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RAPPORTEUR FOR FREEDOM OF EXPRESSION**

Edison Lanza
Special Rapporteur for Freedom of Expression

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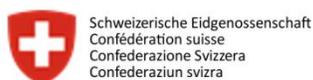
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2017**

INDEX

INTRODUCTION.....	9
CHAPTER I: GENERAL INFORMATION.....	11
A. Creation of the Office of the Special Rapporteur for Freedom of Expression and Institutional Support	
11	
B. Mandate of the Office of the Special Rapporteur	14
C. Principal Activities of the Office of the Special Rapporteur	15
1. Individual Case System.....	15
2. Precautionary Measures	23
3. Public Hearings	26
4. Seminars and Workshops with Strategic Actors in the Region	28
5. Annual Report and Development of Expert Knowledge.....	43
6. Special Statements and Declarations	44
D. Funding	46
E. Staff.....	47
CHAPTER II: EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE	48
i. Introduction and Methodology	48
ii. Evaluation of the State of Freedom of Expression in the Member States	49
1. ANTIGUA & BARBUDA.....	49
2. ARGENTINA.....	50
3. BAHAMAS	70
4. BARBADOS	72
5. BELIZE	73
6. BOLIVIA.....	75
7. BRAZIL.....	83
8. CANADA	97
9. CHILE	102
10. COLOMBIA.....	118
11. COSTA RICA	140
12. CUBA.....	147
13. DOMINICA	158
14. ECUADOR.....	161
15. EL SALVADOR.....	182
16. UNITED STATES.....	194
17. GRENADA	218
18. GUATEMALA	219
19. GUYANA	244
20. HAITI	249
21. HONDURAS	253
22. JAMAICA.....	265
23. MEXICO	268
24. NICARAGUA	301
25. PANAMA	310
26. PARAGUAY	315
27. PERU	330
28. DOMINICAN REPUBLIC.....	339
29. SAINT KITTS & NEVIS	344
30. SAINT VINCENT & THE GRANADINES	345
31. SAINT LUCIA	346
32. SURINAME.....	349
33. TRINIDAD & TOBAGO.....	351
34. URUGUAY	353

35.	VENEZUELA	365
	CHAPTER III: CONCLUSIONS AND RECOMMENDATIONS.....	414
A.	Violence Against Journalists and Media Outlets	414
B.	Social Protests	415
C.	Criminalization of Expression and Proportionality of Subsequent Liability	416
D.	Statements of High-Level State Authorities	417
E.	Prior Censorship.....	417
F.	Indirect Censorship.....	417
G.	Internet	418
H.	Surveillance Programs and Confidential Sources.....	418
I.	Access to Public Information	419
J.	Diversity and Pluralism in the Allocation of Radio Frequencies.....	420
	APPENDIX.....	421

TABLE OF ACRONYMS AND REFERENCES

ACHPR:	African Commission on Human and Peoples' Rights
American Convention:	American Convention on Human Rights
American Declaration:	American Declaration of the Rights and Duties of Man
Declaration of Principles:	Declaration of Principles on Freedom of Expression
European Convention:	European Convention on Human Rights and Fundamental
Freedoms	
European Court:	European Court of Human Rights
IACHR:	Inter-American Commission on Human Rights
ICCPR:	International Covenant on Civil and Political Rights
ILO:	International Labor Organization
Inter-American Court:	Inter-American Court of Human Rights
OAS:	Organization of American States
OSCE:	Organization for Security and Cooperation in Europe
Office of the Special Rapporteur:	Office of the Special Rapporteur for Freedom of Expression
UN:	United Nations
UNESCO:	United Nations Educational, Scientific and Cultural Organization

INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression (hereinafter, “Office of the Special Rapporteur”) was created in October of 1997 by the Inter-American Commission on Human Rights (hereinafter, “IACHR”) during its 97th Period of Sessions. Since its establishment, the Office of the Special Rapporteur has had the support of not only the IACHR, but also Member States of the Organization of American States (OAS), Observer States, civil society organizations, communications media, journalists, and, particularly, the victims of violations of the right to freedom of expression. Indeed, those who have turned to the inter-American system for the protection of human rights as a mechanism for the protection and guarantee of their right to freedom of expression have found that the Office of the Special Rapporteur offers decisive support for reestablishing the guarantees necessary for exercising their rights and for insuring that the damage from the violation of those rights is repaired.

2. Since its inception twenty years ago, the Office of the Special Rapporteur has worked for the promotion of the right to freedom of expression through technical assistance in the processing of cases, precautionary measures and hearings, among others. With the same objective, and in the framework of the IACHR, the Office of the Special Rapporteur has prepared thematic and regional reports, carried out official visits and promotional trips, and participated in dozens of conferences and seminars that have sensitized and trained hundreds of public officials, journalists, and defenders of the right to free expression.

3. The annual report of 2017 follows the basic structure of previous annual reports and fulfills the mandate established by the IACHR for the Office of the Special Rapporteur. The report begins with a general introductory chapter that explains in detail the Office’s mandate, the most important achievements of the Office of the Special Rapporteur, and the activities carried out in 2017.

4. Chapter II presents the now-customary evaluation of the situation of freedom of expression in the hemisphere. In 2017, the Office of the Special Rapporteur received information from multiple sources about situations that could affect the exercise of the right to freedom of expression as well as progress in the effort to guarantee this right. Following the methodology of previous reports, this information was evaluated in light of the Declaration of Principles on Freedom of Expression (hereinafter, “Declaration of Principles”), approved by the IACHR in 2000. The Declaration of Principles constitutes an authoritative interpretation of article 13 of the American Convention on Human Rights (hereinafter, “American Convention”) and an important instrument to help States to resolve challenges and promote, guarantee, and respect the right to freedom of expression.

5. Based on analysis of the situations reported in the hemisphere, the Office of the Special Rapporteur highlights some of the progress and challenges being faced by States in the region. In particular, Chapter II of this report highlights the adoption by national courts of judicial rulings that represent progress at the domestic level in the recognition and protection of the right to freedom of expression. For example, this Office found there was also some progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. However, despite these efforts, the majority of these crimes remain in a troubling state of impunity. Indeed, this section of the report places emphasis on the murders, detentions, attacks, and threats against journalists for the exercise of their profession. The report also points to numerous attacks and threats in the context of protests. According to the information received by the Office of the Special Rapporteur, 22 journalists or media workers were killed during 2017 in the region, while several others disappeared or were dislocated from the areas in which they worked, for reasons that could have been related with their exercise of freedom of expression. States have the obligation to protect journalists who confront particular risks as a result of the exercise of their profession. States have an obligation to investigate, try, and punish those responsible for these acts, not only to provide reparation to the victims and their families, but also to prevent future occurrences of violence and intimidation.

6. Similarly, the Office of the Special Rapporteur considers it’s important to draw attention to other obstacles to the exercise of freedom of expression in the Americas, such as the application of criminal legislation to prosecute those who have made declarations that offend public servants, the use of stigmatizing

declarations against journalists and the media by senior state authorities, and the use of mechanisms of direct and indirect censorship to restrict the free flow of information. The report also identifies some of the obstacles that remain in the region to achieve diversity and pluralism of voices in broadcasting, and deals with some of the new challenges arising from indirect or massive surveillance and data retention practices implemented with the aim of maintaining public order and on security grounds.

7. The intense efforts of the Office of the Special Rapporteur have allowed it to become an expert office charged with promoting and monitoring respect for freedom of expression in the hemisphere. This standing has generated, in turn, a substantial increase in the expectations of the hemispheric community with regard to the work of the Office of the Special Rapporteur. In order to meet this demand, it is necessary to pay attention not only to the institutional and political support of the Office of the Special Rapporteur, but also its financial support, since without this support it cannot function and carry out the activities required by its mandate. It is important to once more urge OAS Member States to follow those countries that have responded to the call of the hemispheric summits to support the Office of the Special Rapporteur. The Plan of Action approved by the Heads of State and Government at the Third Summit of the Americas, held in Québec in April of 2001, establishes that “[t]o strengthen democracy, create prosperity and realize human potential, our Governments will [...] [c]ontinue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR[.]”

8. The Office of the Special Rapporteur thanks the various Member States that have collaborated with it during 2017, as well as and the IACHR and its Executive Secretariat for their constant support. The Office of the Special Rapporteur especially recognizes those independent journalists and media workers who, on a daily basis, carry out the important work of informing society. Finally, the Office of the Special Rapporteur profoundly laments the murders of journalists who lost their lives defending the right of every person to freedom of expression and information.

9. Also, the Office of the Special Rapporteur expresses its appreciation for financial contributions made by the States of Chile, Costa Rica, the United States of America, Peru, Uruguay, France, and the Kingdom of the Netherlands, as well as the Swedish Agency for International Development Cooperation, the Swiss Confederation, Open Society Foundations, the National Endowment for Democracy (NED) and Google Inc. which allowed for the implementation of the Office's 2017 program. The Office of the Special Rapporteur invites other States to add to this necessary support.

10. This annual report intends to contribute to the establishment of an improved climate for the exercise of freedom of expression in the region, and in this way ensure the strengthening of democracy, wellbeing, and progress of the hemisphere's inhabitants. Its objective is to collaborate with OAS Member States in raising awareness about the existing problems and in formulating viable proposals and recommendations based on regional doctrine and jurisprudence. To achieve this aim, it is necessary that the work of the Office of the Special Rapporteur be understood as a useful tool for responding to the challenges we face and for generating a broad and fluid dialogue not only with the Member States, but also with civil society and journalists in the region.

CHAPTER I: GENERAL INFORMATION

A. Creation of the Office of the Special Rapporteur for Freedom of Expression and Institutional Support

11. The Inter-American Commission on Human Rights, by the unanimous decision of its members, created the Office of the Special Rapporteur for Freedom of Expression during its 97th period of sessions, held in October 1997. This Special Rapporteurship was created by the Commission as a permanent, independent office that acts within the framework and with the support of the IACHR. Through the Office of the Special Rapporteur, the Commission sought to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system and in protecting, guaranteeing, and promoting other human rights. During its 98th period of sessions, held in March 1998, the IACHR defined in general terms the characteristics and functions of the Office of the Special Rapporteur and decided to create a voluntary fund to provide it with economic assistance.

12. The Commission's initiative to create a permanent Office of the Special Rapporteur for Freedom of Expression found full support among the OAS Member States. Indeed, during the Second Summit of the Americas, the hemisphere's Heads of State and Government recognized the fundamental role of freedom of thought and expression, and noted their satisfaction over the creation of the Special Rapporteurship. In the Declaration of Santiago, adopted in April 1998, the Heads of State and Government stated the following:

We agree that a free press plays a fundamental role [in protecting human rights] and we reaffirm the importance of guaranteeing freedom of expression, information, and opinion. We commend the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States.¹

13. The Heads of State and Government of the Americas likewise expressed their commitment to support the Office of the Special Rapporteur for Freedom of Expression. On this point, the Summit Plan of Action recommended the following:

To strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression, information and thought, through support for the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression.²

14. Moreover, the Heads of State and Government ratified the mandate of the Office of the Special Rapporteur during the third Summit of the Americas, in Québec, adding that their governments would:

Continue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.³

15. The OAS General Assembly has on various occasions expressed its support for the work of the Office of the Special Rapporteur and entrusted it with follow-up or analysis of some of the rights that comprise freedom of expression. Thus, for example, in 2005 the OAS General Assembly approved Resolution 2149 (XXXV-O/05), in which it reaffirms the right to freedom of expression, recognizes the important contributions

¹ Declaration of Santiago. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. "Official Documents of the Summit Process from Miami to Santiago." Volume I. Office of Summit Follow-up. Organization of American States.

² Plan of Action. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. "Official Documents of the Summit Process from Miami to Santiago." Volume I. Office of Summit Follow-up. Organization of American States.

³ Plan of Action. Third Summit of the Americas. April 20-22, 2001. Québec, Canada.

made in the Office of the Special Rapporteur's 2004 annual report, and urges follow-up on the issues included in that report, such as the evaluation of the situation regarding freedom of expression in the region; indirect violations of freedom of expression; the impact of the concentration in media ownership; and the way hate speech is addressed in the American Convention.⁴ The Office of the Special Rapporteur has analyzed these issues in different annual reports, in the context of its evaluation of the state of freedom of expression in the region and in fulfillment of its task of creating expertise and promoting regional standards in this area.

16. In 2006, the OAS General Assembly reiterated its support for the Office of the Special Rapporteur in its Resolution 2237 (XXXVI-O/06). In this resolution, the General Assembly reaffirmed the right to freedom of expression, recognized the important contributions made in the Office of the Special Rapporteur's 2005 annual report, and urged follow-up on the issues mentioned in the report. These included, among others, public demonstrations as an exercise of freedom of expression and freedom of assembly, as well as freedom of expression and the electoral process.⁵ As in the previous case, the Office of the Special Rapporteur has followed up on these issues in its annual evaluation of the situation regarding freedom of expression in the region. In the same resolution, the General Assembly called for convening a special meeting of the Committee on Juridical and Political Affairs to delve deeper into existing international jurisprudence regarding the subject matter of article 13 of the American Convention, and to specifically address issues such as public demonstrations and freedom of expression, as well as the development and scope of article 11 of the American Convention. That meeting was held on October 26-27, 2007.

17. In 2007, the OAS General Assembly approved Resolution 2287 (XXXVII-O/07), in which it invited the Member States to consider the Office of the Special Rapporteur's recommendations on the matter of defamation laws. In that resolution, the General Assembly reiterated its request to convene a special meeting in the Committee on Juridical and Political Affairs to delve deeper into existing international jurisprudence regarding article 13 of the American Convention. That meeting was held on February 28-29, 2008.

18. In 2008, the General Assembly approved Resolution 2434 (XXXVIII-O/08), which reaffirms the right to freedom of expression and requests once again that the IACHR conduct appropriate follow-up on compliance with standards in this area and deepen its study of the issues addressed in its annual reports. The resolution invites the Member States to consider the recommendations of the Office of the Special Rapporteur regarding defamation, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, and in this regard, to regulate these conducts exclusively in the area of civil law.

19. In 2009, in its Resolution 2523 (XXXIX-O/09), the General Assembly underscored the importance of the Office of the Special Rapporteur's recommendations contained in the 2004, 2005, 2006, 2007, and 2008 annual reports. It also requested once again that the IACHR follow up on the recommendations included in these reports and in particular invited the Member States to take into consideration the Office of the Special Rapporteur's recommendations, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, as well as by regulating this conduct exclusively in the area of civil law.

20. In 2011, the General Assembly passed resolution 2679 (XLI-O/11) reiterating the importance of freedom of expression for the exercise of democracy and reaffirming that free and independent media are fundamental for democracy, for the promotion of pluralism, tolerance and freedom of thought and expression, and for the facilitation of free and open dialogue and debate in all sectors of society, without discrimination of any kind. The Assembly invited the Member States to consider the recommendations of the IACHR Office of the Special Rapporteur for Freedom of Expression and asked the IACHR to follow up on and deepen its research on the subjects contained in the pertinent volumes of its annual reports for the years 2006, 2007, 2008, 2009, and 2010 on freedom of expression.

⁴ IACHR. Annual Report 2004. Annual Report 2004. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II.222. Doc. 5 rev. 23 February 2005. Chapters II, V and VII.

⁵ IACHR. Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. OAS/Ser.L/V/II.124 Doc. 7. 27 February 2006. Chapter V and VI.

21. On the subject of access to information, the General Assembly has made several statements supporting the work of the Office of the Special Rapporteur and urging the adoption of its recommendations. In its Resolution 1932 (XXXIII-O/03) in 2003, reiterated in 2004 in Resolution 2057 (XXXIV-O/04), and in 2005 in Resolution 2121 (XXXV-O/05), the General Assembly asked the Office of the Special Rapporteur to continue reporting on the situation regarding access to public information in the region in its annual reports. In 2006, through Resolution 2252 (XXVI-O-06), among other points, the Office of the Special Rapporteur was instructed to provide support to the Member States that request assistance in the development of legislation and mechanisms on access to information. The IACHR was also asked to conduct a study on the various forms of guaranteeing that all persons have the right to seek, receive, and disseminate public information based on the principle of freedom of expression. As a follow-up to this resolution, the Office of the Special Rapporteur in August 2007 published the *Special Study on the Right of Access to Information*.⁶ In 2007, the General Assembly approved Resolution 2288 (XXXVII-O/07), which highlights the importance of the right of access to public information, takes note of the Office of the Special Rapporteur's reports on the situation regarding access to information in the region, urges the States to adapt their legislation to guarantee this right, and instructs the Office of the Special Rapporteur to offer advisory support to the Member States in this area. In 2008, the OAS General Assembly also approved Resolution 2418 (XXXVIII-O/08), which highlights the importance of the right of access to public information, urges the States to adapt their legislation to meet standards in this area, and instructs the Office of the Special Rapporteur to offer advisory support, as well as to continue including a report on the situation regarding access to public information in the region in its annual report.

22. In 2009, in its Resolution 2514 (XXXIX-O/09), the General Assembly once again reiterated the importance of the right of access to public information and recognized that the full respect for freedom of expression, access to public information, and the free dissemination of ideas strengthens democracy, contributes to a climate of tolerance of all views, fosters a culture of peace and non-violence, and strengthens democratic governance. It also instructs the Office of the Special Rapporteur to support the Member States of the OAS in the design, execution, and evaluation of their regulations and policies with respect to access to public information and to continue to include in its annual report a chapter on the situation regarding access to public information in the region.

23. In that same resolution, the General Assembly entrusted the Department of International Law, with the collaboration of the Office of the Special Rapporteur, the Inter-American Juridical Committee and the Department of State Modernization and Governance, as well as the cooperation of Member States and civil society, with drafting a Model Law on Access to Public Information and a guide for its implementation, in keeping with the Inter-American standards on the issue. In order to comply with this mandate, a group of experts was formed - in which the Office of the Special Rapporteur took part - that met three times during the year to discuss, edit and finalize the documents. The final versions of the two instruments were approved by a group of experts in March 2010 and presented to the Committee on Political and Juridical Affairs of the Permanent Council in April of 2010. In May of 2010, the Permanent Council submitted a resolution and the text of the Model Law to the General Assembly, which issued resolution AG/RES 2607 (XL-O/10) in June of 2010. This resolution approved the text of the Model Law⁷ and reaffirmed the importance of the annual reports of the Office of the Special Rapporteur.

24. In 2011, in resolution 2661 (XLI-O/11), in 2012 in resolution AG/RES. 2727 (XLII-O/12) and in 2013 in resolution AG/RES 2811 (XLIII-O/13), the General Assembly, among other matters, has entrusted the Office of the Special Rapporteur of the IACHR to continue to include in the annual IACHR report a report on the situation or status of access to public information in the region and its effect on exercise of the right to freedom of expression.

⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. Estudio Especial sobre el Derecho de Acceso a la Información. August, 2007.

⁷ OAS. The Model Law and its Implementation Guide Resolution AG/RES 2607 (XL-O/10).

25. In 2014, the General Assembly of the OAS approved resolution AG/RES. 2842 (XLIV-O/14) on Access to Information and Protection of Personal Data, which, among other things, includes entrusting the Office of the Special Rapporteur for Freedom of Expression to continue including in the annual IACHR report a report on the situation/status of access to public information in the region and its effect on exercise of the right to freedom of expression.

26. In 2016, the general Assembly of the OAS approved resolution AG/RES. 2885 (XLVI-O/16) on Access to Public Information, which instructs the Office of the Special Rapporteur for Freedom of Expression to develop and disseminate the content of the inter-American legal framework on access to information, including the inter-American Model Law on Access to Public Information, through the preparation of reports on the scope of the law and the application of its principles. Additionally it also instructed the Office of the Special Rapporteur to assist Member States and to organize and participate in capacity building programs for public officials on access to information and justice operators.

27. In 2017, the General Assembly of the OAS adopted resolution AG / RES. 2908 (XLVII-O / 17) regarding the right to freedom of thought and expression and the safety of journalists and media workers in the hemisphere. The proposal was presented by the delegation of Uruguay and co-sponsored by the delegations of Argentina, Bolivia, Chile, Costa Rica, Mexico, Peru and the Dominican Republic. The Office of the Special Rapporteur joins the commitment that the States make in this resolution to implement strategies and resources that end with the prevailing impunity in crimes against journalists.

28. Since its creation, the Office of the Special Rapporteur has also had the support of civil society organizations, the media, journalists and, most importantly, individuals who have been victims of violations of the right to freedom of thought and expression, along with their family members.

B. Mandate of the Office of the Special Rapporteur

29. The Office of the Special Rapporteur for Freedom of Expression is a permanent office with its own operative structure and functional autonomy, which operates within the legal framework of the IACHR.⁸

30. The Office of the Special Rapporteur has a general mandate to carry out activities for the protection and promotion of the right to freedom of thought and expression, including the following:

31. Advise the IACHR in evaluating cases and requests for precautionary measures, as well as in preparing reports;

32. Carry out promotional and educational activities on the right to freedom of thought and expression;

33. Advise the IACHR in conducting on-site visits to OAS member countries to expand the general observation of the situation and/or to investigate a particular situation having to do with the right to freedom of thought and expression;

34. Conduct visits to OAS Member Countries;

35. Prepare specific and thematic reports;

36. Promote the adoption of legislative, judicial, administrative, or other types of measures that may be necessary to make effective the exercise of the right to freedom of thought and expression;

37. Coordinate with ombudsman's offices or national human rights institutions to verify and follow up on conditions involving the exercise of the right to freedom of thought and expression in the Member States;

⁸ See Articles 40 and 41 of the American Convention and Article 18 of the Statute of the IACHR.

38. Provide technical advisory support to the OAS bodies;

39. Prepare an annual report on the situation regarding the right to freedom of thought and expression in the Americas, which will be considered by the full Inter-American Commission for its approval and inclusion in the IACHR's annual report, presented annually to the General Assembly;

40. Gather all the information necessary to prepare the aforementioned reports and activities.

41. In 1998, the Commission announced a public competition for the post of Special Rapporteur. Once the process was completed, the IACHR decided to designate as Special Rapporteur the Argentine attorney Santiago A. Canton, who assumed the post on November 2, 1998. In March 2002, the IACHR named Argentine attorney Eduardo A. Bertoni as Special Rapporteur. Bertoni occupied this position from May 2002 to December 2005. On March 15, 2006, the IACHR chose Venezuelan attorney Ignacio J. Alvarez as Special Rapporteur. In April 2008, the IACHR announced a competition to select Álvarez's successor. During the period in which the post was vacant, the Office of the Special Rapporteur was under the responsibility of then-Commission Chairman Paolo Carozza. The selection process ended on June 1, 2008 and on July 21, 2008, the IACHR chose Colombian attorney Catalina Botero Marino as Special Rapporteur,⁹ who served in that post for two consecutive periods, from October 6, 2008 until October 5, 2014. On December 19, 2013, the IACHR began a selection process to choose the Rapporteur for a new period. The process ended on February 20, and the candidates preselected to hold this position were interviewed during the 151st Period of Sessions. On July 22, 2014, the IACHR chose Uruguayan attorney and journalist Edison Lanza as Special Rapporteur, pursuant to article 15.4 of its Regulation.

42. On April 27th, 2017, within the framework of the commemoration of the twentieth anniversary of the Special Rapporteurship for Freedom of Expression, Special Rapporteur Edison Lanza presented alongside the IACHR and the Inter-American Court, the Annual Report for 2016 to the Committee on Legal Affairs and Politicians (CAJP) of the OAS. The representatives of the countries of Argentina, Chile, Colombia, Costa Rica, and the United States, led by the Ambassador of Uruguay, recognized the important work carried out by the Special Rapporteur since its inception in relation to the protection and promotion of the right to freedom of expression in the hemisphere and stressed the importance of ensuring the continuation of its mandate. In the celebration of its 20 years, the Special Rapporteur thanked Member States and, in particular, the countries that, through financial contributions, have made possible the work of the office in the hemisphere.

C. Principal Activities of the Office of the Special Rapporteur

43. During its twenty years of existence, the Office of the Special Rapporteur has carried out each of the tasks assigned to it by the IACHR and by other OAS bodies such as the General Assembly in a timely and dedicated manner.

44. This section of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2017.

1. Individual Case System

45. One of the most important functions of the Office of the Special Rapporteur is to advise the IACHR in the evaluation of individual petitions and prepare the corresponding reports.

46. The appropriate advancement of individual petitions not only provides justice in the specific case, but also helps call attention to paradigmatic situations that affect freedom of thought and expression, and creates important case law that can be applied in the inter-American human rights system itself as well as in courts in countries throughout the region. The individual case system also constitutes an essential factor

⁹ IACHR. July 21, 2008. [Press Release No 29/08. IACHR Elects Catalina Botero Marino as Special Rapporteur for Freedom of Expression](#)

within the broad strategy of promoting and defending the right to freedom of thought and expression in the region, a strategy that the Office of the Special Rapporteur carries out through various mechanisms offered by the inter-American human rights system.

47. Since its creation, the Office of the Special Rapporteur has advised the IACHR in the presentation of important cases involving freedom of expression to the Inter-American Court of Human Rights (hereinafter, the “Court” or the “Inter-American Court”). The most relevant cases in the area are:

- *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. This case dealt with prohibition of prior censorship. The Court’s decision led to an exemplary constitutional reform in Chile and to the establishment of an important hemispheric standard in this area.

- *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. The petitioner was a naturalized citizen of Peru who was a majority shareholder in a television channel that aired a program that was severely critical of certain aspects of the Peruvian government, including cases of torture, abuse and acts of corruption committed by the Peruvian Intelligence Services. As a result of these reports, the State revoked the petitioner’s Peruvian citizenship and removed his shareholding control of the channel. The judgment of the Inter-American Court found that the government’s actions had violated the right to freedom of expression through indirect restrictions and ordered the State to restore the victim’s rights.

- *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. This case involved a journalist who had published several articles reproducing information from various European newspapers on alleged illegal conduct by a Costa Rican diplomat. The State convicted the journalist on four defamation charges. The Inter-American Court found that the conviction was disproportionate and that it violated the right to freedom of expression, and ordered, among other things, the nullification of criminal proceedings against the journalist.

- *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. During the 1993 presidential campaign in Paraguay, candidate Ricardo Canese made statements to the media against candidate Juan Carlos Wasmosy, whom he accused of being involved in irregularities related to the construction of a hydroelectric plant. Canese was prosecuted and sentenced in the first instance to four months in prison, among other restrictions to his basic rights. The Inter-American Court found that the conviction was disproportionate and violated the right to freedom of expression. The Court also underscored the importance of freedom of expression during election campaigns, in the sense that people should be fully entitled to raise questions about candidates so that voters can make informed decisions.

- *Case of Palamara-Iribarne v. Chile*. Judgment of November 22, 2005. Palamara, a former military official, had written a book that was critical of the National Navy. The book gave rise to a military criminal trial for “disobedience” and “breach of military duties,” and led the State to withdraw from circulation all existing physical and electronic copies. The Court ordered a legislative reform that would ensure freedom of expression in Chile, as well as publication of the book, restitution of all copies that had been seized, and reparation of the victim’s rights.

- *Case of Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. This case addresses the State’s refusal to provide Marcelo Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero with certain information that they requested from the Foreign Investment Committee regarding forestry company Trillium and the Río Cóndor project. In this ruling, the Inter-American Court recognized that the right to access to information is a human right protected under article 13 of the American Convention.

- *Case of Kimel v. Argentina*. Judgment of May 2, 2008. The decision refers to the conviction of journalist Eduardo Kimel who in a book had criticized the conduct of a criminal judge in charge of investigating a massacre. The judge initiated a criminal proceeding in defense of his honor. The Inter-American Court found that the journalist’s punishment was disproportionate and violated the victim’s right to freedom of expression. In its decision, the Inter-American Court ordered the State to, among other things, provide the victim with reparations and reform its criminal legislation on the protection of honor and reputation, finding that it violated the principle of criminal definition or strict legality.

- *Case of Tristán Donoso v. Panama*. Judgment of January 27, 2009. This judgment refers to the proportionality of the sanctions imposed on a lawyer convicted of the crimes of defamation and slander for having declared during a press conference that a State official had recorded his private telephone conversations and had disclosed them to third parties. The Inter-American Court concluded that the State violated the lawyer's right to freedom of expression, since the criminal conviction imposed as a form of subsequent liability was unnecessary. The Inter-American Court also established criteria on the intimidating and inhibiting nature of disproportionate civil sanctions.

- *Case of Ríos et al. v. Venezuela*. Judgment of January 28, 2009. The judgment refers to different public and private acts that limited the journalistic endeavors of the workers, management, and others associated with the RCTV television station, as well as to certain declarations by agents of the State against the station. The Inter-American Court found that statements were incompatible with the freedom to seek, receive, and impart information "since they could have resulted intimidating for those linked with that communication firm." The Inter-American Court also found that the State's responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Inter-American Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against the journalists and to adopt "the necessary measures to avoid illegal restrictions and direct or indirect impediments to the exercise of the freedom to seek, receive, and impart information."

- *Case of Perozo et al. v. Venezuela*. Judgment of January 28, 2009. This judgment involved statements by public officials and other alleged hindrances to the exercise of freedom of expression, such as acts of violence by private actors against individuals linked to the Globovisión television station. The Inter-American Court found that statements made by high-level public officials and State authorities' omissions in terms of their obligation to act with due diligence in investigating acts of violence against journalists constituted violations of the State's obligation to prevent and investigate the facts. The Inter-American Court found that the State's responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against journalists and to adopt "the necessary measures to prevent the undue restrictions and direct and indirect impediments to the exercise of the freedom to seek, receive, and impart information."

- *Case of Usón Ramírez v. Venezuela*. Judgment of November 20, 2009. Usón, a retired military officer, was convicted of the crime of "slander against the National Armed Forces," after appearing on a television program and expressing critical opinions regarding the institution's reaction in the case of a group of soldiers who had been severely injured while in a military establishment. The Inter-American Court found that the criminal law used to convict Usón did not comply with the principle of legality because it was ambiguous, and concluded that the application of the criminal law in the case was not appropriate, necessary and proportional. The Inter-American Court ordered the State, *inter alia*, to vacate the military justice proceedings against the victim and modify, within a reasonable time, the criminal provision employed in his case.

- *Case of Manuel Cepeda Vargas v. Colombia*. Judgment dated May 26, 2010. This case refers to the extrajudicial execution of Senator Manuel Cepeda Vargas, who was a national leader of the Colombian Communist Party and a prominent figure in the political party Unión Patriótica. The Court held that, in cases like this one, it is possible to illegally restrict freedom of expression through *de facto* conditions that put the person exercising freedom of expression at risk. The Court found that the State, "must abstain from acting in a way that fosters, promotes, favors or deepens such vulnerability and it has to adopt, whenever appropriate, the measures that are necessary and reasonable to prevent or protect the rights of those who are in that situation." Likewise, the Court found that effects on the right to life or personal integrity that are attributable to the State can mean a violation of article 16(1) of the Convention when the cause is connected with the legitimate exercise of the victim's right to freedom of association. In this sense, the Court highlighted that opposition voices are "essential in a democratic society" and indicated that "in a democratic society States must guarantee the effective participation of opposition individuals, groups and political parties by means of appropriate laws, regulations and practices that enable them to have real and effective access to the different deliberative mechanisms on equal terms, but also by the adoption of the required measures to guarantee its

full exercise, taking into consideration the situation of vulnerability of the members of some social groups or sectors." Finally, the Court found that although Senator Cepeda Vargas was able to exercise his political rights, his freedom of expression and freedom of association, "the fact that he continued to exercise them was obviously the reason for his extrajudicial execution," meaning that the State "did not create either the conditions or the due guarantees for Senator Cepeda [...] to have the real opportunity to exercise the function for which he had been democratically elected; particularly, by promoting the ideological vision he represented through his free participation in public debate, in exercise of his freedom of expression. In the final analysis, the activities of Senator Cepeda Vargas were obstructed by the violence against the political movement to which he belonged and, in this sense, his freedom of association was also violated."

- *Case of Gomes Lund et. al. v. Brazil.* Judgment dated November 24, 2010. The case addresses the arbitrary detention, torture and forced disappearance of 70 people as the result of operations of the Brazilian army between 1972 and 1975. The purpose of the operations was to eradicate the so-called Araguaia Guerrillas. The operations took place in the context of the Brazilian military dictatorship. The case also addressed the damage to the right to access to information that the family members of the victims suffered. In this respect, the Inter-American Court reiterated its jurisprudence on the right to freedom of thought and expression, which has held that article 13 of the American Convention protects the right of all individuals to request information held by the State, subject to the limitations permitted under the Convention's regime of exceptions. In addition, the Inter-American Court established that in cases of violations of human rights, State authorities cannot resort to citing State secrecy, the confidentiality of information, or public interest or national security in order to avoid turning over the information required by the judicial or administrative authorities in charge of the investigation. Likewise, the Court held that when the investigation of a crime is at issue, the decision whether to classify the information as secret and refuse to turn it over - or to determine if the documentation even exists - can never depend exclusively on a state body whose members have been accused of committing the illicit act. Finally, the Court concluded that the State cannot resort to the lack of evidence of the existence of the documents requested by the victims or their family members. On the contrary, it must back up its denial of documents by demonstrating that it has taken all available measures to prove that, in effect, the requested information does not exist. In this sense, the Court indicated that in order to guarantee the right to access to information, government authorities must act in good faith and diligently carry out the actions necessary to ensure the effectiveness of the right to freedom of thought and expression, especially when the request for information involves learning the truth of what happened in cases of serious human rights violations like forced disappearance and extrajudicial execution, as was the case here.

- *Case of Fontevecchia and D'Amico v. Argentina.* Judgment of November 29, 2011. The case refers to the civil punishment imposed on Messrs. Jorge Fontevecchia and Hector D'Amico, director and editor, respectively, of the magazine *Noticias*, through judgments issued by Argentine courts as subsequent liability for the publication of two articles, in November of 1995. These publications referred to the existence of an unrecognized son of Carlos Saúl Menem, then President of the Nation, with a congresswoman; the relationship between the President and the congresswoman; and the relationship between the President and his son. The Supreme Court of Justice of the Nation found that the right to privacy of Mr. Menem had been violated by the publications. The Inter-American Court found that the information published was of public interest and that it was already in the public domain. Therefore, there was no arbitrary interference with the right to privacy of Mr. Menem. Thus, the measure of subsequent liability imposed did not comply with the requirement of being necessary in a democratic society, and constituted a violation of article 13 of the American Convention.

- *Case of González Medina and relatives v. Dominican Republic.* Judgment of February 27, 2012. In this judgment, the Court found the Dominican State responsible for violating Narciso González Medina's rights to personal liberty, personal integrity, life, and recognition of juridical personality. In May 1994, the lawyer, professor, and journalist Narciso González Medina was forcibly disappeared, and his whereabouts were still unknown as of the date of the Court's decision. Days before his disappearance, González had published an opinion piece in a magazine called *La Muralla* and had given a speech at the Autonomous University of Santo Domingo (UASD, in its Spanish acronym), in both of which he had denounced corruption and electoral fraud. The Court was able to establish that the context of González Medina's disappearance was characterized by "an extremely tense political climate owing to the alleged electoral fraud" in the May 1994 elections in the

Dominican State; that the country “was almost under military control” at that time; and that “repressive methods were used against those who protested,” as were practices involving “harassment and surveillance of journalists and those who criticized the Government.” Although the Commission alleged that González Medina’s exercise of freedom of expression and his forced disappearance were related, the Court did not find the Dominican State responsible for violating article 13 because, according to the Court, it lacked competence *ratione temporis* in this case. The Court found that even though in previous cases “it has recognized that when the purpose of the violation of the rights to life, and to personal liberty or integrity is to impede the legitimate exercise of another right protected by the Convention (...), such as freedom of association (...) [or] freedom of expression, there is also an autonomous violation of these rights,” in this case it was not possible to establish international responsibility because “the beginning of the forced disappearance [had been] prior to the acceptance of the Court’s jurisdiction,” and the Dominican Republic had not acquiesced to the facts or acknowledged its responsibility during the process. Thus, the Court “lacks competence [*ratione temporis*] to examine the alleged violation of the freedom of expression of [...] González Medina as an autonomous violation.”

– *Case of Vélez Restrepo and Family v. Colombia*. Judgment of September 3, 2012. The case has to do with the attack perpetrated against journalist Luis Gonzalo “Richard” Vélez Restrepo by soldiers of the Colombian National Army while he was filming a protest demonstration in which soldiers from that institution beat several of the protesters. The case also involves the threats and harassment suffered by the journalist and his family, and the attempted arbitrary deprivation of liberty of the journalist, which occurred as Mr. Vélez tried to advance the judicial proceedings against his attackers. The Inter-American Court found the Colombian State responsible for violating the journalist’s right to personal integrity and freedom of expression. It also found the State responsible for not having adequately protected Mr. Vélez, given the threats he had received, and for not having effectively investigated the attack he suffered and the subsequent harassments. The Court noted that “journalism can only be exercised freely when those who carry out this work are not victims or threats or physical, mental or moral attacks or other acts of harassment”; therefore, States “have the obligation to provide measures to protect the life and integrity of the journalists who face [a] special risk.” Among other reparation measures, the Court ordered the State to incorporate into its human rights education programs for the Armed Forces a special module on the protection of the right to freedom of thought and expression and on the work of journalists and media workers.

– *Case of Uzcátegui et al. v. Venezuela*. Judgment of September 3, 2012. In this judgment, the Court found the Venezuelan State responsible for violating, among other things, the right to life of Néstor José Uzcátegui; the rights to personal liberty and personal integrity of the human rights defender Luis Enrique Uzcátegui and Carlos Eduardo Uzcátegui; and the right to freedom of expression of Luis Enrique Uzcátegui. In terms of this last matter, the judgment verifies that, in response to the murder of Néstor Uzcátegui, his brother, Luis Enrique not only reported the facts to the public prosecutor’s office; he also asserted through various media outlets that, in his judgment, the General Commander of the State of Falcón Police Armed Forces at the time was responsible for several homicides carried out by “extermination groups” under his command. Upon making such assertions, Uzcátegui was intimidated and harassed. He was also the subject of a criminal complaint for defamation, filed by the police Commander concerned. The Court considered the acts of harassment and threats produced as a result of Uzcátegui’s denunciations to have been proven. It also found that the assertions made publicly by Luis Enrique Uzcátegui could and should “be understood as part of a broader public debate on the possible implication of the State security forces in cases involving grave human rights violations.” Taking into account the relevance of such assertions, the Court found that the existence of the criminal proceedings, their duration in time, and the circumstance of the high rank of the person filing the complaint “could have generated a chilling or inhibiting effect on the exercise of freedom of expression, contrary to the State’s obligation to guarantee the free and full exercise of this right in a democratic society.” As to the threats and intimidation, taking into account that “it is possible that freedom of expression may be unlawfully restricted by *de facto* conditions that directly or indirectly place those who exercise it at risk or in a situation of increased vulnerability,” the Court found that every State must “abstain from acting in a way that contributes to, stimulates, promotes or increases this vulnerability and must adopt, when pertinent, necessary and reasonable measures to prevent violations and protect the rights of those who find themselves in this situation.” In the case at hand, the Court deemed that the State did not prove that it had “taken sufficient and effective steps to prevent the acts of threats and harassment against Luis Enrique

Uzcátegui in the particular context of Falcón state,” and therefore “it did not meet its obligation to adopt necessary and reasonable measures to effectively guarantee [his] rights to personal integrity and to freedom of thought and expression,” under the terms of the American Convention.

– *Norin Catriman and Others Case (leaders, members and activists of the Mapuche Indigenous People) vs Chile*. Sentence of May 29, 2014. The case refers to criminal proceedings and sentences imposed on eight leaders, members and activists of the Mapuche Indigenous People, as perpetrators of crimes classified as terrorism in the application of Law 18,314 (known as the “Antiterrorist Law” [*Ley Antiterrorista*]), in a context of social protest aimed at recovering the ancestral territories of the Mapuche People and respect for the use and enjoyment of their lands and natural resources. In its ruling, the Court examined the compatibility of accessory penalties imposed in the present case against the victims, leaving them disqualified for 15 years from “making use of a social communications medium or being the director or administrator of one, or performing duties associated with the issuance or dissemination of opinions or information.” The Court determined that the referred-to accessory penalty implies undue restriction of the victims’ exercise of the right to freedom of thought and expression, “not only for having been imposed based on sentences that applied criminal law in violation of the principle of legality and of various procedural guarantees, but also because, in the circumstances of the present case, it is contrary to the principle of proportionality of the penalty.” The Court added that, given that the victims are traditional authorities of the Mapuche Indigenous people who “are responsible for playing a determining role in communicating the interests and in the political, spiritual and social leadership of their respective communities,” the imposition of the referred-to accessory penalty “has restricted the possibility of participating in the dissemination of opinions, ideas and information by carrying out duties in the social communications media, which could limit the sphere of action of their right to freedom of thought and expression in the exercise of their duties as leaders or representatives of their communities. At the same time, this negatively affects the social dimension of the right to freedom of thought and expression, which, as established by the Court in its jurisprudence, implies the right of everyone to know about opinions, narratives and news expressed by third parties.” It also reiterated its jurisprudence regarding the “intimidating effect on the exercise of freedom of expression that can be caused by the fear of being subjected to an unnecessary or disproportionate criminal or civil sanction in a democratic society, which can lead to self-censorship both by those upon whom the sanctions are imposed as well as other members of society.” In the present case, the Tribunal determined “that the way in which the Antiterrorist Law [*Ley Antiterrorista*] was applied to the members of the Mapuche Indigenous People could have caused reasonable fear among other members of that people involved in actions associated with social protest and claims for their territorial rights or who could possibly wish to participate in them.” It therefore determined that the State had violated the right to freedom of expression, in detriment to the victims.

– *Case of Grainer et al (Radio Caracas Televisión) v. Venezuela*. Judgment of June 22, 2015. In this judgment the Inter-American Court held the State of Venezuela internationally responsible for the violation of certain rights following the closing of the television channel Radio Caracas Televisión (“RCTV”) on May 27, 2007. The closing was due to the State reserving the radio electric spectrum that RCTV had been using and thereafter barring participation in administrative proceedings of a media outlet that was critical of the government. Specifically, the Court decided it was an indirect restriction on the right to freedom of expression of the executives and journalists for that media outlet, as well as a violation of the right to freedom of expression as it relates to the duty of non-discrimination. In this regard, the Inter-American Court considered the restrictions to freedom of expression often materialize through State or individuals’ actions affecting not only the entity that makes up the media outlet but also the plurality of individuals, such as shareholders or the journalists working there reporting through the media outlet and whose rights may also be violated. Likewise the Court recognized the legal authority and need the States have to regulate radio broadcasting, which includes not only the possibility of defining the way concession, renewal or revocation of licenses are granted, but also in the planning and implementation of public policy on said activity; as long as the right to freedom of expression is respected. In addition it found that considering the radio electric spectrum is limited with only a certain number of frequencies, this restricts the number of media outlets that have access to it; therefore it is necessary to ensure that diverse visions, opinions or informational positions are represented in that number of media outlets. The Court noted that plurality of ideas in the media couldn’t be measured by the number of media outlets but rather that the broadcasted ideas and information are

effectively diverse and addressed from differing positions and not by one viewpoint. The aforementioned must be considered in procedures used for granting or renewing broadcasting concessions or licenses. In addition, the Court underscored the need for States to regulate the procedures on granting and revoking broadcasting concessions or licenses in a clear and precise manner through objective criteria avoiding partiality. In particular, it considered said regulation cannot be based on “political discrepancies that could generate a government editorial line. As noted earlier, the right to freedom of expression should not only be guaranteed for favorable broadcasting or broadcasts considered inoffensive or indifferent, but should also be specially protected when they are disagreeable to the government or any other sector of the population”. Upon analyzing the instant case the Court concluded the State’s actions “imply abuse of power as a State power was used in order to align a media outlet with the government”. This opinion is based on the fact that “the decision had been made earlier and was founded on the annoyance caused by RCTV’s editorial line, in addition to the context of the deterioration of the protection to freedom of expression that was proven in this case”. The Court affirmed that said abuse of power “impacted the exercise of freedom of expression, not only to RCTV workers and executives, but also in the social dimension of the aforementioned right, in other words, citizens were deprived of access to the RCTV editorial line. In fact the true objective was to silence government criticism which in addition to pluralism, tolerance and spirit of openness are necessary for a democratic debate which is exactly what the right to freedom of expression seeks to protect”. Lastly, the Court found violations of due process and right to be heard in as much as: i) the legal procedure followed for title transformation and concession renewal “was deliberately omitted by the State”, and ii) the victims were unable to intervene directly in the legal proceedings resulting in the seizing of RCTV property and as of June of 2007 no other hearings have been held on the matter.

– *Case of López Lone et al v. Honduras*. Judgment of October 5, 2015. In the judgment the Court recognized the existing relationship between political rights, freedom of expression, right of assembly and freedom of association and that together all these rights make democracy possible. The relationship between these rights is manifested even more where there is rupture of institutional order after a coup d’état. In this regard the Court also noted that protests and expressions favoring democracy must have the highest level of protection possible and depending on the circumstances these may be tied with some or all of the aforementioned rights. This Court also considered the right to defend democracy constitutes a specific manifestation of the right to participate in public matters and is likewise part of the joint exercise of other rights such as the right to freedom of expression and right of assembly. The Court underscored that the American Convention confers the protection of political rights, freedom of expression, right of assembly and freedom of association to all persons, independent from any other consideration; therefore it cannot be permitted for or restricted from a specific profession or group of people. Nevertheless, it clarified that these rights are not absolute and may be subject to restrictions compatible with the Convention. Regarding persons in the judiciary, it held that due to their duties in the administration of justice, under normal Rule of Law conditions, judges are subject to different restrictions in ways that do not affect other individuals, including other public servants. In this regard it noted that pursuant to the American Convention the restrictions to certain behaviors for judges with the object of protecting independence and impartiality in the execution of justice as a “right or freedom of others”. Nonetheless, it warned that the power the States have to regulate or restrict these rights is not discretionary and must be interpreted in a restrictive manner, in such a way that it could not bar judges from participating in all types of political discussions. In this regard, it underscored that there are situations where judges, as regular members of society, may feel the moral obligation to express themselves. In fact the Court noted that when there is a serious democratic crisis, such as the one in this case, regulations restricting the rights of judges from political participation in defense of democratic order are inapplicable. It would run counter to the very power of State branches of government and to international obligations derived from participation in the OAS to disallow judges to voice their opinion against a coup d’état. On the other hand the Court considered that the mere opening of a disciplinary action case against the judges and the appellate court judge (magistrada) for their actions against the coup d’état and in favor of the Rule of Law could have an intimidating effect and therefore constitute an undue restriction on their rights. Specifically regarding the victims in this case the Court noted: i) the disciplinary procedures against Mr. López Lone for participating in a protest against the coup d’état and his subsequent removal, and against Mr. Chévez de la Rocha for his alleged participation and subsequent detention in a protest against the coup d’état and for the comments made to Judiciary colleagues as well as not allowing his return to the bench; were a violation of their freedom of expression, right to assembly and political rights enshrined in articles 13.1, 15

and 23 of the Convention, as related to article 1.1 of the aforementioned; ii) disciplinary action against Ms. Flores Lanza, for availing herself of the amparo recourse, filling a complaint on the comments and actions of other judiciary bodies, as well as her subsequent removal, and the opening of a disciplinary action against Mr. Barrios Maldonado, for a news article wherein his opinion on the coup d'état was summarized, constitute a violation of freedom of expression and political rights, enshrined in articles 13.1 and 23 of the Convention as it pertains to article 1.1 of the aforementioned, and in prejudice thereto.

- *Case of I.V v Bolivia*: On November 30, 2016 the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court” or “the Tribunal”) issued a sentence in which it declared the Plurinational State of Bolivia internationally responsible for violation of the rights to personal integrity, personal freedom, dignity, private and family life, access to information and founding a family, recognized in articles 5.1, 7.1, 11.1, 11.2, 13.1 and 17.2 of the American Convention, in detriment to Mrs. I.V. The central controversy of the present case consisted in determining if the tying of the Fallopian tubes of Mrs. I.V. on July 1, 2000 in Bolivia by a public employee at a state hospital was contrary to the international obligations of the State, in other words, if that procedure was carried out after obtaining the informed consent of the patient, under the parameters established in international law for this type of medical actions at the time of the events. In its ruling, the Court determined that the obligation to obtain informed consent signifies the establishment of limits for medical action and guarantees that these limits are adequate and effective in practice, so that neither the State nor third parties, particularly the medical community, may act in arbitrary ways in the sphere of the personal or private integrity of individuals, particularly in relation to access to health services, and in the case of women, family planning or other services associated with sexual and reproductive health. Also, the informed consent rule is associated with the right of access to information in the field of health, because a patient can only give their informed consent if they have received and understood sufficient information that enables them to make a full decision. That is why, in the health sphere, the Court reiterated the instrumental character of the law for access to information, because it is an essential means for obtaining informed consent and, therefore, the effective realization of the right to autonomy and freedom with respect to reproductive health. The Tribunal emphasized that “in the field of sexual and reproductive health, the obligation for active transparency attributable to the State goes hand-in-hand with the duty of health personnel to provide information that enables people to make free and responsible decisions about their bodies and sexual and reproductive health, which are associated with intimate aspects of their personality and private and family life.”¹⁰

- *Case of Lagos del Campo v. Peru*: On August 31, 2017, the Inter-American Court handed down a judgment finding the State of Peru internationally responsible for violating Mr. Alfredo Lagos del Campo's rights to freedom of expression and to a fair trial. Mr. Lagos del Campo was an elected union representative in Peru's metallurgical industry, who was fired because of statements he made to the press criticizing his employer. The Inter-American Court recognized that the scope of protection of the right to freedom of expression “is particularly applicable in labor settings such as in the instant case,” and that the State must not only respect but also guarantee this right, “in order for workers or their representatives to also be able to exercise it. Therefore, when there is a general or public interest, an enhanced level of protection of freedom of expression is required, especially with respect to those who hold positions as representatives.” The Inter-American Court observed that the State upheld a restriction on the victim's right to freedom of expression, through a penalty that was unnecessary in relation to the aim pursued and in the absence of a proper reason. It found that, according to the circumstances of this case, there was no compelling need justifying the victim's dismissal. In particular, the Inter-American Court held that his freedom of expression was restricted without taking account of the fact that his statements referred to matters of public interest, within the scope of his responsibilities, which were additionally protected by his status as an elected workers' representative. The Inter-American Court also found that the State violated the victim's rights to freedom of association and to employment stability and protection.¹¹

¹⁰ Inter-American Court of Human Rights. Case I.V.* v. Bolivia. Judgment of November 30, 2016 (Preliminary objections, merits, reparations, and costs), Paras.156 and following.

¹¹ Inter-American Court of Human Rights. Case of Lagos del Campo v. Peru. Judgment of August 31, 2017 (Preliminary objections, merits, reparations, and costs), para. 76 et seq.

48. With the preparation and advancement of these cases, the Office of the Special Rapporteur helps make it possible for the Commission and the Inter-American Court of Human Rights to establish important case law on the limitations and scope of the right to freedom of thought and expression. The standards achieved lend a greater dynamism to the work of the bodies of the inter-American system and make it possible to take on new challenges in the effort to raise the level of protection for freedom of thought and expression throughout the hemisphere.

2. Precautionary Measures

49. The Office of the Special Rapporteur has worked, within its mandate, with the IACHR Protection Group with regard to recommendations on the adoption of precautionary measures in the area of freedom of expression. In this regard, the IACHR has requested on multiple occasions that OAS Member States adopt precautionary measures to protect the right to freedom of expression. It did so, for example, in the cases of (i) Matus Acuña (Chile);¹² (ii) Herrera Ulloa v. Costa Rica;¹³ (iii) López Ulacio v. Venezuela;¹⁴ (iv) Peña v. Chile;¹⁵ (v) Globovisión v. Venezuela;¹⁶ (vi) Tristán Donoso v. Panama;¹⁷ (vii) Yáñez Morel v. Chile;¹⁸ (viii) Pelicó Pérez v. Guatemala;¹⁹ and (ix) Rodríguez Castañeda v. Mexico;²⁰ (x) Leo Valladares Lanza and Daysi Pineda Madrid v. Honduras;²¹ (xi) Journalists of La Voz de Zacate Grande (Honduras),²² y (xii) Lucia Carolina Escobar Mejia,

¹² IACHR decision issued June 18, 1999, and expanded on July 19, 1999, requesting that the Chilean government adopt precautionary measures for the benefit of Bartolo Ortiz, Carlos Orellana, and Alejandra Matus, in light of detention orders against the first two and an order prohibiting the distribution and sale of a book, stemming from the publication of the *Libro Negro de la Justicia Chilena* [*Black Book of Chilean Justice*], written by Mrs. Matus.

¹³ IACHR decision of March 1, 2001, requesting that the State of Costa Rica adopt precautionary measures for the benefit of journalist Mauricio Herrera Ulloa and the legal representative of the newspaper *La Nación*, who had received criminal and civil convictions due to the publication of reports against an official in the Costa Rican Foreign Service, with the sentences not having fully materialized at the time the measures were adopted.

¹⁴ IACHR decision of February 7, 2001, requesting that the State of Venezuela adopt precautionary measures for the benefit of journalist Pablo López Ulacio, who had accused a businessman of benefiting from state insurance contracts in the context of a presidential campaign. The journalist was ordered detained and prohibited from publicly mentioning the businessman in the daily *La Razón*.

¹⁵ IACHR decision of March 2003, requesting that the State of Chile adopt precautionary measures, for the benefit of writer Juan Cristóbal Peña. Consisting on lifting the judicial order, seizing and withdrawing from circulation a biography of a popular singer who sought the order on the grounds that the account was considered grave slander.

¹⁶ IACHR decisions of October 3 and October 24, 2003, requesting that the State of Venezuela suspend administrative decisions to seize operating equipment from the Globovisión television station and that it guarantee an impartial and independent trial in this case.

¹⁷ IACHR decision of September 15, 2005, requesting that the State of Panama suspend a detention order against Santander Tristán Donoso, stemming from his failure to comply with a monetary fine imposed for the alleged commission of the crime of libel and slander. Mr. Tristán Donoso denounced that the Prosecutor General of the Nation had divulged taped telephone call conversations.

¹⁸ IACHR decision adopted following the presentation of an individual petition in 2002, in the name of Eduardo Yáñez Morel, who was prosecuted for committing the crime of *desacato*, having severely criticized the Supreme Court of Justice on a television program in 2001.

¹⁹ IACHR decision of November 3, 2008, in which the IACHR requested that the State of Guatemala take the measures necessary to guarantee the life and humane treatment of Pelicó and his family, because of the grave and constant threats received by the journalist as a result of his investigations and publications on drug trafficking.

²⁰ IACHR decision adopted on July 3, 2008, for the purpose of preventing the destruction of electoral ballots from the 2006 presidential elections in Mexico.

²¹ IACHR decision of April 26, 2011, requesting that the State of Honduras adopt any necessary measures to guarantee the life and physical integrity of Leo Valladares Lanza and his wife, Daysi Pineda Madrid, and so that Leo Valladares Lanza could continue to carry out

Cledy Lorena Caal Cumes, Gustavo Girón v. Guatemala,²³ (xiii) Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga v. Ecuador²⁴; (xiv) 15 workers of Progreso Radio v. Honduras²⁵; and (xv) Yoani María Sánchez Cordero v. Cuba²⁶; José Moisés Sánchez Cerezo (Mexico);²⁷ Miguel Henrique

his activities to defend and promote human rights under safe conditions. The decision also requested that the State reach agreement with the beneficiaries and their representatives on the measures to be adopted.

²² IACHR decision of April 18, 2011, asking the State of Honduras to adopt any necessary measures to guarantee the life and physical integrity of the journalists from La Voz de Zacata Grande, and to reach agreement with the beneficiaries and their representatives on the measures to be adopted.

²³ IACHR decision of November 14, 2011, requesting that the State adopt any necessary measures to guarantee the life and integrity of Lucía Carolina Escobar Mejía, Cledy Lorena Caal Cumes, and Gustavo Girón; reach agreement with the beneficiaries and their representatives on the measures to be adopted; and inform the Commission on the steps taken to investigate the events that led to the adoption of the precautionary measure.

²⁴ IACHR decision of February 21, 2012 requesting the State of Ecuador to immediately suspend the effects of the judgment of February 15, 2012, in order to guarantee the right to freedom of expression. On March 9, 2012, the IACHR lifted these precautionary measures and filed the case file, after receiving a communication dated February 29, 2012, whereby the applicants requested said removal, since the causes for immediate urgency that motivated them had ceased.

²⁵ Extension of precautionary measure. IACHR decision of May 25, 2012, requesting the State of Honduras to inform the IACHR about the agreement with the beneficiaries of the implementation of MC 399/09, which protects several workers of Radio Progreso in Honduras, broken down from CM 196/09 on April 1, 2011.

²⁶ IACHR decision of November 9, 2012, requesting the State of Cuba to adopt the necessary measures to guarantee the life and physical integrity of Yoani María Sánchez Cordero and her family, to coordinate the measures to be adopted with the beneficiary and her representatives, and to report on the actions taken in order to investigate the deeds that gave rise to the adoption of precautionary measures.

²⁷ IACHR decision of January 26th, 2015, requesting the State to adopt the necessary measures to determine the situation and exact location of José Moisés Sánchez Cerezo, to protect his life and personal integrity, and to inform about the ongoing actions in order to investigate the events that prompted the adoption of the precautionary measure.

Otero and others (Venezuela);²⁸ X and others (Mexico);²⁹ César Obando Flores Rodríguez (Honduras)³⁰; Lester Toledo and family (Venezuela)³¹; and Braulio Jatar (Venezuela).³²

50. During 2017, the Office of the Special Rapporteur collaborated in the study of 34 requests of precautionary measures. The following requests were granted: Members of Party Voluntad Popular regarding Venezuela³³; Lorenzo Mendoza and family regarding Venezuela³⁴; Luis Florido regarding Venezuela³⁵;

²⁸ IACHR decision of November 9th, 2015, requesting the State to adopt the necessary measures to guarantee the legitimate exercise of freedom of expression by Miguel Enrique Otero, Alberto Federico Ravell, Isabel Cristina Ravell, and Teodoro Petkoff without being subjected to acts of stigmatization and harassment while carrying out their journalistic activities; to coordinate the measures to be adopted with the beneficiaries and their representatives; and to adopt the necessary actions in order to avoid the repetition of the events that prompted the present precautionary measure.

²⁹ IACHR decision of November 16, 2015, requesting the State to adopt the necessary measures in order to preserve the life and personal integrity of X and his/her family members; to adopt the necessary measures so that X may carry out the work related to his/her journalistic activities without being subject to acts of violence and harassment; to coordinate the measures to be adopted with the beneficiaries and their representatives; to inform about the ongoing actions to investigate the alleged events that prompted the adoption of the precautionary measure, and, thus, avoid their repetition.

³⁰ IACHR Decision of April 28th, 2016, requesting the State to adopt the necessary measures in order to preserve the life and personal integrity of the beneficiary; to adopt the necessary measures so that César Obando Flores Rodríguez may carry out the work related to his journalistic activities without being subject to acts of violence and harassment; to coordinate the measures to be adopted with the beneficiaries and their representatives; to inform about the ongoing actions to investigate the alleged events that prompted the adoption of the precautionary measure, and, thus, avoid their repetition.

³¹ IACHR Decision of June 4th, 2016, requesting the State to adopt the necessary measures in order to preserve the life and personal integrity of Lester Toledo and family members; to adopt the necessary measures to guarantee the political rights of Lester Toledo so that he may carry out the work related to his activities as deputy of the legislative council in the state of Zulia and leader of the opposition, without being subject to acts of violence and harassment; to arrange the measures with the beneficiary and their representatives and to inform about the ongoing actions to investigate the alleged events that prompted the adoption of the precautionary measure, and, thus, avoid their repetition

³² IACHR Decision of December 22nd, 2016, requesting the State to adopt the necessary measures in order to preserve the life and personal integrity of Mr. Braulio Jatar. In particular to provide adequate medical attention according to his pathologies; to ensure that the conditions of detention are in accordance with international standards, taking into consideration his current state of health; and arrange the measures to be adopted with the beneficiary and representatives.

³³ IACHR decision of January 14, 2017 requesting the State to adopt the necessary measures to guarantee the life and personal integrity of i) David Smolansky, Freddy Guevara, Ismael León and Juan Pablo López Gross, members of the Voluntad Popular party, ii) Theresly Malavé, human rights defender, and iii) Alexander Tirado; Raúl Emilio Baduel, Ángel Contreras, Yon Goicoechea and Delson Guárate, detained in the Centro para Procesados 26 de julio and El Helicoide; to adopt the necessary measures to guarantee the political rights of David Smolansky, Freddy Guevara, Ismael León and Juan Pablo López Gross so that they can carry out their activities as opposition leaders without being subjected to harassment, threats or acts of violence; to take the necessary measures to ensure that Theresly Malavé can carry out her activities as a human rights defender without being subjected to acts of violence and harassment for carrying out her work; to ensure that the conditions of detention of the beneficiaries housed in the Centro para Procesados 26 de julio and El Helicoide are in accordance with international standards; to arrange the measures to be adopted with the beneficiaries and their representatives; and to report on the actions taken in order to investigate the alleged events that gave rise to the adoption of this precautionary measure and thus prevent its repetition.

³⁴ IACHR decision of January 20, 2017 requesting the State to adopt the necessary measures to guarantee the life and personal integrity of Lorenzo Mendoza and his family; to arrange the measures to be adopted with the beneficiaries and their representatives, and to report on the actions taken in order to investigate the alleged events that gave rise to the adoption of this precautionary measure and to prevent its repetition.

Henrique Capriles Radonski regarding Venezuela³⁶; Milagro Sala regarding Argentina³⁷; and Journalists of the newspaper “*Revista Factum*” regarding El Salvador³⁸.

51. The granting of the precautionary measures does not constitute a prejudgment on the merits in question. Rather, these measures are adopted out of a need to avert grave, imminent, and irremediable harm to one of the rights protected in the American Convention of Human Rights, or to maintain jurisdiction in the case and so the subject of the action does not disappear.

3. Public Hearings

52. The IACHR received various requests for hearings and working meetings on matters involving freedom of expression during its most recent periods of sessions. The Office of the Special Rapporteur participates actively in the hearings on freedom of expression, preparing the reports and handling the corresponding interventions and follow-up.

53. Within the framework of the 161st Period of Sessions of the IACHR that took place from March 15th to 22nd, 2017, various hearings addressed issues related to the right to freedom of expression in the hemisphere. On March 18th, a regional hearing on the right of access to relevant information for the enforceability of economic, social, cultural and environmental rights took place. The hearing was requested by the civil society organizations of Fundación Construir Bolivia; Institute of Legal and Social Studies of Uruguay (ILESUR); Regional Alliance for Free Expression and Information; Article 19 Brazil; Foundation for the Development of Sustainable Policies (FUNDEPS), Civil Association for Equality and Justice (ACIJ); CAinfo and Fundar to inform the IACHR of the need to consolidate standards regarding production and access to information that allows progress towards the effective implementation and enforceability of economic, social, cultural and environmental rights (DESCA). Likewise, on March 18th, a regional hearing requested by civil society organizations, social movements and communities from Nicaragua, Guatemala and the Dominican Republic was held with the support of Due Process of Law Foundation (DPLF). The hearing addressed the right of access to information and transparency in environmental management, concession, monitoring and supervision of extractive activities in the Americas. The Office of the Special Rapporteur also participated on in a hearing regarding the situation of the right to freedom of expression in Nicaragua, requested by the Nicaraguan Center for Human Rights (CENIDH); the Research Center for Communication (CINCO), the Violeta

³⁵ IACHR decision of April 7, 2017 requesting the State to adopt the necessary measures to guarantee the life and personal integrity of Mr. Luis Florido, and ensure that he can exercise his political rights as a member of the National Assembly without being subjected to threats, harassment or acts of violence; to arrange the measures to be adopted with the beneficiaries and their representatives, and to report on the actions taken in order to investigate the alleged events that gave rise to the adoption of this precautionary measure and to prevent its repetition.

³⁶ IACHR decision of June 2, 2017 requesting the State to adopt the necessary measures to guarantee the life, personal integrity and political rights of Mr. Henrique Capriles Radonski without being subjected to threats, harassment or acts of violence; to arrange the measures to be adopted with the beneficiaries and their representatives, and to report on the actions taken in order to investigate the alleged events that gave rise to the adoption of this precautionary measure and to prevent its repetition.

³⁷ IACHR decision of July 27, 2017 requesting the State to adopt the necessary measures to guarantee the life and personal integrity of Milagro Sala; to arrange the measures to be adopted with the beneficiary and her representatives; and, taking into account the exceptional nature of pre-trial detention and the aggravation of the risk situation to her life and personal integrity as a result of the peculiarities of the continued deprivation of liberty of the beneficiary, that the competent authorities adopt, in light of the described standards, alternative measures to preventive detention, such as house arrest, or else, that the beneficiary may face the trial in liberty with measures such as electronic surveillance.

³⁸ IACHR decision of October 27, 2017 requesting the State to adopt the necessary measures to protect the life and personal integrity of the beneficiaries; to take the necessary measures so that they can develop their journalistic activities, in the exercise of freedom of expression, without being subjected to acts of intimidation, threats and harassment; and to arrange the measures to be adopted with the beneficiary and their representatives.

Barrios de Chamorro Foundation; and the Center for Justice and International Rights (CEJIL). During the hearing, press organizations and civil society denounced to the IACHR the systematic acts of direct and indirect restriction on freedom of expression that have taken place in the country since President Daniel Ortega took office a decade ago. On March 20th, a hearing was held entitled "Reports of repression of protest and unionization in the province of Jujuy, Argentina. This hearing was requested by the union of sugar workers and employees of the Ledesma and La Esperanza Mill, alongside Amnesty International, CEPRODH, lawyers in human rights, social studies in northwestern Argentina and the Center for Legal Studies (CELS). In addition, within the framework of the sessions, the Special Rapporteur held meetings with journalists and visiting civil society organizations, including; Article 19 Mexico, Educating Consumers, Internews El Salvador, and meetings with the regional representative of the United Nations High Commissioner Amerigo Incalcaterra and the lawyer of the case of the Venezuelan journalist, Braulio Jatar.³⁹

54. The IACHR held, at the invitation of the Argentine State, its 162nd Extraordinary Period of Sessions in Buenos Aires, from May 22nd to 26th, 2017, in which hearings were held to address issues related to the right to freedom of expression in the Southern Cone. On May 26th, hearings were held on the topics of "Democratization of the Media in Uruguay", requested by the civil society organization of Coalition for Democratic Communication (CDC), and another on the "Situation of Freedom of Expression and Community Radio in the Southern Cone" requested by AMARC, AMARC International, and OBSERVACOM. The IACHR also convened an ex-officio hearing on protest and human rights in Paraguay on May 26th, with the participation of the State and the Association of Graphic Reporters of Paraguay, as well as the Forum of Paraguayan Journalists (FOPEP, for its initials in Spanish). The IACHR session finished on May 27th with a press conference led by the President of the IACHR, Francisco Jose Eguiguren Praeli, with the participation of the Executive Secretary of the IACHR Paulo Abrão, the Commissioners José de Jesús Orozco Henríquez, Margarete May Macaulay, Esmeralda Arosemena de Troitiño, and Luis Ernesto Vargas Silva, the Deputy Executive Secretary Elizabeth Abi-Mershed, and the Special Rapporteur on Freedom of Expression Edison Lanza. The press conference was held in the 'Memory and Human Rights Space', the former Mechanical School of the Navy (exESMA) during the Argentine military civic dictatorship. Former Argentine chancellor Jorge Taiana and Horacio Verbitzky of the Center for Legal and Social Studies (CELS) also accompanied the IACHR in the closing ceremony. In the framework of the 162nd session, the Rapporteur held a meeting with the coordinator of the Commission and Director of the National Entity of Communications of Argentina (Enacom), Silvana Giudici.⁴⁰

55. During the 163rd Extraordinary Period of Sessions of the IACHR held in Lima from July 3rd to 7th, 2017, at the invitation of the Peruvian State, two hearings were held addressing issues related to the right to freedom of expression in the Hemisphere. On July 5th, a hearing was held on the situation of the right to freedom of expression in Colombia; requested by the Fundación para la Libertad de Prensa (FLIP) in order to present before the IACHR the attacks against the press, protection and impunity challenges as current phenomena, and pendings on integral attention in the country. Likewise, a hearing on the right to freedom of expression and democracy in Venezuela requested by Public State Organizations, the Instituto de Libertad y Prensa (IPYS), and the Human Rights Center of the UCAB took place on the 6th. The petitioners denounced before the IACHR a structural pattern of impunity that persists in cases of violence against journalists in the country. During the hearing, the Special Rapporteur referred to hostility, attacks, and threats against journalists by even senior public officials, and recalled that the State of Venezuela has an obligation to prevent, protect, and investigate such cases. Rapporteur Edison Lanza also participated in two working meetings on the precautionary measures of Braulio Jatar and of the Members of the Voluntad Popular party, both regarding Venezuela. To conclude, the IACHR renewed the mandate of Special Rapporteur Edison Lanza for a new period of three years, in accordance with Article 15 of its Rules of Procedure.⁴¹

56. During the framework of the 164th Period of Session of the IACHR held in Mexico City from September 4th to 8th, 2017, the Office of the Special Rapporteur participated on September 6th in a hearing on

³⁹ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

⁴⁰ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

⁴¹ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

the situation of the right to freedom of expression in Costa Rica. This hearing was requested by the civil society organization Red de Medios y Iniciativas de Comunicación Alternativa (RedMICA Network) and was attended by the Costa Rican State. The objective of the hearing was to advocate the need to adapt the national legal framework regarding broadcasting to the Inter-American standards on freedom of expression and to report on the impact that the current regulation has had on the characteristics of concentration, pluralism and diversity of operators and contents registered by the country today. During the sessions in Mexico, the Special Rapporteur held working meetings with Article 19 Mexico to gather information on the case of murdered journalist Javier Valdez.⁴²

57. Within the framework of the 165th Regular Period of Session of the IACHR held from October 23rd to 27th in Montevideo, at the invitation of the Uruguayan State, the Office of the Special Rapporteur participated in several hearings related to the right to freedom of expression in the Hemisphere that took place in the Legislative Palace. With the absence of the Ecuadorian State, on October 23rd the hearing on freedom of expression and reform of the Organic Law of Communication in Ecuador requested by the organizations was held: Andean Foundation for Social Observation and Media Studies (Fundamedios); Ecuadorian Association of Newspaper Publishers (AEDEP); Platform for Democracy and Human Rights in Ecuador; and National Union of Journalists of Ecuador. The Office of the Special Rapporteur also participated on October 24th in the ex-officio hearing convened by the IACHR on violence, citizen security and freedom of expression in Venezuela. The audience included the participation of the Venezuelan State and the following civil society organizations: A Window to Freedom, the Venezuelan Observatory of Prisons, Venezuelan Penal Forum, Public Space, Human Rights Center of the Andrés Bello Catholic University and the Venezuelan Observatory of Social Conflict. Additionally, within the framework of the session, the Special Rapporteur held a meeting with the Uruguayan Press Association (APU) and a closed work meeting with Deputy Karina Banfi and a group of national commissioners of the freedom of expression commission of Argentina in relation to the situation of the state of freedom of expression in the province of Formosa.⁴³

58. During the 166th Extraordinary Period of Sessions of the IACHR held from November 29th to December 7th in Washington DC, the Office of the Special Rapporteur for Freedom of Expression held a hearing on December 7th on the right of association, peaceful assembly and freedom of expression in the United States. The hearing was requested by the organizations of CIVICUS; Center for Not-for-Profit Law (ICNL) and Charity & Security Network.⁴⁴

4. Seminars and Workshops with Strategic Actors in the Region

59. Seminars are a critical tool the Office of the Special Rapporteur uses to promote the inter-American system for the protection of human rights and the right to freedom of expression. In the last twenty (20) years, the Office of the Special Rapporteur has organized seminars throughout the region, in many cases with the cooperation of universities, government institutions, and nongovernmental organizations.

60. Hundreds of journalists, attorneys, members of the Public Prosecutor's Office, university professors, judges, and journalism; and law students among others, have attended the training sessions. These are offered by staff members of the Office of the Special Rapporteur both in country capitals and in more remote regions where there is often no access to information on the guarantees that can be sought to protect the right to freedom of thought and expression.

61. The meetings with those involved open the door for more people to be able to use the inter-American human rights system to present their problems and complaints. The seminars also enable the Office of the Special Rapporteur to expand its network of contacts. In addition, the workshops and working meetings have allowed the Office of the Special Rapporteur to work closely with strategic actors to advance the application of international standards in domestic legal systems.

⁴² IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

⁴³ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

⁴⁴ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

62. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2017.

63. On January 23rd, human rights specialist of the Office of the Special Rapporteur for Freedom of Expression of the IACHR, Tatiana Guasti traveled to Panama City to participate in a regional consultation on communication strategies for UNICEF in Latin America and the Caribbean. The lawyer participated in a seminar about freedom of expression and the role of the media.

64. A team of the Special Rapporteurship composed of Edison Lanza and senior attorney Ona Flores, traveled to San José, Costa Rica to participate in the 117th Regular Session of the Inter-American Court of Human Rights. On February 7th, the public hearing of the "Lagos del Campo v. Peru Case" was held, relating to the dismissal of Mr. Alfredo Lagos del Campo on June 26th, 1989, allegedly as a result of certain demonstrations held by the president of the Electoral Committee of the Industrial Community of the Ceper-Pirelli company. The hearing also counted on the participation of Damian Loreti (UBA) as expert witness.

65. On February 23rd, the Office of the Special Rapporteur organized, with the support of the Open Society Justice Initiative (OSJI), a meeting with regional experts on social protest and human rights that took place at the offices of the Open Society Foundation in Washington DC. The purpose of the consultation was to discuss a draft thematic report on Protest and Human Rights drafted by the Office of the Special Rapporteur. Over the years, the IACHR and its Office of the Special Rapporteur have produced important sets of principles and standards related to the exercise of human rights in the context of protest, however, there continues to be regulatory gaps, as well new challenges which have arisen in the region. The report, therefore, seeks to address these challenges and provide better guidance for States on how to implement their international obligations regarding social protest through national laws and practices as well as contributing to the promotion efforts made by civil society organizations. The event was attended by more than 30 international human rights experts, including Gustavo Palmieri (Lanus University); Catalina Botero (University of the Andes); Paula Litvachky (CELS); Jomary Ortegon (CAJAR, Colombia); Sofia Robina (Centro Prodh Mexico); Jocelyn Nieva (International Center for Not-for-Profit Law, ICNL); Sandra Coliver (OSJI); Daniel Holder (Committee of the Administration of Justice, CAJ); Jennifer Turner (American Civil Liberties Union Human Rights Program, ACLU); Rob de Luca (Canadian Civil Liberties Association, CCLA); Paula Martins (Article 19 Brazil); Ligia Bolivar (UCAB, Venezuela); Barbora Bukovska (Article 19); Michael Hamilton (University of East Anglia / OSCE); Heidi Rombouts (UN Pacific Meeting and Association); and Maria Luisa Bascur (UN-HR, Mexico). During the consultation, the issues of criminalization of the protest; accountability and facilitation of the protest and was addressed in a plenary discussion the legal framework in the context of social protest were discussed. In addition, the Center for Legal and Social Studies (CELS) presented its report "The Latin American States in the Face of Social Protest", collecting the situation of social protest in the region, and Daniel Holder presented a draft of the guidelines developed jointly with OSJI, on the principles of protests and the right to information which focused on the transparency of the police agencies in the management of protests.

66. On February 24th, the workshop on "Concentration, diversity and pluralism in the digital economy" was held at the School of Media and Public Affairs at George Washington University (GW). Organized by the Latin American Observatory of Regulation, Media and Convergence (OBSERVACOM), Special Rapporteur Edison Lanza offered welcoming remarks alongside Professor Silvio Waisbord (University of George Washington) and the Director of Observacom, Gustavo Gomez, who highlighted the objectives of the workshop. The workshop counted with the participation of experts: Joao Brant (OBSERVACOM); Joan Barata (former advisor to the OSCE Media Freedom Representative, Spain); Jonathan Levy (Federal Communications Commission-FCC, USA); and Rosana dos S. Alcantara (Ex-CININE, Brazil).

67. On March 6th, the launching of the "Joint Declaration on Freedom of Expression and "Fake News ", Disinformation and Propaganda," adopted on March 3 by the Special Rapporteurs on Freedom of Expression of the UN, the Organization of American States (OAS), the Organization for Security and Cooperation in Europe (OSCE) and the African Commission of Human Rights (CADHP) took place in Vienna, Austria. The Rapporteurs explained that state and private sector efforts to confront disinformation and propaganda run

the risk of suppressing the free flow of ideas and dissent, in a manner contrary to international human rights law. The Joint Declaration identifies the general principles, standards and good practices that must be respected and promoted by the different actors in the face of disinformation and propaganda. During the launching, the Special Rapporteur expressed his concern that disinformation and propaganda be implemented to confuse the population and interfere with their right to receive varied information and to form their own opinion. The event was attended by the Special Rapporteurs Edison Lanza (IACHR); David Kaye (UN); Dunja Mijatović (OSCE) and Faith Pansy Tlakula (CADHP).

68. From March 3rd to 4th, a team from the Office of the Special Rapporteur composed by Human Rights Specialist Tatiana Guasti and the Regional Monitoring Fellow Tenesha Myrie, made an academic visit to Kingston, Jamaica to issue a workshop on the inter-American system and jurisprudence on freedom of expression to Caribbean civil society organizations. The purpose of the visit was to share information with different actors of civil society on the Inter-American human rights system and to report on the different mechanisms of the IACHR and their use, to which they can access. The meeting took place at the University of the West Indies and was attended by over 20 representatives of different civil society organizations, including: OxFaAM; Civil Rights Commission of Puerto Rico; Eve for Life; Grand Bahama Human Rights Association; Jamaica Coalition for Healthy Society; Missionaries of the Poor Sisters; Jamaicans for Justice; Lawyers' Christian Fellowship Limited (Jamaica); WMW Jamaica and Generation 2000.

69. The academic visit to Jamaica was carried out within the framework of the consultation and preparation of the 2017-2021 Strategic Plan of the Inter-American Commission on Human Rights (IACHR) with Caribbean civil society, in which the team of the Special Rapporteurship offered technical support. In this space, civil society actors raised a wide range of concerns regarding human rights. Regarding the right to freedom of expression, the main concerns raised during this consultation included the new 'Cyber Crimes Law' in Jamaica, considered ambiguous in the area of security and human rights, and which raises issues related to limiting of the use of Internet and social networks. With respect to traditional media, the self-censorship to which journalists tend to apply in the region was highlighted. To conclude, the special rapporteurship also held a meeting on March 4th with the President of the Jamaica Press Association, Mrs. Dionne Jackson Miller and it's the Executive Member, Mr. Milton Walker, to gather information on the general situation of the right to freedom of expression in the Caribbean and the main challenges for journalists in the exercise of this right. It was also important to establish a network of contacts with key actors in the region, since the lack of information is one of the main challenges faced by the IACHR regarding the monitoring of the Caribbean. During the meeting, the journalists provided information on topics such as: violence against journalists, right of access to public information, Jamaica defamation law of 2013 and concentration of media in the region.

70. On March 6th, the Special Rapporteur and the Project Coordinator of the Office of the Special Rapporteur Melissa Cabrera, held various meetings with European Union delegations in Brussels with the objective of publicizing the work undertaken by the OSR in the region. During their stay in the country, the OSR team held meetings with Christian Leffler, Assistant Secretary General for Global and Economic Affairs; Edit Hrdá, Director of the Americas; and a lunch with Manfredo Fanti, Chief of the Regional Affairs Division of the Americas. The Rapporteur presented to different EU delegations the key results of the 2016 annual report of the Office of the Special Rapporteur and a briefing on the current situation of freedom of expression in the continent, with a particular focus on the countries of Venezuela, Ecuador and Cuba. Additionally, the team further had the opportunity to engage in a conversation with Human Rights officials of the DEVCO Commission, in which present were the Deputy Director of the Americas Roland Schaefer and the Deputy Director of Human Resources Marc Giacomini were present at this meeting. Through these meetings the special rapporteur for freedom of expression made the office known and established relationships with possible new donors.

71. From March 7th to 8th, the Special Rapporteur and the human rights specialist Tatiana Guasti participated as experts in the capacity building seminar "Regional Seminar RTA: The public policy of access to information and transparency", which took place in Santo Domingo, Dominican Republic. The workshop was jointly organized by the Office of the Special Rapporteur for Freedom of Expression, Transparency and Access to Information Network (RTA), and DIGIEG on behalf of the Dominican Republic and as a full member of the

RTA. The objective was to provide professionals and public officials from different disciplines with theoretical-practical elements in the field of access to information and transparency, generating skills that develop theoretical and practical elements in relation to the theme of good governance and development of modern democracies. The team of experts was composed of Special Rapporteur Edison Lanza; Mariana Ghioni, (AGESIC, Uruguay); Carolina Maturana (Transparency Council, Chile); the National Government Representative; and the lawyer Tatiana Guasti, who dictated the workshop to people from different sectors (public, NGOs and media) of the country.

72. From March 8th to 10th, the validation meeting of the "Toolbox for Judicial Schools" on freedom of expression, access to public information, transparency and security of journalists was held in Santo Domingo. The meeting was jointly organized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Ibero-American Network of Judicial Schools (RIAEJ), with the support of the Office of the Special Rapporteur for Freedom of Expression, Open Society Foundations and the Government of Sweden, who summoned judicial schools in nineteen (19) Ibero-American countries to jointly validate the training toolkit for judges' trainers on freedom of expression. Among the participants were Sergio Palacio, secretary general of the Ibero-American Network of Judicial Schools (RIAEJ); Guilherme Canela, Communication and Information counselor for UNESCO; Edison Lanza, Special Rapporteur for Freedom of Expression of the IACHR; Gervasia Valenzuela Sosa, National Director of the School of the Judiciary (ENJ); and María Mercedes Brito Féliz, General Secretary of the Dominican National Commission for UNESCO. The meeting is an activity enclosed within the UNESCO Regional initiative of institutional strengthening for the promotion and protection of freedom of expression, transparency, access to information and the safety of journalists, in line with the Development Objective 16, of peace, justice and institutions (Agenda 2030). The National School of the Judiciary of the Dominican Republic, in its capacity as host, received during the two days of the meeting representatives of judicial schools of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Spain, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico and the Dominican Republic.

73. On March 10th, the Office of the Special Rapporteur organized, with the support of UNESCO, a dialogue with the Schools and Judicial Centers of Central America, the Dominican Republic and Mexico on continuing training in freedom of expression. The working day focused on the next steps towards the development of continuous training within each Judicial Training Unit for the training of operators in terms of standards of freedom of expression. The activity is part of the second phase of the project for the consolidation of judicial systems as key actors in the promotion and protection of freedom of expression in the Latin American region. The objective of the meeting was to strengthen the capacity and knowledge of the operators of the judicial systems of the region on the rights to freedom of expression, access to information and other related rights through on-site and virtual trainings, and the exchange of experiences.

74. On March 10th, a conversation on freedom of expression in Latin America and the Caribbean organized by the Dominican Journalists Association (CDP) was also held in Santo Domingo. The discussion was attended by international experts Edison Lanza (IACHR); Guilherme Canela (UNESCO) and Silvia Chocarro (IFEX Global Advocacy Strategist). The event was presented by the President of the CDP, Olivo De León, who highlighted the importance of freedom of expression for individual and social life, for the preservation and maintenance of democracy, and for the democratic exercise of public liberties.

75. The Special Rapporteur Edison Lanza participated as a panelist in the seminar "Monitoring civic space and civil society participation: Presentation of the CIVICUS Monitor and the Civil Society Participation Mechanism in the Summits of the Americas (PASCA)". The meeting was held on March 22nd at the offices of Freedom House in Washington D.C., with the objective of presenting and positioning the PASCA project and the CIVICUS Monitor tool to strategic actors. The Special Rapporteur intervened alongside Freedom House's Representative in the panel regarding the challenges for the civic space in Latin America and the participation of civil society. The event counted with the participation of Carlos Ponce, Director of Programs for Latin America of Freedom House; Ines M. Pousadela of CIVICUS; and Gina Romero and Hans Tippenhauer of RedLad.

76. From March 29th to 31st, a delegation of the Office of the Special Rapporteur undertook an academic visit to Guatemala in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the promotion of inter-American standards in the field of protection to journalists. During his stay in the country, the Special Rapporteur and human rights specialist Viviana Ordoñez, held meetings with government authorities in charge of ensuring the safety of journalists, investigating the crimes against them and guaranteeing the right to freedom of expression. In this context, the Special Rapporteur met with the Public Ministry (MP) in which were present the general secretary of the MP, the director of the judicial school, and the director of the Human Rights Unit, responsible for investigating the murders of journalists where issues related to the fight against impunity in crimes against journalists were addressed, and in particular, the need to continue investigative efforts and training for prosecutors in the country. The rapporteur also held a meeting on the 30th of March with the National Human Rights Ombudsman, Jorge De Leon Duque, to discuss the plan to create a mechanism to protect journalists, investigations of crimes against journalists, the plurality of media and the participation of the community sector in the media, a task that is still pending in the country. Additionally, the team also met with the International Commission against Impunity (CICIG) where the problem of impunity in crimes committed against journalists was addressed, and with the Secretary of Social Communication of the Presidency of the Republic, Mr. Alfredo Brito, to further address issues related to the safety of journalists and the possibility of creating a special protection mechanism.

77. On March 31st, the Special Rapporteurship and the Office of the United Nations High Commissioner for Human Rights in Guatemala, traveled to the city of Mazatenango to present the new report titled "Silenced Zones: Regions of High Danger to Exercise Freedom of Expression" and dictated a workshop to local journalists on protection and the exercise of freedom of expression. Journalists and local civil society organizations such as CERIGUA, Instituto Demos, UDEFEGUA and Civitas participated in the capacity building workshop. In Mazatenango, the Special Rapporteur met with the Departmental Auxiliary of the Human Rights Ombudsman (PDH) in Suchitepéquez, who explained the main risks to which journalists in the area are exposed as well as the State's responses to said situation.

78. From April 1st to 3rd, the Special Rapporteur traveled to Antigua, Guatemala to participate in the biannual meeting of the Inter-American Press Association (IAPA), which addressed various issues related to the performance of the freedom of press in the Americas. The event was inaugurated by IAPA's President, Matt Sanders and the President of Guatemala, Jimmy Morales who highlighted in his remarks the importance of freedom of expression and traditional media, despite the continuous rise of technology. On April 1st, the Rapporteur dictated a keynote speech entitled "freedom of expression as a guarantee of democratic stability," where he highlighted the worrying number of murders against journalists in the region, and concluded that 2016 has been one of the most violent periods against the press. The semi-annual meeting of the IAPA summoned in Antigua more than 300 directors, editors and journalists of the American continent. Among those present were Roberto Rock (the Broken Chair); Katie Townsend (Reporters Committee for Freedom of Press); Hector Schamis (El País, Georgetown University); Danilo Arbilla (Search); Sebastian Sposito (Google).

79. The Rapporteur Edison Lanza participated on April 6th via videoconference, in the ninth edition of South School on Internet Governance 2017 "Sustainable Internet Governance". The Special Rapporteur provided remarks in the jurisdiction, national security and human rights panel. Said panel was moderated by Eduardo Caroso of Antel Uruguay and counted with the participation of the prosecutor Neide de Oliveira; Claudio Lopes, State Attorney of Rio de Janeiro; and Fabricio Polido from the University of Minas Gerais.

80. On April 26th, a meeting of experts on the situation of freedom of expression in Cuba was held at the OAS headquarters in Washington DC. The Office of the Special Rapporteur convened a group composed of experts, academics and hemispheric leaders on the subject of freedom of expression with the aim of promoting a space for the exchange of information and reflection on the current situation of freedom of expression in Cuba. Among other topics, the question of the importance of the monitoring carried out by the IACHR on the situation of human rights in Cuba; the different tendencies and problems for the exercise of freedom of expression; the impact of the Internet and new technologies in that situation; the limitations of the exercise of the right to freedom of expression in the country and the follow-up that the inter-American human rights system makes to the situation and the possible spaces for advocacy were addressed. The meeting was attended by representatives of organizations: Human Rights Watch; International Amnesty; Institute of Press

and Society (IPYS); Internews; IWPR LAC; Institute on Race, Equality and Human Rights; Committee to Protect Journalists (CPJ); National Endowment for Democracy; Inter-American Press Association (IAPA); International Center for Journalists (ICFJ) and the Executive Secretary of the IACHR. Also, with the support of IWPR, the Office of the Special Rapporteur invited two Cuban journalists from OnCuba and the Pro-Freedom of the Press Association to learn about their experiences in the face of limitations on the right to freedom of expression on the island, and their vision of the challenges for Cuban civil society.

81. On April 28th, the Special Rapporteur participated as an expert in the launch of Freedom House's report on 'Freedom of the Press 2017', which took place in the Newseum of Washington D.C. Edison Lanza participated alongside Garry Kasparov, a human rights activist; Scott Shane, New York Times journalist; and Amberin Zaman, Turkish journalist for Al Monitor, in the "Dark Horizon of Press Freedom" panel, which was moderated by Freedom House president Mike Abramowitz. The event was attended by the correspondents of the White House Jim Acosta (CNN), Mark Landler (New York Times) and Carol Lee (The Wall Street Journal).

82. From May 3rd to 5th, the Special Rapporteur Edison Lanza and human rights specialist Viviana Ordoñez traveled to Asuncion, Paraguay, to participate in the conferences of regional celebration in the framework of World Press Freedom Day. The celebration workshops were organized by the Inter-Institutional Committee on Security of Journalists and Fight against Impunity, composed by: the Supreme Court of Justice; Legislative Power; Public Ministry, Secretariat of Information and Communication (SICOM); Ministry of Education and Culture - CNC UNESCO Paraguay; Ministry of Foreign Affairs; Ministry of Interior; Paraguayan Journalists Forum (FOPEP); Union of Journalists of Paraguay (SPP); and the Association of Graphic Reporters of Paraguay (ARGP). The meeting was also sponsored by the Office of the Special Rapporteur for Freedom of Expression of the IACHR and the UNESCO Regional Office of Science, and the support of international experts such as Guilherme Canela (UNESCO), Edison Lanza (IACHR), Gustavo Gomez and Sergio de Cola (OBSERVACOM), Stella Leonor Sanchez Gil (Attorney General of Colombia), and Guilherme Alprende, Brazilian Association of Investigative Journalists (ABRAJI).

83. On May 3rd, the seminar "*Freedom of expression, plurality of media and journalists' security: Essential factors for democracy*", took place in the Palace of Justice, and was open to judicial magistrates, prosecutors, public defenders, lawyers, as well as journalists, social communicators, and citizens in general. Several foreign and national experts were part of the discussion and analysis panels that composed the seminar, which discussed the guarantees for freedom of expression and the exercise of journalism of the Inter-American standards and experiences. The plurality of media, public information, and democracy was also debated in the event. Additionally, on May 4th, the international seminar "*Freedom of expression, journalists' security and democracy*", was inaugurated by the State Attorney General Javier Díaz Verón, and included welcoming remarks from the President of the Human Rights Commission of the House of Representatives, Deputy Olga Ferreira.

84. During their stay in the country, the Special Rapporteurship held meetings with several government officials, including a meeting with the Attorney General, Dr. Javier Díaz Verón, who reaffirmed his commitment to protecting journalists and fighting impunity. Likewise, the prosecution reiterated the interest in continuing training activities on freedom of expression to prosecutors in the country. The OSR team also met with the journalists of the ABC newspaper and with the Paraguayan journalists' union. During the meeting, the Silenced Zones report was presented and a dialogue with journalists' regarding the main challenges of protection and cyber security established.

85. From May 8th to May 9th, the Office of the Special Rapporteur jointly organized an open event titled "Freedom of Expression and Right to Digital Oblivion", in Bogotá, Colombia, with the Faculty of Law of the Los Andes University. The Special Rapporteur participated alongside Catalina Botero (Los Andes University), Carlos Alfonso Souza (Institute of Technology and Society of Rio de Janeiro) and Christopher Bavits (Center for Internet and Society of Harvard University) in the panel on the conceptualization of the right to be forgotten. The event focused on topics such as: what challenges does the right to digital oblivion presents to the freedom of press, possible responsibilities of intermediaries of the Internet, and Latin-American perspectives. Among the attendees were Pedro Vaca (FLIP); Maria Paz Canales (Derechos Digitales); Daphne Keller (Center for Internet and Society Stanford); Guilherme Canela (UNESCO); Elena Perotti (WAN-IFRA),

and the judges: Maria Eugenia Sandoval (Chile); Francisco de las Carreras (Argentina); Carlos Soto Morales (Mexico); And Alejandro Linares (Colombia). On May 17th, a second closed discussion was held at Los Andes University. Dean Catalina Botero (Los Andes University), Carlos Cortes (Internet expert), Pedro Vaca (FLIP), and Carolina Botero (Karisma Foundation) provided keynote lectures on the challenges on the right to be forgotten as well as possible remedies and solutions.

86. On May 11th, the Special Rapporteur dictated a lecture at the Elliot School of International Affairs at George Washington University titled "*Venezuela: Human Rights, Democracy and the Role of the OAS.*" The Special Rapporteur expressed the severe situation that Venezuela is experiencing in the area of freedom of expression and human rights, and explained the position taken of the IACHR and its Special Rapporteurship, as experts, in relation to the events that have taken place in the country in the context of protests. George Washington University and the Venezuelan civil society organization '*Defiende Venezuela*' jointly organized the event, in which over 50 students participated.

87. The Special Rapporteur participated on May 16th, through videoconference, at the annual "Internet Day" event organized by the Legal Commission of the Argentine Chamber of Internet (CABASE). The Rapporteur offered some opening remarks in the panel "initiatives for the development of digital economy", where he discussed the issue of intermediate responsibility and the importance of public policies to foster a framework of innovation and freedom of expression in Argentina. The panel also had the participation of Ady Beitler (Inter-American Development Bank - IDB), Carolina Aguerre (UDESA), Javier Pallero (ACCESS), and Adela Goberna (ALAI).

88. From May 15th to the 18th, the Special Rapporteur traveled to Stockholm, Sweden to participate in the 'Stockholm Internet Forum (SIF),' an international forum organized by the Swedish Cooperation Agency (SIDA). The forum brought together policymakers, civil society representatives, activists, business people and representatives of the international technical community to discuss the central issue of the connections between access and power. The aim of the forum was to generate a dialogue to deepen discussions on how a free, open and secure Internet promotes human rights and development at a global level. The Special Rapporteur was the keynote speaker in the international event which gathered more than 4,000 people from 90 countries, to present the importance of internet access for the exercise to freedom of expression and human rights.

89. In the framework of the SIF international forum held in Stockholm, the Rapporteur gave a briefing on the situation of freedom of expression in Latin America, with particular focus on Venezuela, Bolivia, Ecuador, Mexico and the Northern Triangle to the Swedish International Development Cooperation Agency (SIDA) project officers, development actors and organizations working in Latin America. The Rapporteur also held a meeting on May 16th with representatives of the Euro-Latin SIDA department Torgny Svenungsson, Camilla Ottosson and Ulrika Åhmark, in which representatives of the embassies of Bolivia, Colombia, Guatemala, and Cuba were also present. To finalize, the Special Rapporteur held a meeting on May 17th with the Department of the Americas of the Ministry of Foreign Affairs of Sweden, highlighting the important work of the IACHR and the OAS in the region and presenting the challenges that the Inter-American system faces today regarding the system financing.

90. On May 24th, the public hearing of the case "Herzog and Others v. Brazil" was held at the Inter-American Court of Human Rights in San José, Costa Rica. The case relates to the alleged international responsibility of the State of Brazil for the situation of impunity in which the arrest, torture and death of journalist Vladimir Herzog occurred on October 25th, 1975 during the country's military dictatorship. During the hearing, the Special Rapporteur on Freedom of Expression Edison Lanza explained the basis of the case on behalf of the IACHR, where he emphasized that the case was part of the military repression at the time and asked the judges to condemn the State and order to clarify the facts. Clarice Herzog, the widow of the journalist, also testified at the hearing. Furthermore, during the course of his stay in Costa Rica, the Special Rapporteur was invited by the Office of the Ombudsman to give an update on the IACHR's criteria for freedom of expression. The Deputy Ombudsman, Mr. Juan Manuel Cordero attended the presentation.

91. From May 29th to 30th, the Rapporteur participated as an expert at the annual meeting of the Ibero-American Telecommunications Organization (OTI), held at the Univision News Center in Miami, Florida. The Rapporteur participated alongside Laura Chinchilla (OTI), Alberto Ibargüen (Knight Foundation) and Matthew Sanders (IAPA) on the panel regarding the situation of freedom of expression in Ibero-America which was moderated by the Secretary-General of the OAS, Luis Almagro. The panelists analyzed the scenario freedom of expression faces in the region, the threats and challenges, and discussed the necessary actions for its strengthening. The event had representatives of 31 OTI member companies, including the presidents of Telemundo, Cesar Conde, of Univision, Randy Falco, of Grupo Clarín, Jorge Carlos Rendo, of Grupo Prisa, Juan Luis Cebrián, of RCN, Gabriel Reyes, of Grupo Caracol, Jorge Martínez de León, of Tv Azteca, Benjamín Salinas, of Grupo Imagen, Olegario Vázquez Aldir, of DirecTV, Jeff McElfresh, and of the Inter American Press Association (IAPA), Matthew Sanders, who reaffirmed their commitment to promote access to connectivity in the region and defend freedom of expression and of press.

92. The Special Rapporteur participated on June 6th in the event "Human Rights and Democracy in Venezuela" organized by the United States Mission to the United Nations and cosponsored by the United Kingdom, in the framework of the 35th session of the UN Human Rights Council in Geneva, Switzerland. In an expert panel with the participation of Alonso Medina Roa (*Foro Penal*), Mercedes de Freitas (*Transparencia Venezuela*), Julio Henriquez (*Foro Penal*), Laura Louza Scognamiglio (Access to Justice), and Special Rapporteur Edison Lanza (IACHR / OAS), moderated by Sarah Cleveland (Columbia Law School), panelists reflected on the current human rights situation in the country in the context of recent protests, including the government's violent crackdown on opposition parties and civil society, in which in the mentioned date the lives of at least 75 people had been claimed, more than 1,000 have been injured, almost 3,000 have been detained, and 331 civilians have been indicted by military courts, during the 82 days of protest. During the meeting, the panelists also evaluated President Maduro's appeal to a constituent assembly to rewrite Venezuela's constitution and the withdrawal from the OAS, and discussed a number of issues relating to human rights and fundamental freedoms. Other topics discussed at the conference included freedom of expression, peaceful assembly and association freedoms, political prisoners, arbitrary detention, and arbitrary and illegal deprivation of life, including summary executions and torture.

93. On June 6th, Special Rapporteur Edison Lanza participated via videoconference in the inauguration of the first institutional forum 2017 on freedom of expression, communication and democracy organized by the University of Costa Rica in the Auditorium of the Center for Research and Training in Public Administration (CICAP). Dr. Manuel M. Murillo, Coordinator of the Special Interdisciplinary Commission (IEC), Dr. Henning Jensen Pennington, Rector of the University of Costa Rica, and Dr. Fernando Cruz Castro, Constitutional Court Judge, gave the opening remarks. Participants included a number of academics, journalists, officials from international organizations, and judges of the Supreme Court.

94. On June 13th, the Special Rapporteur was invited by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Economic Commission for Latin America and the Caribbean (ECLAC) to participate via skype at a regional consultation on the project of guidelines on the effective implementation of the right to participate in public affairs, held in Santiago, Chile. Within the framework of Human Rights Council Resolution 33/22 titled "*Equal participation in political and public affairs*," the first regional consultation for the Americas had as its main objectives the collection of different points of view of the interested parties on the content of the draft guidelines, and to achieve a better understanding of laws, jurisprudence, policies and good practices in the region. The Rapporteur participated alongside Leo Valladares, former Ombudsman of Honduras and current executive director of the Association for Participatory Citizenship (ACI-PARTICIPA), in the session of "Ensuring an enabling environment for the effective exercise of the right to participate in public affairs: previous requirements.

95. On June 14th, the Special Rapporteur participated through a videoconference in a seminar addressed to journalists, judges, and Guatemalan prosecutors that took place at Rafael Landívar University in Guatemala City. The objective of the meeting was to reaffirm the State's obligation in terms of protecting journalists and specifically the role of justice operators in protecting and combating impunity. More than 80 people attended the meeting, as well as university students, the organizations Civitas, UNESCO, Deutsche Welle, *Plaza Pública*, GIZ, UNICAP (MP), and the School of Judicial Studies.

96. From June 18th to 21st, Special Rapporteur Edison Lanza attended the 47th Regular Period of Session of the General Assembly of the Organization of American States (OAS), held in Cancún, Mexico, where he participated in several open meetings with Member States and Permanent Observers. The Special Rapporteur accompanied the delegation of the IACHR in various efforts before observer countries and visiting organizations to update on the current economic situation of the IACHR. The General Assembly ended its regular term with the approval of a doubling of the regular fund allocated the inter-American human rights system bodies, allowing a gradual increase of 33% per year of each body per year. With this decision, Member States demonstrated their growing commitment to international human rights law and to the assurance of the independence and autonomy of the Inter-American Court and the Commission. Additionally, at the 47th regular session, the Assembly adopted a resolution on the right to freedom of thought and expression and the safety of journalists and workers in the media in the hemisphere. The approved resolution condemns murders, assaults, and other acts of violence against journalists and media workers and urges States to implement comprehensive measures to prevent, protect, investigate, and punish those responsible. The proposal was presented by the delegation of Uruguay and co-sponsored by the delegations of Argentina, Bolivia, Chile, Costa Rica, Mexico, Peru, and the Dominican Republic.

97. Furthermore, on June 18th during the General Assembly, the Special Rapporteur participated in the side event "Conversation with the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights", organized by the Center for Justice and International Law (CEJIL). The meeting generated a space for the exchange of ideas from representatives of civil society organizations who participated in the General Assembly. During his stay in Mexico, the Special Rapporteur held a meeting with Ambassador Bénédic de Cerjat, Head of the Americas Division of the Federal Ministry of Foreign Affairs of Switzerland, to discuss the current projects carried out by the Special Rapporteurship.

98. From June 22nd to 24th, a team of the Special Rapporteurship composed of the Special Rapporteur Edison Lanza and the Orlando Sierra Fellow, Pedro Noel, held an academic visit to the cities of Mexico City and Chihuahua. The purpose of the visit was to share information on the IACHR and the IACHR mechanisms related to freedom of expression; collect information on the situation of freedom of expression in the country, its main challenges, and establish a contact network for greater commitment. On the 22nd of June a meeting with the international community was held at the UNHCR's headquarters with the participation of the ambassadors' from Sweden (Annika Thunborg) and Denmark (Amb. Henirk Hahn), and representatives of the embassies of the Netherlands, United Kingdom, Germany, Australia, Austria, Canada, Belgium, Switzerland, Finland, the European Union, and UNESCO was held in Mexico City. The team also held a meeting with local journalists and civil society representatives, attended by the newspapers of *Proceso*, *Istmopress*, *Changoonga*, *Lado B.*, and the organizations of *Artículo 19*, *RSF*, *Fotoreporteros MX*, *CIMAC*, *Propuesta Cívica* and *R3D*. Presented by Maria Luisa Bascur of the High Commissioner's Office, participants shared their concerns regarding journalists' safety in their geographical areas and work topics.

99. Moreover, the Special Rapporteur held a meeting at the Ministry of Foreign Affairs with the Advisory Council of the Mechanism for the Protection of Human Rights Defenders and Journalists in Mexico. The members of the advisory council provided the office with up-to-date information and shared their concerns regarding the current status of the mechanism. On the 22nd, a special government meeting of the mechanism for Human Rights Defenders and journalists in Mexico was also convened, on the occasion of the Rapporteur's visit. Present at the meeting were Roberto Campa Cifrián (Secretary of Human Rights, Ministry of the Interior), Ambassador Miguel Ruiz Cabañas Izquierdo (Undersecretary for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs), Ricardo Cayuela (Prosecutor, Special Prosecutor's Office for Crimes against Journalists- FEADLE), representatives of the Mexican Senate, Federal Police, National Commission of Human Rights (CNDH), and of the Council of the Mechanism of Protection to the Defenders of Human Rights and Journalists' in Mexico. The Special Rapporteur also held a meeting with the Special Prosecutor of the FEADLE, Ricardo Cayuela, and another meeting with the President of the CNDH, Luis Gonzalez.

100. On the 23rd, Special Rapporteur Edison Lanza traveled to Chihuahua with the Mexico Representative of the Office of the United Nations High Commissioner, Jan Jarab, at the invitation of the Congress of that state to participate in the "*Consultation Forum of the Congress of the State for the analysis of the initiative of the Law*

for protection of journalists and human rights defenders of the state of Chihuahua ". During the visit, the team held meetings with local authorities, civil society organizations, and local journalists as well as a meeting with the relatives of the murdered journalist Miroslava Breach. In the afternoon, the Special Rapporteur met with the Governor, the Secretary General of Government, the Human Rights and Justice Adviser, and the General State Attorney, César Augusto Peniche, where they shared information and an analysis on the situation of freedom of expression and access to information in the state of Chihuahua, as well as the advances in the implementation of an early warning.

101. Special Rapporteur Edison Lanza traveled to Geneva, Switzerland to participate in a multilateral consultation on strengthening the implementation of the United Nations Plan of Action on the safety of journalists and the problem of impunity. Held on June 29th at the UN Palais des Nations, organized by UNESCO and the Office of the High Commissioner for Human Rights (OHCHR), the meeting brought together UN member states, intergovernmental and non-governmental organizations, media associations, and academic experts to evaluate in the context of the first five years of the above-mentioned action plan. The consultation offered participants the opportunity to identify the main achievements, gaps, and challenges related to the need to improve the safety of journalists and media workers. The Special Rapporteur participated in the panel on "*Exchange of good practices between member states and regional intergovernmental organizations*", moderated by Guy Berger, Director of the Division of Freedom of Expression and Media Development of UNESCO.

102. Within the framework of the 163rd period of session of the IACHR celebrated in Peru from July 3rd to 7th, the Special Rapporteur held a closed meeting with Venezuelan civil society actors in Lima on the afternoon of July 6th. The meeting invited Venezuelan journalist Marco Ruiz and representatives of the organizations present at the IACHR's POS: IPYS Peru and IPYS Venezuela, *Espacio Público*, Human Rights Center of the UCAB, Carlos Ayala, and the Union of Journalists, with the objective of collecting key information on the deterioration of freedom of expression in the country. During the meeting, the Special Rapporteur was able to gather information on censorship on the Internet, limitations on protest, use of force, vigilance, direct restrictions on journalism practice, and access to information, among other topics, as well as requesting specific information on how foreign journalists are affected by the latest developments in the country. Likewise, the Rapporteur used the space to communicate the strategies that the office is implementing to denounce continually the limitations to freedom of expression and other human rights in the country.

103. Additionally, the Special Rapporteur participated in a public forum with indigenous leaders, representatives of social movements, and members of civil society organizations dedicated to research, activism, and advocacy on the right to access information and transparency in the management of natural resources. The event titled "*Transparency and access to information in extractive industries as a human right: The cases of Latin America and the Caribbean*" was organized by the Due Process of Law Foundation (DPLF) within the framework of the period of sessions, and counted with the participation of representatives of state entities and the Office of the Ombudsman of Peru. Finally, during the sessions, the IACHR renewed the mandate of Special Rapporteur Edison Lanza for a new period of three years, in accordance with Article 15 of its Rules of Procedure.

104. From July 9th to 12th, Special Rapporteur Edison Lanza visited Santiago de Chile, with the purpose of disseminating and presenting the conclusions of the report "Situation of the Right to Freedom of Expression in Chile". The report is the result of the official visit of the Office of the Special Rapporteur for Freedom of Expression to Chile carried out from May 31st to June 4th, 2016, at the invitation of the Chilean State to assess the situation of freedom of expression and access to information in the country. At the invitation of the Ministry of Justice and Human Rights and the National Human Rights Institute (INDH), the Rapporteur presented the findings and recommendations of the report on July 10th at the Faculty of Law of the University of Chile. The launch of the report was welcomed by the Undersecretary of Human Rights Lorena Frías and the Director of INDH Branislav Marelic, and ended with a press conference by local media. Also, the Rapporteur Edison Lanza held meetings with representatives of the country's civil society, including AMARC, *Chile Transparente*, *Fucatel*, *Derechos Digitales*, *ECO*, *Cátedra de Derechos Humanos* of the University of Chile, *Observatorio Ciudadano*, and *Acción A.G y Ciudadano Inteligente*. During his stay in the country, the Special Rapporteur held meetings with the President of the Supreme Court, Minister Hugo Enrique Dolmestch Urra;

the Head of the Protection Division, Sebastián Cabezas; the President of the Chamber of the Chamber of Deputies, Deputy Fidel Espinoza; and Foreign Minister Heraldo Muñoz to formally present the report's conclusions and recommendations.

105. From July 27th to 28th, a team of the Special Rapporteurship, composed by the Special Rapporteur Edison Lanza, Attorney Tatiana Guasti and project assistant Casilda Hevia, traveled to Guatemala City to participate in two (2) standards promotion workshops for national legislators and representatives of community radio stations. On July 27th, the Office of the Special Rapporteur with the Office of the United Nations High Commissioner for Human Rights in Guatemala (OHCHR), organized a seminar on the *incorporation of inter-American standards on freedom of expression into national legislation*. With the Congress of the Republic of Guatemala and its President Oscar Chinchilla as national counterpart, the host country was responsible for identifying and extending invitations to Guatemalan human rights lawmakers. In total, 24 Central American legislators, including key legislators from the Central American countries of Costa Rica (1), El Salvador (2), Honduras (2) and Panama (1), and Nicaragua participated in the workshop. Aimed at legislators, legislative advisers and members of the committees on communication and human rights of the national legislative bodies of the region, the main objective of the seminar was to stimulate the adoption of inter-American standards in the national legal framework of freedom of expression, focusing on current regional issues such as violence against journalists, diversity and pluralism, access to public information, and the Internet. The workshop counted with the participation of experts Maria Pia Matta (AMARC), Carlos Cortés (Internet expert), Hector Morales (UN Office in Guatemala), and the Special Rapporteur, Edison Lanza.

106. On July 28th, the Office of the Special Rapporteur organized a workshop with the support of the *Centro Civitas* and OHCHR on "*Inter-American Standards for Free and Inclusive Broadcasting*", aimed at civil society organizations working with community radio stations in the country. The workshop was inaugurated by Special Rapporteur along with the Representative of the OAS office in Guatemala, Milagro Martínez, and the Representative of the OHCHR, Liliana Valiña. Aimed at 44 participants from different provinces of Guatemala, the main objective of the seminar was to stimulate the adoption of inter-American standards in the national legal framework of freedom of expression, focusing on issues of broadcasting, diversity and pluralism, and community radio. Together with Special Rapporteur, experts Maria Pia Matta (AMARC), Evelyn Blank (CIVITAS),; Ancelmo Xumic (Movimiento Radios Comunitarias), and representatives of Demos and Cultural Survival organizations provided presentations.

107. From July 30th to August 4th, the Rapporteur Edison Lanza and attorney Tatiana Guasti were part of the Inter-American Commission on Human Rights (IACHR) delegation who carried out an on-site visit to consult and report on the situation of human rights in Guatemala. The delegation was headed by the President of the IACHR, Francisco José Eguiguren Praeli; the First Vice-President, Margaret May Macaulay; the Second Vice-President, Esmeralda Arosemena de Troitiño, and Commissioners José de Jesús Orozco Henríquez, Paulo Vannuchi, James Cavallaro and Luis Ernesto Vargas Silva. The delegation was composed of the Executive Secretary, Paulo Abrão; the Special Rapporteur for Freedom of Expression, Edison Lanza; as well as a group of specialists from the Executive Secretariat. During the on-site visit, the IACHR met with state government authorities and met representatives of civil society, autonomous bodies, international organizations, academics, and journalists. Regarding the situation of the right to freedom of expression, the Office of the Special Rapporteur stated that Guatemala is experiencing a context of violence against journalists characterized by murders and threats. The IACHR received information on violence against journalists, as well as on the concentration of media ownership and lack of legal recognition of community broadcasting, realities that hinder free access to information and the consolidation of a culture of respect for human rights.

108. Also, an IACHR team led by Commissioner José de Jesús Orozco and the Special Rapporteur Edison Lanza traveled to Huehuetenango as part of field observation to gather information on the spoils of communities, the application of the crimes of usurping and an aggravated modality that has been established, as well as the criminalization of members and representatives of peasant and indigenous communities. The Office of the Special Rapporteur has been in charge of preparing the chapter on freedom of expression of the report of the on-site visit of the IACHR to Guatemala.

109. A team from the Office of the Special Rapporteur traveled to San Jose, Costa Rica to participate in two public hearings in the framework of the 119th Regular Session of the Inter-American Court of Human Rights. On the 21st, the public hearing of the "Case Fontevecchia and D'Amico vs. Argentina "in which it had determined that the Argentine State violated the right to freedom of expression of two journalists. The hearing was attended by CELS representative organization of the victims, the Argentine State, and Special Rapporteur Edison Lanza. On the 22nd of August, the hearing of "Caso Nelson Carvajal & family vs. Colombia" took place. The hearing was related to the murder of the journalist Nelson Carvajal Carvajal for reasons related to the exercise of his profession. The Inter-American Press Association (IAPA), the Robert F Kennedy Human Rights, the sister of the murdered journalist Judith Carvajal, the expert witness Carlos Lauria, the Special Rapporteur and a delegation of the Colombian State participated in the hearing.

110. The Special Rapporteur and attorney Tatiana Guasti, executed an academic visit to San José on August 23rd and 24th to conduct a capacity building seminar on the incorporation of inter-American standards on freedom of expression in the Judiciary. Directed to 17 Costa Rican judges and prosecutors, the workshop was jointly organized by the Office of the Special Rapporteur and the Training School of Costa Rica. Additionally, the Special Rapporteur was invited to participate in the panel on "Surveillance, privacy and freedom on the Internet in a world of open data." The Regional Open Data Conference (ConDatos), held in San Jose, brought together experts from public institutions, the private sector and civil society to present, discuss, discuss and propose key aspects of policy open data, open government, civic innovation, public challenges, privacy and new ways of working in the region. The conference was organized by the Government of the Republic of Costa Rica, Open Government and Opening Data Costa Rica.

111. On August 31st, the national conference on Journalist Security and Fight against Impunity was held in San Salvador. Organized by the San José UNESCO Office, with the support of the Ministry of Justice and Public Security through the Vice Ministry of Justice of El Salvador and the Association of Journalists of El Salvador (APES), the objective of the meeting was to develop a national plan strategic to protect journalists. The Special Rapporteur participated via skype, at the opening of the national conference alongside Frank La Rue (UNESCO); Yanira Argueta (Salvadoran Institute for the Development of Women - ISDEMU); Raúl López (Vice Minister of Justice); Delila Arriaza (APES) and Christian Salazar (United Nations System).

112. Special Rapporteur Edison Lanza participated as a lecturer in the Hector Fix-Zamudio Training Diploma in the Inter-American Human Rights System, organized by the Institute of Legal Research of the Autonomous University of Mexico (UNAM). On September 7th, the Special Rapporteur delivered a class entitled "Internet and the Right to Freedom of Expression" to academics, students, members of civil society organizations and public officials, including judges of the diploma course. Also, in the framework of the 164th Extraordinary Period of Sessions of the IACHR held in Mexico City from September 2th to 9th, the Special Rapporteur held meetings with the new delegation of the Inter-American Court, Mexican civil society organizations and a meeting with the Deputy Brenda Velázquez, President of the Special Commission for Monitoring Attacks on Journalists and the Media and the deputies members of that commission.

113. On September 13th, a local event of the "Internet Governance Forum" (IGF) was held in Montevideo, Uruguay and jointly organized by the Agency for Electronic Government and the Information and Knowledge Society (AGESIC); Internet Society - Chapter Uruguay; Observatory of Information and Communication Technologies (OBERVATIC); Catholic University of Uruguay; and the Technological University (UTE). The Rapporteur participated via videoconference in the panel on "Internet Rights: Privacy and Freedom of Expression".

114. On September 21st, the regional capacity building seminar on strategic litigation "Regional Project on Human Rights and Democracy in the countries of the Northern Triangle of Central America and Nicaragua" was held. Jointly organized by the IACHR and the Pan American Development Foundation (PADF), the workshop was aimed at members of civil society. The Special Rapporteur was in charge of the panel on "Inter-American Standards: Right to freedom of expression and access to information."

115. Special Rapporteur traveled on September 27th to Buenos Aires, Argentina, to participate in the Conference on Internet and Human Rights held at the Legislative Palace. Jointly organized by the Observatory

of Human Rights of the Nation's Senate (ODDHH) and the Center for Studies on Freedom of Expression and Access to Information (CELE, for its initials in Spanish), the Rapporteur participated alongside Valeria Milanés (ADC), Norma Morandini (ODDHH), Agustina del Campo (CELE), and Eleonora Rabinovich (COOGLE) in the debate addressing the new challenges posed by the development of regulations related to the internet, as well as the role of the legislative body in the promotion of a free, open and inclusive Internet.

116. On September 27th, the seminar "Connectivity and Freedom of Expression in the Americas" organized by the Organization of American States (OAS), was held in the organization's headquarters Washington DC. The senior attorney of the Office of the Special Rapporteur, Ona Flores, moderated the panel on connectivity and freedom of expression. The seminar counted with the participation of regional and international experts from: academia, government, consultancy and the private sector.

117. From September 28th to 29th, the Special Rapporteur traveled to Montevideo, Uruguay to participate in the seminar "Access to Information as a facilitator of the three pillars of the 2030 Agenda: Democracy, Development and Human Rights", organized by the Unit of Access to Public Information (UAIP), Agesic, the Presidency of the Republic of Uruguay and UNESCO. The objective of the forum was to strengthen the spaces for dialogue and define the recommendations that allow resolving the challenges related to the laws of access to information in the region. The Rapporteur also participated on the 29th in the "Dialogue table on freedom of expression: Are there limits to freedom of expression? -Situation in Uruguay and the region". Organized by the Uruguayan Press Association (APU), the event aimed to present the situation of freedom of expression in the context of the region and make recommendations for Uruguay to deepen its commitment to protect freedom of expression and include in it a human rights perspective. Among the experts were Nelson Villareal (Human Rights Secretary of the Presidency); Gustavo Gomez (OBSERVACOM); Victoria Alfaro (APU); José Peralta (IFEX) and Daniel Lema (CAinfo).

118. During his stay in Montevideo, the Special Rapporteur held a meeting with the Office of the Prosecutor and the Attorney General of the Nation, Jorge Díaz to discuss the possibility of establishing a training agreement for prosecutors on freedom of expression and criminal law. Also, on the occasion of the meeting of experts on access to information, the Resident Representative of the World Bank Group, Matilde Bordón organized a dinner for the access to information participants.

119. From September 25th to 29th, the "XI Edition of the Yatchay Program" of the Pontifical Catholic University of Peru (PUCP) was held. Organized by the PUCP Institute for Democracy and Human Rights (IDEHPUCP), with the support of the Rector's Office, the University's Master's Degree in Human Rights and the support of the International Committee of the Red Cross, the course aims to promote the study of human rights and their systems of protection in students of law and contribute to the dissemination of the standards of protection of human rights established by the Inter-American Human Rights System. The Special Rapporteur Edison Lanza elaborated jointly with human rights specialist Ramiro Ugarte, the hypothetical case related 'new technologies and human rights' for the participants of the program.

120. From October 2nd to 4th, the Special Rapporteur undertook an academic visit to Lima, Peru to participate in the international seminar "Freedom of Expression, Media and Rights of Girls, Boys and Adolescents: Prioritizing Legal Frameworks and Public Policies", jointly organized by Red Andi Latin America and the Radio and Television Advisory Council (CONCORTV). The Special Rapporteur presented alongside IACHR Commissioner and Rapporteur on the Rights of the Child, Esmeralda Arosemena de Troitiño, the thematic report elaborated by the IACHR in the panel "Freedom of Expression, Media and Rights of Children and Adolescents: Priority Issues for the Agenda of Multilateral Organizations". The seminar's objective was to analyze the main problems and challenges facing the protection of the rights of children in the media and their role as agents of change. The seminar was attended by international speakers including: Frank La Rue (UNESCO); María Cristina Perceval (UNICEF); Corina Leguizamon (Institute of Public Policies in Human Rights of Mercosur); Joan Barata (international expert); Rosa Cañete Alonso (OXFAM, Spain); Paula Baleato (Red Andi) and various specialists from the countries of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Spain, the United States, France, Mexico, Paraguay, Peru and Uruguay.

121. From October 9th to 10th, a team of the Special Rapporteurship traveled to Panama City to conduct the sub-regional capacity building workshop on Inter-American standards on freedom of expression. Jointly organized by the Judicial Branch of the Republic of Panama, UENSCO and the Office of the Special Rapporteur, the objective of the workshop was to strengthen the incorporation of Inter-American standards on freedom of expression and human rights in judicial decisions. The group of international facilitators during both days of the workshop was composed by the Special Rapporteur Edison Lanza (IACHR), Carlos Cortes (regional expert), Guilherme Canela (UNESCO, Montevideo) and from Panama, the Magistrate of the Superior Court of Appeals, Mauricio Marín; and the OISPA coordinator of the Public Prosecutor's Office, Delia De Castro. Themes addressed during the capacity building workshop varied from restrictions on the right to freedom of expression; Internet; the role of the judiciary in the investigation and prosecution of crimes against freedom of expression; the rights of access to information and the toolbox on freedom of expression. Participants included judges, magistrates, public defenders, prosecutors and other judicial servants from the countries of Panama, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic and Mexico.

122. Within the framework of the 165th regular session of the IACHR held in Montevideo at the invitation of the Uruguayan State from October 23rd to 27th 2017, a team of the Office of the Special Rapporteur composed of Edison Lanza and Ona Flores traveled to Montevideo to participate in hearings related to the right to freedom of expression and parallel academic events. On October 20th, the Special Rapporteur participated in the event organized by the civil society organization Article 19, entitled "Agenda of the meeting on the Mechanisms for the Protection of Latin America Human Right Defenders and Media Workers" and held at the headquarters of the Association of the Uruguayan Press (APU). The Rapporteur gave a lecture on the role of the Inter-American system and focused on the different protection mechanisms available at the IACHR. The Special Rapporteur also participated as a panelist in the event paying tribute to Mexican journalists organized by APU, Cotidiano Mujer, Feminist Articulation MARCOSUR, Network of Women Journalists and supported by the Municipality of Montevideo. Along with Guilherme Canela (UNESCO); Daniel Méndez (Mayor of Montevideo); Patricia González (Counseling for Gender Equality); Victoria Alfaro (APU); and Lilian Celiberti (Cotidiano Mujer, AFM), the Special Rapporteur participated in the panel regarding the illustrious visitor's statement to the Mexican journalist Marcela Turati.

123. During his stay in the country, the Rapporteur also participated on the 24th in the International Forum "Media Concentration, Democracy, and Freedom of Expression" organized by OBSERVACOM, UNESCO, FESUR (Friedrich Ebert Foundation in Uruguay) and sponsored by the Ministry of Foreign Relations of Uruguay. The public activity took place at the Solís Theater in Montevideo with the purpose of discussing the perspectives and relations between media concentration, democracy and freedom of expression in Latin America. The event featured opening remarks by Lidia Brito, Director of UNESCO Montevideo, Sebastian Sperling, Director of FESUR, and Victoria Alfaro, President of the APU. Additionally, among the panelists were: Ricardo Pérez Manrique, former President of the Supreme Court of Justice of Uruguay; Edison Lanza, Special Rapporteur for Freedom of Expression of the IACHR; Gustavo Gómez (OBSERVACOM), Facundo Franco, Nicolás Thevenet and Fernando Gelves, Martín Becerra and João Brant (OBSERVACOM). Furthermore, team of the special rapporteurship participated on October 26th in the meeting consultation on the right to protest and civic space in Latin America, organized by CaInfo and Open Society Justice Initiative (OSJI). The aim of the meeting was to share information and discuss litigation strategies in the context of protest rights, and identify possible cases to promote before national and international justice systems. The consultation was a joint effort of OSJI and the Office of the Special Rapporteur, which sought to facilitate the space for discussion of the work carried out by organizations and human rights defenders working in the Latin American region and to envision the possibilities of collaboration between these entities. Among the specialists were among others. Edison Lanza (IACHR); Ona Flores (IACHR); Daniela Ikawa (OSJI); Mariana Mass (Open Society) Daniel Holder (CAJ); Gabriela Kletzel (CELS); Paula Martins (Article 19); and Jomary Ortegon (CAJAR).

124. From November 1st to 4th, Special Rapporteur Edison Lanza traveled to Bogotá, Colombia to participate in the events organized as part of the celebration of the 20th anniversary of the Special Rapporteurship for Freedom of Expression of the IACHR. The Office of the Special Rapporteur organized, together with the University of the Andes, the Center for Studies on Freedom of Expression and Access to Information (CELE) and the support of the Foundation for Freedom of the Press (FLIP), the international conference entitled, "Freedom of expression before the democratic challenges of the hemisphere". The

activity took place on November 2nd at the Universidad de los Andes, to commemorate the creation of the Inter-American Commission on Human Rights (IACHR) office in 1997. The event addressed issues related to violence against journalists and media workers and impunity in the hemisphere; freedom of expression, journalism and democracy; regional perspectives on the challenges to guarantee and protect freedom of expression and human rights on the internet; and the declaration of principles on the freedom of expression of the IACHR and its validity in light of the changes produced by the digital age. The activity brought together regional experts in the field, including: Jineth Bedoya (El Tiempo, Colombia); Carlos Dada, (El Faro, El Salvador); Marianela Balbi (IFEX - ALC / IPYS Venezuela); Ana Ruelas (Article 19 Mexico); Rachael Kay (IFEX); César Ricaurte (Fundamedios, Ecuador); Carlos Ayala (former president of the IACHR); Damian Loreti (UCAB); Toby Mendel (Center for Law and Democracy) and Agustina del Campo (CELE, Argentina). The event served as a public platform to address the hemispheric agenda's pressing issues for the defense of freedom of expression such as violence and security of journalists; internet and privacy; and freedom of expression and democracy, and it further provided an opportunity to analyze the regional advances in the matter. In addition, the five special rapporteurs to date, Santiago Cantón (1998-2002), Eduardo Bertoni (2002-2005), Ignacio Álvarez (2006-2008), Catalina Botero (2008-2014) and Edison Lanza (in office since 2014) gave presentations and participated in an open dialogue throughout the event.

125. On November 3rd, the special rapporteurs and a group of experts participated in a closed session to analyze the work of the Office of the Special Rapporteur for Freedom of Expression and its strategic vision based on three previously prepared documents. The meeting's objective was to discuss the impact of the office, its strengthening and to outline a thematic agenda establishing the priorities for the next 5 years. The essays discussed were prepared by Alejandra Umpiérrez (regional expert), Michael Camilleri (Inter-American Dialogue) on the crisis of democratic institutions in the hemisphere and the fight against corruption, as a context for the exercise of freedom of expression in the hemisphere; and Agustina del Campo (CELE) on the trends and possible priorities for the thematic agenda of the Office of the Special Rapporteur for Freedom of Expression. The five Special Rapporteurs and the experts Pedro Vaca (FLIP, Colombia); Luis Fernando Garcia (CR3D, Mexico); Viviana Krsticevic (CEJIL); Carlos Correa (Public Space, Venezuela) Juan Carlos Lara (Digital Rights, Chile) among others. Also, as part of the celebration of the 20th anniversary of the office, the Ambassador of Switzerland, Mr. Kurt Kunz, invited international experts to a reception on November 1st held at the ambassador's residence in Colombia. The reception also counted with the presence of ambassadors, media directors and members of the Colombian government.

126. From November 13th to 15th, the course on freedom of expression, access to public information and violence against journalists was held at the headquarters of the Federal Judicial Institute in Mexico City. Organized by the Foundation for Freedom of the Press (FLIP); UNESCO; the Federal Judiciary Institute of the Judicial School and the Office of the Special Rapporteur; the seminar was aimed at federal judges who were trained in freedom of expression and access to information. The human rights specialist of the Office of the Special Rapporteur, Tania Da Rosa, dictated on November 15th the courses on access to information. Magistrate Salvador Mondragon Reyes (Director, Federal Judicial Institute); Guilherme Canela (Communication Advisor, UNESCO, Katitza Rodriguez (Director of Law, Electronic Foundation -EFF) and Sebastian Salamanca (FLIP, Colombia) participated as experts.

127. The Special Rapporteur participated in his expert capacity in the event "Corruption, Internet Freedom and Privacy on-line", organized on November 15th by the Inter-American Dialogue in Washington D.C. The panel gathered experts: Catalina Botero, Dean of the Law School of the Universidad de los Andes, Colombia; Romina Mella, Journalist and Founding Member of IDL-Reporters; José Luis Piñar, Professor of Administrative Law at the San Pablo CEU University, and former director of the Spanish Agency for Data Protection (AEDP); and Michael Camilleri, Director of the Peter D. Bell Rule of Law Program - Inter-American Dialogue, to analyze the recently published report by the center on freedom of expression and the concept of the right to be forgotten. Moderated by the President of the Inter-American Dialogue, Michael Shifter, the debate centered on the right to be forgotten and its implications online, with regards to the problems of corruption, impunity, freedom of press and historical erasure faced in Latin America.

128. On November 15th, the Special Rapporteur attended the twenty-seven international press freedom awards organized by the Committee to Protect Journalists (CPJ) at the Grand Hyatt Hotel in New York. The

event was organized by Christiane Amanpour, CNN international correspondent and CPJ's senior adviser, and the chairman of the dinner was Mr. David Rhodes, president of CBS News. Among the honorees were Ahmed Abba from Cameroon; Patricia Mayorga of Mexico, Pravit Rojanaphruk of Thailand and Afrah Nasser of Yemen.

129. On November 17th, Special Rapporteur Edison Lanza and senior attorney Ona Flores attended a working lunch organized by the Ambassador of Uruguay to the OAS, Hugo Cayrus Maurin. Present were the Ambassadors of the Missions of Argentina, Brazil, Canada, Costa Rica, Chile, Mexico, Panama, Peru and the interim representative of the United States before the OAS. The meeting offered a space to present the challenges and opportunities for the thematic agenda of the special rapporteur for freedom of expression within the framework of the celebration of its 20th anniversary in Bogotá. The team's presentation compiled all the work done by the office since its creation and concluded with possible scenarios for the expansion of a new defined agenda of freedom of expression in the hemisphere.

130. From November 27th to December 4th, a delegation of the Special Rapporteurship for Freedom of Expression of the IACHR held a joint visit to Mexico with the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, per invitation of the Government of Mexico. The delegation was led by Special Rapporteur Edison Lanza (IACHR) and Special Rapporteur David Kaye (UN), and composed by the specialists, Ona Flores (IACHR); Azin Tadjdini (UN); Maria Luisa Bascur (UN-DH, Mexico); and Ricardo Neves (UN-DH, Mexico), with the aim of evaluating the situation of freedom of expression in the country, and in particular to analyze the situation regarding the safety of journalists. The joint visit also aimed to follow up on the recommendations presented by Frank La Rue and Catalina Botero (former special rapporteurs), after their joint country visit in 2010. The official visit included an intense work agenda in which the Rapporteurs held meetings with high level representatives of the Federal Government, the Legislative and Judicial Powers, as well as Secretaries General of Government, Prosecutors and Attorneys of the states of Guerrero, Sinaloa, Tamaulipas, Veracruz and Mexico City. Also, during their stay in the country, they met with authorities of the National Commission of Human Rights and of state human rights commissions; and held meetings with over 250 journalists and representatives of civil society from 21 states. The special rapporteurs further met with relatives of the victims who provided them with detailed information and testimonies on the situation of freedom of expression in the country. As a result of these meetings, the Rapporteurs recognized the violence-ridden environment that is going through Mexican journalists every day and urged the Government to increase the resources available for the mechanisms that have been established to provide protection and transparency.

131. Finally, in the closing session held on December 4th, the Undersecretary of Human Rights of the Ministry of the Interior, Roberto Campa, reiterated the firm commitment that the Mexican State maintains with human rights and welcomed the recommendations presented by the Special Rapporteurs of the UN and the IACHR to strengthen all actions in order to benefit the work of journalists in the country. The Special Rapporteurs lamented how violence against those who practice journalism in Mexico has been a crisis for over a decade and despite the creation by the government of protection and persecution mechanisms, impunity and insecurity continue to characterize this situation throughout the country. In their preliminary observations, the international experts condemned the aggressions, murders, disappearances and espionage against the communicators of the country and provided a series of recommendations, among them: the strengthening of the Mechanism for the Protection of Journalists and the Special Prosecutor's Office for Crimes against Journalists (FEADLE, for its initials in Spanish), the implementation of a national law and the creation of a council of international experts to provide advice on the lines of investigation.

5. Annual Report and Development of Expert Knowledge

132. One of the main tasks of the Office of the Special Rapporteur is the preparation of the annual report on the state of freedom of expression in the hemisphere. Every year, this report analyzes the state of enjoyment of the right to freedom of expression in the States of the hemisphere, which includes noting the main threats to the exercise of the right to freedom of expression and the progress that has been made in this area.

133. Besides its annual reports, the Office of the Special Rapporteur periodically produces specific reports on particular countries. For example, it has prepared and published special reports on the situation regarding the right to freedom of expression in Paraguay (2001), Panama (2003), Haiti (2003), Guatemala (2004), Venezuela (2004), Colombia (2005), Honduras (2009, 2010 and 2015), Venezuela (2009 and 2010) and Mexico (2010 and 2015).

6. Special Statements and Declarations

134. Through the daily monitoring of the state of freedom of expression in the region—conducted by means of an extensive network of contacts and sources—the Office of the Special Rapporteur issues statements such as press releases, reports, and opinions on specific cases or situations that are relevant to the exercise of this fundamental right. Press releases issued by the Office of the Special Rapporteur receive wide coverage and constitute one of its most important work mechanisms.

135. The Office of the Special Rapporteur receives an average of 1,000 e-mails per month. Of these, 75 per cent refer to alerts, press releases, or requests for information and consultations on freedom of expression in the region, and receive a timely response; 10 per cent refer to formal petitions to the IACHR's individual case system; and the remaining 15 per cent have to do with issues that do not fall within its area of competence. The Office of the Special Rapporteur reviews, culls, and sorts the information it receives to determine the course of action to take.

136. In addition, since its creation the Office of the Special Rapporteur has participated in the drafting of joint declarations with the other regional rapporteurs and the UN rapporteur for freedom of expression. These joint statements are generally signed by the UN Special Rapporteur; the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE); the Special Rapporteur of the OAS; and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights. When the issues are regional in nature, the declarations are signed by the Rapporteurs for the UN and the OAS.

137. The joint declarations constitute an important tool for the work of the Office of the Special Rapporteur. In previous years, these statements have covered such subjects as: the importance of freedom of expression (1999); murders of journalists and defamation laws (2000); challenges to freedom of expression in the new century in areas such as terrorism, the Internet, and radio (2001); freedom of expression and the administration of justice, commercialization and freedom of expression, and criminal defamation (2002); media regulation, restrictions on journalists, and investigations into corruption (2003); access to information and secrecy legislation (2004); the Internet and anti-terrorism measures (2005); publication of confidential information, openness of national and international entities, freedom of expression and cultural and religious tensions, and impunity in cases of attacks against journalists (2006); diversity in access, ownership, and content of the media, particularly radio and television (2007); the defamation of religions and anti-terrorist and anti-extremist legislation (2008); media and elections (2009); ten key challenges to freedom of expression in the next decade (2010); Wikileaks (2010); freedom of speech on the Internet (2011); crimes against freedom of expression (2012); the universality and the right to freedom of expression (2014); the obligations of states to protect journalists who cover armed conflicts (2015); and freedom of expression and the fight against violent extremism (2016).⁴⁵

138. On March 3rd, 2017, the United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR)

⁴⁵ The abovementioned joint declarations are available for consultation at:

<http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&IID=1>

Special Rapporteur on Freedom of Expression and Access to Information, approved a joint declaration on freedom of expression and “fake news”, disinformation and propaganda (2017).⁴⁶

139. During 2017, the Office of the Special Rapporteur issued thirty-one (31) press communiqués⁴⁷ to call attention to incidents associated with freedom of thought and expression. These pronouncements emphasized events of particular concern along with the best local practices, and explain the respective regional standards. The press communiqués issued in 2017 may be consulted at the website of the Office of the Special Rapporteur, available at: <http://www.oas.org/es/cidh/expresion>.

140. On February 23rd, 2017 the Inter- American Commission on Human Rights, it's Special Rapporteurship for Freedom of Expression and the Office of the United Nations High Commissioner for Human Rights in Honduras published a joint press release expressing concern over adopted reforms in the Honduran penal code, retrogressive for human rights and freedom of expression in the country.⁴⁸

141. On March 23rd the international organizations: UN organization dedicated to gender equality and the empowerment of women Office in Mexico (UN Women), the Office of the Special Rapporteur for Freedom of Expression of the IACHR, Office of the United Nations High Commissioner for Human Rights in Mexico expressed their strong condemnation for the murder of Mexican Journalist Miroslava Breach in Chihuahua, Chihuahua.⁴⁹

142. On April 26th, two experts on freedom of expression of the United Nations and the Inter-American Commission on Human Rights published a joint press release condemning the practice of censorship and internet blocking in Venezuela, as well as the detention, attacks and stigmatization of journalists and media workers covering the recent protests in the country.⁵⁰

143. On May 18th, Special Rapporteur for Freedom of Expression of the IACHR, Edison Lanza, along with the Special Rapporteur of United Nations on Freedom of Opinion and Expression, David Kaye, published a

⁴⁶ Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1056&IID=1>

⁴⁷ During 2017 (until December 12) the following press releases were issued: IACHR. Special Rapporteurship for Freedom of Expression. [Joint Press Release](#) December 4, 2017; [Press Release R179/17](#) November 10, 2017; [Press Release R177/17](#) November 7, 2017; [Press Release R171/17](#) October 30, 2017; [Press Release R162/17](#) October 13, 2017; [Press Release R156/17](#) October 11, 2017; [Press Release R143/17](#) September 9, 2017; [Press Release R135/17](#) September 6, 2017; [Press Release R129/17](#) August 29, 2017; [Press Release R120/17](#) August 15, 2017; [Press Release R109/17](#) July 29, 2017; [Press Release R106/17](#) July 26, 2017; [Press Release R96/17](#) July 12, 2017; [Press Release R86/17](#) June 27, 2017; [Press Release R81/17](#) June 20, 2017; [Joint Press Release R64/17](#) May 18, 2017; [Press Release R63/17](#) May 16, 2017; [Press Release R55/17](#) April 28, 2017; [JOINT PRESS RELEASE R51/17](#) April 26, 2017; [Press Release R80/16](#) Press Release R50/17 April 24, 2017; [Press Release R47/17](#) April 18, 2017; [Press Release R30/17](#) March 10, 2017; [Press Release R25/17](#) March 7, 2017; [Press Release R20/17](#) February 28, 2017; [Joint Press Release R18/17](#) February 23, 2017; [Press Release R17/17](#) February 17, 2017; [Press Release R16/17](#) February 17, 2017; [Press Release R5/17](#) January 24, 2017; [Press Release R4/17](#) January 23, 2017.

⁴⁸ The Inter-American Commission on Human Rights, its Special Rapporteurship for Freedom of Expression and the Office of the United Nations High Commissioner for Human Rights in Honduras express concern over adopted reforms in the Honduran penal code, retrogressive for human rights and freedom of expression: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1054&IID=1>

⁴⁹ Joint Press Release expressed their strong condemnation for the murder of Mexican Journalist Miroslava Breach in Chihuahua: <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1059&IID=2>

⁵⁰ Venezuela / Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1062&IID=1>

joint press release condemning the murder of Mexican journalist and writer Javier Valdez Cárdenas, an urged immediate actions to end the cycle of violence against journalists⁵¹.

144. On December 4th, the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights Edison Lanza and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the UN, David Kaye published a joint press release urging Mexico to redouble efforts to protect journalists.⁵²

D. Funding

145. The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) in October 1997, during its 97th session. The IACHR deemed it essential to create this office, considering the role that the right to freedom of expression plays in consolidating and developing the democratic system and in denouncing and protecting other human rights. As was explained at the beginning of this chapter, the creation of the Office of the Special Rapporteur as a permanent office found full support among the OAS Member States.⁵³

146. In March 1998, during its 98th session, the IACHR defined the characteristics and functions of the Office of the Special Rapporteur. Given the lack of resources, the IACHR—with the support of certain States such as Brazil and Argentina—established a separate, voluntary fund that would allow the office to operate without causing financial problems for the Commission itself. The voluntary assistance fund has, in fact, been an essential mechanism for not increasing the expenses of the Commission or imposing on it the burden of seeking resources to fund the operations of the Office of the Special Rapporteur. Thus, this office does not receive resources from the regular fund of the OAS or from the IACHR, nor does it impose on the IACHR Executive Secretariat the task of finding the resources it needs to operate. That being the case, since its creation the Office of the Special Rapporteur has relied wholly on the funds it obtains through donations from States that—like Argentina, Brazil, Chile, Costa Rica, the United States, Mexico, Peru or Uruguay—have contributed to the voluntary fund, or through its participation in processes to compete for international cooperation funds.

147. In terms of international cooperation projects, it is important to mention that the Office of the Special Rapporteur develops them in strict adherence to the agenda or work plan that has been approved by the IACHR. Based on that work plan, the Office of the Special Rapporteur develops specific projects that are subject to rigorous procedures within the OAS so that they meet the approval of the Project Evaluation Committee (CEP) and the office of legal affairs and the financial office, among others. Once a project has successfully undergone these procedures, it is presented for the open, public competitions held by cooperation agencies. This process ensures that the cooperation funding exactly matches the Office of the Special Rapporteur's own priorities. Through this technical mechanism for obtaining funds, the Office of the Special Rapporteur has managed to increase its income by more than 50 per cent in recent years. On this same subject, it is pertinent to add that 12 per cent of the funds obtained by the Office of the Special Rapporteur (13.6 per cent of all funds executed by the office) must be designated for central administration of the OAS as indirect cost recovery or ICR.⁵⁴

⁵¹ UN and Inter-American Experts Condemn Reporter's Killing in Mexico and Call for Immediate Action to End Cycle of Killings of Journalists: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1066&IID=1>

⁵² Mexico must redouble efforts to protect journalists, human rights experts urge: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1083&IID=1>

⁵³ Santiago Declaration. Plan of Action. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. In: Official Documents of the Summit Process, from Miami to Santiago. Volume I. Office of Summit Follow-Up. OAS.

⁵⁴ OAS. General Standards to Govern the Operations of the General Secretariat of the Organization of American States. Chapter IV (General Provisions of a Financial and Budgetary Nature). OEA/Ser.D/I.1.2 Rev.16. June 4, 2012. Article 80. Available for consultation at: <http://www.oas.org/legal/english/Standards/GenStIndex.htm>; OAS. General Secretary. Executive Order 07-01 Rev 1. Policy on Indirect Cost Recovery. May 29, 2007. Available for consultation at: <http://www.oas.org/legal/english/gensec/EXOR0701REV1.pdf>

148. The Office of the Special Rapporteur would like to express very special thanks for the contributions it has received from OAS Member States, observer countries, and international cooperation agencies. In 2017, the Office of the Rapporteur calls attention to the projects that have been carried out satisfactorily thanks to the financial contributions made by the States of Chile, Costa Rica, France, Kingdom of the Netherlands, the United States of America, Peru, Uruguay, as well as the Swedish Agency for International Development Cooperation, the Swiss Confederation, Google Inc, Open Society Foundations, and the National Endowment for Democracy (NED). This funding has allowed the Office of the Special Rapporteur to fulfill its mandate and continue its work of promoting and defending the right to freedom of expression. Once the OAS has released the official figures on the resources received and executed by this office, they will be published in the audited financial statements available on the webpage of the organization.⁵⁵

E. Staff

149. The Office of the Special Rapporteur has worked under the coordination of the Special Rapporteur, with a team of two or three lawyers who are experts in subjects related to freedom of expression, a journalist in charge of monitoring the situation of freedom of expression in the region, and a person who performs administrative assistance tasks. Since July of 2009, the Office of the Special Rapporteur has had a person in charge of managing projects and mobilizing resources. Any additional resources that have been obtained have served to provide greater stability and better working conditions for the members of this team. The Office of the Special Rapporteur has also benefited from the presence of interns who have been an essential part of the team. At different times in 2017, Laura Cristina Dib Ayesta (Venezuela), and Ignacio Odriozola (Argentina) contributed their work and enthusiasm very constructively to the Office of the Special Rapporteur. The Rapporteurship has also counted with the work of fellows, Pedro Noel (Fellowship Orlando Sierra, 2017), Tenesha Myrie (Regional Monitoring Fellowship, 2017) and Lisa Theodore (Regional Monitoring Fellowship, 2017).

⁵⁵ All the information is available for consultation at: OAS. Board of External Auditors. Report to the Permanent Council 2013. Annual Audit of Accounts and Financial Statements for the years ended December 31 2012 and 2013. Section II. Specific Funds. Pp 57-59; OAS. Board of External Auditors. Report to the Permanent Council Annual Audit of Accounts and Financial Statements for the years ended December 31, 2012 and 2011. Section II. Specific Funds. Statement by programs. Pp. 70-72; Report to the Permanent Council Annual Audit of Accounts and Financial Statements for the years ended December 31, 2011 and 2010. Section II. Specific Funds. Statement by programs. Pp. 78-79; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2011 and 2010. Specific Funds. Statement by programs. Pp. 77-79; Report to the Permanent Council Annual Audit of Accounts and Financial Statements for the years ended December 31, 2009 and 2008. Pp. 71-73; Report to the Permanent Council. Annual Audit of Accounts and financial statements for the years ended December 31, 2008, and 2007. Section II. Specific Funds. Pp. 69-70; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2007 and 2006. Section II. Specific Funds. Pp. 79-80; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2006 and 2005. Section II. Specific Funds. Para. 69; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2005 and 2004. Section II. Specific Funds. Para. 61; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2004 and 2003. Section II. Specific Funds. Para. 42; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2003 and 2002. Section II. Specific Funds. Para. 41; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2002 and 2001. Section II. Specific Funds. Statement of changes in Fund Balance. Para. 54; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2001 and 2000. Specific Funds Statement of changes in Fund Balance January 1, 2001 to December 31, 2001. Section II. Para. 52; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2001 and 2000. Specific Funds Related to regular Activities. Statement of changes in Fund Balance January 1, 2000 to December 31, 2000.

CHAPTER II: EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

i. Introduction and Methodology

1. This chapter describes some of the most important aspects of the situation of freedom of expression in the hemisphere during 2015. Its objective is to foster a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required action during this year. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote resolutely the right to freedom of expression and, to that end, publicizes their best practices, reports some serious problems observed, and offers viable and practical recommendations rooted in the Declaration of Principles.

2. As in previous annual reports, this chapter notes those aspects of the right to freedom of expression that most merit attention and that have been reported to the Office of the Special Rapporteur during the year. Following the methodology of previous annual reports, this chapter is based on information received by the Office of the Special Rapporteur from various States, intergovernmental and non-governmental sources. The Office of the Special Rapporteur takes particular interest in the information provided by States, presented during the hearings held by the IACHR, submitted by non-governmental organizations in the region and contained in alerts sent by media outlets and media workers. In all cases, the information is contrasted and verified. The Office presents only that information which it thinks will help the States identify worrisome problems or tendencies that could eventually cause irreparable effects if not addressed.

3. The information in this report is presented in an orderly and systematic manner that takes note of the advances, setbacks, and challenges regarding various aspects of the exercise of the right to freedom of expression. Thus, this chapter includes progress made in legal, administrative or legislative matters, as well as the most serious problems that arose throughout the year. The latter include murders, threats and attacks against journalists exercising their profession; subsequent findings of disproportionate liability; and progress toward as well as challenges to the right of access to information, among others.

4. The cases selected in each topic serve as examples in relation to the respect and exercise of freedom of expression. Sources are cited in all cases. In some instances, the Office of the Special Rapporteur received information that it could not confirm and such information is not included. Such omissions should be considered in that context. In the majority of cases, the Office of the Special Rapporteur identifies the direct source, citing the address of the corresponding Web site. When the information is not published directly by the source, the report cites the date the Office of the Special Rapporteur received the information in its electronic mailbox. This report does not include information submitted to the Office of the Special Rapporteur through requests for precautionary measures, or other information which has not yet been made public.

5. In preparing this chapter of its 2017 Annual Report, the Office of the Special Rapporteur generally took into account information received until December 15, 2017. Information regarding incidents that occurred after the date the 2017 Annual Report went to press is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.oas.org/en/iachr/expression/index.asp>) and the IACHR (<http://www.oas.org/en/iachr/expression/index.asp>).

6. Finally, the Office of the Special Rapporteur acknowledges the collaboration of the OAS Member States and the civil society organizations that, following existing practice, contributed information about the situation of the exercise of freedom of expression in the hemisphere. As it does every year, the Office of the Special Rapporteur encourages the continuation of such practice, which are indispensable to the value of future reports.

ii. Evaluation of the State of Freedom of Expression in the Member States

1. ANTIGUA & BARBUDA

A. Indirect censorship

7. On January 19, the Executive Director of *Observer Media Group*, Darren Derrick, denounced the intention of the Labor Party, in power since the 2014 general elections, to use state institutions to silence their media. In this regard, it would have explained that the Antigua Public Utilities Authority (APUA) refused an agreement established with *Observer* since 2013, where the payment of debts was reconciled, and claimed the sum of EC\$1 million 586 thousand 98 (approximately US\$587 thousand). Derrick considered that it would be an attack to restrict freedom of the press of the "only independent media" in Antigua and Barbuda. However, the Minister of Information, Melford Nicholas, reportedly pointed out that President Gastón Browne does not intend to intervene in the trade agreement, as it is foreign to government issues⁵⁶.

8. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

⁵⁶ The Daily Observer. January 19, 2017. [*APUA attempts to silence OBSERVER*](#); Caribbean News Service. January 20, 2017. [*Government Denies Moving Towards Silencing OBSERVER Media Group*](#); The Daily Observer. January 19, 2017. [*Gov't denies acting to silence OBSERVER*](#).

2. ARGENTINA

9. The climate of political polarization that persists in the country affects the practice of journalism in Argentina. Broad sectors, both those who support the government and the opposition, continue to observe the media and journalists as actors aligned to one or the other side of the political spectrum, which contributes to questioning the credibility of journalism and its role in democracy.

10. Throughout 2017, the Office of the Special Rapporteur also received information regarding attacks and intimidation against journalists, both in the context of investigations into organized crime and corruption, and in situations of social protest or linked to political mobilizations. Likewise, indigenous communities and educational associations mobilizations were dispersed by security forces and, according to civil society organizations, they would have abused the use of force.

11. The decrease in the support provided by the State through the allocation of government advertising to various media and the cancellation of some programs in the public media caused journalistic voices to go off the air and led to accusations about possible political pressures behind of these measures. The authorities affirmed that their decisions are based on the application of a more equitable and transparent distribution of government advertising and that they respect the work of critical journalists.

A. Progress

12. On October 3, the Argentine Supreme Court dismissed an extraordinary appeal filed by the Ministry of Education and upheld the November 2016 judgment of the Federal Court for the Judicial Review of Administrative Action [*Cámara en lo Contencioso Administrativo Federal*] that ordered the government to produce information on the educational history of students with disabilities. The case originated with a joint petition for a constitutional remedy [*amparo colectivo*] filed in 2015 by the organizations *Asociación Civil por la Igualdad y la Justicia* (ACIJ), *Asociación por los Derechos Civiles* (ADC), *Asociación Síndrome de Down de la República Argentina* (ASDRA) and *Red por los Derechos de las Personas con Discapacidad* (REDI), with the support of *Grupo Artículo 24 por la Educación Inclusiva*. The Court found that the State had omitted to comply fully with its internationally assumed obligations, and ordered it to take “the necessary administrative steps and actions, within the framework of its responsibilities, to ensure the production of the information requested” about the educational background of disabled persons.⁵⁷

B. Attacks, Threats, and Intimidation of Journalists and Media Workers

13. According to the information received by the Office of the Special Rapporteur, various journalists were assaulted or threatened, and various media outlets were attacked during 2017 in Argentina. One of the most serious cases took place on June 26, when journalist Jesús Báez do Nascimento, owner of the radio station *FM Carretera 101* of San Antonio, Misiones, was shot four times by two unknown individuals traveling on a motorbike. The attack took place outside the journalist’s home, which also housed the radio station’s broadcasting studio. He had to undergo surgery and was able to recover from the attack. On his radio program, Báez do Nascimento had condemned smuggling and drug trafficking, and the alleged involvement of the provincial police in those activities.⁵⁸

14. Other attacks and assaults reported during the year are detailed below.

⁵⁷ Corte Suprema de Justicia de la Nación. [Asociación Civil por la Igualdad y la Justicia y otros c/ EN - MO Educación s/ amparo ley16.986](#). October 3, 2017; Asociación por los Derechos Civiles (ADC). October 4, 2017. [La Corte Suprema de Justicia confirma la sentencia que condena al Estado Nacional a producir información sobre la situación educativa de las personas con discapacidad](#).

⁵⁸ Télam. July 28, 2017. [Adepa repudió el atentado al periodista Jesús Báez do Nascimento](#); Infobae. July 28, 2017. [Atacaron a balazos al dueño de una radio de Misiones que había denunciado a policías y narcotraficantes](#); El Periódico. July 29, 2017. [Tiroteado un periodista argentino frente a su domicilio](#).

15. On December 26, 2016, *TN* journalists Javier Fabracci and Ignacio González Prieto were assaulted by alleged soccer hooligans while covering a protest at a police station in Flores over the murder of a 14-year-old boy who had been hit by a stray bullet fired by criminals fleeing the scene of a robbery. Fabracci sustained severe injuries to his eyesight.⁵⁹ On December 29, journalist Samuel Zamorano of *Radio 10* in the city of Mar del Plata was reportedly punched and kicked by fans of the Alvarado Soccer Club and leaders of the Bus Drivers' Union [*Unión de Tranviarios Automotores*] (UTA).⁶⁰

16. On the night of January 29 and in the early morning hours of January 30, individuals reportedly staged a picket line at the *Clarín* printing plant that interrupted the normal distribution of the newspapers *Clarín* and *Olé*. The measure was taken to protest the closure of the Artes Gráficas Rioplatenses (AGR) workshop, owned by Grupo Clarín.⁶¹ On February 23, the facilities of Kollor Press were attacked by a group of some 20 to 30 people claiming to be former AGR employees, who reportedly destroyed printing equipment and burned some printed material. According to the owner of the print shop, the group of assailants threatened the factory operators, telling them "not to print any more material for Grupo Clarín," in reference to print work that had previously been done at AGR and that Kollor Press had taken over.⁶²

17. On February 17, in the town of El Bolsón in Río Negro Province, journalist Alejandro Pairone's car was attacked while he was investigating a controversial real estate project slated to be developed in a nature reserve.⁶³ Pairone is a contributor to the magazine *Noticias*.

18. On March 7, *Canal 2* cameraman Alejandro Muñoz was reportedly seriously injured while covering a state employees' march in San Salvador de Jujuy, Jujuy Province.⁶⁴ Also on March 7, journalist Mercedes Ninci of *Radio Mitre* was reportedly assaulted and harassed by persons said to be pro-Kirshner activists while she was waiting to interview trade union leader Luis D'Elía at the federal court headquarters in Comodoro Py, where former president Cristina Kirchner was appearing in a case investigating allegations of criminal conspiracy.⁶⁵ The activists also reportedly surrounded *CNN* journalist Iván Pérez Sarmenti during an on-air broadcast. Later, while covering a demonstration on Avenida de Mayo, the journalist was assaulted by activists, who damaged the news team's video camera.⁶⁶

⁵⁹ *TN*. December 26, 2016. *En medio de los incidentes en Flores, agredieron a un periodista de TN con un matafuego*; *Clarín*. December 26, 2016. *Incidentes en Flores: agredieron a periodistas durante la cobertura*; *Perfil*. December 26, 2016. *En plena protesta agredieron a dos periodistas de TN*.

⁶⁰ Foro de Periodismo Argentino (FOPEA). December 30, 2016. *FOPEA repudia la agresión de hinchas del club Alvarado y la UTA de Mar del Plata a periodista*; *La izquierda diario*. December 30, 2016. *Con patotas y barrabravas se aprobó el aumento del boleto de colectivo en Mar del Plata*; 0223. December 29, 2016. *Pese al fuerte operativo policial, hubo corridas y golpes: agredieron a un periodista*.

⁶¹ *Clarín*. January 30, 2017. *Intentaron bloquear la salida del diario Clarín*.

⁶² Asociación de Entidades Periodísticas Argentinas (Adepa). February 24, 2017. *Condena por ataque a imprenta en Avellaneda*.

⁶³ Bing Bang News. February 23, 2017. *Atacan el auto de un periodista que investiga proyecto inmobiliario en reserva natural*; *Bariloche 2000*. February 23, 2017. *Un periodista que investiga el polémico loteo en El Bolsón sufrió un ataque*; *Revista Noticias*. February 21, 2017. *Atacan al auto de un periodista que colabora con NOTICIAS*.

⁶⁴ FOPEA. March 7, 2017. *FOPEA repudia los hechos de violencia contra la prensa durante manifestaciones*; *Jujuy al Momento*. March 7, 2017. *Se encuentra estable el camarógrafo herido*; Asociación de Entidades Periodísticas (Adepa). March 8, 2017. *Grave agresión a camarógrafo en Jujuy*.

⁶⁵ *Clarín*. March 7, 2017. *Militantes K agredieron a la periodista Mercedes Ninci en Tribunales*; FOPEA. March 7, 2017. *FOPEA repudia los hechos de violencia contra la prensa durante manifestaciones*; *La Nación*. March 7, 2017. *Mercedes Ninci contó cómo fue el ataque en Comodoro Py: "Luis D'Elia me defendió"*.

⁶⁶ FOPEA. March 7, 2017. *FOPEA repudia los hechos de violencia contra la prensa durante manifestaciones*; *Clarín*. March 7, 2017. *Militantes K agredieron a la periodista Mercedes Ninci en Tribunales*.

19. Journalists from the outlets *América 24*, *Todo Noticias*, *Canal 26*, and *C5N* were reportedly assaulted while covering the March 8 International Women's Day march in the city of Buenos Aires. The vehicles belonging to those channels were also reportedly damaged.⁶⁷

20. On March 20, journalists from the news channel *Crónica TV* and other media outlets were assaulted and threatened while covering a traffic accident in the city of Buenos Aires.⁶⁸ Three journalists from *Radio Nacional*, *Misiones Online* and *Telefé Noticias* were reportedly threatened or intimidated on other occasions by unidentified persons, including individuals presumably with ties to drug trafficking; individuals with political motivations; a defendant in a domestic violence case, and trade union organizations taking part in a demonstration.⁶⁹ In addition, at least six journalists from *Clarín*, *El Tribuno*, and *Telefé Noticias* reportedly suffered physical assaults or harm to their work equipment by police officers, public servants, and trade unions during demonstrations, and in another case by a group of people attending a music recital that turned violent.⁷⁰

21. On April 15, journalist Juan de la Cruz Velázquez, host of the program “*Hechos Policiales*” on radio *FM 95.3* in the city of Goya, Corrientes, received an anonymous letter containing a death threat at the radio station after reporting on issues related to drug trafficking in the region. The Office of the Public Prosecutor provided protection measures the journalist, who received a 24-hour police escort.⁷¹

22. On May 30, José Allende, a provincial congressman from the *Partido Justicialista* party representing Entre Ríos, reportedly threatened Martín Carbone of the news portal *Noticiauno*. The congressman allegedly warned Carbone to put a stop to the reports about provincial Health Minister Ariel de la Rosa, or “some thug” would take “measures like Yabrán’s thugs did,” alluding to the murder of José Luis Cabezas, a photographer for the magazine *Noticias*. The threat was made after the website published an article about judicial investigations into alleged irregularities in the Ministry’s contracts.⁷²

23. On June 2, two journalists were reportedly assaulted and arrested by police officers while covering a ceremony in which Governor María Eugenia Vidal of Buenos Aires Province and Security Minister Cristian

⁶⁷ Fundación Led. March 9, 2017. [Preocupación y repudio por agresiones a periodistas durante una manifestación en la Ciudad Autónoma de Buenos Aires.](#)

⁶⁸ Diario Digital. March 20, 2017. [Una de gitanos en Palermo: choque, armas, dólares y amenazas](#); Perfil. March 20, 2017. [El momento de la detención de las familias gitanas en Palermo](#); Fundación Led. March 20, 2017. [Agresión al equipo de Crónica TV y amenazas a varios periodistas.](#)

⁶⁹ Radio Nacional. December 15, 2016. [Amenazaron a Elena Corvalán, periodista de Radio Nacional Salta](#); El Tribuno. December 15, 2016. [Intimidaron a una periodista salteña](#); Fundación Led. December 15, 2016. [Repudio y preocupación por las amenazas a periodista de Radio Nacional de Salta](#); Misiones Online. January 7, 2017. [Amenazan de muerte a periodista de Misiones Online tras entrevista por violencia de género](#); Foro de Periodismo Argentino (FOPEA). January 10, 2016. [FOPEA exige protección judicial a colega amenazado de muerte en Oberá, Misiones](#); InfoNews. February 15, 2017. [Una periodista denunció intimidación y lo vinculó con una investigación sobre Macri y Arribas](#); Diario Registrado. February 15, 2017. [Periodista de Telefé Noticias denunció amenazas por investigar a los Macri.](#)

⁷⁰ Clarín. January 28, 2017. [Un periodista de Clarín fue agredido por un policía mientras trabajaba en Villa Gesell](#); Urgente 24. January 30, 2016. [Grave: Policía furioso golpea a periodista de Clarín por grabar desmadre de jóvenes](#); FOPEA. March 7, 2017. [FOPEA repudia los hechos de violencia contra la prensa durante manifestaciones](#); Telefé. March 13, 2017. [Agredieron a periodistas de Telefe Noticias](#); Fundación Led. March 14, 2017. [Agreden a un equipo de Telefe Noticias en Olavarría.](#)

⁷¹ Diario 21. April 17, 2017. [Tiene custodia policial permanente el periodista goyano que recibió amenaza narco](#); TNGoya. April 15, 2017. [Amenazan de muerte a cronistas de TNGoya por hablar de narcotráfico](#); Foro de Periodismo Argentino (FOPEA). April 18, 2017. [FOPEA repudia las amenazas contra el periodista Juan de la Cruz Velázquez de FM 95.3 de Goya.](#)

⁷² NoticiaUno. May 30, 2017. [Allende amenazó a periodista de NOTICIAUNO: “No vaya a ser que pase lo de Cabezas”](#); Foro de Periodismo Argentino (FOPEA). May 31, 2017. [FOPEA repudia amenazas de un diputado entrerriano a periodista de Noticiauno.](#)

Ritondo were taking part in the city of Bahía Blanca.⁷³ On June 5, journalists Andrés Ferreyra and Mauro Ceschín of *Canal 12*, Leonardo Guevara of *Mitre Córdoba*, Ignacio Cadario of *Continental Córdoba*, and photographer Daniel Cáceres were assaulted by transportation workers while covering a strike by members of the Bus Drivers' Union (UTA) in the city of Córdoba.⁷⁴

24. During a press conference held on June 6, Governor Ricardo Colombi of the Province of Corrientes insulted *Radio Sudamericana* journalist Gonzalo Romero when he asked a question about the candidates in the upcoming provincial elections.⁷⁵

25. Journalist Luciano Mascali of *Radio Ideal* and *FM Conquista* in the city of Reconquista, Santa Fe, and his partner, attorney Luciana González, reportedly continued to be the victims of constant threats and attacks. In July 2016, the journalist filed a complaint with the Office of the Public Prosecutor alleging that he and his partner had received threats. The Office of the Public Prosecutor provided protection for the journalist and his partner while it investigated the complaint.⁷⁶ Nevertheless, the couple was the target of new threats and attacks during 2017. In April, someone reportedly shot out the windshield of Mascali's car. In May, both of their cars were doused with fuel. Also in March, unknown persons reportedly tried to break into their home, despite the fact that they had police protection. In view of these new incidents, the Ministry of National Security reportedly decided to reinforce the security detail assigned to the couple. The Argentine Journalism Forum [*Foro de Periodismo Argentino*] (FOPEA) expressed its concern over the case and noted that, despite the judicial investigation and the persistence of the threats, their origin remains uncertain.⁷⁷

26. Mónica Reviglio, a journalist with the National University of Córdoba's Radio and Television Services and member of the feminist group #*Ni una menos*, was reportedly harassed on social media by a persons who had been convicted of gender-based violence. The harassment took place after she reported on the case. In July, the provincial court sentenced the perpetrator for using Facebook to insult and threaten the journalist and other members of the group, and imposed a fine and a restraining order against him.⁷⁸

27. On June 19, journalist Alejandro García of *FM Radio Gonnet* in La Plata was reportedly intimidated with a firearm by a police officer—a member of the Patrol Command of the Gonnet district of Buenos Aires—when they had an encounter on a public bus. The threat reportedly stemmed from articles the journalist had published about alleged irregularities at one of the town's police stations.⁷⁹

⁷³ Contexto. June 7, 2017. *Camarógrafos bahienses secuestrados como en la dictadura: "La responsable directa es Vidal"*; FMDELACALLETV. June 6, 2017. *Claudio Videla - Camarógrafo detenido en encuentro de Vidal y ADEPA*; Comunicadores de la Argentina (Comuna). June 9, 2017. *Reclamo a Vidal ante la agresión policial a periodistas*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁷⁴ Foro de Periodismo Argentino (FOPEA). June 5, 2017. *FOPEA condena el ataque a periodistas que cubrían una manifestación en Córdoba*; TN. June 6, 2017. *Un paro de choferes deja a Córdoba Capital sin transporte por segundo día seguido*; Perfil. June 6, 2017. *Caos de transporte por paro de colectivos en Córdoba*; Clarín. June 5, 2017. *Conductores de colectivos paralizaron la ciudad de Córdoba y analizan extender la huelga toda la semana*.

⁷⁵ Clarín. July 7, 2017. *El gobernador de Corrientes insultó a un periodista durante la presentación de candidatos*.

⁷⁶ IACHR. *Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para. 26.

⁷⁷ Foro de Periodismo Argentino (FOPEA). June 19, 2017. *FOPEA reitera preocupación por amenazas a un periodista de Reconquista*; El Litoral. June 27, 2017. *Refuerzan la custodia a un periodista y una abogada*.

⁷⁸ CBA24n. July 19, 2017. *Mónica Reviglio: "Me sentí en peligro"*; Foro de Periodismo Argentino (FOPEA). July 27, 2017. *FOPEA se solidariza con la periodista Mónica Reviglio y exige que cesen los hostigamientos en su contra por parte de un condenado por violencia de género*.

⁷⁹ Foro de Periodismo Argentino (FOPEA). June 22, 2017. *FOPEA repudia las amenazas de un policía contra el periodista Alejandro García de Radio Gonnet*; Diario Digital de Gonnet. June 19, 2017. *Comunicado del Sindicato de Prensa por amenaza a periodista de Gonnet*.

28. In the early morning hours of August 3, a vehicle belonging to the newspaper *Jornada* of Chubut was struck by a Molotov cocktail while parked outside the paper's building in the city of Trelew. The newspaper's directors were of the opinion that the attack could be related to the demonstrations held in various towns in Patagonia to protest the arrest of Mapuche leader Facundo Jones Huala, since pamphlets from the group *Resistencia Ancestral Mapuche* [Mapuche Ancestral Resistance] were found around the vehicle. The newspaper reported that this was the third attack against the company in a week—a few days earlier, unknown persons had painted the front of its building with slogans expressing support for Jones Huala; and in Puerto Madryn, unknown persons had cut the guy wires on *FM Tiempo's* radio antenna, which kept the station from broadcasting.⁸⁰

29. On August 7, journalist Gonzalo Aziz and cameraman Daniel Raichijk of *TN* were assaulted while covering a demonstration in the Plaza de Mayo.⁸¹

30. On October 11, persons allegedly tied to the drug trafficking group known as “Los Monos” burst into the presentation of a book about the group's activities and threatened the authors, journalists Germán de los Santos of *La Nación*, and Hernán Lascano of *La Capital*. The presentation, given at the National University of Rosario, had to be suspended following the incident.⁸²

31. On December 8, the Norwegian journalist and activist, Petter Titland, would have been banned from entering the country and then deported to Brazil by authorities of the National Migration Directorate [*Dirección Nacional de Migraciones*] (DNM) of Argentina. According to the information available, Titland, who is a member of the Association for the Taxation of Financial Transactions and for Citizen Action [*Asociación por la Tasación de Transacciones Financieras y por la Acción Ciudadana*] (ATTAC), was allegedly included in a list of 64 activists whose entry into the country was not authorized by those responsible of the areas that assess security, even though all would have been accredited by the WTO. As a result, the Government of Norway issued a statement to the Argentine Foreign Ministry clarifying that Titland “has not been in violent actions [and] has not incited others to commit them either”. Finally, on December 10 the journalist would have been authorized to enter the country.⁸³

32. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Social Protest

33. On January 10 and 11, in the Department of Cushamen, Province of Chubut, members of the National Police [Gendarmería Nacional] and the provincial police reportedly violently evicted the indigenous Mapuche community of Cushamen, who, years earlier, had reclaimed ancestral ownership of lands awarded to the

⁸⁰ Adepá. August 3, 2017. *Arrojan bomba molotov contra un móvil del diario Jornada de Chubut*; La Nación. *Arrojan una bomba molotov contra un móvil del diario Jornada de Chubut*; Foro de Periodismo Argentino (FOPEA). *FOPEA repudia el ataque al diario Jornada en Trelew*.

⁸¹ TN. August 7, 2017. *Agredieron al equipo de TN durante la marcha a Plaza de Mayo*; La Nación. August 7, 2017. *Agredieron a un periodista y a un camarógrafo de TN durante la marcha por la Emergencia Alimentaria*; Clarín. August 7, 2017. *Agreden a un periodista de TN mientras cubría la marcha*.

⁸² La Nación. October 12, 2017. *Irrumpieron durante la presentación de un libro*; El País. October 12, 2017. *Los narcos más famosos de Argentina impiden la presentación de un libro que los investiga*.

⁸³ [1] Infobae. December 9, 2017. *Deportaron a un activista noruego y a una periodista británica que venían por la cumbre de la OMC*; La Nación. December 10, 2017. *Deportaron a dos activistas por la cumbre*; Los Andes. December 11, 2017. *Tras el escándalo con Noruega, Argentina permite entrar a Petter Titland y arden los memes*.

Italian firm Benetton. The Mapuche families were evicted pursuant to a court order because, as a form of protest, they had cut off several routes to prevent a tourist train from traveling through the area. The Mapuches reported that the operation was carried out by more than 200 police officers, who damaged their homes and fired rubber bullets. At least two members of the community were seriously injured. Emilio Jones was hit by a rubber bullet in the jaw, and had to undergo reconstructive surgery. Fausto Jones Huala was transported to the hospital and admitted to the intensive care unit with multiple head injuries after having been shot in the head with rubber bullets. Several members of the community were also arrested.⁸⁴

34. On April 9, the Buenos Aires Police prevented teachers to set up a tent outside Congress, where they intended to operate an itinerant school in the midst of a wage dispute with the government. According to various print media sources, the police used tear gas, pepper spray, and beatings to repress the action, alleging that the teachers' unions did not have permission to set up a tent in a public space. At least four demonstrators were reportedly arrested for assault and resisting arrest. The itinerant schools were part of the measures taken by the teachers' unions, which had been holding demonstrations and strikes to demand salary increases since March.⁸⁵

35. On July 13, National Police and Buenos Aires Police officers forcibly removed several workers from the PepsiCo plant in Florida, Vicente López. The workers had occupied the plant to protest layoffs in connection with the June 20 factory closing. Several people were reportedly arrested and injured during the police operation. The workers alleged an inordinate use of tear gas, pepper spray, and beatings against those who resisted the eviction. In addition, various police officers were reportedly injured by rocks and other blunt objects thrown by the workers.⁸⁶ A number of news teams were also reportedly affected by the actions of the security forces while covering the eviction. Aldo Romano, an assistant working for *Crónica TV*, was reportedly beaten and kicked by police officers, and cameraman Fabio Soria of *La Nación+* was allegedly hit with a baton. In addition, several other journalists, camerapersons, photographers, and technical assistants from different media outlets were reportedly affected by the pepper spray and tear gas that was used against the demonstrators.⁸⁷

36. According to information of public knowledge, on August 1, in the Vuelta del Río area, department of Cushamen, Province of Chubut, agents of the National Police [*Gendarmería Nacional*] would have dispersed, with an excessive use of force, a demonstration carried out by members of the mapuche community Pu Lof. In the context of the dispersal of the protest, demonstrators indicate that Santiago Maldonado, a young artisan who would be supporting the claim of the aforementioned community, was allegedly detained by National Police personnel. After several days without news of Maldonado, the intervening federal judge would have classified the case as "forced disappearance of a person". As a result of this situation, massive marches would have taken place to demand the authorities to search for him. On October 17, after several raids in the area of

⁸⁴ Infobae. January 12, 2017. *Recrudece el conflicto de los mapuches de Chubut con violentos desalojos*; Página 12. 12 de enero de 2017. *"Entraron a matar", relataron los mapuches de Cushamen*; El País. January 13, 2017. *La histórica disputa de Benetton y los mapuches en Patagonia se agrava con 14 heridos*; Amnistía Internacional. January 11, 2017. *Golpes a hombres, mujeres y niños: Amnistía Internacional repudia la represión a la comunidad mapuche en Chubut*; Clarín. January 12, 2017. *El gobierno de Chubut acusó de "grupo terrorista" a los activistas mapuches*; LMNeuquén. January 12, 2017. *Una represión a mapuches deja a varias personas heridas*; La Izquierda Diario. January 11, 2017. *Represión y ocupación militar del territorio del Pu-Lof en Resistencia Cushamen*.

⁸⁵ Infobae. April 9, 2017. *La policía desalojó a sindicalistas docentes que intentaban montar una "carpa blanca" frente al Congreso*; Ámbito. April 9, 2017. *La Policía impidió a docentes instalar "escuela itinerante" frente al Congreso*; El Espectador/AFP. April 9, 2017. *Policía reprime protesta de maestros en Argentina*.

⁸⁶ Tiempoar. July 13, 2017. *Las Imágenes de la represión en PepsiCo*; Página 12. July 13, 2017. *El Gobierno justificó la represión en PepsiCo*; Clarín. July 13, 2017. *Terminó el desalojo de la planta de PepsiCo: incidentes y detenidos*; El Cronista. July 13, 2017. *Desalojaron la planta de PepsiCo: incidentes, heridos y denuncias de represión policial*; Minuto Uno. July 13, 2017. *Represión en PepsiCo: varios heridos y detenidos durante el desalojo*.

⁸⁷ Foro de Periodismo Argentino (FOPEA). July 13, 2017. *FOPEA repudia la represión policial en la empresa PepsiCo donde fueron afectados varios trabajadores de prensa*.

the events, divers from the Naval Prefecture [*Prefectura Naval*] found a lifeless body in the Chubut River, which was later confirmed to be that of Santiago Maldonado.⁸⁸ According to a preliminary report from the Prefecture, Maldonado could have drowned in the Chubut river.⁸⁹ Previously, on August 22, the Inter-American Commission granted precautionary measures for the protection of the rights of Santiago Maldonado, and requested the Argentine State to adopt the necessary measures to determine his situation and whereabouts, in order to protect his rights to life and personal integrity; as well as to report on the actions taken in order to investigate the alleged facts that led to the adoption of such precautionary measure.⁹⁰

37. During a demonstration held on September 1 in the Plaza de Mayo in Buenos Aires to protest the August 1 disappearance and subsequent death of a young activist, Santiago Maldonado, several people were injured and 31 were arrested by city police. Two press workers from *TV Pública* and a reporter from *TN* were reportedly pepper sprayed in the face; a photographer from *Colectiva Fotografía a Pedal* was hit by a rubber bullet in the neck, and a reporter from *Agencia de Noticias Redacción* (ANRed) was hit by several rubber bullets and pepper sprayed. In addition, four community journalists were among the group of people arrested: Juan Pablo Mourenza and Ezequiel Hugo Medone, of *Red Nacional de Medios Alternativos*, and photographers Daniel Lara and Daniel Castro Marín. The detainees were reportedly held incommunicado on charges of “public intimidation, assault on a law enforcement officer, and resisting arrest.”⁹¹ They claimed that they had been arrested without cause, as they had been covering the events, were far from the protest, or had not taken part in the disturbances.⁹² On the night of September 3, Judge Marcelo Martínez De Giorgi ordered the release of all the detainees.⁹³ Photographer Mourenza reported that when his personal items were returned to him, the memory card—containing all the photographic material from the protest—was missing from his camera.⁹⁴

38. On November 25, in the town of Villa Mascaridi, Province of Río Negro, a confrontation took place between members of the Mapuche indigenous community, who occupied private lands, but under the consideration that they are ancestral, and agents of the Argentine Naval Prefecture [*Prefectura Naval Argentina*] (PNA). During the eviction, firearms would have been used and in this context Rafael Nahuel, a young man from the Mapuche community Lof Laken Winkul Mapu died; at least two people were injured. According to the information available, Nahuel would have died after being shot in the back, allegedly while fleeing the PNA. Relatives and individuals close to Rafael Nahuel have criticized the actions of the Federal

⁸⁸ El País Digital. August 8, 2017. [¿Qué pasa con la comunidad mapuche en Chubut?](#); Clarín. September 1, 2017. [Marcha por Santiago Maldonado: miles de personas se concentraron en Plaza de Mayo para pedir por su aparición](#); Infobae. September 9, 2017. [Un funcionario del Gobierno reconoció que un gendarme pudo haber participado en la desaparición de Santiago Maldonado](#); Pagina 12. September 30, 2017. [El país marcha por Santiago Maldonado](#); El Tiempo. October 18, 2017. [Hallan cuerpo en lugar donde desapareció activista Santiago Maldonado](#); La Nación. October 20, 2017. [Por qué Santiago Maldonado estaba en la protesta mapuche](#).

⁸⁹ Radio Mitre. October 25, 2017. [Caso Maldonado | Un informe preliminar de Prefectura indica que el artesano pudo haberse ahogado en el río Chubut](#); Clarín. October 25, 2017. [Un informe preliminar de Prefectura indica que Santiago Maldonado pudo haberse ahogado en un pozo del río Chubut](#); Diario Hoy. October 26, 2017. [Para Prefectura, Santiago Maldonado se ahogó en un pozo del río Chubut](#).

⁹⁰ IACHR. August 23, 2017. [IACHR Grants Protection Measure for Santiago Maldonado in Argentina](#); IACHR. [Resolución 32/2017 – Medida Cautelar No. 564-17, Santiago Maldonado respecto de Argentina](#). August 22, 2017.

⁹¹ La Nación. September 2, 2017. [Quiénes son y dónde fueron alojados todos los detenidos tras la marcha por Santiago Maldonado](#); Comunicadores de la Argentina (Comuna). Letter addressed to the Office of the Special Rapporteur for Freedom of Expression. September 2, 2017. Available at the Archive of the Office of the Special Rapporteur for Freedom of Speech.

⁹² Sindicato de Prensa de Buenos Aires. September 2, 2017. [El SiPreBA denuncia represión y ataques a la prensa y exige libertad a los detenidos](#); Ámbito. September 2, 2017. [La Coalición por una Comunicación Democrática exigió la libertad de los periodistas detenidos](#); Página 12. September 4, 2017. [Una acusación con muchos huecos](#).

⁹³ Página 12. September 4, 2017. [Una acusación con muchos huecos](#); La Nación. September 3, 2017. [Liberan a los detenidos en la protesta por la aparición de Santiago Maldonado](#).

⁹⁴ Cosecha Roja. September 4, 2017. [“Nos preguntaron si queríamos ser el próximo Santiago Maldonado”](#).

Court of Bariloche, given that the acting judge allegedly declared the case as "uncertain death" and allowed the PNA officials to return to their posts in the Province of Buenos Aires. For its part, the Ministry of Security of the Nation, regarding the events, assured that "It was not a group of protester or of vindication but of a methodology of armed violence, contrary to democracy and the Rule of Law".⁹⁵

39. Journalists were reportedly attacked again during other protests held on September 30, also in connection with Santiago Maldonado's death. According to various media reports, journalists from *América*, *Crónica TV*, *C5N* and *Clarín* were assaulted in the city of Buenos Aires. In the town of El Bolsón, Río Negro, a team from *TN* and journalists from local media outlets were reportedly attacked. In Río Gallegos, Santa Cruz, various reporters were allegedly subjected to insults.⁹⁶

40. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"⁹⁷ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."⁹⁸

41. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles."⁹⁹

D. Subsequent Liability

42. On February 14 of this year, the Argentine Supreme Court denied the request of the Human Rights Office of the Ministry of Foreign Affairs and Religion for a final judgment handed down by the Court be set aside pursuant to the Inter-American Court's decision in the case of *Fontevicchia and D'Amico v. Argentina*.

⁹⁵ Página 12. November 26, 2017. *Represión y muerte en la Patagonia*; BBC Mundo. November 26, 2017. *Qué hay detrás de la muerte de un mapuche durante un enfrentamiento con la policía en Argentina*; La Nación. November 26, 2017. *Villa Mascardi: el Gobierno asegura que los mapuches usaron armas de fuego y habla de una "declaración de guerra" de la RAM*; El Patagónico. December 3, 2017. *La investigación por la muerte de Rafael Nahuel comenzó con complicaciones*.

⁹⁶ Infobae. October 1, 2017. *Agredieron a periodistas en la marcha por los dos meses de la desaparición de Santiago Maldonado*; La Nación. October 2, 2017. *Encapuchados agredieron a periodistas en las marchas por Santiago Maldonado*; TN. October 1, 2017. *Agredieron a periodistas tras la marcha por Santiago Maldonado*; TN. October 1, 2017. *Agredieron al equipo de TN cuando cubría una marcha por Santiago Maldonado en El Bolsón*; Perfil. October 1, 2017. *Agredieron a periodistas de C5N, América TV y Crónica TV en la marcha por Maldonado*; Foro de Periodismo Argentino (FOPEA). October 3, 2017. *FOPEA repudia las agresiones contra periodistas en las marchas por Santiago Maldonado*.

⁹⁷ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

⁹⁸ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

⁹⁹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

The Supreme Court held that the Inter-American Court cannot overturn judgments.¹⁰⁰ The majority opinion was issued by Justices Ricardo Lorenzetti, Elena Highton de Nolasco, Carlos Rosenkrantz, and Horacio Rosatti (the latter wrote a concurring opinion, and Justice Juan Carlos Maqueda dissented). According to the judgment, granting the request would mean turning the Inter-American Court into a “fourth instance” for the review of national court decisions, contrary to the structure of the inter-American human rights system and the principles of public law enshrined in the Argentine Constitution. Moreover, the Court found that overturning its own final judgment—based on the *Fontev ecchia* decision of the Inter-American Court—would entail depriving itself of its own character as the supreme body of the Argentine Judiciary and replacing it with an international tribunal, in violation of Articles 27 and 108 of the Constitution.¹⁰¹ In 2011, the Inter-American Court of Human Rights handed down its judgment in the case of *Fontev ecchia and D’Amico v. Argentina*, ordering the State to aside the 2001 judgment of the Argentine Supreme Court that found journalists Jorge Fontev ecchia and Héctor D’Amico liable for damages to former Argentine President Carlos Menem based on the publication of reports that Menem had an unacknowledged son. The Inter-American Court held that the judgment was a violation of the right to freedom of expression enshrined in the American Convention on Human Rights (art. 13).

43. Emiliano Yacobitti, president of the *Unión Cívica Radical* [Radical Civic Union] of the Federal Capital and Secretary of the Treasury and Administration of the University of Buenos Aires, filed a lawsuit for damages in December 2016 against *C5N* journalist Alejandro Bercovich, because of what he considered to be “systematic persecution on social media.” The politician reportedly accused the journalist of “going beyond his role as a journalist” and sought damages in the amount of ARS\$ 75,000. Bercovich took part in a 2015 journalistic investigation that linked Yacobitti to alleged corrupt acts between the university and the Clinical Hospital. The Twitter posts that Yacobitti considered defamatory were related to those events.¹⁰² At a hearing held on June 6, 2017 Bercovich argued that his statements were protected by his constitutional right to free expression, that they referred to Yacobitti as a public figure, and that they were not intended to affect his private or personal life. Yacobitti subsequently declared that he was satisfied and withdrew his complaint.¹⁰³

44. On March 23, Division D of the National Court of Appeals for Civil Matters [*Sala D de la Cámara Nacional de Apelaciones en lo Civil*] affirmed a lower court’s judgment against the satirical magazine *Barcelona*, and increased the amount of “non-pecuniary damages” awarded to Cecilia Pando, president of the Association of Relatives and Friends of Argentine Political Prisoners [*Asociación de Familiares y Amigos de los Presos Políticos de la Argentina*] (an organization that defends former members of the military prosecuted for human rights violations).¹⁰⁴ The lawsuit against the magazine stemmed from the August 2010 publication of an image in which Pando’s face was photoshopped onto the body of a naked woman in chains, as a satirical representation of a demonstration where she and other members of the association chained themselves outside the Ministry of Defense to protest the situation of various members of the military prosecuted for human rights violations committed during the last Argentine dictatorship. Pando sought compensation for damages, alleging that the publication adversely affected her “honor.” The magazine defended itself by arguing that “all it did was reflect the news using satire and parody, in no way intending to harm the

¹⁰⁰ Centro de Información Judicial. February 14, 2017. *La Corte sostuvo que la Corte Interamericana de Derechos Humanos no puede revocar sentencias del Máximo Tribunal argentino.*

¹⁰¹ Infobae. February 14, 2017. *La Corte Interamericana de Derechos Humanos no podrá revocar sentencias de la Corte Suprema;* Página 12. February 14, 2017. *La Corte debilita la protección interamericana para los derechos humanos.*

¹⁰² Perfil. December 13, 2016. *El dirigente radical Yacobitti denunció por “cyberbullying” al periodista Alejandro Bercovich;* Sindicato de Prensa de Buenos Aires (Sipreba). June 3, 2017. *El SIPreBA ratifica su solidaridad con Alejandro Bercovich;* Foro de Periodismo Argentino (FOPEA). June 1, 2017. *FOPEA alerta por los alcances de una demanda del secretario de hacienda de la UBA contra el periodista Alejandro Bercovich.*

¹⁰³ Twitter account of Alejandro Bercovich @aleberco. [June 6, 2017.](#)

¹⁰⁴ Cámara Civil Sala D. April 29, 2016. *Expediente. Nº 63.667/2012 “Pando de Mercado, María Cecilia y otro c/ Gente Grossa SRL s/ daños y perjuicios”;* Fundación Led. March 31, 2016. *Preocupación sobre la sentencia contra la revista Barcelona;* Asociación de Entidades Periodísticas Argentinas (ADEPA). April 3, 2017. *Preocupación de Adepa por el fallo contra la revista Barcelona.*

plaintiff's honor and reputation, let alone humiliate her." On April 29, 2016, Chief Judge Susana Novile of Civil Court No. 108 ordered the magazine to pay Pando ARS\$ 40,000.¹⁰⁵ The judge, citing the case law of the Argentine Supreme Court, held that "the exercise of the right to express ideas or opinions cannot be extended to the detriment of necessary harmony with all other constitutional rights, including the individual rights to moral integrity, honor, and privacy (...). She found that, "even though the magazine is satirical, the photo and text in question go beyond a sarcastic and mocking tone and make an exaggerated display of the plaintiff," and concluded that the plaintiff had demonstrated that her "honor was tarnished."

45. The Court of Appeals increased the amount of the damages to ARS\$ 70,000 (approximately US\$ 4,000). Its judgment affirmed that, although freedom of expression is "a fundamental pillar in the consolidation of a republican system—even in its satirical form—and this is manifested through every person's right to express any thought, idea, belief, value judgment, or opinion through any medium; nevertheless, this exercise is not absolute, and it is confronted by other, similarly fundamental rights, such as honor, privacy, and one's own image." In this regard, the Court held that, "At times, the satirical manipulation of a photograph may reflect intentions that do not enjoy sufficient constitutional relevance to justify the harm to the right to one's image." Thus, "The right to one's image only yields to a general interest related to educational, scientific, or cultural aims; that is, the lack of a legitimizing aim, the anti-functional nature of the act, is sufficient to give rise to compensable damages caused to the party affected by the information (...). In other words, insofar as those interests are inconsistent, parody or caricature cannot be understood as the exercise of social or political criticism through satire and humor."¹⁰⁶ On April 11, the magazine's director, Ingrid Beck, tweeted that the magazine had filed an extraordinary appeal of the judgment in order to have the case heard by the Supreme Court.¹⁰⁷

46. The judgment was cause for concern among journalistic organizations and defenders of freedom of expression, who maintained that political satire and humor is speech protected by the right to free expression, especially when it refers to public figures.¹⁰⁸ In addition, the financial penalty imposed against the magazine jeopardizes its survival, according to its director, who cautioned that the weekly publication will have to close if forced to pay the damages.¹⁰⁹

47. A group of congressional representatives from the "Cambiamos" sector who are members of the Freedom of Expression Committee of the House of Representatives filed an *amicus curiae* brief with the Superior Court of Formosa [*Superior Tribunal de Justicia de Formosa*] in the case involving journalist Gabriel Hernández and six others who were ordered to pay \$ 2 million to Gildo Insfrán, the governor of the Province of Formosa, after the governor sued for "damages." The representatives asserted that the reporter's situation "is just one example of what is happening in Formosa, where citizens censor themselves out of fear of government retaliation."¹¹⁰

¹⁰⁵ Juzgado Civil N° 108. "*Pando de Mercado, María Cecilia y otro c/ Gente Grossa SRL s/ daños y perjuicios*" (*Expediente N° 63.667/2012*). April 29, 2016; IACHR. *Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para. 55.

¹⁰⁶ Cámara Civil - Sala D. April 29, 2016. *Expediente. N° 63.667/2012 "Pando de Mercado, María Cecilia y otro c/ Gente Grossa SRL s/ daños y perjuicios"*.

¹⁰⁷ Twitter account of Ingrid Beck @soyingridbeck. [April 11, 2017](#).

¹⁰⁸ Asociación por los Derechos Civiles (ADC). April 6, 2017. *Preocupación ante el reciente fallo en el caso "Pando vs. Barcelona"*; Asociación de Entidades Periodísticas Argentinas (ADEPA). April 3, 2017. *Preocupación de ADEPA por el fallo contra la revista Barcelona*; Fundación LED. March 31, 2017. *Preocupación sobre la sentencia contra la revista Barcelona*.

¹⁰⁹ La tinta. March 31, 2017. *Revista Barcelona al borde de la quiebra por satirizar a Cecilia Pando*; El destape. March 28, 2017. *La revista Barcelona quedó al borde del cierre por una denuncia de Pando*.

¹¹⁰ Parlamentario. April 11, 2017. *Diputados de Cambiamos advierten sobre "violación a la libertad de expresión" en Formosa*; Clarín. April 11, 2017. *Diputados de Cambiamos buscan revertir la condena a un periodista en Formosa*.

48. The case against Hernández and six other journalists, media owners, and executives, arose from an incident that took place on January 21, 2013, when an anonymous listener called the journalist’s radio program, “Mano a Mano” on *Radio Fantasía*, and implicated the governor of Formosa in his own son’s death, 10 years earlier. The governor brought a legal action against Hernández, Andrea Cospito, and radio announcers César and Alicia Orué, of *Radio Fantasía*, and María de los Ángeles López, the owner of the radio station; as well as Julián González, director of the newspaper *La Opinión Ciudadana*, and Carlos Varela, director of the digital news outlet *La Corneta Noticias*, for repeating the listener’s statements. On June 23, 2016 the On June 23, the Civil and Commercial Chamber [*Cámara Civil y Comercial*] of Formosa upheld the judgment of the 1st Civil and Commercial Court [*Juzgado Civil y Comercial No. 1*] of Formosa. The appellate court’s decision was appealed to the Superior Court of Formosa, and was pending at the time of this writing.¹¹¹

49. Simultaneously, Hernández and journalist Leonardo Fernández Acosta were reportedly criminally investigated pursuant to a complaint filed on October 28, 2016 by provincial prosecutor Stella Maris Zabala de Copes, based on their Facebook posts about a power outage that prevented *Radio Nacional Formosa*—on which both journalists host a program—from going on air. The prosecutor reportedly requested the investigation of “the reckless speech and/or conduct” of the journalists, “bearing in mind that they work as journalists who shape public opinion and have an influence on young people.” She reportedly asked for “the maximum sentence” for the alleged crime.¹¹² The prosecutor later filed a brief with the court to clarify that the complaint was not against the journalists who made the statements on Facebook, but rather against whomever may have intentionally interrupted the broadcast of the radio program. In August 2017, at the request of the Public Ministry, substitute federal Judge Juan Carlos Vallejos ordered the investigation shelved.¹¹³

50. During the 165th Session of the IACHR, held in Montevideo, Uruguay, the Special Rapporteur for Freedom of Expression met with journalist Gabriel Hernández and a delegation of Argentine lawmakers who provided updates on the lawsuits against the journalist and condemned the widespread harassment of independent journalists in the Province of Formosa.

51. On October 3, the Supreme Court unanimously affirmed the judgment against journalist Samuel Gelblung, finding him liable for “damages” arising from the dissemination of allegedly false information on a television program in connection with the case of a teenager who was found suffocated to death.¹¹⁴ In May 2000, the program “*Memoria*,” hosted by Gelblung, aired a report linking the alleged lover of the young woman’s mother to the murder. In their report, the journalists did not cite a specific source, and mentioned the alleged perpetrator’s surname and profession. The persons mentioned in the report sued for damages. In the judgment, which upheld the decisions of the trial court and the appellate court, the Supreme Court stated that freedom of expression “has a preeminent place” within the framework of constitutional freedoms, because of “its central importance to the preservation of a democratic republic.” Nevertheless, the Court stated, this “does not mean that it has been established as an absolute right, or that there are not specific circumstances in which those who disseminate information should be held civilly liable for harm caused.” In this case, the Court found that the doctrine developed in the “Campillay” case—which protects those who attribute the information to an identifiable source, use speech that is merely speculative, or keep confidential the identity of persons implicated by the information—was not applicable because the journalists’ statements “were not attributed to any source” and made a “vague and general reference.” Consequently, “the defendant

¹¹¹ IACHR. [Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para. 57

¹¹² Foro de Periodismo Argentino (FOPEA). November 22, 2016. [FOPEA condena una nueva presión judicial del gobierno de Formosa hacia periodistas](#).

¹¹³ Juzgado Federal de Formosa N° 1. NN sobre Sobre libertad de prensa – denunciante: Zabala de Copes, Stella Maris- Fiscalía Federal N° 1 Formosa reg. 141/2016. Expte. N° 8232/2016. Available at the Archive of the Office of the Special Rapporteur for Freedom of Speech.

¹¹⁴ Corte Suprema de Justicia de la Nación. October 3, 2017. [Martín, Edgardo Héctor cl Telearte S.A. y otros si daños y perjuicios](#).

cannot be exempt from liability in light of the ‘Campillay’ doctrine, as it does not protect the media outlet when it stops being a simple disseminator of information that comes from some other source, and instead becomes the author of harmful or aggravating information.” The Court held that the doctrine of “actual malice” does not apply in this case, either, and that “simple negligence is sufficient to attribute civil liability to the defendants.” The journalist was ordered to pay damages in the amount of ARS\$ 40,000.¹¹⁵

52. The Inter-American Court has also established, as regards possible civil liability, that civil judgments in freedom of expression cases must be strictly proportionate so as not to have an inhibitory effect on that freedom, as “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”¹¹⁶

53. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism,¹¹⁷ because “they have voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call information into question through its convening power.”¹¹⁸ In this regard, the Inter-American Commission stated that “[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy.”¹¹⁹ Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, “[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official.” That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

54. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “*desacato* laws,” restrict freedom of expression and the right to information.”

¹¹⁵ La Nación. October 4, 2017. [La Corte fijó postura sobre el uso de las fuentes por parte de los periodistas](#); iProfesional. October 3, 2017. [Condenan a Chiche Gelblung por difundir información dañina a un tercero sin fuente identificable](#).

¹¹⁶ I/A Court H.R.. *Case of Tristán Donoso v. Panama. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 27, 2009. Serie C No. 193. Para.129.

¹¹⁷ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177. Para. 86-88; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135. Para. 83-84; I/A Court H. R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87.

¹¹⁸ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177. Para. 86-88; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135, Para. 83; I/A Court H. R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125-129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 115.

¹¹⁹ IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.¹²⁰

E. Direct and Indirect Censorship

55. The newspaper *El Libertador* of the city of Corrientes reportedly imposed a policy on its journalists barring them from publishing information about judges, public servants, and members of congress without the express authorization of the paper's directors. Based on this measure, police news reporter Santiago Angarola was apparently suspended for having reprinted a cable from the news agency Noticias Argentinas reporting on a drug trafficking case that allegedly involved employees of the Federal Judiciary. Although they were not identified by name, the journalist was reportedly subjected to disciplinary sanctions for not requesting the proper authorization. The Argentine journalism forum [*Foro de Periodismo Argentino*] (FOPEA) wrote a letter to the newspaper's directors demanding that they end the censorship mechanism and asking them to set aside the disciplinary measure against the journalist.¹²¹

56. On July 5, the State-owned airline Aerolíneas Argentinas reportedly issued an order for its planes not to transport copies of the newspaper *Página 12*, with which it had a business agreement for distribution of the paper in the provinces. The airline reportedly took the measure because of a discrepancy in the business agreement, but the newspaper complained that it was a unilateral decision made by the company, and that it constituted an act of censorship because of its critical stance toward the government.¹²²

57. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

F. Access to Public Information

58. On March 27, the government signed Decree 206/2017 regulating Law No. 27.275 on Access to Public Information, which was passed by Congress on September 14, 2016. The decree, which entered into force on September 29, 2017 and only regulates some articles of the law, specifies, among other things, that the Agency for Access to Public Information—the entity created to enforce the law—will act within the purview of the Office of the Chief of the Cabinet of Ministers, and that the head of that body "will issue the explanatory and supplemental rules pertinent to the enforcement" of the law. It provides that entities subject to the law will be required to disclose information completely free of charge, "except in those cases where it is expressly authorized by current law to charge a fee or its equivalent as consideration for the service provided." The text states that, in the event that entities subject to the law "have an electronic version of the information requested, they should send or make it available to the requester free of charge." "If no electronic version exists, they may duplicate the requested information in the form of uncertified copies, magnetic, optical, sound, visual, holographic, or other means," and "the costs of the reproduction will be borne by the requester." The decree also provides that "The restricted, confidential, or secret nature of information

¹²⁰ IACHR. Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

¹²¹ Foro de Periodismo Argentino (FOPEA). June 16, 2017. FOPEA ante un caso de censura en un diario correntino; Nova Corrientes. July 26, 2017. Periodistas repudian sanciones impuestas por el diario El Libertador a sus empleados; Semanario Monte Caseros. June 13, 2017. Nuevo caso de censura y violencia laboral en El Libertador; Federación Argentina de Trabajadores de Prensa (FATPREN). June 12, 2017. FATPREN repudia al dueño del diario El Libertador.

¹²² *Página 12*. July 9, 2017. La censura levanta vuelo; Urgente 24. July 6, 2017. Polémico (y poco claro): Página/12 denuncia censura de Cambiemos; Comunicadores de la Argentina (Comuna). July 6, 2017. Comuna rechaza la censura a Página 1.

classified for reasons pertaining to defense, foreign policy, or national security must be set forth in provisions regulating the exercise of the activity and by the reasoned action of the respective competent authorities, prior to the request for information. In the absence of any provision to the contrary, information classified as restricted, confidential, or secret will remain so for ten years from the time of its production, after which time the entity subject to the law must perform a new analysis on the feasibility of declassifying the information for purposes of making it public.” It further establishes that “financial secrecy,” as defined under national law, “is specifically protected.” In addition, the exceptions provided to the public disclosure of information will not be applicable “in court cases in which grave human rights violations, genocide, war crimes, or crimes against humanity are investigated and tried.”¹²³

59. On September 25, the Executive Branch adopted Decree of Necessity and Urgency 746/2017, amending provisions of Law 27.275. The Agency for Access to Public Information now reports to the Office of the Chief of the Cabinet of Ministers, which will have the power to approve its organizational structure. In addition, the decree also transferred to the agency the power to act as the Enforcement Authority for Personal Data Protection Law No. 25.326, which had previously been the responsibility of the National Personal Data Protection Office [*Dirección Nacional de Protección de Datos Personales*] of the Ministry of Justice.¹²⁴

60. Various civil society organizations, including the Argentine Journalism Forum, the *Asociación Civil por la Igualdad y la Justicia*, *Poder Ciudadano*, and the Inter American Press Association, expressed concern over the amendments, especially because they were passed through an exceptional “necessity and urgency” mechanism rather than through the regular legislative procedure. They also called into question the subordination of the agency responsible for implementing the law to the authority of the Office of the Chief of the Cabinet of Ministers, on the grounds that takes away its functional autonomy.¹²⁵ In turn, *Asociación por los Derechos Civiles* (ADC) expressed in a statement that the measure “raises serious problems from a constitutional perspective, while also giving rise to unavoidable questions about the new body’s ability to perform its duties efficiently.” First, the ADC called into question the use of a Decree of Necessity and Urgency to make the amendments, given that “it can only be justified when there are ‘exceptional circumstances [that] make it impossible to follow the regular procedures’ for the approval of laws. Second, the organization stated that the provision “affects the functional autonomy of the Agency for Access to Public Information, by providing that the structure proposed by the director must be approved by the Chief of the Cabinet of Ministers.” That provision “runs counter to the legislature’s objective of having an independent oversight body to monitor potential interference by the Executive Branch,” suggested the organization. In that regard, it maintained that “Any attempt to reform the agency should be debated previously in Congress so that the legislature is the branch responsible for authorizing changes to the provisions that the legislature established.” Third, the ADC raised objections to the concentration of responsibilities for access to public information and the protection of personal data in a single body. Although the ADC is of the opinion that this concentration “is not a problem in and of itself,” it asserted that “Because both rights enjoy the same status, it is essential that the body is provided with similar institutional capacities for it to perform its duties with regard to both.”¹²⁶

61. Principle 4 of the Declaration of Principles on Freedom of Expression which states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in

¹²³ Boletín Oficial de la República Argentina. Decreto 206/2017. Acceso a la Información Pública. March 27, 2017.

¹²⁴ Decreto de Necesidad y Urgencia 746/2017. September 25, 2017.

¹²⁵ Foro de Periodismo Argentino (FOPEA). September 27, 2017. Reclamo de organizaciones por la reforma por decreto de la Ley de Acceso a la Información Pública; Inter American Press Association (IAPA). 73rd General Assembly. Salt Lake City, Utah. October 27-30, 2017. Argentina.

¹²⁶ Asociación por los Derechos Civiles (ADC). October 2, 2017. Declaración de ADC ante el Decreto de Necesidad y Urgencia N° 746/2017.

democratic societies.” Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

G. Internet and Freedom of Expression

62. On December 28, 2016, the 2nd Federal Civil and Commercial Court [*Juzgado en lo Civil y Comercial Federal N° 2*] ordered the social network Twitter to eliminate “all comments and photomontages” insulting model Victoria Vanucci, who brought legal action against the network after various users made offensive posts about her upon the release of photographs in which she and her husband could be seen hunting animals in South Africa. Judge Horacio Alfonso ordered Twitter to delete content referring to Vanucci as a “murderer,” “whore,” “Jew,” “scourge,” “non grata,” “cockroach,” “bitch,” “shit”; accusing her of being a drug addict, wishing her “death,” “suffering,” and “pain,” or expressing “hatred.”¹²⁷

63. On January 25, the news website *Adelanto 24* suffered a cyberattack that knocked it offline for some 32 hours. According to its own investigation, the attack was provoked by members of the army who were supposedly upset about the publication of an article that revealed internal conflicts within the institution related to a salary dispute.¹²⁸ On March 3, the digital media outlet *Edición Límite* suffered two cyberattacks that took it offline for several days, allegedly in connection with the publication of articles about public servants and persons with ties to the government. The Provincial Minister of Santa Fe, Pablo Farías, committed on his behalf and on behalf of the Ministry of Security to assist in determining what occurred.¹²⁹

64. On March 27, the website of *El Litoral* of Santa Fe was the target of a cyberattack in which hackers published an intimidating anonymous message on the website against the media outlet and against a prosecutor. According to the paper’s directors, the hacking also took the website offline for several hours, which prevented access to its content.¹³⁰

65. In April, the Second Division of the Court of Appeals for Criminal Offenses and Misdemeanors [*Sala II de la Cámara de Apelaciones en lo Penal, Contravencional y de Faltas*] of Buenos Aires upheld the preventive blocking of the digital platforms used to access Uber car service. Judges Marcela De Langhe, Fernando Bosch, and Pablo Bacigalupo affirmed the lower court’s decision, handed down in January by Judge María Fernanda Botana at the request of the Buenos Aires Office of the Public Prosecutor, to preventively block “the digital platforms, apps, and other technological resources that make it possible to hire and/or use the passenger transportation services offered by the company Uber Argentina,” until such time as the reasons for the preventive measure cease to exist. The judges specified that “The lower court judge ruled to extend the preventive shutdown/blocking [of Uber] to the entire country,” since it had been proven that “the company in question is engaged in a lucrative activity without authorization and therefore, there is *prima facie* evidence of a crime.” They explained, “Despite numerous decisions aimed at putting a stop to the conduct at issue in this case—with measures that were narrower in scope—it has not been possible to accomplish that aim. This jeopardizes the objective of the protective measures, which is to ensure the effectiveness of the decision ultimately rendered in the case.” The judges added that, “In that scenario, the preventive shutdown/block [of

¹²⁷ Asociación de Entidades Periodísticas Argentinas (Adepa). December 29, 2016. *Preocupación de Adepa por fallo que ordena a Twitter suprimir contenido*; TN. December 28, 2016. *Victoria Vanucci le ganó la pulseada a Twitter: la Justicia ordenó borrar los mensajes en su contra*; Infobae. December 28, 2016. *La Justicia le ordenó a Twitter eliminar los mensajes que ofenden a Victoria Vanucci*.

¹²⁸ *Adelanto 24*. February 3, 2017. *El Ejército, otra vez*; Foro de Periodismo Argentino (FOPEA). February 8, 2017. *FOPEA condena ciberataque al sitio de Adelanto 24 y pide esclarecimiento*.

¹²⁹ Edición Límite/Facebook. March 3, 2017. *Carta a los lectores*; Foro de Periodismo Argentino (FOPEA). March 9, 2017. *FOPEA repudia y pide esclarecimiento del ataque informático a Edición Límite en Santa Fe*.

¹³⁰ Asociación de Entidades Periodísticas Argentinas (Adepa). March 27, 2017. *Ataque informático al sitio web de El Litoral*; Foro de Periodismo Argentino (FOPEA). March 28, 2017. *FOPEA repudia y pide esclarecimiento del hackeo a El Litoral*; Fundación Led. March 30, 2016. *Hackean el sitio web del diario El Litoral*.

Uber] must be upheld” throughout the country, because “at this point in the proceedings that is the only way in which to implement the measure ordered.”¹³¹

66. In June, the Court upheld a protective measure imposed by trial court Judge Claudia Alvaro to block the use of credit cards to pay for Uber services. The judges unanimously upheld the April 28 ruling ordering credit card service provider companies Prisma Medio de Pago SA, American Express Argentina SA, First Data Cono Sur SRL, Banco Comafi (Diners), Mastercard Cono Sur SRL, and Citibank NA in Argentina “to abstain from authorizing points of sale of UBER TECHNOLOGIES INC and/or UBER and/or UBER B.V. and/or UBER ARGENTINA SRL and/or RAISER OPERATIONS BV and/or to conduct any activity that allows and/or facilities the company to complete its transactions, limiting it to those transactions made within the city of Buenos Aires.”¹³² In April, in light of a similar appeal, the same Court ruled against the use of third-party payment processors such as Zap Zap, Ecopays, Wirex, and Skrill, to pay for Uber services.¹³³

H. Diversity, Pluralism, and Community Broadcasting

67. On December 30, 2016, the government adopted Decree 1340/2016, authorizing telecommunications companies to provide convergent services, known as “quadruple play” (a single company provides landline and mobile telephone service, cable television, and Internet service).¹³⁴ The measure, signed by President Mauricio Macri, aims to “attain a higher degree of network and service convergence under competitive conditions, promoting the deployment of next generation networks and broadband Internet penetration throughout Argentina.” According to the decree, the authorization date is January 1, 2018 for the city of Buenos Aires, greater Buenos Aires, and the cities of Rosario and Córdoba; the start date for the rest of the country will be determined by the National Communications Agency [*Ente Nacional de Comunicaciones*] (Enacom). The decree would thus enable the mobile telephone companies Telefónica, Telecom, and Claro to offer cable television, while the cable companies, such as Cablevisión/Nextel, will be able to provide cell phone service. In addition, the decree granted Enacom the power to reassign radio spectrum frequencies, “establishing compensation, and deployment and coverage obligations.”¹³⁵ A number of academic, journalistic, and civil society organizations criticized the measure on the grounds that it encourages the consolidation of an oligopoly market and favors the main telecommunications corporations, intensifying media concentration.¹³⁶ As a consequence, the merger between the largest cable and Internet company in

¹³¹ Poder Judicial de la Ciudad de Buenos Aires. April 11, 2017. *Confirman bloqueo de UBER en todo el país*; Cámara de Apelaciones en lo Penal, Contravencional y de Faltas. Ciudad Autónoma de Buenos Aires. April 4, 2017. *Causa n° 4790-42-16, caratulada “Incidente de apelación por clausura/bloqueo de página web en todo el país en autos NN (Uber) y otros s/ inf. arts. 83, 73 y 74 CC”*; La Nación. April 11, 2017. *La Justicia confirmó que la empresa Uber no podrá operar*.

¹³² Cámara de Apelaciones en lo Penal, Contravencional y de Faltas. Ciudad Autónoma de Buenos Aires. June 8, 2017. *Causa n° 4790-04-CC/2016 caratulada “Incidente de apelación de clausura preventiva art. 29 LPC en autos UBER SRL. s/ infr. 83 CC-“Sala II*; Poder Judicial de la Ciudad de Buenos Aires. June 9, 2017. *Confirman bloqueo en el uso de tarjetas de crédito para UBER*.TN. June 12, 2017. *Uber: la Justicia porteña confirmó el bloqueo al pago con tarjeta y la empresa acepta efectivo*; Télam. June 9, 2016. *Confirman el bloqueo del uso de tarjetas de crédito para Uber*.

¹³³ Cámara de Apelaciones en lo Penal, Contravencional y de Faltas. Ciudad Autónoma de Buenos Aires. April 27, 2017. *Causa n° 4790-51-16, caratulada “Incidente de apelación por clausura/bloqueo de tarjetas Zap Zap y otras en autos NN (Uber) y otros s/ inf. arts. 83, 73 y 74 CC”*. Sala II.

¹³⁴ Ministerio de Comunicaciones. December 30, 2016. *Decreto 1340/2016*.

¹³⁵ El Cronista. January 2, 2017. *Qué dice el decreto que habilita el cuádruple play*; Perfil. January 2, 2017. *El gobierno firmó el decreto que autoriza el cuádruple play*; La Nación. January 3, 2017. *Telefónica amenaza con ir a la Justicia por el decreto de convergencia*; Terra. January 2, 2017. *Por decreto, el Gobierno avanzó con la “convergencia” para telefónicas y operadoras de cable*; Observacom. January 16, 2017. *Decreto de la “convergencia” desregula el sector de las comunicaciones en Argentina*.

¹³⁶ Coalición por una Comunicación Democrática. January 2, 2017. *Decreto 1340/2016 “Retrosceso: mayor concentración fuera de la Ley”*; Cámara de Agentes de Telecomunicaciones Móviles de Argentina. No date. *Repercusiones del decreto que habilita el “cuádruple play”*;

Argentina, Cablevisión (Grupo Clarín), and one of the main landline and mobile telephone companies, Telecom Argentina (Fintech), was announced on June 30. With this merger, the first “quadruple play” (Internet, cable TV, mobile telephone, and landline services) convergent operator in the country was established. According to the specialized press, the new operator will control 55% of the broadband business, 40% of the paid television market, 35% of mobile telephony, and 44% of landline telephony.¹³⁷ Experts also noted that the merger could lead to market dominance by the new operator in some Argentine provinces. For instance, in Córdoba, Cablevisión/Telecom could end up with 95% of the province’s broadband market.¹³⁸

68. On December 29, 2016, the National Communications Agency (Enacom) adopted Resolution 10090 - E/2016 for purposes of reorganizing “the allocation of digital channels of the free-to-air digital television services of the Buenos Aires Metropolitan Area to authorized parties, licensees, and licensee applications pending adjudication.” The redistribution of the lineup involved the inclusion of new channels, such as *Perfil* (*Perfil TV*), the news channel *QM* (of the city of La Plata), the government signals of the city of Buenos Aires and the Province of Buenos Aires, and the Catholic Church’s signal. The measure further provided for the inclusion in the lineup of frequencies granted to the University of Buenos Aires, and to different foundations, cooperatives, and civil associations, as well as the channels *El Trece*, *Telefe*, *El Nueve* and *América*.¹³⁹

69. On March 28, the Ministry of Communications postponed—for the second time—the introduction of the draft Regulatory Framework Law for Telecommunications and Audiovisual Communication Services.¹⁴⁰ Through Resolution 601-E/2017, the ministry granted a 180-day deadline extension to the Committee in charge of drafting the bill. In October 2016, the ministry had already delayed the bill’s introduction by 180 days.¹⁴¹ According to the resolution passed in March, 78 civil society organizations, specialists, academics, and citizens have made contributions to the draft law thus far, within the framework of a participatory consultation process. Nevertheless, the resolution indicates that a significant number of organizations and citizens “requested new rounds of consultation to ensure the absolute openness of the process,” and therefore it provided for “the initiation and development of a process for new consultations.”

70. On April 25, pursuant to a search warrant issued by Judge Jorge Ernesto Rodríguez of the 2nd Federal Court for Criminal and Correctional Matters [*Criminal y Correccional N° 2*] of Morón, employees of the National Communications Agency (Enacom) and Federal Police reportedly conducted a search and seized the equipment of community broadcast stations *Radio M* of Virrey del Pino, and *FM Fórmula* of the town of Merlo. The operation was reportedly carried out because the stations were interfering in the air communications of the Ezeiza Airport. In addition, the police reportedly took the owner of radio *FM Fórmula*, Ariel Montes, and two journalists from the station into custody as detainees [“*demorados*”] for their alleged interference in aviation radio frequencies. A criminal case was reportedly brought against Montes, based on an infraction report prepared in February for the alleged interference caused by the radio station. The Union of Audiovisual and Associated Journalists of La Matanza [*Unión de Comunicadores Audiovisuales y Afines de la*

Diario Contexto. January 4, 2017. *Otro decreto de Macri para favorecer al Grupo Clarín*; Kaos en la Red. January 6, 2017. *Argentina. Un decreto a la medida de las corporaciones*.

¹³⁷ Clarín. June 30, 2017. *Telecom y Cablevisión se integran y se transforman en el primer operador argentino de cuádruple play*; Reuters. July 2, 2017. *Telecom Argentina. Cablevision agree to merge amid telecoms reform*; *Ámbito Financiero*. July 3, 2017. *Telecom-Cablevisión: fusión concentra ya casi el 60% de los accesos a internet*; *La Nación*. July 12, 2017. *Tras la fusión con Telecom, Cablevisión será la que gestione la nueva empresa*; *Perfil*. July 30, 2017. *Nuevo mapa en telecomunicaciones: confirman la fusión de Cablevisión y Telecom*.

¹³⁸ *Perfil*. July 9, 2017. *En Córdoba, el desafío será regular a un monopolio extremo y poderoso*.

¹³⁹ Boletín Oficial de la República Argentina. Ente Nacional de Comunicaciones. *Resolución 10090 - E/2016*. December 29, 2016.

¹⁴⁰ Boletín Oficial de la República Argentina. *Resolución 601-E/2017*. March 28, 2017.

¹⁴¹ Boletín Oficial de la República Argentina. Ministerio de Comunicaciones. *Resolución 1098 - E/2016*. October 27, 2016.

Matanza] (Ucaya) expressed its repudiation of “the seizures carried out” against the community radio stations and condemned “the unprecedented violence and arbitrary nature” with which the officials acted.¹⁴²

71. The community channel *Barricada TV* of Buenos Aires began broadcasting on June 28 on free-to-air digital television [*Televisión Digital Abierta*] (TDA) channel 32.1. The station is one of the first in the non-profit sector to obtain a license to provide audiovisual communication services. The broadcast began as a test, given that it is still awaiting final authorization from the National Communications Agency (Enacom).¹⁴³ The community media outlets *Urbana TV* of Buenos Aires, *Pares TV* of Luján, and *Comarca Si* of Florida also began to air on channel 32. The four media outlets that participated in the competitive bidding process in 2015 and in November of that year obtained licenses to operate on channels 33 and 19, but during 2016 they experienced problems with interference in their broadcasts. In the case of *Barricada TV* and *Urbana TV*, the interference was due to the fact that the commercial channel *El Trece* continued operating on channel 33, despite the fact that its authorized test period had ended.¹⁴⁴ The community media outlets lodged several complaints with the authorities and with the courts, and organized demonstrations outside Enacom headquarters to demand that the situation be corrected. In December 2016, Enacom decided to reassign the four community outlets to channel 32.¹⁴⁵ The channels, joined together as the National Coordinating Body of Alternative Television Networks [*Coordinadora Nacional de Televisoras Alternativas*] (CONTA), maintained that “The measure immediately resolves the interference created by Canal 13,” but also “suspends the reorganization of the TDA channel lineup that required that station—among others—to move to a different channel once the competitive bidding processes have been conducted.” They maintained that the agency’s decision to relocate the community media “means that the ‘mirror’ signals of the commercial channels have consolidated their position and continue to broadcast on the test frequencies.”¹⁴⁶

72. Additionally, in February, Enacom reportedly ordered community radio station *FM Ocupas* of Moreno to go off air because it allegedly interfered with signals from the Mariano Moreno Airport.¹⁴⁷

73. According to estimates by InterRedes cited in a study conducted by researchers from five Argentine universities, as of April 2017 Enacom owed payments to over 200 projects awarded by the Competitive Development Fund for Audiovisual Media [*Fondo de Fomento Concursable para Medios de Comunicación Audiovisual - Fomeca*] in 2015, totaling over ARS\$ 25 million. The government has made some partial payments since then, according to the investigation.¹⁴⁸ In November 2016, the National Communications Agency (Enacom) announced the opening of five new lines of credit for non-profit entities, community media

¹⁴² Tiempoar. April 28, 2017. *Denuncian persecución penal a radios comunitarias*; Resumen Latinoamericano. April 26, 2017. *Argentina: Decomisaron los equipos de dos radios comunitarias y aumenta la censura/Comunicado de UCAYA:Violencia Estatal/FARCO Y ALER*; 17 48. May 8, 2017. *Repudian el cierre de radios comunitarias*.

¹⁴³ Barricada TV. June 26, 2017. *La televisión comunitaria llega a la televisión digital abierta*; Conclusión. June 26, 2017. *Barricada TV y el desafío de ser alternativo en la TDA*; El Argentino. June 27, 2017. *Barricada TV comienza con sus emisiones en la Televisión Digital Abierta*.

¹⁴⁴ IACHR. *Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para. 90 - 92.

¹⁴⁵ Barricada TV. December 15, 2016. *Cuatro canales comunitarios comenzarán a transmitir en el 32*; Info News. December 15, 2016. *Ahora, Barricada TV ya no estará más interferida por El Trece*; Notas. Periodismo Popular. December 16, 2016. *ENACOM habilitó una señal para los canales comunitarios interferidos por Canal 13*; Tinko Comunicaciones. December 16, 2016. *Bienvenidos al aire colegas de la TV*; Página 12. December 15, 2016. *Los primeros cuatro canales comunitarios*.

¹⁴⁶ Barricada TV. December 15, 2016. *Cuatro canales comunitarios comenzarán a transmitir en el 32*; Página 12. December 15, 2016. *Los primeros cuatro canales comunitarios*.

¹⁴⁷ Radio Gráfica. February 28, 2017. *FM Ocupas / “Nos sacaron del aire y van por todas las radios comunitarias”*; 17 48. May 8, 2017. *Repudian el cierre de radios comunitarias*; Página 12. May 9, 2017. *FM Ocupas*.

¹⁴⁸ LOGOS: COMUNICAÇÃO E UNIVERSIDADE. January-April 2017. *Regresión. Las nuevas políticas para medios comunitarios en Argentina*; Página 12. September 25, 2017. *Medios comunitarios contra las cuerdas*.

outlets, producers, native peoples, and licensed owners of broadcasting services. These lines of credit were opened under the umbrella of the Fomeca), a tool created in 2009 in tandem with the Audiovisual Communication Services Law to strengthen community media and independent productions. The fund facilitates the redistribution of resources collected through fines and taxes from audiovisual media outlets in order to promote community media.¹⁴⁹ During 2016, after the arrival of the new administration that amended some of the legal provisions, many community projects that had been approved in 2015 and had already begun to be carried out reportedly stopped receiving support, and the mechanism ceased to operate. Moreover, the calls for proposals corresponding to the 2016 budget were reportedly not issued. Enacom authorities suggested that the standstill was due to the fact that the process by which the subsidies were granted was under audit.¹⁵⁰ The community media outlets held demonstrations and lodged complaints to demand payment of the funds owed and the restoration of the development mechanism. In August 2016, Enacom officials met with representatives of InterRedes, a network of various community media organizations, and agreed to resume the pending payments and to announce the new calls for proposals so that funding would be available as soon as possible.¹⁵¹

74. On August 3, the head of Argentina's Office of the Ombudsperson for Audiovisual Communication Services [*Defensoría del Público de Servicios de Comunicación Audiovisual*], María José Guembe, sent a letter to the Office of the Special Rapporteur to provide relevant information about human rights and audiovisual media in the country. According to the Ombudsperson's Office, Argentina is currently the scene of "a process of unprecedented media concentration," which reportedly began with the adoption of Decree of Necessity and Urgency No. 267/2016 by the incoming government of Mauricio Macri. The decree amended the Audiovisual Communication Services Law and implemented measures that have reportedly intensified media concentration, such as dismantling anti-trust oversight mechanisms and approving the merger of powerful players in the telecommunications markets. In addition, the Office of the Ombudsperson noted that its position has been "weakened, because the National Congress failed to activate the mechanisms provided for the appointment of the Ombudsperson."¹⁵²

75. On various occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media in our region fulfill a fundamental function for the exercise by diverse sectors of society of freedom of expression and access to information.¹⁵³ In that sense, it is necessary for the states to legally recognize community media and to consider fair spectrum reserves for this type of media, along with adequate conditions of access to licenses that would take into account the circumstances. Similarly, community media must benefit from fair and simple procedures for obtaining licenses, must not have to comply with technological or other types of requirements that involve disproportionate barriers for access to

¹⁴⁹ Ente Nacional de Comunicaciones (Enacom). September 26, 2016. *Se vienen las nuevas líneas del FOMECA*; Ente Nacional de Comunicaciones (Enacom). September 25, 2016. *Abrieron las nuevas líneas del FOMECA*.

¹⁵⁰ Centro de Producciones Radiofónicas. November 23, 2016. *Sobre retardo y relanzamiento del FOMECA*; Señales. September 26, 2016. *ENaCom anuncia nuevas líneas del FoMeCA*.

¹⁵¹ La izquierda diario. October 26, 2016. *Medios comunitarios se movilizan hoy por reiterado incumplimiento del Enacom*; AMARC Argentina. October 24, 2016. *ENACOM no cumple con los medios comunitarios*; Radio Comunitaria La Lechuza. August 22, 2016. *ENaCom se comprometió al pago de Fomecas adeudados y apertura de líneas 2016*; Agencia FARCO. August 22, 2016. *ENaCom se comprometió al pago de Fomecas adeudados y apertura de líneas 2016*.

¹⁵² Defensoría del Público de Servicios de Comunicación Audiovisual. Nota N° 464/2017. August 3, 2017. Available at the Archive of the Office of the Special Rapporteur for Freedom of Speech.

¹⁵³ IACHR. *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*. Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para. 414; IACHR. *Annual Report 2002. Report of the Special Rapporteur for Freedom Of Expression*. Chapter IV (Freedom of Expression and Poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 41.

licenses, and in their operation must not be the target of differentiated treatments that are not adequately justified.¹⁵⁴

76. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

I. Government Advertising

77. According to an investigation conducted jointly by the Argentine Journalism Forum and the *Asociación Civil por la Igualdad y la Justicia* (ACIJ) based on a complaint filed by *Ciudadanos Libres por la Calidad Institucional* with the Anti-Corruption Office, President Mauricio Macri’s government reportedly invested at least ARS\$ 389 million government advertising in 2016, in violation of the Public Ethics Act. That amount would be equivalent to roughly 16% of the total amount spent by the government on advertising during 2016 (ARS\$ 2.4 billion). The information emerged from an analysis of the databases on government advertising produced by the Secretariat of Public Communications [*Secretaría de Comunicación Pública*] and published by the Ministry of Modernization [*Ministerio de Modernización*]. The researchers examined in particular the ten most expensive government advertising campaigns during 2016, and found that at least three of those campaigns—*Juntos*, *Empezar*, and *Jubilados*—“centered around a series of videos that featured Macri speaking to the camera at the end or as part of the advertising spots.” According to the coordinator of the ACIJ’s Department for the Strengthening of Democratic Institutions, Fernando Braccacini, “The appearance of the president’s image is a violation of Article 42 of the Public Ethics Act since it entails the personal promotion of a public servant, something that is expressly prohibited.” Officials from the Secretariat of Public Communications consulted by the organizations about the possible violation of the act maintained that, in their opinion, “The president’s appearance in the advertising campaigns does not violate the Public Ethics Act” because they are “institutional messages like any other.”¹⁵⁵

78. Among other critical statements about local media, Raúl García Goyena, the Secretary of Communication and Open Government of Jujuy, reportedly said that he made the owners of a local media outlet “get down on their knees” when he refused to pay them ARS\$ 1 million that they were seeking for government advertising. The remarks were made during an informal conversation with a producer from *Radio Universidad* that was secretly recorded and shared on social media.¹⁵⁶ When questioned by the Argentine Journalism Forum (FOPEA), the official expressed his regret for what he said, and clarified that they were not public statements.¹⁵⁷

79. The Office of the Special Rapporteur recalls that article 13.3 of the American Convention establishes that “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” Similarly, Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among

¹⁵⁴ IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 92 and following.

¹⁵⁵ Foro de Periodismo Argentino (FOPEA). July 13, 2017. Publicidad oficial en la mira.

¹⁵⁶ Somos Jujuy. April 20, 2017. Raúl García Goyena: Estoy haciendo que RVJ se arrodille Destacado.

¹⁵⁷ Foro de Periodismo Argentino (FOPEA). April 23, 2017. FOPEA rechaza expresiones del secretario de Comunicación de Jujuy; Inter American Press Association (IAPA). 73rd General Assembly. Salt Lake City, Utah. October 27-30, 2017. Argentina.

others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

J. Other relevant situations

80. On September 18, the journalist Roberto Navarro was dismissed by the authorities of channel C5N, where he held the Sunday program "*Economía Política*". According to the information available, the dismissal would have occurred after the communicator argued via Twitter with one of the managers of the channel, because they would not have allowed him to air a report on a senator candidate of the ruling party or address some allegations that would implicate the Vice President, Gabriela Michetti. The journalist would have indicated that the decision was the result of "government pressure". For his part, in a public act held on the day following the dismissal of Navarro, President Mauricio Macri said "we have to respect those who think differently".¹⁵⁸

81. On November 17, journalist Víctor Hugo Morales informed via Twitter that he was fired from the C5N channel, where he hosted the evening program "*El Diario*". According to the information available, Morales' dismissal would have occurred after the channel was acquired by the OP Investments group. As reported by the journalist, commonly linked to the party led by the former president Cristina Fernandez de Kirchner, when they announced his dismissal they would have indicated that his presence "was incompatible with the channel's new line."¹⁵⁹

3. BAHAMAS

A. Progress

82. In 2017 The Bahamas enacted the Freedom of Information Act. This law provides a general right of access to records held by public authorities and is aimed at giving effect to certain fundamental principles underlying the system of constitutional democracy, namely, governmental accountability, transparency, and public participation in national decision making. A general right of access is given to Bahamian citizens, permanent residents, body incorporated or registered under the laws of The Bahamas, partnership or other unincorporated association formed under the laws of The Bahamas and persons whom maintain the Bahamas, an office, branch or agency through which he carries on any business activity. Other persons may be granted a right of access through the respective Minister at the direction of the Cabinet.

83. Certain records are protected from disclosure in specified circumstances. These records include those concerned with security, defence, international relations, law enforcement, legal privilege, national economy, commercial affairs, and documents concerning the operations of public authorities. Also included records revealing Government deliberative processes, records where their disclosure would prejudice effective conduct of public affairs, records relating to commercial interests, heritage sites, sensitive personal data, and records where their disclosure are likely to endanger health and safety. Decisions by public authorities to refuse, limit or defer grant of access to a record are subjected to internal review. Measures to promote openness in respect of the implementation of this law include the appointment of an information manager, protection for whistle-blowers, publication of a code on minimum standards and best practices, maintenance of records, duty to report obligations, and training of officials regarding the right to information and the effective implementation of the law.¹⁶⁰

¹⁵⁸ La Nación. September 19, 2017. *Echaron a Roberto Navarro de C5N y el conductor culpó al Gobierno*: Clarin. September 19, 2017. *Echaron a Roberto Navarro de C5N*: El Destape. September 20, 2017. *Macri, tras el despido de Roberto Navarro: "Tenemos que respetar al que piensa distinto"*.

¹⁵⁹ La Nación. November 17, 2017. *Despidieron a Víctor Hugo Morales de C5N*: El Observador. November 18, 2017. *Víctor Hugo Morales contó cómo fue su despido de C5N*: Clarin. 20 de noviembre de 2017. *Víctor Hugo Morales culpó al Gobierno por su despido de C5N*.

¹⁶⁰ The Bahamas. *Freedom of Information Act*, March 1, 2017.

B. Subsequent Liability

84. On 11 April 2017, attorney Maria Daxon filed a constitutional motion in the Supreme Court of the Bahamas challenging the criminal libel laws. Among the relief sought is a declaration that the laying of the charge against her, her prosecution, trial and liability to conviction and sentence to a fine and or imprisonment for up to 2 years for the offence of Intentional Libel contrary to section 315(2) of the Penal Code Cap 84 (“the Criminal Libel Proceedings”) are void, illegal and of no effect, in that they are a breach of her constitutional right to freedom of expression guaranteed by article 23 (1) of the Constitution. The motion further challenged the constitutionality of section 315(2) of the Penal Code Cap 84 (“the Criminal Libel Proceedings”).¹⁶¹ Daxon’s constitutional motion stems from her arrest and charge in December 2016 for intentional libel concerning alleged statements. It is alleged that between August 26 and August 30, 2016, Daxon wrote defamatory statements about Commissioner Greenslade and Senior ACP Bethell, which were likely “to injure and expose” the officers to “general hatred, contempt or ridicule.”¹⁶² The constitutionality of the country’s criminal libel laws have also been challenged by Omar Archer via constitutional motion which was filed on April 12, 2017.¹⁶³

85. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, “privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

86. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “*desacato* laws,” restrict freedom of expression and the right to information.” Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.¹⁶⁴

¹⁶¹Maria Dixon v Commissioner of Police and The Attorney General of the Commonwealth of The Bahamas, Originating Notice of Motion for Constitutional Relief pursuant to a Reference under Article 28 (3) by Stipendiary and Circuit Magistrate, Mr. Andrew Forbes filed on 11 April 2017 2017/PUB/CON/FP/00001; Tribune 242. April 12, 2017. *Daxon Challenges Criminal Libel Constitutionality*.

¹⁶²Tribune 242. September 2, 2016. *Lawyer Granted Bail After Being Charged With ‘Defaming’ Top Police Officers*; The Nassau Guardian. September 3, 2016. *Maria Daxon gets Bail*.

¹⁶³Omar Archer Sr. v Commissioner of Police and The Attorney General of the Commonwealth of The Bahamas, Originating Notice of Motion for Constitutional Relief pursuant to a Reference under Article 28 (3) by Stipendiary and Circuit Magistrate, Derence Rolle-Davis filed on 12 April 2017 2017/PUB/CON/FP/00003; Magnetic Media, April 13, 2017. *Omar Archer’s case now a human rights matter*.

¹⁶⁴ IACHR. Annual Report 2015. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

4. BARBADOS

A. Stigmatizing statements

87. On July 22, the Acting Deputy Commissioner of Police (ADCP), Oral Williams, warned agents of the Royal Barbados Police Force (RBPF) to be wary of the media, in a speech he gave during the closing ceremony of the course on "Maritime Operations and Planning".

88. In this regard, Williams would have indicated to the agents that "they should be careful and aware of what they say and what they do when they carry out operations", since the evidence of "a well done video can be admitted in a court". In addition, he would have added that this kind of recordings usually last a few seconds, and commonly do not show what happened before or after. According to the information available, Williams' statements are framed in a context of strong criticism directed against police officers due to the repeated reports of mistreatment that the civilian population claims to suffer and, in particular, since the publication of a video where allegedly a policeman is seen beating a man lying on the ground.¹⁶⁵

89. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."¹⁶⁶

¹⁶⁵ Loop. June 19, 2017. *Police to investigate video of fete patron being kicked*; Nation News. June 22, 2017. *No to brutality*; Nation News. July 22, 2017. *Beware of 'social media'*.

¹⁶⁶ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

5. BELIZE

A. Attacks, threats, and intimidation against journalists and the media

90. On September 6, in the city of Orange Walk, the editor and journalist of *KREM Radio and Television*, Marisol Amaya, would have been assaulted by agents of the Special Patrol Unit while she was about to interview a political leader of the People's United Party. According to the information available, Amaya would have been caught from behind and separated from the group of journalists who were there.¹⁶⁷ According to the information released, on October 5, the Commissioner of Police (COP), Allen Whyllie, indicated that he would begin investigating these events.¹⁶⁸

91. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

92. The Office of the Special Rapporteur notes that "violence committed against female journalist as a result of their work has a particular characteristics streaming from the social constructs of gender and discrimination."¹⁶⁹ The United Nations Special Rapporteur in the Promotion and Protection of Freedom of Opinion and Expression stated in his report on the protection of journalist and media that a "gender-sensitive approach is therefore needed when considering measures to address the issue of violence against journalists."¹⁷⁰ The Office of the Special Rapporteur reiterates that States have a reinforced obligation to act with due diligence to prevent violence against female journalists.¹⁷¹

B. Social Protest

93. On September 6, in the city of Orange Walk, a group of people supporting the People's United Party would have blocked access to the Toll Bridge and in response to this, police agents would have thrown tear gas bombs to disperse the protest. Likewise, a contingent of buses and cars that were heading towards the location of the demonstration would have been intercepted by police forces in their attempt to arrive at the location.¹⁷² On October 5, the Commissioner of Police (COP), Allen Whyllie, said he would begin to investigate these events.¹⁷³

¹⁶⁷ Breaking Belize News. September 6, 2017. *KREM denounces attack against Marisol Amaya; calls on all media houses to stand against attack*; Ambergis Today. September 6, 2017. *The Special Envoy Speaks Out On Assault Of Female Journalist*.

¹⁶⁸ News 5. October 5, 2017. *Police Begin Review of O.W. 'Riot'*; Love FM. October 5, 2017. *Commissioner of Police brief in response to Toll Bridge incident*.

¹⁶⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. December 31, 2013. *CIDH/RELE/INF. 12/13. Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators*.

¹⁷⁰ UN. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. A/HRC/20/17. June 4, 2012. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Para. 52. Available for consultation at: http://ap.ohchr.org/documents/dpage_e.aspx?m=85.

¹⁷¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. December 31, 2013. *CIDH/RELE/INF. 12/13. Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators*.

¹⁷² Breaking Beliz News. September 6, 2017. *Police tear gas protestors at Toll Bridge in Orange Walk*; News 5. September 6, 2017. *Opposition protest becomes chaotic riot at Tower Hill*.

¹⁷³ News 5. October 5, 2017. *Police Begin Review of O.W. 'Riot'*; Love FM. October 5, 2017. *Commissioner of Police brief in response to Toll Bridge incident*.

94. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”¹⁷⁴ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹⁷⁵

95. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹⁷⁶

¹⁷⁴ IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁷⁵ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹⁷⁶ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. Joint declaration on violence against journalists and media workers in the context of protests.

6. BOLIVIA

96. The remarks of high authorities of the national and local government towards the press continued, although they decreased in intensity with respect to those registered in 2016. Journalists from various media were attacked by demonstrators and police authorities during various forms of protest. The Office of the Special Rapporteur welcomes the exclusion of journalists and journalism in general from a criminal reform being studied by Parliament aimed at accountability of professional malpractice.

A. Progress

97. On May 30, the Telecommunications and Transportation Regulatory and Inspection Authority [*Autoridad de Regulación y Fiscalización de Telecomunicaciones y Transportes*] (ATT) announced that the government would start an analog blackout beginning in 2019, a process to deactivate analogue TV broadcasts, starting with the metropolitan areas of the departments of La Paz, Cochabamba, and Santa Cruz, which will end in 2024. ATT's telecommunications director Juan Carlos Machicao also announced that in March 2018 the first private digital channels will be on the air. According to Decree 3152, which regulates the implementation of digital television in the country, the allocation of digital channels will be up to 33 percent to the State, up to 33 percent to the commercial sector, up to 17 percent to the community sector, and up to 17 percent to Native Peasant Indigenous Peoples and Intercultural and Afro-Bolivian communities.¹⁷⁷

B. Attacks, threats, and intimidation of journalists and the media

98. The Office of the Special Rapporteur notes with concern the repeated attacks, intimidation, and harassment of journalists by the current mayor of Santa Cruz, Percy Fernández. This Office has been reporting on actions of this nature by Fernández since its annual report of 2012.¹⁷⁸ On March 23, in a string of insults against the journalist Adolfo Loayaza of *Red ATB*, in the framework of the commemorative events for World Oceans Day, after the journalist had asked about an issue of municipal relevance, the aforementioned official said "I get angry because I feel like it. And why don't you get angry? Because you're a frog! Jackass! (...) I do not want to talk to you, you are idiots!" The mayor offered his public apologies later.¹⁷⁹

99. On April 5, a journalist from *El Periódico* was verbally abused when she was classified as "bad professional" and "sold-out journalist" when she asked a question to leaders of the Civic Committee [*Comité Cívico*] of the Department of Cochabamba in the framework of the march to support the Direct Transfer of Resource Act [*Ley de Transferencias Directas de Recursos*] for the eight municipalities of the Department of Cochabamba.¹⁸⁰ On March 16, the president of the same committee, Juan Flores, aggressively disqualified a journalist from *Bolivia TV* during a press conference. "When the *MASistas* of the municipality march, nobody notices them (sic). (...) You are also officials who owe yourselves to the Cochabamba people, to the Bolivian people, and not to the *MAS!*" On these facts, the Federation of Unions of the Press of Cochabamba [*Federación Sindical de Trabajadores de la Prensa de Cochabamba*] expressed their rejection, also bringing up a gender perspective, and demanding that Flores makes a public apology, apology that was made days later.¹⁸¹

¹⁷⁷ Estado Plurinacional de Bolivia. Autoridad de Regulación y Fiscalización de Telecomunicaciones y Transportes. *Conferencia de Televisión Digital Terrestre a cargo de la ATT trasciende fronteras*. May 30, 2017; Estado de Bolivia. *Decreto Supremo 3152*. April 19, 2017.

¹⁷⁸ IACHR. *Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II.147. Doc. March 15, 2013. Para. 58

¹⁷⁹ Los Tiempos. March 23, 2017. *Percy Fernández insulta a periodista en medio de actos por el Día del Mar*; El Día. March 23, 2017. *Percy Fernández llama 'cojudo y maricón' a un periodista*; El Deber. March 23, 2017. *Percy se disculpa con el periodista que agredió*.

¹⁸⁰ El Periódico. April 6, 2017. *Exfuncionario cívico agrade a una periodista de el Periódico*.

¹⁸¹ ATB. March 17, 2017. *Presidente del Comité Cívico pide disculpas a periodista por haberla agredido*; You Tube/Abya Yala Televisión. March 17, 2017. *Prensa de Cochabamba repudia agresión a periodista por presidente Cívico*; Eju!. March 17, 2017. *Presidente del Comité Cívico de Cochabamba pide disculpas a periodista por agredirla*.

100. The Office of the Special Rapporteur has received information on various incidents of harassment and restriction of press coverage in the region of the Indigenous Territory of Isiboro Sécore Natural Park [*Territorio Indígena del Parque Natural Isiboro Sécore*] (TIPNIS), within the framework of a national controversy over the construction of a highway in that protected area, under the supervision of the Bolivian Highway Administration [*Administradora Boliviana de Carreteras*] (ABC). On August 23, the Association of Journalists of La Paz [*Asociación de Periodistas de La Paz*] (APLP) denounced said actions in TIPNIS. Previously, the Bolivian National Press Association [*Asociación Nacional de Prensa de Bolivia*] (ANP), publicly demanded the government transparency on information regarding the construction work carried out in the national park. Members of the *Página Siete* team, Beatriz Layme and Álvaro Valero, would have been threatened and persecuted between August 13 and 16 when covering the area, allegedly by settlers who support the construction of the highway. The journalist from *Opinión* Melissa Revollo would have reported that on August 9, self-identified indigenous people banned the use of journalistic equipment during a meeting of the Southern Indigenous Council [*Consejo Indígena del Sur*] (Conisur). On August 3, Roger Medina of *Los Tiempos*, along with a photographer and a driver, would have been intimidated and expelled from the area, also by settlers, while performing their journalistic work.¹⁸²

101. On May 5, a press team of a mobile unit of *Unitel* Tarija would have been robbed with a firearm on the outskirts of Tarija, Department of Tarija, by criminals who would have stolen their camcorder and broken one of the windows of the vehicle. The Union Federation of Press Workers of Tarija [*Federación Sindical de Trabajadores de la Prensa de Tarija*], the Union Confederation of Workers of the Press of Bolivia [*Confederación Sindical de Trabajadores de la Prensa de Bolivia*] (CSTPB), the National Association of Journalists of Bolivia [*Asociación Nacional de Periodistas de Bolivia*] (ANPB) and the Association of Journalists of La Paz [*Asociación de Periodistas de La Paz*] (ALPL) have publicly repudiated the incident.¹⁸³

102. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Social protest

103. On March 8, President Evo Morales enacted General Law 906 on Coca [*Ley 906 General de la Coca*], a law that repeals the ban on the production and conservation of coca plants and seeds in the country established by Law 1008 on Coca and Controlled Substances Regime [*Ley 1008 del Régimen de la Coca y Sustancias Controladas*]. Unlike its predecessor, the new law would recognize the coca plant as a Bolivian cultural heritage and establishes that the Ministry of Rural Development and Lands [*Ministerio de Desarrollo*

¹⁸² Inter-American Press Association (IAPA). *Report on Bolivia - 73th General Assembly Salt Lake City, Utah - October 27-30, 2017*. October 26, 2017; *Correo del Sur*. August 22, 2017. *Periodistas de dos diarios sufren persecución en el Tipnis*; *La Razón*. August 23, 2017. *APLP denuncia amedrantamiento a periodistas en el TIPNIS*; ANP. August 23, 2017. *Gobierno no explica por qué colonizadores impiden visitar el TIPNIS*; *En Diario*. August 11, 2017. *ANP pide transparencia informativa sobre Tipnis*; *El Diario/ANP*. August 12, 2017. *Colonos obstruyen trabajo periodístico en el Tipnis*; *Agencia de Noticias Finde*. August 23, 2017. *APLP denuncia atentado contra la libertad de expresión en el TIPNIS*; *Radio FM Bolivia*. No date. *Periodistas sufren persecución en el Tipnis*; *Opinión*. August 15, 2017. *ANP denuncia que colonos obstruyen el trabajo de periodistas en el Tipnis*.

¹⁸³ *Página Siete/ABI*. May 5, 2017. *Reportan que equipo de prensa de red Unitel es atracado en Tarija*; *Observatorio Boliviano de Derechos Humanos*. *Reporte Semestral de Violaciones a Los Derechos Humanos Sucidadas en Bolivia. Periodo Enero – Julio 2017*. August 2017. *El Deber*. May 6, 2017. *Asaltan al equipo de Unitel en Tarija*.

Rural y Tierras] will regulate, authorize, accredit, and supervise the circulation, transportation, and commercialization of the plant's leaf.¹⁸⁴

104. The coca sector has carried out several protests in order to regularize more extensive cultivable areas or the inclusion of areas that were not initially contemplated by the Law, both during the negotiation process and after its entry into force. As part of the protests held in February by *cocaleros* (coca farmers) from Los Yungas in La Paz, on July 21, journalist Ángel Blanco of *Radio Alternativa* was detained while covering a clash between demonstrators and the police in the capital, and was transferred to the Special Task Force on Fight against Crime [*Fuerza Especial de Lucha contra el Crimen*] together with 148 *cocaleros*.¹⁸⁵ On July 18, during the protests held in Colomi, Cochabamba state, Samuel Vallejos, a mechanic who was in the vicinity, was killed. While the coca sector blames the police of shooting him with a firearm during the dissolution of the protest, the Cochabamba Ombudsman, Nelson Cox, has stated that the autopsy dismisses this possibility, and instead indicates that "the death was due to hypovolemic shock (bleeding out) from an injury that was not a result of a bullet from a firearm." Also, the Minister of Government, Carlos Romero, declared that the use of lethal weapons in the operation was not authorized.¹⁸⁶

105. On February 15, as part of the protests carried out by the population of Achacachi, Department of La Paz, during February, 4 journalists were reportedly wounded by demonstrators. Edwin Huanca, from Achacachi's *Radio de los Pueblos Originarios (RPO)*, the journalist Ana Apaza and photo-journalist Álvaro Valero, from *Página Siete*, were attacked. The photographer of the APG agency, Javier Mamani, also reported attacks against him and indicated that his work equipment was stolen by people participating in the protests¹⁸⁷.

106. **In August, during protests, street traders allegedly harassed the staff of a *Página Siete* agency for three days, allegedly in retaliation for publishing information on the collection of contributions of union members between 2013 and 2015. According to available information, on August 24, during a protest of the unionists in La Paz, journalist Kattya Valdés of *La Razón* would have been harassed and intimidated by female demonstrators. Also, on August 22, the journalist of red de televisión ATB Victor Mendizábal, the cameraman Cristian Merino, and a mobile unit technician, Carlos Viricochea, were allegedly attacked while covering a demonstration by unionists in the capital.**¹⁸⁸

¹⁸⁴ Vicepresidencia del Estado Plurinacional de Bolivia. March 8, 2017. [El Presidente Evo Morales promulgó la Ley General de la Coca](#); Sputniknews. February 22, 2017. [Gobierno boliviano decide aprobar Ley General de la Coca pese a protesta campesina](#).

¹⁸⁵ Agencia de Noticias Fides. 21 de febrero de 2017. [Detienen a un reportero de radio Alternativa de los Yungas](#); Los Tiempos. 21 de febrero de 2017. [Conflicto cocalero y manifestaciones por el 21F convulsionan La Paz](#); La Patria/ANF. February 22, 2017. [Detienen a un reportero de radio Alternativa de los Yungas](#).

¹⁸⁶ La Voz de Tarija. July 19, 2017. [Colomi: Autopsia descarta que joven haya fallecido por arma de fuego](#); El Deber. February 20, 2017. [Descalifican protesta en Colomi y aseguran que muerte no fue por bala](#). El Deber. July 19, 2017. [Exigen justicia por la muerte de Samuel Vallejos en Colomi](#); El Mundo/Agencia de Noticias Fides. July 19, 2017. [Gobierno confirma un muerto en Colomi y repliega a la Policía](#); La Razón. July 20, 2017. [Fiscalía ratifica que una canica mató a poblador de Colomi](#); Erbol. July 19, 2017. [Colomi: Autopsia descarta que joven haya fallecido por bala](#).

¹⁸⁷ Consulado de Bolivia/ABI. February 16, 2017. [Periodista de Radio de los Pueblos Originarios en Achacachi es golpeado por turba de vecinos](#); Agencia de Noticias Fides/ANF. February 16, 2017. [Gobierno señala que un "golpe municipal" impulsó los enfrentamientos en Achacachi](#); *Página Siete*. February 16, 2017. [Gremios periodísticos condenan agresiones a la prensa en Achacachi](#); *Página Siete*. February 16, 2017. [Gremios periodísticos condenan agresiones a la prensa en Achacachi](#); La Voz de Tarija. February 16, 2017. [La ministra de Comunicación se solidariza con el periodista golpeado en Achacachi](#); Correo del Sur/ANF. February 17, 2017. [Conflicto en Achacachi deja periodistas heridos](#).

¹⁸⁸ La Patria/ANP. August 26, 2017. [Gremiales agreden a periodistas](#); *Página Siete*. August 26, 2017. [Los gremiales protestan con bebés y hostigan a Página Siete](#); *Página Siete*/ANP. August 30, 2017. [ANP rechaza hospedaje de gremiales a Página Siete](#).

107. On August 29, journalist Agustín Mamani of *Radio del Valle* would have been detained by police officers while walking down the street after covering a protest in La Paz, in the zone of Obrajes. Available information indicates police officers would have asked to see his journalist's credentials and because he did not have it on him, Mamani would have been detained and his camera seized. On August 31, the journalist was charged, among others, with crimes of destruction and deterioration of state property, along with 40 demonstrators, and sentenced to house arrest.¹⁸⁹

108. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”¹⁹⁰ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹⁹¹

109. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹⁹²

D. Stigmatizing statements

110. The polarization of the media scenario through stigmatizing statements by State authorities has been a constant concern of this Office.

111. On December 14, 2016 the Bolivian government presented the documentary titled “*Cartel de la Mentira*” (Cartel of lies), an initiative of the Ministry of the Presidency. The documentary is based on the supposed destabilizing power that the critical press has in the country, within the context of the referendum held in Bolivia in February of that year. The documentary focuses on how the media treated the case of the alleged son of President Evo Morales, and in particular refers to the journalist Raul Peñaranda, editor of *Agencia de Noticias Fides*, calling him one of the main responsible for supposedly orchestrating a defamation campaign against the President. The documentary has been rejected by various civil society organizations, who consider that he himself has an objective to silence critical communicative activity in the country.¹⁹³

¹⁸⁹ Committee to Protect Journalists (CPJ). September 5, 2017. *Bolivian radio journalist under house arrest, facing charges after covering protest*; Página Siete. September 3, 2017. *Mamani: “Policías no me creyeron que soy periodista”*; Tierra Noticias. August 31, 2017. *Juez dispone detención domiciliaria para 41 comunarios de Río Abajo que lesionaron a pasajeros*.

¹⁹⁰ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁹¹ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹⁹² United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

¹⁹³ Página Siete. December 15, 2016. *Rechazan el documental contra medios y periodistas críticos*; Knight Center for Journalism in the Americas. December 20, 2016. *Bolivian government releases documentary “The Cartel of Lies” with attacks on the press: journalists react; Gobierno boliviano lanza documental “El Cártel de la Mentira” con ataques a la prensa: periodistas reaccionan*; Eju!. December 14, 2016. *El Gobierno presenta ‘El cártel de la mentira’*; El Diario. December 16, 2016. *ANP lamenta “atropello a la libertad de prensa”*.

112. In the context of the territorial dispute between Bolivia and Chile, on July 1 President Evo Morales declared on Twitter that "The antipatriotic group of pro-Chilean deserves the highest censorship by the Bolivian people. (...) This pro Chilean group is the same that more than 130 years ago complemented the stabbing in the back our country suffered. (...) This group, which supports the Chilean geophagus oligarchic, is supported in the dark pages of the native servile media." The President would have made such statements after that some opposition politicians announced that they would request an internal investigation of the nine Bolivian individuals arrested in March by Chilean officials in the border area between the two countries allegedly carrying out illicit activities. Regarding this event, the National Customs [*Aduana Nacional*] has issued a press release presenting information on the detainees, and affirming that there was "a reporter's version spread in a media of Santa Cruz de la Sierra which maliciously pretends to alter the reality."¹⁹⁴

113. President Evo Morales also made denigrating statements to the media on May 4, stating in his official Twitter account that the "Media who does not receive official advertisement from the State, are the ones who lie, insult, defame and discredit authorities. Are they being paid off?" The statement of the Head of State was issued in the framework of World Press Freedom Day, as a criticism to an alleged partial coverage of the facts by the country's media following the State policies on placement of official advertising. The same day, in a public ceremony in Cochabamba, the president would have affirmed that "of course they all demand the allocation of official advertising, they are thousands and thousands of media, its's impossible grant placements to every media outlet, and because we don't place official advertising with them, the media says that we are the ones who limit information, and since they don't receive some of the State media, they begin to lie, to defame, to accuse".¹⁹⁵

114. In August, during an interview in the show '*Consentimiento Latinoamericano*' of the *ERBOL* channel, the former secretary general of the Bolivarian Alliance for the Peoples of America [*Alianza Bolivariana para los Pueblos de América*] (ALBA), David Choquehuanca, would have declared that "we must be careful with the media, the opposition is the media" and that "these external forces are the ones who want to blind our people". The statements would have been contextualized by Choquehuanca when referring to the results of the referendum that denied Evo Morales the possibility to run again as president, and to the lack of power of the ruling groups to mobilize people nowadays.¹⁹⁶

115. On November 12, President Evo Morales publicly accused the *Página Siete* newspaper of being a "liar" when referring to the number of followers he has on Twitter, in relation to the leader of the opposition, Carlos Mesa. Likewise, referring to a cover published by the same newspaper, he would have accused them of "lying" about the Coca Law and of "misrepresenting" the concept of "communal democracy." In addition, he would have indicated that "This newspaper says that the Plurinational Constitutional Court fails against Yungas and legalizes coca of Chapare The worst lie. The newspaper owner should defend himself, he should come and debate with me, let's see how he lies".¹⁹⁷

¹⁹⁴ Agencia de Noticias Fides. June 30, 2017. [Denuncian que uno de los nueve bolivianos expulsados de Chile es "chutero"](#); *Página Siete*. July 1, 2017. [Evo cree que hay un "coro de la antipatria pro chilena" e insta a su censura](#); "El coro de la antipatria pro chilena merece la mayor censura del pueblo boliviano. Este coro pro chileno es el mismo que hace más de 130 años acompañó la puñalada que se dio en la espalda de nuestra Patria. Este coro, que apoya la geofagia oligárquica chilena, recibe apoyo en las oscuras páginas del periodismo criollo servil." Official Twitter account of Evo Morales @evoespueblo. July 1, 2017; *Erbol*. July 1, 2017. [Morales pide censura a "coro pro chileno" en Bolivia](#); *El País/ANF*. June 30, 2017. [Denuncian que uno de los nueve bolivianos expulsados de Chile es "chutero"](#).

¹⁹⁵ *La Razón*. May 4, 2017. [Evo: Medios de comunicación que no reciben publicidad del Estado son los que mienten](#); *El Deber*. May 4, 2017. [Evo: medios que no reciben publicidad estatal mienten](#).

¹⁹⁶ *Erbol*. August 27, 2017. [David Choquehuanca: "La oposición se llama medios de comunicación"](#); *Página Siete*. August 28, 2017. [Choquehuanca: Oposición se llama medios de comunicación](#); *Eju!*. August, 27 2017. [Excanciller Choquehuanca: Oposición se llama medios de comunicación](#).

¹⁹⁷ *La Voz de Tarija*. November 12, 2017. [Ataque de Evo a la prensa acusa a Página Siete de mentir y a su propietario de ser "pro chileno"](#); *Página Siete*. November 13, 2017. [Evo cree que es el más popular en Twitter y que Página Siete miente](#); *Página Siete*. November

116. As a result, the National Association of the Bolivian Press [*Asociación Nacional de la Prensa Boliviana*] (ANP), which groups the country's main newspapers, publicly expressed its solidarity with the newspaper *Página Siete* after the alleged statements of President Evo Morales, and demanded respect for the constitutional rights of citizens and journalists of the printed media.¹⁹⁸

117. On November 22, the general manager of the state-owned company *Empresa Azucarera de San Buenaventura* (EASBA), Ramiro Lizondo Vargas, published a column under the header "To the scoundrel press...", where he indicated that the newspaper *El Diario* is in "the ranks of the anti-homeland [and] has been led to a coma and near disappearance." He also allegedly launched threats against the press that questioned the investment and results of the industry financed with public resources, while accusing journalists of "lying and defamation". In this regard, the National Press Association of Bolivia [*Asociación Nacional de la Prensa de Bolivia*] (ANP), in addition to their solidarity with the media, would have warned that this kind of statements are aimed at silencing the voice of a newspaper and journalists that "under existing constitutional rights are free to issue studies and opinions in relation to a topic of public interest."¹⁹⁹

118. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State's job to help create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.²⁰⁰

E. Legal reforms

119. On October 10, the presidents of the House of Representatives, Gabriela Montaña, and Senators, José Alberto Gonzales, reached an agreement with the National Association of Journalists of Bolivia [*Asociación nacional de Periodistas de Bolivia*] (ANPB), the Association of Journalists of La Paz [*Asociación de Periodistas de La Paz*] (APLP), the Union Confederation of Bolivian Press Workers [*Confederación Sindical de Trabajadores de la Prensa de Bolivia*] (CSTPB), and the Independent Press Association of Santa Cruz [*Asociación de la Prensa Independiente de Santa Cruz*] to exclude media professionals from an amendment proposal to the criminal code discussed in the legislative chambers, which would criminalize professional malpractice.²⁰¹

120. According to available information, in paragraph 2 of the text it was included that "It shall not constitute a criminal offense when the exercise of the profession does not imply a position of guarantor regarding health or physical integrity". The issue became relevant after the leaders of the lower and upper chambers met with the medical professionals sector and decided to include a broader spectrum of professions under the definition of the crime of professional negligence, which would include journalistic

16, 2017. *La ANP expresa solidaridad con Página Siete tras ataque*; Eju!. November 13, 2017. *Evo cree que es más seguido en Twitter y ataca a Página Siete*.

¹⁹⁸ *Página Siete*. November 16, 2017. *La ANP expresa solidaridad con Página Siete tras ataque*; Correo del Sur/ANP. November 16, 2017. *La ANP se solidariza con el periódico Página Siete*.

¹⁹⁹ Correo del Sur/ANP. November 22, 2017. *Ejecutivo de empresa estatal anuncia "desaparición" de El Diario*; *El Diario*. November 23, 2017. *Ejecutivo de empresa estatal amenaza a EL DIARIO*.

²⁰⁰ IACHR. *Annual Report of the Inter-American Commission on Human Rights 2014*. Chapter II (Evaluation of the State of Freedom Of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2014. Para. 65.

²⁰¹ Asociación Nacional de la Prensa (ANP). October 10, 2017. *Presidentes del legislativo aceptan excluir a periodistas de Código Penal*.

activity. With the aforementioned amendment, the wording of article 200 of the Criminal Code Code Bill was approved by the House of Representatives on October 17.²⁰²

F. Further Responsibilities

121. According to available information, on October 3, the Amautas Departmental Confederation [*Confederación Departamental de Amautas*] would have filed a complaint with the Vice minister of Decolonization Felix Cardenas for discrimination and incitement to racism against *Red Uno*, the Archdiocesan Lay Council [*Consejo Arquidiocesano de Laicos*], and the Civic Committee [*Comité Cívico*] of the city of Santa Cruz. The last two organizations would have performed Christian prayers and songs, and symbolically purified the location in the main square of the city of Santa Cruz where a week before an Andean ritual had been performed.²⁰³

122. The incident would have been presented as an act of confrontation and redress towards the indigenous people of the Amautas, and the media would have been included in the complaint for having reproduced and covered the event. In the case of a ruling against them, *Red Uno* would be the fourth case where the media is prosecuted under article 281 of the Law against Racism and all forms of Discrimination [*Ley contra el Racismo y toda forma de Discriminación*], which criminalizes the dissemination and incitement to racism or discrimination in the country, since the law came into force in October 2010.²⁰⁴

123. In accordance with Principle 1 of the IACHR Declaration of Principles on Freedom of Expression, "Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society."

G. Access to public Information

124. In March, civil society organizations reported that the demand of the rector of the *Universidad Mayor de San Simón* (UMSS) that the Documentation and Information Center Bolivia [*Centro de Documentación e Información Bolivia*] (Cedib) vacates its office in 48 hours, would be a detrimental act to the Bolivian documentary memory and of inhibition of the public debate in the country. They also stated that "this action [by the university] is a worrying sign of the reduction of civic space in Bolivia and could mean the loss of valuable documentation on human rights in the country." As reported, Cedib has been declared as documentary heritage of Cochabamba.²⁰⁵

²⁰² Asociación Nacional de Prensa (ANP). October 10, 2017. *Presidentes del legislativo aceptan excluir a periodistas de Código Penal*; La Voz de Tarija. September 25, 2017. *Médicos piden que artículos del Código Penal sobre negligencia se apliquen a todos los sectores*; La Razón. October 17, 2017. *Diputados aprueban artículo sobre mala práctica en el Sistema del Código Penal*; Cámara de Diputados del Estado Plurinacional de Bolivia. October 17, 2017. *Aprueban artículo consensuado sobre Mala Práctica Profesional en proyecto de Código del Sistema Penal*; Página Siete. September 26, 2017. *Proyecto de ley penaliza toda mala praxis profesional*; La Razón. September 27, 2017. *Proyecto de ley sobre mala praxis fija sanciones para casos de daño a la salud e integridad física*.

²⁰³ La Razón. October 3, 2017. *La Confederación Departamental de Amautas acusa de discriminación al grupo Católicos Laicos, al Comité Cívico de Santa Cruz y a la red UNO*; El Día. October 3, 2017. *Amautas denuncian por discriminación a Sandra Serrano, al Comité Cívico y a la Red Uno*; Eju! 3 de octubre de 2017. *Denuncian racismo por echar agua bendita en la plaza de Santa Cruz*; Página Siete. October 3, 2017. *Denuncian a laicos, cívicos y un canal de TV por discriminación en aniversario cruceño*; Asociación Nacional de la Prensa (ANP). October 3, 2017. *La ANP denuncia intento de censura a canal de TV*.

²⁰⁴ Página Siete. October 3, 2017. *Denuncian a laicos, cívicos y un canal de TV por discriminación en aniversario cruceño*; Asociación Nacional de la Prensa (ANP). October 3, 2017. *La ANP denuncia intento de censura a canal de TV*; Estado de Bolivia. Asamblea Legislativa Plurinacional. Ley contra el Racismo y toda forma de Discriminación. October 8, 2010. Available at: <https://bolivia.infoleyes.com/norma/2395/ley-contra-el-racismo-y-toda-forma-de-discriminacion-045>

²⁰⁵ Los Tiempos. April 1, 2017. *UMSS conmina al Cedib a desalojar sede en 2 días*; Página Siete. April 5, 2017. *EL desalojo del CEDIB arriesga el fondo documental de Bolivia*; Civicus. May 5, 2017. *Civil Society Organization in Cochabamba Harassed and Forced to Relocate*;

125. Principle 4 of the Declaration of Principles on Freedom of Expression which states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

H. Internet and freedom of expression

126. The Office of the Special Rapporteur has received concerning information on incidents of cyber-attacks against media infrastructures in Bolivia. In 2017, *Sol de Pando*, *Agencia de Noticias Fides*, *La Razón* and *Página Siete* media have suffered attacks on their respective websites, rendering them unavailable.²⁰⁶

I. Other relevant situations

127. On March 24, 2017, Erick Condorena and Sandra Mariscal, Bolivian journalists from the *Bolivia TV* channel, were detained upon arrival from Bolivia to the Iquique airport. According to the available information, the customs authority requested a work visa for them to enter the country as journalists. Likewise, on March 28, 2017, nine Bolivian journalists from the various media participating in the inaugural flight of the Chilean-Brazilian airline LaTAM, would have been detained at the Santiago de Chile airport and would only have been authorized to enter the country under the condition that they signed a document by which they committed themselves, among other things, to not affect the internal and external security, sovereignty, and public order of Chile. In the first incident, the journalists would have been warned that in order to pursue their professional activity in Chile they should be previously accredited in a state office in Santiago de Chile. Also, the journalists involved in the two incidents mentioned expressed that they would have been held incommunicado for several hours and would have been intimidated by officials of the Chilean customs authority. Regarding the incidents, civil society organizations, the media, and the Bolivian state expressed their rejection before the Chilean government for the alleged incidents of harassment and restriction of journalistic coverage towards Bolivian journalists.²⁰⁷

²⁰⁶ El Diario/ANP. March 24, 2017. [Agencia de Noticias Fides sufre ataque informático](#); Agencia de Noticias Fides. January 25, 2017. [Periódico Sol de Pando denuncia ataque informático](#); Eju/ANF. January 25, 2017. [Dos periódicos de Bolivia de línea independiente denuncian ataque informático](#); Página Siete. January 25, 2017. [Página Siete sufrió ataque informático](#); *Observatorio Boliviano de Derechos Humanos*. Reporte Semestral de Violaciones a Los Derechos Humanos Sucidadas en Bolivia. Periodo Enero – Julio 2017. August 2017.

²⁰⁷ Agencia Fides. March 24, 2017. [ANP reclama por maltrato a periodistas bolivianos que fueron retenidos en Iquique](#); El Diario. April 7. [ANP expresa solidaridad con Pedro Rivero Jordán](#). Eju. March 24, 2017. [Retenidos e incommunicados en Chile, periodista y camarógrafo de estatal Bolivia Tv relatan la odisea](#); La Razón. March 24, 2017. [Periodista y camarógrafo de Bolivia Tv relatan que fueron retenidos e incommunicados en Chile](#); El Diario. March 29, 2017. [Nueve periodistas bolivianos fueron retenidos en Santiago](#); El Deber. March 28, 2017. [Periodistas bolivianos denuncian hostilidad en aeropuerto de Santiago](#); El Comercio. March 29, 2017. [Periodistas bolivianos denuncian malos tratos en Chile](#); La Razón. March 28, 2017. [Grupo de periodistas bolivianos fue retenido en aeropuerto de Chile](#); La Tercera. March 29, 2017. [La Paz asegura que periodistas bolivianos fueron obligados a firmar para “no ejercer sus labores en Chile”](#); Ahora Noticias. March 29, 2017. [Bolivia acudirá a organismo internacional: acusa violación de derechos a periodistas en Chile](#); Noticias de Bolivia/YouTube. March 24, 2017. [Video de la periodista Sandra Mariscal y como fue maltratada en Chile](#); Estado Plurinacional de Bolivia. Defensoría del Pueblo. DP-DESP. N 073/2017. March 27, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

7. BRAZIL

128. During 2017, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have continued to document cases of attacks against journalists and social media workers due to the exercise of their work, although in this year there has been no record of a murder of journalists. The Office of the Special Rapporteur observes with concern the cases of violence and excessive use of force against journalists and demonstrators in the context of the various protests and social demonstrations that took place throughout the country, as a result of the instability of the Brazilian political scene that led to the destitution of Dilma Rousseff as President of the Republic through a political process of impeachment, and the takeover of Michel Temer as President of the Republic. In particular, the social and labor security reform proposed by the federal government caused strong opposition and protests that were met with excessive use of force. The main perpetrators of these attacks were members of the Military Police.

A. Progress

129. On February 1, journalists Tatiana Merlino, Débora Prado, and Pedro Pomar, were acquitted by the 1st Criminal Chamber of the Pinheiros Forum [*1ª Vara Criminal do Fórum de Pinheiros*] in the criminal action filed by the former Secretary of Health of São Paulo, Giovanni Guido Cerri. Guido Cerri would accuse the journalists of the crime of defamation due to the report "Entrepreneur of the sector, Secretary of Health 'gives the letters' in two OSS" [*Empresário do setor, secretário da Saúde "dá as cartas" em duas OSS*], published in the May 2013 edition of the Journal of the Association of Teachers of the University of São Paulo [*Associação dos Docentes da Universidade de São Paulo*] (Adusp).²⁰⁸

130. On June 21, the 4th Chamber of the Supreme Court of Justice [*4ª Turma do Superior Tribunal de Justiça*] (STJ) authorized the website '*Falha de S. Paulo*', to operate again. The website, which would be a parody to the newspaper *Folha de São Paulo*, would have been with its access suspended since 2010, due to a judicial determination in the framework of the process filed by the *Folha de São Paulo* newspaper. The newspaper would argue that the website would violate its brand by using similar typology, which could cause confusion among its readers. However, the Court understood that the prohibition would mean an act of censorship, and that the authors right authorizes parody and protects the right to irreverence of the right to entertainment.²⁰⁹

B. Assaults, detentions, threats, and harassment against journalists and the media

131. The attacks on journalists and social media workers in Brazil were allegedly perpetrated mainly by police agents. In this regard, on January 31, photojournalist, Léo Pinhero, was arrested in São Paulo on charges of "obstruction of police work" while attempting to document a search action by the Metropolitan Civil Guard [*Guarda Civil Metropolitana*] (GCM), despite having identified himself as a journalist.²¹⁰ In addition, on February 23, two photojournalists would have been shot with a firearm while covering a conflict in the region known as "Cracolândia" in São Paulo. An investigation would have been initiated to identify and punish the perpetrator of the shooting.²¹¹ Similarly, an investigation would have been initiated into the conduct of a military policeman in the city of Urânia, state of São Paulo, who threw to the ground a reporter's

²⁰⁸ Artigo 19. February 3, 2017. *Justiça absolve jornalistas em ação movida por ex-secretário de Saúde de São Paulo*; Associação Nacional de Jornais (ANJ). February 13, 2017. *Justiça absolve jornalistas acusados de difamação por ex-secretário da Saúde de SP*.

²⁰⁹ Consultor Jurídico (Conjur). June 21, 2017. *Legislação brasileira protege a paródia, diz STJ ao liberar Falha de S. Paulo*; Artigo 19. June 22, 2017. *Justiça alega censura e libera site Falha de S. Paulo*; Superior Tribunal de Justiça (STJ). Recurso Especial No. 1.548.849 – SP (2014/0281338 – 0). Available at: <http://s.conjur.com.br/dl/falha-spaulo-voto-vencedor-salomao.pdf>

²¹⁰ Portal Comuniquese. January 31, 2017. *Repórter é preso ao fotografar ação de guardas-civis em SP*; R7. January 31, 2017. *Jornalista é detido em São Paulo ao fotografar ação de guardas municipais*.

²¹¹ Associação de Repórteres Fotográficos e Cinematográficos no Estado de São Paulo (Arfoc-SP). No date. *Repórter Fotográfico baleado durante cobertura na região da Cracolândia em SP*; G1. February 23, 2017 (updated on March 15, 2017). *Dois fotógrafos são baleados durante ação policial na Cracolândia*; UOL. February 23, 2017. *Celular salva fotógrafo de tiro real em confronto na Cracolândia*.

cell phone while filming the arrival of a defendant for a hearing on August 1, after preventing the cameraman from taking shots of the arrival of the Police vehicle.²¹²

132. For its part, on July 10, reporter Vinícius Arruda, of the *Metro* newspaper, would have been detained in Vitória, in the state of Espírito Santo, after allegedly reporting a police approach to suspects in a neighborhood of the city. According to the information, the journalist would have been carrying his professional identification at the time of the events. As reported, at first, the journalist would have been taken to the police station as a witness to the events. However, once there, where he would have stayed for at least seven hours, he would have been told that he was being held for "disobedience". The government of the state would have published a note of repudiation "of any intimidating action against journalists in the exercise of their journalistic work."²¹³ Likewise, on July 24, Mauro Silva, a reporter for the newspaper *O Estado de Mato Grosso do Sul*, was reportedly arrested by the police when he tried to record a discussion between the police and a civilian. According to the information received, the reporter would have been released after an hour and a half.²¹⁴

133. For their part, on September 12 military police would have attacked journalists Douglas Freitas and Isadora Neumann while they were covering the protest for the closure of the Queermuseu exhibition in Porto Alegre, Rio Grande do Sul state.²¹⁵ In the same month a Military Police officer would have pointed a gun to the head of journalist Wellington Macedo when he was in front of the Santa Casa de Sobral Hospital, Ceará state, while he was waiting for the arrival of the victims of a traffic accident.²¹⁶ In the same state and month, the presenter Patrícia Calderon, would have been notified to declare in the Comptroller General of Discipline [*Controladoria Geral de Disciplina*] (CGD) after a complaint [*representação*] filled by a Chief of Police. According to the information, Calderon would have been notified to declare for having presented a report about the death of an inspector who died after a testimony in the CGD that would have gone wrong.²¹⁷

134. The reporter and columnist of *O Globo*, Míriam Leitão, would have been harassed before and during a flight between Brasília and Rio de Janeiro, on June 3. According to the information received, in the flight that she boarded, there would have also been 20 delegates from a Brazilian political party, who would have screamed at her threats, harassments, and offenses because they considered the journalist to be an "enemy of

²¹² G1. August 4, 2017. *Sentimento é de impotência', diz repórter agredido por policial militar na rua*; G1. August 3, 2017. *Equipe de jornalismo é agredida por policial durante cobertura de audiência em Urânia*; A Voz das Cidades. August 1, 2017. *Urânia – Equipe de Televisão é agredida por Policiais Militares de Urânia*.

²¹³ G1. July 10, 2017. *Jornalista é detido após filmar abordagem da PM, em Vitória, diz advogado*; Gazeta Online. July 10, 2017 (updated on July 11, 2017). *Repórter que filmou abordagem da PM é indiciado por desobediência*; O Estado do ES. July 10, 2017. *Jornalista detido por filmar abordagem de PMs é indiciado*.

²¹⁴ Associação Nacional de Jornais (ANJ). July 25, 2017. *Repórter é detido em Campo Grande após tentar filmar discussão entre policial e civil*; Portal Imprensa. July 24, 2017. *Repórter é detido em Campo Grande após tentar filmar discussão entre policial e civil*; Campo Grande News. September 24, 2017. *Jornalista acaba detido pela PM após filmar acidente de trânsito*.

²¹⁵ Inter American Press Association (IAPA). *Brazil Report - 73rd General Assembly*. Salt Lake City, Utah. October 27-30. October 26, 2017; Federação Nacional dos Jornalistas (Fenaj). September 13, 2017. *SINDJORS repudia nova ação truculenta da Brigada Militar contra a imprensa*.

²¹⁶ Sobral 24 horas. *Tenente da polícia militar saca pistola e aponta para cabeça de jornalista em Sobral: vídeo*; Federação Nacional dos Jornalistas (Fenaj). September 27, 2017. *Sindjorce e FENAJ repudiam abuso de autoridade e cerceamento ao exercício profissional de jornalistas*.

²¹⁷ Federação Nacional dos Jornalistas (Fenaj). September 27, 2017. *Sindjorce e FENAJ repudiam abuso de autoridade e cerceamento ao exercício profissional de jornalistas*; Sindicato dos Policiais Civis de Carreira do Estado do Ceará. September 20, 2017. *Nota de repúdio a CGD e apoio a jornalista Patrícia Calderon*.

the party".²¹⁸ In addition, on June 16, film reporter Walfran Leão, of *TV Em Tempo* and Laila Pereira of *Rede Amazônica*, were allegedly beaten by security men during a political party convention in Manaus, Amazonas state.²¹⁹

135. On the other hand, the National Association of Journalist [*Associação Nacional de Jornais*] (ANJ) and the Inter-American Press Association (IAPA) reported that in 2017 there would have been a decrease in attacks against press freedom. According to these organizations, this decrease would be partly a reflection of the decrease of demonstrations that had been happening in recent years in the country, in which journalists ended up being victims of both demonstrators and the police.²²⁰

136. Civil society organizations have stated in various reports that most of the attacks and crimes against journalists that have occurred in recent years in the country would go unpunished. As reported, in most of the 12 cases of murders of journalists that would have occurred between 2012 and 2014, and that still would not have been resolved, the suspected masterminds would be Police or political agents.²²¹ Likewise, according to the Committee to Protect Journalists (CPJ), Brazil would be one of the countries in which the impunity score increased in the highest proportion during the decade that the organization has published the Global Impunity Index, rising by 177 per cent. In addition, the CPJ indicated that since 2015 no one accused of murdering a journalist in the country had been convicted.²²²

137. Amidst this situation, In August the Civil Police of Paraíba would have detained five people, including three former police officers, suspected of participating in the murder of radio journalist Ivanildo Viana., Viana was murder on February 27, 2015, in João Pessoa, Paraíba state. The motive of the crime, nor its intellectual author, still would not have been identified.²²³ Also, in September, the mayor of Santa Luzia, in Belo Horizonte, Minas Gerais state, was arrested on suspicion of being involved in the murder of Mauricio Campos Rosa, a journalist for the newspaper *O Grito*, on August 17, 2016. In October, the Supreme Court of Justice [*Superior Tribunal de Justiça*] (STJ) ordered house arrest.²²⁴

138. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR, approved in the year 2000, establishes that "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Social protest

²¹⁸ O Globo. June 13, 2017. *O ódio a bordo*; Associação Brasileira de Jornalismo Investigativo (Abraji). June 13, 2017. *Abraji repudia ataque à colunista Miriam Leitão durante voo*; Estadão. June 13, 2017. *Associações de jornalismo repudiam ataque de membros do PT contra Miriam Leitão em voo*.

²¹⁹ Associação Nacional de Jornais (ANJ). June 26, 2017. *Jornalistas são agredidos por seguranças em evento político*.

²²⁰ Folha de São Paulo. October 19, 2017. *ANJ vê queda nos ataques à liberdade de expressão no Brasil*; Inter American Press Association (IAPA). *Brazil Report - 73rd General Assembly. Salt Lake City, Utah. October 27-30*. October 26, 2017.

²²¹ Artigo 19. *O Ciclo do silêncio: Impunidade em homicídios de comunicadores no Brasil*. 2016; Inter American Press Association (IAPA). *Brasil*. 2017; Associação Brasileira das emissoras de rádio e televisão (Abert). *Violações a Liberdade de Expressão: Relatório Anual 2016*. 2016. No date; Federação Nacional dos Jornalistas (Fenaj). *Relatório 2016: Violência contra jornalistas e liberdade de imprensa no Brasil*. January 2017.

²²² Committee to Protect Journalists (CPJ). October 31, 2017. *Getting Away with Murder*.

²²³ Inter American Press Association (IAPA). *Brazil Report - 73rd General Assembly. Salt Lake City, Utah. October 27-30*. October 26, 2017.

²²⁴ Inter American Press Association (IAPA). *Brazil Report - 73rd General Assembly. Salt Lake City, Utah. October 27-30*. October 26, 2017; G1. September 7, 2017. *Prefeita de Santa Luzia é presa por suspeita de envolvimento em morte de jornalista*; G1. October 6, 2017. *STJ concede prisão domiciliar para prefeita afastada de Santa Luzia*.

139. The Office of the Special Rapporteur observes with concern the cases of violence and excessive use of force against journalists and protesters in the context of the protests and social demonstrations that took place throughout the country during the year. In this regard, on April 11, a 19-year-old boy died after being shot by a rubber bullet on March 17 while participating in a demonstration against violence in the city of Itambé, in the state of Pernambuco.²²⁵

140. According to information of public knowledge, on April 17 photographers André Lucas and Gustavo Ferreira de Oliveira were arrested after a demonstration of the *Movimento Passe Livre* in São Paulo. After the photographers recorded a blockade with burned tires, they would have been arrested under the accusation of being the authors of the fire and taken to the police station.²²⁶ In addition, on April 28, in the city of Goiânia, state of Goiás, a military police officer would have physically attacked the student Mateus Ferreira da Silva while he was participating in a demonstration against the reforms proposed by the federal government, suffering a brain injury and multiple fractures.²²⁷

141. The Office of the Special Rapporteur was informed that on March 13 the Office of the Attorney General of the State of São Paulo [*Ministério Público do Estado de São Paulo*] (PM-SP) issued a list with 11 recommendations to the Military Police so that it will guarantee the free and safe exercise of media workers in the context of protests and social demonstrations in the country. According to the information, the Military Police would have 90 days to inform the Office of the Attorney General of the adoption of the measures. Said recommendations would be the result of a civil investigation [*inquérito civil*] of the MP-SP, through which it would have identified human rights violations against press professionals and against the right to freedom of expression by agents of the State, especially the Military Police.²²⁸

142. In the manifestations of April 28 in different regions of the country, and on May 24 at the Esplanade of Ministries in Brasília, several cases were reported of arrests of demonstrators, use of tear gas bombs, beatings by batons, and use rubber bullets to disperse the protesters, as well as cases of journalists and protesters assaulted. According to available information, at least one person would have been wounded with

²²⁵ G1. April 11, 2017. *Morre jovem baleado por PM em protesto na Mata Norte de PE*; Artigo 19. April 12, 2017. *Jovem morre um mês depois de ser alvejado por bala de borracha em protesto*.

²²⁶ Artigo 19. April 24, 2017. *Detenção de fotógrafos em protesto representa ato de arbitrariedade*; Agência Brasil. April 17, 2017. *Fotógrafos são detidos após protesto contra reajuste de tarifa em São Paulo*; Opera Mundi. April 18, 2017. *PM de São Paulo prende fotógrafos sob acusação de provocarem incêndio que somente registraram*.

²²⁷ G1. May 1, 2017. *PM afasta capitão após agressão de estudante durante protesto em Goiânia*; Folha de São Paulo. May 1, 2017. *Após agressão a estudante, PM goiana afasta capitão de funções de rua*.

²²⁸ Folha de São Paulo. March 28, 2017. *Promotoria pede à PM medidas contra agressões a jornalistas em protestos*; Sindicato dos Jornalistas Profissionais no Estado de São Paulo. March 30, 2017. *Violência contra jornalistas: Ministério Público envia recomendação à PM de São Paulo*; Artigo 19. March 29, 2017. *Ministério Público quer que PM-SP adote medidas visando segurança de comunicadores em protestos*.

a firearm during the protests in Brasilia.²²⁹ The Ministry of Public Security of the Federal District Government [*Secretaria da Segurança Pública e da Paz Social do Distrito Federal*] (SSP-DF) reported that an investigation had started against the two policemen who allegedly shot at the demonstrators in the May 24 protest.²³⁰

143. In this context it is worrisome that in response to the protests of May 24, the Government issued a Decree authorizing the use of the Armed Forces to guarantee law and order in the Federal District between 24 and 31 of May. This decree was revoked on May 25, 2017, after criticism from human rights organizations and experts at the national and international level. The IACHR and the South America Regional Office of the United Nations Office of the High Commissioner for Human Rights (OHCHR) issued a joint press release condemning the excessive use of force by the police in the demonstrations.²³¹

144. According to information of public knowledge, on November 17 during the protests requesting the preventive detention of deputies in the city of Rio de Janeiro, police officers would have used tear gas bombs and rubber bullets against the demonstrators. A young man would have been injured in the head by a rubber bullet and a public servant would have been injured by a moral effect bomb.²³²

145. Regarding the protection of assembly and manifestation rights, in February, the São Paulo Court of Justice [*Tribunal de Justiça de São Paulo*] (TJ-SP) ratified the November 2016 decision authorizing the use of rubber bullets and tear gas bomb by the Military Police in public demonstrations in São Paulo.²³³ Earlier, in October 2016, a judge of the 10th Public Treasury Chamber of São Paulo [*10ª Vara de Fazenda Pública de São Paulo*], sentenced the State of São Paulo to pay compensation for Police violence during the protests of 2013, and banned, among other things, the use of rubber bullets and tear gas in demonstrations. According to the

²²⁹ IACHR. May 26, 2017. *Press Release No.069/17. UN Human Rights and IACHR Condemn Excessive Use of Force during Social Protests and during Security Operations in Brazil*; G1. May 25, 2017. *Temer suspende ordem para ação das Forças Armadas em Brasília*; Jusbrasil. Diário Oficial da União. May 24, 2017. R7. April 28, 2017. *Polícia de SP prendeu 21 pessoas durante protestos, diz SSP*; Veja. April 28, 2017. *Polícia prendeu 21 pessoas durante a greve geral*; R7. April 28, 2017. *Saiba como foram os atos em São Paulo e no Rio de Janeiro*; R7. April 28, 2017. *'Nada justifica investida com bombas pela polícia', diz OAB-RJ*; Política Aplicada. April 29, 2017. *Rio de Janeiro: repressão, fura-greves e resistência*; Ordem dos Advogados do Brasil – Seccional do Estado do Rio de Janeiro. April 28, 2017. *OAB/RJ repudia ação violenta das forças policiais em ato desta sexta*; G1. April 28, 2017. *Cinco pessoas ficam feridas em manifestação no Centro do Rio*; O Globo. May 24, 2017. *Vídeo: Policiais atiram na direção de manifestantes em Brasília*; Brasil 247. June 8, 2017. *Servidor baleado em protesto contra Temer é transferido para BH*; Associação Brasileira de Jornalismo Investigativo (Abraji). May 29, 2017. *Sete jornalistas são agredidos em protesto em Brasília*.

²³⁰ IACHR. May 26, 2017. *Press Release No.069/17. UN Human Rights and IACHR Condemn Excessive Use of Force during Social Protests and during Security Operations in Brazil*; O Globo. May 24, 2017. *Secretaria de Segurança do DF abre inquérito para apurar tiros em manifestantes*; Metrôpoles. May 24, 2017 (updated on June 28, 2017). *PM abre inquérito para apurar tiros de policiais contra manifestantes*.

²³¹ IACHR. May 26, 2017. *Press Release No.069/17. UN Human Rights and IACHR Condemn Excessive Use of Force during Social Protests and during Security Operations in Brazil*; G1. May 25, 2017. *Temer suspende ordem para ação das Forças Armadas em Brasília*; Jusbrasil. Diário Oficial da União. May 24, 2017.

²³² O dia. November 17, 2017. *Manifestantes fazem ato na Alerj para pedir prisão preventiva de deputados*; Folha de São Paulo. November 17, 2017. *Polícia reprime manifestantes que forçam grades da Assembleia no Rio*; O Povo. November 17, 2017. *Estudante é atingido por bala de borracha em manifestação em frente da Alerj*; Estadão. November 17, 2017. *Cenas do Rio em guerra no dia D para Picciani*; Diário do Nordeste. November 18, 2017. *Manifestantes são feridos em protesto*.

²³³ G1. February 14, 2017. *TJ-SP autoriza uso de balas de borracha por PMs em protestos*; G1. November 8, 2016. *Justiça volta a permitir uso de bala de borracha em manifestações em SP*; Estadão. November 8, 2016. *Justiça de SP volta a permitir bala de borracha e gás em manifestações*; R7. November 8, 2016. *Justiça de SP volta a permitir uso bala de borracha por PM em manifestações*; Agência Brasil. February 14, 2017. *TJ-SP autoriza polícia a usar gás lacrimogêneo e balas de borracha em protestos*.

judgement, "the element that caused the violence in the protests was the lack of preparation of the Military Police."²³⁴

146. This Office observes with concern the use of judicial actions, such as the *Interdito Proibitório*²³⁵, to limit protests and social demonstrations in the country. In this regard, on May 5, a decision of the 5th Court of the Public Treasury of Curitiba [5ª Vara da Fazenda Pública de Curitiba] would have granted an injunction in an *Interdito Proibitório* action filed by the Mayor's Office of the city of Curitiba with the object of preventing, among others, activists of the Landless Rural Workers' Movement [*Movimento dos Trabalhadores Rurais Sem Terra*] (MST), as well as other movements, from approaching the Federal Justice building during the testimony of former President Luiz Inácio Lula da Silva. According to the Mayor's office, in the event of occupation of the premises near the Federal Justice building, the safety of the population of this region would be compromised "once there is threat of imminent violence."²³⁶

147. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"²³⁷ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."²³⁸

148. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles."²³⁹

D. Stigmatizing statements

149. According to the information available on May 6, former President Luiz Inácio Lula da Silva declared at a Congress of the Workers Party [*Partidos dos Trabalhadores*] (PT) that "The media covers said that the PT was over and that Lula will be arrested. I've been listening to it for two years. If they do not arrest me soon, maybe I'll arrest them for the lies they tell".²⁴⁰

²³⁴ Agência Brasil. October 20, 2016. *Nova decisão judicial proíbe uso de bala de borracha em protestos em São Paulo*; G1. October 20, 2016. *Justiça condena SP a pagar R\$ 8 mi por violência policial em protestos*; Folha de São Paulo. October 20, 2016. *Estado de SP é condenado por excessos da PM nas manifestações de 2013*.

²³⁵ Legal instrument that seeks to prevent imminent aggressions that threaten the possession of goods.

²³⁶ Jornal do Brasil. May 8, 2017. *Depoimento de Lula faz Justiça proibir acampamentos em Curitiba*; Página1news. May 8, 2017. *Justiça proíbe acampamentos em Curitiba por conta de depoimento de Lula*.

²³⁷ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

²³⁸ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

²³⁹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

²⁴⁰ Estadão. May 6, 2017. *'Se eles não me prenderem logo, quem sabe eu mando prendê-los', diz Lula*; RedeTV. May 6, 2017. *"Se não me prenderem logo, quem sabe eu mando prendê-los", ironiza Lula*.

150. On May 16, federal representative Jair Bolsonaro broadcasted a video on Youtube where he verbally aggravates the *Folha de São Paulo* media and calls it "fake news" while speaking on the phone to one of its journalists. On October 6, the councilor of Rio de Janeiro, Carlos Bolsonaro, posted on his official Twitter account an image qualifying *Revista Veja* as "fake news"; On November 13 he referred to some media as "Fake news and scoundrels" on Twitter; on September 22 he tweeted "The #fakenews are certain that the Brazilian people are fools [otário]"; On October 3, he posted on Twitter that "The fake news saga against Jair Messias Bolsonaro continues".²⁴¹

151. On September 4, federal representative Jair Bolsonaro responded to a comment by journalist Glenn Greenwald on Twitter making pejorative allusions towards his homosexual orientation.²⁴²

152. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."²⁴³

E. Subsequent liability

153. The IACHR and its Office of the Special Rapporteur have maintained that the rules on *desacato* are incompatible with the inter-American human rights system, as they lend themselves to "to abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions."²⁴⁴ In this regard, the Office of the Special Rapporteur received with concern the information that in May the 3rd Section of the STJ decided that contempt [*desacato*] remains a crime in Brazil after meeting with its two Criminal Law Chambers to resolve the issue definitively. Previously, in December 2016, the Fifth Chamber of the STJ had decided that the offense of contempt [*desacato*] contravened Article 13 of the American Convention.²⁴⁵

²⁴¹ "A SAGA DA FAKENEW CONTRA JAIR MESSIAS BNOLSONARO CONTINUA..." Official Twitter account of Carlos Bolsonaro @carlosbolsonaro. [October 3, 2017](#); "A #fakenews tem certeza q o brasileiro é otário. Veja tb o Noblat! Ñ é a toa o comportamento político de seu filho" Official Twitter account of Carlos Bolsonaro @carlosbolsonaro. [September 22, 2017](#); "Fakenews e canalhas, tá muito feio mesmo: Bolsonaro não tem guru em economia ou em setor algum! Há um grupo bom e crescente E QUE NÃO PROCURA PROTAFONISMO, mas somar. Parem de inventar ou espalhar mentiras o tempo todo! Meu deus!" Official Twitter account of Carlos Bolsonaro @carlosbolsonaro. [November 13, 2017](#).

²⁴² "'Do you burn the donut?' I don't care! Be happy! Hugs for you!" Official Twitter account of Jair Bolsonaro @jairbolsonaro. [September 4, 2017](#); "A SAGA DA FAKENEW CONTRA JAIR MESSIAS BNOLSONARO CONTINUA..." Official Twitter account of Carlos Bolsonaro @carlosbolsonaro. [October 3, 2017](#); "A #fakenews tem certeza q o brasileiro é otário. Veja tb o Noblat! Ñ é a toa o comportamento político de seu filho" Official Twitter account of Carlos Bolsonaro @carlosbolsonaro. [September 22, 2017](#); "Fakenews e canalhas, tá muito feio mesmo: Bolsonaro não tem guru em economia ou em setor algum! Há um grupo bom e crescente E QUE NÃO PROCURA PROTAFONISMO, mas somar. Parem de inventar ou espalhar mentiras o tempo todo! Meu deus!" Official Twitter account of Carlos Bolsonaro @carlosbolsonaro. [November 13, 2017](#).

²⁴³ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

²⁴⁴ IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995, p. 223 (Spanish version).

²⁴⁵ IACHR. [Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II \(Evaluation of the State of Freedom of Expression in the Hemisphere\)](#). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para.172; STJ. May 29, 2017. *Terceira Seção define que desacato continua a ser crime*.

154. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that "public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information."

155. In August, the judge of the Third Civil Chamber of the Teresina County [Tercera Sala Civil de la Comarca de Teresina] would have granted a precautionary measure that would prohibit the *180graus* news site and the journalists Apoliana Oliveira and Aquiles Nairó, from publishing news about the construction company Caxé - constructora that would be investigated along with another 12 companies in the of the Court of Accounts of the state of Piauí. According to this precautionary decision, the site would also be required to take down all the news about Caxé from its website. If it did not comply with the judicial decision, the court would have determined a daily fine of R\$1,000, approximately US\$312. However, on September 19 the Supreme Court of Brazil [Supremo Tribunal Federal] (STF) suspended the measure. According to Minister Edson Fachin, the restriction to the *180graus* site "clearly embodies an act of censorship (...) to the fundamental precepts that constitute freedom of the press." Likewise, on October 26, the STF would also have granted a precautionary decision to suspend the decision of the courts of the state of São Paulo that would have determined the withdrawal of journalistic material from the *Exame Magazine* and the abstention of disclosure of information with regards to the judicial recovery of the company Agropecuária Tuiuti S/A. According to Minister Luiz Fux, such a measure would establish prior censorship "in possible violation of the authority of the STF decision that declared the Press Law (Law 5,250 / 1967) not aligned to the Federal Constitution of 1998."²⁴⁶

156. The Office of the Special Rapporteur welcomes the announcement made in May by the President of STF, Minister Carmen Lucia, on the establishment of a National Executive Commission in the National Forum of Judiciary and Freedom of the Press [Fórum Nacional do Poder Judiciário e Liberdade de Imprensa], of the National Council of Justice [Conselho Nacional de Justiça] (CNJ) to investigate possible restrictions on freedom of the press in the judicial sphere.²⁴⁷ The Forum will analyze cases of alleged censorship, prosecution of journalists, and other restrictions to journalistic work in which the judiciary can act to guarantee the right to information and freedom of the press in the country. In August, the CNJ requested that Brazilian television, newspaper, and radio associations submit a list of judicial proceedings related to the issue of freedom of the press in Brazil, in order to identify the involvement of the judiciary and conflicts related to the press.²⁴⁸

F. Direct censorship

157. On March 8, through a precautionary decision, the judge of the Third Criminal Chamber of Maceió [3ª vara Criminal de Maceió] would have banned journalist Davi Soares and *Diario do Poder* from publishing articles on a congress representative, who, moreover, a judge ordered his name could not be mentioned in the future publications of the newspaper. In addition, the judge would have ordered the withdrawal of all materials published on said representative. The precautionary measure would have been granted within the framework of a process for the crimes of insult, slander, and defamation that would have been filed by said representative against journalist Davi Soares and *Diario del Poder*.²⁴⁹

158. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information

²⁴⁶ Supremo Tribunal Federal (STF). October 26, 2017. *Liminar suspende decisão que proibiu revista de noticiar recuperação judicial de empresa.*

²⁴⁷ Conselho Nacional de Justiça (CNJ). May 3, 2017. *Liberdade de imprensa: Cármen Lúcia cria comissão para mais garantias;* Conselho Nacional de Justiça (CNJ). May 4, 2017. *Nomeada Comissão de Liberdade de Imprensa do CNJ;*

²⁴⁸ Conselho Nacional de Justiça (CNJ). August 9, 2017. *CNJ pede informações sobre processos de liberdade de imprensa.*

²⁴⁹ Federação Nacional dos Jornalistas (Fenaj). March 22, 2017. *Nota Oficial da FENAJ e Sindjornal contra a censura e em defesa da liberdade de imprensa;*

transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

G. Confidentiality of sources

159. In March, in the context of an investigation into violation of professional secrecy [*inquérito que investiga violação de sigilo funcional*], the judge of the 13th Federal Court of Curitiba [*13ª Vara Federal de Curitiba*] ordered the confiscation of documents, computers, hard disks, cellphones, among other things Eduardo Guimarães, in order to discover his sources of information. Likewise, the judge would have ordered a telephone confidentiality breach [*quebra de sigilo telefônico*] of the journalist and issued a court order so that Guimarães was led to testify by force. Later, the judge would have reversed his decision and ordered the exclusion in the investigation [*inquérito*] of "any evidence related to the identification of the source of information." These decisions were made within the framework of the investigation into civil servants who would be leaking confidential information to the press about the inquiries in the *Lava Jato* investigation. According to the information, in March 2016, in his *Blog da Cidadania*, the journalist reported that former President Luiz Inacio Lula da Silva would be cited as a witness by *Lava Jato* investigators, which would have occurred only a few weeks after publication.²⁵⁰

160. The Inter-American Commission recalls that Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression states that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

H. Access to Public Information

161. This year marks the fifth anniversary of the Access to Information Act [*Lei de Acesso à Informação*] (LAI) in Brazil.²⁵¹ Despite significant progress in this area the country still faces challenges in the exercise of this right, especially with respect to information related to the Military Police. Likewise, the requirement that the applicant identify and report an identity document at the time of requesting the information, would be another challenge in the country to the exercise of this right, especially for activists and journalists seeking information of great public interest.

162. On April 10, the 1st Public Treasury Court of the São Paulo Court [*1ª Vara da Fazenda Pública do Tribunal de Justiça de São Paulo*] rejected the request for precautionary measure [*liminar*] filed by the NGO *Artículo 19* to have access to the document prepared by the Military Police of the state of São Paulo on rules of procedure on the collection and storage of images made by police during demonstrations in the streets. The organization filed a Security Mandate [*mandado de segurança*]²⁵² before the court requesting this information after having four requests for access to the information rejected in 2016. According to the organization there

²⁵⁰ Revista Fórum. March 23, 2017. *Advogado de Eduardo Guimarães diz que Moro obteve fonte em quebra de sigilo telefônico*; Consultor Jurídico (Conjur). March 23, 2017. *Depois de quebrar sigilo, Sérgio Moro recua em caso de fontes de blogueiro*; Justiça Federal. 13ª Vara Federal de Curitiba. Pedido de busca e apreensão criminal No. 500876224.2017.4.04.7000/PR. Despacho/Decisão de fecha March 23, 2017. Available at: <http://s.conjur.com.br/dl/decisao-moro-blogueiro.pdf>; Consultor Jurídico (Conjur). March 21, 2017. *Moro determina coercitiva e apreende laptop de blogueiro para descobrir fontes*; Gloval Voices. July 10, 2017. *Juez brasileño exige fuentes a bloguero, pone a prueba los límites de libertad de los medios*; G1. March 21, 2017. *Blogueiro é conduzido coercitivamente à PF em SP para prestar depoimento*; Artigo 19. March 22, 2017. *Decisão de Sérgio Moro contra blogueiro é intimidatória e viola Constituição*; The Intercept Brasil. March 23, 2017. *Sérgio Moro quebrou sigilo telefônico de Eduardo Guimarães antes de ordenar condução coercitiva*.

²⁵¹ Ministério da Transparência e Controladoria-Geral da União (CGU). May 16, 2017. *Governo Federal celebra cinco anos da Lei de Acesso à Informação*.

²⁵² Supremo Tribunal Federal (STF). *Mandado de Segurança*. "Process to guarantee determined and true right, individual or collective, that is violated or threatened by an act of an authority, in an illegal or unconstitutional act".

would be allegations of the creation of databases of demonstrators and intimidation against people recorded.²⁵³

163. In June, the Ministry of Transparency and the Comptroller General [*Ministério da Transparência e Controladoria-Geral da União*] (CGU), publicly reviewed the five years of the LAI, and reported that on June 1 they would have reached more than 500 thousand requests for access to public information in the country. These numbers would have been recorded from May 2012 to June 1, 2017. According to the information published, more than 495 thousand applications were answered. Of these, 75.3 per cent were "fully answered", and 43.2 thousand were denied because they were, among other reasons, classified information, personal data, generic or incomprehensible requests. Additionally, it was reported that the average response time would be around 13 days, which would be less than half of the maximum period established by the Law, which would be 30 days.²⁵⁴

164. On September 28, Brazilian civil society organizations published a joint statement with recommendations to the Brazilian State to promote the strengthening of the Access to Information Law in Brazil, such as the creation of a constitutionally autonomous Transparency Body. In addition to some noted progress, such as expanding the volume and quality of public information available to citizens, said letter indicated some challenges that would still exist on the subject. In this sense, they affirmed that there would be "considerable deficits [*lacunas*] in the implementation and compliance of the LAI in the entire Brazilian State, especially at the state and municipal levels."²⁵⁵

165. On November 8, *Estadão* published an investigation based on audio documents, in which it denounced that, during a meeting of the Municipal Commission on Access to Information [*Comissão Municipal de Acesso à Informação*] (CMAI) of Sao Paulo, Lucas Tavares, chief of staff of the Special Communication Ministry of Sao Paulo [*Secretaria Especial de Comunicação de São Paulo*], affirmed that they would difficult the compilation and delivery of information requested by journalists to the CMAI.²⁵⁶

166. Principle 4 of the Declaration of Principles of the IACHR establishes that "[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Likewise, in accordance with the principle of maximum disclosure, the law must guarantee that access to public information is effective and as wide as possible; and in case of exceptions, these should not become the general rule. In addition, the regime of exceptions must be interpreted restrictively, and any doubt must be resolved in favor of transparency and access.

I. Diversity and pluralism

167. On March 28 President Michel Temer sanctioned Provisional Measure 747 of 2016 [*Medida Provisória – MP 747*] that would simplify the rules regarding renewal of licences of radio and television stations. According to the information, among other things, the approved text would simplify the term of

²⁵³ Artigo 19. April 13, 2017. *Justiça nega acesso à diretriz que regulamenta filmagens em protestos por PM-SP*; Consultor Jurídico (Conjur). April 13, 2017. *Justiça mantém sob sigilo regra sobre filmagem de manifestações em SP*.

²⁵⁴ Ministério da Transparência e Controladoria-Geral da União (CGU). June 2, 2017. *Governo Federal atinge marca de 500 mil pedidos de acesso à informação*.

²⁵⁵ Artigo 19. October 3, 2017. *Entidades divulgam declaração visando fortalecer a transparência no Brasil*; Agencia Brasil. September 28, 2017. *Entidades lançam carta pedindo avanços na Lei de Acesso à Informação*.

²⁵⁶ Estadão. November 8, 2017. *Ouçá o áudio e leia a transcrição da reunião da Comissão de Acesso à Informação*; Associação Brasileira de Jornalista Investigativo (ABRAJI). November 8, 2017. *Prefeitura de SP discrimina jornalistas na aplicação da LAI*.

renewal of the grant and implement the possibility of contractual changes without the need for prior consent of the executive.²⁵⁷

168. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

J. Internet and public media

169. According to data from the project *Ctrl+X*, which maps judicial actions requesting the withdrawal of content from the Internet, judicial decisions that would prevent the disclosure of information have become more frequent in the country. According to project data, up to November 2017, 121 orders to remove comments from social networks, Google searches, as well as complete reports from web sites processes, were documented. Two types of processes would be highlighted: those of prior censorship and those that would request the complete removal of the media.²⁵⁸

170. In accordance with Principle 5 of the IACHR's Declaration of Principles, “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

171. In October, it was announced that journalists threatened or persecuted through social networks may file a complaint with the Office of the General Attorney of São Paulo [*Ministério Público do Estado de São Paulo*] (MP-SP), which promised to investigate the cases through the Nucleus to Combat Cybercrime [*Núcleo de Combate a Crimes Cibernéticos*] of the MP-SP created in 2016. This decision would have been made after the MP-SP would have alerted the police due to the case of the sports journalist Mauro Cezar Pereira, who would be frequently threatened and harassed through social networks.²⁵⁹

172. In addition, the Office of the Special Rapporteur notes with concern the information that Brazil Communications Company [*Empresa Brasil de Comunicação*] (EBC) - responsible for public communication in the country - would be subject to interventions by the Government with respect to their administrative autonomy and editorial freedom. On this matter, in August, the Unions of Journalists and Broadcasters of the Federal District, Rio de Janeiro, and São Paulo, as well as the Commission of the workers of the EBC denounced the “systematic disrespect” of the management of Brazil Communications Company with regards to their workers, and “the attempt, day after day, to dismantle national public communication”. They indicate, among others, that since the amendment of the Law of the EBC through a Provisional Measure, the federal public communication would suffer “daily setbacks”. In this regard, they claim that several programs of the

²⁵⁷ Associação Brasileira de Emissoras de Rádio e Televisão (Abert). March 28, 2017. [É lei: MP 747 é sancionada pelo presidente Michel Temer](#); Associação Brasileira de Rádio e Televisão (Abratel). March 29, 2017. [Vitória para a Radiodifusão: Temer sanciona MP 747; Presidência da República](#). Law No. 13.424 of March 28, 2017; G1. March 28, 2017. [Temer sanciona lei que muda regras para concessão de rádio e TV](#).

²⁵⁸ Associação Brasileira de Jornalismo Investigativo (Abraji). April 25, 2017. [A censura de Marcela Temer é só a ponta do Iceberg](#); Associação Brasileira de Jornalismo Investigativo (Abraji). July 5, 2017. [Ações para retirada integral de site do ar se acumulam](#); Associação Brasileira de Jornalismo Investigativo (Abraji). November 2, 2017. [Projecto CTRL+X - Filtro ativo: Data: 2017](#).

²⁵⁹ El País. October 4, 2017. [Ministério Público de São Paulo mira em crimes de ódio contra jornalistas na Internet](#); Ministério Público do Estado de São Paulo. September 28, 2017. [Procurador pede investigação sobre crimes cometidos via web contra jornalista esportivo](#).

TV Brazil and *Radio Nacional* have been removed from the air, while programs in favor of the Government would have been created.²⁶⁰

173. As the Office of the Special Rapporteur noted in its report on "Freedom of Expression Standards for Free and Inclusive Broadcasting," public media can (and should) play an essential part in ensuring the plurality and diversity of voices necessary in a democratic society. Its role is essential when providing high-quality content that is not necessarily commercial, and that reflects the informational, educational, and cultural needs of the people. However, for public media really to be able to perform their role, they must be independent of the executive branch; truly pluralistic; universally accessible; with funding adequate to the mandate provided for by law; and they must provide community participation and accountability mechanisms at the different levels of content production, distribution, and receipt.²⁶¹

K. Government Advertising

174. On November 3, President Michel Temer sanctioned a Provisional Measure that would have restructured the Government Ministries.²⁶² According to this measure, the Minister of the Secretary-General would inter alia "coordinate, standardize, supervise, and control the publicity and sponsorship of the organs and entities of the federal public administration, direct and indirect, and companies under the control of the Union".²⁶³

175. The Office of the Special Rapporteur recalls that article 13.3 of the American Convention establishes that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions." Similarly, Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that "The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law."

L. Other relevant situations

176. On February 20, the mayor of Sao Paulo, João Doria, enacted Bill 56/2005 approved by the local legislative chamber on February 14. In its article 4, the law imposes pecuniary sanctions against those who paint in spaces or public patrimonies. Likewise, the law establishes that the practice of graffiti must always be carried out with the authorization of the competent bodies responsible for the preservation and conservation of the historical and artistic heritage; it amends Law 13.478, typifying as punishable administrative offense "sticking posters on trees of public buildings, bleachers, parapets, canals and tunnels, poles, traffic signs, hydrants, public telephones, mail boxes, fire alarm and waste queues, curbs, walks and coatings of public buildings, stairs of public or private buildings, statues, monuments, columns, walls, public or private

²⁶⁰ Sindicato dos Jornalistas do Distrito Federal. February 24, 2017. *Sindicato questiona direção da EBC sobre censura no Carnaval*; Fórum Nacional Pela Democratização da Comunicação. September 12, 2017. *Estudo sobre censura na EBC é apresentado em Curitiba*; Sindicato dos Jornalistas do Distrito Federal, August 14, 2017. *EBC: Desrespeito com os profissionais e desmonte da comunicação pública*; Brasil 247. June 14, 2017. *Jornalistas classificam mudanças na EBC como "práticas de censura"*; Blog Conselho Curador. September 1, 2017. *Nota Pública: O desmonte da EBC: um ano depois*; The Intercept Brasil. September 7, 2017. *Jornalistas da EBC relatam constrangimento, medo e censura no governo Temer*.

²⁶¹ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Serv.L/V/II CIDH/RELE/INF. 3/09 December 30, 2009, §83.

²⁶² G1. November 3, 2017. *Temer sanciona medida provisória que garante foro privilegiado a Moreira Franco*.

²⁶³ G1. November 10, 2017. *Temer esvazia Secom e dá a Moreira 'superpoderes' como verba de publicidade*.

buildings, and other urban equipment". On September 13, the Special Body of the Court of Justice of São Paulo [*Órgão Especial do Tribunal de Justiça de São Paulo*] considered unconstitutional articles 8 of the Rules of Procedure, which established that graffiti writers could not be hired by the municipal administration in the future, and 9, which provided for collaboration agreements between the government and private companies for the "repair of the urban landscape" in exchange for publicity.²⁶⁴

177. Within the framework of the hearing on the Independence of Justice Operators in Brazil held on May 24 during the 162 Period of Sessions, the participating organizations said that the country is currently experiencing a situation in which judges who work to enforce domestic laws and inter-American standards are targets of acts of reprisal. They indicated that these judges see their independence and freedom of expression severed, as they are subject to disciplinary measures, investigative proceedings, and warnings, and are singled out publicly over the decisions they make. For its part, the State reported that the 1988 Constitution established a highly sophisticated democratic system which created an autonomous and independent judiciary. In addition, the representatives of the State indicated that Brazil safeguards the judiciary's guarantees of impartiality, and noted that judges express themselves freely in the media.²⁶⁵

178. Additionally, in the framework of the hearing on human rights and free, plural, and uncensored education in Brazil, held during the 162 period of session of the IACHR, the Commission received information on bill 196/2016 "School without Party" [*Escola Sem Partido*]²⁶⁶, which would propose modifying the basic guidelines of education, in order to eliminate any type of ideology in schools.²⁶⁷ As reported, one of the points of this project would contemplate, for example, the prohibition of gender-based education.²⁶⁸ The applicant organizations expressed their concern for the project as they indicated that it would be a violation of the right to freedom of expression and teaching, and would be a sign that the religious / conservative movement would seek to neutralize politics within the halls by barring gender discussions in schools and invisibilizing issues related to sexual orientation. For its part, the Brazilian State highlighted, among other things, that the school curricular base in the country is a document that positively values cultural diversity and social groups. It also stressed that the discussions on these bills are ongoing in a democratic spirit.²⁶⁹

179. In September, the first queer-themed exhibition in Brazil, which featured works by renowned Brazilian artists, was canceled beforehand given the campaigns and criticisms made on social networks and movements that alleged that the works were offensive in advocating acts of "blasphemy", "zoophilia" and

²⁶⁴ Estado de Brasil. Câmara Municipal de São Paulo. *Lei N. 16.612*. February 20, 2017; Folha de São Paulo. September 14, 2017. *Justiça de SP derruba 'lista negra' de pichador em leu encampada por Doria*; EBC. February 2, 2017. *Doria sanciona lei antipichação e proíbe grafite não autorizado*.

²⁶⁵ IACHR. 162 Period of Sessions. Hearing on the independence of judicial operators in Brazil. May 24, 2017. Available at: <https://www.youtube.com/watch?v=Q1U8TmqotQc>

²⁶⁶ Senado Federal, *Projeto de Lei do Senado n 193*. June 3, 2016.

²⁶⁷ Instituto de Desenvolvimento e Direitos Humanos (IDDH), Campanha Nacional pelo Direito à Educação, Associação Brasileira de Lésbicas, Gays, Bissexuais, Travestis e Transexuais (ABGLT), Comissão de Diversidade Sexual da Ordem dos Advogados do Brasil (Seccional Paraná), Confederação Nacional dos Trabalhadores em Educação (CNTE), Sindicato dos Trabalhadores em Educação Pública do Estado do Paraná and Defensoria Pública do Estado do Paraná. Memorial de seguimiento de la audiencia sobre derechos humanos y educación libre, plural y sin censura en Brasil: la propuesta de exclusión de la perspectiva de identidad de género y de orientación sexual en la Base Curricular Nacional y el "Proyecto Escuela Sin Partido" received on August 3, 2017. Available at: Archive of the Inter American Commission of Human Rights.

²⁶⁸ Escola sem partido. *Escola sem partido*. September 5, 2017.

²⁶⁹ IACHR. 162 Period of Sessions. Hearing on Human rights and free, plural and uncensored education in Brazil: The proposal to exclude the perspective of gender identity and sexual orientation in the National Curriculum Base and the "Escola sem partido" project. May 25, 2017. Available at: <https://www.youtube.com/watch?v=IA3ogLwqDiA>; IACHR. June 27, 2017. *Report on Public Hearings from the 162nd Session*.

"pedophilia".²⁷⁰ In this regard, in November organizations of the Brazilian civil society would have rejected through a public statement the attacks against the free artistic manifestation in Brazil, and called attention to the need to establish a parameter that guides the access to cultural and artistic events.²⁷¹

180. According to information of public knowledge, in October, the Minister of Justice of Brazil declared to the *Folha de São Paulo* newspaper he wanted to change the Brazilian policy on Indicative Classification of audiovisual works. According to the minister, the current model, in which a division in Brasilia would be responsible for designating the age of those who can watch soap operas or movies, would be a "madness". In this regard, civil society organizations made a statement indicating that the current model would act "according to the principle of co-regulation, prioritizing the process of self-classification of content", that is, "the classification process is mostly in the hands of the audiovisual producers themselves." Additionally, the aforementioned statement would request that the Ministry of Justice reinforces "the democratic and participatory nature" of the indicative Classification" instead of signaling its dismantling".²⁷²

181. On November 29, the São Paulo Court of Justice decided to deny the request for compensation made by the photographer Sérgio Silva to the State of São Paulo for damages caused to his vision. In June 2013 the photographer would have been hit by a rubber bullet while covering a demonstration and because of that he would have lost his left eye vision. In the decision, the three judges responsible for the trial voted against the photographer's request.²⁷³ According to the information, the judges would have understood that there would be no evidence that the professional was hit by a rubber bullet fired by a police officer¹⁸⁶. This decision rejected the argumentation made by the judge of the 10th Court of the Treasury [*10ª Vara da Fazenda Pública*] of the Court of Justice of São Paulo on August 10, 2016. In the first instance decision, the request was not accepted, as the judge understood that "by putting himself in the middle of the confrontation between the police and the demonstrators [Sérgio Silva] consciously and voluntarily took the risk of being targeted by some of the groups that were facing each other".²⁷⁴

²⁷⁰ El País. September 13, 2017. *Queermuseu: O dia em que a intolerância pegou uma exposição para Cristo*; *The Guardian*. September 12, 2017. *Brazilian queer art exhibition cancelled after campaign by rightwing protesters*; *El País*. September 14, 2017. "*Caso Queermuseu mostra que são tempos de intolerância. Da direita, mas também da esquerda*"; G1. September 12, 2017. "*Não há pedofilia*" *diz promotor após visitar exposição de diversidade sexual cancelada em Porto Alegre*.

²⁷¹ Artigo 19. November 14, 2017. *Entidades rechaçam ataques contra a livre manifestação artística*; *Intervozes – Coletivo Brasil de Comunicação Social*. November 13, 2017. *Nota pública: Direitos das crianças e adolescentes, Classificação Indicativa e liberdade artística*.

²⁷² Artigo 19. October 9, 2017. *Nota pública sobre as declarações do ministro da Justiça acerca da Classificação Indicativa*; *Rede Brasileira Infância e Consumo (REBRINC)*. October 9, 2017. *Nota pública sobre as declarações do Ministro da Justiça acerca da Classificação Indicativa*; *Observatório da comunicação pública (OBCOMP)*. October 13, 2017. *Entidades questionam declaração do ministro da Justiça sobre Classificação Indicativa*.

²⁷³ Artigo 19. November 29, 2017. *Caso Sérgio Silva: a violência das ruas aos tribunais*; *Diário de São Paulo*. November 29, 2017. *TI nega de novo indenização a fotógrafo*.

²⁷⁴ IACHR. *Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para.199.

8. CANADA

182. Canada remains a country that has low levels of violence against journalists. However, there has been an increase in the reported number of incidents involving assaults by demonstrators against journalists covering social protest events. The Office of the Special Rapporteur also observes with concern the proceedings in the case of journalist Ben Makuch, who is contesting an order by the Royal Canadian Mounted Police (RCMP) to hand over information related to one of his journalistic sources. This Office also notes the continued absence of whistleblowers rights in the country, and the State's lack of initiative to resolve the issue.

183. The Office of the Special Rapporteur acknowledges the progress made with the enactment of the Journalistic Sources Protection Act, which enhances the legal protection of journalistic sources who offer information in exchange for anonymity.

184. In addition, the Office of the Special Rapporteur acknowledges the efforts of the State to amend its laws to solve problems related to surveillance and espionage activities and their possible infringement of the right to freedom of expression as well as the right to protest and dissent.

A. Progress

185. On April 11, the Senate of Canada unanimously passed Bill S-231, the Journalistic Sources Protection Act, which establishes additional guarantees for journalists and informants. The bill amended the Canadian Evidence Act and allows journalists to refuse to provide to civil, criminal or administrative courts, documentation or information that could reveal the identity of a source, as well as documents provided by sources.

186. This protection would apply in all cases, unless the information or document cannot be obtained by any other reasonable means and the public interest outweighs preserving the confidentiality of sources. The law also amends the Criminal Code, imposing stricter conditions for the issuance of warrants to gather information or documentation and to intercept the communications of journalists, which will only be able to be issued by a superior court judge. The bill was sent to the House of Commons for consultation, where it was unanimously approved on October 4. Although it is an advancement in the Canadian legal framework on the protection of journalists and sources, the new law maintains a restrictive definition of journalistic activity and does not protect sources whose identity is not publicly known. The civil society organization Canadian Journalists for Free Expression stated that, "While we strongly support Bill S-231, it will provide no protection in the context of Makuch's appeal, because his source does not conform to the requirement of source anonymity as defined in the bill. (...) This leaves our country open to a situation in which a young Canadian journalist could soon be behind bars for simply doing his job. Clearly, this demonstrates a need for stronger legal protections."²⁷⁵

187. On June 6, Justice Minister and Attorney General Jody Wilson-Raybould introduced Bill C-51, "*An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act*," to the Canadian Parliament. The bill includes the repeal of several criminal offenses, including the crimes of blasphemy, challenging another person to a duel, fraudulently pretending to practice witchcraft, and the crime of possessing, printing, distributing, or publishing crime comics.²⁷⁶

²⁷⁵ Openparliament.ca. June 20, 2017. [Bill S-231](#); The Globe And Mail. November 22, 2017. [Senator tables bill to protect confidentiality of journalists' sources](#); Canada Land. April 21, 2017. [Senate Unanimously Adopts Canada's First Press-Shield Bill](#); The Globe and Mail. October 4, 2017. [Ottawa passes legislation to protect journalists' anonymous sources from police](#); Canadian Journalists for Free Expression. October 4, 2017. [Historic day for press freedom in Canada: parliament to pass press shield bill](#).

²⁷⁶ Canada. Department of Justice. [Bill C-51. An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act](#). June 6, 2017; Canadian Journalists for Free Expression (CJFE). June 6, 2017. [CJFE applauds legislation to repeal Canada's Blasphemy Law](#).

B. Social Protest

188. On May 6, Canadian journalist Kevin Metcalf was assaulted by cultural supremacists at a “freedom of speech” rally in Toronto. According to the information available, the incident sparked particular controversy, as the local police were on the scene and said to be lenient toward the perpetrators of the intimidations, threats, and assaults against Metcalf. On June 6, one of the perpetrators of the attack on the journalist, a 22-year old man, was charged with assault by the Toronto Police, who are also investigating a second individual involved in the attack.²⁷⁷

189. On May 29, Beatrice Hunter was arrested after appearing before the Supreme Court in Happy Valley-Goose Bay after violating and refusing to reaffirm an undertaking she signed in 2016 promising to stay a kilometer away from Muskrat Falls, in the Province of Newfoundland and Labrador, where she had reportedly been protesting against the construction of a hydroelectric plant. According to the information available, she was released ten days later.²⁷⁸

190. On August 20, journalists Mike Armstrong and Jean-Vicent Verville of Global News were harassed by demonstrators in Quebec while covering a counter-protest held by activists the same day as an anti-immigrant demonstration organized by the white supremacist movement La Meute. During the incident, one of the journalists was shoved by a demonstrator, and the camera he was carrying was damaged.²⁷⁹

191. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”²⁸⁰ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”²⁸¹

192. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an

²⁷⁷ CBC News. June 4, 2017. [Video - Alleged assault of journalist at anti-M-103 rally sparks concerns about police response](#); Canadian Journalists for Free Expression (CJFE). May 9, 2017. [CJFE: Statement on the assault of an employee by right wing extremists](#); CBC News. June 7, 2017. [Charges laid following alleged assault on journalist at anti-M-103 rally](#).

²⁷⁸ CBC/MSN. June 9, 2017. [Beatrice Hunter released from jail, allowed to protest outside Muskrat Falls gate](#); The Nova Scotia Advocate. June 4, 2017. [Muskrat Falls land defender Beatrice Hunter held in men's prison 1,000 kilometers from home](#).

²⁷⁹ Global News. August 24, 2017. [Quebec City protests: anti-fascist counter-protesters clash with police](#); National Post. August 20, 2017. [Hundreds of counter-protesters swarm far-right La Meute protest in Quebec City](#); Canadian Journalists for Freedom of Expression (CJFE). August 21, 2017. [CJFE deeply concerned by assault on Global News journalists at Quebec City protests](#).

²⁸⁰ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

²⁸¹ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

exception, used under strictly necessary circumstances consistent with internationally recognized principles.”²⁸²

C. Confidentiality of Sources

193. In 2016 Annual Report, the Office of the Special Rapporteur had documented the case of *Vice Media* journalist Ben Makuch, who was ordered by the Superior Court of Ontario on March 1, 2016 to turn over to the Royal Canadian Mounted Police (RCMP) details and content of his alleged correspondence with suspected ISIS fighter Farah Shirdon as the result of a case brought by the RCMP in February 2015.

194. Makuch published several articles and interviews between June and October 2014 about how ISIS supposedly recruits combatants in Western countries, based on information acquired through his professional contact with Shirdon. The court denied *Vice Media Canada's* request to overturn, revoke, or modify the production order. On April 28, 2016, *Vice Media* filed an appeal with the Ontario Court of Appeal; in February 2017, the court upheld the decision, dismissing the appeal. According to the information available, *Vice Media* is now seeking to appeal the case to the Supreme Court of Canada.

195. The Office of the Special Rapporteur on May 6, 2016, sent a letter to the State of Canada requesting information about this issue. The State of Canada replied in a communication received by the Office of the Special Rapporteur on August 5 that the production order requested by the RCMP did not seek to identify a confidential source, as Farah Shirdon's identity was known; rather, the State asserted, the objective was to obtain copies of the messages exchanged between the journalist and his source. In February 2017, Canadian Journalists for Free Expression (CJFE) and a coalition comprised by civil society organizations, media outlets, and trade unions organized a day of protest in different parts of the country defending the protection of the sources in this case. In addition, various organizations including Reporters Without Borders (RWB), the Centre for Free Expression, Unifor, CWA/SCA Canada, *Association des Journalistes Indépendants du Québec (AJIQ)*, *Fédération Nationale des Communications (FNC-CSN)*, Newspapers Canada, Reporters Committee for Freedom of the Press, and the National NewsMedia Council have signed a petition requesting the withdrawal of the judicial order to produce information about Makuch's communications with his source. *Vice News* reportedly sent a letter to the RCMP stating that it would abandon its attempt to fight the demand at the Supreme Court of Canada if the RCMP were to drop its production order. It further argued that the United States Army had confirmed the death of the alleged source, Farah Shirdon, in July 2015, which would negate the basis for the order to produce information, i.e., the criminal investigation and prosecution of Shirdon.²⁸³

196. According to Principle 8 of the IACHR Declaration of Principles of Freedom of Expression “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

²⁸² United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

²⁸³ Canadian Journalists for Free Expression (CJFE). May 13, 2016. [CJFE to Intervene in Vice News vs. RCMP Appeal](#); Fahmy Foundation. September 24, 2016. [Canadian Journalist's Fight Against RCMP Intensifies](#); Ontario Superior Court of Justice. [R. v. Vice Media Canada inc.](#) March 1, 2016; Newswire/CNW. March 22, 2017. [CJFE and press freedom groups condemn Ontario court ruling against VICE journalist Ben Makuch](#); Canadian Journalists for Free Expression (CJFE). May 3, 2017. [Spy Vs. reporter](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. Letter to the State of Canada: Information request regarding the protection of confidentiality of sources of VICE journalist Ben Makuch (Article 18 of the Statute of the CIDH). May 6, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Canada. Permanent Mission of Canada to the OAS. Note PRMOAS Note No. 608 to the IACHR, August 5, 2016, that refers the response to the request for information pursuant to Article 18 of the Statute of the Inter-American Commission on Human Rights dated May 6, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; The Star. September 20, 2017. [Vice urges RCMP to drop demand for materials after reports stating accused terrorist is dead](#); Canadian Journalists for Freedom of Expression (CJFE). September 7, 2017. [Mission accomplished? Shirdon is dead, will the RCMP drop its case against Ben Makuch now?](#)

D. Legal Reforms

197. The Anti-terrorism Act passed in 2015 by Stephen Harper's administration has been strongly opposed by experts and members of civil society since it entered into force in 2015, among other reasons for supposedly violating provisions of the Canadian Charter of Rights and Freedoms and excessively increasing the powers of the Canadian Security Intelligence Service (CSIS), significantly expanding its surveillance capacity and allowing a large number of government departments and agencies to share the private information of individuals without sufficient oversight.

198. With regard to freedom of expression, the law has also been criticized for establishing the criminal offense of "promoting terrorism." On June 20, the new government of Justin Trudeau introduced Bill C-59, "An Act respecting national security matters," to Parliament, which proposed a number of changes to the national security laws, including amendments to part of the Anti-Terrorism Act. The proposed changes are the result of online and in-person consultations run by the government in late 2016. With respect to freedom of expression, the bill has constructive provisions such as increased supervision of the intelligence and security community, including the Royal Canadian Mounted Police, the CSIS, and the Communications Security Establishment; the imposition of Federal Court orders for various activities conducted by Canadian spies; a more precise definition of the concept of "terrorist propaganda," and the clarification that advocacy, protest, dissidence, and artistic expressions are not activities that undermine national security unless accompanied by other activities that threaten Canada's security.

199. In the same context, civil society has criticized the bill for containing legal provisions allowing spies or police officers to impersonate journalists; allowing spies to falsify reports or fabricate false news for purposes of their investigations, and authorizing offensive cyber activities by the CSE outside Canada's borders.²⁸⁴

E. Access to Public Information

200. The Office of the Special Rapporteur has observed the results of the annual report presented in June by Canadian Information Commissioner Suzanne Legault. The Commissioner has harshly criticized the Access to Information Act, for being outdated as well as for the way it has been implemented by government agencies. Regarding the latter, the report documents a number of practical cases and investigations who realize that the right to access to public information in Canada has been hindered in recent years by disinterest, negligence, or a lack of diligence on the part of different government authorities, including the Royal Canadian Mounted Police (RCMP), the Canada Post Corporation, and the Privy Council Office of Canada [*Bureau du Conseil privé*]. In addition, according to the Commissioner, the federal government's proposal for 2017 contained no funding for transparency measures, and "the year is ending with a shadow of disinterest on behalf of the government." In her report, Legault asserts that the Access to Information Act is being used as a shield against transparency and accountability.²⁸⁵

201. Civil society had been criticizing the Access to Information Act since 2013, on the grounds that some parts of it are slow-moving, outdated (no significant changes having been made in 34 years), and have gaps in content that would make it unable to prevent government agencies from concealing or refusing to disclose requested information. In 2016, the new administration of Prime Minister Justin Trudeau announced

²⁸⁴ National Post. July 21, 2017. ['Bill C-51 is a grave threat to our rights in Canada': Groups to launch Charter challenge against law](#); Global News. June 20, 2017. [Liberals say national security reform bill aims to strike balance between keeping Canadians safe, protecting rights](#); The Star. June 20, 2017. [Liberals table bill to remodel national security services, oversight](#); Canadian Journalists for Free Expression. June 21, 2017. [National security acts—like pop acts—require all the right notes](#); Canada. House of Commons of Canada. Bill C-. [An Act respecting national security matters](#). 2017.

²⁸⁵ Canada. [Office of the Information Commissioner of Canada. Annual Report 2016-2017](#). June 2017.

that a complete review of that law would not take place until 2018, but that legislation would be introduced in the meantime with detailed changes.

202. In May 2017, civil society was still calling for the government to introduce those changes. Days after the publication of the annual report of the Office of the Information Commissioner of Canada, the federal government introduced a bill in Parliament to amend the Access to Information Act (Bill C-58) and grant additional powers to the Office of the Information Commissioner, allowing it to compel government agencies to publish certain records after an investigation conducted by the Commissioner, and to reevaluate cases in which attorney-client privilege has been asserted as a reason not to disclose requested information.

203. The bill would also grant government institutions the authority to deny requests for information for different reasons, such as the vague, abusive, or ill-intentioned nature of the request. The Commissioner may also, according to the draft amendment, recuse him or herself from or stop the investigation of a request for information complaint on those same grounds. In addition, the bill would allow government institutions, and involved third parties, to ask the Federal Court for requested information to be protected after a disclosure order. Another relevant aspect of the proposed legislation is that it requires some government entities to proactively publish information defined as “of public interest,” such as the travel expenditures of public servants and, in some cases, of judges. Bill C-58 has been criticized by civil society for failing to make the offices of cabinet ministers subject to the Access to Information Act.²⁸⁶

204. Principle 4 of the Declaration of Principles on Freedom of Expression which states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

F. Other Relevant Situations

205. On September 22, U.S. whistleblower Chelsea Manning was barred by immigration authorities from admission to Canada, upon attempting to enter the country at the border between Champlain, New York, in the United States, and St-Bernard-de-Lacolle, Quebec. According to the available information, based on subsection 44(1) of the Immigration and Refugee Protection Act, Manning was declared inadmissible for “having been convicted outside Canada of a crime that, had it been committed in Canada, would constitute a violation of the Act of Parliament punishable by a maximum term of imprisonment of at least 10 years,” under subsection 36(1) of the same law.²⁸⁷

²⁸⁶ The Star. June 19, 2017. [New bill would boost information watchdog's powers, reshape Access to Information Act](#); Canada in Focus. June 29, 2017. [Federal government proposes reform of public sector Access to Information Act](#); Canadian Journalists for Freedom of Expression. May 3, 2017. [Eighth Annual Review of Free Expression in Canada](#); CFJE. September 27, 2017. [Global Coalition Calls for Government to Scrap 'Inadequate' Access to Information Reform Bill](#).

²⁸⁷ Canadian Journalists for Free Expression (CJFE). September 27, 2017. [Why banning Manning is bad for Canada and democracy](#); Vice. September 25, 2017. [Chelsea Manning was blocked from entering Canada](#).

9. CHILE

206. In June 2016, the Office of the Special Rapporteur made an official visit to Chile to evaluate the situation of freedom of expression in the country. The conclusions reached by this Office lead to a series of recommendations published in the Report on the Situation of Freedom of Expression in Chile of 2016.²⁸⁸ Throughout 2017, the Office of the Special Rapporteur noted that there has been progress in compliance to the Inter-American standards, although several of the documented challenges persist and some of these recommendations remain to be met or implemented.

207. In this context, the Office of the Special Rapporteur receives with special satisfaction the efforts of the State to observe the recommendations made regarding the right to access to public information²⁸⁹, specifically regarding to the opening of the archives, documents, testimonies, and information provided by the victims to the Valech I Commission. In this matter the Special Rapporteur also highlights a series of judicial decisions that guaranteed access to public information.

208. During 2017 there were new cases of criminalization of demonstrations of students and members or sympathizers of the Mapuche community, a series of attacks against journalists, and a relevant number of criminal proceedings against media workers accused of attacking public order or of defamation of public officials.

209. On the other hand, the enactment of different laws stands out positively, especially the reform of Law 20.477, which prevents the Military Justice from taking action in the event that the victims or defendants in a proceeding are civilians, and the Law of Guaranteed Minimum Speed for Internet Access [*Ley de Velocidad Mínima Garantizada de Acceso a Internet*].

A. Progress

210. On November 11, 2016, Law 20.968 was enacted which, in addition to defining the crimes of torture and cruel, inhuman, or degrading treatment, modifies the jurisdiction of the Military Justice, establishing that in no case will civilians and children, who are victims or are accused persons, be subject to the jurisdiction of the military courts, in these cases the ordinary courts will operate.²⁹⁰

211. The Office of the Special Rapporteur welcomes the State's observation on the recommendation made in the Report on the Situation of Freedom of Expression in Chile in 2016 regarding the need to reform its legislation as soon as possible, in order to guarantee that violations of human rights committed by agents of the security forces are investigated and judged by bodies and courts belonging to the civil jurisdiction.²⁹¹

212. On this matter, on February 20, the Second Chamber of the Supreme Court [*Segunda Sala de la Corte Suprema*] (CS) ruled that the Valparaíso Guarantees Court was competent to intervene in a case initiated against two officers for assaults in a protest, and not the Second Military Court of Santiago [*Segundo Juzgado Militar de Santiago*].²⁹² In this regard, the CS based its decision on art. 1 of the amended Law 20.477. The Second Military Court of Santiago had dismissed both members of the police force. Specifically, the agents had

²⁸⁸ Office of the Special Rapporteur for Freedom of Expression. [Informe Especial Sobre la Libertad de Expresión en Chile 2016](#). (Chapter VII Recommendations). OEA/Ser. L/V/II. CIDH/RELE/INF. 16/17. March 15, 2017. Paras. 194-216.

²⁸⁹ Office of the Special Rapporteur for Freedom of Expression. [Informe Especial Sobre la Libertad de Expresión en Chile 2016](#). OEA/Ser. L/V/II. CIDH/RELE/INF. 16/17. March 15, 2017. Para. 203.

²⁹⁰ Biblioteca del Congreso Nacional de Chile. [Ley 20.477](#) (Modified on November 22, 2016 by law 20.968).

²⁹¹ Office of the Special Rapporteur for Freedom of Expression. [Informe Especial Sobre la Libertad de Expresión en Chile 2016](#). OEA/Ser. L/V/II. CIDH/RELE/INF. 16/17. March 15, 2017. Para. 216.

²⁹² Corte Suprema de Chile. February 20, 2017. Decision available at: <http://www.pjud.cl/documents/396729/0/CONTIENDA+VALPARAISO+MILITAR.pdf/7f582b40-7741-437f-8eee-0fab74d0e73>

been accused of beating the student Patricia Estay Barrera in the context of the protests that took place on May 21, 2015 in the city of Valparaíso.²⁹³

213. On the other hand, on December 22, 2016, Law No. 20.977 was published, which provided that the text of Law No. 13.196, known as the "Copper Reserved Law" [*Ley Reservada de Cobre*], cease to be secret, therefore the public would be granted access to its text.²⁹⁴ Likewise, on April 7, Law No. 21.005²⁹⁵ was published, it provides that the National Television Council [*Consejo Nacional de Televisión*] (CNT), every year in March, must send a report to both Houses of the National Congress containing the results of the policy of audiovisual promotion and of the promotion of cultural and educational programming. In addition, the CNT must give public account on its website of the management of its policies, plans, programs, actions, and budget management; it must also publish the minutes of its sessions in accordance with the Law on Public Service Transparency and on Access to Information of the State Administration [*Ley de Transparencia de la Función Pública y de Acceso a la Información de los Órganos del Estado*].

214. The Office of the Special Rapporteur also highlights the different progress in legislative and judicial matters aimed at favoring access to public information, guaranteeing the autonomy of the competent bodies, and ultimately allowing the exercise of the right to seek information.²⁹⁶ Nevertheless, the Office of the Special Rapporteur warns that a significant number of secrecy laws²⁹⁷ persist and therefore urges the State to redouble its efforts to publicize the regulations of the texts that remain confidential.²⁹⁸

215. On October 18, the Honorable Chamber of Representatives of the National Congress of Chile approved the Law on Guaranteed Minimum Speed for Internet Access N° 21.046²⁹⁹ [*Ley de Velocidad Mínima Garantizada de Acceso a Internet*], the text of which modifies the General Telecommunications Law [*Ley General de Telecomunicaciones*] (LGT).³⁰⁰ According to the information available, the new law had technical support from the Ministry of Transport and Telecommunications [*Ministerio de Transporte y Telecomunicaciones*], and it was unanimously approved by both parliamentary chambers. The Law orders Internet access providers to guarantee a percentage of the average speeds that the user will receive, offered in their business plans, in national and international connections, wired and wireless, during times of greater and lesser congestion. Likewise, Internet providers will stipulate in the service contracts the limits at which the speed they provide will oscillate, and a system or application that allows the measurement of said speeds, also associated technical parameters must be made available to users. For its part, the Law provides that if the user suspects that the internet speed to which he or she accesses does not comply with the agreement, they may take action and "request the reparation or restitution of the service, as well as compensation for the time in which the connection would not have been found available or functioning in a defective way." Likewise, the Law establishes that a body will be designated through public bidding to measure the quality of national services, although the Deputy Secretary of Telecommunications could carry out the measurement in

²⁹³ Diario U Chile. February 23, 2017. *Carabineros que agredieron a joven en Valparaíso serán juzgados por la justicia civil*; Resumen Latinoamericano. February 24, 2017. *Chile. La Corte Suprema de Justicia, ordena que se juzgue a carabineros por golpes a una estudiante*.

²⁹⁴ Biblioteca del Congreso Nacional de Chile. *Ley 20.977: Exige la publicación en el diario oficial de la Ley N° 13.196, reservada del cobre*. December 22, 2016.

²⁹⁵ Biblioteca del Congreso Nacional de Chile. *Ley 21.005: Moderniza el Consejo Nacional de Televisión, concede las asignaciones que indica y delega facultades para fijar su planta de personal*. April 7, 2017.

²⁹⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Informe Especial Sobre Libertad de Expresión en Chile 2016*. OEA/Ser. L/V/II. CIDH/RELE/INF. 16/17. March 15, 2017. Para. 200.

²⁹⁷ Consejo para la Transparencia. *Leyes secretas*. May 16, 2016; Cooperativa. December 11, 2016. *En Chile hay más de 200 leyes secretas, según el Consejo para la Transparencia*.

²⁹⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Informe Especial Sobre Libertad de Expresión en Chile 2016*. OEA/Ser. L/V/II. CIDH/RELE/INF. 16/17. March 15, 2017. Para. 201.

²⁹⁹ Congreso Nacional. *Ley N° 21.046, Velocidad Mínima Garantizada de Acceso a Internet*.

³⁰⁰ *Cfrme*. Cámara de Diputados. Proyectos de Ley. *Modifica Ley General de Telecomunicaciones, para establecer la obligación de una velocidad mínima garantizada, de acceso a Internet*. October 18, 2017.

the exercise of its functions. Finally, the Law establishes that companies will have a period of six months to inform their customers of the speeds in the hours of greater and lesser congestion, corresponding to each contract.³⁰¹

216. The Office of the Special Rapporteur welcomes the approval of the Law on Guaranteed Minimum Speeds for Internet Access, and the effort of the State of Chile to move forward with the adoption of positive measures to facilitate access to quality Internet as recommended in the Report on the Situation of Freedom of Expression in Chile in 2016.³⁰²

217. For its part, in 2017 this Office registered several judicial decisions that have ordered the provision of public information to different state institutions or companies with state contributions, and thus ensuring greater transparency of government actions.³⁰³ In this regard, on July 13, the Ninth Chamber of the Court of Appeals [*Novena Sala de la Corte de Apelaciones*] ruled that *Carabineros* (security forces) should provide "details of the expenses, bids, and registration of suppliers of deterrents, such as tear gas, and rubber bullets used for demonstrations control" to the Council for Transparency [*Consejo para la Transparencia*] (CPT). In this regard, on August 23, 2016, the newspaper *Biobio* made such request to the police institution, but the institution refused because its provision could cause damage or detriment to the proper performance of the functions of *Carabineros*, particularly in matters of restoration of public order. Faced with this, *Biobio* filed an appeal with the CPT, which set a deadline of five working days for *Carabineros* to deliver the information discussed. However, the police institution alleged the illegality of the Writ of Amparo before the Court of Appeals, which in turn ratified the CPT's decision.³⁰⁴

218. On July 21, the Fifth Chamber of the Court of Appeals of Santiago [*Quinta Sala de la Corte de Apelaciones de Santiago*] (CA) rejected the claim of illegality filed by the Chilean Defense Council [*Consejo de Defensa de Chile*], the Chilean Treasury [*Fisco de Chile*], and the Chilean Army [*Ejército de Chile*], against the decision of the Council for Transparency [*Consejo para la Transparencia*] (CPT) through which they were ordered to convey the payroll of officers promoted to the rank of General in the period between March 10, 2002 and March 11, 2006, along with those who between 1973 and 1990 were part of military or intelligence units that would have been involved in serious human rights violations. In this regard, the CA understood that it was not enough that the law that established the reservation or secrecy of these data was adopted in accordance with the Qualified Quorum Law [*Ley de Quorum Calificado*], but that it was important to determine whether the grounds used to deny the aforementioned information were framed within of the objectives of the constitutional and legal provisions. Therefore, the CA pointed out that the requested information did not affect the "national security" budget which, based on Article 8 of the Political Constitution of the Republic of Chile,³⁰⁵ allows its secrecy to be established, and therefore the information must be turned over to the applicant.³⁰⁶

³⁰¹ Gobierno de Chile. October 19, 2017. *Proyecto de Ley de Velocidad Mínima Garantizada de Acceso a Internet avanza a etapa final de discusión parlamentaria*; Publimetro. October 19, 2017. *Cámara aprobó proyecto sobre velocidad mínima de internet y se despachó a ley*; FayerWayer. October 19, 2017. *Chile: Aprobada ley que garantiza velocidad mínima de conexión a internet*.

³⁰² Office of the Special Rapporteur for Freedom of Expression. *Informe Especial Sobre la Libertad de Expresión en Chile 2016*. OEA/Ser. L/V/II. CIDH/RELE/INF. 16/17. March 15, 2017. Para. 211.

³⁰³ Mediabanco. August 28, 2017. *CORTE SUPREMA CONFIRMA FALLO Y ORDENA ENTREGA DE INFORMACIÓN DE PLAN DE ABSORCIÓN DE AFP*; Consejo Para la Transparencia. July 1, 2017. *Corte de Apelaciones de Santiago confirma en forma unánime tres decisiones del CPLT*; El Dínamo. August 28, 2017. *Justicia ordena a la Armada a entregar información sobre oficiales recontratados*; El Dínamo. September 20, 2017. *Corte de Santiago ordena a empresas SQM a entregar información por transparencia*; Microjuris. October 17, 2017. *Corte de Santiago ordena a isapres entregar información sobre estados financieros por ley de transparencia*.

³⁰⁴ Emol. June 19, 2017. *Corte obliga a Carabineros a entregar información sobre gastos en bombas lacrimógenas*; Biobio Chile. October 21, 2017. *Millonario gasto de Carabineros en lacrimógenas: los peligros y el protocolo para gasear*.

³⁰⁵ Political Constitution of the Republic of Chile. *September 22, 2005*. Article 8: The exercise of public functions obligates its holders to comply strictly with the principle of probity in all their actions. The acts and resolutions of organs of the State, as well as their fundamentals and the procedures used, are public. However, only a law of qualified quorum can establish the confidentiality or secrecy of

219. Also, on October 16, within the framework of a remedy of protection filed by Matías Rojas against a decision of the Court of Appeals which endorsed his expulsion from a press conference convened by *Carabineros* where they would refer to the corruption case known as "Pacogate,"³⁰⁷ the Third Chamber of the Supreme Court [*Tercera Sala de la Corte Suprema*] (CS) decided to revoke said ruling and, in its place, ordered that *Carabineros* must "give him the accommodations to participate without being able to prevent him from entering the press conferences attended by in the exercise of his professional work." The CS understood that the expulsion of the journalist by the police institution constituted an act of prior censorship. The CS based its decision on art. 5 of the Declaration of Principles on Freedom of Expression, and interpreted the concept of interference as any action that comes from an external agent that obstructs or impedes the communication or information process. The CS also recalled the second principle of the Declaration of Principles on Freedom of Expression of the Organization of American States (OAS), art. 19 of the Universal Declaration of Human Rights (UDHR), and UNESCO Resolution 104, and concluded that in the light of the aforementioned instruments "it cannot but conclude that the action of preventing a journalist from participating in a press conference constitutes a threat to the freedom to issue an opinion and to inform, without prior censorship."³⁰⁸

220. Moreover, on September 11, President Michelle Bachelet publicly announced that there would be an immediate discussion on the bill that seeks to lift the secrecy clause of the National Commission on Political Prison and Torture [*Comisión Nacional sobre Prisión Política y Tortura*], referred to as the Valech I Commission.³⁰⁹ In this regard, Bachelet pointed out that the measure, with the prior authorization of the victims, seeks exclusively for the courts to access the information contained in a petition in order to clarify pending cases and "to contribute specifically to the attainment of truth, justice and reparation for the victims and their families." The President also indicated that, along with the above mentioned, a reclassification mechanism for victims of political prison and torture, enforced disappearance, and political execution will be

the former or the latter, when disclosure would affect the proper fulfillment of the functions of these organs, the rights of persons, the security of the Nation or the national interest. The President of the Republic, the Ministers of State, the deputies and senators, and the other authorities and civil servants that a constitutional organic law shall specify, must declare their interests and patrimony in public form. This law shall determine the cases and the conditions under which those authorities will delegate to a third party the administration of those assets and obligations which involve conflicts of interest in the exercise of their public function. It may also consider other appropriate measures to resolve them and, in qualified situations, provide for the disposition of all or part of these assets.

³⁰⁶ Diario U Chile. July 24, 2017. *Ejército deberá entregar nómina de los ex DINA y CNI que ascendieron en democracia*; Resumen. July 24, 2017. *Por 2ª oportunidad ordenan al Ejército entregar nómina de generales que cumplieron funciones en la DINA y CNI*; Biobio. July 25, 2017. *Corte ordena entregar nómina de oficiales de la DINA y CNI ascendidos a generales*.

³⁰⁷ El Ciudadano May 12, 2017. *Violenta censura de Carabineros contra El Ciudadano: Corte admite recurso de protección*; Cooperativa.Cl. May 16, 2017. *Fiscalía no perseverará en querrela presentada por Villalobos contra periodista*; El Ciudadano. May 16, 2017. *Desestiman investigación contra periodista de El Ciudadano tras denuncia de General Director de Carabineros*, Mediabanco. May 17, 2017. *Colegio de Periodistas emplaza a director de Carabineros a "actuar con transparencia"*.

³⁰⁸ Tercera Sala de la Corte Suprema. October 16, 2017. Available at: <http://www.pjud.cl/documents/396729/0/PROTECCION+PERIODISTA+CONFERENCIA+SUPREMA.pdf/0740d154-d0da-4573-b115-2e4149da1562>

³⁰⁹ The Valech I Commission was created in 2003 to determine who suffered deprivation of liberty and torture for political reasons during the military dictatorship. According to the information available, the information provided by the victims to this Commission is legally reserved for 50 years, until 2054. Under the terms of Law No. 19.992, the reserve covers all "persons, groups of persons, authorities or magistrates", which has been interpreted as even affecting courts of justice. This differs from the information of the Rettig Commission on Forced Disappearance and Political Execution (1990) which, although being under "absolute confidentiality", its access by the courts of justice in the processes submitted to their knowledge is guaranteed by law. The confidentiality is allegedly justified upon the right of privacy of those who have given testimony. See also: Decreto Supremo No. 1.040 de 2003. Art. 5; Decreto No. 355 of 1990; Ley 19.123 of 1992 Art. 2.3 inciso final.

presented, which through an advisory committee will review the background of those persons who allegedly were rejected by the Valech II Commission.³¹⁰

B. Attacks, threats, and intimidation against journalists and the media

221. On March 24, the journalist Sandra Mariscal and the cameraman Erick Condorena, of the public channel *Bolivia TV*, were reportedly detained and held incommunicado in the city of Iquique, Tarapacá region, despite presenting their documentation and identifying themselves as members of the press. Mariscal and Condorena would have arrived at the aforementioned airport in order to cover the events related to the diplomatic tension between Chile and Bolivia after the arrest of nine Bolivian officials at the border. However, Condorena was returned to Bolivia while Mariscal would have been able to enter the country but with the prohibition to carry out journalistic activities.³¹¹

222. On March 28, nine Bolivian journalists from different media outlets participating in the inaugural flight of the Chilean-Brazilian airline LATAM, were reportedly held at the Santiago airport in Chile at approximately 5:00 p.m. (local time). According to the information available, they would have only been allowed to enter the country under the condition that they sign a document by which they undertook to not affect the internal and external security, sovereignty, and public order of Chile, allegedly under Article 15 of the Immigration Law of Chile. They would have all been returned to Bolivia.³¹²

223. In accordance to the faculties established in Article 41 of the American Convention on Human Rights, on April 25, the Office of the Special Rapporteur sent a letter to the State of Chile motivated by the information presented on March 27 by the Ombudsman of Bolivia, related to the events presented in the two preceding paragraphs, where it noted that Chile attacked the right to access to information, used indirect prior censorship, and implemented regressive administrative measures to restrict the exercise of freedom of expression.³¹³ In the letter information was requested on the events reported as well as on the legal basis of the measures adopted in the cases referred to in this communication, and on the regulatory framework applicable to the accreditation of foreign journalists in the country.³¹⁴

224. In its response, dated July 28, the State indicated with respect to the March 24 event that the journalistic team of *Bolivia TV*, consisting of Sandra Mariscal and Erick Condorena, did not have a temporary visa for foreign journalists or social media professionals who travel to Chile because of their activities and that, for this reason, in accordance with the law in force, Condorena was returned to Bolivia that afternoon, while Mariscal was informed about the current regulations on the matter and the procedure to be followed to obtain the corresponding accreditation. In addition, the State noted that the International Press Unit [*Unidad de Prensa Internacional*] (UPI) of the Division of the Communications Ministry, under the General Secretariat of Government, reported that both journalists subsequently entered the country on different dates, stating each of them. On the other hand, in relation to the event of March 29, the State stated that the nine Bolivians did not have a specific visa to carry out their activities, that all persons were detained on the current law in

³¹⁰ Publimetro. September 11, 2017. *Bachelet anuncia discusión inmediata a proyecto que levanta secreto a Comisión Valech*; Cooperativa. September 11, 2017. *Bachelet quiere terminar con el secreto de los antecedentes de la Comisión Valech*; Emol. September 12, 2017. *El debate sobre el secreto de la Comisión Valech: Las claves tras el anuncio de Bachelet*.

³¹¹ La Razón. March 24, 2017. *Periodista y camarógrafo de Bolivia Tv relatan que fueron retenidos e incommunicados en Chile*; Telesur TV. March 24, 2017. *Detienen a dos periodistas bolivianos en aeropuerto de Chile*.

³¹² La Razón. March 28, 2017. *Grupo de periodistas bolivianos fue retenido en aeropuerto de Chile*; El Diario. March 29, 2017. *Nueve periodistas bolivianos fueron retenidos en Santiago*.

³¹³ Office of the Special Rapporteur for Freedom of Expression. Defensoría del Pueblo del Estado Plurinacional de Bolivia. March 27, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

³¹⁴ Office of the Special Rapporteur for Freedom of Expression. Comunicación al Estado conforme al Artículo 41 de la Convención Americana sobre Derechos Humanos. April 25, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

Chile, and that they were returned to Bolivia on April 1. He also added that the UPI did not receive any request for accreditation and that the Ministry of the Interior and Public Safety explained that the procedure was carried out within the time required for the control of any foreigner according to the amount that was detained.³¹⁵

225. This Office of the Special Rapporteur wishes to recall that in the Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption, the Special Rapporteurs for Freedom of Expression of the United Nations, the Inter American Commission on Human Rights (IACHR), and the Organization for Security and Co-operation in Europe (OSCE), pointed out that the accreditation to journalists "are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body, and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non-discriminatory criteria published in advance."³¹⁶

226. On June 6, a journalist and a cameraman from *TVN Red Araucanía* were attacked by unknown individuals when they covered a news report on a fire in an evangelical church in the Temuicui area. After making the report, the journalists would have noticed the existence of a barricade, from where unknown individuals came out with their faces covered, who would have fired at the vehicle in which they were traveling. The Office of the Attorney General of Araucanía announced that it was investigating the events as an assassination attempt.³¹⁷

227. On June 12, the community radio *Talcahuano*, from the town of the same name, would have suffered an attack that destroyed its antenna and part of the transmitting equipment, as a result of which the station stopped broadcasting its programming on air. As reported by the *JMG* radio of the School of Journalism of the University of Chile [*Escuela de Periodismo de la Universidad de Chile*], witnesses of the act would have identified that the attack was allegedly carried out by members of the Masonic Educational Corporation of Talcahuano [*Corporación Educacional Masónica de Talcahuano*] and an official of the municipality of the port, since, according to Alejandro Martínez, communications director of the city, "[the] members of this Freemasonry are the owners of the only authorized signal to operate in the area - *Radio Etchegoyen*."³¹⁸

228. Between August and September, different journalists, photographers, and communicators reported attacks by *Carabineros* while covering different protests in the city of Santiago. In this regard, on August 1, Carlos Vera Mancilla, *Reuters* photojournalist, would have been prevented from covering the incidents that occurred between Carabineros Special Forces [*Fuerzas Especiales de Carabineros*] (FFEEC) and students³¹⁹. On August 10, FFEEC agents allegedly assaulted, damaged their work equipment, and then arrested an

³¹⁵ Letter from the State of Chile in response to the request for information pursuant to Article 41 of the American Convention on Human Rights transmitted on April 25, 2017. July 28, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

³¹⁶ Office of the Special Rapporteur for Freedom of Expression. [Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption](#). December 18, 2003.

³¹⁷ Biobío. June 6, 2017. [Equipo de televisión sufrió emboscada en camino rural de La Araucanía](#); 24 Horas.cl. June 6, 2017. [Equipo de TVN sufre violento ataque por desconocidos en Temuicui](#); Soy Temuco. June 6, 2017. [Fiscalía investigará como homicidio frustrado el ataque a equipo de TVN en Temuicui](#); 24 Horas.cl. June 6, 2017. [Ministerio Público investigará como "homicidio frustrado" ataque a equipo de TVN](#).

³¹⁸ Signis ALC. July 20, 2017. [Radio comunitaria Talcahuano sufrió atentado](#).

³¹⁹ PienSA Prensa / Facebook. August 1, 2017. [Carabineros de FF.EE. Sargento 2do P. Campos R. Amenaza e impide el trabajo de fotógrafos que cubren incidentes con estudiantes en las cercanías del Liceo de Aplicación](#); Defensoría Popular. Grupo de acción para comunicadores en conflicto (GACC). Informe agresiones comunicadores y fotógrafos en Chile. 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

independent photographer while covering the detention of some students as part of a protest.³²⁰ According to information received by this Office, on August 17, the aforementioned photojournalist, Vera Mancilla, of *Agencia Reuters*, would have been pushed with an FFEEC shield and fell to the ground, while covering the demonstrations that took place in front of the Consulate of Argentina.³²¹ On September 17, two photojournalists would have been detained while they were recording a protest carried out by members of the "Free Animal" Civil Society at the Padre Hurtado Park rodeo.³²² For its part, on September 22, a journalist of *Agencia Reuters* would have been detained while covering a demonstration for the Mapuche community.³²³

229. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Social Protest

230. As in the report prepared in 2016³²⁴, the Office of the Special Rapporteur has recorded that the tendency to limit or restrict the exercise of social protest continued throughout this year. This Office has documented numerous cases of arrests of demonstrators by the Carabineros Special Forces [*Fuerzas Especiales de Carabineros*] (FFEEC) along with other practices such as the dissuasive presence of police forces, the abusive use of tear gas bombs, rubber bullets, and hydrant trucks.³²⁵

231. In this regard, the Office of the Special Rapporteur receives with concern the use of force and the persistence of arrests during the manifestations of members or sympathizers of the Mapuche community.³²⁶ Especially regarding the events of the months of September and October, in the context of the demonstrations

³²⁰ Pienza Prensa / Facebook. August 10, 2017. *Fotógrafo es detenido por Carabineros de FFEE mientras cubría detenciones a estudiantes en el centro de Santiago*; Defensoría Popular. Grupo de acción para comunicadores en conflicto (GACC). Informe agresiones comunicadores y fotógrafos en Chile. 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

³²¹ Defensoría Popular. Grupo de acción para comunicadores en conflicto (GACC). Informe agresiones comunicadores y fotógrafos en Chile. 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

³²² Publimetro. September 17, 2017. *Con serios incidentes y fotógrafos detenidos culminó acto de apoyo al rodeo*; Biobio. September 17, 2017. *Detienen a 29 personas en funa contra el rodeo en medialuna de Parque Padre Hurtado*.

³²³ Pienza Prensa / Facebook. September 22, 2017. *INSÓLITO Carabineros detiene a colaborador de agencia Reuters en marcha #Mapuche #108DíasEnHuelgaDeHambre*; Defensoría Popular. Grupo de acción para comunicadores en conflicto (GACC). Informe agresiones comunicadores y fotógrafos en Chile. 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

³²⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Informe Especial Sobre la Libertad de Expresión en Chile 2016*. Chapter VI (Freedom of Expression and Social Protests). OEA/Ser. L/V/II. CIHD/RELE/INF. 16/17. March 15, 2017.

³²⁵ Biobio. April 11, 2017. *Con 68 detenidos y 7 carabineros heridos terminó marcha estudiantil en Santiago*; El Tipografo. May 4, 2017. *Protestas de profesores de San Fernando: 11 detenidos por manifestación en Ruta 5 Sur*; La Tercera. May 18, 2017. *Quince estudiantes detenidos tras protesta en oficinas de Carabineros*; Soy Chile. May 21, 2017. *21 de mayo: cuatro detenidos por manifestación de organizaciones de DD.HH. en Valparaíso*; Cooperativa. June 14, 2017. *Protesta estudiantil en Providencia terminó con cuatro detenidos*; Telesur Noticias. July 10, 2017. *Siete detenidos en Chile por protestar contra bus transfóbico*; Biobio. September 11, 2017. *Más de 30 detenidos dejan manifestaciones por el 11 de septiembre en Concepción*; El Mostrador. September 17, 2017. *Protesta contra el rodeo finalizó con 29 detenidos en el parque Alberto Hurtado*.

³²⁶ Hispan TV. December 27, 2017. *Carabineros chilenos reprimen protesta nacional de mapuches*; Telesur. December 27, 2017. *Mapuches protestan contra detención de Francisca Linconao*; 24 Horas. January 6, 2017. *Con incidentes menores terminó marcha en recuerdo a Matías Catrileo*; Hispan TV. January 18, 2017. *Policía chilena carga contra marcha de Mapuche por su 'represión'*; Telesur. April 19, 2017. *Chile: mapuches resisten represión y arrestos violentos de carabineros*;

that took place in the city of Concepción in support of the Mapuche community members detained in the Temuco prison as a result of the so-called "Operation Hurricane."³²⁷ On September 25, a group of individuals would have held a manifestation in favor of the aforementioned Mapuches. In this context, 26 people were apprehended by members of the FFEEC after a faction of the protesters allegedly took a building where the radio station *Biobio* is located.³²⁸ The next day, again a group of people protested insisting on the claim for the detainees of the Mapuche community. According to the information available, the demonstrators had interrupted the vehicular traffic for 20 minutes until FFEEC agents arrived at the scene, who proceeded to disperse the protest. There, they would have arrested at least ten people plus two reporters from the newspaper *Resumen*.³²⁹ Likewise, on October 2, a demonstration with the same purpose would have been held. The members of the FFEEC would have thrown tear gas to disperse the protesters and arrested at least 20 people.³³⁰ Then, on October 9, a new demonstration in support of the Mapuches would have been convened. However, before it began, at least 30 police officers would have approached the protesters and requested their identification. At least six of these people would have been detained.³³¹

232. In this regard, this Office of the Special Rapporteur regrets the continued use of force as a routine means to prevent or restrain the exercise of social protest under the pretext that they have not been authorized. Similarly, the Office of the Special Rapporteur notes with concern that no progress has been made since October 2016 regarding the bill that seeks to repeal Supreme Decree No. 1.086 of 1983³³², despite having reminded the State of the importance of guaranteeing the right to assembly through the adoption of new legislation in accordance with international principles and standards in this area.³³³

233. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"³³⁴ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."³³⁵

234. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are

³²⁷ Emol. September 24, 2017. *Operación Huracán: Ocho comuneros mapuche detenidos serían formalizados por Ley Antiterrorista*; The Clinic. September 24, 2017. *Operación huracán: Detienen a Héctor Llaitul y otros siete comuneros por quema de camiones en el sur*.

³²⁸ Cooperativa. September 25, 2017. *Protesta a favor de comuneros terminó con 26 detenidos en Concepción*; Emol. September 25, 2017. *Al menos 30 detenidos tras protesta a favor de comuneros mapuches en Concepción*.

³²⁹ Resumen. September 26, 2017. *Con detenciones arbitrarias Carabineros reprime nueva marcha en apoyo a presos mapuche en Concepción*; Radio Agricultura. September 27, 2017. *Protesta a favor de la causa mapuche termina con 10 detenidos*.

³³⁰ Soy Chile. October 2, 2017. *Marcha en apoyo a los presos mapuche dejó 20 detenidos en Concepción*. Biobio. October 3, 2017. *Al menos 20 detenidos deja nueva protesta en apoyo a causa mapuche en Concepción*.

³³¹ Resumen. October 10, 2017. *Con detenciones arbitrarias y controles de identidad Carabineros impide manifestación mapuche en Concepción*; Kaosenlared. October 10, 2017. *Nación Mapuche (Chile). Carabineros impide manifestación mapuche en Concepción*.

³³² *Cfrme*. Cámara de Diputados de Chile. Proyectos de Ley. *Deroga el decreto supremo N° 1.086, de 1983, del Ministerio del Interior, sobre Reuniones Públicas*. October 17, 2016.

³³³ Office of the Special Rapporteur for Freedom of Expression. *Informe Especial Sobre la Libertad de Expresión en Chile 2016*. Chapter VII (Recommendations). OEA/Ser. L/V/II. CIHD/RELE/INF. 16/17. March 15, 2017. Para. 213.

³³⁴ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

³³⁵ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles."³³⁶

D. Subsequent liability

235. On January 5, the Oral Court No. 7 of Santiago [*Tribunal Oral N° 7 de Santiago*] acquitted *Hispan Tv* journalist Leonel Retamal, who had been accused of committing the crime of damaging.³³⁷ Retamal would have been detained on July 28, 2016 while he was covering a student demonstration. After being released the next day, a complaint was filed against him allegedly for damaging *Carabineros's* equipment.³³⁸

236. On February 4, the Italian journalist Lorenzo Spairani would have been expelled from the country. Spairani, entered Chile with a grant from the European Union with the intention of carrying out a work trip with social groups and making a documentary about it. According to the information available, members of the Investigative Police [*Policía de Investigaciones*] (PDI) would have broken into his home, arrested Spairani and then transferred him to a police center, where he was handed the respective decree of expulsion through which he was informed about the prohibition of entry into the country to anyone who propagates or promotes doctrines "that tend to destroy or alter by violence, the social order of the country or its system of government."³³⁹ On February 20, Attorney General Rodolfo Isaac Noriega Cardo filed a writ of amparo in favor of Spairani and against the PDI and the Intendency of the Metropolitan Region [*Intendencia de la Región Metropolitana*] (IRM) before the Fifth Chamber of the Court of Appeals of Santiago [*Quinta Sala de la Corte de Apelaciones de Santiago*], through which he invoked the illegality of the expulsion order. However, the court decided to reject the appeal filed on considering that the decision was legal based on what is prescribed in art. 15 of Decree Law No. 1.094.³⁴⁰ Faced with this, the National Institute of Human Rights [*Instituto Nacional de Derechos Humanos*] (INDH) appealed to the Supreme Court [*Corte Suprema*] (CS). Finally, on March 7, the Second Chamber of the CS decided to revoke the judgment of February 20 and overturned the expulsion order, clarifying that Spairani "is not affected by any prohibition to enter Chile."³⁴¹

³³⁶ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

³³⁷ Hispan Tv / Youtube. January 5, 2017. [Derrotado montaje contra corresponsal de HispanTV en Chile](#); Colegio de Periodistas de Chile. January 6, 2017. [Absuelven de cargos a periodista acusado de agredir a la policía.](#)

³³⁸ Hispan TV. July 28, 2017. [Video: La policía chilena detiene al corresponsal de HispanTV y agrede a su camarógrafo](#); IACHR. [Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.](#) Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para. 1320.

³³⁹ El Mostrador. February 6, 2017. [Expulsan del país a periodista italiano: registraba videos para organización de trabajadores del Sename](#); Diario U Chile. February 8, 2017. [Comunicador italiano expulsado: "En Chile no hay miedo a usar leyes de la Dictadura"](#).

³⁴⁰ Corte de Apelaciones de Santiago (Quinta Sala). Available at: <http://media.biobiochile.cl/wp-content/uploads/2017/02/amparo-periodista-italiano-1.pdf>. February 20, 2017; Decreto Ley N° 1094. Art. 15.1: The following foreigners are prohibited from entering the country: 1.- Those who disseminate or encourage in word or in writing or by any other means, doctrines that tend to destroy or alter by violence, the social order of the country or its system of government, those that are syndicated or reputed to be agitators or activists of such doctrines and, in general, those who carry out deeds that Chilean laws qualify as crimes against the foreign security, national sovereignty, internal security or public order of the country and those who commit acts contrary to the interests of Chile or constitute a danger to the State. July 14, 1975.

³⁴¹Corte Suprema (Segunda Sala). Available at: http://suprema.poderjudicial.cl/SITSUPPORWEB/DownloadFile.do?TIP_Documento=3&TIP_Archivo=3&COD_Opcion=1&COD_Corte=1&CRR_IdTramite=2766392&CRR_IdDocumento=2284530&Cod_Descarga=11. March 7, 2017; La Tercera. March 8, 2017. [Corte Suprema](#)

237. On February 23, three social media workers were accused by the Attorney General's Office of Panguipulli of committing the crime of "public disorder". The media workers, who belong to independent media, would have covered the demonstration held on August 1, 2016 in Tranguil, where members of the Mapuche community and environmental organizations demanded compliance with Convention 169 of the International Labor Organization (ILO). According to available information, the protest would have developed peacefully without any injuries or arrests.³⁴²

238. On May 16, the North Central Prosecutor's Office [*Fiscalía Centro Norte*] dismissed an investigation, which was then closed by the Seventh Court of Guarantee of Santiago [*Séptimo Juzgado de Garantía de Santiago*], against journalist Matías Rojas, of *El Ciudadano*, after determining that it did not have sufficient evidence to continue with the investigation of the case against him. Rojas had been accused in 2016 by the General Director of *Carabineros* [*Director General de Carabineros*], Bruno Villalobos, after the journalist published an investigation related to the General's assets; the information had been obtained through the Transparency Law.³⁴³

239. On June 13, the First Chamber of the Supreme Court [*Primera Sala de la Corte Suprema*] (CS) confirmed the judgment that convicted the newspaper *El Mercurio* to pay compensation of CLP \$ 20 million (approximately US \$32 thousand) to Ignacio Loyola Villalobos, who sued the newspaper for "moral damage". On July 1, 2008, the media outlet reportedly had a headline on its cover which stated that Villalobos was expelled from the *Carabineros* because of his connection to a drug trafficking group. However, in the lawsuit this former official claimed that the newspaper had provided inaccurate information, since he had voluntarily resigned from the police institution, and also false information, since there was no reason to associate him with a drug trafficking group. Despite that the fact that the newspaper argued a "just cause of error", the CS maintained that "The defendant (*El Mercurio*) acted with obvious culpability in highlighting the existence of such links both on the cover and in the internal headlines of the paper. That is, when it made the publication in the manner indicated above, and knowing that such links had been established, acting unprepared, it reported as if they were verified, relating these facts to the departure of the plaintiff from *Carabineros* [...]"³⁴⁴

240. On August 31, journalist Patricio Mery Bell had been detained by the Investigative Police [*Policía de Investigaciones*] (PDI) in response to the order issued by the Fourth Criminal Court of Santiago [*Cuarto Tribunal Oral en lo Penal de Santiago*] upon his arrival from Ecuador to the airport in Santiago. According to the information available, Mery Bell published an article in the *Panorama News* portal in September 2011, in which he stated that the former General Director of the *Carabineros*, Gustavo González Jure, would have led a platoon of police officers, who in 1988, in a context of protests, allegedly murdered a young man of 14 years.³⁴⁵ That same year, González Jure criminally accused Mery Bell for the crime of "serious insults". Throughout the trial the journalist traveled to Ecuador, where he would stay for a month, but due to an infection he had to be hospitalized, losing the possibility of returning and presenting himself before the

declara "ilegal" expulsión del país de realizador audiovisual italiano que cubría movimientos sindicales; Resumen. March 8, 2017. Suprema declara arbitraria e ilegal expulsión del país del comunicador italiano Lorenzo Spairini.

³⁴² El Puelche. February 24, 2017. Panguipulli: Formalizan a los 13 de Reyehueico por "desórdenes públicos"; Diario U Chile. March 11, 2017. Formalizados por difundir información: la situación que enfrentan los comunicadores independientes.

³⁴³ El Ciudadano. May 16, 2017. Desestiman investigación contra periodista de El Ciudadano tras denuncia de General Director de Carabineros; El Desconcierto. May 17, 2017. Tribunal desestima querrela de general Villalobos contra periodista de El Ciudadano.

³⁴⁴ Mediabanco. June 20, 2017. CORTE SUPREMA CONFIRMA SENTENCIA Y ORDENA A DIARIO PAGAR INDEMNIZACIÓN POR DIFUSIÓN NEGLIGENTE DE NOTICIA; El Ciudadano. June 21, 2017. Corte Suprema ordena a El Mercurio a pagar indemnización tras vincular a carabinero con banda narco.

³⁴⁵ Panorama News. December 26, 2011. Los Muertos Del General González Jure Nuevo General Director De Carabineros.

respective Court. Although he would have sent the medical certificates stating what happened, the Court ordered his arrest.³⁴⁶

241. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, “privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

242. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “*desacato* laws,” restrict freedom of expression and the right to information.” Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.³⁴⁷

E. Legal reforms

243. On March 13, President Michelle Bachelet signed the Bill that regulates the Protection and Treatment of Personal Data [*Ley que Regula la Protección y el Tratamiento de los Datos Personales*], which would seek to amend Law No. 19.628 on Protection of Private Life [*Ley N° 19.628 sobre Protección de la Vida Privada*]. From the initiative it is clear that the bill seeks to raise the protection of privacy to comply with international standards on the treatment of personal data and the guidelines of the Organization for Economic Cooperation and Development (OECD). Likewise, it broadens the concept of public access sources, specifying as an only requirement a consultation in a lawful manner, it includes new principles that govern the subject, it contains a wide catalog of rights that assist the owner of the data, and creates the Agency for the Protection of Personal Information [*Agencia de Protección de Datos Personales*].³⁴⁸

244. However, the draft law includes clauses such as the one set forth in article 25 on “right to be forgotten” where it is specified that personal data relating to the commission and conviction of criminal, civil, administrative, or disciplinary infractions cannot be communicated or published when the action has prescribed or once the sanction imposed has been complied with, and every person who works in public bodies is required to maintain the secrecy about the reserved information. In addition, the bill protects information self-determination and requires the owner of the data to have an email box.³⁴⁹

245. On September 4, President Michelle Bachelet signed the bill that aims to incorporate the crime of “incitement to racial and religious hatred” to the Criminal Code. The bill that typifies the aforementioned crime, would have the intention to punish those who publicly, or through any means suitable for public

³⁴⁶ Panorama News. March 6, 2012. *Derrota de González Jure: Juicio contra Patricio Mery podría reabrir caso de menor asesinado en 1988*; Resumen Latinoamericano. June 24, 2017. *Patricio Mery: El Periodista elogiado por Rafael Correa es perseguido por la Policía y Justicia Chilena*; La República. September 1, 2017. *Reportan encarcelamiento en Chile de Patricio Mery Bell*; Piensa Chile. September 1, 2017. *Carabineros contra Patricio Mery Bell: Libertad de Expresión a la chilena*.

³⁴⁷ IACHR. Annual Report 2015. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

³⁴⁸ Tele13. March 13, 2017. *Los ejes del proyecto de ley que busca proteger los datos personales*; Estado de Chile. Cámara de Diputados. *Proyecto de Ley que regula la protección y el tratamiento de los datos personales y crea la Agencia de Protección de Datos Personales*. March 15, 2017.

³⁴⁹ Estado de Chile. Cámara de Diputados. *Proyecto de Ley que regula la protección y el tratamiento de los datos personales y crea la Agencia de Protección de Datos Personales*. March 15, 2017.

dissemination, directly or indirectly incite physical violence against a person or a group of people, either by nationality, sex, gender, sexual orientation, religion, or belief, which would be punished by imprisonment from 61 to 540 days, and fines of CLP\$1,400,790 (approximately US\$2,213) to CLP\$ 2,334,650 (approximately US \$ 3,668).³⁵⁰

F. Direct censorship

246. On May 24, the Chilean Journalists Association [*Colegio de Periodistas de Chile*] reported that journalist Nathaly Álvarez had received pressure from the command of former President Sebastián Piñera. According to the information available, Álvarez would have conducted an investigation in which she reported Piñera's interests and links with companies in the fishing sector during his time as head of government, while stating that he hid those businesses in his sworn statement. After publishing the article, the journalist allegedly received a call from Cecilia Pérez, who is part of the former president's command, demanding that she dismissed the publication, to which the journalist refused. Later, *Radio Cooperativa*, the media that published the note, would have modified the content of the article alleging errors in the initial edition. After what happened the journalist resigned to the radio.³⁵¹

247. Moreover, on October 30, the Court of Appeals of Concepción [*Corte de Apelaciones de Concepción*] ordered a measure to not enforce a ruling against the media *Radio Bio Bio*, which would have order them to refrain from making publications "on these and recurring events" related to Bernardo José Neira Figueroa, Roberto Alfredo Belmar Carrasco, and Erick Antonio Rojas Benavides, three union leaders of the National Service for Children [*Servicio Nacional de Menores*] (Sename).³⁵² The decision was adopted as a result of the appeal filed by the persons indicated above, after on September 25 *Radio Bio Bio* published an article in which it indicated that, according to a report made by the Regional Comptroller [*Contraloría Regional*], Neira Figueroa, Belmar Carrasco, and Rojas Benavides would have received millionaire salaries without working in months; the note also pointed out other irregularities associated to Sename.³⁵³

248. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

G. Freedom of expression in electoral contexts

249. On October 27, the National Television Council [*Consejo Nacional de Televisión*] (CNT) filed charges against the *TVN*, *Mega*, *CHV* and *Canal 13* channels, which broadcasted the "Presidential Primary Debate 2017" together. According to the information available, the channels would have violated Law No. 18.838

³⁵⁰ Instituto Nacional de Derechos Humanos. [Proyecto de Ley que tipifica el delito de incitación al odio racial y religioso](#). October 13, 2014; *Cooperativa*. September 4, 2017. [Proyecto de ley tipifica como delito la incitación a la violencia por discriminación](#); T13. September 4, 2017. [Bachelet firma proyecto contra incitación al odio: las penas alcanzan hasta los 3 años de cárcel](#); El Mostrador. September 4, 2017. [Bachelet firma proyecto que tipifica como delito la incitación a la violencia](#).

³⁵¹ Colegio de Periodistas de Chile. May 24, 2017. [Colegio de Periodistas acusa presión indebida e intento de censura contra ex periodista de radio Cooperativa](#); El Mostrador. May 24, 2017. [Colegio de Periodistas acusa presión indebida desde el piñerismo e intento de censura contra ex periodista de radio Cooperativa](#); El Dínamo. May 25, 2017. [La versión de Radio Cooperativa que deja en entredicho la denuncia del Colegio de Periodistas](#).

³⁵² Estado de Chile. Corte de Apelaciones de Concepción. October 30, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

³⁵³ Biobio. September 25, 2017. [Acusan que empleados de Sename Bío Bío reciben millonarios sueldos sin trabajar en meses](#). Zero. September 25, 2017. [Nuevo escándalo: Empleados del Sename habrían cobrado millonarios sueldos sin trabajar](#).

since they granted space to the three candidates of *Chile Vamos*, Sebastian Piñera, Felipe Kast, and Manuel José Oseandón, and left out the candidates of *Frente Amplio*, Beatriz Sánchez and Alberto Mayol, affecting the "pluralist principle" and discriminating arbitrarily based on the tendency or belonging to a political group.³⁵⁴

250. In electoral contexts, freedom of expression is directly connected to political rights and their exercise, and both types of rights mutually strengthen one another.³⁵⁵ Reasoned democratic debate requires the greatest possible circulation of ideas, opinions and information about the candidates, their parties, and their platforms during the period preceding an election, principally through the media, the candidates, and others who wish to express themselves. Everyone must be able to question and investigate the capacity and suitability of the candidates, disagree with and confront their ideas and opinions, so that voters can form their opinions.³⁵⁶ As the IACHR has underscored, free speech and political debate are essential for the consolidation of the democratic life of societies, and therefore are of compelling social interest.³⁵⁷

H. Access to public Information

251. On March 23, the Constitutional Court of Chile [*Tribunal Constitucional de Chile*] (TCC) declared the second paragraph of Article 5 of the Transparency Law (LT) unconstitutional³⁵⁸, which stipulated that all information prepared with public budget or held by the organs of the administration will be public, unless it is subject to the exceptions indicated. The TCC concluded this after a presentation made by the Salmon Industry Association in Chile [*Asociación de la Industria del Salmón en Chile*] (together with other companies of the same industry) by means of which it requested that said article be declared inapplicable because it is unconstitutional. All this, within the framework of a judicial controversy where the National Fisheries and Aquaculture Service [*Servicio Nacional de Pesca y Acuicultura*] (Sernapesca) was required to provide information related to the use of antibiotics in salmon.

252. The TCC made an analysis on the importance of the economic rights of companies and therefore of the industrial secrecy and the regulatory development of it in Chile. On access to information and the compatibility of the second paragraph of article 5 of the law, the TCC concluded that when the law mentions that all information held by the State is public, it does not include the information that has to do with the industrial secrecy of the companies and that the provisions of article 5 are not compatible with article 8 of the Political Constitution of Chile, since the latter does not impose on the public administration the obligation to provide information in a different way to what is stated for in the legal system; the TCC added that the information that the companies give to the State authorities cannot be obtained through the right to access to the information since this possibility was ruled out in the constitutional reform of 2005.³⁵⁹

253. Principle 4 of the Declaration of Principles on Freedom of Expression which states that "[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Additionally, with regard to the principle of maximum disclosure the law must

³⁵⁴ Emol. October 27, 2017. *Consejo Nacional de Televisión formula cargos contra cuatro canales por falta de pluralismo en debate de Primarias*.

³⁵⁵ I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 90.

³⁵⁶ I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 90.

³⁵⁷ IACHR. Arguments before the Inter-American Court in the case of *Canese v. Paraguay*. Transcribed in: I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para 72. B).

³⁵⁸ Biblioteca del Congreso Nacional de Chile. *Ley 20285 sobre Acceso a la Información Pública*. Art. 5 Para. 2: Likewise, information made with a public budget is public, as well as any other information held by agencies of the Administration, regardless of its format, support, date of creation, origin, classification or processing, unless subject to stated exceptions.

³⁵⁹ Tribunal Constitucional de Chile. Rol 3111-16. March 23, 2017. Available at: <http://www.tribunalconstitucional.cl/sentencias/busqueda-basica>

guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

I. Communications surveillance

254. On June 13, 2017, the Ministry of the Interior and Public Security of Chile [*Ministerio del Interior y Seguridad Pública de Chile*] adopted Decree No. 866, which amends Decree No. 142 of 2005, and establishes regulations on the interception of telephone and other telecommunication communications, and conservation of communication data.

255. The Decree, which has been questioned by civil society organizations who claim that the regulation restricts the rights to privacy and freedom of expression unnecessarily and disproportionately and that was adopted without any process of public consultation³⁶⁰, would establish in its article 8 that "the telecommunication service providers shall keep and store for a period of not less than 2 years, as reserved and at the disposal of the authority, all the communicational data referred to in [the decree]." This provision, in addition, would define in broad terms the type of data that should be collected and establish a storage term broader than the minimum established in the law. The Criminal Procedure Code provides for a period of "no less than one year". The decree would not establish guarantees of judicial control in relation to the preservation and distribution of communicational data, which would allow the forces in charge of citizen security to access this personal information without the necessary judicial order.

256. Likewise, it is questioned that Article 3 (i) of the decree prohibits companies from "maintaining and incorporating networks [and] equipment into their technology that hinder or prevent in any way, compliance with the orders issued by a competent authority that have as their object the interception and recording of communications," which would prevent the possible implementation of encryption technologies to protect the privacy of users, something increasingly common in digital communications. The legality of Decree no. 866 is currently under review by the Comptroller General of the Republic [*Contraloría General de la República*].³⁶¹

257. On this point, on September 26, the Office of the Special Rapporteur forwarded to the State of Chile a letter in the terms of Article 41 of the American Convention on Human Rights, where it requested its collaboration to receive the information it deemed pertinent on the State's reasons that justify the adoption of the Decree in question. In particular, this Office of the Special Rapporteur requested information regarding the legal and constitutional basis of Decree No. 866, the measures adopted to ensure full compliance of the Decree with international human rights instruments and standards, and finally, the spaces of consultation provided to civil society and other key actors in the design of this norm and its implications for the rights to freedom of expression and private life.³⁶² At the closing of this report, the State of Chile has not replied to the letter sent.

258. The Office of the Special Rapporteur reiterates that surveillance programs must be designed and implemented in accordance with international human rights standards. Notably, States must guarantee that the interception, collection and use of personal information are clearly authorized by law in order to protect

³⁶⁰ Derechos Digitales. August 29, 2017. [*¿Qué dice el llamado "Decreto Espía"?*](#); Derechos Digitales. August 24, 2017. [*Gobierno de Chile busca aumentar su capacidad de vigilancia, aunque sea inconstitucional*](#); Human Rights Watch/José Miguel Vivanco (en Huffington Post). September 11, 2017. [*Chile's Troubling Move Against Privacy*](#).

³⁶¹ El Mostrador. August 21, 2017. [*Aleuy Big Brother: polémico reglamento permite la supervigilancia de las comunicaciones*](#); Derechos Digitales. August 24, 2017. [*Gobierno de Chile busca aumentar su capacidad de vigilancia, aunque sea inconstitucional*](#); Diario U Chile. September 2, 2017. [*Organizaciones alertan sobre "Decreto Espía" que pretende promulgar el Ministerio del Interior*](#).

³⁶² Office of the Special Rapporteur for Freedom of Expression. Comunicación al Estado conforme al Artículo 41 de la Convención Americana sobre Derechos Humanos. September 26, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

individuals from arbitrary or abusive interference with their privacy. Moreover, the decision to undertake surveillance activities that intrude upon individual privacy must be authorized by an independent judiciary and justified in terms of the objectives pursued in the specific case and the proportionality of the measure in relation to necessity and the interests pursued. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that States should establish independent oversight mechanisms over the authorities in charge of conducting surveillance in order to ensure transparency and accountability.³⁶³

J. Diversity and pluralism

259. In March it was made public that the National Television Council [*Consejo Nacional de Televisión*] (CNTV) opened a bid to award 116 Digital Television frequencies throughout the country, this being the first bid under the Digital Television Law [*Ley de Televisión Digital*] of 2014. This would allow a greater number of channels, greater offer, and greater diversity of content in digital television. The alleged concessions are of a national, regional, local, and local community nature; According to the public call, 40 percent of the available frequencies should be reserved for regional, local, and local community channels, of which two national frequencies destined only for cultural or educational signals should be considered.³⁶⁴

260. For its part, in May, public information indicated that representatives of the *Partido Comunista* (PC) filed a request to prevent the Bethia Group to purchase the radio stations *Tiempo*, *Infinita*, and *Romántica* of Bezanilla group, before the National Economic Prosecutor's Office [*Fiscalía Nacional Económica*] (FNE). According to the information available, the Bethia Group would own the *Mega* television channel and the *Candela* and *Carolina* radio stations, thus, if the purchase is made, the aforementioned group would have ownership of 14% of the FM *dial*. The representative would have argued before the FNE that if the commercial agreement were reached, it would be encouraging the concentration of media and thus affecting the plurality and diversity of communications and the right to freedom of expression of Chilean society.³⁶⁵

261. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

K. Community broadcasting

262. On March 19, the *Madre de la Divina Providencia* radio station (Madipro), from Villa O'Higgins, Aysén region, would had interrupted its broadcasts after receiving a complaint from the Undersecretary of Telecommunications [*Subsecretaria de Telecomunicaciones*] (SDT) before the Cochrane Prosecutor's Office, for operating without authorization. According to the information available, Madipro, a traditional radio station in the Region of Aysén, would have tried to obtain a concession that would allow it to regulate its

³⁶³ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc.50. December 31, 2013. Para. 415-417.

³⁶⁴ Consejo Nacional de Televisión (CNTV). No date. CNTV Abre concurso público para 116 frecuencias de televisión digital en todo el país; Observacom. March 20, 2017. Abren concurso para nuevos operadores comerciales y comunitarios de TV digital en Chile.

³⁶⁵ El Demócrata. May 9, 2017. Pedirán veto de la FNE: Diputados comunistas tratarán de impedir que Mega compre radios; El Mostrador. May 16, 2017. Diputados comunistas piden no autorizar a Mega la compra de tres radios FM.

operation but failed to win one in the periodic bids that the SDT calls for.³⁶⁶ Also, the director Yaline Riveros would have agreed to the conditional suspension of the procedure under the commitment not to carry out emissions for a year.

263. On September 16, Law 21.035 was published, which modifies the General Telecommunications Law [*Ley General de Telecomunicaciones*] in relation to notifications during the processing of granting concessions. The law incorporates a transitory article that provides that the concessionaires of the broadcasting of minimum coverage service who undertook the new regime established by the Law 20.433³⁶⁷, and who could not acquire the condition of community radios, whether it was due to not having published or publishing outside of the term of the decree granting concessions, may participate one time in the contest of the following four-month period, to renew or receive their concession, as appropriate.³⁶⁸

264. On various occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media in our region fulfill a fundamental function for the exercise by diverse sectors of society of freedom of expression and access to information.³⁶⁹ In that sense, it is necessary for the states to legally recognize community media and to consider fair spectrum reserves for this type of media, along with adequate conditions of access to licenses that would take into account the circumstances. Similarly, community media must benefit from fair and simple procedures for obtaining licenses, must not have to comply with technological or other types of requirements that involve disproportionate barriers for access to licenses, and in their operation must not be the target of differentiated treatments that are not adequately justified.³⁷⁰

³⁶⁶ El Ciudadano. March 19, 2017. *Radio Madipro: Treinta años en el dial de Aysén y la cierran por no tener permiso*; Observacom. March 21, 2017. *Histórica Radio Madipro de Villa O'Higgins deja de transmitir*; Medio a Medio. March 29, 2017. *Se confirma silenciamiento a radio comunitaria Madipro de Aysén*.

³⁶⁷ Biblioteca del Congreso Nacional de Chile. *Ley 20.433: Servicios de radiodifusión comunitaria ciudadana*. May 4, 2010.

³⁶⁸ Biblioteca del Congreso Nacional de Chile. *Ley 21.035*. September 16, 2017.

³⁶⁹ IACHR. . *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*. Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para. 414; IACHR. *Annual Report 2002. Report of the Special Rapporteur for Freedom Of Expression*. Chapter IV (Freedom of Expression and Poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 41.

³⁷⁰ IACHR. *Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression*. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 92 and following.

10. COLOMBIA

265. The Office of the Special Rapporteur observes with concern that situations of violence against journalists reported in 2017 increased if compared with previous years. In October, radio journalist Efigenia Vásquez Astudillo was murdered in the Cauca region of Colombia. In addition, the Office of the Special Rapporteur continued to record multiple attacks, kidnappings, and threats against journalists and media workers, and notes with concern the information indicating an increase in these situations in relation to 2016. The Office of the Special Rapporteur particularly notes that different episodes of aggression against journalists were carried out by law enforcement agents during journalistic coverage activities. Several episodes of stigmatizing statements were also recorded.

266. On the other hand, the Office of the Special Rapporteur continued to receive information on the excessive use of force in the context of social demonstrations and protests.

267. The Office of the Special Rapporteur received information on progress during 2017 in the investigation and administration of justice related to specific cases of homicides and other crimes against journalists in Colombia. However, it continues to note with concern the high levels of impunity that persist in relation to the dozens of murders that have occurred in the last two decades and hundreds of other aggressions. The Office of the Special Rapporteur also values the efforts of the Colombian State to reduce violence against journalists through the implementation of the protection program managed by the National Protection Unit [*Unidad Nacional de Protección*] (UNP), in an effort that has been sustained over time and takes note of the reform proposals presented by civil society to achieve a comprehensive policy of prevention and protection for those who exercise freedom of expression.

268. Through 2017, this Office registered positive sentences related to the protection of freedom of expression in the country. However, the Office of the Special Rapporteur also noted the proliferation of various judgments which have not strictly incorporated international standards on the matter.

269. The special situation the country is undergoing to strengthen peace and democracy, based on the implementation of the Peace Agreement signed between the government and the FARC guerrilla in 2016, also brings the opportunity to the implementation of those agreed measures to strengthen the rights of freedom of expression, association, and assembly and political rights in general. At the same time, it takes note of the proposals formulated by civil society regarding the importance of the design and operation of the Special Jurisdiction for Peace [*Jurisdicción Especial para la Paz*] (JEP) and the other mechanisms that make up the Integral System for Truth, Justice, Reparation, and non-Repetition [*Sistema Integral de Verdad, Justicia, Reparación y no Repetición*] incorporate transparency standards that guarantee the right to information and the reconstruction of the truth and memory to which the victims and society as a whole are entitled. It also notes the importance of these different mechanisms addressing the impact that the conflict has had on freedom of expression, journalists, and the media, as a fundamental pillar of the democratic system.³⁷¹

A. Progress

270. On July 24 the Ninth Chamber of Review of the Constitutional Court [*Sala Novena de Revisión de la Corte Constitucional*] issued a ruling that protects the right to due process and freedom of information and protects the right of citizens to know information about the harmful effects of sugary drinks to health.³⁷² The

³⁷¹ Proyecto Antonio Nariño (PAN). *Los retos para el acceso a la información en la implementación del Acuerdo Final entre el Gobierno y las Farc. April 2017. P. 15 and 30. Available at: [http://www.pan.org.co/?q=noticias-y-novedades/el-pan-presenta-su-informe-los-retos-para-el-acceso-la-informaci%C3%B3n-en-la-Fundaci%C3%B3n-para-la-Libertad-de-Prensa-\(FLIP\).-Agenda-de-libertad-de-prensa-y-Paz:-c%C3%B3mo-implementar-los-acuerdos-de-paz-en-clave-de-libertad-de-expresi%C3%B3n](http://www.pan.org.co/?q=noticias-y-novedades/el-pan-presenta-su-informe-los-retos-para-el-acceso-la-informaci%C3%B3n-en-la-Fundaci%C3%B3n-para-la-Libertad-de-Prensa-(FLIP).-Agenda-de-libertad-de-prensa-y-Paz:-c%C3%B3mo-implementar-los-acuerdos-de-paz-en-clave-de-libertad-de-expresi%C3%B3n). November 2016. P. 37. Available at: <https://flip.org.co/index.php/es/publicaciones/manuales/item/2062-el-acuerdo-final-en-clave-de-libertad-de-prensa>*

³⁷² República de Colombia. Corte Constitucional. *Sentencia T 543/17* of July 24, 2017. *El Espectador*. November 2, 2017. [SIC no puede vetar comerciales sobre los efectos de las bebidas azucaradas.](#)

decision referred to a writ of amparo filed against the Superintendence of Industry and Commerce [*Superintendencia de Industria y Comercio*], an organization that had forbidden the emission of a commercial talking about the harmful effects of sugar-sweetened beverages to health. The willing prohibition applied to any means of communication, including web pages. The Constitutional Court referred to the principle that freedom of expression is protected in the same way on the internet as in offline environments. The ruling warned the agency that in the exercise of its administrative powers in consumer protection, cannot take any action that implies prior control over the information, regardless of the media through which it is transmitted, and that can only establish subsequently liability, within the framework of which the fundamental rights of those involved must be respected, which includes the right to due administrative process.

271. In another order of ideas, on January 30 Fabio López Escobar was deported from the United States, being fugitive from justice after being convicted in 2015 as co-author of the homicide of journalist Orlando Sierra in 2002.³⁷³

272. On September 8, the Third Specialized Criminal Judge of Neiva [*Juez Tercero Penal Especializado de Neiva*] imposed a prison sentence of 47 years, 6 months, and 2 days on Juan Camilo Ortíz for the material authorship of the murder of the journalist Flor Alba Núñez, which occurred on September 10, 2015 in Pitalito, Huila.³⁷⁴ As reported, the ruling would have highlighted the profession of the victim as a determinant of the crime. Local organizations warned of the need for the investigation to continue since the other material author of the murder has not been brought to justice, nor have the intellectual authors of the crime been identified. The Prosecutor's Office reported that it was continuing to investigate.³⁷⁵

273. On September 6, the Supreme Court of Justice [*Corte Suprema de Justicia*] sentenced the former director of the now extinct Administrative Department of Security [*Departamento Administrativo de Seguridad*] (DAS), Jorge Aurelio Noguera Cotes, to seven years and 10 months in prison, as co-author of the crime of aggravated conspiracy, after verifying his responsibility in the interceptions of communications, surveillance, and illegal monitoring of human rights defenders, NGOs, political leaders, and journalists.³⁷⁶ The Criminal Cassation Chamber [*Sala de Casación Penal*] determined that, Noguera Cotes designed and organized, with the then adviser José Miguel Narváez, and members of the General Directorate of Intelligence [*Dirección General de Inteligencia*], the so-called G-3, a group that operated between March 2003 and October 2005 and was "created with calling for permanence to intercept without judicial order of telephones, mails, fax, and follow-ups of people who did not exercise nor was attributable any illicit activity, with respect to those who could only reproach their opposition to the national government." The ruling also ordered "to give

³⁷³ El Espectador. January 30, 2017. *Deportado a Colombia Fabio López Escobar, condenado por el crimen del periodista Orlando Sierra*; El Heraldó January 31, 2017. *Asesino de Orlando Sierra llegó a Colombia deportado de EEUU*; Knight Center for Journalism in the Americas. January 30, 2017. *U.S. deports man convicted in murder of Colombian journalist Orlando Sierra*; IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Par. 341.

³⁷⁴ IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression* Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Par. 350.

³⁷⁵ Fiscalía General de la Nación. *Condenado presunto autor del homicidio de periodista Flor Alba Núñez*. August 11, 2017; Federación Colombiana de Periodistas (FECOLPER). *Caso Flor Alba Núñez Vargas. Se gana una batalla, más no la guerra*. September 8, 2017; Fundación para la Libertad de Prensa (FLIP). *Condena contra el autor material del homicidio de Flor Alba Núñez: un paso en la lucha contra la impunidad*. September 8, 2017; El Espectador. September 8, 2017. *Condenan a 47 años de prisión a homicida de la periodista Flor Alba Núñez*. El Tiempo. September 8, 2017. *Condenan a 47 años de cárcel a asesino de periodista Flor Alba Núñez*.

³⁷⁶ Corte Suprema de Justicia. Sala de Casación Penal. *Sentencia de única instancia SP13920-2017*, September 6, 2017; Corte Suprema de Justicia. September 11, 2017. *Corte Suprema dita nueva condena contra exdirector del DAS Jorge Noguera*; Fundación para la Libertad de Prensa (FLIP). *La Corte Suprema de Justicia condena al exdirector del DAS por interceptaciones a periodistas*. September 11, 2017.

copies of the procedural documents (...) to the Accusations Committee of the House of Representatives [*Comisión de Acusaciones de la Cámara de Representantes*], so that if it finds merit, investigates former President Álvaro Uribe Vélez for the conduct referred to in this ruling, if it has not yet done so". In substantiating its decision on this point, the Court stated that "several of the victims, including Claudia Julieta Duque and Alirio Uribe Muñoz, stated "that the follow-ups and interceptions occurred during his government" who designated them as human rights traffickers and terrorists, adjectives that associated to the criminal actions carried out by the DAS during his term."³⁷⁷ The former president issued a certificate denying having given illegal orders to those in charge of the DAS.³⁷⁸

274. The Office of the Special Rapporteur highlights the progress reported, notwithstanding reiterates its concern on the fact that impunity for crimes against journalists continues to be very high, which has been accompanied by delays in the resolution of the majority of crimes against journalists. In this regard, it notes that during the public hearings held in July in the framework of the 163 Period of Sessions of the IACHR, the Foundation for Freedom of the Press [*Fundación para la Libertad de Prensa*] (FLIP) reported that 99.7 percent of impunity persisted in murders of journalists, 100 percent impunity in cases of threats, and 47.7 percent of the statute of limitations for investigating homicides against journalists and media workers.³⁷⁹ According to abundant information provided by FLIP after the hearing, of the 153 cases of journalists murdered because of their work in Colombia since 1977 to date, 76 have prescribed, that is, almost 50 percent, while the great majority of homicide cases -128- remain in total impunity. In only 22 cases there has been some type of conviction against material authors, and only in 3 cases there has been convictions against intellectual authors" the organization reported.³⁸⁰ It added that "the situation is even more worrying in terms of threats against journalists." In this regard, FLIP indicated that between January 2016 and the date of the submission of information, the entity "has documented death threats against 198 reporters. These cases, like all the complaints filed in the last ten years before the Attorney General's Office, are in the investigation stage with total impunity." Likewise, the IACHR observes that in accordance with the results of an investigation published in August of 2017 by the International Federation of Journalists [*Federación Internacional de Periodistas*] (FIP) "out of the total number of attacks against investigative reporters between September 1986 and April 2017, only 0.2 out of 10 cases reached trial stage or were convicted."³⁸¹ The report indicated that these data arise from figures given by the Attorney General's Office and correspond to 673 cases registered in a period of 31 years, in which 773 journalists were victims of various crimes. The document indicated that according to the data obtained, the impunity of murders of journalists is 95.23%. In addition, it reported that only one case of threats of a total of 304 investigated achieved conviction. The Prosecutor's Office informed that a specific strategy has been implemented to obtain procedural progress in the crimes against journalists.³⁸²

B. Murders

275. On August 27, photojournalist Elmer Agudelo Vidales was murdered at the door of his house in Palmira. The local police would have reported that the crime would not be linked to the exercise of journalism but would be related to a personal problem, previously reported, and offered a reward to identify the perpetrator or perpetrators of the crime. The Colombian Federation of Journalists [*Federación Colombiana de*

³⁷⁷ Corte Suprema de Justicia. Sala de Casación Penal. Sentencia de única instancia SP13920-2017, de September 6, 2017. Punto 8.4.

³⁷⁸ Centro Democrático. Constancia sobre nueva acusación por interceptaciones ilegales. September 12, 2017.

³⁷⁹ IACHR. 163 Period of Sessions. Public Hearing: Situación del derecho a la libertad de expresión en Colombia. July 5, 2017 [Video. Minute 14:33 - 15:00]

³⁸⁰ Fundación para la Libertad de Prensa. Response to IACHR questions in July 5 hearing. August 8, 2017. Received by the Office of the Special Rapporteur on September 19, 2017.

³⁸¹ Federación Internacional de Periodistas (FIP). El silenciamiento de los periodistas y la estruendosa impunidad en Colombia. Informe especial para la Federación Internacional de Periodistas y su filial FSC-CCOO realizado por Claudia Julieta Duque y Marvin David Del Cid. August 9, 2017.

³⁸² IACHR. 163 Period of Sessions. Public Hearing: Situación del derecho a la libertad de expresión en Colombia. July 5, 2017.

Periodistas] (FECOLPER) urged the authorities in charge of the investigation to clarify the events and "not to reject the hypothesis that his murder may be related to his reporting activity."³⁸³ The State said that the investigation was under way.³⁸⁴

276. On October 8, radio journalist Efigenia Vásquez Astudillo was murdered in the Cauca region, Colombia. According to the information available, the speaker of the indigenous radio station *Renacer Kokonuko* died after receiving bullet wounds during a police eviction operation of Kokonuko People community members protesting in Puracé, department of Cauca.³⁸⁵ In a statement issued the same day the National Indigenous Organization of Colombia [*Organización Nacional Indígena de Colombia*] (ONIC) indicated that the journalist was killed by the Mobile Anti-riot Squad [*Escuadrón Móvil Antidisturbios*] (ESMAD) of the Police. Different organizations indicated that the *journalist* was exercising her work. On October 30, the Office of the Special Rapporteur issued a statement expressing deep concern over the murder and urging the State to conduct the investigation of these events with due diligence and to punish those responsible.³⁸⁶ As reported by the Foundation for Press Freedom [*Fundación para la Libertad de Prensa*], on November 3, ESMAD attacked the station *Renacer Kokonuko*.³⁸⁷ According to the information provided by the organization, from midday on, confrontations took place between the public force and community members in the Aguas Tibias site, where the journalist was murdered on October 8. The station had been sharing with its listeners the statement of the council in which the community was summoned to join the demonstration.

C. Attacks, threats, and intimidation to journalists and media

277. On July 5, during the IACHR's 163rd period of session, the public hearing "Situation of the right to freedom of expression in Colombia" was held, in which representatives of the Foundation for Freedom of the Press [*Fundación para la Libertad de Prensa*] (FLIP) participated, as well as a delegation of the State.³⁸⁸ The organization indicated that from 2016 to the date of the hearing it had registered a balance of 439 journalists who were victims of aggressions. The civil society organization assured that these data reflect that still "in Colombia there are forbidden zones" and a "scenario of self-censorship" in different regions.³⁸⁹ During the

³⁸³ Federación Colombiana de Periodistas (Fecolper). [Asesinan en Palmira al reportero gráfico Elmer Agudelo Vidales. August 27, 2017](#); Federación Internacional de Periodistas (FLIP); [Colombia: FIP lamenta asesinato de periodista en Palmira. August 28, 2017](#); El Tiempo. September 3, 2017. [La hipótesis sobre la muerte de reportero gráfico en Palmira](#); El Espectador. August 29, 2017. [Inician investigaciones para identificar autores del asesinato del fotógrafo Elmer Agudelo](#).

³⁸⁴ Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

³⁸⁵ Organización Nacional Indígena de Colombia (ONIC). [Asesinada joven comunicadora indígena del Pueblo Kokonuko. October 8, 2017](#). Pazifco Noticias /You Tube. October 9, 2017. [Efigenia Vásquez, comunicadora indígena de Coconuco, otra víctima del Estado](#); Comisión Nacional de Comunicación de y para Pueblos Indígenas – CONCIP de la Mesa Permanente de Concertación –MPC. [CONCIP – MPC denuncia, rechaza y demanda justicia ante el asesinato de la comunicadora Kokonuco Efigenia Vásquez Astudillo. October 11, 2017](#); Federación Colombiana de Periodistas (FECOLPER). [Policía Nacional ataca a periodistas y es señalada de asesinar a comunicadora indígena. October 9, 2017](#); Fundación para la Libertad de Prensa (FLIP). [FLIP condena muerte de comunicadora indígena en el Cauca. October 9, 2017](#); Proclama. October 9, 2017. [Policía se pronuncia sobre muerte en Coconuco](#); El Espectador. October 9, 2017. ["Ignorantes, cobardes": Onic a Esmad por muerte de periodista indígena](#); El Tiempo. October 11, 2017. [Periodista en Cauca murió por disparo de arma múltiple: Medicina Legal](#); Fundación para la Libertad de Prensa (FLIP). [Comunicadora indígena Efigenia Vásquez fue asesinada mientras realizaba labores como periodista. October 25, 2017](#).

³⁸⁶ IACHR- Office of the Special Rapporteur for Freedom of Expression. [Press Release R171/17. Office of the Special Rapporteur calls to investigate and determine the circumstances of the murder of community journalist Efigenia Vásquez. October 30, 2017](#).

³⁸⁷ Fundación para la Libertad de Prensa (FLIP). [FLIP condena nuevas agresiones del ESMAD en contra de la emisora indígena Renacer Kokonuko. November 7, 2017](#).

³⁸⁸ IACHR. 163 Period of Sessions. Public Hearing: [Situación del derecho a la libertad de expresión en Colombia. July 5, 2017](#)

³⁸⁹ IACHR. 163 Period of Sessions. Public Hearing: [Situación del derecho a la libertad de expresión en Colombia. July 5, 2017](#) [Video. Infographic. Minute 3:34]

hearing civil society acknowledged some efforts of the public force to minimize the regressions against the press, but indicated that "it continues being a recurrent aggressor" of journalists, having registered "serious cases" of bullet impact against journalists who cover protest and measures of seizure of equipment and journalistic material in coverages. For its part, the State ratified its commitment to freedom of expression and the exercise of journalism in Colombia, and reported on the measures adopted to strengthen existing protection and investigation mechanisms, which will be addressed later in this report. In its observations on the draft version of this report, the State pointed out that in the past three years the national Protection Unit had conducted more than 450 risk assessments. It pointed out that while an assessment is being conducted the situation is monitored by an analyst who is empowered to order emergency measures in the event of an imminent risk.³⁹⁰

278. The firearms attacks, threats, and intimidation against journalists and other media workers were repeated in different areas of Colombia throughout 2017. According to public information on January 12, journalists Cristian Herrera and Andrés González were attacked by unknown individuals in Cúcuta, department of Norte del Santander while they were traveling in a vehicle of the National Protection Unit [*Unidad Nacional de Protección*] (UNP), since Herrera would be beneficiary of the protection mechanism since 2014. Despite the shots and blows that the vehicle received, all were unharmed.³⁹¹ On January 27, journalist Edwin Montiel, director of the *Frontera Stereo* radio station in Maicao, department of La Guajira, was the victim of an attack when, arriving at his house, unknown individuals shot him, hitting the vehicle several times. The media worker, who was unharmed, reportedly claimed that the attack was related to his work at the station and the complaints he made about public security in the border region with Venezuela.³⁹² As this report was going to press, the State reported that the journalist still benefited from protection measures.³⁹³ On March 13, the Colombian Federation of Journalists issued an alert reporting the threats received by journalists Laura Toscana, María Bustamante, David Márquez, and José Sarmiento, from the department of Sucre, and by journalist Lucio Torres, from Cartagena, due to their journalistic activity, among other cases.³⁹⁴ According to the State, additional information was requested to the journalists. The State also reported that Torres had been granted protection measures.³⁹⁵

279. For its part, the threats against Ricardo Ruidíaz continued through 2017. On May 14, the journalist would have received death threats while his radio program *'Rompecabezas arma corazones'* was broadcasting on *Colmundo Radio*, in the city of Bogota. In recent months the journalist reported the crimes committed by the Gulf Clan against children, especially girls. Also, on November 23, unknown individuals would have thrown a grenade when the reporter entered his residence in Bogota aboard a vehicle assigned for his protection. The device did not explode nor were injured people reported. The journalist maintained that the police action was irregular since one of the police officers had picked up the grenade and offered

³⁹⁰ Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

³⁹¹ Reporters Without Borders. Colombia: Los periodistas Cristian Herrera y Andrés González logran escapar de un intento de asesinato. January 14, 2017; Misión de Apoyo al Proceso de Paz (Mapp-OEA). Comunicado: MAPP/OEA Rechaza atentado contra periodistas en Cúcuta. January 14, 2017; Federación Internacional de Periodistas (FIP). Colombia: ataque a periodistas con armas de fuego. January 13, 2017.

³⁹² Fundación para la Libertad de Prensa (FLIP). Periodista de Frontera Stereo fue víctima de un atentado en Maicao. January 28, 2017. El Heraldo. January 28, 2017. Periodista de Maicao denuncia atentado en su contra; Federación Colombiana de Periodistas (Fecolper). Impactan con arma de fuego vehículo en el que se movilizaba director de Frontera Stereo. January 28, 2017.

³⁹³ Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

³⁹⁴ Federación Colombiana de Periodistas (Fecolper). ARREMETIDA CONTRA LA PRENSA EN COLOMBIA: cinco (5) periodistas amenazados en el Caribe, una (1) periodista intimidada en Meta y tres (3) reporteros despojados de sus equipos de trabajo en Cauca. March 13, 2017; El Heraldo. March 14, 2017. Reporteros de EL HERALDO en Sucre denuncian que recibieron amenazas; El Tiempo. March 17, 2017. Periodista amenazado denunció a pastor Arrázola.

³⁹⁵ Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

public statements that would be inconsistent: first he said that the grenade was a toy, and later that it was a stunning grenade.³⁹⁶ The journalist has been provided protective measures.³⁹⁷

280. On July 28, journalist Claudia Gurisatti, director of *Noticias RCN* and *NTC 24*, denounced she was victim of a harassment campaign carried on social networks that could have put her personal integrity at risk.³⁹⁸

281. On the other hand, according to the information available on August 23, Mauricio Cardoso, a journalist for the newspaper *Extra Caquetá*, was wounded by unknown individuals when he was traveling by motorbike to his home in Florence and three men intercepted him and knocked him out of the motorcycle, after which he was wounded with a dagger. The attackers would have told the journalist that they were going to assassinate him "for being a whistleblower". One of the men would have pointed the reporter with a firearm threatening to shoot him.³⁹⁹

282. During the last year, the Office of the Special Rapporteur received with concern information on kidnappings of journalists in Colombia. On June 17, the Dutch journalists Derk Johannes Bolt and Eugenio Ernest Marie Follender were kidnapped in Norte de Santander - Catatumbo region - by the guerrilla of the National Liberation Army [*Ejército de Liberación Nacional*] (ELN). The journalists were released at dawn on the 24th of the same month and handed over to a commission of the Ombudsman's Office. According to FLIP, this organization has carried out four kidnappings in this region over the past three years.⁴⁰⁰

283. The Office of the Special Rapporteur documented other situations in which ELN participation was indicated. Such is the case of the journalists of the newspaper *El País* Hugo Mario Cárdenas López, who had been told by the State that he enjoyed protection measures⁴⁰¹, Oswaldo Paéz Fonseca, and Octavio Villegas Salinas, who were reportedly intimidated on March 9 by people carrying weapons, who would have kept their journalistic equipment, during a coverage in the rural area of the municipality of El Tambo, department of

³⁹⁶ Fundación para la Libertad de Prensa (FLIP). [FLIP rechaza las constantes amenazas de las que ha sido víctima el periodista Ricardo Ruidíaz](#). November 3, 2017; Fundación para la Libertad de Prensa (FLIP). [Periodista de Colmundo Radio recibió amenazas mientras transmitía su programa en vivo](#). May 16, 2017; La FM. May 15, 2017. [Ricardo Ruidíaz, investigador de Colmundo, denunció supuestas amenazas por parte de Clan del Golfo](#); Fundación para la Libertad de Prensa (FLIP). November 23, 2017. [Lanzan granada a vehículo de periodista en Bogotá](#); NC Radio. November 24, 2017. [Director de la Fundación Amigos Unidos denunció atentado en su contra](#); Radio Caracol. November 24, 2017. [Director de una fundación fue víctima de un atentado en Bogotá](#).

³⁹⁷ Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

³⁹⁸ "Thanks to the many who support me in this moment of bullying in the networks. Those who stigmatize me with lies endanger my integrity". Twitter account of Claudia Gurisatti @CGurisattiNTN24. [July 7, 2017](#); El Espectador. July 7, 2017. [Claudia Gurisatti denuncia "momento de matoneo en redes"](#).

³⁹⁹ Asociación de trabajadores de los medios de comunicación del Caquetá (ASOTMEC). Comunicado de prensa. August 24, 2017. Available at: <http://www.editorialamazonico.com.co/periodistas-exigen-esclarecer-atentado-de-reportero-del-diario-extra-caqueta/>; Fundación para la Libertad de Prensa (FLIP). [Fundación para la Libertad de Prensa. La FLIP condena el grave ataque del que fue víctima periodista del Extra Caquetá](#). August 25, 2017; La Silla Vacía. September 10, 2017. [Lo que callan los periodistas de Caquetá](#).

⁴⁰⁰ Fundación para la Libertad de Prensa (FLIP). [La FLIP espera condenas ejemplares para el ELN por el secuestro de los periodistas holandeses](#). June 24, 2017; Federación Colombiana de Periodistas (FECOLPER)/ Facebook. June 19, 2017. https://www.facebook.com/permalink.php?id=102196113160354&story_fbid=1403586509687968#; Colombia Estéreo. June 22, 2017. [Federación de Periodistas pide inmediata liberación de secuestrados por el Eln](#). Reporters Without Borders. [RSF calls for release of Dutch journalists held by ELN in Colombia](#). June 21, 2017; El Espectador. June 24, 2017. [Periodistas holandeses fueron liberados](#); El Tiempo. June 24, 2017. [Periodistas holandeses liberados por ELN dicen estar bien](#).

⁴⁰¹ Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

Cauca.⁴⁰² Similarly, according to the information available on March 28, a communication attributed to the ELN guerrillas was circulated, in which statements were made against the station of Arauca *La Voz del Cinaruco* and against the *La Silla Vacía* website.⁴⁰³ The State reported that several journalists for *La Voz del Cinaruco* are currently being protected⁴⁰⁴.

284. The Office of the Special Rapporteur also learned of attacks against journalists and media workers during the coverage of police procedures and public demonstrations, in which the participation of law enforcement agents, and in some cases also of demonstrators, was reported. In addition to the murder of the journalist Efigenia Vázquez in which, as indicated, there are claims about the alleged responsibility of members of ESMAD that are being investigated, for example, on February 10 it was reported that the reporter Esteban Peralta (*Campo Television* channel) was assaulted in Santa Marta, Magdalena by members of the National Police.⁴⁰⁵ On March 21, journalists Martha Elena Monroy and Helmer González of the newspaper *La Patria* would have been detained by members of the National Police for a short period of time in the municipality of Aguadas, Caldas.⁴⁰⁶ Other cases on which complaints were filed regarding the alleged participation of State agents in the facts are outlined in the following section. On October 8, a humanitarian mission and journalists, who were in Tumaco to follow up on the serious events that had occurred a few days earlier in the area that led to the violent deaths of six people in confrontations between peasants and the public forces, were attacked mid-tour by the National Police with several stun bombs. As reported during the attack, shots were also heard.⁴⁰⁷

285. On the other hand, according to information of public knowledge, on October 5, *Caracol Televisión* journalist María Camila Orozco was attacked by a businessman in the context of a hearing of the *Panamá Papers* case.⁴⁰⁸

286. Likewise, throughout 2017 the Corporation of Journalists of Arauca [*Corporación de Periodistas de Arauca*] (COPAR) reported that all the equipment of the *Emisora Arauca Stéreo FM 100.3* was stolen from its transmission floor. The entity maintained that the act constituted an attack on freedom of expression and

⁴⁰² El País. March 9, 2017. *El País rechaza agresión del ELN a dos de sus periodistas*; El Espectador. March 23, 2017. *“Pensamos que nos iban a fusilar”: periodista de El País retenido por el ELN*; Inter American Press Association (IAPA). *Condena la SIP agresión e intimidación a periodistas en Colombia y México y ciberataque en Venezuela*. March 10, 2017; Fundación para la Libertad de Prensa (FLIP). *Hombres identificados como miembros del ELN hostigaron a periodistas en Cauca*. March 9, 2017; Federación Colombiana de Periodistas (Fecolper). *Obstruyen el trabajo periodístico y roban elementos de prensa a reporteros del Diario El País de Cali*. March 10, 2017.

⁴⁰³ Fundación para la Libertad de Prensa (FLIP). *El ELN estigmatiza y pone en riesgo a La Silla Vacía y a la Voz del Cinaruco*. March 30, 2017; Violeta Stereo FM. March 30, 2017. *Periodistas de Arauca rechazan señalamientos del ELN*; La Voz del Cinaruco. March 30, 2017. *El Costo de la Verdad*.

⁴⁰⁴ Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

⁴⁰⁵ Fundación para la Libertad de Prensa (FLIP). *Miembros de la Policía Nacional agredieron a un periodista en Santa Marta*. February 10, 2017; RCN Radio. February 10, 2017. *Indignación en Santa Marta por fuerte agresión a periodista por parte de policías*; El Espectador. February 10, 2017. *Policías impidieron que periodista grabara cuando golpeaban y pateaban a un ciudadano*.

⁴⁰⁶ Fundación para la Libertad de Prensa.. *La Policía no tenía motivos para detener a los periodistas de La Patria*. March 23, 2017; La Patria. March 21, 2017. *Policía retiene a equipo periodístico de La Patria*; El Colombiano. March 21, 2017. *Policía retuvo en Caldas a periodistas del diario La Patria*; Federación Colombiana de Periodistas (Fecolper). *CIPEC. Exige sanciones disciplinarias contra los policías que retuvieron a periodistas*. March 22, 2017.

⁴⁰⁷ Fundación para la Libertad de Prensa (FLIP). *FLIP condena ataques de la Policía a periodistas y comisión civil en Tumaco*. October 9, 2017; Federación Colombiana de Periodistas (FECOLPER). *Policía Nacional ataca a periodistas y es señalada de asesinar a comunicadora indígena*. October 9, 2017.

⁴⁰⁸ “This businessman mistreated me physically and verbally at the hearing for the #PanamáPapers, and in presence of CTI @FiscaliaCol. And later on...” Twitter account of journalist *MCamilaOrozco*. October 6, 2017; Las2orillas. October 6, 2017. *VIDEO: La violenta agresión a una periodista de Noticias Caracol en audiencia de Panamá Papers*

demanded that it be investigated.⁴⁰⁹ On October 25, the Rural Press Agenda [*Agenda de Prensa Rural*] reported the manipulation of a computer and several hard disks of its facilities with sensitive information.⁴¹⁰

287. On November 11, journalists of the portal *Crónicas Desarmadas* were detained for around 14 hours by agents of the National Army [*Ejército Nacional*] in Tibú, North of Santander, for performing an investigation in the region by using a drone. According to available information, the agents accused the journalists of nocturnal overflight over military bases and, without warrant, tried to confiscate their journalistic equipments.⁴¹¹

288. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

D. Social Protest

289. On April 20, the Constitutional Court issued a judgment declaring the articles of the Police Code which dealt with the right to assembly and protest to be unconstitutional. Said articles established among others the obligation to give written notice to the administrative authorities of the location, said document must have at least the signature of three persons and be submitted 48 hours in advance. The Constitutional Court after studying its jurisprudence, determined that what was enshrined in the revised articles "consisted of an integral regulation of the fundamental rights of peaceful public gathering and protest, with an impact on the interrelated and concurrent rights of freedom of expression and political rights, which dealt with the structural elements and the basic principles of those same rights, in the sense of having established limits, restrictions, exceptions and prohibitions", therefore such regulation had to be carried out through a law of statutory character and not of ordinary character as is the law under study. The Court determined that the Congress of the Republic should issue a rule with consideration of the above.⁴¹²

290. On June 12, the Third Section of the State Council [*Sección Tercera del Consejo de Estado*] convicted the National Police for the events surrounding the death of student Jhonny Silva and the injuries suffered by another student as part of a demonstration that was intervened by agents of the Mobile Anti-Riot Squad [*Escuadrón Móvil Antidisturbios*] (ESMAD) in 2005.⁴¹³ The State Council ordered as a measure of non-repetition, that within two (2) months counted from the execution of the judgment, the Ministry of National Defense - National Police - must implement within the ESMAD squadrons that operate in throughout the country a comprehensive training course in guarantee and protection of Human Rights of people who exercise the right of assembly, public demonstration, and protest, this in order to prevent events such as those that gave rise to this action.

⁴⁰⁹ Twitter account of journalist Carlos Alfonso Pérez. [@perezaraucano Comunicado de la Corporación de Periodistas de Arauca](#). May 30, 2017.

⁴¹⁰ Contagio Radio. October 25, 2017. [Hurtan equipos y material sensible de oficina de la Agencia Prensa Rural](#); Fundación para la Libertad de Prensa (FLIP). [El robo a las instalaciones de Agencia de Prensa Rural es un intento de censura](#). October 26, 2017.

⁴¹¹ Fundación para la Libertad de Prensa (FLIP). [Carta abierta sobre detención arbitraria a periodistas en la región de Catatumbo](#). November 21, 2017.

⁴¹² Corte Constitucional de Colombia. April 20, 2017. [Comunicado No. 21. Sentencia C-223/17 \(Abril 20\) M.P. Alberto Rojas Ríos](#).

⁴¹³ Consejo de Estado. [Silva Bentandurt y Otros c/ Ministerio de Defensa. Acción de Reparación Directa No. 2098201](#). Judgment of June 12, 2017; El Espectador. June 16, 2017. [Consejo de Estado ordena implementar curso de derechos humanos para el Esmad](#); Caracol Radio. June 16, 2017. [El Esmad deberá dictar curso de derechos humanos](#).

291. On July 19, the World Organization against Torture (OMCT) made public the preliminary results on the international research mission carried out in the country between July 11 and 19⁴¹⁴. As part of its conclusions, the OMCT indicated that "criminalization in cases of social protest continues to be worrisome" in Colombia, noting that the mission received "various information regarding the use of a repressive approach to the handling of peaceful protests." It maintained that there were several cases that included defenders in the department of Cauca and in the context of the civic strike in the city of Buenaventura.

292. Various journalists and media workers were attacked during the coverage of protest demonstrations in 2017. According to the information available, on May 9 alternative journalist Pedro García was shot while covering the Indigenous Minga in the municipality of Cornito, Department of Cauca. In the same events one of the indigenous and children who participated in the protest would have lost his life due to a projectile impact.⁴¹⁵ On July 1, *Colombia Informa* reported the illegal detention of its correspondent in Santander, María Montiel, when she was covering demonstrations in the community of La Mata in Ayacucho, Cesar, and who had been illegally detained for 31 hours.⁴¹⁶ In August, during the coverage of the mining strike in the municipalities of Segovia and Remedios, Antioquia, the journalist Francisco Pérez de *Teleantioquia Noticias* reportedly suffered different attacks by private individuals and agents of the Mobile Anti-Riot Squad tried to take his camera away and called him a troublemaker and a harasser, as reported⁴¹⁷. On November 1, two journalists from *NC Noticias*, *Marcha Patriótica*, and *Prensa Rural* were attacked by agents of the National Police in Norte de Santander while they were covering the farmer's strike in the Catatumbo region. According to the claim of the reporters, the officers confiscated journalistic material and threw fuel on the journalists.⁴¹⁸

293. The Office of the Special Rapporteur also recorded other situations in which the excessive use of force against the civilian population was reported in the context of protests and social demonstrations, which are outlined below:

294. On April 19, a group of people with disabilities, including children, were protesting in front of the facilities of the Bogota City Hall, when one of the members that was part of the operation deployed by the Mobile Anti-Riot Squad [*Escuadrón Móvil Antidisturbios*] (ESMAD) used tear gas to disperse the protest that also coincided with a protest by small transporters. The Bogota Police Commander indicated that the police procedure did not conform to the protocol and announced that internal investigations were being carried out against the police agent who threw the gas.⁴¹⁹

⁴¹⁴ World Organisation Against Torture. [Colombia: Preliminary findings of an international fact-finding mission - No peace for human rights defenders](#). July 19, 2017.

⁴¹⁵ Asociación de Cabildos Indígenas del Norte del Cauca. [Fuerza Pública acaba con la vida de Daniel Felipe Castro Basto](#). May 9, 2017; Consejo Regional del Cauca (CRIC). [CRIC rechaza vil asesinato de Daniel Felipe Castro Basto por parte de la Policía Nacional](#). May 9, 2017.; La Opinión/Colprensa. May 10, 2017. [Investigan protesta indígena que dejó un muerto en Cauca](#); Noticias Caracol. May 10, 2017. [Las acusaciones mutuas entre fuerza pública e indígenas tras desmanes en Cauca donde murió un menor](#); Federación Colombiana de periodistas (Fecolper). [Impactan con arma de fuego a periodista alternativo en cubrimiento de Minga Indígena](#). May 10, 2017. Fundación para la Libertad de Prensa (FLIP). [Colaborador del periódico El Turbió resultó gravemente herido en protestas en el Cauca](#). May 10, 2017.

⁴¹⁶ Colombia Informa. July 1, 2017. [Policía golpea y detiene ilegalmente a corresponsal de Colombia Informa en Santander](#); Fundación para la Libertad de Prensa (FLP). July 1, 2017. [Periodista de Colombia Informa fue dejada en libertad, FLIP pide investigaciones](#)

⁴¹⁷ El Tiempo. August 29, 2017. [Critican falta de garantías a periodistas que cubren el paro minero](#); FLIP. [Se silencia a la prensa durante paro minero en Nordeste antioqueño](#). August 30, 2017.

⁴¹⁸ Telesur. November 2, 2017. [Policía agrede a periodistas durante paro campesino en Colombia](#); Sputnik. November 2, 2017. [Periodistas colombianos denuncian agresión de la policía cuando cubrían paro de campesinos](#); Prensa Rural. November 2, 2017. [Fuerza pública agrede periodistas que cubren paro agrario en el Catatumbo](#). Fundación para la Libertad de Prensa (FLIP). [La FLIP expresa su preocupación por las recientes agresiones contra la prensa durante manifestaciones sociales](#). November 2, 2017.

⁴¹⁹ El Espectador. April 19, 2017. [Esmad activó gas lacrimógeno durante protesta de personas con discapacidad en Bogotá](#); El Colombiano. April 19, 2017. [Esmad lanzó gases a protesta de personas en situación de discapacidad en Bogotá](#); Noticias Caracol. April 19,

295. According to information of public knowledge, on May 16 a general strike began in Buenaventura that lasted for 22 days and during which marches and protests were held. The mobilizations were in demand of access to labor sources, housing, drinking water, education, and health, among other economic, social, and cultural rights. During the civic stop, demonstrators made blockades on the roads that connect the municipality with Cali, capital of the department; According to the information available, the blockades were dispersed by the Mobile Anti-riot Squad [*Escuadrón Móvil Antidisturbios*] (ESMAD) of the National Police where the abusive use of force by the soldiers was reported, who would have thrown tear gas indiscriminately towards the protesters, among those children and older adults.⁴²⁰ On June 13, the IACHR issued a statement in which it expressed concern over the repression of protests and demonstrations in Buenaventura by the Mobile Anti-riot Squad and urged the State to investigate whether there was excessive use of force and to adopt urgent and reasonable measures to fully guarantee the rights of peaceful assembly and freedom of expression⁴²¹. On July 7 it was made public that the Attorney General's Office opened an investigation into the alleged abuse of force in which ESMAD agents would have incurred in these events, given the filing of 169 complaints for this reason.⁴²²

296. On June 9, ESMAD blocked and dispersed with water jets a massive mobilization of teachers in Bogotá.⁴²³ According to the information available, several demonstrators reported that they were also attacked with tear gas and beaten by the authorities. The Colombian Federation of Educators [*Federación Colombiana de Educadores*] (FECODE) also reported the repression of the ESMAD against the mobilization of teachers in Nariño.⁴²⁴

297. On August 19, a verification commission was held in Segovia, Antioquia, composed of the Nodo Antioquia, Colombia Europe Coordination [*Coordinación Colombia Europa*] (CCEEU), Social process of guarantees for defenders [*Proceso social de garantías para defensores*], Popular Training Institute [*Instituto Popular de Capacitación*], Cahucopana, Legal Freedom Corporation [*Corporación Jurídica Libertad*], and the Human Rights Committee Gustavo Marulanda [*Comité de derechos humanos Gustavo Marulanda*], denounced through a statement the "military and war treatment that is being given to the protests" that were carried out for a month in the municipalities of Segovia and Remedios by mining workers.⁴²⁵ According to information published by various media outlets, the mining strike that lasted for 42 days left three people dead and several injured in circumstances over which contradictory versions have been reported by demonstrators

2017. *Integrante de la Policía lanzó gas lacrimógeno contra niños y adultos en condición de discapacidad*; W Radio. April 19, 2017. *Policía de Bogotá reconoce su mal procedimiento en marcha de personas con discapacidad*.

⁴²⁰ El Espectador. May 19, 2017. *Comunidad de Buenaventura denuncia agresión del Esmad para disolver el paro cívico*; Telesur. May 20, 2017. *Colombianos denuncian represión por paro cívico en Buenaventura*; Noticias Caracol. May 19, 2017. *Tensión y disturbios en Buenaventura: comunidad y Esmad se enfrentan en medio del paro cívico*; El País. May 21, 2017. *Las 'promesas inconclusas' que detonaron el paro cívico en Buenaventura*. Telesur. June 2, 2017. *Represión del Esmad deja 320 heridos en Buenaventura*, Colombia.

⁴²¹ IACHR. **Press Release 76/17. IACHR Expresses Concern over the Use of Force in Protests in Colombia**. June 13, 2017.

⁴²² El Tiempo. July 6, 2017. *Investigan al Esmad por excesos durante el paro cívico de Buenaventura*; El Espectador. July 7, 2017. *Procuraduría abrió investigación por presunto abuso del Esmad en paro de Buenaventura*.

⁴²³ El Espectador. June 9, 2017. *Esmad de la Policía lanzó gases y agua a maestros que protestan en la Calle 26*; Contagio Radio. June 9, 2017. *ESMAD ataca el paro de maestros en Bogotá*. Semana. June 9, 2017. *El Esmad dispersa marcha de docentes en Bogotá*.

⁴²⁴ Contagioradio.com. June 15, 2017. *Fecode rechaza violencia del ESMAD contra profesores en Nariño*.

⁴²⁵ Noticias Caracol. August 16, 2017. *Joven de 18 años murió en medio de paro minero en Segovia*; Noticias RCN. August 16, 2017. *Asesinaron a joven en medio de disturbios por paro minero en Segovia y Remedios*. Corporación Jurídica Libertad. *Se agudiza la crisis humanitaria en Segovia*. August 19, 2017. El Espectador. August 19, 2017. *Comisión de verificación en Segovia, Antioquia, rechaza accionar del Esmad en paro minero*; El Espectador. August 21, 2017. *Paro minero en Remedios y Segovia cumple un mes de incertidumbre y tensiones*. Noticascn.com. September 2, 2017. *Tras 42 días, terminó el paro minero en Segovia y Remedios, en Antioquia*.

and law enforcement authorities. In addition, police authorities reported that several police officers were injured by demonstrators.

298. On October 5, in the municipality of Tumaco six peasants who were in a mobilization against the forced eradication of illicit crops were killed and at least 20 people injured.⁴²⁶ The inhabitants of the region blamed the members of the National Police for the events. In a press release issued on the same day, the Army and National Police indicated that preliminary inquiries indicated that "apparently 'Guacho' and his residual GAO group of the FARC's Daniel Aldana, launched at least five bomb cylinders against the members of the Public Force and against the crowd that was there, and then attacked the demonstrators and the authorities with indiscriminate fire of rifles and machine guns."⁴²⁷ In a press release issued on October 9, the Ombudsman's Office made a series of recommendations and stated that "during the visit to the area, the Ombudsman's commission did not observe at first sight any evidence of the effects that generates the shock wave resulting from the activation of pump cylinders, such as craters, splinter damage, among others."⁴²⁸

299. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"⁴²⁹ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."⁴³⁰

300. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles."⁴³¹

E. Protection mechanism

301. According to the information provided by the State, as of July 31, 2017, 139 journalists and social media workers throughout the country were protected by the National Protection Unit. 63 percent of which are located in 24 departments of the country and 37 percent in Bogotá.⁴³² Likewise, the State reported that as

⁴²⁶ Semana. October 6, 2017. *¿Quién mató a los campesinos en Tumaco? Continúan versiones encontradas*; NoticiasRCN. October 6, 2017. *"Eso fue una masacre total": campesino que atestiguó ataque en Tumaco*. El tiempo. October 12, 2017. *Con fotos y video. Policía busca demostrar que fue atacada en Tumaco*.

⁴²⁷ Policía Nacional de Colombia. Press release. *El Ejército y la Policía Nacional se permiten informar*. October 5, 2017.

⁴²⁸ Defensoría del Pueblo. *Defensoría del Pueblo solicita al Fiscal y al Procurador una investigación especial tras homicidio múltiple en Tumaco*. October 9, 2017.

⁴²⁹ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

⁴³⁰ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

⁴³¹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

⁴³² República de Colombia, Nota S-GAIIID-17-067759, August 29, 2017.P. 53.: IACHR. 163 Period of Sessions. Public Hearing: *Situación del derecho a la libertad de expresión en Colombia*. July 5, 2017 [Video. Minute 31:00 - 32:45].

of September 2016, the Risk Assessment Protocol for the Population of Journalists and/or Social Media Workers [*Protocolo de Evaluación de Riesgo para la Población de Periodistas y/o Comunicadores Sociales*] was implemented, which takes into account the specificities and particularities that must be observed at each stage of the risk assessment process when the beneficiaries are journalists and/or social media workers.

302. The State emphasized that said Protocol was built with the participation of the Foundation for Freedom of the Press [Fundación para la Libertad de Prensa] (FLIP) and the Colombian Federation for Journalists [*Federación Colombiana para Periodistas*] (FECOLPER).⁴³³ Throughout 2017, although civil society organizations have recognized the role of the UNP in reducing the murders of journalists in recent years, they have insisted that there are still problems in the implementation of protection schemes. In this regard, for example, on February 2, FLIP informed the national government of its withdrawal from the Committee on Risk and Recommendation of Measures [*Comité de Riesgo y Recomendación de Medidas*] (CERREM) due to discrepancies with some criteria that had been applied for the risk.⁴³⁴

303. During the public hearing on July 5, FLIP also held that the response to the risk faced by journalists is "fragmented." In this sense, the organization raised the need to create a National Prevention System that involves the three branches of public power.⁴³⁵ In accordance with the diagnosis of the Prevention and Protection Program carried out by FLIP, the current mechanism "is exclusively reactive. According to the study, such restructuring should guarantee and/or improve the following aspects: (i) processing times and response of requests; (i) interim protection during the ordinary protection procedure; (iii) protection measures with a differential, ethnic, and gender approach; (iv) coordination of the protection measures with the beneficiary (v) collective protection; (vi) centralization of the decision-making bodies of the measures; and (v) strategy of prevention and fight against impunity.

304. The Office of the Special Rapporteur appreciates the efforts of the Colombian State to reduce violence against journalists through the implementation of the protection program managed by the National Protection Unit (UNP), in an effort that has been sustained over time. Notwithstanding the foregoing, it reiterates the need to continue strengthening and improving this system through the effective coordination of state bodies responsible for protecting journalists and social media workers at risk and the authorities responsible for investigating, prosecuting, and punishing those responsible for threats, harassment, attacks, and murders perpetrated against said population because of their profession.⁴³⁶

305. The State also informed that the process of formulation of the Public Policy to Guarantee the Right to Freedom of Expression of Persons who Exercise Journalistic Activity in Colombia is in "a stage of growth so that it is formalized by the National Government by means of a Decree". However, the Commission also received information that during 2017 civil society organizations publicly warned about the halt of the aforementioned process.⁴³⁷ The Office of the Special Rapporteur notes that the program to develop this public

⁴³³República de Colombia, Nota S-GAIIID-17-067759, August 29, 2017.P. 53.

⁴³⁴ Federación Colombiana de Periodistas (Fecolper). **La Fecolper continuará participando en CERREM de periodistas. February 16, 2017.**

⁴³⁵ IACHR. 163 Period of Sessions. Public Hearing: Situación del derecho a la libertad de expresión en Colombia. July 5, 2017 [Video. Minute 13:12- 14:15].

⁴³⁶ IACHR. Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/ V/II. Doc. 49/13. December 31, 2013. Para. 966.

⁴³⁷ Federación Internacional de Periodistas (FIP). **Colombia: FIP y FECOLPER se reúnen con el Gobierno para garantizar condiciones laborales dignas.** April 5, 2017; "**#DíadelPeriodista**. <https://m.facebook.com/notes/adriana-hurtado/d%C3%ADadelperiodista-periodismo-colombiano-lucha-por-desatarse-la-mordaza-en-medio-d/10156369001818998/> ...". Twitter account of Federación Colombiana de Periodistas @FECOLPER. **August 4, 2017**; La Región. August 12, 2017. **Vulneraciones a ejercicio del periodismo en Colombia: FECOLPER [nota adjunta]** ; Fundación para la Libertad de Prensa (FLIP). **Carta abierta al presidente Santos por el caso Carvajal en la Corte IDH**. August 28, 2017.

policy has been in the design stage for more than two years and, in the current context, it is particularly important to implement it as soon as possible.

F. Stigmatizing statements

306. In this period, the Office of the Special Rapporteur also monitored the climate of hostility against the press, characterized by stigmatizing statements against journalists, issued by high-ranking public officials.

307. In March 2017, the former ministers Gina Parody and Cecilia Álvarez accused *Noticias RCN* of issuing false and biased information when referring to a journalistic investigation by the channel about a contract for public works.⁴³⁸ The high-ranking officials requested that the information be rectified, which was rejected by the channel, as it maintained that the information disclosed was "objective, truthful and impartial, and as a consequence rectification is not appropriate."⁴³⁹

308. On June 1, 2017, the Undersecretary of the Senate, Saul Cruz, claimed that he had been the victim of an attack by the *Noticias Uno* news team before the plenary session of the Congress. Several senators took the complaint to be true and raised the need to investigate the facts and establish criminal sanctions against reporters. Subsequently, videos and testimonies revealed that the undersecretary would have simulated physical aggression.⁴⁴⁰ On November 29, the Office of the Attorney General [*Procuraduría General de la Nación*] (PGR) reported that it sanctioned Cruz Bonilla, with the suspension in the exercise of his position and a special ineligibility for a period of eight months. The PGR maintained that "by the time the subject investigated intervened in the plenary of the Senate of the Republic, his ability to discern was normal and he was even able to determine a real fact from a fake one" and concluded that he affected the integrity and transparency of the public service and the legislative function. The ruling was appealed and will be resolved by the Disciplinary Chamber of Congress.⁴⁴¹ Subsequently, according to the State, the PGN punished that same official with eight months suspension from that office for the same incident along with special disqualification for the same length of time.⁴⁴²

309. Other events of this type took place on social networks: on May 15, Senator Álvaro Uribe Vélez, through his twitter account, indicated journalist Julián Martínez of *Noticias Uno*, was a pro-FARC journalist.⁴⁴³ On May 16, the senator published another tweet in which he pointed to the weekly magazine columnist Daniel Samper of "little bandit" and "abuser of newborn girls."⁴⁴⁴ Later, on July 14, in another tweet he called

⁴³⁸ Noticias RCN. March 3, 2017. *Comunicado de Noticias RCN en respuesta a las exministras Cecilia Álvarez y Gina Parody*; Pulzo. March 6, 2017. *Se creció la pelea entre Noticias RCN y las exministras Parody y Álvarez-Correa*; Inter American Press Association (IAPA). *Informes: Colombia*. 73rd General Assembly. Salt Lake City, Utah. October 27-30, 2017. Noticias RCN.

⁴³⁹ Noticias RCN. No date. *Respuesta a las exministras Cecilia Álvarez y Gina Parody*.

⁴⁴⁰ Fundación para la Libertad de Prensa (FLIP). *FLIP condena agresión de congresistas en contra de Noticias Uno*. June 24, 2017.

El Espectador. June 5, 2017. *Procuraduría abrirá indagación preliminar al subsecretario del Senado*; El Tiempo. June 6, 2017. *El poder de Saúl Cruz, el funcionario que fingió agresión de la prensa*; Semana. No date. *La agresión de un periodista de Noticias Uno que nunca sucedió*; El Tiempo. June 6, 2017. *Saúl Cruz se disculpa con Noticias Uno por haber mentado por agresión*.

⁴⁴¹ Procuraduría General de la Nación. November 29, 2017. *Procuraduría sanciona con suspensión e inhabilita por 8 meses a Saúl Cruz, subsecretario del Senado*; El Tiempo. November 29, 2017. *Inhabilitan por ocho meses a Saúl Cruz, subsecretario del Senado*; Caracol Radio. November 29, 2017. *Suspendido e inhabilitado por 8 meses el subsecretario del Senado, Saúl Cruz*.

⁴⁴² Republic of Colombia, Note S-GAHD-17-101743 of December 18, 2017.

⁴⁴³ "To Noticias Uno, its Pro Farc journalist Julián Martínez and its director Dr. Orozco I will repeat the answer I gave in 2013 to their repeated slander". Twitter account of Álvaro Uribe Vélez @AlvaroUribeVel. May 15, 2015; Fundación para la libertad de Prensa. *Álvaro Uribe Vélez estigmatiza a periodista de Noticias Uno*. May 15, 2017.

⁴⁴⁴ "That's what this little thug of Samper Ospina says, cowardly abuser of newborn girls". Twitter account of Álvaro Uribe Vélez @AlvaroUribeVel. May 16, 2017; Semana. May 20, 2017. *Daniel Samper, el youtuber, ahora en la mira de Uribe*.

him "rapist of children."⁴⁴⁵ Through various statements and a public letter, organizations linked to the defense of freedom of expression and dozens of personalities warned that this type of behavior is aimed at silencing critical journalism.⁴⁴⁶ Finally, Samper took the case to court and on August 2 the Criminal Chamber of the Superior Court of the Judicial District of Bogotá [*Sala Penal del Tribunal Superior del Distrito Judicial de Bogotá*] granted him constitutional protection and ordered Senator Uribe to issue a firm and precise retraction of his syndications to the plaintiff through the same network in which he expressed them, making it clear that the statements are not based on available evidence and that, therefore, what he affirmed with regard to the journalist is not true. The legislator expressed his disagreement with the court decision but complied with it by means of a statement issued on August 5, in which he retracted his statements but remained critical of the journalist's work. In the same period, other situations of harassment and stigmatizing statements that would involve local authorities and political figures against journalists were made public.⁴⁴⁷

310. On July 26, the Office of the Special Rapporteur for Freedom of Expression issued a statement in which it warned of several episodes of stigmatization and violence against journalists in the country and recalled that public officials have the obligation to adopt a public discourse that contributes to prevent violence against journalists, which requires them to refrain from making statements that expose journalists and media workers to a greater risk of violence.⁴⁴⁸ . In its observations on the draft version of this report, the State indicated that such occurrences "are isolated incidents that do not reflect a pattern of stigmatization or violence against journalists on account of their profession" and it claimed that "they clearly demonstrate that it is not State policy to attack journalists."⁴⁴⁹

G. Subsequent liabilities

311. On February 28, the Municipal Criminal Court of Chocontá ordered the arrest of journalist Aldemar Solano for the contempt of writ of amparo ruling that ordered him to rectify and remove from his blog an article published in the blog *Garabatos* in November of 2016 related to complaints of work-related harassment against a judge from the municipality of Sesquilé, department of Cundinamarca. Said decision was confirmed by the Municipal Criminal Court of Chocontá on March 27 and, in addition to the arrest, the withdrawal of the published article and the payment of a fine were ordered.⁴⁵⁰ On March 31, the Criminal Court of the Chocontá Circuit reportedly revoked the sanction imposed by the Municipal Criminal Court after the journalist withdrew the article from its Facebook page and from his blog.⁴⁵¹

312. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, "privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become

⁴⁴⁵ "Federico Escobar protests the offense of the child rapist, Samper Ospina, to Antioquia, an offense published in *Semana*". Twitter account of Álvaro Uribe @AlvaroUribeVel. [July 14, 2017](#).

⁴⁴⁶ Fundación para la Libertad de Prensa (FLIP). [Press release](#). July 14, 2017; Federación Colombiana de Periodistas (FECOLPER). [Statement](#). July 17, 2017. *Semana*. July 15, 2017. [La carta de los periodistas a Uribe por el trino contra Daniel Samper](#).

⁴⁴⁷ Federación Colombiana de Periodistas (FECOLPER). [Statement](#). July 17, 2017; FECOLPER. [Alcalde de Ibagué asegura que periodistas crean pánico con noticias y hace llamado para que "no deterioren la imagen de la ciudad con escándalos"](#). August 2, 2017; Fundación para la Libertad de Prensa (FLIP). [Periodista de La Silla Vacía fue víctima de intimidaciones](#). January 16, 2017; La Silla Santandereana. January 16, 2017. [Óscar Iván Díaz amedrenta a La Silla Santandereana](#); Federación Colombiana de Periodistas (Fecolper). [La Corporación de Periodistas y Comunicadores Sociales de Santander. CPS, rechaza las intimidaciones a la periodista Jineth Prieto](#). January 17, 2017.

⁴⁴⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Press release 106/17. Office of The Special Rapporteur expresses concern over stigmatization and violence against journalists in Colombia](#). July 26, 2017.

⁴⁴⁹ Republic of Colombia, Note S-GAIIID-17-101743 of December 18, 2017.

⁴⁵⁰ Fundación para la Libertad de Prensa (FLIP). March 30, 2017. [Juez Penal Municipal de Chocontá ordenó arresto contra periodista de Sesquilé, Cundinamarca](#).

⁴⁵¹ *Garabatos*. April 3, 2017. [Juzgado de Chocontá revoca la sanción impuesta por tutela de la Juez de Sesquilé](#).

involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

H. Right to rectification or response

313. According to the information available, on four times during 2017 and by judicial order, the senator and presidential candidate Claudia López had to rectify herself on declarations made through her Twitter account and in journalistic programs.⁴⁵² In November, a decision of the Supreme Court of Justice ordered Lopez to retract explicitly and publicly, through a radio station from her previous statement that, in her opinion, the *Cambio Radical* party is "an assembly to commit crimes with legal personhood".⁴⁵³ Previously she was ordered to retract from statements that had been posted on Twitter regarding the representative to the Chamber of Boyacá, *Ciro Alejandro Ramírez*⁴⁵⁴ and the Attorney General, *Nestor Humberto Martínez*⁴⁵⁵, and for statements made in a news program regarding the former Minister of Housing *Luis Felipe Henao*.⁴⁵⁶ As a result, the newspaper *El Espectador* published an editorial in which it stated that "[t]he cases involving Senator Claudia López demonstrate a disturbing pattern that threatens freedom of expression in Colombia".⁴⁵⁷

I. Source confidentiality

314. On June 13, *Noticias RCN* reported through a statement that the Joint Monitoring and Verification Command of the Ministry of National Defense [*Comando Conjunto de Monitoreo y Verificación del Ministerio de Defensa Nacional*] summoned the journalist of that media, *Maritza Aristizabal*, to testify under oath.⁴⁵⁸ *Noticias RCN* said that this notification was part of a series of pressures that the media and its journalist received as a result of a report issued on May 26 in which a letter signed by General *Javier Flórez* and directed to Peace Commissioner *Sergio Jaramillo* was revealed. The press release states that two senior officials asked *Noticias RCN* to confirm or deny the identity of a source of information, as well as to deliver a document that is part of the investigative journalistic work to which it refused. *Noticias RCN* indicated that it informed its discontent to the Ministry of National Defense; A few hours later, the director received a call from a senior officer of the National Army who announced that the citation was canceled and that the investigation for which the journalist was summoned was closed. The Foundation for Freedom of the Press documented the case and issued a statement in which it rejected "that the military forces use unconstitutional mechanisms to pressure journalists to reveal their sources."⁴⁵⁹

315. According to the information available, on June 13, the Third Municipal Criminal Warranty Control Judge of Buga [*Juez Tercero Penal Municipal de Control de Garantías de Buga*] authorized a search on the Facebook account of journalist *William Solano*, a journalist investigated for the alleged crime of insult, thus

⁴⁵² Semana. November 22, 2017. *Claudia López, cuarta rectificación en cuatro meses*; RCN Radio. November 21, 2017. *Claudia López debe retractarse de sus comentarios por cuarta vez*.

⁴⁵³ El Espectador. November 22, 2017. *Claudia López, de nuevo a retractarse por sus afirmaciones*; El Colombiano. November 22, 2017. *Una vez más ordenan a Claudia López retractarse con Cambio Radical*

⁴⁵⁴ El Heraldo. November 15, 2017. *Corte Suprema ordena a Claudia López rectificar trino contra Ciro Ramírez*; Pulzo. November 16, 2017, *Por tercera vez, Claudia López deberá retractarse por acusaciones en Twitter*

⁴⁵⁵ El Tiempo. November 10, 2017. *Claudia López, a retractarse por acusación contra el fiscal Martínez*. El Colombiano. November 10, 2017. *Senadora Claudia López deberá rectificar señalamientos contra el fiscal*.

⁴⁵⁶ El tiempo. July 13, 2017. *Claudia López se retracta de afirmaciones contra Luis Felipe Henao*; Semana. November 9, 2017. *Claudia López pierde una batalla en la Corte Suprema de Justicia*

⁴⁵⁷ El Espectador. November 25, 2017. *La opinión entutelada*.

⁴⁵⁸ Noticias RCN. June 13, 2017. *RCN denuncia presión de las Fuerzas Militares en contra de la libertad de prensa*.

⁴⁵⁹ Fundación para la Libertad de Prensa. *FLIP rechaza presiones de las Fuerzas Militares en contra de Noticias RCN*. June 14, 2017.

pretending to have access to his sources. On July 21, the First Judge of the Buga Circuit [*Juez Primero del Circuito de Buga*] denied the requested amparo. On July 27, FLIP appealed the decision in the second instance by the Superior Court of the Buga District.⁴⁶⁰

316. The Inter-American Commission recalls that Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression states that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

J. Censorship

317. On March 31, 2016, the Constitutional Court upheld the decision of a municipal court to order a user to remove Facebook content in which one person accused another of being a thief.⁴⁶¹ The Court held that the Facebook exhibition of the plaintiff's image accompanied by the assertion on her "thief" quality escapes any subjective or opinion scenario and, on the contrary, refers to an accusation of a specific factual situation related to with the commission of a crime, but without it being proved true. The ruling stated that in these cases "the effective fundamental guarantee includes, in addition to the cessation of the violation with the order to withdraw the publication, the assessment of the rectification measure aimed at the repair of the affected fundamental rights".

318. On February 3, the Sixth Review Chamber of the Constitutional Court [*Sala Sexta de Revisión de la Corte Constitucional*] adopted a decision in relation to a writ of amparo filed by a merchant through which it ordered Google Inc, in his capacity as owner of the "Blogger.com" tool, to delete a blog, considering that "its content imputes anonymously unproven information on the commission of the crime of fraud and other expressions that may be considered insults and slander against the plaintiff and his company, and given that the latter does not have another effective remedy for his claim."⁴⁶² Additionally, the Chamber warned Google that while it does not regulate the subject matter of anonymous blogs with defamatory, disproportionate, slanderous, or abusive content in Blogger.com's content policy, the company must, without a court order, eliminate content in which the affected cannot defend, controvert, or rectify information by anonymous nature. Likewise, the judgment published in September, ordered that Google Colombia and Google Inc register in the ICT registry under the Ministry of Information and Communications Technologies [*Ministerio de Tecnologías de la Información y las Comunicaciones*]. Finally, it urged the aforementioned Ministry to regulate the protection of the rights of Internet users, especially in relation to abusive, defamatory, dishonorable, slanderous, and insulting publications. At the close of this report Google had raised a nullity incident⁴⁶³

319. Principle 5 of the Declaration states that "Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression." Principle 13, in turn, affirms that "The [media] have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

⁴⁶⁰ Fundación Karisma. [Tutela para revocar decisión del juez que autorizó el ingreso a la cuenta de Facebook de un periodista](#); Fundación para la Libertad de Prensa. [La FLIP rechaza la autorización de juez para ingresar a la cuenta de Facebook de periodista en Buga](#). July 6, 2017.

⁴⁶¹ República de Colombia. Corte Constitucional. [Sentencia T- 145/16](#). March 31, 2016; El Espectador. August 7, 2017. [Corte Constitucional fija límites a los señalamientos en las redes sociales](#)

⁴⁶² República de Colombia. Corte Constitucional. [Sentencia T- 063/17](#) of February 3 2017; El Tiempo. October 16, 2017. [La batalla jurídica que perdió Google en Colombia](#).

⁴⁶³ Fundación para la Libertad de Prensa (FLIP). [La libertad de expresión en internet está en manos de la Corte Constitucional](#). November 9, 2017.

K. Access to public Information

320. On April 5, Decree 588 of 2017 was issued through which the Commission for the Clarification of Truth, Coexistence, and Non-Repetition [*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición*] (CEV) is organized. Said Commission is an independent entity, of constitutional rank, with legal status, administrative, budgetary, and technical autonomy, which will have a term of three years. Its objective is to contribute to the clarification of past events, promote, and contribute to the recognition of the victims and promote coexistence in the territories. Title IV of the Decree deals with access to information. In this regard, it provides that all state entities must provide collaboration and provide the Commission with the information available to them regarding the fulfillment of the mandate of the Commission. It indicates that "in accordance with the provisions of Article 21 of the Statutory Law of Transparency and the Right of Access to National Public Information [*Ley Estatutaria de Transparencia y del Derecho de Acceso a la Información Pública Nacional*]" reservations regarding access to public information in the face of Human Rights violations or IHL infractions are not opposable. In compliance with its mandate, the CEV may request from public institutions the information necessary for the exercise of its functions, without any reservation against it." It specifies that when "it is reserved information, the CEV, in any case, must guarantee, in writing, the reservation of the same, the transfer of the legal reserve of the information, subscribe reserve commitment minutes, and observe the securities and levels of classification enshrined in Statutory Law 1621 of 2013, Statutory Law 1712 of 2014, its regulatory decrees, and other relevant regulations, without prejudice to criminal, disciplinary, and fiscal actions that may arise due to violation of the legal reserve." It also states that "when the information, files, documents, or data required by the CEV correspond to classified, qualified, or reserved information, the holding institution must provide, together with the required information, a report supporting the reservation or classification, according to the following rules: i) do it in writing; ii) specify the legal norms that support the reservation or classification; iii) argue whether there is a present, probable and specific risk of damaging the protected interest that supports the restriction of the information, and iv) demonstrate the damage that may occur with the publicity of these files and information." The regulation stipulates that the "National Government shall guarantee the publicity and mass dissemination of the final report and other documents that the CEV deems necessary to bring into public"⁴⁶⁴ At the close of this report, the Decree was being examined by the Constitutional Court.⁴⁶⁵

321. On September 21, *Dejusticia* made a public call to the Selection Committee to strengthen publicity and transparency in the selection of the Special Jurisdiction for Peace [*Jurisdicción Especial para la Paz*].⁴⁶⁶ The organization requested that the Committee inform the public about aspects of the pre-selection process and selection of candidates, the criteria used for the definite selection of the pre-candidates.

322. On September 28 the Alliance More Information More Rights [*Alianza Más Información Más Derechos*], composed by Corporation Ocasá, the Center for Law, Justice, and Society Studies [*Centro de Estudios de Derecho, Justicia y Sociedad*] (*Dejusticia*), the Antonio Nariño Project [*Proyecto Antonio Nariño*] (PAN), the Foundation for Freedom of the Press [*Fundación para la Libertad de Prensa*] (FLIP), and the Transparency for Colombia Corporation [*Corporación Transparencia por Colombia*] (TpC), issued a statement in which it expressed its "concern for the barriers that still persist for access to information" in the country.⁴⁶⁷ Among other things, the document noted that "there is no evidence that the Office of the Prosecutor has prioritized its obligations as a guarantor body" and called for improving and guaranteeing transparency in the face of the legislative and presidential elections process that will take place in 2018, and in relation to the

⁴⁶⁴ República de Colombia. Presidencia de la República. [Decreto 588 de 2017. April 5, 2017](#). Articles 15 - 19.

⁴⁶⁵ El tiempo. October 11, 2017. [Corte Constitucional abre el debate sobre la Comisión de la Verdad](#). El Espectador. October 11, 2017. [El futuro de la Comisión de la Verdad se discute hoy en la Corte Constitucional](#); El Espectador. October 11, 2017. [Comisión de la Verdad no puede tener restricciones para acceder a información: Minjusticia](#);

⁴⁶⁶ *Dejusticia*. [Dejusticia llama a fortalecer la publicidad y la transparencia en la selección de la Jurisdicción Especial para la Paz](#). September 21, 2017.

⁴⁶⁷ *Alianza Más Información Más Derechos*. [Colombia aún no garantiza el derecho de acceso a la información pública](#). September 28, 2017.

judicial system. In particular, civil society called for the publication of the resumes of the auxiliary magistrates and holders of the high courts, their income statements, their licenses and service commissions, and to disclose the names of those who have family members in public positions of free appointment and removal in the Office of the Prosecutor, the control bodies, the Congress of the Republic, or in high levels of the executive branch, their travel and leave days, among others.

323. On October 11, the Foundation for Freedom of the Press issued a statement in which it reported "constant restrictions and attacks on the press by officials of the Technical Investigation Corps [*Cuerpo Técnico de Investigación*] (CTI) of the Prosecutor's Office in the coverage of public hearings." The organization outlined several cases in which journalists were prevented from covering public hearings.⁴⁶⁸

L. Internet and freedom of expression

324. On December 12, 2016, the Ninth Review Chamber of the Constitutional Court [*Sala Novena de Revisión de la Corte Constitucional*] determined that *El Espectador* should, by means of de-indexing techniques, prevent that, when the name of Mr. Carlos Alberto Plata Gómez is entered in search engines, the opinion article "The cartel that stole Bogota" doesn't show up.⁴⁶⁹ The Court considered, among other matters, that the title of the article implied that the plaintiff was involved in criminal acts. Additionally, given that the article can be found on Google, the Court considered that the violation of the plaintiff's rights were permanent.

325. On December 16, 2016, the Constitutional Court determined that the RCN channel should update information on its website in relation to a note that contained a citizen complaint.⁴⁷⁰ The Court determined that the permanence in time of a content on the web was a factor that caused risk to the people related to the content. The IAPA considered that the decision made public in June is regressive, since, although the Court does not say that the obligation to update is *ex officio*, but rather refers to the power of the person interested to request such an update, it raises that such possibility is maintained while the information is available on the Internet.⁴⁷¹ It noted that according to what arises from the ruling, the Court's rule does not only apply to criminal proceedings but to all types of news published on the internet.

326. On January 26, the First Land Court [*Juzgado Primero de Tierras*] ordered the newspaper *La Patria*, through a precautionary measure, to remove a content from its website. The decision referred to a news report on a decision issued by that court in the context of a process of land restitution of an indigenous reserve.⁴⁷²

327. The Office of the Special Rapporteur has stated that "procedures for de-indexing or removing content cannot be used as a preventive mechanism to protect the right to honor or reputation. Individuals have other remedies available to them to seek redress for the harm caused in the case of alleged dissemination of false, offensive, or inaccurate information by digital media, such as the right of correction and reply, and civil actions for damages. These remedies are less harmful to the right to freedom of expression and require the plaintiff to bear the burden of proving the falsity or inaccuracy of the information being disseminated".⁴⁷³

M. Communications surveillance

⁴⁶⁸ Fundación para la Libertad de Prensa (FLIP). [El CTI continúa obstaculizando a la prensa en audiencias públicas. October 11, 2017.](#)

⁴⁶⁹ Corte Constitucional. [Sentencia 693/16](#) of December 12, 2016.

⁴⁷⁰ Corte Constitucional. [Sentencia T-725/16](#) of December 16, 2016; *Ámbito Jurídico*. July 7, 2017. [En tutela contra RCN, Corte desarrolla jurisprudencia sobre el derecho a la actualización informativa](#); *El Espectador*. July 6, 2017. ["Medios de comunicación deben actualizar sus noticias disponibles en la web": Corte.](#)

⁴⁷¹ Inter American Press Association (IAPA). [Informe: Colombia](#). 73rd General Assembly. Salt Lake City, Utah. October 27-30, 2017.

⁴⁷² Fundación para la Libertad de Prensa. [FLIP rechaza censura contra La Patria de Manizales](#). January 30, 2017.

⁴⁷³ IACHR. [Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para. 139.

328. On August 23, the *LasZorillas* website reported that journalist Gustavo Rugeles was the victim of interceptions of his communications during 2016 when he worked for that media outlet.⁴⁷⁴ The interceptions were ordered by the Prosecutor's Office and would have lasted two months, coinciding with the period in which the journalist was conducting a journalistic investigation. According to the media, the Attorney General of the Nation would have confirmed to the journalist that the interception took place. Additionally, in the file held by the Prosecutor's Office it was determined that Rugeles had nothing to do or was being investigated for the events that are part of the process that was used as a pretext to listen to his conversations.

329. The Office of the Special Rapporteur reiterates that surveillance programs must be designed and implemented in accordance with international human rights standards. Notably, States must guarantee that the interception, collection and use of personal information are clearly authorized by law in order to protect individuals from arbitrary or abusive interference with their privacy. Moreover, the decision to undertake surveillance activities that intrude upon individual privacy must be authorized by an independent judiciary and justified in terms of the objectives pursued in the specific case and the proportionality of the measure in relation to necessity and the interests pursued. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that States should establish independent oversight mechanisms over the authorities in charge of conducting surveillance in order to ensure transparency and accountability.⁴⁷⁵

N. Diversity and pluralism

330. In the framework of the public hearing "Situation of the right to freedom of expression in Colombia" mentioned above, the Foundation for Press Freedom [Fundación para la Libertad de Prensa] (FLIP) presented an investigation on the challenges to guarantee the right to information in the country given the lack of media outlets in many areas of the territory; 83 municipalities in Colombia lack media, or the only source of local information is provided by the Ministry of Defense through military radio.⁴⁷⁶ According to the data of this same investigation that appeared in the page of the Project Mapping of the Information⁴⁷⁷ to October of 2017, of 509 municipalities it had been identified that 287 correspond to "silence zones" where there are no outlets that produce local news. For its part, the State of Colombia indicated that it has implemented different projects to guarantee access to information and technology through initiatives to advance Internet connectivity and reduce the digital divide. It argued that the government has opted for the strengthening of Public Radio. It reported that the State has granted 669 concessions for commercial stations, 300 of public interest, 625 community.

331. In October, the Ministry of Information and Communications Technologies [*Ministerio de Tecnologías de la Información y las Comunicaciones*] (MinTIC) presented a bill to the Congress of the Republic

⁴⁷⁴ LasZorillas. August 23, 2017. **Chuzadas desde la Fiscalía al periodista Gustavo Rugeles cuando formaba parte del equipo de LasZorillas**; Fundación para la Libertad de Prensa (FLIP). **FLIP envía derecho de petición a Fiscalía por interceptaciones a Gustavo Rugeles**. August 25, 2017.

⁴⁷⁵ IACHR. Annual Report 2013. **Annual Report of the Office of the Special Rapporteur for Freedom of Expression**. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc.50. December 31, 2013. Para. 415-417.

⁴⁷⁶ IACHR. 163 Period of Sessions. Public Hearing: **Situación del derecho a la libertad de expresión en Colombia**. July 5, 2017. IACHR. **Report on Public Hearings of the 163 Period of Sessions. August 16, 2017**.

⁴⁷⁷ Fundación para la Libertad de Prensa (FLIP). Proyecto: Cartografías de la Información. Available at: <https://flip.org.co/cartografias-informacion/> (Accessed on October 14, 2017).

for the creation of the Communications Commission as a converging regulatory body.⁴⁷⁸ This Commission will have the power to grant concessions in television and sound broadcasting, and administer the Fund for the Development of Television. According to the MinTIC when explaining the project, the attributions of the sector will be distributed in the following way: MinTIC will continue being the policy rector and in charge of the monitoring and control of ICT, TV, and sound broadcasting; the Communications Commission will be responsible for the regulation and granting of concessions; the National Spectrum Agency [*Agencia Nacional del Espectro*] (ANE) will be the advisory body in the management of the electromagnetic spectrum in ICT, radio, and TV; The ICT Ministry, for its part, will have the functions of surveillance and control of the sector, except in matters related to the protection of the rights of users and the competition regime, which will continue to be in charge of the Superintendence of Industry and Commerce [*Superintendencia de Industria y Comercio*]. The project orders the suppression of the National Television Authority [*Autoridad Nacional de Televisión*]. The Commission will be a National State Agency of Special Nature [*Agencia Nacional Estatal de Naturaleza Especial*], of national order, with legal status, its own assets, and financial and administrative autonomy, which will be part of the Information and Communications Technologies sector, but will not be part of the executive branch of public power.

332. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”⁴⁷⁹

O. Other situations

333. The Attorney General's Office announced on May 23 that it confirmed the dismissal and general disablement for thirteen years against three patrol officers of the National Police who had assaulted two journalists from the *City TV* channel in Bogotá when they were recording the arrest of a person by the police. According to the ruling, they carried serious intentional misconduct.⁴⁸⁰

334. The journalist Gina Rojas reported that the directors of the newspaper *Extra Boyacá* asked her to omit information that affected Governor Carlos Amaya. The pressures would have become evident after the publication of a report. As reported by different organizations, the journalist was pressured, she was asked to resign and was harassed by the employer until she submitted her resignation on July 29.⁴⁸¹ Through a statement published on August 1, the governor of Boyacá stated he had no interference in the decision made by the media to request her resignation.⁴⁸²

⁴⁷⁸ Ministerio de Tecnologías de la Información y las Comunicaciones (MinTIC). [MinTIC presenta al Congreso el Proyecto de Ley para crear un organismo regulador convergente](#). October 17, 2017;

⁴⁷⁹ IACHR. [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc. 5 rev. 1. December 29, 2003. Para. 419.

⁴⁸⁰ Procuraduría General de la Nación. May 23, 2017. [Boletín 387. Procuraduría confirma destitución e inhabilidad por trece años a miembros de la policía por agresión a periodistas de City TV](#); El Tiempo. May 23, 2017. [Confirman destitución a policías que agredieron a periodistas](#).

⁴⁸¹ Federación Colombiana de Periodistas (FECOLPER). [Periódico El Extra deberá responder por presunta censura y acoso laboral a periodistas de Boyacá y Meta](#). August 1, 2017. Fundación para la Libertad de Prensa (FLIP). [Diario Extra acosa a periodista por no ofrecer "ayuda total y directa" al gobernador de Boyacá](#). August 1, 2017.

⁴⁸² Gobernación de Boyacá. [Comunicado a la opinión pública del Gobernador de Boyacá](#). August 1, 2017.

335. According to the information available, in the case of the journalist Jineth Bedoya, in August the Office of the Prosecutor had requested the conviction of former paramilitaries Alejandro Cárdenas Orozco, for the crime of aggravated violent carnal access, and of Jesús Emiro Pereira for the crimes of aggravated simple kidnapping, aggravated torture, and aggravated violent sexual act.⁴⁸³ On August 9 it was made public that the Criminal Chamber of the Supreme Court of Justice confirmed the expulsion from the special jurisdiction of Justice and Peace of two paramilitaries for the kidnapping, torture, and rape of the journalist.⁴⁸⁴ In this context, civil society organizations reported that the journalist had to give a statement for the twelfth time about the events and the sexual assault that is being investigated in the framework of this process.⁴⁸⁵

336. Throughout 2017, various judicial bodies took part in the trials for the serious acts of psychological torture to which the journalist Claudia Julieta Duque was subjected to by officials of the former Administrative Department of Security [*Departamento Administrativo de Seguridad*] (DAS), as a result of her investigation into the murder of the also journalist Jaime Garzón in 1999. In October the Office of the Attorney General declared as crimes against humanity the crimes committed against the journalist and issued an indictment against the former director of DAS Emiro Rojas Granados, and the former Intelligence Detective of that entity, Néstor Pachón Bermúdez.⁴⁸⁶ According to the International Federation of Journalists, in November the Prosecutor's and the Attorney General's Office [*Procuraduría General de la Nación*] (PGN) had requested a conviction against Ronal Harbey Rivera Rodríguez and Rodolfo Medina Alemán, former Colombian intelligence agents accused of torturing the journalist⁴⁸⁷. Meanwhile, on April 24, Enrique Alberto Ariza Rivas, former intelligence chief of the organization, was deported from the US after the journalist reported that he was in that country. On June 23, the pretrial detention order against William Alberto Merchán López was complied with, he had been a former detective of the DAS's Counterintelligence Department and was also linked to the investigation since May 2016. When the measure was ordered, Merchán worked as an officer of the Victims and Witnesses Protection Program of the Office of the Attorney General.⁴⁸⁸

337. On the other hand, it was made public in December that the Prosecutor's Office had decided not to investigate the former director of the DAS, Jorge Noguera Cote, for the psychological torture and threats against the journalist Claudia Julieta Duque. According to the information available, regarding the threats, the fifth deputy prosecutor before the Court would have indicated that "as the acts constituting the threats occurred from March 2003 to October 25, 2005" the crime prescribed. With regards to the crime of torture,

⁴⁸³ El Espectador. August 8, 2017. [Fiscalía pide condena contra alias 'JJ' y 'Huevo de Pisca' por secuestro de Jineth Bedoya](#); Fundación para la Libertad de Prensa (FLIP). [FLIP solicita a juez condenar a Cárdenas Orozco y Pereira Rivera en el caso de Jineth Bedoya Lima](#). August 10, 2017. Equip Nizkor. [Alegato final de la Fiscalía en el caso Jineth Bedoya](#). August 8, 2017.

⁴⁸⁴ El Espectador. August 9, 2017. [Corte Suprema confirmó expulsión de "Panadero" y "J.J." de Justicia y Paz](#); El Tiempo. August 10, 2017. ['Panadero' y 'J.J.' salen de Justicia y Paz, tendrán 40 años de cárcel](#);

⁴⁸⁵ El Tiempo. March 1, 2017. [Bedoya pide investigar al general \(r\) Leonardo Gallego en su caso](#); IFEX. [Revictimised: Colombian journalist called to stand for 12th time](#). February 27, 2017; Federación Internacional de Periodistas (FIP). [Colombia: La incesante lucha de Jineth Bedoya, periodista torturada y abusada por paramilitares](#). March 24, 2017; El País. March 1, 2017. [Jineth Bedoya señala al general \(r\) Leonardo Gallego de participar en su secuestro](#); Caracol Radio. March 2, 2017. [Niego enfáticamente señalamientos de Jineth Bedoya: general Gallego](#);

⁴⁸⁶ Equipo Nizkor. [Caso de Claudia Julieta Duque es un crimen de lesa humanidad: Fiscalía](#). October 25, 2017; Fundación para la Libertad de Prensa (FLIP). [El caso de Claudia Julieta Duque fue calificado como crimen de lesa humanidad](#). October 26, 2017; El Tiempo. October 26, 2017. [Fiscalía dice que el caso de la periodista Duque es de lesa humanidad](#)

⁴⁸⁷ Federación Internacional de Periodistas. [Fiscalía y Procuraduría piden condena contra torturadores de periodista Claudia Julieta Duque. December 7, 2017](#);

⁴⁸⁸ Semana. April 24, 2017. ["La justicia cuando quiere, puede": Claudia Julieta Duque](#); Federación Internacional de Periodistas (FIP). [Colombia: el juicio contra dos torturadores de Claudia Julieta Duque entra en su etapa final](#). June 15, 2017; Caracol Radio. June 23, 2017. [Capturan a funcionario de la Fiscalía por tortura a Claudia Julieta Duque](#); El Espectador. June 23, 2017. [Capturan a funcionario de la Fiscalía implicado en caso de tortura psicológica contra periodista](#).

the prosecutor announced that there is no evidence to confirm that Noguera Cote "has devised, participated, intervened, or promoted them". The journalist stated that she would appeal the decision of the Prosecutor's Office.⁴⁸⁹

⁴⁸⁹ El Tiempo. December 8, 2017. *Se abstienen de investigar a Jorge Noguera por tortura a periodista*; El Espectador. December 9, 2017. *Fiscalía se abstiene de investigar a Jorge Noguera por amenazas a periodista*

11. COSTA RICA

338. The Office of the Special Rapporteur highlights that Executive Branch sent to the Legislative Assembly a bill that contemplates the decriminalization of crimes against honor in cases of public interest, recognizes the right to protect the confidentiality of sources, and stipulates the conscience clause for journalists' employment contracts. On the other hand, it takes into account the bill sent to the legislature aimed at regulating the right to access to public information. Both bills are under discussion, the present report describes their fundamental characteristics, as well as the contributions and observations made by civil society.

339. Throughout 2017, the Office of the Special Rapporteur received complaints and information from civil society concerning alleged media concentration levels on radio and television in the country, and on the lack of an adequate regulatory framework to guarantee the diversity and plurality of contents and operators. According to this information, the situation could be aggravated by the implementation of the transition to digital television. Meanwhile, the State reported that it is conducting studies on the concentration levels of the actors in the market and encouraging the entry of new non-commercial actors.

A. Legal reforms

340. On April 27, the Executive Branch issued two decrees to regulate "Transparency and access to public information in the State and its dependencies" and the "Opening of Public Data," as part of the National Open Government Strategy.⁴⁹⁰

341. Decree 40200 on Transparency and Access to Information [*Transparencia y Acceso a la Información*] and its Guideline 073 have as their object ensuring that all dependencies of the Central Government and the Decentralized Public Administration guarantee the effective fulfillment of this human right in a proactive, timely, officious, complete, and accessible manner.⁴⁹¹ The Decree regulates the procedure and deadlines for requesting and providing information, and establishes that each agency must appoint an Access to Information Officer. The rule provides that in cases where access to public information is denied based on a regulatory exception, the applicant may file the corresponding administrative appeal with the corresponding institutional authority. Chapter III of the Decree establishes a set of obligations of active transparency indicating the list of information that the agencies must publish on their websites. In turn, Guideline 073 instructs the decentralized public administration to "govern their actions in accordance with the principles of maximum disclosure, transparency, citizen participation, celerity, informality, and non-discrimination."⁴⁹² It also "urges the Decentralized Public Administration to adopt the same principles of access to information."

342. In turn, Decree 40199 and its Guideline 074 establish that public data are made available to the public as open data for the purpose of facilitating their access, use, reuse, and redistribution for any legal purpose,⁴⁹³ under a series of principles, public data should be open by default, accessible and usable, comparable, neutral, and interoperable. The implementation and enforcement of the National Public Data Opening Policy [*Política Nacional de Apertura de Datos de Carácter Público*] will be composed by a National Open Data Commission [*Comisión Nacional de Datos Abiertos*], a Technical Secretary of the National Public Data Opening Policy [*Secretaría Técnica de la política Nacional de Apertura de Datos Públicos*], and the Institutional Links Group for the Opening of Public Data [*Grupo de Enlaces Institucionales para la Apertura de Datos Públicos*].

⁴⁹⁰ Elpaís.cr. April 27, 2017. [**Dos proyectos de ley y dos decretos buscan implementar Gobierno Abierto en el país.**](#)

⁴⁹¹ Poder Ejecutivo. [Decreto Ejecutivo 40200 "Transparencia y Acceso a la Información Pública". April 27, 2017.](#)

⁴⁹² Poder Ejecutivo. [Directriz 073 "Transparencia y Acceso a la Información Pública". April 27, 2017.](#)

⁴⁹³ Poder Ejecutivo. [Decreto Ejecutivo 40199 "Establece la apertura de los datos públicos". April 27, 2017;](#) Poder Ejecutivo. [Directriz 073 "Apertura de datos abiertos". April 27, 2017.](#)

343. On 27 April, the Executive Branch sent to the Legislative Assembly two initiatives on freedom of expression and access to public information.⁴⁹⁴

344. The draft of the "Freedom of Expression and Press Act" [*Ley de libertad de expresión y prensa*] promotes the decriminalization of crimes against honor for cases of information of public interest, expressly recognizes the right to protect the confidentiality of sources, and stipulates the inclusion of the conscience clause in journalists' work contracts. The statement of reasons for the initiative emphasizes the need for these reforms in order to harmonize national legislation with Inter-American standards. In this regard, it expresses that both the IACHR and the Inter-American Court of Human Rights "have reiterated the duty of States to ensure the protection of the right to freedom of expression as a means of strengthening the functioning of pluralistic and deliberative democratic systems through promotion of the free circulation of information, ideas, and expressions of all kinds."

345. Regarding the reforms to the title of crimes against the honor of the Criminal Code,⁴⁹⁵ the bill foresees amendments to articles 151 (Exclusion of crime) and 155 (Reparation publication), and repeals article 149 (Proof of veracity). Article 151 of the Criminal Code establishes that an expression is not punishable: "a) If the accusation made refers to facts of public interest; b) If the accusation is true and has not been made out of pure desire to offend; c) In the case of unfavorable opinion to literary, artistic, historical, scientific, or professional work; d) If it is an unfavorable opinion expressed in fulfillment of a duty or exercising a right, provided that the procedure or the lack of reservations, when there should have been one, does not demonstrate an offensive purpose. In the case of the offense referred to in article 152, it shall not be punishable in the case of the publication or reproduction of information or judgments on acts of public interest offensive to honor issued by mass media, by news agencies, by public authorities, or by individuals with authorized knowledge of the facts; provided that the publication indicates from which of these the information comes from."

346. Additionally, the bill reduces the limitation period for crimes against honor to one year, "in order to avoid that the threat of a judicial process acts as a brake on the medias' duty to disseminate information," the statement of reasons states. Also, it expressly included the right to protection of sources.

347. On the other hand, the initiative introduces amendments to the Labor Code which regulate the conscience clause aimed at ensuring that those who practice journalism are not forced to perform work contrary to their conscience or the ethical standards generally accepted in the exercise of their profession. This clause stipulates the right of journalists to not be subject to sanctions by directors or employers because of their opinions or information, in their professional performance; when such situation occurs, those who exercise journalism may invoke this clause to terminate the employment contract under a justifiable cause, with the guarantee of receiving the compensations and legal benefits provided in the Labor Code. The bill proposes that all provisions contained therein should be interpreted and applied in accordance with inter-American standards and international human rights law in force in the country.

B. Access to public information

348. On June 30, the Constitutional Chamber of the Supreme Court of Justice granted an *amparo* appeal filed by a journalist of *La Voz de Guanacaste* against the Municipality of Santa Cruz, due to the absence of a response to the request for a set of information on the concessions granted in the Maritime Land Area by the municipality.⁴⁹⁶ Basing the decision, the Chamber reaffirmed that the right to access to public information

⁴⁹⁴ Asamblea Legislativa. [Expediente 20362. Proyecto Ley de libertad de expresión y prensa. April 27, 2017](#); Asamblea Legislativa. [Expediente 20361. Proyecto de Ley de Acceso a la Información Pública. April 27, 2017](#).

⁴⁹⁵ Sistema Costarricense de Información Jurídica. [Código Penal, Ley N.º 4573. May 4, 1970](#).

⁴⁹⁶ Poder Judicial de Costa Rica. Corte Suprema de Justicia. Sala Constitucional. Res. N.º 2017010085 of June 30, 2017. Available at: http://www.vozdeguanacaste.com/sites/default/files/sentencia_santacruz_lvg.pdf; La Voz de Guanacaste. July 5, 2017. [Sala Constitucional condena a alcaldesa de Santa Cruz a entregar información pública a La Voz de Guanacaste](#).

"entails an extension of the State's obligations, in the information society, which now goes beyond simply responding to a request for information." "Today, the Administration is obliged to inform the public about their actions and progressively make accessible the information that is in their possession through the technological means at their disposal. In this ideal development of the law the State should aspire to have information that is officially made available to the public by technological means, must be complete, current, orderly, accessible, as far as possible, through programs or interfaces of common use, without imposing unjustified barriers." Thus, the digitization of public information demands "a progressive adaptation" according to the budgetary and human resources of each agency.

349. On August 11, the Constitutional Chamber granted an *amparo* appeal filed by a journalist from the digital newspaper *Elmundo.cr* and ordered the Ministry of Health to provide a letter prepared by the agency that had been requested in the framework of a journalistic investigation on alleged irregularities at open pit garbage dumps.⁴⁹⁷ In rendering the judgment, the Chamber indicated that the fact that there was a pending process before the Environmental Administrative Court was not an impediment to enable the journalist access to the required document as it is information of public interest.

350. According to the newspaper *La Nación*, on August 3, the Board of Directors of the Bank of Costa Rica (BCR) limited access to audio recordings of Board sessions to avoid leaks. Basing the decision, the authorities consulted by the media indicated that the audios are support materials for the preparation of the minutes and contain information that is not public insofar as it relates, inter alia, to bank secrecy.⁴⁹⁸

351. On April, 27, the Executive Branch sent to the Legislative Assembly a initiative for the "Access to public information Act" [*Ley de acceso a la información pública*]. In accordance with Article 1 of this bill to be reviewed by the Legislative Assembly, it aims to "ensure the proper exercise of the right to access to public information." Public authorities of the central and decentralized Administration of the State and the private law subjects are bounded under the bill when they exercise an activity or power of public nature, permanent or temporary, administer, or manage public funds. It establishes the principles of universality, non-discrimination, transparency, maximum disclosure, inclusion, neutrality, citizen participation, and accountability. Chapter II of the bill stipulates a set of obligations of active transparency and the control of their compliance by the Ombudsman's Office [*Defensoría de los Habitantes de la República*]. Requests for information must be answered within a maximum of 10 days.

352. The system of exceptions regulated by article 12 provides that "with regard to the principle of maximum disclosure and the supremacy of the public interest, any information held by a public authority is of public interest, except for the specific exceptions established." Article 13 lists the exceptions indicating that the obliged will not grant access to the information requested, only in the following cases: a) When the information has been declared a State secret, because it affects public safety, national defense, or foreign relations in accordance with the second paragraph of article 30 of the Political Constitution; b) In the case of ongoing processes relating to international relations; c) In the case of monetary and fiscal policies at the stage prior to their implementation, the disclosure of which represents a risk to the economic public order or concedes undue advantage in such regimes; d) By provision contained in a special law. In accordance with article 25, in refusing to submit information based on any of the aforementioned legal exceptions, the obligated party must establish and prove that what is required is subject to the regulated exceptions. In the event of total or partial refusal to provide information, the interested party may file an appeal for revocation before the same authority that issued the act and/or resort to the constitutional writ of *amparo*. Failure to comply with any of the obligations established by law by the public authority will entail administrative

⁴⁹⁷ Poder Judicial de Costa Rica. Corte Suprema de Justicia. Sala Constitucional. ***Res. Nº 2017012627. Sala Constitucional. August 11, 2017.*** Available at: <https://www.elmundo.cr/wp-content/uploads/2017/08/20170007010193-15758074-1.pdf>; Elmundo.cr. August 14, 2017. ***Ministerio de Salud miente a la Sala Constitucional para no entregar información pública.***

⁴⁹⁸ La Nación. August 17, 2017. ***Presidenta del BCR: 'Audios no son públicos'***; La Nación. August 17, 2017. ***Directiva del BCR limita acceso a audios de Junta para evitar filtración***; La Nación. August 22, 2017. ***Sala IV ratificó carácter público de audios de directivas desde 2004.***

responsibility, which will be substantiated under the ordinary and current regime; for the obligated subjects of private law, it provides they will be sanctioned with a fine.

353. A number of civil society organizations welcomed the presentation of an initiative to advance the implementation of the right to access to public information in the country, but warned of the need to refine the bill, taking into account, *inter alia*, the legal exceptions regime, which is argued, could present a confusing and ambiguous formulation that could lead to the imposition of limits on access to public information beyond those recognized by national jurisprudence.⁴⁹⁹ According to available information, some legislators and the media would also have raised objections to the proposed regulation. At the close of this report, the Legislative Assembly Commission on Technology and Education [*Comisión de Tecnología y Educación de la Asamblea Legislativa*] had approved a motion to convene a hearing to hear the positions of the authorities of the different media and the Association of Journalists [*Colegio de Periodistas*].⁵⁰⁰ A motion was also approved to request an opinion from these actors on the draft of the "Freedom of Expression and Press Act" [*Ley de libertad de expresión y Prensa*].

354. Principle 4 of the Declaration of Principles on Freedom of Expression which states that "[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

C. Internet and freedom of expression

355. On July 14, the Constitutional Chamber of the Supreme Court of Justice, by a majority, partially admitted, a writ of *amparo* filed against the Superintendence of Telecommunications [*Superintendencia de Telecomunicaciones*] (Sutel) and others, in which the "fair use policy" of the postpaid mobile Internet was challenged, by which, the companies were allowed to decrease the mobile Internet speed of the user for the rest of the billing cycle, once it had reached the contracted capacity threshold.⁵⁰¹ The applicants who submitted the writ indicated that the applied policy limited the Internet navigation speed to such a degree that it rendered it inoperative, thereby damaging their fundamental rights, in particular the right to Internet access.

356. The ruling emphasized the relevance of the Internet in today's society for the exercise of freedom of expression and other rights. In that sense, it indicated that a restriction to the Internet could affect freedom of expression in the terms established in Article 13 of the American Convention, "extending the prohibition established in section 3 thereof."

357. Additionally, the ruling held that "given the constitutional relevance of the Internet in our society, it is clear that the State and, as part of it, Sutel has an obligation to ensure that a minimum access to said

⁴⁹⁹Primera Plana. April 18, 2018. *Colper presentó observaciones a proyecto de Ley de Acceso a la Información*; Abriendo datos Costa Rica. *Comentarios al texto de la propuesta de ley de acceso a la información pública. 19 de abril de 2017*; CRHoy.com. August 7, 2017. *Ejecutivo insiste en ley mordaza para restringir acceso a información pública*; Diario Extra. August 30, 2017. *Instituto de Prensa advierte "peligro" en proyecto que impulsa gobierno*.

⁵⁰⁰ Asamblea Legislativa. Comisión Permanente Especial de Ciencia, Tecnología y Educación. Acta de la sesión ordinaria No8. August 29, 2017. Available at: <http://www.asamblea.go.cr/glcp/SitePages/ConsultaActasComisiones.aspx>; CRHoy.com. August 29, 2017. *Diputados aprueban consultar proyecto a directores de medios*.

⁵⁰¹ Poder Judicial de Costa Rica. Sala Constitucional. Corte Suprema de Justicia. **Res. N° 2017011212 of July 14, 2017**; Crhoy.com. July 14, 2017. *Declaran parcialmente con lugar recurso contra política de uso justo de Internet móvil pospago*; La Nación. July 14, 2017. *Sala IV: Sutel lesionó derechos básicos de clientes con política de 'uso justo' de red móvil*.

network is guaranteed." The Chamber clarified that it does not oppose the fair use policy as a mechanism for traffic management, but warned that such a policy "cannot harm the irreducible minimum of a right, also called essential content. The disregard of this minimum, which allows a functional access to the Internet, would mean denying the right itself, as from the point of view of its effectiveness it ends up voiding it of content (...) the policy of fair use is not a sanction, but a traffic management mechanism. In that respect, it is contrary to the constitutional principle of reasonableness and proportionality that the essential content of a fundamental right disappears, when there are other methods capable of achieving the same result (avoiding intensive consumption), without the need to excessively restrict the persons of such right."

358. Consequently, the Chamber held that according to the criterion of necessity, "it wouldn't be justifiable the application of the policy of fair use when there is no congestion in the networks, as could be in times of low demand for the service. The decrease in speed can only happen to relieve the service" stated the judgment. The Chamber understood that being Internet access a fundamental right as established by its jurisprudence in 2010, the determination of the minimum speed for Internet connection that will serve as a basis for the implementation of the fair use policy should be established by Sutel and not by the operators, so that the user affected by said policy maintains functional access to the Internet. In that sense, among other measures, it ordered the agency to make such determination within a four months period. The policy of "fair use" of the Internet had also been challenged by the Costa Rican Association of Journalists and the Ombudsman's Office.⁵⁰²

D. Diversity and pluralism

359. The *Red de Iniciativas de Medios de Comunicación Alternativa* (Redmica) together with the organization *Voces Nuestras* filed an action of unconstitutionality against Radio Law [*Ley de Radio*] No. 1758 of June 19, 1954 and its amendments, and the Rules of Procedure for the Transition to Digital Terrestrial Television in Costa Rica [*Reglamento para la Transición a la Televisión Digital Terrestre en Costa Rica*], Executive Decree No. 36774 of September 6, 2011.⁵⁰³

360. They argued that the legal framework omitted to regulate the granting of concessions for the use and exploitation of the radio spectrum to carry out broadcasting activities and, in addition, failed to recognize and regulate the existence and activity of community radio broadcasters, as well as digital television, and the use of the digital dividend. By a resolution issued on July 26, the majority of the Constitutional Chamber of the Supreme Court of Justice rejected "based on the merits" the filed action.⁵⁰⁴ The ruling indicated that according to article 29 of the General Telecommunications Law, the enabling title for individuals to use and exploit the radio spectrum is the concession, and it also establishes the procedure to grant it, in the sense that it should be by public tender, which must be prepared by Superintendence of Telecommunications [*Superintendencia de Telecomunicaciones*] (Sutel). The ruling held that "at the time of preparing the respective tender, said body must necessarily take into account the international instruments on human rights applicable in Costa Rica - and their interpretation by the competent bodies -, as components of Constitutional Law."

361. On September 6, during the 164th Extraordinary Period of Session of the IACHR, a public hearing was held on the "Situation of the Right to Freedom of Expression in Costa Rica".⁵⁰⁵ During this hearing, *Red de Iniciativas de Medios de Comunicación Alternativa* (Redmica) and the Center for Justice and International Law

⁵⁰² Monumental.co.cr. February 28, 2017. *Defensoría pide a Sutel desaplicar política de "uso justo" de internet móvil postpago*; Colegio de Periodistas de Costa Rica (Colper). Comunicado de la Junta Directiva. *Colper respalda los argumentos de Defensoría sobre política de "uso justo"*. March 6, 2017.

⁵⁰³ Voces Nuestra. **Presentan acción contra la actual ley de Radio en Costa Rica**. March 9, 2017; Observacom. **RedMICA y Nuestras Voces promueven acción de inconstitucionalidad contra Ley de Radio de Costa Rica**. March 9, 2017.

⁵⁰⁴ Poder Judicial de Costa Rica. Sala Constitucional. Corte Suprema de Justicia. *Res. N° 2017011715, July 26, 2017*.

⁵⁰⁵ IACHR. 164 Extraordinary Period of Sessions, Mexico City. **Public hearing "Situation of the right to freedom of expression in Costa Rica"**. September 6, 2017.

(CEJIL) expressed their concern about said sentence, which, they consider "aggravates" the situation. During the hearing, the organizations that requested the hearing emphasized that the legal framework under which broadcasting in the country currently operates is obsolete, insufficient, and disregards the inter-American standards on freedom of expression, insofar as it does not offer guarantees for the existence of diversity and plurality of media. Additionally, it would not explicitly recognize community media, nor does it provide for anti-monopoly measures, and an adequate regulatory institutionalality. The organizations also presented the results of a study carried out by Redmica, according to which 90 percent of the media is commercial. They affirmed that there are no community media in the country, but a network of cultural media that belong to a single public-private institution. They indicated that 57 percent of the radio frequencies belong to seven groups, and in television, 60 percent of the channels belong to five companies of which only two are Costa Rican. The organizations that requested the hearing said that at least 10 companies exceed the technical criteria on concentration established by Sutel in 2012 that were rejected by the Ministry of Science and Technology.

362. For its part, the State delegation highlighted Costa Rica's commitment in the promotion and defense of freedom of expression. The State announced that it is working on the presentation of a bill draft in the coming months aimed at regulating taxing and sanctions in the field of broadcasting. As for the concentration of the media, the State indicated that it is working on defining procedures to determine if there is a concentration that affects the market; it affirmed that nowadays there is plurality but admitted that plurality and diversity can be broader and indicated that this is an aspiration to which it is committed. According to state representatives in the National Telecommunication Development Plan [*Plan Nacional de Desarrollo de Telecomunicaciones*] it has reserved "at least" 24Mhz for non-commercial purposes. In that sense, the State promised to continue the dialogue with civil society. The members of the IACHR and the Special Rapporteur for Freedom of Expression took note of the information on the situation of media concentration and asked the State about the measures planned to combat it and to guarantee the diversity and plurality of broadcasting media.

363. On April 27, Sutel's Board of Directors resolved to recommend to the Ministry of Science, Technology and Telecommunications [*Ministerio de Ciencia, Tecnología y Telecomunicaciones*] (Micitt) the opening of an administrative procedure for the possible application of Article 22 of the Telecommunications Law and the eventual recovery of 12 television frequencies, on the grounds that the concessionaires would not be operating under the conditions of coverage set forth in the enabling title.⁵⁰⁶ The Chamber of Concessionaires would have challenged the lack of due process in the adoption of said recommendation by the Board of Directors of Sutel, as the concessionaires hadn't had previous knowledge of the respective reports on which the recommendation was based.⁵⁰⁷ Speaking to the press, ministry officials said they will enforce the law and take the necessary steps to sort the spectrum by recovering frequencies that are not being properly used.⁵⁰⁸

364. On June 19, *Crhoy.com* reported that five business groups that run the nation's top commercial television channels use a network of anonymous corporations to maintain control over 45 percent of analogue channel concessions. Citing a response from Sutel to a request for access to public information, the media indicated that the group holding the largest number of channels is Repretel under the legal entities of Telesistema Nacional S.A., Televisora Sur y Norte S.A., and Teleamérica S.A. has the concession of 10 television channels, 5 arrays (2, 4, 6, 11 and 46) and 5 repeaters (3, 12, 22, 26 and 34). As reported by this media,

⁵⁰⁶ Superintendencia de Telecomunicaciones (SUTEL). [Acta sesión ordinaria 33-2017. April 27, 2017](#). Point 4.1 in the agenda. Observacom. [Regulador de Costa Rica recomienda al gobierno revisar concesiones de 12 frecuencias de TV por no estar operando](#). June 5, 2017.

⁵⁰⁷Laprensalibre.cr. May 31, 2017. [Acta pública de Sutel pone en riesgo económico a TV y radios](#); Laprensalibre.cr. May 31, 2017. [TV Digital podría verse afectada por acta pública de Sutel](#); Diario Extra. June 13, 2017. ["Hay 'fantasmas' en el tema del espectro"](#) *Vanessa Castro, abogada experta en telecomunicaciones*; Laprensalibre.cr. June 13, 2017. [Canartel defenderá a concesionarios de frecuencias televisivas](#).

⁵⁰⁸ RTN Revista. June 1, 2017. [Entrevista sobre nuevas frecuencias de TV Digital](#).

Repretel is followed by the Christian organization Enlace, which owns 7 channels, and Teletica, with has rights over 5 channels.

365. On 4 July, members of various political factions presented a bill on the efficient use of the radioelectric spectrum in radio and television broadcasting.⁵⁰⁹ The text provides for a set of guiding principles. The initiative establishes that the current concession contracts for array signals are in force until their expiration date. Existing licensees are guaranteed to be able to continue broadcasting in digital format the array signal that was concessioned in analogue in the 6MHz space. The draft establishes a reserve for public purposes of 30MHz, corresponding to the 3 channels of 6MHz to SINART, 1 channel of 6MHz to *Universidad de Costa Rica*, and 1 channel of 6MHz to *Universidad Nacional de Educación a Distancia*. Also, a reserve for non-profit organizations of 24MHz is established.

366. On the other hand, according to what was informed by the Presidency of the Republic, in July the National Radio and Television System of Costa Rica [*Sistema Nacional de Radio y Televisión de Costa Rica*] (Sinart) launched the Office of the Audience Ombudsman [*Defensoría de las Audiencias*]. At the head of the Office of the Ombudsman, the Executive Council of Sinart appointed the communicator Nathalia Rojas Zúñiga, after a public tender.⁵¹⁰

367. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

E. Other relevant situations

368. On November 8, *Diario Extra* reported the existence of an alleged strategy of harassment by the Bank of Costa Rica [*Banco de Costa Rica*] (BCR) in collaboration with the cement businessman Juan Carlos Bolaños. According to the newspaper, the Attorney General's Office found a document that cites this media outlet as a "tactical objective" for both parties linked to the "Cementazo" case, in order to destabilize it. The finding was made during the raids executed in the main building of the BCR, as part of the investigations carried out by the Public Prosecutor's Office and the Judicial Investigation Agency in that case. *Diario Extra* reported that the idea of weakening the environment would have arisen after a series of publications on top management of the bank and irregular management in the entity. On November 9, through a public statement, the Costa Rican Journalists Association [*Colegio de Periodistas de Costa Rica*] demanded an investigation into the events reported, which, if confirmed, would constitute a serious precedent to destabilize the democratic State, they said. On November 13, the Court of Honor of the Journalists' Association [*Tribunal de Honor del Colegio de Periodistas*] issued a statement in which it stated that: "it emphatically rejects any action, strategy, speech, or proposal, aimed at curbing and hindering the free exercise of Freedom of Information and Freedom of Expression, as was intended to be done against *Diario Extra*, knowing that these rights are enshrined in the legislation. To violate these principles is to attack freedom as the foundation of democracy."

⁵⁰⁹ Asamblea Legislativa. Proyecto "Ley sobre uso eficiente del espectro radioeléctrico en radiodifusión sonora y televisiva". July 4, 2017.

⁵¹⁰ Presidencia.go.co. Defensoría de las Audiencias del SINART inicia acercamiento con la población en Costa Rica. July 31, 2017.

12. CUBA⁵¹¹

369. During 2017, the IACHR and its Office of the Special Rapporteur for Freedom of Expression continued to receive troubling information about unlawful restrictions on freedom of expression in Cuba and government actions designed to inhibit or punish—through the criminal justice system—speech and positions critical of the government. Of particular concern is the steady increase in the selective and deliberate persecution of independent media outlets and organizations that disseminate information outside the control of the State and opinions on matters of public interest. All of this is under a legal framework that does not protect the practice of independent journalism. Government control of the media and of access to digital media also persisted in the country, due to Cuba’s limited Internet connectivity and the blocking of critical media outlets, which restricts the Cuban people’s access to information, cultural expression, and the discussion of ideas through the print media, radio, television, and the Internet.

A. Violence due to the exercise of freedom of expression and the situation of impunity

370. According to non-governmental organizations, State security agencies maintained a policy of harassment toward journalists, human rights defenders, political dissidents, and others. Different measures have reportedly been taken by State agents to prevent such persons from conducting their activities freely, including arbitrary detentions (generally of short duration) the use of the criminal justice system to criminalize their activities, internal deportations, summonses to police stations, house searches, and the confiscation of the instruments of their work. Restrictions on the right to demonstrate, the excessive use of force at demonstrations, and impunity in cases involving such abuses were also reported.

371. According to the Cuban Observatory of Human Rights [*Observatorio Cubano de Derechos Humanos*] (OCDH), 3,594 arbitrary arrests were reported in the first eight months of the year.⁵¹² The OCDH reported that the government increased its use of other repressive tactics, such as barring and physically preventing activists from leaving their own homes, the “fabrication” of common criminal offenses to intimidate or detain opponents, and direct pressure and attacks on the children and relatives of activists.⁵¹³ It indicated that the government had reportedly begun “a new gamut of harassment and repression” against independent journalists, after a supposed kind of “moratorium” on repression against them. The OCDH pointed to the examples of Henry Constantín Ferreiro, Director of the magazine *La Hora de Cuba* and Regional Vice Chair of the Press Freedom Committee of the Inter American Press Association (IAPA), journalist Sol García Basulto of *La Hora de Cuba*, and Manuel Alejandro León Velázquez, a contributor to *Radio Martí* and *Diario de Cuba*.⁵¹⁴

372. According to the information available, Sol García Basulto and Henry Constantín were also the victims of cyber-harassment on social media and anonymous social networks, and were spied on

⁵¹¹ This section corresponds to the section on freedom of expression in Cuba, included in Chapter IV of Volume I of the Annual Report 2017 of the IACHR, assigned to the Office of the Special Rapporteur for Freedom of Expression.

⁵¹² CubaNet. June 5, 2017. *Más de 2 mil detenciones arbitrarias en Cuba en lo que va de año*; Observatorio Cubano de Derechos Humanos (OCDH). June 5, 2017. *2.149 detenciones arbitrarias desde enero en un claro recrudecimiento de técnicas represivas*; Diario las Américas. June 5, 2017. *Denuncian más de 2.000 detenciones arbitrarias en Cuba en lo que va de año*; CubaNet. September 4, 2017. *Arrestos y allanamientos a miembros de la sociedad civil este fin de semana*; Observatorio Cubano de Derechos Humanos (OCDH). September 1, 2017. *Casi 500 detenciones en agosto en Cuba*.

⁵¹³ CubaNet. June 5, 2017. *Más de 2 mil detenciones arbitrarias en Cuba en lo que va de año*; Observatorio Cubano de Derechos Humanos (OCDH). June 5, 2017. *2.149 detenciones arbitrarias desde enero en un claro recrudecimiento de técnicas represivas*.

⁵¹⁴ Diario de Cuba. June 26, 2017. *El OCDH condena la 'escalada represiva contra los periodistas independientes' en Cuba*; El Nuevo Herald. June 26, 2017. *Denuncian aumento de la persecución contra el periodismo independiente en Cuba*; CubaNet. July 5, 2017. *Interrogatorio del MININT a Henry Constantín se pospone indefinidamente*; Communication from Centro para la Apertura y el Desarrollo de América Latina (CADAL) of July 27, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Inter American Press Association (IAPA). *Cuba*. October 26, 2017.

continually.⁵¹⁵ The same thing reportedly happened to journalist Iris Maria Mariño García, also of *La Hora de Cuba*,⁵¹⁶ who was also reportedly threatened by State security agents with prosecution for “usurpation of legal capacity.”⁵¹⁷ Henry Constantín Ferreiro and Sol García Basulto were reportedly charged with the same offense.⁵¹⁸ García Basulto was additionally reported to have been subject to the precautionary measure of house arrest since June.⁵¹⁹

373. In May 2017, Laritza Diversent, director of the human rights defense organization Cubalex, was reportedly summoned to appear at the Office of the Attorney General of the Republic [*Fiscalía General de la República*]. There, she was notified of the result of the legal action brought against the organization in September 2016, in which it was determined, among other things, that Cubalex was operating without authorization. It was also suggested to Laritza that there may be a case against her. According to the information available, because of the escalation of the repression against the organization’s work, 14 members of the Cubalex team and Laritza Diversent traveled to the United States in May and June as political refugees.⁵²⁰ According to reports, Julio Iglesias and Julio Ferrer, also members of the team, are reportedly still in Cuba because they are said to be in criminal proceedings or in custody.⁵²¹

374. According to the information available, on May 1, Daniel Llorente, known as “the opponent of the flag,” was reportedly detained after having run through the Plaza de la Revolución with the United States flag. Llorente was charged with resistance and disorderly conduct, and held at the police station for a month. He was later transferred to the Havana Psychiatric Hospital, where he reportedly remains in custody. This was reportedly not the first time Daniel Llorente carried out public actions. In the past—among other things—he reportedly protested former President Barack Obama’s visit to Cuba in 2016, as well as the opening of the U.S. Embassy in Cuba in 2015. Because he reportedly did not belong to any activist or political group, he was classified as an “independent opponent.”⁵²²

375. For its part, The Cuban Institute for Freedom of Expression [*Instituto Cubano por la Libertad de Expresión y Prensa*] (ICLEP) reported that during the first 20 days of May, the political police committed 13 acts of repression against citizen journalists working for media outlets of the ICLEP.⁵²³ The cases they cited

⁵¹⁵ Inter American Press Association (IAPA). *Cuba*. October 26, 2017.

⁵¹⁶ Inter American Press Association (IAPA). *Cuba*. October 26, 2017.

⁵¹⁷ Martí Noticias. September 24, 2017. *Amenazan con proceso legal a otra colaboradora de "La Hora de Cuba"*; Diario de Cuba. September 24, 2017. *El régimen amenaza con acusar de 'usurpación de la capacidad legal' a otra colaboradora de 'La Hora de Cuba'*.

⁵¹⁸ Martí Noticias. September 24, 2017. *Amenazan con proceso legal a otra colaboradora de "La Hora de Cuba"*; Diario de Cuba. September 24, 2017. *El régimen amenaza con acusar de 'usurpación de la capacidad legal' a otra colaboradora de 'La Hora de Cuba'*.

⁵¹⁹ Diario de Cuba. September 24, 2017. *El régimen amenaza con acusar de 'usurpación de la capacidad legal' a otra colaboradora de 'La Hora de Cuba'*; Inter American Press Association (IAPA). *Cuba*. October 26, 2017.

⁵²⁰ El Nuevo Herald. May 4, 2017. *Activistas de Cubalex, el principal grupo legal opositor de Cuba, se marchan al exilio*; Diario de Cuba. May 4, 2017. *Laritza Diversent: 'Salgo mañana del país y no me dejan regresar'*; Martí Noticias. May 4, 2017. *Catorce miembros de Cubalex obtienen refugio político en Estados Unidos*; Agencia EFE. May 7, 2017. *Cubalex asegura que desde EEUU harán visible desprotección de organizaciones*; 14yMedio. May 4, 2017. *Laritza Diversent y Cubalex comienzan su vida en el exilio*.

⁵²¹ Agencia EFE. May 7, 2017. *Cubalex asegura que desde EEUU harán visible desprotección de organizaciones*; 14yMedio. May 4, 2017. *Laritza Diversent y Cubalex comienzan su vida en el exilio*.

⁵²² CubaNet. June 6, 2017. *'Estoy encerrado con candado', dice desde Mazorra el cubano Daniel Llorente*; Martí Noticias. May 1, 2017. *Daniel Llorente vuelve a manifestarse con bandera de EEUU, ahora en marcha por el 1 de mayo*; El País. June 27, 2017. *Cuba encierra en un psiquiátrico a un opositor*; El Nuevo Herald. May 5, 2017. *Opositor cubano detenido por protestar con bandera de EEUU es acusado de desorden público*; Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). June 3, 2017. *Autoridades cubanas quieren tildar de loco al hombre de la bandera*.

⁵²³ Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). May 22, 2017. *La Policía Política liberó sin cargos al Director Ejecutivo del ICLEP Raúl Velázquez*.

included the arrest of ICLEP's Director, Raúl Velázquez, who was reportedly detained for just over 72 hours, during which time his cell phone was confiscated. A case file was reportedly opened on him for the propaganda offenses of "unlawful printed matter," "subversion," and "counter-revolutionary plans."⁵²⁴

376. On August 18, the coordinator of the Patriotic Union of Cuba [*Unión Patriótica de Cuba*] (Unpacu) Jorge Cervantes García, was reportedly released on bond after spending three months in detention. According to Unpacu, he was charged with the offenses of ongoing *desacato*, acting without authority, and resistance.⁵²⁵ On August 19, three Unpacu activists (Jesús Sánchez Romero, Alexis Rodríguez Chacón, and Ovidio Martín Castellanos) were arrested in Santiago de Cuba. On August 23, Sánchez Romero was reportedly sentenced to 1 year and six months in jail after an abbreviated trial; Martín Castellano reportedly remains in custody, provisionally charged with the offense of assaulting a State official [*atentado*], and Rodríguez Chacón is said to have been released.⁵²⁶ On August 31, independent journalist Carlos Alberto Torres Fleites, who worked as an observer with the Association for Free Press [*Asociación Pro Libertad de Prensa*] (APLP), was reportedly summoned and threatened by a political police officer of the State of Santa Clara with years of imprisonment and retaliation against his family "if he continu[ed] with the regulatory activity and his ties with APLP."

377. On September 1, journalist Ramón Góngora of *Palanque Visión* was reportedly detained, beaten, and interrogated for hours. This incident took place less than a week after another journalist from the same media outlet was reportedly detained for 5 hours in the city of Bayamo.⁵²⁷ Like *Palanque Visión*, other new media projects like *Convivencia of Pinar del Rio* and *La Hora de Cuba of Camagüey* were also reportedly targeted for attacks.⁵²⁸

378. On September 2, independent journalist Serafín Moran Santiago was reportedly detained for 6 hours in the municipality of Plaza as he was leaving the home of Juan Antonio Madrazo, where he had gone to interview Madrazo about the alleged government harassment of members of the platform #Otro18.⁵²⁹

379. Also in the month of September, it was reported that journalists covering Hurricane Irma in Cuba were detained. Reporters Carlos Alejandro Rodríguez and Maykel González Vivero were arrested while reporting from northern Villa Clara. They were released after six hours. According to publicly available information, they were subjected to criminal investigation proceedings, stripped naked and searched by officers who confiscated their cell phones and a camera.⁵³⁰ Other journalists including Karina Gálvez, Martínez Jerez, Rolando Rodríguez Lobaina, and Iván Hernández Carrillo, also reportedly had their work tools confiscated and their records, images, and audio files erased.⁵³¹

⁵²⁴ Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). May 22, 2017. *La Policía Política liberó sin cargos al Director Ejecutivo del ICLEP Raúl Velázquez.*

⁵²⁵ Unión Patriótica de Cuba (Unpacu). August 21, 2017. *Liberan bajo fianza al coordinador de UNPACU en Las Tunas, Jorge Cervantes despues de tre meses tras rejas, con 39 días en huelga de hambre.*

⁵²⁶ Unión Patriótica de Cuba (Unpacu). August 28, 2017. *Uno de los principales líderes de UNPACU, Ovidio Martín Castellanos, en prisión 'provisional', acusado de un falso delito de 'atentado' por ser víctima de violenta golpiza de la policía política;* Martí Noticias. August 29, 2017. *Activista de UNPACU deberá esperar juicio en la cárcel;* Martí Noticias. August 25, 2017. *Opositor de UNPACU detenido el sábado condenado a prisión en juicio sumarísimo.*

⁵²⁷ Martí Noticias. September 3, 2017. *Policía amenaza a periodista con "partirle las piernas" si sigue con Palenque Visión.*

⁵²⁸ Inter American Press Association (IAPA). *Cuba.* October 26, 2017.

⁵²⁹ CubaNet. September 4, 2017. *Arrestos y allanamientos a miembros de la sociedad civil este fin de semana;* Cuba Sindical. September 3, 2017. *Liberado el periodista independiente Serafín Morán, bajo 'amenazas' y 'vigilancia'.*

⁵³⁰ Martí Noticias. September 7, 2017. *Detienen a dos periodistas en Cuba que intentaban reportar sobre huracán Irma;* Periodismo de Barrio. September 7, 2017. *Periodismo de Barrio condena detención arbitraria de reporteros;* Panampost. September 8, 2017. *Dictadura cubana arresta a periodistas que reportaban el avance del huracán Irma;* CubaNet. September 7, 2017. *Detenidos periodistas independientes que reportaban sobre avance de Irma.*

⁵³¹ Inter American Press Association (IAPA). *Cuba.* October 26, 2017.

380. In October, the three protestors who had been arrested on July 26 in Santiago de Cuba during a protest surrounding the “regime’s symbolic celebration of July 26, the anniversary of the failed attack on the Moncada Barracks” were reportedly released. According to reports, Alberto Antonio and Leonardo Ramírez Odio, and their father Alberto de la Caridad Ramírez Baró, members of the Citizens’ Committee for the Defense of Human Rights in Cuba [*Comité Ciudadanos Defensores de los Derechos Humanos en Cuba*], were reportedly charged with disorderly conduct and transferred to the Aguadores jail to await trial.⁵³²

381. Also in October, operations organized by State security authorities resulted in the arrest of several women from the Dignity Movement [*Movimiento Dignidad*]. According to the information available, the regime prevented them from leaving the town of Palmarito de Cauto, in Santiago de Cuba, for several months. The members of the Dignity Movement, led by activist Belkis Cantillo Ramírez, had allegedly been subjected to “strong pressure” from State security authorities from the time the movement became known 10 months ago.⁵³³ In a statement released in October, they denounced the repression and arbitrary arrest of their members, and demanded “the citizens’ right to exercise freedom of movement and communication.”⁵³⁴

382. According to the information provided, in the first seven days of December, 15 journalists from the Cuban Institute for Freedom of Expression and Press [*Instituto Cubano por la Libertad de Expresión y Prensa*] (ICLEP) who would work in community media outlets had been arrested, subpoenaed, and interrogated by the Cuban political police. According to ICLEP, there would be a “repressive wave” against these media and their journalists. It also stated that “the situation of ICLEP journalists is worrisome, mainly that of the directors who are under investigation”.⁵³⁵ Previously, on November 30, the headquarters of the community media outlet *El Majadero de Artemisa*, which would be harassed and permanently surveilled by the political police, would have been raided by said police and its director Roberto Morena arrested and transferred to the Unit of the Revolutionary National Police [*Unidad de la Policía Nacional Revolucionaria*] (PNR) of Artemisa, where he would be accused of printing “illicit gazettes”. Similarly, as reported, through third parties, the political police would inform that “all journalists who make this newspaper possible will be interrogated and criminally processed”.⁵³⁶

383. In 2017, acts of retaliation, harassment, and arrests continued to be carried out against journalists, activists, and human rights defenders who expose the situation of freedom of expression in Cuba in international forums. Such persons have reportedly been subject to repressive measures including prosecution under the Criminal Code, prohibitions against traveling abroad, and exhaustive searches at airports, as in the cases of Dagoberto Valdés, Yoandy Izquierdo, and Rolando Rodríguez Lobaina.⁵³⁷ According to the information received, on April 27, Leticia Ramos Herrería, a member of the Ladies in White [*Damas de Blanco*] movement, was detained at the Juan Gualberto Gómez International Airport in Varadero for 5 hours,

⁵³² Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). October 20, 2017. *Liberados los tres activistas que se manifestaron el 26 de julio en la Catedral de Santiago*; Martí Noticias. October 19, 2017. *Liberan a opositores que protestaron el 26 de julio en Santiago de Cuba*; Diario de Cuba. August 1, 2017. *El régimen podría condenar a cinco años de prisión a los opositores que se manifestaron el 26 de Julio*.

⁵³³ Diario de Cuba. October 22, 2017. *Detenidas activistas del Movimiento Dignidad que llevan diez meses cercadas en un pueblo*; Diario de Cuba. May 5, 2017. *Detenidas una veintena de activistas del Movimiento Dignidad*; Diario de Cuba. January 15, 2017. *Nace bajo la represión un nuevo grupo de Derechos Humanos*; Martí Noticias. October 22, 2017. *Detienen a opositoras de Movimiento Dignidad en Santiago de Cuba*; Foundation for Human Rights in Cuba. Sin fecha. *Dignidad (Dignity) Movement*; 14yMedio. October 23, 2017. *Activistas del Movimiento Dignidad denuncian “represión y detenciones arbitrarias”*.

⁵³⁴ 14yMedio. October 23, 2017. *Activistas del Movimiento Dignidad denuncian “represión y detenciones arbitrarias”*.

⁵³⁵ Diario de Cuba. December 7, 2017. *El ICLEP denuncia ‘una ola represiva’ contra los periodistas de sus medios comunitarios*; Neo Club Press. December 7, 2017. *Ola represiva contra periodistas independientes en Cuba*.

⁵³⁶ Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). December 4, 2017. *Ola represiva contra periodistas del ICLEP*; Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). December 5, 2017. *Bajo acoso medio independiente que distribuye información sin censura en Cuba*;

⁵³⁷ Inter American Press Association (IAPA). *Cuba*. October 26, 2017.

after having taken part in a number of meetings in the United States with officials from the U.S. State Department and the Inter-American Commission on Human Rights, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.⁵³⁸ Lia Villares, an independent activist, was held for 3 hours on May 2 by a National Revolutionary Police officer.⁵³⁹ Similarly, it was learned that the Cuban authorities reportedly prevented Berta Soler, the leader of the Ladies in White, from leaving the Varadero airport for Washington, D.C. where she was to receive the Freedom Award from the International Republican Institute (IRI).⁵⁴⁰ In October, Soler was reportedly kept from leaving the country for the fourth time in 2017.⁵⁴¹ Other journalists, including *Carlos Alejandro Rodríguez Martínez*, *Maily Esteves Pérez*, *Regina Coyula*, *Joan Manuel Núñez Díaz*, *Sol García Basulto*, *Maykel González Vivero*, *Yoandy Izquierdo*, *Anderlay Guerra*, *Raúl Velázquez*, *Roberto de Jesús Quiñones*, *Iván Hernández Carrillo*, *Abel Estrada*, and *Henry Constantín*, among others, were also reportedly prevented from traveling abroad.⁵⁴²

384. During this year, the organization Ladies in White reported that it continued to be subject to attacks, harassment, and arrests. Relatives of the movement's members also reported having been subject to repression by State agents.⁵⁴³ Members described a spike in the Cuban regime's harassment of their children in an attempt to force them to leave the organization.⁵⁴⁴ According to the Cuban Commission on Human Rights and National Reconciliation [*Comisión Cubana de Derechos Humanos y Reconciliación Nacional*] (Ccdhrn), the Ladies in White and the Patriotic Union of Cuba (Unpacu) continue to be "the main targets of political repression" in Cuba.⁵⁴⁵

385. The Inter-American Commission reiterates that Principle 9 of the IACHR's Declaration of Principles establishes that "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation." In addition, as the United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS), have established, the State "has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities." Furthermore, "the

⁵³⁸ Diario de Cuba. April 27, 2017. *El régimen detiene a Leticia Ramos Herrería a su regreso de EEUU*; Primavera Digital. April 30, 2017. Informe Semanal de represión contra el Movimiento Damas de Blanco. Available at: https://primaveradigital.org/cubaprimaveradigital/wp-content/uploads/2017/05/479_99tm.pdf

⁵³⁹ 14yMedio. May 3, 2017. *Lia Villares viaja a Estados Unidos horas después de que se le impidiera hacerlo*.

⁵⁴⁰ 14yMedio. March 21, 2017. *El Gobierno prohíbe a Berta Soler salir de Cuba*.

⁵⁴¹ 14yMedio. October 27, 2017. *El Gobierno impide a Berta Soler salir del país por cuarta vez*; Agencia EFE. October 27, 2017. *La líder de las Damas de Blanco denuncia que el Gobierno le impide salir de Cuba*.

⁵⁴² CubaNet. August 31, 2017. *APLP denuncia amenazas y ofensas a periodista independiente en Santa Clara*; Martí Noticias. August 30, 2017. *Periodistas denuncian amenazas de la Seguridad del Estado para que dejen de informar*; Revista El Estornudo. August 29, 2017. *Persona controlada*; Inter American Press Association (IAPA). Cuba. October 26, 2017.

⁵⁴³ Summary of the reports on repression of the Damas de Blanco movement, year 2016-2017. March 16, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁴⁴ Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). June 5, 2017. *Damas de Blanco denuncian un incremento del acoso a sus hijos*; Diario de Cuba. June 5, 2017. *Damas de Blanco denuncian un incremento del acoso a sus hijos*; Summary of the reports on repression of the Damas de Blanco movement, year 2016-2017. March 16, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁴⁵ CubaNet. September 5, 2017. *Denuncian 511 arrestos por motivos políticos en agosto*; Comisión Cubana de Derechos Humanos y reconciliación Nacional (Ccdhrn). *August report – 511 detentions*. September 5, 2017.

authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from making generalizations based on isolated events or the conduct of particular groups.”⁵⁴⁶

B. Subsequent liability

386. The IACHR and its Office of the Special Rapporteur have maintained that laws criminalizing the defamation of public officials [*desacato* laws] are incompatible with the inter-American human rights system, as they lend themselves to “abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions.”⁵⁴⁷ In addition, they have affirmed that the public has the right to “criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office.”⁵⁴⁸ During 2017, the IACHR and its Office of the Special Rapporteur continued to receive troubling information about the use in Cuba of the criminal law—both substantive and procedural—and the offense of *desacato* as mechanisms for the subsequent imposition of liability against journalists and activists who disseminate ideas, opinions, and information critical of the party in power.

387. In March, the national coordinator of the Christian Liberation Movement [*Movimiento Cristiano Liberación*] (MCL), Eduardo Cardet, was reportedly sentenced to three years in prison. Cardet was detained on November 30, 2016, five days after the death of Fidel Castro, and accused of assaulting a State official.⁵⁴⁹ However, MCL alleged that his arrest was “in retaliation against the movement and its criticism of the legacy of the deceased dictator Fidel Castro.”⁵⁵⁰

388. Four activists from the Patriotic Union of Cuba (Unpacu)—two of whom were members of the Ladies in White—as well as seven members of the Orlando Zapata Tamayo Civic Action Group [*Grupo de Acción Cívica Orlando Zapata Tamayo*], were reportedly tried in June, after awaiting trial for more than a year. According to reports, the first four activists were arrested after taking part in a demonstration on April 15, 2016 in Havana’s *Parque de la Fraternidad*, and were transported to detention centers; the other seven were reportedly arrested, charged, and released on bond after participating in a 2016 demonstration outside the National Capitol Building in Havana. The Cuban regime reportedly asked for up to 3 years in prison in some of the cases.⁵⁵¹ According to reports, they were given notice of the judgments on June 31.⁵⁵²

389. The Inter-American Commission recalls that Principle 1 of the IACHR’s Declaration of Principles establishes that “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.” In addition, Principle 5 of the Declaration states that “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” Principle 13, in turn, affirms that “The [media] have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon

⁵⁴⁶ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

⁵⁴⁷ IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights.](#) Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995, p. 223 (Spanish version).

⁵⁴⁸ IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights.](#) Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995, p. 218 (Spanish version).

⁵⁴⁹ Amnesty International. January 31, 2017. [Cuba: demand release of human rights defender: Dr. Eduardo Cardet Concepción](#); Aciprensa. July 31, 2017. [Democracia Cristiana de América demanda a Cuba la liberación de Eduardo Cardet.](#)

⁵⁵⁰ Aciprensa. July 31, 2017. [Democracia Cristiana de América demanda a Cuba la liberación de Eduardo Cardet](#); Inter American Press Association (IAPA). [Cuba.](#) October 26, 2017.

⁵⁵¹ Diario de Cuba. June 17, 2017. [El régimen pide condenas de hasta tres años de cárcel para 11 activistas](#); Cubanos por el mundo. No date. [Berta Soler denuncia que han llevado a juicio a activistas de tres organizaciones.](#)

⁵⁵² Diario de Cuba. June 17, 2017. [El régimen pide condenas de hasta tres años de cárcel para 11 activistas.](#)

journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

C. Direct censorship

390. In April, journalism student Karla María Pérez González was expelled from the Universidad Central de Las Villas for belonging to the opposition movement Somos+, a Cuban civil society organization that reportedly promotes, among other issues, a multi-party system, the independent press, and open elections. According to the information available, classmates of hers decided that she should be expelled, and their decision was upheld by the school’s Federation of University Students [*Federación Estudiantil Universitaria*] (FEU). In its statement, the FEU alleged that she was a “member of an illegal and counter-revolutionary organization, contrary to the principles, objectives, and values of the Cuban Revolution.”⁵⁵³ In May, Pérez González reported being the victim of a systematic attack by journalists from official government media outlets, bloggers, and university authorities.⁵⁵⁴

391. On August 17, graffiti artist Yulier Rodríguez Pérez was reportedly detained for 48 hours when attempting to paint a mural in downtown Havana. The Cuban artist was reportedly released after the authorities made him sign an agreement to erase his paintings within seven days, with the warning that failure to do so could result in a fine or arrest for the crime of property.⁵⁵⁵ Similarly, according to members of the punk rock group *Porno para Ricardo*, they were subject to government harassment and censorship, and reportedly barred from performing publicly in Cuba, due to, among other things, a repertoire alleged to be anti-government.⁵⁵⁶

392. In December it was made public that the Ministry of the Interior (Minint) would have subpoenaed theater director Adonis Milás after he had allegedly decided to join the alternative biennial. Likewise, they would have pressured members of the Milan group, Persephone Theater. According to what was reported, the director would be a part of the Hermanos Saíz Association [*Asociación Hermanos Saíz*] (AHS), which recently organized presentations of the Hamlet Machine play in Santiago de Cuba. This play would have gone through a jury of the Provincial Council of Performing Arts of Santiago de Cuba [*Consejo Provincial de las Artes Escénicas de Santiago de Cuba*], which approved the showings scheduled for November 24 and 25. However, State Security would have suspended the second show, arguing that the work would cast doubt on the image of Fidel Castro. Due to the alleged pressure of the regime’s agents, the actors would now be afraid to work.⁵⁵⁷

393. According to Principle 5 of the IACHR’s Declaration of Principles “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

⁵⁵³ Semana. April 19, 2017. [La estudiante a la que echaron de una universidad en Cuba por pertenecer a un grupo disidente](#); El País. April 19, 2017. [Una universidad cubana expulsa a una alumna de 18 años por disidente](#); BBC Mundo. April 19, 2017. [“Me expulsaron por no comulgar con las ideas comunistas”: Karla María Pérez, la estudiante de periodismo a la que echaron de una universidad en Cuba por ser de un grupo disidente](#).

⁵⁵⁴ Cuba en Miami. May 9, 2017. [Gobierno de Cuba inicia campaña mediática contra Karla Pérez](#); El Nuevo Herald. May 8, 2017. [La joven expulsada de la universidad en Cuba denuncia una campaña mediática en su contra](#); CubaNet. May 9, 2017. [Joven expulsada de la universidad denuncia campaña mediática en su contra](#).

⁵⁵⁵ Diario de Cuba. August 19, 2017. [La Policía da siete días a un artista para borrar sus pinturas en edificios ruinosos de La Habana](#); Diario de Cuba. August 22, 2017. [Grafitero Yulier P: ‘Voy a defender mi obra y asumir las consecuencias’](#); Amnesty International. August 24, 2017. [Cuba: artista urbano en peligro en Cuba](#).

⁵⁵⁶ Puente Democrático. May 3, 2017. [El punk rock cubano en Buenos Aires](#).

⁵⁵⁷ Diario de Cuba. December 3, 2017. [EL MININT presiona a un grupo de teatro y a su director, quien se incorporó a la bienal alternativa](#); Facebook. November 3, 2017. [Función única de Maquina Hamlet en Santiago de Cuba](#).

D. Freedom of expression and the Internet

394. Although the use of the Internet and the development of digital media—especially those aimed at the international community and exiles—have begun to open up new spaces for the circulation of information and ideas outside the official control of the government, access to digital media is hindered by limited connectivity and the blocking of critical media.⁵⁵⁸ According to reports, the number of websites censored by the government has grown in recent years, and in order to access them—for instance the news sites *CiberCuba*, *14ymedio*, and *Cubanet*—Cuban citizens have used virtual private networks (VPN) or anonymous proxy websites.⁵⁵⁹

395. According to a report published in August by Amnesty International, Cuba has a dual Internet system: one that is less expensive and subject to “strict censorship” by the government through access to selected information, and the global Internet, which is inaccessible to the majority of Cubans.⁵⁶⁰ It further indicated that, according to a study by the Open Observatory of Network Interference (OONI), 41 websites were blocked in Cuba, including *14yMedio*, *Martí Noticias*, *Damas de Blanco*, and *La Nueva Cuba*. The common thread among these websites was that they expressed criticism of the government, or were involved with human rights issues, or with circumvention tools, which are techniques for “getting around censorship.”⁵⁶¹ This lack of Internet access in Cuba was cited by the participants in the hearing on the “Human Rights Situation of Afro-Descendants in Cuba,” held on March 21, during the 161st Regular Session of the IACHR. According to the attendees, the lack of media and Internet access in Cuba affects their rights to free expression and the performance of their work as human rights defenders.⁵⁶²

396. In November, it was known that the Telecommunications Company of Cuba [*Empresa de Telecomunicaciones de Cuba S.A.*] (ETECSA) and the Curacao United Telecommunication Services (UTS) would have signed an agreement to increase the bandwidth of Internet service in Cuba. As reported, UTS would also sell roaming services in the country to customers from all countries.⁵⁶³

397. As the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the OAS Special Rapporteur for Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information stated in their 2011 Joint Declaration,⁵⁶⁴ “Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as

⁵⁵⁸ Infobae. May 7, 2016. *Internet en Cuba: lenta y cara, pero cada vez más masiva*; CubaNet. February 8, 2016. *ETECSA, un monopolio capitalista en Cuba*; Knight Center for Journalism in the Americas. April 16, 2016. *ISOI 2016: Yoani Sánchez explains how technology has made Cubans more free*.

⁵⁵⁹ 14ymedio. August 9, 2017. *Recetas para sortear la censura en internet*.

⁵⁶⁰ Amnesty International. August 29, 2017. *Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education*.

⁵⁶¹ Amnesty International. August 29, 2017. *Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education*; Periódico Cubano. August 31, 2017. *Cuba bloquea 41 sitios de internet en los puntos Wifi, señala informe del Observatorio Abierto de Interferencias en la Red (LISTADO)*.

⁵⁶² IACHR. 161 Ordinary Period of Sessions. Hearing on the “Situation of human rights of people of African descent in Cuba”. March 21, 2017. Available at: <https://www.youtube.com/watch?v=RATqRpKNVM8&t=2s>

⁵⁶³ CubaNet. November 3, 2017. *ETECSA firma acuerdo para aumentar el ancho de banda de Internet*; Cubasí. November 1, 2017. *Etecsa en Fihav: Sólido paso en proceso de informatización*.

⁵⁶⁴ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. *Joint Declaration on Freedom of Expression and the Internet*.

social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.” They similarly recalled, *inter alia*, that “Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.”

E. Freedom of expression in the electoral context

398. The Office of the Special Rapporteur also received information indicating that the government is retaliating against those who have expressed their intent to run for office in Cuba’s 2018 elections, in view of Raúl Castro’s promise to leave office in February 2018. According to the information available—through the application of the law or outside the law—limitations have been placed on pluralism in the exercise of political rights and freedom of expression in the country.

399. On June 13, the Council of State announced that the first round of elections of delegates to the municipal assemblies would be held on October 22, and run-off elections would be held on October 29 in those districts where no single candidate obtained more than 50% of the valid votes cast.⁵⁶⁵ However, because of the serious damage caused by Hurricane Irma, in September the Council of State announced the rescheduling of those dates to November 26 and December 3, 2017, respectively.⁵⁶⁶ The date of the elections of delegates to the provincial assemblies and the representatives to the National Assembly—the body that votes to appoint the country’s President—will reportedly be announced at a later time.⁵⁶⁷ As announced by the National Electoral Commission [*Comisión Electoral Nacional*] (CEN), 12,515 People’s Power delegates would be elected in the general elections held from September 4-30.⁵⁶⁸

400. Most of the aspiring candidates were said to be connected to dissident citizen platforms like the Christian Liberation Movement, #Otro18, the Democratic Action Roundtable [*Mesa de Unidad de Acción Democrática*] (MUAD), *Plataforma Ciudadana*, Citizen Observers of Election Processes [*Ciudadanos Observadores de Procesos Electorales*] (COPE), *Un voto, Cuba Decide* and *Un cubano*.⁵⁶⁹ According to reports, there is a growing campaign of intimidation and disparagement against the candidates from the different platforms seeking to run in the upcoming municipal elections,⁵⁷⁰ and the Cuban government “systematically frustrates the nomination of independent candidates to the Municipal Assemblies of the People’s Power.”⁵⁷¹

401. On September 7, independent candidate Joan Manuel Núñez Díaz reportedly decided not to run as a candidate for municipal delegate due to “the pressure on him and his support networks.”⁵⁷² Other individuals who, according to the information available, were prevented from participating in the Municipal Assemblies of the People’s Power as a result of actions taken against them by the Cuban government are: **Lisset Naranjo, Anais Peñalba, Nancy Quiñones, Elías Sánchez, Zelandia de la Caridad Pérez Abreu,**

⁵⁶⁵ Granma. June 13, 2017. *Convoca el Consejo de Estado a elecciones generales.*

⁵⁶⁶ Granma. September 19, 2017. *Modifica el Consejo de Estado fecha de las elecciones para delegados a las asambleas municipales del Poder Popular*; ABC Internacional/EFE. September 19, 2017. *Cuba atrasa las elecciones por los graves daños del huracán Irma.*

⁵⁶⁷ Agencia EFE. August 12, 2017. *El proceso de nominación de los candidatos a municipales en Cuba comenzará el 4 septiembre.*

⁵⁶⁸ Cubadebate. June 29, 2017. *Cuba elegirá 12 mil 515 delegados del Poder Popular en comicios generales (+ Infografía)*; Diario de Cuba. June 30, 2017. *La Comisión Electoral Nacional aprueba 12.515 circunscripciones.*

⁵⁶⁹ 14yMedio. April 26, 2017. *Detenidos dos activistas de la plataforma #Otro18*; 14yMedio/EFE. April 18, 2017. *Varios opositores denuncian la represión contra candidatos independientes de #Otro18*; Agencia EFE. April 18, 2017. *Opositores cubanos denuncian la represión a candidatos independientes de #Otro18*; Cubanos in Spain. May 18, 2017. *Gobierno cubano comienza proceso para futuras elecciones*; Martí Noticias. May 18, 2017. *Cuba comienza proceso para futuras elecciones, pero no revela detalles o fechas.*

⁵⁷⁰ Observatorio Cubano de Derechos Humanos (OCDH). September 1, 2017. *Casi 500 detenciones en agosto en Cuba.*

⁵⁷¹ Martí Noticias. October 18, 2017. *Gobierno frustra nominación de candidatos independientes en Cuba*

⁵⁷² Diario de Cuba. September 11, 2017. *El régimen acusa de 'tráfico ilegal de personas' a un activista que se iba a presentar a las elecciones.*

Yusniel Pupo Carralero, and Raúl Martínez Caraballo, **among others.**⁵⁷³ **Similarly, five independent candidates entered the race in Santiago de Cuba, but, according to reports, this was not reflected in the official press. In the eastern province, police forces reportedly intervened in nomination meetings “as a form of intimidation.”**⁵⁷⁴

402. Similarly, on September 9, the independent candidate from Mayarí, Holguín, Confesor Verdecia Ellcok, also known as “Proco,” was reportedly removed from his house by a Police patrol, and driven to the local police station where he was detained for two hours and interrogated by State security agents. His arrest was reported to have occurred the day after *Diario de Cuba* published an interview with him, conducted by independent journalist Osmel Ramírez Álvarez. According to the information available, they tried to intimidate him into withdrawing his candidacy, and assured him that they would arrest the journalist who interviewed him “within the next few hours.”⁵⁷⁵

403. The Inter-American Commission has underscored that there is a “direct relationship between the exercise of political rights and the concept of democracy as a way of organizing the State,” and has reiterated the need to guarantee citizens and organized political groups the rights to political participation and freedom of expression without fear of retaliation, enabling and fostering a plural, broad, and robust public debate. In the inter-American system, the relationship between human rights, political rights, and democracy is enshrined in the Inter-American Democratic Charter, which states that: “Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.”

F. Other situations

404. On January 21, Danilo Maldonado “El Sexto” was released after spending nearly two months in custody without any charges having been brought against him.⁵⁷⁶ In July, the UN Working Group on Arbitrary Detention determined that “El Sexto’s” arrest in November 2016 was arbitrary “according to categories I and III of the methods used by the Working Group, and therefore violates Articles 3, 9, and 10 of the Universal Declaration of Human Rights.”⁵⁷⁷ Maldonado was reportedly detained in Havana on November 26, 2016 for the offense of property damage. Maldonado painted graffiti containing the words “He’s gone” [*Se fue*] on a wall of the Habana Libre Hotel after the announcement of Fidel Castro’s death, and reportedly posted a video on his Facebook page celebrating Castro’s death.⁵⁷⁸

⁵⁷³ Martí Noticias. October 24, 2017. *Citan a la Policía a candidata independiente e impiden su nominación*; Martí Noticias. October 18, 2017. *Gobierno frustra nominación de candidatos independientes en Cuba*; 14yMedio. October 13, 2017. *Las autoridades impiden la nominación de todos los candidatos independientes hasta el momento*; Diario de Cuba. September 11, 2017. *El régimen acusa de 'tráfico ilegal de personas' a un activista que se iba a presentar a las 'elecciones'*; NoticiasCubanet Cuba/You Tube. September 14, 2017. *Detienen a Raúl Martínez Caraballo, coordinador de UNPACU, en Manuel Tames, Guantánamo*.

⁵⁷⁴ Martí Noticias. October 18, 2017. *Gobierno frustra nominación de candidatos independientes en Cuba*.

⁵⁷⁵ Diario de Cuba. September 10, 2017. *El régimen detiene a un candidato opositor y amenaza al periodista de DDC que lo entrevistó*.

⁵⁷⁶ DW. January 21, 2017. *Liberado el disidente cubano "El Sexto"*; El País. January 23, 2017. *Un disidente cubano es liberado tras pasar dos meses en prisión*; Martí Noticias. January 21, 2017. *Liberado el grafitero cubano Danilo Maldonado, El Sexto*; Agencia EFE. January 21, 2017. *Las autoridades cubanas liberan a "El Sexto" tras casi dos meses en prisión*.

⁵⁷⁷ United Nations. *Grupo de Trabajo sobre la Detención Arbitraria. Opiniones aprobadas por el Grupo de Trabajo sobre la Detención Arbitraria en su 78º período de sesiones (19 a 28 de abril de 2017) - Opinión núm. 12/2017 relativa a Danilo Maldonado Machado (Cuba)*. A/HRC/WGAD/2017/12. July 7, 2017. Para. 64.

⁵⁷⁸ IACHR. *Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para. 458.

405. In June, it was reported that José Antonio Torres, a *Granma* journalist convicted of espionage, was released on probation. Torres was arrested in 2011 and later sentenced to 14 years in prison for the offense of espionage. According to reports, his arrest and conviction were the result of having written a letter to the head of the U.S. Interests Section in Havana (SINA), with the objective of "obtaining a personal interview" and "sensitive information," according to the court file.⁵⁷⁹

⁵⁷⁹ 14yMedio. June 28, 2017. *El periodista de 'Granma' condenado por espionaje sale en libertad condicional*; 14yMedio. January 27, 2015. *El espía que nunca quiso serlo*; CubaNet. June 28, 2017. *Periodista de 'Granma' condenado por espionaje obtiene libertad condicional*; Martí Noticias. April 26, 2016. *EEUU pide a Cuba que libere a periodista del diario "Granma"*.

13. DOMINICA

A. Progress

406. On March 18, the Eastern Caribbean Telecommunications Authority (ECTEL), of which Dominica is part along with Grenada, St. Kitts & Nevis, St. Lucia, and St. Vincent, would have approved the Electronic Communication Bill (ECB)⁵⁸⁰, whose purpose is to replace the current telecommunications law. The law would have a series of objectives such as the absence of discrimination between licenses that do not have similar circumstances or the access of retail clients to information and its dissemination.

407. In addition, when as a result of a market research a license is found to have "significant power", the ECB, through a commission created for this purpose, would guarantee fair and equal access to the public network of electronic communications or submarine cable stations, guaranteeing the interconnection with said network or access to its infrastructure (towers, property, or underground installation), thus favoring the participation of other licenses. Likewise, ECTEL could recommend to the aforementioned commission to compel said media to provide wholesale services to other concessionaires for resale and, when necessary, to offer prescribed functions or attributes to other licenses.

408. For the rest, the ECB would have among its tasks to favor open access to the Internet and to specify the guidelines that should guide the consumer's defense of electronic communications. According to the information available, each member state of ECTEL must adopt the electronic communications law in its internal legislation⁵⁸¹.

B. Attacks, aggressions, and intimidation against journalists and the media

409. On October 5, journalist Kenton Chance would have been assaulted by a member of the Barbados Defense Force (BDF) who was participating in the activities of the Caribbean Disaster Emergency Management Agency (CDEMA). Chance was reporting to the Caribbean News Commission the relief work that was carried out in the port of Dominica after the passage of Hurricane Maria when the agent would have taken the camera with which he registered the events.

410. Then, instructed by a third person, the agent would have proceeded to delete the film records. Minutes later, the camera would have been returned to the journalist. On October 6, the BDF issued a statement publicly apologizing for what had happened and reported that it would carry out an investigation to find the person responsible for these events⁵⁸².

411. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Subsequent liabilities

412. On February 8, Prime Minister Roosevelt Skerrit would have sued the leader of the opposition, Lennox Linton, and the radio station *Q95* for defamation and aggravated damages. According to the

⁵⁸⁰ Eastern Caribbean Telecommunications Authority (ECTEL). Revised Draft Electronic Communication Bill. September 8, 2017.

⁵⁸¹TeleGeography. March 29, 2017. ECTEL states introduce new Electronic Communications Bill: Caribbean News Now!. August 24, 2017. ECTEL member states to undertake a process of telecommunications reform.

⁵⁸²Barbados Today. October 6, 2017. BDF issues apology over incident in Dominica; iWitness News/Facebook. October 6, 2017. iWN's Kenton X. Chance has made headline news in #Barbados; iWitness News. October 8, 2017. Press statement of the Caribbean Media Corporation (CMC); iWitness News. October 8, 2017. C'bean press group concerned at treatment of Vincy journalist in Dominica.

information available, the lawsuit was filed with the High Court and requested a "significant amount [of money] in damages", as a result of the statements made by Linton in several interviews, articles, and in a public meeting, where he allegedly indicated that the Prime Minister would be selling diplomatic passports or diverting money from a state program called CBI. For his part, Roosevelt Skerrit's lawyer, Tony Astaphan, detailed that Linton's declarations cause "damage to the country simply because [...] they are determined to circulate them in regional and international blogs" and provide erroneous information to stain the Prime Minister. In addition, Astaphan would have indicated that they would write letters to those responsible for the different media outlets to remind them not to "publish information inadvertently, intentionally, or negligently."⁵⁸³

413. On April 27, the Privy Council Appeal sentenced the leader of the opposition, Lennox Linton, to pay the sum of £25 thousand 992 (approximately US\$34 thousand 390) to Kieron Pinard-Byrne, after finding him responsible for defamation. In this regard, the matter would go back to 2002, when Pinard-Byrne sued Linton for an article that he had published on a website and for statements against him on a radio program, to which Linton, who at the time was journalist, would have been invited to. According to the information available, the matter had been addressed by the local courts, the Eastern Caribbean Court of Appeals, and finally the Appeals Council, which ruled that Linton defamed Pinard-Byrne⁵⁸⁴.

414. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, "privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

415. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states: "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information." Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.⁵⁸⁵

D. Access to public information and restrictions on journalistic coverage

416. On May 23, journalists and media workers from different media outlets would have joined the House of Assembly (HOA) to report on the third meeting of the ninth parliament of Dominica. According to the information available, despite the fact that the media workers presented their respective press credentials, security agents who provided services in the HOA would have proceeded to expel them from the premises, after affirming that only the Government Information Service (GIS) was allowed to cover the meeting. However, journalists and media workers from the different media indicated that they had received an invitation to participate in it⁵⁸⁶.

⁵⁸³ Dominica News Online. February 9, 2017. *PM Skerrit sues Linton. Q95*; WiredJa. February 10, 2017. *Dominica: Prime Minister files lawsuit against opposition leader*.

⁵⁸⁴ Dominica News Online. April 27, 2017. *Privy Council orders Linton to pay court cost of over £45,000 to Pinard-Byrne*; Q95 FM. July 10, 2017. *Lennox Linton offers to pay \$300 monthly to Kieron Pinard Byrne with respect to a difamation lawsuit*; Dominica News Online. August 31, 2017. *Linton served with 'bankruptcy notice' in libel court matter*.

⁵⁸⁵ IACHR. Annual Report 2015. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

⁵⁸⁶ Dominica News Online. May 23, 2017. *Journalists kicked out of Parliament*.

417. On June 22, journalist Carlisle Jno-Baptiste would have been banned from entering the HOA. According to the information available, the Speaker of the HOA, Alix Boyd Knights, would have prevented him from accessing the building until the journalist publicly apologized for "having disrespected the sanctity of this House." For his part, Jno-Baptiste would have indicated that he never received an explanation for not being granted access to the HOA, and that what could have bothered the Speaker would have been an event two weeks before the episode, in which Knights allegedly thought that the journalist had had a microphone in a meeting, an exaggeration the journalist denied.

418. This Office of the Special Rapporteur wishes to recall that in the Joint Declaration on the regulation of the media, restrictions on journalists, and the investigation of corruption, the Special Rapporteurs for Freedom of Expression of the United Nations, the Inter-American Commission on Human Rights (IACHR), the Organization for Security and Cooperation in Europe (OSCE), noted that accreditation schemes for journalists " are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance. Accreditation should never be subject to withdrawal based only on the content of an individual journalist's work"⁵⁸⁷.

⁵⁸⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption. December 18, 2003.

14. ECUADOR

419. After the inauguration of President Lenín Moreno on May 24, the Office of the Special Rapporteur received information on the change in attitude of national government high-ranking authorities towards the media, journalists, and human rights defenders. According to civil society organizations and the media, the president has acknowledged to a greater extent the important role the press plays in Ecuadorian democracy and has mitigated most of the stigmatizing and criminalizing practices characteristic of the previous administration.

420. During the administration of former President Rafael Correa, which began in 2007 and ended with the handover of his last administration on May 24, 2017, the Office of the Special Rapporteur noted the significant increase in restrictions on journalistic activity in Ecuador, the constants and systematic stigmatizing practices against journalists and media which was executed and encouraged by the Government, and the use of criminal law to sue or threaten journalists or media outlets that published information that public officials considered offensive. The application of the Organic Law of Communication [*Ley Orgánica de Comunicación*], during the administration of President Correa, was a matter of concern for this Office of the Special Rapporteur since its approval. Through the Superintendence of Information and Communication [*Superintendencia de la Información y Comunicación*] (Supercom), the media was sanctioned, admonished, and ordered frequently to publish reproductions and official content. Likewise, the former President, through his periodic Saturday program (*Enlace Ciudadano*), persistently criticized and disqualified journalists, media, and civil society organizations not aligned with the ruling party.

421. At the hearing on the situation of freedom of expression in Ecuador, held on October 23 in the framework of the 165 period of sessions of the IACHR, civil society and media organizations enumerated the violations to freedom of expression that, in their opinion, occurred in the last years of Rafael Correa's government. The petitioners acknowledged that after the inauguration of the new Government there has been a "greater openness" and "tolerance" towards journalistic work, which has led to a "drastic fall in the number of attacks on freedom of expression." In any case, they maintained the need to implement "structural changes aimed at fully guaranteeing the practice of journalism and freedom of expression." "The legal and institutional structure of the Correa decade is intact, to the point that officials continue to use criminal law to sue journalists who publish information with criticism." The State of Ecuador did not attend the hearing, but sent a letter to the Inter-American Commission on Human Rights indicating it was willing to discuss changes to the Organic Law of Communication in different forums and instances.

422. Throughout the year, indigenous communities claimed in international forums for the recognition of their rights, the end of the criminalization of their protest activities, and the violation of the right of association in Ecuador. It was also a matter of concern to civil society and to some political sectors a bill presented by the then President Rafael Correa to regulate acts of hatred and discrimination on the Internet.

423. This report also presents information received on political polarization during the months leading up to the elections, generating an increase in attacks against journalists during the coverage of press conferences and political events. Likewise, several Twitter accounts of journalists, opposition candidates, or critical citizens of the Government, as well as numerous news media websites were the target of cyber-attacks.

A. Progress

424. In June, the Constitutional Court processed the unconstitutionality appeals filed against Decree No. 16, which created the Rules of Procedures for the Operation of the Unified Information System of Social and Citizen Organizations [*Reglamento para el Funcionamiento del Sistema Unificado de Información de las Organizaciones Sociales y Ciudadanas*]. The remedies had been presented between July and December 2013 by the indigenous organization *Ecuarrunari*, *Fundamedios*, the Unitary Confederation of Retail Merchants and Autonomous Workers of Ecuador [*Confederación Unitaria de Comerciantes Minoristas y Trabajadores Autónomos del Ecuador*], and congress members Magali Orellana, Lourdes Tibán, and César Umaginga. The

trial judge, Wendy Molina Andrade, notified on June 16 that she would hear the remedies and unify them in a single process⁵⁸⁸.

425. In July, congress members from different groups created a parliamentary group to promote reforms to the Organic Law of Communication [*Ley Orgánica de Comunicación*] (LOC). The initiative, called "Parliamentary Group for the Defense of Freedom of Expression" [*Grupo parlamentario por la defensa de la libertad de expresión*], registered before the National Assembly on August 17, and is composed of legislators from various political sectors. The group will be in charge of analyzing the different bills to reform the LOC that have been presented to Congress, and then elaborating a single proposal⁵⁸⁹.

426. On August 23, the District Administrative Court of Guayaquil declared the nullity of the sanction imposed in January 2014 by the Superintendence of Information and Communication [*Superintendencia de la Información y Comunicación*] (Supercom) against the newspaper *El Universo* and the cartoonist Xavier Bonilla "Bonil", due to a cartoon published in December 2013 regarding the home raid of journalist Fernando Villavicencio in the context of a judicial investigation⁵⁹⁰. The Court held that the argument of the Superintendence "lacks the necessary strength for a pertinent and complete motivation to arise, since there is no typified conduct by *Diario El Universo*, meriting a sanction."⁵⁹¹ The agency had sanctioned the newspaper with a fine equivalent to 2 per cent of the average turnover of the last three months, while ordering the cartoonist to rectify the publication. The measure was taken because, according to the agency, the cartoon presented the events in a way that "affects and delegitimizes" the actions of the authority and "supports the social turmoil that generates a wrong approach to the facts." On February 5, 2014, 'Bonil' published the rectification of his cartoon and *El Universo* paid the fine imposed⁵⁹².

B. Attacks, threats, and intimidation against journalists and the media

427. On the night of December 11, 2016, the director of the *Ecuadorenvivo* site, Alfonso Pérez, was attacked by a vehicle and then physically assaulted. The media outlet reported in an editorial that the police authorities did not investigate the case and freed the aggressors⁵⁹³.

428. On February 16, journalist Janet Hinostriza (*Teleamazonas*) would have received a package containing an explosive device at her workplace⁵⁹⁴. The envelope, which had no return address, contained a

⁵⁸⁸ Press Reader/Diario Expreso. June 20, 2017. *La Corte 'desempolva' la demanda de inconstitucionalidad al Decreto 16*; Fundamedios. June 21, 2017. *Corte Constitucional da trámite a acciones de inconstitucionalidad luego de 4 años*; Corte Constitucional del Ecuador. Ordinance of June 16, 2017. Available at: <http://www.fundamedios.org/wp-content/uploads/2017/06/0016-13-IN-MAURICIO-ALARCON-Y-OTRO-AVOCO.pdf>

⁵⁸⁹ El Telégrafo. July 28, 2017. *Asambleístas articularán los pedidos de reformas a la LOC*; El Universo. July 31, 2017. *Cristina Reyes: 'Hay buenas señales, pero cortemos de raíz el problema'*; La Hora. July 27, 2017. *Grupo parlamentario multipartidista impulsará reformas a la Ley de Comunicación*.

⁵⁹⁰ El Universo. August 24, 2017. *Jueces declaran nula actuación de Supercom sobre caricatura de Bonil*; La Hora. August 24, 2017. *Anulan sanciones en contra de 'Bonil' y El Universo*.

⁵⁹¹ El Universo. August 23, 2017. *Jueces declaran nula actuación de Supercom sobre caricatura de Bonil*; La Hora. August 24, 2017. *Anulan sanciones en contra de 'Bonil' y El Universo*; Fundamedios. August 24, 2017. *Tribunal Contencioso anula sentencia y multa dictada por la Supercom en contra de diario El Universo*.

⁵⁹² IACHR. *Annual Report 2014*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 377.

⁵⁹³ Ecuador en Vivo. December 12, 2016. *¡Exigimos Respuestas!*; Fundamedios. December 13, 2016. *Policía no investiga las agresiones físicas en contra de director del portal Ecuador en Vivo*.

⁵⁹⁴ El Comercio. February 16, 2017. *Evacúan Teleamazonas por explosivo enviado a periodista Janet Hinostriza*; Committee to Protect Journalists (CPJ). February 17, 2017. *Ecuadorian TV journalist receives mail bomb*; El Comercio. February 16, 2017. *Policía confirma que sobre entregado en Teleamazonas para Janet Hinostriza contiene una cápsula detonante*.

DVD box with the text: "Who are behind corruption? The irrefutable evidence." The journalist suspected when she noticed that there were cables inside the box and alerted the police. The Police Intervention and Rescue Group [*Grupo de Intervención y Rescate*] (GIR) evacuated the building of the television station to inspect the package, and confirmed that it contained a detonating capsule, which was not activated, so there was no damage. The day before, Congressional president, Gabriela Rivadaneira, received a similar package. After the episodes, the Police detected in the post office another envelope with explosives that was directed to the journalist of *Ecuavisa* Estefaní Espín. As reported by the Interior Ministry, in addition to these three cases, another five packages with explosives would have been sent during those dates and, by the similar characteristics of the triggers, and would come from the same issuer, which would be a group with "advanced knowledge in the matter of explosives."⁵⁹⁵ The President, Rafael Correa, described the deliveries as "very serious" and linked them to alleged intentions of "altering the presidential elections" convened for February 19. So far, the Office of the Special Rapporteur has not received information on the identification of those responsible⁵⁹⁶.

429. Independent journalist Jairo Loor reported that he was a victim of physical attacks by presidential security detail, during the visit of then President Rafael Correa to Quevedo hospital, in Los Ríos province, on March 10. The communicator reported that he was attacked and his cell phone snatched when he tried to record the President after asking a question that would have bothered him⁵⁹⁷.

430. Photographer Marcos Pin, of the *AFP* agency, was physically attacked by alleged militants of the opposition movement *CREO*, while covering a demonstration outside the Provincial Delegation of the National Electoral Council [*Consejo Nacional Electoral*], in Guayaquil, after hearing the partial results of the presidential elections. Likewise, the journalist Rosa Elena Vásquez, of *Televisión*, would have been pushed around while transmitting the incidents live⁵⁹⁸.

431. On June 6, former President Rafael Correa disclosed personal information on his Twitter account on the taxes paid by journalist Jean Cano, questioning the "few taxes he has paid". The publication was in response to a criticism tweet from the journalist about an editorial written by Correa in the state newspaper *El Telégrafo*, in which he wrote: "The propaganda media have withdrawal syndrome. @MashiRafael vs. @Lenin! There go our taxes."⁵⁹⁹

432. On October 15, a Twitter user reportedly threatened to kill television journalist Janet Hinojosa, from the *Teleamazonas* channel. Through the account "@alerta_911" the user wrote that he wanted to shoot the journalist to clean up "the dirty and corrupt press". The threat was in response to a conversation that the journalist had with a former official of the media regulatory body, the Council for Regulation and Development of Information and Communication [*Consejo de Regulación y Desarrollo de la Información y Comunicación*], through the social network⁶⁰⁰.

⁵⁹⁵ Ministerio del Interior. February 16, 2017. *Especialistas antibombas investigan encomiendas con explosivos dirigidos a personalidades públicas*.

⁵⁹⁶ El Telégrafo. February 17, 2017. *Atentados contra Hinojosa y Rivadaneira son indagados*; Ecuador Transparente. February 17, 2017. *Detectan un sobre bomba que iba dirigido a la periodista Estefaní Espín*; TelesurTV. February 17, 2017. *Ocho sobres explosivos enviados en Ecuador previo a elecciones*; El Comercio/EFE. February 16, 2017. *Policía cree al menos otros cinco sobres explosivos han sido enviados en Ecuador*.

⁵⁹⁷ La Hora. March 14, 2017. *Periodista dice que fue agredido por guardia presidencial*; Fundamedios. March 14, 2017. *Periodista es agredido por la seguridad presidencial tras hacer una pregunta 'incómoda' al Jefe de Estado*.

⁵⁹⁸ El Telégrafo. April 2, 2017. *Fotógrafo es agredido por simpatizantes de CREO en Guayaquil*; El Universo. April 2, 2017. *Fotoperiodista denuncia que fue atacado por simpatizantes de CREO*; Fundamedios. April 2, 2017. *Varios incidentes se registran en jornada electoral*.

⁵⁹⁹ Twitter account of Rafael Correa @MashiRafael. *June 6, 2017*; 4pelagatos. June 8, 2017. *Anatomía de una bajeza de Correa*; Fundamedios. June 6, 2017. *ExPresidente expone datos personales de periodista, molesto por comentario en Twitter*

⁶⁰⁰ Committee to Protect Journalists (CPJ). October 18, 2017. *Ecuadoran TV journalist receives death threats*.

433. On September 26, at least five photographers and cameramen from the media outlets *El Comercio*, *Expreso*, *El Universo*, *Ecuavisa*, and *Gama TV*, would have been verbally and physically attacked by alleged supporters of former Vice President Jorge Glas, during the appearance of the former official at the General Prosecutor's Office in the framework of an investigation into alleged corruption linked to the construction company Odebrecht⁶⁰¹. Several journalists went through similar attacks on October 15 on the part of alleged supporters of the former vice president, when they covered a hearing in the aforementioned trial⁶⁰².

434. At the hearing on the situation of freedom of expression in Ecuador, held on October 23 in the framework of the IACHR's 165 period of session, in Montevideo, Uruguay, the petitioners -Francisco Rocha, executive director of the Ecuadorian Association of Publishers of Newspapers [*Asociación Ecuatoriana de Editores de Periódicos*](AEDEP), and César Ricaurte, executive director of *Fundamedios*- said that during the decade of Rafael Correa's government (2007-2017) the conditions for freedom of expression and journalistic work "deteriorated severely" with the application of the Organic Law of Communication, physical and verbal attacks, and with an abusive use of State power. In addition, there were 23 criminal proceedings against citizens and journalists, and more than 200 cases of violation of the so-called digital rights, they said. The petitioners expressed particular concern over the cases of the journalist Fernando Villavicencio, who is being tried with restrictions to his personal freedom (under the obligation to carry an electronic shackle), in the context of a criminal trial for the publication of information on alleged acts corruption during the previous government, and that of Freddy Aponte, a journalist who for the last 10 years has been "harassed through the justice system" by the mayor of Loja, José Bolívar Castillo, due to his journalistic work⁶⁰³.

435. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Social Protest

436. After the death of a policeman on December 14, 2016, during clashes between Shuar indigenous group and security forces,⁶⁰⁴ in the province of Morona Santiago, due to the mining activities of the Chinese company Exsa on land that they consider ancestral property, the Government declared a state of emergency. On January 12, by decree 1294, the Government extended for another 30 days the state of emergency, while the indigenous group reported that the police arrested and imprisoned five people, later declared innocent on January 13⁶⁰⁵. On January 18, 68 groups of national and international civil society petitioned President Correa to "put an end to the persecution of civil society and indigenous activists." They questioned that the Government had declared a state of emergency in the province as a reaction to the resistance measures of the communities against extractive activities in the area⁶⁰⁶.

⁶⁰¹ Fundamedios. September 26, 2017. *Simpatizantes de Vicepresidente agreden a cinco comunicadores y dirigente de oposición*.

⁶⁰² Fundamedios. October 17, 2017. *Turbas violentas actúan con impunidad y agreden por tercera vez a periodistas y ciudadanos en acto judicial del Vicepresidente*; Twitter account of Observatorio Derechos y Justicia @ODJEcuador. [October 15, 2017](#).

⁶⁰³ IACHR. 165 Period of Sessions. *Freedom of Expression in Ecuador*. October 23, 2017.

⁶⁰⁴ El Universo. December 14, 2016. *Gobierno anuncia estado de excepción en Morona Santiago tras ataque en el que murió policía*; El Ciudadano. December 14, 2016. *Un policía muerto y varios heridos durante violentos incidentes en Morona Santiago (Video)*; El Universo/AFP. *Decretan estado de excepción en Morona Santiago*.

⁶⁰⁵ Confederación de Nacionalidades Indígenas de Ecuador (Conaie). January 16, 2017. *Extensión de estado de excepción en Morona Santiago evidencia la persecución política en Ecuador*; Fundación Regional de Asesoría en Derechos Humanos (INREDH). January 16, 2017. *Gobierno Obcecado en hostigar, reprimir y silenciar*.

⁶⁰⁶ Civicus. January 18, 2017. *Comunicado de prensa. 68 grupos de la sociedad civil llaman al presidente ecuatoriano a poner fin a la persecución de la sociedad civil y los activistas indígenas*

437. The Confederation of Indigenous Nationalities of the Ecuadorian Amazon [*Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana*] (Confeniae) claimed that on the night of December 20, 2016 about 100 police officers raided the headquarters of the Interprovincial Federation of Shuar Centers [*Federación Interprovincial de Centros Shuar*] (FICSH), in Sucúa, Morona Santiago province, and detained its president, Agustín Wachapá. The police officers would have caused several damages to the facilities and furniture, and seized computers⁶⁰⁷. On January 6, the Provincial Court of Justice of Cotopaxi province denied the writ of habeas corpus filed by the indigenous leader's defense. Wachapá is being investigated for the alleged crime of incitement to discord "a call to violence by Shuar members to the public force and to generate confrontations between citizens", as a result of publications that he made on Facebook⁶⁰⁸. On April 20, after remaining in prison for four months, the indigenous leader was released on parole, with alternative measures and the payment of a bond of US\$ 6 thousand⁶⁰⁹.

438. In April, the UN Human Rights Council held the Universal Periodic Review (UPR) of Ecuador in Geneva, Switzerland. According to a summary published by the agency, civil society organizations denounced the excessive use of force by security forces against demonstrators, violations of the rights to freedom of expression and association, and an insecure environment for human rights defenders⁶¹⁰.

439. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"⁶¹¹ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."⁶¹²

440. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles."⁶¹³

D. Organic Law of Communication [*Ley Orgánica de Comunicación*]

⁶⁰⁷ Fundamedios. December 21, 2016. *Policías allanan sede de Federación Shuar y detienen a su Presidente*; Conaie. December 21, 2016. *Policía de Ecuador allana sede de FICSH y detiene a su presidente, Agustín Wachapá*.

⁶⁰⁸ Fundamedios. January 11, 2017. *Líder indígena permanece en prisión y es acusado de incitar a la discordia por publicar mensaje en Facebook*.

⁶⁰⁹ El Comercio. April 25, 2017. *Agustín Wachapá, dirigente shuar, salió en libertad condicional de la cárcel de Latacunga*; TVC. April 26, 2017. *Agustín Wachapá, dirigente Shuar salió con libertad condicionada*.

⁶¹⁰ United Nations. Office of the United Nations High Commissioner for Human Rights. May 5, 2017. *Examen Periódico Universal: adoptan proyecto de informe de Ecuador*.

⁶¹¹ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

⁶¹² IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

⁶¹³ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

441. In the Draft Report of the Working Group on the Universal Periodic Review (UPR) of Ecuador, published on May 3, the UN Human Rights Council recommended the Ecuadorian Government to review and modify the Organic Law of Communication and relevant executive decrees so that the media, civil society organizations, and unions can operate freely, and are not arbitrarily sanctioned or dissolved⁶¹⁴.

442. In the application of the aforementioned Organic Law of Communication, several media suffered sanctions during 2017 for failing to comply with its provisions. For example, on December 12, 2016, the Superintendencia de Información y Comunicación [*Superintendencia de la Información y Comunicación*] (Supercom) issued a written warning to the newspaper *Expreso* for violating the provisions of Article 10, section 3 of that regulation, which refers to compliance with the constitutional mandates of verification, contextualization, and contrasting of information. The sanction was the result of a complaint filed by the state oil company Petroamazonas, which claimed that it had not been consulted for the publication of an article that allegedly referred to the company. The news report, gathered the report of the *Alianza País* congresswoman, Pamela Falconí, on the connection of some names mentioned in the investigation of "The Panama Papers" with oil exploitation in the Yasuní National Park. According to *Expreso*, the process began despite the fact that the news report did not mention the name of the state oil company⁶¹⁵.

443. On February 24, 2017, Supercom warned the newspaper *El Nacional* from Milagro⁶¹⁶ for disseminating the photograph of a car accident with a "morbid" focus. On March 2, the entity issued a warning against the newspaper *Extra* for the "repeated" dissemination of explicit images of a victim of an alleged femicide in that day's edition. According to the regulatory body, "the dissemination of news events that can shock the public, such as the death of people, requires unrestricted respect for the dignity of those who are part of the news as well as the recipients of the information."⁶¹⁷

444. On March 22, the Superintendencia de Información y Comunicación [*Superintendencia de Información y Comunicación*] (Supercom) ordered *Radio Impacto FM 98.9*, from Guayaquil, to apologize to paid house workers after determining that the station did not comply with articles 61 and 62 of the Organic Law of Communication, by disseminating content that the agency assessed as discriminatory⁶¹⁸.

445. On March 24, Supercom fined the *Extra* newspaper with an equivalent to 10 per cent of its average turnover for the last three months (approximately US \$153 thousand) for not publishing "enough intercultural content", in reference to the obligation to disseminate in their daily editions a 5 per cent intercultural content⁶¹⁹.

446. Supercom fined seven media outlets with 10 base salaries because, according to their interpretation, they had incurred in "prior censorship", for not reporting an investigation published on April 15 by the Argentine newspaper *Página 12*, referring to assets in fiscal paradises that the former candidate for the Presidency of Ecuador for the opposition, Guillermo Lasso would possess. The fine imposed against the

⁶¹⁴ United Nations. General Assembly. Human Rights Council. Draft Report of the Working Group on the Universal Periodic Review. *Ecuador*. A/HRC/WG.6/27/L.2. May 3, 2017.

⁶¹⁵ Superintendencia de la Información y Comunicación (Supercom). December 12, 2016. *Diario "Expreso" recibe amonestación escrita*; *Expreso*. November 29, 2016. *La Supercom abre otro proceso contra EXPRESO*.

⁶¹⁶ The sanction was for not blurring a photograph of a car accident published in the January 19 issue, which violated the provisions of Article 10, numeral 3, literal d, of the Organic Law of Communication, which refers to the morbid treatment of information. Supercom. February 24, 2017. *Diario "El Nacional" recibe amonestación escrita*.

⁶¹⁷ Superintendencia de la Información y Comunicación (Supercom). March 2, 2017. *Diario Extra recibe llamado de atención*.

⁶¹⁸ El Telégrafo. March 21, 2016. *Radio deberá pedir disculpas a trabajadoras remuneradas del hogar*; Fundamedios. March 28, 2017. *Medio es obligado a disculparse con las trabajadoras remuneradas del hogar, por comentarios 'discriminatorios'*.

⁶¹⁹ Superintendencia de la Información y Comunicación (Supercom). March 24, 2017. *Diario Extra incumple porcentaje de contenido intercultural*.

media outlets *El Comercio*, *El Universo*, *Expreso*, *La Hora*, *Telecentro*, *Teleamazonas* and *Ecuavisa* is equivalent to approximately US\$ 3 thousand 750. Carlos Ochoa, director of the agency, explained that the sanction was due to the breach of article 18 of the Law of Communication, which orders the media to cover and disseminate facts of public interest. In the opinion of the Superintendencia, the assets of a candidate for the Presidency, its origins, and where they are located, is of public interest and should have been informed by the Ecuadorian media⁶²⁰.

447. On April 28, the same Supercom issued a written warning against the television stations *Ecuavisa*, *Teleamazonas* and *Canal Uno* for having disseminated the results of the exit poll by Cedatos company, which anticipated as a winner the opposition candidate Guillermo Lasso⁶²¹. That same day, Supercom sanctioned *Diario Expreso* with a written warning for "intentionally misrepresenting" an information in which Lasso was mentioned as the elected president⁶²².

448. On May 31, Supercom issued a statement informing the radio to prioritize the dissemination of musical content in an attempt to guarantee the rights of children and adolescents, since it was sure of the high degree of influence that this type of music (in reference to the genre Regueton) has nowadays in children, which could expose them to a behavior detrimental to their integral development⁶²³.

449. On the other hand, during the first months of 2017 the Ecuadorian Government continued with the practice of ordering the publication or transmission of the official opinion on various matters in private media, when the information disclosed by journalists did not coincide with the interpretations or assessments of state agencies. Thus, during the mandate of Rafael Correa, the government repeatedly ordered broadcastings in radio and television channels to reply to information and opinions, and to question journalists and organizations that have issued information with criticism to the state administration. Likewise, the media outlets are forced to publish replies to the information or reviews they publish that are not shared by the Government. The refusal to publish the state response is sanctioned with fines. Since the enactment of the Organic Law of Communication in 2013, media and civil society organizations have questioned the compatibility of this practice with the right to freedom of expression, since these contents were not regarding exceptional situations and of public interest, moreover, many of them would be stigmatizing messages against the media and the opposition⁶²⁴. In fact, the issuance and mandatory publication of content ordered by the Secretariat of Communication [*Secretaría de Comunicación*] (SECOM) increased during the first half of 2017. Among the affected media are *Ecuavisa*⁶²⁵, *La Hora*⁶²⁶, *Exa-Democracia*,

⁶²⁰ Andes. April 21, 2017. *Supercom sancionó a siete medios por censura previa sobre información de patrimonio off shore de ex candidato Guillermo Lasso*; Andes. April 21, 2017. *Sanción a siete medios por censura previa sienta precedente histórico en Ecuador, dice Observatorio*.

⁶²¹ According to the Supercom, the media failed to comply with article 10, paragraph 3, literals a and b of the Organic Law of Communication, which deals with the constitutional premises of verification, opportunity, contextualization and contrast ["verificación, oportunidad, contextualización y contrastación"]. The Supercom resolution aims to draw the attention of the media so as to "refrain from reoffending" ["abstengan de reincidir"] when committing a violation, according to the agency on its website. Superintendencia de la Información y la Comunicación (Supercom). April 28, 2017. *Amonestación escrita para "Ecuavisa", "Teleamazonas" y "Canal Uno"*.

⁶²² Superintendencia de la Información y Comunicación (Supercom). April 28, 2017. *Se amonesta a "Diario Expreso" por infringir norma deontológica*.

⁶²³ Superintendencia de la Información y Comunicación (Supercom). May 31, 2017. *Canciones de Reguetón o género urbano deben respetar franjas horarias*.

⁶²⁴ El Comercio. November 12, 2014. *Cordicom recibe críticas por defender a la Secom*.

⁶²⁵ In the message, the superintendent of Information and Communication, Carlos Ochoa, accused the media of disseminating information "without contrasting". Fundamedios. December 21, 2016. *Superintendente de comunicación interrumpe noticiero con una réplica impuesta para atacar a candidatos que plantean derogar la LOC*; Fundamedios. May 15, 2017. *Cadena de la Secom acusa a canal de TV de protagonizar un 'papelón informativo': The official defended the existence of the Supercom and disqualified the program host, Carlos Rojas, and the channel, stating their failure to comply with the "basic principle of good journalism."* The reply referred to a panel

and *Radio Visión*⁶²⁷, *Teleamazonas*⁶²⁸, radio of the Amazon region of Sucumbíos, and *Pastaza*⁶²⁹, *Gama Tv*⁶³⁰, *El Universo*.⁶³¹

450. On January 23 the newspaper *El Universo* had to publish in its cover a correction imposed by the National Institute of Statistics and Census [*Instituto Nacional de Estadística y Censos*] (INEC), after having disseminated news about unemployment in Ecuador that the agency considered that they had an "incorrect reading" and a "tendentious interpretation" of the employment statistics. The newspaper clarified that it carried out the publication "under protest"⁶³². The newspaper *La Hora* also had to publish editorial replies on the cover of the editions of January 22 and 29 on reports that it had published on unemployment numbers. The newspaper informed its readers that they published the response under protest and clarified that the text of the INEC was not a journalistic note, but an imposed response that used typographies similar to those of the media outlet⁶³³. On February 3, the same newspaper had to publish a response imposed by the Central Bank of Ecuador, after a note on the economic slowdown, which, according to that entity, "misinforms its readers." The media outlet published the official content under protest⁶³⁴. On February 5, the newspaper *La Hora* again had to publish on its cover a response by the Superintendencia of Information and Communication [*Superintendencia de la Información y Comunicación*] (Supercom) that questioned the media for not having contacted them with enough time to contrast a note regarding press freedom and ratings disclosed by the international organization Freedom House. The imposed response occupied a central space with four columns on the cover⁶³⁵.

451. In the context of the public hearing "Freedom of Expression and Reform of the Organic Law on Communications in Ecuador" held on October 23 during the 165 Regular Period of Session, the petitioners indicated to the IACHR and its Office of the Special Rapporteur for Freedom of Expression that the implementation of this law would have had an inhibiting effect for the journalism and for that reason they raised the reform of this and other legal norms, as well as the restructuring of the Secretariat of Communication.

E. Stigmatizing statements

broadcast on July 30, which dealt with the reforms to the Organic Law of Communication. Facebook account of Superintendencia de la Información y Comunicación (Supercom). August 13, 2017. *Réplica de la SUPERCOM a Ecuavisa*; Fundamedios. August 13, 2017. *Superintendente impone réplica y defiende restricciones a los contenidos en los medios*.

⁶²⁶ The rectification requested was regarding a report by the US Department of Justice on alleged acts of corruption by Brazilian company Odebrecht, published by the media. Along with the rectification *La Hora* wrote a clarification stating that it was issuing it "under protest", and because "not doing so represents a serious economic risk" for the newspaper. *La Hora*. December 30, 2016. *Rectificación pedida por el Ministerio Coordinador de Sectores Estratégicos por el caso Odebrecht*.

⁶²⁷ Fundamedios. February 2, 2017. *Réplicas impuestas por el Cordicom acusan a radios Democracia y Visión de desinformar a la ciudadanía y afectar la honra de las autoridades*.

⁶²⁸ Fundamedios. February 9, 2017. *Cadena interrumpe noticieros para insistir en una supuesta "campaña sucia" contra el gobierno*; Fundamedios. March 31, 2017. *Cadena asegura que el gobierno no es responsable de los hechos violentos ocurridos en los últimos días*.

⁶²⁹ Fundamedios. March 24, 2017. *Noticieros en radios de la amazonía son censurados por una cadena impuesta para promocionar obras del gobierno*.

⁶³⁰ Fundamedios. March 22, 2017. *Tres cadenas de la Secom difundidas como programas atacan a candidato, activista y analista*; Fundamedios. April 24, 2017. *Cadena de la Supercom interrumpe noticieros para justificar sanción impuesta contra siete medios*.

⁶³¹ *El Universo*. March 31, 2017. *Réplica del Biess*.

⁶³² *El Universo*. January 23, 2017. *Rectificación pedida por el INEC*.

⁶³³ *La Hora*. January 22, 2017. *Nota de la redacción*.

⁶³⁴ *La Hora*. February 3, 2017. *Réplica impuesta por el Banco Central*.

⁶³⁵ Fundamedios. February 8, 2017. *Supercom impone a diario publicar su réplica en portada*.

452. During the first months of 2017, President Rafael Correa - who was replaced by Lenin Moreno on May 24- continued with the practice of using public media and its weekly broadcasts on the *Enlace Ciudadano* program to criticize and stigmatize journalists and media outlets that report on State actions. The President also repeatedly criticized the opposition candidates during the months leading up to the presidential elections, as well as polling companies and non-governmental organizations.

453. On *Enlace Ciudadano* on January 7, Correa described the *Expreso* and *El Universo* media outlets and some columnists as "corrupt press", of "bad faith", and "ignorant", and accused them of making others "feel ashamed of them", after they published articles and opinions on the economic administration of the country⁶³⁶. On January 14, Correa tore up a copy of the newspaper *Expreso*, and described that newspaper and the newspaper *La Hora* as "corrupt and dishonest"⁶³⁷. On January 21, he questioned the media for not giving enough coverage to the celebration of the 10 years of his government and accused the newspapers *El Comercio* and *La Hora* of being "corrupt" and of committing "prior censorship" for not publishing the event in the cover of their editions⁶³⁸. On February 25, Correa accused several media of generating "chaos since the day of the elections" and criticized the "parade of opponents in commercial media"⁶³⁹.

454. During the electoral campaign for the presidential elections, Correa used on several occasions his Saturday programs to criticize the candidates of the opposition parties. Referring to the presidential candidate and former banker Guillermo Lasso of the *CREO* movement, he referred to the "corrupt bankers", the "greatest plunderers in the history of the country", and accused them of "stockpiling their fortune and toying with the pain" of the people⁶⁴⁰. On April 15, he criticized the *Ecuavisa* television station, the *Participación Ciudadana* organization, and the polling station Cedatos for disseminating results different from those delivered by the pollsters and pro-government media in the April 2 elections. He also questioned the press in general for "selling out" to the opponent candidate⁶⁴¹.

455. On the other hand, Correa repeatedly accused the organization *Fundamedios*, which defends and promotes freedom of expression, of being part of a plan to destabilize his government⁶⁴². He also criticized

⁶³⁶ Presidencia de la República del Ecuador. Secretaría de Comunicación. January 7, 2017. *Enlace Ciudadano Nro. 507 desde Cuenca, Azuay*; Fundamedios. January 10, 2016. *Presidente tilda a medios y columnistas de ignorantes, mediocres y que dan vergüenza ajena por cuestionar manejo económico.*

⁶³⁷ Presidencia de la República del Ecuador ©SECOM/You Tube. January 14, 2017. *Enlace Ciudadano 508 con el Presidente Rafael Correa desde Rumiñahui – Pichincha 14/01/2017*; Fundamedios. January 16, 2017. *Presidente rompe ejemplar de diario por octava ocasión y arremete en contra de La Hora y Expreso.*

⁶³⁸ Presidencia de la República del Ecuador ©SECOM/You Tube. January 21, 2017. *Enlace Ciudadano No 509 desde Atacames - Esmeraldas*; Fundamedios. January 24, 2017. *Presidente acusa a periódicos de cometer censura previa por no sacar en portada acto por los 10 años de su gobierno.*

⁶³⁹ Presidencia de la República del Ecuador ©SECOM/You Tube. February 25, 2017. *Enlace Ciudadano Nro. 513 desde Quito, Pichincha 25/02/2017*; Fundamedios. February 26, 2017. *Presidente Correa acusa a medios de comunicación de provocar caos en la jornada electoral.*

⁶⁴⁰ Presidencia de la República del Ecuador ©SECOM/You Tube. March 18, 2017. *Enlace Ciudadano 516, con el Presidente Rafael Correa desde Salitre – Guayas*; Fundamedios. March 20, 2017. *Presidente ataca a candidato de oposición en sabatina y lo acusa de jugar con el dolor del pueblo.*

⁶⁴¹ Presidencia de la República del Ecuador ©SECOM/You Tube. April 15, 2017. *Enlace Ciudadano No 519 desde Santa Elena - Santa Elena*; Fundamedios. April 15, 2017. *Presidente llama a sus partidarios a movilización luego de atacar a Ong, encuestadora y periodistas.*

⁶⁴² Fundamedios. January 13, 2017. *Presidente acusa una vez más a Fundamedios de formar parte de un plan para desestabilizar a su gobierno*; Presidencia de la República del Ecuador ©SECOM /You Tube. January 12, 2017. *Salida del Presidente Rafael Correa hacia Nueva York 12/01/2012*; Presidencia de la República del Ecuador ©SECOM/You Tube. January 14, 2017. *Enlace Ciudadano 508 con el Presidente Rafael Correa desde Rumiñahui – Pichincha 14/01/2017*; Presidencia de la República del Ecuador ©SECOM/You Tube. January 28, 2017. *Enlace Ciudadano Nro. 510 desde Barcelona, España.*

the organization for allegedly "defending the interests of the media lobby" and said that with their claims they try to "damage the country's image"⁶⁴³.

456. On April 9, journalist Rafael Cuesta Caputi, who worked as news vice president of *Canal Uno*, announced his resignation after a controversy unleashed by the dissemination of polls with results that were not verified, and a series of questionings by President Correa through his program *Enlace Ciudadano*. The questionings against *Canal Uno* were due to the fact that the media disseminated results of polls and exit polls that gave as a winner the opposition candidate Guillermo Lasso, instead of Lenin Moreno, who effectively won in the presidential elections. Cuesta Caputi said that one of the channels, retransmitted in *Enlace Ciudadano*, manipulated and decontextualized their expressions, and stated that the media presented the corresponding apologies to its viewers for the mistake made⁶⁴⁴.

457. On *Enlace Ciudadano* on April 29, Correa called journalists José Hernández, Juan Carlos Calderón, and cartoonist Xavier Bonilla "Bonil" "cowards" and "effeminate" after they questioned him for his statements regarding a judicial investigation on the alleged corruption of a former high-ranking official of his government⁶⁴⁵.

458. On May 20, during the last edition of the *Enlace Ciudadano* program prior to the change of government, Correa again tore up a copy of a newspaper - in this occasion, the newspaper *La Hora*, being the ninth time he did so - and criticized the private media outlet, which he described as "scoundrels" and "corrupt". He also disqualified the journalists, whom he described as "jukebox journalists in which you put a coin in and they play the record you ask for." During the show, a review of what the Government considered "the lies of the corrupt commercial press" during the years of Correa's administration was presented⁶⁴⁶. His successor, Lenin Moreno, who took office on May 24, announced that he would not continue with the weekly programs⁶⁴⁷.

459. On June 19, former President Rafael Correa called on his followers of the social network Twitter to find out and expose the identity and personal information of those who insult and criticize him on social networks. "I propose that all the insulting ones, in addition to denouncing their trills, we find out and expose who they are ... where they live, work, etc., to see if they are capable of saying in person the crap they write in networks. Okay?" He wrote in a series of tweets⁶⁴⁸.

460. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State's job to help

⁶⁴³ Presidencia de la República del Ecuador ©SECOM/You Tube. May 13, 2017. *Enlace Ciudadano No 522 desde Jaramijó – Manabí*; Fundamedios. May 18, 2017. *Presidente acusa a Fundamedios de defender los intereses del 'lobby mediático'*.

⁶⁴⁴ Twitter account of Rafael Cuesta Caputi @ricuesta. *April 9, 2017*.

⁶⁴⁵ Presidencia de la República del Ecuador ©SECOM/You Tube. April 29, 2017. *Enlace Ciudadano Nro. 520 desde Quito, Pichincha*.

⁶⁴⁶ Presidencia de la República del Ecuador ©SECOM/You Tube. May 20, 2017. *Enlace Ciudadano Nro. 523 desde Parque Samanes, Guayaquil*; Fundamedios. May 20, 2017. *Presidente Correa se despide de sus sabatinas con un recuento de insultos a la prensa y la ruptura del noveno periódico*.

⁶⁴⁷ Ecuador Inmediato. May 24, 2017. *Presidente Lenín Moreno no realizará Enlace Ciudadano, pero asegura que mantendrá informada a ciudadanía*; La República. May 24, 2017. *Moreno elimina las sabatinas de Correa*; El Universo/AFP. May 24, 2017. *Ecuador: Presidente Lenín Moreno eliminará enlaces semanales de Rafael Correa*.

⁶⁴⁸ Twitter account of Rafael Correa @MashiRafael. *June 19, 2017; June 19, 2017; June 19, 2017*.

create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.⁶⁴⁹

461. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”⁶⁵⁰

F. Subsequent Liabilities

462. An oversight commission called by former President Rafael Correa and designated by draw by the Council of Citizen Participation and Social Control [*Consejo de Participación Ciudadana y Control Social*] investigated in 2011 the concessions of public contracts to companies linked to Fabricio Correa, brother of the former president, to determine if there were losses for the State. In February 2011 the oversight commission, composed of Pablo Chambers, Gerardo Portillo, Víctor Hugo Hidalgo, and José Quishpe, concluded that former President Correa knew of his brother's contracts with the State - despite the fact that the former president had denied it - and that these would have caused the country a loss of US \$ 144 million. After the disclosure of the report, Correa filed a complaint against the oversight commission for false testimony. After that, the Prosecutor's Office requested that the oversight commission be prosecuted, who were called to trial in September 2012. In May 2014 the Eighth Court of Criminal Guarantees [*Tribunal Octavo de Garantías Penales*] of Pichincha sentenced Chambers and Portillo to one year in prison, and acquitted Quishpe and Hidalgo, despite the fact that the report had the signature of the four members. In September of that year, the Appeal Court of the Criminal Chamber of the Provincial Court [*Tribunal de la Sala Penal la Corte Provincial*] of Pichincha confirmed the conviction. The convicted individuals filed a cassation remedy before the National Court of Justice [*Corte Nacional de Justicia*] (CNJ), who on 15 of December of 2016 rejected it and ratified the conviction of a year of prison⁶⁵¹.

463. On December 19, 2016, the courts annulled a habeas corpus that ordered the freedom of journalist Fernando Villavicencio and former Congressman Clever Jiménez, following an appeal filed by the legal secretary of the Presidency, Alexis Mera. As a result, the arrest warrant against Jiménez and Villavicencio, issued on October 28, 2016 by Judge Jorge Blum of the National Court of Justice in the context of a trial for the alleged disclosure of confidential information, was again in effect⁶⁵². On April 18, Villavicencio filed an asylum request with the Peruvian Ministry of Foreign Affairs, claiming that he suffers political persecution and that he has been ordered to serve a prison sentence⁶⁵³. On July 12, the judge of the National Court of Justice, Magally Soledispa, revoked the order of pretrial detention against Jiménez and Villavicencio, and replaced it with the obligation to use electronic wristbands and present themselves once a week in court⁶⁵⁴.

⁶⁴⁹ IACHR. Annual Report of the Inter-American Commission on Human Rights 2014. Chapter II (Evaluation of the State of Freedom Of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2014. Para. 65.

⁶⁵⁰ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

⁶⁵¹ El Universo. December 16, 2016. *Justicia niega casación interpuesta por exveedores de caso Gran Hermano*; El Comercio. December 15, 2016. *Dos veedores del caso Gran Hermano irán un año a la cárcel*; Fundamedios. December 16, 2016. *Corte Nacional ratifica prisión de un año contra veedores que investigaron contratos de hermano del Presidente*.

⁶⁵² Fundamedios. December 20, 2016. *Se revoca Hábeas Corpus y orden de prisión contra exasambleísta y periodista vuelve a quedar en firme*.

⁶⁵³ Notimérica. April 21, 2017. *El periodista ecuatoriano que pide asilo en Perú: "Ecuador es un Estado de silencio"*.

⁶⁵⁴ Ecuavisa. July 12, 2017. *Sustituyen prisión preventiva para Cléver Jiménez y Fernando Villavicencio*; Ecuador Inmediato. August 26, 2017. *Abogado Ramiro Román: Uso de brazaletes electrónico para Cléver Jiménez y Fernando Villavicencio es una violación a derechos*

464. On June 10, the former Housing Minister, María de los Ángeles Duarte, threatened on her Twitter account to prosecute journalist Fernando Villavicencio due to his comments on the Odebrecht case, which would implicate Ecuadorian government officials in possible acts of corruption. Villavicencio published a tweet suggesting that Duarte would have left the country due to the arrest warrant issued against former minister Walter Solís, as part of the investigations into the Odebrecht case. In response, the former high-ranking official accused Villavicencio of "fake" and "defamatory" and warned him that he will face a lawsuit⁶⁵⁵.

465. On January 18, the manager of the newspaper *La Prensa* of Riobamba (Central Sierra), Patricio Lalama, and the editor of the newspaper, Lucy Freire, were sentenced to pay compensation of US \$ 10 thousand, for publishing an ad paid by a third party. The lawsuit was filed by judge Nelson Cristobal Escobar Calderón in July 2015 due to what he considered "false and malicious statements" made against him in an ad paid for by lawyer Manuel Germán Zapater and published in *La Prensa* in July 2014, in which the judge was questioned for delaying the dispatch of the trials, "violating all rules", "trampling on dignity", and "not comply with legal provisions," among other things⁶⁵⁶.

466. On February 13, during a press conference, the vice president and then candidate for re-election by the ruling party, Jorge Glas, would have threatened to take legal action against the newspaper *Expreso* for the "dishonor" actions against him⁶⁵⁷. On March 1, Glas went to the State Attorney's Office to file a complaint for slander with the aim of "putting an end to" what he called "a systematic campaign to destroy his image and affect his honor" by the *Expreso* newspaper, which published several complaints against the vice president for alleged acts of corruption. In November, Glas was subjected to pretrial detention⁶⁵⁸.

467. On April 20, Judge Karen Matamoros declared the members of the National Anticorruption Commission [*Comisión Nacional Anticorrupción*] guilty of the crime of slander, in the context of a complaint filed by the State Comptroller General, Carlos Pólit⁶⁵⁹. The members of the commission Julio César Trujillo, Isabel Robalino, María de Lourdes Arboleda, Byron Celi, Simón Espinosa, Alfredo Rodas, Ramiro Román, Juan Fernando Vega, and Jorge Rodríguez were sentenced to one year in prison, to pay a compensation to Polit, and to present a public apology. However, immediately after hearing of the conviction, Polit's lawyer announced that his client would revoke the complaint, after which the judge accepted the withdrawal and declared the criminal action prescribed. The case began in February 2016, when the commissioners filed a

humanos (AUDIO); El Universo. July 12, 2017. *Cléver Jiménez y Fernando Villavicencio, sin prisión, deberán usar dispositivos electrónicos*; Fundamedios. July 14, 2017. *Juez cambia prisión preventiva contra Villavicencio y Jiménez por obligación de usar brazaletes*.

⁶⁵⁵ Twitter account of María Duarte @Maria_DuarteP. [June 10, 2017](#); Fundamedios. June 13, 2017. *Exministra amenaza con demandar a periodista y arremete contra Diario*.

⁶⁵⁶ Fundamedios. February 8, 2017. *Diario es sancionado con el pago 10 mil como indemnización a un juez, por la publicación de un aviso pagado*.

⁶⁵⁷ La Hora. February 14, 2017. *Glas critica denuncias de corrupción y lanza amenazas legales*; Fundamedios. February 13, 2017. *Vicepresidente-candidato amenaza con enjuiciar a diario Expreso tras denuncias de corrupción*; Expreso. February 13, 2017. *Jorge Glas reaccionó ante las denuncias que lo involucran en supuestos casos de corrupción*; Expreso. February 13, 2017. *Un juicio privado evidencia las coimas en el sector público*

⁶⁵⁸ La República. March 1, 2017. *Glas presenta denuncia por "difamaciones" en su contra*; Queveoaldía. March 1, 2017. *Jorge Glass presenta denuncia en contra de Diario Expreso por difamación*; Fundamedios. March 1, 2017. *Vicepresidente-candidato presenta denuncia por calumnias y acusa a diario de difamarlo*.

⁶⁵⁹ La República. April 20, 2017. *Condenan por calumnia a miembros de Comisión Anticorrupción. Pólit los perdona*; Metro. April 20, 2017. *Jueza declara culpables a miembros de la Comisión Nacional Anticorrupción*; El Comercio. April 21, 2017. *Comisión Anticorrupción se declara en inocencia, tras condena y extinción de juicio dictados por la jueza Matamoros*; La Hora. April 20, 2017. *No habrá condena para miembros de la Comisión Anticorrupción*; El Universo. April 20, 2017. *Contralor renuncia a acción penal contra Comisión Anticorrupción tras pedido de Lenín Moreno*.

complaint in which they pointed out that Pólit was part of a list of officials responsible for an alleged overpricing in the appraisal of land acquired for the construction of the Pacific Refinery. In July of that year the judge of the National Court of Justice, Marco Maldonado, archived the complaint and described it as "malicious and reckless". After the case file was archived, the State Comptroller General filed a lawsuit against the commissioners for slander, for making a false accusation of an offense against him. Shortly before Judge Matamoros' sentence was known, Ecuadorian President Lenin Moreno referred to the issue in his official Twitter account, where he encouraged Polit to "review the lawsuit" against the commissioners and said it was time for "greater tolerance", while asking social organizations "to proceed with greater thoroughness and responsibility"⁶⁶⁰.

468. On April 21, the political activist and director of the information site *Ecuadorenvivo*, Alfonso Pérez Serrano, was criminally accused by the Collective of relatives of the 'Hoguera Bárbara' martyrs, for allegedly "inciting discord among citizens", after giving a political speech weeks ago, while citizens and supporters of the opposition movement *CREO* gathered outside the headquarters of the National Electoral Council [*Consejo Nacional Electoral*] (CNE) to demand transparency in the results of the presidential elections. The activist later reported that the complaint against him contained a letter from the then legal advisor of the Presidency, Alexis Mera, who accuses him of uttering expressions against Rafael Correa. "The underlying issue is that the accuser is Rafael Correa, who apparently felt alluded to by descriptions I have made without even mentioning his name," he said⁶⁶¹.

469. On June 5, as a former president, Rafael Correa filed a complaint against journalist Martín Pallares, from the *4Pelagatos* site, whom he accused of proffering "expressions of discredit and dishonor" against him, a violation typified in article 396 of the Organic Comprehensive Criminal Code [*Código Orgánico Integral Penal*] and is punishable by a prison term of 15 to 30 days. In an article published on April 25, the journalist questioned the president for a supposed "double speech" in relation to the case of former energy minister Alexksey Mosquera, who is under investigation for corruption⁶⁶². On July 3, after a hearing held in the Northern Judicial Unit of Quito [*Unidad Judicial Norte de Quito*], Judge Fabricio Carrasco declared the journalist innocent⁶⁶³. The former president filed an appeal against the decision, which was admitted for processing on July 18 by the Judicial Contraventions Unit of Pichincha [*Unidad Judicial de Contravenciones de Pichincha*]⁶⁶⁴.

470. The mayor of the city of Loja, José Bolívar Castillo, has been using criminal complaints on a regular basis to report attacks to his honor by journalists and opposition leaders, while stigmatizing those who criticize or investigate. In May, Judge Gladys Sarango would have banned activist and blogger Bolívar Loján from using "computer media" as part of a precautionary measure issued in the context of a judicial proceeding against him for the alleged crime of perjury. The activist was accused by the mayor, for allegedly committing perjury when he testified as a witness in the trial that the politician initiated against Councilwoman Jeannine Cruz. The precautionary measure bans the activist from "referring to or assaulting" the mayor, attending the meetings of the Mayor's Office, or entering the facilities of the Municipality, and ordered him to appear every 10 days before the Office of the Prosecutor. The complaint against the

⁶⁶⁰ Twitter account of Lenin Moreno @Lenin. [April 20, 2017](#) and [April 20, 2017](#).

⁶⁶¹ Fundamedios. May 31, 2017. [Director de portal informativo denuncia que ExPresidente estaría tras la acusación penal en su contra](#).

⁶⁶² 4Pelagatos. June 21, 2017. [Rafael Correa demanda al pelagato Pallares](#); El Universo. June 22, 2017. [Periodista de medio digital enfrenta demanda de Rafael Correa](#); Fundamedios. June 22, 2017. [ExPresidente demanda penalmente a periodista por un artículo](#).

⁶⁶³ El Telégrafo. July 3, 2017. [Juez declara inocente a Pallares tras demanda por expresiones de descrédito y deshonor](#); Ecuavisa. July 3, 2017. [Juez declara inocente a periodista Martín Pallares en caso interpuesto por Rafael Correa](#).

⁶⁶⁴ El Universo. July 19, 2017. [Abogado de Rafael Correa apela sentencia a favor de Martín Pallares](#); El Comercio. July 19, 2017. [Juez acepta apelación de Rafael Correa por sentencia a favor de Martín Pallares](#); Fundamedios. July 24, 2017. [Se tramitará apelación de exPresidente contra sentencia que declaró inocente a periodista](#).

Councilwoman was motivated, in turn, by alleged "expressions of discredit or dishonor" that she professed in social networks and that the mayor considered offensive⁶⁶⁵.

471. Indeed, on July 3, the Civil Judicial Unit of Loja [*Unidad Judicial Civil de Loja*] declared journalist Freddy Aponte bankrupt, in the context of a trial initiated in 2007 by the mayor José Bolívar Castillo, for moral damages and insults. Aponte was declared bankrupt after not being able to face the payment of a compensation of approximately US \$ 55 thousand to Castillo. The media worker had already been tried and sentenced for "fraudulent bankruptcy" by the criminal justice system, due to the non-payment of that compensation, and was acquitted in April 2015 by the Criminal Chamber of the National Court of Justice. However, the mayor initiated a new civil process - the sixth one against the journalist - that led to the declaration of bankruptcy. As a result of the judicial decision, the journalist was unable to manage his assets and is banned from leaving the country. The journalist had already served a six-month prison sentence in 2008 as part of this process, as he was found guilty of making false accusations against the mayor in his opinion program "*Primer Plano*" on *Radio Zapotillo*. Aponte reported being the victim of a "systematic persecution" by the mayor due to the complaints he makes in his programs. He also reported that there are links between the high-ranking official and the local judges, which prevents his case from being impartially judged⁶⁶⁶. The harassment of the mayor of Loja against the journalist has not been limited to judicial proceedings. On April 26, the mayor burst into Aponte's radio program, "*Primer Plano*," demanding to go on air to refute comments made by the journalist about his administration⁶⁶⁷. On July 9, in the municipal program "*Nuestra ciudad en la semana*" Bolívar Castillo said that the media worker "vomits poison and hatred every day" against him through the program on *Radio Zapotillo*. Regarding the judicial processes, the mayor affirmed that it is a constant struggle in which he will not bend "for the general wellbeing" and because, in his opinion, the journalist "has a lot of power and believes he is untouchable"⁶⁶⁸.

472. Journalist Wilman Morocho reported that on April 7 he was fired from *Radio Satelital* de Loja, after alleged pressure exerted by the mayor of that town, José Bolívar Castillo, due to his criticism on his administration. The director of the station, Patricio Salinas, denied to the Fundamedios organization that the dismissal was due to pressure from the mayor, although he did confirm that there were urgings a few months ago⁶⁶⁹.

473. The Army Commander, General Édison Narváez, asked the journalist Marlon Puertas, director of the journalistic website *La Historia*, to rectify expressions that he considered threaten the honor of the Armed Forces and question his leadership, and warned that otherwise the institution will take "measures under the law" against him. In his program "*Focus en Democracia*," from the *DemocraciaTV* Internet channel, Puertas said that "in the past a General inspired respect, and it would not have occurred to a politician to treat them like a shoe, as they are treated now"⁶⁷⁰.

474. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, "privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in

⁶⁶⁵ La Hora. May 29, 2017. [Prohíben el acceso a redes sociales a activista político](#); El Universo. June 1, 2017. [Activista lojano tiene limitante en redes](#); Fundamedios. May 29, 2017. [Jueza prohíbe a activista 'utilizar medios informáticos'](#).

⁶⁶⁶ El Universo. July 6, 2017. [El periodista Freddy Aponte declarado 'insolvente' en proceso con alcalde lojano Bolívar Castillo](#); Rayuela Radio. July 10, 2017. [Freddy Aponte: La sentencia demuestra la sistemática persecución del Alcalde de Loja en mi contra](#); Fundamedios. July 5, 2017. [Nueva sentencia declara insolvente a periodista procesado seis veces por Alcalde](#).

⁶⁶⁷ Fundamedios. May 11, 2017. [Alcalde irrumpe en emisora para exigir réplica](#).

⁶⁶⁸ Fundamedios. July 11, 2017. [Alcalde de Loja arremete en contra de periódico y periodista](#).

⁶⁶⁹ La Hora. April 12, 2017. [Periodista lojano es despedido intempestivamente](#); Twitter account of Wilman Morocho @wilmannoticias. April 11, 2017; Fundamedios. April 10, 2017. [Periodista denuncia que es despedido de emisora por presiones de Alcalde](#).

⁶⁷⁰ El Universo. August 21, 2017. [Jefe del Ejército advierte con acciones legales al periodista Marlon Puertas](#); Twitter account of LaHistoria @lahistoriaec. August 20, 2017.

which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

475. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “*desacato* laws,” restrict freedom of expression and the right to information.” Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.⁶⁷¹

G. Legal reforms

476. On May 23, then President Rafael Correa presented a bill to regulate “acts of hatred and discrimination in social networks and the Internet.” The project creates obligations for “providers of social network services,” such as preparation of quarterly reports and management of illegal content. In view of the latter, the providers of said services must remove or block access to manifestly illegal content within 24 hours after receiving a complaint or report, and eliminate or block access to any illegal content within 72 hours after receiving the complaint. In case of non-compliance, the bill provides for sanctions from 100 to 1,000 unified basic salaries. The bill has generated rejection among civil society organizations and some political sectors⁶⁷².

H. Censorship of journalistic material / Prior censorship / Direct and indirect censorship

477. On December 13, 2016, the First Instance Resolution Commission [*Comisión de Resolución de Primera Instancia*] (CRPI) of the Superintendence of Market Power Control [*Superintendencia de Control de Poder del Mercado*] (SCPM) issued a resolution ordering the Association of Private Banks [*Asociación de Bancos Privados*] and its subsidiaries to implement the creation of electronic money accounts. In this resolution, the Superintendence ordered that, as a preventive measure, the entities refrain from carrying out and disseminating by any printed, televised, or social media outlet “slanderous allusions to the means of payment Electronic Money [*Dinero Electrónico*]”⁶⁷³.

478. On August 2, the Ministry of Culture of the Municipality of Quito reported that the mural titled “*El Milagroso Altar Blasfemo*” would be removed from the exhibition “*La intimidad es política*” at the Metropolitan Cultural Center of Quito [*Centro Cultural Metropolitano de Quito*]. The municipal authorities would have made the decision a day after the Ecuadorian Episcopal Conference issued a statement expressing their “concern and discomfort” for the exhibition, considering it promotes mockery and phobia against believers, particularly against Catholic Christians⁶⁷⁴. The municipality would have argued that the reason would be the lack of permits to work in a government structure, and would have assured that the position of the Church is not related to the decision to withdraw the work. They also informed that the work would be photographed and relocated to another place in the Metropolitan Cultural Center of Quito. The mural, by the Bolivian group *Mujeres Creando*, was shown with a warning to the public that its content could be offensive to

⁶⁷¹ IACHR. Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

⁶⁷² El Comercio. May 25, 2017. Proyecto de Ley para controlar redes sociales e Internet fue enviado por Correa a la Asamblea el 23 de mayo; Fundamedios. May 25, 2017. Rafael Correa remite al legislativo Proyecto de Ley para regular redes sociales; El Telégrafo. May 26, 2017. Proyecto para regular redes sociales se enfoca en los proveedores.

⁶⁷³ Fundamedios. December 19, 2016. Resolución de Superintendencia de Control de Mercado limita la libertad de expresión.

⁶⁷⁴ El Universo. August 1, 2017. Conferencia Episcopal Ecuatoriana “preocupada” por contenido de exposición en Quito; El Comercio/EFE. August 1, 2017. Obispos de Ecuador expresan malestar por muestra ‘La intimidad es política’.

those who profess the Christian faith. The work integrated a sample of works of national and international artists who presented reflections on sex, gender, social class, or ethnicity⁶⁷⁵.

479. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

I. Freedom of expression in electoral contexts

480. On January 25, the *Avanza* party, led by Ramiro González, denounced the censorship of a radio advertisement that promoted their nominations to the Assembly and the Andean Parliament. On January 20, the National Electoral Council [*Consejo Nacional Electoral*] (CNE) suspended the spot on the grounds that it violates Article 19 of the Constitution and Article 277 of the Code of Democracy [*Código de la Democracia*], which refer to the prohibition of issuing advertisements that induce violence or discrimination. The censored spot makes a representation of a legislative session, where, instead of human voices, lambs are heard and the howl of a wolf who, after decision of his companions and by disposition of a legislative authority, is sanctioned for being different. In a press conference, González described the decision as "attack" against the rights to freedom and democracy. His party had to modify the spot to continue promoting their nominations⁶⁷⁶.

481. Journalists from different media reported aggressions in the framework of the electoral campaign. On February 9, supporters of the opposition political party *CREO* allegedly physically and verbally assaulted the journalist Patricio Carrera, of the state media *El Telégrafo* during the coverage of a conference of Andrés Páez, candidate for vice-presidency for that movement⁶⁷⁷. On February 20, an *Ecuavisa* news team and a photojournalist from *El Comercio* were attacked by a group of people outside the headquarters of the National Electoral Council in Quito, in the face of the uncertainty generated by the delay in the delivery of the presidential elections results held the day before⁶⁷⁸.

482. On March 15, Venezuelan activist Lilian Tintori, wife of opposition leader Leopoldo López, who is a prisoner in Venezuela, was prevented from entering Ecuador for allegedly not having justified "her immigration status." The Deputy Minister of the Interior, Diego Cifuentes, assured that "there were inconsistencies between the tourist visa and the proselytizing activities that she indicated she was going to carry out." The activist had been invited by opposition presidential candidate Guillermo Lasso⁶⁷⁹.

⁶⁷⁵ El Universo. August 2, 2017. *Municipio de Quito reubica pintura que integra exhibición 'La intimidad es política'*; Fundamedios. August 4, 2017. *Municipio censura mural de exposición artística tras queja de la Iglesia*;

⁶⁷⁶ El Telégrafo. January 25, 2017. *CNE suspende publicidad de Avanza*; El Comercio. January 25, 2017. *Avanza denuncia supuesta censura de spot de campaña por parte del CNE*.

⁶⁷⁷ El Telégrafo. February 9, 2017. *Periodista de EL TELÉGRAFO fue agredido por militantes de CREO*; El Telégrafo. February 9, 2017. *EL TELÉGRAFO rechaza agresión a periodista por parte de militantes de CREO*; Fundamedios. February 9, 2017. *Periodista de medio estatal es intimidado por simpatizantes de movimiento de oposición*.

⁶⁷⁸ Fundamedios. February 22, 2017. *Camarógrafo y fotoperiodista son víctimas de insultos y forcejeos durante manifestaciones, tras elecciones*.

⁶⁷⁹ Andes. March 15, 2017. *Lilian Tintori fue inadmitida de ingresar a Ecuador por no justificar su condición migratoria*; CNN. March 15, 2017. *Lilian Tintori no fue admitida en Ecuador porque no justificó su condición inmigratoria*; El Universo. March 15, 2017. *Activista Lilian Tintori denunció que Inmigración no la dejó entrar a Ecuador*.

483. On April 2, the director of the Citizen Participation Corporation [*Corporación Participación Ciudadana*], Ruth Hidalgo, received a death threat through two phone calls, one to her cellphone and the second to her home phone. Other members of the organization were also threatened. The incident occurred after announcing the results of the rapid count that the organization carried out after the presidential elections, where she declared the existence of a technical tie⁶⁸⁰.

484. In the framework of the electoral process, different incidents related to the exercise of freedom of expression occurred. On April 5 the Superintendence of Information and Communication [*Superintendencia de la Información y Comunicación*] (Supercom) issued, under Article 57 of the Organic Law of Communication [*Ley Orgánica de Comunicación*] (LOC), a "severe call for attention" against Diego Oquendo Silva, legal representative of *Radio Visión*, for opening the microphones of the station to the listeners so that they could express themselves regarding the electoral results proclaimed by the National Electoral Council [*Consejo Nacional Electoral*] (CNE)⁶⁸¹. On April 7, a mandatory broadcast was transmitted on the news programs of *Ecuavisa*, *Televisión*, *Ecuador TV* and *TC*, in which protesters who, in the days following the presidential elections, demanded a more transparent electoral process on the streets, were disqualified⁶⁸². On April 11, dozens of supporters of the opposition candidate Guillermo Lasso, who lost the elections on April 2, were evicted from the outskirts of the CNE in Quito, where they demanded a recount of votes. The demonstrators had remained for nine days in front of the headquarters of the electoral body and had blocked the circulation on the avenue *6 de diciembre*. The police disarmed the tents installed on the streets and seized donations that the protesters received⁶⁸³. The Ministry of Interior reported in a statement that the police action was carried out in order and with no excesses⁶⁸⁴.

485. The Secretariat of Communication [*Secretaría de Comunicación*] (Secom) disqualified in a broadcast the polling Center for Studies and Data [*Centro de Estudios y Datos*] (Cedatos) and the Citizen Participation Corporation for the results of the exit poll released after the April 2 elections, which were favorable to the opposition candidate Guillermo Lasso⁶⁸⁵. The Citizen Participation Corporation was also questioned for having announced a technical tie and not pronouncing as the winner the official candidate⁶⁸⁶. Likewise, the pro-government *Alianza PAIS* movement threatened to file lawsuits against Cedatos, and the *Ecuavisa* and *Canal UNO* television channels for having proclaimed a "false result"⁶⁸⁷. In this context, Cedatos reported in a press release having been the victim of illegal information interception and violations to the privacy of their emails, and filed a complaint with the Prosecutor's Office⁶⁸⁸.

⁶⁸⁰ El Comercio. April 3, 2017. *Participación Ciudadana ratificó el empate técnico y cuestionó amenazas*; Ecuadorinmediato. April 3, 2017. *"Todos los que conformamos Participación Ciudadana hemos recibido amenazas de muerte", afirma Ruth Hidalgo*; Fundamedios. April 4, 2017. *Directora de Participación Ciudadana es amenazada de muerte*.

⁶⁸¹ Superintendencia de la Información y Comunicación (Supercom). April 5, 2017. *Llamado de atención a Radio Visión*; El Comercio. April 5, 2017. *Supercom emite llamado de atención a Radio Visión, por abrir micrófonos a los oyentes*.

⁶⁸² Fundamedios. April 13, 2017. *Nueva cadena se impone para descalificar protestas ciudadanas*.

⁶⁸³ La Jornada/AFP. April 11, 2017. *Desalojan a seguidores de Lasso en Ecuador*; Extra. April 11, 2017. *Policía desalojó a manifestantes de los exteriores del CNE*; Ecuavisa. April 11, 2017. *Policía desaloja a simpatizantes de CREO que acampaban afuera del CNE*; La Hora. April 11, 2017. *Desalojan a manifestantes de las afueras del CNE en Quito*.

⁶⁸⁴ Ministerio del Interior. No date. *Con orden y sin desmanes fue retirado un grupo de personas de las afueras del CNE*.

⁶⁸⁵ Fundamedios. April 6, 2017. *Cadena acusa a medios de poner Presidente en base a una encuesta y descalifica a Cedatos y Participación Ciudadana*.

⁶⁸⁶ Fundamedios. April 6, 2017. *Cadena acusa a medios de apoyar el fraude y descalifica a encuestadora y organización que no dieron por ganador al candidato oficial*.

⁶⁸⁷ Fundamedios. April 7, 2017. *Movimiento oficialista amenaza a encuestadora y canales de TV con juicios*; El Telégrafo. April 5, 2017. *Alianza PAIS se adhiere a las acciones de impugnación presentadas por CREO*; El Comercio. April 5, 2017. *Alianza País se adherirá a impugnación de Creo, pero exigirá acciones judiciales si se comprueba que 'mintieron'*.

⁶⁸⁸ Cedatos. April 5, 2017. *Comunicado: Cedatos anuncia a la opinión pública un nuevo atentado contra sus sistemas de información*.

486. On May 4, Judge María Elena Lara ordered the opening of a prosecution for the alleged crime of forgery and use of false documents against Cedatos. The decision was made after the Prosecutor's Office argued that there were enough elements of conviction to presume that officials of that company made changes in the results of the polls to benefit the presidential candidacy of the opponent Guillermo Lasso. The defense of the company rejected the decision and affirmed that there were several violations to due process⁶⁸⁹. On May 25, at the request of the Prosecutor's Office, the judge decided to link the director of Cedatos, Ángel Polibio Córdova, to the investigation being carried out against the consultant⁶⁹⁰.

487. The offices of the pollster in Quito were raided on April 7 to seize information contained in the computer equipment and physical files of the company, in the framework of an investigation initiated following a complaint filed by the congresswoman of the ruling party and vice president of the Assembly, Rosana Alvarado, who accused the pollster of having mistakenly announced a favorable outcome to candidate Lasso in the exit polls in the presidential elections on April 2⁶⁹¹. On April 13, within the framework of this investigation, the Provincial Prosecutor's Office of Pichincha called 19 people to render a statement, among them, Polibio Córdova, Lasso, Andrés Páez, and Alfonso Espinosa de los Monteros, a journalist from *Ecuavisa*⁶⁹². The call was made after the then President Rafael Correa expressed, during his *Enlace Ciudadano* program of April 8, that both *Ecuavisa* and Cedatos should answer before the law, since in his opinion they had "civil, administrative, and all kinds of responsibilities", due to the disclosure of the polls that gave an alleged advantage to the opposition candidate⁶⁹³.

488. In electoral contexts, freedom of expression is directly connected to political rights and their exercise, and both types of rights mutually strengthen one another.⁶⁹⁴ Reasoned democratic debate requires the greatest possible circulation of ideas, opinions and information about the candidates, their parties, and their platforms during the period preceding an election, principally through the media, the candidates, and others who wish to express themselves. Everyone must be able to question and investigate the capacity and suitability of the candidates, disagree with and confront their ideas and opinions, so that voters can form their opinions.⁶⁹⁵ As the IACHR has underscored, free speech and political debate are essential for the consolidation of the democratic life of societies, and therefore are of compelling social interest.⁶⁹⁶

J. Internet and freedom of expression

489. Throughout 2017, and particularly in the previous weeks and during the presidential elections, several websites were victims of cyber-attacks that temporarily suspended access to their contents. Several Twitter accounts of candidates by opposition parties, political activists, journalists, and the media also suffered hackings.

⁶⁸⁹ Fundamedios. April 7, 2017. *Allanan oficinas de encuestadora que dio resultado favorable a candidato de oposición*.

⁶⁹⁰ Fundamedios. May 29, 2017. *Se vincula a Presidente de encuestadora en investigación fiscal*; Ecuavisa. May 25, 2017. *Jueza vincula a representante de Cedatos a proceso penal contra encuestadora*.

⁶⁹¹ El Político. April 7, 2017. *Allanan sede de Cedatos por difundir datos de elecciones en Ecuador*; Ecuavisa. April 7, 2017. *Policía y agentes fiscales ingresan a las oficinas de la encuestadora Cedatos*.

⁶⁹² El Comercio. April 18, 2017. *Fiscalía llama a rendir versión a Alfonso Espinosa de los Monteros, Polibio Córdova, Guillermo Lasso*; El Universo. April 19, 2017. *Fiscalía cita a Guillermo Lasso y a Alfonso Espinosa de los Monteros*; Fundamedios. April 20, 2017. *Como lo pidió el presidente Correa, la Fiscalía abre proceso a Alfonso Espinosa de los Monteros, CEDATOS y Guillermo Lasso*

⁶⁹³ Presidencia de la República del Ecuador ©SECOM. April 8, 2017. *Enlace Ciudadano 518, con el Presidente Rafael Correa desde Palenque – Los Ríos*.

⁶⁹⁴ I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 90.

⁶⁹⁵ I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 90.

⁶⁹⁶ IACHR. Arguments before the Inter-American Court in the case of Canese v. Paraguay. Transcribed in: I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para 72. B).

490. On January 15, six Twitter accounts of opposition politicians, political activists, and independent media journalists would have been hacked; among them the account of the candidate for the Presidency of the Republic, Abdalá Bucaram Pulley and of his movement, *Fuerza Ecuador*, the account of the candidate for the vice presidency Andrés Páez, and the account of the director of the *Plan V* magazine, Juan Carlos Calderón⁶⁹⁷. The news site *Ecuadorenvivo* would have suffered cyber-attacks on January 19 and 25⁶⁹⁸. The journalistic research site *Milhojas.is* would also have been the target of attacks on January 24⁶⁹⁹ and February 3⁷⁰⁰. On January 25 the website of the organization Fundamedios, the site *Ecuadorchequea.com* (a fact-checking site that verifies the speech of the candidates for the Presidency), and the digital radio *Rayuelaradio* would have been victims of a hack that took them off the air for many hours⁷⁰¹. On February 7, the official *Últimas Noticias* account on the Twitter social network would have been hacked⁷⁰². On February 12 and 16, two Twitter accounts of *El Comercio* newspaper would have been hacked⁷⁰³. On August 14, the *Fundamedios* site again suffered a cyber-attack⁷⁰⁴. In April Twitter would have suspended the account of user @Aliciadorada, which had almost 10 thousand followers. The tweeter said that the social network notified her that her account was permanently suspended because she shared private information⁷⁰⁵.

491. The organization Fundamedios, reported in August that the company Twitter would keep suspended and blocked the accounts of at least eight users who comment on issues of economic situation and are critical of the government of Ecuador. Among them would be the satirical account @CrudoEcuador, and others like @mi_rinkon, @LeonardoHumbolt, @AliciaDorada, @skueffner, @FDavid_92, @EcuadorTwitter, and @GaloLara. In turn, according to the organization *Digital Users*, 14 accounts would have been blocked and suspended by Twitter between July 29 and August 6⁷⁰⁶.

492. On February 6, the journalistic site *Ubicatv.com*, which often publishes information with criticism of government, was taken off the air following a claim of copyright infringement filed by the Secretariat of Communication [*Secretaría de Comunicación*] (SECOM), due to the use of photographs of the candidate for the presidency by the government party, Lenin Moreno, and of the former minister of hydrocarbons, Carlos Pareja Yannuzzelli, a public official allegedly implicated in a corruption case with the state oil company. SECOM alleged that the material belongs to it and complained to the servers that host the site, who took it down. Hours later, the site was working again⁷⁰⁷.

K. Communications surveillance

⁶⁹⁷ Fundamedios. January 17, 2017. [Cuentas de candidatos, activistas políticos y periodistas son hackeadas.](#)

⁶⁹⁸ Fundamedios. January 25, 2017. [Página web de Fundamedios y portales informativos sufren ataques informáticos en contexto electoral.](#)

⁶⁹⁹ Fundamedios. January 24, 2017. [Portal Milhojas es atacado y sale del aire temporalmente tras publicar informe sobre el caso Odebrecht.](#)

⁷⁰⁰ Twitter account of Fundación Mil Hojas @fmilhojas. [February 2, 2017](#); Fundamedios. February 3, 2017. [Portal Milhojas es víctima de hackeo y denuncias por uso de imágenes de abogado del Presidente Correa y de un general asesinado.](#)

⁷⁰¹ Fundamedios. January 25, 2017. [Página web de Fundamedios y portales informativos sufren ataques informáticos en contexto electoral.](#)

⁷⁰² El Comercio. February 7, 2017. [Aclaración- Hackearon la cuenta de Twitter de Últimas Noticias](#); Fundamedios. February 9, 2017. [Cuentas de candidatos, activistas políticos y periodistas son hackeadas.](#)

⁷⁰³ Twitter account of El Comercio @elcomercio.com. [February 12, 2017](#); El Comercio. February 16, 2017. [¡URGENTE! La cuenta de Twitter de EL COMERCIO fue hackeada la noche del February 16,1 2017.](#)

⁷⁰⁴ Fundamedios. August 15 2017. [Portal de Fundamedios sufre ataques cibernéticos desde diferentes partes del mundo.](#)

⁷⁰⁵ Fundamedios. May 23, 2017. [Cuenta de tuitera crítica con el Gobierno es suspendida de manera definitiva](#); "They have suspended my account @Aliciadorada without giving me the reason and I am here, resisting". [Twitter account of aliciadorada @quintenalibre.](#)

⁷⁰⁶ Fundamedios. August 3, 2017. [Twitter bloquea cinco cuentas críticas con el gobierno](#); Fundamedios. August 11, 2017. [Fundamedios condena censura de Twitter tras suspensión de cuenta de Crudo Ecuador.](#)

⁷⁰⁷ Fundamedios. February 7, 2017. [Portal crítico con el gobierno es dado de baja tras reclamos de copyright de la Secom.](#)

493. On September 15, President Lenin Moreno publicly reported that he had found an activated hidden camera in his presidential office. Moreno reported that the former president Rafael Correa had ordered the installation of the hidden camera years ago, during his administration, and that he monitored it from his cellphone. The president questioned the fact that he had not been informed of the existence of the camera and affirmed that it was an "offense of violation to privacy". He also ordered an internal investigation to determine the reasons why security personnel did not report on the installation of the device⁷⁰⁸. Correa responded to the accusations in his Twitter account, calling Moreno "ridiculous" and challenged him to present evidence⁷⁰⁹.

494. A few days after the discovery reported by Moreno, the Ecuadorian newspaper *Expreso* published an investigation revealing that the National Intelligence Secretariat [*Secretaría Nacional de Inteligencia*] (Senain) of Ecuador had monitored civil society during the term of former President Rafael Correa. According to the publication, dated September 21, Senain would have monitored people in the personal, familiar, and professional circles of opposition politicians, journalists, businesspersons, social, and indigenous organizations, tweeters, and even members of the Correa government⁷¹⁰.

495. The Office of the Special Rapporteur has also observed that the decisions to conduct surveillance operations that invade the privacy of persons must be authorized by independent judicial authorities who must explain the reasons why the measure is ideal for achieving the goal sought in a specific case, whether the measure is restricted enough not to affect the person's right any more than necessary, and whether it is proportionate to the interest being furthered. Investigations that involve an invasion of privacy that is authorized by law and ordered by a judge having jurisdiction must also uphold other guarantees related to due process. States must guarantee that the judicial authority is specialized and has jurisdiction to make legal decisions regarding the lawfulness of communications surveillance, the technology used and its effect on rights that may be compromised, and that they provide enough guarantees to act appropriately. Finally, the Office of the Special Rapporteur notes that at least the criteria for decisions made by courts must be public.⁷¹¹

L. Community broadcasting

496. On July 7, the Telecommunications Regulation and Control Agency [*Agencia de Regulación y Control de las Telecomunicaciones*] (Arcotel) declared the allocation of 553 radio and TV frequencies deserted, as part of a public bid initiated in 2016. 539 were vacant due to lack of applicants and 14 frequencies for local radios were disqualified for not reaching the minimum score required in the bidding rules. The 553 frequencies were left open for future bids. According to resolution 0654 of Arcotel, applicants who were disqualified or who for any reason did not participate in the bid for the award of frequencies and are making use of the radio spectrum may continue operating as long as the frequencies are not allocated⁷¹².

497. On various occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media in our region fulfill a fundamental function for the exercise by diverse sectors of society of

⁷⁰⁸ Twitter account of Lenín Moreno @Lenin. September 15, 2017; CNN. *Lenín Moreno enfurecido denuncia cámara escondida en su despacho y acusa a Rafael Correa*; El País. September 16, 2017. *Correa dejó una cámara oculta activa en el despacho presidencial*.

⁷⁰⁹ Twitter account of Rafael Correa @MashiRafael. September 15, 2017 and September 15, 2017.

⁷¹⁰ Expreso. September 21, 2017. *La Senain espía en el entorno de líderes opositores*; El País. September 30, 2017. *El Gobierno de Correa espía a la sociedad civil para tener bajo control a los opositores*.

⁷¹¹ IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 416.

⁷¹² Agencia de Control y Regulación de las Telecomunicaciones (Arcotel). *Resolución 0654*. July 7, 2017; El Telégrafo. July 18, 2017. *553 frecuencias fueron declaradas desiertas en concurso de Arcotel*; El Universo. July 15, 2017. *Arcotel hará otro concurso por más de 550 frecuencias*; Observacom. July 25, 2017. *ARCOTEL de Ecuador declaró desierta la adjudicación de 553 frecuencias en concurso para radio y TV de 2016*.

freedom of expression and access to information.⁷¹³ In that sense, it is necessary for the states to legally recognize community media and to consider fair spectrum reserves for this type of media, along with adequate conditions of access to licenses that would take into account the circumstances. Similarly, community media must benefit from fair and simple procedures for obtaining licenses, must not have to comply with technological or other types of requirements that involve disproportionate barriers for access to licenses, and in their operation must not be the target of differentiated treatments that are not adequately justified.⁷¹⁴

⁷¹³ IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para. 414; IACHR. Annual Report 2002. Report of the Special Rapporteur for Freedom Of Expression. Chapter IV (Freedom of Expression and Poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 41.

⁷¹⁴ IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 92 and following.

15. EL SALVADOR

498. In 2017, the Office of the Special Rapporteur registered serious threats and intimidation against two journalists through social networks, the incursion into the newsroom of the media outlet, and attacks on vehicles of certain media. The existence of a microphone in the offices of a civil society organization that works on issues related to the rule of law and access to public information was also reported. Additionally, a preliminary bill that would guarantee protection mechanisms for journalists and social media workers was presented in Parliament, although no progress has been made in its approval so far.

499. During the present year, a defamation lawsuit was filed by the mayor of the city of San Salvador, Nayib Bukele against *La Prensa Gráfica*. However, the court decided to strike the complaint on the understanding that the journalistic investigation was of public interest and was based on various documentary and testimonial sources.

500. The Office of the Special Rapporteur also highlights a decision of a Court of Appeals that acquitted the director of *Revista Factum* who, in 2016, had been accused of slander by a businessman who was interrogated and then arrested for the crimes of fraud and bribery.

A. Progress

501. On January 19, President Salvador Sánchez Cerén announced that his country will adopt the ISDB-TB standard for the transmission of digital radio and television. In this regard, Sánchez Cerén explained that through a hardworking process of consultation, technical research, and dialogue with organizations, unions, and concessionaires, the General Superintendence of Electricity and Telecommunications [*Superintendencia General de Electricidad y Telecomunicaciones*] (SIGET), would have established the National Plan of Digital Terrestrial Television [*Plan Nacional de Televisión Digital Terrestre*], for which reason "the country moves towards Central American integration and joins the same communication technology established throughout the region." The measure would begin to take effect towards the end of 2018.⁷¹⁵ According to the information available, the announcement of the beginning of the digitalization of Salvadoran television takes place within the framework of the reforms to the Telecommunications Law, which now recognizes the operation of community radio and television as part of the system of media that should work in El Salvador. Likewise, it would be expected that, with the result of the "digital dividend" that would result from the process of technological convergence, the passage to the authorization of community television media will be generated. In addition, the selected technical standard "represents multiple advantages for the country, such as greater coverage, better sound and image quality, interactivity, the possibility of generating early warnings in the event of disasters, and mobility in portable devices"⁷¹⁶.

B. Murders

502. On November 16, cameraman Samuel Rivas, of the *Grupo Megavisión*, was murdered in the city of Ilopango, department of San Salvador, after being shot several times allegedly by gang members. According to the information available, Rivas was painting the facade of a church he regularly attended, when two men got off a motorcycle and shot him. According to the police personnel that would guard the area, the alleged gang members who attacked the cameraman "operate in the area" and an investigation was opened to find those responsible. In this regard, the news director of the *Grupo Megavisión*, Roberto Hugo Preza, reportedly indicated that the cameraman had never received threats and, therefore, he could not assure that his murder was linked to his status as a media worker. For its part, the Association of Journalists of El Salvador

⁷¹⁵ Superintendencia General de Electricidad y Telecomunicaciones (SIGET). January 19, 2017. *El Salvador adopta el Estándar ISDB-TB para la Televisión Digital*; Prensa Latina. January 19, 2017. *El Salvador adopta estándar ISDB-Tb para radio y televisión digital*.

⁷¹⁶ Observacom. January 24, 2017. *Apagón analógico se dará cuando el 90 % de salvadoreños esté listo*; Observacom. January 26, 2017. *El Salvador adoptó el estándar japonés para la TV digital*.

[Asociación de Periodistas de El Salvador] (APES), condemned what happened in the social network Twitter and requested "a thorough investigation of the incident"⁷¹⁷.

503. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Attacks, threats, and intimidation to journalists and the media

504. Regarding attacks, threats, and intimidation to journalists and the media, on May 22, in the municipality of San Miguel, journalist Marcela Rivera and cameraman Marcos Rivera, both from *Tropivisión*, reported that Mario Arévalo, councilor and director of *TVO*, would have interfered and obstructed their journalistic work during the coverage of an incident between personnel of the Corps of Municipal Agents [*Cuerpo de Agentes Municipales*] (CAM) and members of the political party *GANA*. The councilman would have simulated to record them and threatened them. According to available information, the events were witnessed by members of the National Civil Police [*Policía Nacional Civil*] (PNC) and CAM agents who would have not intercede in the matter⁷¹⁸.

505. On June 30, in the municipality of Santa Tecla, journalists from *4 Visión* and *Canal 12* would have been assaulted by vendors in the area while they were preparing to record the riots that occurred in the San Martín park between vendors and members of the Municipal Agent Corps [*Cuerpo de Agentes Municipales*] (CAM). According to available information, the media workers Alejandra Arévalo and Juan Arriaga would have been injured⁷¹⁹.

506. On August 22, the journalist Jorge Omar Beltrán published through his Twitter account that his car was painted with a blue acid and that on the windshield there was a sign with the letters "SOB" [*HDP*]. The media worker, who covers security issues, gangs, and corruption, reported that the National Civil Police [*Policía Nacional Civil*] (PNC) wrote down the complaint for damages and not for threats⁷²⁰.

507. Following the publication on August 22 of a report titled "In the privacy of the police death squad," which revealed that four agents of the Special Reaction Forces of El Salvador [*Fuerzas Especiales de Reacción de El Salvador*] (FES), a specialized unit of the National Police Civil [*Policía Nacional Civil*] (PNC), would have killed gang members simulating a confrontation, two journalists from the news outlets *Revista Factum* and *El*

⁷¹⁷ Elsalvador.com. November 16, 2017. *Camarógrafo Samuel Rivas asesinado frente a iglesia donde se congregaba*; Univision Noticias. November 16, 2017. *Presuntos pandilleros matan a balazos a un camarógrafo en El Salvador*; "The Board of Directors of APES condemns the murder of cameraman Samuel Rivas and demands that the authorities investigate in depth the event". Twitter account of APES @apeselsalvador. November 16, 2017.

⁷¹⁸ Diario TVR. May 24, 2017. *Cobarde intimidación y uso de violencia contra la mujer*; "The Asociación de Periodistas de El Salvador (APES), regrets and condemns attack against Freedom of the Press in San Miguel". Twitter account of Asociación de Periodistas de El Salvador @apeselsalvador. May 26, 2017.

⁷¹⁹ Diario Digital Cronio. June 30, 2017. *Agreden a periodistas de 4 Visión y canal 12 en disturbios entre vendedores y CAM de Santa Tecla*; La Portada. June 30, 2017. *Disturbios entre agentes del CAM, Santa Tecla y vendedores, deja varios lesionados*.

⁷²⁰ "I want to publicly denounce that I have been targeted by what I consider an attack against me and my family. See the images". Twitter account of Jorge Beltrán Luna @JBeltranluna. August 22, 2017; La Prensa Gráfica. August 22, 2017. *Bañaron de ácido carro de periodista salvadoreño y le dejaron un mensaje*; El Salvador Times, August 23, 2017. *Dañan carro de periodista y le dejan una nota con las letras "HDP" en el vidrio frontal*.

Faro would have received threatening and intimidating messages through Twitter and Facebook⁷²¹. One of the intimidating comments made via Twitter, alluded to the different investigations carried out by the journalist *Revista Factum* "against the PNC."⁷²² On the same day, the Office of the Prosecutor for the Defense of Human Rights [*Procuraduría para la Defensa de los Derechos Humanos*] (PDDH) ordered through a precautionary measure of protection that the Director of the PNC, Howard Cotto, guaranteed the safety of the journalists involved, along with the protection of the facilities, equipment, materials, and all useful instruments necessary to carry out their activities⁷²³.

508. On August 26, four people would have arrived at the offices of *Revista Factum*, in a blue bus, without carrying official distinctions and identifying themselves as members of the PDDH, with the intention of obtaining information related to the entry and exit schedules of journalists⁷²⁴. Hours later, the PDDH denied having sent any delegates⁷²⁵. According to available information, two days later the movement of suspicious cars in the vicinity of the newsroom would've been observed⁷²⁶. On August 28, the Vice President of El Salvador, Oscar Ortiz, would have publicly declared the following: "you have to knock on wood nothing happens to a journalist", while referring to the research conducted by *Revista Factum* and *El Faro*⁷²⁷. For his part, the Attorney General of the Republic, Douglas Meléndez, told a local media that "[A]ny journalist who feels threatened should go to the Prosecutor's Office and we are going to give them the corresponding support", while pointing out that he had given orders so that the Specialized Prosecutor's Unit against crimes by Organized Crime investigates the complaint made by *Factum*⁷²⁸. On October 27, the IACHR granted precautionary measures in favor of the journalists of *Revista Factum*, requesting, among others, that the State adopt the necessary measures to protect the life and personal integrity of the beneficiaries.

509. On November 28, Friederick Meza, a photojournalist at *La Prensa Gráfica*, reported to the Office of the Human Rights Ombudsman [*Procuraduría para la Defensa de Derechos Humanos*] (PDDH) that he received threats and intimidation against himself and his family through a publication that was made in the social network Facebook, from the profile "*Fuerzas Policiales El Salvador*", where he was accused of having taken some photographs that would have reached the hands of gang members. According to the information

⁷²¹ *Revista Factum*, August 22, 2017. *En la intimidad del escuadrón de la muerte de la Policía*; *El País*, August 29, 2017. *Amenazados dos medios salvadoreños tras sus revelaciones sobre matanzas extrajudiciales de la policía*; BBC, September 1, 2017. *Los reportajes por los que amenazaron de muerte a los periodistas de El Faro y Factum en El Salvador*.

⁷²² "SALVADORAN PEOPLE: This is the information of the FACTUM 'Journalist' who wrote the publication against the PNC. Draw your conclusions." Twitter account of Sigfrido Reyes @sigfridoreyes. August 25, 2017; *El Mundo*, August 27, 2017. *Sigfrido Reyes criticado en redes por retuit contra periodistas*.

⁷²³ *Revista Factum*, August 26, 2017. *PDDH ordena medidas de protección para Factum tras amenazas*; *El Faro*, August 28, 2017. *Culpar al mensajero*.

⁷²⁴ *Revista Factum*, August 28, 2017. *Exterminio: El Estado cómplice*; Inter American Press Association (IAPA), August 29, 2017. *El Salvador: Profunda preocupación de la SIP por amenazas contra periodistas de medios digitales de El Salvador*.

⁷²⁵ *Revista Factum*, August 26, 2017. *PDDH ordena medidas de protección para Factum tras amenazas*; Inter American Press Association (IAPA), August 29, 2017. *El Salvador: Profunda preocupación de la SIP por amenazas contra periodistas de medios digitales de El Salvador*.

⁷²⁶ *Revista Factum*, August 28, 2017. *Exterminio: El Estado cómplice*; Inter American Press Association (IAPA), August 29, 2017. *El Salvador: Profunda preocupación de la SIP por amenazas contra periodistas de medios digitales de El Salvador*.

⁷²⁷ *La Prensa Gráfica*, August 28, 2017. *"Hay que tocar madera para que no pase algo con un periodista": Vicepresidente Ortiz*; *El Faro*, September 8, 2017. *"Las amenazas a periodistas no son un asunto de tocar madera"*.

⁷²⁸ *El Mundo*, August 28, 2017. *Fiscalía investiga grupo de exterminio policial revelado por Factum*; *La Prensa Gráfica*, August 29, 2017. *FGR indaga a más PNC y militares por exterminio*.

available, the publication contained Meza's personal information, a photograph of him, and incited to take action against him⁷²⁹.

510. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

511. According to available information, in May the Association of Journalists of El Salvador [*Asociación de Periodistas de El Salvador*] (APES) together with the president of the Legislative Assembly, Guillermo Gallegos, and other members of the parliamentary body, would have initiated deliberations aimed at reaching a consensus on a law that guarantees adequate conditions for carrying out journalistic activity, along with the creation of a social welfare institute for journalists. In July, the new president of APES, Dalila Arriaza, would have indicated that the efforts to elaborate a preliminary draft of the law continued, following the progress made by her predecessor, Serafin Valencia⁷³⁰.

512. At the close of this report, the Office of the Special Rapporteur has not received information on further progress towards concluding the aforementioned bill that establishes the necessary means to guarantee the protection of journalists and social media workers in El Salvador.

513. The IACHR and its Office of the Special Rapporteur have defined some of the requirements for protective mechanisms to be effective. For example, the Office of the Special Rapporteur has recommended placing emphasis on: 1) the importance of guaranteeing the necessary personnel and financial resources for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and procurement of justice; 3) the need to adequately define protective measures called for in the mechanism and the procedure for their adoption; 4) the need to guarantee the full participation of journalists, civil society and beneficiaries in the implementation and operation of the mechanism; and 5) the benefits of seeking support from the international community for the mechanism's operation.⁷³¹

D. Social protest

514. On May 1, *Telecorporación Salvadoreña* and *Teleprensa* vehicles who were covering the demonstrations that took place during Labor Day, would have been attacked and stained by a group of protesters who were heading to Plaza Libertad, in the city of San Salvador. According to available information, agents of the National Civil Police [*Policía Nacional Civil*] (PNC) who were present on site would not have intervened to avoid these attacks⁷³².

515. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible

⁷²⁹ La Prensa Grafica. November 30, 2017. *Fotoperiodista de LPG denuncia en PDDH amenazas e intimidación*; *Crónica Viva*. December 3, 2017. *FIP: Amenazan a fotoperiodista de El Salvador por redes sociales*.

⁷³⁰ La Prensa Gráfica. May 8, 2017. *APES prepara una propuesta de ley para protección de periodistas*; La Página. July 31, 2017. *APES asegura que libertad de expresión sigue garante*.

⁷³¹ IACHR. Annual Report 2013. *Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 81; IACHR. *Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression*. Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 712.

⁷³² La Página. May 1, 2017. *Manifstantes manchan vehículos de dos canales de televisión*; Elsalvador.com. May 1, 2017. *VIDEO: Dañan vehículo de TCS frente a policías durante marcha del Día del Trabajo*.

when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”⁷³³ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”⁷³⁴

516. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”⁷³⁵

E. Stigmatizing statements

517. According to available information, on June 13, Violeta Menjivar, Minister of Health, would have supported the decision taken by the director of the Rosales National Hospital [*Hospital Nacional Rosales*], located in the city of San Salvador, to prevent the media from entering said hospital⁷³⁶. Days later, on June 28, the Minister of Health would have established a ban on access to journalists and media workers to all hospitals in the country and on that occasion allegedly indicated that the “media cause terror in the population.”⁷³⁷

518. Also, on July 24, the Vice Minister of Justice and Security, Raúl Antonio López, declared that the media “seeks to sell a story” when they report acts of violence and added “We ask the media vehemently [to] highlight the positive news of our country.” This would have taken place in the Forum “Protection of journalists: guarantee of freedom of expression” organized by the Association of Journalists of El Salvador [*Asociación de Periodistas de El Salvador*] (APES) together with the Legislative Assembly⁷³⁸.

519. For its part, on September 11, Jaime Martínez, director of the National Public Security Academy [*Academia Nacional de Seguridad Pública*] (ANSP) had expressed on the television program *Noticiero Hechos* of *Canal 12* that “there are journalists who are at the service of gangs’ intentions to present themselves as victims.”⁷³⁹ Days later, on September 14, *El Faro Magazine* published an interview with Jaime Martínez where he was consulted about his statements. On this particular, he allegedly said “Yes, there is one called, I think it’s Bryan, who according to information from the Police is a young man. According to the police, is not me saying this.” When asked if he was referring to Bryan Avelar, the journalist who would have participated in a

⁷³³ IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

⁷³⁴ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

⁷³⁵ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. Joint declaration on violence against journalists and media workers in the context of protests.

⁷³⁶ El Mundo. June 12, 2017. Destituirán vigilantes que permitan ingreso de periodistas al Rosales; El Mundo. June 13, 2017. Ministra respalda restricción de prensa en hospitales.

⁷³⁷ Diario Libre. June 28, 2017. Ministra de Salud impide que periodistas ingresen a hospitales porque dice que “causan terror”.

⁷³⁸ Diario Libre. July 24, 2017. Viceministro de Justicia pide a los medios de comunicación que “destaquen las noticias positivas” del país; Pax Noticias. July 25, 2017. Realizan foro y taller denominado “Protección a periodistas: garantía de libertad de expresión”.

⁷³⁹ “There are journalists who are lending themselves to the intentions of the gangs to present themselves as victims”. Twitter account of Noticiero Hechos @NoticieroHechos. September 11, 2017; Canal 12. September 11, 2017. Jaime Martínez nos habla sobre la labor que realiza la Academia Nacional de Seguridad Pública.

joint publication between members of *Revista Factum* and *El Faro* in which the existence of an "extermination group" within the ranks of the National Civil Police [*Policía Nacional Civil*] (PNC)⁷⁴⁰, had been revealed, he allegedly indicated that "they say it's a guy named Bryan, who is a journalist and reveals information, and that he is involved in this because he's the brother of a gangster who is in prison, a gang leader (*palabrero*). That's what they say. So, if it is so, there are very specific situations that must be investigated."⁷⁴¹

520. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State's job to help create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.⁷⁴²

521. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."⁷⁴³

F. Subsequent liabilities

522. On January 25, the mayor of San Salvador, Nayib Bukele, declared that he considered that the publications made by *La Prensa Gráfica* on the project to implement the video surveillance system in the municipality caused "damage to the honor, morals, and integrity" of the councilors of his sector who voted for the project. Under that argument, the mayor confirmed that "the council voted to sue *La Prensa Gráfica* for defamation."

523. The lawsuit was filed with the Santa Tecla Court on July 4, requesting US\$ 5 million in reparations. On June 27, the Antigua Cuscatlán Court rejected Bukele's lawsuit, considering that the information published by *La Prensa Gráfica* was based on interviews with experts and official documents and that the published article did not contain offensive or offensive words against the plaintiff⁷⁴⁴. According to the information available, the judge stated that the capital mayor, like any public official, is obligated to provide information to journalists on the management of their entities; He confirmed the absence of inaccurate data since the newspaper article was based on "public information on which any person can have access". He also added that the note cites sources of individuals and that, if the mayor disagrees with them, there is a "right of reply";

⁷⁴⁰ *Revista Factum*, August 22, 2017. *En la intimidación del escuadrón de la muerte de la Policía*.

⁷⁴¹ *El Faro*. September 14, 2017. *Jaime Martínez contradice a Jaime Martínez*; *Revista Factum*. September 15, 2017. *La irresponsabilidad de Jaime Martínez y del gobierno del FMLN*.

⁷⁴² IACHR. *Annual Report of the Inter-American Commission on Human Rights 2014*. Chapter II (Evaluation of the State of Freedom Of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2014. Para. 65.

⁷⁴³ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

⁷⁴⁴ *Diario1*. June 4, 2017. *Alcalde Nayib Bukele demanda a La Prensa Gráfica por difamación*; *La Prensa Gráfica*. January 26, 2017. *Bukele confirma demanda en contra de La Prensa Gráfica*; *Elsalvador.com*. January 25, 2017. *APES medios condenan proceder anti-prensa de edil capitalino*; *Elsalvador.com*. June 27, 2017. *Las 4 razones por las que el juez rechazó demanda de Bukele contra La Prensa Gráfica*.

concluding the judgment stating that there was no reason to sustain the falsehood, inaccuracy, or defamatory sense of the news⁷⁴⁵.

524. On the other hand, on July 27, Judge Cruz Antonio Pérez Granados of the Court of Santa Tecla acquitted the journalist and co-editor of *Revista Factum* website, Héctor Silva Ávalos, after he was charged in April 2016 for the crimes of slander and insult by businessman José Enrique Rais López, after publishing an article titled "The house of cards is falling."⁷⁴⁶ On that occasion, the Court of Santa Tecla had received from the complainant various publications made by the journalist in which it was reported the alleged relationship of the businessman with the former Attorney General of El Salvador, Luis Martínez, to whom the former would have facilitated his planes for multiple trips, presumably in exchange for favoring him in the investigation of a complaint lodged against him by a couple of Canadian citizens with whom he had previously been associated in a company dedicated to solid waste management.

525. However, on October 5, the Criminal Chamber of the Fourth Section of Santa Tecla [*Cámara de lo Penal de la Cuarta Sección de Santa Tecla*] revoked the judgment of the Santa Tecla Court, arguing that the ruling judge violated the legal security of the plaintiff. Furthermore, they indicate that the ruling judge did not adopt a resolution in accordance with the criminal procedural rules and that he did not rule on petitions made by the accusing party, issues that would have created a scenario of uncertainty for the accusing party. According to the information available, the Chamber ordered the separation of the judge who intervened in the previous instance, and ordered the hearing of the evidence to be repeated, along with the other proceedings and successive hearings⁷⁴⁷.

526. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, "privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

527. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states: "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information." Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.⁷⁴⁸

G. Legal reforms

528. On June 19, the government presented before the Legislative Assembly of the Republic of El Salvador a bill for the prevention of violence which establishes that the media must self-regulate when publishing content that reflects the violence the country is experiencing, among other subjects.

⁷⁴⁵ Diario1. June 4, 2017. *Alcalde Navib Bukele demanda a La Prensa Gráfica por difamación*; La Prensa Gráfica. January 26, 2017. *Bukele confirma demanda en contra de La Prensa Gráfica*; Elsalvador.com. January 25, 2017. *APES medios condenan proceder anti-prensa de edil capitalino*; Elsalvador.com. June 27, 2017. *Las 4 razones por las que el juez rechazó demanda de Bukele contra La Prensa Gráfica*.

⁷⁴⁶ El Mundo. July 28, 2017. *Periodista exonerado por calumnia y difamación*; Diario Libre. August 1, 2017. *Abogados de empresario Enrique Rais confían en que Cámara de lo Penal de Santa Tecla corrija fallo parcializado de juez de Sentencia*

⁷⁴⁷ Ultima Hora. October 5, 2017. *Cámara anula sobreesimiento a periodista Héctor Silva*; Elsalvador.com. October 6, 2017. *Cámara anula fallo a favor del periodista Héctor Silva Ávalos*

⁷⁴⁸ IACHR. Annual Report 2015. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

529. According to article 30, "[t] he media should contribute to the promotion of the prevention of violence, coexistence, and a culture of peace in the population, seeking ethical self-regulation of information and non-violent content to not affect the mental health of the population, notwithstanding the respect for freedom of expression, press, and information"⁷⁴⁹.

530. In this regard, the president of the Association of Journalists of El Salvador [*Asociación de Periodistas de El Salvador*] (APES), Dalila Arriaza, rejected that it be regulated by a law, because, whether it wanted or not, that leaves an open door that could lend itself to control later on ". On the other hand, the Editorial Director of *La Prensa Gráfica*, Gabriel Trillos, reported that "It is the typical formula used by antidemocratic or populist governments, to look for a good argument or excuse such as the prevention of violence, to end up imposing and controlling" . Likewise, referring to the final section of the article, which mentions that it will be "notwithstanding the respect for freedom of expression, press, and information," *Telecorporación Salvadoreña* spokesperson Charlie Renderos, said that "Putting this in a law makes it, I believe, a state regulation"⁷⁵⁰.

H. Indirect censorship

531. On June 27, journalist Rafael Domínguez, host of the program *Así estamos* broadcasted on *Agape TV Canal 8*, announced through a video posted on social networks that the television station under his leadership would soon end, and denounced pressures on the media to end the program due to its journalistic line. "There are many people who do not like to be told things as they are, they do not like the way we approach the issues, and they do not like to be told the truth of what is happening. We're leaving because those people are the ones that are pushing for us to get out of the air, just like that."⁷⁵¹ Days later, the show stopped broadcasting. This would have been questioned and condemned by different social and political actors that would have blamed the government for exerting pressure to censor *Así estamos*⁷⁵².

532. However, on July 19, Rafael Dominguez reportedly indicated that the program would be broadcasted on the *TVO Oriente* channel starting July 24 and ruled out taking legal action for what happened⁷⁵³. According to the information available, the program *Así estamos* critically analyzes current events nationwide and allows viewers to communicate to express their opinions about it.

533. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

I. Freedom of Expression in an electoral context

⁷⁴⁹ Panampost. July 12, 2017. *El Salvador: ley contra la violencia busca censurar a los medios de comunicación*; El Salvador Times. July 19, 2017. *¿Intenta el Gobierno censurar a los medios de comunicación con la Ley de Prevención de Violencia?*

⁷⁵⁰ El Mundo. July 13, 2017. *APES rechaza regulación a medios en ley antiviolencia*; *La Prensa Gráfica*. July 19, 2017. *Prevenir la violencia no puede ser excusa para hacer peligrar la libertad de expresión*.

⁷⁵¹ El Mundo. June 28, 2017. *Rafael Domínguez asegura que su programa Así estamos, "tiene los días contados"*; *Elsalvador.com*. June 28, 2017. *Rafael Domínguez canceló su programa "Así estamos" debido a presiones*.

⁷⁵² Diario Libre. June 29, 2017. *ARENA acusa al Gobierno del FMLN de presionar para cerrar espacios en medios de comunicación*; *La Prensa Gráfica*. July 1, 2017. *ANEP condena censura de programa "Así estamos"*.

⁷⁵³ *La Prensa Gráfica*. July 19, 2017. *"Así estamos" vuelve a la televisión tras cierre forzado*; *Así estamos/Facebook*. July 24, 2017. *PROGRAMA LUNES 24 DE JULIO 2017. Así Estamos vuelve a la televisión abierta con este programa que se transmite por primera vez en TVO canal 23*.

534. On June 11, different media outlets could not access the departmental assembly of the *Frente Farabundo Martí para la Liberación Nacional* (FMLN), held in the city of San Salvador, where the candidates for the legislative and municipal elections of 2018 would be elected. According to the information available, the personnel responsible for the security of the location would have indicated that they had "precise orders" not to allow the entry of journalists or communicators⁷⁵⁴.

535. Likewise, on June 25, different media outlets were once again prevented from covering the process of internal election of candidates belonging to the *Frente Farabundo Martí para la Liberación Nacional* (FMLN). This ban would have occurred both in the city of San Salvador and in the neighboring municipality of Santa Tecla, department of La Libertad⁷⁵⁵.

536. On July 3, in the city of Usulután, department of the same name, journalist Mauricio Menotty would have been attacked by the wife and daughter of Romeo Sánchez, a precandidate for the *Partido de Concertación Nacional* (PCN). Menotty was preparing to record the act where Sanchez launched his candidacy for mayor of the city in which the event would have occurred⁷⁵⁶.

537. In electoral contexts, freedom of expression is directly connected to political rights and their exercise, and both types of rights mutually strengthen one another.⁷⁵⁷ Reasoned democratic debate requires the greatest possible circulation of ideas, opinions and information about the candidates, their parties, and their platforms during the period preceding an election, principally through the media, the candidates, and others who wish to express themselves. Everyone must be able to question and investigate the capacity and suitability of the candidates, disagree with and confront their ideas and opinions, so that voters can form their opinions.⁷⁵⁸ As the IACHR has underscored, free speech and political debate are essential for the consolidation of the democratic life of societies, and therefore are of compelling social interest.⁷⁵⁹

J. Access to information and restrictions on journalistic coverage

538. On January 25, members of the security of the mayor of San Salvador, Nayib Bukele, would have prevented the entrance to a press conference to journalists of the morning newspapers *El Diario de Hoy* (EDH), *La Prensa Gráfica* (LPG) and *El Mundo* newspaper (DEM), under the argument that said media publish "wrong" and "malicious" information about his management⁷⁶⁰.

539. On August 15, the chief communications officer of the Attorney General's Office [*Fiscalía General de la República*] (FGR), Salvador Martínez, reportedly expelled the team of institutional media workers from the Ministry of National Defense [*Ministerio de Defensa Nacional*] (MDN) from a press conference. In this context, Salvador Martínez would have said to one of the expelled journalists: "I think that they're taking up space, the press room is quite small, so I decided to take them out, I don't see what is weird about expelling someone

⁷⁵⁴ [Elsalvador.com](#). June 11, 2017. *FMLN impide que periodistas ingresen a asamblea departamental*; [La Prensa Gráfica](#). June 12, 2017. *Persiste secretismo en internas del FMLN*.

⁷⁵⁵ [Diario 1](#). June 25, 2017. *FMLN realiza elecciones internas sin acceso a la prensa*; [Elsalvador.com](#). June 25, 2017. *FMLN bloquea ingreso a medios en elecciones internas*; [La Prensa Gráfica](#). June 26, 2017. *Hermetismo, bloqueo a medios y candidaturas únicas en elección FMLN*.

⁷⁵⁶ [Diario 1](#). July 3, 2017. *[Video] Periodista denuncia agresión de esposa de militante del PCN en Usulután*; [El Blog](#). July 3, 2017. *VIDEO: Activista del PCN agrede a periodista en Usulután*.

⁷⁵⁷ I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 90.

⁷⁵⁸ I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 90.

⁷⁵⁹ IACHR. Arguments before the Inter-American Court in the case of *Canese v. Paraguay*. Transcribed in: I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para 72. B).

⁷⁶⁰ [El Salvador Times](#). January 27, 2017. *Bukele prohíbe entrada a periodistas de El Diario de Hoy y La Prensa Gráfica a conferencia y dice que denunciará a LPG por difamación*; [Elsalvador.com](#). January 25, 2017. *APES medios condenan proceder anti-prensa de edil capitalino*.

from a press conference, tell me what's weird about that"(sic). The MDN reported the Chief of Communications of the FGR to the Office of the Prosecutor for the Defense of Human Rights [*Procuraduría para la Defensa de los Derechos Humanos*] (PDDH) and the Government Ethics Tribunal [*Tribunal de Ética Gubernamental*] (TEG)⁷⁶¹. It has not been possible to obtain information on the status of the investigation.

540. This Office of the Special Rapporteur wishes to recall that in the Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption, the Special Rapporteurs for Freedom of Expression of the United Nations, the Inter-American Commission on Human Rights (IACHR) and Organization for Security and Cooperation in Europe (OSCE), noted that accreditation schemes for journalists "are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance. Accreditation should never be subject to withdrawal based only on the content of an individual journalist's work"⁷⁶².

K. Internet and freedom of expression

541. On July 21, 2015, *La Prensa Gráfica* filed a criminal complaint with the Office of the Attorney General [*Fiscalía General de la República*] (FGR) for the cloning of the newspaper's website on July 7. The publication tried to circulate a false interview with the president of the media, José Roberto Dutriz, titled "Dutriz: We are the owners of the newspapers and we can publish whatever we want". On November 12 of the same year, the FGR reported that it had captured Andrés Ricardo Ortiz Lara, allegedly responsible for cloning the newspaper's website. According to the information available, as of that capture, on February 16, 2016, the FGR carried out nine operations in which it arrested four more people who would be involved in the operation of a supposed marketing company that actually operated as "Troll center" Similarly, in the investigations, the mayor of San Salvador, Nayib Bukele, would have been connected as the material author of the cyber attacks against the newspaper. The mayor denied his participation in the events and accused his political rivals, the *ARENA* party, as well as the "de facto powers" of El Salvador, among whom he has mentioned the newspaper *La Prensa Gráfica*, of having launched a campaign against him creating a "nonexistent" case⁷⁶³.

542. In February 2017, the Second Court of Instruction of Santa Tecla [*Juzgado Segundo de Instrucción de Santa Tecla*] received the evidence presented by the Office of the Prosecutor and a few days later, the same Court ordered that José Carlos Navarro Martínez, Andrés Ortiz Lara, Mayra Liseth Morán, Óscar Domínguez and Sofía Medina, had to go to the trial stage for the commission of the crimes of material falsehood, violation of copyright, violation of trademarks, and illicit association. Between September 12 and 13, the attorneys for

⁷⁶¹ La Portada. August 15, 2017. *FGR expulsa en conferencia de prensa a comunicaciones del Ministerio de Defensa*; La Página. August 15, 2017. *Expulsan periodistas del ministerio de la Defensa en conferencia de prensa de Fiscalía*; El Mundo. August 18, 2017. *Defensa se queja de expulsión de su equipo de FGR* El Salvador Times. August 20, 2017. *Ministerio de Defensa denuncia al jefe de Prensa de la FGR*.

⁷⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. *Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption*. December 18, 2003.

⁷⁶³ IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V./II. Doc. 48/15. December 31, 2015. Para. 574; IACHR. *Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere).. OEA/Ser.L/V./II. Doc. 22/17. March 15, 2017. Para. 575; La Página. February 16, 2016. *Cuatro capturados por caso "troll center"*; La Prensa Gráfica. February 9, 2016. *"Troll center" lanzó ataques contra Zamora*; Diario1. November 26, 2015. *Los ataques cibernéticos, dos payasos y el alcalde Bukele*; La Página. February 16, 2016. *Cuatro capturados por caso "troll center"*; Prensa Libre. February 16, 2016. *Detienen a cuatro señalados por ciberataques a medios de comunicación*.

the defendants filed appeals to separate the judges of the court due to lack of impartiality in the incorporation of new procedural evidence.⁷⁶⁴

543. On December 1, the last day of the trial, three documents that the Prosecutor's Office requested from the United States Department of Justice would have been included, in which it would have been revealed that two of the defendants, Morán and Ortiz Lara, bought a site with the address www.laprensagrafica.com, paying so that their identity remained hidden. However, the Sentencing Court of Santa Tecla [*Tribunal de Sentencia de Santa Tecla*] acquitted the five defendants of carrying out the cyber attacks to the detriment of *La Prensa Gráfica*. Guilds and civil society organizations spoke about the case and expressed their disappointment as they expected the judicial outcome to set a precedent in El Salvador⁷⁶⁵.

L. Communications surveillance

544. On January 7, during maintenance work at the headquarters of the Salvadoran Foundation for Economic and Social Development [*Fundación Salvadoreña para el Desarrollo Económico y Social*] (Fusades), it would have been found a hidden microphone in one of their meeting rooms, which allowed listening in to everything that happened in said venue, and also the phone calls. The incident was formally reported to the Attorney General's Office, requesting the investigation of these facts, which are typified in the Salvadoran Criminal Code under the crimes of intervention and interference of telecommunications, search of workplace, and seizure of communications⁷⁶⁶.

545. Likewise, on January 17, the Chamber of Commerce and Industry of El Salvador reported to the FGR that it had been the victim of espionage in its facilities. In this regard, they indicated that when carrying out a review of their facilities as a result of what happened to Fusades, a hidden microphone was found, of approximately four centimeters, in one of the offices of the main building of the institution⁷⁶⁷.

546. For its part, on January 26, the Salvadoran Banking Association [*Asociación Bancaria Salvadoreña*] (ABANSA) filed a complaint with the FGR reporting being a victim of espionage, after discovering a wireless device for the intervention of conversations and telephone communications in the offices of the Executive Directorate. In this regard, the president of ABANSA, Raul Cardenal, reportedly indicated that the device was discovered thanks to the hiring of a group of specialists in tracking spy microphones. According to the available information, the technical specialists would have indicated that this type of device is of controlled sale and that "generally they are sold with permission from one authority to the other". For its part, also on January 26, the National Foundation for Development [*Fundación Nacional para el Desarrollo*] (FUNDE) reported that a phone audio device was found a few days before, placed as part of the direct telephone wiring of the Executive Office's office. On this matter, FUNDE indicated that a specialized company was hired to perform a device search and, as a result, was found an artifact that was described as "an audio device of wireless transmission over a telephone line, with a power regulator and built-in frequency"⁷⁶⁸.

⁷⁶⁴ La Prensa Grafica. July 11, 2017. *Defensa consigue dilatar juicio caso ciberataque a LPG*; Elsalvador.com. September 17, 2017. *Defensa intenta frenar juicio en el caso de ciberataques*; La Prensa Grafica. September 19, 2017. *Aplazan juicio penal ciberataque y niegan cambio de jueces* La Prensa Grafica. November 7, 2017. *Tribunal rechaza anular proceso contra acusados de ciberataque contra LPG*; La Prensa Grafica. November 8, 2017. *Inicia juicio por ciberataque a LPG*; La Prensa Grafica. November 20, 2017. *SIP está "expectante del fallo judicial" en caso ciberataques*; La Prensa Grafica. November 21, 2017. *Fiscalía pide condena unánime por ciberataque*.

⁷⁶⁵ La Prensa Grafica. December 1, 2017. *Jueces absuelven a implicados en ciberataque a medios*; Agencia de Prensa Salvadoreña (APS). December 1, 2017. *Tribunal absuelve a los cinco acusados del ataque cibernético contra La Prensa Gráfica*.

⁷⁶⁶ Alianza Regional. January 23, 2017. *Alianza Regional condena espionaje a FUSADES en El Salvador*.

⁷⁶⁷ Elsalvador.com. January 17, 2017. *Cámara de Comercio denuncia ante Fiscalía posible espionaje*; El Mundo. January 18, 2017. *Cámara halla micrófono y avisa a FGR de espionaje*.

⁷⁶⁸ Elsalvador.com. January 27, 2017. *Banqueros denuncian espionaje y escuchas*; La Prensa Gráfica. January 28, 2017. *ABANSA y FUNDE suman sus denuncias por espionaje*.

547. The Office of the Special Rapporteur reiterates that surveillance programs must be designed and implemented in accordance with international human rights standards. Notably, States must guarantee that the interception, collection and use of personal information are clearly authorized by law in order to protect individuals from arbitrary or abusive interference with their privacy. Moreover, the decision to undertake surveillance activities that intrude upon individual privacy must be authorized by an independent judiciary and justified in terms of the objectives pursued in the specific case and the proportionality of the measure in relation to necessity and the interests pursued. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that States should establish independent oversight mechanisms over the authorities in charge of conducting surveillance in order to ensure transparency and accountability.⁷⁶⁹

548. The Office of the Special Rapporteur has also observed that the decisions to conduct surveillance operations that invade the privacy of persons must be authorized by independent judicial authorities who must explain the reasons why the measure is ideal for achieving the goal sought in a specific case, whether the measure is restricted enough not to affect the person's right any more than necessary, and whether it is proportionate to the interest being furthered. Investigations that involve an invasion of privacy that is authorized by law and ordered by a judge having jurisdiction must also uphold other guarantees related to due process. States must guarantee that the judicial authority is specialized and has jurisdiction to make legal decisions regarding the lawfulness of communications surveillance, the technology used and its effect on rights that may be compromised, and that they provide enough guarantees to act appropriately. Finally, the Office of the Special Rapporteur notes that at least the criteria for decisions made by courts must be public.⁷⁷⁰

M. Other relevant situations

549. On July 25, the former president of the Association of Journalists of El Salvador [*Asociación de Periodistas de El Salvador*] (APES), Serafin Valencia, would have met the Minister of Labor and Social Security [*Ministra de Trabajo y Previsión Social*] (MTPS), Sandra Guevara, with the aim of working together to guarantee the rights of the people who practice journalism in El Salvador. In this regard, the representative of MTPS would have been concerned about the 56 complaints of precarious working conditions of journalists and social media workers that were lodged between August 2016 and July 2017, while in the same period, APES would have identified a growing presence of labor irregularities for the union, such as unjustified dismissals, unpaid overtime, or unreported wage withholdings.

550. On September 5, the new president of APES, Dalila Arriaza, would have condemned again the unjustified dismissals of at least 50 journalists during the course of the year while reiterating the absence of *improvements* in working conditions together with the degree of exploitation faced by many media workers "due to the saturation of work, unpaid overtime, censorship by heads of offices, mistreatment, low wages, sexual harassment, and lack of payment of social benefits."⁷⁷¹

⁷⁶⁹ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc.50. December 31, 2013. Para. 415-417.

⁷⁷⁰ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 416.

⁷⁷¹ Agenda de Prensa Salvadoreña. September 5, 2017. APES denuncia amenazas y despidos injustificados de periodistas en El Salvador; El Mundo, September 6, 2017. Piden mesa para indagar ataques a periodistas.

16. UNITED STATES

551. The Office of the Special Rapporteur has observed that, from the time he took office, President Donald Trump has encouraged the polarization of the media landscape, and has promoted—in public appearances as well as on social media—stigmatizing speech toward different media outlets and journalists that have disseminated information about his administration, to whom he ascribes an alleged role of opposition or political partisanship. As various international organizations, media associations,⁷⁷² and civil society groups have noted, the President’s statements and attacks on the press are particularly serious, insofar as they can intensify the risk of threats and violence against journalists in the country and erode the public trust in journalism as an institution of democracy. In addition, the current administration made numerous direct threats of possible government action or legal proceedings against media outlets, demonstrators, and whistleblowers, taking a particularly hostile stance toward the latter.

552. During 2017 the criminalization of social protest and the escalation of penalties regarding felonies associated to various forms of protest through legal reforms has been a trend in many of the country’s states, although not enforced in all cases. The Office of the Special Rapporteur has also documented multiple acts of violence and intimidation by private individuals and public servants against journalists and demonstrators during protests. In this context, this Office is especially concerned over the case of journalist Aaron Cantu, who was charged with rioting and conspiracy to riot after being arrested while covering a protest in Washington, DC; and by the murder of Heather Heyer during a demonstration in Charlottesville, Virginia.

553. With respect to the protection of freedom of expression on the internet, this Office has noted with concern the decision undertaken by the Federal Communications Commission (FCC) on revoking its rules on net neutrality, which previously had set a relevant regional precedent to the protection of free and non-discriminatory access to contents offered over the internet. By revoking the rules on net neutrality adopted in 2015, FCC now allows telecommunication and cable companies to resume old practices such as content blocking, paid prioritization and throttling.

A. Progress

554. The Office of the Special Rapporteur notes several measures taken in 2017 by the federal judiciary that have advanced freedom of expression in the United States. Two that stand out in particular are: the judgment handed down by the United States Court of Appeals for the Fifth Circuit in the case of *Turner v. Driver*, recognizing the right to film or record police personnel in the performance of their duties;⁷⁷³ and the decision of the United States District Court for the District of South Dakota—Southern Division in the case of *United States v. Robert John Hulscher*, reaffirming the importance of cell phones as a means of communication that, in addition to encouraging freedom of expression, contain immense amounts of personal information that can only be subject to investigation through a lawfully obtained search warrant⁷⁷⁴. This Office also observed the relevance of a decision of the Sixth Circuit Court of Appeals in the case *Signature Management Team, LLC v. Doe*, in which it recognizes the right to anonymity⁷⁷⁵.

B. Attacks, Threats, and Intimidation of Journalists and Media Outlets

⁷⁷² The National Press Club. January 11, 2017. *National Press Club raises concerns about Trump’s use of ‘fake news’*; Society of Professional Journalists. No date. *The First Amendment is under attack. Fight back with us*.

⁷⁷³ US Court of Appeals for the Fifth Circuit. *Turner v. Driver*. Judgment of February 16, 2017. Available at: <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2017/02/Turner-v-Driver.pdf>

⁷⁷⁴ United States District Court, District of South Dakota– Southern Division. *United States v. Robert John Hulscher*. Judgment of February 17, 2017. Available at: <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2017/02/US-v-Hulscher-Order-adopting-report.pdf>

⁷⁷⁵ Copyright & Fair Use. November 28, 2017. *Signature Management Team, LLC v. Doe*. Electronic Frontier Foundation. December 4, 2017. *Court Recognizes First Amendment Right to Anonymity Even After Speakers Lose Lawsuits*.

555. The Office of the Special Rapporteur has noted a spike in incidents of violence, threats, and harassment against journalists in the United States in 2017 over previous years. Additionally, this Office observed with concern complaints of collective and coordinated acts of bullying, harassment, and threats—mostly through social media—toward journalists who publicly criticized President Donald Trump.

556. Journalist Rosa Brooks was reportedly the victim of a campaign of harassment, insults, and death threats by President Trump sympathizers after publishing an article in *Foreign Policy* on January 30 that was critical of measures undertaken by the president. Similar incidents were reported during the 2016 presidential campaign with other journalists like David French, Bethany Mandel, and Megyn Kelly.⁷⁷⁶

557. On different occasions, President Donald Trump threatened to order government actions or legal proceedings against media outlets. On October 5, he suggested that the United States Senate Select Committee on Intelligence, which is overseeing an investigation into Russian meddling in the 2016 United States presidential election, should investigate media outlets for their alleged “fake” and “made-up” news coverage.⁷⁷⁷

558. Later, on October 11, President Donald Trump suggested that certain broadcast media outlets critical of his government could be subject to proceedings to challenge and revoke their licenses, posting the following remarks on Twitter: “With all of the Fake News coming out of NBC and the Networks, at what point is it appropriate to challenge their License? Bad for country!” Network news has become so partisan, distorted and fake that licenses must be challenged and, if appropriate, revoked. Not fair to public!⁷⁷⁸

559. Journalist Dan Heyman of the *Public News Service* was reportedly arrested on May 9 in Charleston, West Virginia, on charges of “willful disruption of governmental processes” after trying to repeatedly ask a question to *Health and Human Services Secretary*, Tom Price, during an event about the opioid crisis. Heyman was reportedly released on US\$ 5,000 bond.⁷⁷⁹ On August 16, journalist J.B. Nicholas was arrested by school security guards while interviewing students at the Bronx Community College of the City University of New York and charged with trespassing.⁷⁸⁰ In addition, on June 14, journalist Douglass Dowty of the *Syracuse Post-Standard* was reportedly briefly detained, handcuffed, and had his cell phone seized by a security guard from the Onondaga County Courthouse in New York State⁷⁸¹ while photographing police officers as they arrested a man.

⁷⁷⁶ Foreign Policy. February 6, 2017. [*And Then the Breitbart Lynch Mob Came for Me*](#); The Washington Post. November 13, 2016. [*Megyn Kelly reportedly accuses Donald Trump of threats and harassment in new book*](#); Business Insider. November 10, 2016. [*Megyn Kelly reportedly accuses Donald Trump of threats and harassment in new book*](#); National Review. October 21, 2016. [*The Price I’ve Paid for Opposing Donald Trump*](#); CBS Philly. October 27, 2016. [*Conservative Writer Details Threats And Intimidation From Trump Supporters*](#); NPR. July 6, 2016. [*Jewish Reporters Harassed By Trump’s Anti-Semitic Supporters*](#); Forward. March 21, 2016. [*My Trump Tweets Earned Me So Many Anti-Semitic Haters That I Bought a Gun*](#).

⁷⁷⁷ “Why Isn’t the Senate Intel Committee looking into the Fake News Networks in OUR country to see why so much of our news is just made up-FAKE!”. Twitter account of Donald J. Trump @realDonaldTrump. [October 5, 2017](#).

⁷⁷⁸ “With all of the Fake News coming out of NBC and the Networks, at what point is it appropriate to challenge their License? Bad for country!”. Official Twitter account of Donald J. Trump @realDonaldTrump. [October 11, 2017](#); “Network news has become so partisan, distorted and fake that licenses must be challenged and, if appropriate, revoked. Not fair to public!”. Twitter account of Donald J. Trump @realDonaldTrump. [October 11, 2017](#).

⁷⁷⁹ NPR. May 10, 2017. [*West Virginia Reporter Arrested For Yelling Question At HHS Secretary*](#); The Hill. May 9, 2017. [*Reporter arrested after repeatedly questioning Health secretary*](#).

⁷⁸⁰ Gothamist. August 18, 2017. [*Video: Reporter Arrested For Interviewing Bronx Community College Students About Confederate Statues*](#); Columbia Journalism Review. December 13, 2017. [*‘This is unprecedented’: Public colleges limiting journalist access*](#).

⁷⁸¹ Syracuse.com. June 14, 2017. [*Courthouse guard handcuffs Syracuse.com reporter. seizes phone for photographing arrest*](#).

560. Local Gallatin County Police conducted an investigation into the May 24 assault of journalist Ben Jacobs of *The Guardian* by then-candidate Greg Gianforte of Montana, who was running for a seat in the United States House of Representatives. June 12 Gianforte was sentenced to 40 hours of community service and 20 hours of anger management classes. The candidate also paid US\$ 4,464 in restitution to Jacobs for his glasses, which were damaged in the incident, and emergency hospital treatment.⁷⁸² On October 19, a Montana Republican Party official said on a local radio station in reference to the incident that he “would have shot” Ben Jacobs if he had been in Gianforte’s shoes.⁷⁸³

561. On June 13, the Office of the Special Rapporteur sent a letter to the State pursuant to Article 18 of the IACHR Statute to request information about the status of the legal proceedings in the case of the assault of journalist Ben Jacobs, the charge filed against reporter Dan Heyman, and the measures taken by the State to prevent attacks and stigmatizing actions against media outlets and journalists in the United States. On July 12, the State replied to the request for information, asserting that “the U.S. Constitution protects even the most offensive and controversial speech from government suppression (...) The U.S. system is built on the idea that the free and open exchange of ideas encourages understanding, advances truth-seeking, and allows for the rebuttal of falsehoods.”⁷⁸⁴

562. On May 2, journalist Nathaniel Hertz was reportedly assaulted by Alaska Senator David Wilson after asking him, in the local capitol building in Juneau, about his impression of an article Hertz had published days earlier. The case was filed by the Juneau Police Department with the Alaska Office of Special Prosecutions for review.⁷⁸⁵ On July 24, an individual reportedly walked into a New York event that *Fox News* journalist Katherine Timpf was attending, and intentionally dumped a bottle of water on her, preventing her from giving a talk she was set to deliver at that event.⁷⁸⁶

563. On March 17, a man was arrested on charges of cyberstalking for allegedly sending a Twitter message containing an animated strobe image to a journalist with epilepsy. The image was reportedly sent to Kurt Eichenwald, a writer for *Newsweek* magazine and a *Vanity Fair* contributor, on December 15, 2016, together with an aggressive and threatening message.⁷⁸⁷

564. The Office of the Special Rapporteur has documented several cases of journalists of Arab descent being detained, questioned, and searched by immigration authorities upon entering the country, which could be directly related to the new immigration policies pursued by the current administration. Isma’il Kushkush was reportedly detained for nearly an hour upon his arrival at Dulles International Airport Washington D.C. on January 3, 2017, after a trip to Israel;⁷⁸⁸ *CNN* editor and producer Mohammed Tawfeeq was reportedly detained on January 29 at the Atlanta Hartsfield-Jackson International Airport and subject to secondary

⁷⁸² The New York Times. June 13, 2017. [Montana Republican Greg Gianforte Is Sentenced in Assault on Reporter](#); Bozeman Daily Chronicle. June 12, 2017. [Gianforte sentenced to anger management, community service for assault of reporter](#).

⁷⁸³ The Hill. October 22, 2017. [Montana GOP official: I ‘would have shot’ reporter assaulted by Gianforte](#); The Guardian. October 21, 2017. [Republican official ‘would have shot’ Guardian reporter attacked by Gianforte](#).

⁷⁸⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. Communication to the State in accordance with article 18 of the IACHR. June 13, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; United States. Permanent Mission of the United States to the OAS. Re: Article 18 Request for Information Freedom of Expression in the United States. July 12, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁷⁸⁵ Alaska Dispatch News. May 3, 2017. [Alaska Dispatch News reporter slapped by Wasilla lawmaker](#); Alaska Public Media. May 23, 2017. [JPD sends Capitol slap case to Office of Special Prosecutions](#).

⁷⁸⁶ National Review. July 25, 2017. [So, We’re Just Whipping Water into Journalists’ Faces Now?](#); New York Post. July 25, 2017. [Fox News host ‘targeted’ in ambush at Brooklyn bar](#).

⁷⁸⁷ CNN Español. March 18, 2017. [Arrestan a hombre en EE.UU. por tuit que provocó ataque de epilepsia a periodista](#); The Washington Post. March 22, 2017. [Tweet that sent journalist Kurt Eichenwald into seizure considered ‘deadly weapon’ in indictment](#).

⁷⁸⁸ U.S. Press Freedom Tracker. January 3, 2017. [Journalist questioned at Dulles International Airport](#).

screening;⁷⁸⁹ on January 29, *BBC* journalist Ali Hamedani was reportedly detained at O'Hare Airport in Chicago and interrogated for more than two hours.⁷⁹⁰

565. White House Correspondents' Association President Jeff Mason reported that the White House asked him to criticize an article published by *Politico* correspondent Tara Palmeri about the President Donald Trump. On July 16, Palmeri said that she was reportedly informed by her editor that the White House had threatened to remove her from the WHCA.⁷⁹¹

566. On July 26, then-White House communications director Anthony Scaramucci reportedly made an intimidating phone call to journalist Ryan Lizza, of *The New Yorker*, pressuring him to reveal a journalistic source for a tweet published on July 26 that reported on a closed meeting with President Donald Trump. In addition, after Lizza published their telephone conversation, Scaramucci made numerous offensive statements about the reporter on Twitter, despite having been fired from the White House.⁷⁹²

567. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Social protest

568. The Office of the Special Rapporteur views with concern the recent efforts of different state legislatures and governments to increase penalties related to social protest. According to the information available, 51 legislative initiatives were introduced in different states around the country between November 2016 and December 2017, seeking to disproportionately restrict or criminalize activities inherent to the exercise of the rights to freedom of expression and assembly. These bills were introduced after the intensification of protests in the country led by social movements involving some of the most vulnerable groups, such as the *Black Lives Matter* movement and the indigenous movement against the Dakota Access Pipeline.⁷⁹³

569. Of these 51 legislative initiatives, 8 have already been approved by the legislatures of various states. For instance, on January 3, 2017, the Legislative Assembly of North Dakota passed three laws that could have a disproportionate impact on the exercise of the right to freedom of expression and assembly.⁷⁹⁴ HB 1293,⁷⁹⁵

⁷⁸⁹ Ajc. February 1, 2017. [CNN producer detained in Atlanta files lawsuit against immigration order](#); The Guardian. February 1, 2017. [CNN editor sues after being detained at Atlanta airport under Trump travel ban](#).

⁷⁹⁰ Huffington Post. January 30, 2017. [BBC Reporter Ali Hamedani Detained Under President Trump's Refugee Ban](#); Independent. January 30, 2017. [Donald Trump 'Muslim ban': Iran-born BBC journalist detained at Chicago airport under new immigration policy](#).

⁷⁹¹ Mediaite. July 16, 2017. [Politico's Tara Palmeri: White House Had "Threatened to Try to Remove Me" from WHCA](#); The Huffington Post. July 16, 2017. [White House Correspondents Head Tells Which Reporter Trump Wanted Him To Condemn](#).

⁷⁹² The New Yorker. August 3, 2017. [Ryan Lizza Revisits His Phone Call With Anthony Scaramucci](#); Vox. August 10, 2017. [Anthony Scaramucci is angrily tweeting at the journalist who got him fired](#).

⁷⁹³ OHCHR, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the right to freedom of peaceful assembly and of association. Available at: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>; Former UN Special Rapporteur. March 30, 2017. [UN Rights Experts Urge Lawmakers To Stop "Alarming" Trend To Curb Freedom Of Assembly In The US](#); The International Center for Not-for-Profit Law (ICNL). September 15, 2017. [US Protest Law Tracker: Bills and Executive Orders Affecting Protests since November 2016](#).

⁷⁹⁴ OHCHR, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the right to freedom of peaceful assembly and of association. Available at:

expanding the definition of the criminal offense of “trespassing” to include public demonstrations and meetings held on private property; HB 1304,⁷⁹⁶ prohibiting the wearing of masks, hoods, and face coverings during the commission of a criminal offense to evade or escape discovery, recognition, or identification, and HB 1426,⁷⁹⁷ increasing the criminal penalties for engaging in a riot to up to one year in prison. In March 2017, the South Dakota Legislature passed SB 176,⁷⁹⁸ which broadens the governor’s power to restrict gatherings of more than 20 people on public property “if the gathering might damage the land or interfere with the renter’s use of the land.” This law also authorizes the enactment of regulations to prohibit or restrict the blocking of a public highway. In April 2017, the Legislature of Tennessee enacted SB 902,⁷⁹⁹ which imposes a fine on any person who intentionally, knowingly, or recklessly obstructs public highways and streets where the obstruction restricts emergency vehicle access, defined as “any vehicle of a governmental department or public service corporation when responding to an emergency, any vehicle of a Police or Fire department, and any ambulance.”

570. 22 other bills were rejected by local legislatures or vetoed by the governors in Arizona,⁸⁰⁰ Arkansas,⁸⁰¹ Colorado,⁸⁰² Florida,⁸⁰³ Georgia,⁸⁰⁴ Indiana,⁸⁰⁵ Kentucky,⁸⁰⁶ Louisiana,⁸⁰⁷ Michigan,⁸⁰⁸ Minnesota,⁸⁰⁹ Mississippi,⁸¹⁰ Missouri,⁸¹¹ New Jersey,⁸¹² North Carolina,⁸¹³ Oregon,⁸¹⁴ Rhode Island,⁸¹⁵ Tennessee,⁸¹⁶ Texas,⁸¹⁷ Virginia,⁸¹⁸ and North Dakota.⁸¹⁹ Among other things, those bills had attempted to disproportionately increase the penalties for blocking roads, make protestors liable for the costs incurred by

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>; Former UN Special Rapporteur. March 30, 2017. UN Rights Experts Urge Lawmakers To Stop “Alarming” Trend To Curb Freedom Of Assembly In The US.

⁷⁹⁵ United States. Sixty-fifth Legislative Assembly of North Dakota. House Bill No. 1293. January 3, 2017.

⁷⁹⁶ United States. Sixty-fifth Legislative Assembly of North Dakota. House Bill No. 1304. January 3, 2017.

⁷⁹⁷ United States. Sixty-fifth Legislative Assembly of North Dakota. House Bill No. 1426. January 3, 2017.

⁷⁹⁸ United States. Sixty-fifth Legislative Assembly of North Dakota. Act to preserve the use of public land, to ensure free travel, to enhance emergency response, and to declare an emergency. No date.

⁷⁹⁹ United States. State of Tennessee. Senate Bill 902. April 19, 2017.

⁸⁰⁰ United States. State of Arizona. Senate. Senate Bill 1142. February 22, 2017.

⁸⁰¹ United States. State of Arkansas. Senate. Senate Bill 550. March 2, 2017.

⁸⁰² United States. State of Colorado. Senate. Senate Bill No. 17-035. January 11, 2017.

⁸⁰³ United States. State of Florida. Senate. Senate Bill 1096. February 21, 2017.

⁸⁰⁴ United States. State of Georgia. Senate. Senate Bill 1. January 10, 2017; Senate Bill 160. April 10, 2017.

⁸⁰⁵ United States. State of Indiana. Senate. Senate Bill 285. January 9, 2017.

⁸⁰⁶ United States. State of Kentucky. General Assembly of Kentucky. BR 175. August 24, 2017.

⁸⁰⁷ United States. State of Louisiana. House of Representatives. House Bill 269. March 30, 2017.

⁸⁰⁸ United States. State of Michigan. House of Representatives. House Bill 4643. December 7, 2016.

⁸⁰⁹ United States. State of Minnesota. House of Representatives. House File 896. February 9, 2017.

⁸¹⁰ United States. State of Mississippi. Senate. Senate Bill 2730. January 16, 2017.

⁸¹¹ United States. State of Missouri. House of Representatives. House Bill 179. January 4, 2017.

⁸¹² United States. State of New Jersey. General Assembly of New Jersey. AB 4777. May 11, 2017.

⁸¹³ United States. General Assembly of North Carolina. House Bill 249. March 2, 2017.

⁸¹⁴ United States. State of Oregon. Senate. Senate Bill 540. January 9, 2017.

⁸¹⁵ United States. State of Rhode Island. House of Representatives. House Bill 5690. March 1, 2017.

⁸¹⁶ United States. State of Tennessee. General Assembly of Tennessee. House Bill 668. February 8, 2017.

⁸¹⁷ United States. State of Texas. House of Representatives. House Bill 250. July 20, 2017.

⁸¹⁸ United States. State of Virginia. House of Representatives. House Bill 1791. January 9, 2017; Senate. Senate Bill 1055. January 6, 2017.

⁸¹⁹ United States. Legislative Assembly of North Dakota. House Bill 1203. January 9, 2017.

public safety in responding to unlawful protests, and inappropriately broaden the definition of terrorism to include conduct related to social protest. As of the date of this writing, 21 such bills are pending debate in the state legislatures.⁸²⁰

571. Acts of violence committed by demonstrators have also been a matter of special concern for the IACHR,⁸²¹ including the various assaults on journalists and the murder of Heather Heyer during the August 12 protest in Charlottesville, Virginia.⁸²²

572. On August 28, 2017, President Trump issued Executive Order 13809 "Restoring State, Tribal, and Local Law Enforcement's Access to Life-Saving Equipment and Resources."⁸²³ The executive order revoked Order 13688 of January 16, 2015, approved during Barack Obama's administration, which had prohibited the acquisition of certain types of military equipment by the country's police.⁸²⁴ In 2015, the Inter-American Commission indicated that one of the main concerns related to the excessive or arbitrary use of force by Police "is focused on militarization of the police in terms of the equipment used, the type of training they receive, the action protocols they use, and the difficulty with which police officers who are guilty of abuse or excessive use of force are held criminally liable and prosecuted."⁸²⁵ With the revocation of Executive Order 13688, police departments will once again received armored vehicles, high-caliber weapons and ammunition, grenades, camouflage uniforms, and other military-grade equipment that can be used in response to protests.⁸²⁶

573. On January 10, three Code Pink activists were evicted from Congress and detained for disturbing the confirmation hearing of the new attorney general appointed by President Donald Trump, Jeff Sessions. According to the information available, activist Desiree Fairouz was reportedly arrested for laughing during the hearing. Activists Tighe Barry and Lenny Bianchi were reportedly arrested for wearing clothing that identifies with the Ku Klux Klan, with the aim of parodying the supposedly racist profile of Sessions. The arrests were made under the charges of "disorderly or disruptive conduct" and "parading or demonstrating on Capitol grounds," which provide for penalties of up to 12 months in prison and/or a fine of US \$ 2

⁸²⁰ The International Center for Not-for-Profit Law (ICNL). September 15, 2017. *US Protest Law Tracker: Bills and Executive Orders Affecting Protests since November 2016*.

⁸²¹OcWeekly. March 26, 2017. *Huntington Beach Pro-Trump March Turns Into Attack on Anti-Trump Protesters*, OC Weekly; Los Angeles Times. March 26, 2017. *Reporter and photographers say they were assaulted by Trump supporters at Huntington Beach rally*; Talking Points Memo. August 15, 2017. *Suspect Charged With Assaulting Journalist During C'ville Counter-Protest In NC*; CBS 6. August 14, 2017. *CBS 6 journalist attacked during Richmond protest*.

⁸²² Unicorn Riot. August 12, 2017. *White Supremacist Mob Carrying Torches Attacks Anti-Racist Protesters in Charlottesville*; U.S. Press Freedom Tracker. August 11, 2017. *Unicorn Riot journalist attacked while reporting in Charlottesville*; The Guardian. August 13, 2017. *Charlottesville: man charged with murder was pictured at neo-Nazi rally*; CNN. August 14, 2017. *Charlottesville white nationalist rally: What we know*.

⁸²³ Homeland Security Digital Library. *Executive Order 13809: Restoring State, Tribal, and Local Law Enforcement's Access to Life-Saving Equipment and Resources*. August 28, 2017.

⁸²⁴ For example, the order banned the acquisition or transfer of the following military equipment: Tracked Armored Vehicles: Vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion; Weaponized Aircraft, Vessels, and Vehicles of Any Kind: These items will be prohibited from purchase or transfer with weapons installed; Firearms of .50-Caliber or Higher; Ammunition of .50-Caliber or Higher Grenade Launchers: Firearm or firearm accessory designed to launch small explosive projectiles; Bayonets: Large knives designed to be attached to the muzzle of a rifle/shotgun/long gun for the purposes of hand-to-hand combat; Camouflage Uniforms: Does not include woodland or desert patterns or solid color uniforms. See: <https://www.justice.gov/sites/default/files/criminal-afmls/legacy/2015/05/21/05-18-15-wire.pdf>

⁸²⁵ IACHR. Annual Report 2015. *Chapter VI.A. (The Use of Force)*. OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 40.

⁸²⁶ The Daily Signal. August 28, 2017. *Why Trump Was Right to Reverse Obama's Policy on Military Gear for Police*; American Civil Liberties Union. August 28, 2017. *Trump Just Gave Thousands of Bayonets And Hundreds of Grenade Launchers Back To Police*.

thousand. On May 3, a jury from the District of Columbia Superior Court convicted Fairouz on both counts. Barry and Bianchi were acquitted of a charge of disorderly conduct, but were convicted on charges of parading or demonstrating⁸²⁷. On July 14, Fairouz's conviction was overturned by a judge of the District of Columbia Superior Court, who ordered a new trial for September. Barry and Bianchi were sentenced to 10 days in jail, suspended under the condition of successfully completing six months of probation⁸²⁸. The trial against Fairouz was then re-scheduled for November 13, but a few days before that date the US Attorney's Office for the District of Columbia decided to drop the case⁸²⁹.

574. Similarly, according to the information available, more than 200 people were detained during protests held on the day of President Donald Trump's inauguration, January 20, 2017.⁸³⁰ The District of Columbia Police have been sued by human rights groups for unlawfully arresting peaceful demonstrators and holding them in custody for up to 16 hours without food, water, or access to bathroom facilities.⁸³¹ Most of the detainees were reportedly being prosecuted on charges of property damage and felony rioting in connection with those protests. On April 27, the defendants and their representatives asked the Superior Court of the District of Columbia to dismiss the charges based on the inapplicability of the rioting statute to constitutionally protected political protests and because the indictment treated the defendants as one big group rather than as individuals, among other grounds. In July, it was learned that the Federal Bureau of Investigation (FBI) had managed to unlock mobile phones seized from the demonstrators in order to use the content of their communications, navigation history, photos, and videos as evidence in their trials.⁸³² On September 14, the judge Lynn Leibovitz dismissed the defense arguments and ordered the defendants to stand trial.⁸³³ Eight journalists were arrested on charges of "rioting" during the January 20 protests. Although the charges against seven of them were later dropped, freelance journalist Aaron Cantu, who was also charged with "conspiracy to riot," "inciting to riot," and five other charges related to the destruction of property, is scheduled to stand trial on October 15, 2018.⁸³⁴

575. As part of this criminal case, on July 12, a D.C. Superior Court judge granted the request of the U.S. Attorney's Office for a search warrant against the Internet service provider DreamHost, ordering it to disclose information in its possession, custody, or control related to the domain Disrupt20j.org, which was allegedly used to disseminate information about the demonstrations and protests held on January 20 during President Donald Trump's inauguration. The order covered stored information, records, documents, codes, and data

⁸²⁷ The New York Times. May 3, 2017. *A Code Pink Protester Laughs Over a Trump Nominee and Is Convicted*; Huffington Post. March 5, 2017. *Jury Convicts Woman Who Laughed At Jeff Sessions During Senate Hearing*; Huffington Post. June 22, 2017. *Woman Convicted After Laughing At Jeff Sessions Asks Judge To Toss Jury Verdict*.

⁸²⁸ Washington Examiner. July 14, 2017. *Judge throws out conviction for Code Pink activist arrested after laughing during Jeff Sessions' confirmation*; The New York Times. July 14, 2017. *Retrial Ordered for Activist Who Laughed During Sessions Confirmation*.

⁸²⁹ The New York Times. November 7, 2017. *Case Is Dropped Against Activist Who Laughed at Jeff Sessions's Hearing*; Daily News. November 7, 2017. *Charges dropped against activist who laughed during Jeff Sessions' confirmation hearing*.

⁸³⁰ United States. Superior Court of the District of Columbia. *The United States of America v. ...*. April 3, 2017; RCFP. 2017. *Updates on journalists arrested and charged with rioting during Presidential Inauguration protests*; The New York Times. January 30, 2017. *Felony Charges Dropped Against 4 Reporters Arrested at Inauguration Protests*.

⁸³¹ The Washington Post. June 21, 2017. *ACLU sues D.C. police over arrests during inauguration disturbance*

⁸³² The Daily Beast. July 26, 2017. *Feds Crack Trump Protesters' Phones to Charge Them With Felony Rioting*; Washington Times. March 23, 2017. *Prosecutors extracting data from cellphones of dozens of Inauguration Day arrestees: Court filing*.

⁸³³ Superior Court of the District of Columbia. *United States of America v. Gabriel Mieleke, et al.*. Available at: https://es.scribd.com/document/358987835/358952994-Order-Denying-Motions#from_embed; Dcist. September 15, 2017. *Judge Denies Motions To Dismiss Rioting Charges Against Inauguration Day Protesters*.

⁸³⁴ RCFP. 2017. *Updates on journalists arrested and charged with rioting during Presidential Inauguration protests*; The New York Times. January 30, 2017. *Felony Charges Dropped Against 4 Reporters Arrested at Inauguration Protests*; Huffington Post. November 19, 2017. *An American Journalist Is Facing A Felony Trial This Week — In The United States*; The New York Times. November 14, 2017. *Journalist Swept Up in Inauguration Day Arrests Faces Trial*.

related to operators, visitors [reported to be some 1.3 million visitor IP addresses], or persons associated with that domain name. The company refused to comply with the order and argued before the D.C. Superior Court that the order jeopardized interests protected by the First and Fourth Amendments.⁸³⁵ In response, the Department of Justice filed a motion with the Superior Court to amend the initial order narrowing its content. On August 24, a Superior Court judge approved the government's request, but with the caveat that the government needed to develop a "minimization" plan to ensure, to the extent possible, that the information to be handed over does not include data or information related to lawful activities protected by the First Amendment.⁸³⁶ According to the information disclosed, the Department of Justice also obtained search warrants requiring Facebook to turn over 90 days' worth of content from the accounts of three activists who allegedly organized mobilizations and protests during the president's inauguration.⁸³⁷ The activists involved challenged the constitutionality of those warrants.⁸³⁸

576. On November 9, Judge Robert E. Morin of the Superior Court for the District of Columbia objected to the Justice Department's order on the grounds that "the risk for disclosure of private political speech and association of innocent persons to the government cannot be ignored and therefore additional protections are necessary." Morin ordered Facebook to redact the identity of nearly 6,000 people who followed the DisruptJ20 page on social media and to limit the production of photographs. However, he dismissed the defense attorneys' request to limit the disclosure of the private content of the page administrators, Lacy Macauley and Legba Carrefour.⁸³⁹

577. In 2017, the Office of the Special Rapporteur continued to hear reports of mass arrests of demonstrators and journalists from the beginning of the protests in opposition to the Dakota Access Pipeline. In January and February, journalists Jenni Monet (*Indian Country Today*, *The Center for Investigative Reporting*), Jenifer Stum, Tonita Cervantes, Jack Smith (*Mic*), Jahnnny Lee (*Sundance Institute*), and Tracie Williams were reportedly detained while covering or documenting the events⁸⁴⁰ They were charged with

⁸³⁵ United States. Superior Court of the District of Columbia. Search Warrant. July 12, 2017; Superior Court of the District of Columbia. *Non-Party Dreamhost, LLC's Response in Opposition To United States' Motion for Dreamhost to show cause*. August 11, 2017. Available at: <https://www.dreamhost.com/blog/wp-content/uploads/2017/08/DH-Opposition-Motion.pdf>

⁸³⁶ NPR. August 24, 2017. Government Can Search Inauguration Protest Website Records, With Safeguards; Dreamhost. August 24, 2017. A Win for Privacy Is a Win for the Web. 2017 WL 4169713 (D.C.Super.) (Trial Order). Superior Court of the District of Columbia. Criminal Division - Special Proceedings. In the Matter of the Search of www.DisruptJ20.org that is Stored at Premises Owned, Maintained, Controlled, or Operated by DREAMHOST. September 15, 2017. Available at: <https://static.reuters.com/resources/media/editorial/20170929/In%20re%20DreamHost.pdf>

⁸³⁷ Superior Court of the District of Columbia. Search Warrant. October 9, 2017. Petitiones 17CSW658 y 17CSW659. Available at: https://www.acludc.org/sites/default/files/field_documents/facebook_search_warrant.pdf. See also: CNN. September 30, 2017. DOJ demands Facebook information from 'anti-administration activists'; Reuters. September 29, 2017. ACLU on Trump protest warrants to Facebook: 'Disclosure' is illegal seizure.

⁸³⁸ ACLU. Motion of intervenors to quash or narrow search warrants. In the Matter of the Search of Associated with Facebook Accounts disruptj20, lacymacauley, and legba.carrefour That Is Stored at Premises Controlled by Facebook, Inc. September 28, 2017. Available at: https://www.acludc.org/sites/default/files/field_documents/facebook_targets_motion_to_quash.pdf

⁸³⁹ United States of America. Superior Court of the District of Columbia. In the matter of the search of information associated with Facebook counts DISRUPTJ20, Lacymacauley, and Legba.carrefour that is stored at premises controlled by Facebook, INC. November 9, 2017; The Washington Post. November 13, 2017. Judge limits search of Facebook accounts connected to Inauguration Day Protests; The Hill. November 13, 2017. Court limits DOJ warrant for Facebook data on Trump protesters.

⁸⁴⁰ Indian Country Today. February 8, 2017. How I Got Arrested While Reporting on the Dakota Access Pipeline; Columbia Journalism Review. February 16, 2017. A reporter's arrest crystallizes her commitment to cover Standing Rock; Committee to Protect Journalists (CPJ). February 17, 2017. Journalists covering Standing Rock face charges as police arrest protesters; NPPA. February 28, 2017. NPPA, Joined by Other Groups Sends Letter Requesting Return of Seized Equipment; Mic. February 25, 2017. I watched Standing Rock protesters dance for victory. Then the police arrested us; Fair. February 23, 2017. Any of the Journalists Present Could Have Been Arrested;

different offenses, including physical obstruction of a government function, criminal trespassing, and rioting, and are scheduled to stand trial in 2018. Almost 80 demonstrators were also arrested by Morton County Police in February 1, 2017.⁸⁴¹ In its 2016 Annual Report, the Office of the Special Rapporteur had already documented cases involving excessive force and arrests of demonstrators and journalists at Standing Rock⁸⁴². It is estimated that some 700 people have been arrested since the protests began in 2016.⁸⁴³

578. On April 15, photojournalist Nebyou Solomon of *8 News Now* was reportedly detained while covering a protest against President Donald Trump at the Trump International Hotel in Las Vegas, Nevada. Nebyou was charged with trespassing and obstructing a public officer. The Las Vegas Metropolitan Police Department released a statement alleging that Solomon was filming the event from private property, although witnesses said that he was doing so from the sidewalk.⁸⁴⁴

579. On June 16, the Minnesota State Patrol reportedly detained 16 demonstrators during protests held on an interstate highway in Saint Paul. Two journalists were also arrested. Susan Du (*City Pages*) and David Clarey (*Minnesota Daily*) were reportedly arrested on charges of unlawful assembly and public nuisance, which were later dropped.⁸⁴⁵

580. There have been complaints that law enforcement officers have engaged in the disproportionate use of force at some of the social protest events, resulting in injuries to demonstrators and journalists. On January 18, journalist Jon Ziegler was reportedly struck by three rubber bullets while filming local Police actions at the Standing Rock protests in the State of North Dakota.⁸⁴⁶ During the protest held on President Donald Trump's inauguration day, January 20, a photographer from WJLA covering the event, Vanessa Koolhof, was reportedly injured in an altercation between Police and demonstrators.⁸⁴⁷ At the same event, *Washington Post* cameraman Dalton Bennet was assaulted by Metropolitan Police officers.⁸⁴⁸

NPPA. March 3, 2017. *Photojournalists Arrested at Protests Work to Have Confiscated Gear Returned*; U.S. Press Freedom Tracker. January 16, 2017. [Journalist Jenifer Stum charged with trespassing and rioting at Standing Rock](#).

⁸⁴¹ The New York Times. February 22, 2017. [North Dakota Arrests 10 as Pipeline Protest Camp Empties](#); BBC. February 2, 2017. [Dakota pipeline: Police arrest 76 as protests continue](#); The Guardian. February 2, 2017. [Over 70 arrested at Standing Rock as Dakota Access aims to finish pipeline](#).

⁸⁴² IACHR. [Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 600-603

⁸⁴³ BBC. February 2, 2017. [Dakota pipeline: Police arrest 76 as protests continue](#); NPR. February 2, 2017. [More Than 70 Arrests In North Dakota As Pipeline Detractors Weigh Legal Action](#); The New York Times. February 2, 2017. [Dozens of Dakota Pipeline Protesters Are Arrested](#).

⁸⁴⁴ Las Vegas Review-Journal. April 15, 2017. *Journalist arrested during tax protest outside Trump International in Las Vegas*; Kolo Tv. April 15, 2017. *Las Vegas journalist arrested at Trump Tax Day rally released from jail*.

⁸⁴⁵ Minnesota Daily. June 17, 2017. [Journalists among those arrested at Castile rally](#); Star Tribune. June 17, 2017. [18 arrested, including 2 journalists, at I-94 protest](#); U.S. Press Freedom Tracker. June 17, 2017. [Student journalist arrested while covering protest in Minnesota](#).

⁸⁴⁶ You Tube/Rebelutionary_Z. January 21, 2017. [Full last hour-Backwater Bridge 1/18/17-Cops attack, shoot my hand](#); U.S. Press Freedom Tracker. January 18, 2017. [Independent journalist Jon Ziegler injured by rubber bullet at Standing Rock](#).

⁸⁴⁷ WJLA. No date. [WATCH: ABC7 photographer knocked down, injured in downtown inauguration protests](#); Circa. January 19, 2017. *President Trump and First Lady Melania danced with military members at the final ball*.

⁸⁴⁸ The Washington Post. January 20, 2017. [Washington Post videojournalist wrestled to ground by police](#); Twitter account of Alexander Emmons @AlexEmmons ["Washington Post reporter Dalton Bennett thrown to the ground by riot police"](#). [January 20, 2017](#).

581. On August 22, local Phoenix, Arizona police attempting to disperse a protest against President Donald Trump used tear gas and pepper spray against demonstrators and at least 17 journalists from the *Arizona Republic* who were covering the event.⁸⁴⁹

582. During the different protests organized in September and October in St. Louis, Missouri over the 2011 murder of Anthony Lamar Smith by police officer Jason Stockley, the Office of the Special Rapporteur documented a number of assaults on journalists who were covering the events. On September 17, documentary filmmaker Jennifer Burbridge was reportedly physically assaulted and taken into custody on charges of “failure to disperse” by local police officers while filming a protest. During the same event, *Getty* photographer Scott Olson and *St. Louis Post-Dispatch* reporter Mike Faulk were reportedly detained on the same charges. According to the information available, at the time of the arrests, law enforcement officers used a police tactic known as “kettling,” to encircle the demonstrators and deny them the opportunity to disperse before being arrested. Journalists Heather DeMian and photographer Christian Gooden, of the *St. Louis Post-Dispatch*, were reportedly pepper sprayed by local police while covering a demonstration on September 29. On October 3—also in St. Louis—journalist Al Neal, of *People’s World*, was reportedly detained by police on charges of trespassing while covering a protest. Journalists Jon Ziegler, Jordan Chariton, and Ty Bayliss, of *The Young Turks*, and Daniel Shular and Aminah Ali, of *Real STL News*, were similarly detained.⁸⁵⁰

583. On March 25, during a pro-Trump rally, photographers Brian Feinzimer and Julie Leopo, and journalist Frank Tristan, of *OC Weekly*, were reportedly assaulted by a group of demonstrators in Huntington Beach, California.⁸⁵¹ On August 11, reporter Christopher Schiano of *Unicorn Riot* was physically attacked while interviewing participants in a march of white supremacists in Charlottesville, Virginia.⁸⁵² On August 12, Heather Heyer was murdered when James Alex Fields Jr., a Neo-Nazi sympathizer, plowed his car into a crowd. At least 19 other people were injured in the attack.⁸⁵³ Journalist Taylor Lorenz, of *The Hill*, was reportedly struck in the face while filming the crime scene by a man who was reportedly detained by police and released on US\$ 1,000 bond⁸⁵⁴. On August 13, two unidentified journalists were assaulted while covering

⁸⁴⁹ Poynter. August 24, 2017. [Arizona editor to readers on covering chaos after Trump rally: ‘That’s about as real as it gets.’](#); Az Central. August 24, 2017. [A sudden change, a cloud of gas and real news in the making](#). U.S. Press Freedom Tracker. August 22, 2017. [Journalists in Phoenix tear-gassed while covering protest](#).

⁸⁵⁰ St. Louis Post-Dispatch. September 26, 2017. [Filmmakers sue St. Louis police for arrest in ‘kettle’](#); U.S. Press Freedom Tracker. September 17, 2017. [Filmmaker Jennifer Burbridge pepper sprayed and arrested by St. Louis police](#); St. Louis Post-Dispatch. September 25, 2017. [Undercover cop, Air Force officer, med student among those police swept up during downtown protest](#); St. Louis Post-Dispatch. September 19, 2017. [As arrests are made, protesters question the tactics used by St. Louis police](#); People’s World. October 4, 2017. [People’s World reporter arrested while covering St. Louis protests](#); U.S. Press Freedom Tracker. October 3, 2017. [People’s World reporter Al Neal arrested and jailed for over 24 hours](#); BuzzFeed News. October 6, 2017. [This Is What’s Happening In St. Louis. Where Cops Have Arrested Hundreds Of People Protesting Police Brutality](#); U.S. Press Freedom Tracker. October 3, 2017. [Freelance photographer Daniel Shular arrested in St. Louis](#); St. Louis Post-Dispatch. October 2, 2017. [Interview with Heather DeMian](#); Unit Media Gild. October 5, 2017. [TNG-CWA call on St. Louis Police to stop arresting working journalists](#); U.S. Press Freedom Tracker. September 29, 2017. [Independent livestreamer, Heather DeMian, pepper sprayed by St. Louis police](#).

⁸⁵¹ OcWeekly. March 26, 2017. [Huntington Beach Pro-Trump March Turns Into Attack on Anti-Trump Protesters, OC Weekly](#); Los Angeles Times. March 26, 2017. [Reporter and photographers say they were assaulted by Trump supporters at Huntington Beach rally](#).

⁸⁵² Unicorn Riot. August 12, 2017. [White Supremacist Mob Carrying Torches Attacks Anti-Racist Protesters in Charlottesville](#); U.S. Press Freedom Tracker. August 11, 2017. [Unicorn Riot journalist attacked while reporting in Charlottesville](#).

⁸⁵³ The Guardian. August 13, 2017. [Charlottesville: man charged with murder was pictured at neo-Nazi rally](#); CNN. August 14, 2017. [Charlottesville white nationalist rally: What we know](#).

⁸⁵⁴ Daily Mail. August 13, 2017. [Reporter is punched in the face by counter-protester as she tries to film aftermath of Charlottesville car attack](#); MediaLte. August 13, 2017. [Man Arrested in Charlottesville Was Counter-Protestor Who Punched Female Reporter](#); U.S. Press Freedom Tracker. August 12, 2017. [Journalist Taylor Lorenz punched while filming aftermath of fatal attack](#).

counter-protests held in in Charlottesville, Virginia, Richmond, Virginia, and Asheville, North Carolina following Heather Heyer’s murder during the white supremacists’ march.⁸⁵⁵

584. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”⁸⁵⁶ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”⁸⁵⁷

585. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”⁸⁵⁸

D. Stigmatizing Statements

586. On various occasions, President Donald Trump has accused the press—especially media outlets like *CNN*, *The New York Times*, and *The Washington Post*—of being the “enemy of the American people,” saying that it “speaks not for the people but for the special interests.”⁸⁵⁹ He has similarly stated that the media “is distorting democracy,”⁸⁶⁰ that it is “dishonest,”⁸⁶¹ that “the level of dishonesty [of the press] is out of

⁸⁵⁵ Talking Points Memo. August 15, 2017. *Suspect Charged With Assaulting Journalist During C’ville Counter-Protest In NC*; CBS 6. August 14, 2017. *CBS 6 journalist attacked during Richmond protest*.

⁸⁵⁶ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

⁸⁵⁷ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

⁸⁵⁸ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

⁸⁵⁹ USA Today. February 24, 2017. *Trump again calls media ‘enemy of the people’*; The New York Times. February 17, 2017. *Trump Calls the News Media the ‘Enemy of the American People’*.

⁸⁶⁰ The Denver Post. July 16, 2017. *Trump says media “distorting democracy” in morning Twitter post*; The Daily Beast. July 16, 2017. *Trump: ‘Fake’ Media Is ‘Distorting Democracy’*.

⁸⁶¹ Time. August 23, 2017. *President Trump Ranted For 77 Minutes in Phoenix. Here’s What He Said*; ABC News. August 23, 2017. *Trump blames media for condemnation of comments on Virginia*.

control,”⁸⁶² and that it publishes “fake news.”⁸⁶³ President Donald Trump’s statements have also called into question the veracity of anonymous journalistic sources used by those media outlets,⁸⁶⁴ calling them “made up,” and claiming that they “do not exist.”⁸⁶⁵ He even urged the Senate Intelligence Committee to investigate the media for supposedly spreading fake news.⁸⁶⁶

587. The repeated use of the term “fake news” to disparage certain media outlets is particularly serious given that it aims to equate the professional work of the press and journalists with the growing phenomenon of disinformation and propaganda, about which experts on freedom of expression of the UN, OSCE, IACHR and the African Commission on Human Rights issued a joint declaration.⁸⁶⁷ Authorities should respond to criticism they find unfair, or information they consider to be erroneous, by creating the conditions for better and more debate and information—not through measures that can inhibit or disparage the role of journalists and the media in a democratic society, or stifle robust deliberation. In turn, as Principle 6 of the Declaration of Principles adopted by the IACHR establishes, journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.

588. Between January 28 and February 28, 2017, the president issued at least 17 messages through his Twitter account, calling the information disseminated by some media outlets about the initial weeks of his presidency “fake news.” On January 28, he stated that “The failing @nytimes has been wrong about me from the very beginning. Said I would lose the primaries, then the general election. FAKE NEWS!”⁸⁶⁸ The next day, he tweeted, “Somebody with aptitude and conviction should buy the FAKE NEWS and failing @nytimes and either run it correctly or let it fold with dignity!”⁸⁶⁹ On February 3, he indicated that the news disseminated

⁸⁶² The White House. Office of the Press Secretary. Remarks by President Trump in Press Conference. February 16, 2017. The President stated that: “Unfortunately, much of the media in Washington, D.C., along with New York, Los Angeles, in particular, speaks not for the people but for the special interests and for those profiting off a very, very obviously broken system. The press has become so dishonest that if we don’t talk about it, we are doing a tremendous disservice to the American people — tremendous disservice. We have to talk about it to find out what’s going on, because the press honestly is out of control. The level of dishonesty is out of control. I ran for President to represent the citizens of our country. I am here to change the broken system so it serves their families and their communities well. I am talking, and really talking, on this very entrenched power structure, and what we’re doing is we’re talking about the power structure, we’re talking about its entrenchment. As a result, the media is going through what they have to go through to oftentimes distort — not all the time — and some of the media is fantastic, I have to say; they’re honest and fantastic. But much of it is not — the distortion. And we’ll talk about it, and you’ll be able to ask me questions about it”.

⁸⁶³ CNN. August 14, 2017. Trump to CNN’s Jim Acosta: You’re fake news (VIDEO); Politico. August 14, 2017. Asked about lack of press conferenes, Trump calls CNN ‘fake news’ (VIDEO).

⁸⁶⁴ Entertainment Weekly. June 27, 2017. All the times Donald Trump has called the media ‘fake news’ on Twitter; The Hill. July 12, 2017. Trump slams media: ‘Often times those sources are made up and do not exist’.

⁸⁶⁵ Entertainment Weekly. June 27, 2017. All the times Donald Trump has called the media ‘fake news’ on Twitter; The Hill. July 12, 2017. Trump slams media: ‘Often times those sources are made up and do not exist’.

⁸⁶⁶ “Why Isn’t the Senate Intel Committee looking into the Fake News Networks in OUR country to see why so much of our news is just made up-FAKE!”. Twitter account of Donald J Trump @realDonaldTrump. October 5, 2017.

⁸⁶⁷ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. March 3, 2017. Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda.

⁸⁶⁸ “The failing @nytimes has been wrong about me from the very beginning. Said I would lose the primaries, then the general election. FAKE NEWS!”. Twitter account of Donald J Trump @realDonaldTrump. January 28, 2017.

⁸⁶⁹ “Somebody with aptitude and conviction should buy the FAKE NEWS and failing @nytimes and either run it correctly or let it fold with dignity!”. Twitter account of Donald J Trump @realDonaldTrump. January 29, 2017.

by some media outlets about his conversation with the Australian prime minister were false. “[...] FAKE NEWS media lied,” he affirmed.⁸⁷⁰ On February 4, he tweeted “the FAKE NEWS @nytimes is still lost!”⁸⁷¹ On February 6, he asserted that “Any negative polls are fake news, just like the CNN, ABC, NBC polls in the election,”⁸⁷² and that “Some FAKE NEWS media, in order to marginalize, lies!”⁸⁷³ On February 9, he accused CNN journalist Chris Cuomo of spreading “FAKE NEWS!”.⁸⁷⁴ On February 10, he accused the “failing @nytimes” of publishing another fake story.⁸⁷⁵ On February 12, he stated that “the FAKE NEWS media” “refuse to mention” that he was welcomed by many supporters in Florida. “Very dishonest!” he stated.⁸⁷⁶ On February 12, he once again accused CNN of being a “FAKE NEWS” channel.⁸⁷⁷ On February 15, he stated that “The fake news media is going crazy with their conspiracy theories and blind hatred. @MSNBC & @CNN are unwatchable. @foxandfriends is great!”.⁸⁷⁸ On February 16, he tweeted about “FAKE NEWS media, which makes up stories and ‘sources.’”⁸⁷⁹ On February 17, he said, “the FAKE NEWS media (failing @nytimes, @NBCNews, @ABC, @CBS, @CNN) is not my enemy, it is the enemy of the American People!”⁸⁸⁰ On February 18, he called on his supporters not to believe “the main stream (fake news) media” reports about his administration.⁸⁸¹ On February 20, he accused the media of disseminating fake news about immigration,⁸⁸² and on February 24 the President reiterated that “FAKE NEWS media knowingly doesn't tell the truth.”⁸⁸³ On February 26, he asserted that “Russia talk is FAKE NEWS put out by the Dems, and played up by the media, in

⁸⁷⁰ “Thank you to Prime Minister of Australia for telling the truth about our very civil conversation that FAKE NEWS media lied about. Very nice!”. Twitter account of Donald J Trump @realDonaldTrump. [February 3, 2017](#).

⁸⁷¹ “After being forced to apologize for its bad and inaccurate coverage of me after winning the election, the FAKE NEWS @nytimes is still lost!”. Twitter account of Donald J Trump @realDonaldTrump. [February 4, 2017](#).

⁸⁷² “Any negative polls are fake news, just like the CNN, ABC, NBC polls in the election”. Twitter account of Donald J Trump @realDonaldTrump. [February 6, 2017](#).

⁸⁷³ “I call my own shots, largely based on an accumulation of data, and everyone knows it. Some FAKE NEWS media, in order to marginalize, lies!”. Twitter account of Donald J Trump @realDonaldTrump. [February 6, 2017](#).

⁸⁷⁴ “Chris Cuomo, in his interview with Sen. Blumenthal, never asked him about his long-term lie about his brave “service” in Vietnam. FAKE NEWS!”. Twitter account of Donald J Trump @realDonaldTrump. [February 9, 2017](#).

⁸⁷⁵ “The failing @nytimes does major FAKE NEWS China story saying “Mr.Xi has not spoken to Mr. Trump since Nov.14.” We spoke at length yesterday!”. Twitter account of Donald J Trump @realDonaldTrump. [February 10, 2017](#).

⁸⁷⁶ “Just leaving Florida. Big crowds of enthusiastic supporters lining the road that the FAKE NEWS media refuses to mention. Very dishonest!”. Twitter account of Donald J Trump @realDonaldTrump. [February 12, 2017](#).

⁸⁷⁷ “While on FAKE NEWS @CNN, Bernie Sanders was cut off for using the term fake news to describe the network. They said technical difficulties!”. Twitter account of Donald J Trump @realDonaldTrump. [February 12, 2017](#).

⁸⁷⁸ “The fake news media is going crazy with their conspiracy theories and blind hatred. @MSNBC & @CNN are unwatchable. @foxandfriends is great!”. Twitter account of Donald J Trump @realDonaldTrump. [February 15, 2017](#).

⁸⁷⁹ “FAKE NEWS media, which makes up stories and “sources,” is far more effective than the discredited Democrats - but they are fading fast!”. Twitter account of Donald J Trump @realDonaldTrump. [February 16, 2017](#).

⁸⁸⁰ “The FAKE NEWS media (failing @nytimes, @NBCNews, @ABC, @CBS, @CNN) is not my enemy, it is the enemy of the American People!”. Twitter account of Donald J Trump @realDonaldTrump. [February 17, 2017](#).

⁸⁸¹ “Don't believe the main stream (fake news) media. The White House is running VERY WELL. I inherited a MESS and am in the process of fixing it”. Twitter account of Donald J Trump @realDonaldTrump. [February 18, 2017](#).

⁸⁸² “Give the public a break - The FAKE NEWS media is trying to say that large scale immigration in Sweden is working out just beautifully. NOT!”. Twitter account of Donald J Trump @realDonaldTrump. [February 20, 2017](#).

⁸⁸³ “FAKE NEWS media knowingly doesn't tell the truth. A great danger to our country. The failing @nytimes has become a joke. Likewise @CNN. Sad!”. Twitter account of Donald J Trump @realDonaldTrump. [February 24, 2017](#).

order to mask the big election defeat and the illegal leaks!”⁸⁸⁴. Statements of the same nature continued during the following months.⁸⁸⁵

589. Some of the president’s stigmatizing and offensive statements have also been aimed directly at media professionals; on July 1, he tweeted that journalist Mika Brzezinski, host of the program ‘Morning Joe,’ is “dumb as a rock.”⁸⁸⁶ On July 2, the president shared a video in which he is physically attacking a figure with the logo of the news network CNN superimposed over its head.⁸⁸⁷

590. On November 6, the Special Rapporteur of the IACHR, Edison Lanza, and the Special Rapporteur for Freedom of Opinion and Expression of the United Nations, David Kaye, forwarded a communication to the State, in accordance with the faculties established in Article 18 of the Statute of the IACHR and resolution 34/18 of the Human Rights Council, with the objective of requesting information on the multiple cases of threats, harassment, and stigmatization of the media by President Donald Trump and reminding the State of the need to adopt measures to strengthen freedom of expression; the compatibility of the actions described with international standards on freedom of expression; the measures adopted by the federal administration to encourage freedom of expression and the independence of the press in the country through public statements, institutional practices, and policies; and, finally, requested information on the measures eventually adopted by the regulatory bodies in relation to the president’s suggestions to evaluate the revocation of the licenses of certain media outlets by federal authorities. At the closing date of this report, the State had not replied to said letter⁸⁸⁸.

591. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State’s job to help

⁸⁸⁴ “Russia talk is FAKE NEWS put out by the Dems, and played up by the media, in order to mask the big election defeat and the illegal leaks!”. Twitter account of Donald J Trump @realDonaldTrump. [February 26, 2017](#).

⁸⁸⁵ “Whenever you see the words ‘sources say’ in the fake news media, and they don’t mention names...”. Twitter account of Donald J. Trump @realDonaldTrump. [May 28, 2017](#); “The Fake News Media hates when I use what has turned out to be my very powerful Social Media – over 100 million people! I can go around them”. Twitter account of Donald J. Trump @realDonaldTrump. [June 16, 2017](#); “#FraudNewsCNN #FNN”. Twitter account of Donald J. Trump @realDonaldTrump. [July 2, 2017](#); “The Trump base is far bigger & stronger than ever before (despite some phony Fake News polling). Look at rallies in Penn, Iowa, Ohio.....”. Twitter account of Donald J. Trump @realDonaldTrump. [August 7, 2017](#); “Facebook was always anti-Trump. The Networks were always anti-Trump hence, Fake News, @nytimes (apologized) & @WaPo were anti-Trump. Collusion?”. Twitter account of Donald J. Trump @realDonaldTrump. [September 27, 2017](#); “Sadly, they and others are Fake News, and the public is just beginning to figure it out!”. Twitter account of Donald J. Trump @realDonaldTrump. [October 13, 2017](#); “We should have a contest as to which of the Networks, plus CNN and not including Fox, is the most dishonest, corrupt and/or distorted in its political coverage of your favorite President (me). They are all bad. Winner to receive the FAKE NEWS TROPHY!”. Twitter account of Donald J. Trump @realDonaldTrump. [November 27, 2017](#); “Things are going really well for our economy, a subject the Fake News spends as little time as possible discussing! Stock Market hit another RECORD HIGH, unemployment is now at a 17 year low and companies are coming back into the USA. Really good news, and much more to come!”. Twitter account of Donald J. Trump @realDonaldTrump. [December 10, 2017](#).

⁸⁸⁶ El País. June 29, 2017. [Trump ataca a una famosa periodista: “Se desangraba por un estiramiento de cara”](#); Entertainment Weekly. July 1, 2017. [Donald Trump calls Mika Brzezinski ‘dumb as a rock’ in new tweet](#).

⁸⁸⁷ The New York Times. July 2, 2017; Philly.com. July 2, 2017. [President Trump shares wrestling video of himself punching CNN](#).

⁸⁸⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. Communication to the State in accordance with Article 18 of the IACHR. November 6, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.⁸⁸⁹

592. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”⁸⁹⁰

E. Publication of Classified Information, Protection of Sources and Whistleblowers

593. The Office of the Special Rapporteur observes with concern the stance taken by Donald Trump’s administration with respect to the protection of sources and whistleblowers. The White House has criticized the media’s dissemination of information based on government leaks.⁸⁹¹ The IACHR observes with concern the August 4 announcement by Attorney General Jeff Sessions that the Department of Justice will review its policies on issuing subpoenas to journalists and media outlets as part of their efforts to stop government leaks. He also announced that the FBI had created a new counterintelligence unit specializing in cases involving leaks to the press.⁸⁹²

594. On May 16, it was learned that during a private conversation at the White House, President Donald Trump reportedly suggested to then-director of the Federal Bureau of Investigation (FBI), James Comey, that he consider jailing journalists who publish classified information.⁸⁹³

595. On January 26, Donald Trump said that whistleblower Chelsea Manning was a “traitor,” who had benefitted months earlier from the commutation of her sentence by then-President Barack Obama. The president added that Manning “should never have been released from prison.”⁸⁹⁴ On numerous other occasions, President Donald Trump has openly displayed a hostile attitude toward anonymous sources of information within United States government agencies. On August 4, U.S. Attorney General Jeff Sessions stated

⁸⁸⁹ IACHR. [Annual Report of the Inter-American Commission on Human Rights 2014](#). Chapter II (Evaluation of the State of Freedom Of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2014. Para. 65.

⁸⁹⁰ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

⁸⁹¹ “It is my opinion that many of the leaks coming out of the White House are fabricated lies made up by the #FakeNews media”. Twitter account of Donald J Trump @realDonaldTrump. [May 28, 2017](#); “‘Close to treason:’ DHS Sec. Kelly calls out intel leaks on #MTP pic.twitter.com/AryNexBtlj”. Twitter account of Meet The Press/NBC News. [May 28, 2017](#); Entertainment Weekly. June 27, 2017. [All the times Donald Trump has called the media 'fake news' on Twitter](#); The Hill. July 12, 2017. [Trump slams media: 'Often times those sources are made up and do not exist'](#); Think Progress. May 28, 2017. [White House says leaks “close to treason” while Trump says they are just fake news](#).

⁸⁹² The New York Times. August 4, 2017. [Leak Investigations Triple Under Trump, Sessions Says](#); MotherJones. August 4, 2017. [Jeff Sessions Wants to Stop Leaks by Targeting Journalists](#). In this sense, other decisions were reportedly taken, such as checking the cell phones of several of the White House employees, in order to verify that they did not contact journalists and leak information. Excelsior. February 26, 2017. [Casa Blanca no quiere filtraciones, revisa celulares de empleados](#); CNN Español. February 27, 2017. [Revisan teléfonos de trabajadores de la Casa Blanca para evitar filtraciones](#).

⁸⁹³ The New York Times. May 16, 2017. [Comey Memo Says Trump Asked Him to End Flynn Investigation](#); CNN. May 17, 2017. [The time Donald Trump reportedly urged James Comey to jail journalists](#).

⁸⁹⁴ CNN. January 26, 2017. [Trump calls Chelsea Manning 'ungrateful TRAITOR' for Obama criticism](#); NPR. January 26, 2017. [Trump: Chelsea Manning An 'Ungrateful Traitor' For Criticizing Obama](#).

that the Department of Justice was pursuing three times as many leak investigations than the previous administration.⁸⁹⁵

596. On June 3, Reality Winner, a contractor with the Pluribus International Corporation of Georgia assigned to the National Security Agency (NSA) as a cryptologic language analyst, was arrested and charged with “willful retention and transmission of National Defense information to a person not entitled to receive it,” in violation of 18 U.S. Code, Chapter 37, Espionage and Censorship § 793(e) on “Gathering, transmitting or losing Defense information.” The document supposedly sent to the media outlet *The Intercept* had reportedly been used as the basis for an article about cyberattacks carried out by the Russian State against VR Systems, a U.S. company responsible for managing electronic voting in the states of California, Florida, Illinois, Indiana, New York, North Carolina, Virginia, and West Virginia in 2016. The State of North Carolina reportedly opened an investigation into the matter based on the revelations contained in the document published by *The Intercept*.

597. According to the information available, Winner, who pleaded not guilty on June 8 in a federal court in Augusta, could face up to 10 years in prison and a fine of up to US\$ 250,000. On August 29, Winner’s attorneys filed a brief with the U.S. District Court for the Southern District of Georgia in Augusta, alleging that her Miranda rights were violated when she was questioned by FBI agents prior to her arrest, and therefore arguing that the statements she made at that time should not be used against her at trial. On August 30, Judge Brian Epps continued Winner’s trial to March 2018, as her defense lawyers had still not been given permission to access a number of classified records related to the case. Judge Epps twice dismissed defense requests for Winner to be release on bond, first on the grounds that she might still be in possession of classified United States government material, and later, on October 5, on the grounds that Winner “admires Edward Snowden and Julian Assange” and that “she hates the United States and desires to damage national security.”⁸⁹⁶

598. On April 13, during a presentation at the Center for Strategic and International Studies, the new director of the Central Intelligence Agency (CIA), Mike Pompeo, insulted and threatened *Wikileaks* publisher Julian Assange, stating that “Assange is a narcissist who has created nothing of value. He relies on the dirty work of others to make himself famous. He is a fraud—a coward hiding behind a screen. (...) we have to recognize that we can no longer allow Assange and his colleagues the latitude to use free speech values against us. To give them the space to crush us with misappropriated secrets is a perversion of what our great Constitution stands for. It ends now.”⁸⁹⁷

⁸⁹⁵ The New York Times. August 4, 2017. [Leak Investigations Triple Under Trump, Sessions Says](#); MotherJones. August 4, 2017. [Jeff Sessions Wants to Stop Leaks by Targeting Journalists](#).

⁸⁹⁶ United States. District Court for the Southern District of Georgia. [United States v. Reality Leigh Winner. Case No. 1:17-MJ-024](#). June 5, 2017; Techdirt. August 17, 2017. [North Carolina Election Agencies First Learned They'd Been Hacked From Leaked Documents Published By The Intercept](#); The Intercept. June 5, 2017. [Top-Secret NSA Report Details Russian Hacking Effort Days Before 2016 Election](#); CNN. June 7, 2017. [Accused leaker Reality Winner is scared after arrest, mom says](#); United States. District Court for the Southern District of Georgia. Augusta Division. [Criminal No. 1:17-CR-34](#). June 7, 2017; United States. District Court for the Southern District of Georgia. Augusta Division. [Declaration of Reality Leigh Winner](#). August 29, 2017; United States. District Court for the Southern District of Georgia. Augusta Division. [Memorandum in Support of Motion to Suppress Defendant’s Statements and Request for Evidentiary Hearing](#). August 29, 2017; United States. District Court for the Southern District of Georgia. [Order. CR 117-034](#). October 5, 2017; CNN. June 9, 2017. [Accused leaker Reality Winner pleads not guilty, denied bail](#); The Intercept. September 29, 2017. [Judge delays decision in motion to release Reality Winner on bail](#); Courage Foundation. October 9, 2017. [Judge denies Reality Winner bail on grounds she “hates” the United States](#); NPR. June 8, 2017. [Accused NSA Leaker Reality Winner To Remain In Jail Pending Trial](#).

⁸⁹⁷ United States of America. Central Intelligence Agency (CIA). [Director Pompeo Delivers Remarks at CSIS](#). April 13, 2017; Salon. April 14, 2017. [CIA Director Mike Pompeo changes his mind don WikiLeaks, which he now calls a “hostile intelligence service”](#).

599. At the same event, director Pompeo characterized *Wikileaks* as a “non-state hostile intelligence service.”⁸⁹⁸ On July 20, he affirmed that statement and advocated using espionage laws to prevent *Wikileaks* from continuing to publish classified information about the United States government.⁸⁹⁹ The same day, Attorney General Jeff Sessions stated that the arrest of *Wikileaks* editor Julian Assange is a priority for the Department of Justice, after the press informed that an indictment against him is being prepared.⁹⁰⁰

F. Restriction on Media Coverage and Access to Information, Public Servants, and Public Places

600. Donald Trump’s administration at one point banned video and audio recordings at official press conferences, hindering the media’s ability to cover those events.⁹⁰¹ In addition, media professionals and press organizations have reported an increase in restrictions on journalistic coverage inside the United States Capitol, which houses the country’s legislative chambers. This has reportedly made it more difficult to spontaneously interview members of congress.⁹⁰²

601. On February 3, Congress voted to repeal a Securities and Exchange Commission (SEC) rule requiring oil, gas and mining companies to disclose payments made to foreign governments. The purpose of that rule was to apply transparency and accountability standards to U.S. companies to keep them from financing corruption in countries where mineral extraction activities make it more likely. President Donald Trump signed the repeal on February 14.⁹⁰³

602. On November 2, the Department of the Interior announced its decision to withdraw the United States from the Extractive Industries Transparency Initiative (EITI). The EITI Standard is a global standard for the good governance of oil, gas and mineral resources industries, which provides accountability mechanisms governing property owners, contracts, and tax and legal procedures related to the extractive sector. The withdrawal of the United States from EITI as well as the repeal of the aforementioned SEC rule were observed with concern by civil society organizations, which thought that these moves could weaken transparency standards and anti-corruption efforts in the country.⁹⁰⁴

603. The Office of the Special Rapporteur has received information about different incidents where relevant portions of informational United States government web pages were deleted and no longer available to the public. These include pages and content related to the humanitarian crisis in Puerto Rico, climate

⁸⁹⁸ The New York Times. April 13, 2017. [Mike Pompeo, Once a WikiLeaks Fan, Attacks It as Hostile Agent](#); United States. Central Intelligence Agency (CIA). April 13, 2017. [Director Pompeo Delivers Remarks at CSIS](#).

⁸⁹⁹ The Washington Times. July 21, 2017. [WikiLeaks wants to ‘take down America any way they can,’ says CIA chief](#); Washington Examiner. July 20, 2017. [CIA Director Mike Pompeo: ‘WikiLeaks will take down America any way they can’](#).

⁹⁰⁰ Al-Jazeera. April 20, 2017. [Julian Assange’s arrest a ‘priority’: Jeff Sessions](#); CNN. April 20, 2017. [Sources: US prepares charges to seek arrest of WikiLeaks’ Julian Assange](#).

⁹⁰¹ CNN. June 19, 2017. [Off-camera, no audio broadcast: White House keeps undermining press briefing](#); ThinkProgress. July 10, 2017. [The White House is out of excuses for off-camera briefings](#).

⁹⁰² Politico. June 13, 2017. [Reporters protest restrictions on TV interviews in Capitol](#); CNBC. June 13, 2017. [Senate Rules Committee reverses restrictions on talking to senators on Capital Hill](#); Slate. June 13, 2017. [Anxiety of the Capitol Hill Press Mob](#); Washington Examiner. October 31, 2017. [Report access curtailed at Capitol after protest during Trump visit](#).

⁹⁰³ The Hill. February 3, 2017. [Senate votes to repeal transparency rule for oil companies](#); Bloomberg. February 14, 2017. [Trump Repeal of SEC Regulation Signals More to Come](#); Politico. February 14, 2017. [Trump signs bill killing SEC rule on foreign payments](#).

⁹⁰⁴ The Hill. February 3, 2017. [Senate votes to repeal transparency rule for oil companies](#); Bloomberg. February 14, 2017. [Trump Repeal of SEC Regulation Signals More to Come](#); Public What You Pay. November 2, 2017. [News: Trump Administration Further Erodes US Leadership on Combatting Corruption](#); United States of America. Department of the Interior. Office of Natural Resources Revenue. [Mr. Fredrik Reinfeldt Chair, Extractive Industries Transparency Initiative Board](#). November 2, 2017; Global Witness. November 2, 2017. [Global Witness opposes U.S. withdrawal from Extractive Industries Transparency Initiative](#).

change, LGBT minorities, and civil rights.⁹⁰⁵

604. On January 10, Texas Congressman Louie Gohmert reportedly attempted to physically prevent photographer Jim Lo Scalzo of the *European Pressphoto Agency* from taking pictures of demonstrators protesting during the nomination of Jeff Sessions as Attorney General of the United States.⁹⁰⁶

605. On February 24, certain media outlets were barred from attending an off-camera press conference at the White House. The outlets excluded from the event were *The New York Times*, *Politico*, *Buzz Feed*, *BBC*, *The Guardian*, *Daily Mail*, *CNN*, *The Hill* and the *Los Angeles Times*. When journalists from those news organizations attempted to enter the gaggle, they were told that they could not because their names were not on the list of attendees.⁹⁰⁷ On July 24, during a photo session with White House interns, President Donald Trump mocked and then ordered journalist Catherine Lucey of the *Associated Press* to be quiet after she asked a question about Jeff Sessions, the Attorney General of the United States.⁹⁰⁸

606. On January 28, private security officers at John F. Kennedy Airport, assisted by the New York Police, reportedly blocked people from entering Terminal 4, keeping journalists from covering a protest event being held at the airport after the announcement of the initial immigration restrictions of Donald Trump's administration on citizens from certain countries, known as the "first travel ban."⁹⁰⁹

607. After interviewing an alleged victim of sexual abuse and the alleged perpetrator of the crime at United States Marine Corps Base Camp Lejeune on February 5, Marine Corps veteran and journalist James LaPorta, contributor of *The Daily Beast* received a letter on February 10 from Camp Lejeune commander Colonel M. L. Scalise, informing him that he was indefinitely barred from accessing the base for having "violated" the rules of the institution.⁹¹⁰

608. On April 14, the Office of the President announced that it would no longer publish the White House visitors' log. Although it was not mandatory, the publication of those records was an important resource for transparency and accountability, providing relevant information to society about the president's activities and relationships.⁹¹¹

609. On July 11, the Knight First Amendment Institute filed suit against President Donald Trump in the Southern District of New York for blocking United States citizens on Twitter. The organization, representing seven individuals, contends that online forums are covered by the First Amendment just as physical spaces

⁹⁰⁵ Vox. October 6, 2017. [Trump's administration deleted data on Puerto Rico's crisis from FEMA's website](#); The Guardian. May 14, 2017. [Trump is deleting climate change, one site at a time](#); People. January 20, 2017. [Trump's White House Website Takes Down Official Pages on Civil Rights, Climate Change, LGBT rights](#); Sunlight Foundation. August 8, 2017. [What we've learned about Trump administration's changes to government websites won't shock you](#).

⁹⁰⁶ Dallas News. January 2017. [Texas Rep. Louie Gohmert accused of blocking journalist from photographing protesters](#); DIY Photography. January 13, 2017. [Texas Rep. Louie Gohmert Blocks Journalist From Taking Photos of Protesters](#).

⁹⁰⁷ CNN. February 24, 2017. [White House blocks news organizations from press briefing](#); The Hill. February 24, 2017. [White House hand-picks select media outlets for briefing](#).

⁹⁰⁸ Business Insider. July 24, 2017. [Trump rolls his eyes and tells a reporter to 'be quiet' during a photo op with White House interns](#); Metro. July 25, 2017. [Trump silences reporter for asking a question](#).

⁹⁰⁹ The Village Voice. February 1, 2017. [Reporting on Trump's Muslim Ban Is Against JFK Terminal's Rules](#); U.S. Press Freedom Tracker. January 28, 2017. [Police and private security prevent journalists from covering protests at JFK airport](#).

⁹¹⁰ "[DLog: D107] Received a copy of my debarment. I'm apparently "detrimental to the security, good order & discipline of @camp_lejeune." #USMC" Twitter account of James LaPorta @JimLaPorta. [June 5, 2017](#); U.S. Press Freedom Tracker. February 10, 2017. [Marine Corps bans journalist and veteran James LaPorta from Camp Lejeune base](#).

⁹¹¹ The New York Times. April 14, 2017. [White House to Keep Its Visitor Logs Secret](#); Politico. April 14, 2017. [White House says it won't make visitor logs public](#).

are, and that the president's Twitter account has become an important source of news and information about the government and its administration.⁹¹²

610. On September 4, journalist Terry J. Allen of *These Times* was temporarily detained in the state of Vermont by U.S. Customs and Border Protection officers as she was leaving the country, and was forced to delete photos that she had taken of the Canadian border region.⁹¹³

G. Legal reforms

611. On August 1, Republican Senator Rob Portman introduced a draft amendment to the Communications Act, entitled "Stop Enabling Sex Traffickers Act" (SESTA), S. 1693, for debate in the Senate. On November 3, Republican Senator John Thune proposed a substitute amendment to the replace the one introduced initially. Although bill S. 1693 has been supported by the Internet Association (a group of high-profile Internet companies including Facebook, Google, Twitter, and Microsoft), diverse members of civil society have expressed criticism, specifically because the bill would extend the subsequent liability of service providers to user-generated content; because of its broad and vague definition of the phrase "assist, support, or facilitate" sex trafficking, and because of its retroactive enforcement. Experts further criticized the proposal because it appeared to ignore infrastructure differences between small and large service providers, which could lead to significant disparities in the enforcement of the law, given the different technical capacities among companies. On November 8, Senator Thune's amended version of the bill was approved by the Senate Committee on Commerce, Science, and Transportation.⁹¹⁴

H. Freedom of Expression on the Internet

612. On December 14, 2017, the Federal Communications Commission (FCC), in a split vote of 3-2, overturned the net neutrality rules adopted by the agency in 2015. According to an official press release⁹¹⁵, the measure was adopted with the purpose of "restoring the long-standing light and bipartisan regulatory framework that has fostered the rapid growth, openness, and freedom of the Internet for almost 20 years". The FCC maintained that the 2015 standards imposed "substantial costs to the entire Internet ecosystem." It indicated that "instead of that rigid framework," the new rules "will protect consumers at a much lower cost for investment than with the rigid and broad standards of prior public services." The adopted regulation contemplates transparency requirements "that will empower consumers and facilitate effective government oversight of broadband providers' conduct," the agency said. In particular, the measure reinstates the classification of the mobile broadband Internet access service as a private mobile service and mandates "that ISPs disclose information about their practices to consumers, business owners, and the FCC, including any blockage, regulation, paid prioritization, or affiliate prioritization. The FCC determined that "transparency, combined with market forces, and antitrust and consumer protection laws, achieve benefits comparable to the previous rules at a lower cost."

⁹¹² Knight First Amendment Institute. July 11, 2017. [Critics Blocked from President's Twitter Account File Suit](#); The Verge. July 11, 2017. [Trump is being sued by a First Amendment group for blocking Twitter users](#).

⁹¹³ Vtdigger. September 17, 2017. [First person: How a reporter's photos were deleted at the Vermont border](#); Manchester Journal. September 20, 2017. [Editorial: Bullying at the border hurts Vermont](#).

⁹¹⁴ United States. Senate. [S. 1693](#). August 1, 2017; United States. [S. 1693. In the nature of a substitute](#). November 3, 2017; The Washington Post. November 3, 2017. [Major tech-industry group drops opposition to sex trafficking bill](#). Electronic Frontier Foundation (EFF). September 22, 2017. [Google Will Survive SESTA. Your Startup Might Not](#); Electronic Frontier Foundation (EFF). November 3, 2017. [Senator Thune's Bill Is Just As Bad As SESTA](#); United States. Senate Committee on Commerce, Science, and Transportation. [Executive Session](#). November 8, 2017.

⁹¹⁵ Federal Communications Commission. [FCC Takes Action to Restore Internet Freedom](#). Reverses Title II Framework, Increases Transparency to Protect Consumers, Spur Investment, Innovation, and Competition. December 14, 2017.

613. Previously, on August 17 Special Rapporteur Edison Lanza of the IACHR and United Nations Special Rapporteur on Freedom of Opinion and Expression, David Kaye, sent a document to the Federal Communications Commission (FCC) entitled “Restoring Internet Freedom,” commenting on the Commission’s Notice of Proposed Rulemaking (NPRM). The Special Rapporteurs recalled the obligations arising from the international agreements signed by the State, in particular the International Covenant on Civil and Political Rights and the American Declaration of the Rights and Duties of Man, and expressed their concern regarding proposed changes to FCC regulations related to the repeal or weakening of rules against blocking, throttling, and the arbitrary prioritization of Internet content, as well as the potential weakening of the Internet Conduct Standard and the Transparency Rule. Both rapporteurs concluded that the changes announce by the FCC could significantly roll back protections for net neutrality and unduly interfere with freedom of expression online in the United States, and called upon the Commission to take the necessary steps to ensure compliance with the applicable international standards.⁹¹⁶

I. Surveillance of Communications

614. Communications surveillance continued to be a topic of extensive debate in the United States. Although the country has made progress in regularizing surveillance activity following the 2013 revelations of former National Security Agency (NSA) contractor Edward Snowden, new publications on the surveillance practices and programs of the Central Intelligence Agency (CIA) in 2017 have criticized the lack of public scrutiny in the use of cyber-surveillance tools in the U.S.⁹¹⁷

615. On November 8, the House Committee on the Judiciary passed the USA Liberty Act, creating a new framework for transparency protections and mechanisms related to the surveillance of communications of U.S. citizens and foreigners by government security agencies, and reauthorizing Section 702 of the Foreign Intelligence Surveillance Act (FISA) for 6 more years. Section 702, established in 2008 through the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008, and previously scheduled to sunset on December 31, 2017, allows the government to intercept the communications of foreign nationals outside the United States. On September 25, NSA officials confirmed that they are monitoring the communications of more than 100,000 people pursuant to Section 702.

616. Changes to the law most notably include: stricter mechanisms for the authorization of criminal and national security investigations under Section 702; transparency measures for cases in which the identity of U.S. citizens is revealed after their communications are intercepted because of their interactions with foreign nationals under surveillance (“unmasking”); the prohibition of gathering information about the communications of U.S. citizens when those communications mention foreign nationals targeted for surveillance (“abouts”); more binding procedures to delete all information gathered under Section 702 that does not contain foreign intelligence information; the strengthening of the Privacy and Civil Liberties Oversight Board (PCLOB), which is responsible for monitoring the government’s national security tools.

617. Additionally, the legal reform extended whistleblower protections for employees of intelligence community contractors, in cases where they reveal corruption and infraction. On the other hand, it increased penalties (from one to five years in prison) for the offense of unauthorized removal or retention of classified information.⁹¹⁸

⁹¹⁶ In the Matter of Restoring Internet Freedom. Comments of the United Nations Special Rapporteur on Freedom of Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. August 17, 2017.

⁹¹⁷ Wired. May 7, 2017. [WikiLeaks drops 'Grasshopper' documents, part four of its CIA Vault 7 files](#); Zerohedge. March 8, 2017. [Wikileaks Unveils 'Vault 7': 'The Largest Ever Publication Of Confidential CIA Documents': Another Snowden Emerges](#).

⁹¹⁸ CNN. September 25, 2017. [NSA reveals 100,000 foreign nationals under surveillance](#); LAWFARE. November 22, 2017. [Summary: The House Judiciary Committee's Revised USA Liberty Act](#); House of Representatives Judiciary Committee. November 8, 2017. [Goodlatte Statement at Markup of the USA Liberty Act](#); Broadcasting Cable. November 8, 2017. [House Judiciary Approves USA Liberty Act](#).

618. In addition, the leaks by *Wikileaks* and Shadow Brokers, an anonymous group that has leaked an extensive amount of National Security Agency (NSA) codes exposing espionage and surveillance programs, have brought to light the government's lack of control over its own cyber arsenal, and the problems that entails.⁹¹⁹ This issue was evidenced in the case of the ransomware [a computer virus that blocks access to files on a computer or network and requests the payment of ransom to restore them] known as *Wannacry*, which affected the Windows XP operating system. Microsoft—the manufacturer of Windows XP—said that the virus was developed based on leaked NSA codes.⁹²⁰ In this context, the legitimacy of defense and intelligence authorities producing and using such programs, as well as the potential impact and consequences of “stockpiling” software vulnerabilities that are unknown to the software manufacturers themselves (zero-day attacks), have been subject to public debate.⁹²¹

619. The Office of the Special Rapporteur reiterates that surveillance programs must be designed and implemented in accordance with international human rights standards. Notably, States must guarantee that the interception, collection and use of personal information are clearly authorized by law in order to protect individuals from arbitrary or abusive interference with their privacy. The Office of the Special Rapporteur observes that States should establish independent oversight mechanisms over the authorities in charge of conducting surveillance in order to ensure transparency and accountability.⁹²²

620. The Office of the Special Rapporteur has also observed that the decisions to conduct surveillance operations that invade the privacy of persons must be authorized by independent judicial authorities who must explain the reasons why the measure is ideal for achieving the goal sought in a specific case, whether the measure is restricted enough not to affect the person's right any more than necessary, and whether it is proportionate to the interest being furthered. Investigations that involve an invasion of privacy that is authorized by law and ordered by a judge having jurisdiction must also uphold other guarantees related to due process. States must guarantee that the judicial authority is specialized and has jurisdiction to make legal decisions regarding the lawfulness of communications surveillance, the technology used and its effect on rights that may be compromised, and that they provide enough guarantees to act appropriately. Finally, the Office of the Special Rapporteur notes that at least the criteria for decisions made by courts must be public.⁹²³

J. Diversity, Pluralism, and Community Broadcasting

621. On September 26, the Federal Communications Commission (FCC) assessed a monetary forfeiture in the amount of US\$ 144,344 against Fabrice Polynice, Harold Sido, and Veronise Sido for the alleged violation of Section 301, chapter 47 of the U.S. Code, which prohibits willful, intentional, and repeated radio broadcasting without a license granted by a federal authority, pursuant to its interpretations of 47 U.S. Code Sections 503(b)(1)(B) and 312(f)(1).

622. According to the information available, Polynice was allegedly operating radio *Touche Douce* in Miami, Florida, for an audience consisting mainly of Haitian immigrants. Veronise Sido and Harold Sido reportedly allowed transmitters and radio equipment to be installed in the yard of their house. The fine is the highest amount permissible under section 503(b)(2)(D) for violations of this nature and is adjusted for inflation. In his statement on the measure, FCC Commissioner Mignon L. Clyburn acknowledged that foreign-

⁹¹⁹ Forbes. May 17, 2017. [WannaCry Ransomware Wasn't The First Malware Using Stolen NSA Exploit](#); Spiceworks. May 18, 2017. [Experts: Stolen NSA exploit behind WannaCry is the first of many.](#)

⁹²⁰ NPR. May 15, 2017. [WannaCry Ransomware: Microsoft Calls Out NSA For 'Stockpiling' Vulnerabilities](#); USA Today. May 15, 2017. [NSA says it was not origin of ransomware that hit Microsoft's Windows.](#)

⁹²¹ Techcrunch. May 16, 2017. [After WannaCry, ex-NSA director defends agencies holding exploits](#); Arstechnica. April 14, 2017. [NSA-leaking Shadow Brokers just dumped its most damaging release yet.](#)

⁹²² IACHR. Annual Report 2013. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc.50. December 31, 2013. Para. 415-417.

⁹²³ IACHR. Annual Report 2013. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 416.

born Haitians represented 4% of the population in the Miami/Fort Lauderdale metropolitan area, and that, of some 60 radio stations in southern Florida, only one, *Touche Douce*, served that group. Nevertheless, Clyburn affirmed: "I will end my official statement the way in which I began: pirate radio stations are illegal." For his part, Commissioner Michael O'Rielly welcomed the decision, but noted the inadequacy of the potential fines, and suggested the need to increase their amount for these types of cases.⁹²⁴

623. On October 25, the chairman of the Federal Communications Commission (FCC), Ajit Pai, announced during his appearance before the Subcommittee on Communications and Technology of the United States House of Representatives, the Committee on Energy and Commerce, and the Oversight of the Federal Communications Commission that he planned to eliminate FCC regulations that would restrict or limit media concentration in the United States.

624. Specifically, Pai stated that he would ask the FCC to review the restrictions on the ownership of various mass media outlets in a single market and the rule that prevents a single company from owning two of the four largest television channels in a region, or two channels if the local market does not have at least 8 independent channels, among others.⁹²⁵

625. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that "monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

K. Disinformation campaigns

626. Reports from the intelligence community and social network service providers denounced the deliberate dissemination of false news during the presidential election process that ended on November 8, 2016. In a report published on January 6, 2017, the Office of the Director of National Intelligence concluded that sponsored content in the press and on social networks by the Russian Federation influenced the presidential campaign, especially through the *RT* and *Sputnik* channels and a "network of almost-government trolls."⁹²⁶

627. On September 6, Facebook announced that it had identified more than US \$100 thousand spent on divisive and controversial ads between June 2015 and May 2017 in this network, operated by around 470 inauthentic accounts related to each other and probably operated from Russia. According to the company, most of the 3,000 ads mentioned did not refer to specific candidates or the electoral process in a specific way, but were focused on issues that generate division and controversy in the country such as racial equality, LGBTI rights, control of weapons, and immigration.⁹²⁷ A study, published in 2017 in the *Journal of Economic Perspectives*, by academics from Stanford University and New York University observed at least 156 fake

⁹²⁴ United States. Federal Communications Commission (FCC). File No.: EB-FIELDSCR-13-00012949 NAL/Acct. No.: 201732600002 FRN: 0022240279. File No.: EB-FIELDSCR-15-00018596 NAL/Acct. No.: 201732600002 FRN: 0026090365. Notice of Apparent Liability for Forfeiture. September 26, 2017.

⁹²⁵ The New York Times. October 25, 2017. F.C.C. to Loosen Rules on Local Media Ownership; Ars Technica. October 26, 2017. Ajit Pai Submits plan to allow more media consolidation.

⁹²⁶ United States. Director of National Intelligence. Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution. January 6, 2017.

⁹²⁷ The Washington Post. September 6, 2017. Russian firm tied to pro-Kremlin propaganda advertised on Facebook during election; The Wall Street Journal. September 6, 2017. Facebook Identifies \$100,000 In Ad Spending by Fake Accounts With Suspected Ties to Russia; Fox Business. September 6, 2017. Facebook Identifies \$100,000 In Ad Spending By Fake Accounts With Suspected Ties to Russia; News/AP. September 7, 2017. 'We got paid to advertise fake news during US election', Facebook admits.

news articles during the three months leading up to the presidential election, which were promoted and disseminated in different web pages and social networks. According to the same study, they were shared 37.6 million times on Facebook.⁹²⁸

628. On October 26, Twitter announced the cessation of all ads on the social network sponsored by users accounts owned by *RT* and *Sputnik*⁹²⁹. In a report published in April 2017, Facebook admitted to being a constant victim of disinformation campaign attempts, consisting of creating false accounts and promoting false stories, coordinated news expansion with the intent to manipulate political discussions, information theft of users and distribution of stolen information to third parties, and massive collection of user data for better control of public discourse, among others⁹³⁰.

629. In November 2017, the Department of Justice ordered T&R Productions, the company that operates the news portal and the RT television channel in the United States, to register under the Foreign Agents Registration Act (FARA). FARA was a regulation set in motion in 1938 to force organizations representing foreign interests in the country to disclose the relationship of their activities and finances with foreign governments. T&R Productions complied with the order and registered as an organization representing the interests of the Russian Federation in US territory on November 13⁹³¹.

L. Other Relevant Situations

630. Mexican journalist Martín Méndez Pineda crossed the border on February 5, to request asylum in the United States because of threats he had reportedly received due to his journalistic work in the State of Guerrero. U.S. authorities didn't grant him asylum and Méndez Pineda spent over 100 days in detention. He returned to Mexico voluntarily on May 23 after U.S. authorities denied his request earlier that month to be released pending the adjudication of his case.⁹³² On July 13, the immigration judge in El Paso, Texas, Robert S. Hough, denied the asylum request of Mexican journalist Emilio Gutiérrez Soto. After the journalist appealed the decision, on November 16 the judge rejected the appeal and Soto was informed by officers of the U.S. Immigration and Customs Enforcement that they planned to deport him. Soto filed a stay of removal request and would still await approval of it⁹³³.

631. On October 29, Juli Briskman made a gesture in protest as President Donald Trump's motorcade passed by the Trump National Golf Club in Sterling, Virginia. On October 31, Briskman's employer Akima LCC, a United States government contractor, reportedly fired her for violating the company's social media policy

⁹²⁸ Journal of Economic Perspectives. *Social Media and Fake News in the 2016 Election*. 2017.

⁹²⁹ Twitter. October 26, 2017. *Announcement: RT and Sputnik Adverstising*; Newsweek. October 26, 2017. *Twitter bans russian-run RT and Sputnik ads over 'fake news' accusations*; The Guardian. October 26, 2017. *Twitter bans ads from RT and Sputnik over election interference*.

⁹³⁰ Facebook Newsroom US. *Information Operations and Facebook*. April 2017; The Guardian. April 27, 2017. *Facebook admits: governments exploited us to spread propaganda*.

⁹³¹ NPR. November 14, 2017. *TV Company Linked To Russia's RT America Registers as Foreign Agent in U.S.*; The Washington Post. November 13, 2017. *RT files paperwork with Justice Department to register as foreign agent*; Facebook. September 6, 2017. *An Update on Information Operations On Facebook*.

⁹³² Contralínea. May 23, 2017. *EU rechaza asilar al periodista Martín Méndez Pineda*; Reporters Without Borders (RSF). No date. *A Mexican journalist seeking asylum from death threats has no place in detention*; Reporters Without Borders (RSF). May 24, 2017. *MÉXICO / El periodista Martín Méndez Pineda regresa a México pese a las amenazas*.

⁹³³ El Paso Times. November 17, 2017. *Mexican journalist, son on verge of deportatin after asylum request denied*; Animal Político. July 28, 2017. *Tras 9 años de espera, juez de EU niega asilo político a periodista mexicano*; EFE. July 28, 2017. *Niegan asilo a periodista mexicano después de nueve años*.

by disseminating content published by media outlets about the incident on her personal social media.⁹³⁴

632. On November 16, the Federal Communications Commission authorized broadcasters to use the new ATSC 3.0 digital television technology. The technology would allow more precise geolocation of television signals, better image definition, interactive programming, and better accuracy in advertising. The decision of FCC has been criticized by legislators because such measure could be outside the constitutional attributions of the body; the absence of subsidies forecast for users to make the transition of their recipients towards the new standard and not having a testing period for the new technology, in which it could detect implications of the same in privacy, the use of encryption, and the risks of hacking⁹³⁵.

633. On December 3, the ABC News television station reported that the journalist Brian Ross had been suspended for four weeks, because he had erroneously reported that Michael Flynn, a former presidential advisor on matters of national security, would have affirmed that Donald Trump had allegedly ordered him to hold meetings with representatives of the Russian Federation during the 2016 election campaign, within the framework of the investigations carried out by the Federal Bureau of Investigation (FBI) for months on the alleged Russian intervention in the last electoral campaign⁹³⁶. In fact, the journalist read a rectification on the same night he made the mistake, on the ABC channel, to specify that the guidelines that Trump gave Flynn on contacts with the Russian government would have occurred after the election, as president-elect.

⁹³⁴ The Huffington Post. November 6, 2017. *Woman Fired For Flipping Off Donald Trump's Motorcade*; The Guardian. October 29, 2017. *Hail to the chief: cyclist gives Trump the middle finger*.

⁹³⁵ Cable. November 14, 2017. *Rosenworcel: FCC Should Go Back to Drawing Board on ATSC 3.0*; Reuters. *FCC approves TV technology that gives better pictures but less privacy*; United States. Federal Communications Commission. *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*. October 26, 2017.

⁹³⁶ The Washington Post. December 3, 2017. *ABC News apologizes for 'serious error' in Trump report and suspends Brian Ross for four weeks*; UH Noticias. December 3, 2017. *Una cadena estadounidense suspende a un periodista por acusar «erróneamente» a Trump*.

17. GRENADA

A. Progress

634. Like the other States parties of the Eastern Caribbean Telecommunications Authority (ECTEL), Grenada would have approved the Electronic Communications Bill (ECB)⁹³⁷, which, among its objectives, would seek to introduce changes in issues related to the management of electronic communications, without discrimination between licenses that do not have similar circumstances or the access of retail clients to information and its dissemination. The ECB would also have among its purposes to guarantee fair and equal access to the public network of electronic communications or the adoption of antitrust measures that favor the plurality of licenses, while aiming at guaranteeing open access to the Internet and to specify the guidelines that should guide the consumer defense of electronic communications. According to the information available, each member state of ECTEL must adopt the electronic communications law in its internal legislation⁹³⁸.

⁹³⁷ Eastern Caribbean Telecommunications Authority (ECTEL). Revised Draft Electronic Communication Bill. September 8, 2017.

⁹³⁸ TeleGeography. March 29, 2017. ECTEL states introduce new Electronic Communications Bill: Caribbean News Now!. August 24, 2017. ECTEL member states to undertake a process of telecommunications reform.

18. GUATEMALA

A. Situation of journalists and attacks on freedom of expression

635. During the *in loco* visit conducted in 2017, the IACHR verified significant levels of violence against journalists in Guatemala, characterized by murders, threats, and speech that aims to stigmatize media outlets and journalists engaged in the fight against corruption and the abuse of power. According to reports, journalists and media workers are “highly vulnerable” to violence in the practice of their profession, especially in areas outside the nation’s capital. These journalists, in addition to confronting the scourge of drug trafficking and organized crime, are also subject to attacks from some public servants allegedly linked to corrupt acts.⁹³⁹ According to the information received, Quetzaltenango is one of the areas where the greatest number of attacks on journalists have been reported in recent years.⁹⁴⁰

636. Article 35 of the 1985 Constitution of the Republic of Guatemala, amended in 1993, establishes that “The expression of thought through any means of dissemination, without censorship or prior permission, is free [...]” Notwithstanding this broad constitutional protection of the right to freedom of expression, the Commission has “constantly received information to the effect that the full exercise of that right has been obstructed by acts of intimidation against independent media and journalists.”⁹⁴¹ Additionally, in recent years the IACHR has noted “with particular concern the attacks against [journalists] covering investigations into public administration, acts of corruption, and human rights.”⁹⁴² During its *in loco* visit, the Commission verified that, in addition to attacks and stigmatization, there are persistent structural problems in Guatemala that prevent citizens from receiving information from a variety of sources, such as the high degree of concentration in the ownership and control of both free-to-air and subscription-based radio and television channels. There are also serious obstacles that keep the community media outlets of indigenous peoples from accessing the radio spectrum and the public resources needed to achieve sustainability.

637. The IACHR notes in particular the announcement made by President Jimmy Morales during the *in loco* visit, regarding the imminent approval of a Program for the Protection of Journalists and Media Workers, on which he is reportedly working in consultation with journalists’ organizations. Nevertheless, the IACHR also notes with concern that there has been no tangible progress since that time toward the establishment of that program.

638. The IACHR and its Office of the Special Rapporteur for Freedom of Expression would like to underscore that journalism in Guatemala is currently playing a fundamental role in denouncing abuses of power and following up on investigations into cases of corruption. The IACHR observed that journalists and media workers continue to be, throughout Guatemala, the main source of information and debate concerning the serious human rights problems, institutional crisis, and corruption affecting the country. Nevertheless, a smear campaign against journalists and news media was evident on social media in 2017. According to Human Rights Ombudsman [*Procurador de los Derechos Humanos*] (PDH) Augusto Jordán Rodas Andrade,

⁹³⁹ Prensa Libre. February 8, 2017. *PDH pide protección a periodistas*; República. February 6, 2017. *PDH pide implementar programa de protección a periodistas*.

⁹⁴⁰ Centro de Reportes Informativos sobre Guatemala (Cerigua). *Estado de la Situación de la Libertad de Expresión en Guatemala – Primer Trimestre 2017*. May 2, 2017

⁹⁴¹ IACHR. *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*. OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 281.

⁹⁴² IACHR. *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*. OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 281.

there is “an intent to disparage journalists in these times of so much uncertainty in Guatemala, which may jeopardize [its] fragile democracy.”⁹⁴³

639. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

640. Based on the inter-American case law and doctrine, the IACHR and its Office of the Special Rapporteur remind the Guatemalan State, in relation to violence and attacks on journalists and media outlets, of the importance of meeting the three positive obligations that emanate from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to criminally investigate, prosecute, and punish the perpetrators of these crimes. Violence against journalists must be combated through a comprehensive policy of prevention, protection, and the pursuit of justice. These obligations are mutually complementary in order for free, democratic, and robust speech to exist without restrictions.⁹⁴⁴

B. Murders of journalists and reporters, and impunity for these crimes

641. In 2016, and thus far in 2017, the Office of the Special Rapporteur for Freedom of Expression received information about the murder of 10 journalists in Guatemala. Eight journalists were reported to have been murdered in 2016; nevertheless, it has not been determined whether their murders were connected to the exercise of the right to freedom of expression.⁹⁴⁵ According to the information available, the authorities opened investigations in those cases, but no answers have yet been provided with respect to the logical line of investigation into whether these crimes were connected to the work the victims were performing as journalists and media workers.⁹⁴⁶ The Office of the Special Rapporteur has received information about two other cases in 2017, which it is monitoring in order to establish whether they are related to the victims’ journalistic work.⁹⁴⁷ In its comments to the draft of this report, the State indicated that between 2012 and June 2017, the Public Prosecutor’s Office received 372 reports related to threats, violent attacks and murders of journalists, which lead to 17 judicial sentences: two acquittals and six convictions for crimes against life, as well as one acquittal and eight convictions for other crimes.⁹⁴⁸

⁹⁴³ Prensa Libre. September 2, 2017. *PDH abre expediente para investigar campaña de desprestigio contra la prensa independiente*; Procurador de los Derechos Humanos (PDH). September 4, 2017. *PDH abre expediente por campaña para desacreditar a periodistas y medios de información*.

⁹⁴⁴ IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 31.

⁹⁴⁵ IACHR. *Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 641-644.

⁹⁴⁶ IACHR. *Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 645.

⁹⁴⁷ Inter American Press Association (IAPA). January 25, 2017. *IAPA outraged at murder of journalist in Guatemala*; Prensa Libre. February 2, 2017. *UNESCO pide esclarecer asesinato de periodista en Zacapa*; La Opción de Chihuahua. February 7, 2017. *Asesinan en Guatemala a comunicadora Vilma Gabriela Barrios*; Centro de Reportes Informativos sobre Guatemala (Cerigua). February 6, 2017. *Joven locutora asesinada en Quetzaltenango*; Centro de Reportes Informativos sobre Guatemala (Cerigua). July 8, 2017. *CERIGUA condena el vil asesinato de comunicador en Petén*; elPeriódico. July 12, 2017. *Otro comunicador asesinado*.

⁹⁴⁸ Communication from the State of Guatemala, “Submission of the State of Guatemala to Include in the Draft Report on the Human Rights Situation in Guatemala,” December 22, 2017.

642. Journalist Manuel Salvador Villagrán, who worked with different local media outlets in the municipality of San Jorge, Department of Zacapa, was murdered on January 19, 2017. He was also reportedly the head of the Department of Public Relations of the Municipality of San Jorge. Sources revealed that the journalist was shot several times while riding his motorcycle.⁹⁴⁹ According to publicly available information, significant progress has been made in the investigation of this crime.⁹⁵⁰

643. On July 8, 2017, journalist and presenter Johnny Javier Guardado's body was found in the municipality of El Chal, Department of Petén. According to the information available, he had been stabbed.⁹⁵¹

644. Additionally, according to the information gathered by the Office of the Special Rapporteur and received during the *in loco* visit, Guatemala continues to have high levels of impunity for crimes involving the murder of journalists. Given the slow pace of the investigations, in most cases the authorities reportedly have not been able to determine whether these crimes are related to the journalistic work of the victims.⁹⁵² According to Guatemalan freedom of expression organizations, that situation gives rise to self-censorship among journalists who do not know why they might be attacked.⁹⁵³

645. Despite this situation, the IACHR acknowledges the progress of the investigation into the murder of two journalists which shook the country in 2015. In January 2017, the International Commission against Impunity in Guatemala [*Comisión Internacional contra la Impunidad en Guatemala*] (CICIG) and the Public Ministry (MP) filed a request for a preliminary impeachment hearing against Representative Julio Antonio Juárez Ramírez for the March 10, 2015 death of journalists Danilo Efraín Zapón López and Federico Benjamín Salazar Gerónimo in Mazatenango, Suchitepéquez. Ramírez is alleged to have been the mastermind of the murders, and reportedly viewed Zapón López as “a threat to the consolidation of his candidacy as district representative and a challenge to his power in the area.” In January 2017, two individuals were reportedly arrested for their participation in the journalists' deaths.⁹⁵⁴ Another four individuals were reportedly apprehended at an initial phase.⁹⁵⁵ In February, the Guatemalan Supreme Court (CSJ) heard the request for a preliminary impeachment hearing against Representative Juárez Ramírez.⁹⁵⁶ In November, the Investigative Judge appointed by the Supreme Court of Justice [*Corte Suprema de Justicia*] (CSJ) in the case against Representative Juárez Ramírez, would have recommended to the plenary of judges of the CSJ to withdraw the immunity of the parliamentarian to be investigated for the murder of journalists⁹⁵⁷.

⁹⁴⁹ Periodistas en Español. January 20, 2017. *Periodistas asesinados en Guatemala: Manuel Salvador Villagrán*; Radio ONU. February 3, 2017. *Condena por el asesinato del periodista Manuel Salvador Villagrán en Guatemala*; Notas Periodísticas. January 24, 2017. *Cámara Guatemalteca de Periodismo pide al MP pronta investigación de asesinato*.

⁹⁵⁰ CNN en Español. May 4, 2017. *Once periodistas fueron asesinados en quince meses en Guatemala*.

⁹⁵¹ Centro de Reportes Informativos sobre Guatemala (Cerigua). July 8, 2017. *CERIGUA condena el vil asesinato de comunicador en Petén*; elPeriódico. July 12, 2017. *Otro comunicador asesinado*.

⁹⁵² Committee to Protect Journalists (CPJ). December 19, 2016. *Searching for answers in murder cases amid violence and corruption in Guatemala*.

⁹⁵³ Committee to Protect Journalists (CPJ). December 19, 2016. *Searching for answers in murder cases amid violence and corruption in Guatemala*.

⁹⁵⁴ Comisión Internacional contra la Impunidad en Guatemala (CICIG). January 26, 2017. *Ante juicio contra diputado y capturas en caso asesinato de periodistas*; Prensa Libre. January 26, 2017. *Diputado Julio Juárez habría ordenado el asesinato de periodista Danilo López*; Ministerio Público (MP). February 1, 2017. *Sindicados en crimen de Periodistas son ligados a proceso penal*.

⁹⁵⁵ Ministerio Público (MP). February 1, 2017. *Sindicados en crimen de Periodistas son ligados a proceso penal*; Comisión Internacional contra la Impunidad en Guatemala (CICIG). January 26, 2017. *Ante juicio contra diputado y capturas en caso asesinato de periodistas*.

⁹⁵⁶ Prensa Libre. February 9, 2017. *Empieza antejuicio contra diputado Julio Juárez Ramírez*; Guatevisión. February 8, 2017. *CSJ da trámite a antejuicio contra diputado de FCN Julio Juárez*.

⁹⁵⁷ Centro de Reportes Informativos sobre Guatemala (Cerigua). November 6, 2017. *Jueza Pesquisidora recomienda retirar inmunidad a diputado Juárez por asesinato de periodista*; CRN Noticias. November 7, 2017. *Juez recomienda retirar inmunidad al diputado Julio Juárez por asesinato de periodistas*; elPeriódico. November 6, 2017. *Recomiendan retirar inmunidad a diputado señalado por muerte de dos*

646. In June 2017, it was learned that through its Office of the Special Prosecutor against Impunity [*Fiscalía Especial contra la Impunidad*], the Public Ministry was able to get High-Risk Court “B” to admit 81 items of evidence against the alleged murderers of Danilo López and Federico Salazar. It was also determined that the trial will be held in High-Risk Court “A.”⁹⁵⁸

647. Additionally, during the first half of 2017, through the actions of the Public Ministry’s Unit for Crimes against Journalists [*Unidad de Delitos contra Periodistas*], two individuals were convicted of crimes committed against journalists during 2016. On May 30, Byron Eduardo Felipe Morales was sentenced to 40 years for the June 2016 murder of journalist Víctor Hugo Valdez Cardona. Similarly, on June 2, Rolando Antonio Jiménez Cruz was sentenced to 23 years for the September 4, 2016 death of journalist Felipe David Munguía Jiménez. The investigation is reportedly ongoing in an effort to establish the identity of the masterminds of the crime against Jiménez.⁹⁵⁹

648. The IACHR received information about the May 2017 inauguration of a Prosecution Unit for Crimes against Journalists in Quetzaltenango. According to reports, the Prosecutor’s Office in Quetzaltenango is composed of one prosecutor, three assistant prosecutors, one prosecution officer, and an administrative assistant.⁹⁶⁰ This agency has territorial jurisdiction over the departments of Suchitepéquez, Retalhuleu, San Marcos, Huehuetenango, Totonicapán, Sololá, and Quetzaltenango.⁹⁶¹ In addition, according to information provided by the State, a division of the Unit for Crimes against Journalists that operates in Guatemala City was established in 2017, which includes: an agency that handles common crimes, made up of one prosecutor, 5 assistant prosecutors, and one prosecution officer; and another agency that investigates crimes against the person committed against journalists, comprised by one prosecutor, 4 assistant prosecutors, and one prosecution officer. A driver has also reportedly been assigned to provide assistance in investigative proceedings.⁹⁶² This staffing increase represents a strengthening of the Unit’s human resources, which in 2015 had only five prosecutors to handle over 100 cases.⁹⁶³ The State additionally reports that a general instruction from the Attorney General and Head of the Public Ministry that contains general guidelines for

periodistas; Soy502. No date. [Recomiendan quitar inmunidad a diputado de FCN implicado en asesinato](#); Guatevisión. November 6, 2017. [Diputado de FCN contra las cuerdas: Recomendán retirar inmunidad a Julio Juárez](#).

⁹⁵⁸ Ministerio Público (MP). June 15, 2017. [Un total de 81 medios de prueba serán utilizados en juicio contra implicados en muerte de periodistas](#).

⁹⁵⁹ Ministerio Público (MP). May 30, 2017. [Un hombre fue condenado a 40 años de prisión por muerte de periodista](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). May 30, 2017. [Asesino de periodista condenado a 40 años de prisión incommutables](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). June 2, 2017. [MP logra nueva condena por crimen contra periodista](#); Ministerio Público (MP). June 2, 2017. [Un hombre fue condenado a 23 años de prisión por muerte de periodista](#); El Nacional. June 2, 2017. [Guatemala: asesino de periodista recibe 23 años de cárcel](#); Clases de Periodismo. June 3, 2017. [Guatemala: asesino de periodista recibe 23 años de cárcel](#).

⁹⁶⁰ elPeriódico. May 9, 2017. [Inauguran fiscalías en Quetzaltenango](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). May 9, 2017. [Thelma Aldana inauguró Agencia Fiscal de Delitos contra Periodistas en Quetzaltenango](#).

⁹⁶¹ República de Guatemala. Communication from the State of Guatemala regarding the request for information from the Office of the Special Rapporteur for Freedom of Expression of the IACHR. Ref. P-1021-2017/VHG/LWC/nj. July 24, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁶² República de Guatemala. Communication from the State of Guatemala regarding the request for information from the Office of the Special Rapporteur for Freedom of Expression of the IACHR. Ref. P-1021-2017/VHG/LWC/nj. July 24, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁶³ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 295.

investigating cases in which the victims are human rights defenders (including journalists) is currently at the approval stage.⁹⁶⁴

649. The IACHR notes in particular the efforts made by the Public Ministry to address the obligation to pursue full justice for murdered journalists, bearing in mind the specificities of these types of investigations. However, it also takes note of the delay in prosecuting the masterminds in some of these cases, due to the lack of coordination among the different state agencies with jurisdiction over the matter.

650. The IACHR has reiterated that the murder of journalists constitutes the most extreme form of censorship and States have a positive obligation to identify and punish the perpetrators of these crimes. For the Inter-American Commission, it is essential that the Guatemalan State investigate in a complete, effective, and impartial manner the murders of journalists and clarify their motives and judicially determine the relationship they may have with journalism and freedom of expression. The authorities should not rule out the exercise of journalism as a motive for murder and/or aggression before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in collecting evidence in this regard can have serious repercussions on the development of the processes in stages of prosecution or trial⁹⁶⁵. Not having exhausted completely the logical lines of investigation affects, above all, that the intellectual authors can not be identified⁹⁶⁶.

651. As established by the Special Rapporteur of the United Nations (UN) for the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of the American States (OAS), the State " has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities." Moreover, the authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from making generalizations based on isolated events or the conduct of particular groups."⁹⁶⁷

C. Threats, arrests, harassment, and attacks on journalists and media outlets

652. In its report entitled *Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion*, the IACHR observed that, given their difficult working conditions, some journalists are said to have opted for self-censorship to protect themselves from attacks and threats. Between January and August of 2015, the Office of the Prosecutor for Crimes against Journalists [*Fiscalía de Delitos contra Periodistas*] received 81 complaints—a figure that surpassed the numbers recorded in each of the three previous years.⁹⁶⁸

⁹⁶⁴República de Guatemala. Communication from the State of Guatemala regarding the request for information from the Office of the Special Rapporteur for Freedom of Expression of the IACHR. Ref. P-1021-2017/VHG/LWC/nj. July 24, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁶⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murders of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35, March 8, 2008. Para. 116.

⁹⁶⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murders of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35, March 8, 2008. Para. 125-126; IACHR. Office of the Special Rapporteur for Freedom of Expression. Impunity, self-censorship and armed internal conflict: an analysis of the state of freedom of expression in Colombia. OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 65-66.

⁹⁶⁷ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. Joint declaration on violence against journalists and media workers in the context of protests.

⁹⁶⁸ IACHR. Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion. OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 289.

653. More recently, during the *in loco* visit, journalists and organizations that defend freedom of expression reported to the IACHR a spike in threats and stigmatization on social media, assaults by law enforcement officers, and a climate of sharp social and political polarization that also permeates the practice of journalism, especially opinion journalism. According to press organizations, local politicians, members of the National Police, and organized crime are sources of intimidation in areas of the country outside the capital. Under the difficult working conditions, some journalists have reportedly continued to engage in self-censorship to protect themselves from attacks and threats. In 2017, between January and August, the Office of the Prosecutor for Crimes against Journalists reportedly received 53 complaints, 24 of which alleged threats.⁹⁶⁹ Additionally, 170 complaints are reportedly at the initial criminal investigation phase in the common crimes unit, including the Department of Quetzaltenango, and 24 complaints are pending in the unit for crimes against the person. Some of the most notable cases of 2017 are detailed below.⁹⁷⁰

654. On March 1, photojournalist Alex Cruz and driver Ernesto Hidalgo, of the newspaper *elPeriódico*, were reportedly intercepted by two unknown men who threatened them with firearms and confiscated their cell phones and photography equipment.⁹⁷¹

655. In June, it was learned that journalist Marielos Monzón, a columnist for *Prensa Libre*, filed a complaint with the Public Ministry's Prosecution Unit for Crimes against Journalists alleging that she had been subject to threats and intimidation. According to the information available, a list had reportedly been distributed in recent weeks to members of organized crime blaming her and other journalists for the legal proceedings brought against individuals involved in drug trafficking crimes. According to Cerigua, "[t]his would not be the first time that Monzón is mentioned in lists of people labeled "communists", in 2011 she was accused along with 5 other people, of committing numerous crimes during the Internal Armed Conflict, when she was just a girl, the claim was later dismissed by the prosecution"⁹⁷².

656. The same month, it was reported that Edgar Rubio Castañeda, an Infantry Colonel in the Guatemalan Army, had been interrogated by military authorities because of his book *Desde el cuartel, otra visión de Guatemala* ["From the Barracks: Another View of Guatemala"]. A Military Honor Board, which was reportedly established specifically to question him about the publication of the aforementioned book, reportedly demanded that Rubio Castañeda present defense evidence. Additionally, the Board reportedly accused him of insubordination to the Army and of failing to conform to the institution, both of which are punishable under the Military Code.⁹⁷³

⁹⁶⁹ Information received during the on-site visit to Guatemala between July 30 and August 4, 2017. Data from the Unidad Fiscal de Delitos contra Periodistas. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁷⁰ República de Guatemala. Communication from the State of Guatemala regarding the request for information from the Office of the Special Rapporteur for Freedom of Expression of the IACHR. Ref. P-1021-2017/VHG/LWC/nj. July 24, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁷¹ Inter American Press Association (IAPA). *Guatemala*. March 27, 2017; *elPeriódico*. April 2, 2017. *La prensa de Guatemala recurre al silencio por miedo a políticos y criminales*; Cámara Guatemalteca de Periodismo. March 1, 2017. *Asaltan a fotoperiodista de Diario ElPeriódico*.

⁹⁷² Cimacnoticias. June 28, 2017. *Guatemala: amenazas contra periodista Marielos Monzón*; Inter American Press Association (IAPA). July 6, 2017. *Guatemala: Denuncian amenaza e intimidación contra periodista*; Centro de Reportes Informativos sobre Guatemala (Cerigua). July 4, 2017. *Centro PEN Guatemala se solidariza con Marielos Monzón*; Centro Pen Guatemala. Press Release dated June 28, 2017. Available at: <http://centropenguatemala.blogspot.com/>; Guatevisión. June 26, 2017. *Lista en poder de narcos señala a una periodista*.

⁹⁷³ La Hora. May 23, 2017. *Junta de Honor cita a coronel por publicación del libro "Desde el cuartel"*; Prensa Comunitaria. May 31, 2017. *Ministro de la Defensa y Jefe del Estado Mayor podrían enfrentar denuncias formales por violar la Constitución*; *elPeriódico*. May 25, 2017. *Ejército exige a coronel que pruebe que la institución armada violó derechos humanos*.

657. In July, *Centro Pen* [PEN Center] Guatemala condemned the assaults committed against various reporters from *Prensa Libre* in the capital and Quetzaltenango, and from *Nuestro Diario*. According to the organization, reporters Rigoberto Escobar, Carlos Paredes, Edwin Pitán, Carlos Ventura, and Byron Bravo were assaulted by members of the security details of politicians and private electric power generation companies in outlying areas of the country.⁹⁷⁴ Similarly, on September 7, Rony Rolando Castillo, the *Nuestro Diario* correspondent for central-north Santa Rosa, was reportedly assaulted and had his photography equipment stolen by a group of tuk-tuk drivers while photographing a demonstration outside the Cuilapa National Hospital in Santa Rosa.⁹⁷⁵

658. As previously indicated, the sharp social and political polarization permeating the practice of journalism in Guatemala was reflected in the reports of threats, harassment, and the stigmatization of journalists, media workers and media outlets, among other things. Some of the most notable cases from 2017 are detailed below.

659. On February 28, during a press conference, President Jimmy Morales reportedly blamed the media for spreading rumors of a coup d'état in Guatemala.⁹⁷⁶ According to reports, the president himself was the one who raised the issue on February 16, when he alleged that he had heard “well-founded rumors” of a possible coup in Guatemala.⁹⁷⁷

660. According to the information available, on August 28, *Guatevisión* denounced the publication of a fake Facebook page, which accused the media outlet of being a “traitor to the nation,” manipulating information, and placing the country in foreign hands. According to reports, that message was apparently replicated by accounts with few posts in their history, with few contacts, or contacts that were hidden or created within the past two or three years—which in turn attacked the channel on its own Facebook page, as well as in the comment sections of articles that had been shared. This reportedly occurred in reaction to the channel’s uninterrupted coverage the previous day of President Jimmy Morales’s decision to declare Iván Velázquez *persona non grata*.⁹⁷⁸

661. Following the smear campaign that had been waged on social media against journalists and the news media, the Office of the Human Rights Ombudsman (PDH) opened a file on September 2, as Ombudsman Augusto Jordán Rodas Andrade had indicated that, “there is an intent to disparage journalists in these times of so much uncertainty in Guatemala, which may jeopardize our fragile democracy.”⁹⁷⁹

662. On August 29, various media outlets complained of the restrictions placed on their coverage of the Regional Intelligence Conference in which President Jimmy Morales took part. According to the information available, a group of journalists was reportedly assaulted by members of the Secretariat of Administrative and Security Affairs [*Secretaría de Asuntos Administrativos y de Seguridad*] (SAAS). At the same event, SAAS

⁹⁷⁴ Pen International. July 28, 2017. *PEN Guatemala denuncia las recientes agresiones en contra periodistas*.

⁹⁷⁵ Centro de Reportes Informativos sobre Guatemala (Cerigua). September 8, 2017. *Santa Rosa: Periodista fue agredido por “tuctuqueros”*; Pen International. September 13, 2017. *Pen Guatemala denounces attack against journalist*.

⁹⁷⁶ Prensa Libre. March 1, 2017. *Jimmy Morales se contradice*; Guatevisión. March 1, 2017. *[VÍDEO] Jimmy revela más detalles de supuesto golpe de Estado*; Inter American Press Association (IAPA). *Guatemala*. March 27, 2017.

⁹⁷⁷ HispanTV. February 17, 2017. *Presidente guatemalteco advierte de un golpe de Estado en el país*; República. February 16, 2017. *Jimmy Morales: “hay rumores de golpe de estado”*.

⁹⁷⁸ Prensa Libre, August 29, 2017. *Guatevisión denuncia bloqueo y campaña en su contra por recientes coberturas*; Aquitodito. August 30, 2017. *Denuncian ataque e insultos contra Guatevisión*.

⁹⁷⁹ Prensa Libre. September 2, 2017. *PDH abre expediente para investigar campaña de desprestigio contra la prensa independiente*; Procurador de los Derechos Humanos (PDH). September 4, 2017. *PDH abre expediente por campaña para desacreditar a periodistas y medios de información*.

staff reportedly tried to grab a camera that the reporters were using to film the incident. The president reportedly left without making any statements to the press.⁹⁸⁰

663. In October, it was learned that members of the citizen committee of the department of Quetzaltenango had threatened to initiate criminal proceedings against the journalist Óscar de León, of *Radio Sigo 104.7 FM*, because of a publication he made on social networks with regard to the remodeling of the El Carmen park in the municipality of Salcajá that involved local authorities⁹⁸¹.

664. All types of threats, aggressions, or harassment against journalists, media workers, or the media themselves must be investigated by the courts, and the authorities should not rule out the exercise of journalism as a motive for the crime before the investigation is completed. States have an obligation to take effective measures to prevent attacks against journalists and others exercising their right to freedom of expression and to combat impunity, in particular by vigorously condemning such attacks when they do occur, by investigating them promptly and effectively in order to duly sanction those responsible, and by providing compensation to the victims where appropriate. States also have an obligation to provide protection to journalists and others exercising their right to freedom of expression who are at a high risk of being attacked⁹⁸².

665. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

D. Censorship

666. During 2017, the IACHR and the Office of the Special Rapporteur for Freedom of Expression also received information about alleged cases of pressure over media and censorship in Guatemala. In February, a group of journalists working for the newspaper *Contrapoder* reportedly complained that an article about Iván Velásquez, head of the International Commission against Impunity in Guatemala (CICIG), was censored. The article, entitled "*Emboscada contra Iván Velásquez*" ["Ambush of Iván Velásquez"] was supposedly withdrawn moments before the magazine went to press.⁹⁸³ According to the information available, the reason given by the vice president of the publishing group for its withdrawal was a lack of "journalistic rigor."⁹⁸⁴

⁹⁸⁰ Publinews. August 29, 2017. [Se registra altercado entre periodistas y SAAS en actividad donde participó Jimmy Morales](#); Cámara Guatemalteca de Periodismo. August 29, 2017. [Periodistas denuncian agresiones de miembros de la SAAS](#).

⁹⁸¹ Centro de Reportes Informativos sobre Guatemala (Cerigua). October 4, 2017. [Amenazan con iniciar acciones penales contra periodista por publicación](#).

⁹⁸² The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. May 4, 2015. [Joint declaration on freedom of expression and responses to conflict situations](#).

⁹⁸³ Centro de Reportes Informativos sobre Guatemala (Cerigua). [Estado de la Situación de la Libertad de Expresión en Guatemala – Primer Trimestre 2017](#). May 2, 2017; Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. March 3, 2017. [#AlertaDefensoras GUATEMALA / Censuran artículo sobre la campaña de desprestigio que enfrenta el CICIG](#); Pedrovisión Noticias. March 4, 2017. [LA NOTA CHAPINA: La historia de la nota censurada sobre Iván Velásquez en "Contrapoder"](#).

⁹⁸⁴ Centro de Reportes Informativos sobre Guatemala (Cerigua). [Estado de la Situación de la Libertad de Expresión en Guatemala – Primer Trimestre 2017](#). May 2, 2017; Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. March 3, 2017. [#AlertaDefensoras GUATEMALA / Censuran artículo sobre la campaña de desprestigio que enfrenta el CICIG](#); Pedrovisión Noticias. March 4, 2017. [LA NOTA CHAPINA: La historia de la nota censurada sobre Iván Velásquez en "Contrapoder"](#).

667. According to reports, *Guatevisión's* signal was reportedly blocked in several departments of the country between 10:00 a.m. and 5:00 p.m., and 6:00 p.m. and 9:00 p.m. on August 27, while it was airing uninterrupted coverage of President Jimmy Morales's decision to declare Iván Velázquez, head of the International Commission against Corruption in Guatemala (CICIG), *persona non grata*. The blocking of *Guatevisión's* signal, which was allegedly done by cable companies tied to certain political groups, occurred during the broadcast of "news that affected [certain] interests. **It happened to us in Petén, Retalhuleu, Quetzaltenango, and Sololá.**"⁹⁸⁵

668. Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship. Additionally, Principle 5 of the Declaration of Principles on Freedom of Expression establishes that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

E. Program for the protection of journalists and media workers

669. In October 2012, during the Universal Periodic Review (UPR), Guatemala agreed to create a Program for the Protection of Journalists. That commitment was reiterated on November 28, 2013 by then-President of Guatemala, Otto Pérez Molina.⁹⁸⁶ Nevertheless—nearly five years later—the implementation of such a program continues to be under discussion, despite the repeated recommendations of the IACHR, its Office of the Special Rapporteur, UNESCO, and OHCHR to move forward with its creation. In 2014, a High-Level Committee and a Technical Committee were established, consisting of the Presidential Commission coordinating the Executive's Policy on Human Rights (COPREDEH), the Ministry of the Interior [*Ministerio de Gobernación*], the Public Ministry, and the Social Communication Secretariat of the Presidency [*Secretaría de Comunicación Social de la Presidencia de la República*] (SCSPR). Their objective was to design and implement a program for the protection of journalists.⁹⁸⁷

670. The following year, the government made progress on the design of the mechanism, in consultation with civil society and human rights organizations. Together, the High-Level Committee and the Technical Committee worked to design and implement the protection mechanism for journalists. This work was also supported by UNESCO and the Office of the High Commissioner for Human Rights (OHCHR). An initial document entitled "Preliminary Proposal - Program for the Protection of Journalists" was drafted, and the institutions that should make up the Program, their powers with respect to protection, and the mechanisms for coordination were identified. In this context, after being debated by journalists and defenders of the right to freedom of expression, a set of observations, recommendations, and comments was submitted to the Technical Committee for its consideration and incorporation into the conceptual design of the System to Protect the Practice of Journalism [*Sistema de Protección al Ejercicio Periodístico*] (SPEP).⁹⁸⁸ Nevertheless, various journalists' associations claimed that they had little to no participation in preparing the proposal.

⁹⁸⁵ Prensa Libre. August 29, 2017. *Guatevisión denuncia bloqueo y campaña en su contra por recientes coberturas*; Centro de Reportes Informativos sobre Guatemala (Cerigua). August 31, 2017. *APG denuncia que Guatevisión ha sido objeto de censura*.

⁹⁸⁶ The commitment was co-signed by the Vice President, the Minister of the Interior, the Chairman of the Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos (COPREDEH), with representatives of the Human Rights Ombudsman Institution, the Office of the Attorney General; and as witnesses of honor, the Resident Coordinator of the United Nations and the Representative of the United Nations Educational, Scientific and Cultural Organization – UNESCO.

⁹⁸⁷ IACHR. *Annual Report 2014*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2015. Para. 557-560.

⁹⁸⁸ IACHR. *Annual Report 2015*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 683-694.

Finally, in 2016, after the new government came to power, President Jimmy Morales's administration decided to suspend the process and begin a new process for establishing the mechanism.⁹⁸⁹

671. More recently, on different occasions in 2017, then-Human Rights Ombudsman Jorge de León Duque urged the government to implement the Program for the Protection of Journalists without delay. On February 7, the PDH expressed his concern over the vulnerable situation of the country's journalists, especially those who carry out their activities in areas outside Guatemala City, and urged the government to implement the program soon.⁹⁹⁰ De León Duque reiterated that need on May 3, in a statement released for World Press Freedom Day.⁹⁹¹

672. In February, the Press Alliance [*Alianza de Entidades de Prensa*] reportedly denounced the Guatemalan State for failing to keep its promise to adopt a Program for the Protection of Journalists. In the joint statement signed by the Association of Journalists of Guatemala (APG), the Guatemalan Chamber of Journalism [*Cámara Guatemalteca de Periodismo*] (CGP), the Guatemalan Chamber of Professional Broadcast Announcers [*Cámara de Locutores Profesionales de Guatemala*] (CLPG), and Guatemalan Sports Reporters [*Cronistas Deportivos Guatemaltecos*] (CDG), the Alliance condemned the Guatemalan government's apparent lack of will to fulfill its promises with respect to the Program.⁹⁹² On June 1, after Representative Sandra Morán announced her willingness to work on a legislative bill for the protection of journalists, the Press Alliance reportedly dismissed the intent of some congressional representatives who support such a law, alleging that they did not enjoy public confidence and credibility, and that the intent of the initiative was not just to protect journalists but also to create opportunities and processes for regulation that would include a general media law.⁹⁹³

673. On May 2, Guatemalan Vice President Jafeth Cabrera and his communications team met with the Press Alliance to address the establishment of the Program for the Protection of Journalists, which reportedly has made no progress since July 2016. Jafeth Cabrera was said to have offered to look into the reasons for the alleged delay, and indicated that if the President would delegate the proposal to him, he would make the effort to move it forward.⁹⁹⁴

674. On this point, the IACHR took note of President Jimmy Morales's announcement during the *in loco* visit to the effect that the Government was working on a Program for the Protection of Journalists and Media Workers in consultation with journalists' organizations, and that he would approve it as soon as possible.

⁹⁸⁹ IACHR. Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017. Para. 657.

⁹⁹⁰ Centro de Reportes Informativos sobre Guatemala (Cerigua). February 7, 2017. PDH insta al gobierno a la pronta implementación del Programa de Protección a Periodistas; Prensa Libre. February 8, 2017. PDH pide protección a periodistas; La Conexiónusa.com/EFE. February 7, 2017. Ombudsman pide a Guatemala implementar un plan de protección para periodistas.

⁹⁹¹ Centro de Reportes Informativos sobre Guatemala (Cerigua). May 3, 2017. PDH reitera necesidad de establecer Programa de Protección a Periodistas; Procurador de los Derechos Humanos. May 3, 2017. Comunicado PDH – Día Mundial de la Libertad de Prensa. Available at: <http://pdh.org.gt/biblioteca/sala-de-prensa/category/16-comunicados.html?start=10>

⁹⁹² Centro de Reportes Informativos sobre Guatemala (Cerigua). February 24, 2017. Alianza de Entidades de Prensa denuncia al Estado por incumplimiento de promesas; El Clarín. February 24, 2017. Alianza de Entidades de Prensa de Guatemala en comunicado conjunto denuncia incumplimiento del gobierno; Inter American Press Association (IAPA). Guatemala. March 27, 2017.

⁹⁹³ Notas Periodísticas. June 2, 2017. Alianza de Entidades de Prensa refuta fingido proyecto de Ley a favor del gremio; elPeriódico. June 2, 2017. Entidades de Prensa rechazan propuesta de diputada; Centro de Reportes Informativos sobre Guatemala (Cerigua). June 1, 2017. Entidades de Prensa se oponen a intención de diputados de crear espacios de protección a periodistas.

⁹⁹⁴ Centro de Reportes Informativos sobre Guatemala (Cerigua). May 2, 2017. Vicepresidente escucha propuesta de Programa de Protección a Periodistas.

675. During the *in loco* visit, the IACHR again heard complaints from various civil society organizations, including Cerigua and other member organizations of the Press Alliance,⁹⁹⁵ regarding the government's lack of political will to move forward with the creation, funding, and implementation of a protection mechanism, despite the long-standing assurances offered by the Executive Branch. The IACHR also received a letter signed by a number of active journalists demanding a public and participatory consultation in the process for the creation of the protection mechanism not limited to a few civil society organizations.⁹⁹⁶

676. The IACHR observes, according to information provided by the State, that the Ministry of the Interior, through the National Civil Police and its Personal Protection and Security Division [*División de Protección a Personas y Seguridad*], is responsible for providing security to human rights defenders, journalists, trade unionists, and others pursuant to Government Order 97-2009, which has been in force since April 3, 2009. According to the Guatemalan State, supplemental protection measures are provided through personal security, permanent security posts, and perimeter security. Additionally, the Presidential Commission coordinating the Executive's Policy on Human Rights (COPREDEH) published the "Protocol for the Protection of Journalists," detailing a number of situations and rules that provide individuals who practice journalism with an overview of situations of risk. It also published the "Protection Manual for Journalists and Media Workers," addressing national and international laws, permissible restrictions, and other material.⁹⁹⁷

677. More recently, the Guatemalan news agency *Centro de Reportes Informativos sobre Guatemala* [Center for News Reports on Guatemala] (Cerigua), launched a campaign in Geneva with members of the diplomatic missions of different States in order to express their concern over the lack of progress on the establishment of the Program for the Protection of Journalists. The organization underscored that advances were made in the protection of the press, such as the establishment of the Body for the Analysis of Attacks on Human Rights Defenders [*Instancia de Análisis de Ataques contra Defensores de Derechos Humanos*], an entity coordinated by the Ministry of the Interior whose participants include the Public Ministry (MP), the Presidential Commission coordinating the Executive's Policy on Human Rights (COPREDEH), and the Office of the High Commissioner for Human Rights (OHCHR), as well as a variety of social actors, including Cerigua. Nevertheless, Cerigua indicated that the Ministry of the Interior had refused to approve the order that would enable the entity to continue operating. It further alleged that the advisor in question needlessly blocked the approval of the government order to proceed with the creation of the Program for the Protection of Journalists, despite the existence of an order from the Office of the President.⁹⁹⁸ In its comments to the draft of this report, the State of Guatemala stated that in November 2016 the President pushed for the creation of a Governmental Agreement that would create the Program for the Protection of Journalists and Social Communicators. According to the State, this program:

⁹⁹⁵ **Asociación de Periodistas de Guatemala (APG), Cámara Guatemalteca de Periodismo (CGP), Centro de Reportes Informáticos de Guatemala (Cerigua), Cámara de Locutores Profesionales de Guatemala, Cronistas Deportivos Guatemaltecos, Asociación de Periodistas Marquenses, Asociación de Prensa de Huehuetenango, Asociación de Periodistas Comunitarios de Verapaz (APCV), Asociación de Periodistas y Comunicadores Sociales de Alta Verapaz (APC-AV), Asociación de Periodistas de Jutiapa (APJ), Red de Comunicadores Sociales de Chiquimula (RCS), Asociación de Comunicadores de Santa Rosa, Asociación de Prensa Jalapaneca (Aprej), Asociación de Comunicadores "Omar Aguirre" Huehuetenango, Asociación de Periodistas y Comunicadores Sociales de Sololá, Asociación de Prensa Quetzalteca (APQ).**

⁹⁹⁶ Communicatio submitted to the Special Rapporteur for Freedom of Expression, Edison Lanza, by a group of journalists during the *in loco* visit to Guatemala. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁹⁷ República de Guatemala. Brief from the State of Guatemala regarding the request for information prior to the on-site visit of the IACHR. Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos (COPREDEH). Ref. P-859-2017/VHGM/LWC/nj. June 16, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁹⁸ Centro de Reportes Informativos sobre Guatemala (Cerigua). September 22, 2017. [*Ileana Alamilla hace lobby en Ginebra por el Programa de Protección a Periodistas.*](#)

“[W]ill be implemented in the office of Human Rights of the Minister of the Interior, who will define the legal procedures of the program, will establish its process within its jurisdiction, and will encompass any harm to the physical or psychological integrity, threat, harassment or intimidation against journalists and social communicators due to their profession. The Ministry of the Interior will issue the regulations for the specific activities of the program and will provide the necessary resources for its functioning. Currently, the Governmental Agreement that creates the program for the protection of journalists has been submitted to the consideration of various unionized sectors and journalists’ organizations.”⁹⁹⁹

678. Based on the foregoing, the IACHR and its Office of the Special Rapporteur for Freedom of Expression remind the Guatemalan State some of the guidelines it has developed, and that should be taken into account in the design and operation of protection programs for journalists, among them: i) political commitment from the State, that must include an adequate legal framework, sufficient human resources, trained and prepared, capable of establishing trust with the persons who seek protection; with corresponding resources with a view to covering the costs of the personnel who work in the program and the specific expenses related to the protective measures provided; adopt rules clearly spelling out the authorities and responsibilities of the officials who will play a role in either implementing or monitoring the protection measures; ii) that it include the adequate identification of potential beneficiaries and an adequate recognition of the grounds on which a potential beneficiary can seek protection; iii) a proper risk assessment, considering the gender perspective, that enables the State to determine the best way to fulfill its obligation to protect, taking into account contextual and specific circumstances and providing for the active participation of the beneficiary; iv) the provision of suitable and effective protection measures that are tailored to both protect beneficiaries’ life and integrity corresponding to journalists’ needs and allow them to continue their professional activities; v) clear criteria and procedures for monitoring the effectiveness of the selected measures, and if the measures of protection are ineffective they will have to be adjusted to comport with the situation that the beneficiary is experiencing; vi) assess the risk in order to decide whether the measures of protection should be lifted with the beneficiaries’ participation in order to get their view on the question of whether the measures should be lifted; and vii) material protective measures shall be linked to exhaustive and independent investigations by the pertinent authorities to prevent and reduce the sources of the risk¹⁰⁰⁰.

F. Situation of broadcasting

679. Durante its *in loco* visit, the Inter-American Commission verified the lack of progress with regard to the obligation that the State assumed on multiple occasions to legally recognize the community broadcasting sector and effectively allocate permission for this sector to use frequencies. It additionally verified that, although Guatemala has no regulatory framework of policies for the incorporation of indigenous peoples into the broadcasting sector, it continued to persecute so-called “illegal” radio stations, which in some cases provide a service to the communities. While in some cases this persecution has been aimed at unauthorized commercial radio stations, in others it has also included the small radio stations of indigenous communities that broadcast in spite of the obstacles to accessing frequencies.

680. In February 2016, the IACHR and its Office of the Special Rapporteur learned that the Guatemalan Congress was in the third phase of studying draft law 4087, the “Community Media Act” [*Ley de Medios de Comunicación Comunitaria*]. The bill, backed by civil society and the country’s indigenous peoples, sought to guarantee “access to media for indigenous communities and socially excluded minority sectors,” promoting

⁹⁹⁹ Communication from the State of Guatemala, “Submission of the State of Guatemala to Include in the Draft Report on the Human Rights Situation in Guatemala,” December 22, 2017.

¹⁰⁰⁰ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). December 31, 2013. Para. 81-84; IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. December 31, 2011. Para. 487-531.

international standards. At the time, the Office of the Special Rapporteur stated that the legislative debate on the bill represented an extraordinary opportunity for the State to effectively comply with its international obligations in this area.¹⁰⁰¹ Nevertheless, the bill was defeated in an expedited procedure by the majority of a congressional Technical Committee, on the grounds that it lacked technical support and was an “untimely” and “unconstitutional” initiative.

681. More recently, during the *in loco* visit, the IACHR received with concern information about the application by analogy of the criminal offense of “frequency theft” [*hurto de fluidos*] and “theft” to community radio stations in order to bring criminal charges against them. The Guatemalan Association of Mayan Lawyers and Notaries reported that 46 community journalists have been convicted of this offense at this point.¹⁰⁰² In addition, César Gómez, a representative of the Community Radio Movement, reported that the State continues to harass these media outlets, and that at least 12 of them have been shut down in the past two years. He also reportedly stated that the Office of the Prosecutor for Crimes against Journalists and Trade Unionists stopped going after the community broadcasters once the situation was denounced before the IACHR; however, since then, the Office of the Prosecutor for Environmental Crimes [*Fiscalía de Delitos contra el Ambiente*] has reportedly been responsible for harassing them, despite the fact that the matter is not within its purview. Gómez further alleged that the Prosecutor’s Office violated the right to due process because criminal proceedings were brought against community broadcasters without the administrative proceedings before the Superintendency of Telecommunications (SIT) first being exhausted, as required under the General Telecommunications Act [*Ley General de Telecomunicaciones*].¹⁰⁰³

682. According to the information available, various operations were carried out in the first half of the year to dismantle alleged “pirate radio stations”—the term used to refer to broadcasters that are not authorized to operate by the Superintendency of Telecommunications (SIT). According to information provided by the State, “Requests have been filed with the competent courts of Guatemala to conduct 165 evidentiary searches and inspections of premises where investigations have yielded evidence of the unlawful use of radio frequencies. [...] The seizure of the broadcasting equipment used as an instrument of the crime being prosecuted has also been requested.” The State additionally indicated that, “Sixty-five convictions have been handed down to date, ordering the seizure of the broadcasting devices used in those unlawful activities.”¹⁰⁰⁴ Some of the most notable cases from 2017 are detailed below.

683. According to the information available, on February 15, authorities raided the radio station *La Jocosca* 104.7 FM,¹⁰⁰⁵ and on February 22, in the municipality of Palencia, Guatemala, raids were carried out against 87.9 FM, *Promesa Stereo, Señal de Salvación*¹⁰⁰⁶ and radio 104.7 MHz, resulting in the arrest of Eduardo Ortega Santos, who was subsequently charged with the offense of “theft.”¹⁰⁰⁷ Similarly, on March 8, in the municipality of Táctic, Department of Alta Verapaz, raids were conducted against stations using the

¹⁰⁰¹ IACHR. Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017. Para. 673.

¹⁰⁰² Communication from Asociación de Abogados y Notarios Mayas de Guatemala. 4 de agosto de 2016 [sic]. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁰⁰³ Centro de Reportes Informativos sobre Guatemala (Cerigua). July 5, 2017. Las radios comunitarias en Guatemala, además de no ser reconocidas sufren persecución y criminalización; Federación Guatemalteca de Escuelas Radiofónicas. July 11, 2017. Sigue criminalización de la radio comunitaria.

¹⁰⁰⁴ República de Guatemala. Communication from the State of Guatemala regarding the request for information from the Office of the Special Rapporteur for Freedom of Expression of the IACHR. Ref. P-1021-2017/VHG/LWC/nj. July 24, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁰⁰⁵ Ministerio de Gobernación de Guatemala. February 15, 2017. Localizan radio pirata en allanamiento.

¹⁰⁰⁶ Ministerio de Gobernación de Guatemala. February 22, 2017. Otra radio pirata desarticulada.

¹⁰⁰⁷ Ministerio Público (MP). March 9, 2017. Agencia que investiga delitos relacionados a frecuencias ilegales coordinó diligencia en Escuintla.

frequencies 104.7 and 92.7, respectively.¹⁰⁰⁸ The following day, a search was conducted at a property located in the municipality of Santa Lucía Cotzumalguapa associated with the frequency 95.9 FM.¹⁰⁰⁹ Subsequently, on March 15, the Public Ministry (MP) announced the seizure of equipment used on three “illegal frequencies”: radio station *Adoración Estéreo* in the municipality of Táctic, which operated on frequency 95.5 FM; radio station *Éxitos* in the municipality of Chamelco, which operated on frequency 104.3 FM, where Franklin Caz Caal was reportedly arrested and charged with “theft”; and finally, radio station *La Voz de Pocola* 105.5 FM, in the municipality of Pocola de Carchá.¹⁰¹⁰ On June 15, two raids were reportedly carried out in the municipalities of Patzicia and Patzún, Department of Chimaltenango, in connection with frequencies 91.9 and 107.9. José Lorenzo Choc Pérez was reportedly arrested and charged with theft in one of those raids.¹⁰¹¹

684. On July 25, in the municipality of San Miguel Chicaj, Department of Baja Verapaz, staff from the Metropolitan District Prosecutor’s Office and National Civil Police (PNC) officers carried out a raid on a radio station that was using frequency 107.5, which is reportedly assigned to *Radio TGW*, owned by the Guatemalan State. The operation reportedly resulted in the seizure of the equipment used to conduct the radio activity.¹⁰¹² Additionally, on August 31, in the municipality of Fray Bartolomé de las Casas, Department of Alta Verapaz, the Agency for Crimes Committed through the Unlawful Use of Radio Frequencies [*Agencia de Delitos Cometidos por el Uso Ilegal de Frecuencia Radioeléctricas*] reportedly seized the equipment used by frequency 92.5, including an amplifier, a CPU, an exciter, and various consoles. In the same incident, National Civil Police (PNC) officers reportedly arrested Santos Yaxcat Yat on suspicion of theft.¹⁰¹³

685. In spite of the situation described above, the IACHR took note of the fact that the community radio station *Snuq’ Jolom Konob’* in Santa Eulalia—which it visited—reopened on December 2, 2016.¹⁰¹⁴ Previously, the Office of the Special Rapporteur had noted the harassment of the station, which was shut down by local authorities on January 20, 2015. There was an attempt to reopen it on March 19, 2016, but the attempt was blocked by the mayor and marred by violent incidents.¹⁰¹⁵ The IACHR takes particular note of the decision of the local authorities of Santa Eulalia in favor of the resumption of activities by *Snuq’ Jolom Konob’*, and of its journalists and media workers for their efforts to ensure that the population of Santa Eulalia has the means to access the right to freely seek, receive, and disseminate information and opinions.

686. According to information of public knowledge, on 17 October, community journalist Williams Mazariegos, of the community radio station *Radio Cima* in El Tumbador, department of San Marcos, received death threats, through an anonymous note left in his home, that would indicate “you are going to die for

¹⁰⁰⁸ Ministerio Público (MP). March 8, 2017. *MP coordina allanamientos por utilización de frecuencias ilegales en Alta Verapaz*.

¹⁰⁰⁹ Ministerio Público (MP). March 9, 2017. *Agencia que investiga delitos relacionados a frecuencias ilegales coordinó diligencia en Escuintla*.

¹⁰¹⁰ CRN Noticias. March 15, 2017. *MP logra el cierre de tres radios que operaban de manera ilegal en Alta Verapaz*; Ministerio Público (MP). March 16, 2017. *Agencia de Delitos Cometidos por el Uso Ilegal de Frecuencia Radioeléctricas coordina allanamientos en Alta Verapaz*.

¹⁰¹¹ Ministerio Público (MP). June 15, 2017. *Agencia que investiga delitos relacionados a frecuencias ilegales coordina diligencia en Chimaltenango*.

¹⁰¹² ChapinTV.com. July 25, 2017. *Realizan allanamiento en Baja Verapaz por radio pirata*; Ministerio Público (MP). July 26, 2017. *Baja Verapaz: Ministerio Público coordina allanamiento y secuestro de equipo en radio ilegal*.

¹⁰¹³ Ministerio Público (MP). September 1, 2017. *MP incauta equipo utilizado en frecuencia ilegal en Alta Verapaz*.

¹⁰¹⁴ Km 169 Prensa Comunitaria. November 30, 2016. *Después De Más De Un Año Censurada Por Fin La Radio Comunitaria Snuq’ Jolom Konob’ Logra Reabrirse*; Radio Comunitaria Snuq’ Jolom Konob’/Facebook. December 2, 2016. *Celebración Reapertura de la comunitaria de Santa Eulalia*.

¹⁰¹⁵ IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 716

speaking." The journalist would believe that said threat could be related to news about scams and public resources that the radio has disclosed¹⁰¹⁶.

687. Since 2000, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have issued recommendations to the State of Guatemala in two aspects, namely: the need for a fairer and more inclusive legal framework for broadcasting and the decriminalization of broadcasting without a license¹⁰¹⁷. The use of criminal law to punish violations to the broadcasting regime can be problematic in the light of the American Convention on Human Rights, and the establishment of criminal penalties for commercial or community broadcasting, which they may face due to the absence or misuse of the license, could constitute a disproportionate reaction¹⁰¹⁸.

G. Improper concentration of media ownership

688. During its *in loco* visit to Guatemala, the IACHR confirmed that the State has made no progress with respect to the excessive degree of concentration in the ownership and control of audiovisual media, especially free-to-air television. In December 2012, Decree 34-2012 entered into force, amending the General Telecommunications Act to extend by 20 years the titles to the usufructuary rights to the radio spectrum.¹⁰¹⁹ One of the main beneficiaries of the reform was Mexican businessman Ángel González, who holds rights to the frequencies and is the owner of four private VHF channels that broadcast in Guatemala. In addition, according to the report on Campaign Finance in Guatemala published by the International Commission against Impunity in Guatemala (CICIG) in July 2015, "There is probably no other case in the world where a single individual owns the four existing private VHF channels. But this has been possible in Guatemala, and Mr. Ángel González has no VH[F] competition."¹⁰²⁰ According to various actors from both civil society and the State, the businessman is responsible for promoting an agenda tied to sectors that oppose institutional anti-corruption reforms and the investigation and punishment of serious human rights violations.

689. According to the State, as far as the market and ownership in the country's communications sector are concerned, the Superintendency of Telecommunications (SIT) does not apply a specific allocation process to audiovisual media outlets, "the most usual process being the one established in Article 61 of the General Telecommunications Act, which provides for a public competition, under equal conditions, for all who wish to acquire [frequencies] in accordance with the law." It stated with respect to the announcement of public competitions and/or processes for the allocation of frequencies to the community sector, "We must clarify that there are no community radio stations, and thus prevent any discretionary power with respect to the matter; all that exists is what is established in Article 61 of the General Telecommunications Act, which provides for a public competition, without limitation on the participation of any person or entity."¹⁰²¹ Even though the law prescribes public competitions for the adjudication of titles to the usufructuary rights to frequencies, competition by auction would do little to encourage the plurality and diversity of voices in Guatemala. That method is provided in Article 62 of the General Telecommunications Act, which establishes

¹⁰¹⁶ Centro de Reportes Informativos sobre Guatemala (Cerigua). October 28, 2017. [Director de radio comunitaria fue amenazado de muerte](#)

¹⁰¹⁷ IACHR. [Annual Report 2014](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 577.

¹⁰¹⁸ IACHR. [Annual Report 2013](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation on the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 129; IACHR. [Annual Report 2011](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 467.

¹⁰¹⁹ Congreso de la República de Guatemala. [Decreto 34-2012](#). November 20, 2012.

¹⁰²⁰ Comisión Internacional contra la Impunidad en Guatemala (CICIG). [Financiamiento de la política en Guatemala](#). July 16, 2015.

¹⁰²¹ República de Guatemala. Superintendencia de Telecomunicaciones de Guatemala (SIT). OFI-SIT-DSI-1010-2017. August 17, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

that “the Superintendency will determine the manner in which the public auction will be conducted. All offers must be submitted as a sealed bid, including a performance bond equivalent to the sum offered or any other form of guarantee that the Superintendency determines.”¹⁰²² As the IACHR has stated, “auctions based solely on economic criteria or that grant concessions without equal opportunity to all sectors are not compatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights and the Declaration of Principles on Freedom of Expression.”¹⁰²³

690. Additionally, during the *in loco* visit, the IACHR was informed that the government had begun a process for the implementation of free-to-air digital terrestrial television, reportedly involving important regulatory decisions. The State reported that the discussion of a Draft Government Order on the Implementation of Digital Television was currently underway, and was under analysis at the Ministry of Communications, Infrastructure, and Housing [*Ministerio de Comunicaciones, Infraestructura y Vivienda*]. It emphasized that the Superintendency of Telecommunications [*Superintendencia de Telecomunicaciones*] of Guatemala (SIT) was attempting to “create major opportunities for the application of Information and Communications Technology (ICT) and multimedia services, with the transition from analog to digital television broadcasting. It is also working to ensure that the digital dividend (freed-up spectrum) will allow for the introduction of mobile wireless broadband communications.”¹⁰²⁴

691. In view of the above, the IACHR expresses its concern over the absence of a plan for organizing the spectrum and the allocation of frequencies to allow for the entrance of new operators. Guatemala should not pass up this historic opportunity to democratize its media system and promote greater media pluralism and diversity, bearing in mind the existence of a group that dominates television in Guatemala—a group that, according to the recent criminal investigation conducted by CICIG and the MP, allegedly used its dominant position to illegally finance the campaign of former President Pérez Molina, having privileged access to funds earmarked for government advertising and influencing the State’s decisions on broadcasting.

692. As indicated on previous occasions, the IACHR recalls that the concentration of media in a few hands has a negative impact on democracy and freedom of expression, as expressly stated in principle 12 of the Declaration of Principles on Freedom of Expression. of the IACHR: “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information”. Since its first statement on the issue, the Inter-American Court has ruled that the existence of any monopoly on the ownership or administration of the media, whatever the form it intends to adopt, is prohibited, and acknowledged that States must actively intervene to avoid concentration of ownership in the media sector¹⁰²⁵.

693. In this regard, the IACHR has indicated that, “If the media is controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy. Democracy requires the confrontation of ideas, debate and discussion. When this

¹⁰²² Congreso de la República de Guatemala. Ley General de Telecomunicaciones. Decree No. 94-96 reformed according to decree number 115-97 of Congreso de la República. Article 62. November 14, 1996.

¹⁰²³ IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 65.

¹⁰²⁴ República de Guatemala. Superintendencia de Telecomunicaciones de Guatemala (SIT). OFI-SIT-DSI-1010-2017. August 17, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁰²⁵ I/A Court H. R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29, American Convention On Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Serie A No. 5. Para. 33-34; IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 117.

debate does not exist, or is weakened by the lack of sources of information, the main pillar for the functioning of democracy is harmed”¹⁰²⁶.

694. The Office of the Special Rapporteur has also said that the States should take measures to ensure that all groups in society have access to opportunities to make their voices heard, both within their communities and in wider social debates, including through measures to promote media diversity, public service broadcasting and community media. The promotion of media and digital literacy and citizen journalism, including the capacity to make effective use of online communication tools, are also important¹⁰²⁷.

695. The future regulation on digital television "should aim to ensure that the new digital dividend makes optimal use of the spectrum to ensure the greatest plurality and diversity possible"¹⁰²⁸ and become an opportunity to limit and reduce, or at least not increase, the undue concentration of existing media in the analogue environment by people, companies, or linked economic groups, either through ownership or control of the operation and programming of new television services.

H. Government Advertising

696. The investigation conducted by Guatemala’s Public Ministry and the International Commission against Impunity in Guatemala (CICIG), called “Co-optation of the State,” revealed a corruption scheme set up to finance the election campaign of *Partido Patriota* that carried its leader Otto Pérez Molina to the Presidency and Roxana Baldetti to the Vice Presidency. The unlawful activities to obtain funds for *Partido Patriota* were reportedly conducted between 2008 and 2011, and remained in place during the party’s administration (2012-2015). In a press release, the CICIG detailed that the “unlawful election campaign financing” was obtained through a network of corporations controlled by Baldetti that had no real business activity, since they were “instruments to channel the money secretly handed over by the representatives” of Radiotelevisión Guatemala S.A. (*Canal 3*) and Televisiete S.A. (*Canal 7*), owned by Mexican businessman Ángel González.¹⁰²⁹

697. González’s two companies, according to the documents seized during the investigation, contributed a total of 17,679,200 *quetzales* (approximately US\$ 2,300,000 million) to *Partido Patriota* between 2008 and 2011. The CICIG concluded that, “this money was not reported to the Supreme Electoral Tribunal” as campaign contributions, and “was used to purchase the latest-model vehicles.” The aforementioned television companies reportedly benefitted from million-dollar contracts for government advertising, beginning when Pérez Molina and Baldetti came to power. The investigation revealed that the value of the contracts entered into between 2012 and 2015 was in excess of 200,000,000 *quetzales* (approximately US\$ 26,000,000 million), which means that the two companies received 69% of all government television advertising purchased

¹⁰²⁶ IACHR. 29 December, 2003. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. Chapter VII (The Situation of Freedom of Expression). Para. 419.

¹⁰²⁷ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. May 4, 2015. Joint declaration on freedom of expression and responses to conflict situations.

¹⁰²⁸ [1] IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 80.

¹⁰²⁹ Comisión Internacional contra la Impunidad en Guatemala (CICIG). June 2, 2016. Comunicado de prensa 047. Caso Cooptación del Estado de Guatemala; elPeriódico. July 25, 2016. Ángel González: el encantador de presidente está molesto; Observacom. July 28, 2016. “El Fantasma” González rodeado por la Justicia: pedido de captura internacional para su esposa por caso “Cooptación del Estado” en Guatemala; Proceso. June 6, 2016. Maqate mexicano de medios es vinculado con red de corrupción en Guatemala; Observacom. June 14, 2016. Ángel González recibió US\$ 27 millones de publicidad oficial tras financiar ilícitamente campaña presidencial de Otto Pérez Molina en Guatemala.

during that period.¹⁰³⁰ González's wife, Alba Elvira Lorenzana, is the subject of an international arrest warrant for her alleged involvement in the unlawful financing of *Partido Patriota* in exchange for the million-dollar contracts for state advertising.¹⁰³¹ Former President Pérez Molina and former Vice President Baldetti resigned in 2015 amid various accusations of corruption, and both are being held in pretrial detention awaiting trial.

698. In connection with this group, in March 2017, the head of the Office of the Solicitor General [*Procuraduría General de la Nación*] (PGN), Anabella Morfín, filed a criminal complaint with the Public Ministry (MP) against the Superintendency of Telecommunications of Guatemala (SIT) for its alleged failure to turn over documents concerning the titles to the usufructuary rights to television frequencies granted to the company Albavisión, owned by Mexican businessman Ángel González, requested of the SIT in 2016. The complaint was reportedly filed together with a report on the 85 frequencies said to be held by Ángel González's channels. According to the information available, the Solicitor General has indicated on a number of occasions that she was not given the complete documentation on those titles to usufructuary rights for purposes of verifying whether they were granted lawfully or unlawfully. For its part, the SIT reportedly replied that it had turned over all of the documents on record in the Telecommunications archives.¹⁰³²

699. In May, the Guatemalan Prosecutor's Office filed an indictment in the "Co-optation of the State" case, naming 46 individual defendants, including former President Pérez Molina.¹⁰³³ The same month, based on testimony offered by Salvador González Álvarez, it was learned that, during the period she served as Vice President (2012-2015), Roxana Baldetti allegedly controlled 70 per cent of the *Corporación de Noticias* media group, which owned the newspapers *Siglo21* and *Al Día*, and used it to present information favorable to her and to the administration.¹⁰³⁴

700. During the visit, the Communications Secretariat of the Presidency [*Secretaría de Comunicación de la Presidencia*] reported that it had ended the practice of using government advertising to reward media outlets for favorable coverage and punish critical media.

¹⁰³⁰ Comisión Internacional contra la Impunidad en Guatemala (CICIG). June 2, 2016. *Comunicado de prensa 047. Caso Cooptación del Estado de Guatemala*; elPeriódico. July 25, 2016. *Ángel González: el encantador de presidente está molesto*; Observacom. July 28, 2016. *"El Fantasma" González rodeado por la Justicia: pedido de captura internacional para su esposa por caso "Cooptación del Estado" en Guatemala*; Proceso. June 6, 2016. *Magnate mexicano de medios es vinculado con red de corrupción en Guatemala*; Observacom. June 14, 2016. *Ángel González recibió US\$ 27 millones de publicidad oficial tras financiar ilícitamente campaña presidencial de Otto Pérez Molina en Guatemala*.

¹⁰³¹ Comisión Internacional contra la Impunidad en Guatemala (CICIG). June 2, 2016. *Comunicado de prensa 047. Caso Cooptación del Estado de Guatemala*; Prensa Libre. June 2, 2016. *Esposa de magnate de la TV y banqueros, con orden de captura*; Observacom. July 28, 2016. *"El Fantasma" González rodeado por la Justicia: pedido de captura internacional para su esposa por caso "Cooptación del Estado" en Guatemala*; Diario Extra. June 4, 2016. *Orden de captura por Interpol a esposa de dueño de Repretel*; Estrategia y Negocios. September 8, 2016. *Guatemala: Interpol emite alerta roja contra la esposa del magnate televisivo Ángel González*; Prensa Libre. September 9, 2016. *Interpol publica orden de captura de Alba Lorenzana*.

¹⁰³² elPeriódico. February 8, 2017. *Denunciarán a la SIT por falta de información sobre usufructos*; La Hora. March 30, 2017. *PGN denunció a la SIT por contratos de la TV abierta*; elPeriódico. March 30, 2017. *PGN denuncia en MP a Superintendencia de Telecomunicaciones por negarle información de usufructos para TV abierta*; Guatevisión. March 30, 2017. *PGN denuncia a la SIT por proteger a monopolio de la TV*.

¹⁰³³ Agencia EFE. March 7, 2017. *La Fiscalía de Guatemala presenta una acusación por el caso "Cooptación del Estado"*; Prensa Libre. March 7, 2017. *Tres acusados en caso Cooptación piden juicio abreviado*; Fundamedios. March 6, 2017. *Así consiguió el Fantasma González contratos con el Estado en Guatemala*.

¹⁰³⁴ Centro de Investigación de Crimen Organizado. June 5, 2017. *Exvicepresidenta de Guatemala controlaba e influenciaba los medios de comunicación: Testigo*; Prensa Libre. June 1, 2017. *Fortuna de Roxana Baldetti surge de ocho empresas*.

701. The Office of the Special Rapporteur recalls that Article 13.3 of the American Convention establishes that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions." In this sense, also the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights, in principle 13 indicates that "the exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law".

I. Excessive use of force at social protests

702. According to the information gathered by the Office of the Special Rapporteur and received during the *in loco* visit, the interests and presence of corporations on traditional indigenous lands and territories has led to serious tensions and disputes in different regions of Guatemala, giving rise to social protest and—on occasion—triggering episodes of violence. There have been protests in some communities in view of the implementation of extractive projects, which have reportedly been repressed by the National Civil Police (PCN) and the army, as well as by private security personnel.

703. In its visits to the cities of Ixquisis and Santa Eulalia, the IACHR received with concern information about the situation of violence and criminalization to which human rights defenders are reportedly exposed. Reports included allegations of the excessive use of force during social protests against hydroelectric projects in the region. In Ixquisis, in particular, the IACHR heard the testimony of relatives of Sebastián Alonso Juan, who was shot to death on January 17 during a peaceful protest outside the company *Proyectos de Desarrollo Hídrico S.A.*, in San Mateo Ixtatán. According to the information available, citizens from different communities of the Chuj and Q'anjob'al peoples were protesting against a hydroelectric project in Ixquisis, when armed individuals reportedly fired shots at them.¹⁰³⁵

704. At the March 20 hearing it held on the criminalization of rights defenders who are opposed to hydroelectric projects in Guatemala, the Commission received information about violent evictions of the communities that opposed the operation of corporations in their territories, as well as attacks, threats, and constant harassment, particularly against female rights defenders. They alleged patterns of criminalization in the Guatemalan system through the statutory creation of criminal offenses to be used against them, as well as through malicious prosecution by prosecutors from the Public Ministry and lawyers from the transnational corporations. They condemned, among other things, the murder of rights defender Sebastián Alonso Juan. At that same hearing, the Guatemalan State explained that it was seeking to gradually replace its current energy sources with renewable energy like hydroelectric power. It also stated that it was developing a National Plan

¹⁰³⁵ Resumen Latino Americano. No date. *Guatemala: Un campesino asesinado por policías y paramilitares en una manifestación contra Hidroeléctrica*; Consejo de Pueblos Wuxhtaj. January 18, 2017. *Asesinan a Sebastien Alonso, líder opositor al proyecto hidroeléctrico Pojom 1*; Prensa Comunitaria. January 17, 2017. *Disparos Contra Manifestantes En Yichkisis En San Mateo Ixtatán*; European Parliament. February 16, 2017. *Human rights: Nicaragua, executions in Kuwait and Bahrain, and Guatemala*; Federación Internacional de Derechos Humanos (FIDH). February 7, 2017. *Guatemala: Asesinato de Sebastián Alonzo Juan y actos de intimidación y amenazas de muerte contra una caravana que buscaba verificar los hechos*; IACHR. February 7, 2017. *Press Release 011/17 IACHR Condemns Murders of Human Rights Defenders in the Region*; IACHR. June 5, 2017. *Press Release 072/17. IACHR issues call for OAS States to Protect Defenders of the Land and Environment*.

on Business and Human Rights, which will include the monitoring and oversight of business activities, the protection of human rights, and measures of reparation.¹⁰³⁶

705. More recently, at the September 7 hearing about reports of attacks on human rights defenders by extractive corporations in Guatemala, the Commission received information about an alleged State policy of persecuting individuals who defend the environment, resources, water, and land and territory in general. The requesting organizations stated, among other things, that this was an “unwritten” policy, implemented through defamation cases, stigmatization, and criminalization, carried out principally by the National Civil Police (PCN), and by the Public Ministry in some cases. They also reported attacks by extractive industries against them and against communities. For its part, the State indicated, among other things, that the *in loco* visit was the starting point for reaching consensus, dialogues, negotiations, and taking account of the communities. It indicated that the recommendations made by the IACHR after the *in loco* visit had been received by COPREDEH and the Guatemalan Foreign Ministry, and that they are being considered for this sustainable dialogue with the communities and the corporations. The Guatemalan State expressed its willingness to engage in ongoing, sustainable dialogue, and to conduct these types of negotiations. Finally, it stated that it strives to ensure strict compliance with the law, and the application of “conventionality control” with respect to the investigation that is incumbent upon the Public Ministry. It asserted that a very low percentage of the complaints lodged with the Human Rights Prosecutor’s Unit for Crimes against Activists [*Unidad de delitos contra activistas de la Fiscalía de Derechos Humanos*] by human rights defenders stem from attacks by the extractive corporations.¹⁰³⁷

706. According to publicly available information, on May 27, members of the Artisanal Fishermen's Guild [*Gremial de Pescadores Artesanales*] (GPA) of El Estor, Department of Izabal, reportedly blocked the route to Panzós, Alta Verapaz, in response to the authorities’ refusal to establish a dialogue roundtable to address the alleged pollution of the El Estor Lake by the *Compañía Guatemalteca de Niquel* [Guatemalan Nickel Company] (GNC). In order to clear the way, National Civil Police (PNC) anti-riot forces reportedly fired ammunition, rubber bullets, and tear gas canisters at the demonstrators. Carlos Maaz Coc, a member of the Maya-Q’eqchi indigenous community, reportedly died in the incident after being shot, and at least four police officers were wounded.¹⁰³⁸ The same day, the Ministry of the Interior reported the death of one individual, although that statement was subsequently denied.¹⁰³⁹

707. On June 22, a group of residents of the municipality of Casillas, Department of Santa Rosa, reportedly blocked traffic heading toward the San Rafael Las Flores Mine. This was done to protest the mining company, which they held responsible for a number of tremors in the area that had caused cracks to form in residents’ houses. According to the information available, riot control officers from the National Civil Police (PNC) arrived on the scene and launched tear gas to break up the protest. Eleven people were reportedly injured, including a four-month-old baby and a two-year-old who were sickened by a tear gas canister that was thrown at their house. Four individuals who allegedly used rocks to assault members of the PNC were also arrested.¹⁰⁴⁰

¹⁰³⁶ IACHR. March 22, 2017. [Press Release 035A/17 Report on the 161st Session of the IACHR](#); IACHR. 161st Period of Sessions, Public Hearing - Criminalization of human rights defenders who oppose hydroelectric projects in Guatemala. March 20, 2017. Available at: <https://www.youtube.com/watch?v=3TW9U6qI-fA>

¹⁰³⁷ IACHR. 164 Period of Sessions. Public Hearing - Reports of attacks on human rights defenders by extractive companies in Guatemala. September 7, 2017. Available at: <https://www.youtube.com/watch?v=yuVmLG9gkME&t=5s>

¹⁰³⁸ Km 169 Prensa comunitaria. May 30, 2017. [El Estor: Pueblo Q’eqchi Enterró A Pescador Carlos Maaz, Asesinato Negado Por El Gobierno](#); Front Line Defenders. May 31, 2017. [Carlos Maaz Coc asesinado mientras participaba en manifestación pacífica](#).

¹⁰³⁹ Ministerio de la Gobernación. May 27, 2017. [Urgente: Cuatro PNC heridos en bloqueo en El Estor Izabal](#); Ministerio de la Gobernación. May 28, 2017. [PNC y autoridades se reúnen en Izabal](#).

¹⁰⁴⁰ Prensa Libre. June 22, 2017. [Disturbios en Casillas dejan 11 intoxicados y cuatro capturados](#); Info impacto/You tube. June 22, 2017. [Manifestantes agreden a la policía en Casillas](#).

708. On July 21, a group of residents protested by obstructing the highway leading to the municipality of Casillas, Department of Santa Rosa, reportedly blocking the passage of vehicles headed toward the El Escobal Mine in San Rafael Las Flores, which was guarded by the National Civil Police (PNC). According to the information available, the mine was not authorized to operate in light of a judgment by the Guatemalan Supreme Court (CSJ) admitting a petition for a constitutional remedy [*amparo*] filed by the Center for Environmental, Social and Legal Action [*Centro de Acción Legal Ambiental y Social*] (Calas) and suspending the mine's license for extraction.¹⁰⁴¹ PNC Officers reportedly fired tear gas canisters to break up the protest, and at least four people were sickened as a result.¹⁰⁴²

709. On August 24, the Guatemalan Education Workers Union [*Sindicato de Trabajadores y Trabajadoras por la Educación*] (STEG) held a number of protests around the country to demand better working conditions and salary increases. In the town of Atescatempa, Department of Jutiapa, at least two teachers were reportedly arrested.¹⁰⁴³ The same day, in Ciudad Pedro de Alvarado, Department of Jutiapa, four other teachers were reportedly arrested for blocking the highway. Likewise, in Puerto Quetzal, Department of Escuintla, seven teachers were said to have been apprehended by the PNC while taking part in the demonstrations, although they were released after speaking with the authorities. According to the information available, the PNC used tear gas to disperse the crowd and no injuries were reported.¹⁰⁴⁴

710. Guatemala also saw numerous social protests and demonstrations this year stemming from the country's political turmoil. This resulted, among other things, in President Jimmy Morales decision to declare Iván Velásquez, head of the International Commission against Impunity in Guatemala (CICIG) *persona non grata*, after he and the Office of the Attorney General accused President Morales of irregularities during the campaign that carried him to power in 2016. In view of this situation, on September 12 the IACHR issued a resolution on human rights, impunity, and corruption in Guatemala, urging the State to "fulfill [its] obligation to protect human rights defenders, whistleblowers, journalists, and media outlets, which face particular risk when they investigate and disseminate information on corruption," among other things.¹⁰⁴⁵

711. On September 14, a group of individuals demonstrated in the *Plaza de la Constitución* in Guatemala City, across from the Congress of the Republic, to reject the amendments made to the Criminal Code by decrees 14-2017 and 15-2017 which, upon entering into force, would benefit politicians investigated for electoral crimes. They also demanded the resignation of the 107 members of congress who had voted for the amendments. There was a certain degree of tension between the demonstrators and the Military Police (PM) and officers from the Secretariat of Administrative and Security Affairs of the Presidency (SAAS) guarding the *Plaza de la Constitución*.¹⁰⁴⁶ Consequently, President Jimmy Morales issued a statement rejecting "all acts and displays of violence," and indicated that he had instructed the country's security authorities to investigate who had been responsible for those acts.¹⁰⁴⁷

¹⁰⁴¹ Prensa Libre. July 5, 2017. [*CSJ suspende licencias de operación de minera San Rafael*](#); elPeriódico. July 6, 2017. [*CSJ suspende licencias de explotación minera a empresa Minera San Rafael S.A.*](#)

¹⁰⁴² Prensa Libre. July 21, 2017. [*Enfrentamiento entre pobladores y PNC deja varios intoxicados*](#); Publinews. July 21, 2017. [*Varias personas intoxicadas por gas lacrimógeno durante disturbios en Santa Rosa*](#).

¹⁰⁴³ Prensa Libre. August 24, 2017. [*Disturbios, maestros detenidos y policías heridos en jornada de protestas*](#); El Orbe. August 27, 2017. [*Caos en la Frontera Por Bloqueos y Protestas de Maestros en Guatemala*](#).

¹⁰⁴⁴ Prensa Libre. August 24, 2017. [*Disturbios, maestros detenidos y policías heridos en jornada de protestas*](#); Guatevisión. August 24, 2017. [*Capturan a maestros por bloquear carreteras*](#).

¹⁰⁴⁵ IACHR. September 12, 2017. [*Press Release 140/17. IACHR Publishes Resolution on Human Rights and the Fight Against Impunity and Corruption*](#); IACHR. [*Resolution 1/17 Human Rights and the Fight against Impunity and Corruption*](#). September 12, 2017.

¹⁰⁴⁶ Prensa Libre. September 14, 2017. [*Ciudadanos protestan en la Plaza de la Constitución contra Morales y diputados*](#); 20 minutos. September 14, 2017. [*Por protestas contra presidente, Guatemala suspende desfile patrio*](#).

¹⁰⁴⁷ AGN. September 14, 2017. [*Presidente Morales condena actos de violencia y atropello a celebración a la patria*](#); Guatevisión. September 14, 2017. [*#URGENTE Jimmy Morales arremete contra manifestantes*](#).

712. The following day, the protests outside the Legislative Palace continued, while members of the House of Representatives held an extraordinary session to review the amendments to the Criminal Code. The session resulted in the shelving of both decrees. The Military Police (PM) reportedly dispersed the protest with pepper spray.¹⁰⁴⁸ One representative from the *FCN-Nación* party reportedly called the demonstrators “terrorists.”¹⁰⁴⁹ A video also shows that when the representatives exited a bus at the Legislative Palace, some of them hurled insults and made vulgar gestures at the demonstrators.¹⁰⁵⁰

713. On September 16, referring to the previous day’s events, Human Rights Ombudsman Jordán Rodas stated that among the demonstrators “it was known that there were infiltrators, not part of the social movement, who intended to leave a negative impression of the civic action that took place yesterday.” He added that “These individuals [congress members’ security details] were inciting violence, and we believe it was because some representatives feared for their physical safety. They were afraid that people were carrying fuel.”¹⁰⁵¹

714. The same day, the Constitutional Court (CC) admitted two petitions for constitutional remedies [*amparos*] filed by the Office of the Human Rights Ombudsman [*Procuraduría de los Derechos Humanos*] (PDH). In its decision, the CC held that the authorities “must allow the exercise of the rights to free movement, free expression of thought, assembly, and protest,” and that the President must adhere to the decision, instructing the Ministry of the Interior and the National Civil Police (PNC) to comply with the decision and allow demonstrators to exercise their rights peacefully.¹⁰⁵² The same day, the Guatemalan government released a statement on Twitter indicating that it would comply with the decision.¹⁰⁵³

715. On September 24, at a public meeting attended by ranchers and agribusiness leaders, as well as President Jimmy Morales, the governor of the Department of Izabal reportedly stated in reference to the social protests that had taken place in the past month, that “We are not going to allow small minority groups that have no representation to demand [the President’s] resignation,” later adding that, “out of respect and loyalty to the Guatemalan people, we have to say no to those people that were demonstrating—they are not a big deal.” Finally, he stated that “For five or ten thousand people to gather in the square, those people have [been paid], and that is why they can’t claim to be speaking on behalf of honest and hardworking Guatemalans.”¹⁰⁵⁴

716. The IACHR indicated that “the imperative social interest of the right to participate in public demonstrations means that there is a general presumption in favor of its exercise.” The IACHR affirmed that “the presumption in favor of the exercise of social protest implies that the States must act on the basis of the legality of the protests or public demonstrations and on the assumption that they do not constitute a threat to public order, even in the cases that are made without prior notice.” Police action should have as its main objective the facilitation and not containment or confrontation with the demonstrators. Hence, police

¹⁰⁴⁸ Guatevisión. September 16, 2017. [*Festejos de independencia fueron marcados por manifestaciones anticorrupción*](#); Prensa Libre. September 16, 2017. [*CC ordena garantizar los derechos de los manifestantes*](#).

¹⁰⁴⁹ Prensa Libre. September 16, 2017. [*El diputado Estuardo Galdámez calificó de terroristas a manifestantes*](#); Elsalvador.com. September 16, 2017. [*Diputados guatemaltecos quedan encerrados siete horas en el Congreso*](#).

¹⁰⁵⁰ Noticiero Guatevisión/You tube. September 16, 2017. [*“Diputados dentro de buses insultan a los guatemaltecos con señas soeces”*](#); Guatevisión. September 16, 2017. [*VIDEO: Diputados dentro de buses insultan a los guatemaltecos con señas soeces*](#).

¹⁰⁵¹ Prensa Libre. September 16, 2017. [*Jordán Rodas dice que la PNC hizo uso excesivo de la fuerza contra manifestantes*](#); Soy 502. September 16, 2017. [*Guardias armados de algunos diputados estaban infiltrados en protestas*](#).

¹⁰⁵² Agencia EFE. September 16, 2017. [*Constitucional ordena respetar los derechos de los manifestantes en Guatemala*](#). Prensa Libre. September 16, 2017. [*CC ordena garantizar los derechos de los manifestantes*](#).

¹⁰⁵³ “The president @jimmymoralesgt in response to the resolution issued today by the honorable Constitutional Court (CC)”. Twitter account of Gobierno de Guatemala @GuatemalaGov. [*September 16, 2017*](#).

¹⁰⁵⁴ Gobierno de Guatemala. September 24, 2017. [*Presidente Jimmy Morales se reúne con representantes del sector ganadero del país*](#); Prensa Libre TV/ You tube. September 24, 2017. [*Duras críticas contra protestas ciudadanas en apoyo a Jimmy Morales | Prensa Libre*](#).

operations organized in the context of protests should be guided, as a general rule, to guarantee the exercise of this right and the protection of protesters and third parties present. In this sense, the Commission has considered that the mere deconcentration of a demonstration does not constitute, in itself, a legitimate end that justifies the use of force by the security forces. "When a demonstration or protest leads to situations of violence, it must be understood that the State was not able to guarantee the exercise of this right."

J. Access to public information

717. The right to access to public information in Guatemala is provided in the Constitution of Guatemala, as well as in the ordinary law, through the Access to Public Information Act [*Ley de Acceso a la Información Pública*] (LAIP), Decree 57-2008, passed in 2008 by the Congress of the Republic, which further designates the Human Rights Ombudsman (PDH) as its regulating entity.¹⁰⁵⁵

718. According to the PDH, progress was made in the implementation of the Access to Information Act in 2016, "to the extent that the number of Access to Information Units, Electronic Portals, Reports of Entities Subject to the Law, and public requests have all risen." Nevertheless, he indicated that certain challenges remain in view of the low levels of compliance, especially in areas outside the capital, in the municipal governments and development councils. At the central level, noncompliance is said to be notable among trusts, non-governmental entities that handle funds, and entities in the sports sector. He further asserted that there are structural challenges such as "the politicization, corruption, and social inequality of the country, which has hindered the exercise of the right in outlying areas, specifically in municipalities where citizens have considerable interest in how resources are managed, but procedures at times are not carried out correctly due to unfamiliarity with the law."¹⁰⁵⁶

719. According to the information available, between 2012 and 2016 the PDH documented an exponential increase in the number of requests for access to public information submitted to the mechanisms established by the LAIP. This is reflected in the 21,944 requests received in 2012, compared to 63,830 in 2016. Nevertheless, in this context, the PDH identified two related challenges: first, to compare figures on the gender of the persons requesting information, and second, to promote the use of the legally created mechanisms throughout the country to prevent the geographic concentration of requests in the Department of Guatemala.¹⁰⁵⁷ In July 2017, the Public Ministry (MP) and the PDH reportedly signed an inter-institutional cooperation agreement. Its objective is to strengthen the LAIP through the creation of one agency under the responsibility of the MP that will hear and decide complaints alleging noncompliance with the law, and another that will provide guidance to complainants in those proceedings, under the direction of the PDH.¹⁰⁵⁸

¹⁰⁵⁵ Procurador de los Derechos Humanos (PDH). Informe Anual de la situación del derecho a la información pública 2016. No date. Available at: <http://www.pdh.org.gt/biblioteca/category/90-informes-anales.html>

¹⁰⁵⁶ Procuraduría de Derechos Humanos (PDH). Informe Implementación Ley de Acceso a la Información Pública. Conclusiones del Informe Anual 2016. No date. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁰⁵⁷ Procurador de los Derechos Humanos (PDH). Informe Anual de la situación del derecho a la información pública 2016. No date. Available at: <http://www.pdh.org.gt/biblioteca/category/90-informes-anales.html>. Regarding gender, between 2014 and 2016, 39% of requests were made by women while 61% were made by men. In terms of geographical concentration, 85% of the requests made between 2016 and January 31, 2017 came from the department of Guatemala. On this matter, the PDH included among its challenges the need to empower the population of the rest of the country in order for them to know and demand their right to access public information. This is precisely because the PDH identified that in 2016, apart from the department of Guatemala, no other department reached 2% of requests for public information. In 2016, 45% of obligated individuals had not made any request.

¹⁰⁵⁸ elPeriódico. July 21, 2017. *PDH y MP fortalecerán Ley de Acceso a la Información*; Emisoras Unidas. No date. *MP y PDH ratifican cooperación en el cumplimiento a la Ley de Acceso a la Información*; Ministerio Público (MP). July 20, 2017. *MP y PDH firman Convenio de Cooperación Interinstitucional para fortalecimiento de la Ley de Acceso a la Información Pública*.

The new Human Rights Ombudsman, Jordán Rodas Andrade, reportedly confirmed that the agreement remains in effect.¹⁰⁵⁹

720. Principle 4 of the Declaration of Principles on Freedom of Expression which states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

K. Recommendations

- Acknowledge, from the highest levels of government, the legitimacy and value of the work of journalists, and condemn attacks committed in retaliation for the exercise of freedom of expression.
- Investigate crimes committed against journalists completely, effectively, and impartially. Additionally, in cases involving the murder of journalists, establish the motive and judicially determine any possible connection to journalistic activity and freedom of expression. The authorities should not rule out the practice of journalism as a motive for the attack and/or assault before the investigation is completed.
- With respect to the program for the protection of journalists and media workers—the creation of which was announced by the President of the Republic during the visit—ensure that its content is consistent with the international parameters, in broad and effective consultation with civil society organizations, journalists, and media workers.
- Take measures to guarantee the exercise of freedom of expression, plurality, and diversity in the digital transition process. Among other things, bring the license access, renewal, and revocation processes into line with the inter-American standards.
- Promote a pluralistic approach to information and multiple points of view by fostering the full enjoyment of freedom of thought and expression, access to the media, and diversity in media ownership and sources of information through, among other things, transparent licensing systems, and, as appropriate, effective regulations that prevent the improper concentration of media ownership.
- Adopt the legislative measures and public policies to recognize and ensure community media outlets’ access to radio and television frequencies and licenses; in the meantime, abstain from criminally prosecuting community radio stations.
- Enact special, clear, and precise laws to regulate advertising at each level of government. Such provisions should clearly define government advertising and establish appropriate penalties for their violation. The Office of the Special Rapporteur reiterates that government advertising should never be allocated by the States to reward or punish media outlets for their editorial and news content.

¹⁰⁵⁹ Ministerio Público (MP). August 21, 2017. *Fiscal General recibe visita del Procurador de los Derechos Humanos*; el Periódico. August 21, 2017. *Presidente Morales y fiscal Aldana, los primeros contactados por el nuevo procurador Jordan Rodas Andrade*. In this regard, the Human Rights Ombudsman (Procurador de los Derechos Humanos) stated that the agreement should continue “because with more transparency in compliance with the Law of Access to Public Information, logically we are going to decrease corruption that is a scourge that hurts our society”.

- Ensure that its administrative laws and practices are compatible with the prohibition against the participation of the armed forces in public safety operations, in particular, the control of violence at social protests. Limit budget allocations to matters concerning national defense.

19. GUYANA

A. Attacks, threats, and intimidation against journalists and the media

721. It is reported that in January 2017, the government's cultural policy advisor, Ruel Johnson, who is also a Director of the Guyana National Newspaper Limited called for the "torching" of the Sanata Complex, which houses most prominently the Guyana Times newspaper, Television Guyana (TVG) and Radio Guyana Inc. 89.5. Johnson's alleged statement is "Here's my idea for a united Guyanese protest against impunity and tenderpreneurship – go break down all the parking meters and then proceed to torch the Sanata complex."

722. The media reported that "Johnson explicitly made the connection between the Sanata Complex, QAIL, its owner and the media group consisting of the Guyana Times newspaper, Television Guyana (TVG – CH 28) and Radio Guyana Inc. (89.5) which according to him should all be 'torched'." A police report was filed by the head of security at the media entity with the Police Criminal Investigation Department (CID). The Government of Guyana is said to have distanced itself from the threat made on social media.¹⁰⁶⁰

723. In response to the reported threat, the Private Sector Commission called out the Government for its inaction against Johnson. The Private Sector Commission asserted that Johnson may be deemed to have been inciting terrorism, as well as the threat of arson in breach of Guyana's laws. The Private Sector Commission expressed that such a call from any other citizen would be reprehensible and that when such calls are made by a Government official to over eight thousand social media followers, then that official must surely be viewed with severity.¹⁰⁶¹

724. On June 11, *Capitol News* cameraman Rudy Morris would have been detained by members of the Guyana Defense Force (GDF) in the city of Muri Muri. Morris would have gone along with a resident of the place to film inside the Kaieteur National Park, in the framework of an investigation related to the claims of the Chenapau settlers. According to the information available, while they were returning to the boat in which they were traveling, agents of the GDF allegedly detained the cameraman for allegedly having accessed a restricted area without authorization. Afterwards, he was transferred to a dependency where he was held incommunicado for several hours and, after seizing his work equipment, he was released. According to the information collected, Morris would have identified himself as a member of the press and, in addition, he would have received authorization from the Protected Areas Commission (PAC) to access the respective National Park¹⁰⁶².

725. On September 1, in the city of Eccles, in the eastern region of Demerara, one of the antennas of *Multi Technology Vision Inc.* (MTV) would have fallen on the installations of the audiovisual media, causing both the breaking up of work equipment and the channel building, and generating the suspension of the transmissions until further notice. The general manager of MTV, Raymond Singh, said that it would have been an act of sabotage given that, from the police investigations, a clip was found attached to one of the cables that anchored the tower. According to the information available, an investigation would be carried out to find

¹⁰⁶⁰ iNews Guyana. Govt's Cultural Advisor, Chronicle Director calls for "torching" of Guyana Times. January 31, 2017. Available at: <http://www.inewsguyana.com/govts-cultural-advisor-chronicle-director-calls-for-torching-of-guyana-times-evening-newstvg/>; *iNews Guyana*. February 1, 2017. *Breaking: Police en-route to arrest Govt's Cultural Policy Advisor for "torching" threat*; Guyana Times. February 2, 2017. *Govt's Cultural Advisor wanted by police for questioning*. Available at: <http://guyanatimesgy.com/govts-cultural-advisor-wanted-by-police-for-questioning/>

¹⁰⁶¹ Guyana Times. February 7, 2017 . *Govt's Cultural Advisor's threats can incite terrorism, constitute a threat of arson – PSC*. Available at: <http://guyanatimesgy.com/govts-cultural-advisors-threats-can-incite-terrorism-constitute-a-threat-of-arson-psc/>

¹⁰⁶² Guyana Chronicle. June 13, 2017. *Cameraman released*; Stabroek News. June 14, 2017. *Capitol News cameraman released after detention by soldiers at KNP*.

those responsible for these acts¹⁰⁶³. At the time of preparing this report, it has not been possible to find information regarding the restart of the channel's activities or related to the progress of the investigation.

726. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁰⁶⁴

727. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

B. Stigmatizing Statements

728. In April 2017, Minister of Communities, Ronald Bulkan wrote to the editor of the Guyana Chronicle regarding a decision made by the Guyana Chronicle in its March 31, 2017 publication. Bulkan's letter stated:

729. "Your front page is dominated by the headline: 'More Oil' and was followed by a full-page story on page three. I wish to suggest that your emphasis and message are totally misplaced. The subliminal message seems to be that oil will be our saviour, solve our woes, take us to the promised land and such like . . . I suggest, therefore, that your public duty would have been better served by switching the aforementioned articles. The President has already cautioned that we should not become intoxicated by the prospects of oil..."¹⁰⁶⁵

730. The Guyana Press Association viewed Bulkan's letter as "an attempt to drive fear into the editors and reporters of that newspaper with the sole aim of securing censorship and self-censorship," and called upon President David to ensure that Prime Minister Moses Nagamootoo and the rest of his Cabinet be advised that they should not interfere in the affairs of the State media. The Association also expressed its strong disagreement with the continued role of the Director of Public Information, Imran Khan, as Chairman of the Board of Directors of the Guyana National Newspapers Limited – the publishers of the Guyana Chronicle. The Association made claims about attempts by "a senior government Minister continues to dictate coverage of his office to the Editor-in-Chief and often has stories sent for his approval once it has to do with his office or the PNC, the main party in the governing coalition." The Association also claimed to be aware that "weekly

¹⁰⁶³ Kaieteur News. September 2, 2017. *Sabotage suspected as TV station tower crashes down*; News Room. September 2, 2017. *MTV investigating possible sabotage in collapse of broadcast tower*.

¹⁰⁶⁴ IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. . *Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression*. Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹⁰⁶⁵ Guyana Chronicle. April 2, 2017. Your lead story should have been the swearing-in of the mayors and deputy mayors. Available at: <https://guyanachronicle.com/2017/04/02/your-lead-story-should-have-been-the-swearing-in-of-the-mayors-and-deputy-mayors>

meetings of the Prime Minister with senior executives of the state media continues to be used as a tool to dictate editorial content and to silence or trivialise opposition views.”¹⁰⁶⁶

731. It is reported that in response, President David Granger stated that his government Minister dictating where articles should be placed in the state newspaper is not interference, but the Minister giving his opinion as a private citizen and that the Guyana Press Association’s (GPA) condemnation of the Minister’s action is not justifiable. Granger is reported to have expressed that “I do not think he attempted to coerce or to use his ministerial influence to change what I regard as the editorial right to publish an article or to publish news stories. I don’t think there was any interference at all” and that sometimes important national events occur and some newspapers ignore such stories. ¹⁰⁶⁷

732. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State’s job to help create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.¹⁰⁶⁸

733. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”¹⁰⁶⁹

C. Legal reforms

734. On August 4, the National Assembly adopted the Broadcasting Amendment Bill, a law that would have introduced numerous changes to the current Broadcasting Act of 2011, which would cover issues such as the introduction of three kinds of broadcasters (called commercial, non-commercial and community) and three types of emission zones (divided in primary, secondary and tertiary). Likewise, on September 15, President David A. Granger enacted the aforementioned amendment. In this regard, he would have indicated

¹⁰⁶⁶ Guyana Times. GPA condemns Bulkan’s “attempt to drive fear” into state media, April 5, 2017 at <http://guyanatimesgy.com/gpa-condemns-bulkans-attempt-to-drive-fear-into-state-media/>; Stabroek News, GPA accuses gov’t members of trying to dictate state media content, April 5, 2017 at <http://www.stabroeknews.com/2017/news/stories/04/05/gpa-accuses-govt-members-trying-dictate-state-media-content/>

¹⁰⁶⁷ iNews Guyana. April 10, 2017. Bulkan didn’t interfere in state media, gave his opinion- President. Available at: <http://www.inewsguyana.com/bulkan-didnt-interfere-in-state-media-gave-his-opinion-president/>; Stabroek News. April 11, 2017. Granger denies interference by Bulkan in Chronicle - Jagdeo says gov’t has politicised state media more than PPP. Available at <http://www.stabroeknews.com/2017/news/stories/04/11/granger-denies-interference-bulkan-chronicle/>

¹⁰⁶⁸ IACHR. *Annual Report of the Inter-American Commission on Human Rights 2014*. Chapter II (Evaluation of the State of Freedom Of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2014. Para. 65.

¹⁰⁶⁹ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

that the purpose of the new regulations would be mainly to solve the problem of illegal media that do not have a license¹⁰⁷⁰.

735. However, according to the information available, the law would force all media to request a license within thirty days of its enactment, operating without it could result in fines of up to US \$ 1 million and convictions up to a year of prison. Likewise, the law would impose on the media the free transfer of 60 minutes a day of programming to the public service, between six in the morning and ten at night. This could cause disruptions or breaches of preexisting contractual obligations with the advertising media and alter the pre-established order in the programming. In turn, this would empower the Government by granting it an official publicity space, since the law itself defines that the "public service programming" should be used to both inform and educate the public, as well as to promote the Government's policies and activities that favor the general public.

736. Many actors of Civil Society Organizations and the media would have criticized the law, since throughout its adoption process they would not have been consulted despite the transcendent changes that the rule would bring regarding the exercise of freedom of expression¹⁰⁷¹.

D. Indirect censorship

737. On April 5, the Guyana Press Association (GPA) issued a statement calling attention to the attitude of the Minister of Communities, Ronald Bulkan, who had sent a letter to the *Guyana Chronicle* newspaper reprimanding the performance of the editorial team. On the subject, Bulkan would have suggested where to place certain news and condemned that the article informing about the inauguration of mayors and town hall representatives had not been highlighted. In this regard, the GPA noted that the letter intended to cause fear within the press employees with the aim of self-censoring their freedom of opinion, and that this kind of actions are in direct opposition to the statement of President David Granger that his administration would favor the independence of newspapers, television, and radio programs¹⁰⁷².

738. For his part, when asked about Bulkan's attitude, President David Granger would have stated that he did not consider it an interference in the work of the media but rather the opinion of the Minister of Communities¹⁰⁷³.

739. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

E. Subsequent liabilities

740. Former Attorney General of Guyana, Anil Nandlall filed a civil defamation suit against the current Attorney General and Minister of Legal Affairs, Basil Williams. The suit is in respect of statements allegedly

¹⁰⁷⁰ Guyana Daily News. August 9, 2017. *Int'L Organizations Concerned Broadcasting Bill Threatens Press Freedom*; CarbiFlame. August 9, 2017. *Media Groups Concerned About Guyana Broadcast Bill*; News Room. September 9, 2017. *President yet to assent to Broadcasting Bill: GNBA says broadcasters agree to amendments*; News Room. September 16, 2017. *President assents to controversial Broadcast Bill*.

¹⁰⁷¹ Guyana Press Association/Facebook. August 2, 2017. *Statement on Amendments to Broadcasting Act*; Reporters without Frontiers (RWF). August 8, 2017. *Guyana - RSF urges President Granger not to adopt new broadcasting legislation*; International Press Institute (IPI). August 8, 2017. *Guyana broadcast bill said to threaten press freedom*.

¹⁰⁷² iNews Guyana. April 4, 2017. *GPA condemns Bulkan's "attempt to drive fear" in State media*; Kaieteur News. April 5, 2017. *Press Association blazes Bulkan over attempts to "dictate" Chronicle headlines*.

¹⁰⁷³ iNews Guyana. April 10, 2017. *Bulkan didn't interfere in state media, gave his opinion - President*.

made by Williams in which he accused Nandlall of theft of law books. It is reported that Nandlall has repeatedly confirmed that while he was Attorney-General, law books were purchased for him by the state, using state funds, and are said to be worth over \$2.5 million. These books are said to have been purchased for Nandlall as a condition of his service. After the People's Progressive Party was unseated in 2015, Nandlall took possession of the books which were bought for him as Attorney General. The alleged offending statements by Williams include the following: "Mr Nandlall will be charged for [the] missing law books...Mr. Nandlall has stolen government property and he will be charged..." It is also reported that similar sentiments were expressed at another forum in which the Williams stated "Nandlall stole government property...the law books...he still has the law books and he will get lock up for the law books and anyone who claim they gave him permission to steal the law books will get lock up as well, because there is no immunity for stealing and doing criminal acts in this country." On April 27, 2017, Nandlall was charged by the Special Organised Crime Unit (SOCU) with Larceny by Bailee. In respect of the suit, Nandlall sought damages in excess of \$125M for defamation as well as an injunction restraining Williams from repeating similar statements for which he is being sued.¹⁰⁷⁴

741. Williams contended that the suit should be dismissed and that his comments were based on the fact that Nandlall did not follow the Financial Expenditure Procurement process and the Stores Laws and Regulations, and as a result, could be subject to prosecution: "The comments were not orchestrated to be an attack on the claimant personally, but were made within the scope of the defendant's office . and responsibilities as the Minister of the Ministry of Legal Affairs with responsibility to protect state assets. He was duty bound to undertake a reasonable investigation into the location of unaccounted assets." Williams asserted that as a public official it was necessary for him to make the information known to the public and to the media in good faith.¹⁰⁷⁵

742. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, "privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."¹⁰⁷⁶

743. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states: "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "*desacato* laws," restrict freedom of expression and the right to information." Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.¹⁰⁷⁷

¹⁰⁷⁴ News Room. April 15, 2017. [Nandlall files legal action against AG for Defamation of Character](#); Starbroek News. April 15, 2017. [Nandlall sue AG over law reports allegations](#); Guyana Chronicle. April 16, 2017. [Nandlall sues AG Williams for Defamation](#).

¹⁰⁷⁵ Guyana Chronicle. May 5, 2017. [AG wants Nandlall 'libel' suit dismissed](#).

¹⁰⁷⁶ IACHR. [The Human Rights Situation in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 394.

¹⁰⁷⁷ IACHR. Annual Report 2015. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

20. HAITI

744. During 2017, the Office of the Special Rapporteur has observed with concern the repeated excessive use of force by law enforcement, also seen in previous years, when dispersing social protest events—specifically during demonstrations surrounding the tax reform implemented by the government in September. In addition, the enactment of a law creating the criminal offense of defamation could lead to setbacks with regard to the right to freedom of expression in the country. This Office also received with concern information about threats made to journalist Jean Nazaire Jeanty by Jean Gabriel Fortuné, the mayor of Les Cayes, and the alleged subsequent assault of the journalist.

A. Attacks, Threats and Harassment against Journalists and Media Outlets

745. The mayor of the municipality of Les Cayes, capital of the Department of Sud, Jean Gabriel Fortuné, reportedly made a death threat against journalist Jean Nazaire Jeanty of *Radio Télévision Caraïbes* after the journalist aired a report on unhealthy conditions at Gelée Beach, where a festival was held from August 12-15 to celebrate a Haitian Roman Catholic feast day in honor of Our Lady of the Assumption. According to the information available, Gabriel Fortuné stated to the press that “If there were a state intelligence service in this country, Jean Nazaire Jeanty should be dead... The wages of sin is death. I said it, and I repeat, this man deserves death.” The statements were condemned by the National Association of Haitian Media [“*Association Nationale des Médias Haïtiens*”] (ANMH) and the Association of Haitian Journalists [“*Association des Journalistes Haïtiens*”] (AJH). Days later, on August 8, journalist Nazaire Jeanty was reportedly attacked while traveling in a car in the Dufort area of the capital, Port-au-Prince, but escaped unharmed.¹⁰⁷⁸

746. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁰⁷⁹

747. The IACHR and the Office of the Special Rapporteur recall that public servants must unequivocally repudiate attacks perpetrated in retaliation for the exercise of freedom of expression, and must abstain from making statements that may increase the vulnerability of those who are persecuted for exercising their right to freedom of expression. Similarly, it is essential that the authorities who hold elective positions or who hold responsibilities within the State structure encourage the competent authorities to act with due diligence and speed to investigate the facts and punish those responsible.¹⁰⁸⁰

¹⁰⁷⁸ Alter Presse. August 8, 2017. *Haïti-Presse : L’Ajh dénonce les menaces de mort du maire principal des Cayes contre le journaliste Jean Nazaire Jeanty*; Le Nouvelliste. August 7, 2017. *Gabriel Fortuné : <<Dans tout pays sérieux, les services secrets, sans recevoir d’instructions, tueraient ce journaliste>>*; Loop. August 10, 2017. *Le journaliste menacé de mort par Gabriel Fortuné victime d’accident*; Le Nouvelliste. August 8, 2017. *L’ANMG et l’AJH condamnent les menace de mort à l’encontre du journaliste Jean Nazaire Jeanty*.

¹⁰⁷⁹ IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. . *Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression*. Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹⁰⁸⁰ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. *Joint Declaration on Crimes Against Freedom of Expression*.

B. Social Protest

748. Protests were held over several days in different parts of the country against the State budget for fiscal year 2017-2018, approved by the Senate on September 9, which reportedly imposed tax increases affecting diverse sectors of society.¹⁰⁸¹ The Office of the Special Rapporteur has received information about different incidents related to the excessive use of force by law enforcement officers when breaking up those demonstrations. Violent incidents were also reported to have been committed by civilians against protestors and by protestors against journalists and their teams in this context.

749. On September 12, various protest events were held in different districts of the capital, Port-au-Prince. According to information gathered by the Haitian National Police [*Police Nationale D'Haiti*] (PNH) and released through police spokesperson Frantz Lerebourg, the police operation—which reportedly involved the use of tear gas canisters and firearms to disperse demonstrators who had erected barricades of flaming tires and damaged commercial buildings—resulted in two deaths. In addition, 12 people were reportedly arrested on that day.¹⁰⁸²

750. On September 27, there was a violent police crackdown on a demonstration in Ouanaminthe, in the Nord-Est Department of Haiti. The demonstration had been convened by the National Union of Haitian Workers [*Centrale nationale des ouvriers haïtiens*], the Textiles Workers' Union Re-exports Group [*Groupement syndical des travailleurs du textile pour la réexportation*] and the Izin Tekstil-Batay Ouvriye Platform of Textile Plant Unions [*Platfòm Sendikal Izin Tekstil-Batay Ouvriye*], in the vicinity of the building that houses the Internal Revenue Service [*Direction Générale des Impôts*] (DGI). Ten people were reportedly injured during the event—two of them by gunfire—and two demonstrators were arrested. The Codevi Workers' Union [*Syndicat d'ouvriers de Codevi*] (Sococa) reportedly filed a complaint alleging the excessive use of force by law enforcement authorities.¹⁰⁸³

751. On September 30, the police reportedly used violence to disperse a demonstration in the capital city of Port-au-Prince, discharging firearms and launching tear gas canisters at demonstrators. In addition, vehicles belonging to the media outlets *Kiskeya* and *Métropole* were allegedly stolen by persons taking part in the protest.¹⁰⁸⁴

752. On October 3, the mayor of the municipality of Les Cayes, capital of the Department of Sud, Jean Gabriel Fortuné, reportedly stated at a press conference that the public should arm itself with sticks, rocks, and guns to fight the protestors, because children were being prevented from going to school as a result of the disturbances caused by the days of protest in connection with a general strike called for October 2-3.¹⁰⁸⁵

753. On October 14, during a demonstration organized by leaders of the political opposition in the city of Les Cayes, capital of the Department of Sud, individuals identified as activists from the Haitian Tet Kale Party [*Parti haïtien tèt kale*] (PHTK) allegedly attacked demonstrators with rocks. The Haitian National Police [*Police Nationale D'Haiti*] (PNH) reportedly intervened violently in the incident, causing a 3-year-old child to

¹⁰⁸¹ Loop. September 10, 2017. *Le Budget de l'exercice fiscal 2017-2018 voté par les députés*.

¹⁰⁸² Reuters. September 12, 2017. *Violent Street protests break out in Haiti over tax hikes*; Le Nouvelliste. September 12, 2017. « *La manifestation de l'opposition émaillée de violence a été planifiée*»; Le National. September 17, 2017. *Divers secteurs en renfort au mouvement de grève du 18 septembre 2017*; Radio Canada. September 30, 2017. *Une manifestation tourne à la violence à Port-au-Prince*.

¹⁰⁸³ Haiti Libre. September 28, 2017. *Flash: Manifestation ouvrière au moins 10 blessés dont 2 par balles*.

¹⁰⁸⁴ Loop. September 30, 2017. *En photos, la manifestation de ce 30 sep vigoureusement dispersée*. La Nouvelliste. October 2, 2017. *Les voitures de deux médias attaquées lors de la manifestation du 30 septembre*.

¹⁰⁸⁵ Loop. October 3, 2017. *Déclaration incendiaire du maire des Cayes suite aux manifestations*; Agence Haïtienne de Presse. *Le Maire Des Cayes, Jean Gabriel Fortuné, Un Proche Du Président Jovenel Moïse, Invite Les Parents De La 3ème Ville Du Pays À Se Procurer Toutes Sortes D'armes: Armes À Feu, Armes Blanches Ou Bâtons Pour Faire Face Aux Manifestations De L'opposition Politique Des Cayes Et Pouvoir Emmener Leurs Enfants À L'école*.

be sickened by tear gas. In addition, some individuals reportedly put up a barricade made out of flaming tires.¹⁰⁸⁶

754. On November 7, a large number of people would have spoken publicly in the capital city, Port-au-Prince, to demand the resignation of the president, Michel Martelly. According to the available information, different groups formed mainly by young people would have clashed with supporters of the ruling party, who would have used firearms to dislodge the protest. In this context, at least two protesters were reportedly wounded after receiving two bullet shots¹⁰⁸⁷.

755. On 1 December, in the city of Belladères, Center department, a group of demonstrators held a protest in front of the police department, demanding the release of a man allegedly arrested for the crime of theft and injuries. According to the information available, the protesters would have thrown stones at the agency and, consequently, the police agents would have tried to evict the demonstration by throwing tear gas bombs. In this context, one of the thrown bombs would have entered the home of a woman named Yolanda Surpris, 49, who died in a hospital in the area as a result of inhaled gas¹⁰⁸⁸.

756. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”¹⁰⁸⁹ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹⁰⁹⁰

757. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹⁰⁹¹

C. Subsequent Liability

758. On March 14, the Haitian Senate unanimously passed the draft Defamation Law [*Loi portant sur la Diffamation*], originally introduced in 2014 by then-Senator Edwin Zenny, which could negatively affect the right to freedom of expression in Haiti. Article 7 of the draft law establishes criminal penalties of up to one year in prison, in addition to potential fines, for anyone convicted of criminal defamation. Under Article 2, this includes “all persons who, whether in public places or meetings, in an official or public instrument, through printed material, through the press, or through audiovisual or electronic means, attribute acts to a person or entity that attack that person or entity’s honor, integrity, or image.” Although the law provides for the

¹⁰⁸⁶ Vant Bèf Info. October 14, 2017. *Haiti-Manifestation : Des leaders de l’opposition peinent à manifester dans le Sud du pays.*

¹⁰⁸⁷ France TV info. November 8, 2017. *VIDEO. Haïti : violente manifestation à Port-au-Prince contre le président Martelly.*

¹⁰⁸⁸ La Nouvelliste. December 4, 2017. *Le calme est revenu à Belladère; RTVC. December 5, 2017. Belladères, de nouveau calme.*

¹⁰⁸⁹ IACHR. *Report on Citizen Security and Human Rights.* OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁰⁹⁰ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas.* OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹⁰⁹¹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests.*

principle of *exceptio veritatis*, Article 8 presumes *mens rea* in cases of defamation. It also holds media editors liable for the decision to publish defamatory content and intermediaries and Internet service providers for making defamatory content available to the public, except in cases in which they can prove that they had no actual knowledge of the unlawful content. According to the information available, there was no public consultation with local press associations or media outlets in voting on and enacting this law¹⁰⁹².

759. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, “privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

¹⁰⁹² State of Haiti. Senate. Loi portant sur la Diffamation. Available at: <https://reznodwes.com/senat-texte-de-la-proposition-de-loi-portant-sur-la-diffamation/>; Le Nouvelliste. March 14, 2017. La loi sur la diffamation votée à l'unanimité par le Sénat; Alter Presse. March 15, 2017. *Haiti-Presse : Une loi sur la diffamation votée au sénat, sans consultations avec les médias.*

21. HONDURAS

760. The political crisis generated after the presidential elections of November 28, 2017 has increased the risk for the exercise of freedom of expression and journalism in the country. The Office of the Special Rapporteur has received with alarm information about the declaration of a state of emergency, attacks and threats to the media, as well as killings and injuries of protesters as a result of the illegal and excessive use of the police force. There have also been mass arrests of demonstrators, some accused of terrorism.

761. Prior to the electoral period, the Office of the Special Rapporteur had already expressed its concern over the approval of a series of amendments to the Criminal Code in Honduras, which include provisions that are contrary to international standards and that may illegitimately restrict the right to freedom of expression in the country. In addition, the Office of the Special Rapporteur had already received complaints about illegitimate restrictions and the use of criminal law to criminalize student protests, as well as excessive use of force to disperse these protests.

A. Murders

762. Honduras continues to be one of the most dangerous countries in the region to practice journalism. According to the information received, during 2017 there were five murders of media workers and 15 incidents, some of them very serious, of attacks, assaults, and threats. The lack of investigation of these events and the clarification of their relationship with journalism continue to generate a climate of fear and self-censorship among journalists and their communities.

763. On January 17, journalist Igor Abisaí Padilla Chávez, who worked for the *HCH* channel, was murdered in the city of San Pedro Sula, department of Cortés while he was filming a television commercial, inside a commercial establishment. Padilla was the producer of a humorous program called '*Los Verduleros*' that was broadcasted on weekends by *HCH*. According to available information, the journalist received a phone call, which is why he went out into the street, where he was attacked by four individuals who came out from two cars and shot him multiple times, leaving him badly injured. Although he was transferred to a hospital, he didn't make it in time to receive medical attention. On the 18th, the authorities reported the detention of 17 individuals, presumed members of the "*Mara 18*" gang, who would be responsible for the events. On the 19th, the detention of Martha Yolanda Ortez was reported, who would have made the telephone call that served to ambush the communicator¹⁰⁹³.

764. On June 15, Víctor Yobani Fúnez Solís, host of the program '*Informe Nocturno*', broadcasted on *Canal 45*, was murdered after a man shot him three times on a public road near his home located in the neighborhood La Gloria, in the city of La Ceiba. A video camera captured the attack, but because the aggressor used a motorcycle helmet, it wasn't possible to identify him. Fúnez Solís had previously received threats due to the content of his journalistic program. In addition to his journalistic work, Fúnez was a representative candidate for the *Partido Nacional* and, according to available information, he would have been the most voted candidate in the primary elections of the department of Atlántida. On the same day of the homicide, the National Police announced the detention of Edwin Reniery Suazo Cruz, who was allegedly responsible for the murder and circulated a video in which he confessed to be the material author of the crime, although he later accused the Police of torturing him to force him to plead guilty. At the close of this report, Suazo Cruz is the only person detained in relation to the investigation and has already been linked to the process¹⁰⁹⁴.

¹⁰⁹³ La Prensa. January 17, 2017. *Matan al periodista hondureño Igor Padilla*; Notimerica. January 19, 2017. *Dos detenidos reconocen haber asesinado al periodista Igor Padilla en Honduras*; El heraldo. January 22, 2017. *Lo que sabemos del crimen contra el periodista hondureño Igor Padilla*; C-Libre. January 17, 2017. *Asesinan a periodista en San Pedro Sula*.

¹⁰⁹⁴ La Prensa. June 15, 2017. *Periodista hondureño es asesinado frente a su casa frente a La Ceiba*; El Heraldo. June 15, 2017. *Asesinan a periodista y candidato a diputado del Partido Nacional Víctor Fúnez en La Ceiba*; El Heraldo. June 15, 2017. *Detenido confiesa haber asesinado al periodista Víctor Fúnez en la Ceiba*; Proceso Digital. June 15, 2017. *Capturan a presunto asesino de periodista Víctor Fúnez*; El Heraldo. June 16, 2017. *"El Pájaro" dice que lo obligaron a culparse en video por muerte de periodista hondureño*; El Heraldo. June 20,

765. On September 13, the media worker Carlos William Flores was murdered, he was the director of the program '*Sin Pelos en la Lengua*', broadcasted on *Canal 22* of the community of Tegucigalpa. The channel is owned by the Association of Cable Carriers of Omoa [*Asociación de Cableros de Omoa*] (ACO) and, according to public information, Flores paid for the space of his transmission and would have criticized the extractive industry in the region of Cuyamelito, Cuyamel, and Rio Motagua. The events would have taken place in the municipality of Omoa, department of Cortés, when Flores returned from the area of Corinto, bordering Guatemala, and had been attacked by individuals in a car who shot him several times injuring him and a companion. The authorities have not reported any progress in relation to the investigation¹⁰⁹⁵.

766. On October 5, communicator Osmin Antonio España Chávez died in a hospital in San Pedro Sula, where he was transferred after suffering, the day before, a firearm attack in the community of Santa Rosa de Copán, department of Copán. España hosted the television program '*El Show del Príncipe*', broadcasted on *Canal 80*, and from there he would have exercised a critical journalism. According to information of public knowledge, four individuals participated in the attack and one of them would have been detained. At the close of this report, the authorities have not released any progress regarding the investigation of the case¹⁰⁹⁶.

767. On October 23, Carlos Oveniel Lara Domínguez was murdered, he worked as a cameraman for *Canal 12 Telemaya* in the town of La Entrada, in the municipality of Nueva Arcadia, department of Copán. According to the information gathered, Lara Domínguez left his home, located in the El Dorado neighborhood, when he would have been intercepted by unknown individuals who shot him three times after an apparent robbery attempt. At the close of this report, the authorities have not reported any progress in the investigation of the facts¹⁰⁹⁷. The media worker had previously reported threats against his life to the Honduran authorities, according to some journalistic versions.

768. In this regard, the State has informed the IACHR that the Office of the Public Prosecutor has registered 3 murders of social communicators during 2017, which would have been prosecuted¹⁰⁹⁸.

769. Faced with these events, the National System of Protection for Human Rights Defenders, Journalists, Social Media Workers, and Justice Operators, which entered into operation in December 2016, is called to adopt all the necessary measures to generate trust among journalists and prevent attacks. The increase in the budget and international cooperation announced in 2017 are positive steps towards that direction¹⁰⁹⁹.

2017. *En un solar hallan los documentos de periodista asesinado Víctor Fúnez*; IACHR. Office of the Special Rapporteur for Freedom of Expression. June 20, 2017. *Press Release R81/17. Office of the Special Rapporteur Condemns the Murder of Journalist Víctor Fúnez in Honduras*.

¹⁰⁹⁵ C-Libre. September 13, 2017. *Asesinan a comunicador en Omoa Cortes*; La Prensa.hn. September 14, 2017. *Matan a comunicador social en Omoa, Cortés*; IACHR. Office of the Special Rapporteur for Freedom of Expression. September 19, 2017. *Press Release R143/17. Office of the Special Rapporteur Condemns Murder of Journalist Carlos William Flores in Honduras and Urges the State to Investigate Connection to Journalistic Activity*; Conexihon. September 24, 2017. *Carlos William Flores, tercera voz silenciada por las balas de la violencia en 2017*.

¹⁰⁹⁶ C-Libre. October 5, 2017. *Periodista no sobrevive a atentado criminal*; Tiempo Digital. October 5, 2017. *Copán: Un detenido por crimen de Osmin España: investigan causa pasional*; Cerigua. October 5, 2017. *Periodista Osmin España asesinado en Honduras*; Tiempo Digital. October 6, 2017. *Osmin España, cuarto comunicador asesinado en lo que va del 2017*.

¹⁰⁹⁷ C-Libre. October 23, 2017. *Asesinan a camarógrafo cuando se dirigía a su centro de trabajo*; La Prensa. October 23, 2017. *Ultiman de varios disparos a camarógrafo en La Entrada, Copán*; Telesur. October 24, 2017. *Asesinan a un camarógrafo en Honduras*; Knight Center for Journalism in the Americas. October 26, 2017. *Honduran cameraman who reported receiving threats is killed in Copán*.

¹⁰⁹⁸ República de Honduras, Oficio SDH-0042-2018, of February 9, 2018, received on February 9, 2018.

¹⁰⁹⁹ U.S. Embassy in Honduras. January 27, 2017. *Gobierno de los Estados Unidos y Freedom House firman convenio de apoyo al Mecanismo de Protección en Honduras*; Criterio. January 27, 2017. *Freedom House y EE.UU apoyarán mecanismo de protección a periodistas y defensores de derechos humanos*.

770. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹¹⁰⁰

771. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

B. Attacks, threats, and intimidation of journalists and the media

772. During the reporting period at least 15 incidents were documented in which social media workers, human rights defenders, activists, and the media would have been victims of assaults, threats, acts of intimidation, direct attacks, and attempts to confiscate their work equipment.

773. Three journalists would have received death threats through the use of social networks and one more warned of possible attacks against him by a mayor. On January 4, Ernesto Alonso Rojas and Suly Cáliz, from the television channel *Hable Como Habla* (HCH), would have received a threat coming from the profile of a person identified as "Jowe Aguilar" with the following message addressed to the owner of the channel, Eduardo Maldonado: "Don Eduardo ... I give you a month to fire Elsa Oseguera, otherwise I will kill Suliz or Ernesto". Accompanying the message would appear the photograph of an individual wearing the uniform of the Technical Agency of Criminal Investigation [*Agencia Técnica de Investigación criminal*] (ATIC) carrying a pair of firearms¹¹⁰¹. On February 1, Edgar Joel Aguilar, who is the presenter and reporter of the red note on *Telemaya Canal 12* in Ciudad de La Entrada, municipality of Nueva Arcadia, department of Copán, would have received a death threat through Facebook through the messages sent via the WhatsApp application. Aguilar, who is also a correspondent for *Canal 6* reportedly received several messages, including a six-day ultimatum to leave the channel. In the aforementioned message, the aggressor would also have written: "You are behind a death and you know well ... so watch out for the *calaca* (death skeleton)" (sic). In April 2012, Aguilar was the victim of a criminal attack when unknown individuals shot him at least 28 times with heavy weapons¹¹⁰². On March 28, the journalist and human rights activist, Esteban Vasquez, who is correspondent of *Radio Progreso* and a member of the Indigenous Independent Movement "*Lenca de La Paz-MILPAH*", would have been threatened by alleged activists of the *Partido Nacional*. The events occurred in the community of Arenales, Santa María, department of La Paz, where, after intercepting him, the alleged attackers told him: "if you

¹¹⁰⁰ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. . Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression. Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹¹⁰¹ Criterio.hn. January 17, 2017. *Periodistas de HCH de S.P.S. recibieron amenazas*; Radiohouse.hn. January 18, 2017. *La amenaza era real: "Despidan a Elsa o mataremos a periodistas de HCH"*; Tiempo. January 4, 2017. *Elsa Oseguera acusada de ser marera de la MS*.

¹¹⁰² C-Libre. February 6, 2017. *Amenazan a periodista y le dan plazo para que abandone canal*; Cerigua. February 8, 2017. *Amenazan de muerte a periodista hondureño*.

continue your work of informing, you will be murdered."¹¹⁰³ On August 7, the station *Radio Progreso* reported, through its Facebook page, an attack suffered by its correspondent in the municipality of Santa Rosa de Aguán, in the department of Colón, César Obando Flores, to whom the mayor said demarcation would have warned "that he was going to give him a little warm up". The events occurred on August 6, after an open municipality meeting in the Brisas del Mar community, when the media worker, who is the beneficiary of precautionary measures ordered by the Inter-American Commission on Human Rights, requested an interview with the official. According to the complaint made by *Radio Progreso*, the reaction of the mayor would have its origin in the publication by Obando Flores, of journalistic reports which documented the rejection of communities and organizations to the installation of a refinery in the region¹¹⁰⁴.

774. On August 24, journalist Johnny Lagos, who runs the newspaper *El Libertador*, published in the city of Tegucigalpa, was the victim, together with his wife, Lurbin Yadira Cerrato, also a journalist, of a firearm attack perpetrated by unknown individuals when he left the newsroom. According to the information disseminated by the media, the objective of the perpetrators would have been to kill the journalist, although the police authorities indicated that it was an attempted armed robbery. *El Libertador*, which has an online edition and makes a monthly printing, would be characterized by its critical line towards the government¹¹⁰⁵. On September 21, a threatening message consisting of the silhouette of a corpse at the scene of the crime accompanied by the caption "RIP" would have appeared in front of the *El Libertador* offices. The media denounced the incident as an attempt at intimidation linked to the attack suffered by its director on August 21¹¹⁰⁶.

775. Other journalists would have been victims of kidnappings throughout 2017. On February 20, the journalist and human rights defender of the Center for Research and Promotion of Human Rights [*Centro de Investigación y Promoción de los Derechos Humanos*] (CIPRODEH), Evelyn Molina Castañeda, was kidnapped and psychologically tortured, on a taxi in the city of Tegucigalpa, in the company of two other women. The vehicle would have been boarded by an individual who pointed a gun at them and threatened to shoot them in different parts of the body. After taking them to various places in the city, they were finally abandoned near the National Vocational Training Institute [*Instituto Nacional de Formación Profesional*] (INFOP) and stripped of their belongings and identification documents¹¹⁰⁷. On February 23, the independent journalist and correspondent of several magazines, Rony Huete, denounced having been kidnapped in a taxi, when he boarded the vehicle in Colonia San Miguel, in Tegucigalpa. Two subjects had boarded the vehicle and took him to different parts of the city, later robbed him, and abandoned him after stealing his work equipment, a laptop and his cell phones. Huete also reported that on February 15 he would have been run over by a bodyguard of the rector of the *Universidad Nacional Autónoma de Honduras* (UNAH), Julieta Castellanos, after he asked questions related to the alleged violation of human rights of students of said house of studies¹¹⁰⁸. On August 30, journalist Víctor Manuel Pineda, who hosts a program on *Canal 6* that is broadcasted from the city of San

¹¹⁰³ Confidencial HN. March 28, 2017. *Honduras: Nacionalistas amenazan de muerte a corresponsal de Radio Progreso*; C-Libre. March 29, 2017. *Amenazan a corresponsal indígena de Radio Progreso*.

¹¹⁰⁴ Criterio.hn. August 6, 2017. *Acalde de Santa Rosa de Aguán amenaza a corresponsal de Radio Progreso*; Tiempo.hn. August 6, 2017. *Alcalde de Colón amenaza a periodista de Radio Progreso*; Radio Progreso/Facebook. August 7, 2017. *Alerta*; CERIGUA. August 10, 2017. *Honduras: Alcalde amenaza a periodista*.

¹¹⁰⁵ Tiempo Digital. August 24, 2017. *Atentan contra el director de El Libertador y su esposa en Tegucigalpa*; C-Libre. August 24, 2017. *Atentan contra director de El Libertador y su esposa*; El Libertador. August 25, 2017. *"ES ÉL, MATÁ A ESE HIJO DE PUTA"*; El Libertador. August 25, 2017. *El Mundo se Solidariza con el Libertador*; El Caribe. August 25, 2017. *Atentan contra periodista hondureño*; CIPRODEH. August 25, 2017. *CIPRODEH condena atentado contra periodistas de Periódico El Libertador*.

¹¹⁰⁶ El Libertador. September 21, 2017. *"DESCANSE EN PAZ". DEJAN MENSAJE FRENTE A OFICINAS DE EL LIBERTADOR*; C-Libre. September 22, 2017. *Dejan mensaje de terror a periodista que recibió un atentado hace un mes*.

¹¹⁰⁷ C-Libre. February 20, 2017. *Secuestran temporalmente a periodista en Tegucigalpa*; Cerigua. May 2, 2017. *Honduras: Periodista fue secuestrado y asaltado en un taxi*.

¹¹⁰⁸ C-Libre. February 2, 2017. *Asaltan y secuestran temporalmente a periodista*; Cerigua. March 2, 2017. *Honduras: Periodista fue secuestrado y asaltado en un taxi*.

Pedro Sula, would have been kidnapped at his home. According to information of public knowledge, Pineda, who was also a representative candidate nominated by the *Partido Liberal*, would have been kidnapped with the intention of collecting a ransom of 60,000 dollars in exchange for his release. On September 23, the police authorities reported the rescue of the media worker, as well as the arrest of two alleged perpetrators of the plagiarism who the Criminal Court in Tegucigalpa linked to the process¹¹⁰⁹.

776. Regarding the case of journalist Ronnie Huete, the State has informed the IACHR that the Office of the Public Prosecutor has prepared the draft Fiscal Requirement [Requerimiento Fiscal] for the crimes of injuries, threats and unfair deprivation of liberty against security guards of the National Autonomous University of Honduras [Universidad Nacional Autónoma de Honduras – UNAH], to the detriment of the communicator¹¹¹⁰.

777. On March 8, the community radio station *La Voz Lenca*, which is operated by the Civic Council of Popular and Indigenous Organizations of Honduras [*Consejo Cívico de Organizaciones Populares e Indígenas de Honduras*] (COPINH), would have been attacked with stones by an unidentified group of people. The events would have taken place in the community of La Cruz Concordia, in the municipality of San Francisco, department of Lempira, and COPINH would have indicated that government authorities were behind the attack¹¹¹¹.

778. On April 6, the journalist of *Radio Globo*, Rony Espinoza, was verbally assaulted by alleged supporters of the *Partido Libertad y Refundación* (LIBRE), one of whom would have attacked him with blows. According to available information, the events occurred outside the Supreme Court of Justice [*Corte Suprema de Justicia*] (CSJ), in the City of Tegucigalpa, in the minutes prior to the arrival at the building of former President Manuel Zelaya, who had to relieve a judicial proceeding. The attackers would be sympathizers of Zelaya who would have come to the place to express their support¹¹¹².

779. On May 17, the Honduran army would have assaulted several cameramen while they were covering a transfer of prisoners from different prisons to the maximum-security prison known as "*La Tolva*" or "*El Pozo II*". The military, who carried out work to protect the transfer operation, would have also tried to retain the equipment of one of the cameramen and threatened to arrest them¹¹¹³.

780. On May 31, cameraman René Alberto Ortega of the *Corporación Televicentro* (TVC) of the city of Tegucigalpa, would have been shot six times with firearms. The events occurred when Ortega left the facilities of his workplace located in the Buenos Aires neighborhood of the Honduran capital. The media worker was hospitalized as a result of the impacts and, after being operated on, he was admitted to the intensive care area. The National Police discarded the hypothesis of the robbery, because all the belongings of Ortega were found in the place. On June 1, the National Commissioner for Human Rights [*Comisionado Nacional de los*

¹¹⁰⁹ C-Libre. September 4, 2017. *Periodista cumple cinco días desaparecido*; Tiempo Digital. September 4, 2017. *60 mil dólares piden secuestradores de Víctor Manuel Pineda*; La Prensa. September 23, 2017. *Liberan al periodista Víctor Manuel Pineda*; La Tribuna. September 23, 2017. *Rescatan sano y salvo al candidato a diputado Víctor Manuel Pineda*; La Tribuna. September 24, 2017. *A la cárcel envían a implicados en secuestro de Víctor Manuel Pineda*.

¹¹¹⁰ República de Honduras. Oficio SDH-0042-2018, of February 9, 2018, received on February 9, 2018. Disponible en: Archivo de la Relatoría Especial.

¹¹¹¹ C-Libre. March 9, 2017. *Atacan emisora comunitaria la Voz Lenca del COPINH*; Pasos de animal grande. March 9, 2017. *Personas armadas con piedras atacan contra La Voz Lenca, radio comunitaria del COPINH*.

¹¹¹² Tiempo Digital. April 4, 2017. *Simpatizantes de LIBRE agreden a periodista de Radio Globo*; Proceso Digital. April 6, 2017. *Seguidores de Zelaya agreden a periodista de radio Globo*; ConfidencialHN. April 6, 2017. *Agreden a periodistas de Radio Global mientras cubrían protestas de partido opositor*.

¹¹¹³ Criterio.hn. May 17, 2017. *Militares impiden a camarógrafos hacer su trabajo en traslado de reos a "La Tolva" (Video)*; Tiempo Digital. May 17, 2017. *Militares intentan quitarle cámara a periodistas que cubrían traslado de reos a "La Tolva"*; C-Libre. May 30, 2017. *"Y porque putas no se van para allá" le dice militar a periodistas*.

Derechos Humanos] (Conadeh), requested the General Director of the Protection System for Human Rights Defenders, Journalists, Social Media Workers, and Justice Operators, to adopt protective measures in favor of Ortega¹¹¹⁴.

781. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹¹¹⁵

782. The authorities responsible for an investigation should conduct their activities in an expedited manner, avoiding delays or unnecessary hindrances in the proceedings which could lead to impunity and infringe on judicial protections under the law. In the Joint Declaration on Crimes against Freedom of Expression the Special Rapporteurs pointed out that “authorities should make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.”¹¹¹⁶

783. The IACHR and the Office of the Special Rapporteur recall that public servants must unequivocally repudiate attacks perpetrated in retaliation for the exercise of freedom of expression, and must abstain from making statements that may increase the vulnerability of those who are persecuted for exercising their right to freedom of expression. Similarly, it is essential that the authorities who hold elective positions or who hold responsibilities within the State structure encourage the competent authorities to act with due diligence and speed to investigate the facts and punish those responsible.¹¹¹⁷

C. Social protest

784. Throughout the year, there would have been at least a dozen demonstrations by students of the *Universidad Nacional Autónoma de Honduras* (UNAH). The institution’s students would have taken to the streets for various reasons, and during the demonstrations they would have been repelled by the police authorities with tear gas and jets of water, in addition to the detention of around thirty protesters on various dates.

¹¹¹⁴ C-Libre. June 1, 2017. *Camarógrafo de Televisión gravemente herido en atentado*; La Tribuna. June 1, 2017. *Atentan contra camarógrafo de Televisión en Tegucigalpa*; La Prensa. May 17, 2017. *Otros 36 reos son trasladados a “La Tolva” en El Paraíso*; Proceso Digital. June 4, 2017. *Conadeh pide medidas de protección para camarógrafo víctima de atentado*.

¹¹¹⁵ IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. . *Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression*. Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹¹¹⁶ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. *Joint Declaration on Crimes Against Freedom of Expression*.

¹¹¹⁷ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. *Joint Declaration on Crimes Against Freedom of Expression*.

785. On February 9, university students protested the conviction against former university student Kevin Joshua Solórzano Hernández, who was found guilty of the murder of former prosecutor Edwin Eguigure, which had occurred on November 11, 2014. Solórzano was arrested on November 20, of the same year, and during the trial he was also accused of attempted murder against the widow of the former prosecutor. The protests were repelled by the police with the use of tear gas¹¹¹⁸. On March 2, new demonstrations would have taken place in demand of greater spaces to participate in university life, in addition to demanding clarification of the murder of the indigenous environmentalist Berta Cáceres, which occurred a year earlier. The police would have intervened to contain the demonstration using jets of water and tear gas¹¹¹⁹. On May 2 and 3, students would've blocked Suyapa Boulevard once again, which is one of the main roads surrounding the university campus, demanding greater participation within the conformation of the University Management Board [*Junta de Dirección Universitaria*], the main administrative body of the house of studies, whose seven members had to be elected on April 29. The demonstrators would have confronted the police, throwing stones at the soldiers, while the latter used tear gas and jets of water to dissolve the demonstration. During the confrontation, a policeman would have been injured¹¹²⁰. On May 24, a group of students would have taken two UNAH's buildings in support of three of their classmates, who were students of the Faculty of Humanistic Sciences, in trial since 2015, accused by the rectory due to the 2014 protests, when UNAH's new academic rules were approved. According to available information, twenty students would have been arrested by the National Police, whose intervention would have been requested by the university authorities¹¹²¹. On June 13, university students occupied UNAH's facilities¹¹²², but were evicted by policemen on June 16¹¹²³.

786. On this matter, the State has declared to the IACHR that the National Police has acted through the use of legal means for the control and dispersion of crowds using only those means authorized by national regulations and international treaties and the Manual of the Use of Force [*Manual del uso de la fuerza*], using techniques that cause the least harm to individual integrity¹¹²⁴.

787. On July 19, students united under the *Movimiento Estudiantil Universitario* (MEU) marched to the National Congress and delivered their proposal to end the crisis, consisting of the creation of a "Provisional University Government" [*Gobierno Universitario Provisional*] and the consequent suspension of all current university authorities¹¹²⁵. On August 15, National Congress designated a Special Commission to address the

¹¹¹⁸ La Tribuna. February 9, 2017. *Estudiantes de la UNAH protestan en el bulevar Suyapa*; *El Heraldo*. February 8, 2017. *Cronología completa del caso contra Kevin Solórzano*; *Tiempo Digital*. February 10, 2017. *Estudiantes protestan por la falta de justicia en Honduras*.

¹¹¹⁹ La Tribuna. March 2, 2017. *Con 'chorros' de agua desalojan protesta de estudiantes en UNAH*; *La Prensa*. March 2, 2017. *Policía desaloja a estudiantes de la UNAH en Tegucigalpa*; *Tiempo Digital*. March 2, 2017. *Se da confrontación entre estudiantes de la UNAH y Policías Antimotines*.

¹¹²⁰ *El Heraldo*. May 2, 2017. *Estudiantes de la Universidad Nacional Autónoma de Honduras reactivan las protestas*; *Tiempo Digital*. May 2, 2017. *Estudiantes del MEU se toman Bulevar: exigen elecciones en UNAH*; *HRN*. May 2, 2017. *Enfrentamiento entre miembros del MEU y Policía Militar frente a la UNAH*; *Tiempo Digital*. May 3, 2017. *Un policía herido deja nuevo enfrentamiento en la UNAH*.

¹¹²¹ *Tiempo Digital*. May 24, 2017. *UNAH: Se toman edificios en apoyo a estudiantes judicializados*; *Criterio HN*. May 25, 2017. *Policía ingresa a la UNAH y detiene 20 estudiantes esta madrugada*.

¹¹²² *El Heraldo*. June 13, 2017. *Suspenden clases en la UNAH por protesta de estudiantes*; *La Prensa*. June 13, 2017. *Suspenden las clases en la UNAH por toma de estudiantes*.

¹¹²³ *El Heraldo*. June 16, 2017. *Seis alumnos detenidos en desalojo del edificio de Química y Farmacia de la UNAH*; *El Heraldo*. June 16, 2017. *Desalojo provoca batalla campal entre estudiantes y policías en la UNAH*; *La Prensa*. June 16, 2017. *Detenidos y daños materiales dejan protestas en la UNAH*.

¹¹²⁴ República de Honduras. Oficio SDH-0042-2018, of February 9, 2018, received on February 9, 2018.

¹¹²⁵ *La Tribuna*. June 20, 2017. *Estudiantes de la UNAH nuevamente se toman edificios*; *Criterio.hn*. July 19, 2017. *En masiva movilización MEU entrega propuesta al Congreso Nacional*; *La Prensa*. July 19, 2017. *Estudiantes de la UNAH entregan anteproyecto al Congreso Nacional*.

university problems. The Commission summoned MEU officials to a meeting on August 16, the same date on which the anti-riot police evicted a group of students from the Faculty of Chemistry and Pharmacy, resulting in five policemen injured in the confrontation¹¹²⁶. On August 30, Congress' Legislative Committee presented a proposal to appoint an Acting Rector who would be elected by the University Management Board [*Junta de Dirección Universitaria*] and would head the UNAH for a period of six months. On September 25, Francisco José Herrera Alvarado would have been selected for the position, on and that same day the Rector Julieta Castellanos Ruiz ceased in her functions, the next classes would have resumed at the institution¹¹²⁷. However, the fact that the student Marcio Noé Silva, member of the MEU, remained in prison subject to criminal proceedings, and that another 10 students are subject to precautionary measures, would have provoked new student protests and confrontations¹¹²⁸.

788. On April 25, members of the "Somos Muchas" organization, which promotes the decriminalization of therapeutic abortion, held a march in front of the National Congress. They reported having been assaulted by groups allegedly aligned with the Government, who they identified as scholar students of the "*Programa Honduras 20/20*", aimed at students with limited resources. The events would have happened in the presence of army officials who would have refrained from intervening¹¹²⁹.

789. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"¹¹³⁰ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."¹¹³¹

790. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures

¹¹²⁶ Criterio.hn. August 15, 2017. *Congreso Nacional nombra comisión para dictaminar iniciativa ciudadana presentada por el MEU*; El Heraldo. August 15, 2017. *Congreso Nacional nombra comisión para conocer problemática de la UNAH*; Última Hora. August 16, 2017. *Cinco policías heridos tras desalojo de una universidad en Honduras*; La Prensa. August 16, 2017. *Policías y miembros del MEU se enfrentan en Tegucigalpa*; Abriendo Brecha. August 16, 2017. *"Batalla campal" entre estudiantes de la UNAH y policías (VIDEO)*; Nodal. August 17, 2017. *Honduras: la Policía reprime a estudiantes en huelga de hambre en la Universidad Autónoma*.

¹¹²⁷ La Tribuna. August 30, 2017. *Proponen rector interino para solventar crisis de la UNAH*; La Tribuna. September 20, 2017. *Unos 28 candidatos se perfilan con rector interino de la UNAH*; Tiempo Digital. September 25, 2017. *Eligen a Francisco Herrera como rector interino de la UNAH*; Criterio.hn. September 25, 2017. *Estudiantes celebran con fiesta la salida de Julieta Castellanos*; El Heraldo. September 27, 2017. *Comienza el nuevo Gobierno de la Universidad Nacional Autónoma de Honduras*; El País. September 26, 2017. *UNAH reanuda clases tras elección de rector interino*.

¹¹²⁸ Tiempo Digital. September 27, 2017. *A prisión mandan a estudiante del MEU, Marcio Noé Silva*; Pasos de Animal Grande. September 28, 2017. *Prisión para estudiante reinicia protestas estudiantiles en la UNAH*; La Prensa. October 18, 2017. *Encapuchados vuelven a protagonizar disturbios en la UNAH*.

¹¹²⁹ Criterio. April 25, 2017. *Antibortistas supuestamente nacionalistas agreden a grupos pro aborto terapéutico*; Tiempo Digital. April 25, 2017. *Ciudadanos en contra del aborto agreden a aquellos a favor afuera del Congreso*; C-Libre. April 26, 2017. *Turba pro-gobierno agrede a mujeres que se manifestaban a favor de la despenalización del aborto en Honduras*.

¹¹³⁰ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹¹³¹ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹¹³²

D. Stigmatizing statements

791. Civil society organizations denounced the existence of a smear campaign directed against journalist Jairo López, director of the television program “*El Informador*”, which is transmitted through *Canal 21* in the city of Choluteca, department of the same name. The campaign would allegedly be promoted by the president of the National Congress, Mauricio Oliva Herrera, whose escort would have pointed a weapon against civilians, being captured in a video broadcasted by Lopez in his program. After the images were broadcasted, another video that aims at linking the journalist to a criminal network and with the alleged drug trafficker Orlando Pinto, would have been distributed through the social network Facebook¹¹³³.

792. The State has informed the IACHR that in Honduras the crime of threat is an illegality pursued at an individual level. Journalist Jairo López has not reported the incident to the Office of the Public Prosecutor, therefore the intervention of the Office of the Public Prosecutor in said case would not be possible. Also, Lopez is, according to the State, covered by the National Protection System for Human Rights Defenders, Journalists, Social Communicators and Justice Operators [*Sistema Nacional de Protección para personas Defensoras de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadoras de Justicia*]¹¹³⁴.

793. On March 31, the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Honduras issued a statement in which it warned of the existence of stigmatizing and discrediting campaigns directed against human rights defenders in Honduras. In its press release the OHCHR specifically referred to the cases of the Jesuit priest Ismael Moreno Coto, human rights defender and executive director of *Radio Progreso* and the Reflection, Research, and Communication Team [*Equipo de Reflexión, Investigación y Comunicación*] (ERIC-SJ), as well as the indigenous leader Salvador Zúniga, and the Civic Council of Popular and Indigenous Organizations of Honduras [*Consejo Cívico de Organizaciones Populares e Indígenas de Honduras*] (COPINH). Both activists and the civil society organization would be subject to accusations that aim at linking them to illicit activities. The OHCHR urged the Government of Honduras to take the necessary actions to ensure that human rights defenders can carry out their activities¹¹³⁵.

794. Public servants, like all people, are entitled to the right to freedom of expression in its many forms. Nevertheless, in their case, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized in the Inter-American case law, particularly with respect to: the special duties they acquire by virtue of their status as state officials; (b) the duty of confidentiality that

¹¹³² United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

¹¹³³ Tiempo Digital. February 13, 2017. [Choluteca: Supuesto escolta de Mauricio Oliva casi dispara a protestantes](#); C-Libre. February 14, 2017. [Periodista de la zona sur es víctima de campaña de desprestigio](#); Tiempo Digital. February 14, 2017. [Periodista sufre campaña de desprestigio tras denunciar abusos de Mauricio Oliva](#); Pasos de animal grande. February 15, 2017. [Caso Jairo López: Campaña de desprestigio contra periodista inunda medios nacionales y es conocido internacionalmente por organizaciones de derechos humanos](#); Reporters Without Borders. February 23, 2017. [HONDURAS | Proceso judicial irregular y campaña de desprestigio: el periodista Jairo López, en medio de la tormenta](#).

¹¹³⁴ República de Honduras, Oficio SDH-0042-2018, of February 9, 2018, received on February 9, 2018.

¹¹³⁵ The New York Times. March 26, 2017. [El sacerdote que se enfrenta al presidente de Honduras](#); C-Libre. March 30, 2017. [Aparece campaña de odio contra director de Radio Progreso](#); Conexihon. March 31, 2017. [OACNUDH en alerta por reciente campaña de desprestigio contra defensores y defensoras](#).

may apply to certain types of information held by the State; (c) the right and duty of public officials to denounce human rights violations; and (d) the particular situation of members of the Armed Forces.¹¹³⁶

795. With regard to the impact of the statements of public servants on the rights of others, the Inter-American Court has held that, under certain circumstances—even if the official speech does not expressly authorize, instigate, order, instruct, or promote acts of violence against specific citizens—its reiteration and content can increase the “relative vulnerability” of those groups and the risks they face.¹¹³⁷

E. Legal reforms

796. On February 21, the Honduran Congress approved a reform of Article 335 of the Criminal Code, by which the terrorist offense was incorporated into said ordinance; On February 22, in the same law, article 335-B was added, through which the crime of apology and incitement to acts of terrorism was established. These reforms are intended to punish anyone who “publicly, through the media, or dissemination to the public made apology, exaltation, or justification of the crime of terrorism or those who participated in its execution, or incite others to commit terrorism, or the funding of the same”, and established prison sentences of four to eight years for such conduct. The incorporation of the aforementioned criminal conducts is part of the “Law for the Strengthening and Effectiveness of Security Policy” [*Ley para el Fortalecimiento y Efectividad de la Política de Seguridad*], an initiative promoted by the president, Juan Orlando Hernández, and which has been deemed by various opposition groups as an attempt to criminalize social protest¹¹³⁸. Various civil society organizations, including the Journalists Association of Honduras [*Colegio de Periodistas de Honduras*] (CPH), have rejected the legal reforms and begun a campaign to promote their repeal. On April 4, the president of CPH, Dagoberto Rodríguez, would have held a meeting with the president of the Congress, Mauricio Oliva, to ask him to discuss his petition. Faced with the refusal of the legislator, the journalistic union would have decided to combat the law by filing a writ of Amparo before the Supreme Court of Justice¹¹³⁹. On June 5, the CPH President informed through his Twitter account that the Public Prosecutor of Honduras had issued an opinion declaring the unconstitutionality of Article 335-B of the Criminal Code and stating that it would present a declaration to the Supreme Court on the partial inapplicability of the rule regarding journalistic work¹¹⁴⁰. On August 15, the highest court would have ruled inadmissible a writ of Amparo filed by representatives José Manuel Zelaya and Luis Redondo, of the *Partido Libertad y Refundación*, against the aforementioned law, arguing that said remedy is not adequate, but rather an unconstitutionality action. At the close of this report, two unconstitutionality appeals lodged by the civil society organization Committee for Free Expression [*Comité por la Libre Expresión*] (C-Libre) and journalist Edgardo Rodríguez,

¹¹³⁶ IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 200.

¹¹³⁷ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 145; I/A Court H. R. *Case Perozo et al vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 195. Para. 157.

¹¹³⁸ La Prensa. February 22, 2017. Congreso aprueba artículo que vulnera la libertad de expresión; Prensa Libre. February 22, 2017. Honduras aprueba ley que califica de “terroristas” a pandilleros y manifestantes; El Heraldo. February 27, 2017. Honduras: reformas al código penal en vigencia tras ser publicadas en La Gaceta; TVC. April 3, 2017. Colegio de Periodistas de Honduras pide derogar artículo que atenta contra libertad de expresión, de no hacerlo irán a la CSJ.

¹¹³⁹ La Tribuna. April 5, 2017. Congreso Nacional rechaza derogar artículo 335-B; La Prensa. May 11, 2017. Corte Suprema recomendará al Congreso Nacional que reforma artículo 335-B.

¹¹⁴⁰ “Prosecutor for the Defense of the Constitution declares article 335-B unconstitutional and asks CSJ for its inapplicability”. Twitter account of Dagoberto Rodríguez @darocohn. June 5, 2017; El Heraldo. June 6, 2017. Declaran inaplicable el artículo 335-B que lesiona la libertad de expresión; La prensa. June 6, 2017. Según opinión del MP, artículo 335-B es inconstitucional.

member of the Board of Directors of the Freedom and Democracy Association [*Asociación Libertad y Democracia*] (ALD), were under study¹¹⁴¹.

797. The IACHR and its Office of the Special Rapporteur, together with the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Honduras, expressed, through a joint press release, their concern "over the adopted reforms in the Honduran penal code, which may lead to a negative impact in the legitimate exercise and enjoyment of the guarantees and fundamental rights, the protection and promotion of freedom of expression in the country"¹¹⁴².

F. Direct and indirect censorship

798. Two media workers would have been subjected to censorship by municipal and legislative authorities. On September 28, the newspaper *El Pulso* reported that its reporter Nincy Perdomo would have been denied access to the facilities of the Jicaral Hotel Convention Center, where a special session of the National Congress was being held. The order to prevent the journalist's access would have been handed over by the person responsible for the security of congress, as a result of alleged publications made by the journalist in which she stated that "the president doesn't do anything and only goes to sleep."¹¹⁴³ On October 9, the civil society organization C-Libre issued an alert to denounce the alleged censorship suffered by the journalist Isaac Calix, who hosted a program on the TV channel *Más TV*. According to the organization, Calix reported that Dorn Ebanks, mayor of Roatán, of the department of Islas de la Bahía, had asked the television station to cancel the program "*Elecciones 2017, tu voz es tu voto*", hosted by Calix, by using the advertising contract that the city council has with the company¹¹⁴⁴.

799. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

G. Other relevant situations

800. On May 18, César Geovany Bernardez, director of the Honduran Black Fraternal Organization [*Organización Fraternal Negra Hondureña*] (OFRANEH), was arrested; he was also working as a correspondent for the Radio *Progreso* station that transmits from the municipality of El Progreso, in the department of Yoro. The arrest of Bernardez would have been registered in the locality El Porvenir, of the department of Atlántida, under an arrest warrant issued against him and three other members of the OFRANEH board in November 2016, after the Canadian businessman Patrick Forsent, owner of the company CARIVIDA, filed a complaint against them for the crime of land usurpation. The company would have the intention of building a tourist complex in traditional Garífuna lands. The judge of the case, although he

¹¹⁴¹ Radio América. June 27, 2017. *Sala Constitucional admite recurso contra 335-B*; ALD. July 1, 2017. *ALD presenta recurso ante la Sala de lo Constitucional*; El Heraldito. August 15, 2017. *CSJ rechaza recurso contra artículo 335-B interpuesto por "Mel" Zelaya y Luis Redondo*; La Prensa. August 15, 2017. *Quedan pendientes otros dos recursos contra el 335-B*; Abriendo Brecha. August 15, 2017. *Corte declara inadmisibile recurso contra el artículo 335-B*.

¹¹⁴² IACHR. Office of the Special Rapporteur for Freedom of Expression. February 23, 2017. *Joint Press Release R18/17. The Inter-American Commission on Human Rights, its Special Rapporteurship for Freedom of Expression and the Office of the United Nations High Commissioner for Human Rights in Honduras express concern over adopted reforms in the Honduran penal code, retrogressive for human rights and freedom of expression*.

¹¹⁴³ El Pulso. September 28, 2017. *¡Censura! Congreso Nacional Impide Ingreso a Nuestra Periodista*; C-Libre. August 28, 2017. *Presidente del Congreso prohíbe acceso a cronista parlamentaria*.

¹¹⁴⁴ C-Libre. October 9, 2017. *Periodista denuncia que por presiones de alcalde municipal le cancelaron su espacio informativo*.

ordered the release of Bernardez, would have imposed precautionary measures, among them a ban on leaving the country¹¹⁴⁵.

¹¹⁴⁵ CLACPI. May 18, 2017. *Detienen a Directivo de la Organización Fraternal Negra de Honduras*; Front Line Defenders. May 19 and 22, 2017. *Detención del Defensor de Derechos Humanos Cesar Geovany Bernardez*; C-Libre. May 19, 2017. *Detienen a corresponsal de Radio Progreso*.

22. JAMAICA

A. Stigmatizing statements

801. On April 25, the Prime Minister, Andrew Holness, would have pointed out that Jamaicans should not listen and believe the fake news presented by the media. Likewise, he would have indicated that he will not allow the press to spread "propaganda" or alternative facts. In this regard, the Prime Minister did not specify to which media outlet his comment was directed at. However, it would have indirectly alluded to an article published by *The Gleaner* on April 15, in which the state of deterioration of a street in the city of Kingston and Holness's responsibility in solving it was mentioned. The video of the press conference where he allegedly referred to this matter was published in Holness's profile on the social network Facebook¹¹⁴⁶.

802. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."¹¹⁴⁷

B. Subsequent Liabilities

803. On March 14, 2017, human rights defender Latoya Nugent was arrested and detained by members of the Counter-Terrorism and Organized Crime Division of the Jamaica Constabulary Force. She was charged under the Cybercrimes Act for breach of section 9 dealing with "use of computer for malicious communication" for reportedly naming alleged perpetrators of sexual violence on social media.¹¹⁴⁸ On March 15, 2017 it is reported that Nugent was hospitalized and was unable to appear before the Court due to health concerns.¹¹⁴⁹ Nugent was subsequently granted bail.¹¹⁵⁰

804. Section 9 of the Cybercrimes Act provides that a person commits an offence if that person uses a computer to send to another person any data (whether in the form of a message or otherwise) – that is obscene, constitutes a threat or is menacing in nature; and with the intention to harass any person or cause harm, or the apprehension of harm, to any person or property. An offence is committed regardless of whether the actual recipient of the data is or is not the person to whom the offender intended the data to be sent. The penalty for the offence of "use of computer for malicious communication" if summarily convicted before a Resident Magistrate, ranges from up to four million dollars or imprisonment for a term not exceeding four

¹¹⁴⁶ Nationwide 90FM. May 1, 2017. *Holness goes after 'Fake News'*; The Gleaner. April 15, 2017. *Worst Road in Kingston*; Andrew Holness/Facebook. April 25, 2017. *Anything you see, check it with a grain of salt. We are not going to allow them to spread fake news, propaganda and alternative facts on what the Government of Jamaica is doing.*

¹¹⁴⁷ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

¹¹⁴⁸ Jamaica Gleaner. March 15, 2017. *Tambourine Army Leader Arrested and Charged*; Jamaica Observer. March 15, 2017. *Advocacy Group Co-founder arrested and charged.*

¹¹⁴⁹ Jamaica Gleaner. March 15, 2017. *UPDATE: Co-Founder of Tambourine Army Latoya Nugent Admitted to Hospital*; Jamaica Observer. March 15, 2017. *UPDATE: Tambourine Army claims Nugent was denied medical attention while in police custody*. Jamaica Observer. March 15, 2017. *UPDATE: Tambourine Army co-founder rushed to hospital in state of shock.*

¹¹⁵⁰ Jamaica Gleaner. March 16, 2017. *Tambourine Army co-founder granted bail, released from hospital*; Jamaica Observer. March 15, 2017. *update: Nugent granted bail, released from hospital*; RJR News Online. March 15, 2017. *Tambourine Army's Latoya Nugent granted bail.*

years. If convicted on indictment before a Circuit Court, the penalty ranges up to a fine or imprisonment for a term not exceeding twenty years.¹¹⁵¹

805. Following Nugent's arrest, stakeholders in the legal profession, the media and civil society expressed concern about the use of the Cybercrimes Act. The concern was that the law was being inappropriately used to address claims of defamatory speech and appeared to be an attempt to criminalize defamation through the backdoor.¹¹⁵² In 2013, Jamaica's Defamation Act abolished criminal libel and abolished the distinction between slander and libel.¹¹⁵³ In response to the concerns raised, a commitment was made by parliamentarians to review the Cybercrimes Act in 2017 so as to address concerns raised including the concern that the law inhibits freedom of expression.¹¹⁵⁴ On May 17, 2017, the Office of the Director of Public Prosecutions withdrew the charges against Nugent on the basis that it had insufficient evidence to proceed and the actions complained of did not meet the elements of the offence in section 9 of the Cybercrimes Act.¹¹⁵⁵

806. The Office of the Special Rapporteur highlights that all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, the Office of the Special Rapporteur indicated that any legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect the free flow of information and legitimate websites and services.¹¹⁵⁶ To prevent the criminalization of the use of the Internet, "Cybersecurity" legislations should avoid creating new offences or increasing the penalties of criminal conducts that are not aimed at attacking the integrity, the infrastructure or the confidentiality of the Internet. For example, defamation or fraud should not be considered "computer crimes" and the punishment of those offenses should not be aggravated in exclusive consideration of the technological medium used to carry them out.

C. Legal reforms

807. On May 12, the Minister of Education, Youth, and Information, Ruel Reid, would have indicated in Parliament that the Government and the Broadcast Commission would be evaluating a series of reforms aimed at regulating local media. In this regard, Reid would have justified the extent to which Jamaica has a multiplicity of audiovisual media that would provoke intense struggles to increase the ratings, causing sensationalist news to attract the public's attention. Likewise, Reid would have pointed out that the Government's action seeks to guarantee access to public information and is, in turn, in recognition of the responsibility of creating conditions for economic growth and national development¹¹⁵⁷.

¹¹⁵¹ Parliament of Jamaica. Cybercrimes Act, December 21, 2015.

¹¹⁵² Jamaica Gleaner. March 19, 2017. Folly of the Cybercrimes Act; Jamaica Observer. March 21, 2017. PAJ concerned about use of new Cybercrimes Act; Jamaica Gleaner. March 21, 2017. Jamaica Coalition for Healthy Society wants Cybercrimes Act reviewed; Jamaica Gleaner. March 23, 2017. Review dangerous Cybercrimes Act, urges JCHS chair.

¹¹⁵³ Parliament of Jamaica. Defamation Act, November 28, 2013.

¹¹⁵⁴ RJR News Online. March 23, 2017. Cybercrimes Act needs more Amendments, says Robinson; Jamaica Gleaner. April 28, 2017. Lawmaker wants Cybercrimes Act reviewed; Jamaica Observer. April 28, 2017. Revision of Cybercrimes Act to get underway shortly, Wheatley says.

¹¹⁵⁵ Jamaica Gleaner. May 17, 2017. Charges dropped against Tambourine Army co-founder; Jamaica Gleaner. May 17, 2017. UPDATE: Why the DPP dropped the charges against Tambourine Army co-founder; Jamaica Observer. May 17, 2017. DPP discontinues cybercrime case against Nugent.

¹¹⁵⁶ UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet.

¹¹⁵⁷ Jamaica Gleaner. May 13, 2017. Government Considers Regulating Social Media; Loop. May 13, 2017. Government looking to regulate the local media landscape.

808. On May 16, the Press Association of Jamaica (PAJ) would have made a statement requesting the Government to clarify a series of questions related to the alleged reform being promoted. In addition, PAJ reported that between March 2009 and January 2011, it made different recommendations to amend the current law on Access to Public Information, but they were never taken to Parliament to be studied¹¹⁵⁸. Finally, on May 17, Minister Ruel Ried, in dialogue with the *Cliff Hughes Online* radio program, would have rectified his statements by stating that without the approval of the PAJ and the opposition, there would be no changes in the regulations¹¹⁵⁹.

D. Access to public information

809. According to the information available, the government allegedly restricted journalists' access to different forums and events. In this regard, in briefings of the Prime Minister, Andrew Holness media workers would have been omitted in the respective guest lists, while selectively distributing government information, favoring certain media and journalists¹¹⁶⁰.

810. This Office of the Special Rapporteur wishes to recall that in the Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption, the Special Rapporteurs for Freedom of Expression of the United Nations, the Inter-American Commission on Human Rights (IACHR) and Organization for Security and Cooperation in Europe (OSCE), noted that accreditation schemes for journalists "are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance. Accreditation should never be subject to withdrawal based only on the content of an individual journalist's work"¹¹⁶¹.

¹¹⁵⁸ Jamaica Gleaner. May 16, 2017. [*PAJ Seeks Clarification On Reid's Media Regulation Statements*](#) Loop. May 16, 2017. [*PAJ writes Gov't on press freedom issue*](#).

¹¹⁵⁹ Nation Wide Radio. May 17, 2017. [*Information Minister changes tune on Social Media Regulation*](#).

¹¹⁶⁰ Inter American Press Association (IAPA). [*Report on the Caribbean*](#). 73rd General Assembly. Salt Lake City, Utah. October 27-30, 2017.

¹¹⁶¹ [*Special Rapporteurship for Freedom of Expression. Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption*](#). December 18, 2003.

23. MEXICO

811. Mexico faces a profound security crisis severely affecting the human rights of its people. At the heart of the crisis is a breakdown in the rule of law and governance at local levels across the country, simultaneously leading to and exacerbated by murders, disappearances and torture. The suffering is widespread, yet the violence has often singled out those most essential to telling the story of conflict and insecurity, corruption and criminality: journalists. It is violence with a particularly political purpose, a widespread attack on the roots of democratic life in Mexico, at local, state and national levels.

812. Any fair-minded assessment must acknowledge that addressing such violence is not simple. Organized crime has deeply infiltrated the public life of the country, especially at the level of states and municipalities, as we heard from dozens of government officials, journalists, and non-government organizations. In addition to the use of violence in all its forms, criminal actors and public authorities attempt to co-opt journalists for their purposes and impose information favorable to the cartels or against their enemies. Organized crime has generated hybrid ways to interfere with journalism, generating division and distrust among journalists, and between journalists and local officials.

813. The Government, while acknowledging the problems, has nonetheless failed to devote necessary resources and demonstrate political will. We recognize progress in the protection of journalists at the federal level, but even the coordination of that protection in the states is insufficient. The mechanisms of protection have surprisingly limited resources given the context of a national crisis. The specialized mechanisms of accountability, at federal and state levels, have not delivered results, leading to increased frustration. Indeed, impunity for crimes is the general rule in cases of reported journalist killings and disappearances. This has generated a distrust of the media and journalists towards the institutions and a painful disconnection of the victims and their relatives from the institutions of justice. While the existence of these institutions is commendable, a national commitment to expanding their ambition and resources is essential to address the scourge of violence.

814. The endemic attacks on journalists, as well as human rights defenders, undoubtedly present the most immediate and challenging threat to freedom of expression in Mexico today, but that does not exclude consideration of other factors, for there is a broader environment in which deep challenges to press freedom and individual expression persist. In part this environment involves a historic transition from past authoritarian practices in government to emerging political pluralism and demands for democratic standards. That transition has not done away with the problematic and intimidating practices of the past, such as the expectations of good coverage under official advertising, described by the aphorism, "I do not pay to be beaten"; the dismissal of critical journalists at the request of authorities; the development of rosters for paid journalism by state administrations; and the lack of pluralism in the property and the editorial line of the media system. The well-documented examples of digital surveillance of journalists and human rights defenders, among others, seem to be both a relic of the approaches of the past and an example of the challenges journalists face in the digital age.¹¹⁶²

A. Advancements

815. In March, the Oral Proceedings Court in the Coast Region, State of Oaxaca, convicted Jorge Armando Santiago Martínez for the murder of journalist Marcos Hernández Bautista in 2016.¹¹⁶³ Hernández was the correspondent for Oaxaca's daily newspaper *Noticias Voz e Imagen de Oaxaca* and was a freelancer for other media outlets. He also served as a public official in the government of his town and was an active member of

¹¹⁶² UN/IACHR. Preliminary Observations by the UN Special Rapporteur on freedom of expression and the Special Rapporteur on freedom of expression of the IACHR following their joint visit to Mexico. December 4, 2017.

¹¹⁶³ AND Sureste. March 4, 2017. Logra FGJE sentencia condenatoria en contra de homicida del periodista Marcos Hernández; Proceso. March 4, 2017. Oaxaca: Dan 30 años de prisión a excomandante que asesinó a periodista en 2016.

the Movimiento de Regeneración Nacional political party.¹¹⁶⁴ Santiago Martínez, the former police chief of the municipality of Santiago Jamiltepec, was convicted and sentenced to a 30-year prison term and to payment of MXN\$ 178 thousand (around USD \$9,100) as reparation.¹¹⁶⁵ Based on available information, the Court has failed to determine the motive for the murder or who was the mastermind behind it.¹¹⁶⁶

816. On April 19, the Second Chamber of the Supreme Court of Justice of the Nation ruled on *amparo* review case No. 1/2017, finding that in order for limitations on freedom of expression exercised through an internet site to be deemed constitutional, they must be set forth in the law, pursue a legitimate purpose and be necessary and proportional.¹¹⁶⁷ In the specific case, the Court held that it was “unconstitutional for the Mexican Intellectual Property Institute (IMPI), on the grounds of being a protected musical work, to order all information, data and expressions on the webpage of the appellant to be blocked, preventing users from being able to enter said virtual site.”¹¹⁶⁸

817. In the view of the Court, the measures meet the legality requirement¹¹⁶⁹ and pursue a legitimate purpose, to wit, copyright protection from third parties. Notwithstanding, the Court ruled that said measures do not meet the requirements of necessity and proportionality, nor are they the least restrictive measures. Concretely, it held that “restrictions on the human right of freedom of expression ‘should not be excessively broad,’ on the contrary, permissible restrictions ‘should refer to concrete content;’ hence generic prohibitions on certain web sites and systems in order to function are not compatible with the human right of freedom of expression, except for truly exceptional situations. Such situations of exceptionality could be triggered when all of the content of a webpage is illegal.”¹¹⁷⁰ The Court noted that the blocking of the webpage, which subsequently prevents any user from gaining access to said site, constitutes the most restrictive measure possible on freedom of expression, opinion and information. Lastly, the Court found that totally blocking the webpage constituted “censorship, not only of the content generated by the administrator, right holder, owner or person responsible for said webpage himself, but also of the entire flow of information and expression that could stem from the exchange carried out by the users themselves of such a virtual site.”¹¹⁷¹

818. In July, the former Mayor of Silao, Enrique Benjamín Solís Arzola, was convicted and sentenced to 2 years in prison after admitting to being the instigator of the crimes of serious bodily harm and threats against journalist Karla Silva of the Leon city newspaper *El Heraldo*. Solís Arzola confessed to ordering in 2014 the Municipal Police chief at the time to hire individuals to beat and threaten journalist Silva for criticism of him in her articles. The former Mayor was also disqualified from holding public office for 2 years, sentenced to pay a fine and reparation to the victims. Solís Arzola was held in pre-trial detention for one year and four

¹¹⁶⁴ IACHR. Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Par. 793.

¹¹⁶⁵ Committee to Protect Journalists (CPJ). March 6, 2017. Ex-police commander jailed for 30 years for murder of Oaxaca journalist; NVI Noticias. March 4, 2017. Dan 30 años de prisión a homicida de periodista;

¹¹⁶⁶ AND Sureste. March 4, 2017. Logra FGJE sentencia condenatoria en contra de homicida del periodista Marcos Hernández; Página 3. March 5, 2017. Dan 30 años de prisión al ex comandante que asesinó al periodista Marcos Hernández.

¹¹⁶⁷ Suprema Corte de Justicia de la Nación. Amparo en revisión 1/2017. April 19, 2017.

¹¹⁶⁸ Suprema Corte de Justicia de la Nación. April 19, 2017. SCJN declara inconstitucional el bloqueo de una página web, al considerar que tal medida violenta la libertad de expresión.

¹¹⁶⁹ The order blocking the website was based mainly on “Article 199 Bis, fraction V, of the Industrial Property Law, in relation to the various 177, penultimate paragraph, of the Regulation of the Federal Law of Copyright”. Suprema Corte de Justicia de la Nación. Amparo en revisión 1/2017. April 19, 2017. p. 37.

¹¹⁷⁰ Suprema Corte de Justicia de la Nación. Amparo en revisión 1/2017. April 19, 2017. p. 38.

¹¹⁷¹ Suprema Corte de Justicia de la Nación. Amparo en revisión 1/2017. April 19, 2017. p. 44.

months and when he was sentenced to the minimum prison term, he was granted release on bail.¹¹⁷² He was also required to issue a public apology through a newspaper with state-wide circulation. In the daily newspaper *El Correo* of Guanajuato, the following message was published: "I, Enrique Benjamín Solís Arzola, former Municipal President [mayor] of Silao (2012-2015), offer my apology for having hurt and threatened El Heraldo de León newspaper journalist Karla Janeth Silva Guerrero and her companion Adriana Elizabeth Palacios. By doing so, I violated freedom of expression. Crimes committed on September 4, 2014."¹¹⁷³

819. On November 15, the First Chamber of the Supreme Court of Justice of the Nation ruled that the Congress of the Union should fulfill its legislative duties and issue a law to regulate expenditures on official publicity. The Court set April 30, 2018 as the deadline to meet said obligation emanating from the 2014 amendment to the Constitution, which mandated the Congress to legislate on the subject of government publicity¹¹⁷⁴ within a period that lapses on April 30, 2014. An *amparo* suit was brought by the organization Artículo 19 for failure to honor the constitutional mandate.¹¹⁷⁵ As for the right to freedom of expression, the Court ruled: "the failure to issue the aforementioned law violates freedom of expression, of the press and of information. This right requires free communications media, which convey to citizens all types of opinions, for which it is necessary to have sufficient economic income. The failure to regulate official publicity fosters an arbitrary exercise of the social communication budget, thereby restricting freedom of expression."¹¹⁷⁶

820. On December 16, 2016, the Superior Electoral Tribunal of the Federal Judiciary (TEPJF) decided two cases of injunctive measures, issued by the Complaints and Reports Commission of the National Electoral Institute (CQD), which ordered blocking content for allegedly violating electoral law.¹¹⁷⁷ In one of the cases, the TEPJF revoked injunctive measures against *Esquire* magazine for publishing advertisements for the Governor of Puebla, Rafael Moreno Valle. The measures had been issued by the CQD because electoral regulations had reportedly been violated. The judgment held that the article does not set forth positions of the Governor and does not highlight the official anywhere in it. Additionally, the TEPJF found that, with respect to the injunctive measures ordering the Governor to refrain from issuing statements on his standing in the elections, it would amount to prior censorship. Consequently, these measures were also revoked. In the other case, the TEPJF ruled on injunctive measures that had been granted on behalf of the same official. Said measures were for Televisa S.A. to suspend broadcast of an interview with said public official. The judgment referred to the importance of the role of the media in society and the possibility of taking positions on matters of public interest.

¹¹⁷² El Universal. July 22, 2017. *Ex alcalde confiesa que mandó golpear a periodista y lo dejan libre*. Animal Político. July 22, 2017. *Exalcalde de Silao admite haber ordenado golpiza contra periodista; lo dan dos años de prisión*; Proceso. July 22, 2017. *Exalcalde de Silao acepta que mandó golpear a reportera en 2014... sale de prisión y ofrece disculpa pública*.

¹¹⁷³ Zona Franca. July 22, 2017. *Antes el desdén, ahora el desplegado público: Solís Arzola difunde disculpa a la periodista Karla Silva*; Nación 321. July 24, 2017. *El caso del exalcalde que mandó a golpear a una periodista y está libre*; Proceso. July 22, 2017. *Exalcalde de Silao acepta que mandó golpear a reportera en 2014... sale de prisión y ofrece disculpa pública*.

¹¹⁷⁴ Specifically transitory article 3 of said reform states: "The Congress of the Union shall issue, during the second period of ordinary sessions of the second year of the LXII Legislature, the law that regulates the eighth paragraph of article 134 of this Constitution, that will establish the norms to which the public powers, the autonomous organs, the dependencies and entities of the public administration and of any other entity of the three orders of government shall be subject to, and that will guarantee that the expenditure in social communication meets the criteria of efficiency, effectiveness, economy, transparency and honesty. Likewise, that it respects the budget caps, limits and conditions of exercise that the budgets of respective expenses establish".

¹¹⁷⁵ Suprema Corte de Justicia de la Nación. November 15, 2015. *Ordena SCJN al Congreso de la Unión expedir una ley en la que se regule el gasto en publicidad oficial antes del 30 de abril de 2018*.

¹¹⁷⁶ Suprema Corte de Justicia de la Nación. November 15, 2015. *Ordena SCJN al Congreso de la Unión expedir una ley en la que se regule el gasto en publicidad oficial antes del 30 de abril de 2018*.

¹¹⁷⁷ Tribunal Electoral del Poder Judicial de la Federación. December 16, 2016. *EL TEPJF revoca medidas cautelares de la Comisión de Quejas y Denuncias del INE contra el Gobernador de Puebla*; Milenio. December 13, 2016. *La necia censura del INE*.

B. Murders and Disappearances

821. On March 2, journalist Cecilio Pineda Birto was murdered in Ciudad Altamirano, State of Guerrero. Unknown motorcyclists shot the journalist, while he was on the premises of a carwash. After the attack, the broadcaster was transferred to a clinic where he passed away. The journalist had been publically speaking out for some months that he was the target of ongoing death threats by organized crime groups and in 2015 he was the victim of an attempt on his life. Pineda Birto was the editor-in-chief of the daily newspaper *La Voz de la Tierra Caliente* and a collaborating reporter for the newspapers *El Universal* of Mexico City and *La Jornada Guerrero*, and covered local organized crime news. Additionally, he would report on social media about incidents of corruption and criminal acts in the Tierra Caliente region of the State of Guerrero.¹¹⁷⁸ The Office of the Special Prosecutor to Address Crimes against Freedom of Expression (FEADLE), reported that it has cooperated with the Office of the Prosecutor of the State of Guerrero. Both offices opened parallel investigations to determine which one can prosecute the case.¹¹⁷⁹

822. According to the Federal Mechanism for the Protection of Human Rights Defenders and Journalists, Pineda Birto was at “extraordinary” risk after being the victim of an attempt on his life and having received death threats because of his work as a reporter. The Mechanism reported that it contacted the journalist to offer him protection after a news article was published in September 2015. According to a communiqué of the Secretariat of the Interior, “the Mechanism determined, through an urgent action assessment, that due to the seriousness of the case the suitable measure was for Pineda Brito to immediately leave the danger zone, and therefore temporary refuge was offered for him and his family, which he accepted.”¹¹⁸⁰ The State reported that the case was examined at 4 meetings of the Governing Board of the Mechanism and after conducting the appropriate field inspections, the extraction proposal was offered to him again. However, according to the Mechanism, because the journalist decided to not accept transfer to the safe site, the case was closed and all protection measures were taken away from him.¹¹⁸¹ In June, the Office of the Attorney General of the Republic (PGR) offered a reward for locating those responsible for the homicide of Pineda Birto.¹¹⁸² In its observations on the draft version of this report, the State likewise reported that the Mechanism for the Protection of Human Rights Defenders and Journalists and the Executive Commission for Victim Service had

¹¹⁷⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 10, 2017. *Press Release R30/17. Office of the Special Rapporteur Condemns Killing of Journalist Cecilio Pineda in Mexico and Urges the State to review Action of the Federal Protection Mechanism in the case*; Artículo 19. August 17, 2017. *Primer semestre de 2017: 1.5 agresiones diarias contra periodistas en México*; Proceso. March 2, 2017. *Ejecutan al periodista Cecilio Pineda en Ciudad Altamirano, Guerrero*; CPJ. No date. *Cecilio Pineda Birto*; La Jornada. March 3, 2017. *Asesinan al periodista Cecilio Pineda Birto*.

¹¹⁷⁹ “Meanwhile, the head of the FEADLE, mentioned that [...] in the case of Cecilio Pineda, a communication worker from Guerrero, from the moment in which the events happened, this body cooperated with the state government and the parallel dossiers were incorporated to see who can judicialize the issue”. Cámara de Diputados. April 5, 2017. *Boletín N.º. 3429: Entre 2000 y 2017, se registran 114 homicidios a periodistas: FEADLE ha atraído 48 casos y sólo existen tres sentencias*.

¹¹⁸⁰ Secretaría de Gobernación. March 4, 2017. *Lamenta el Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas la muerte de Cecilio Pineda Brito*.

¹¹⁸¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 10, 2017. *Press Release R30/17. Office of the Special Rapporteur Condemns Killing of Journalist Cecilio Pineda in Mexico and Urges the State to review Action of the Federal Protection Mechanism in the case*; Secretaría de Gobernación. March 4, 2017. *Lamenta el Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas la muerte de Cecilio Pineda Brito*; Animal Político. March 3, 2017. *El periodista Cecilio Pineda es asesinado a tiros en Tierra Caliente de Guerrero*; Proceso. March 2, 2017. *Ejecutan al periodista Cecilio Pineda en Ciudad Altamirano, Guerrero*; Artículo 19. August 17, 2017. *Primer semestre de 2017: 1.5 agresiones diarias contra periodistas en México*; Artículo 19. March 8, 2017. *Declaraciones de Segob sobre asesinato de Cecilio Pineda exhiben fallas del Mecanismo de Protección*; Committee to Protect Journalists (CPJ). No date. *Cecilio Pineda Birto*.

¹¹⁸² Procuraduría General de la República. June 13, 2017. *Ofrece PGR recompensa para localizar a los responsables de homicidio y tentativa de homicidio en contra de 6 periodistas*.

asked the CEAV to provide comprehensive support to his family.¹¹⁸³

823. Journalist Ricardo Monlui Cabrera was murdered on March 19 in Ciudad Yanga, Veracruz. Unknown men riding on motorcycles shot him as he was leaving a restaurant where he was accompanied by his family members. Monlui Cabrera was the editor-in-chief of the newspaper *El Político*, columnist of the newspapers *El Sol de Córdoba* and *Diario de Xalapa*. He was also the president of the Association of Journalists and Graphic Reporters of Córdoba.¹¹⁸⁴ The Office of the Attorney General of the State of Veracruz wrote in a release posted on the official Facebook account that “prosecutorial authorities are exhausting all lines of investigation, including the journalistic activity the communicator engaged in.”¹¹⁸⁵ In its observations on the draft version of this report, the State pointed out that the Attorney General’s Office in Veracruz had opened an investigation file and ordered protection measures for the journalist’s home. The CEAV provided Mr. Monlui’s family with medical, psychological, and legal assistance and will also seek to offer them shelter. Likewise, the Protection Mechanism offered protection to family members of the deceased, who stated that they did not require it.¹¹⁸⁶

824. Respected journalist Miroslava Breach Velducea was murdered on March 23 in Chihuahua, Chihuahua. According to available information, an individual shot the journalist when she was leaving her residence in the presence of one of her children. The journalist passed away on the way to the hospital. Miroslava Breach had been practicing journalism since the 1980s, with a special focus on matters linked to human rights, democracy, drug trafficking and corruption. In particular, her work shed light on incidents of unlawful dispossession and struggle for the land where indigenous communities live in Chihuahua, women’s rights and, more recently, disputes between cartels and cartel relations with the political world. Breach was a correspondent for more than 15 years of the nationwide newspaper *La Jornada* and she worked for the news agency *El Norte* of Juárez. The Governor of the State of Chihuahua condemned the murder. UN Women, the IACHR Office of the Special Rapporteur for Freedom of Expression and UNHR expressed their dismay and condemnation for the murder and called on the appropriate authorities to reinforce actions aimed at protecting the exercise of freedom of expression and human rights defense. They additionally underscored the need for federal and state authorities to step up their joint efforts to bring down the high rate of impunity in Chihuahua. They stressed that lines of investigation must not only take into consideration the practice of journalism, but also a gender perspective, in view of the specific risks faced by women journalists for the simple fact of being women.¹¹⁸⁷

825. Based on available information, the Governor of the State of Chihuahua created a “special,

¹¹⁸³ Communication of the Mexican State. Report of the Mexican State on the draft of Chapter V on follow-up to the recommendations of the Report “Situation of Human Rights in Mexico” of the Inter-American Commission on Human Rights in response to the Note of October 31, 2017, Note OEA-03018, November 30, 2017.

¹¹⁸⁴ Artículo 19. March 19, 2017. *Asesinan a periodista en Veracruz, suman 22 en el estado*; Animal Político. April 6, 2017. *Matan al periodista veracruzano Ricardo Monlui Cabrera*; Committee to Protect Journalists (CPJ). March 20, 2017. *Asesinan al periodista Ricardo Monlui Cabrera en el estado mexicano de Veracruz*. UNESCO. March 21, 2017. *Director General denounces killing of journalist Ricardo Monlui Cabrera in Mexico*; IACHR. Office of the Special Rapporteur for Freedom of Expression. April 18, 2017. *Press Release R47/17. Office of the Special Rapporteur Condemns Murder of Journalist Maximino Rodríguez Palacios in Mexico*.

¹¹⁸⁵ Fiscalía General del Estado de Veracruz. March 19, 2017. *#ComunicadoOficial: Investiga FGE homicidio de comunicador en #Yanga*.

¹¹⁸⁶ Communication of the Mexican State. Report of the Mexican State on the draft of Chapter V on follow-up to the recommendations of the Report “Situation of Human Rights in Mexico” of the Inter-American Commission on Human Rights in response to the Note of October 31, 2017, Note OEA-03018, November 30, 2017.

¹¹⁸⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 23, 2017. *Comunicado de prensa conjunto R38/17. Organismos internacionales expresan su firme condena por el asesinato de la periodista Miroslava Breach en Chihuahua, Chihuahua*; BBC. April 3, 2017. *Miroslava Breach investigated organised crime and drug gangs until she was shot dead*; La Opinión. March 23, 2017. *Miroslava Breach, la periodista asesinada en México cuando llevaba a su hijo a la escuela*.

multidisciplinary group to run the investigations.”¹¹⁸⁸ In April, the chief state executive reported that they had “practically all of the evidence [needed] to go arrest those responsible and they are reinforcing the case and the chain of custody with the highest scientific, technical and legal rigor.”¹¹⁸⁹ He also announced that there will be arrests because “it is a matter in which the actual perpetrator, co-participants and, of course, the mastermind have been detected.”¹¹⁹⁰ In June, the Office of the Attorney General of the Republic (PGR) offered a reward for helping to locate those responsible for the homicide of Miroslava Breach Veldeca.¹¹⁹¹ However, thus far none of these persons allegedly responsible have been located or brought to trial. In its observations on the draft version of this report, the State reported that the Attorney General’s Office of the state of Chihuahua had provided psychological and legal assistance to the journalist’s family, while a special procedure was used to include some of Miroslava Breach’s co-workers in the Protection Mechanism.¹¹⁹²

826. On April 14, journalist Maximino Rodríguez Palacios was murdered in La Paz, State of Baja California Sur. Rodríguez Palacios was gunned down in a burst of shots while he was parking his car in the company of his wife (who emerged from the attack unharmed). The journalist had been working for nearly two years for *Colectivo Pericú*, a blog to report and post news about crimes, corruption and other things, in the State of Baja California Sur and he had reportedly been the target of threats after he published in April reports of an alleged criminal cell called “Los Colores.”¹¹⁹³

827. According to a release issued by the Office of the Attorney General of the Republic (PGR), both the Office of the Assistant Attorney General for Regional Oversight, Criminal Proceedings and Amparo (SCRPPA), at its State Representative’s Office in Baja California Sur, and the Office of the Special Prosecutor to Address Crimes against Freedom of Expression (FEADLE), opened an investigation into the homicide of the journalist.¹¹⁹⁴ In June, the PGR reported that three individuals allegedly responsible for the homicide of journalist Maximino Rodríguez Palacios had been arrested.¹¹⁹⁵ He also noted that the journalist’s homicide

¹¹⁸⁸ Javier Corral/ YouTube. March 23, 2017. [Posicionamiento íntegro del gobernador Javier Corral Jurado por el caso Miroslava Breach.](#)

¹¹⁸⁹ Informador/Javier Corral/Facebook. April 17, 2017. [Habrà más detenciones en caso de Miroslava Breach: Corral; Aristegui Noticias.](#) April 17, 2017. [Identificados, los autores del homicidio de Miroslava Breach: Javier Corral;](#) Proceso. April 17, 2017. [Identificados, los autores del homicidio de Miroslava Breach: Javier Corral.](#)

¹¹⁹⁰ Informador/Javier Corral/Facebook. April 17, 2017. [Habrà más detenciones en caso de Miroslava Breach: Corral; Aristegui Noticias.](#) April 17, 2017. [Identificados, los autores del homicidio de Miroslava Breach: Javier Corral;](#) Proceso. April 17, 2017. [Identificados, los autores del homicidio de Miroslava Breach: Javier Corral.](#)

¹¹⁹¹ Procuraduría General de la República. June 13, 2017. [Ofrece PGR recompensa para localizar a los responsables de homicidio y tentativa de homicidio en contra de 6 periodistas.](#)

¹¹⁹² Communication of the Mexican State. Report of the Mexican State on the draft of Chapter V on follow-up to the recommendations of the Report “Situation of Human Rights in Mexico” of the Inter-American Commission on Human Rights in response to the Note of October 31, 2017, Note OEA-03018, November 30, 2017.

¹¹⁹³ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 18, 2017. [Press Release R47/17. Office of the Special Rapporteur Condemns Murder of Journalist Maximino Rodríguez Palacios in Mexico;](#) El País. April 14, 2017. [Matan a otro periodista en México, el cuarto en mes y medio;](#) SDP. April 14, 2017. [Asesinan a Max Rodríguez Palacios, reportero de La Paz.](#)

¹¹⁹⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 18, 2017. [Press Release R47/17. Office of the Special Rapporteur Condemns Murder of Journalist Maximino Rodríguez Palacios in Mexico;](#) El País. April 14, 2017. [Matan a otro periodista en México, el cuarto en mes y medio;](#) SDP. April 14, 2017. [Asesinan a Max Rodríguez Palacios, reportero de La Paz.](#)

¹¹⁹⁵ 31. Ricardo Sánchez Pérez Del Pozo, head of the Office of the Special Prosecutor to Address Crimes against Freedom of Expression (Feadle), stated in the fourth ordinary meeting of the Special Commission of Follow-up on Attacks on Journalists and the Media, held on July 20, that “In this case the State Attorney’s Office and the Prosecutor’s Office initiated the investigative dossiers, and in an exercise of open, transparent collaboration, at more instances they shared the evidence gathered and in a coordinated manner achieved the arrest of those materially responsible for the events, and will continue to work in such manner, with great commitment to

was reportedly related to the practice of his profession.¹¹⁹⁶ That same month, the PGR offered a reward for helping to locate those responsible for the homicide of Rodríguez Palacios.¹¹⁹⁷

828. Respected journalist and author Javier Valdez Cárdenas was murdered on May 15, in the city of Culiacán, State of Sinaloa. Unknown individuals shot him as he was leaving the newsroom of *Ríodoce*, the weekly magazine he founded and wrote for. Valdez Cárdenas had a long and accomplished career in journalism and was engaged in a courageous investigation into drug trafficking and organized crime in his country. On May 17, Mexican President Enrique Peña Nieto announced an action plan to strengthen the work of institutions investigating crimes against journalists, as well as the protection mechanism. UN and IACHR freedom of expression experts expressed their deep dismay over the murder of the journalist, welcomed the commitment of the President and urged the Mexican government, especially the competent authorities, to investigate the murder of Javier Valdez thoroughly and identify, prosecute and punish everyone responsible.¹¹⁹⁸ The Office of the Special Prosecutor to Address Crimes against Freedom of Expression (FEADLE) and the Office of the Attorney General of the State of Sinaloa (FGES) have opened an investigation into the case.¹¹⁹⁹ In June, the Office of the Attorney General of the Republic (PGR) offered a reward to help locate those responsible for the homicide of Javier Valdez Cárdenas.¹²⁰⁰

829. On September 15, journalists and activists demonstrated in protested before the Office of the Attorney General of the State of Sinaloa (FGES) and demanded justice. The director of *Ríodoce* called into question the investigative efforts of the FGES and the FEADLE: "The State Prosecutor's Office headed by Juan José Ríos Estavillo is obligated to investigate the murder, but failed to do so for a long time. And it failed to do so because the Federal Prosecutor's Office came in and took over the evidence collection and investigation, but without taking on formal responsibility, because they do not want to respond to the demands for justice."¹²⁰¹ Since Javier Valdez's death, family members and coworkers formally asked the FEADLE and the FGES to figure out which office would take the lead on the investigation. Notwithstanding, so far this request went unheeded.¹²⁰²

determine the responsibilities, if they existed, if there are intellectual culprits in the homicide". Congreso de los Estados Unidos Mexicanos. July 20, 2017. [Acta de la Cuarta Reunión Ordinaria de la Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación.](#)

¹¹⁹⁶ El Universal. June 1, 2017. [Detienen a presuntos asesinos del periodista Max Rodríguez](#); Televisa. June 1, 2017. [Detienen a presuntos homicidas del periodista Max Rodríguez](#); Proceso. June 1, 2017. [Capturan a tres presuntos asesinos del periodista Max Rodríguez.](#)

¹¹⁹⁷ Procuraduría General de la República. June 13, 2017. [Ofrece PGR recompensa para localizar a los responsables de homicidio y tentativa de homicidio en contra de 6 periodistas.](#)

¹¹⁹⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 18, 2017. [Joint Press Release R64/17. UN and Inter-American Experts Condemn Reporter's Killing in Mexico and Call for Immediate Action to End Cycle of Killings of Journalists](#); IFEX. May 18, 2017. [Javier Valdez: Chronicle of a death foretold?](#); Inter American Press Association (IAPA). May 15, 2017. [México: SIP expresa severa condena por asesinato de un periodista](#); Committee to Protect Journalists (CPJ). May 15, 2017. [Mexican journalist and CPI awardee Javier Valdez Cárdenas murdered.](#)

¹¹⁹⁹ La Jornada. May 15, 2017. [Feadle abre investigación sobre asesinato de Javier Valdez](#); El Universal. June 12, 2017. ["Hay avances en investigación de asesinato de periodista Valdez": vicesfiscal](#); Procuraduría General de la República. May 22, 2017. [Comunicado 866/17 Conferencia de prensa de Titular de FEADLE y Servicios Periciales en Culiacán, Sinaloa.](#)

¹²⁰⁰ Procuraduría General de la República. June 13, 2017. [Ofrece PGR recompensa para localizar a los responsables de homicidio y tentativa de homicidio en contra de 6 periodistas.](#)

¹²⁰¹ Ríodoce. September 15, 2017. [Cuestionan 'silencio cómplice' de fiscalías, a cuatro meses del crimen de Javier Valdez](#); Proceso. September 15, 2017. [A cuatro meses del homicidio de Javier Valdez, denuncian "silencio cómplice y criminal".](#)

¹²⁰² The director stated: "Three months ago we demanded loudly and in a formal request for them to define themselves; to say which of the prosecutors would take charge of the investigations, because we did not want their responsibilities to be diluted. But they did not do it because the federal prosecutor does not want to attract the case. And he does not want to do it because the Attorney General of the Republic, since he was a senator said that 'historically, the attractions had not worked at all'". Ríodoce. September 15, 2017. [Cuestionan](#)

830. On May 15, journalist Jonathan Rodríguez of the weekly magazine *El Costeño* was murdered in Autlán, Jalisco. Rodríguez was riding in his car with his mother Sonia Córdova, news director of the magazine. Córdova survived the attack, but was shot several times. According to available information, a few days prior to the attack, the magazine had reported to the Federal Police and to the mayor of Autlán that he, the victim, had been threatened and followed.¹²⁰³

831. On May 18, a group of armed men abducted journalist Salvador Adame, director of TV station *Canal 6tv* in the municipality of Múgica, Michoacán.¹²⁰⁴ The Office of the Attorney General of the State of Michoacán (PGJE) reported that the competent authorities opened an investigation and notified the Office of the Attorney General of the Republic, the Federal Police and the Secretariat of National Defense.¹²⁰⁵ On June 14, the PGJE reported that it had found the journalist's body¹²⁰⁶.

832. On July 9, Honduran journalist Edwin Rivera Paz was murdered in Acayucan, State of Veracruz. Rivera Paz had been compelled to leave Honduras for fear of retaliation after the murder of his fellow journalist Igor Padilla. Edwin Rivera, cameraman for the TV program *Los Verduleros* of the Honduran television channel Hable Como Habla, reportedly requested refugee status from the Mexican authorities. The Mexican Refugee Aid Commission had granted him temporary protection.¹²⁰⁷

833. On August 1, journalist Luciano Rivera, director of the magazine *Dictamen* and reporter for *CNR TV* was murdered in the municipality of Playas de Rosarito, State of Baja California. Five individuals reportedly came into the bar that the journalist was patronizing at the time and one of them shot him. Rivera had published reports against the local police, stories about investigations into acts of violence, which could be linked to organized crime and cases related to the public security of Playa de Rosarito. According to information provided by the State, the same day of the murder, the Office of the Special Prosecutor to Address Crimes against Freedom of Expression (FEADLE) sent an official letter to the district attorney of Playas de Rosarito in order to request official copies of the case investigation file and opened an investigation. The local authorities reported that one of the persons allegedly involved was arrested. On August 1, the Assistant Attorney General for Baja California, Patricia Ortega, announced to the local press that there is no evidence that Rivera's murder was related to his practice of journalism.¹²⁰⁸

834. Journalist Cándido Ríos Vázquez, correspondent of the daily newspaper *Diario de Acayucan* and

'silencio cómplice' de fiscalías, a cuatro meses del crimen de Javier Valdez; Proceso. September 15, 2017. *A cuatro meses del homicidio de Javier Valdez, denuncian "silencio cómplice y criminal"*.

¹²⁰³ Artículo 19. May 18, 2017. *Jonathan Rodríguez, asesinado pese a denunciar amenazas previas contra semanario El Costeño*; Animal Político. May 15, 2017. *Hieren a la subdirectora de un semanario de Jalisco y matan a su hijo*; La Opinión/EFE. May 16, 2017. *Matan a reportero y lesionan a subdirectora de semanario en Autlán, Jalisco*

¹²⁰⁴ Committee to Protect Journalists (CPJ). May 22, 2017. *Mexican journalist abducted in Michoacán state*; Artículo 19. June 27, 2017. *Gobierno de Michoacán no da certeza en la investigación de la desaparición de Salvador Adame y revictimiza a sus familiares*

¹²⁰⁵ Procuraduría General de la Justicia del Estado de Michoacán. May 22, 2017. *Da PGJE vista a PGR por privación de la libertad en Nueva Italia*;

¹²⁰⁶ IM Medio Noticias/YouTube/Navidad Adame. June 27, 2017. *Familia de Salvador Adame pide nuevas pruebas de ADN ya basta de tanta impunidad*.

¹²⁰⁷ Reporters Without Borders. July 12, 2017. *MÉXICO | Asesinado Edwin Rivera Paz, periodista hondureño refugiado en México*; Aristegui Noticias. July 12, 2017. *Huía de la violencia en Honduras y encontró la muerte en Veracruz*; Gaceta Mexicana. July 10, 2017. *Asesinan a fotógrafo hondureño en Veracruz*; El Debate. July 11, 2017. *Exige Honduras esclarecer crimen de Edwin Rivera*.

¹²⁰⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 15, 2017. *Press Release R120/17 Office of the Special Rapporteur condemns murder of journalist Luciano Rivera in Mexico and urges to investigate the relation to his activity*; Las voces del Mundo. August 1, 2017. *Octavo periodista asesinado en México*; El País. August 1, 2017. *Asesinado el octavo periodista mexicano en lo que va de año*; Proceso. September 5, 2017. *Libran orden de aprehensión contra presunto asesino del periodista Luciano Rivera*.

founder of *La Voz de Hueyapan*, was murdered on August 22 in Covarrubias, State of Veracruz. According to the Office of the Attorney General of Veracruz, the two individuals who were accompanying Ríos Vázquez were also murdered.¹²⁰⁹ According to public information, one of the people accompanying the journalist was the former police inspector of Acayucan. Ríos Vázquez passed away on the way to the hospital.¹²¹⁰ Authorities stated that all indications point to the attack being linked to another person, not to the journalist, that it involved an attack against another persons and against the escorts of those persons.¹²¹¹ Since July 2013, the broadcaster had been under the protection of the Mechanism for the Protection of Human Rights Defenders and Journalists. Likewise, since 2012 the journalist has been receiving legal assistance from the State Commission for the Protection of Journalists of Veracruz, because of death threat complaints filed by him against Gaspar Gómez Jiménez, former mayor of Hueyapan de Ocampo. Based on public information, on October 26, 2016, Ríos Vázquez forwarded a communication to the Office of the Special Prosecutor to Address Crimes against Freedom of Expression (FEADLE) and to the Protection Mechanism reporting several incidents of assault and threats on his life perpetrated by Gómez Jiménez. A few days before the murder of the journalist, Gómez Jiménez posted a video on the social network leveling several threats against the journalist.¹²¹²

835. Juan Carlos Hernández, of *La Bandera Noticias*, was murdered on September 5, in Yuriria, Guanajuato. Based on press reports, Hernández had recently begun work for this media outlet and his main job was to assist reporter Alejandro Chávez on a daily basis in taking photographs and videos. Hernández began to work at the news outlet as a taxi driver, but later joined the journalism team.¹²¹³ According to spokespersons of the Government of Guanajuato, Hernández “was not working as a journalist, reporter or photographer or any other activity that has to do with journalism [...] but was known [...] for many years [...] as a taxi driver and for approximately two months he was working as a taxi driver providing service in particular to the editor-in-chief of this news portal.”¹²¹⁴

836. On October 5, press photographer Edgar Daniel Esqueda Castro was reportedly abducted from his

¹²⁰⁹ Fiscalía General del Estado de Veracruz. August 23, 2017. [#FGEInforma: Investiga FGE homicidio en Hueyapan de Ocampo](#); AGN Veracruz. August 22, 2017. [Agresión en Juan Díaz Covarrubias deja sin vida a tres personas entre ellos un periodista](#).

¹²¹⁰ Committee to Protect Journalists (CPJ). August 25, 2017. [Mexican reporter shot and killed in Veracruz state](#); La Jornada. August 23, 2017. [Asesinan en Hueyapan, Veracruz, al periodista Cándido Ríos Vázquez](#); Plumas Libres. August 22, 2017. [Asesinan a periodista en Hueyapan de Ocampo; Tenía protección del Mecanismos Federal de la SEGOB](#); AGN Veracruz. August 22, 2017. [Agresión en Juan Díaz Covarrubias deja sin vida a tres personas entre ellos un periodista](#)

¹²¹¹ Proceso. August 23, 2017. [Cándido Ríos estaba en el Mecanismo de Protección a Periodistas de la Segob: “ataque no era contra él”](#); *Campa*; Reporters Without Borders. August 24, 2017. [Mexican journalist under federal protection murdered in Veracruz](#); El Universal. August 23, 2017. [Ataque no iba dirigido a reportero: Roberto Campa](#).

¹²¹² IACHR. Office of the Special Rapporteur for Freedom of Expression. August 29, 2017. [Press Release R129/17. The Office of the Special Rapporteur condemns the murder of journalist Cándido Ríos Vázquez in Mexico and urges to investigate the relation to his activity](#); La Jornada. August 23, 2017. [Asesinan en Hueyapan, Veracruz, al periodista Cándido Ríos Vázquez](#); Fiscalía General del Estado de Veracruz. August 23, 2017. [#FGEInforma: Investiga FGE homicidio en Hueyapan de Ocampo](#); Committee to Protect Journalists (CPJ). August 25, 2017. [Mexican reporter shot and killed in Veracruz state](#); AGN Veracruz. August 24, 2017. [Ex alcalde de Hueyapan de Ocampo había amenazado al periodista Cándido Ríos Vázquez](#); Comisión Estatal para la Atención y Protección de los Periodistas. August 22, 2017. [Pronunciamiento Público respecto al homicidio del periodista Cándido Ríos Vázquez](#); Aristegui Noticias. August 25, 2017. [Cándido Ríos, el pregonero de Hueyapan que fue silenciado](#).

¹²¹³ Zona Franca. September 7, 2017. [Vocero del gobierno de Márquez niega calidad de periodista a Juan Carlos Hernández](#); Knight Center for Journalism in the Americas. September 8, 2017. [Assistant to police reporter killed in Guanajuato, Mexico](#); El Universal. September 7, 2017. [Asesinan a tiros a colaborador del portal de noticias en Guanajuato](#); Aristegui Noticias. September 7, 2017. [Asesinan a colaborador de La Bandera Noticias; era taxista, dice vocero de Guanajuato](#); Ifex/ Inter American Press Association. September 19, 2017. [IAPA expresses concern over recent murders of journalists in Honduras, Mexico](#).

¹²¹⁴ Aristegui Noticias/ YouTube. September 7, 2017. [Gobierno de Guanajuato niega calidad de periodista a Juan Carlos Ríos](#)

residence in the State of San Luis de Potosí, and had been missing until October 6, when his body was found with his hands tied and signs of torture next to the railroad tracks of the same town. According to available information, Esqueda Castro, who had collaborated with *VoxPopuli* of San Luis Potosí and *Metropoli* of San Luis, had received threats from an assistant prosecuting attorney and filed a complaint with the Ombudsman of said office about the incident. The Federal Mechanism for the Protection of Human Rights Defenders and Journalists claimed that it had offered Esqueda Castro protection measures, but he had rejected them.¹²¹⁵ Additionally, there are complaints that a group of armed men dressed in police uniforms were responsible for his abduction.¹²¹⁶ On October 5, the Prosecutorial Police of the State (PME) denied having been involved in the crime through a release published by the Office of the Attorney General of the State of San Luis Potosí (PGJSLP).¹²¹⁷ Based on information provided by the State, the Office of the Special Prosecutor to Address Crimes against Freedom of Expression (FEADLE) opened an investigation into the homicide of journalist Esqueda, aimed at following the line of investigation linked to freedom of expression.¹²¹⁸

837. Later, a video circulated on social media in which journalist Daniel Esqueda Castro allegedly appeared prior to being murdered. In the video, it shows a man with his eyes covered and his hands tied who was identified as “Daniel Castro” and noted that he was collaborating with the Northeast Cartel. Additionally, it singled out several local journalists, members of the police force and public officials who were collaborators with said cartel.¹²¹⁹ The organization Artículo 19 asserted that said video had been leaked by a former member of the judicial police and that “if it were legitimate, this video could have been obtained under torture and therefore the veracity of its content should be severely questioned.”¹²²⁰

838. It is fundamental for the Inter-American Commission that the State of Mexico fully investigates the murders of the journalists in an effective and impartial manner, shedding light on the motives and making a judicial determination on whether it is related to the exercise of journalism or freedom of expression. The authorities should not discard the exercise of journalism as motive for murder and/or attacks before the investigation is completed. In that regard, the IACHR reiterates the 2010 recommendation issued by Frank la Rue, the former United Nations Special Rapporteur on the promotion and protection of the right to freedom of expression to “[a]dopt special protocols for the investigation of crimes against journalists whereby the hypothesis that the motive for the crime was the profession be privileged and exhaustive.”¹²²¹

¹²¹⁵ Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas. October 6, 2017. [El Mecanismo para la Protección De Personas Defensoras de Derechos Humanos y Periodistas lamenta profundamente el asesinato del periodista Daniel Esqueda Castro](#); Committee to Protect Journalists (CPJ). October 6, 2017. [Mexican journalist found dead with bullet wounds in San Luis Potosí](#).

¹²¹⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. October 11, 2017. [Press Release R156/17. Office of the Special Rapporteur condemns murder of Edgar Daniel Esqueda Castro in Mexico and urges to investigate the relation to his journalistic activity](#); Artículo 19. October 6, 2017. [FEADLE debe investigar posible implicación de autoridades en el asesinato del fotoperiodista Edgar Esqueda](#); Knight Center for Journalism in the Americas. October 6, 2017. [Mexican photojournalist found dead one day after being abducted in San Luis Potosí](#); El Universal. October 6, 2017. [Hallan cuerpo del reportero gráfico secuestrado en SLP](#); Subrayado. October 5, 2017. [Levantaron a reportero en San Luis](#).

¹²¹⁷ “#SLP | The State Ministerial Police informed that NO police action has been taken against a reporter from the capital” Twitter account of the PGJE San Luis de Potosi @PGJE_SLP. [October 5, 2017](#).

¹²¹⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. October 11, 2017. [Press Release R156/17. Office of the Special Rapporteur condemns murder of Edgar Daniel Esqueda Castro in Mexico and urges to investigate the relation to his journalistic activity](#).

¹²¹⁹ Proceso. October 13, 2017. [“Confesión” bajo tortura: Los últimos momentos con vida del fotoperiodista Daniel Esqueda \(Video\)](#); La Silla Rota. October 13, 2017. [Los últimos momentos del fotoperiodista asesinado \(Video\)](#); Univisión Noticia/ YouTube. October 13, 2017. [“Estoy detenido por trabajar para el Cártel del Noreste”: La confesión bajo tortura de un periodista](#).

¹²²⁰ Artículo 19. October 27, 2017. [La prensa no está a salvo de los funcionarios públicos en San Luis Potosí](#).

¹²²¹ IACHR. [The Human Rights Situation in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 394.

839. The omission of logical avenues of investigation or lack of diligence in the gathering of evidence in this respect can have a serious impact on the development of proceedings at the indictment or trial stages, especially in the identification of masterminds.¹²²²

C. Attacks and assaults on journalists and the media

840. On February 17, Othón García of the media company *Rotativo* of Oaxaca, was reportedly threatened with disappearance and beaten by an alleged municipal police agent of Oaxaca.¹²²³ On March 7, a public official reportedly ran over Gilberto Navarro, a reporter of *AM Express*, in Guanajuato. The journalist had published a story showing the public official assaulting a driver.¹²²⁴ On March 13, parodist Violeta Santiago was reportedly injured with a door by the director of public works of Agua Dulce, Veracruz, when she was requesting information about his job.¹²²⁵

841. On March 28, unknown individuals attempted to set the home of journalist Julio Omar Gómez on fire in Baja California Sur. Alfredo Valle, the escort assigned to protect the journalist was murdered as he attempted to stop the individuals. In December 2016, unknown individuals allegedly set the home of Gómez on fire and in February 2017, his vehicle.¹²²⁶ On March 29, journalist Armando Arrieta, editor-in-chief of the newspaper *La Opinión*, was reportedly the victim of an attempt on his life. He was shot as he arrived in his residence in the city of Poza Rica, State of Veracruz. Arrieta was transferred to a local hospital in serious condition. The Office of the Attorney General of the State of Veracruz opened an investigation.¹²²⁷ Separately, the Office of the Special Prosecutor to Address Crimes against Freedom of Expression (FEADLE) also opened a case investigation file.¹²²⁸

842. On April 2, the printed version of the daily newspaper *Norte* of Ciudad Juárez announced it was closing down. Two days later, it announced its web site would be taken down.¹²²⁹ In its last printed editorial column, the director explained: “The tragic and sorrowful death of Miroslava Breach Velducea – our colleague – last March 23, has made me think deeply about the adverse conditions in which we do our job as journalist

¹²²² IACHR, Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murders of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 125-126; IACHR, Office of the Special Rapporteur for Freedom of Expression. Impunity, self-censorship and armed internal conflict: An analysis of the state of freedom of expression in Colombia. OEA/Ser.L/V/II Doc.51. August 31, 2005, paras. 65-66.

¹²²³ Oaxaca día a día. February 16, 2017. Reportero fue golpeado en Oaxaca; Artículo 19. February 17, 2017. Periodista es golpeado y amenazado por personal del ayuntamiento de Oaxaca.

¹²²⁴ AM. March 8, 2017. Atenta funcionario contra reportero; Artículo 19. March 17, 2017. Ex funcionario atropella a reportero en Guanajuato; Committee to Protect Journalists (CPJ). March 14, 2017. Local official hits journalist with car.

¹²²⁵ The official reportedly closed a door on her and hurt her wrist. Horizonte Digital. No date. Reportera de Agua Dulce presentó formal denuncia por agresión; Artículo 19. March 16, 2016. Funcionario de Veracruz agrede a reportera al cuestionarle sobre actos de corrupción.

¹²²⁶ Mileno. March 28, 2017. Hombres armados matan a escolta de reportero en BCS; Gaceta Mexicana. March 28, 2017. Asesinan a escolta de periodista en Baja California Sur; Jornada. March 29, 2017. Atentan contra periodista; matan a su escolta.

¹²²⁷ Fiscalía General del Estado de Veracruz. March 29, 2017. Comunicado Oficial; Committee to Protect Journalists (CPJ). March 29, 2017. Mexican newspaper editor shot and wounded in Veracruz; Animal Político. March 29, 2017. Atacan en Veracruz al periodista Armando Arrieta; le disparan en la puerta de su casa; La Jornada. March 30, 2017. Muy grave, el periodista Armando Arrieta, tras ser atacado a balazos en Poza Rica.

¹²²⁸ Procuraduría General de la República. March 29, 2017. Comunicado 565/17 FEADLE inicia carpeta de investigación por agresión a periodista de Veracruz.

¹²²⁹ “Goodbye! #CiudadJuarez”. Twitter account of Norte Digital @nortedigital. April 4, 2014; El Universal. April 5, 2017. Diario “Norte” de Ciudad Juárez también cierra su sitio web.

currently. Risk is the main ingredient.”¹²³⁰ Journalist Daniel Velázquez of the newspaper *El Sur* was reportedly assaulted by officials of the Town Hall of Acapulco on April 28.¹²³¹

843. On May 5, journalist Alejandro Chávez of *La Bandera* of Uriangato, was allegedly assaulted and harassed by Miguel Alfaro Vallejo, advisor to the mayor of the municipality of Yuriria, Guanajuato.¹²³² On May 10, members of the State Police force of Campeche reportedly assaulted reporters Humberto Curmina and Jorge Sosa.¹²³³ On May 29, in Playa del Carmen, Quintana Roo, journalist Carlos Barrios of the news portal *Aspectos* allegedly was threatened and part of his ear was cut off with a knife. The assailant warned Barrios that *Aspectos* must stop publishing information backing the governor of Quintana Roo.¹²³⁴ Indigenous journalist and activist Marcela de Jesús Natalia was reportedly attacked on June 3, in Ometepec, State of Guerrero. Natalia, broadcast journalist at the Radio and Television System of Guerrero, sustained a bullet wound when she was leaving her radio program. Later in June, the alleged assailant was arrested.¹²³⁵

844. According to the organization Artículo 19, on election day of June 4, 19 cases of assault were documented against journalists. It contended that the “main perpetrators were members of political parties and public officials, who were accused of being responsible for 6 of the assaults, each one.”¹²³⁶ On June 5, journalist Alfonsina Ávila, of the media company *Zona Franca*, was reportedly assaulted by the Citizen Counselor of the Procurement Committee of the municipality of León, Guanajuato, while she was interviewing him.¹²³⁷ On June 10, members of the public security force were alleged to have assaulted Alejandro Paz, director of *La Expresión*, and Julio César Trujillo, cameraman of *Televisa*. The journalists were covering the transfer of 165 persons deprived of liberty.¹²³⁸

845. According to deputies who are members of the Special Congressional Committee to Follow-up on Assaults on Journalists and Media, on June 25, journalist Rubén Pat was “arbitrarily threatened and tortured by municipal police of the municipality of Solidaridad, for publishing information linking municipal officials to organized crime.”¹²³⁹ Ruben Pat, of the digital media outlet *Semanario Playa News* of Quintana Roo, reported the incident to the Federal Mechanism for the Protection of Journalists.¹²⁴⁰ According to Miguel Ángel Pech

¹²³⁰ Norte Digital. April 2, 2017. *¡Adios!*

¹²³¹ Artículo 19. April 28, 2017. *Periodista es agredido por funcionarios del ayuntamiento de Acapulco*; *El Sur*. April 28, 2017. *Guarura impide con fuera a reportero de El Sur acercarse al alcalde Evodio Velázquez*.

¹²³² Artículo 19. May 7, 2017. *Continúan las agresiones contra periodista en Yuriria, Guanajuato*; *Zona Franca*. May 6, 2017. *Ahora asesor del Alcalde de Yuriria agrede y amenaza a periodista: “ve poniéndote al tiro”*.

¹²³³ La neta Campeche. May 11, 2017. *Reporteros presentan formal denuncia contra policías por lesiones y abuso de autoridad* Artículo 19. May 13, 2017. *Policías estatales golpean a periodistas en Campeche*.

¹²³⁴ Committee to Protect Journalists (CPJ). June 1, 2017. *Reporter threatened and has part of ear cut off in Mexico’s Quintana Roo state*; *Noticaribe*. May 30, 2017. *Denuncian ataque a reportero en Playa Del Carmen al que le habrían intentado cortar la oreja como amenaza contra semanario local*.

¹²³⁵ Cencos. June 5, 2017. *Atentan contra la vida de Marcela de Jesús Natalia, locutora y activista del pueblo Ñom’daa*; *SDP Noticias*. June 19, 2017. *Cae uno por ataque a la locutora Marcela de Jesús Natalia*; *Proceso*. June 14, 2017. *Detienen en Oaxaca a presunto agresor de locutora indígena*.

¹²³⁶ Artículo 19. June 6, 2017. *Suman 19 agresiones contra la prensa durante elecciones*.

¹²³⁷ Artículo 19. June 7, 2017. *Agreden a reportera en Guanajuato tras cuestionar manejo injustificado de recursos*; *Zona Franca*. June 5, 2017. *Guzmán Acosta, consejero ciudadano y contratista del municipio, impide con policía entrevista sobre su actuación*.

¹²³⁸ Senado de los Estados Unidos Mexicanos. June 21, 2017. *Proposiciones de Ciudadanos Legisladores*; Artículo 19. June 10, 2017. *Policías estatales agreden a periodistas cuando cubrían traslado de reos en Tamaulipas*

¹²³⁹ Congreso de los Estados Unidos Mexicanos. July 18, 2017. *Acta de la Quinta Reunión Ordinaria de la Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación*.

¹²⁴⁰ Committee to Protect Journalists (CPJ). June 29, 2017. *Mexican journalist says he was attacked, threatened by police*; Artículo 19. June 27, 2017. *Policías municipales torturan y amenazan a director de medio en Quintana Roo*.

Cen, Attorney General of the State of Quintana Roo, the journalist “sustained injuries that made him lose part of his face. And [...] in addition to protection measures, proceedings are still underway for abuse of authority against the municipal policemen of Solidaridad, where the case investigation file is still open.”¹²⁴¹

846. On August 14, journalist Fredy Morales, host of the program *Enlace Serrano*, was stabbed by unknown assailants more than a dozen times at his residence in the State of Puebla.¹²⁴² On August 24, unknown individuals ran over Alejandro Guerrero, journalist of the media outlet *El Sur*.¹²⁴³ On August 27, members of the municipal police of Celaya, Guanajuato reportedly threatened, beat and handcuffed journalist Mako Sierra of the media company *Sala de Prensa*.¹²⁴⁴ Jesús Daniel Domingo was allegedly beaten and threatened in Ciudad Juárez, Chihuahua allegedly by police officers of the city when he was attempting to cover an eviction.¹²⁴⁵ On October 24, two unknown men fired on the facilities of *Canal 10* in Cancún, Quintana Roo. The media outlet’s accountant was reportedly wounded.¹²⁴⁶

D. Threats, intimidation and arrests of journalists and media

847. Ricardo Sánchez Pérez Del Pozo, the head the office of the Special Prosecutor for Crimes against Freedom of Expression [*Fiscalía Especializada en Delitos Cometidos contra la Libertad de Expresión*] (FEADLE), asserted at the fourth regular meeting of the Special Committee to Follow-Up on Assaults on Journalists and the Media, held on July 20, that “the highest number of complaints received by the office of the prosecutor is for threats and abuses of authority; the entities with the highest number of incidents of complaints [filed] by journalists are: Veracruz, Chihuahua, Tamaulipas and Guerrero.”¹²⁴⁷

848. On January 10, in Tlaxiaco, Oaxaca, host Abigail Soraya Arias was reportedly threatened with death via the telephone. Arias is the radio host of the program *Despierta Tlaxiaco* of radio station *La Perla de la Mixteca*.¹²⁴⁸ On January 11, journalist Alberto Escorcía Gordiano was allegedly intimidated over Twitter. Unknown individuals published his telephone number and address over this social network. The Office of the Attorney General of Mexico City was aware of his situation, because the journalist had reportedly been threatened previously. Moreover, Escorcía had been a beneficiary of the Federal Mechanism for the

¹²⁴¹ Congreso de los Estados Unidos Mexicanos. July 18, 2017. *Acta de la Quinta Reunión Ordinaria de la Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación.*

¹²⁴² Diario Cambio. August 15, 2017. *Reportero de la Sierra Norte es apuñalado 15 veces por denunciar robo de huachicol*; Committee to Protect Journalists (CPJ). August 29, 2017. *Mexican journalist severely injured in Puebla state*; Animal Político. August 16, 2017. *Ataques contra la prensa: hieren en su casa en Puebla al periodista Fredy Morales.*

¹²⁴³ El Sur. August 25, 2017. *Embisten con un automóvil a corresponsal de El Sur*; Artículo 19. August 24, 2017. *Sujetos desconocidos atropellan a periodista en Guerrero.*

¹²⁴⁴ The journalist was allegedly reporting a story about the disappearance and murder of a girl; Voces Laja Bajío. August 28, 2017. *Agreden a periodista en Celaya*; Artículo 19. August 29, 2017. *Periodista en Celaya es agredido por funcionarios públicos*;

¹²⁴⁵ Artículo 19. September 30, 2017. *Policías golpean y amenazan a reportero de El Diario de Juárez al intentar cubrir desalojo*; Sin embargo. October 1, 2017. *Periodista es agredido en Ciudad Juárez, Chihuahua, por policías municipales: piden protección (VIDEO)*.

¹²⁴⁶ Committee to Protect Journalists (CPJ). October 26, 2017. *Shots fired at local broadcaster in Mexican state of Quintana Roo*; Noticias Pedro Canché. October 24, 2017. *Balean instalaciones del Canal 10 de Cancún y hieren al contador Alfredo Galán.*

¹²⁴⁷ Congreso de los Estados Unidos Mexicanos. July 20, 2017. *Acta de la Cuarta Reunión Ordinaria de la Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación.*

¹²⁴⁸ Cimac Noticias. January 13, 2017. *Amenazan de muerte a Soraya Arias, periodista en Oaxaca*; Artículo 19. January 11, 2017. *Amenazan de muerte a locutora en Oaxaca.*

Protection of Human Rights Defenders and Journalists since November 2015.¹²⁴⁹ On January 30, journalist Raúl Rodríguez of the newspaper *Morelos Habla*, received a death threat in Cuernavaca. The incidents reportedly took place a few hours after he published news of alleged acts of corruption by municipal authorities. The journalist reported the incidents to the authorities, but in April he decided to leave the country.¹²⁵⁰

849. On February 10, the Secretary of Public Security of Michoacán reportedly threatened journalist Alejandra Marina Martínez. The journalist was recording residents complaining about insecurity in the municipality, when the public official berated her and members of the public security force snatched away the journalist's equipment.¹²⁵¹ On February 17, Susana Leticia Arellano, journalist of the media outlet *El mañanero*, was allegedly threatened in Oluta, Veracruz. A man, who identified himself as the husband of the sixth town councilmember of the City Hall of Acayucan, reportedly threatened Arellano for allegedly misrepresenting information in an interview of his wife.¹²⁵² On February 19, Isaí Lara Bermúdez, politics editor of the weekly magazine *ZETA*, reported that the police chief of the municipality of Tecate, State of Baja California, was allegedly planning an attack on him. Lara Bermúdez had published a column about said chief a few days prior to the threat.¹²⁵³

850. On February 28, journalist Jonathan Zepeda of *Notiprensa*, and political cartoonist Carlos Orantes, were arbitrarily detained in Tuxtla Gutiérrez, Chiapas. The journalists were conducting an investigation at the Municipal Palace into potential acts of corruption by local authorities.¹²⁵⁴ On March 6, armed men reportedly stole the issues of the weekly magazine *Reporte Jalisco* and threatened the media outlet's employees. That same day, Marcelo Ramírez, journalist of the media company *Decisiones*, was allegedly threatened after publishing a news article about the former mayor of Jalisco.¹²⁵⁵ On March 7, journalist Mauricio Can Tec, of the daily newspaper *Diario de Yucatán*, was arbitrarily detained and assaulted while he was covering a story outside of the municipal palace.¹²⁵⁶ On March 11, unknown men reportedly burned the motorcycle of journalist Carlos Roberto Marroquín, host of the radio program *Contexto Radio* and director of *Voces Colectivas Asociación Civil* in Hermosillo, Sonora.¹²⁵⁷

851. On March 15, Tamara De Anda, blogger of *El Universal*, reporter of *Canal Once*, radio host of *Radio Formula* and collaborator of *Maspormas*, was the target of death threats, harassment over social networks,

¹²⁴⁹ Alberto Escorcía/Change. [Irregularidades de @PGJDF CDMX y @PGR mx en investigación de mi caso de amenazas](https://www.change.org/p/epn-twitterlatam-bastadeamenazas/u/20481296...); "Today I have to denounce the irregularities in the investigation over threats that I have received <https://www.change.org/p/epn-twitterlatam-bastadeamenazas/u/20481296...>". Twitter account of Alberto Escorcía @AlbertoEscorcía. June 7, 2017; Artículo 19. January 13, 2017. [Intimidación a periodista tras publicar análisis sobre #SaqueaUnWalmart](#).

¹²⁵⁰ Artículo 19. April 29, 2017. [Amenazan de muerte a periodista por reportaje sobre corrupción de autoridades de Cuernavaca](#); Página Abierta. February 4, 2017. [Amenazan de muerte a periodista por reportar corrupción de autoridades de Cuernavaca](#); Morelos Habla/ISUU. Edición 23 de marzo. P.8

¹²⁵¹ La bandera Noticias. January 11, 2017. [Titular Seguridad Pública Michoacán agradece a reportera](#); Artículo 19. February 11, 2017. [Secretario de Seguridad Pública de Michoacán amenaza a reportera](#)

¹²⁵² Liberal. February 19, 2017. [Reportera denuncia amenaza de regidora](#); Artículo 19. March 1, 2017. [Familiar de funcionarios amenaza a reportera en Veracruz](#)

¹²⁵³ Artículo 19. February 19, 2017. [Periodista es amenazado tras delatar abuso de autoridad de director de seguridad pública](#); Cerigua. February 21, 2017. [Alertan a editor del semanario ZETA de posible atentado](#).

¹²⁵⁴ Congreso de los Estados Unidos Mexicanos. July 18, 2017. [Acta de la Quinta Reunión Ordinaria de la Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación](#). p. 17; Artículo 19. March 5, 2017. [Policías municipales detienen arbitrariamente a periodistas en Chiapas por grabar actos irregulares de funcionarios](#).

¹²⁵⁵ Artículo 19. March 9, 2017. [Atacan el mismo día a dos medios de comunicación en Jalisco](#).

¹²⁵⁶ Diario de Yucatán. March 7, 2017. [Policía de Cacalchén detiene a reportero de Grupo Megamedia](#); Artículo 19. March 9, 2017. [Policías municipales detienen arbitrariamente a periodista en Yucatán](#).

¹²⁵⁷ Artículo 19. March 12, 2017. [Incendian motocicleta de locutor en Sonora](#);

after the broadcaster denounced that a taxi driver had harassed her on the street shouting “Gorgeous” to her. The journalist received support from the police and brought a case in Civil Court.¹²⁵⁸ One of the threatening messages that Ms. De Anda received contained a screen capture of a slip of paper with the name of the journalist on it, along with some bullets and a rosary with the following caption: “I ask for the lord’s forgiveness for what I am going to do, but you destroyed my family, tamara is dead.”¹²⁵⁹

852. On March 21, journalist and women’s rights activist Verónica Villalvazo, known as “Frida Guerrero,” [‘Frida the lady worrier’], was threatened and harassed over her social network accounts as a consequence of her speaking out publically against femicides in Mexico.¹²⁶⁰ Villalvazo filed a complaint with the FEADLE for the death threats. The journalist and activist carries a panic button as a security measure granted by the Federal Mechanism for the Protection of Human Rights Defenders and Journalists.¹²⁶¹ On March 29, three journalists (a Spaniard, a Mexican and an Englishman) from *Al Jazeera* were stopped and held up by three armed individuals in the State of Sinaloa.¹²⁶²

853. In March, José Luis Morales, host of the radio news program ‘Infolínea’ of *Radio Mexicana FM* in Aguascalientes, reported being the target of a “smear campaign,” receiving threats, pressure and police harassment. Based on available information, different media outlets reported that warrants were issued for his arrest. In addition to the foregoing, alleged police agents attempted to arrest him. According to the journalist, the Office of the Attorney General of the Republic told him that there was no case against him. Morales claimed that those responsible for said harassment were involved in Aguascalientes politics.¹²⁶³

854. On April 8, the weekly magazine *Semanario Zeta* published a story relating threats by a member of the Arellano Félix cartel against the media outlet. According to the information obtained by the weekly, said cartel intended to “put an end to the *Semanario ZETA* by placing a bomb in the building or nearby it and exploding it.”¹²⁶⁴ On April 18, journalist Francisco Acosta, manager of the newspaper *Novedades Quintana Roo*, was reportedly harassed and intimidated by four individuals, who got out of an official vehicle of the government of Quintana Roo.¹²⁶⁵

855. In April, journalist Gerardo Ruiz Herrera was allegedly harassed and bullied by the State Secretariat of Public Security of Puebla. The Assistant Secretary for Intelligence ordered an investigation of the journalist

¹²⁵⁸ El Universal. March 18, 2017. *Crónica de un acoso denunciado*; El País. March 22, 2017. *Tamara de Anda ‘Plaqueta’ explica por qué un piropo no es un halago sino una forma de acoso*.

¹²⁵⁹ El Universal. March 18, 2017. *Crónica de un acoso denunciado*; Artículo 19. March 17, 2018. *Periodista es acosada y amenazada en redes sociales tras hacer pública su denuncia por acoso*; Radio Formula. March 17, 2017. *Amenazan en redes a Tamara de Anda por denunciar acoso ante juez cívico*.

¹²⁶⁰ Cencos. April 4, 2017. *Hostigan a “Frida Guerrero” por denunciar feminicidio en Ecatepec*; Notigodinez. April 5, 2017. *Amenazan de muerte a la periodista ‘Frida Guerrero’ y a su familia por su labor contra el feminicidio*; Afondo. May 17, 2017. *Amenazan de muerte a la periodista Frida Guerrero por apoyo a víctimas de feminicidios*.

¹²⁶¹ Cimacnoticias. May 16, 2017. *“Frida Guerrero” denuncia hostigamiento ante la FEADLE*; Afondo. May 17, 2017. *Amenazan de muerte a la periodista Frida Guerrero por apoyo a víctimas de feminicidios*; Oaxaca Capital. May 18, 2017. *Frida Guerrero presenta una denuncia ante la Feadle por amenazas de muerte y hostigamientos*.

¹²⁶² Aristegui Noticias. March 29, 2017. *Asaltan y retienen a periodistas de Al Jazeera en Sinaloa*; 24 horas. March 24, 2017. *Periodistas de Al Jazeera, ilesos tras robo y secuestro exprés en Sinaloa: Fiscalía (+video)*.

¹²⁶³ SIP. March 10, 2017. *Condena la SIP agresión e intimidación a periodistas en Colombia y México y ciberataque en Venezuela*; El Mañana. March 9, 2017. *Denuncia periodista acoso policial y difamación en su contra*

¹²⁶⁴ Zeta Tijuana. April 8, 2017. *Otra vez el CAF amenaza a ZETA*; Artículo 19. April 9, 2017. *Semanario Zeta bajo amenaza por integrar-te del crimen organizado*

¹²⁶⁵ Artículo 19. April 26, 2017. *Funcionario del gobierno de Quintana Roo hostigan a periodista*; Congreso de los Estados Unidos Mexicanos. July 18, 2017. *Acta de la Quinta Reunión Ordinaria de la Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación*;

after learning about information that was reportedly sent to the journalist implicating him with organized crime groups. The official allegedly released personal information about Ruiz Herrera to other journalists.¹²⁶⁶ On April 22, 2017, Nehemías Jiménez and José David Morales Gómez, journalists of the media company *Chiapas sin Censura* received death threats, were detained and their work equipment was taken away from them. The journalists were documenting possible illegal practices at a public event of Senator Roberto Albores. Subsequently, supposed policemen dressed as civilians returned their property. The photos and video recordings had been deleted.¹²⁶⁷

856. On May 13, seven journalists were held up and threatened with death by around 100 armed individuals in Acaptelahuaya, State of Guerrero. These journalists included: Sergio Ocampo and Jair Cabrera, correspondents of the national newspaper *La Jornada*; Alejandro Ortiz, of the news portal *Bajo Palabra*; Jorge Alberto Martínez, of the news agency Quadratín Guerrero; Ángel Galeana, correspondent of Grupo *Imagen*; Pablo Pérez, freelance Spanish journalist of *Hispano Post*; and Hans-Máximo Musielik, freelance German photographer and collaborator of *ViceNews México*. The assailants stole their work tools, such computers, cell phones, cameras and one of the vehicles.¹²⁶⁸ The Office of the Special Prosecutor to Address Crimes against Freedom of Expression (FEADLE) coordinated actions with state authorities to open an investigation.¹²⁶⁹ That same day, journalist Fabián García Castrejón, reporter of *Aristegui Noticia* and editor of *Ámbito Nayarit*, discovered threatening messages at the front door of his house in Tepic, State of Nayarit. The journalist received protection from the Mechanism for the Protection of Journalists and was relocated to Mexico City.¹²⁷⁰

857. On May 16, the president of the Association of Journalists of Sinaloa, Juan Manuel Partida Valdez reported he had received death threats. Partida Valdez served as an intermediary between the authorities and a witness in the case of the murder of journalist Javier Valdez. Said witness allegedly informed Partida Valdez that Javier Valdez appeared on a list of journalists marked for murder.¹²⁷¹

858. On May 22, alleged members of the municipal police force of Aquiles Serán, Chihuahua, reportedly threatened, intimidated and prevented journalists from several local media outlets from doing their job. The

¹²⁶⁶ Photographs of journalist Ruiz Herrera, of his car, information about his address, places he frequented and personal information of his father and sister (workplace, telephone and address) were reportedly included. The journalist indicated that he has not received information related to said public official. Artículo 19. April 5, 2017. *Secretaría Pública de Puebla acosa e intimida a periodista*; Congreso de los Estados Unidos Mexicanos. April 2017. Mapa georeferenciado. Available at:

<http://www5.diputados.gob.mx/index.php/camara/Comision-Especial-de-Seguimiento-a-las-Agresiones-a-Periodistas-y-Medios-de-Comunicacion/Diagnostico-de-Agresiones-a-Periodistas-en-Mexico/Mapa-Georeferenciado>; E-consulta. April 3, 2017. *Persiguen y arman expediente a periodista en Puebla*.

¹²⁶⁷ Congreso de los Estados Unidos Mexicanos. July 18, 2017. *Acta de la Quinta Reunión Ordinaria de la Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación*; Artículo 19. April 23, 2017. *Detienen y amenazan a periodistas por registrar prácticas ilegales en acto de campaña en Chiapas*.

¹²⁶⁸ Committee to Protect Journalists (CPJ). May 22, 2017. *Mexican journalists robbed*; La Jornada. May 14, 2017. *CEDH condena agresión contra siete periodistas en Guerrero*; Aristegui Noticias. May 14, 2017. *Al menos 100 hombres armados retienen y roban a periodistas en Guerrero (Video)*.

¹²⁶⁹ Aristegui Noticias. May 14, 2017. *Al menos 100 hombres armados retienen y roban a periodistas en Guerrero (Video)*; Univisión. May 14, 2017. *La Fiscalía mexicana investiga un ataque a siete periodistas en el sur de México*.

¹²⁷⁰ Committee to Protect Journalists (CPJ). May 19, 2017. *Mexican journalist flees state after receiving threats*; Proceso. May 15, 2017. *Reportero abandona Nayarit ante amenazas de muerte*.

¹²⁷¹ La Jornada. May 24, 2017. *Amenazan de muerte a Juan Manuel Partida, presidente de la ASP de Sinaloa*; Aristegui Noticias. May 23, 2017. *"Mañana van por ti": la amenaza a otro periodista de Sinaloa*.

journalists were covering possible abuses by authorities and arbitrary detentions.¹²⁷² On May 14, alleged state officials beat Arturo Ávalos, journalist of the medial outlet *De Política y Algo Más*, and prevented him from performing his job.¹²⁷³

859. The print media outlet *El mañana* of Nuevo Laredo, Tamaulipas was the target of a campaign of stigmatization and acts of intimidation by the mayor of Nuevo Laredo. The newspaper had published stories about the lack of transparency in the office of the mayor and conflicts of interest between suppliers and public officials.¹²⁷⁴ According to available information, in May, the mayor called a press conference and claimed: "We have been the targets of constant attacks by the newspaper *El Mañana* [...] and the message goes out to them, we are not going to give in, we are not going to give them the 2.5 million pesos that they want monthly in order to be able to print positive things."¹²⁷⁵ Subsequently, *El Mañana* received information about a possible attack on it.¹²⁷⁶ In August, the director of *El Mañana* sued the mayor for corruption and illegal enrichment.¹²⁷⁷ In addition, in January, the daily suspended distribution of its print version for two days as a result of threats allegedly leveled against it by a criminal group.¹²⁷⁸

860. On June 5, three policemen held a gun to journalist Leonardo Martínez Peralta, of the daily newspaper *ABC* and demanded that he delete the photos that he had just taken of the confrontation between these officers with other armed men.¹²⁷⁹ On June 9, José Angel Castro, journalist of the media outlet *Tabasco Hoy*, was assaulted, intimidated and arbitrarily arrested by members of the State public security forces of Tabasco. The journalist was covering a police news item.¹²⁸⁰ In June, journalist Sanjuana Martínez collaborator of *La Jornada* was threatened with death and rape over social media.¹²⁸¹ On July 8, Amir Ibrahim, director of the portal *El QuintanaRoo* was reportedly threatened by unknown men and allegedly by a businessman from Quintana Roo.¹²⁸² Unknown armed men watched the home of journalist Ezequiel Flores, of *Proceso*, for two days. The journalist reported the incidents to the Mechanism for Protection, of which he is a

¹²⁷² The alleged public force members would have taken photos of them and threatened to "hunt them down". Artículo 19. May 24, 2017. *Persisten agresiones: policías municipales amenazan e intimidan a seis reporteros en Chihuahua*; Tiempo. May 22, 2017. *Amenazan policías de Aquiles Serdán con "cazar" a reporteros*.

¹²⁷³ The journalist allegedly attempted a conciliation before the State Commission for the Protection of Journalistic Practice. However, the official reportedly described the attack as a "little push". Artículo 19. May 27, 2017. *Periodista es criminalizado por secretario de Seguridad Pública de Colima, dos días después es amenazado*; Diario Avanzada. May 28, 2017. *Periodista es criminalizado por secretario de Seguridad Pública de Colima, dos días después es amenazado*.

¹²⁷⁴ Artículo 19. June 25, 2017. *Gobierno de Nuevo Laredo intimida y promueve campaña contra El Mañana*; El mañana. May 30, 2017. *Denuncia Rivas Cuéllar extorsión de El Mañana*; El Universal. June 22, 2017. *Escala conflicto entre edil de Nuevo Laredo y El Mañana*; Revista sin Frontera. May 29, 2017. *Se enfrentan Enrique Rivas Cuellar y El Mañana*.

¹²⁷⁵ Noti Gape/ YouTube. May 30, 2017. *Acusa Enrique Rivas a El Mañana de extorsión*; Reporte Directo/ YouTube. May 29, 2017. *Advierte Alcalde de #NuevoLaredo Enrique Rivas Cuéllar que no se dejará extorsionar*.

¹²⁷⁶ El Mañana. June 24, 2017. *Advierten inminente ataque contra El Mañana*; Artículo 19. June 25, 2017. *Gobierno de Nuevo Laredo intimida y promueve campaña contra El Mañana*.

¹²⁷⁷ Proceso. August 16, 2017. *Director de El Mañana de Nuevo Laredo demanda a alcalde por corrupción y enriquecimiento ilícito*; Tehuacan.

¹²⁷⁸ Animal Político. February 2, 2017. *Diario El Mañana de Nuevo Laredo suspende su distribución por amenazas*; El diario de Coahuila. February 2, 2017. *El Mañana de N. Laredo suspende publicaciones por amenazas del narco*.

¹²⁷⁹ Quadatín Guerrero. June 6, 2017. *Acusa ex presidente de periodistas de Zihuatanejo agresión de policías*; El Universal. June 5, 2017. *Guerrero: periodismo bajo fuego*; La Plaza Diario. June 6, 2017. *Encañonan policías estatales a reportero de Zihuatanejo*.

¹²⁸⁰ Artículo 19. June 9, 2017. *Periodista es detenido y agredido por elementos de seguridad de Tabasco*;

¹²⁸¹ La Jornada. June 23, 2017. *La CNDH pide al gobierno neoleonés dar protección a Sanjuana Martínez*; Sin embargo. June 21, 2017. *Red de Defensoras pide a Segob protección para Sanjuana Martínez, acosada y amenazada de muerte*.

¹²⁸² Artículo 19. July 9, 2017. *Amenazan de muerte a director de medio crítico en Quintana Roo*; El Universal. August 5, 2017. *Amir Ibrahim, el periodista amenazado con "narcomantas" en QRoo*.

beneficiary due to previous threats. According to the journalist, the federal authorities took two hours to arrive.¹²⁸³

861. On July 13, journalist Lydia Cacho Ribeiro was threatened by an unknown individual in Quintana Roo.¹²⁸⁴ On July 15, Jesús Olivares, of the newspaper *El Dictámen*, was threatened over Facebook allegedly by a former public official of Veracruz.¹²⁸⁵ On July 18, journalists Cynthia Caballero and Miguel Angel Salguero, of *Iztacalco Noticias* news agency, received threats after publishing a video of members of political parties engaged in physical fighting.¹²⁸⁶ On July 19, two narco-blanket messages allegedly appeared in Quintana Roo signed by the Zetas threatening with death journalists Pedro Canché, editor of the portal *Pedro Canché Noticias*, and Amir Ibrahim, director of the portal *El QuintanaRoo*.¹²⁸⁷ That same day, journalist Luis Rubén López Domínguez, of the newspaper *Tabasco Hoy*, was allegedly threatened in the municipality of Paraíso, State of Tabasco. An individual reportedly shot at the journalist's car and left a threatening message on the windshield. López published news stories about several municipal officials. The spokesperson of the mayor's office called the incident a "self-staged attempt."¹²⁸⁸

862. July 20, Alejandro Otero Reséndiz, journalist of the digital magazine *Revista Original*, was reportedly assaulted, threatened and blocked and his work tools damaged while he was covering a news story in Chinconcuac, State of México. Alleged members of the State Security Commission and of the Municipal Police Department incited individuals to beat the journalist. One of the alleged members of the Municipal Police pressured journalist Rodrigo Hernández, from the digital newsfeed *Contrapapel Texcoco*, to reveal his sources after disseminating information connected to Otero Reséndiz's original coverage.¹²⁸⁹

863. On July 21, journalist José Maldonado, founder and editorial chief of *Agencia Mexicana de Noticias Noventa Grados*, reportedly was threatened by email. The email warned Maldonado to stop publishing information relating to the activities of public officials of Morelia, State of Michoacán.¹²⁹⁰ On July 25, journalist Gil Cruz, of the newspaper *Periódico MX*, was threatened through a message to his family members in Álamo Temapache, Veracruz. According to available information, unknown individuals entered the parents' family business and threatened to kill Gil Cruz if they didn't pay 100,000 pesos by the weekend.¹²⁹¹

864. On August 3, Armando Ramírez, journalist of the news service *Noticiudadana* was threatened over

¹²⁸³ Artículo 19. June 11, 2017. [Continúan agresiones contra corresponsal de Proceso, en Guerrero](#); Proceso. June 11, 2017. [Corresponsal de Proceso en Guerrero denuncia actos de hostigamiento en su contra](#).

¹²⁸⁴ Artículo 19. July 25, 2017. [Amenaza contra Lydia Cacho exhibe omisión del Estado en garantizar su seguridad](#); Pen International. July 26, 2017. [México: PEN Internacional, PEN México y PEN San Miguel de Allende condenan las recientes amenazas contra periodistas](#).

¹²⁸⁵ Artículo 19. July 15, 2017. [Continúan amenazas contra periodistas en Veracruz, la entidad más letal para la prensa](#); Plumas Libres. July 15, 2017. [Reportero de El Dictamen denuncia por amenazas al exoperador de Fidel y Duarte, Rafael Cruz](#).

¹²⁸⁶ Artículo 19. July 19, 2017. [FEADLE debe investigar amenazas contra dos periodistas en la Ciudad de México](#).

¹²⁸⁷ Reporters Without Borders. July 27, 2017. [Threats and intimidation – Mexico's weapons of mass censorship](#); Noticias Pedro Canché. July 19, 2017. [Grupos políticos imitan al narco y amenazan al director de este portal #NiUnoMas](#); El Quintana Roo. July 19, 2017. [Nueva amenaza contra el director de ElQuintanaRoo.mx](#); Committee to Protect Journalists (CPJ). July 21, 2017. [Journalists receive death threats in Mexican state of Quintana Roo](#).

¹²⁸⁸ Artículo 19. July 21, 2017. [Gobierno municipal criminaliza a periodista amenazado en Tabasco y asegura que es un "autoatentado"](#); Quadratin. July 19, 2017. [Periodista de Tabasco denuncia agresión a balazos en su domicilio](#); Tabasco Hoy. July 20, 2017. [Atacan a periodista de Tabasco HOY](#); Reporters Without Borders. July 27, 2017. [Threats and intimidation – Mexico's weapons of mass censorship](#).

¹²⁸⁹ Artículo 19. July 20, 2017. [Policías del Estado de México amenazan e intimidan a periodistas en Chinconcuac](#).

¹²⁹⁰ Committee to Protect Journalists (CPJ). July 26, 2017. [Mexican journalist threatened in Michoacán state](#); Agencia Noventa Grados. July 21, 2017. [Amenazan de muerte al Director de la Agencia Noventa Grados por publicaciones contra la PGJE de Michoacán](#).

¹²⁹¹ Artículo 19. July 27, 2017. [Continúan amenazas contra periodista en Veracruz, ahora su familia recibe las agresiones](#); El Financiero. July 26, 2017. [Periodista amenazado en Veracruz denuncia ataque contra sus padres](#).

the social media allegedly for publishing articles about organized crime in Tláhuac.¹²⁹² Journalist Héctor de Mauleón, columnist of *El Universal* received death threats through the social networks and an email on July 27 and August 30. One of the threats circulating via Twitter shows a video with a photograph of the journalist and how someone is shooting him.¹²⁹³ The journalist reportedly conducted interviews which discuss organized crime in Mexico City. The National Commission on Security, Forensic Science Division of the Federal Police, the Office of the Attorney General of the Republic and the Office of the Special Prosecutor to Address Crimes against Freedom of Expression (Feadle) are all supposedly investigating the threats.¹²⁹⁴

865. On August 20, persons alleged to be policemen in Sabinas, Coahuila beat, arbitrarily detained and held in isolation journalist Sigifredo de la Cerda, of the newspaper *Zócalo*, and prevented him from doing his job. The journalist was covering a breaking news story when alleged policemen reportedly beat, choked and then transferred him to the Office of the Public Prosecutor. The officials are alleged to have said that because he was not wearing a vest with the word “Press” on it, he could not be identified as such. After 10 hours of being held in custody, the journalist was notified that he had been charged with causing bodily injury for allegedly beating a police officer.¹²⁹⁵ On August 29, journalist Virjilio Osorio Nava and camerawoman Montserrat Ángel Rogelio, of the magazine *El Gritón* and the TV channel *El Mundo de Tlaxcala*, were reportedly threatened with death by an alleged State police officer of Tlaxcala.¹²⁹⁶

866. On September 5 and 6, several members of the daily newspaper staff of *Quintana Roo Hoy*, including its assistant director Irma Ribbon López, received several death threats via text messages and phone calls. They also received a bomb threat by phone and, consequently, firemen, Civil Protection and the state and federal police were mobilized to the facilities of the newspaper. The threats specifically involved articles published by the news outlet. Recently, the newspaper had published articles about the Cancun Cartel and about the unlawful dispossession of land in the hotel zone. The Office of the Attorney General of the Republic opened an investigation into the incidents.¹²⁹⁷

¹²⁹² Radio Fórmula. August 3, 2017. *Amenazan a reportero por caso Tláhuac*; Artículo 19. August 8, 2017. *Periodistas de Tláhuac amenazados por cubrir operativos e inseguridad en la delegación*.

¹²⁹³ Margarita Vázquez Sánchez, Central Investigative Prosecutor for the Care of Special Affairs of Mexico City, said that “regarding some threats that we had against journalist Héctor de Mauleón, fortunately we were able to, through the Cybernetic Police of the Attorney General’s Office, integrate the research dossier. And we managed to locate the person who was making the threats, and we also managed to link it to the process. Currently the defendant has applied for *amparo*, and we are awaiting the resolution of the *amparo*. But it is an achievement that we obtained in relation to the threats received by the journalist”. Congreso de los Estados Unidos Mexicanos. July 18, 2017. *Acta de la Quinta Reunión Ordinaria de la Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación*.

¹²⁹⁴ Artículo 19. August 16, 2017. *Procuraduría de CDMX obligada a actuar ante amenazas contra Héctor de Mauleón*; *El Universal*. August 16, 2017. *Policía Federal investiga amenaza de muerte a Héctor de Mauleón*; *El Financiero*. August 17, 2017. *Amenazan de muerte a periodista Héctor de Mauleón*; *Publimetro*. August 17, 2017. *PGR investiga amenazas contra el periodista Héctor de Mauleón*; *MVS Noticias*. August 17, 2017. *PGR investiga amenazas de muerte contra periodista Héctor de Mauleón*.

¹²⁹⁵ Artículo 19. August 22, 2017. *Reportero es agredido y detenido arbitrariamente durante 15 horas en Sabinas, Coahuila*; *Periódico Activista*. August 17, 2017. *Policías estatales agreden y encarcelan a periodista que cubría una violenta detención*.

¹²⁹⁶ The supposed policeman had stopped the car where the communication workers were travelling on and after realizing that they were journalists, he allegedly tore apart the press credential and voter card of Osorio Nava. The journalist had reportedly recorded the incident so the police officer allegedly tried to stop him. The alleged police officers allowed them to continue and told them that they were going to talk to their superiors and that if they “gave the order” they would “stop them when they returned along the highway and they would not come out alive.” Artículo 19. August 29, 2017. *Amenazan de muerte y detienen a periodistas en Tlaxcala*; *El Gritón*. August 29, 2017. *Amenazan de muerte a periodistas en Tlaxcala*.

¹²⁹⁷ El Quintana Roo. September 6, 2017. *Nueva amenaza a la prensa quintanarroense*; Artículo 19. September 6, 2017. *Continúan las amenazas contra la prensa crítica en Quintana Roo*.

867. Several journalists and media outlets were victims of unknown individuals who broke into their homes or facilities. In January, the offices of the outlet *El Otro Enfoque*, in Silao, Guanajuato, were broken into. The unknown burglars reportedly stole a computer with journalistic information, a telephone and a motorcycle.¹²⁹⁸ In April and May, respectively, unknown individuals broke into the residence of Genaro Lozano, columnist of *Reforma* and television host of *Televisa* in Mexico City¹²⁹⁹ and the residence of Alejandro Saucedo Alvarado, a journalist of the media outlet *Red es Poder* in Torreon, Coahuila.¹³⁰⁰ In both instances, no valuables were stolen, but objects such as cameras and documents were moved around. Similarly, in May, unknown persons reportedly broke into the facilities of the publisher of the magazine *Proceso*, in Mexico City.¹³⁰¹ According to the organization Artículo 19, the day after the incident, a cloned cover and text of the magazine was circulated on social media.¹³⁰² In June, the office of journalist Joaquín López Dóriga of *Radio Fórmula* in Mexico City also was broken into. The unknown individuals reportedly stole a cellphone, four computers and searched through files and drawers.¹³⁰³

868. The IACHR recalls the obligation of the States to adopt a public discourse that contributes to preventing violence against journalists, including the recognition of journalistic work and public condemnation of murders and all physical violence against journalists, omitting any statement that can raise the risk for journalists; and to adopt training programs, as well as to formulate and implement guidelines of conduct for public officials and especially police or security forces on respect for the media, including those specifically related to gender issues.

869. In addition, the State must ensure that effective and concrete protection measures are adopted, urgently, to guarantee the safety of those who are subject to a special risk for the exercise of their right to freedom of expression, whether that the threats come from agents of the State or of individuals. The measures must guarantee journalists the possibility of continuing their professional activity and their right to freedom of expression. In the same way, the State must adopt the necessary measures so that those who work in the media and have had to move or go into exile because they are at risk, can return to their homes in safety conditions. When it is not possible for these people to return, the States must adopt measures so that they can remain in the place they choose in decent conditions, with security measures and with the financial support necessary to preserve their work and family life.

870. In accordance with international human rights standards, the Mexican State is not only obligated to guarantee that its agents do not commit acts of violence against journalists, but also to reasonably prevent aggressions from individuals when they know or should know about the risk. The ninth principle of the Declaration of Principles on Freedom of Expression of the IACHR establishes that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators

¹²⁹⁸ El otro Enfoque. January 5, 2017. *Roban en oficina de El Otro Enfoque*; Artículo 19. January 5, 2017. *Allanan oficinas de El Otro Enfoque en Guanajuato*;

¹²⁹⁹ Proceso. May 7, 2017. *El periodista Genaro Lozano denuncia amenazas y allanamiento de su domicilio*; Artículo 19. May 6, 2017. *Allanan domicilio de periodista que sigue proceso electoral del Edomex*;

¹³⁰⁰ Congreso de los Estados Unidos Mexicanos. April 2017. Mapa georeferenciado. Available at: <http://www5.diputados.gob.mx/index.php/camara/Comision-Especial-de-Seguimiento-a-las-Agresiones-a-Periodistas-y-Medios-de-Comunicacion/Diagnostico-de-Agresiones-a-Periodistas-en-Mexico/Mapa-Georeferenciado>; Artículo 19. April 1, 2017. *Allanan domicilio de comunicador en Coahuila*;

¹³⁰¹ Proceso. May 26, 2017. *Tres sujetos allanan las instalaciones de Proceso (Video)*; Artículo 19. March 27, 2017. *FEADLE debe investigar allanamiento a instalaciones de Proceso*; Aristegui noticias. May 27, 2017. *3 hombres con botas y corte tipo militar, allanan oficinas de Proceso (Nota y video)*.

¹³⁰² Artículo 19. March 27, 2017. *FEADLE debe investigar allanamiento a instalaciones de Proceso*.

¹³⁰³ Artículo 19. June 30, 2017. *FEADLE y PGJ CDMX deben investigar allanamiento y robo oficinas de Joaquín López Dóriga*; López-Dóriga Digital. June 27, 2017. *Roban oficina de Joaquín López/Dóriga en Radio Fórmula*.

and to ensure that victims receive due compensation".

E. Prevention, protection and impunity of crimes against journalists

871. In its report *The Situation of Human Rights in Mexico* and its first follow-up report on its recommendations, the IACHR recognized the efforts of the Mexican State for adapting its legal framework and institutions to address the challenge posed by impunity. However, it noted that reforms are ineffective when in practice and in response to victims' and, in general, society's clamoring for justice, there is no response. On the contrary, rates of impunity are still on the rise in a context of constant serious crime and assaults on the press. This all conveys the wrong message as those who attack the press go unpunished leaving journalists and broadcasters defenseless.

872. The Commission has recognized the efforts of the Mexican State to confront the situation of impunity, such as instituting legislative reforms and creating investigative units like the Office of the Special Prosecutor to Address Crimes against Freedom of Expression (FEADLE). In May 2013, the National Congress approved a legal reform to regulate the legal authority of the Office of the Federal Prosecutor to take over cases¹³⁰⁴ and the jurisdiction of the federal justice system to prosecute and try crimes committed against journalists, persons or facilities, that "affect, limit or undermine the right to information or freedoms of expression or press."¹³⁰⁵ The purpose of this reform was to overcome the legal obstacle that FEADLE faced to be able to take over jurisdiction and become more effective in getting to the bottom of cases that may be linked to the practice of journalism. Notwithstanding, in its recommendations, the IACHR pointed to the need to eliminate obstacles in practice that stand in the way of FEADLE from taking over cases of crimes committed against journalists and freedom of expression and be able to conduct a thorough, timely and independent investigation in contexts where there are no assurances of such an investigation.

873. According to information provided by the State, "as of July 31, 2017, the FEADLE had exerted the power to take over 48 preliminary investigations in several federal entities." Additionally, it reported that in order to strengthen its activities, FEADLE is implementing Immediate Response Cells (CRI, the Spanish initials for Células de Reacción Inmediata), made up of federal prosecutors, federal enforcement agents and police personnel.¹³⁰⁶

874. Notwithstanding, Sara Irene Herrerías Guerra, Assistant Attorney General for Human Rights, Crime Prevention and Community Service of the PGR, acknowledged that of the 48 cases taken over by the FEADLE, only three have led to convictions, according to information presented at a hearing before the Special Committee to follow up on assaults on journalists and media of the Chamber of Deputies of the Federation. For her part, Brenda Velázquez Valdez, chair of the Special Committee, noted that "with four murders linked to the exercise of freedom of expression, in March alone, it is clear that the Government of the Republic's prevention and prosecution policies are ineffective and inefficient." Deputy Exaltación González Ceceña asserted: "impunity to find the actual perpetrators and masterminds behind assaults on journalists, that is to say, murders, attacks on their physical integrity or materials, because their facilities are also assaulted and

¹³⁰⁴ Estados Unidos Mexicanos. Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal. May 3, 2013.

¹³⁰⁵ Estados Unidos Mexicanos. Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal. May 3, 2013.

¹³⁰⁶ Estados Unidos Mexicanos. Third report of the Mexican State on the compliance and follow-up of the recommendations contained in the report of the Inter-American Commission on Human Rights "Situation of Human Rights in Mexico", resulting from the visit made to Mexico on September 28 to October 2, 2015.

they are cases that remain unsolved.”¹³⁰⁷

875. Additionally, on May 17, “the President of the Republic invited the Governors of the federal entities to a special meeting of the National Governors Conference CONAGO to agree, through emergency actions in the area of protection and justice, on a plan to strengthen the National Mechanism for the Protection of Human Rights Defenders and Journalists.” At said meeting, the following strategies were agreed upon: i) Creation of State Protection Units for Human Rights Defenders and Journalists made up of public servants of state governments; ii) Mapping out areas of risk and locations of assaults against human rights defenders and journalists in each federal entity; iii) Drafting of a National Protocol for the Coordination of Protection of Human Rights Defenders and Journalists.¹³⁰⁸

876. On June 2, the Secretary of the Interior entered into agreements with 32 entities to reinforce collaboration between the federal government and the state governments. Additionally, on August 11, CONAGO approved the Coordination Protocol for the Protection of Human Rights Defenders and Journalists. Likewise, the Protocol for Accompaniment of Journalists was drafted, which defines “the procedure to investigate, assist and protect victims and offended parties from crimes committed against journalists, or which infringe, limit or undermine the right to information, freedom of expression or of the press.”¹³⁰⁹

877. For its part, the Consultative Council of the Mechanism for the Protection of Human Rights Defenders and Journalists issued a press release stating: “for all actors with whom we have spoken [...] impunity is the fundamental factor that rewards and covers up crimes committed against human rights defenders and journalists in the country. Over 90% of cases remain in impunity, according to the authorities themselves. Civil society organizations claim that the figure is even higher. The main thing is that both the FEADLE and the prosecutor’s offices of all the entities [States] have shown an inability to address these crimes. Cover up, incompetence and complicity may be some of the factors for having these results,” noted the organizations making up the Consultative Council of the protection mechanism.¹³¹⁰

878. The Office of the Special Rapporteur recalls that one of the factors contributing to the steady rates of impunity in crimes against journalists is the failure to exhaust lines of investigation linked to the practice of journalism by the victim, inasmuch as it hinders criminal prosecution and fosters impunity of the masterminds.¹³¹¹ The State’s efforts to focus on convicting perpetrators sends a message to the victims of an apparent striving to bring justice.

879. Based on the foregoing, the IACHR and its Special Rapporteurship reiterate the recommendation to the State to maintain FEADLE’s status as a specialized prosecutor and endow it with sufficient economic resources to do its job. In turn, the FEADLE must make sure it removes the obstacles standing in the way of the practice of taking over the investigations of cases of crimes committed against journalists and against freedom of expression; accordingly, the necessary measures must be adopted to avoid conflicts of jurisdiction between the federal and state jurisdictions that hamper or delay investigations. Additionally, special investigation protocols must be adopted under which the hypothesis of a link between the homicide or the assault, to the craft of journalism must be thoroughly and sufficiently exhausted. The victims and their families and, when applicable, their assistants, must be ensured the ability to take part in the criminal

¹³⁰⁷ Cámara de Diputados. April 5, 2017. *Boletín N° 3429: Entre 2000 y 2017, se registran 114 homicidios a periodistas; FEADLE ha atraído 48 casos y sólo existen tres sentencias.*

¹³⁰⁸ Estados Unidos Mexicanos. Third report of the Mexican State on the compliance and follow-up of the recommendations contained in the report of the Inter-American Commission on Human Rights “Situation of Human Rights in Mexico”, resulting from the visit made to Mexico on September 28 to October 2, 2015.

¹³⁰⁹ Procuraduría General de la República. September 4, 2017. *Quinto Informe de Labores de la PGR.*

¹³¹⁰ Alejandra Nuño-Sitio Oficial/Facebook. May 26, 2017. *Comunicado de Medios*; Instituto Mexicano de Derechos Humanos y Democracia. May 26, 2017. *Comunicado de Medios.*

¹³¹¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. December 31, 2013. *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators.* Para. 169.

proceedings with full fair trial rights, both in seeking the truth and getting to the bottom of the crimes as well as when the time comes to demand reparation. As to the participation of the victims, the State reiterated that, “under the new National Code of Criminal Procedure, the incorporation of the rights of victims as one of its core principles, the FEADLE is obligated to respect and ensure the participation of the direct and indirect victims and the representatives thereof.”¹³¹²

F. Social Protest

880. On January 5 and 7, at least 20 journalists were assaulted by members of the public security force in the states of Coahuila and Baja California. The incidents reportedly took place during protests against the rise in the price of fuel.¹³¹³ On January 5, Erika del Carmen Llaguno and Ismael Meza, of *Libera Radio* were threatened and beaten while they were covering citizen rallies in Hermosillo, Sonora.¹³¹⁴ On June 10, members of the public security forces assaulted journalists Rubén Santos Hernández, cameraman of *Meganoticias* and Ricardo Jonás Soto Contreras, reporter of *TV Azteca Veracruz*. The journalists were covering the abuses and use of excessive force by the public security bodies against demonstrators in Veracruz.¹³¹⁵

881. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”¹³¹⁶ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹³¹⁷

882. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹³¹⁸

G. Mechanism for the Protection of Defenders and Journalists

¹³¹² Estados Unidos Mexicanos. Third report of the Mexican State on the compliance and follow-up of the recommendations contained in the report of the Inter-American Commission on Human Rights “Situation of Human Rights in Mexico”, resulting from the visit made to Mexico on September 28 to October 2, 2015.

¹³¹³ Artículo 19. January 7, 2017. *Elementos de la fuerza pública de Coahuila golpean y detienen a periodistas durante protesta*; Committee to Protect Journalists. January 12, 2017. *La policía mexicana ataca a periodistas que cubren protestas*.

¹³¹⁴ Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación. January 2017. *Incidencia agresiones a periodistas y medios de comunicación*; Artículo 19. January 22, 2017. *Agreden a periodistas después de cubrir movilización en Sonora*

¹³¹⁵ Congreso de los Estados Unidos Mexicanos. June 21, 2017. *Punto de Acuerdo*; Artículo 19. June 12, 2017. *Policía estatal agrede a periodistas y a manifestantes durante protesta en Veracruz*;

¹³¹⁶ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹³¹⁷ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹³¹⁸ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

883. In its country report, specifically, the chapter on the Protection Mechanism, the IACHR notes the efforts made by the State to protect at-risk persons in the context of the serious violence taking place as a result of the defense or promotion of human rights, and the exercise of freedom of expression and journalism in Mexico over past years. Particularly, the Commission deemed especially important the creation of the “Mechanism for the Protection of Human Rights Defenders and Journalists” (hereinafter “the Mechanism” or “the Protection Mechanism”) in 2012, the issuance of the specific regulatory framework, the allocation of funds for the protection program to function, implementation of procedures to assist persons who resort to the Mechanism to request protection measures and the considerable number of persons receiving protection, among other actions it implemented for the purpose of creating ties of trust in the effectiveness of the Mechanism.¹³¹⁹ In this regard, based on the information received through the different monitoring mechanisms of the IACHR, including precautionary measures, the Commission made several recommendations to the State in this specific area.

884. In following up on said recommendations, the Inter-American Commission recognizes the efforts and the commitment undertaken by the State to protect a growing number of beneficiaries of the Protection Mechanism, some of whom are beneficiaries of IACHR granted precautionary measures and provisional measures of the Inter-American Court. As of July 2017, the Mechanism received 5.5% more requests for protection and 17.7% more people have been granted protection than in 2016 as of September. In fact, as of July 2017, 95 requests for protection (56 journalists and 39 defenders) have been received and 93 persons (55 journalists and 39 defenders) have been granted protection.¹³²⁰ It must be noted that, since its creation in 2012, the Mechanism has provided protection measures to a total of 10 groups of journalists and that 7 of these groups filed their request in 2017. Additionally, since its creation, it has provided protection measures to a total of 774 individual beneficiaries and currently, measures are in force for 599 beneficiaries, of which 374 are human rights defenders and 225 are journalists.¹³²¹

885. For its part, the Consultative Council of the Mechanism for the Protection of Human Rights Defenders and Journalists issued a press release identifying, among other things, the major shortcomings of the Mechanism. In fact, it highlighted the importance of increasing personnel and establishing a fixed amount in the Federal Budget of Expenditures so proper funding is not subject to “vagaries of politics.”¹³²² It also recalled that the Trust of the Federal Mechanism “did not receive one peso from the budget. In fact, the annual contribution to the trust has been decreasing: in 2013, it was endowed with \$127,500,000 pesos; in 2014, with \$118,000,000 pesos; in 2015, with \$102,000,000 pesos; in 2016, with \$88,900,000 pesos; and in 2017, \$0 pesos. If you compare the contribution of 2013 to that of 2016, there has been a 31.28% decrease, even though there is an increasing trend in the number of beneficiaries and protection measures adopted.”¹³²³

886. The Consultative Council also raised the need to provide comprehensive assistance to journalists and broadcasters who are forcibly displaced or are extracted by the Mechanism. As to the case of the murder of journalist Cecilio Pineda Birto on March 2 in the State of Guerrero, no protection measures were being provided by the Mechanism when he was killed because all measures had been lifted in October 2016. According to the State, all measures were removed, even though he was at serious risk, because on several

¹³¹⁹ IACHR. Situation of Human Rights in Mexico. OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015, paras. 431 and following.

¹³²⁰ Secretaría de Gobernación. July 2017. Informe Estadístico Julio 2017: Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas; IACHR. Annual Report 2016. Chapter V. Follow Up of Recommendations Made by the IACHR in its Report on the Human Rights Situation in Mexico.

¹³²¹ Secretaría de Gobernación. July 2017. Informe Estadístico Julio 2017: Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas.

¹³²² Alejandra Nuño-Sitio Oficial/Facebook. May 26, 2017. Comunicado de Medios; Instituto Mexicano de Derechos Humanos y Democracia. May 26, 2017. Comunicado de Medios.

¹³²³ Alejandra Nuño-Sitio Oficial/Facebook. May 26, 2017. Comunicado de Medios; Instituto Mexicano de Derechos Humanos y Democracia. May 26, 2017. Comunicado de Medios.

occasions the journalist did not accept the safe house being offered to him by the Mechanism.¹³²⁴ In this regard, it is important to reiterate that, pursuant to Inter-American standards on the subject matter, “States have an obligation not only to protect at-risk journalists, but also to guarantee that the protective measures adopted are effective and adequate. In this sense, when measures are adopted to protect journalists from the credible threat of damage to their physical integrity, the measures must take into account the needs specific to the profession of the beneficiary, the beneficiary’s gender, and other individual circumstances.”¹³²⁵

887. According to the organization Artículo 19, as of June 18 draft laws on protection of journalists were either reintroduced or introduced in the following states; Baja California Sur, Chihuahua, Durango, State of Mexico, Guanajuato, Guerrero, Hidalgo, Michoacán, Nuevo Leon, Oaxaca, Puebla, Querétaro, Quintana Roo, Sinaloa, Sonora, Tabasco, Tamaulipas, Zacatecas. In the view of said organization, these draft laws are “quick fixes [palliatives] in relation to the serious crisis that is being experienced in Mexico, because without the capacities and the political will, only more laws will be generated lacking effectiveness and more bureaucracy.”¹³²⁶ On this score, the Consultative Council of the Mechanism for the Protection of Human Rights Defenders and Journalists noted: “the creation of state mechanisms does not solve the problem in the local sphere” and warned about “the difficulties in methodologies and training involved in setting the Protection Mechanism into motion. That experience must be taken into account before adopting similar bodies at the local level. [...] Discussions as to whether legislation should go beyond the creation of a mechanism and focus on forms of cooperation and adequate coordination; on the role of the institutions of administration of justice; and on the prevention measures that must be adopted, among other things.”¹³²⁷

888. On another front, members of civil society have continued expressing their concern over the lack of a strategy of prevention and punishment of those responsible for the attacks who continue to confront human rights defenders and journalists. On July 26, the group of organizations Espacio de Organizaciones de la Sociedad Civil Para la Protección de Personas Defensoras y Periodistas (Espacio OSC) published a report examining the obstacles and challenges of Mexican protection policies. In this regard, it identified: i) that there is a “lack of capacity to react to the diversity of forms of violence that defenders and journalists face (physical and digital assaults, acts of stigmatization or criminalization);” ii) the Protection Mechanism had not incorporated a gender approach into risk assessments and measures; iii) there is a lack of coordination between federal entities and the Protection Mechanism in implementation of measures; iv) measures still have to be adopted to foster a suitable environment for the exercise of freedom of expression and defense of human rights; v) “impunity and lack of adequate investigation into assaults and murders of human rights defenders and journalists continues to fuel, and even exacerbates, the commission of these crimes. The total absence of actions by the Protection Mechanism to ensure criminal investigation of assaults is proof that

¹³²⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 10, 2017. [Press Release R30/17. Office of the Special Rapporteur Condemns Killing of Journalist Cecilio Pineda in Mexico and Urges the State to review Action of the Federal Protection Mechanism in the case](#); Secretaría de Gobernación. March 4, 2017. [Lamenta el Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas la muerte de Cecilio Pineda Brito](#); Animal Político. March 3, 2017. [El periodista Cecilio Pineda es asesinado a tiros en Tierra Caliente de Guerrero](#); Proceso. March 2, 2017. [Ejecutan al periodista Cecilio Pineda en Ciudad Altamirano, Guerrero](#); Artículo 19. August 17, 2017. [Primer semestre de 2017: 1.5 agresiones diarias contra periodistas en México](#); Artículo 19. March 8, 2017. [Declaraciones de Segob sobre asesinato de Cecilio Pineda exhiben fallas del Mecanismo de Protección](#); Committee to Protect Journalists (CPJ). No date. [Cecilio Pineda Birto](#).

¹³²⁵ IACHR. Report by the Office of the Special Rapporteur for Freedom of Expression. December 31, 2013. [Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators](#). Para. 72.

¹³²⁶ Artículo 19. September 7, 2017. Information sent to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Artículo 19. August 17, 2017. [Primer semestre de 2017: 1.5 agresiones diarias contra periodistas en México](#).

¹³²⁷ Alejandra Nuño-Sitio Oficial/Facebook. May 26, 2017. [Comunicado de Medios](#); Instituto Mexicano de Derechos Humanos y Democracia. May 26, 2017. [Comunicado de Medios](#).

there is no true policy in Mexico, designed to prevent risks and protect human rights defenders and journalists.”¹³²⁸

H. Subsequent liability

889. In May, Humberto Moreira, former governor of Coahuila, reportedly filed a complaint for defamation, slander and libel against the daily newspapers *Reforma* and *Vanguardia*. The official brought legal action before the Office of the Attorney General of the Republic and the Office of the Specialized Prosecutor to Address Electoral Crimes. According to available information, the complaints were related to an investigative news story published in the *Reforma* newspaper, reprinted by *Vanguardia*, claiming that Moreira’s family members allegedly had foreign bank accounts.¹³²⁹

890. On June 9, Mario Galeana, journalist *24 Horas* Puebla, was served notice of a suit filed against her for damages by Ignacio Molina Huerta, secretary general of the city hall of San Pedro Cholula, State of Puebla. The journalist published information about allegedly illegal acts committed by the public official.¹³³⁰ Silvano Bautista, journalist of *El Diario de Chiapas*, also was served notice in June of a lawsuit filed by María de Jesús Olvera Mejía, deputy of the local Congress of the State of Chiapas. According to available information, the suit is related to a story published in October 2016 in which Bautista provides an account of 8 preliminary investigations allegedly opened against the deputy.¹³³¹ The deputy is reportedly asking for MXN\$ 5 million in damages (around US\$ \$260 thousand 100).¹³³² Subsequently, Bautista received protection through the Police as a preventive measure.¹³³³

891. On June 26, the daily newspaper *El mañana* was served notice of a lawsuit for MXN\$ 15 million (around US\$ 792 thousand), brought by Hilario Martín Landa Herrera for alleged damages. Landa Herrera is a supplier of the City Hall of Nuevo Laredo, and his suit is related to investigations and requests for access to information that the media outlet filed. According to the newspaper’s investigations, some of the companies linked to Landa Herrera are the main drug suppliers in the municipality. In this regard, *El Mañana* reportedly gained access to documents linking the official to the commission of crimes.¹³³⁴ According to the organization Artículo 19, Landa Herrera filed a second lawsuit against *El Mañana* for publishing a news story reporting on the first claim filed against the media outlet.¹³³⁵ Subsequently, on October 2, *El Mañana* was served notice of a third lawsuit brought against it. The municipal treasurer of Nuevo Laredo, Daniel Tijerina Valdez, reportedly

¹³²⁸ Artículo 19. July 26, 2017. *La deuda del Estado mexicano: protección integral para personas defensoras de derechos humanos y periodistas*; Espacio OSC. July 26, 2017. *Protección integral para personas defensoras de derechos humanos y periodistas: la deuda del Estado mexicano*

¹³²⁹ Vanguardia. May 19, 2017. *Acusa nuevamente a VANGUARDIA Humberto Moreira*; El Siglo de Oro. May 20, 2017. *Demanda Humberto Moreira al PAN y a Reforma*; Animal Político. May 18, 2017. *Humberto Moreira demanda a Reforma y Vanguardia por difamación, niega fortuna en el extranjero*; Reforma. May 16, 2017. *Detectan a Moreira fortuna en Mónaco*; Vanguardia. May 16, 2017. *Descubren fortuna a familiares de Humberto Moreira en paraísos fiscales*.

¹³³⁰ 24 Horas. June 14, 2017. *Intimidan en Puebla a periodista de 24 Horas*; Artículo 19. June 5, 2017. *Funcionario del ayuntamiento de Cholula demanda por daño moral a periodista*

¹³³¹ SDP Noticias. June 13, 2017. *Demanda priista por daño moral a periodista en Chiapas*; Artículo 19. June 17, 2017. *Diputada criminaliza labor de periodista en Chiapas y lo demanda por daño moral*;

¹³³² Congreso de los Estados Unidos Mexicanos. July 18, 2017. *Acta de la Quinta Reunión Ordinaria de la Comisión Especial de Seguimiento a las Agresiones a Periodistas y Medios de Comunicación*; Diario de Chiapas. June 14, 2017. *Periodistas del estado de Chiapas se solidarizan con el colega Silvano Bautista Ibarias*; Vanguardia. June 14, 2017. *Protestan periodistas contra diputada priista en Chiapas*.

¹³³³ El Universal. June 17, 2017. *Resguardan a periodista de Chiapas*; Eje Central. June 18, 2017. *Resguardan a periodista luego que diputada priista criminalizara labor*.

¹³³⁴ El mañana. June 27, 2017. *Acosan a El Mañana con demanda por 15 mdp*; Artículo 19. November 14, 2017. *Funcionarios atentan contra la libertad de expresión al demandar al El Mañana de Nuevo Laredo*.

¹³³⁵ Artículo 19. November 14, 2017. *Funcionarios atentan contra la libertad de expresión al demandar al El Mañana de Nuevo Laredo*.

sued the newspaper for publishing a story about the official's alleged illegal enrichment.¹³³⁶

I. Direct censorship

892. The Office of the Special Rapporteur notes with satisfaction the decision adopted by the 14th District Court on Civil Matters in Mexico City [*Juzgado 14 de Distrito en Materia Civil en la Ciudad de México*] on July 15, in which it would have rejected the lawsuit filed against the journalist Carmen Aristegui by the radio *MVS*¹³³⁷. In 2015, Aristegui, who uncovered a case of alleged corruption involving high authorities in the purchase of a luxurious house used by the President of the Republic¹³³⁸, was displaced untimely from her radio space in the concessionaire of *MVS* radio, who argued image reasons to unilaterally break the contract with one of the journalist teams with the largest audience in the journal. After that, and other investigations, the journalist and her team were dismissed by the concessionaire of the station with which they had a contract. The company *MVS* alleged that Aristegui and her team had used the image and brand of the press for unauthorized purposes, in order to join the Mexico Leaks platform, aimed at obtaining information from confidential sources¹³³⁹. The company said that the termination of the contract was not due to government pressure, but to the defense of the brand of the firm used without consultation. For her part, Aristegui indicated that the excuse was unsustainable and that a clarification on air was enough to resolve the dispute; she added that her and her team had adhered to this mechanism to protect their sources and access confidential information on an individual basis, which ultimately benefited the journalistic quality of the program¹³⁴⁰.

893. According to a statement issued by the lawyers of Carmen Aristegui, the judge "concluded that the pretext used by the radio station to prematurely terminate the contract with Carmen Aristegui was actually the announcement of the launch of the Mexicoleaks platform, without it being an illegal behavior, neither on behalf of the journalist nor of her collaborators, and reiterated that the journalist never breached her contractual or legal obligations." Likewise, according to the statement, the judge indicated that it is false that Aristegui had illegally exploited the *MVS* trademarks or infringed its copyright. As a result, "Carmen Aristegui was acquitted of paying any amount to *MVS* and it was declared that she had not incurred any responsibility"¹³⁴¹.

894. For its part, radio *MVS* indicated that the judge ruled in their favor by "declaring the contract with the journalist to be legally terminated for the hosting of the radio program" and not imposing any compensation payment in favor of the journalist¹³⁴². In this regard, Aristegui's lawyers pointed out that the judge refers to the termination of the contract due to the expiration of the term and that "if *MVS* did not obtain anything that he requested in court, it means that they lost the case"¹³⁴³.

J. Access to Information

¹³³⁶ El Mañana. October 3, 2017. *Notifican a El Mañana demanda del Tesorero Municipal*; El Mañana. September 15, 2017. *Ahora demanda el Tesorero: siente 'daño en su moral' (VIDEO)*; Artículo 19. November 14, 2017. *Funcionarios atentan contra la libertad de expresión al demandar al El Mañana de Nuevo Laredo*.

¹³³⁷ Aristegui Noticias. July 28, 2017. *Juez falló a favor de MVS, dice la empresa: MVS miente, su conducta fue declarada ilegal: Cortina*.

¹³³⁸ Aristegui Noticias. November 9, 2015. *La casa blanca de Enrique Peña Nieto (investigación especial)*.

¹³³⁹ El Tiempo. March 16, 2015. *Despiden a periodista que destapó escándalo de mansión de Peña Nieto*; BBC. March 16, 2015. *El escándalo que condujo al despido de la destacada periodista mexicana Carmen Aristegui*; La Jornada. March 15, 2015. *MVS despide a la periodista Carmen Aristegui*; CNN en español. July 14, 2015. *Termina batalla judicial: Carmen Aristegui pierde amparo contra MVS*; Animal Político. July 14, 2015. *Carmen Aristegui pierde amparo contra MVS*.

¹³⁴⁰ El Economista. March 23, 2015. *La entrevista de Proceso a Carmen Aristegui*; Proceso. March 21, 2015. *Aristegui: la censura y el despido, por presión de Los Pinos*.

¹³⁴¹ Aristegui Noticias. July 28, 2017. *Juez falló a favor de MVS, dice la empresa: MVS miente, su conducta fue declarada ilegal: Cortina*.

¹³⁴² *MVS Noticias*. July 28, 2017. *Juez Federal declara legal la terminación del contrato de Carmen Aristegui con MVS*.

¹³⁴³ Aristegui Noticias. July 28, 2017. *Juez falló a favor de MVS, dice la empresa: MVS miente, su conducta fue declarada ilegal: Cortina*.

895. In its report *Situation of Human Rights in Mexico* and in its first follow-up report on the recommendations made, the IACHR welcomed the approval of the General Law of Transparency and Access to Public Information, which stands as proof of the Mexican State's commitment to transparency and the right of access to information. However, it voiced its concern over information received regarding obstacles to ensuring access to information related to human rights violations. In particular, the IACHR and its Office of the Special Rapporteur expressed their concern about the power vested in the Office of the Counsel of the President of the Republic to appeal any decision to declassify information, made by the National Institute of Access to Information, which put national security interests in jeopardy.¹³⁴⁴ During its country visit, the IACHR also took note of a progressive regression in the active transparency and public information policy about civilian and military deaths in security operations, in particular, when the armed forces are involved.¹³⁴⁵

896. On March 17, during the 161 period of session of the Inter-American Commission on Human Rights, the hearing "Right to Truth in Cases involving Gross Human Rights Violations in Mexico" was held, requested by several civil society organizations. According to the organizations, the right to truth must be guaranteed through judicial and extrajudicial mechanisms that allow society and the victims to know the facts. Likewise, the right to truth requires effective investigations, professional, and independent forensic systems, reparation mechanisms that address the effects on victims due to the lack of truth and a document management system that allows memory to be reconstructed and guarantees the non repetition of human rights violations. They also stated that in Mexico there are a number of restrictions to access documents and information held by public entities related to gross human rights violations. They reported the difficulties of the victims to access the files of the investigations, the lack of delivery of copies, as well as the delivery of the fully endowed information. They also indicated that there is a fragmentation of information in complex cases due to the multiplicity of files that are distributed at the state and federal levels. Likewise, the fragmentation is evidenced when the reports of missing persons are collected and these are not necessarily linked to the preliminary investigation of the case under investigation. In addition to the above, fragmentation occurs with the partial contribution of information made by the different areas of expert services even within their own institution. According to the organizations, in the genetic area it is particularly serious, because both the PGR and the Federal Police have national genetic bases of unidentified remains and relatives of missing persons, that for the moment do not connect with each other. Likewise, the database of the PGR would only receive partial genetic information from a third of the States of the Republic.

897. The petitioners stated that there are regulations and administrative practices that hinder access to the information stored in the historical archives related to human rights violations, since the documents containing said information are endowed claiming the protection of personal data. For its part, the State reported on the General Archive of the Nation [*Archivo General de la Nación*] (AGN), a decentralized body that acts according to INAI guidelines on data protection. Based on these guidelines, documents containing information on human rights violations have been endowed. He reiterated his commitment to transparency and accountability and, as an example, referred to the implementation of the so-called open folder to which the parties can access via the Internet, in accordance with the criminal legislation victims should have access to the file and can get free copies of it¹³⁴⁶.

898. In its follow-up report on the recommendations made in its report *Situation of Human Rights in Mexico*, the IACHR welcomed the INAI joint initiative with civil society organizations to develop the project *Memory and Truth*. According to information provided by the State, this project consists of a virtual platform devoted to the dissemination of information on cases of alleged human rights violations and probable crimes against humanity. The purpose of this initiative is "to promote the guarantees of non-repetition, the right to

¹³⁴⁴ Congreso de los Estados Unidos Mexicanos. Ley General de Transparencia y Acceso a la Información Pública Gubernamental, July 2014, art. 157.

¹³⁴⁵ IACHR. *The Human Rights Situation in Mexico*. OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 499 - 505.

¹³⁴⁶ IACHR/YouTube. 162 Period of Sessions. Hearing "[The right to truth in cases of serious violation of human rights in Mexico](#)". March 17, 2017; IACHR. March 22, 2017. [Report on the 161st Session of the IACHR](#).

the truth, facilitate access to information for victims, investigative bodies, adjudicatory bodies and/or guarantors of human rights, courts and any other interested party.” The information available for reference is related to the cases of Acteal, Aguas Blancas, Apatzingan, Atenco, Ayotzinapa 2011, Ayotzinapa 2014, Cadereyta, Cotton Field, El Halconazo, San Fernando 2010, San Fernando 2011, Dirty War, Tlatelolco and Tlatlaya. In order to generate useful public information, information is located then sorted and analyzed into categories of alleged violation and theme.¹³⁴⁷

899. On July 12, the National Institute of Transparency, Access to Information and Protection of Personal Data (INAI) approved the declaration of public interest for the 15 cases of gross human rights violations included in project *Memory and Truth*.¹³⁴⁸ Commission member Areli Cano Guadiana said that INAI’s decision is a “fair response to the expectation of a society that demands to know the truth about the what happened in our history” and that the 15 cases that were recounted all have common elements “which makes it necessary for a wide opening of information related to them. Abuse of power, confrontation and the use of violence; partial and limited versions and manipulation of events are aspects that seriously undermine social coexistence and democratic rule of law and are significantly checked by public scrutiny.”¹³⁴⁹

900. The IACHR reiterates its recommendation to the Mexican State as to regulating the power vested by the Law of Access to Information to the Office of Legal Counsel of the Office of the President to appeal any decision to declassify information made by the National Institute of Access to Information (INAI), that places national security interests in jeopardy. It also reiterates its recommendation to strengthen laws, policies and practices to ensure that judicial authorities have full access to relevant information when they investigate and prosecute cases of human rights violations attributed to members of the security forces. Also, to adopt the appropriate measures for the security agencies to gather, systematize and publish periodically information pertaining to affections of life and integrity, as a consequence of the fight against organized crime. In this regard, INAI, as the guarantor, must make sure, through compliance with its constitutional and statutory mandate, that authorities comply with their obligations of transparency and access to information.¹³⁵⁰

K. Surveillance of communications

901. Over the course of 2017, complaints of violations of privacy were brought. In January, *el Diario* charged that an operations facility of the Office of the Prosecutor of Chihuahua allegedly monitored the communications of local politicians, policemen, government officials, former public servants, journalists and businessmen. This surveillance was reportedly conducted using Israeli equipment.¹³⁵¹ Subsequently, the Attorney General of the State, César Augusto Peniche Espejel, claimed that that entity does not have an area dedicated to spying nor does it have the tools to carry out that type of activities. He asserted that, since 2014, there has been an obligation in force to have an oversight and intelligence area, but that this area dedicated to the investigation of crime and not spying.¹³⁵² On January 21, *el Diario* cited the study: The State of

¹³⁴⁷ Comunicación del Estado mexicano. Respuesta del Estado mexicano al proyecto de capítulo V del Informe Anual 2016 de la Comisión Interamericana de Derechos Humanos, January 16, 2017; Proyecto Memoria y verdad. No date. [Acerca del Proyecto](#).

¹³⁴⁸ Instituto Nacional de Transarencia, Acceso a la Información y Protección de Datos Personales (INAI). July 12, 2017. [Acta de la sesión del 12 de julio. Número: ACT-PUB 12/07/2017.6](#)

¹³⁴⁹ INAI. July 12, 2017. [Acta de la sesión del 12 de julio. Número: ACT-PUB 12/07/2017.6](#); La Jornada. July 13, 2017. [De interés público, el proyecto Memoria y verdad: Inai](#).

¹³⁵⁰ In its observations on the draft version of this report, the State reported that in cases of grave human rights violations, Article 5 of the General Law on Transparency and Access to Public Information provides that information relating to grave violations of human rights or crimes against humanity may not be classified as confidential, pursuant to both domestic law and the international treaties to which the Mexican State is party. Communication of the Mexican State. Report of the Mexican State on the draft of Chapter V on follow-up to the recommendations of the Report “Situation of Human Rights in Mexico” of the Inter-American Commission on Human Rights in response to the Note of October 31, 2017, Note OEA-03018, November 30, 2017.

¹³⁵¹ El Diario. January 18, 2017. [Apunta Fiscalía espionaje a periodistas y policías](#).

¹³⁵² El Diario. January 19, 2017. [Rechaza Fiscalía estatal área especial para espionaje](#).

Surveillance: Out of Control,” read the title of the story published by the Red en Defensa de los Derechos Digitales (R3D) [‘Digital Rights Defense Network’], revealing that Chihuahua is one of the Mexican entities that has relations with the private espionage company *Hacking Team*.¹³⁵³

902. In February, civil society organizations decried that the Draft Law of Homeland Security¹³⁵⁴ would excessively increase the powers of the army, the navy and the air force to conduct spying on Mexican citizens. Article 28 of this draft law establishes that authorities may use “any method of information collection” to carry out intelligence activities; Article 48 of this same bill provides that “concessionaires, permit holders, operators and traders of telecommunications services and, as applicable, those authorized and service providers of applications and content” must “have the essential technical capacity to meet the demands made by the judicial authority to operate the cited measures.”¹³⁵⁵ In light of this, it should be noted that, based on the National Survey on Transparency, Access and Protection of Personal Data (ENAIID), published in December 2016, 84% of the population interviewed expressed its 81.4% have the same concern with regard to their personal email address. Additionally, 61.3% of those surveyed were concerned about improper use of information on their religious beliefs and 59.5% about data related to their political opinions.¹³⁵⁶

903. On February 11, Citizen Lab published a study, which sprung from a petition of the organization R3D,¹³⁵⁷ showing that a scientist of the National Institute of Public Health and two Mexican NGO directors had been targets of espionage through spying malware known as “Pegasus” marketed by the Israeli company NSO.¹³⁵⁸ In total, from July 18 to August 17, 2016, these three individuals received 12 sms messages with links tied to that malware. Both the scientist and the activists had actively participated in the promotion of a soft drink tax.¹³⁵⁹

¹³⁵³ El Diario. January 21, 2017. *Sí adquirió Chihuahua equipo para espionaje, confirma estudio.*

¹³⁵⁴ Proceso. February 14, 2017. *ONG alertan ante inminente aprobación de la Ley de Seguridad Interior.*

¹³⁵⁵ Animal Político. February 6, 2017. *Seguridad Interior: ¿México bajo espionaje militar?*

¹³⁵⁶ Instituto Nacional de Estadística y Geografía. December 2016. *Encuesta Nacional de Transparencia, Acceso y Protección de Datos Personales (ENAIID).*

¹³⁵⁷ R3D. February 11, 2017. *Destapa la vigilancia: promotores del impuesto al refresco, espiados con malware gubernamental.*

¹³⁵⁸ Citizen Lab. February 11, 2017. *Bitter Sweet. Supporters of Mexico's Soda Tax Targeted With NSO Exploit Links.*

¹³⁵⁹ The New York Times. February 11, 2017. *Spyware's Odd Targets: Backers of Mexico's Soda Tax.*

904. According to information disseminated by a group of civil society organizations,¹³⁶⁰ from January 2015 to August 2016, there were reported 97 attempts at infecting cellphones of journalists, human rights defenders, attorneys and politicians with the malware “Pegasus.”¹³⁶¹ According to the information revealed, the malware would affect a smartphone by allowing “access to files kept on the equipment, as well as contacts, messages, emails. The malware also obtained permissions to use, without the target being aware, the microphone and camera device.”¹³⁶² The incidents were also reported and investigated by the daily newspaper *The New York Times* and independent computer science experts.¹³⁶³

905. Based on the statements of Dmitry Bestuzhev, director of the Research and Analysis Team for Latin America of Kaspersky Lab, Mexico’s vulnerabilities in cyber security can be viewed as heightened, inasmuch as, according to Bestuzhev, Mexico is the third most affected country in Latin America and fifth in the world by the cyber attack through the computer virus Wannacry, perpetrated on May 12.¹³⁶⁴

906. During the hearing on Justice and Impunity in Mexico, held on Thursday July 6, 2017 at the 163rd regular session of the IACHR, the participating human rights organizations expressed their alarm over charges of spying on persons who criticized the Mexican government. They also felt that the Office of the Attorney General of the Republic (PGR) “cannot guarantee a partial and autonomous investigation,” because its criminal investigation agency is one of the entities that has acquired the aforementioned malware. As such, they claimed: “the only possible route toward justice is through the creation of an international panel of experts.”¹³⁶⁵ Additionally, during the hearing on the Special Ayotzinapa Follow-Up Mechanism, also held at the IACHR’s 163rd session, PRODH denounced attempts at spying on members of this organization.¹³⁶⁶

907. At these hearings, the State contended that the FEADLE of the PGR opened an investigation into these incidents and that the complainants are invited to provide testimony or other evidence needed to move the investigation forward. Additionally, it reported that this special prosecutor’s office has proposed establishing partnership agreements with national and international agencies in order to “strengthen any investigation and determine, if applicable, appropriate liability.”

908. On June 21, 2017, the National Human Rights Commission of Mexico reported that it requested different federal government offices¹³⁶⁷ to “implement actions so that when they possess programs to intercept communications of telephone and computer devices, to refrain from using it against journalists, civil society organizations and human rights defenders, as well as against any other person in violation of the legal

¹³⁶⁰ Citizen Lab, Article 19 Office for Mexico and Central America, R3D: Red en Defensa de los Derechos Digitales y SocialTIC.

¹³⁶¹ Among the 19 people who have been the target of infection attempts with “Pegasus” in Mexico are journalists Carmen Aristegui and Carlos Loret de Mola, defenders Mario Patrón, Santiago Aguirre and Stephanie Brewer of the Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro PRODH) and at least one member of Grupo Interdisciplinario de Expertos Independientes (GIEI), created through an agreement signed in November 2014 by the IACHR, the Mexican State and representatives of the 43 students missing in Ayotzinapa. At the time of the reported attacks, the victims were investigating and reporting on events of renowned public interest and/or were carrying actions related to the defense of serious violations of human rights.

¹³⁶² Citizen Lab, Article 19, R3D and SocialTIC. *Gobierno Espía: Vigilancia sistemática a periodistas y defensores de derechos humanos en México*. June 19, 2017. IACHR. Office of the Special Rapporteur for Freedom of Expression. July 12, 2017. [Press Release R96/17 Office of the Special Rapporteur expresses concern over alleged spying targeting journalists and human rights defenders in Mexico and urges the State to conduct a thorough and independent investigation.](#)

¹³⁶³ New York Times. June 19, 2017. [Using Texts as Lures, Government Spyware Targets Mexican Journalists and Their Families.](#)

¹³⁶⁴ Forbes. May 15, 2017. [México es el país más afectado por el virus WannaCry en AL](#);MSN. May 15, 2017. [México es el país más afectado por Wannacry en América Latina: Kaspersky.](#)

¹³⁶⁵ IACHR. July 6, 2017. [Public hearings: Justice and impunity in Mexico](#) [minute 14:05 and on].

¹³⁶⁶ IACHR. July 6, 2017. [Public hearing: Ayotzinapa](#) [minute 5: 50 and on].

¹³⁶⁷ Among them, Secretaría de la Defensa Nacional (SEDENA), Secretaría de Marina (SEMAR), Centro de Investigación y Seguridad Nacional and the PGR.

constitutional order.” In turn, it asked that, “in the event that information has been obtained through this type of program, refrain from using the information or disseminating it and have its legality assessed by the competent bodies” and that “an investigation be conducted of the incidents with professionalism, comprehensiveness, objectivity and diligence.”¹³⁶⁸ Additionally, through a joint communiqué of July 10, 2017, the Mexican State, expressed its “repudiation of any act that undermines freedom of expression and the right to privacy of persons.”¹³⁶⁹

909. October 31, journalist Félix Bigman’s Facebook account was reportedly hacked. Bigman works at the outlets *Tu Espacio del Sureste* and *La noticia ciudadana*, where he engages in investigative journalism criticizing the government of the municipality Kanasín, Yucatán. In January, unknown individuals also appropriated his account and published news in support of the municipal government. Additionally, since the account was hacked, individuals have been threatening the journalist’s sister. On prior occasions, the journalist also had been threatened with death. Recently, on March 15 he was threatened on the street by an individual who made specific reference to his work as a journalist.¹³⁷⁰

910. This Rapporteurship has stressed that the exercise of freedom of expression on the Internet is closely tied to the guarantee of privacy of individuals on the network. Breach of privacy in communications causes a chilling effect, reducing the full realization of freedom of expression.¹³⁷¹

L. Diversity and pluralism

911. On February 17, Jairo Cerriteño Ojeda’s radio program, which was broadcast on three radio stations, was cancelled for good. According to available information, the cancellation took place one day after the portal *Monitor Expresso*, of which Cerriteño is the director, refused to take down a story about Silvano Aureoles, the governor of Michoacán. The story involves an interview by another journalist of the governor during a meeting with migrants in Chicago, United States.¹³⁷²

912. On July 20, the Title of Social Community Concession was approved and awarded to the community radio station *En Neza Radio* of Nezahualcóyotl, in the State of México. The community radio station had been in existence for more than 20 years and had been applying for the concession permits for around 14 years, but it had been denied on three occasions.¹³⁷³

913. On August 15, the Plenary of the Federal Institute of Telecommunications [*Instituto Federal de Telecomunicaciones*] (IFT) authorized the merger between the AT&T Group and Time Warner (TW)¹³⁷⁴. However, the IFT identified that such a merger “could generate risks of effects that are contrary to economic competition and free competition, because the participation of AT & T in Sky Mexico and its association with Grupo Televisa, would create incentives for AT&T/TW to: (i) unilaterally, prevent access to the provision and

¹³⁶⁸ Comisión Nacional de Derechos Humanos. June 21, 2017. [Comunicado de Prensa DGC/203/17](#).

¹³⁶⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 12, 2017. [Press Release R96/17 Office of the Special Rapporteur expresses concern over alleged spying targeting journalists and human rights defenders in Mexico and urges the State to conduct a thorough and independent investigation](#).

¹³⁷⁰ Artículo 19. November 2, 2017. [Intervienen cuenta de Facebook de periodista crítico en Yucatán](#).

¹³⁷¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Annual Report 2013](#). Chapter IV Freedom of Expression and the Internet. OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 23.

¹³⁷² Monitor Expresso. February 22, 2017. [Cancelan espacio radiofónico a periodista Jairo Cerriteño tras llamada de Gobierno de Michoacán](#); Artículo 19. February 24, 2017. [Gobierno de Michoacán debe abstenerse de censurar a periodistas](#);

¹³⁷³ Amarc. July 26, 2017. [Con un trabajo comunitario de 21 años, a 14 de haber solicitado por primera vez permiso y después de tres negativas de las autoridades “En Neza Radio” obtiene título de concesión social comunitaria en cd. Nezahualcóyotl, edo. Mex](#); Mileno. August 21, 2017. [Neza, ya tiene oficialmente su primera estación de radio](#).

¹³⁷⁴ Instituto Federal de Telecomunicaciones. August 22, 2017. [El IFT autorizó, sujeta al cumplimiento de condiciones, la concentración por la que grupo AT&T adquiere a Time Warner](#).

licensing of channels and packages of Pay TV channels to third parties, other than Sky Mexico [provides pay TV services and AT&T is an indirect shareholder] and Grupo Televisa [is a shareholder of Sky Mexico], and establish barriers to entry and displace those third parties in the related Pay TV market, and (ii) coordinate or exchange information with Grupo Televisa in the provision of Pay TV channels." AT&T and TW presented a proposal of conditions to avoid those risks identified by the IFT. In this regard, the IFT conditioned its authorization to comply with the following provisions: "1. Separation of Sky Mexico with respect to the provision of channels for STAR providers by TW and AT&T at the level of Directors and Relevant Personnel. 2. Separation of HBO LAG [HBO Latin America Group] from the operations of TW in the provision of Pay TV channels; 3. Obligations to meet all requests for access to channels that TW receives from Pay TV providers and to negotiate under competitive conditions; 4. Reporting and Verification Mechanisms"¹³⁷⁵.

914. In October, the Senate Plenary approved reforms to the Federal Telecommunications and Broadcasting Law [*Ley Federal de Telecomunicaciones y Radiodifusión*] (LFTR)¹³⁷⁶. Among others, paragraph III of article 256 was eliminated, which established as a right of the audiences: "that it be clearly differentiated the news information from the opinion of the person presenting it". Although the reform obligates the concessionaires to refrain from "transmitting publicity or propaganda presented as journalistic or news information" (Article 256.IV), they will be the ones who in their own Ethics Codes "will indicate the elements and practices that they will observe to prevent and avoid carrying out the ban". The amendment to article 259 establishes that the concessionaires that provide the broadcasting service will freely designate the defender of the audience. The actions of the audience advocate shall be subject "exclusively to the Concessionaire's Code of Ethics". Previously, the defenders of the audience were subject to the general guidelines that the Federal Institute of Telecommunications [*Instituto Federal de Telecomunicaciones*] (IFT) issued on the minimum obligations of the defenders of audiences¹³⁷⁷. The IFT or other authority will not have the power to intervene or make a prior or subsequent opinion regarding the designation of the defender of the audience or the Code of Ethics issued by the concessionaire (Article 256. X). The reform also eliminated the powers of the IFT to establish "precautionary suspensions" in the matter of defense of the audiences¹³⁷⁸.

915. For its part, the Radio and Television Commission of the Chamber of Representatives approved reforms to the Federal Telecommunications and Broadcasting Law [*Ley Federal de Telecomunicaciones y Radiodifusión*] (LFTR) and the Federal Criminal Code. Said reform, if approved by Congress, would modify article 304 of the LFTR in such a way that the ineligibility for five years to obtain new concessions would be applicable not only to those who have revoked the concession or authorization, but also to those who have been sanctioned for providing telecommunications or broadcasting services without having a concession. For its part, the amendment to Article 172 TER of the Federal Criminal Code would establish a penalty of "imprisonment of two to six years and a hundred to three hundred days fine and confiscation of instruments, objects, or product" to "use, take advantage of, or exploit" bands of frequency of the radioelectric spectrum or

¹³⁷⁵ Instituto Federal de Telecomunicaciones. August 22, 2017. [El IFT autorizó, sujeta al cumplimiento de condiciones, la concentración por la que grupo AT&T adquiere a Time Warner.](#)

¹³⁷⁶ Senado de la República. October 27, 2017. [El Senado aprueba reformas a la Ley Ley Federal de Telecomunicaciones y Radiodifusión](#); Secretaría de Gobernación/Diario oficial de la Federación. October 31, 2017. [DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal de Telecomunicaciones y Radiodifusión.](#)

¹³⁷⁷ Paragraph II of subparagraph c) of article 311 was revoked. It established the power of the IFT to sanction "c) With a fine of 100 to 500 minimum daily wages in force in the Federal District to the defender of the hearings upon: [...] II. Failure to comply with the guidelines of a general nature issued by the Institute on the minimum obligations of defenders of hearings". Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Telecomunicaciones y Radiodifusión.](#) July 14, 2014; Secretaría de Gobernación/Diario oficial de la Federación. October 31, 2017. [DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal de Telecomunicaciones y Radiodifusión.](#)

¹³⁷⁸ Secretaría de Gobernación/Diario oficial de la Federación. October 31, 2017. [DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal de Telecomunicaciones y Radiodifusión.](#)

orbital resources without having authorization or concession"¹³⁷⁹.

916. On various occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media in our region fulfill a fundamental function for the exercise by diverse sectors of society of freedom of expression and access to information.¹³⁸⁰ In that sense, it is necessary for the states to legally recognize community media and to consider fair spectrum reserves for this type of media, along with adequate conditions of access to licenses that would take into account the circumstances. Similarly, community media must benefit from fair and simple procedures for obtaining licenses, must not have to comply with technological or other types of requirements that involve disproportionate barriers for access to licenses, and in their operation must not be the target of differentiated treatments that are not adequately justified.¹³⁸¹

917. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

24. NICARAGUA

918. During 2017, the Office of the Special Rapporteur for Freedom of Expression continued receiving concerning information regarding the situation of freedom of expression in Nicaragua. According to information reported by the press and civil society organizations, the practice of preventing or limiting a free access to journalists and independent communicators to a wide range of government activities allegedly continues in the country. President Daniel Ortega has not held press conferences open to all media in the ten years he has been leading the executive branch and his government’s high executives are forbidden of granting interviews to unofficial media.

919. Likewise, during 2017 cases of harassment, stigmatization, and threats against journalists and human rights defenders were reported. The limitations to the work of the independent press occur in a context in which most of the television and radio media would be controlled by a duopoly composed by the presidential family and the Mexican businessman Ángel González, a situation that severely affects the plurality of voices and the access of the Nicaraguan people to independent and varied information. It was even reported that a private radio station would have yielded to pressure from the government to remove an independent news program from the air, which reportedly had a large audience. Additionally, the placement of government advertising lacks a transparent system to regulate the process, and, according to the independent media and civil society organizations, government advertising is mainly allocated to state media or media allied to the official discourse. In turn, the right to access to public information has severe restrictions, despite the existence of a law approved a decade ago, there are no implementation policies, and the existing appeals against refusal to provide information are ineffective in enforcing state agencies to guarantee the right to access to information.

¹³⁷⁹ Secretaría de Gobernación. July 26, 2017. Iniciativa con Proyecto de Decreto por el que se adicionan la Ley Federal de Telecomunicaciones y Radiodifusión y el Código Penal Federal; Cámara de Diputados. October 4, 2017. De la Comisión de Radio y Televisión referente a la reunión ordinaria, celebrada el 4 de octubre de 2017; La Jornada. November 23, 2017. Ignoran diputados observación de ONU a ley de telecomunicaciones

¹³⁸⁰ IACHR. . Justice and Social Inclusion: The Challenges of Democracy in Guatemala. Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para. 414; IACHR. Annual Report 2002. Report of the Special Rapporteur for Freedom Of Expression. Chapter IV (Freedom of Expression and Poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 41.

¹³⁸¹ IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 92 and following.

A. Attacks, threats, and intimidation to journalists and media

920. In Nicaragua there is a hostile environment against independent journalism, the most illustrative acts of this environment are the physical attacks, the official blockade, intimidation, harassment, and espionage, as reported by the civil society organizations that participated in the hearing held within the framework of the 161st Regular Period of Sessions of the IACHR. According to the monitoring carried out by the organizations, throughout Ortega's governments, journalists from *La Prensa*, *Canal 12*, *Canal 23*, *Canal 14*, *Canal 10*, *Esta Semana*, *Radio Corporación*, *Onda Local*, *Radio Darío*, *Confidencial*, *Associated Press*, and other national and foreign media, have been subjected to physical attacks, including damage to their audiovisual equipment, while covering events of public interest. The organizations report that in most cases the aggressors are associated to official paramilitary groups and the National Police, and have never been investigated or detained¹³⁸².

921. On March 27, the newspaper *La Prensa* reported in its editorial that "immediately after" they attended the hearings of the Inter-American Commission on Human Rights to denounce the problems related to freedom of expression in the country, a "strong campaign to smear" the newspaper started. The attacks focused on two of its main journalists: the editor-in-chief, Eduardo Enríquez and the cartoonist Manuel Guillén, the newspaper said. The editorial stated that the Government of Nicaragua uses the strategy of attacking the credibility of independent media to discredit them in the public eye.

922. On February 28, the human right defender of indigenous and Afro-descendant peoples Lottie Cunningham, president of the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua [*Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua*] (Cejudhcan), was the victim of death threats. The human rights defender would have received an anonymous message that, among other things, warned her that: "We will no longer allow you to speak against the *Frente (Sandinista de Liberación Nacional)*. One more publication in press, radio, or television, and you know what's going to happen (...) We will annihilate you, if you want war, you will have war. War means blood." Cunningham had already been the victim of threats in the past, and since August 8, 2016 had been granted a precautionary measure by the IACHR¹³⁸³.

923. On August 22, during the coverage of the trial against a person accused of setting fire to part of the *Mercado Oriental* in Managua, the *Hoy* newspaper reporter, Juan Carlos Tijerino, would have been assaulted by relatives and friends of the person convicted¹³⁸⁴.

924. On September 5, while covering the presentation of the electoral formula of the *Frente Sandinista de Liberación Nacional* in a Managua market, the *100% Noticias* journalist, Jefferson Cruz Díaz, would have been assaulted by the president of the Merchants' Market Association of Nicaragua [*Asociación de Comerciantes de Mercados de Nicaragua*], Jorge Gonzales, when he attempted to interview him, and also by alleged members of municipal security¹³⁸⁵.

¹³⁸² IACHR. 161 Period of Sessions. Hearing - Situation of freedom of expression, the media and Access to information in Nicaragua. March 18, 2017. Available at: <https://www.youtube.com/watch?v=Z4DSgLSHA70>

¹³⁸³ Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos (IMDefensoras). March 9, 2017. [#AlertaDefensoras NICARAGUA / Amenazas de muerte contra Lottie Cunningham, defensora de los derechos de los pueblos indígenas y afrodescendientes](#); *La Prensa*. March 8, 2017. [Defensora de derechos indígenas recibe amenazas de muerte en Nicaragua](#); Federación Internacional de Derechos Humanos (FIDH). March 28, 2017. [Nicaragua: Amenazas contra las Sras. Vilma Núñez, Lottie Cunningham, Juana Bilbano y Francisca Ramírez](#).

¹³⁸⁴ *La Prensa*. August 22, 2017. [Agreden a periodista del periódico Hoy en cobertura a juicio](#).

¹³⁸⁵ *100% Noticias/You Tube*. September 5, 2017. [Agreden a periodista de 100% Noticias. Jefferson Cruz Díaz](#); *100% Noticias*. September 5, 2017. [Presidente de comerciantes agrede a periodista de 100% Noticias](#).

925. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹³⁸⁶

926. The authorities responsible for an investigation should conduct their activities in an expedited manner, avoiding delays or unnecessary hindrances in the proceedings which could lead to impunity and infringe on judicial protections under the law. In the Joint Declaration on Crimes against Freedom of Expression the Special Rapporteurs pointed out that "authorities should make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available."¹³⁸⁷

B. Stigmatizing statements

927. On March 8, nine Nicaraguan ministers and deputy ministers sent a letter to the US ambassador, Laura Dogu, questioning the tribute to human rights defender Vilma Nuñez, founder and president of the Nicaraguan Center for Human Rights [*Centro Nicaragüense de Derechos Humanos*] (Cenidh), in the framework of International Women's Day. In the letter, the high executives questioned the decision of the ambassador to nominate Nuñez to the International Prize for Courageous Women [*Premio Internacional a las Mujeres de Coraje*], which they considered "an act of hostility" against the Nicaraguan people. They also described Nuñez as "a person whose diatribes, insults, and practices have repeatedly offended the People and Government of Nicaragua."¹³⁸⁸

928. On May 16, the Supreme Court of Justice published a press release in which it stigmatized the work of journalist Martha Vásquez and the newspaper *La Prensa*, assuring that the newspaper "deceives its readers."¹³⁸⁹ The press release refers to the "frequent defamatory practices against the Judiciary" and to the "gross manipulation" that the media carries out "as part of its campaign of permanent attacks."¹³⁹⁰ The statements were made following an article published by the journalist in which she reported that the

¹³⁸⁶ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. . Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹³⁸⁷ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. Joint Declaration on Crimes Against Freedom of Expression.

¹³⁸⁸ Confidencial. March 8, 2017. Gobierno desata ataque contra Vilma Nuñez, presidenta del Cenidh; *La Prensa*. March 11, 2017. Estas son las ministras que se ofendieron por reconocimiento a Vilma Nuñez; El 19 digital. March 8, 2017. Carta de Ministras y Viceministras de Nicaragua a la Embajadora Laura Dogu; Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos (IMDefensoras). March 9, 2017. #AlertaDefensoras NICARAGUA / Ministras y altos cargos del gobierno difaman y calumnian a Vilma Nuñez, presidenta del CENIDH; Federación Internacional de Derechos Humanos (FIDH). March 28, 2017. Nicaragua: Amenazas contra las Sras. Vilma Nuñez, Lottie Cunningham, Juana Bilbano y Francisca Ramírez.

¹³⁸⁹ *La Prensa*. May 19, 2017. La "justicia" contra la periodista.

¹³⁹⁰ Poder Judicial. Dirección de Comunicación. May 16, 2017. Así engaña a sus lectores el diario La Prensa.

Supreme Court had purchased high-end vehicles for its judges, at a time when the Judiciary was in an austerity plan¹³⁹¹.

929. The following day, on May 17, security guards of the Judiciary would have prevented the journalist from entering the Central Judicial Complex [*Complejo Judicial Central*] of Managua to carry out her usual news coverage in the courts. When asked by the press about the issue, the spokesperson of the Judiciary, Roberto Larios, responded that the newspaper "has a smear and misogynistic campaign" against the president of the Judiciary, Alba Luz Ramos, and said that they didn't have knowledge about the alleged order to ban the entrance of the journalist to the Judicial Complex¹³⁹². On May 19, the newspaper *La Prensa* reported that for three consecutive days the Supreme Court of Justice denied access to the facilities of the Judicial Complex to the journalistic team of the newspaper which intended to cover the trial involving a known criminal. Reportedly, a team from the newspaper *Hoy* had also been prevented from entering.¹³⁹³

930. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State's job to help create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.¹³⁹⁴

931. Public servants, like all people, are entitled to the right to freedom of expression in its many forms. Nevertheless, in their case, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized in the Inter-American case law, particularly with respect to: the special duties they acquire by virtue of their status as state officials; (b) the duty of confidentiality that may apply to certain types of information held by the State; (c) the right and duty of public officials to denounce human rights violations; and (d) the particular situation of members of the Armed Forces.¹³⁹⁵

C. Indirect restrictions to freedom of expression

932. The State of Nicaragua would have continued with the practice of unduly obstructing the right of journalists and academics to seek, receive, and disseminate information of public interest. In that regard, the Government would have been continuing their policy to not authorize access to media, who were considered independent, to all kinds of official activities or information. According to the director of the organization on freedom of expression Violeta Barrios de Chamorro Foundation [*Fundación Violeta Barrios de Chamorro*], Cristiana Chamorro, "all government actions are aimed at hindering the right of journalists and academics to seek, receive, and disseminate information of public interest."¹³⁹⁶

933. According to the petitioning organizations of the hearing on the situation of freedom of expression in the country held during the 161st Regular Period of Sessions of the IACHR on February 21, the authorities, e.g., prevented access to independent media and foreign correspondents to the state of the union address¹³⁹⁷. "The prohibition against independent media covers any type of government activity. From the presentation of

¹³⁹¹ *La Prensa*. May 16, 2017. *Corte Suprema de Justicia renueva costosa flota vehicular*.

¹³⁹² *La Prensa*. May 19, 2017. *Corte Suprema de Justicia reitera ataques contra LA PRENSA*.

¹³⁹³ *La Prensa*. May 19, 2017. *CSJ cierra sus puertas a periodista de LA PRENSA*.

¹³⁹⁴ IACHR. *Annual Report of the Inter-American Commission on Human Rights 2014*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2014. Para. 65.

¹³⁹⁵ IACHR. *Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 200.

¹³⁹⁶ *La Prensa*. May 4, 2017. *Fundación Violeta Barrios premia ideas innovadoras*.

¹³⁹⁷ *La Prensa*. February 27, 2017. *Una farsa de rendición de cuentas*.

a regular felon in a press conference by the National Police, to reports on natural disasters, presentations of the Ministry of Health about vaccines or epidemics, and even judicial hearings," the organizations said¹³⁹⁸.

934. On the other hand, according to the Inter American Press Association (IAPA) in its report on the situation of freedom of expression in Nicaragua, President Ortega would not have held press conferences open to all media since he took office in 2007¹³⁹⁹. The same situation was reported by the participating organizations of the hearing mentioned, who also added that the President would have rejected interviews with media with independent or critical editorial lines to his party, and that he also prevents his ministers from doing so¹⁴⁰⁰.

935. During the hearing on the "Situation of the Right to Freedom of Expression in Nicaragua", held within the framework of the 161st Regular Period of Sessions of the IACHR, on March 18 in Washington DC, the petitioners expressed their concern regarding the situation of the right to freedom of expression, freedom of the press, and access to public information in Nicaragua¹⁴⁰¹. The organizations affirmed that during the 10 years of President Daniel Ortega's government there has been "an authoritarian process of concentration of power around the Executive branch, invalidating the constitutional principle of independence and separation of powers, which as consequence affects the right to freedom of expression." They assured that the legislative, judicial, and electoral branches have no guarantees of independence, "which undermines the rule of law and the principles, which according to the Constitution, should protect freedom of expression." The petitioners pointed out that this situation has been accompanied by the adoption of laws that are harmful to freedom of expression, such as the Sovereign Security Law [*Ley de Seguridad Soberana*], "which criminalizes social protest."

936. This Office of the Special Rapporteur wishes to recall that in the Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption, the Special Rapporteurs for Freedom of Expression of the United Nations, the Inter-American Commission on Human Rights (IACHR) and Organization for Security and Cooperation in Europe (OSCE), noted that accreditation schemes for journalists "are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance. Accreditation should never be subject to withdrawal based only on the content of an individual journalist's work"¹⁴⁰².

D. Access to public information

937. According to the petitioning organizations of the IACHR hearing on the situation of freedom of expression in Nicaragua held within the framework of the 161st Regular Period of Sessions of the IACHR, despite the approval of a Law on Access to Public Information [*Ley de Acceso a la Información Pública*] in Nicaragua in May 2007, citizens have seen unable to exercise such right due to the repeated refusal by multiple State agencies to respond to requests for information, as well as the refusal to fulfill obligations of

¹³⁹⁸ IACHR. 161 Period of Sessions. Hearing - Situation of freedom of expression, the media and Access to information in Nicaragua. March 18, 2017. Available at: <https://www.youtube.com/watch?v=Z4DSgLSHA70>

¹³⁹⁹ Inter American Press Association (IAPA). Mid-year Meeting - Antigua, Guatemala, Guatemala. March 31 - April 3, 2017. [Nicaragua](#); La Prensa. August 15, 2016. [Daniel Ortega sigue callado con la prensa](#).

¹⁴⁰⁰ IACHR. 161 Period of Sessions. Hearing - Situation of freedom of expression, the media and Access to information in Nicaragua. March 18, 2017. Available at: <https://www.youtube.com/watch?v=Z4DSgLSHA70>

¹⁴⁰¹ IACHR. 161 Period of Sessions. Hearing - Situation of freedom of expression, the media and Access to information in Nicaragua. March 18, 2017. Available at: <https://www.youtube.com/watch?v=Z4DSgLSHA70>

¹⁴⁰² [Special Rapporteurship for Freedom of Expression. Joint Declaration on the regulation of the media, restrictions on journalists and the investigation of corruption](#). December 18, 2003.

active transparency. Ten years after the approval of the law, its application "has been null and void, without the sanctions provided for in the law being applied, or the request submitted being successful."¹⁴⁰³

938. During the hearing "Extractive Industries: Access to Information", held on March 18 during the 161st Regular Period of Sessions of the IACHR, the petitioners argued that in Nicaragua, the Dominican Republic, and Guatemala, "there are no effective and timely mechanisms on access to information and transparency" in the planning and decision making of environmental and social management of extractive projects. They also stated that during the development of extractive projects, access to information mechanisms although established in the legal framework "are not effective."

939. They indicated that "the information is insufficient, the evaluation, and environmental inspection is extremely poor, and the information on social and environmental expenses of the companies is not disclosed." They also pointed out the "ineffectiveness of administrative and judicial procedures to demand the delivery of information on concessions, tax exemptions, and payment of royalties." Nor is information on environmental impact studies or monitoring of environmental obligations by the State accessible. The petitioners identified three types of formal limitations to access information: procedural or bureaucratic; the lack of implementation of the interculturality principle (the information does not adapt to the language of the population possibly affected); and, the classification of information as confidential, secret, or reserved for reasons of security or national interest¹⁴⁰⁴.

940. Principle 4 of the Declaration of Principles on Freedom of Expression which states that "[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

E. Concentration of the media

941. In Nicaragua, the media system has high levels of concentration and little pluralism. There is a television duopoly controlled by the family of President Ortega and Mexican businessman Ángel González¹⁴⁰⁵. According to the petitioning organizations, during the hearing on the situation of freedom of expression in Nicaragua held during the 161st Regular Period of Sessions of the IACHR on March 18, the Government has not complied with the constitutional mandate that orders the State to guarantee the media "is not subjected to foreign interests or the economic monopoly of any group." "This provision has been violated in two ways by the government, by encouraging open television and a large part of the radio to be in the hands of two economic groups, and by being one of the partners of this duopoly of foreign capital," they denounced.

942. As explained by the petitioners, private companies owned by the presidential family own channels 4, 8, and 13 (in VHF), which operate as "official media." Likewise, channel 6 is state owned and controlled by

¹⁴⁰³ IACHR. 161 Period of Sessions. Hearing - Situation of freedom of expression, the media and Access to information in Nicaragua. March 18, 2017. Available at: <https://www.youtube.com/watch?v=Z4DSgLSHA70>

¹⁴⁰⁴ IACHR. 161 Period of Sessions. Hearing Extractive Industries: Access to information. March 18, 2017. Available at: <https://www.youtube.com/watch?v=logRsoHEmNU>

¹⁴⁰⁵ Inter American Press Association (IAPA). Mid-year Meeting – Antigua, Guatemala, Guatemala. March 31 – April 3, 2017. *Nicaragua*; IACHR. *Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para. 908; Freedom House. *Freedom of the Press 2016. Nicaragua*; Confidencial. January 9, 2016. *Se profundiza el duopolio televisivo*; Havana Times. March 3, 2017. *Journalists in Nicaragua Can't Access Public Information*; Confidencial. March 1, 2017. *La prensa versus el miedo a la transparencia*; Diario de Las Américas. February 24, 2015. *Familia Ortega monopoliza medios de comunicación en Nicaragua*.

the Government. The Mexican businessman controls channels 2, 7, 9, 10, and 11. In total, the duopoly controls 10 television channels. Only channel 12, owned by the Valle-Flores family, would operate on open television "outside the custody of the television duopoly." This family also operates three cable channels (14, 63, and 99). In the UHF frequency, channel 41 is owned by the presidential family, while González owns channels 17, 19, and 23. According to the organizations, "all their properties are at the hands of figureheads who appear to be requesting the allocation of licenses or acquiring them, with the complicity of the State." The petitioners reported that "the existence of the television duopoly restricts the possibilities for Nicaraguans to express themselves and receive information." They maintained that the main characteristic of the channels of the Ortega-Murillo family and the businessman González, "is that they are dedicated exclusively to disseminating official propaganda (...) invalidating the principle of plurality of information sources and the possibility of public debate."¹⁴⁰⁶

943. In broadcasting, the scenario is similar, the organizations argued at the hearing. The Ortega-Murillo family owns *La Nueva Radio Ya*, *La Sandino*, and at least 10 stations, while González controls 17 radio stations. "But it is difficult to establish the total number of radio stations they control, because the Nicaraguan Institute of Telecommunications and Postal Services [*Instituto Nicaragüense de Telecomunicaciones y Correos*] (Telcor) refuses to provide information on the ownership of the licenses and there are no means of access to public information," they said¹⁴⁰⁷.

944. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that "monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

F. Government advertising

945. The IACHR and its Office of the Special Rapporteur have received information on the alleged use of indirect mechanisms to hinder the development of journalism by inducing them to self-censorship. It's of particular concern the use of the discretionary power of the State for the allocation of government advertising as an instrument to reward and punish the editorial line of the media, a situation that has been denounced by various media and civil organizations. According to the report on the situation of freedom of expression in Nicaragua of the Inter American Press Association (IAPA), "Government advertising is used to reward or punish the media according to their tendencies, and is being used in a large proportion to favor the media owned by the presidential family."¹⁴⁰⁸

946. According to the organizations that participated in the hearing on the situation of freedom of expression in Nicaragua during the 161st Regular Period of Sessions of the IACHR, the Government allocates advertising "without regulation or transparency, discriminating against independent media, and conferring privileges to those who are owned by the presidential family." According to a monitoring carried out by advertising agencies at the beginning of 2017, and cited by the organizations, in 2016 government institutions invested US \$ 16 million 200 thousand dollars in media advertising, which represents 10% of the

¹⁴⁰⁶ IACHR. 161 Period of Sessions. Hearing - Situation of freedom of expression, the media and Access to information in Nicaragua. March 18, 2017. Available at: <https://www.youtube.com/watch?v=Z4DSgLSHA70>

¹⁴⁰⁷ IACHR. 161 Period of Sessions. Hearing - Situation of freedom of expression, the media and Access to information in Nicaragua. March 18, 2017. Available at: <https://www.youtube.com/watch?v=Z4DSgLSHA70>

¹⁴⁰⁸ Inter American Press Association (IAPA). Mid-year Meeting - Antigua, Guatemala, Guatemala. March 31 - April 3, 2017. [Nicaragua](#).

total advertising. 98% of government advertising goes to television, and particularly to channels 4, 8, and 13, which operate as private companies of the presidential family¹⁴⁰⁹.

947. The Office of the Special Rapporteur recalls that article 13.3 of the American Convention establishes that “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” Similarly, Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

G. Other relevant situations

948. On April 3, the Board of Directors of the Nicaraguan Association of Broadcasting Professionals [*Asociación de Profesionales de la Radiodifusión Nicaragüense*] (Apranic), which owns the radio station *La Primerísima*, informed the director of the radio program “Onda local”, Patricia Orozco, that they would cancel the transmission of the program. The Association did not explain the decision¹⁴¹⁰. The program was one of the most popular in the country and had been on the air for 17 years. The members of the program and various social organizations expressed their concern over the decision, which they attributed to a purpose of silencing critical, independent, and inconvenient journalism to the Government. The program carried out investigative journalism, with a focus on human rights issues, and in partnership with local media and civil society organizations¹⁴¹¹.

949. On this particular, in a letter addressed to the Special Rapporteur for Freedom of Expression of the IACHR, the Mesoamerican Initiative of Women Human Rights Defenders [*Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos*] warned about the suppression of criticism or independent journalism in the media. Likewise, the Nicaraguan Center for Human Rights [*Centro Nicaragüense de Derechos Humanos*], in a letter sent to the Special Rapporteur, expressed concern over what they considered a decision “influenced by the Government.”¹⁴¹². For his part, the director of the Media Observatory of the Center for Communication Research [*Observatorio de Medios de Comunicación del Centro de Investigación de la Comunicación*] (CINCO) of Nicaragua, Guillermo Rothsuh, condemned the closing of the radio station: “the Nicaraguan society and the different municipalities of the country lose an unconditional ally in their demands towards local and central governments.” In a statement, the “Onda Local” team reported that they would continue broadcasting the program through the Internet and regretted that in the country “spaces continue to be lost in broadcasting,

¹⁴⁰⁹ IACHR. 161 Period of Sessions. Hearing - Situation of freedom of expression, the media and Access to information in Nicaragua. March 18, 2017. Available at: <https://www.youtube.com/watch?v=Z4DSgLSHA70>

¹⁴¹⁰ Apranic. Letter addressed to Patricia Orozco, director of program Onda Local. April 3, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁴¹¹ La Prensa. April 4, 2017. *Ordenan el cierre del programa Onda Local*; La Prensa. April, 4, 2017. *Cierre de Onda Local es denunciado ante Relator de Libertad de Expresión*.

¹⁴¹² Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos (IMDefensoras). April 6, 2017. Letter addressed to the Special Rapporteur for Freedom of Expression. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Centro Nicaragüense de Derechos Humanos. April 3, 2017. Letter addressed to the Special Rapporteur for Freedom of Expression. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

especially of those programs who opt for the plurality of voices, and which are not of the liking of the official, informal, state, and private media.”¹⁴¹³

¹⁴¹³ Onda Local. April 3, 2016. *APRANIC cierra Onda Local*.

25. PANAMA

950. Investigations on the EPASA publishing group continued through 2017, linked to former President Martinelli. While the prosecutor would have formalized the existence of an investigation in relation to the acquisitions of Grupo EPASA that would involve 15 companies, 2 individuals, and a law firm upon which the crime of money laundering would be imputed, meanwhile the managers of the media that are owned by EPASA, denounced that the investigations would be promoted by the government in retaliation to their coverage and claims of corruption acts of the current government. The government, meanwhile, argues that it is an investigation that depends on the prosecutor and is linked to the alleged existence of corruption of the previous government in the operation of buying some media from that group.

A. Attacks, threats, and intimidation against journalists and the media

951. On February 1, the newspaper *Panamá América*, part of the Panama América Publishing Group [*Grupo Editora Panamá América*] (EPASA), would have reported being threatened by the Government of Panama due to its critical publications, especially the revelations that it would have made regarding the alleged involvement of relatives of the representative in congress of the ruling party, José Luis Varela, who is the brother of the President of the Republic, in the investigation of the Odebrecht case, which in Panama would involve the payment of US\$ 59 million in bribes to public officials. EPASA's claim was presented after the representative in congress of the ruling party *Partido Panameñista*, Jorge Iván Arrocha, requested, from the tribune of the Congress, that the General Prosecutor, Kenia Porcell, investigate the acquisition process of the newspapers *Panamá América*, *Crítica*, and *Día a Día*, by the EPASA group, noting that the money with which the operation was carried out would be the product of "many bribes and payoffs". On February 8, the Inter-American Press Association expressed its concern for what it considered to be "a subtle form of intimidation and censorship" by the Panamanian government¹⁴¹⁴.

952. On 8 February, the Inter-American Press Association expressed its concern over what it considered "a subtle form of intimidation" on the part of the Panamanian government¹⁴¹⁵. In the case of Epasa, the Attorney General, Kenia Porcell, informed the IAPA, that the Prosecutor's Office is investigating whether in the publisher's purchase in 2010, made through persons linked to former President Ricardo Martinelli (2009-2014), state funds were diverted. Roberto Rock, president of the IAPA's Committee on Freedom of the Press and Information, led a visit to Panama along with a delegation made up of Edward Seaton, former president of the IAPA and president of Seaton Newspapers, Manhattan, Kansas, United States; Raúl Kraiselburd, former president of the IAPA; Danilo Arbilla, former president of the IAPA; Jorge Canahuati, president of the Executive Committee of the IAPA and president of the OPSA Group, San Pedro Sula, Honduras and Ricardo Trotti, executive director. President Varela told the delegation that the case of EPASA depends on the investigations of the Prosecutor's Office and the judges who must assess whether corruption was committed in the event that public funds were used for the purchase. According to a public statement, the IAPA expressed its concern to President Varela "because of the political connotations that the case of EPASA could have, considering his estrangement from former President Martinelli, who was his vice president. Claims were made about alleged tax harassment against EPASA, as well as signs of discrimination with government advertising."

¹⁴¹⁴ *Crítica*. January 31, 2017. [Panameñista pide a Procuradora investigar a Epasa](#); *Panamá América*. February 1, 2017. [Oficialismo ataca a Epasa y amenaza con procesos judiciales](#); LatinOL.com. February 1, 2017. [Diputado Arrocha lanza amenaza al Grupo Epasa](#); *Día a Día*. February 2, 2017. [Amenazan con procesos judiciales a diarios de Grupo Epasa](#); *Panamá América*. February 7, 2017. [Diputado Arrocha insiste en amenazas contra Epasa](#); Inter American Press Association (IAPA). February 8, 2017. [Panamá: La SIP advierte sobre intimidación a casa editorial EPASA](#); CNN Español. June 1, 2017. [Caso Odebrecht en Panamá: 36 procesados y 56 millones aprehendidos](#).

¹⁴¹⁵ *Crítica*. January 31, 2017. [Panameñista pide a Procuradora investigar a Epasa](#); *Panamá América*. February 1, 2017. [Oficialismo ataca a Epasa y amenaza con procesos judiciales](#); LatinOL.com. February 1, 2017. [Diputado Arrocha lanza amenaza al Grupo Epasa](#); *Día a Día*. February 2, 2017. [Amenazan con procesos judiciales a diarios de Grupo Epasa](#); *Panamá América*. February 7, 2017. [Diputado Arrocha insiste en amenazas contra Epasa](#); Inter American Press Association (IAPA). February 8, 2017. [Panamá: La SIP advierte sobre intimidación a casa editorial EPASA](#); CNN Español. June 1, 2017. [Caso Odebrecht en Panamá: 36 procesados y 56 millones aprehendidos](#).

953. On June 26, Attorney General Porcell would have formalized the existence of an investigation in relation to the acquisitions by Group EPASA that would involve 15 companies, 2 individuals company, and a law firm, for which they would be charged with the crime of money laundering. The case, known as "New Business", would involve the diversion of public funds, a fact on which the Attorney General claimed to have found evidence upon detection of an offshore account that would have been used for: first, the collection of money from the public reserves and, later, for the acquisition of the *Crítica*, *Día a Día*, and *Panamá América* media outlets. EPASA Group has described the investigation as an attempt to discredit the company. Employees of the Group have publicly declared themselves against the investigation, calling it an attack against freedom of expression¹⁴¹⁶. At the close of this report, the Panamanian Prosecutor's Office has reported that, as a result of the case, 20 people have been prosecuted, 3 red warnings have been issued, and one person had been arrested, while another person would be a fugitive¹⁴¹⁷.

954. On July 6, journalist Alexander Arosemena, who works for the newspaper *La Prensa*, would have been arrested by the police while operating a drone with which he took photographs of the building under construction of the new headquarters of the Apostolic Nunciature in Ciudad de Panamá. The arrest would have been made at the request of the surveillance staff of the Nunciature, the latter would subsequently issue a statement in which it would allege that an "offense of violation of extraterritoriality (provided for in the Vienna Convention), as well as violations of the right of privacy and airspace rules" would have been carried out. The newspaper and journalists' organizations condemned the incident and described it as an attack on freedom of expression because neither the journalist nor the drone invaded the property. The journalist would have remained under arrest for just over four hours and then would have been released without charges being brought against him¹⁴¹⁸.

955. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁴¹⁹

¹⁴¹⁶ Telemetro.com. June 23, 2017. *Empleados de Editora Panamá América se manifiestan tras investigación del MP*; *Crítica*. June 26, 2017. *Procuraduría oficializa investigación que ordenó Varela hace un año*; *La Estrella de Panamá*. June 27, 2017. *Los dineros para comprar Epasa salieron del Estado*; *La Prensa*. June 27, 2017. *Kenia Porcell: 18 imputados por blanqueo*; *Panamá América*. June 27, 2017. *No existe una medida que afecte al Grupo Epasa*.

¹⁴¹⁷ *La Prensa*. August 23, 2017. *Vinculan a otras 8 personas con el caso New Business*; *El Diario*. July 5, 2017. *Ordenan la detención de exministros de obras públicas de Martinelli en Panamá*; *Telemetro*. September 7, 2017. *Casa por cárcel para José Corcione por caso New Business*.

¹⁴¹⁸ *La Prensa*. July 6, 2017. *Periodista de 'La Prensa' es liberado: fue detenido por fotografiar la sede de la Nunciatura en Clayton*; *El Nuevo Diario*. July 6, 2017. *Detienen a reportero que tomaba fotos con dron en Nunciatura en Panamá*; *Telemetro*. July 6, 2017. *Liberan a periodista de La Prensa detenido cuando fotografiaba sede de la Nunciatura*; *La Prensa*. July 7, 2017. *Incidente por fotos en Nunciatura Apostólica*; *Arquidiócesis de Panamá*. July 7, 2017. Press Release. *Comunicado de la Nunciatura Apostólica en Panamá*.

¹⁴¹⁹ IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. *Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

956. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

B. Social protest

957. On June 12, 13, and 22 there would have been clashes between students of the *Universidad de Panamá* and members of the National Police during the protest demonstrations due to the promulgation, on June 6, of Executive Decree 130 [*Decreto Ejecutivo 130*], through which the Government of the Republic would be proposing the creation of a unique cadastral system in the country. The confrontations would have left nine civilians and six police officers injured, as well as four detained students. President Juan Carlos Varela would have issued a decree suspending the measure on June 12, but the protests would have continued in demand that Executive Decree 130 be repealed¹⁴²⁰.

958. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"¹⁴²¹ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."¹⁴²²

959. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles."¹⁴²³

C. Other relevant situations

¹⁴²⁰ TVN Noticias. June 11, 2017. *Se enciende el debate en las redes sociales por el Decreto Ejecutivo 130*; El Nuevo Herald. June 12, 2017. *Panamá arde en protestas: 4 estudiantes detenidos y 2 policías heridos en disturbios*; Telemetro. June 12, 2017. *Presidente Varela firma suspensión del Decreto 130 sobre actualización catastral*; TVN Noticias. June 13, 2017. *Estudiantes universitarios realizan protesta este martes*; Crítica. June 13, 2017. *Universitarios vuelven a protestar contra el decreto 130*; La Estrella de Panamá. June 13, 2017. *Analicemos el Decreto Ejecutivo N° 130*; Panamá América. June 14, 2017. *Continúa el descontento ciudadano por Decreto N° 130*; Telemetro. June 22, 2017. *Universitarios se enfrentan a antimontines en protesta contra decreto 130*; El Carabobeño. June 22, 2017. *Un niño herido por bala de salva en protesta en ciudad de Panamá*; TVN Noticias. June 23, 2017. *Estudiantes de la UP denuncian la presencia de infiltrados en protestas*.

¹⁴²¹ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁴²² IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹⁴²³ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

960. On February 15, the Communications and Transportation Commission of the Legislative Assembly [*Comisión de Comunicación y Transporte de la Asamblea Legislativa*] discussed and approved Bill No. 465 "That establishes the inclusion of educational, cultural, or electoral education messages in regular media programming", sending it to the plenary for discussion. The initiative had been presented on September 20, 2016 by Assemblyman Noriel Salerno Estevez, of the *Partido Cambio Democrático*, and it proposes establishing as an obligation of digital media "inserting in their regular programming educational messages and cultural, as well as educating on electoral matters, which contribute to strengthening participatory democracy, values such as love of the homeland, peace, respect, family harmony, and tolerance" and an obligation of print media to insert in their editions similar messages "in spaces located in sections that are fixed for advertisements to guarantee that messages are perceived by a large number of readers." The same initiative suggested that such messages would be produced by the media themselves, but in the definition of the content and extension of the same would participate the Ministries of Education and Social Development [*Ministerios de Educación y Desarrollo Social*], the National Authority of Public Services [*Autoridad Nacional de los Servicios Públicos*], the State Radio and Television Service [*Servicio Estatal de Radio y Televisión*], the Panamanian Broadcasting Association [*Asociación Panameña de Radiodifusión*], the Council of Rectors of Panama [*Consejo de Rectores de Panamá*], and the civic clubs¹⁴²⁴.

961. The initiative of representative Salerno was rejected by different organizations and media associations such as the Panamanian Broadcasting Association [*Asociación Panameña de Radiodifusión*], the National Journalism Council [*Consejo Nacional de Periodismo*], and the Inter-American Press Association, whose members described the project as a violation of the right to freedom of expression, as well as an "interference with contents and a violation of the right to property of newspaper companies." The project was withdrawn by its author on March 22¹⁴²⁵.

962. On October 23 it was announced at a press conference, that the United States Department of the Treasury would have agreed to remove the editorial group *El Siglo* from the so-called "Clinton List", a company that publishes the newspapers *La Estrella de Panamá* and *El Siglo*, after accepting the proposal of its main shareholder, Abdul Waked, to transfer, free of charge, 51 per cent of the shares of the Editorial Group to the *Fundación Publicando Historia*. The Office of Foreign Assets Control (OFAC) would have included Waked in the "Clinton List" on May 5, 2016, after being identified as allegedly responsible for the crime of money laundering, a circumstance that involved the prohibition of individuals and companies of American origin to carry out commercial operations with the aforementioned newspapers, which put them on the verge of disappearance. The decision of the US government ended a 17 months period during which various civil society organizations and personalities of Panamanian public life pleaded to the United States government to lift restrictions imposed on the dean of Panamanian newspapers¹⁴²⁶.

¹⁴²⁴ Asamblea Nacional. September 20, 2016. *Proyecto de Ley 465 Que establece la inserción de mensajes educativos, culturales o sobre docencia electoral en la programación regular de medios de comunicación.*

¹⁴²⁵ La Prensa. March 6, 2017. *Objetan propuestas de Diputado Salerno*; Inter American Press Association (IAPA). March 9, 2017. *Panamá: La SIP rechazó iniciativa de ley que se entromete en los contenidos*; TVN Noticias. March 11, 2017. *Gremios rechazan proyecto que pretende regular a medios de comunicación en Panamá*; Telemetro. March 14, 2017. *La Asociación Panameña de Radiodifusión solicita retiro del proyecto de ley 465*; TVN Noticias. March 16, 2017. *Gremios periodísticos conversan con diputados sobre proyecto de Ley 465*; La Prensa. March 22, 2017. *Comisión de la Asamblea rechaza debatir proyecto sobre contenido de los medios de comunicación*; La Estrella de Panamá. March 23, 2017. *Asamblea rechaza proyecto encaminado a regular los medios.*

¹⁴²⁶ La Prensa. May 5, 2016. *Departamento del Tesoro de Estados Unidos incluye a Abdul y Nidal Waked y sus sociedades en la 'Lista Clinton'*; Inter American Press Association (IAPA). July 21, 2017. *Panamá: SIP pide a EE.UU. reconsiderar decisión que afecta a diarios panameños*; El País. July 21, 2017. *El diario decano de Panamá, en peligro de desaparición por una sanción comercial*; La Estrella de Panamá. October 23, 2017. *La Estrella de Panamá y El Siglo, desbloqueados de las sanciones de la Lista Clinton*; ElCapitalFinanciero.com. October 23, 2017. *Los diarios El Siglo y La Estrella de Panamá salen de la Lista Clinton*; El País. October 24, 2017. *EE UU levanta las sanciones que amenazaban al diario decano de Panamá.*

963. Between September 4 and October 2, the National Public Services Authority [*Autoridad Nacional de los Servicios Públicos*] (ASEP) of Panama conducted a public consultation in order to establish the date to carry out the first phase of the "analog blackout" in the country. The ASEP informed, at the end of the consultation, that it had received only three observations, two of which were made by concession companies of television frequencies. Following the consultation, October 14, 2018 was presented as the date to carry out the first phase of the analog blackout¹⁴²⁷.

¹⁴²⁷ ASEP. No date. *ASEP anuncia consulta pública para apagón analógico*; La Estrella de Panamá. September 10, 2017. *Apagón analógico podría ser en el año 2018*; ASEP. Documentation of public consultation N° 012-17, available at http://www.asep.gob.pa/index.php?option=com_content&view=article&id=974&Itemid=332.

26. PARAGUAY

964. In 2017, demonstrations were held to protest the attempt by a group of Senators to pass a constitutional amendment that would allow for the president's reelection. During the protests held on March 31, a group of demonstrators committed acts of violence, and police repressed protestors and—indiscriminately—journalists who were covering the events, which was of deep concern to the Office of the Special Rapporteur. Subsequent to these incidents, the State reported that a number of actions and investigations had been undertaken. In the following months, the Inter-American Commission and its Office of the Special Rapporteur called on the State numerous times to guarantee the diligent and impartial investigation of these events and determine the respective liabilities.¹⁴²⁸ The Office of the Special Rapporteur continued to document other incidents during this period involving assaults, threats, and stigmatizing statements against journalists and media workers.

965. The Office of the Special Rapporteur views with particular concern the recent introduction to Congress of a bill seeking to establish a framework to eliminate anonymity on the Internet and remove content from social media—without a court order—when it is considered offensive or alleged to be false by candidates to public office or public servants. This type of restriction can seriously affect freedom of expression and the circulation of information on matters of public interest.

966. With respect to access to public information, the Office of the Special Rapporteur recognizes the ongoing efforts of the Paraguayan State to move forward with the implementation of the law on access to public information, and encourages it to continue to take measures that help guarantee transparency and access to information of public interest. Nevertheless, the office learned of some decisions made by different bodies of the Judicial Branch in 2017 that could be “red flags” regarding the role of the Judiciary as a guarantor of the effective enjoyment of this right.

967. In addition, the Office of the Special Rapporteur underscores the establishment of the Inter-Institutional Working Group for the Safety of Journalists and the positive actions that have resulted from this space for the promotion of freedom of expression and the protection of journalists. Moreover, it encourages the State to continue working on the implementation of the security protocol for at-risk journalists that was approved in 2017, and on the adoption of a comprehensive protection mechanism. The office also joins civil society in acknowledging the decision of President Horacio Cartes to veto a provision that would have adversely affected access to, and privacy in the use of, mobile phones.

968. The Office of the Special Rapporteur also heard the public complaints of the Paraguayan Journalists' Forum [*Foro de Periodistas Paraguayos*] and Journalists' Union [*Sindicato de Periodistas*] regarding increased job insecurity and layoffs, which according to the journalists' union is tied to the high concentration of media ownership in Paraguay. Additionally, the Office of the Special Rapporteur takes note of reports of political pressure on media outlets and the complaints that have arisen with regard to government advertising policy.

A. Progress

969. In February, the Inter-Institutional Working Group for the Safety of Journalists and the Fight against Impunity was established, consisting of members of the following organizations: the Supreme Court of Justice, the Legislative Branch, the Public Ministry, the Secretariat of Information and Communication (SICOM), the Ministry of Culture and Paraguay National Commission for UNESCO, the Ministry of Foreign Affairs, the Ministry of the Interior, the Paraguayan Journalists' Forum, the Paraguayan Journalists' Union, and the Paraguayan Press Photographers' Association [*Asociación de Reporteros Gráficos del Paraguay*]. This coordinating body between the public sector and civil society was created pursuant to the Letter of Intent

¹⁴²⁸ IACHR. [Press Release IACHR Deeply Concerned over Acts of Violence and Repression in Context of Protests in Paraguay](#). April 3, 2017; IACHR. [Public Hearing. Protest and human rights in Paraguay](#) (Video). May 26, 2017.

signed by the State and UNESCO in November 2016.¹⁴²⁹ According to the information available, the Group has been operating as a forum to engage in dialogue about the safety of journalists in Paraguay and coordinate the promotion of joint actions to help shape public policies on the issue. In the context of the State's obligation to put an end to impunity for crimes against journalists, the trial of Vilmar "Neneco" Acosta Marques began on October 23. Acosta Marques, the former mayor of Ypejhú, was charged by the Office of the Public Prosecutor as the alleged instigator of the 2014 murders of *ABC Color* journalist Pablo Medina and his assistant, Antonia Almada.¹⁴³⁰

970. On July 18, the Juvenile Court of Appeals [*Tribunal de Apelaciones de la Niñez y la Adolescencia*] of the Capital overturned a lower court judgment ordering the digital rights organization TEDIC to remove content from a page on its website where it condemned gender-based Internet violence against journalist Karen Ovando.¹⁴³¹ The organization's publication contained a screenshot of a Facebook Messenger group message to which the journalist had access and made public in order to denounce, among other things, that the message talked about raping her to "correct" her sexual orientation. One of the participants in the group chat filed a petition for a constitutional remedy [writ of *amparo*] seeking to have the content removed. The appeals court found in its judgment that the previously granted writ of *amparo* was not the appropriate judicial proceeding with which to address the issues at stake in the case.

B. Attacks, Threats, and Harassment against Journalists and Media Outlets

971. On March 12, journalist Eduardo González died. In March 2016, he had been found unconscious with signs of head trauma on Ruta Granero del Sur, in the Department of Itapúa.¹⁴³² Addressing the incident in its 2016 report, the Paraguayan Journalists' Union (SPP) indicated that the police had said that González died in a traffic accident, but that this version raised doubts because the motorcycle he had been riding showed no damage or signs of collision.¹⁴³³ According to that report, "The suspicions began to point toward local police officers that González had denounced on his radio program *El Trigo FM* for their alleged complicity in cattle theft." The Office of the Special Rapporteur regrets that the journalist died without the circumstances of his death having been clarified, and it urges the authorities to continue investigating the facts diligently and impartially, exhausting the lines of investigation related to the victim's professional practice of journalism.

972. On September 2, in the border city of Capitán Bado, Judge Leongino Benítez ordered the release of Felipe Ecurra Rodríguez, who—according to reports—has ties to drug trafficking and has been accused of plotting to murder journalist Cándido Figueredo (a local correspondent for *ABC Color*) in retaliation for his

¹⁴²⁹ IACHR. Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017. Para. 949.

¹⁴³⁰ *ABC Color*. October 23, 2017. *Se inicia juicio a presunto autor intelectual del crimen de Pablo*; *ABC Color*. March 2, 2017. *Vilmar afrontará juicio oral por asesinato de periodista*; *La Nación*. March 2, 2017. *"Neneco" Acosta va a juicio oral por el crimen de Pablo*; IACHR. Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV (Silenced zones: Highly dangerous areas for the exercise of freedom of expression). OEA/Ser.L/V/II IACHR/RELE/INF.16/17. March 15, 2017. Para. 119-120; *La Nación*. April 6, 2017. *Designan tribunal que juzgará a "Neneco" Acosta por crimen de periodista*; *ABC Color*. April 7, 2017. *Zelaya preside tribunal que juzgará a Vilmar Acosta*.

¹⁴³¹ Poder Judicial de Paraguay. Tribunal de Apelaciones de la Niñez y la Adolescencia de la Capital. Acuerdo y Sentencia 57. July 18, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; TEDIC. *Buena noticia: Tribunal revoca sentencia que censuraba a TEDIC por denunciar violencia de género*. July 28, 2017.

¹⁴³² *Última Hora*. March 13, 2017. *Periodista fallece tras una larga agonía*; *Itapúa noticias tv*. March 14, 2017. *Tras muerte de comunicador fiscal adjunto afirma que causa es investigada*.

¹⁴³³ Sindicato de Periodistas de Paraguay (SPP). Informe 2016. Received through electronic means by the Office of the Special Rapporteur for Freedom of Expression on September 1, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; *Última Hora*. January 15, 2017. *Periodistas se solidarizan con colega que lucha por su vida*.

investigative journalism.¹⁴³⁴ The Paraguayan Journalists' Union (SPP) and the Committee to Protect Journalists (CPJ) warned of the risk Figueredo faces as a result of that decision. The SPP and various media outlets indicated that "there are suspicions" regarding the judge's action. In a press release, the Union demanded that the Judiciary investigate the judge's action. According to the information available, on September 11 the Supreme Court ordered a review of the judge's decision. On September 15, a delegation of the SPP and the Inter-Institutional Working Group for the Safety of Journalists and the Fight against Impunity met with authorities from the Ministry of the Interior to express their concern over the risk faced by the journalist and request that the State guarantee his safety.¹⁴³⁵

973. The Office of the Special Rapporteur also continued to document threats and attacks on journalists and press workers reported in different areas of the country.

974. According to the information available, on December 24, 2016, journalist Blanca López of the *Sistema Nacional de Televisión* (SNT) reported having received a death threat that included members of her family. In reporting on the incident, different media outlets indicated that the threat may have been related to her coverage of drug trafficking cases.¹⁴³⁶ On December 26, 2016, journalist Raúl Cortese, a correspondent for *Telefuturo* and the newspaper *Última Hora*, reported having been intimidated with threats and gunshots by the occupant of a property and his guards while he was conducting a journalistic investigation in the district of Mayor Otaño, in the Department of Itapúa.¹⁴³⁷

975. On the night of January 17, 2017, journalist Nino Silguero Rodas, a broadcaster on *Radio Panambi Vera* of Villarica in the Department of Guairá and correspondent for *970 AM*, had his car set on fire by unknown persons outside his house. The same day, the Paraguayan Journalists' Union publicly condemned the incident and demanded security for the journalist and his family.¹⁴³⁸ In February, TV journalist Fernando Sotelo of the town of Hohenau in the Department of Itapúa reported that he had been threatened by Adolar Schlender, the mayor of Jesús de Tavarangüe, and pressured not to report on an investigation that the Office of the Comptroller General of the Republic was conducting into alleged irregularities in the municipal government.¹⁴³⁹ According to the journalist, the mayor told him that if he published the information, things would "go very badly" for him.

¹⁴³⁴ "We demand #security for our journalist colleague Cándido Figueredo of [@ABC_color @minteriorpy](#)". Twitter account of Sindicato de Periodistas del Paraguay [@PeriodistasPy](#). **Undated press release published on September 15, 2017.** Committee to Protect Journalists (CPJ). **Paraguayan judge releases drug trafficker who had planned to kill journalist.** September 11, 2017. ABC Color. September 8, 2017. **Fuertes "incentivos" para liberar a Barón Ecurra;** ABC Color. September 10, 2017. **Narco badeño liberado sigue con su plan de asesinar a periodista de ABC.**

¹⁴³⁵ Ministerio del Interior de Paraguay. **Ministro se reunió con comunicadores y garantizó la seguridad para periodista amenazado en Amambay.** September 15, 2017. ParaguayEnNoticias (PN). September 15, 2017. **Ministro garantiza seguridad a periodistas amenazados en Amambay.**

¹⁴³⁶ Última Hora. December 24, 2016. **Amenazan de muerte a periodista Blanca López y a su familia;** Hoy. December 24, 2016. **Periodista del SNT recibe amenaza de muerte.**

¹⁴³⁷ Última Hora. December 27, 2016. **Itapúa: Reciben a balazos a periodista para borrar evidencias;** ADN. No date. **Periodista fue amedrentado a tiros cuando realizaba su labor ;** itapuanoticias.tv. December 27, 2016. **Video capta parte del momento en que Eisen amenaza a periodista [Video]**

¹⁴³⁸ Última Hora. January 17, 2017. **Atentan contra periodista en Guairá;** ABC Color. January 17, 2017. **Queman auto de periodista;** "We denounce the attack that colleague Nino Silguero has just suffered, we demand security for him and his family and punishment for those responsible". Twitter account of Sindicato de Periodistas del Paraguay (SPP) [@PeriodistasPy](#). January 17, 2017.

¹⁴³⁹ Ñandutí. 1020 AM. February 15, 2017. **"Si publicas no vayas a pisar mas mi distrito y si pisas, te va a ir muy mal";** ABC. February 14, 2017. **Denuncia amenaza de muerte;** Paraguay en Noticias (PN). February 14, 2017. **Intendente de Jesús amenaza de muerte a comunicador de Colonias Unidas.**

976. On March 21, photographer Juan Agüero of *Última Hora* and columnist Alejandro López and cameraman Gustavo Avalos of *Telefuturo* were assaulted by a group of law students from the National University of Asunción (UNA) who were taking part in a final campaign event for the election of Student Center leaders.^{1440,1441} According to publicly available information, the supervisory criminal court ordered the house arrest of two students charged with assaulting the press workers.¹⁴⁴²

977. According to the information available, on April 6, Grupo Multimedia S.A. filed a complaint with the Public Ministry against unnamed individuals responsible for messages circulating on social media advocating for the building that houses the digital newspaper *Hoy* to be set on fire, “with its journalists inside.”¹⁴⁴³

978. Also in April, a team of journalists from *Telefé Noticias* of Argentina that was investigating the marijuana trafficking route in Pedro Juan Caballero had to abruptly suspend its work and leave the country due to alleged death threats.¹⁴⁴⁴ On August 26, journalist Clara Martínez of *Red Paraguaya de Comunicaciones* (RPC) was harassed by fans of the Cerro Porteño soccer club while covering the aftermath of a soccer match. The SPP found that the journalist was subjected to sexual coercion and condemned all forms of violence and discrimination against women journalists. For its part, the directors of the soccer club also denounced the act of violence and expressed their solidarity with the reporter.¹⁴⁴⁵

979. On October 12, the newspaper *ABC Color* reported that its journalist Gladys Benítez was threatened by the head of the National Land and Rural Development Institute [*Instituto Nacional de Desarrollo Rural y de la Tierra*] (Indert), Justo Pastor Cárdenas, based on the publication of information about the origin of his assets and his alleged enrichment.¹⁴⁴⁶ According to the newspaper, the official reportedly warned the journalist: “Gladys, do not mess with or bother my children. I am the only one who is going to get into your dirty and miserable war. If you mess with my kids, I will mess with yours. Don’t fuck with that. For my family, I am capable of doing things that wouldn’t even occur to you. Let that be very clear.” SPP condemned the act before the Senate’s Human Rights Committee and held a march repudiating the threat.¹⁴⁴⁷

980. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free,

¹⁴⁴⁰ *Última Hora*. March 21, 2017. [Periodistas agredidos en Derecho UNA](#).

¹⁴⁴¹ Foro de Periodistas Paraguayos/ Facebook. March 22, 2017. [Comunicado](#); *Última Hora*. March 22, 2017. [SPP repudia agresión a trabajadores de Última Hora y Telefuturo](#)

¹⁴⁴² Judiciales.net. April 7, 2017. [Agresión a periodistas: arresto para universitarios](#);

¹⁴⁴³ *Hoy*. April 6, 2017. [Amenazan quemar diario HOY, denuncian a Fiscalía](#); *La Nación*. April 7, 2017. [Denuncian ante Fiscalía amenazas a Hoy](#)

¹⁴⁴⁴ *Extra*. April 19, 2017. [Periodistas huyen de Pedro Juan, amenazados con sufrir “un accidente”](#); *ABC Color*. April 19, 2017. [Equipo de Telefe salió amenazado de Pedro Juan](#).

¹⁴⁴⁵ *Última Hora*. August 29, 2017. [Periodista acosada por hinchas cuenta lo que pasó: “Tuve miedo y me sentí desprotegida”](#); *ABC*. August 31, 2017. [Marcharán contra el acoso a una periodista](#).

¹⁴⁴⁶ *ABC Color*. October 12, 2017. [Las amenazas de Cárdenas](#); *Central Noticias*. October 13, 2017. [“Fui un poco bruto”, dijo Cárdenas sobre amenaza](#); *Hoy*. October 12, 2017. [Titular del Indert justifica mensaje a periodista y muestra su patrimonio](#)

¹⁴⁴⁷ *ABC Color*. October 21, 2017. [Denunciaron ante el Senado las amenazas de Cárdenas](#); Inter American Press Association (IAPA). [Report on Paraguay](#). General Assembly, October 27-30, 2017.

robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁴⁴⁸

981. The Office of the Special Rapporteur notes that “violence committed against female journalist as a result of their work has a particular characteristics streaming from the social constructs of gender and discrimination.”¹⁴⁴⁹ The United Nations Special Rapporteur in the Promotion and Protection of Freedom of Opinion and Expression stated in his report on the protection of journalist and media that a “gender-sensitive approach is therefore needed when considering measures to address the issue of violence against journalists.”¹⁴⁵⁰ The Office of the Special Rapporteur reiterates that States have a reinforced obligation to act with due diligence to prevent violence against female journalists.¹⁴⁵¹

982. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression states that: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Social Protest

983. During the demonstrations that were held on March 31 to protest the decision of a group of senators to amend the rules of the upper house of Congress to pass a constitutional amendment allowing for presidential reelection, a significant number of demonstrators and journalists were reportedly injured as a result of the indiscriminate use of tear gas and rubber bullets by police. Additionally, according to publicly available information, police raided the headquarters of the opposition party *Partido Liberal Radical Auténtico* in the early morning hours of April 1, beating and shooting at demonstrators inside the premises. A young party leader named Rodrigo Quintana died from multiple gunshot wounds. On April 1, Interior Minister Miguel Tadeo Rojas, as well as the Commander of the National Police, were removed from office as a consequence of the police actions during the protests.

984. On April 3, the IACHR issued a statement urging the State to comply with its international obligations to respect and guarantee human rights in this context, particularly the full enjoyment of the rights to life, humane treatment, and personal freedom of protestors, as well as the rights to freedom of expression, peaceful assembly, and political participation.¹⁴⁵² According to the information received by the Office of the Special Rapporteur, while they were covering the public demonstration outside Congress, 23 journalists and media workers were assaulted by law enforcement officers during the repression of the protests. On April 7, in a joint action facilitated by the Inter-Institutional Working Group for the Safety of Journalists and the Fight against Impunity, the Paraguayan Journalists’ Union, the Paraguayan Journalists’ Forum (FOPEP), and the

¹⁴⁴⁸ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. . Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression. Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. Second Report on the Situation of Human Rights Defenders in the Americas.. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹⁴⁴⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. CIDH/RELE/INF. 12/13. Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators.

¹⁴⁵⁰ UN. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. A/HRC/20/17. June 4, 2012. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Para. 52. Available for consultation at: http://ap.ohchr.org/documents/dpage_e.aspx?m=85.

¹⁴⁵¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. CIDH/RELE/INF. 12/13. Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators.

¹⁴⁵² IACHR. Press Release IACHR Deeply Concerned over Acts of Violence and Repression in Context of Protests in Paraguay. April 3, 2017.

Press Photographers' Association filed a formal complaint regarding the attacks on the press workers before the Public Ministry's Office of the Assistant Human Rights Prosecutor [*Fiscalía Adjunta de Derechos Humanos*].¹⁴⁵³

985. On May 26, during a public hearing convened by the IACHR *ex officio* during its 162nd Session held in Buenos Aires, the FOPEP and the Paraguayan Photojournalists' Association presented videos and evidence of the repression unleashed against press workers during the aforementioned protests. Civil society affirmed that journalists and media workers were "deliberately and indiscriminately attacked by the National Police under superior orders to the effect that there not be any record of the repression perpetrated by the National Police against the protestors."¹⁴⁵⁴ According to reports, the most serious case was that of press photographer José Bogado of the newspaper *Última Hora*, who was hit by 18 rubber bullets.¹⁴⁵⁵ According to reports, other journalists, camerapersons, and photographers were injured by rubber bullets and beatings. In some cases, their work equipment was also damaged. For its part, the State provided an account of the actions taken thus far to identify and punish those responsible for the repression. It admitted that the repression of journalists is unacceptable, but asserted that at this stage of the investigations it was not possible to establish that there was a deliberate attempt to impede the work of journalists, as reported. During the hearing, the State announced the imminent approval of a security protocol for journalists in high-risk situations.

986. The IACHR expressed concern over the reports and videos presented by civil society at the hearing, which showed an excessive use of force by the police against demonstrators and members of the press who were covering the protests. It asked the State about the status of the investigations to identify and punish the members of the security forces involved in the assault on the press and the killing of a *Partido Liberal* leader that night. It also reminded the State of the inter-American standards on the need to train police in procedures and use of force during demonstrations. On August 9, various media outlets reported that the Public Ministry had charged two police officers with assaulting two members of the press who had been covering the incidents of March 31 outside Congress.¹⁴⁵⁶ Additionally, according to the information available, in April the Bar Association of Alto Paraná and the Paraguayan Bar Association reportedly filed a complaint with the police authorities of Alto Paraná concerning the violent repression of young demonstrators on the *Puente de la Amistad* [Friendship Bridge] during the public protests held in that town in the early morning hours of April 1.¹⁴⁵⁷

987. Regarding these same incidents, on August 8, the United Nations Committee against Torture adopted its Concluding Observations on the seventh periodic report of the State of Paraguay. The Committee expressed its concern "over reports alleging the disproportionate use of force by the national police, including acts of torture and ill-treatment inflicted upon arrested persons, during the riots that occurred in connection with the protests in Asunción on 31 March and 1 April 2017." It additionally expressed concern about the "the alleged extrajudicial killing" of political leader Rodrigo Quintana during the police operation carried out on April 1, and urged the State to investigate and punish these acts.¹⁴⁵⁸

¹⁴⁵³ *Última Hora*. April 7, 2017. **Presentan denuncia contra policías por 22 trabajadores de prensa agredidos**; ABC Color. April 8, 2017. **Piden esclarecer agresiones a periodistas**.

¹⁴⁵⁴ IACHR. *Public Hearing. Protest and human rights in Paraguay* (Video). May 26, 2017.

¹⁴⁵⁵ According to the information published by the press and gathered during the hearing, the journalists and photojournalists attacked were reportedly: José Bogado, Christian Núñez, Óscar Lovera, Blas Barrios, Víctor Duarte, Tereza Fretez, Leticia Barrios, Perla Silguero, Mili Aguayo, Jaime Woitcha, Cynthia Saldívar, David Bogado, Paola Miranda, Ariel Fonseca, Ricardo Alderete, Néstor Cardozo, Andrea Prieto, Patricia Grance, Rufo Diana, Milciades Castillo, Fernando Calistro, Diego Peralbo and Ángel Lovera.

¹⁴⁵⁶ *Última Hora*. August 9, 2017. **Imputan a policías por agresión a comunicadores**; ABC Color. August 9, 2017. **Dos policías imputados por agresión a la prensa**.

¹⁴⁵⁷ ABC Color. April 11, 2017. **Denunciarán represión policial en el Este**; Vanguardia. April 18, 2017. **Denuncian brutal represión policial que dejó 50 heridos**; Primera Plana. April 20, 2017. **Garroteados del puente denuncian a jefes policiales del Alto Paraná**.

¹⁴⁵⁸ United Nations. *Committee against Torture. Concluding observations on the seventh periodic report of Paraguay*. August 8, 2017.

988. In July and August, peasant leaders and the Human Rights Coordinating Committee of Paraguay (Codehupy) reported that police had placed restrictions on the peasant demonstrations held in Asunción to demand the enactment of a law to resolve debt problems in the sector.¹⁴⁵⁹ On August 6, the Ministry of the Interior and the National Police issued a statement announcing that during the peasant demonstrations the Police would continue to implement “preventive controls throughout the country in order to prevent acts that infringe upon or violate public order and the rights of others.”¹⁴⁶⁰ The statement specified that the officers would not carry firearms during the demonstration.

989. On September 8, a student was forcibly removed from an official ceremony at the Encarnación National Technical School in which the President of the Republic and other national authorities were taking part, for carrying a sign that said, “free school lunch for all.”¹⁴⁶¹ On September 12, Codehupy released a statement condemning the existence of a policy restricting public demonstrations and freedom of expression during different social protests that took place in 2017.¹⁴⁶²

990. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”¹⁴⁶³ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹⁴⁶⁴

991. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹⁴⁶⁵

D. Stigmatizing Statements:

¹⁴⁵⁹ Vanguardia. July 20, 2017. ***Policía debe actuar en protesta de los campesinos, dice fiscal***. La Nación. July 23, 2017. ***Marcha campesina en Asunción: policía no permitirá bloqueo de calles***; Telesur. July 25, 2017. ***Movilizaciones campesinas de Paraguay son amenazadas por el gobierno***; Coordinadora de Derechos Humanos del Paraguay. ***Las manifestaciones públicas son inherentes a la democracia y deben ser garantizadas plenamente. July 28, 2017***; Última Hora. August 8, 2017. ***Policía pide a campesinos marchar sin palos en las manos***; La Nación. August 9, 2017. ***Codehupy aboga porque campesinos puedan ejercer su derecho a manifestarse***; La Nación. August 17, 2017. ***Presentarán denuncia contra “criminalización de luchas sociales”***.

¹⁴⁶⁰ Paraguay.com. August 6, 2017. ***Policía no permitirá cierre de calles durante marcha campesina***.

¹⁴⁶¹ RDN. September 8, 2017. ***Expulsan a estudiante por pedir almuerzo escolar a Cartes***; ABC Color. September 8, 2017. ***Lo echan de su colegio por reclamar a Cartes***.

¹⁴⁶² Coordinadora de Derechos Humanos del Paraguay. ***El gobierno socava la protesta social con prácticas autoritarias y pone en riesgo la convivencia democrática***. September 12, 2017.

¹⁴⁶³ IACHR. ***Report on Citizen Security and Human Rights***. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁴⁶⁴ IACHR. ***Second Report on the Situation of Human Rights Defenders in the Americas***. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹⁴⁶⁵ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. ***Joint declaration on violence against journalists and media workers in the context of protests***.

992. According to publicly available information, during a public ceremony held on June 23 in Ciudad del Este, Paraguayan President Horacio Cartes reportedly accused two journalists of inciting violence and insinuated that they should be jailed for their coverage of the political crisis of March 31.¹⁴⁶⁶ *ABC Color* reported that, although the president had not named the journalists directly, his statements were directed at Menchi Barriocanal and Óscar Acosta, journalists from *Telefuturo* and *radio Monumental*. The president reportedly said: “There is a married couple that, if there is justice, should be there (in prison) with Stiben Patron as well, because they incited violence (on March 31).” The Paraguayan Journalists’ Union, the Paraguayan Journalists’ Forum, and Amnesty International issued different statements rejecting the president’s assertions.

993. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”¹⁴⁶⁷

E. Mechanisms of Protection

994. The Inter-Institutional Working Group for the Safety of Journalists and the Fight against Impunity, comprised by representatives of different public agencies and civil society, was established in February 2017. The Working Group has facilitated the coordination of actions to promote and protect freedom of expression and journalists’ safety.¹⁴⁶⁸ In view of this development, on May 4, IACHR Special Rapporteur Edison Lanza met with the Group to receive information about the initiative and mark the beginning of a forum for technical advice and exchange in furtherance of risk prevention and the protection of journalists in Paraguay. From May 3 to 5, the Special Rapporteur traveled to Asunción to participate in the regional celebration events in the framework of World Press Freedom Day. Events of celebration were organized by the Inter-institutional Table. Special Rapporteur Edison Lanza met with the Table in order to receive information about the initiative and to start a space for exchange and technical advice on the progress of the prevention and protection of journalists in Paraguay. During his stay in the country, the Office of the Special Rapporteur also held meetings with government authorities, including a meeting with the Attorney General, Dr. Javier Díaz Verón, who reaffirmed his commitment to the protection of journalists and the fight against impunity.

995. On June 22, through Resolution 538 of 2017, the National Police adopted the Protocol for the Safety of Journalists in High-Risk Situations. The resolution states that the Protocol was drafted by the Permanent Committee for the Study of Laws and Regulations [*Comisión Permanente de Estudio de Leyes y Reglamentos*], in conjunction with members of the Paraguayan Journalists’ Union (SPP) and the Paraguayan Journalists’

¹⁴⁶⁶ ABC Color. June 23, 2017. Cartes: *“Hay un matrimonio que debería estar en prisión con Stiben Patron”*; Última Hora. June 24, 2017. *Sindicato de Periodistas condena amenaza del Presidente contra Menchi y Óscar*; Foro de Periodistas Paraguayos (FOPEP). Undated press release. Published on June 24, 2017 at: <http://www.abc.com.py/nacionales/solidaridad-con-oscar-acosta-y-menchi-1606768.html>; Paraguay.com. June 28, 2017. *Amnistía Internacional pide a Cartes terminar con amenazas*.

¹⁴⁶⁷ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

¹⁴⁶⁸ UNESCO. *Libertad de expresión, pluralidad de medios y seguridad de periodistas: Factores esenciales para la democracia*. Regional Celebration for the World Day of Press Freedom, May 3 - 5, 2017; IACHR. May 26, 2017. *Public Hearing. Protest and human rights in Paraguay* (Video). Hoy. April 7, 2017. *22 periodistas y fotógrafos presentan denuncia por ataques durante cobertura*; Ministerio del Interior. *Ministro se reunió con comunicadores y garantizó la seguridad para periodista amenazado en Amambay*. September 15, 2017.

Forum (FOPEP).¹⁴⁶⁹ It establishes the procedure to be followed by the National Police in the case of “complaints of threats lodged by journalists in high-risk situations.” The procedure stipulates that when such a complaint is received, it must be reported to the Departmental Police Headquarters and the background information must be forwarded to the Public Ministry. The Bureau of Prevention and Security [*Dirección General de Prevención y Seguridad*] will supervise all measures taken pursuant to the Protocol, and to that end a database will be compiled in coordination with the SPP and the FOPEP. It further specifies that, when a complaint is received, “it is recommended to establish an analysis group made up of representatives of the Police institution and the journalistic trade associations.”

996. In addition, during 2017 several committees of the House of Representatives issued opinions on the draft law on “freedom of expression and the protection of journalists, press workers, and human rights defenders,” introduced on November 17, 2016. As of this writing, the bill had not been considered by the full House. Its debate was postponed during various plenary sessions.¹⁴⁷⁰

997. The IACHR and its Office of the Special Rapporteur have identified some of the requirements for the protection mechanisms to be effective. They stress, for example: 1) the importance of guaranteeing the necessary personnel and financial resources for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and administration of justice; 3) the need to adequately define protective measures called for in the mechanism and the procedure for their adoption; 4) the need to guarantee the full participation of journalists, civil society and beneficiaries in the implementation and operation of the mechanism; and 5) the benefits of seeking support from the international community for the mechanism’s operation.¹⁴⁷¹

F. Access to Public Information

998. September marked the two year anniversary of the entry into force of Law 5282/2014 on “free citizen access to public information and governmental transparency.” According to the information available, 156 institutions had joined the unified portal www.informacionpublica.gov.py by early October.

999. As publicly reported by the Ministry of Justice, during 2017 its Office of Access to Public Information continued with the process of publicizing the law and training public servants.¹⁴⁷² Civil society organizations have also promoted and disseminated the law during this period, including by signing agreements with public institutions to enhance the training of their employees.¹⁴⁷³ Nevertheless, the Office of the Special Rapporteur received information pointing to ongoing difficulties in the implementation of the provision at the municipal level, given that most municipal governments had still not joined the Access to Public Information Portal.¹⁴⁷⁴

¹⁴⁶⁹ Policía Nacional de Paraguay. **Resolución 538 de 2017. June 22, 2017**; Última Hora. June 23, 2017. ***Policía Nacional aprueba protocolo de seguridad para periodistas.***

¹⁴⁷⁰ Congreso Nacional. Cámara de Diputados. Bill “De libertad de expresión protección a periodistas, trabajadores de prensa y defensores de derechos humanos”. **Ficha técnica del expediente** (Last accessed, October 5, 2017).

¹⁴⁷¹ IACHR. **Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression**. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 81; IACHR. **Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression**. Chapter II: Special Report on Freedom of Expression in Mexico 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 712.

¹⁴⁷² Ministerio de Justicia. Continúan jornadas de capacitación sobre Acceso a la Información Pública. July 26, 2017; La Nación. No date. ***Ley de Acceso a la Información Pública cumple dos años de vigencia***

¹⁴⁷³ Última Hora. August 17, 2017. ***A través de un programa buscarán hacer cumplir ley de transparencia***; Hoy. July 18, 2017. ***Registran problemas de municipios en acceso a información***; Hoy. August 31, 2017. ***Lambaré, primer municipio en buscar una ciudadanía activa.***

¹⁴⁷⁴ Última Hora. August 16, 2017. ***Varias instituciones incumplen aún la transparencia en información pública***; ABC. August 29, 2017. ***Municipios aún se resisten a brindar información pública.*** ABC. Color. September 28, 2017. ***Logro ciudadano, no político.***

1000. Members of the print media and civil society have also continued to demand that the State guarantee the right to access to public information and transparency in different spheres.¹⁴⁷⁵ On September 28, various aspiring presidential candidates signed an agreement in favor of transparency and free access to information on the occasion of the International Day for Universal Access to Information. The initiative was promoted by the Access to Information Group [*Grupo Impulsor de Acceso a la Información*] (GIAI).¹⁴⁷⁶

1001. On July 7, the Constitutional Chamber of the Supreme Court dismissed *in limine* a constitutional challenge filed by a citizen seeking to overturn an appellate court judgment handed down in October 2016. That judgment had held that information on the amounts of taxes and fees owed by the top 100 delinquent taxpayers of the Municipality of Encarnación had to be disclosed with the names of third parties expressly excluded.¹⁴⁷⁷

1002. On September 21, the Sixth Civil and Commercial Court of Appeals [*Sexta Sala del Tribunal de Apelaciones en lo Civil y Comercial*] ordered the Tribunal for the Prosecution of Judges [*Jurado de Enjuiciamiento de Magistrados*] (JEM) to turn over to two lawyers from the Paraguayan Lawyers' Coordinating Committee [*Coordinadora de Abogados del Paraguay*] a copy of the minutes of their regular and extraordinary sessions and other information about the hiring of public employees.¹⁴⁷⁸ In stating the reasoning for its ruling on the writ of *amparo* through which the lawyers sought access to this and other information from the JEM, the Court found that the requested instruments were different from the decisions of the Tribunal, and because they were not secret or confidential under any provision of law, they had to be considered public documents.

1003. On September 29, the 17th Civil and Commercial Trial Court [*Juzgado de Primera Instancia Civil y Comercial de 17^o Turno*] dismissed a request for the Judicial Council [*Consejo de la Magistratura*] to disclose the results of the psycho-technical tests administered to applicants. The Court held that such information "could" contain "sensitive data" that would violate the constitutionally protected right to the protection of privacy. The judgment rejected the possibility of partially publishing such information (Art. 37 of Decree 4064/2015) "given the highly technical nature of the way in which the test results are displayed." The GIAI asserted that the information placed by the Judicial Council in the court file and the information published on its website was not enough to weigh each candidate, which it considered key to understanding the reasoning for each decision.¹⁴⁷⁹ In administrative proceedings, the Judicial Council had denied access to the decision of

¹⁴⁷⁵ Hoy. July 21, 2017. ***Pese a la ley Comuna y la Corte niegan información de 100 grandes morosos***; ABC Color. August 29, 2017. ***Abogados critican poca transparencia en terna***. Última Hora. September 2, 2017. ***Crece presión ciudadana sobre la terna y Consejo se resiste a dar información***; ABC Color. September 24, 2017. ***La (maldita) primavera informativa***; ABC Color. October 1, 2017. ***Inoficioso***; ABC Color. October 2, 2017. ***Transparencia y democracia***.

¹⁴⁷⁶ Última Hora. September 28, 2017. ***Candidatos firmaron compromiso de acceso a la información pública***; ABC. September 28, 2017. ***Celebran Día de Acceso a la Información en Paraguay***.

¹⁴⁷⁷ Corte Suprema de Justicia de Paraguay. AI 2013, July 7, 2017. Acción de inconstitucionalidad en el juicio: "María Primitiva Villalba Ferrari S/ Amparo Constitucional C/ Municipalidad de Encarnación. Basado en el artículo 24 de la ley 5282/2014 de Transparencia Gubernamental". Año 2016 No. 1803. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression. Última Hora. July 20, 2017. ***CSJ rechaza acceso a la información pública en Encarnación***; ABC. July 20, 2017. ***Insisten con acceso a información de Comuna encarnacena***; Última Hora. July 21, 2017. ***Piden rever rechazo de caso de acceso a la información***; La Nación. July 21, 2017. ***Luis Yd niega información pública con aval de la CSJ***; Hoy July 21, 2017. ***Accionarán ante la CIDH en caso de que comuna de Encarnación siga negando lista de morosos***.

¹⁴⁷⁸ Tribunal de Apelaciones en lo Civil y Comercial Sexta Sala. Cedulón de Notificación. AS 67, September 21, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression. Última Hora. September 23, 2017. ***Conceden apelación contra el JEM por datos de contratados***; ABC. September 23, 2017. ***Cámara obliga al Jurado a dar actas***. ABC. August 14, 2017. ***Juez ordena al JEM proveer información***.

¹⁴⁷⁹ GIAI/Facebook. ***Algunas consideraciones del Grupo Impulsor del Acceso a la Información Pública***. September 30, 2017.

the honor committee, which was later turned over pursuant to the *amparo* proceedings.¹⁴⁸⁰ On October 5, the GIAI appealed the trial court's decision.¹⁴⁸¹ On November 6, the Court of Appeals in Civil and Commercial Matters [*Tribunal de Apelaciones en lo Civil y Comercial*], First Chamber, confirmed the first instance judgment¹⁴⁸².

1004. Principle 4 of the Declaration of Principles on Freedom of Expression which states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

G. Internet and freedom of expression

1005. On October 10, Representative Edgar Ortiz introduced a bill that would require the providers of online applications and social networks to immediately suspend and remove—at the request of the affected parties—any offensive or defamatory remark written anonymously on their websites against political parties, movements, or electoral candidates until the author is identified by his or her full name, identification, and social security number.¹⁴⁸³ The initiative provides that once the author of the online commentary is fully identified, the providers of the online applications and social networks can allow it to remain online. Civil society organizations warned that the initiative “violates the freedom of expression of citizens and is a direct attack on the right to political participation without fear of retaliation,” and asked Congress to reject the bill.

1006. The Office of the Special Rapporteur for Freedom of Expression has underscored that, because freedom of expression and privacy are closely related, the States should avoid the implementation of any measure that arbitrarily or abusively restricts the privacy of individuals. This is broadly understood to mean all private and anonymous space, free of intimidation and retaliation, necessary for an individual to be able to freely form an opinion and express his or her ideas, as well as to seek and receive information. In that regard, it has underscored that the protection of the right to privacy entails at least two specific policies connected to the exercise of the right to freedom of thought and expression: the protection of anonymous speech and the protection of personal data.¹⁴⁸⁴

H. Surveillance of Communications

¹⁴⁸⁰ Consejo de la Magistratura. Nota SG No 454/2017, September 15, 2017 (Respuesta a la solicitud de acceso a la información pública). Electronic dossier application No. 7724. Available at: <http://informacionpublica.paraguay.gov.py/portal/#!/ciudadano/solicitud/7724>

¹⁴⁸¹ Juzgado de Primera Instancia Civil y Comercial de 17º Turno. Judgment of September 29, 2017. Available at: Grupo Impulsor de Acceso a la Información Pública/Facebook. Published on September 29, 2017. Available at: https://m.facebook.com/story.php?story_fbid=2014654255435496&id=1482046618696265; ABC. October 1, 2017. ***Rechazan amparo contra Consejo y no entregará los test de evaluación***; La Unión 800AM. September 22, 2017. ***Mediante amparo, abogados piden datos sobre selección para Fiscalía ocultados por Consejo de la Magistratura***; 780 AM. September 30, 2017. ***Terna FGE: Amparistas contra el Consejo disconformes con decisión de Jueza***.

¹⁴⁸² Poder Judicial de Paraguay. Tribunal de Apelaciones en lo Civil y Comercial, Primera Sala. Judgment 70 of November 6, 2017.

¹⁴⁸³ Congreso Nacional de Paraguay. Bill D-1745454 of October 10, 2017. Available at: <http://sil2py.diputados.gov.py/formulario/FichaTecnicaExpediente.pmf>; TEDIC. ***Organizaciones de la sociedad civil de América Latina solicitan al Congreso que rechace el proyecto de Censura Política***. October 25, 2017.

¹⁴⁸⁴ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 132 – 133.

1007. On April 20, the organization TEDIC presented a report evaluating the country's six most important telecommunications companies.¹⁴⁸⁵ Upon releasing the report, **the organization emphasized the need for these companies to strengthen their standards for the protection of personal communications data and guarantees for complying with the rights of their users.** TEDIC stated that, "State-owned companies, such as COPACO and VOX, provide traffic data (metadata) to the Public Ministry, *without a judicial warrant.*"¹⁴⁸⁶ With respect to the content of communications, according to the results of the investigation, the companies examined agreed to turn over data on the content of a user's communications to justice authorities provided that there is a prior court order.

1008. On September 25, the President of the Republic Horacio Cartes vetoed parts of the draft "Law regulating the activity of mobile telephone service," which governs the activation of this type of telephone service.¹⁴⁸⁷ The bill provides that sales agents must demand that the person requesting service meet a number of requirements prior to the activation of that service, including filling out a form on which "the right thumbprint" of both the requester and the sales agent must be placed. The president's objection indicated that the prerequisites for activating service "would be a barrier to citizens' access to telecommunications," and that "the collection of biometric data could be dangerous because [a fingerprint] it is a unique piece of data that should be treated with extreme care." Accordingly, he concluded that the bill "fails to provide the minimum standards" that should govern the collection of personal data. The organization TEDIC noted that the objection to this bill is "a favorable precedent for the right to privacy of persons who access the Internet through their mobile devices."¹⁴⁸⁸

1009. The Office of the Special Rapporteur has observed that decisions to conduct surveillance that invades individual privacy should be authorized by independent judicial authorities, who should state the reasons why the measure is suitable for accomplishing the aims pursued in the specific case; whether it is sufficiently limited so as not to affect the right in question more than necessary, and whether it is proportional to the interest being promoted. Moreover, investigative processes that entail an invasion of privacy that is legally authorized and ordered by a judge of competent jurisdiction must respect other rights related to due process. The Office of the Special Rapporteur has also indicated that the reasons for the decisions adopted by the courts in such cases should be made public.

I. Diversity and Pluralism

1010. According to the Paraguayan Journalists' Union, the documented concentration of media ownership in the country is one "of the main causes of violations of the right to communication and information, and makes arbitrariness and abuses of power a daily reality."

1011. The report further stated that, "The limited number of media outlets reduces the flow and quality of information and jeopardizes the independence of journalists, who—in an increasingly restricted labor market—have less freedom to fulfill their duty to inform, and are more susceptible to pressure and self-

¹⁴⁸⁵ TEDIC. April 2017. *¿Quién defiende tus datos? Buscando la transparencia de los intermediarios de Internet en Paraguay.*

¹⁴⁸⁶ TEDIC. June 7, 2017. *¿Se cumple el estándar de protección del tratamiento de datos de nuestras comunicaciones, cuando la fiscalía accede a nuestros datos sin orden judicial?.*

¹⁴⁸⁷ Presidencia de la República del Paraguay. Decree 7756 of September 25, 2017. Available at: <http://sil2py.senado.gov.py/formulario/FichaTecnicaExpediente.pmf?q=FichaTecnicaExpediente%2F106057>; Congreso de la Nación. Bill N° 5.883, "Que regula la activación del servicio de telefonía móvil". August 21, 2017. Available at: <http://sil2py.senado.gov.py/formulario/FichaTecnicaExpediente.pmf?q=FichaTecnicaExpediente%2F106057#>

¹⁴⁸⁸ TEDIC. *Acertada decisión del Poder Ejecutivo para la defensa de nuestra privacidad.* September 28, 2017.

censorship.”¹⁴⁸⁹ According to an alert issued by the International Federation of Journalists (IFJ), between July and August of 2017, 18 journalists were fired “from the large media groups in Paraguay,” having been “let go because they dissented from the editorial line of their employer media outlet (...) or because they organized to obtain better salaries and working conditions.”¹⁴⁹⁰

1012. At the public hearing held during the 162nd Session of the IACHR, the Paraguayan Journalists’ Forum and the Paraguayan Photojournalists’ Association expressed concern over the fact that “sixty-five percent of the media outlets are in the hands of the family” of the President of the Republic. The representatives of the State were unaware of the source of this figure.¹⁴⁹¹

1013. On January 12, Unicanal S.A. and Teledifusora Paraguaya S.A. publicly disclosed an “agreement of intent,” “subject to the prior approval of Conatel,” for the purchase of *Red Paraguaya de Comunicación Canal 13*. With this sale, the channel would become part of Grupo JBB, which is owned by businessman Javier Bernardes and also owns the cable TV channel *Unicanal SA*.¹⁴⁹² In addition, in June, the National Telecommunications Commission (Conatel) awarded licenses for two new digital commercial television channels. The awardees were Mercuria SA and DTH Magnética SA, companies reportedly owned by Argentine and Paraguayan interests. The new free-to-air television channels have 18 months to begin operations.¹⁴⁹³

1014. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

J. Community Broadcasting

1015. In numerous reports, members of the community broadcasting sector continued to complain that community radio stations critical of the government were subject to persecution, bureaucratic restrictions, and financial subsistence problems to the extent that they are unable to obtain advertisers.¹⁴⁹⁴ In addition, during the public hearing **on the right to freedom of expression and community radio in the Southern Cone** held during the IACHR’s 162nd Session, the petitioner organizations asserted that the

¹⁴⁸⁹ Sindicato de Periodistas del Paraguay. Informe 2016. Extended version of the article published in the Human Rights in Paraguay 2016 Report of the Coordinadora de Derechos Humanos del Paraguay (Codehupy). Received electronically on September 1, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁴⁹⁰ Sindicato de Periodistas del Paraguay (SPP). **Comunicado de la Comisión Directiva**. August 30, 2017; Última Hora. September 1, 2017. **SPP denuncia ataque a la libertad de expresión en Salto del Guairá**. Hoy. June 5, 2017. **Recurren al Ministerio del Trabajo por “discriminación y persecución” de Vierci**; La Unión 800AM. June 9, 2017. **Periodistas de Última Hora exigen reunión con dueño tras denunciar discriminación en Grupo Vierci**; Foro de Periodistas Paraguayos (FOPEP). Twitter account. **June 21, 2017**. Última Hora. July 6, 2017. **Manifestación por despido de periodista de Unicanal**.

¹⁴⁹¹ IACHR. May 26, 2017. **Public Hearing. Protest and human rights in Paraguay** (Video: 41:40 – 43:50).

¹⁴⁹² Hoy. January 12, 2017. **Bernardes gana pulseada a A.J Vierci y compra a Christian Chena Canal 13**; Última Hora. January 13, 2017. **Bernardes acuerda compra de Canal 13 y se pone fin a la ola de rumores**. La Nación. January 13, 2017. **Grupo de medios JBB confirma la compra de activos de Canal 13**.

¹⁴⁹³ ABC Color. June 22, 2017. **Conatel adjudica canales digitales**; Prensario Internacional. June 27, 2017. **Paraguay adjudica dos nuevas licencias de TV abierta**.

¹⁴⁹⁴ Última Hora. February 13, 2017. **Radios comunitarias son presas de la burocracia y persecución del Gobierno**; SIGNIS ALC. February 13, 2017. **Radios comunitarias sufren persecución de autoridades y empresarios**; Última Hora. May 3, 2017. **Persecución a radios comunitarias, límite a libertad de prensa en Paraguay**;

country's laws continue to be discriminatory and fail to consider the respective inter-American standards.¹⁴⁹⁵ Furthermore, "journalists and community radio broadcasters are frequently subject to threats and attacks from criminal organizations as well as from government authorities, in a climate of serious impunity," according to a report by Reporters Without Borders.¹⁴⁹⁶

1016. Similarly, according to information from the Observatory of the Paraguayan Journalists' Union, the National Telecommunications Commission (Conatel) issued a decision on February 15 notifying the community radio station *Record FM* of Arroyito, in the Department of Concepción, that its authorization to provide service was being terminated. According to SPP, the stated reason was the expiration of the station's license, and it reportedly received notice of the decision two days before the first municipal elections were held in Arroyito.¹⁴⁹⁷ Those affected asserted that the measure was politically motivated.

1017. On various occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media in our region fulfill a fundamental function for the exercise by diverse sectors of society of freedom of expression and access to information.¹⁴⁹⁸ In that sense, it is necessary for the states to legally recognize community media and to consider fair spectrum reserves for this type of media, along with adequate conditions of access to licenses that would take into account the circumstances. Similarly, community media must benefit from fair and simple procedures for obtaining licenses, must not have to comply with technological or other types of requirements that involve disproportionate barriers for access to licenses, and in their operation must not be the target of differentiated treatments that are not adequately justified.¹⁴⁹⁹

K. Government Advertising

1018. According to publicly available information, on February 8, Paraguay's Vice President Juan Afara met with members of the Paraguayan Broadcasters' Union [*Unión de Radiodifusores del Paraguay*] to propose a political and business relationship to facilitate informing the public about government works and "good news" about public administration.¹⁵⁰⁰ During his speech, the Vice President expressed his intent to strengthen ties with "legal" broadcasters and stressed the need for "the truth to reach" citizens in a context in which there are "ill-intentioned" people who "undermine" the government's work, and promised to maintain "business ties" with the broadcasters through Sicom and Conatel.¹⁵⁰¹ On February 9, the Association of Community Radio Stations and Alternative Media Voices Paraguay [*Asociación de Radios Comunitarias y*

¹⁴⁹⁵ IACHR. Public hearing. Situation of the right to freedom of expression and community radios in the Southern Cone. May 26, 2017.

¹⁴⁹⁶ Reporters Without Borders. Paraguay. No progress.

¹⁴⁹⁷ RTV. March 24, 2017. URGENTE: A 2 días de elecciones municipales, CONATEL ordena silencio a Radio Comunitaria de Arroyito: "Conatel clandestinely shuts down community radios". Twitter account of Sindicato de Periodistas del Paraguay (SPP) @PeriodistasPy March 27, 2017; Observatorio Sindicato de Periodistas del Paraguay. Electronic communication received by the Office of the Special Rapporteur for Freedom of Expression on March 27, 2017.

¹⁴⁹⁸ IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para. 414; IACHR. Annual Report 2002. Report of the Special Rapporteur for Freedom Of Expression. Chapter IV (Freedom of Expression and Poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 41.

¹⁴⁹⁹ IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 92 and following.

¹⁵⁰¹ ABC Cardinal, 730AM. "Vínculo comercial" para publicar "buenas noticias" [Audio Vicepresident of the Republic. Minute 3: 17 - 7:00]; ABC. February 9, 2017. Usan a Conatel y Sicom para extorsión política a radios [Speech transcription]; ABC Color February 10, 2017. Primera reunión de Afara para bajar línea a radios fue el lunes; Crónica. February 10, 2017. Gobierno debe decir "las obras que hace"; Observacom. February 15, 2017. Vicepresidente de Paraguay propuso "vínculo político-comercial" a radiodifusores para que difundan noticias positivas del gobierno.

Medios Alternativos Voces Paraguay] issued a statement questioning the government's action.¹⁵⁰² The Inter American Press Association (IAPA) was also aware of this situation: according to the report on Paraguay from the mid-year meeting of the Inter American Press Association, held from March 31 to April 3, 2017 in Guatemala, "The existence of denunciations by social organizations of pressures from those in power against news media has given rise to questions about governmental interference in press freedom." It further noted that, "[Added to this is] the government initiative to pay owners of radio stations for them to broadcast news favorable to the government. This explicit offer was made by Paraguayan Vice President Juan Afara in February."¹⁵⁰³

1019. According to the information available, in September, Senator Víctor Bogado (ANR) filed a complaint alleging defamation [*difamación, calumnia e injuria*] against the director of the newspaper *ABC Color*, Aldo Zuccolillo, and seeking compensation of \$PYG 5 million 400 thousand (approximately US\$ 956 thousand). The congressman reportedly filed a similar complaint in 2016. The newspaper has investigated and raised questions about the growth of the congressman's assets.¹⁵⁰⁴

1020. In October, the Ministry of Education and Culture passed a resolution prohibiting the dissemination and use of printed and digital materials referring to "gender theory and/or ideology" in schools within the Ministry's purview.¹⁵⁰⁵

1021. Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that "The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law."

¹⁵⁰² Demoinfo.org. February 9, 2017. *Voces Paraguay dice que es un atentado a la democracia propuesta del gobierno a propietarios de medios.*

¹⁵⁰³ Inter American Press Association (IAPA). Mid-year Meeting – Antigua, Guatemala, Guatemala. March 31 - April 3, 2017. Paraguay Report (No date).

¹⁵⁰⁴ Inter American Press Association (IAPA). Report on Paraguay. General Assembly, October 27- 30, 2017; Hoy. September 14, 2017. Víctor Bogado querrela a Zuccolillo por calumnia y le exige G. 5.400 millones; ABC Color. August 13, 2017. ¿De dónde sacó la plata?

¹⁵⁰⁵ Ministerio de Educación y Cultura. Resolución 29664. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression. Última Hora. October 10, 2017. MEC prohíbe uso de materiales sobre "ideología de género".

27. PERU

1022. The Executive has made efforts to recognize the work of the press and to create an environment free of threats for the exercise of journalism and freedom of expression in Peru. However, threats to freedom of expression have emerged from the majority of the legislative branch, some of whose members have submitted bills that seek to establish state controls over information, in the name of "veracity", among other ways to condition the press. A project that proposes impeding the exercise of journalism by media executives when they are involved in alleged acts of corruption was also presented; the latter was a matter of concern for the Office of the Special Rapporteur.

1023. Violence against journalists and the media continues to be an unresolved issue in different areas of the country, where attacks, threats have occurred, and even an aberrant murder that took place in the town of Sayán that still remains unpunished.

1024. The permanence in the legal system of crimes such as defamation and insults continues to give rise to criminal complaints against Peruvian journalists and columnists for reporting or commenting on matters of public interest. Due to this, several media workers have had to face criminal convictions at the district level for this type of proceedings. The role of the courts of appeal and the Supreme Court has been important in ensuring a balance that takes into account the public interest for information, the importance of investigative journalism, and a robust opinion, in a democratic society.

A. Murders

1025. On February 27, the lifeless body of journalist José Feliciano Yactayo Rodríguez, who worked as an independent journalist and audiovisual producer, was found. His dismembered body was found in Andahuasi, a village in the district of Sayán, in the province of Huaura, department of Lima. According to the information released, Yactayo would have disappeared two days before, after meeting with some friends near his home in the city of Lima.

1026. On April 9, the authorities informed of the arrest of Wilfredo Zamora Carrión, who was allegedly responsible for the crime. In these events, businessman Aldo Cáceda Benvenuto has also been involved for, presumably, helping Zamora. The authorities have not reported whether the murder was linked to the journalistic activities of the victim¹⁵⁰⁶.

1027. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁵⁰⁷

¹⁵⁰⁶ Notimérica. March 16, 2017. *¿Quién era Pepe Yactayo, el periodista asesinado en Perú?*; Notimérica. March 16, 2017. *La UNESCO condena el asesinato del periodista José Feliciano Yactayo Rodríguez en Perú*; RPP Noticias. March 3, 2017. *El caso del asesinato del periodista José Yactayo explicado paso a paso*; América Noticias. March 3, 2017. *Autoridades investigan muerte de periodista José Yactayo*; El Comercio. April 9, 2017. *Asesinato del periodista José Yactayo tuvo móvil pasional*; Trome. April 10, 2017. *José Yactayo: ¿Por qué Wilfredo Zamora Carrión descuartizó su cadáver si dice que no lo mató? [VIDEOS]*; AmericaTV. May 11, 2017. *Caso Yactayo: video muestra la llegada a Lima del empresario vinculado al crimen*; El Comercio. June 4, 2017. *Este es el testimonio de Aldo Cáceda ante el Poder Judicial sobre muerte de José Yactayo*.

¹⁵⁰⁷ IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. *Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II: *Evaluation of the State of Freedom of*

1028. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

B. Attacks, threats, and intimidation to journalists and the media

1029. During 2017, the Office of the Special Rapporteur learned of several events in which a dozen journalists and a media outlet were subjected to acts of restriction or harassment to their journalistic work. Several of these events were carried out by state agents, and others are related to conflicts between communities and extractive industry actors in Peru, which led to the arrest of nine journalists and the expulsion of two of them from the country.

1030. On February 3, journalist Marco Bonifacio Sánchez, host of the program *'El Canillita'*, which is broadcasted on *Turbo Mix Radio y Televisión*, would have been ambushed by unknown individuals, who put him in a vehicle, beat him and tortured him, and even tried to cut off his tongue. The attack would have occurred in the city of Cajamarca, capital of the province of the same name, at night when the journalist was walking back to his home. According to his colleague, Ronald Tiper, the attack would be linked to the broadcasting of a video, made by Bonifacio, in which acts of corruption by the mayor of Cajamarca, Manuel Becerra Vélchez, would have been presented¹⁵⁰⁸.

1031. On April 21, agents of the National Police, accompanied by immigration agents, would have detained in Cuzco the American documentary filmmaker John Dougherty and the Canadian activist Jennifer Moore, under accusations of carrying out prohibited activities under the tourist status in which they entered Peru on April 15. According to information of public knowledge, Dougherty and Moore participated in the showcase of the documentary *"Fraude de Flin Flon"* which denounced the negative consequences that the activity of the mining company HudBay Minerals, of Canadian origin, would have had for the populations of diverse countries in the continent. After being detained a few hours, both were released and, according to press reports, they had traveled to Bolivia on the recommendation of their lawyers before the hearing to which they were summoned by Peruvian immigration authorities on April 25. The Government of Peru would have prohibited them from entering the country as a result of these events¹⁵⁰⁹.

1032. On July 12, the director of the digital media *Chimbotenlinea* reported an alleged act of intimidation against the aforementioned media, carried out by the Office of the General Attorney of District of the Santa Province's [*Ministerio Público del Distrito Fiscal de la provincia de Santa*], by distributing a press release in which it would scold the publication of information related to a criminal investigation carried out by the Specialized Corporate Provincial Prosecutor's Office against Organized Crime [*Fiscalía Provincial Corporativa*

Expression in the Hemisphere. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹⁵⁰⁸ Instituto Prensa y Sociedad. February 6, 2017. *Agreden a periodista e intentan cortarle la lengua*; Clases de Periodismo. February 6, 2017. *Perú: atacan a periodista e intentan cortarle la lengua*; Correo. February 6, 2017. *Cajamarca: agreden a periodista e intentan cortarle la lengua*; Committee to Protect Journalists (CPJ). February 8, 2017. *Assailants try to cut out Peruvian journalist's tongue*.

¹⁵⁰⁹ Ministerio del Interior. April 22, 2017. *COMUNICADO MININTER N° 008-2017 SOBRE LA SITUACIÓN MIGRATORIA IRREGULAR DE UNA CIUDADANA CANADIENSE Y UN NORTEAMERICANO*; Movimientom4. April 22, 2017. *Comunicado Urgente: policía peruana retiene y hostiga a Jennifer Moore y John Dougherty*; La República. April 22, 2017. *Denuncian detención ilegal de periodista estadounidense y ciudadana canadiense*; El Comercio. April 23, 2017. *Una mujer canadiense y un estadounidense fueron detenidos y pueden ser expulsados de Perú*; ONIC. April 23, 2017. *Liberan a Jennifer Moore, integrante de Mining Watch Canadá e integrante del Movimiento Mesoamericano contra el Modelo Extractivo Minero (M4)*; Radio Canada International. April 25, 2017. *Pese a amedrentamiento policial presentan en Perú el documental "Fraude de Flin Flon"*.

Especializada contra la Criminalidad Organizada], which would involve a criminal gang operating in the area. According to the authorities' press release, this information would be classified as confidential and they considered that its disclosure would affect the investigations and "represents a risk to the physical and psychological integrity of the Prosecutor in charge of the case", which is why they would have warned about the possibility of it resulting in criminal, civil and administrative sanctions against the media. The warnings were condemned by various journalistic organizations that considered them a threat to journalists for publishing information of public interest¹⁵¹⁰.

1033. On October 20, the police would have detained journalists Martín Ramos Mamani, of *Stereo Uno*; Walter Porras Laguna, from the weekly *Vista Previa*; Carlos Zuñiga Zeballos, of *TV Austral*; Jesús Fernández Rivera, of *TV Unsa*; Giancarlo Aragón Villanueva, from *Quatro TV*; Jorge Gámez Zuñiga, of the newspaper *Sin Fronteras*, and Julio Revilla Riega while they were covering a community protest against the mining company Buenaventura, in the province of Castilla. According to the information released, the community members were accused of illegally entering the land where the Paula mine is located, an act that provoked the police to be present, registering the detention of some fifty community members and the seven media workers covering the events. Various union groups reported that the media workers would have been subject to physical attacks and threats¹⁵¹¹.

1034. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁵¹²

1035. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Social protest

1036. During the month of January, at least two clashes between protesters and the police would have taken place, resulting in 11 wounded individuals-including a child and six police officers- and about 70

¹⁵¹⁰ Chimbotonlinea.com. July 11, 2017. *"Los Chacales del Desierto" implicados en sicariato, extorsiones y tráfico de terrenos en Nuevo Chimbote*; Chimbotonlinea.com. July 12, 2017. *Procurador calificó como un "exceso" el comunicado emitido por la fiscalía contra Chimbotonlinea.com*; IPYS. July 12, 2017. *Corte de Justicia amenaza con denunciar penalmente a medio de comunicación digital*; RSD. July 12, 2017. *Chimbote: Fiscalía amenaza con denunciar a periodistas por publicar información "reservada"*.

¹⁵¹¹ Correo. October 21, 2017. *Policía detiene a comuneros y periodistas en incidente de mina Paula*; RadioUno. October 21, 2017. *Arequipa: Detienen a periodistas y comuneros en protesta contra minera*; FPP. October 21, 2017. *Pronunciamiento. Exigimos Libertad Inmediata de Periodistas Detenidos por Informar Contaminación Ambiental de Minera Buenaventura*; El Búho. October 21, 2017. *Siete periodistas detenidos mientras cubrían denuncia contra minera Buenaventura*; ANP. No date. ANP: *Detención de periodistas constituye ataque letal a derecho a la información*.

¹⁵¹² IACHR. *Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. *Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression*. Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

detainees. The events would have taken place on January 5 and 12, when residents of the Puente Piedra district, in the Province of Lima, protested against the establishment of a toll fee on the Panamericana Norte Highway, following a contract signed between the municipality of Lima and the company Rutas de Lima. According to the information released, the police would have used tear gas on both occasions to disperse the demonstrators and would have shot in the air. On January 17, the mayor of Lima, Luis Castañeda, announced the suspension of the toll. However, in June there would have been new protests, this time demanding the withdrawal of all toll points in the Peruvian capital¹⁵¹³.

1037. Between June 15 and September 4, a national strike of education workers would have taken place, called by the Unified Workers Union in Education of Peru [*Sindicato Unitario de Trabajadores en la Educación del Perú*] (SUTEP) to demand a salary increase, the suspension of the evaluation process announced by the Government, the increase in the number of hiring, and the repeal of the Law of the Teacher Education Reform [*Ley de la Reforma Magisterial*] (Law 29944), among others. The strike, which would have begun in the department of Cuzco, gradually spread to different regions of the country where at least 13 clashes would have been recorded between rival factions of the teachers' union and between the police, on various dates. On July 19, the Council of Ministers published in the Official Gazette a decree declaring a state of emergency in five districts of the Department of Cuzco and one of the Department of Puno, a measure that implied the suspension, for 30 days, of the constitutional rights relating to personal liberty and security, the inviolability of domicile, and freedom of assembly and transit. The measure, which was lifted the next day for the districts of Machu Picchu and Ollantaytambo, would have been motivated by various acts of protest by teachers, including the blockage of the train tracks leading to Machu Picchu, tearing down a section of the perimeter wall of the airport of Cuzco, and blocking the international bridge Ilave that unites Peru and Bolivia. The confrontations between rival factions of the SUTEP and the police would have left an undetermined number of people injured and 14 detained. In two of the protests, two reporters covering the events were reportedly attacked¹⁵¹⁴.

1038. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission

¹⁵¹³ El Comercio. January 5, 2017. *Puente Piedra: así protestaron en Panamericana Norte por peaje*; RPP. January 5, 2017. *28 detenidos y 9 heridos en protesta contra el peaje en Puente Piedra*; AméricaTV. January 6, 2017. *Peaje Puente Piedra: manifestantes iniciaron marcha por la Panamericana Norte*; Perú21. January 12, 2017. *Peaje en Puente Piedra: Hay 60 detenidos por protesta en Panamericana Norte [Video]*; RPP. January 12, 2017. *La Policía detuvo a más de 60 personas en marcha en Puente Piedra*; RPP. January 18, 2017. *Luis Castañeda: "El peaje de Chillón no va"*; RPP. June 1, 2017. *Los vecinos de Puente Piedra no quieren ningún peaje en su distrito*.

¹⁵¹⁴ A primera hora. June 6, 2017. *SUTEP anuncia inicio de huelga nacional indefinida desde el 15 de junio*; La República. June 6, 2017. *Maestros inician huelga indefinida desde el próximo 15 de junio*; Telesur. July 6, 2017. *Docentes en Perú mantienen 23 días de paro indefinido*; Perú21. July 11, 2017. *Cusco: Profesores bloquean vía del tren a Machu Picchu y exigen aumento de sueldo*; Correo. July 14, 2017. *Maestros en huelga atacan aeropuerto de Cusco [FOTOS]*; Perú21. July 15, 2017. *Ministerio de Educación y Sutep concretaron acuerdos [VIDEO]*; Perú21. July 16, 2017. *Profesores de Sutep y Sute se pelearon en Plaza de Armas de Arequipa*; El Peruano, July 19, 2017. Decreto Supremo N° 078-2017-PCM. Available at https://www.google.com.mx/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjiw0lvCqavXAhVVG9WMMKHXXLDmoQFggxMAI&url=http%3A%2F%2Fepdoc2.elperuano.com.pe%2FEpPo%2FDescargaIN.asp%3FReferencias%3DMTU0NjMxN1_8zMjAxNzA3MTk%3D&usg=AOvVaw33NhpYX-57ES_xb4tkWpGC; El Comercio. July 21, 2017. *Puno: maestros en huelga bloquean paso hacia Bolivia en Ilave*; El Comercio. July 21, 2017. *Perú declara estado de emergencia en Machu Picchu por huelga de maestros*; Perú21. July 24, 2017. *PPK sobre huelga de maestros en Cusco: "Aquí hay una motivación política"*; CanalN. August 21, 2017. *Profesores en huelga agredieron a equipo de Canal N*; Trome. August 21, 2017. *Huelga de maestros: Agreden a periodista y camarógrafo durante marcha [VIDEO]*; Perú21. September 3, 2017. *Huelga de maestros: Cronología de una protesta donde los que más pierden son los alumnos*; RPP. September 3, 2017. *Reportera denunció que un miembro de la seguridad de Pedro Castillo le dio un puñete en el rostro*; Correo. September 3, 2017. *Profesores ponen fin a la huelga y clases se reinician mañana*; Telesur. September 4, 2017. *Reinician clases en Perú tras 75 días de huelga docente*.

has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”¹⁵¹⁵ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹⁵¹⁶

1039. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹⁵¹⁷

D. Subsequent liability

1040. On March 31, the 35th Criminal Judge of the City of Lima sentenced lawyer Ronald Alex Gamarra Herrera for finding him guilty of the crime against honor in its aggravated modality of defamation. Gamarra Herrera was reportedly accused by Luz Marina Guzmán Díaz, a member of the National Council of Magistrates [*Consejo Nacional de la Magistratura*] (CNM) after he published an opinion piece titled “*Favor con favor se paga*”. The text had been published on March 20, 2015 by the weekly *Hildebrandt* in its *Trece*, where Gamarra would have referred to the alleged existence of an exchange of favors between the Councilor Guzmán Díaz and the Prosecutor Mirtha Chenguayén Guevara. The judge considered an aggravating circumstance of the conduct the fact that the author of the text was a lawyer by profession, as well as the fact that “the opinion expressed by the defendant of Ms. Luz Marina Guzmán Díaz, is not based directly on making public information known –to inform–, but on making a verdict or appearing to be making one, as if he considered her to be convicted, that is, he carries out a stigmatization of that person, and that is where the honor of this person must be respected, as we must differentiate that one legal thing is ‘the public cause’ or ‘public knowledge’, and another one is to pour denigrating phrases against the honor of the person, imputing or denigrating them for such or so action, under the right of freedom to inform.”¹⁵¹⁸

1041. Gamarra Herrera was sentenced to one year of suspended prison on the condition that, during said period, he does not change his address without prior authorization from the Court; present himself every 30 days to the Biometric Control Center [*Centro de Control Biométrico*] of the Court to report on its activities; pay \$10,000.00 Sol Peruano (PEN) (approximately US\$3,000.00) for civil damages, within a period not exceeding five months; not commit another crime of aggravated defamation; and pay a fine of more than PEN \$3,000.00 (approximately US \$900.00). The Office of the Special Rapporteur expressed concern over this criminal conviction and recalled that this was the third time that a Peruvian district court issued a similar judgment in less than a year. The Office also recalled that “the case law of the Inter-American System has repeatedly recognized that freedom of expression grants—to both the directors of media outlets and the journalists that work for them—the right to disseminate information and ideas of all kinds, especially on public interest issues”, which is why he reiterated the call to the Peruvian State to adopt “the international standards on

¹⁵¹⁵ IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁵¹⁶ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹⁵¹⁷ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

¹⁵¹⁸ 35^o Juzgado Penal para Reos Libres. Judgment delivered in dossier 05454-2015-0-1801-JR-PE-35. March 31, 2017. Para. 8. Available at: <http://legis.pe/wp-content/uploads/2017/03/Sentencia-que-condena-a-Ronald-Gamarra.pdf>.

freedom of expression regarding the subsequent liability for the dissemination of opinions and information, and as a consequence, to promote the reform of domestic criminal legislation that punishes speech that relates to public interest or directed at public officials."¹⁵¹⁹

1042. On February 7, the 34th Provincial Criminal Prosecutor's Office of Lima decided to open an investigation and summon journalist Jaime Chinchá Ravines of the Willax TV channel to testify after the Venezuelan Embassy in Peru denounced him for having broadcasted, on January 10, through the program *'Primer Plano'*, a journalistic note that would entail for the Venezuelan diplomats, an accusation for the commission of an offense "against public trust". The journalistic piece would consist of a collection of reactions of Venezuelan citizens, interviewed on the outskirts of the building of the aforementioned Embassy, regarding the declaration, issued by the Venezuelan National Assembly, of "abandonment of office" by President Nicolás Maduro. The same Prosecutor's Office reversed its decision on March 30 when its title holder, Antonio Gosicha, resumed the post from which he had been absent. In explaining the reason for the overturn, Gosicha explained that the Deputy Prosecutor "has sinned of being diligent by accepting a complaint that under Peruvian law does not contain any crime."¹⁵²⁰

1043. On February 22, the Press and Society Institute [*Instituto Prensa y Sociedad*] (IPYS) warned of the existence of a complaint filed by a Peruvian judge against journalists Antonio Bazán Chero, of the newspaper *La Industria*, Juan Mendoza, correspondent of *Peru 21*, and Fátima Constantino and Juan Vejarano, of the newspaper *La República*. The alleged facts occurred on February 20, when Judge Cecilia Margarita Grandez Rojas filed a lawsuit against the journalists after they disseminated information regarding a trial in which the judge would be involved and that would involve a case of domestic violence against his own son. IPYS requested the respect of journalists' right to freedom of expression¹⁵²¹.

1044. Principle 11 of the IACHR's Declaration of Principles on Freedom of Expression states: "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as *"desacato laws,"* restrict freedom of expression and the right to information." Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.¹⁵²²

¹⁵¹⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 24, 2017. *Press Release R50/17. Office of the Special Rapporteur Expresses Concern over a New Criminal Conviction for Defamation against a Columnist and Human Rights Defender in Peru*; LaMula.PE. March 31, 2017. *Otro golpe a la libertad de expresión: Ronald Gamarra fue condenado a un año de prisión suspendida*; La República. March 31, 2017. *Ronald Gamarra es condenado a un año de prisión suspendida*; Ypis. April 3, 2017. *Ex procurador anticorrupción es sentenciado por difamación*; Perú21. April 13, 2017. *Ronald Gamarra: ¿Sentencia es atentado a la libertad de expresión?*

¹⁵²⁰ Willax Televisión/YouTube. January 10, 2017. *Primer Plano - ENE 10 - Parte 1/5 - VENEZOLANOS SE ENTERAN DE LA DESTITUCIÓN DE MADURO*; Perú21. March 27, 2017. *Gobierno de Venezuela denunció a periodista Jaime Chinchá y equipo de Willax TV*; Correo. March 28, 2017. *Venezuela denuncia a Jaime Chinchá por nota periodística*; La República. March 28, 2017. *Nicolás Maduro: embajada de Venezuela denuncia a periodista Jaime Chinchá*; Instituto Prensa y Sociedad. March 29, 2017. *IPYS envía carta a Fiscal de la Nación solicitando archivar investigación a periodista*; El Comercio. March 29, 2017. *Embajada de Venezuela presentó una denuncia por un reportaje para Willax TV. Fiscalía abrió una investigación preliminar*; Perú21. April 5, 2017. *Fiscalía desestimó denuncia del gobierno de Venezuela contra Jaime Chinchá*; "The prosecution decides to file the complaint of Chavism against me. Who accepted it was a deputy. The office bearer arrives and corrects the mess". Twitter account of Jaime Chinchá @JaimeChinchá. [April 5, 2017](#).

¹⁵²¹ Instituto Prensa y Sociedad. February 22, 2017. *Jueza denuncia a periodistas*.

¹⁵²² IACHR. Annual Report 2015. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

1045. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism,¹⁵²³ because “they have voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call information into question through its convening power.”¹⁵²⁴ In this regard, the Inter-American Commission stated that “[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy.”¹⁵²⁵ Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, “[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official.” That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest.

E. Direct and indirect censorship

1046. On March 7, the *Partido Fuerza Popular* bloc, a majority in the Congress of the Republic, presented an initiative titled “Law that protects the freedoms and information rights of the people” [*Ley que protege las libertades y derechos informativos de la población*]. The project, which contains only three articles, would have as its object, according to its promoters, “to adopt measures designed to guarantee society’s right to objective, accurate, plural, and timely information, and to strengthen the exercise of freedom of expression of the media”, as well as “to avoid influence on content and editorial line, among other analogous concepts, as a result of the interference of acts of corruption by owners or third parties linked to the media, protecting the freedom of expression and the right of information of citizens.”

1047. The project, which was described as unconstitutional by various civil organizations and by the Ombudsman's Office, proposes to prohibit those who have been convicted of corruption offenses, “to the detriment of the State”, to participate as directors, shareholders or media editors, and even proposes to extend this prohibition to those who are under investigation after having been reported for said crimes. Additionally, the project proposes the creation of a “citizen oversight”, whose function would be to participate “in the management of the media”. On March 31, the authors of the project announced an amendment to the original project, which would have removed the ban originally proposed to those who are under investigation

¹⁵²³ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177. Para. 86-88; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135. Para. 83-84; I/A Court H. R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87.

¹⁵²⁴ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177. Para. 86-88; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135, Para. 83; I/A Court H. R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125-129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 115.

¹⁵²⁵ IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

for corruption, as well as the proposal to create a citizen oversight. President Pedro Pablo Kuczynski would have warned on April 7 that he will not sign "any press law" if it's sent by Congress¹⁵²⁶.

1048. The Office of the Special Rapporteur recalls that article 13.3 of the American Convention establishes that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions." Similarly, Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that "The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law."

F. Government Advertising

1049. On November 15, Congressman Mauricio Mulder, representative of the American Revolutionary Popular Alliance [*Alianza Popular Revolucionaria Americana*] (APRA), presented before Congress a bill that aims to regulate the advertising expenditure of the Peruvian State (Law No. 2331). In this regard, in its article 3, the bill provides for the prohibition of any kind of government advertising in private media, while establishing that the violation of this mandate will be considered a crime of embezzlement. In addition, the project foresees that the governmental management tasks should be publicized in the state media "at a cost rate". In addition, he adds that all public entities must subscribe an account in the most widely used social networks and with the largest number of users, where they will have to communicate their activities and social interest issues¹⁵²⁷.

1050. The bill has been criticized by different public officials and members of civil society. In this regard, it had been indicated that the regulations could affect the right to information that citizens have to know what is happening in public management, what are the important problems in health, education. For its part, the project would have been labeled "wrong" because "[t]he thing is to handle advertising with balance to avoid concentrating on one media outlet and another is to cut it radically." Likewise, the Inter-American Press Association (IAPA) reported that "the law affects the freedom of competition", constituting the State as "a monopoly", and that although the media are companies "they ensure the validity of a right of people to be informed"¹⁵²⁸.

1051. The Office of the Special Rapporteur recalls that article 13.3 of the American Convention establishes that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the

¹⁵²⁶ Congreso de la República. March 7, 2017. *Proyecto de Ley N° 1027/2016-CR*; RPP Noticias. March 24, 2017. *El Congreso evalúa un proyecto de ley para controlar a los medios de comunicación*; La República. March 24, 2017. *Proyecto fujimorista pretende controlar los medios*; AmericaTV. March 30, 2017. *Defensoría: Proyecto de ley de medios "colisiona con derechos y libertades"*; El Comercio. March 30, 2017. *En claves: el proyecto fujimorista sobre control de medios*; AmericaTV. March 31, 2017. *Fuerza Popular: Letona da detalles del nuevo proyecto de ley de medios*; Gestión. March 31, 2017. *Consejo de la prensa rechaza persistencia de Fuerza Popular en nueva Ley de medios*; La República. April 7, 2017. *PPK: "No quiero ninguna ley de prensa, yo no firmaré"*.

¹⁵²⁷ La República. November 16, 2017. *Mauricio Mulder presenta proyecto de ley que discrimina a medios periodísticos*; America TV. November 17, 2017. *Mauricio Mulder presentó proyecto de ley que regula gastos de publicidad del Estado*; La Mula. November 17, 2017. *Apra presenta proyecto de ley para prohibir publicidad estatal en medios privados*.

¹⁵²⁸ La República. November 17, 2017. *Del Castillo sobre iniciativa de Mulder: "Un proyecto de esa naturaleza es equivocado"*; La República. November 18, 2017. *SIP sobre proyecto de Mauricio Mulder: "Lesiona el derecho a la libre competencia"*; RPP Noticias. November 20, 2017. *Defensor del Pueblo: "El proyecto de Mulder afecta el derecho a la información"*.

dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions." Similarly, Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that "The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law."

G. Other relevant situations

1052. On July 17, Congressman José Marvin Palma Mendoza, of the parliamentary group *Fuerza Popular* presented a bill to add Article 154-B to the Criminal Code of Peru with the purpose of sanctioning the nonconsensual dissemination of images or audios with sexual content, a behavior known as "nonconsensual pornography" or "revenge pornography". The initiative, which at the close of this report is being studied in the Justice and Human Rights Commission [*Comisión de Justicia y Derechos Humanos*], establishes that the crime of "diffusion of nonconsensual intimate material" would be committed by "he/she who, without consent and deliberately disseminates, threatens, or makes available images, audio-visual material, or audio, with sexual content of an individual with whom he or she has maintained or maintains an intimate or trusting relationship". The preamble includes, among other elements to support its relevance, the provisions of Articles 2, 5 and 11 of the American Convention on Human Rights, as well as Advisory Opinion No. 18 of the Inter-American Court of Human Rights, in which the obligations contracted by the states parties are specified, in relation to the generic duty established in article 2 of the Convention, regarding the need to adopt measures that guarantee "on one hand the suppression of norms and practices of any nature that entails violation of the guarantees provided for in the Convention. On the other hand, the issuance of norms and the development of practices conducive to the effective observance of said guarantees."¹⁵²⁹

¹⁵²⁹ Congreso del Perú. July 17, 2017. *Proyecto de Ley N° 1669/2016-CR*; Legis.pe. July 18, 2017. *Difusión de material íntimo no consentido se sancionaría hasta con 6 años de prisión*; Hiperderecho. July 19, 2017. *Presentan Proyecto de Ley para combatir la difusión de pornografía no consentida en Perú*.

28. DOMINICAN REPUBLIC

1053. The situation of risk for the exercise of journalism and for those who report acts of alleged corruption worsened in the Dominican Republic in 2017. The murder of two journalists and a lawyer linked to anti-corruption social organizations and a popular leader were recorded, all of which could be linked to the exercise of the right to freedom of expression. Various civil society organizations also reported restrictions on the exercise of protest, particularly when they go to public buildings or during government events.

A. Progress

1054. On October 4, the national government put into operation the Unified Portal for Requesting Access to Public Information [*Portal Único de Solicitud de Acceso a la Información Pública*] (SAIP), through which Dominican citizens will be able to request access to information electronically. The project is part of the Dominican Republic's agreements with the Open Government Partnership (OGP), an initiative it joined in 2012. The portal, run by the Office of Government Ethics and Integrity [*Dirección General de Ética e Integridad Gubernamental*] (DIGEIG), reportedly received over 1,200 requests for access to information during its first four weeks in operation.¹⁵³⁰

B. Murders

1055. The situation of risk for journalists and activists worsened in the Dominican Republic during 2017. The murders of two journalists, a lawyer with ties to anti-corruption social groups, and a popular leader were reported; all of those cases may be connected to the exercise of the right to freedom of expression. The number of murders committed during the year was unprecedented, according to the reports of the Office of the Special Rapporteur from 2010 to 2016.

1056. On February 14, journalists Luis Manuel Medina and Leónidas Martínez were murdered during the airing of their program *Milenio Caliente*, on the radio station *FM 103.5* which broadcasts from the city of San Pedro de Macorís, capital of the Province of San Pedro de Macorís. The attack, perpetrated by a single individual, also reportedly resulted in the injury of the station's secretary, Dayana García. According to various media outlets, the assailant entered the radio station, shot the journalists, and fled the scene. However, because the program was also broadcast live on social media, his image was captured on video, reportedly leading to his identification.

1057. The National Police reported the next day that the alleged murderer, identified as José Rodríguez, had been located at a residence in the Villa Azucarera neighborhood, in the district known as "Los Multis," and, once cornered, shot himself to death. Media reports stated that there had been a standoff between the police and the alleged murderer, who reportedly committed suicide after a chase in the area surrounding to the residence.¹⁵³¹

1058. Different civil society organizations condemned the journalists' murder and demanded that the necessary investigations be carried out to identify the masterminds of the attack, if any. The Office of the Special Rapporteur issued a press release condemning the crime and demanding that the Dominican

¹⁵³⁰ Presidencia de la República Dominicana. October 4, 2017. Press release. *Gobierno lanza Portal Único de Solicitud de Acceso a la Información Pública (SAIP)*; 7 días. October 5, 2017. *Gobierno lanza portal único de solicitud de acceso a la información pública*; Presidencia de la República Dominicana/Official YouTube channel. October 6, 2017. *Gobierno lanza Portal Único de solicitud de Acceso a la Información Publica (SAIP)*.

¹⁵³¹ Univisión. February 14, 2017. *Matan a tiros a dos periodistas dominicanos mientras transmitían un noticiero en Facebook Live*; El Mundo. February 15, 2017. *Matan a tiros a dos periodistas en República Dominicana*; El País. February 15, 2017. *Asesinados dos periodistas de una emisora dominicana mientras transmitían en vivo*; Diario Libre. February 15, 2017. *Confirman muerte de supuesto asesino de locutores en San Pedro de Macorís*; El Día. February 15, 2017. *Muere el presunto asesino de los locutores Luis Manuel Medina y Leo Martínez*.

authorities “judicially determine the relationship that they may have with journalistic activity and freedom of expression,” as “The authorities must not discard the practice of journalism as a motive for the killings and/or aggression before the investigation is completed.”¹⁵³²

1059. On October 12, attorney Yuniol Ramírez Ferreras was found dead. He was a professor at the Law School of the Autonomous University of Santo Domingo (UASD) and served as the president of the National Lawyers’ Association [*Convergencia Nacional de Abogados*] (CONA). Ramírez’s body was found in a creek in the Manoguayabo neighborhood, in the municipality of Santo Domingo Oeste, Province of Santo Domingo. He had been shot in the face, and was found chained to a pair of cement blocks. According to the information disseminated, the professor had been seen for the last time on October 11, when he went to teach classes at UASD. He reportedly received a phone call that forced him to interrupt the class and leave the building. On October 15, authorities reported the arrest of José Antonio Mercado Blanco, one of the alleged direct perpetrators of the murder, as well as three accomplices, after they executed a search and arrest warrant against Argenis Contreras González, the person alleged to have fired the shot that killed Yuniol Ramírez.

1060. The detainees are said to be employees of the Office of the Metropolitan Bus Service [*Oficina Metropolitana de Servicios de Autobuses*] (OMSA), a government agency that prepares, repairs, maintains, and dispatches the Santo Domingo city bus fleet. According to initial investigations disclosed by Santo Domingo prosecutor Olga Diná Llaverías, the victim allegedly tried to extort the detainees. Journalistic accounts, however, assert that Ramírez Ferreras’s murder was motivated by the journalist’s exposé of corruption at the government agency.¹⁵³³

1061. On August 1, social and student leader Mario Vladimir Lantigua Baldera was shot and killed, allegedly by security officers in the Pueblo Nuevo sector of the community of San Francisco de Macorís, in the Province of Duarte. According to the information available, the events occurred during the confrontation between local residents and members of the National Police on the first day of a strike called by numerous social organizations demanding the construction of public works and the investigation of alleged corrupt acts. Members of different social organizations indicated that images captured on security cameras show that the shots were fired from a police weapon. Three police officers were also injured in the incident.¹⁵³⁴

1062. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and

¹⁵³² IACHR. Office of the Special Rapporteur for Freedom of Expression. February 17, 2017. [Press Release R17/17 Office of the Special Rapporteur Condemns Killing of Journalists While They Were on the Air in the Dominican Republic and Urges the State to Promptly and Opportunely Investigate and Punish Those Responsible](#); CNN. April 4, 2017. [¿Qué pasó con el caso los periodistas asesinados en República Dominicana? SIP exige respuestas](#).

¹⁵³³ El Diario de San Juan. October 12, 2017. [Hallan muerto al abogado Yuniol Ramírez Ferreras, reportado desaparecido](#); Hoy Digital. October 12, 2017. [¿Quién era Yuniol Ramírez, el abogado cuyo cadáver apareció hoy?](#); El Diario de San Juan. October 13, 2017. [Abogado asesinado suspendió clase que impartía al recibir una llamada](#); Diario Hipaniola. October 15, 2017. [Detienen a tres funcionarios por asesinato de abogado y profesor Yuniol Ramírez](#); El Nacional. October 15, 2017. [VIDEO: MP y PN dicen asesinato de Yuniol Ramírez habría sido por extorsión al director de la OMSA](#); Listín Diario. October 15, 2017. [Dan último adiós al abogado y profesor Yuniol Ramírez](#); Diario Libre. October 17, 2017. [Acusado de participar en asesinato de Yuniol Ramírez narra detalles del hecho](#); Diario Libre. October 19, 2017. [Abogado Yuniol Ramírez habría sido asesinado en inmediaciones de la UASD](#); Acento. October 28, 2017. [Abogado introduce denuncia por muertes y represiones en violación a la libertad de expresión ante CIDH](#).

¹⁵³⁴ El Caribe. August 1, 2017. [Balance: Huelga en SFM deja un muerto y varios agentes de la Policía heridos](#); Almomento.net. August 1, 2017. [SAN FCO. MACORIS: Matan joven de un balazo en primer día huelga 48 horas](#); Hoy Digital. August 2, 2017. [Dirigente popular fue muerto de un tiro en huelga de SFM; tres policías heridos](#); Telenord/YouTube. August 3, 2017. [Momento de la muerte de Vladimir Lantigua Baldera](#); El Caribe. August 18, 2017. [Falpo exige justicia por homicidio de dirigente Vladimir Lantigua Baldera](#); Eljaya.com. August 22, 2017. [Muestran imágenes vinculan a policía asesinato Vladimir Lantigua Baldera](#).

freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁵³⁵

1063. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Attacks, Threats and Harassment against Journalists and Media Outlets

1064. There were at least two reported cases of journalists being assaulted while working, allegedly at the hands of State agents. Journalists Tomás Ventura¹⁵³⁶ and Ramón Cruz Benzán¹⁵³⁷ were reportedly assaulted on May 11 and 17, respectively, during events held by the Public Ministry and at a demonstration of citizens demanding transparency in the investigation of alleged cases of corruption involving public servants and the Brazilian company Odebrecht.

1065. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

D. Social Protest

1066. Between January and June, a number of social organizations reportedly called for protest demonstrations and sit-ins outside government institutions to demand transparency in the investigation of alleged corrupt acts involving the payment of some US\$ 92 million in bribes to different government officials.

1067. On January 23, the so-called "end of impunity" march proceeded down several avenues in the city of Santo Domingo. The protestors attempted to end the march outside the National Palace, but a group of police officers reportedly blocked access to the area where the building is located, so they had to make a detour toward Independence Park.¹⁵³⁸ On May 16, a group of members of the *Frente Amplio de Lucha Popular* [Broad

¹⁵³⁵ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. . Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹⁵³⁶ *Diario Libre*. May 11, 2017. *Sindicato de Trabajadores de la Prensa condena agresión a periodista de Diario Libre durante embargo a Neptuno's*; Antena 7. May 11, 2017. *Califican de salvaje agresión contra periodista*; *Listín Diario*. May 11, 2017. *Agreden a periodista mientras cubría embargo al restaurante Neptuno's*.

¹⁵³⁷ Comisión Nacional de Derechos Humanos - RD. May 19, 2017. *CNDH - RD condena agresión a periodista Listin Diario y ofrece sus servicios legales al mismo*; Inter American Press Association (IAPA). May 18, 2017. *República Dominicana: Policías agreden a periodista de Listín Diario*; Noticias Sin. May 18, 2017. *Procuraduría deplora agresión contra periodistas*; El Nacional. May 19, 2017. *CDP y SIP repudian agresión militar contra periodista*.

¹⁵³⁸ *El Popular*. January 22, 2017. *Odebrecht: marcha masiva de ciudadanos contra corruptos en Santo Domingo*; EV. January 23, 2017. *Marcha en Santo Domingo para exigir cárcel en caso Odebrecht*; Hoy Digital. January 23, 2017. *Manifestantes: caso Odebrecht será el Fin de la Impunidad en República Dominicana*.

Front for Popular Struggle] reportedly attempted to set up a camp outside the Office of the Attorney General of the Republic [*Procuraduría General de la República*] to pressure Attorney General Jean Alain Rodríguez to publicly disclose the names of those implicated in the Odebrecht bribery case. Members of the National Police reportedly prevented the protestors from doing so, dispersing them with tear gas and using force. Several individuals were reportedly arrested during the police operation, and others sustained slight injuries.¹⁵³⁹

1068. On March 30, during the celebration of the 173rd anniversary of the battle for the independence of the Dominican Republic, the national government reportedly implemented a strategy to bar people wearing green clothing from access to the commemoration. The instruction, which reportedly came from the officers responsible for the event's security, was apparently meant to prevent the participation of members of the movement called "green march," which is calling for transparency in the investigation of the alleged acts of corruption between public servants and the Brazilian company Odebrecht. At least two journalists, Ruth Camil Santos, of *Telenoticias, Canal 11*, and Wellington Díaz, of the newspaper *Hoy*, reported that when they arrived to cover the event wearing green, they were prevented from going into the area where the authorities, including President Danilo Medina, were located. The journalists were ultimately authorized to enter the area where the event was being held, but—according to the information disseminated—a significant number of citizens were forced to leave.¹⁵⁴⁰

1069. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"¹⁵⁴¹ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."¹⁵⁴²

1070. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles."¹⁵⁴³

E. Direct and Indirect Censorship

1071. The National Commission on Public Performances and Broadcasting [*Comisión Nacional de Espectáculos Públicos y Radiofonía*], a public agency within the Postal and Telecommunications

¹⁵³⁹ CNN Español. May 16, 2017. *Impiden campamento de manifestantes frente a la Procuraduría de República Dominicana*; El Caribe. May 16, 2017. *PN enfrenta a bombazos a miembros del Falpo que acamparían frente a la Procuraduría*; Terra. May 16, 2017. *Policía dominicana impide montar un campamento protesta frente a Procuraduría*.

¹⁵⁴⁰ 7 días. March 31, 2017. *Limitan acceso de periodistas con ropa verde al acto encabezado por presidente Medina*; Hoy Digital. March 30, 2017. *Por vestir de verde, impiden entrada de periodistas cubrirían desfile Batalla 30 de marzo*.

¹⁵⁴¹ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁵⁴² IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹⁵⁴³ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

Administration [*Dirección General de Correos y Telecomunicaciones*], reportedly suspended journalists Álvaro Arturo Arvelo Aybar and Claudia Pérez Ramírez, for 20 and 30 days, respectively. Arvelo is the host of the radio program *El Gobierno de la Mañana*, which is broadcast on radio station Z101, while Pérez hosts the television program *Eficiencia Social* on Canal 45, which is owned by the company Teleradioamerica.

1072. In the first case, the government agency reportedly decided to suspend the journalist from his activities as of October 9, because Arvelo had made “a number of accusations, insults, and speech contrary to morality and decency, as well as assertions that profane the name, the work, and the image of Founding Father Juan Pablo Duarte,” during the broadcast of his September 28 program.

1073. In the second case, the agency reportedly sanctioned Pérez Ramírez for “using crude and vulgar language, including coarse, vulgar, obscene, and discriminatory words and speech inappropriate for use in public.” The measure has been characterized as a violation of the constitutional right to freedom of expression and as an act of censorship. On October 27, the company Teleradioamerica reportedly announced the permanent suspension of the program hosted by Pérez Ramírez.¹⁵⁴⁴

1074. According to Principle 5 of the IACHR Declaration of Principles of Freedom of Expression “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

¹⁵⁴⁴ Diario Libre. September 15, 2017. [Suspenden a presentadora de televisión Claudia Pérez Ramírez “La Tora”](#); Dominicanohora/YouTube. September 16, 2017. [Este fue el motivo por el cual suspendieron a la presentadora de televisión Claudia Pérez “La Tora”](#); Listín Diario. September 17, 2017. [“La Tora” sobre su suspensión: “el Procurador tiene una persecución en contra mía”](#); Ciudadoriental.com. October 10, 2017. [Alvarito: “sacado del aire” durante 20 días por sus pronunciamientos contra Duarte](#); Acento. October 10, 2017. [Alvarito es suspendido por 20 días por insultar al Padre de la Patria, Juan Pablo Duarte](#); Primicias. October 15, 2017. [Opinión jurídica generalizada. CNEPR viola Constitución, rechazo a censura previa y atentado a libertad expresión](#); Almomento.net. October 27, 2017. [Suspenden, ahora definitivamente, programa Claudia Pérez “La Tora”](#).

29. SAINT KITTS & NEVIS

A. Progress

1075. In line with the above regarding other member countries of the Eastern Caribbean Telecommunications Authority (ECTEL), this Office of the Special Rapporteur welcomes the approval of the Electronic Communications Bill (ECB)¹⁵⁴⁵, which would include a series of objectives to ensure the dissemination of licenses to retail customers, fair and equal access to the public network of electronic communications, to favor open access to the internet, and to specify the guidelines that should guide the consumer's defense of electronic communications. According to the information available, each member state of ECTEL must adopt the electronic communications law in its internal legislation¹⁵⁴⁶.

¹⁵⁴⁵ Eastern Caribbean Telecommunications Authority (ECTEL). Revised Draft Electronic Communication Bill. September 8, 2017.

¹⁵⁴⁶ TeleGeography. March 29, 2017. ECTEL states introduce new Electronic Communications Bill: Caribbean News Now!. August 24, 2017. ECTEL member states to undertake a process of telecommunications reform.

30. SAINT VINCENT & THE GRANADINES

A. Progress

1076. The Office of the Special Rapporteur welcomes, as it has done with the other States of the Eastern Caribbean Telecommunications Authority (ECTEL), the approval of the Electronic Communications Bill (ECB)¹⁵⁴⁷, which would include a series of objectives to ensure the dissemination of licenses to retail customers, fair and equal access to the public network of electronic communications, to favor open access to the Internet, and to specify the guidelines that should guide the consumer's defense of electronic communications. According to the information available, each member state of ECTEL must adopt the electronic communications law in its internal legislation¹⁵⁴⁸.

¹⁵⁴⁷ Eastern Caribbean Telecommunications Authority (ECTEL). Revised Draft Electronic Communication Bill. September 8, 2017.

¹⁵⁴⁸ TeleGeography. March 29, 2017. ECTEL states introduce new Electronic Communications Bill: Caribbean News Now!. August 24, 2017. ECTEL member states to undertake a process of telecommunications reform.

31. SAINT LUCIA

A. Progress

1077. In the same way that reference has been made to the other States that are part of the Eastern Caribbean Telecommunications Authority (ECTEL), the Office of the Special Rapporteur welcomes the approval of the Electronic Communications Bill (ECB)¹⁵⁴⁹, which would have a series of objectives to ensure the dissemination of licenses to retail customers, fair and equal access to the public network of electronic communications, to favor open access to the Internet, and to specify the guidelines that should guide the consumer's defense of electronic communications. According to the information available, each member state of ECTEL must adopt the electronic communications law in its internal legislation¹⁵⁵⁰.

B. Social Protest

1078. According to available information, on March 17, 2017 officers attached to the Special Service Unit (SSU) of the Royal St. Lucia Police Force (RSLPF) were deployed to the site of the Hong-Kong based Desert Star Holding (DSH) Project at Beausejour, Vieux-Fort. This deployment was in response to social media posts indicating that on March 17, 2017 persons will gather at the site in order to stop the project by halting further construction and removing all equipment in an effort to protect what is left of Saint Lucia's beaches and land.

1079. In response to the deployment of officers at the site, the Saint Lucia Labour Party is reported to have issued a press release expressing "outrage over the decision of the Allen Chastanet Government to send armed SSU officers to patrol the DSH site to deter any public protest." It expressed that the "action of the Chastanet government was out of proportion and hasty" and that the "Government did not send regular Police, to determine whether there was an illegal protest or sabotage, but instead sent a battalion of HEAVILY ARMED SSU officers. This is clearly an attempt to frighten Saint Lucians who are in opposition to the project." The Saint Lucia Labour Party emphasized that "[c]itizens have a democratic right to protest and the Police must not be used to suppress that right."¹⁵⁵¹ In December 2016 citizens had staged protests outside the parliament building against the multi-billion dollar DSH project that includes the construction of a race course, a free trade zone, a shopping mall complex, marina, and other facilities on 700 acres of land in Vieux Fort will destroy the environment in that area, and would result in the taking away of homes and recreational areas from people in the community.¹⁵⁵²

1080. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"¹⁵⁵³ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."¹⁵⁵⁴

1081. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are

¹⁵⁴⁹ Eastern Caribbean Telecommunications Authority (ECTEL). *Revised Draft Electronic Communication Bill*. September 8, 2017.

¹⁵⁵⁰ TeleGeography. March 29, 2017. *ECTEL states introduce new Electronic Communications Bill*: Caribbean News Now!. August 24, 2017. *ECTEL member states to undertake a process of telecommunications reform*.

¹⁵⁵¹ Saint Lucia News Online. March 17, 2017. *SSU Officers at DSH Site*; Saint Lucia Times. March 22, 2017. *SLP outraged over 'suppression' of protest*.

¹⁵⁵² Saint Lucia Times. December 20, 2016. *Protest outside parliament against DHS deal*; Jamaica Observer. December 20, 2016. *People protest outside Saint Lucia Parliament against multibillion dollar project*.

¹⁵⁵³ IACHR. *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁵⁵⁴ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹⁵⁵⁵

C. Stigmatizing statements

1082. On August 21, in the context of a press conference given by the Minister of Tourism, Dominic Fedee, the journalist of *HTS News4orce*, Miguel Favrier, would have consulted him about the concessions with which the Government allegedly favored the company Sandals Saint Lucia and, specifically, on the veracity of the documents that would demonstrate such operation, that had been presented days before in two talk shows.

1083. The Minister of Tourism would initially have asked Favrier to show him these documents, but when the journalist indicated that he did not have them, Dominic Fedee allegedly indicated that he would not answer questions based on rumors, that this could not be a credible question and, finally, that this kind of questions would degrade the journalist as such. Likewise, the Minister of Tourism would have pointed out to Favrier that he would only answer questions that could be backed up, and he would have asked him to be fair to the people of Saint Lucia, who do not want that information presented in their homes¹⁵⁵⁶.

D. Diversity and pluralism

1084. On May 11, Prime Minister Allen Chastanet announced the closure of *Radio Saint Lucia*, given that the annual subsidy of EC\$400 thousand (approximately US\$148 thousand) could not manage to absorb a debt of approximately EC\$3 million (approximately US\$1 million 100 thousand).

1085. In addition, the Prime Minister would have indicated the different debts that the radio has with different state and private entities, while explaining that the internet, television, and cell phones have taken over the media outlets. He would have also stated that “[t]he airwaves are saturated with radio stations and there are multiple channels for the government to get its message across to the public. Therefore, we should review the role of *Radio Saint Lucia* in this context.”¹⁵⁵⁷

1086. In this regard, the IACHR recalls that rules regulating radio broadcast must be designed in such a way as to grant sufficient guarantees against possible arbitrary acts of the State. In order for this goal to be met, the following requirements, *inter alia*, must be met: (1) the rules establishing rights and obligations must be clear and precise; (2) the rules must provide for transparent procedures and due process—which enable, among other things, judicial review of decisions made in the administrative realm—; (3) the permit must be granted for use of the frequency for a sufficient length of time to be able to carry out the communications project or to recover the investment and make it profitable; (4) there must be assurances that while the frequency is being used, further requirements will not be demanded than what is established in the law; and (5) decisions shall not be made that impair the exercise of freedom of expression based on the editorial or

¹⁵⁵⁵ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

¹⁵⁵⁶ St. Lucias News Online. August 21, 2017. [Tourism minister clashes with HTS reporter at press briefing](#); St. Lucia Times. August 21, 2017. [Fedee news conference turns testy.](#)

¹⁵⁵⁷ St. Lucia News Online. May 11, 2017. [Goodbye Radio St. Lucia: “Internet, television and cellphones have taken over” – Chastanet](#); The Voice. May 13, 2017. [RSL To Close, Union To Meet Employees.](#)

news line. These and other protections, which will be discussed hereunder, are essential for the existence of truly free and vigorous radio broadcast.

32. SURINAME

A. Social Protest

1087. In April 2017 there were anti-government protests in the capital Paramaribo largely led by trade unions and other civil groups. These protests are said to revolve around economic policies and changes such as recent fuel hikes and government freezes which are said to have brought untold hardships on the people of Suriname. There were calls for the resignation of President Desi Bouterse and an insistence that the administration changes its policies. Reports are that the riot police prevented protesters from continuing street marches and arrested and detained several individuals including, a union leader.

1088. It is reported that the District Commissioner of Paramaribo indicated that the organizers of the protest did not have a permit and that if organizers had applied for a license the police force would have provided security during the marches in order to prevent calamity and keep order.¹⁵⁵⁸ It is further reported that in response, the trade unions and other civil groups have signaled that they are filing a lawsuit against the government for violating their fundamental rights, in particular, the right to hold peaceful demonstrations everywhere in the country.¹⁵⁵⁹

1089. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”¹⁵⁶⁰ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹⁵⁶¹

1090. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹⁵⁶²

B. Legal reforms

1091. On August 7, the digital media, *Caribbean News Now*, published a note indicating that the Government of Suriname sent a bill to parliament, called Electronic Legal Transactions, which would aim to fine or punish with imprisonment any person who insults the president through a media outlet. In this regard, Surinamese Association of Journalists (SAJ) and the Association of Caribbean MediaWorkers (ACMW)

¹⁵⁵⁸ Caribbean News Now. April 19, 2017. *Police arrest demonstrators at anti-government protest in Suriname; Demerara Waves. April 18, 2017. Several detained at anti-government protests in Suriname; Nationnews. April 8, 2017. Protests in Suriname over price hike for gas, water and electricity.*

¹⁵⁵⁹ Demerara Waves. April 26, 2017. *Protesters to take legal actions against Suriname government for violation of fundamental rights.*

¹⁵⁶⁰ IACHR. *Report on Citizen Security and Human Rights.* OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁵⁶¹ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas.* OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹⁵⁶² United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests.*

would have expressed their concern indicating that the bill would not only restrict freedom of expression but also protect the president's image. In addition, the Surinamese Association of Journalists sent a letter to Parliament requesting reconsideration of the bill¹⁵⁶³.

¹⁵⁶³ Caribbean News Now. August 7, 2017. *Proposed Suriname defamation law setback for freedom of expression in the Caribbean*; Library of Congress. August 25, 2017. *Suriname: Draft Legislation on Electronic Transactions Includes Provision on Insulting President*.

33. TRINIDAD & TOBAGO

A. Progress

1092. On August 25, the Minister of Communication and Public Administration, Maxie Cuffie, announced the prompt reopening of public television *Trinidad & Tobago Television* (TTT), which had been closed in January 2005 due to financial problems. In this regard, the Minister indicated that TTT will focus on promoting local programming and publishing government information, while representing a source of employment for many local producers who will work for the media.

1093. In turn, he would have expressed that the decision was made in accordance with the recommendations made by the Board of Directors of the Caribbean New Media Group/Government Information Services Limited (CNMG / GISL) in relation to the role of state media in the country¹⁵⁶⁴. At the closing of this report, no progress has been made regarding the government announcement.

B. Attacks, threats, and intimidation against journalists and the media

1094. On 13 September, photographer Kristian De Silva of *Trinidad Guardian*, *One Caribbean Media* cameraman Phil Britton and *Newsday* reporter Jeff Mayers were reportedly assaulted while covering the alleged "fake oil" scandal involving the company A & V Oil and Gas Ltd. Da Silva would have been attacked by two people and his equipment would have been destroyed in the vicinity of the aforementioned company. Likewise, Britton was allegedly attacked by people who threw glass bottles at his vehicle, while the reporter, Mayers, allegedly received threats from a security guard in this same context. According to the information available, the events were reported to the police but only in one of them a guard was reportedly being investigated¹⁵⁶⁵. The Prime Minister, Keith Rowley, issued a statement condemning the acts of violence against social media workers, while the Executive Director of A & V Oil and Gas Ltd., Hanif Baksh publicly apologized to the respective media¹⁵⁶⁶.

1095. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Stigmatizing statements

1096. On May 25, the congressional representative for the Naparima party, Rondey Charles, while referring to the increase in crime in the country, would have publicly expressed that the media "co-conspire" (sic) together with the People's National Movement (PNM) wanting to generate a "state of complacency" among citizens. The following day, Media Association of Trinidad & Tobago (MATT) demanded a public apology from Rodney Charles, after noting that the media in Trinidad and Tobago have been characterized by

¹⁵⁶⁴ Daily Express. August 24, 2017. *TTT to be revived*; Global Voices. August 24, 2017. *Could Trinidad and Tobago's Media Shake Up Usher in a Return to 'Total Local' Programming?*; Newsday. August 25, 2017. *CNMG to close, TTT is back*.

¹⁵⁶⁵ 955 FM. September 18, 2017. *PM condemns attacks on media workers covering fake oil scandal*; Newsday. September 19, 2017. *Media workers give statement to police*.

¹⁵⁶⁶ Office of the Prime Minister Trinidad & Tobago. September 17, 2017. *Prime Minister Rowley Condemns Attack on Media*; CTVTT. September 18, 2017. *A&V Oil And Gas Limited Apologises After Media Personnel Assaulted On The Job. Offers Media Tour Of Penal Facility*; Newsday. September 19, 2017. *A&V apologises to media*.

their commitment and respect to the principles of journalism¹⁵⁶⁷. According to the information available, Rodney Charle would not have yet offered the respective public apologies.

1097. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”¹⁵⁶⁸

D. Legal reforms

1098. On June 23, the Minister of Communications and Public Administration, Maxie Cuffie, announced that the Parliament's Joint Select Committee (PJSC) would be close to finalizing the deliberations regarding the Cybercrime Bill. In this context, he would have indicated that all stakeholders, including the press and the media, will be happy with their results. However, different civil society organizations such as the Association of Caribbean Media Workers (ACMW), the Media Association of Trinidad and Tobago (MATT), or The Center for Law and Democracy (CLD) would have expressed their concern in this regard, since they considered that the law could have the potential to restrict the activity of those journalists working on matters of public interest while it could criminalize those expressions that lack legal support or justification, for example, information obtained through a source that wants to be protected. Therefore, they would have proposed that the project include legal exceptions against journalists and whistleblowers¹⁵⁶⁹. On August 7, the Minister of Communication and Public Administration issued a statement through which he indicated that the Cybercrime Bill will ensure the correct administration and dissemination of content in the era of "new media."¹⁵⁷⁰

¹⁵⁶⁷C News. May 26, 2017. *Naparima MP: Murder Rate Goes Up When PNM In Government*; Loop. May 26, 2017. *MATT wants apology from Naparima MP*; Loop. May 28, 2017. *Relationship between PNM governance and crime, MP says*; Daily Express. May 28, 2017. *MATT calls for apology from MP*.

¹⁵⁶⁸I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

¹⁵⁶⁹Centre for Law and Democracy. June 1, 2017. *Trinidad and Tobago: Major Problems Remain with Cybercrime Bill*; Loop. June 23, 2017. *MATT questions Minister on Cybercrime Bill*. Media Association of Trinidad & Tobago / Facebook. June 23, 2017. *Minister of Public Administration and Communications Maxie Cuffie says he has "every confidence" that the proposed Cybercrime Bill's "final product will be acceptable to the journalist fraternity, the public of Trinidad and Tobago and the politicians"*; Guardian. June 27, 2017. *Media will be happy with Cybercrime Bill—Cuffie*.

¹⁵⁷⁰Ministry of Public Administration and Communication. August 7, 2017. *CUFFIE: DATA PROTECTION ACT AND CYBERCRIME*.

34. URUGUAY

1099. During 2017 the Office of the Special Rapporteur observed with concern the information received regarding the increase in criminal complaints alleging defamation [*difamación e injurias*] filed against journalists by public servants claiming to be adversely affected by publications on issues of public interest connected to their performance. The office also received reports of stigmatizing statements made by public figures and government employees against journalists and media outlets.

1100. The Office of the Special Rapporteur takes note of the actions undertaken by the Communications Services Regulatory Unit [*Unidad Reguladora de Servicios de Comunicaciones*] (URSEC) to apply and implement a number of specific provisions of the Audiovisual Communication Services Act [*Ley de Servicios de Comunicación Audiovisual*]. At the close of this report, the Honorary Advisory Commission for Audiovisual Communication Services [*Comisión Honoraria Asesora de Servicios de Comunicación Audiovisual*] (CHASCA) had been set up. However, the regulation of the law had not yet been approved and the implementation of the planned institutional framework for its full implementation remained pending.

1101. Through 2017, the Office of the Special Rapporteur received with concern information on the attack with a firearm against a journalist and emphasizes the importance of the investigation with due diligence of this event to clarify its possible relation to journalistic activity.

A. Progress

1102. A judgment handed down on November 28, 2016 by First Administrative Law Judge [*Juez Letrado en lo Contencioso Administrativo de 1er Turno*] Gabriel Ohanián set a precedent regarding the exercise of freedom of expression by public servants and the scope of their duty of confidentiality.¹⁵⁷¹ The judgment held that “the general principle is freedom of expression,” and therefore the duty of confidentiality that governs public servants in specific circumstances “must be assessed restrictively,” so that “it cannot refer to an opinion regarding the functioning of the government agency for which he or she works.”¹⁵⁷² It further stated that “the government cannot attempt to control the opinion of its subordinates, and public criticism coming from subordinates has been, is, and will be tolerated by the government. Secrecy runs completely counter to the meaning of Republicanism.” The judgment, which ordered an agency to pay damages to a public servant, was appealed.

1103. On December 14, 2016, the First Civil Court of Appeals [*Tribunal de Apelaciones Civil de 1er Turno*] ordered the Ministry of the Interior to pay non-pecuniary damages to press photographer Alejandro Moreira, who in 2014 reported having been assaulted by police while covering incidents that took place after a soccer game. The Court found that “excessive police action had been clearly proven,” and raised concerns about the fact that Moreira had been ordered to leave during one of the incidents. The Court held that “the legitimacy of that order is at least questionable, as it ignores the fact that the plaintiff was working as a journalist covering the events that took place at the end of the soccer match.”¹⁵⁷³

1104. On January 27, the Access to Public Information Unit issued a decision affirming the prohibition against the general classification of information, the requirement of proof of harm for purposes of imposing restrictions on access to information, and the unenforceability of confidentiality when the information requested refers to human rights violations or is relevant to investigate, prevent, or avoid such violations.¹⁵⁷⁴

1105. On May 16, the Third Administrative Disputes Court [*Juzgado Letrado de lo Contencioso Administrativo de 3er Turno*] ordered the Ministry of Foreign Affairs to turn over information requested by a

¹⁵⁷¹ Poder Judicial. March 23, 2017. [Juez Ohanián condenó a ASSE a resarcir a funcionaria que padeció acoso laboral.](#)

¹⁵⁷² Poder Judicial. Juzgado de lo Contencioso Administrativo de Primer Turno. [Judgment 62/2016 of November 28, 2016.](#)

¹⁵⁷³ Poder Judicial de Uruguay. Tribunal de Apelaciones Civil de 1er Turno. [Judgment SENTENCIA N° DFA 3-833/2016 SEF 3-172/2016 of December 14, 2016](#); El Observador / Referí. [Fotógrafo oficial de Nacional fue agredido por policías.](#) March 27, 2014.

¹⁵⁷⁴ UAIP. Judgment [Dictamen 01/2017 of January 27, 2017.](#)

citizen about the hiring of a lawyer to represent the Uruguayan State in the Plan Condor trial in Rome.¹⁵⁷⁵ The Ministry reportedly complied with the judgment, but it also filed an appeal, which was rejected.¹⁵⁷⁶

B. Attacks, Threats, and Harassment Against Journalists and Media Outlets

1106. Throughout 2017, some episodes of serious attacks and threats against journalists, that had not yet been clarified by the courts, were reported in Uruguay¹⁵⁷⁷.

1107. According to the information available, on February 7, journalist Isabel Prieto Fernández, of the website *Caras y Caretas*, was approached in Montevideo by unknown persons who shot at her from a motorcycle while she was driving her car; bullets struck her vehicle and grazed the back of her head.¹⁵⁷⁸ Organizations promoting freedom of expression in Uruguay urged the authorities to investigate the possibility that the attack may have been linked to Prieto's work as a journalist.¹⁵⁷⁹ During a meeting held on February 9, authorities from the Ministry of the Interior reportedly told the journalist that their strongest working theory was that the attack was an attempted robbery, although they indicated that they would continue to investigate.¹⁵⁸⁰

1108. On February 9, journalist Julio Ríos, host of the program "*Las Voces del Fútbol*" on radio *1010 AM*, reported that he had been threatened by Gustavo Torena, a businessman involved with sporting events, who burst into the radio station's studios while Ríos was on air.¹⁵⁸¹ According to the information available, was prosecuted without being held in pretrial detention for a crime of violence after the journalist filed the criminal complaint. News coverage related to professional soccer and events involving soccer-related violence gave rise to other incidents in which the work of journalists and media outlets was publicly disparaged, heightening the risk that journalists could be subject to some kind of retaliation by fans.¹⁵⁸²

¹⁵⁷⁵ Poder Judicial. Juzgado Letrado de lo Contencioso Administrativo de 3er Turno. Decreto 610/2017 of May 16, 2017. Available at IUE. 2-14303/2017 <http://www.expedientes.poderjudicial.gub.uy/Consulta.php>; El Observador. June 2, 2017. *Abogado que representó al Estado por Plan Cóndor cobró € 500.000.*

¹⁵⁷⁶ Poder Judicial. Tribunal de Apelaciones en lo Civil de 3er Turno. Autos caratulados RAMA, ELBA c/ MINISTERIO DE RELACIONES EXTERIORES - ACCESO DE INFORMACIÓN - - QUEJA POR DENEGACIÓN DE APELACIÓN - - IUE N°: 0002-014303/2017. Decree of June 21, 2017. Available at: <http://www.expedientes.poderjudicial.gub.uy/Consulta.php>

¹⁵⁷⁷ CAinfo – APU. *Informe Periodismo y libertad de expresión en Uruguay. Tercer Informe de Monitoreo de Amenazas.* May 3, 2017.

¹⁵⁷⁸ Caras y Caretas. February 8, 2017. *Intentan asesinar a periodista de Caras y Caretas que denunció maltrato policial*; La diaria. February 9, 2017. *Periodistas nacionales e internacionales repudian el atentado de ayer contra una colega*; CAinfo. May 3, 2017. *Periodismo y libertad de expresión en Uruguay Tercer Informe de Monitoreo de Amenazas.* P. 6.

¹⁵⁷⁹ APU. *APU convoca a conferencia de prensa por atentado a periodista.* February 8, 2017 ; CAinfo. *Press Release. Repudio ante atentado a periodista de Caras y Caretas.* February 8, 2017; FIP. *Uruguay: ataque a periodista que denunció maltrato policial. February 8, 2017*; Canal 10. "Subrayado". February 8, 2017. *Balean a una periodista de Caras & Caretas que denunció maltrato policial*; Canal 12. "Telemundo". February 8, 2017. *"Me tiraron a la cabeza. tan simple como eso"*

¹⁵⁸⁰ Montevideo Portal. February 9, 2017. *Ministerio del Interior dijo a periodista atacada que la moto está filmada*; CAinfo. February 10, 2017. *Reclaman al Ministerio del Interior un rápido esclarecimiento del ataque sufrido por periodista Isabel Prieto* ; Fiscalía General de la Nación. No date. *Fiscal de Corte se reunió con la Asociación de la Prensa Uruguaya*

¹⁵⁸¹ 180. February 9, 2017. *El "Pato Celeste" fue "a patotear" al programa de Julio Ríos*; El Observador. February 12, 2017. *Gustavo Torena fue procesado sin prisión por amenazas a Julio Ríos*. CAinfo. May 3, 2017. *Periodismo y libertad de expresión en Uruguay Tercer Informe de Monitoreo de Amenazas.* P. 7.

¹⁵⁸² Canal 10. Subrayado. May 26, 2017. *Presidente de Nacional cuestiona vínculo del robo de banderas con el club* (VIDEO). Canal 4. Telenoche. May 26, 2017. *Procesado dijo que banderas de Peñarol estaban en sede de Nacional*; Radio Cut /Sport 890. May 26, 2017. *José Luis Rodríguez en Sport 890*; Canal 4. "Algo contigo". May 29, 2017. *Entrevista a Gerogina Mayo*; El Observador. May 30, 2017. *El problema son los periodistas.*

1109. In addition, in July, journalist Juan Correa, of the news portal *Agesor*, of the Department of Soriano reported having been threatened by a leader of the Lions Club of Mercedes after publishing an article stating that a former member of the military accused of serious human rights violations during the military dictatorship (1973-1985) had been elected president of the club.¹⁵⁸³ The act was condemned by APU and the National Human Rights Institute [*Institución Nacional de Derechos Humanos*]. Other intimidating actions taken against journalists during the period covered by this report were evidently carried out on social media.¹⁵⁸⁴ One of the most well-known cases was that of *Televisión Nacional Uruguay* (TNU) journalist Georgina Mayo, who on January 4 was the victim of a harassment campaign on social media as a result of her coverage of an act of soccer-related violence. According to the information available, the objective of the campaign was to get the journalist fired from the public channel.¹⁵⁸⁵

1110. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁵⁸⁶

1111. The Uruguayan Press Association [*Asociación de la Prensa Uruguaya*] (APU) and the Archive and Access to Public Information Center [*Centro de Archivo y Acceso a la Información Pública*](CAinfo) indicated that between April 1, 2016 and March 31, 2017, 23 cases were registered throughout the country that threatened the free exercise of journalism¹⁵⁸⁷.

1112. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

¹⁵⁸³ Asociación de la Prensa Uruguaya.. Press Release. July 11, 2017. Available at:

<https://desaparecidos.org.uy/2017/07/comunicado-de-apu-sobre-amenazas-hacia-el-periodista-juan-correa/>; Asociación de Madres y Familiares de Detenidos Desaparecidos. July 11, 2017. Press Release. Available at:

<http://www.agesor.com.uy/archivos/pdf/3098917.07.11%20Nota%20repudio%20amenaza%20a%20Juan%20Correa.pdf>; La diaria. July 12, 2017. ***Periodista amenazado por informar que el nuevo presidente del Club de Leones de Mercedes es un ex militar "torturador"***; Institución Nacional de Derechos Humanos. ***Declaración de la INDDHH sobre las amenazas a periodista del departamento de Soriano.*** July 13, 2017.

¹⁵⁸⁴ Cainfo / Facebook. December 12, 2017. ***Empresaria amenazó a periodista de Brecha por artículos periodísticos***; Cainfo. ***Periodismo y libertad de expresión en Uruguay Tercer Informe de Monitoreo de Amenazas.*** May 3, 2017. P. 7.

¹⁵⁸⁵ Montevideo Portal. January 5, 2017. ***Hinchas de Nacional iniciaron campaña en las redes contra Georgina Mayo***; La República. January 6, 2017. ***Presentadora de TNU fue víctima de cyberbullying***; Cainfo. ***Periodismo y libertad de expresión en Uruguay Tercer Informe de Monitoreo de Amenazas.*** May 3, 2017. P. 7.

¹⁵⁸⁶ IACHR. ***Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression.*** Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. ***Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression.*** Chapter II: *Evaluation of the State of Freedom of Expression in the Hemisphere.* OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. ***Second Report on the Situation of Human Rights Defenders in the Americas.*** OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹⁵⁸⁷ CAinfo – APU. ***Informe Periodismo y libertad de expresión en Uruguay. Tercer Informe de Monitoreo de Amenazas.*** May 3, 2017.

C. Social Protest

1113. According to information in the public domain, on March 20 the Executive Branch issued Order 76/017 regulating new provisions concerning demonstrations on public thoroughfares. The order established that the Ministry of the Interior “shall take pertinent measures” to “preserve the public use of streets, roads, or highways on which traffic may be blocked or disrupted by persons, vehicles, or objects of any kind.”¹⁵⁸⁸ To this end, “the Office of the Minister may directly request assistance from other public agencies, as well as coordinate, in such case, activities to enforce” the order. Once the orders have been issued, the Ministry of the Interior “must immediately report the police intervention to the Judiciary,” which “will be conducted in order to ensure the right to free movement, public order, and tranquility.” The provision would not apply to the blocking of public thoroughfares by trade unions exercising the right to strike. On March 22, the National Human Rights Institute recommended that the national authorities adhere to international standards.¹⁵⁸⁹ For their part, social organizations expressed their opposition to the Order.¹⁵⁹⁰ In March, nine trade unions and at least three business associations reportedly challenged the provision in administrative court, calling for its revocation.¹⁵⁹¹ On March 23, Executive Order 76/017 was reportedly applied by officers from the Ministry of the Interior in the area of Conchillas, Department of Colonia.¹⁵⁹²

1114. In a statement released on June 16, the Ministry of the Interior reported that, following an urgent administrative investigation, it had determined that a police officer “failed to respect the operational protocol with regard to his full identification as a police officer” at a student demonstration that took place on June 9. The Federation of University Students reportedly publicly condemned the act. The statement emphasized that “Police officers are forbidden—by express mandate of political and police authorities—from infiltrating citizen demonstrations held in the full exercise of that right to public expression.”¹⁵⁹³

1115. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”¹⁵⁹⁴ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹⁵⁹⁵

1116. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are

¹⁵⁸⁸ Presidencia de la República Oriental del Uruguay. [Decree 76/017 of March 20, 2017](#). Reglamentación del art. 4° de la ley 19.315, relativo al derecho de libre circulación en las calles, caminos o carreteras.

¹⁵⁸⁹ Institución Nacional de Derechos Humanos. [Declaración de la Institución Nacional de Derechos Humanos y Defensoría del Pueblo \(INDDHH\) respecto al Decreto No. 76/2017 del 20 de marzo de 2017](#). March 22, 2017.

¹⁵⁹⁰ Caras y Caretas. March 22, 2017. [El Serpaj rechazó el decreto firmado por Vázquez contra los piquetes](#); CAinfo. [Ante decreto del gobierno contra cortes de calles, caminos y rutas como forma de protesta social](#). March 24, 2017. El Observador. March 25, 2017. [Decreto para prohibir los cortes de calles está bajo la lupa de la OEA](#).

¹⁵⁹¹ Montevideo Portal. March 30, 2017. [Nueve sindicatos presentarán un Recurso de Revocación contra el decreto “anti piquetes”](#)

¹⁵⁹² El País/ Radio Montecarlo (Video). March 23, 2017. [El momento en que los trabajadores del Sutcra fueron detenidos](#); El Observador. March 23, 2017. [Dos personas fueron detenidas durante piquete en Montes del Plata](#); Montevideo Portal. March 23, 2017. [Transportistas fueron detenidos por la policía en Conchillas al impedir paso de vehículos](#).

¹⁵⁹³ Radio Universal. June 16, 2017. [Ministerio del Interior aplicó procedimiento disciplinario por policía infiltrado ilegalmente en marcha estudiantil](#); La Red 21. June 16, 2017. [El Ministerio del Interior sancionó a policía que se infiltró en una marcha de estudiantes](#).

¹⁵⁹⁴ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁵⁹⁵ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹⁵⁹⁶

D. Stigmatizing Statements

1117. According to the information available, during a press conference held on February 1, the Minister of Livestock, Agriculture and Fisheries, Tabaré Aguerre, made sarcastic and disqualifying remarks calling into question the credibility of a journalist, and the newspaper *La Diaria*, for which he writes, because of an article about a loan that the minister had reportedly received in his capacity as a rice producer from the Fund to Finance and Restructure the Rice Sector.¹⁵⁹⁷

1118. In June, the “711 List,” a political faction led by then-Vice President of the Republic, Raúl Sendic, issued a statement saying that “part of the press” had engaged in “a systematic and petty attack” in its coverage of a journalistic and political debate that took place after information came out about purchases Sendic had made with the corporate credit card of the State entity ANCAP.¹⁵⁹⁸ On June 8, through the use of the Access to Public Information Law, the weekly newspaper *Búsqueda* revealed the former official’s alleged improper use of that corporate credit card at stores in Uruguay and other countries, which resulted in the Vice President’s resignation from office months later. While still in office, Sendic called into question the media’s work on the different investigations involving him and announced that he was evaluating the possibility of bringing legal actions against journalists Patricia Madrid and Viviana Ruggiero because of information published in a book they had authored.¹⁵⁹⁹

1119. On July 27, the director of the State Health Services Administration [*Administración de Servicios de Salud del Estado*] (ASSE), Susana Muñiz, maintained that journalists and “bottom-dwelling” politicians were conducting a smear campaign against ASSE.¹⁶⁰⁰ She later filed a complaint against a journalist alleging defamation, as discussed below. In addition, on August 29, the Uruguayan Press Association reported that the

¹⁵⁹⁶ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [*Joint declaration on violence against journalists and media workers in the context of protests*](#).

¹⁵⁹⁷ La Diaria. January 30, 2017. [Mediante el fondo arrocero, el MGAP le prestará 180.000 dólares a su propio titular, Tabaré Aguerre](#); Ministerio de Ganadería, Agricultura y Pesca. [Ministro Aguerre brindó conferencia de prensa sobre su participación en el Fondo de Financiamiento y Recomposición de la Actividad Arrocera. Conferencia de prensa](#) (VIDEO). February 1, 2017; La Diaria. February 2, 2017. [La guerra de Aguerre](#); Ecos. February 3, 2017. [Aguerre versus La Diaria: una conferencia de prensa violenta](#); Búsqueda. February 9, 2017. [Relator de la OEA y sindicato de la prensa cuestionaron al ministro Aguerre por “descalificar” a periodista](#).

¹⁵⁹⁸ El País. June 9, 2017. [Lista 711: “Hay un ataque sistemático y mezquino hacia la figura de Sendic”](#); Montevideo Portal. June 10, 2017. [La Lista 711 rechazó “una nueva campaña de denostación y agravio” contra Raúl Sendic](#).

¹⁵⁹⁹ Caras y Caretas. June 8, 2017. [Sendic respondió a Búsqueda: “No pueden ensuciarme por \\$29.000”](#); Canal 4. June 28, 2017. [Sendic asegura que hay un “ensañamiento” en su contra](#); Canal 12. Telemundo. June 28, 2017. [Raúl Sendic analiza denunciar ante la Justicia a las autoras del libro “El hijo pródigo”](#); El Observador. June 28, 2017. [Sendic: autoras del libro “van a tener que ir a la Justicia a probar las falsedades” que publicaron](#); El Observador. June 29, 2017. [Raúl Sendic contraataca con críticas a opositores y periodistas](#)

¹⁶⁰⁰ Radio Uruguay. July 27, 2017. [Muñiz acusó campaña de desprestigio de ASSE por parte de periodistas y políticos “carroñeros”](#); Diario Cambios. July 28, 2017. [“Existe una campaña de carroñeros que hay en contra del prestador más importante del país”](#).

former Governor of the department of Flores, Carlos Mazzullo, attacked journalist Mariely Salvatto, of *Radio Cinco 89.7*, during a press conference.¹⁶⁰¹

1120. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”¹⁶⁰²

E. Subsequent Liability

1121. According to the information available, in late August the weekly newspaper *Búsqueda*,¹⁶⁰³ the Uruguayan Press Association¹⁶⁰⁴ (APU), and the Center for Archives and Access to Public Information¹⁶⁰⁵ (Cainfo) reported an uptick in legal actions being brought and announced against journalists and media outlets, and warned of the chilling effect of such situations. In this context, Director Susana Muñiz of the State Health Services Administration (ASSE) filed a complaint alleging criminal defamation against journalist Gabriel Pereyra, of the newspaper *El Observador*, following the publication of an opinion piece in which he responded to disparaging statements Muñiz had made about journalists and called into question the management of the government agency.¹⁶⁰⁶ According to the information available, the case was shelved by the 17th Criminal District Court [*Juzgado Letrado de Primera Instancia en lo Penal de 17^o Turno*] after the journalist and Muñiz reached an agreement at the hearing held on August 16, at which time the official withdrew the complaint. *El Observador* reported that the agreement had been reached after the journalist clarified that the column was not intended to offend the official; however, he did not retract his article.¹⁶⁰⁷ According to the information available, this case was followed days later by a criminal defamation complaint brought by the former director of ANCAP against the newspaper *El País* and journalist Daniel Isgleas. On September 14, the first hearing was held before the 18th Criminal District Court [*Juzgado Letrado de Primera Instancia en lo Penal de 18^o Turno*], at which the parties failed to reach a conciliation agreement. The legal action was filed after the publication of an article reporting on the results of a parliamentary investigation into alleged irregularities in the construction of a regasification plant. The case was still pending before the court at the time of this writing.¹⁶⁰⁸ These two complaints were brought during a year in which other senior

¹⁶⁰¹ APU/Facebook. [Press Release. August 29, 2017](#); Agesor. August 30, 2017. [Periodista amenazada por preguntar](#).

¹⁶⁰² I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

¹⁶⁰³ *Búsqueda*. August 24, 2017. [La judicialización del periodismo](#).

¹⁶⁰⁴ “The APU alerts on new legal action against journalist”. Press Release. Twitter account of Asociación de la Prensa Uruguaya [@apu_uy. August 26, 2017](#).

¹⁶⁰⁵ Centro de Archivo y Acceso a la Información Pública (CAinfo). Press Release. [Expresidente de Ancap inició demanda penal: Alerta por sucesión de juicios de funcionarios públicos contra periodistas](#). August 28, 2017.

¹⁶⁰⁶ *El Observador*. July 29, 2017. [¡Hola Susana!, ni los buitres se salvan en tus hospitales](#).

¹⁶⁰⁷ *El Observador*. August 3, 2017. [La columna de Gabriel Pereyra que provocó la denuncia de la presidenta de ASSE](#); *El Observador*. August 16, 2017. [Muñiz retiró denuncia contra Gabriel Pereyra por columna sobre ASSE](#); Montevideo Portal. August 16, 2017. [Susana Muñiz retiró la denuncia contra el periodista Gabriel Pereyra](#); *La Diaria*. August 17, 2017. [Juez le pidió a Susana Muñiz y Gabriel Pereyra que dieran “el ejemplo” y hubo acuerdo para retirar denuncia por difamación](#).

¹⁶⁰⁸ *Búsqueda*. August 24, 2017. [Expresidente de Ancap demandó penalmente a El País y a uno de sus periodistas; advirtió que continuará también en la vía civil](#); *El País*. September 14, 2017. [Comienza juicio de Coya contra El País](#); *El País*. September 14, 2017. [Finalizó la primera audiencia del juicio de Coya contra El País: no hubo conciliación](#); *El Observador*. September 15, 2016. [Exjerarca de ANCAP sigue adelante con juicio para defender su “honor”](#)

government officials and private individuals publicly announced the potential filing of criminal actions against journalists because of the publication and broadcasting of different investigations.¹⁶⁰⁹

1122. During 2017 the Office of the Special Rapporteur also learned of other cases of complaints filed by senior government officials seeking to have private citizens investigated for alleged defamation on social media, including Vice President Raúl Sendic¹⁶¹⁰ and pro-government Senator Leonardo De León.¹⁶¹¹

1123. Additionally, according to the information available, on July 31 the 5th Office of the Prosecutor [Fiscalía Penal de 5to Turno] requested the criminal prosecution of humorist Marcel Keroglian for “the commission of repeated defamation offenses.”¹⁶¹² The weekly newspaper *Búsqueda* reported that the order from the prosecutor’s office came after the amendment of a complaint filed against the journalist by the Uruguay Football Referees’ Association [Asociación Uruguaya de Árbitros de Fútbol] (Audaf) in view of repeated comments on Twitter that, in the complainants’ view, tarnished their reputations. The prosecutor’s office stated that Keroglian “was able to disseminate stories to various persons, together and separately, attributing words or deeds to specific individuals that, if they were true, exposed the complainants to public disparagement or hatred.”

1124. On November 7, journalist Javier Bonilla, specialized in aeronautical and defense issues, and Albérico Barrios, editor of the newspaper *El Corresponsal* of Canelones, had to appear before the Criminal Court of First Instance in Criminal Matters [Juzgado Letrado de Primera Instancia en lo Penal de 24 Turno] following a defamation complaint made by the owner of the automotive company Autolider, Carlos Bustin, as a result of publications made on Twitter about the situation of the company and the possibility of it going to settlement. Two users of Twitter who replied to the information also had to attend the Court. The businessman withdrew the complaint after signing an agreement between the parties¹⁶¹³.

1125. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism,¹⁶¹⁴ because

¹⁶⁰⁹ Canal 12. Telemundo. June 28, 2017. *Raúl Sendic analiza denunciar ante la Justicia a las autoras del libro “El hijo pródigo”*; El Observador. June 28, 2017. *Sendic: autoras del libro “van a tener que ir a la Justicia a probar las falsedades” que publicaron*; Montevideo Portal. July 27, 2017. *Investigación de ASSE exoneró a directora de Hospital de Ojos, que hará demanda a Santo y Seña*; Caras y Caretas. July 27, 2017. *Directora del Hospital de Ojos demandará a Santo y Seña*

¹⁶¹⁰ El Observador. August 13, 2017. *Sendic denunció difamación e injurias en redes sociales*; Canal 10. Subrayado. August 17, 2017. *Jueza pidió informes a Twitter por difamación e injurias a Raúl Sendic*

¹⁶¹¹ El Observador. July 9, 2017. *De León denunció ante Delitos Tecnológicos presunta foto trucada*; El País. July 13, 2017. *Dos políticos colorados declaran por foto trucada*; Canal 12. Telemundo. August 13, 2017. *Harán citaciones judiciales por agravios en redes sociales hacia Leonardo De León*

¹⁶¹² Búsqueda. October 12, 2017. *Fiscal pide procesar a un humorista por difamar a los árbitros*; Montevideo Portal. October 12, 2017. *Abogado de Keoroglian: “Si la ley se aplica igual para todos, hay que procesar a media tribuna”*

¹⁶¹³ Montevideo Portal. November 7, 2017. *Empresa Autolider retiró denuncia contra “tuiteros”, tras acuerdo*; Cainfo. November 7, 2017. *Preocupación por demanda penal a periodistas y usuarios de redes sociales*; El Observador. November 7, 2017. *Dueño de Autolider lleva a la Justicia a dos periodistas*

¹⁶¹⁴ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177. Para. 86-88; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135. Para. 83-84; I/A Court H. R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73. Para. 69; I/A Court H. R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Judgment of August 31, 2004. Serie C No. 111. Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87.

“they have voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call information into question through its convening power.”¹⁶¹⁵ In this regard, the Inter-American Commission stated that “[t]his kind of political debate encouraged by the right to freedom of expression will inevitably generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy.”¹⁶¹⁶ Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, “[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official.” That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest

F. Audiovisual Communication Services Act

1126. During the 162nd Extraordinary Session, the IACHR and the Office of the Special Rapporteur received information about delays in the comprehensive implementation of the Audiovisual Communication Services Act¹⁶¹⁷ (LSCA)19.307, enacted in December 2014.¹⁶¹⁸ During the public hearing held on May 26 in Buenos Aires, representatives of the Coalition for Democratic Communication [*Coalición por una Comunicación Democrática*] (CCD) called on the State to immediately issue regulations to the law and to set up the new institutions responsible for its implementation.¹⁶¹⁹ Civil society reported that there had also been no progress in the implementation of the Public Radio and Television System, and maintained that, although public media outlets exist, they are not coordinated as provided for in the new law. The petitioners indicated that the failure to apply the law comprehensively has had repercussions on the processes for the allocation of radio and television frequencies.

1127. The State, represented by the Communications Services Regulatory Unit (URSEC) and the Ministry of Industry, Energy, and Mines, maintained that the law had been “in full force” from the time of its enactment, and was being applied in different cases. The authorities were of the opinion that the establishment of the Audiovisual Communications Council [*Consejo de Comunicación Audiovisual*] and the Honorary Advisory Council of the Audiovisual Communication Service (CHASCA)—which at that time had not yet been set up—were not essential for the application of the law. They asserted that the delays in issuing regulations to the law reflected the fact that there were 29 pending lawsuits involving constitutional challenges, and that the President of the Republic had therefore determined that the regulations to the law should not be issued until the outcomes of those actions are known. The State indicated that from February 2015 to May 18, 2017, the URSEC passed 54 resolutions directly applying the law, and forwarded them to the Office of the Special Rapporteur for Freedom of Expression. During the session, the State announced the imminent issuance of regulations to the law by Executive Branch. At the close of this report, a draft of the

¹⁶¹⁵ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177. Para. 86-88; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135, Para. 83; I/A Court H. R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74. Para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107. Para. 125-129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 115.

¹⁶¹⁶ IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

¹⁶¹⁷ Poder Legislativo de Uruguay. Law on Audiovisual Communication Services [Ley 19307], December 29, 2014.

¹⁶¹⁸ IACHR. 162 Extraordinary Period of Sessions. Buenos Aires, Argentina. Democratización de los medios de comunicación en Uruguay (Video of hearing).

¹⁶¹⁹ IACHR. 162 Extraordinary Period of Sessions. Buenos Aires, Argentina. Democratización de los medios de comunicación en Uruguay (Video of hearing).

regulation was to publicly available information, CHASCA was convened to hold its first session on October 4.¹⁶²⁰

1128. In July, the newspaper *El Observador* reported, based on information provided by URSEC in response to a request for access to public information, that pursuant to the LSCA the body had imposed six financial penalties against private free-to-air television channels for excessive commercial breaks between May 2015 and February 2017.¹⁶²¹ For its part, URSEC issued a statement on July 25, explaining the scope of the law and of the standards it had been applying to advertising.¹⁶²² Additionally, on July 6, the body passed Resolution 101/ 2017, regulating Articles 60 and 61 of the LSCA, which provide for national music and production quotas. On September 7, 2017, URSEC issued Resolution 141, amending the system governing the national music quota, citing the need to simplify it.¹⁶²³

1129. Additionally, according to the information available, in Judgment 362/2017 of April 24, 2017, the Supreme Court upheld the constitutionality of various provisions of the Audiovisual Communication Services Act designed to protect the communication rights of individuals.¹⁶²⁴

1130. The National Institute for Children and Adolescents [*Instituto Nacional del Niño y el Adolescente*] (INAU) filed a complaint against *Canal 12* of Cerro Largo, alleging that one of its central news broadcasts violated Articles 31 and 32 of the law protecting the rights and privacy of children and adolescents. On October 6, 2016, the station had aired a report about a case involving the alleged sexual abuse of two minor children, and interviewed one of the victims with his or her mother. The station denied having violated those rights and argued that the report had been done with the consent of the children's mother, and that the images were broadcast in such a way that their faces could not be identified. On September 7, the 5th District Court of Melo [*Juzgado Letrado de Melo de 5to Turno*] ordered *Canal 12* to pay 10,000 Readjustable Units [*Unidades Reajustables*] (equivalent to US\$ 350,000)—the maximum financial penalty amount provided for under the Audiovisual Communication Services Act (LSCA) for the violation of its provisions, after finding that the station violated the privacy rights of two minor children by broadcasting the news item in question without taking sufficient measures to ensure that they could not be identified, and asserting that the family could be identified by the mother's face. The media outlet appealed the judgment. The National Association of Uruguayan Broadcasters (ANDEBU) argued that the judgment reflected an improper application of the LSCA and that the penalty imposed was disproportionate and "confiscatory," and would entail the station's closure.¹⁶²⁵

G. Access to Public Information

1131. On September 27, the Center for Archives and Access to Public Information and the Catholic University of Uruguay publicly released a report indicating that although government entities had improved the degree of overall compliance with their active transparency obligations, they still only published an average of 48% of the information that is subject to mandatory disclosure under Law on Access to Public Information 18.381, in effect since October 2008, and the 2010 regulations thereto.¹⁶²⁶

¹⁶²⁰Cotidiano Mujer. *Cotidiano Mujer en la CHASCA*. October 5, 2017.

¹⁶²¹El Observador. June 27, 2017. *Gobierno aplica la ley de medios y multa a canales por las tandas*.

¹⁶²²URSEC. July 25, 2017. *Duración de tandas y mensajes publicitarios en televisión*.

¹⁶²³URSEC. *Resolución 101, July 6, 2017*. URSEC. *Resolución 141, September 7, 2017*.

¹⁶²⁴Poder Judicial. Suprema Corte de Justicia. *Judgment 362/2017 of April 24, 2017*; La Diaria. May 13, 2017. *Ley de medios constitucional: SCJ falló contra Canal 4*.

¹⁶²⁵El Profesional. September 8, 2017. *Juez multa a canal 12 de Melo por un monto de 350 mil dólares*; El País. September 8, 2018. *Canal de Melo fue sancionado por entrevista a menores abusados*; ANDEBU. *ANDEBU expresa su grave preocupación ante el fallo judicial dictado contra CXB Melo TV Canal 12 de la ciudad de Melo*. Press Release. No date.

¹⁶²⁶CAinfo. *Índice de Transparencia Activa en Línea ITAEL 2016*. September 27, 2017.

1132. On February 13, through Order 45/2017, the Executive Branch amended Article 69 of Order 500/91, regulating the actions of public servants in relation to the production of requests, drafts, reports, opinions, and other documents in administrative proceedings of the Central Government.¹⁶²⁷ The new rule provided that, “Any public servant who makes public, discloses, or makes known to third parties” such documents, “except in those cases provided by law, will be considered to have committed a serious infraction, and is liable to be removed from employment.” On February 24, a number of civil society organizations belonging to the Open Government Network asserted that Order 45/2017 “is a step backwards in the regulation of access to public information and transparency.”¹⁶²⁸ The provision was challenged jointly by the Uruguayan Press Association (APU) and several journalists in an administrative appeal seeking its revocation. In view of the denial of that appeal, the organizations announced that they planned to challenge the provision in the Administrative Disputes Court.¹⁶²⁹

1133. The use of the Law on Access to Public Information by journalists and media outlets was evident during 2017, and reportedly facilitated the dissemination of information in the public interest. Nevertheless, the Office of the Special Rapporteur continued to receive information about the persistence of obstacles preventing access to public information under the protection of the law in different scenarios. For instance, on May 14, the newspaper *El Observador* published a report stating that its requests for information from different government bodies are frequently met with the assertion that no such information exists.¹⁶³⁰ Also in June, the Luz Ibarburu Observatory reported obstacles to obtaining information about actions carried out by the State to comply with the judgment handed down by the Inter-American Court of Human Rights in the case of *Gelman v. Uruguay*.¹⁶³¹ On September 29, the Center for the Promotion and Defense of Human Rights [*Centro de Promoción y Defensa de los Derechos Humanos*] (CDH) and *REDES – Amigos de la Tierra Uruguay* reported that different public agencies refused to provide them with access to information on commitments undertaken by the Uruguayan State for the establishment of a second cellulose plant by the Finnish company UPM, which is required under Law 18.381.¹⁶³²

1134. On September 26, the 6th District Court [*Juzgado Letrado de Primera Instancia de 6to Turno*] of the Department of Maldonado dismissed a petition for a constitutional remedy [*amparo*] filed by a town councilman from Frente Amplio to obtain a copy of the US\$ 18 million 500 thousand contract between the Municipal Government of Maldonado and an international corporation for the purchase of video surveillance equipment to be installed in different spots around the department, after his request for the document had been denied through administrative channels. The judgment held that the information requested fell within the scope of the public safety confidentiality exception. The judgment was on appeal at the time of this writing.¹⁶³³

¹⁶²⁷ Presidencia de la República Oriental del Uruguay. February 13, 2017. [Decreto 45/2017. Modificación del artículo 69 del Decreto 500/91 relativo al procedimiento administrativo y disciplinario aplicable al funcionario público de la Administración Central](#)

¹⁶²⁸ Red de Gobierno Abierto. [Decreto del Poder Ejecutivo retrocede la regulación en materia de acceso a la información pública y transparencia](#). February 24, 2017.

¹⁶²⁹ El País. March 23, 2017. [Recusan decreto que prohíbe filtrar datos](#).

¹⁶³⁰ El Observador. May 14, 2017. [El Estado desconocido](#); CAinfo. July 6, 2016. [Salud Mental: organismos públicos evidencian falta de información](#); CAinfo. December 16, 2015. [El Estado Uruguayo debe garantizar la disponibilidad y el acceso oportuno a información de calidad sobre salud sexual y salud reproductiva en Uruguay](#).

¹⁶³¹ Brecha. June 16, 2017. [Derechos humanos: derrotar los focos de impunidad](#); La Diaria. June 16, 2017. [El Estado le negó información al Observatorio Luz Ibarburu sobre el seguimiento del caso Gelman](#); Observatorio Luz Ibarburu. [Observatorio Luz Ibarburu solicitó nuevamente al Estado uruguayo información sobre el proceso de ejecución de la sentencia de la Corte IDH](#). August 9, 2017. Observatorio Luz Ibarburu. [Respuesta del Ministerio de Relaciones Exteriores](#). September 15, 2017.

¹⁶³² REDES Amigos de la Tierra / CDH. [Renuncia de jerarca del MEF incrementa preocupación por posibles compromisos de Uruguay con UPM para instalación de nueva planta cerca de Paso de los Toros](#). September 29, 2017.

¹⁶³³ Poder Judicial de Uruguay. Juzgado Letrado de Primera Instancia de 6to Turno de Maldonado. IUE 290-186/2017. Judgment of September 26, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

1135. On October 23, after a request for access to public information made by a journalist from the newspaper *El Observador*, the Presidency of the Republic issued a resolution by which it classified as confidential "all [information] relative to the surveys of public opinion entrusted by the Presidency of the Republic". The resolution established that said information forms part of the deliberative processes for the adoption of public policies¹⁶³⁴.

1136. On October 26, the General Archive of the Nation gave access to the contents of 152 documentaries linked to the work of military intelligence during the dictatorship (1973-1985), and of previous and subsequent years, in response to request of access to public information presented by the Luz Ibarburu Observatory. These documents had been declared as confidential information in a resolution issued by the agency in July 2011. The request for access was made by the Observatory on behalf of victims of human rights violations that occurred during the military dictatorship, on the understanding that the information contained therein could have relevance for the court cases that investigate the crimes of that period¹⁶³⁵.

1137. In November, the Municipality of Maldonado filed an appeal for unconstitutionality against the Law on Access to Public Information [*Ley de Acceso a la Información Pública*] in the context of a judicial proceeding initiated against it by two departmental editors in response to the refusal of the agency to provide them with a set of information that they would have requested through 17 petitions for information. The legal department of the Municipality understands that the editors cannot use the Law on Access to Public Information because Article 284 of the Constitution provides for a specific mechanism for members of the Departmental Board to access information of the administration¹⁶³⁶.

1138. Principle 4 of the Declaration of Principles on Freedom of Expression which states that "[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Additionally, with regard to the principle of maximum disclosure the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

H. Surveillance of Communications

1139. During the past year, Uruguay continued taking measures to implement the electronic communications surveillance system called "El Guardián." Pursuant to the 2015 agreement reached between the Ministry of the Interior and the Judiciary, the Automated Lawful Interception System [*Sistema Automatizado de Interceptaciones Legales*] (SAIL) became operational on December 21, 2016. The system was developed for processing court-ordered interceptions.¹⁶³⁷ SAIL is independent of "El Guardián," which remains under the exclusive control of the Ministry of the Interior, as the Office of the Special Rapporteur indicated in its 2015 Annual Report.¹⁶³⁸

¹⁶³⁴ Presidencia de la República. **Resolution P2047** of October 23, 2017; *El Observador*. October 26, 2017. [Vázquez clasificó como reservadas las encuestas que manda comprar](#); Presidencia de la República. **Press release**. October 27, 2017.

¹⁶³⁵ Observatorio Luz Ibarburu. October 31, 2017. [EL OLI obtuvo respuesta favorable en el pedido de acceso a la información sobre los "Archivos Berruti" por parte del Archivo General de la Nación](#).

¹⁶³⁶ La Diaria. November 11, 2017. [Recurso presentado por Intendencia de Maldonado contra la Ley de Acceso es "disparatado", según Edison Lanza](#); Montevideo Portal. November 9, 2017. [Maldonado denunció la Ley de Acceso a la Información Pública por inconstitucional](#).

¹⁶³⁷ Poder Judicial. December 29, 2016. [Sistema automatizado de interceptaciones legales está operativo al 100%](#); *El País*. December 14, 2015. [Está operativo el software para utilizar El Guardián](#).

¹⁶³⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. December 31, 2015. Para. 1118.

1140. The Office of the Special Rapporteur reiterates that surveillance programs must be designed and implemented in accordance with international human rights standards. Notably, States must guarantee that the interception, collection and use of personal information are clearly authorized by law in order to protect individuals from arbitrary or abusive interference with their privacy. Moreover, the decision to undertake surveillance activities that intrude upon individual privacy must be authorized by an independent judiciary and justified in terms of the objectives pursued in the specific case and the proportionality of the measure in relation to necessity and the interests pursued. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that States should establish independent oversight mechanisms over the authorities in charge of conducting surveillance in order to ensure transparency and accountability.¹⁶³⁹

I. Other Relevant Situations

1141. On December 14, 2016, the Constitution and Legislation Committee of the House of Representatives passed a bill to regulate government advertising.¹⁶⁴⁰ The initiative was spearheaded by civil society, by the Center for Archives and Access to Public Information (CAinfo), through a legislative bill that was supported by different political parties and sought to bring the regulation into line with the relevant inter-American standards.

1142. On June 26, the First Criminal Court of Appeals [*Tribunal de Apelaciones en lo Penal de 1er Turno*] upheld a lower court's decision dismissing the accusation against the president of the Military Club [*Círculo Militar*], Retired General Raúl Mermot, who was denounced for the crime of supporting torture because of statements in which he urged "not to confuse torture with physical coercion."¹⁶⁴¹ The Court concluded that, in making those statements, the retired member of the military had not committed a crime. In that regard, the Court held "that the fact that the distinction is unacceptable does not presume a risk of indirect incitement (...) in a specific case." It held that, consistent with Law 18.515, the American Convention and other provisions of international human rights law, the reports of the IACHR and the judgments of the Inter-American Court include an "inevitable imperative that must be observed by the judges" called upon to adjudicate cases involving opinion, expression, and dissemination, provided that it does not diminish the standards of protection established in national law or recognized by national case law.

1143. Finally, the parliamentary investigation into alleged spying —unlawful in a democracy—continued in 2017. According to different spokespersons, espionage that included following political figures, political parties, trade unions, journalists, judges, prosecutors, and civil society organizations was reportedly confirmed.¹⁶⁴²

¹⁶³⁹ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc.50. December 31, 2013. Para. 415-417.

¹⁶⁴⁰ Poder Legislativo. Cámara de Diputados. Repertorio N° 252. August 2015. "Se regula su producción, planificación, contratación, distribución y asignación" (Bill); Poder Legislativo. Cámara de Diputados. Comisión de Constitución, Códigos, Legislación General y Administración. Versión Taquigráfica N° 864 de 2016. December 14, 2016; La Diaria. December 17, 2016. Comisión de Diputados aprobó en general proyecto de ley de publicidad oficial

¹⁶⁴¹ Poder Judicial. Tribunal de Apelaciones en lo Penal de 1er Turno. Judgment No 183 of June 26, 2017; La Diaria. June 27, 2017. Tribunal de Apelaciones confirmó absolución de Mermot; Sudestada. May 20, 2017. Mermot hizo una declaración "innecesaria, inadecuada pero no ilegal".

¹⁶⁴² Cámara de Diputados. Repertorio 594 de 2016. Informe Creación Comisión Investigadora. Posibles actos de inteligencia del Estado, violatorios de la normativa legal y constitucional, llevados a cabo por personal policial o militar desde 1985 a la fecha; IACHR. Informe Anual de la Relatoría Especial para la Libertad de Expresión 2016. OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 1051.El País. May 16, 2017. Confirman espionaje militar al Frente hasta 1998; El País. September 18, 2017. Un militar reconoció espionaje en democracia.

35. VENEZUELA¹⁶⁴³

A. Protesta social

1144. On March 30, 2017, a new wave of public demonstrations broke out in Venezuela when thousands of people mobilized in different cities to protest the decisions of the Supreme Court of Justice (TSJ) in which it repudiated the National Assembly (AN) (Chapter II.A.2). The protests intensified in May after the President issued Decree No. 2830 convening the National Constituent Assembly (ANC); the protests continued until the end of July. It is thought that between April 1 and July 31, there were 6,729 demonstrations throughout the country (equivalent to 56 per day)¹⁶⁴⁴ to make political and social demands and targeting specific institutions, such as the TSJ or the National Electoral Council (CNE).¹⁶⁴⁵ According to available information, the Democratic Unity Roundtable (MUD) called for the protests at the national level,¹⁶⁴⁶ while many others broke out spontaneously in residential areas and low-income districts.¹⁶⁴⁷ In that regard, the State has said that during that period there were 9,435 “street actions,” 62.30 percent of which were purportedly violent.¹⁶⁴⁸

1145. The Commission has monitored with grave concern the situation of violence against demonstrators and stigmatization of social leaders and human rights defenders in Venezuela in 2017¹⁶⁴⁹. It is estimated that during the protests in these four months alone 133 people were killed, 4,000 were injured, and more than 5,000 were arbitrarily detained¹⁶⁵⁰ (Chapter III.A.4). The commission has received reports about excessive and indiscriminate use of force by the Bolivarian National Guard (GNB) and the Bolivarian National Police (PNB).¹⁶⁵¹ Furthermore, as this section mentions, the Commission has received extremely troubling information about human rights violations against demonstrators during their detention and prosecution, including torture and other cruel, inhuman and degrading treatment, rape, and the trial of civilians in military criminal tribunals.

1. Regulatory Framework

1146. Any restrictions on freedom of assembly and the right to take part in public demonstrations should be regarded as exceptional and comply strictly with certain requirements, in accordance with Articles IV, XXI, and XXII of the Declaration.¹⁶⁵² For any restriction of such rights to be legitimate, it must be expressly set

¹⁶⁴³ This section corresponds to the section “Social protests and freedom of Expression” of the Country Report 2017 “Democratic Institutions, the Rule of Law and Human Rights in Venezuela” of the IACHR, assigned to the Office of the Special Rapporteur for Freedom of Expression.

¹⁶⁴⁴ Observatorio Venezolano de la Conflictividad Social, *6.729 manifestaciones en 4 meses en todo el país*, August 3, 2017.

¹⁶⁴⁵ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 6.

¹⁶⁴⁶ Runrunes, MUD convocó nueva marcha para este 1 de julio, June 30, 2017; Tal Cual, MUD publicó la agenda de protestas para el 1, 2 y 3 de julio, June 29, 2017; El Nacional, Oposición convoca al “Trancazo contra la dictadura” este martes 4 de julio, July 3, 2017; El Universal, MUD convoca tres días de calle contra la Constituyente, July 27, 2017; y El Universal, MUD convoca protesta a nivel nacional este lunes a partir del mediodía, July 30, 2017.

¹⁶⁴⁷ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, August 31, 2017, p. 6.

¹⁶⁴⁸ IACHR, Violence, Citizen Security, and Freedom of Expression in Venezuela, October 24, 2017.

¹⁶⁴⁹ IACHR, Press Release No. 58/17, IACHR Deplores Repressive Measures Taken by Venezuela against Protests and Condemns Resulting Deaths and Injuries, May 9, 2017.

¹⁶⁵⁰ FPV, Report on State repression in Venezuela July 2017, August 8, 2017, p. 1.

¹⁶⁵¹ FUNDEPRO, Report on the current status of Venezuela, 2017, p. 9.

¹⁶⁵² IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/SER.L/V/II. Doc. 66, December 31, 2011, para. 107; IACHR, 2007 Annual Report, Chapter IV, Venezuela, para. 260-261; UN, Human Rights Council, Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 47.

down in a clear and precise way in a law in the formal and material sense, be justified by an imperative social interest, as well as being genuinely necessary in a democratic society and proportionate to achieving that aim.¹⁶⁵³ It is incumbent on States to demonstrate that restrictions imposed on public demonstrations and protests meet those requirements.¹⁶⁵⁴

1147. In that regard, the IACHR recalls that “in democracies, states should act based on the legality of protests or public demonstrations and under the assumption that they do not constitute a threat to public order.”¹⁶⁵⁵ That assumption should be clearly and expressly established in the laws of states and apply to all without discrimination.¹⁶⁵⁶ If legal provisions are not clear, they should be clarified or, as appropriate, interpreted in favor of those exercising their right to freedom of peaceful assembly and freedom of expression.¹⁶⁵⁷ Broad prohibitions and the establishment of authorization requirements for people to exercise the right to participate in peaceful protests are inherently unnecessary and disproportionate. Furthermore, the purpose of regulating them cannot be to establish grounds for prohibiting the meeting or demonstration.¹⁶⁵⁸ To be sure, the actions of the security forces should protect and facilitate, rather than discourage, the right to assembly and participation in social protests¹⁶⁵⁹.

¹⁶⁵³ IACHR, 2002 Annual Report, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV, “Freedom of Expression and Poverty,” para. 31; 2005 Annual Report, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, March 7, 2006, para. 55; UN, Human Rights Council, Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 15; Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 47; and Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 January 2013, para. 5.

¹⁶⁵⁴ IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 83; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004. Series C No. 107, pars. 120-123; and *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 46.

¹⁶⁵⁵ IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 160; and Press Release No. R109/17, The Office of the Special Rapporteur for Freedom of Expression of the IACHR Condemns Arbitrary Restrictions on Freedom of Expression and Assembly in Venezuela, July 29, 2017.

¹⁶⁵⁶ IACHR, 2015 Annual Report, Chapter IV.A, “Use of Force,” para. 65; UN, Human Rights Council, Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 50; and Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 26.

¹⁶⁵⁷ UN, Human Rights Council, Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 50.

¹⁶⁵⁸ IACHR, 2005 Annual Report, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 91-92.

¹⁶⁵⁹ IACHR, 2007 Annual Report, Chapter IV, Venezuela, para. 260-261; and 2015 Annual Report, Chapter IV.A, “Use of Force,” para. 67.

1148. In spite of the fact that the Venezuelan Constitution recognizes the right of individuals to demonstrate publicly, as well as the right of assembly without permission in advance,¹⁶⁶⁰ the IACHR notes with concern that in recent years reforms have been made to the Venezuelan regulatory framework that place illegitimate restrictions on the exercise of that right. The country's courts, for their part, have extended the content and scope of those restrictions in a manner incompatible with international standards in that regard.¹⁶⁶¹ Such restrictions have been established as a response to a climate of protest against the Government. As is described later in this chapter, legal restrictions have resulted in a pattern of gross violations of demonstrators' human rights.

1149. Law on Political Parties, Public Meetings, and Demonstrations (2010).¹⁶⁶² Article 43 of this law provides that organizers of demonstrations "must give notice, at least twenty-four hours in advance, in writing with a duplicate copy, during business hours, to the first civil authority of the jurisdiction, indicating the planned place or itinerary, day, time, and general objective pursued." The authorities must "stamp on the copy that they give the organizers their acceptance of the location or itinerary and time." That law also provides that if the first civil authority finds justified reasons to "fear" that staging public demonstrations in the same location might "cause disturbances of public order," it may order the demonstrations or public meetings to be held at a different places and times (Art. 44). Likewise, the law authorizes governors' and mayors' offices periodically to establish "places where public meetings or demonstrations may not be held, having first heard the opinions of the parties."

1150. In a decision of April 24, 2014, the Constitutional Division of the TSJ ruled on an application for an interpretation of the constitutionality of this law. The court held that it was mandatory for all citizens, parties and organizations to "exhaust the administrative procedure of authorization before the first civil authority of the appropriate jurisdiction" and failure to meet that requirement "absolutely limits the right to peaceful demonstration, thus impeding the holding of any kind of meeting or demonstration."¹⁶⁶³ In that decision, the Constitutional Division ruled that a lack of authorization to exercise the right to peaceful demonstration could give rise to the police and security forces immediately dispersing the demonstration. Moreover, it ruled that if demonstrations are held when authorization had been denied or changing the pre-authorized conditions of time, manner and location, that may be grounds for liability to criminal prosecution for the crime of "disobedience of authority" envisaged at Article 483 of the Criminal Code.¹⁶⁶⁴

1151. Based on the Division's decision, demonstrations in public thoroughfares organized by political parties or social sectors linked to the opposition are not authorized and have been immediately dispersed; furthermore, mayors belonging to opposition parties who do not comply with the order to prevent such gatherings may be liable to imprisonment and removal from office for disobedience of authority¹⁶⁶⁵ (Chapter II.B.2).

¹⁶⁶⁰ Article 53 of the Constitution of Venezuela provides: "Everyone has the right to meet publicly or privately, without obtaining permission in advance, for lawful purposes and without weapons. Meetings in public places may be regulated by law." Furthermore, Article 68 recognizes that "[c]itizens have the right to demonstrate, peacefully and without weapons, subject only to such requirements as may be established by law. The use of firearms and toxic substances to control peaceful demonstrations is prohibited. The activity of police and security corps in maintaining public order shall be regulated by law."

¹⁶⁶¹ TSJ, Decision No. 276, April 24, 2014; and Decision No. 944, November 15, 2016.

¹⁶⁶² Article 43 of the Law on Political Parties, Public Meetings, and Demonstrations, published in Official Gazette No. 27,725 of April 30, 1965, as amended by the Law Partially Reforming the Law on Political Parties, Public Meetings, and Demonstrations, published in Official Gazette No. 6,013 of December 23, 2010.

¹⁶⁶³ TSJ, Judgment No. 276 of April 24, 2014; and IACHR, 2014 Annual Report, Chapter IV, Venezuela, para. 695.

¹⁶⁶⁴ IACHR, 2014 Annual Report, Chapter IV, Venezuela, para. 696.

¹⁶⁶⁵ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, pp. 30-31; El Tiempo, TSJ emite orden de captura contra Gustavo Marciano y es destituido de su cargo, July 25, 2017; and BBC, Los alcaldes de oposición condenados (y escondidos) por permitir las protestas contra el gobierno de Venezuela, August 10, 2017;

1152. Decree with the Rank, Value, and Force of an Organic Law on Security of the Nation.¹⁶⁶⁶ This decree-law provides that demonstrations and public meetings are prohibited in areas considered "security zones" by the authorities. According to Article 47 of the Decree, "security zones are considered to be those areas of the country that, because of their strategic importance, characteristics, and component elements, are subject to special rules as to the persons, property, and activities found in them in order to ensure the protection of such zones against internal or external hazards or threats." Article 48, for its part, states that the following may be decreed security zones: areas that surround military and public facilities and essential services, areas adjacent to land communication routes, and "[a]ny other security zone considered necessary for the security and defense of the nation." The Law establishes penalties of 5 to 10 years of imprisonment for anyone who engages in activities "that are intended to disrupt or impair the organization and functioning of military installations, utilities, essential industries and businesses, or the socioeconomic life of the country."¹⁶⁶⁷

1153. According to the Ombudsperson's Office (Defensoría del Pueblo - DP), there are 103 zones in the country with that classification,¹⁶⁶⁸ covering some 30 percent of Venezuelan territory,¹⁶⁶⁹ where staging demonstrations is absolutely forbidden.¹⁶⁷⁰ They include government offices and state entities.¹⁶⁷¹ For example, in 2016, the Second Administrative Court banned all unauthorized demonstrations outside offices of the National Electoral Council (CNE). In that regard, it urged the "executive branch to evaluate, pursuant to articles 47 and 48 of the Organic Law on National Security, declaring areas adjacent to the offices of the electoral authority as security zones." It also instructed the GNB to "adopt the security measures necessary to permanently protect the offices of the National Electoral Council and their surroundings areas nationwide, in order to prevent unauthorized events, marches, protests, prohibited gatherings, and violent demonstrations."¹⁶⁷²

1154. Decree 281 issued by the Office of the Mayor of Caracas. This decree, issued in 2014 by the mayor of Caracas, a member of the ruling party, bans public demonstrations on the basis of their political nature in extremely vague terms. In his decree, the mayor considered that "the practices in which some violent groups have been engaging are considered fascist demonstrations because they give rise to actions deliberately intended to damage the infrastructure of government institutions, intimidate workers in the service of the state, and, in general, cause anxiety in the citizenry, thus providing a space for anarchy." Therefore, he declared the Municipality of Caracas to be a "zone of peace, free from fascism ... and a space for building consensus on ideas in a framework of respect for rights, in the struggle to attain Bolivarian socialism." He also

¹⁶⁶⁶ Article 47 of the Decree with the Rank, Value, and Force of an Organic Law on Security of the Nation, published in Official Gazette No. 37,594 of December 18, 2002, as amended by Decree No. 1,473, published in Official Gazette No. 6,156 of November 19, 2014.

¹⁶⁶⁷ Article 56 of the Organic National Security Law, published in official Gazette No. 37,594 of December 18, 2002.

¹⁶⁶⁸ "To date [July 2017], there are 97 registered security zones in the country (1 in Amazonas, 2 in Anzoátegui, 9 in Apure, 4 in Aragua, 2 in Barinas, 5 in Bolívar, 4 in Carabobo, 1 in Delta Amacuro, 8 in the Capital District, 1 in Falcón, 4 in Guárico, 6 in Lara, 5 in Miranda, 2 in Sucre, 30 in Táchira, 6 in Vargas, 6 in Yaracuy, and 1 in Zulia), where there are located border control points, command bases, forts, barracks, military cadet schools and colleges, military hospitals, essential businesses, hydroelectric plants, and two state-owned communications enterprises (Venezolana de Televisión and Radio Nacional de Venezuela); 12 of those zones were created after 2002. There are also six border security zones (Amazonas, Apure, Barinas, Bolívar, Táchira, and Zulia), all of which were created between 1994 and 1998." [DP, En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017, July 27, 2017].

¹⁶⁶⁹ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 27.

¹⁶⁷⁰ DP, En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017, July 27, 2017; and OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 27.

¹⁶⁷¹ IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 58; and TSJ, Case No. AP42-O-2016-000021, Decision of May 18, 2016.

¹⁶⁷² Panorama, Esta es la sentencia del TSJ que prohíbe las manifestaciones frente a sedes del CNE, May 23, 2016, and Informe 21, Publican sentencia del TSJ que prohíbe manifestaciones cerca del CNE, May 23, 2016.

ordered the municipal authorities “to adopt the appropriate measures ... to fully enforce the contents of this decree.”¹⁶⁷³ In this municipality, for example, State authorities regularly setup military and police barriers and order public transport to be closed down so as to prevent demonstrators reaching that area.¹⁶⁷⁴

1155. States of emergency and other legal restrictions of a temporary nature. As this report analyzes, the declarations of states of emergency issued since January 2016 authorize in vague and very broad terms the suspension of the rights of assembly and freedom of expression¹⁶⁷⁵ (Chapter IV.B.2). For the ANC elections the executive branch published Decree No. 2,992, banning all demonstrations and public gatherings throughout the country for five days, from July 28 to August 1.¹⁶⁷⁶

1156. The IACHR notes with concern that the restrictions imposed by this law are founded on vague and imprecise concepts that originate from presidential decrees, regulations, or judicial decisions, not from laws in any formal sense. Indeed, the case law of the inter-American system considers that domestic provisions that States introduce to restrict the rights involved in social protest should have the rank of law, in both the material and the formal sense; in other words, they should emanate from the democratically legislature branch and be promulgated by the executive branch. Only formal law can restrict the enjoyment and exercise of such rights.¹⁶⁷⁷

1157. It is not sufficient for the law to be formal but, rather, they must be established in advance, expressly, restrictively and clearly.¹⁶⁷⁸ A set of provisions that authorizes state agents to ban demonstrations classed as “fascist” or “violent”; when “they fear” that they could “cause disturbances of public order”; in “zones surrounding public facilities” or in “any other security zone considered necessary for the security and

¹⁶⁷³ Office of the Mayor of Caracas, Decree No. 281, February 17, 2014; and DP, En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017, July 27, 2017. In its report, the DP said: “The ordinance on harmonious social coexistence and punishment of minor infractions in the Metropolitan District of Caracas (2006) prohibits taking advantage of marches or demonstrations to damage, stain, soil, or scratch publicly or privately owned walls, or put up posters or advertising without proper authorization, and imposes a fine on violators that varies according to whether they are natural or legal persons (Art. 35). It also punishes unauthorized public demonstrations, as well as those that are authorized that disturb public order or cause damage or injury to property or persons (Art. 22).” [DP, En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017, July 27, 2017].

¹⁶⁷⁴ EFE, Impiden nuevamente a los opositores venezolanos marchar hacia la Defensoría, April 8, 2017; and Metro de Caracas, El @metro caracas suspende operaciones comerciales debido a ataques terroristas sufridos en los últimos días, May 12, 2017.

¹⁶⁷⁵ IACHR, Press Release No. 071/17, IACHR Expresses its Concern Regarding the Declaration of a “State of Exception and Economic Emergency” in Venezuela, June 1, 2016.

¹⁶⁷⁶ Art. 1 of Decree No. 2,992, published in Official Gazette No. 6.317 of July 19, 2017; AVN, Centros de votación son zonas de seguridad y quienes los violenten serán sancionados, July 24, 2017; and Contrapunto, Centros de votación para la constituyente fueron declarados “zonas de seguridad”, July 24, 2017.

¹⁶⁷⁷ I/A Court H.R., *The Word “Laws” in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986, Series A No. 6.

¹⁶⁷⁸ IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 69; and I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5, pars. 39-40; *Case of Palamara Iribarne v. Chile*, Merits, Reparations and Costs, Judgment of November 22, 2005, Series C No. 135, para. 79; *Case of Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004, Series C No. 107, para. 120; I/A Court H.R., *Case of Tristán Donoso v. Panama*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of January 27, 2009, Series C No. 193, para. 117; IACHR, 1994 Annual Report, Chapter V: Report on the Compability of “Desacato” Laws with the American Convention on Human Rights, Title IV; Report No. 11/96, Case No. 11.230, Francisco Martorell, Chile, para. 55; and Arguments before the Inter-American Court of Human Rights in the Case of Ricardo Canese v. Paraguay [Transcripts available at I/A Court H.R., Case of Ricardo Canese v. Paraguay, Merits, Reparations and Costs, Judgment of August 31, 2004, Series C No. 111, para. 72. a)].

defense of the nation” grants the authorities very broad discretionary powers that could be used to justify potentially arbitrary acts that might amount to prior censorship or impose disproportionate liability for the legitimate exercise of a right.¹⁶⁷⁹ It is also troubling that in many cases such restrictions may result in the imposition of criminal penalties, as well as the fact that they do not satisfy the requirements of the principle of strict legality in that regard.

1158. Furthermore, as this report has already analyzed (Chapter IV.B.2), the IACHR notes that the restrictions invoke concepts of “national security,” “public security,” and “public order” that are not defined or interpreted from a democratic perspective and liken protest to a threat to that public interest. The Commission reiterates that such concepts cannot be invoked to suppress a human right, distort it, or deprive it of its real content. They must be interpreted in a manner that adheres strictly to the fair demands of a democratic society.¹⁶⁸⁰

1159. The State has also neglected to demonstrate the necessity and proportionality of such restrictions. On one hand, based on its monitoring of the situation of human rights in Venezuela, it is clear to the IACHR that the legal restrictions are imposed in a discriminatory way based on the nature or political content of the message to be disseminated, enabling the arbitrary restriction of protest by a sector of the population because of their political views. Indeed, the imposition (in a manner incompatible with inter-American standards on protection of human rights and best practices) of a system of authorizations for public demonstrations has allowed the authorities to deny permission for legitimate public demonstrations convened by those sectors, as well as authorizing the security forces to break them up.

1160. On the other hand, the restrictions regarding the “venue” of demonstrations seem to be designed to prevent the message of march and protest’s organizers and participants with which the government disagrees from reaching public eyes and ears.¹⁶⁸¹ The IACHR has repeatedly stated that social protests are indispensable for strengthening democracy, hence the State’s obligation to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims. Sweeping bans against demonstrating outside government offices not only have a negative impact on the transmission of the message, which may end up being silenced, but are an assault on the right of everyone to express political opinions, petition the State, and exercise societal oversight of their rulers. In short, they are disproportionate and unjustified because they undermine the very purpose of protest in a democratic society.

1161. The presence of a few individuals who commit acts of violence in and around a protest—including agents provocateurs—is not grounds for the authorities to brand entire demonstration as violent or illegal or to prohibit it in broad and sweeping terms. Nor is it license for the security forces to use force and indiscriminately detain demonstrators. The State has as a positive obligation to isolate those who commit violent acts and to protect demonstrators. Furthermore, as the IACHR has repeatedly stated, when a demonstration or protest leads to situations of violence it should be understood that the State was not capable of guaranteeing the exercise of this right.¹⁶⁸²

2. Excessive Use of Force

1162. Between April 1 and July 31, 2017, the Public Prosecutors’ Office (Ministerio Público - MP), registered 124 deaths linked to social protests, 46 of which corresponded to demonstrators who lost their lives as a result of the actions of the security forces, and 27 due to the actions of armed pro-government

¹⁶⁷⁹ IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 70.

¹⁶⁸⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 64.

¹⁶⁸¹ UN, Human Rights Council, Report of the United Nations Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 60.

¹⁶⁸² IACHR, 2015 Annual Report, Chapter IV.A, “Use of Force,” para. 68.

militia groups known as colectivos.¹⁶⁸³ According to the same source, 15 children and 7 women were among those killed.¹⁶⁸⁴ This official figure was announced while Attorney General Ortega was still in office; however, since her departure on August 5, 2017, there has been a lack of official information about the number of people killed in the protests. In that connection, the State has said that the deaths were the results of acts of violence and has even referred to them as hate crimes. In addition, it has highlighted that the deaths include 9 members of the security forces.¹⁶⁸⁵

1163. For its parts, the FPV recorded 136 killed in protests between April and August 2017.¹⁶⁸⁶ In that regard, it said that 102 deaths were the consequence of acts of repression involving state officials or armed civilians acting with its acquiescence. None of these cases has apparently been condemned.¹⁶⁸⁷ As of July 31, 2017, that organization said that 101 people were murdered as a direct result of the repression of the demonstrations. At least 83 percent of those killed in these cases died from gunshot wounds. At the same time, 32 people were said to have been killed in indirectly connected incidents.¹⁶⁸⁸ The IACHR expresses its most vigorous rejection of the fact that in just four months dozens of people were murdered while exercising their right to protest to have their rights upheld in Venezuela.

1164. Another 4,000 people were reportedly injured.¹⁶⁸⁹ By contrast, the State has reported that in this context, 1,455 people were wounded, 71 percent whom were said to have been members of State security agencies.¹⁶⁹⁰ The situation is all the more serious when one considers the crisis affecting the health-care system, including a shortage of medicine and medical supplies. State medical assistance groups, such as Protección Civil or Grupo de Rescate Venezuela, are reportedly unable to provide care in any situation unless given instructions to do so and, according to available information, such instructions apparently do not include providing assistance to wounded opposition supporters.¹⁶⁹¹ Civil society, in particular medical students, has had to organize and create the “Cruz Verde” (Green Cross).¹⁶⁹² The Commission condemns the fact that this organization’s volunteers have been attacked in variety of ways by State officials, making it difficult for them to do their work.¹⁶⁹³

¹⁶⁸³ OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 11. Prior to then, as of July 27, the DP had recorded a total of 98 people killed in the demonstrations and at least 16 individuals who died as a result of acts of vandalism, such as looting of businesses [DP, [En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017](#), July 27, 2017, pp. 68-69].

¹⁶⁸⁴ OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 11.

¹⁶⁸⁵ IACHR, [Violence, Citizen Security, and Freedom of Expression in Venezuela](#), October 24, 2017.

¹⁶⁸⁶ FPV, [Reporte sobre la represión del Estado en Venezuela - Agosto 2017](#), September 2017, p. 1.

¹⁶⁸⁷ IACHR, [Violence, Citizen Security, and Freedom of Expression in Venezuela](#), October 24, 2017.

¹⁶⁸⁸ FPV, [Reporte sobre la represión del Estado en Venezuela, Julio 2017](#), August 8, 2017, p. 1.

¹⁶⁸⁹ FPV, [Reporte sobre la represión del Estado en Venezuela, Julio 2017](#), August 8, 2017, p. 1.

¹⁶⁹⁰ IACHR, [Violence, Citizen Security, and Freedom of Expression in Venezuela](#), October 24, 2017.

¹⁶⁹¹ El Tiempo, [Cruz Verde, la brigada que rescata a los manifestantes en Venezuela](#), May 21, 2017.

¹⁶⁹² El Nacional, [Cruz verde, la brigada de primeros auxilios en las protestas](#), May 26, 2017.

¹⁶⁹³ According to the information provided by George Simon and Federica Dávila, members of the Cruz Verde, during the OAS hearings on November 16, 2017, Bolivarian National Guardsmen arrested Cruz Verde volunteers who were caring for injured protesters. In addition, in May 2017, tear gas bombs were fired at one of the Cruz Verde’s SUVs that was there to offer aid. Also, a guardsman fired pellets at a Cruz Verde volunteer at pointblank range [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017; and Youtube video, [Venezuela #31May GNB disparó contra un rescatista de la Cruz Verde UCV](#), El Acertijo Cretino, June 1, 2017].

1165. According to available information, the high numbers of dead and injured are the result of use of firearms and excessive deployment of less lethal weapons, such as teargas and bird shot.¹⁶⁹⁴ Available information suggests that the MP has received at least 1,958 complaints of injuries sustained in such contexts, 60 percent of which were allegedly inflicted by members of the security forces.¹⁶⁹⁵

1166. The security forces are alleged to have misused less lethal weapons. In particular, teargas was purportedly used directly against homes and buildings in residential areas, launched against civilians at close range, or fired directly at demonstrators.¹⁶⁹⁶ For example, on April 8, during the protest staged at Henrique Capriles' headquarters prompted by his disqualification, teargas was reportedly used that is said to have caused a fire in those offices.¹⁶⁹⁷

1167. The IACHR expresses concern at the particular harm that excessive use of force has caused to the rights of children and adolescents, due largely to the significant involvement of the student movement in the demonstrations. According to the MP, 13 adolescents between the ages of 14 and 17 years old were killed during the recent protests. Cecodap recorded the deaths of six other minors, making 19 in all.¹⁶⁹⁸ It is worth mentioning that at least 10 of those killed reportedly died from gunshot wounds.¹⁶⁹⁹ For example, the killing was reported of Carlos José Moreno, a 17-year-old adolescent who was standing in a public place in the vicinity of an opposition demonstration in Caracas when he was struck in the head by a bullet. The MP is investigating the incident.¹⁷⁰⁰ The case was also heard of Fabián Urbina Barrios, 17 years old, who died during the "takeover of Caracas" from a gunshot wound to the chest.¹⁷⁰¹ Furthermore, the MP received 53 complaints

¹⁶⁹⁴ According to information from the FPV, at least 83% of the 133 deaths recorded between April 1 and July 31 were from gunshot wounds [FPV, [Reporte sobre la represión del Estado en Venezuela - Julio 2017](#) August 8, 2017, pg. 1]. According to members of the Cruz Verde, initially, the injuries they attended to during the 2017 protests were suffocation from the use of tear gas. However, over time, the injuries they dealt with predominately changed to gunshot wounds [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017.

¹⁶⁹⁵ OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 15.

¹⁶⁹⁶ El Universal, [Observatorio Venezolano de la Salud alerta sobre uso de gases lacrimógenos](#), May 29, 2017; Huffington Post, [La policía venezolana dispersa con gases lacrimógenos una nueva marcha de la oposición a Maduro](#), May 3, 2017; and Runrun, [El uso del gas pimienta en protestas es inconstitucional](#), April 4, 2017.

¹⁶⁹⁷ Deutsche Welle (DW), [Incendio en el comando de campaña de Capriles](#), April 8, 2017; and NTN24, [Comando Capriles se incendió tras ser atacado con bombas lacrimógenas: El Cicpc se presentó en la madrugada para "investigar"](#), April 8, 2017.

¹⁶⁹⁸ Entorno Inteligente, [VENEZUELA: Cecodap registra 19 adolescentes muertos durante cuatro meses de protestas en Venezuela](#), July 29, 2017. Previously, Cedocap had recorded 14 deaths of adolescent in the context of the protests as at July 5 [Cecodap, Communication to the IACHR, September 2017, para. 18].

¹⁶⁹⁹ Sinergia, Asociación Venezolana de Organizaciones de la Sociedad Civil, Sociedad Civil en la Mira: Informe sobre las garantías y ejercicio de los derechos de participación y asociación en Venezuela 2016-2017, p. 22; Diario Las Américas, [Confirman muerte del joven herido de bala en manifestación opositora de Caracas](#), April 19, 2017; REDHNNA, [Respeto y protección a los niños, niñas y adolescentes en el control del orden público y situaciones de conflictividad social](#), April 29, 2017; and Cecodap, Communication to the IACHR, September 2017, para. 17-19.

¹⁷⁰⁰ Diario Las Américas, [Confirman muerte del joven herido de bala en manifestación opositora de Caracas](#), April 19, 2017; and REDHNNA, [Respeto y protección a los niños, niñas y adolescentes en el control del orden público y situaciones de conflictividad social](#), April 29, 2017.

¹⁷⁰¹ According to his father, Ivan Urbina, as the demonstrators were in the Altamira highway interchange, the guardsmen began shooting with firearms at the people who were at the front of the march. As a result, five people were injured, including Fabián Urbina, who died minutes later due to the severity of his wounds. As of November 16, 2017, three national guardsmen were being held in

of injuries sustained by children and adolescents during the protests.¹⁷⁰² In addition at least 356 children and adolescents reportedly lost their parents as a result of the repression of protests between May and July 2017 in Caracas.¹⁷⁰³

1168. The attack was also reported on a maternal and child hospital in El Valle, Caracas, on April 20, 2017, which forced the evacuation from it of 54 newborns for safety reasons.¹⁷⁰⁴ That led various civil society organizations to call for an inquiry into the indiscriminate and excessive use of teargas by State security personnel during that operation.¹⁷⁰⁵ In light of the situation, the Commission recalls that States have the obligation to avoid excessive use of force by public law enforcement in protest marches and demonstrations, an obligation that must be taken into account especially in the case of children and adolescents.¹⁷⁰⁶

1169. There were also complaints of unlawful raids on homes in the context of the State's response to the protests. The information received by the IACHR mentions operations conducted in residential areas involving the GNB, SEBIN, and PNB. Such operations were recorded in June in the states of Mérida, Lara, Táchira, Carabobo, Zulia, and Miranda, as well as in various parts of Caracas.¹⁷⁰⁷ Residential buildings were directly attacked with teargas projectiles and live fire, while security personnel reportedly violently raided dozens of homes, causing property damage and robbing residents.

1170. Likewise, a report recently published by the OHCHR mentioned that the demonstrations were accompanied by violent raids in housing compounds by security forces with the alleged objective of detaining protesters. The report also said that security forces carried out arbitrary, violent, illegal raids, breaking into homes by force, which particularly affected women—many of them heads of household and in charge of the domestic work—who were at home during the operations.¹⁷⁰⁸

1171. There were also reports of acts of gender-based violence committed as part of the repression against demonstrators, in violation of women's fundamental rights.¹⁷⁰⁹ The Commission was also troubled by reports of excessive force used against older persons in peaceful protests. According to the information received, the PNB has sometimes sprayed older persons with pepper gas.¹⁷¹⁰

connection with this case. However, no one has been convicted [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, for 16, 2017; and El Nacional, [El último adiós a Fabián Urbina](#), June 21, 2017].

¹⁷⁰² OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 15.

¹⁷⁰³ Cecodap, Communication to the IACHR, September 2017, para. 13.

¹⁷⁰⁴ REDHNNNA, [Respeto y protección a los niños, niñas y adolescentes en el control del orden público y situaciones de conflictividad social](#), April 29, 2017; Noticias24, [Bandas armadas contratadas por la oposición atacaron hospital materno-infantil de El Valle](#), April 20, 2017; and Resumen Latinoamericano, [Venezuela: Extremista atacan Hospital Materno-Infantil en Caracas](#), April 21, 2017.

¹⁷⁰⁵ REDHNNNA, [Respeto y protección a los niños, niñas y adolescentes en el control del orden público y situaciones de conflictividad social](#), April 29, 2017.

¹⁷⁰⁶ IACHR, [2015 Annual Report](#), Chapter IV.B, Venezuela, para. 134.

¹⁷⁰⁷ IACHR, Press Release No. 084/17, [IACHR Strongly Condemns Indiscriminately Repressive Military Operations in Venezuela](#), June 27.

¹⁷⁰⁸ A victim reported to the OHCHR that she was subjected to sexual assault in front of her two children, when a national guard touched her breasts during a raid. OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 18.

¹⁷⁰⁹ Red Naranja, [100 Organizaciones rechazan la Violencia Sexual en el contexto de alta violencia e intolerancia política en Venezuela](#), July 28, 2017.

¹⁷¹⁰ El Nacional Web, [PNB Rocío gas pimienta a los abuelos en la avenida Libertador](#), May 12, 2017.

1172. Apart from excessive use of force, the fatalities caused have to do in general with the adoption of a position whereby the exercise of the right to protest is regarded as a citizen security problem. That much is clear from that fact that the social protests that took place between April and July 2017 were apparently grounds for activating the so-called “green phase” of the Zamora Plan (PZ). That led strategies for tackling domestic security problems and crime being used to deal with demonstrations. Thus, the problems noted in the area of citizen security, such as militarization of security activities and civilian participation in such activities, also manifest themselves in specific actions taken by the State to repress social protests (Chapter IV.B.).

1173. As a result, there was a visible militarization of the control of demonstrations in several states.¹⁷¹¹ In addition to increases in personnel, including soldiers, the aim of the PZ was to train security forces to pursue demonstrators or dissidents as if there were internal enemies, an approach befitting the national security doctrine.¹⁷¹² That coincides with information that dozens of people were detained while exercising their right to protest and then charged with committing military offenses that are reportedly being prosecuted as crimes in the military courts¹⁷¹³ (Chapter III.A.3 and 4). Groups of armed civilians are said to have taken part in the repression of the recent protests. According to available information, such groups are responsible for violent acts that have resulted in serious injuries and death to demonstrators and passersby, including children and adolescents.¹⁷¹⁴ They also said to have detained and physically assaulted people, and even of firing on demonstrators.¹⁷¹⁵ The extremely serious consequences of the foregoing have been confirmed by the IACHR: dozens of people killed; thousands arbitrarily detained; acts of torture and other cruel, inhuman and degrading treatment committed; men and women raped; and attempts to prosecute civilians for criminal offenses in military courts (Capítulo III.A.4 and 5).

1174. In that regard, the IACHR recalls that the criminalization of legitimate social mobilization and protest through the direct repression of demonstrators is incompatible with a democratic society,¹⁷¹⁶ since the legitimate exercise of the right peacefully to express one's opinion is not a matter of public security. The IACHR emphatically reiterates that the State should publicly recognize and protect the right to peaceful assembly and freedom of expression without discrimination on the grounds of public opinion and exclude the participation of soldiers and civilian groups in controlling public demonstrations, among other operations.¹⁷¹⁷

1175. In view of the above, the Commission considers that one of the aspects of greatest concern with respect to Venezuela is the situation of the right to peaceful demonstration. Social protest is one

¹⁷¹¹ In that regard, Amnesty International has said that the militarization was clearly evident “in the states of Carabobo, Lara, Barinas and the border state of Táchira where more than 600 soldiers have been deployed to respond to peaceful demonstrations.” Amnesty International, Venezuela: Authorities’ militarization of crisis escalates violence and promotes fear, June 2, 2017.

¹⁷¹² PROVEA, Más de 70 ONG exigimos desactivación inmediata del Plan Zamora y el fin de la actuación de “Colectivos” armados contra manifestantes, April 23, 2017; Youtube video, Public hearings before the OAS regarding Venezuela, OAS, September 14, 2017.

¹⁷¹³ The IACHR notes that on May 9, the AN passed a “resolution repudiating the implementation of the so-called Zamora Plan and the unconstitutional practice of installing military tribunals that usurp the jurisdiction of the regular courts, violating human rights” [Al momento, VENEZUELA: Parlamento rechaza tribunales militares procesen a civiles, May 9, 2017].

¹⁷¹⁴ IACHR, Press Release No. 093/17, IACHR Condemns Serious Acts of Violence at National Assembly in Venezuela, July 10, 2017.

¹⁷¹⁵ IACHR, Press Release No. 044/17, IACHR Urges the Protection of the Right to Protest in Venezuela and Respect for Freedom of Expression, April 11, 2017; UN, Press Release, Venezuela must allow peaceful protests and investigate killing of demonstrators, say UN experts, April 28, 2017; Amnesty International, Venezuela: Lethal violence, a state policy to strangle dissent, July 10, 2014.

¹⁷¹⁶ IACHR, Press Release No. 048/17, IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets, April 19, 2017.

¹⁷¹⁷ IACHR, Press Release No. 048/17, IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets, April 19, 2017.

manifestation of the right to freedom of expression and freedom of assembly, recognized in Articles XXI and IV of the American Declaration. Social protest is a fundamental tool in the defense of human rights and is essential for engaging in political and social criticism of authorities' activities as well as for establishing positions and plans of action with regard to human rights.¹⁷¹⁸ In particular, the IACHR reiterates that participation in demonstrations has an imperative social interest and forms part of the well-ordered functioning of the democratic system inclusive of all sections of society.¹⁷¹⁹ It also underscores that the relationship between political rights, freedom of expression, and the right of peaceful assembly is plain, especially when they are exercised jointly to demand effective democracy.¹⁷²⁰

1176. With reference to the use of force during demonstrations, the IACHR has stated that “it is possible to impose reasonable limits on demonstrators to preserve the peace as well as to disperse demonstrations that are turning violent.”¹⁷²¹ However, such measures must not discourage the right of assembly, but rather protect it; therefore, the dispersal of a demonstration must be justified by the duty to protect persons.¹⁷²² The Commission reiterates that the use of force at public demonstrations must be an exception, used only under strictly necessary circumstances consistent with internationally recognized principles.¹⁷²³ The IACHR notes with concern that the actions of the security forces during the protests have not been consistent with the principles of necessity and proportionality that should govern the use of force.¹⁷²⁴

1177. The IACHR recalls that when using less lethal weapons, one should bear in mind not only the design or characteristics of the weapon, but also other factors related to their use and control.¹⁷²⁵ Less lethal weapons can have indiscriminate effects and, in some instances, fatal consequences.¹⁷²⁶ In that regard, the IACHR considers that launching teargas at demonstrators from close range and from helicopters, as well as using it directly in health care facilities, homes, and residential buildings, are not only not absolutely necessary (given the existence of other less harmful means), but would have a disproportionate impact on the public owing to their possible indiscriminate effects.¹⁷²⁷ There were also reports of the use of expired teargas canisters against demonstrators, which reportedly resulted in a person being killed.¹⁷²⁸

¹⁷¹⁸ IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 127

¹⁷¹⁹ IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 118.

¹⁷²⁰ IACHR, Press Release No. 044/17, IACHR Urges the Protection of the Right to Protest in Venezuela and Respect for Freedom of Expression, April 11, 2017.

¹⁷²¹ IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 134.

¹⁷²² IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 134.

¹⁷²³ IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 131.

¹⁷²⁴ The former refers to the fact that, to be considered within international parameters, the degree of force exercised by state agents must not exceed what is “absolutely necessary,” while the latter assumes that force must be used with moderation and in proportion to the legitimate ends pursued, as well as attempting to reduce to a minimum personal injury and loss of human life. [IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 133].

¹⁷²⁵ IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 133.

¹⁷²⁶ The IACHR has mentioned the following instances in which less lethal weapons may have such effects: rubber munitions shot from a short distance at the upper part of the body, teargas fired at persons' bodies, irritant gases used against children and older persons, and pistols that fire an electric charge used against persons with a heart condition [IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 133]. The OHCHR has offered similar observations [OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 8].

¹⁷²⁷ In the long-term, prolonged and repeated exposure to teargas can lead to the onset of chronic bronchitis, respiratory distress, and, in extreme cases, pulmonary fibrosis [El Universal, Observatorio Venezolano de la Salud alerta sobre uso de gases lacrimógenos, May 29, 2017].

¹⁷²⁸ Youtube video, Public hearings before the OAS regarding Venezuela, OAS, September 14, 2017.

1178. As was noted, agents of the security forces used firearms extensively as a means to suppress down demonstrations. The Commission is deeply concerned by multiple serious complaints that GNB personnel used firearms directly against demonstrators at close range.¹⁷²⁹

1179. The IACHR reiterates its concern about Resolution No. 008610, *Rules on the Actions of the Bolivarian National Armed Forces in Functions of Public Order, Social Peace, and Citizen Co-existence in Public Assemblies and Demonstrations*, issued by the Ministry of People's Power for Defense and in force since January 23, 2015.¹⁷³⁰ The resolution, which governs the functions of the Venezuelan armed forces in controlling public gatherings, in and of itself constitutes an interference by the armed forces in the regular management of public order and allows security forces personnel to use firearms.¹⁷³¹ The Resolution also gives the FANB excessively broad leeway to use lethal weapons during social protests, including firearms. According to Article 15.9 of the law, "firearms shall not be carried or used to control public demonstrations, unless carrying and using them is necessary to respond to the demonstrations."¹⁷³² This is despite the fact that the Constitution of Venezuela establishes that the use of firearms and toxic substances such as tear gas to control demonstrations is prohibited.¹⁷³³ The Commission deeply regrets that, despite contravening international law, on July 27, 2016, the Political and Administrative Division of the TSJ rejected an application for *amparo* (constitutional relief) presented on February 3, 2015 against that resolution by deputies of the AN.¹⁷³⁴

1180. The Commission has repeatedly recommended to the Venezuelan state that firearms should be excluded from the devices used to control social protests.¹⁷³⁵ The prohibition on officials who might have contact with demonstrators carrying firearms and lead munitions has proven to be the best measure for preventing lethal violence and deaths in contexts of social protest.¹⁷³⁶ Furthermore, considering the gravity of the current situation in Venezuela, it is crucial that complaints concerning disproportionate use of force not remain in impunity and that the necessary measures are urgently taken more rigorously to prevent such practice by agents of the security forces.¹⁷³⁷

1181. The Commission urges the Venezuelan State to stop all repression of peaceful demonstrations and immediately to adopt appropriate measures to protect the public, including women, children, and older persons, from all forms of violence. It also underscores that the American Declaration states in its Article VII that "[a]ll children have the right to special protection, care and aid." Therefore, in operations concerning

¹⁷²⁹ IACHR, Press Release No. 084/17, [IACHR Strongly Condemns Indiscriminately Repressive Military Operations in Venezuela](#), June 27, 2017.

¹⁷³⁰ IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 162; and [2015 Annual Report](#), Chapter IV.B, Venezuela, para. 123-128.

¹⁷³¹ Article 1 of Resolution No. 008610, published in Official Gazette No. 40.589 of January 27, 2015. COFAVIC. *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. 2017, p. 70.

¹⁷³² IACHR, [Annual Report 2016](#), Chapter IV(B), Venezuela; and [2015 Annual Report](#), Chapter IV.B, Venezuela paras. 123-128.

¹⁷³³ Article 68 of the [Constitution of Venezuela](#) states that: "[...] The use of firearms and toxic substances for controlling peaceful demonstrations is prohibited. The law will apply to the actions taken by police and security agencies to control the public order."

¹⁷³⁴ The TSJ ruled: "What the Constitution prohibits is the use of firearms and toxic substances to control peaceful demonstrations, not those that are violent or that turn violent." The TSJ also considered that even in non-peaceful demonstrations, the law "governs such situations by providing an array of special precautions to protect the lives and other human rights of demonstrators and, in general, of all the citizenry" [TSJ], Case No. 2015-0086, Judgment of July 27, 2016].

¹⁷³⁵ IACHR, [2016 Annual Report](#), Chapter IV.B, para. 163; and [2015 Annual Report](#), Chapter IV.B, Venezuela, para. 131.

¹⁷³⁶ IACHR, [2015 Annual Report](#), Chapter IV.B, Venezuela, para. 131; and UN, Human Rights Council, 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, 4 February 2016, paras. 50-67.

¹⁷³⁷ IACHR, Press Release No. 084/17, [IACHR Strongly Condemns Indiscriminately Repressive Military Operations in Venezuela](#), June 27, 2017.

public security, States must adopt all necessary and appropriate measures to protect the rights to life and well-being of children.¹⁷³⁸

1182. In light of the foregoing, the Commission urges the State to take the necessary steps to fulfill its duty to facilitate demonstrations and protests, including refraining from requiring prior authorization for staging public demonstrations, or any other excessive requirements that might obstruct them; exclude the participation of military personnel in operations for managing public demonstrations; exclude firearms from the devices used to control social protests; and adopt and rigorously implement specific protocols on the gradual and proportional use of less lethal weapons and punish their indiscriminate use.

3. Stigmatization and Criminalization of social Protest

1183. The Commission has observed that senior government officials use the media to stigmatize and criminalize those who organize and participate in public demonstrations, referring to them as "terrorists" or "armed insurgents."¹⁷³⁹ Dozens of instances have been documented of individuals being singled out by name and stigmatized by the most high-ranking officials, such as the Minister for Interior Relations, Justice and Peace, Néstor Reverol, and National Assembly Deputy Diosdado Cabello, who have accused demonstrators and opposition leaders who organize protests of carrying out a "terrorist plan."¹⁷⁴⁰

1184. Human rights organizations denounced that the forensic police used social media (Twitter) to single out individuals who have demonstrated against the TSJ and President Maduro's government. According to reports, the Scientific, Criminal and Forensic Investigations Corps (CICPC) used a Twitter account with the username "*Prensa CIPC*" to disseminate the likenesses of seven people that they consider "provokers of violence" and invited people to expose them,¹⁷⁴¹ with the post "Wanted. If you see this terrorist, inform the authorities, who will come after him," along with the hashtags *#SeBuscaTerroristas* (*#TerroristsWanted*), *#TerroristasVanPresos* (*#TerroristsGoToPrison*) and *#DenunciaTuZona* (*#ReportYourArea*).

1185. The Commission reiterates its rejection of any kind of intimidating expressions or discourse from high State officials against citizens and opposition leaders as a way of deterring the right to protest.¹⁷⁴² Furthermore, the Commission underscores that stigmatizing statements made by public officials publicly incriminating people for alleged crimes not declared as such by the courts may violate the right to be presumed innocent. That right may also be tacitly violated when actions suggest an indisputable attitude of harassment and intimidation that prejudices the responsibility of the individual.¹⁷⁴³

1186. The IACHR has also received troubling reports of acts of harassment involving both government officials¹⁷⁴⁴ and private citizens¹⁷⁴⁵ breaking into the homes of human rights defenders. It is worth

¹⁷³⁸ IACHR, *Violence, Children and Organized Crime*, OEA/Ser.L/V/II. 40/15, November 11, 2015, para. 308.

¹⁷³⁹ IACHR, Press Release No. 058/17, *IACHR Deplores Repressive Measures Taken by Venezuela against Protests and Condemns Resulting Deaths and Injuries*, May 9, 2017.

¹⁷⁴⁰ NTN24, Diosdado Cabello acusa a la oposición de generar caos en el país a través del "terrorismo," April 11, 2017; VTV, Ministro Reverol: Actos terroristas ejecutados este lunes por la derecha causaron muerte de tres personas y varios heridos, April 25, 2017; Efecto Cocuyo, Ministro Reverol acusó a Julio Borges por muertes de manifestantes en protestas, May 10, 2017; Con el Mazo Dando, Cabello: La derecha necesita un muerto con periodicidad para mantener la violencia en la calle, May 12, 2017; and Con el Mazo Dando, "Responsable de los muertos y fracaso como político" Lo que piensan de Julio Borges, May 11, 2017.

¹⁷⁴¹ Noticiero Venevisión, *Provea denuncia que CICPC intimida a manifestantes a través de Twitter*, April 8, 2017; IPYS Vzla, *Se impone discurso de odio contra manifestantes y activistas de DDHH en redes sociales*, April 11, 2017.

¹⁷⁴² IACHR, Press Release No. 048/17, *IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets*, April 19, 2017.

¹⁷⁴³ IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 86.

¹⁷⁴⁴ It was also reported that officials raided the home of human rights defender Ehisler Velásquez and accused him of causing damage at a prosecutor's office [Amnesty International, *Venezuela: Human Rights Defender Harassed: Ehisler Vásquez*, May 16, 2017].

mentioning that the Commission has granted precautionary measures in favor of Theresly Malavé, a human rights defender. Mrs. Malavé has been the target of threats and intimidation as a result of representing various Voluntad Popular activists who are deprived of their liberty, including a purported attempt to kidnap her in December 2014, as well as being the subject of verbal remarks made by Diosdado Cabello.¹⁷⁴⁶In that regard, the IACHR reiterates that threats and harassment aimed at belittling the physical and mental capacity of human rights defenders amount to a violation of the right to humane treatment.¹⁷⁴⁷

1187. The Commission has also received disturbing information about Adriana Flores Márquez, a member of the Barinas Justice First Party who works with civil society organizations to keep a record of human rights violations committed during the protests in 2017. She claims to have been the victim of political persecution since 2014, when she first expressed her dissent with the Government. There is reported to be an outstanding warrant for her arrest issued by a military court, which accuses her, among other things, of the crime of “assaulting a guard” in the context of an alleged attack on the Zone No. 33 Command Center on May 22, 2017. Adriana Flores has said that she was documenting a protest that day and that her rights to liberty, to personal safety, and even to life, are at risk.¹⁷⁴⁸

1188. The Commission is deeply troubled by the criminalization of human rights defenders. In that regard, as the next section addresses, there have been reports of arrests made by the SEBIN without a court order, activists being prosecuted for military offenses, and the imposition of pretrial detention without justification, among other measures.¹⁷⁴⁹ The commission reiterates that the criminalization of legitimate social mobilization and protest, whether through direct repression of demonstrators, or through investigation, arbitrary detention of demonstrators and criminal prosecution, is incompatible with a democratic society where people have the right to express their opinion “peacefully.”¹⁷⁵⁰ The IACHR also recalls that the misuse of vaguely and ambiguously worded criminal offenses, such as “disobedience of authority,” has a chilling effect on the exercise of the right to protest and is contrary to democratic principles.¹⁷⁵¹ The Commission further reiterates that in Venezuela lack of independence and impartiality in the judiciary has enabled the punitive power of the State to be used to repress peaceful protest.¹⁷⁵²

4. Arbitrary Detentions, Torture, and Sexual Violence during the Social Protests

Arbitrary Detentions

¹⁷⁴⁵ On May 8, 2017, the home of human rights defenders Yonaide Sánchez and Nelsón Freitez, faculty members of the Human Rights Program at Lisandro Alvarado University, was raided for the third time and their belongings ransacked by unidentified persons. According to the information received, the invaders left a pickaxe and two knives in the dining area, apparently as a form of intimidation [Front Line Defenders, Urgent Appeal, [Venezuela: Intimidation against human rights defenders Yonaide Sánchez and Nelsón Freitez](#), May 11, 2017]. In spite of lodging the necessary complaints, they have received no response from the authorities and no investigations appear to be underway [Amnesty International, [Venezuela: Defenders home invaded, safety at risk](#), May 22, 2017].

¹⁷⁴⁶ IACHR, [Resolution No. 1/17](#), Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela.

¹⁷⁴⁷ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 41.

¹⁷⁴⁸ Communication from Adriana Flores Márquez, October 5, 2017.

¹⁷⁴⁹ Amnesty International, [Silenced by force: Politically motivated arbitrary detentions in Venezuela](#), April 26, 2017, p. 4; Espacio Público, [Foro por la Vida rechaza criminalización de PROVEA por promover la defensa de los derechos constitucionales](#), July 19, 2017; Un Mundo Sin Mordaza, [Defiende Venezuela, Llamamiento Urgente Víctima: Carlos Graffe, defensor de derechos humanos Estado: Venezuela](#), July 15, 2017. Civilis Derechos Humanos y otros, [Alertamos ante la creciente criminalización de las organizaciones sociales y sus actores fundamentales en Venezuela](#), August 20, 2017.

¹⁷⁵⁰ IACHR, Press Release No. 048/17, [IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets](#), April 19, 2017.

¹⁷⁵¹ IACHR, Press Release No. 107/15, IACHR Voices Concern over Ruling against Leopoldo López in Venezuela, September 25, 2015.

¹⁷⁵² IACHR, 2015 Annual Report, December 31, 2015, para. 258.

1189. The Commission notes that unlawful and arbitrary detentions have continued in Venezuela, reaching alarmingly high figures over the past year.¹⁷⁵³ According to the information, between January 1, 2014, and October 31, 2017, 11,993 individuals were arbitrarily detained, of which 7,040 have been released conditionally.¹⁷⁵⁴ Likewise, as of November 19, the FPV had identified 317 individuals deprived of liberty for political reasons.¹⁷⁵⁵ It is worth noting that that figure fluctuates constantly as a result of what has been termed the “revolving-door effect.” That effect explains why the number of persons deprived of liberty in Venezuela remains roughly constant from month to month, since while new prisoners are detained, others are released.¹⁷⁵⁶ Thus, as at July 31 there were 620 persons deprived of liberty due to political reasons in Venezuela,¹⁷⁵⁷ whereas at August 31 that figure had dropped to 590.¹⁷⁵⁸ The IACHR also notes with concern that several human rights defenders have been arrested and harassed for defending detainees or reporting on the situation in the country.¹⁷⁵⁹ The Commission has also received information that 19 people have not been set free by the authorities in spite of having release orders.¹⁷⁶⁰

1190. Just in the protests that took place between April 1 and August 31, 2017, 5,341 people were reportedly arrested arbitrarily.¹⁷⁶¹ In July alone, 1414 people were arrested, 391 of whom were detained on July 20 during the 24-hour national civic strike.¹⁷⁶² The Commission is concerned by this high number of people detained while exercising their right to social protest, and by information that suggests that the detentions were politically motivated and aimed at repressing demonstrators.¹⁷⁶³ In that connection, the Commission would remind the State of Venezuela that blanket bans on exercising the right to participate in peaceful protests cannot serve as justification for surveillance, detention, and prosecution of demonstrators

¹⁷⁵³ IACHR, Press Releases Nos. 058/17, IACHR Deplores Repressive Measures Taken by Venezuela against Protests and Condemns Resulting Deaths and Injuries, May 9, 2017; and 048/17, IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets, April 19, 2017.

¹⁷⁵⁴ FPV, Reporte sobre la represión en Venezuela – Octubre 2017, pg. 2. The FPV stated before the IACHR on October 24 2017, that as of that date, 11,989 people had been arbitrarily detained. This means that in one week, four more people were arbitrarily detained. At that time, the FPV also stated that 7,030 individuals had been granted conditional release [IACHR Violence, citizen security, and freedom of expression in Venezuela, October 24, 2017].

¹⁷⁵⁵ FPV, Presos políticos, November 19, 2017.

¹⁷⁵⁶ FPV, Reporte sobre la represión del Estado en Venezuela - Julio de 2017, p. 6, note 5.

¹⁷⁵⁷ FPV, Reporte sobre la represión del Estado en Venezuela - Julio de 2017, p. 6.

¹⁷⁵⁸ FPV, Reporte sobre la represión del Estado en Venezuela - Agosto 2017, p. 5. In that same regard, it should be noted that according to FPV figures, as of October 24, 2017, there were 391 political prisoners [IACHR, Violence, citizen security, and freedom of expression in Venezuela, October 24, 2017]. While as of October 31, the figure had dropped to 380 [FPV, Reporte sobre la represión en Venezuela – Octubre de 2017, pg. 4].

¹⁷⁵⁹ For example, the lawyer Abraham Cantillo, FPV Deputy Coordinator for the State of Lara, was robbed by armed civilians and threatened on July 20, 2017 outside the air force base where the Seventh Military Oversight Tribunal for the State of Lara is located. On July 27 he received death threats and was brutally beaten by men who referred to him as the “damned lawyer for the *guarimberos*” [FPV, Reporte sobre la represión del Estado en Venezuela - Julio de 2017, p. 9]. In addition, as mentioned, the IACHR granted precautionary measures in favor of the human rights defender Theresly Malavé, who has been harassed for her work representing detained leaders [IACHR, Resolution No. 1/17, Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela]. The IACHR also requested Venezuela to provide protection to the FPV [FPV, CIDH solicitó al Estado venezolano garantizar protección a Foro Penal y demás ONG de DDHH, March 23, 2017].

¹⁷⁶⁰ IACHR, Violence, Citizen Security, and Freedom of Expression in Venezuela, October 24, 2017.

¹⁷⁶¹ FPV, Reporte sobre la represión del Estado en Venezuela - Agosto 2017, p. 2.

¹⁷⁶² FPV, Reporte sobre la represión del Estado en Venezuela - Julio de 2017, p. 4.

¹⁷⁶³ FPV, Reporte sobre la represión del Estado en Venezuela - Agosto 2017, p. 1.

or social leaders who are simply expressing their opinions about a government policy or measure.¹⁷⁶⁴ By the same token, an individual must only be deprived of their liberty for a specific deed that warrants their arrest, which must be a crime and envisaged in law as such; the risk that an individual might commit a crime cannot, therefore, be grounds for arresting them.¹⁷⁶⁵

1191. The Commission also notes that 90 percent of those detentions were allegedly made without a court order.¹⁷⁶⁶ In that regard, the OHCHR found that security forces have often claimed after people were detained without an arrest warrant that they were caught *in flagrante delicto*.¹⁷⁶⁷ However, they were apparently arrested on their way to, during, or after demonstrations; others were arrested even though they were not demonstrating, but simply perceived to support the opposition.¹⁷⁶⁸ Similarly, Amnesty International has alerted about the discretionary and arbitrary use of the concept of *in flagrante delicto* in which the person detained was very often going about their daily activities, which were not of a criminal nature.¹⁷⁶⁹ The IACHR is profoundly concerned by these reports and recalls that an arrest can only be made on the basis of a court order or while a crime is being committed, otherwise it is unlawful.

1192. The IACHR has been informed of circumstances that would appear to violate the rights of detainees. In the majority of cases they were allegedly not informed of the reasons for their detention until they were brought before a judge.¹⁷⁷⁰ They were also not permitted to contact relatives or lawyers until that moment.¹⁷⁷¹ Cases have also been reported of incommunicado detention¹⁷⁷² and arbitrary transfers between detention centers during pre-dawn hours and without notice.¹⁷⁷³ The Commission has also learned of cases in

¹⁷⁶⁴ IACHR, Press Release No. R109/17, The Office of the Special Rapporteur for Freedom of Expression of the IACHR Condemns Arbitrary Restrictions on Freedom of Expression and Assembly in Venezuela, July 29, 2017.

¹⁷⁶⁵ IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 188.

¹⁷⁶⁶ FPV, Reporte sobre la represión del Estado en Venezuela - Agosto 2017, p. 2. That problem was also mentioned by FPV during the hearings on September 14 at OAS headquarters. At those hearings, it was remarked that not all incarcerations were ordered by judges or requested by prosecutors, but that very often they stemmed from political decisions [Youtube video, Public hearings before OAS regarding Venezuela, September 14, 2017].

¹⁷⁶⁷ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 22.

¹⁷⁶⁸ The OHCHR says that this information was obtained from interviews held by its office [OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 22].

¹⁷⁶⁹ Amnesty International, Silenced by force: Politically motivated arbitrary detentions in Venezuela, April 26, 2017, pp. 7-8.

¹⁷⁷⁰ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, pp. 22-23.

¹⁷⁷¹ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 23.

¹⁷⁷² The OHCHR reported that a man it interviewed was told by a SEBIN official: “You are kidnapped by the Government of Venezuela and no one will know anything about you.” It also documented the case of Ángel Zerpa, who was arrested by the SEBIN on July 22 and only allowed to have contact with his family on August 19. In that context, it also reported the possibility of cases of forced disappearance. One woman interviewed by the OHCHR said that the authorities initially denied having any information about her son. The authorities only allowed her to see him after 40 days in detention [OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 21]. Amnesty International also drew attention to this problem and pointed to the case of Yon Goicoechea, who was arrested on August 29, 2016, and held incommunicado until September 1, 2016 [Amnesty International, Silenced by force: Politically motivated arbitrary detentions in Venezuela, April 26, 2017, pp. 14-15]. FPV has also alerted about the situation [FPV, Reporte sobre la represión del Estado en Venezuela - Agosto 2017, p. 2].

¹⁷⁷³ According to information received by the Commission, former defense minister Raúl Isaías Baduel, who has reportedly been in detention since January 2017, was irregularly transferred from Ramo Verde Military Prison by the General Directorate for Military Counterintelligence in the early hours. According to information provided to the IACHR, the director of that facility approved the transfer,

which people have not been set at liberty, despite the existence of a release order.¹⁷⁷⁴ There have also been complaints of judges requiring that bail be guaranteed by one or more guarantors as a condition for release, needlessly prolonging the detention.¹⁷⁷⁵

1193. Regarding individuals deprived of liberty in the context of demonstrations, the Commission takes note that on November 14, 2017, a preparatory meeting began in Santa Domingo, Dominican Republic, toward restarting the process of "Peace Dialogue." It was attended by the President of the Bolivarian Republic of Venezuela, Nicolás Maduro, and representatives of the opposition. This meeting was attended by the Vice President of Communication and Culture, Jorge Rodríguez, who also led the delegation of the Venezuelan government, and the president of the ANC, Delcy Rodríguez; the opposition was represented by former CNE rector Vicente Díaz, Gustavo Velázquez, and José Luis Cartaya.¹⁷⁷⁶ In December 2017, a recommendation was received from the Truth, Justice, Peace, and Public Tranquility Commission, created by the ANC (the all-powerful body comprised solely of supporters of the government) recommending evaluation of measures in lieu of deprivation of liberty for approximately 80 individuals detained or sentenced to prison. According to public sources, starting on the morning of December 23, the Venezuelan government freed several dozen individuals deprived of liberty during the protests that took place between 2014 and 2017. At the time of approval of this report the IACHR had no information on the legal situation of the individuals released.¹⁷⁷⁷

1194. The Commission expresses its strongest possible rejection of such situations, which are contrary to both the right to personal liberty and the right to a fair trial. In that regard, the IACHR recalls that the American Declaration enshrines the right of protection against arbitrary arrest at Article XXV, which provides: "No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law." That article also provides: "Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released." In that connection, the IACHR reiterates that a detention is arbitrary and illegal when not carried out for the reasons, and according to the formalities, established by law; when carried out without adherence to the standards established by law; and when it involves misuse of the authority to arrest--in other words, when carried out for purposes other than those envisaged and stipulated by law. Furthermore, detention for improper purposes is in itself a sort of sentence without trial, or an unlawful penalty that violates the guarantee against imposition of punishment without benefit of trial and encourages the term "arbitrary" to be considered synonymous with "irregular," "abusive," or "contrary to law."¹⁷⁷⁸

despite the absence of a court order or any prior notice. As a result, for a time the relatives did not know Mr. Baduel's whereabouts and the authorities allegedly refused to give them any information in that regard [IACHR, Request for precautionary measures presented on the half of Raúl Isaías Baduel, MC-629-17].

¹⁷⁷⁴ FPV highlighted the case of 14 Chacao municipal police officials who, despite the existence of a release order since August 8, 2016, at the date of this report (July 2017) had yet to be released. Víctor Ugas, Yon Goicoechea, José Vicente García, Rafael Liendo, and Javier Elías Briceño Scott are reputedly in the same situation [FPV, [Reporte sobre la represión del Estado en Venezuela - Julio de 2017](#), p. 7]. The FPV also provided evidence of failure to set free people with a release order at the hearing at the OAS on September 14 [Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, September 14, 2017].

¹⁷⁷⁵ OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 24. In that regard, the FPV said in its August 2017 report that at present, 30 percent of detainees were waiting for guarantors to be presented to secure their release [FPV, [Reporte sobre la represión del Estado en Venezuela - Agosto 2017](#), p. 3].

¹⁷⁷⁶ [República Dominicana | Celebrada reunión de Diálogo de Paz entre Gobierno de Venezuela y oposición \(Video\) – VTV](#)

¹⁷⁷⁷ [Mundo, Maduro libera a 80 presos políticos pero mantiene a 227](#), December 26, 2017; [El País, Maduro libera a la primera treintena presos políticos en la víspera de Navidad](#), December 25, 2017; [El Nacional, Presos políticos que podrían ser liberados fueron trasladados a la ANC](#), December 23, 2017.

¹⁷⁷⁸ IACHR, [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 187.

1195. Accordingly, the Commission urges the State to refrain from practices involving massive, collective, or indiscriminate arrests and to comply with all requirements imposed by domestic laws and international standards with regard to the arrests that security forces make in contexts of social protests, particularly to ensure that those detained and their families receive accurate information regarding the reasons for their arrest and the place where the person is being held.

Torture and Other Cruel, Inhuman, or Degrading Treatment

1196. The Commission has been monitoring extremely troubling reports about alleged torture and cruel, inhuman and degrading treatment committed by agents of the state against persons deprived of their liberty in Venezuela. Prior to 2017 there were already complaints of such highly reprehensible acts. Specifically, in 2015, the IACHR received information about 51 cases of alleged acts of torture and cruel, inhuman and degrading treatment committed between January and June alone, marking a 28 percent rise relative to the year before.¹⁷⁷⁹ In July 2016, it was alleged that since May the SEBIN and the GNB had detained 21 people, most of whom said they were tortured or suffered other ill treatment while in custody.¹⁷⁸⁰ The IACHR also received information about the individual identification of 18 torture victims, which would represent an increase of 300 percent compared with 2015.¹⁷⁸¹ In 2016, 473 victims were identified of cruel, inhuman, or degrading treatment or punishment (320 less than in 2015) as well as "cases involving groups of more than 10 victims that occurred in incarceration facilities."¹⁷⁸²

1197. According to information provided to the Commission, in the demonstrations since April 2017 the number of complaints of torture and other mistreatment rose markedly, which suggests the use of that practice as a tool to deter or punish social protest. The alleged torture is purportedly used for a number of purposes, including obtaining confessions, bringing charges against another person, or to send a repressive message. Thus, CASLA says that it recorded at least 120 cases of people tortured between April 1 and June 12, 2017.¹⁷⁸³ For its part, the FPV said in June that "[o]f the 3,880 people arrested since April, at least 15 percent have been subjected to torture or cruel and inhuman treatment."¹⁷⁸⁴ By contrast, the DP informed the OHCHR that between April 1, and July 10, 2017, it received 2 complaints of torture and 122 complaints of cruel, inhuman and degrading treatment.¹⁷⁸⁵

1198. The alleged torture is reputedly carried out at government facilities by different security agencies, such as the SEBIN, the GNB, and the PNB, as well as regional or municipal police agents. In the case of the SEBIN, instances of torture were recorded at the Helicoide and Plaza Venezuela (known as *La Tumba* [The

¹⁷⁷⁹ IACHR, Press Release No. 120A/15, Report on the 156th Session of the IACHR, December 24, 2015; 2015 Annual Report, Chapter IV.B, Venezuela, para. 33.

¹⁷⁸⁰ HRW, Venezuela: Dissidents Allege Torture, Coerced Confessions, July 27, 2016.

¹⁷⁸¹ PROVEA, Situación de los Derechos Humanos en Venezuela: Informe Anual Enero/Diciembre 2016, Derecho a la integridad personal, pp. 3, 6-8.

¹⁷⁸² PROVEA, Situación de los Derechos Humanos en Venezuela: Informe Anual Enero/Diciembre 2016, Derecho a la integridad personal, p. 3.

¹⁷⁸³ Information provided by CASLA [Youtube video, Public hearings before OAS regarding Venezuela, OAS, September 14, 2017]. The same information was reported by the media [Infobae, Victimas y defensores de DDHH denunciaron ante la OEA 289 casos de tortura en Venezuela, September 14, 2017]. El Universal, Presentaron en La Haya nuevas denuncias de torturas en Venezuela, June 16, 2017; OAS Secretary General of the OAS, Third Report on the Continuing Crisis in Venezuela, OSG/ 285-17, July 19, 2017, p. 36.

¹⁷⁸⁴ El Comercio, "En Venezuela están abusando sexualmente de algunos detenidos", July 16, 2017.

¹⁷⁸⁵ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 21.

Tomb]) facilities.¹⁷⁸⁶ As regards the GNB, alleged acts of torture were reported at the command center known as “Ciudad Chavez,”¹⁷⁸⁷ Command Center 433,¹⁷⁸⁸ and La Ciega detention center.¹⁷⁸⁹ Cases of torture have also been documented at the CICPC offices in Villa del Rosario,¹⁷⁹⁰ and at the PNB headquarters in Aragua State.¹⁷⁹¹ The IACHR has also received information about alleged torture at different prisons, including La Pica,¹⁷⁹² DESUR detention center,¹⁷⁹³ CENAPROMIL (Ramo Verde) Military Prison,¹⁷⁹⁴ Uribana prison, and 26 de Julio Remand Center.¹⁷⁹⁵ Torture is also said to have been inflicted at improvised places of detention for holding demonstrators detained for hours, such as the Corporación Eléctrica Nacional (CORPOELEC) building in the Amparo sector and Fundación Servicio de Atención del Zulia (Funsaz 171) on Av. La Limpia, both in the city of Maracaibo, Zulia State.¹⁷⁹⁶ The IACHR also received information of detained demonstrators being

¹⁷⁸⁶ UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 4. The IACHR has also granted precautionary measures for detainees at SEBIN facilities [IACHR, [Resolution 6/15](#), Precautionary Measure No. 223-13, Lorent Saleh and Gerardo Carrero regarding Venezuela, March 2, 2015].

¹⁷⁸⁷ The FPV documented the case of E.M.G., who was apprehended on June 12, 2017, by GNB personnel outside his school and taken to the command center known as “Ciudad Chávez,” where he was physically assaulted and threatened with a firearm, in addition to which two tear gas grenades were deployed [FPV, [Reporte sobre la represión del Estado en Venezuela - Junio de 2017](#), p. 7].

¹⁷⁸⁸ Wuilly Arteaga, who is known for demonstrating peacefully by playing his violin, alleged that he was tortured while detained at GNB Command Center 433 in the urbanization known as El Paraíso in Caracas [FPV, [Reporte sobre la represión del Estado en Venezuela - Julio 2017](#), p. 5].

¹⁷⁸⁹ Hely Huerta denounced that he was physically assaulted and psychologically mistreated when he was transferred to the GNB detention center known as La Ciega. Brandon Becerra denounced that he was physically assaulted and verbally abused by the GNB during his detention at La Ciega [CODHEZ and Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, pp. 17-18].

¹⁷⁹⁰ The case was recorded of 16 people detained by the GNB during a demonstration on May 5, 2017, who were held at the CICPC facility in Villa del Rosario, where they had a powder known as *piroca*, which has the same effect as teargas, thrown in their faces [FPV, [Reporte sobre la represión del Estado en Venezuela - Mayo de 2017](#), p. 1].

¹⁷⁹¹ A group of 10 young people, detained on May 15, 2017, reported that they had been victims of torture and sexual violence at the PNB facility in Aragua State [BBC, [“Gritaba y lloraba... tenía tanto miedo que me oriné”: detenidos en protestas opositoras en Venezuela denuncian violaciones, golpizas y torturas](#), June 29, 2017]. CODHEZ and Aula Abierta reported complaints of cruel, inhuman, and degrading treatment being inflicted on people at military facilities, such as La Ciega and Desur in Maracaibo [CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 16].

¹⁷⁹² The case was recorded of Orlando Moreno, who was detained during a protest on June 27, 2017, and taken to La Pica Prison, where he was suspended by handcuffs around his hands for 24 hours and beaten repeatedly to coerce him into accusing the political leader Maria Corina Machado [FPV, [Reporte sobre la represión del Estado en Venezuela - Junio de 2017](#), pág. 8].

¹⁷⁹³ CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, pp. 11-14.

¹⁷⁹⁴ The opposition leaders Leopoldo López and Daniel Ceballos denounced that they were tortured at CENAPROMIL Military Prison (Ramo Verde) [PROVEA, [Amnistía Internacional | Venezuela: Preso de conciencia Leopoldo López denuncia tortura](#), June 28, 2017; IACHR, [Resolution 12/15](#), Precautionary Measure No. 335-14, Leopoldo López and Daniel Ceballos regarding Venezuela, April 20, 2015].

¹⁷⁹⁵ Alexander Tirado and Raúl Emilio Baduel denounced that they were victims of torture at Uribana Prison, in the State of Lara. Baduel and Tirado also said that they were held in inhuman conditions at 26 de julio Remand Center [IACHR, [Resolution No. 1/17](#), Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela, January 14, 2017].

¹⁷⁹⁶ CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 15].

physically and psychologically mistreated at other moments, including in the course of their arrest and transfer to detention centers.¹⁷⁹⁷

1199. The Commission notes with deep concern that the SEBIN allegedly has a facility known as “The Tomb” (*La Tumba*) located in a basement five floors underground at its Plaza Venezuela headquarters. Acts of torture are allegedly committed at that facility, where detainees are placed in very small cells with the lights never turned off, they are unable to see sunlight or breathe fresh air, the temperatures are below 8°C, and they are held incommunicado and even in isolation for long periods.¹⁷⁹⁸

1200. The torture allegedly includes physical blows to all parts of the body using such instruments as sticks, metal bars, helmets, and firearms.¹⁷⁹⁹ Other alleged forms of torture are the application of electric shocks,¹⁸⁰⁰ forcing victims to assume inhuman positions (such as kneeling and being tied up for long periods, squatting, and being manacled by the hands and feet).¹⁸⁰¹ There were also reports of teargas grenades being deployed in cells,¹⁸⁰² in transport vehicles,¹⁸⁰³ and even directly into detainees' faces¹⁸⁰⁴. There were reports

¹⁷⁹⁷ CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 10].

¹⁷⁹⁸ UVAL provides a detailed description of the place [UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, pp. 27-29]. The Commission took note of the conditions at that detention center when it granted precautionary measures to Gerardo Carrero and Lorent Saleh in 2015 [CIDH, [Resolution No. 6/2015](#), Precautionary Measure No. 223-12, Lorent Saleh and Gerardo Carrero regarding Venezuela]. CASLA provided a detailed description during the hearings at the OAS on September 14, 2017 Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, September 14, 2017]. The descriptions made coincide with those given by Mariana Serano, wife of Gerardo Carrero; and Yamileh Saleh, mother of Lorent Saleh. Both men were detained at *La Tumba*. [Youtube video, *Estar en “La Tumba” es una muerte lenta*, February 11, 2015, [Yamileh Saleh: “La fiscal le dijo a mi hijo se iba a pudrir en la cárcel”](#), RunrunEstudio, February 23, 2015].

¹⁷⁹⁹ With respect to this form of torture, the FPV said that 36 people were detained on July 20. Of those, 16 were released. 2 of those detained said that they were beaten on the back with a cable (*guaya*) and the others all said that they were struck on different parts of the body. A prominent case was that of Willy Moisés Artega, a demonstrator who protested peacefully by playing his violin. He was arrested on July 27, 2017. According to his testimony, he was beaten so hard with CNB helmets that he lost the hearing in his right ear [FPV, [Reporte sobre la represión del Estado en Venezuela - Julio de 2017](#), pp. 4-5]. UVAL also provided information in that regard [UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 20].

¹⁸⁰⁰ It is worth mentioning the testimony of a former detainee interviewed by OHCHR, who said that he was given electric shocks while he was interrogated. He said, “I was completely naked. They drenched me in water. One guard kept saying, ‘Wet him well otherwise you are going to fry him’” [OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 20]. UVAL reported similar information [UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 21].

¹⁸⁰¹ For Example, Deputy Wilmer Azuaje has denounced that sort of torture. He said: “[t]hey had me in handcuffs, unable to move, with my feet tied. So I am asking for an international response” [[El Carabobeño, Disputado Wilmer Azuaje denunció torturas físicas y psicológicas](#), August 24, 2017]. UVAL reported similar information [UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 19].

¹⁸⁰² Amnesty International, [Silenced by force: Politically motivated arbitrary detentions in Venezuela](#), April 26, 2017, p. 11.

¹⁸⁰³ According to a report, when the minor E.M.G. was transferred from “Ciudad Chávez” to the CICPC, two teargas grenades were thrown into the vehicle as he was put in it and the doors were then closed, causing him to pass out [FPV, [Reporte sobre la represión del Estado en Venezuela - Junio de 2017](#), p. 7].

¹⁸⁰⁴ CODHEZ and Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 14]. Another detainee is also recorded as saying “they sprayed me with pepper gas and

of alleged smothering with bags impregnated with chemical substances, such as ammonia or insecticide,¹⁸⁰⁵ and the use of *piroca* gas (which has effects similar to those of teargas) on the face and anus.¹⁸⁰⁶ The OHCHR also documented testimony of that nature.¹⁸⁰⁷ It was also reported that the lack of water and food at detention facilities meant that relatives of detainees had to take them food and drink on a regular basis;¹⁸⁰⁸ that the food provided was not fit for human consumption;¹⁸⁰⁹ and that, in some cases, detainees were forced to eat food off the floor.¹⁸¹⁰

1201. The IACHR has also received reports of acts of torture and other cruel, inhuman and degrading treatment through its precautionary measures mechanism. It received allegations of torture and cruel treatment, both physical and psychological, suffered by three members of the Voluntad Popular party, who were reportedly physically assaulted and forced to assume inhuman positions and had teargas grenades thrown into their cells. In addition, one of them was held in an unventilated cell measuring 2 m² in which there was human excrement, where he was subjected to psychological torture and not even allowed to go to the toilet.¹⁸¹¹ The Commission granted precautionary measures to Leopoldo López and Daniel Ceballos, both of whom were detained at the Ramo Verde facility in 2014, where there were locked in their cells for 23

put a hood over my head" [BBC, "Gritaba y lloraba... tenía tanto miedo que me oriné": detenidos en protestas opositoras en Venezuela denuncian violaciones, golpizas y torturas, 29 de junio de 2017].

¹⁸⁰⁵ UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 21.

¹⁸⁰⁶ In May 2017, the FPV recorded the case of 16 detainees who had a powder known as *piroca* thrown in their faces [FPV, Reporte sobre la represión del Estado en Venezuela - Mayo de 2017, p. 11]. According to CODHEZ and Aula Abierta, "[t]he people detained in Villa del Rosario in Zulia State [...] reported that they were locked in a room and had a white powder (*piroca*) thrown at them which caused a powerful burning and stinging sensation, as well as making it hard for them to speak, and that they were later given water with the same powder that caused a much worse stinging sensation." In addition, some detainees "said that they were taken to a toilet, where their trousers were pulled down and *piroca* (pepper gas) was sprayed on their anuses" [CODHEZ and Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 13].

¹⁸⁰⁷ One person interviewed by the OHCHR reportedly said: "They threw chlorine and salt in my mouth, they beat me with sticks and they fired tear gas grenades close to my face. I lost consciousness." Another victim said: "The guards would regularly throw tear gas grenades inside the cell and blocked the doors' bars with a mattress to prevent the gas from dispersing." Two women recounted how guards put a hood on their head with tear gas powder for two hours [OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 20].

¹⁸⁰⁸ UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 17.

¹⁸⁰⁹ Alexander Tirado and Raúl Emilio Baduel alleged that at 26 de Julio remand center there was a lack of water and the food was unfit for human consumption. Delson Guárate, who is detained at El Helicoide, says that there is a lack of water there and the food is not fit for human consumption. Yon Goicoechea, who was detained on August 29, 2016, said that he is given decomposing food [IACHR, Resolution No. 1/17, Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela, January 14, 2017].

¹⁸¹⁰ It is alleged that while Raúl Baduel Alexander Tirado were being held in Uribana prison they had hot food delivered straight into their hands so that they were forced to drop it on the floor alongside the raw sewage that seeped into their cell [Amnesty International, Silenced by force: Politically motivated arbitrary detentions in Venezuela, April 26, 2017, p. 11]. A former detainee at La Tumba said that "the food they provided their was sometimes spoiled and I had to eat it off the floor with my hands" [UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 28].

¹⁸¹¹ IACHR, Resolution No. 1/17, Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela.

hours a day and reportedly held in solitary confinement without natural light on more than one occasion.¹⁸¹² Precautionary measures were also granted to Lorent Saleh and Gerardo Guerrero, who were held in solitary confinement at the SEBIN in cold cells without access to sunlight or fresh air, and with scant opportunity to exercise.¹⁸¹³

1202. The Commission was also informed about 10 youths who were reportedly detained by the PNB during the demonstrations on May 15, 2017, in El Limón, Aragua State. According to information provided to the Commission, the youths were “subjected to appalling torture at the police station [and] sustained multiple blows and kicks to sensitive areas, such as the ribs and face.” According to reports, “toxic gases and powders were sprayed directly into their eyes while they were kneeling, in addition to which they were suspended by the arms” and forced to “engage in indecent acts with each other.” Allegedly, the youths “were also threatened with death, rape, and intimidation.”¹⁸¹⁴

1203. The Commission reiterates its utmost rejection of any act of torture or cruel, inhuman and degrading treatment, especially when it appears to have become commonplace, as in this instance. It would remind the State, that the prohibition of torture and cruel, inhuman and degrading treatment is a *ius cogens* norm of international law.¹⁸¹⁵ That prohibition is enshrined in Articles XXV and XXVI of the American Declaration as well as in Article 5 of the Inter-American Convention to Prevent and Punish Torture.¹⁸¹⁶ Furthermore, the Commission reiterates that this peremptory prohibition of any form of torture is the corollary of the State's duty to treat everyone deprived of their liberty humanely and with respect for their dignity.¹⁸¹⁷ The Commission emphasizes that the investigation of cases of torture and cruel, inhuman and degrading treatment “must be conducted *ex officio* and be governed by the principles of independence, impartiality, competence, diligence, and promptness,”¹⁸¹⁸ and that “in cases involving persons deprived of liberty, the State's duty to investigate has to meet a higher standard,”¹⁸¹⁹ since they are in its custody.

Sexual Violence

¹⁸¹² IACHR, [Resolution No. 12/15](#), Precautionary Measure No. 335-14, Leopoldo López and Daniel Ceballos regarding Venezuela.

¹⁸¹³ IACHR, [Resolution No. 6/15](#), Precautionary Measure No. 223-13, Asunto Lorent Saleh and Gerardo Carrero regarding Venezuela.

¹⁸¹⁴ One of them was allegedly beaten on the knees until a fluid came out of them, while another had “motorcycles ridden over his body while he was being threatened and restrained with handcuffs.” IACHR, Request for precautionary measures submitted on behalf of detained students in El Limón, MC-428-17.

¹⁸¹⁵ IACHR, [2014 Annual Report](#), Chapter IV.B, Venezuela, para. 23; [Report No. 84/13](#), Case 12.482, Merits, Valdemir Quispialaya Vilcapoma, Peru, para. 95; and [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 332.

¹⁸¹⁶ That provision states: “The existence of circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance or strife, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for the crime of torture. Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.”

¹⁸¹⁷ IACHR, [2014 Annual Report](#), Chapter IV.B, Venezuela, para. 23.

¹⁸¹⁸ IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 193; and [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 345.

¹⁸¹⁹ IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 193; and [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 347.

1204. The IACHR has received extremely troubling information about allegations of sexual violence during detentions in the context of the recent social protests. It regrets deeply that sexual violence against people arrested in social demonstrations is not a new problem in Venezuela.¹⁸²⁰

1205. In relation to the recent events, women's organizations informed the IACHR of at least six cases in which PNB and GNB personnel had groped or sexually violated women and men deprived of their liberty.¹⁸²¹ AVESA denounced 25 cases of sexual violence in the context of the repression of the demonstrations, in which 56 percent of the victims were women. According to the same source, the violence took different forms, including exposure to sexual violence (60 percent), groping (20 percent) and rape (16 percent). The assailants reportedly belonged to the PNB (68 percent), the Aragua Police (20 percent), and the GNB (12 percent).¹⁸²² Other sources also report different forms of violence inflicted by agents of the State.¹⁸²³ At the same time, it is worth noting that there is a high level of underreporting of cases due to "victim shame or intimidation, non-recognition of offenses, and/or lack of human rights defenders and public officials trained in identifying them."¹⁸²⁴

1206. The IACHR has also received reports of acts of this nature through its precautionary measures mechanism. For instance, in relation to the group of 27 students of Universidad Experimental Pedagógica Libertador (UPEL) who were detained in July 2017 as they spent the night at the university during demonstrations, the IACHR was informed that the women alleged to have been sexually assaulted with pipes inserted through their trouser pants as well as being groped.¹⁸²⁵ The Commission also heard how youths detained by the PNB on May 15, 2017, in El Limón, Aragua State, were reportedly sexually assaulted with pipes.¹⁸²⁶

1207. Another case that was brought to the attention of the IACHR involved two UCAB students in Guayana, who were arrested on June 1 during the demonstrations and alleged to have been the victims of

¹⁸²⁰ Indeed, in the context of the demonstrations and arrests that occurred between February and May 2014, COFAVIC recorded 54 complaints of torture and cruel, inhuman and degrading treatment, 26 percent of which alleged the use of sexual torture, including rape, stripping naked, humiliation, and taunting at detention centers [Venezuela Awareness, [La violencia que calla a los detenidos](#), June 25, 2017]. The Commission learned of the case of Érika Moncada, a Colombian citizen detained in August that year, who was allegedly suffocated with plastic bags to obtain "confessions;" she was also raped and tortured with a beating that dislodged a breast implant, causing her unbearable pain; and had electric shocks applied to her breasts [IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 38].

¹⁸²¹ CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, pp. 29-31.

¹⁸²² AVESA, [Violencia sexual en el contexto de represión política - Algunos datos de la prensa nacional](#), July 13, 2017; Corresponsales clave, [Violencia sexual en medio de la represión política en Venezuela](#), July 18, 2017; Runrunes, [100 ONGs rechazan violencia sexual en marco de represión](#), July 25, 2017.

¹⁸²³ According to CASLA, 192 people alleged to have been victims of some type of sexual violence, while another 140 were allegedly threatened with it. According to the same source, seven people denounced attempted rape with pipes or other objects, while at least five people (four men and one woman) were reportedly raped. In addition, 77 people reputedly alleged to have been stripped naked while others said that they were partially stripped so as to force them to adopt stress positions. Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, September 14, 2017. BBC, ["Gritaba y lloraba... tenía tanto miedo que me oriné": detenidos en protestas opositoras en Venezuela denuncian violaciones, golpizas y torturas](#), June 29, 2017. 2001.com.ve, [70% de denuncias en La Haya por torturas en Venezuela incluyen abusos sexuales](#), July 1, 2017.

¹⁸²⁴ CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, p. 29.

¹⁸²⁵ IACHR, Request for a precautionary measures MC-486-17. Similarly, the FPV reported that they had "cylinders [inserted] in their genitals and anuses." Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, September 14, 2017.

¹⁸²⁶ IACHR, Request for precautionary measures submitted on behalf of detained students in El Limón, MC-428-17.

indecent acts inside the personnel carrier that took them away.¹⁸²⁷ There was also reports of sexual violence against 10 youths who were arrested on May 15 near an area where protests were being staged.¹⁸²⁸ Another recorded case was that of D.E., a woman who was detained on May 17, 2017, by GNB personnel and claimed to have been sexually abused. Specifically she alleged that after being put in a pickup truck, was physically assaulted and subjected to indecent acts, before being given a powder that made her lose consciousness.¹⁸²⁹ A man detained in Villa del Rosario, Zulia State, alleged that he was raped with a broom handle.¹⁸³⁰ There were also allegations concerning the frequent use of threats of a sexual nature.¹⁸³¹

1208. The IACHR expresses its utter repudiation of such alleged abuses and calls on the State to implement the recommendations made by the IACHR in that regard in this report at the earliest opportunity. In particular, the IACHR reiterates that States have a special duty to act with due diligence to prevent and eradicate all forms of violence and discrimination against women.¹⁸³² It also underscores that the risks of being subjected to physical, sexual, and psychological violence, as well as other forms of abuse, are accentuated when women are deprived of their liberty and in the custody of State authorities.¹⁸³³ In that connection, the obligation of the State to prevent and eradicate violence against women is more acute in such contexts. Therefore, States should adopt all necessary comprehensive measures to ensure that their rights are effectively observed and guaranteed, so that they are not the object of discrimination and are protected from all forms of violence or exploitation.¹⁸³⁴

5. Access to Justice and Due Process

1209. The Commission notes with deep disquiet that civilians are reportedly being prosecuted and tried in military criminal courts. It received information that as of May 2017 there were at least 52 such cases, including those of Santiago Guevara, a professor from the University of Carabobo (prosecuted in February

¹⁸²⁷ In particular, one woman was groped and made to sit with her legs spread apart, in spite of the fact that she was wearing a dress, while another woman was also groped and was the victim of a member of the GNB inserting his fingers in her mouth and shouting at her, "Suck, bitch!" [CODEHCUU, Informe sobre la situación de Venezuela, September 5, 2017, p. 9].

¹⁸²⁸ According to Martín Ríos, a defense attorney for the victims, "[t]hey were made to line up and forced to touch each other's private parts and handle one another's members"; one of them "had his shorts pulled down and a pipe inserted in his rectum." [BBC, "Gritaba y lloraba... tenía tanto miedo que me oriné": detenidos en protestas opositoras en Venezuela denuncian violaciones, golpizas y torturas, June 29, 2017].

¹⁸²⁹ FPV, Reporte sobre la represión del Estado en Venezuela - Junio de 2017, p. 7.

¹⁸³⁰ CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 13].

¹⁸³¹ CODHEZ and Aula Abierta recorded their constant use against detainees in the State of Zulia, in particular, at the detention center known as "La Ciega". [CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 23].

¹⁸³² IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 195; Access to Justice for Women Victims of Sexual Violence: Education and Health, OEA/Ser.L/V/II. Doc. 65, December 28, 2011, para. 31-39; Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application, OEA/Ser.L/V/II.143, Doc. 60, November 3, 2011, pars. 22-24, and Access to Justice for Women Victims of Sexual Violence in Mesoamerica, OEA/Ser.L/V/II. Doc. 63, December 9, 2011, pars. 37-43.

¹⁸³³ IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 195; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), adopted on June 9, 1994, Article 9; and I/A Court H.R., Case of the Miguel Castro-Castro Prison v. Peru. Merits, Reparations and Costs, Judgment of November 25, 2006. Series C No. 160, para. 303.

¹⁸³⁴ IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 198; and I/A Court H.R., Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs, Judgment of November 25, 2006. Series C No. 160, para. 303.

2017), and Stayci Escalona (a young woman arrested with Deputy Caro and prosecuted in January 2017 in the Sixth Military Oversight Tribunal).¹⁸³⁵ The IACHR was also informed that between April 1 and October 23, 2017, 757 civilians were prosecuted in military tribunals and that 207 of them are still in custody. The Commission was also made aware that between April 1 and October 31, 2017, 757 civilians were tried before military tribunals, 198 of which are still imprisoned.¹⁸³⁶

1210. According to publicly available information, the prosecution of civilians in military courts increased from March 2017 onward, when Attorney General Ortega announced that she did not support the Government's "directives for violating human rights." That apparently had to do with the decision to prosecute a number of cases in the military jurisdiction, rather than in the regular courts.¹⁸³⁷ This alarming increase is apparently connected with the implementation of the Zamora Plan, under which detained civilians have reportedly been turned over to the military courts. In that regard, the AN passed a resolution repudiating the implementation of the Zamora Plan and the unconstitutional practice of installing military tribunals that usurp the jurisdiction of the regular courts, violating human rights.¹⁸³⁸ The Attorney General also disputed the competence of military tribunals to prosecute civilians.¹⁸³⁹

1211. The information available indicates that in a high proportion of cases civilians are charged with the offenses of "treason," "rebellion," and "assaulting a guard" classified at Articles 464, 476-487, and 501-502, respectively, of the Organic Code of Military Justice.¹⁸⁴⁰ The State, for its part, has justified the use of the military criminal courts by the fact that there have reportedly been at least 12 attacks on military facilities, which apparently qualifies as the offense of "assaulting a guard."¹⁸⁴¹ However, the IACHR is surprised that people unconnected with the armed forces are being charged with offenses of a clearly military nature. Furthermore, in breach of the principle of legality, the definition of the offense of "assaulting a guard" is extremely broad and vague, allowing its application to such conduct as striking or verbally insulting an official.¹⁸⁴² In addition, the IACHR recalls that military judges and prosecutors do not satisfy the requirement

¹⁸³⁵ Proiuris, [Exigimos que cese inmediatamente el procesamiento de civiles en la jurisdicción penal militar](#), May 7, 2017.

¹⁸³⁶ FPV, [Report on Repression in Venezuela – October 2017](#), pg. 3.

¹⁸³⁷ In similar fashion, the OHCHR said: "The number of civilians tried before the military courts has dramatically increased since the beginning of the protests, in what sources regard as an effort to bypass the Attorney-General's constitutional role in criminal proceedings" [OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 25]. That information was echoed by Captain Igor Eduardo Nieto Buitrago during the hearings at the OAS on September 15, 2017 [Youtube video, [Public hearings before OAS regarding Venezuela](#), September 15, 2017].

¹⁸³⁸ Al momento, [Venezuela: Parlamento rechaza tribunales militares procesen a civiles](#), May 9, 2017.

¹⁸³⁹ She questioned the authority of the military criminal jurisdiction to request the regular criminal courts of the State of Zulia to transfer the case of 14 young people arrested for allegedly taking part in the toppling of a statue of former president Hugo Chávez in Villa del Rosario [Ministerio Público venezolano, [Fiscal 41 del Zulia solicitó que 14 detenidos por hechos ocurridos en Villa del Rosario sean juzgados por tribunal civil y no militar](#) Fiscal 41 del Zulia solicitó que 14 detenidos por hechos ocurridos en Villa del Rosario sean juzgados por tribunal civil y no militar [Fiscal 41 del Zulia solicitó que 14 detenidos por hechos ocurridos en Villa del Rosario sean juzgados por tribunal civil y no militar](#) Fiscal 41 del Zulia solicitó que 14 detenidos por hechos ocurridos en Villa del Rosario sean juzgados por tribunal civil y no militar, May 9, 2017].

¹⁸⁴⁰ Organic Code of Military Justice, Special Official Gazette No. 5263 of September 17, 1998.

¹⁸⁴¹ IACHR, [Violence, Citizen Security, and Freedom of Expression in Venezuela](#), October 24, 2017.

¹⁸⁴² Article 502 of the Organic Code of Military Justice provides: "Anyone who uses threatening or offensive language or gestures toward a guard shall be punished with six months to one year of arrest. If the deed is committed while on campaign, the punishment shall be one to two years of imprisonment" [Organic Code of Military Justice, Special Official Gazette No. 5263 of September 17, 1998].

of independence for the reason that they are active members of the armed forces, part of the military hierarchy, and subject to the authority of the Minister of the People's Power for Defense and the President.¹⁸⁴³

1212. ¹⁸⁴⁴The Commission notes that the above also violates the Constitution of Venezuela, Article 49(4) of which recognizes the right to a competent tribunal, while Article 261 expressly provides that “common crimes, human rights violations, and crimes against humanity shall be tried by the courts of the ordinary jurisdiction.”¹⁸⁴⁵In addition, the Inter-American Court has referred to the use of the military criminal jurisdiction in Venezuela and has ordered the State to “establish ... through its legislation, limits on the competence of military tribunals, in such a way that the military jurisdiction will be used only with respect to those crimes relating to military functions. Likewise, the State must repeal all domestic legislation that is not in conformance with said ... jurisprudence ... within a reasonable time.”¹⁸⁴⁶

1213. The Commission strenuously repudiates such acts and stresses that the use of the military criminal jurisdiction to prosecute civilians entails a violation of a series of rights, such as the right to an independent and impartial natural judge. It also vitiates judicial guarantees across the entire process, which has serious consequences for the effectiveness of the rule of law.¹⁸⁴⁷ The Commission emphatically reiterates that military justice should be used only to judge active-duty military officers for the alleged commission of strictly service-related offenses, and that military courts do not satisfy the requirements of independence and impartiality that judges are expected to meet.¹⁸⁴⁸ In the opinion of the IACHR, that is clearly not the case in the above instances where civilians are alleged to have committed offenses of a military nature.

1214. The IACHR notes with concern inaction and lack of diligence on the part of justice operators where human rights violations committed in Venezuela are concerned. The Commission acknowledges the work of the former Attorney-General, Luisa Ortega, under whose stewardship the MP published statistics on people killed in social protests. Investigations opened into those deaths identified 41 members of the security services as alleged perpetrators and ordered their arrest.¹⁸⁴⁹ However, it regrets the alleged lack of cooperation on the part of the security forces in those investigations,¹⁸⁵⁰ as well as the lack of disclosure of the number of fatalities during protests, which coincided with the assumption of the position of the Attorney General by Tarek William Saab. The Commission notes that the State has said that of the 124 deaths that, according to the MP, occurred during the protests in 2017, the State was presumed responsible in 16 cases, a very low figure considering the facts described above and the circumstances in which they took place. The State also reported that 78 percent of cases were still under investigation.¹⁸⁵¹ Therefore, the IACHR calls upon

¹⁸⁴³ IACHR, Press Release No. 68/17, IACHR Deeply Concerned about the Worsening Violence in Venezuela and the Use of Military Courts to Prosecute Civilians, May 26, 2017; OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 25.

¹⁸⁴⁴ Article 49 (4) provides: “ Every person has the right to be judged by his or her natural judges of ordinary or special competence, with the guarantees established in this Constitution and by law. No person shall be put on trial without knowing the identity of the party judging him or her, nor be adjudged by exceptional courts or commissions created for such purpose” [Art. 49 (4) of the Constitution of Venezuela].

¹⁸⁴⁵ Art. 261 of the Constitution of Venezuela.

¹⁸⁴⁶ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2009, Series C No. 207, para. 199.8.

¹⁸⁴⁷ IACHR, Press Release No. 68/17, IACHR Deeply Concerned about the Worsening Violence in Venezuela and the Use of Military Courts to Prosecute Civilians, May 26, 2017.

¹⁸⁴⁸ IACHR, Report No. 84/13, Case 12.428, Merits, Valdemir Quispealaya Vilcampoma, Peru, para. 131.

¹⁸⁴⁹ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 16.

¹⁸⁵⁰ OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 16.

¹⁸⁵¹ IACHR, Violence, Citizen Security, and Freedom of Expression in Venezuela, October 24, 2017.

the State rigorously to fulfill its duty to investigate those allegations with due diligence and within a reasonable time, in order to prevent their impunity.¹⁸⁵² Regarding the recognition of the work done by the Attorney General, the State indicates in its comments that "it is surprising that the Commission would recognize the 'performance' of the former Attorney General when its own draft Country Report states that the Public Ministry and its head at the time—Ms. Luisa Ortega Díaz—has, as the body in charge of criminal investigations, 'also been seriously deficient in the performance of its functions.'"¹⁸⁵³

1215. The IACHR is also disturbed by allegations that in cases where rape has been used as torture, the MP has only brought charges of cruel treatment. There is no open investigation in the majority of complaints alleging torture.¹⁸⁵⁴ The Commission also laments the failure of the DP to speak up about such situations, which has prompted civil society to call for the resignation of the erstwhile ombudsperson and current Attorney General, Tarik William Saab.¹⁸⁵⁵ As a result, impunity extends to 98 percent of human rights violations in Venezuela.¹⁸⁵⁶

1216. In this context, the Commission laments profoundly that the judiciary and the MP are not fulfilling their constitutionally ordained role of administering justice in the country¹⁸⁵⁷ (Chapter II.A.1 and 4), which should be insulated from all political interests.¹⁸⁵⁸ It also reiterates that in the context of the serious situation in Venezuela it is crucial that excesses committed by personnel of the security forces not go unpunished.¹⁸⁵⁹

1217. The Commission notes that on March 24, 2017, the Commission for Justice and Truth submitted its report with a view to the investigation and punishment of politically motivated crimes, disappearances, torture, and other human rights violations committed between 1958 and 1998. A total of 10,071 victims of human rights violations, including torture, murder, and forced disappearance, were identified.¹⁸⁶⁰ The Commission for Justice and Truth was brought into being by presidential decree on February 27, 2012, to investigate politically motivated crimes, disappearances, torture, and other human rights violations committed during the period from 1958 to 1998.¹⁸⁶¹ It was installed in April 2016.¹⁸⁶² Although the State's efforts to recover the truth and historical memory are laudable, the IACHR reiterates that truth commissions are not a substitute for judicial process, and that the obligations of the State to combat impunity and provide reparation to victims of gross human rights violations remain.¹⁸⁶³

The IACHR also observes that the State has recognized that it faces a challenge on the matter of impunity and has said that one step it has taken to combat this problem was the creation of the ANC, whose objectives

¹⁸⁵² IACHR, Press Release No. 084/17, IACHR Strongly Condemns Indiscriminately Repressive Military Operations in Venezuela, June 27, 2017.

¹⁸⁵³ Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, para. 86.

¹⁸⁵⁴ Those allegations were made by CASLA during the hearings at the OAS on September 14 [Youtube video, Public hearings before OAS regarding Venezuela, OAS, September 14, 2017].

¹⁸⁵⁵ El Nacional, Defensor del pueblo renuncie, April 7, 2017.

¹⁸⁵⁶ OVV, Impunidad alcanza a 98% de crímenes contra DDHH en Venezuela, según Cofavic, October 28, 2016.

¹⁸⁵⁷ Arts. 253 and 285 of the Constitution of Venezuela.

¹⁸⁵⁸ IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 164.

¹⁸⁵⁹ IACHR, Press Release No. 111/17, IACHR Condemns the Deaths and Acts of Violence on Election Day in Venezuela, August 1, 2017.

¹⁸⁶⁰ IACHR, "The Right to Truth and Report of Venezuela's Commission for Justice and Truth." 161st Period of Sessions, March 22, 2017.

¹⁸⁶¹ Alba Ciudad, Miembros de la Comisión por la Justicia y la Verdad 1958-1998 rechazan posiciones de la Fiscal General, June 9, 2017.

¹⁸⁶² Telesur, Instalan Comisión por la Verdad y Justicia en Venezuela, April 12, 2016.

¹⁸⁶³ IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V.II.152, Doc.2, August 13, 2014, pars. 34 and 133-135.

include a top-to-bottom review of the justice system.¹⁸⁶⁴The IACHR observes that the foregoing is related to the establishment by the ANC of the Commission for Truth, Justice, Peace, and Public Tranquility in August 2017. Nonetheless, as the IACHR has already noted, the initiative raises questions about a possible overreach by the ANC of its functions and would increase persecution of dissent ([Chapter II.A.2](#)). Furthermore, on this point the IACHR underscores that truth commissions are extrajudicial bodies whose purpose is to advance the right of the victims and society to know the truth but are "not an adequate substitute for the judicial process."¹⁸⁶⁵ In that connection, it reiterates that it is particularly important for the State to take steps to ensure a judicial investigation of abusive use of force, whether by agents of the state, or by third parties, in order to impose criminal penalties on those responsible and provide adequate redress to the victims.¹⁸⁶⁶

B. Freedom of Thought and Expression

1218. The right to freedom of expression established in Article IV of the American Declaration provides that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." The organs of the inter-American system have recognized that this right constitutes a key element on which the existence of democratic societies is based, due to its indispensable structural relationship with democracy¹⁸⁶⁷.

1219. The Human Rights Committee of the United Nations¹⁸⁶⁸, the European Court of Human Rights¹⁸⁶⁹, and the African Commission and Court on Human and Peoples' Rights¹⁸⁷⁰ have also recognized, in the same terms, the transcendental importance of freedom of expression in a democratic society. Article 4 of the Inter-American Democratic Charter characterizes freedom of expression and the press as "essential components of the exercise of democracy."¹⁸⁷¹ In the same way, the Declaration of Principles on Freedom of Expression adopted by the IACHR in 2000 recalls that "freedom of expression in all its forms and manifestations is a

¹⁸⁶⁴ IACHR, [Violence, Citizen Security, and Freedom of Expression in Venezuela](#), October 24, 2017.

¹⁸⁶⁵ IACHR, [Report No. 136/99](#), Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos; and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 229.

¹⁸⁶⁶ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 149.

¹⁸⁶⁷ IACHR, *Compulsory membership in an association prescribed by law for the practice of journalism (Arts. 13 and 29, American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, para. 70; *Case of Claude Reyes et al. vs. Chile*. Merit, Reparations and Costs. Judgment of September 19, 2006. Series C, No. 151, para. 85; *Case of Herrera Ulloa vs. Costa Rica*. Preliminary Objections, Merit, Reparations and Costs. Judgment of July 2, 2004. Series C, No. 107, para. 116; *Case of Ricardo Canese vs. Paraguay*. Merit, Reparations and Costs. Judgment of August 31, 2004. Series C, No. 111, para. 86; IACHR, [Report No. 20/99](#), Merit, Case 11,317, Rodolfo Robles Espinoza and Sons, Peru, para. 148; [Declaration of Principles on Freedom of Expression](#), 2000; IACHR, Office of the Special Rapporteur for Freedom of Expression, [The Inter-American Legal Framework Regarding the Right to Freedom of Expression](#), 2009, para. 8.

¹⁸⁶⁸ UN, Human Rights Committee, [Communications 422/1990, 423/1990 and 424/1990](#), Aduayom et al. vs. Togo, Decision of July 12, 1996, para. 7.4, and [General Comment No. 34](#), Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34, September 12, 2011.

¹⁸⁶⁹ ECHR. *Case of Castells v. Spain*. Judgment of April 23, 1992, Series A. No. 236, para. 42; *Case of Lingens v. Austria*. Judgment of July 8, 1986. Series A, No. 103, para. 41; *Case of Barthold v. Germany*. Judgment of March 25, 1985, Series A, No. 90, para. 58; *Case of The Sunday Times v. United Kingdom*. Judgment of March 29, 1979, Series A, No. 30, para. 65; and *Case of Handyside v. United Kingdom*. Judgment of December 7, 1976, Series A, No. 24, para. 49.

¹⁸⁷⁰ African Commission on Human and Peoples' Rights, Media Rights Agenda and Constitutional Rights Project v. Nigeria, Communications Nos. 105/93, 128/94, 130/94 and 152/96, Decision of October 31, 1998, para. 54; Declaration of Principles on Freedom of Expression in Africa, 17 - 23 October, 2002; and African Court on Human Rights and Peoples' Rights. *In the Matter of Lohé Issa Konaté v. Burkina Faso*. Application No. 004/2013. Judgment of December 5, 2014.

¹⁸⁷¹ Article 4 of the [Inter-American Democratic Charter](#).

fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society." For the same reasons, it's been affirmed that States must promote, and not inhibit, a vigorous, plural, and uninhibited deliberation on all public matters.

1220. For more than a decade, the IACHR and the Office of the Special Rapporteur for Freedom of Expression have followed with special attention the situation of freedom of expression in Venezuela and have documented the progressive deterioration of the exercise of this right in the country¹⁸⁷².

1221. Throughout 2017, the IACHR and its Office of the Special Rapporteur continued to document severe restrictions on the right to freedom of expression in the country, including censorship, closure of media, attacks on journalists, and in general patterns of harassment and criminalization of those who issue political opinions or disseminate information that does not have state approval. As will be analyzed in this chapter, these measures do not respond to a legal framework compatible with international obligations subscribed by the Venezuelan State in this matter. On the contrary, these measures are applied outside the law or based on ambiguous and excessively broad legal provisions. According to the information obtained, the authorities tend to justify restrictions on the right to freedom of expression under the protection of assets linked to national security, sovereignty, and peace, but in practice, these measures have been aimed at silencing critical voices of the current Government. The impact of these measures on Venezuelan democracy is evident and deserves priority attention.

1. The compatibility of the current legal framework with the State's international obligations regarding the right to freedom of expression

1222. Restrictions on the right to freedom of expression must be defined in a precise and clear manner through a formal and material law, aimed at achieving legitimate ends and be necessary and proportionate in a democratic society for the achievement of those compelling purposes it pursues. In addition, the subsequent liabilities arising from the exercise of freedom of expression must always be ordered by an independent and impartial judicial or jurisdictional authority, respecting the due process guarantees. In all cases, these measures must not be discriminatory or produce discriminatory effects, nor can they constitute censorship through direct or indirect means. The IACHR considers that the Venezuelan legal framework, described below, imposes restrictions on the freedom of expression and access to information in a way that is incompatible with these requirements, and have been used to initiate judicial or administrative proceedings against those who disseminate information contrary to the government's interests, and inhibit criticism and political debate.

1223. *Law on Social Responsibility in Radio, Television, and Electronic Media [Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos]*: The IACHR has repeatedly indicated the need to review the legal framework in which the media operates in Venezuela¹⁸⁷³ and, in particular, the need to amend the Law on Social Responsibility in Radio, Television, and Electronic Media¹⁸⁷⁴. In recent years, this regulation has served as a basis for closing or threatening the closure of audiovisual media and the blocking of online media (*infra*).

¹⁸⁷² IACHR, *Report on the Situation of Human Rights in Venezuela*, OAS/Ser.L/II.118, Doc. 4 rev. 1, October 24, 2003; IACHR, *Annual Report 2004*, Chapter V, Venezuela, para. 305; IACHR, *Democracy and Human Rights in Venezuela*, OAS/SER.L/V/II, Doc. 54, December 30, 2009, para. 347; IACHR, *Annual Report 2010*, Chapter IV, Venezuela; *Annual Report 2011*, Chapter IV, Venezuela; *Annual Report 2012*, Chapter IV, Venezuela; *Annual Report 2013*, Chapter IV, Venezuela; *Annual Report 2014*, Chapter IV, Venezuela; *Annual Report 2015*, Chapter IV.B, Venezuela, and *Annual Report 2016*, Chapter IV.B, Venezuela.

¹⁸⁷³ IACHR, *Annual Report 2010*, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 412-524; and *Annual Report 2012*, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 510-514.

¹⁸⁷⁴ IACHR, *Democracy and Human Rights in Venezuela*, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 350-380; and *Annual Report 2012*, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 510-514.

For example, article 29 of said law establishes that the providers of radio, television, and electronic media services will be sanctioned with high fines, suspension of their transmissions and even the revocation of the concession, when they broadcast messages that "promote, advocate, or incite disturbances of public order," or "promote, advocate, or incite crime," or "foster distress in the public or disturb public order," "ignore the legitimately constituted authorities," or "are contrary to the safety of the Nation"¹⁸⁷⁵. In addition, this law authorizes the State to restrict access to Internet content or websites that, in its judgment, disseminate this type of prohibited content¹⁸⁷⁶. In particular, the law authorizes the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel), a body directly dependent on the executive power, to order electronic media "to refrain from broadcasting messages that violate the circumstances established" in the law¹⁸⁷⁷, forces Internet service providers to create mechanisms "that allow restricting [...] the dissemination"¹⁸⁷⁸ of such messages, and establishes the liability of those companies for expressions of third parties when they do not take measures to restrict those speeches at the request of Conatel¹⁸⁷⁹.

1224. *Desacato offenses and other offenses against honor*: the Criminal Code¹⁸⁸⁰ and the Code of Military Criminal Justice¹⁸⁸¹ uphold the norms of protection of honor and reputation of state officials against the issuance of critical expressions that may be considered offensive, such as vilification and offense to the authority. The Criminal Code also maintains the crime of defamation¹⁸⁸². The IACHR has already established in the study of individual cases regarding Venezuela¹⁸⁸³, according to its doctrine and established case law¹⁸⁸⁴,

¹⁸⁷⁵ Article 29 of the [Law on Social Responsibility in Radio, Television and Electronic Media](#).

¹⁸⁷⁶ Articles 27 and 29 of the [Law on Social Responsibility in Radio, Television and Electronic Media](#).

¹⁸⁷⁷ Article 33 of the [Law on Social Responsibility in Radio, Television and Electronic Media](#).

¹⁸⁷⁸ Article 27 of the [Law on Social Responsibility in Radio, Television and Electronic Media](#).

¹⁸⁷⁹ Article 27 of the [Law on Social Responsibility in Radio, Television and Electronic Media](#).

¹⁸⁸⁰ Arts. 147, 148 and 149 of the Venezuelan Criminal Code.

¹⁸⁸¹ Arts 505 and 505 of the Organic Code of Military Criminal Justice.

¹⁸⁸² Article 444 of the Criminal Code.

¹⁸⁸³ For instance, in the Merit Report of the case of Néstor José and Luís Uzcátegui et al. (Venezuela), the IACHR determined that Article 444 of the Criminal Code, which establishes the crime of defamation, "does not establish clear parameters that allow circumscribing the prohibited conduct and its elements [...]; it is not capable of guiding the conduct of individuals regarding the serious consequences of the deprivation of personal freedom and the abrogation of political rights. Its text does not define a clear and unequivocal threshold between cases in which it is lawful or not to publicly denounce criminal deeds or to issue critical opinions about State authorities. On the contrary, the vagueness of this legal text opens the door to the use of criminal law to produce an intimidating environment that inhibits a discourse of public interest" [IACHR, [Report No. 88/10](#), Case 12,661, Merit, Néstor José and Luís Uzcátegui et al., Venezuela, para. 279]. The IACHR issued a similar conclusion in the Merit Report of the case of Tulio Álvarez [IACHR, [Case No. 12.663](#), Tulio Alberto Álvarez, Venezuela, July 5, 2017]. Also in the case of Francisco Uson Ramírez, the IACHR pointed that Art. 505 of the Organic Code of Military Criminal Justice establishes a crime of *desacato*, since it punishes criticism of the Armed Forces and establishes a penalty of deprivation of freedom for a period of up to eight years. The IACHR determined that "this is quite clearly incompatible with the standards recognized by the Inter-American System in the area of freedom of expression, and for this reason the domestic courts should have refrained from enforcing it" [IACHR, [Application to the Inter-American Court of Human Rights in the Case of Francisco Usón Ramírez \(Case 12,554\) versus the Bolivarian Republic of Venezuela](#), July 25, 2008].

¹⁸⁸⁴ IACHR, Office of the Special Rapporteur for Freedom of Expression, [The Inter-American Legal Framework Regarding the Right to Freedom of Expression](#), 2009; IACHR, [Annual Report 1994](#), Chapter V, Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights; [Report N° 90/05](#), Case 12,142, Merit, Alejandra Marcela Matus, Chile, para. 40-42, [Annual Report 1998](#), Volume III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV, Laws of Contempt, Compulsory Membership in a Professional Association, and Murders of Journalists; [Annual Report 2000](#), Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III, Legislation and Freedom of Expression: an Overview of the Internal Legislation of the Member States, 2. *Desacato, or Contempt, Laws*; and [Annual Report 2002](#), Report of the Office of the Special Rapporteur for Freedom of Expression.

that these provisions are incompatible with the principle strict legality in criminal law and the right to freedom of expression, for which it has recommended to the Venezuelan State its repeal.

1225. *Crimes against national security*: all through 2017, the IACHR documented the arrest and start of criminal proceedings for crimes against national security, including of a military nature, such as treason, rebellion, and espionage, against social referents, journalists, politicians, and protesters (*infra*). These are provisions that typify behaviors in a broad, vague, and ambiguous way that lend themselves to abuse in order to suppress political and critical expressions that have nothing to do with national security, from a democratic perspective. For example, the crime of treason, prescribed in articles 128 and 129 of the Organic Criminal Code, and in article 464 of the Code of Military Criminal Justice, establishes prison up to 30 years for those who "conspire" against the republican institutions of the homeland or "antagonize them by any means", or "threat in any way national sovereignty". Likewise, the crime of military rebellion establishes that "rebellion is a military crime even for non-military", when "they antagonize in any way the national forces."¹⁸⁸⁵ Likewise, any person who "reveals documents, news, or information of a military nature that in the interest of national defense must remain secret"¹⁸⁸⁶, commits the crime of espionage. For its part, the Decree-Organic Law on Security of the Nation [*Decreto-Ley Orgánica de Seguridad de la Nación*]¹⁸⁸⁷ provides prison for those who refuse, within the framework of the law, to provide information to the authorities on national security, or to those who disclose data or provide information to "any particular or to another State compromising the security and defense of the Nation."

1226. *Hate Speech*: On November 8, 2017, the Constituent National Assembly (ANC for its acronym in Spanish) of Venezuela approved the bill of *Constitutional Law against Hatred, for Pacific Coexistence and Tolerance* presented by President Maduro. The approved law sets restrictions to the exercise of the right to freedom of expression in Venezuela that are incompatible with the Inter-American Legal Framework on this matter. First, the law establishes broad, vague and ambiguous criminal figures to punish persons who "foster, promote or incite hatred" or promote "fascism", attributing an unacceptable measure of discretion to triers at the moment of establishing what type of violence and hate was promoted, thus placing freedom of expression at risk and compromising the principle of legality. The terms mentioned by this law, such as "promotion and encouragement" of all types of "discrimination" and "fascism" are too broad and imprecise, and exceed the provisions of international human rights law in this matter. This law does not seem to have a legitimate aim. In its general provisions, it evokes the objectives of promoting diversity and tolerance, while eradicating hate, discrimination and violence by discriminatory reasons. However, the declarations issued by authorities of the government and ANC members indicate that it will be used to persecute the political opposition, legitimize censorship and criminalize expressions against the political ideas of the government¹⁸⁸⁸. As the President of the Republic presented the bill of the new law, he pointed that "anyone who should go into the streets and express intolerance and hate will be captured, judged and punished with severe penalties ranging from 15 to 25 years of prison"¹⁸⁸⁹. During the debates on the bill, ANC President and former Venezuelan Chancellor Delcy Rodríguez pointed that the State should take action against the use of social networks as "psychological war laboratories". Mrs. Rodríguez affirmed that "there is an imported hate, which is part of a plan to attack the people's integrity. Such imported hate is bringing the most racist and classist expressions of the Venezuelan right-wing".¹⁸⁹⁰ For instance, she stated that "the mayor of Caracas was threatened by a twitter message from an opposition-party. Such death threats and hate expressions must end in Venezuela, and for this reason, this

¹⁸⁸⁵ Art. 486 of the Organic Code of Military Criminal Justice.

¹⁸⁸⁶ Art. 471 of the Organic Code of Military Criminal Justice.

¹⁸⁸⁷ Office of the President, *Decree No. 1.473, Reform of the Organic Law on National Security*, November 19, 2014.

¹⁸⁸⁸ Ministry of Popular Power for Communication and Information, *Ley de Convivencia Pacífica garantizará que nadie sea víctima del odio*, August 22, 2017; *ANC debate Ley para la Convivencia Pacífica and contra la Intolerancia*, August 22, 2017; and Deutsche Welle, *La Constituyente regulará las redes sociales para evitar "delitos de odio"*, August 22, 2017.

¹⁸⁸⁹ Aporeta, *La ANC recibió el proyecto de ley contra el Odio, la Intolerancia and la Violencia*, August 11, 2017; EFE / El Nuevo Herald, *Maduro propone ley que da cárcel a quien 'salga a la calle a expresar odio'*, August 11, 2017.

¹⁸⁹⁰ Ministry of Popular Power for Communication and Information, *Ley de Convivencia Pacífica garantizará que nadie sea víctima del odio*, August 22, 2017; *ANC debate Ley para la Convivencia Pacífica and contra la Intolerancia*, August 22, 2017.

law will provide for the punishment of hate crimes, with sanctions and regulations for media outlets"¹⁸⁹¹. Also ANC Vice-President Earle Herrera pointed that "extremist sectors of the opposition [...] have harassed Chavist workers and representatives, and Venezuelan citizens were burned exclusively on account of their political ideology"¹⁸⁹². The law sets severe penalties, but their necessity and proportionality were not demonstrated. Its Article 20 establishes from "10 to 20 years" of prison, as well as the imprescriptibility of the crimes defined by it. Art. 22 provides for the revocation of official licenses to radio and television services that "disseminate messages propagandizing in favor of war or advocating for national, racial, religious or political hate, or any other form of hatred". This section also considers a fine of 50,000 to 100,000 tax units for legal persons held responsible for social networks and electronic media outlets that do not suspend messages with such features within six hours after they are published, in addition to the applicable criminal and civil penalties. Article 23 sets financial sanctions of three to four per cent of the raw income of radio or TV providers who "do not fulfill their obligation to reserve free broadcast spaces for messages that promote diversity, tolerance and mutual respect, and for the prevention and eradication of all forms of political violence, hate and intolerance".

1227. *States of exception*: as already explained, Presidential Decree No. 2849¹⁸⁹³ of May 13, 2017 established a new state of exception and economic emergency in the entire territory of Venezuela that grants wide discretionary powers to the Executive to repeal human rights through "special and forceful" measures (Chapter III.B.2). It has been a matter of serious concern that such powers are invoked to arbitrarily restrict the right to freedom of expression. The decree aims to combat the "hostile and destabilizing attitude against the Republic" promoted by "opposition political sectors, with the support of foreign spokespersons and institutions." In particular, the decree considers that sectors of the opposition "maintain a siege against the recovery of the Venezuelan economy" and execute "new and perverse forms of attacks", such as "the use of the information technology systems and the use of the cyberspace to foment hatred and create a distortion of our economy [...] and the dissemination of false news about the ability or disposition of payment of the Republic or of PDVSA, regarding the financial instruments issued." The decree of state of exception gives the authority to the executive power to: 1) "design and execute special public security plans that face destabilizing actions that conspire against the peace of the Nation", and 2) "dictate forceful, transitory, and exceptional regulations that prevent campaigns of destabilization and distortion of the economy, driven by national and foreign factors through computer technology and cyberspace". As reported, the decree has authorized the filtering, blocking, and monitoring of content on the Internet and the people have not had mechanisms of transparency or independent judicial control over these measures¹⁸⁹⁴.

1228. *Financial crimes*: in 2015 the President of the Republic issued the Decree Law on the Exchange Regime and its Illicit [*Decreto Ley del Régimen Cambiario y sus Ilícitos*], which establishes sanctions of ten to fifteen years in prison for those who broadcast "via electronic means, television, radio, or communication of any kind, writings, signals, images or sounds," false or fraudulent "information" about the exchange rate of the Venezuelan currency with respect to the dollar. The information will be understood as "false" or "fraudulent" when it contradicts or distorts the values applicable to the exchange rate set by the Executive and the Central Bank of Venezuela."¹⁸⁹⁵ The extent of this type of crime can unduly limit access to information of public interest in economic matters, at a time when Venezuela is going through an economic and financial crisis that has led to the devaluation of the bolivar against the dollar at historic lows, and at a time when serious obstacles to access timely and reliable state information exist (*infra*).

¹⁸⁹¹ EFE, [Regularán el uso de redes sociales en Venezuela para sancionar "delitos de odio"](#). August 23, 2017.

¹⁸⁹² Ministerio del Poder Popular para la Comunicación and la Información, [Ley de Convivencia Pacífica garantizará que nadie sea víctima del odio](#), August 22, 2017.

¹⁸⁹³Office of the President, [Decreto No. 2.849](#), May 2017.

¹⁸⁹⁴ IPYS, [Internet Society se pronuncia por bloqueos de Internet en Venezuela](#), May 24, 2017.

¹⁸⁹⁵ [Decreto No. 2.167](#), by means of which the Decree with rank, value and force of Law of the Exchange Regime and its Illicit is issued. December 30, 2015.

1229. *Law for the Defense of Political Sovereignty and National Self-Determination [Ley de Defensa de la Soberanía Política y la Autodeterminación Nacional]*¹⁸⁹⁶: this law establishes in its Article 8 sanctions of high fines to any Venezuelan national who invites to the country a foreign person or organization to issue opinions that may offend "the institutions of the State, its high officials, or affect the exercise of sovereignty."¹⁸⁹⁷ The same rule provides that foreigners who participate in these activities will be expelled from the territory of the Republic, it also provides sanctions to impose on the nationals who have invited them.

1230. The IACHR notes with concern the proliferation of legal provisions in the Venezuelan legal system that restrict the right to freedom of expression under ambiguous and overly broad definitions of concepts such as national security, public order, or hate speech. In most cases, these are laws adopted by the executive branch without a legislative process with a broad consultation and public debate. This type of norms gives the administrative authorities in charge of applying them a discretion incompatible with the full validity of the right to freedom of expression¹⁸⁹⁸. Indeed, the provisions examined do not limit the discretion of the executive authorities to determine the meaning of these concepts, which is a synonym of Government or official political power interest¹⁸⁹⁹.

1231. While it is true that the protection of national security, the safeguarding of public order, and the protection of the rights of individuals are legitimate objectives for establishing subsequent liabilities for the exercise of freedom of expression, they must be invoked and interpreted in accordance to "the just demands of the general welfare and the advancement of democracy"¹⁹⁰⁰. The need for these new laws to protect legitimate interests in a democratic society and to address specific and objectively verifiable threats is not clear¹⁹⁰¹. Particularly, the IACHR recalls that national security cannot be used "as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse."¹⁹⁰² It is also worrying that the regulations contemplate sanctions of the greatest severity: long prison sentences, suspension of transmissions, revocation of a concession, as well as blocking and removal of content on the Internet¹⁹⁰³. This type of measures must be subject to a strict judgment of necessity and proportionality in order to ensure that they are not used to pressure and punish or reward and privilege the media according to their editorial lines or to prevent people from searching, receiving, and disseminating, information of public interest¹⁹⁰⁴.

¹⁸⁹⁶ National Assembly, *Ley de Defensa de la Soberanía Política and la Autodeterminación Nacional*, December 23, 2010.

¹⁸⁹⁷ Art. 8 of the *Ley de Defensa de la Soberanía Política and la Autodeterminación Nacional*.

¹⁸⁹⁸ IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework Regarding the Right to Freedom of Expression*, 2009.

¹⁸⁹⁹ United Nations, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 1985. According to the *Global Principles on National Security and the Right to Information* ("Tshwane Principles"), of June 12, 2013, "It is good practice for national security, where used to limit the right to information, to be defined precisely in a country's legal framework in a manner consistent with a democratic society". The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted in November 1996, expresses itself in similar terms.

¹⁹⁰⁰ Article XXVIII of the American Declaration.

¹⁹⁰¹ IACHR, *Annual Report 2009*, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 82.

¹⁹⁰² UN, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 1985, para. 31.

¹⁹⁰³ IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework Regarding the Right to Freedom of Expression*, 2009, para. 58 and ss; and *Freedom of Expression and the Internet*, OEA/Ser.L/V/II, IACHR/RELE/INF.1/13, December 31, 2013, para. 84-90.

¹⁹⁰⁴ Principle 13 of the *Declaration of Principles on Freedom of Expression*; and IACHR, Office of the Special Rapporteur for Freedom of Expression, *Freedom of Expression and the Internet*, OEA/Ser.L/V/II, IACHR/RELE/INF.1/13, December 31, 2013, para. 84-90.

1232. Therefore, and as it did in previous reports, the IACHR concludes once again that Venezuela's legal system contains regulations that are incompatible with its international obligations regarding freedom of expression. Consequently, the IACHR urges the Venezuelan State to urgently adapt its legislation in accordance with the standards described herein.

2. Assaults, attacks, detentions, and other acts of harassment against journalists

1233. Violence against journalists and social media workers continues to be a pressing problem in Venezuela. In recent years, the IACHR continued to receive information on numerous acts of physical aggression, threats, detentions, robberies, or dispossessions of media workers' work equipment in Venezuela, perpetrated by security forces and groups of armed civilians, with the intention of silencing them and limiting their coverage in different contexts¹⁹⁰⁵.

1234. For example, the IACHR learned of several cases in which public officials threatened journalists and stripped them of their work equipment¹⁹⁰⁶. In other cases, security forces would not have only stripped journalists of their work equipment, but also assaulted them¹⁹⁰⁷. The assaults for recording sections of a film during its launch¹⁹⁰⁸, the withholdings to prevent the transmission of a session of the AN¹⁹⁰⁹, the attacks by public officials for supposedly being "yellow press,"¹⁹¹⁰ are other examples of the different situations where physical violence was used in against journalists and media workers.

1235. The IACHR has also registered cases of journalists who were victims of assault, threats, and harassment after publishing investigations and reports on corruption and transgressions related to the activity of public officials¹⁹¹¹.

¹⁹⁰⁵ IPYS, *Colectivos agredieron a reporteros gráficos durante elecciones estudiantiles de la UCV*, February 17, 2017; Diario Contraste, *Colectivos armados agredieron a reportero gráfico Felipe Romero en la UCV #17Feb*, February 17, 2017; IPYS, *Funcionarios de seguridad agredieron and amenazaron de muerte a periodista en el Consejo Legislativo de Sucre*, February 17, 2017; and El Pitazo, *Golpearon a opositores durante Memoria y Cuenta de un diputado en Cumaná*, February 17, 2017.

¹⁹⁰⁶ El Cooperante, *Presunto trabajador de la Alcaldía de Coro intentó robar a fotógrafo en rueda de prensa*, February 23, 2017; and IPYS, *Amenazaron con un arma a reportero gráfico del diario La Mañana*, February 24, 2017; 2001, *Amenazaron a periodistas del Diario 2001 durante cobertura en el Materno de Caricuao*, February 9, 2017; and IPYS, *Reporteros fueron amenazados por supuesto colectivo en el Hospital Materno Infantil de Caricuao*, February 11, 2017.

¹⁹⁰⁷ IPYS, *Policia de Yaracuy empujó and intentó despojar de su celular a periodista durante manifestación de la oposición*, April 1st, 2017; and El Pitazo, *Periodista denuncia agresión por parte de cuerpos de seguridad en Yaracuy*, April 10, 2017.

¹⁹⁰⁸ Caraota Digital, *Actor Laureano Olivarez agredió and amenazó a equipo de Caraota Digital*, February 23, 2017; and IPYS, *Atacaron a camarógrafo durante el preestreno de una película venezolana*, February 25, 2017.

¹⁹⁰⁹ Globovision, *Liberan a trabajadores de Capitolio TV tras supuesto "secuestro"*, January 10, 2017; and IPYS, *Secuestraron por más de una hora a técnicos de Capitolio TV*, January 10, 2017.

¹⁹¹⁰ IPYS, *Funcionaria de la alcaldía de San Francisco agredió a reporteras en jornada del Carné de la Patria*, January 30, 2017.

¹⁹¹¹ IPYS, *Amenazaron a camarógrafo de Venevisión*, February 3, 2017; Runrun, *Recrudescen ataques contra representantes de medios de comunicación en 2017*, January 17, 2017; Tal Cual, *GN amenaza a periodista Algimiro Montiel por trabajo sobre corrupción en la frontera*, January 16, 2017; and Tal Cual, *GN amenaza a periodista Algimiro Montiel por trabajo sobre corrupción en la frontera*, January 16, 2017. IPYS, *Sebin interrogó a locutor por presuntas declaraciones sobre caída de puente*, February 3, 2017; El Pitazo, *Sebin interroga a locutor Rafael Hernández por sus comentarios sobre puente Guanape*, January 26, 2017; Caraota Digital, *Reportero de Caraota Digital fue amenazado por GNB durante colas por gasolina*, March 23, 2017; El Carabobeño, *Policia de Chacao impidió reporte de colas en gasolineras a periodistas*, March 23, 2017; El Nacional, *SNTP: Polichacao impidió a periodistas reportar colas en gasolineras*, March 23, 2017; El Carabobeño, *Periodista de Dolar Today reveló que estuvo secuestrado en un cuarto oscuro*, November 7, 2017; El Nacional, *Periodistas denuncian desaparición del reportero gráfico Jesús Medina*, November 4, 2017.

1236. Likewise, the IACHR noted with concern the withdrawal and cancellation of passports to journalists by migration authorities, after they had made comments contrary to the interests of the Government. On May 17, state officials canceled the passport of journalist César Miguel Rondón and media worker Floralicia Anzola and prevented them from leaving the country at Simón Bolívar airport in Maiquetía, Caracas. The day before, President Nicolás Maduro had publicly declared that Miguel Rondón and *El Nacional* columnist Tulio Hernández should be detained¹⁹¹².

1237. The IACHR recorded several attempts and cases of robbery and assault against journalists exercising their work. Criminals would have violently deprived them of various types of work material such as cameras, cellphones, and even cars¹⁹¹³. Likewise, multiple episodes of theft of journalistic equipment have been recorded through invasions of media headquarters, especially in radio broadcasting¹⁹¹⁴.

1238. During the days of protest that began in April, there was also a pattern of acts of harassment, theft, and destruction of equipment and journalistic records - in many cases with physical aggression¹⁹¹⁵. The IACHR received information about dozens of assaults¹⁹¹⁶ and theft of equipment that were perpetrated by public officials¹⁹¹⁷. Civilians and armed groups or "collectives"¹⁹¹⁸ would also have been responsible for these events. Similarly, there have been multiple cases of theft of journalistic equipment by criminals in the context of protests¹⁹¹⁹. A high number of detentions of reporters has been registered during the social protests

¹⁹¹² El Nacional, *El Saime anuló el pasaporte de César Miguel Rondón*, May 18, 2017; and Espacio Público; *Anulan pasapote a César Miguel Rondón tras amenazas de Maduro*, May 17, 2017.

¹⁹¹³ El Carabobeño, *Robaron a periodista and reportero gráfico de Últimas Noticias durante pauta*, January 6, 2017; IPYS, *Robaron equipo reporteril de Últimas Noticias*, January 9, 2017; Sumarium, *Atracan al equipo de Globovisión que cubría actos de la Divina Pastora*, January 13, 2017; Panorama, *Reportan robo a equipo de Globovisión que cubría actos de la Divina Pastora*, January 13, 2017; IPYS, *Robaron cámara fotográfica a reportero de Versión Final*, February 7, 2017; Caraota Digital, *Funcionarios policiales recuperaron un vehículo robado a Globovisión*, March 13, 2017; El Cooperante, *Recuperan vehículo robado a empleados de Globovisión en Plaza Venezuela*, March 13, 2017; La Nación, *Equipo de Últimas Noticias fue víctima de robo en Petare*, March 14, 2017; Analítica, *Robaron a reporteros de Últimas Noticias en Petare*, March 15, 2017; Caraota Digital, *Radio Trujillo quedó fuera del aire tras robo de su sistema de cableado*, March 19, 2017; IPYS, *Radio Trujillo 1280 AM se encuentra fuera del aire por hurto de cableado eléctrico*, March 20, 2017; IPYS, *Hurtaron equipos de Diario de Guayana en cobertura*, March 28, 2017; NTN24, *Robaron el equipo de trabajo de los periodistas del Diario Guayana mientras cubrían el desfile de los niños con Síndrome*, March 21, 2017; Sumarium, *Atracan al equipo de Globovisión que cubría actos de la Divina Pastora*, January 13, 2017; and Panorama, *Reportan robo a equipo de Globovisión que cubría actos de la Divina Pastora*, January 13, 2017.

¹⁹¹⁴ SNTP, Informe Mensual, 26 agresiones a la libertad de expresión en los primeros 30 días del 2017 documentó el SNTP, undated.

¹⁹¹⁵ Runrunes, *SNTP exige investigación penal contra coronel Vladimir Lugo por agresiones a periodistas*, March 31, 2017; 2001, *Sntp exige investigación penal contra el coronel Vladimir Lugo por agresiones a periodistas*, March 31, 2017; and Diario Contraste, *Detienen a camarógrafo de Vivoplaynet en protesta del TSJ #31Mar*, March 31, 2017.

¹⁹¹⁶ Sindicato Nacional de Trabajadores de Prensa, *14 trabajadores de la prensa han sido detenidos and 106 agredidos en el marco de las protestas*, April 24, 2017; La Nación, *Agredieron a tres periodistas durante cobertura a manifestación en Caracas*, April 22, 2017; and El Español, *Las manifestaciones en Caracas se vuelven contra la prensa: agreden a un periodista de Efe*, May 2, 2017.

¹⁹¹⁷ El Carabobeño, *GNB amedrentó a dos periodistas en Aragua*, January 17, 2017; 800 Noticias, *GNB le quitó la cámara a periodistas del diario El Clarín de Aragua*, January 17, 2017; La Patilla, *La "gloriosa" GNB robó a tres periodistas en pleno ejercicio de su labor este #3May en Altamira*, May 3, 2017; and Diario Contraste, *GNB robó cascos, chalecos and teléfonos a periodistas durante protesta en Altamira #3May*, May 3, 2017.

¹⁹¹⁸ SNTP, Informe Mensual, 26 agresiones a la libertad de expresión en los primeros 30 días del 2017 documentó el SNTP, undated.

¹⁹¹⁹ IPYS, *Reporteros denunciaron hurto durante cobertura de manifestaciones*, January 23, 2017; El Pitazo, *Hurtaron teléfono de periodista de El Pitazo durante marcha de la salud en San Martín*, February 7, 2017; and IPYS, *Despojaron de su celular a reportero de El Pitazo durante marcha por la salud*, February 7, 2017.

initiated in April 2017¹⁹²⁰. For the most part, the detentions last for a few hours and appear to be aimed at intimidating journalists and media workers¹⁹²¹. In some situations, detentions have lasted longer, as was the case of the journalist Yonathan Guédez, who the GNB arrested on April 24 while covering a protest in the State of Lara and released 16 days later under the regime of presentation before courts¹⁹²².

1239. Venezuelan civil society organizations have reported that most cases of violence against journalists and media workers remain unpunished. These processes are characterized by the lack of due diligence in the investigations, the sluggishness of the processes initiated, and political pressures against the judiciary¹⁹²³.

1240. The IACHR recalls that "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."¹⁹²⁴ States should ensure that crimes against freedom of expression are subject to independent, prompt, and effective investigations and judicial proceedings. In addition to criminal investigations, disciplinary procedures should be put in place when there is evidence that public officials have committed violations of freedom of expression during their professional work. As has been pointed out on other occasions, the lack of sanctions against material and intellectual perpetrators of homicides, assaults, threats, and attacks related to the exercise of journalistic activity leads to new crimes and generates a notorious effect of self-censorship that seriously undermines the possibilities of a true open, free, and democratic debate.

1241. In the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority. Attacks against journalists who cover these events violate both the individual aspect of freedom of expression—insofar as they prevent journalists from exercising their right to seek and disseminate information, and creates a chilling effect—as well as its collective aspect—in that they deprive society of the right to know the information that journalists obtain. The State has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities¹⁹²⁵.

¹⁹²⁰ El Diario de Los Andes, *En 25 días 14 trabajadores de la prensa han sido detenidos*, May 3, 2017; Sindicato Nacional de Trabajadores de Prensa, *14 trabajadores de la prensa han sido detenidos and 106 agredidos en el marco de las protestas*, April 24, 2017.

¹⁹²¹ La Patilla, *Liberan a periodista que fue retenido and brutalmente agredido por la GNB en Cumaná*, April 13, 2017; El Nacional, *Liberaron al camarógrafo Elvis Flores tras ocho horas detenido en el Sebin*, April 6, 2017; and El Nacional, *Liberaron a periodista Rhobinson Rojas tras cuatro horas detenido*, April 22, 2017.

¹⁹²² Diario de Lara La Prensa, *Yonathan Guédez fue puesto en libertad bajo régimen de presentación*, April 26, 2017.

¹⁹²³ For instance, in March 2017, the 3rd Chamber of the Court of Appeals of Caracas confirmed the dismissal of an investigation of cruel treatment and injuries perpetrated against photo-journalist Gabriel Osorio. Osorio was hit by pellet shots and bodily blows allegedly by unidentified GNB employees. The Public Prosecutor's Office requested the dismissal of this process "since it was not possible to identify the responsible persons". Similarly, journalist María Beatriz Lara was held, hit and sexually attacked by members of the police in the state of Aragua in June 2015. The Prosecutor's accusation against the alleged responsible individuals was presented in December 2016, but since then no substantive action has taken place in regard to the criminal proceeding. After being threatened, María Beatriz Lara left the country. See: Espacio Público. *Libertad de Expresión e Impunidad en Venezuela*. 2017.

¹⁹²⁴ Principle 9 of the Declaration of Principles on Freedom of Expression.

¹⁹²⁵ United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and Special Rapporteur for Freedom of Expression of the Inter-American Court of Human Rights, OAS, *Joint declaration on violence against journalists and media workers in the context of protests*, September 13, 2013.

3. Detention and expulsion of foreign journalists

1242. The IACHR expressed alarm over what has become a pattern of detention, harassment, and expulsion of foreign journalists who investigate events of public interest in Venezuelan soil or disseminate information on the management of government. According to Venezuelan civil society records, as of 2016, at least 30 foreign journalists were either expelled or prevented from entering the country¹⁹²⁶. Highlights were the cases of *Deutsche Welle* correspondent Aitor Sáez¹⁹²⁷; Brazilian journalists Leandro Stoliar and Gilson Fred Oliveira, from *Record TV*¹⁹²⁸; Chilean journalist Patricio Nunes, from *Canal 13*¹⁹²⁹; British journalists Ian O'Reilly and Stephen Sackur, from *BBC*¹⁹³⁰; French journalists Sebastián Pérez and Didier Barral, from *Agencia CAPA*¹⁹³¹; Argentine journalist Jorge Lanata¹⁹³²; Chilean journalist Gabriela Donoso, from *Reuters*¹⁹³³; and Dutch journalist Bram Ebus¹⁹³⁴.

1243. In all the above-mentioned cases, the journalists who were victims of harassment would have been carrying out investigations into corruption or the political and economic crisis in the country. According to the information available, the government has maintained that the expulsions and prohibitions of entry to the Venezuelan territory are due to the lack of accreditation of foreign journalists¹⁹³⁵.

1244. The IACHR strongly rejects this practice and reminds the Venezuelan State that the right to freedom of expression protects the right of every person to seek, receive, and impart information and ideas of all kinds, regardless of frontiers. In view of the important role of control exercised by journalists and the media in the democratic system, the IACHR and its Office of the Special Rapporteur have been emphatic in stating that journalists should not be required to hold a license or registration to carry out their work. The registration and accreditation schemes of journalists are only appropriate if they are necessary to provide them with privileged access to places or events, such schemes must be supervised by independent bodies and by decisions on this accreditation, having a fair procedure, based on clear, reasonable transparent, and previously published criteria. In addition, decisions on accreditation should be neutral against the content and cannot discriminate on the basis of the editorial line or type of coverage.

4. Criminalization of criticism and journalistic work

¹⁹²⁶ Espacio Público. Situación General del derecho a la libertad de expresión en Venezuela. Enero-Septiembre de 2017.

¹⁹²⁷ IPYS Venezuela, *Gobierno prohibió a corresponsal español ingresar al país*, January 25, 2017; and El Confidencial, *Venezuela me impidió la entrada y aún no sé el motivo*, January 24, 2017.

¹⁹²⁸ Committee to Protect Journalists (CPJ), *El CPJ insta a Venezuela a dejar de obstruir el trabajo de la prensa extranjera*, February 13, 2017; O Globo, *Jornalistas detidos na Venezuela chegam a São Paulo*, February 13, 2017; R7.com, *Jornalistas da Record TV chegam ao Brasil após detenção na Venezuela*, February 13, 2017.

¹⁹²⁹ Tele13, *Periodista de Canal 13 es expulsado de Venezuela en medio de ofensiva contra prensa internacional*, March 23, 2017; and El Mostrador, *Expulsan de Venezuela a periodista de Canal 13 por grabar filas en un supermercado*, March 23, 2017.

¹⁹³⁰ RNV, *Expulsados! Vea lo que pretendían hacer estos 2 espías en Venezuela*, undated; and FM Center, *Detenidos and expulsados del país dos periodistas de la BBC*, March 23, 2017.

¹⁹³¹ El Nuevo Herald and Agence France Presse, *Liberados 2 periodistas franceses que fueron detenidos sin explicación en Venezuela*, April 21, 2017; and Deutsche Welle, *París intercedió para liberar a 2 periodistas franceses detenidos en Caracas*, April 21, 2017; and Telemundo, *Sebastián Pérez Pezzani: "Venezuela es como Corea del Norte"*, April 27, 2017.

¹⁹³² Inter-American Press Association (IAPA), *Venezuela prohibió ingreso al país de periodista argentino*, July 27, 2017; and El País, *Venezuela expulsa al periodista argentino Jorge Lanata*, July 28, 2017.

¹⁹³³ Colegio Nacional de Periodistas (CNP), *Niegan entrada al país a reportera chilena de Reuters*, September 1st, 2017; and Caracota Digital, *En Maiquetía prohibieron ingreso de Gabriela Donoso periodista chilena de Reuters*, September 1st, 2017.

¹⁹³⁴ El Universal, *Liberado periodista holandés detenido por investigar sobre el Arco Minero*, September 22, 2017; Runrun, *Guardia Nacional detuvo a periodista holandés en Puerto Avacucho cuando investigaba el Arco Minero*, September 22, 2017.

¹⁹³⁵ Espacio Público. Situación General del derecho a la libertad de expresión en Venezuela. Enero-Septiembre de 2017.

1245. The IACHR has continued to register the start of criminal proceedings against journalists and the media, university professors, and citizens in general, aimed at punishing and inhibiting critical expressions of state authorities' actions or issues of public interest. As described below, on the one hand, the criminalization of criticism and journalistic work has been the result of the application of criminal offenses that, due to their vagueness or ambiguity, violate the principle of legality and inter-American standards, such as the offenses of criminal defamation¹⁹³⁶, treason, and instigation to violence. In other cases, criminalization has been the product of criminal proceedings based on events on which there is no evidence, or the evidence is directly false. These criminal proceedings are generally protracted and within their framework, afflictive measures are authorized against individuals and the media, such as pretrial detention, measures of censorship, bans on leaving the country, and high bails. In several of these cases, investigations and legal proceedings were initiated after the highest authorities of the State called on public entities to "act" against the persons prosecuted.

1246. The criminal proceedings and convictions described below have a systemic effect on the general conditions for the free exercise of freedom of expression in Venezuela. In addition to the individual dimension of the impact of these measures on the individuals accused, criminalization exerts an intimidating effect (*chilling effect*) on society as a whole, which may lead to preventing or hindering public debate and criticizing public officials¹⁹³⁷.

Case El Nacional, La Patilla and Tal Cual

1247. On April 21, 2015, the president of the AN, Diosdado Cabello, criminally and civilly sued the media *El Nacional*, *La Patilla* and *Tal Cual*, and their directors, Henrique Miguel Otero, Alfredo Ravell, and Teodoro Petkoff for defamation, after the media broadcasted a story of the Spanish newspaper *ABC* in which a former trusted official of Cabello linked him to drug trafficking, an accusation that the official denied¹⁹³⁸. In May, the judiciary ordered a ban to leave the country for the 22 directors involved and their periodic presentation before the courts. According to Cabello's lawsuit, this measure was requested under "reasonable presumptions" of flight risk and obstruction of justice. Diosdado Cabello also filed a civil suit for moral damages against the three newspapers and the court in charge ordered a measure banning the sale or bonding of their assets¹⁹³⁹. On its website, the TSJ expressed its solidarity with the then president of the AN, and without a hearing before the court in charge of the case nor respect for due process guarantees, the TSJ

¹⁹³⁶ Thus, for instance, on March 11, 2016, the Sixth Criminal Trial Court of the State of Bolívar imposed on the director of the *Correo del Caroní*, David Natera Febres, a penalty of four years of prison and the payment of a fine of 1,137 tax units for defamation, on account of the periodical's coverage of an alleged case of corruption at state company Ferrominera del Orinoco. The court also prohibited Febres to leave the country and ordered his attendance at every 30 days until his sentence could be confirmed and executed; it also prohibited the selling and registering of the periodical's rights, and prohibited the *Correo del Caroní* to continue publicizing information about the case [Correo del Caroní, "*El Tiburón*" *que extorsionaba en la ciudad del hierro*, July 15, 2013; Correo del Caroní, *Pioneros de FMO repudian saqueo de su empresa por la corrupción*, July 16, 2013; Correo del Caroní, *Fiscalía solicita enjuiciamiento de empresario por el Case FMO*, September 6, 2013; Correo del Caroní, *La investigación periodística detrás de la sentencia contra Correo del Caroní. 18 marzo de 2016*, March 18, 2016; Correo del Caroní, *Tribunal condena a Correo del Caroní por investigar y publicar notas sobre la corrupción en Ferrominera*, March 11, 2016; IPYS Venezuela, *La censura tiene un aval judicial en la sentencia contra el Correo del Caroní*, March 11, 2016; Espacio Público, *Espacio Público rechaza sentencia contra el Correo del Caroní por informar sobre corrupción*, March 11, 2016; El País, *Condenado a cuatro años el director de un diario en Venezuela*, March 11, 2016; and IACHR, Office of the Special Rapporteur for Freedom of Expression, [Press Release R34/16](#). Office of the Special Rapporteur expresses concern over defamation conviction in Venezuela, March 14, de 2016.

¹⁹³⁷IACHR, "Fernando Alciblades Villavicencio Valencia et al., Ecuador". Precautionary Measure No. 30-14. March 24, 2014, Para. 34-36.

¹⁹³⁸ IACHR. [Annual Report 2015](#), Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 1237.

¹⁹³⁹ IACHR, [Resolution 43/15](#), Precautionary Measure No. 179-15, Miguel Henrique Otero et al., Venezuela, November 9, 2015.

advanced its opinion stating that the disclosure of information made by the three media "lacking veracity carry the sanctions provided in the national legal system."

1248. On August 24, 2015, the IACHR and the Office of the Special Rapporteur for Freedom of Expression issued a statement in which they expressed their deep concern at the stigmatization and judicial harassment against the three media outlets¹⁹⁴⁰.

1249. On November 9, 2015, the IACHR adopted precautionary measures in favor of Miguel Henrique Otero, president-editor of *El Nacional*; Alberto Federico Ravell, director of *La Patilla*, and his daughter Isabel Cristina Ravell; and Teodoro Petkoff, director of *Tal Cual*¹⁹⁴¹. In adopting this decision, the IACHR assessed the existence of repeated stigmatizing statements made by high-level officials, acts of monitoring and surveillance, expedited criminal and civil proceedings for defamation initiated by Cabello, banning them from leaving the country, prejudgment by the TSJ, and seizure of property¹⁹⁴². The IACHR understood that in the Venezuelan context, the media that belonged to the beneficiaries of the measure were the only print media with national distribution that still maintained an editorial line independent of the Government.

1250. The criminal trial, which could lead to convictions of up to four years in prison and high fines, has lasted until the date of this report. According to the information available, in September 2017, the case against journalist Teodoro Petkoff, director of *Tal Cual*, was dismissed. The renowned politician and journalist of 85 years of age was declared civilly incompetent, for health reasons. This decision has been qualified by Petkoff's lawyers as arbitrary and illegal.¹⁹⁴³

1251. The IACHR and its Office of the Special Rapporteur have indicated that the use of these criminal offenses, such as defamation as a mechanism for assigning subsequent liabilities when dealing with specially protected speeches, contravenes the freedom of expression protected by Article IV of the American Declaration. In this regard, the Commission and the Inter-American Court have been emphatic in holding that this type of expression enjoys greater protection within the framework of the inter-American system for the protection of human rights¹⁹⁴⁴. Such protection has been justified, among other reasons, by the importance of

¹⁹⁴⁰ IACHR, [Press Release No. 93/15](#), IACHR and the Special Rapporteur express deep concern over the stigmatization and judicial harassment against three media outlets in Venezuela. August 24, 2015.

¹⁹⁴¹ IACHR, [Resolution 43/15](#), Precautionary Measure No. 179-15, Miguel Henrique Otero et al., Venezuela, November 9, 2015.

¹⁹⁴² IACHR, [Resolution 43/15](#), Precautionary Measure No. 179-15, Miguel Henrique Otero et al. Venezuela, November 9, 2015.

¹⁹⁴³ Before the Court ordered the measure, Diosdado Cabello assured in his television program. "When I found out (...) that he was sick; I asked for a doctor to see him, because I do not care about hurting anyone, much less someone who is sick, I just want justice done (...) this weak man here asked to be left out of the suit." Efecto Cocuyo. *Sobreseído proceso contra Teodoro Petkoff por "motivos de salud"*, September 13, 2017; *Tal Cual*. Cabello: fue aprobado el sobreseimiento de Petkoff porque se lo pedí al tribunal, September 13, 2017; *El País*. *Un juez cierra la causa contra el periodista venezolano Teodoro Petkoff por difamar a un dirigente chavista*, September 14, 2017.

¹⁹⁴⁴ IACHR, [Annual Report 1994](#), Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights; [Annual Report 2004](#), Report of the Office of the Special Rapporteur for Freedom of Expression; Chapter VI ("Desacato" Laws and Criminal Defamation), para. 155 and ss.; [Annual Report 2009](#), Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), p. 245ff.; IACHR. *Case of Ivcher Bronstein vs. Peru*. Merit, Reparations and Costs. Judgment of February 6, 2001. Series C, No. 74; *Case of Herrera Ulloa vs. Costa Rica*. Preliminary Objections, Merit, Reparations and Costs. Judgment of July 2, 2004. Series C, No. 107; *Case of Ricardo Canese vs. Paraguay*. Merit, Reparations and Costs. Judgment of August 31, 2004. Series C, No. 111; *Case of Palamara Iribarne vs. Chile*. Merit, Reparations and Costs. Judgment of November 22, 2005. Series C, No. 135; *Case of Kimel vs. Argentina*. Merit, Reparations and Costs. Judgment of May 2, 2008. Series C, No. 177; and Technical Note to the State regarding the international parameter for "freedom of expression and crimes against honor" and the "modification of the mechanisms regarding crimes against honor present in the Brazilian Criminal Code reform bill", November 4, 2013 [IACHR, [Annual Report 2013](#), Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 125].

maintaining a legal framework that encourages public deliberation based on the fact that officials have voluntarily exposed themselves to greater social scrutiny, and have greater and better conditions to respond to public debate¹⁹⁴⁵.

The case of Braulio Jatar

1252. On September 3, 2016, SEBIN agents arrested journalist Braulio Jatar¹⁹⁴⁶. Jatar is a journalist and director of the digital media *Reporte Confidencial*, a columnist for the medio *Reporte Economía*, and a radio programs host in Isla de Margarita, in the state of Nueva Esparta. The arrest occurred the day after the visit that President Nicolás Maduro made to the municipality of Villa Rosa on the island, and during which there was a demonstration of protest (*cacerolazo*) that would have led the president to confront some of the protesters directly. According to the information known, the protest left some 30 people arrested who were later released. The videos that documented the mobilization were published on the night of September 2 in the digital media run by Jatar. Hours after the publication of the videos, at 8:45 the next morning, SEBIN members arrested him in Porlamar, Nueva Esparta state, while he was on his way to his radio program, without a court order¹⁹⁴⁷.

1253. The information available indicates that in addition to arresting the journalist on September 3, SEBIN officers hooded and armed with long weapons would have presented themselves at Jatar's home in order to carry out a search, allegedly without a warrant. On September 4, 2016, Silvia Martínez - wife of Braulio Jatar - was able to visit him for the first time at the SEBIN facilities and reported that he had suffered assaults. On September 5, 2016, the journalist was able to contact his lawyers and was presented before a judge, where he was accused of being a "CIA agent" and of "organizing terrorist activities," and would have been formally charged with a crime typified in the Organic Law against Organized Crime and Terrorist Financing [*Ley Orgánica contra la Delincuencia Organizada y Financiamiento al Terrorismo*] known as "legitimation of capital", the penalty for this crime is estimated between 10 and 15 years, as reported to the IACHR¹⁹⁴⁸.

1254. During his detention he was transferred to prisons in different regions of Venezuela, was prevented from contacting his relatives and lawyers for long periods, and his health deteriorated. Therefore, on December 22, 2016, the Commission granted precautionary measures in favor of the journalist, after considering that Braulio Jatar was in a situation of seriousness and urgency since his life and personal integrity were at risk as a result of the deterioration of his health and the lack of access to medical treatment in addition to the situation of isolation in which he would be¹⁹⁴⁹. The petitioners of the precautionary measures also indicated several irregularities in the process followed against the journalist, as well as the

¹⁹⁴⁵ IACHR. *Case of Tristán Donoso vs. Panamá*. Preliminary Objections, Merit, Reparations and Costs, Judgment of January 27, 2009. Series C, No. 193, para. 122.

¹⁹⁴⁶ IACHR, Annual Report 2016, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 1104.

¹⁹⁴⁷ IACHR, Resolution 67/2016, Precautionary Measure No. 750-16, Braulio Jatar, Venezuela, December 22, 2016; United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, OAS, Joint Press Release No. R51/17, Venezuela/Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists. April 26, 2017.

¹⁹⁴⁸ IACHR, Resolution 67/2016, Precautionary Measure No. 750-16, Braulio Jatar, Venezuela, December 22, 2016.

¹⁹⁴⁹ The IACHR asked Venezuela to: a) Adopt the necessary measures to protect Braulio Jatar's life and personal integrity, in particular, observing the adequate medical assistance to his health needs; b) Ensure that the conditions of Mr. Braulio Jatar's detention agree with the applicable international standards, considering his current health conditions; and c) Come to an agreement with the beneficiary and his representatives on the measures to be adopted [IACHR, Resolution 67/2016, Precautionary Measure No. 750-16, Braulio Jatar, Venezuela, December 22, 2016].

situation of keeping him incommunicado and transferring him from prison on two occasions without giving notice to his family and defenders¹⁹⁵⁰.

1255. On April 27, 2017, in a joint press release, the Special Rapporteur of the UN on the right to freedom of opinion and expression, David Kaye, and the Special Rapporteur for freedom of expression of the IACHR, Edison Lanza, rejected censorship, arrests, and attacks against journalists in Venezuela, and noted that, in an unprecedented event, the journalist Braulio Jatar remained in detention since September 2016, after having broadcasted a video that showed people protesting against President Maduro. The IACHR recognizes that in May 2017 the journalist was released and put under house arrest¹⁹⁵¹. The process against him would remain open.

1256. In June 2017, the United Nations Working Group on Arbitrary Detention established that the deprivation of liberty of the journalist is arbitrary and although the journalist had been transferred to house arrest "a preventive measure of deprivation of liberty remains in force under said modality"¹⁹⁵². In this regard, the group considered that the arrest under the supposed figure of flagrante delicto and its subsequent incrimination for the crime of money laundering, had as its motive the exercise of his right to freedom of expression, particularly for his work as a journalist and for the electronic portal *Reporte Confidencial*, which produces information and critical reflections about the Government. Also, indicated that the Working Group identifies a systematic practice in recent years, by the Government of the Bolivarian Republic of Venezuela, of depriving political opponents of physical freedom, in contravention of fundamental norms of international law, such as the Universal Declaration of Human Rights, and the Covenant¹⁹⁵³.

1257. The Working Group indicated that the State should "put Braulio Jatar immediately at liberty and grant him the effective right to obtain compensation and other types of reparation, in accordance with international law." The Venezuelan State has not complied with this measure.

1258. In its response to this report, the Venezuelan State stated that "it is not the practice or policy of the State to arrest or assault journalists or limit their professional practice. In Venezuela there are no communicators arrested or subjected to judicial proceedings because of their professional activity"¹⁹⁵⁴.

1259. The IACHR and its Office of the Special Rapporteur recall that the use of criminal law by public officials as a tool for intimidating journalists and criminalizing criticism is a practice that is openly contrary to the principles and standards of freedom of expression, in particular, when criminalization is the product of manipulation of the punitive power of the State by state and non-state actors with the objective of controlling, punishing, or preventing the exercise of the right to freedom of expression. On many occasions, stigmatizing statements by public officials precede the initiation of these criminal proceedings.¹⁹⁵⁵

The case of professor Santiago Guevara

1260. The case of the professor of the University of Carabobo, Santiago Guevara, is also of particular concern. On February 23, the Prosecutors Office charged him with the crime of "treason" after being tried in a military court in Caracas. The General Directorate of Military Counterintelligence [*Dirección General de*

¹⁹⁵¹ Inter-American Press Association (IAPA) – Inter American Press Association (IAPA), Venezuela: Braulio Jatar liberado and puesto en arresto domiciliario, May 26, 2017; and El Nacional, Braulio Jatar recibe medida de casa por cárcel, May 24, 2017.

¹⁹⁵² United Nations. Working Group on Arbitrary Detention. Opinion 37/2017 on Braulio Jatar (Bolivarian Republic of Venezuela). A/HRC/WGAD/2017/37. June 21, 2017.

¹⁹⁵³ United Nations. Working Group on Arbitrary Detention. Opinion 37/2017 on Braulio Jatar (Bolivarian Republic of Venezuela). A/HRC/WGAD/2017/37. June 21, 2017.

¹⁹⁵⁴ Bolivarian Republic of Venezuela. Observations to the draft of country report "Institucional democracy, Rule of Law and Human Rights in Venezuela". December 21, 2017. Para. 92.

¹⁹⁵⁵ IACHR, Criminalization of the work of human rights defenders, OEA/Ser.L/V/II., Doc. 49/15, December 31, 2015.

Contrainteligencia Militar] (DGCIM) executed the arrest after the publication of a series of opinion articles on the economic crisis in the country¹⁹⁵⁶.

1261. According to the information received, the detention and trial of Professor Santiago Guevara would be framed in a context of threats, intimidating or discrediting attacks, or acts of criminalization or aggression, to professors for their activities or academic work, or because of their condition of member of the academic community, and because of their professional opinions on the critical situation of services such as health, electricity, or infrastructure¹⁹⁵⁷.

1262. Since Professor Guevara was deprived of his freedom at the headquarters of the General Direction of Military Counterinsurgency on February 21, 2017, his health condition seriously worsened. For this reason, the IACHR ordered the State of Venezuela to "adopt the necessary measures to guarantee the life and personal integrity of Mr. Guevara García, particularly, by providing him with adequate medical attention, in conformity with his illnesses and according to the applicable international standards"¹⁹⁵⁸. The IACHR notes that on December 23, the court in charge of the case granted Mr. Guevara conditional liberty. On that day, he was release from the General Directorate of Military Counterintelligence. According to the State's communication, Mr. Guevara must report periodically to the military court¹⁹⁵⁹.

5. Indirect censorship and mass closure of media

1263. The IACHR and its Office of the Special Rapporteur have also condemned the closure of more than 50 media outlets throughout 2017 in Venezuela under procedures that depart from the principles that guarantee freedom of expression.

1264. According to the information received, on August 24, subscription television providers in Venezuela removed the Colombian channels *Caracol TV* and *RCN* from the programming grid, on the orders of Conatel¹⁹⁶⁰. William Castillo, Deputy Minister for International Communication of the Ministry of Popular Power for Foreign Affairs [*Ministerio del Poder Popular para Relaciones Exteriores*], declared in an interview to the official media that "*RCN* and *Canal Caracol* are instruments of a media war that, in Venezuela, have behaved as machines of aggression to the Venezuelan identity and to the legitimate authorities." The minister accused *Caracol TV* of committing "a series of extremely serious crimes, of offenses against Venezuela, its authorities and our laws." A similar criterion would have previously been used to order the suppression of *CNN* and *NTN 24* signals.

1265. In addition, the use of state power to assign frequencies continues to be used by the Government as a mechanism to reward or punish media in accordance to its editorial line. During 2016, the processes of renewal and granting of radio and television concessions continued to be deferred by the authorities, a situation that is a matter of concern for the IACHR and its Office of the Special Rapporteur, as the uncertainty generated by the absence of a government response to requests for endorsement of concessions can induce media workers to self-censor and become an indirect means of undue restriction on freedom of

¹⁹⁵⁶ El Carabobeño, *Profesor de la UC Santiago Guevara imputado por el delito de "Traición a la Patria"*, February 23, 2017; and El Nacional, *El profesor Santiago Guevara fue acusado de traición a la patria*, February 25, 2017.

¹⁹⁵⁷ Coalición de Cátedras and Centros Universitarios de Derechos Humanos. El pensamiento bajo amenaza: Situación de la libertad académica and la autonomía universitaria en Venezuela. October 2017.

¹⁹⁵⁸ IACHR, *Resolution 50/2017, Precautionary Measure No. 383-17, Santiago José Guevara García, Venezuela*, December 1st, 2017.

¹⁹⁵⁹ Communication of the State within the MC 283/17 proceedings, December 26, 2017.

¹⁹⁶⁰ BBC, *El gobierno de Venezuela prohíbe la señal de las colombianas Caracol Televisión and RCN "por llamados al magnicidio" de Nicolás Maduro*, August 25, 2017; and El Universal, *Conatel ordena a cableras sacar canales colombianos*, August 23, 2017.

expression¹⁹⁶¹. In this regard, on April 21 various civil organizations, as well as university students, gave the Conatel management a letter in which they demanded that the agency speed up said processes. The signatories expressed their concern that "there is no plurality and diversity in the granting of concessions for radioelectric media, as the processes are not governed by clear criteria but by political criteria, given that there are about 200 media outlets with expired concessions, many of which have delivered the required documentation, and yet they are kept in a limbo that induces them to self-censor to avoid not having their license renewed."¹⁹⁶²

1266. The IACHR received information indicating that on the night of Friday August 25, representatives of Conatel entered the stations *92.9 FM* and *Mágica 99.1 FM* in the city of Caracas and ordered the definitive cessation of their transmissions. As reported, minutes after both media went off air the frequencies were taken by two new stations linked to the official party. The radio signal from the *92.9 FM* radio station, which had a large-audience journalistic program, was replaced that same night by *Radio Corazón Llanero*, which would be operated by a foundation under the control of an Army captain, former Venezuelan president Hugo Chávez's aide, and current member of the National Constituent Assembly. The signal of the *Mágica 99.1 FM* station was replaced by the station *Vinotinto FM*, whose owner is yet unknown. On September 5, Conatel would have ordered the cessation of broadcasts of station *88.1 FM* of the emblematic educational radio *Fe y Alegría* in the city of Maracaibo, and hours later, it would have revoked the order without providing any explanations. Previously, on July 16, Conatel, invoking lack of documents, also closed ULA TV, the television channel of the *Universidad de los Andes* in Mérida. In Santa Cruz de Mora and Tovar, towns located in the state of Merida, Conatel closed the local television stations *ZeaTv* and *Televisora Cultural de Tovar*, and the radio stations *Sky 95.5 Fm*, *Campesina Stereo 93.3 Fm*, and *Candela 98.3 Fm.*, supposedly for not being enabled to transmit, requiring them to go to Caracas to carry out the procedures¹⁹⁶³.

1267. According to the information provided by several organizations, during 2017 there would be at least 49 closed national radio stations (among them, *Hit 90.7*, *Estudio 92.1*, *Radio Punto Fijo Stereo* y *Jet 95.3*¹⁹⁶⁴, *Yara104.3*, *K-ndela90.3*, *Más Network98.9*, *Rumbera106.5*, *Shaddai101.9*, *Mix98.3*, *Criollísima104.9*¹⁹⁶⁵, *Suena 101.7 FM*, *Sonora 99.3 FM*, *Cunaviche 106.3 FM*, *Top Stereo 90.3 FM*, and *Latín Top 101.1 FM*¹⁹⁶⁶), television channels (*CNN*¹⁹⁶⁷, *El Tiempo Televisión*¹⁹⁶⁸, *Todo Noticias*¹⁹⁶⁹, *Antena 3*¹⁹⁷⁰) and five international

¹⁹⁶¹ In reply to the present report, the State affirmed that "the private sector controls 67% of the radio spectrum in Venezuela, and is overwhelmingly predominant in the sector of subscription radio and TV services. Similarly, the process of democratization of the radio spectrum in the past 18 years allowed strengthening the public media services and legalizing over 300 small radio and television stations in the hands of local communities. Bolivarian Republic of Venezuela. Observations to the draft of country report "Institucional democracy, Rule of Law and Human Rights in Venezuela". December 21, 2017. Para. 91.

¹⁹⁶² Espacio Público, [Exigen a Conatel respuesta inmediata sobre concesiones de frecuencias radioeléctricas](#), April 21, 2016; Notiminuto, [CNP exige a Conatel rapidez en concesiones para radio and televisión](#), April 21, 2016; Colegio Nacional de Periodistas (CNP), [Exigen a Conatel respuesta inmediata sobre concesiones de frecuencias radioeléctricas](#), April 21, 2016.

¹⁹⁶³ Espacio Público, [Conatel cerró medios de comunicación en Tovar](#), August 18, 2017; and El Pitazo, [Cinco medios de comunicación han sido cerrados por Conatel en menos de 24 horas en Tovar](#), Mérida, August 17, 2017.

¹⁹⁶⁴ El Nacional, [Funcionarios de Conatel acompañados de la policía, decomisaron los equipos de la emisora Estudio 92.1 en Paraguaná](#), 11 de abril de 2017; and La Voz, [Conatel apagó cuatro emisoras en Paraguaná](#), April 11, 2017.

¹⁹⁶⁵ Runrun, [Conatel suspende transmisiones de siete emisoras en Yaracuy](#), March 8, 2017; and NTN24, [Denuncian que Conatel suspendió transmisiones de siete emisoras en Yaracuy](#), March 8, 2017.

¹⁹⁶⁶ Analítica, [SNTP denuncia que Conatel cerró nueve emisoras en Maturín](#), March 22, 2017.

¹⁹⁶⁷ Reporteros Sin Fronteras, [Los periodistas extranjeros, persona non grata en Venezuela](#), March 22, 2017; El País, [Almagro dijo que bloqueo de Maduro a CNN es un "ataque a la democracia"](#), February 17, 2017; and Noticiero Digital, [Andrés Eloy Méndez: CNN en Español no ha sido ni será jamás censurado](#), February 16, 2017.

¹⁹⁶⁸ El Universal, [Bloquean en Venezuela señal de TV de El Tiempo de Colombia](#), April 19, 2017; and El País, [El Tiempo Televisión fue sacado del aire en Venezuela](#), April 19, 2017.

television channels removed from national television programming by subscription during the year 2017, on the orders of the Government. As stated by the Office of the Special Rapporteur in previous press releases, most of the media operates in Venezuela with expired licenses and the regulatory body does not have procedures with guarantees for the awarding and/or renewal of these frequencies.

1268. In addition, Conatel started an administrative proceeding against the television network *Globovisión*. The entity considered the statements of congressman Freddy Guevara during the program *'Vladimir a la 1'* held on January 11, in which he urged Venezuelans to initiate "a process of peaceful resistance" to pressure the government and achieve the celebration of elections, violated the legislation¹⁹⁷¹. On August 11, 2017, Conatel officials went to the offices of the *Televen* and *Venevisión* channels, notifying the start of an administrative proceeding for having violated the law¹⁹⁷², after receiving threats of investigations by President Maduro.

1269. Regarding the start of administrative investigations, the IACHR reaffirms that States have the power to regulate radio waves and to carry out sanctioning administrative procedures to ensure compliance with the legal provisions. Nonetheless, the IACHR reminds the Venezuelan State that, in the exercise of said power, it must guarantee that the use of State power in this matter is not intended to pressure and punish or reward and privilege social media workers and the media according to their editorial line.

1270. The IACHR reminds the Venezuelan State that any restriction on the right to freedom of expression must be based on a law and be proportionate and strictly necessary to protect legitimate ends in a democratic society. The closure of media as punishment for maintaining a critical editorial line of a government arbitrarily suppresses the right that assists all Venezuelans to express themselves without fear of reprisals, and to receive plural and diverse information, and is also a form of censorship indirect under international law. Although the State has the regulated attribution to administer the radio spectrum, this must be done in accordance with the basic principles of international human rights law that prohibit the restriction of the right to freedom of expression through the abuse of the power to regulate and manage the radio frequencies. According to these principles, the processes of adjudication, revocation, and renewal of licenses must be strictly regulated by a law and be guided by objective, clear, impartial, and public criteria compatible with a democratic society; the process must be transparent; the decision that grants or denies the request must be duly motivated; and be subject to adequate judicial control. Furthermore, the administration of the radio spectrum must be guided by the principles of equality and non-discrimination, and must never be used to pressure, reward, or punish a media based on its editorial line or position with respect to the current government.

1271. Venezuela had already been condemned by the Inter-American Court in June 2015 for violating these principles when it decided not to renew the *RCTV* television channel concession on May 27, 2007¹⁹⁷³. In the Inter-American Court opinion's, *RCTV's* closure involved "a misuse of power, since a State faculty was used with the objective of editorially aligning the media outlet with the government." The Court also pointed out that the misuse of power in that case "had an impact on the exercise of freedom of expression, not only in the workers and managers of *RCTV*, but also in the social dimension of that right." In effect, the Court stated "the real purpose was to silence critical voices against the government, which together with pluralism,

¹⁹⁶⁹ Runrun, *Dos nuevos canales de televisión se sumaron a la censura en Venezuela*, April 19, 2017; and Todo Noticias, *Venezuela levantó del aire a TN en medio de las protestas contra Maduro*, April 19, 2017.

¹⁹⁷⁰ La Vanguardia, *Maduro corta la señal de Antena 3 en Venezuela*, April 21, 2017; and Antena 3, *El Gobierno de Maduro cierra la señal de Antena 3 en Venezuela*, April 20, 2017.

¹⁹⁷¹ La Nación, *Conatel investigará a Globovisión por declaraciones de Freddy Guevara*, January 20, 2017; and El Universal, *Diputado Freddy Guevara ante sanción de Conatel contra Globovisión*, January 20, 2017.

¹⁹⁷² El Nacional, *Conatel abrió un proceso sancionatorio contra Venevisión and Televen*, August 11, 2017; and El Caraboboño, *Conatel abrió proceso a Televen and Venevisión por no cubrir elecciones de la ANC*, August 12, 2017.

¹⁹⁷³ IACHR. *Case of Granier et al. (RCTV) vs. Venezuela*. Preliminary Objections, Merit, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293.

tolerance, and the spirit of openness, constitute the demand of a democratic debate which, rightly, freedom of expression seeks to protect."

1272. The IACHR notes that censorship has also been carried out against web portals *VPI*¹⁹⁷⁴, *VivoPlay*¹⁹⁷⁵, *Maduradas.com*¹⁹⁷⁶, *Dólar Today*¹⁹⁷⁷ and television programs, such as *'La Voz del Pregón'*¹⁹⁷⁸, *A Media Mañana*¹⁹⁷⁹ and *'El Comandante'*, a series produced by Sony Pictures Entertainment and broadcasted by the Colombian channel *RCN*, inspired by the life of former Venezuelan President Hugo Chávez¹⁹⁸⁰. The Office of the Special Rapporteur for Freedom of Expression of the IACHR issued a press release together with the Office of the Special Rapporteur on the promotion of the right to freedom of opinion and expression of the United Nations on April 26, in which it expressed its concern regarding the blockade of news programs that offered information of general interest in the country through the Internet under orders issued to service providers by Conatel¹⁹⁸¹.

1273. Likewise, the lack of supply and government control of newsprint continues to affect the free functioning of the written press. According to the information available, dozens of media outlets suffered from a lack of supply (such as *El Impulso*¹⁹⁸², *La Nación*¹⁹⁸³) and some of them ended up canceling its printed version (such as *El Nuevo País*¹⁹⁸⁴, *Diario Católico*¹⁹⁸⁵, *La Verdad Impresa de El Carabobeño*¹⁹⁸⁶, *Diario Los Andes*¹⁹⁸⁷) due to lack of supplies by the Editorial Alfredo Manerio Complex [*Complejo Editorial Alfredo Manerio*] (CEAM), the state company that has the legal monopoly on the importation of newsprint and is responsible for distributing it to the media.

¹⁹⁷⁴ Rurunes, *Conatel ordena bloquear a VivoPlay and VPI TV, únicos medios que transmitieron en vivo protesta del 6Abr*, April 7, 2017; Aporrea, *Bloqueo de sus páginas web por CONATEL, denuncian los canales online de noticias VivoPlay and VPI TV*, April 7, 2017; and El Estímulo, *VivoPlay, VPI and Capitolio TV no se pueden ver en Venezuela*, April 7, 2017.

¹⁹⁷⁵ Rurunes, *Conatel ordena bloquear a VivoPlay and VPI TV, únicos medios que transmitieron en vivo protesta del 6Abr*, April 7, 2017; and Analítica, *VIVOplay abre su señal ante el bloqueo de su página web*, April 10, 2017.

¹⁹⁷⁶ Maduradas, *¡ARRECIA LA CENSURA! Operadoras en Venezuela bloquean el acceso a Maduradas.com*, February 8, 2017; and IPYS, *Bloquearon Maduradas.com en varios estados del país*, February 9, 2017.

¹⁹⁷⁷ Sumarium, *"Se solicitó a un tribunal que se bloqueara la página Dólar Today"*; January 26, 2017, and Telesur, *Fiscalía venezolana solicita bloquear página web Dólar Today*, January 26, 2017.

¹⁹⁷⁸ IPYS, *Cierran programa radial por prohibición de la directiva de la emisora de realizar entrevistas*, February 15, 2017.

¹⁹⁷⁹ NTN24, *El programa de radio A Media Mañana fue sacado del aire por órdenes del Sebin*, March 7, 2017; and Caraota Digital, *¿Libertad de expresión? Sebin sacó del aire programa radial tras entrevista a diputado*, March 7, 2017.

¹⁹⁸⁰ El Nacional, *Conatel ordenó quitar la señal de RCN durante transmisión de El Comandante*, January 31, 2017; and La Patilla, *Conatel ordenó quitar la señal de RCN durante transmisión de "El Comandante"*, January 31, 2017.

¹⁹⁸¹ United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, OAS, *Joint Press Release No. R51/17*, Venezuela/Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists. April 26, 2017.

¹⁹⁸² DW, *Venezuela: diario EL Impulso dejará de salir por falta de papel*, December 30, 2016; Infobar, *Por falta de papel dejará de circular EL Impulso, el diario más antiguo de Venezuela*, December 30, 2016.

¹⁹⁸³ IPYS, *Se agota el papel del diario La Nación*, January 30, 2017.

¹⁹⁸⁴ Espacio Público, *El Nuevo País: primer diario víctima de la crisis de papel en 2017*, January 23, 2017; and Infobae, *Asedio del chavismo a la prensa: el diario El Nuevo País recortará su circulación por falta de papel*, January 24, 2017.

¹⁹⁸⁵ La Nación, *Al decano de la prensa Diario Católico le pudo la crisis y cierra indefinidamente*, January 29, 2017; and IPYS, *Cierra Diario Católico, el más longevo del estado Táchira*, January 28, 2017.

¹⁹⁸⁶ Tal Cual, *El semanario La Verdad Impresa de El Carabobeño circulará hasta el 10 de febrero por falta de papel*, February 9, 2017; and El Carabobeño, *El Carabobeño: víctima del CLAP del papel en Venezuela*, February 15, 2017.

¹⁹⁸⁷ Colegio Nacional de Periodistas (CNP), *El Diario Los Andes no seguirá circulando en Mérida*, August 31, 2017; and Caraota Digital, *Diario de Los Andes cerró su edición impresa en El Vigía por falta de papel*, August 29, 2017.

6. Stigmatizing statements against journalists and the media based on the editorial line

1274. The censorship actions and practices described above have usually been preceded by a highly stigmatizing and intimidating speech promoted by State authorities against journalists and the media. President Nicolás Maduro, former congressman and member of the ANC, Diosdado Cabello and former Foreign Minister Delcy Rodríguez, repeatedly point to media outlets such as *El Nacional*, *Globovisión*, *CNN en español*, *NTN24*, of being "coup plotters", "conspirators", "Fascists", "spies", "squalid", and accuse them of "attacking the peace and democratic stability" of Venezuela, "defaming and distorting the truth", "manipulate information" or spread "war propaganda"¹⁹⁸⁸.

1275. When not carried out directly by government authorities, stigmatization occurs through state media or those openly aligned with the government, who distribute and replicate offensive and stigmatizing speech towards journalists and the media¹⁹⁸⁹. The IACHR has reiterated concern about how these expressions of intolerance on the part of the authorities echo among civil groups sympathetic to the government or government clashing groups to intimidate those journalists who they consider enemies of the Government's political project¹⁹⁹⁰.

1276. In two judgments issued by the Inter-American Court with respect to Venezuela, the court warned that public officials "Public servants must also bear in mind that they have a position as guarantors of the fundamental rights of individuals; as such, their statements cannot deny those rights or constitute forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and dissemination of their thoughts. This special duty of care is heightened particularly in situations involving social conflict, breaches of the peace, or social or political polarization, precisely because of the risks such situations might pose for specific individuals or groups at a given time"¹⁹⁹¹.

1277. As the IACHR has already stated, the stigmatizing discourse against the press promoted by high State authorities is unacceptable within a democratic system, as it encourages violence against journalists, favors the legitimization of censorship of the media, and it erodes the public's confidence in journalism as the guardian of democracy. The IACHR reiterates once again that the authorities of the State can provide the simplest and most effective protection: the public and categorical recognition of the legitimacy of criticism and dissidence in a democracy. Accordingly, it urges the authorities to refrain from making stigmatizing statements that can lead to acts of violence or arbitrary decisions by public officials against journalists and social media.

¹⁹⁸⁸ EFE, [Maduro ordena demandar a periódico por difundir información falsa de PDVSA](#), October 8, 2016; Analítica, [Maduro ordenó demandar medios de comunicación que difundan información falsa de PDVSA](#), October 9, 2016; NTN24, [Maduro ordena demandar a diario venezolano El Nuevo País, por redifundir trabajo sobre crítica situación de Pdvsa](#), October 9, 2016; Siente América; [Bloomberg: Venezuela pretende empeñar a la icónica marca americana Citgo para sobrevivir](#), October 9, 2016; YouTube video, [Con el Mazo Dando, miércoles 16 de marzo de 2016](#), Noticias 24, March 16, 2016; Notitotal, [Las amenazas de Cabello a la oposición venezolana de cara al 1-S \(Video\)](#), August 30, 2016; Noticias Al Día and Ahora, [La advertencia de Diosdado Cabello a los medios de comunicación](#), August 30, 2016; and La Voz, [Diosdado Cabello: "Atrévanse a entrar en Caracas"](#), August 31, 2016.

¹⁹⁸⁹ Radio Nacional de Venezuela (RNV), [¡Expulsados! Vea lo que pretendían hacer estos 2 espías en Venezuela](#), March 23, 2017. For instance the BBC journalists detained by SEBIN on March 20 as they intended to carry out an investigation. A press communication circulated by *El Mazo Dando* and reproduced by many State media outlets, such as *Radio Nacional de Venezuela*, qualifies the BBC journalists as "spies" and suggests that one of them, Ian O'Reilly, "is an expert in the obscure art of secret filming".

¹⁹⁹⁰ IACHR, [Annual Report 2015](#), Chapter IV.B, Venezuela, para. 68.

¹⁹⁹¹ IACHR. *Case of Perozo et al. vs. Venezuela*. Preliminary Objections, Merit, Reparations and Costs. Judgment of January 28, 2009. Series C, No. 195, para. 151; *Case of Ríos et al. vs. Venezuela*. Preliminary Objections, Merit, Reparations and Costs. Judgment of January 28, 2009. Series C, No.194, para. 139.

7. Internet and freedom of expression

1278. Violations to freedom of expression in the context of the internet in Venezuela are mainly due to censorship or cyber-attacks. In the context of cyber-attacks, they generally consist of Distributed Denial of Service (DDoS) attacks, although other vulnerabilities are also eventually exploited, targeting news portals or civil society organizations. The organization *Provea*¹⁹⁹² and the news portals *El Pitazo*¹⁹⁹³ and *Aporrea*¹⁹⁹⁴ have reported being victims of DDoS attacks while *Contrapunto*¹⁹⁹⁵, *Caraota Digital*¹⁹⁹⁶, *Correo del Caroni*¹⁹⁹⁷, *El Camubur*¹⁹⁹⁸, the organization Acción Solidaria¹⁹⁹⁹, and the Venezuelan Episcopal Conference²⁰⁰⁰ reported having suffered attacks based on other types of vulnerabilities. The attacks, for the most part intend to prevent the availability of the websites of organizations and the media, making them inaccessible to the public for periods that can last several days. According to the information received, the blockades to web portals in Venezuela are also perpetrated for short periods in an arbitrary and discretionary manner without having public scrutiny to restrict access to information sources at key moments, such as electoral periods or during protests²⁰⁰¹. Similarly, the IACHR noted with concern reports of digital attacks of kidnapping social network accounts against some journalists in Venezuela. The attacks make the owner of the account lose control and not be able to recover it through the standard mechanisms²⁰⁰².

8. Access to public information

1279. For several years, the IACHR and its Office of the Special Rapporteur have followed with concern the situation of the right to access to information in Venezuela²⁰⁰³. Unlike the vast majority of countries in the

¹⁹⁹² IPYS, *Provea sufre intento de ataque cibernético*, March 9, 2017; and Runrun, *Páginas web de El Pitazo and Provea fueron víctimas de ataques cibernéticos*, March 9, 2017.

¹⁹⁹³ IPYS Venezuela, *El Pitazo Informativo sufrió un ataque DDoS*, March 9, 2017; Runrun, *Páginas web de El Pitazo and Provea fueron víctimas de ataques cibernéticos*, March 9, 2017.

¹⁹⁹⁴ Contrapunto, *Aporrea denuncia nuevo ataque informático: está caída desde el viernes 17 de febrero*, February 18, 2017; and LaLaguana TV, *¿Qué pasa en el portal web Aporrea? Denuncian ataque informático (+tuits)*, February 21, 2017.

¹⁹⁹⁵ 2001, *Medio digital Contrapunto denuncia ataque informático a su sitio web*, April 10, 2017; and Espacio Público, *Situación del derecho a libertad de expresión en Venezuela*, May 3, 2017.

¹⁹⁹⁶ IPYS, *Portal Caraota Digital estuvo 12 horas fuera del aire*, March 8, 2017; and Caraota Digital, *Ataque con virus informático fue la causa del colapso de Caraota Digital*, March 9, 2017.

¹⁹⁹⁷ IPYS, *Medios de comunicación social and ONG sufren ataques masivos en sus plataformas web*, March 10, 2017; and El Nacional, *Correo del Caroní denunció "ataques cibernéticos"*, March 10, 2017.

¹⁹⁹⁸ IPYS, *Medio digital El Cambur sufrió ataque cibernético*, February 25, 2017.

¹⁹⁹⁹ IPYS, *Medios de comunicación social and ONG sufren ataques masivos en sus plataformas web*, March 10, 2017; NTN24, *Segundo día de ciberataques a medios en Venezuela: El Pitazo, ONG Provea y Acción Solidaria presentaron fallas en sus portales*, March 9, 2017.

²⁰⁰⁰ IPYS, *Medios de comunicación social y ONG sufren ataques masivos en sus plataformas web*, March 10, 2017; CEV, *Lamentamos informar que la pagina web de la Conferencia Episcopal Venezolana ha sido hackeada. Trabajamos por su recuperación*, March 10, 2017.

²⁰⁰¹ IPYS, *Principales hallazgos de la navegación en Venezuela*, 2016.

²⁰⁰² Access Now, *El ataque "Doubleswitch" en redes sociales: una amenaza para activistas y periodistas en Venezuela y el resto del mundo*, June 9, 2017.

²⁰⁰³ IACHR, Annual Report 2010, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 489-499; Annual Report 2011, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 520-522; Annual Report 2012, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 521-528; Annual Report 2013, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 912-915; Annual Report 2014, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of

region, Venezuela does not have a law on access to public information, and in the last decade, the AN and the Executive have issued dozens of regulations that establish generic and ambiguous exceptions to access public information²⁰⁰⁴.

1280. For example, *Presidential Decree No. 458* grants very broad powers to the Strategic Center for Security and Protection of the homeland [*Centro Estratégico de Seguridad y Protección de la Patria*] (CESPPA)²⁰⁰⁵, which is a decentralized body of the Office of the Presidency in charge of "unifying the flow of information" on "Security, Defense, Intelligence, Internal Order, and External Relations", to assign the nature of "reserved, classified, or limited disclosure to any information, fact, or circumstance, that is processed in [that entity], and *that are of strategic interest for the Security of the Nation* [...]." Likewise, the decree law of the Central Bank of Venezuela [*Banco Central de Venezuela*] (BCV), issued by the President of the Republic on December 30, 2015, authorizes the board of the BCV, "when required by the Executive, [to] temporarily suspend the publication of information for the period during which internal or external situations that represent a threat to National Security and the economic stability of the Nation are maintained"²⁰⁰⁶. It also establishes that "during internal or external circumstances that threaten the National Security and the economic stability of the nation", the BCV may agree with the Executive "an information provision scheme" on the behavior of the national economy, international reserves level, and economic measures adopted.

1281. In this regard, the IACHR and its Office of the Special Rapporteur have indicated that in order to invoke the reservation of information for reasons of national security, "the laws that regulate secrecy must accurately define the concept of national security and clearly specify the criteria that must be used to determine if certain information may or may not be declared secret, in order to prevent abuse of the 'secret' classification to avoid the disclosure of information of public interest." In this regard, the IACHR emphasizes that a restriction on access to public information that seeks to justify itself in the defense of national security must not be based on an idea of national security incompatible with a democratic society²⁰⁰⁷. Likewise, any restriction on access to information for reasons of national security must be established in the law and be truly necessary in a democratic society. The mere assertion by the government that there is a risk to national security is not enough. This risk must be proven: the exception must pass a three-part test: a) it must be related to one of the legitimate objectives that justify it; b) it must be demonstrated that the disclosure of the information effectively threatens to cause substantial harm to that legitimate objective; and c) it must be demonstrated that the damage to the objective is greater than the public interest in having the information²⁰⁰⁸.

1282. On the other hand, the IACHR observes that not only is there no adequate legal framework for the protection and guarantee of the right to access to public information, but also the judicial and administrative

Expression in the Hemisphere), para. 1100-1102; Annual Report 2015, Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 1205-1210.

²⁰⁰⁴ Information provided by civil society organizations at a public hearing held during the IACHR 156th Session. Available at the Office of the Special Rapporteur for Freedom of Expression, IACHR, and at Transparencia Venezuela [Transparencia Venezuela, *Es Legal pero Injusto*, 2014].

²⁰⁰⁵ Presidency. *Decreto N. 458, mediante el cual se ordena la creación del Centro Estratégico de Seguridad and Protección de la Patria*, October 7, 2013.

²⁰⁰⁶ Article 40, Decree with Rank, Value and Strength of the Law of the Central Bank of Venezuela [Presidencia de la República, *Decreto No. 2.179*, mediante el cual se dicta el Decreto con Rango, Valor and Fuerza de la Ley del Banco Central de Venezuela, December 30, 2015].

²⁰⁰⁷ IACHR. *Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Access to information on human rights violations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011.

²⁰⁰⁸ IACHR. *Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Access to information on human rights violations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011; Open Society Foundations. *The Global Principles on National Security and the Right to Information (The Tshwane Principles)*. June 12, 2013.

remedies that could be used to access the information have repeatedly proved ineffective for that purpose²⁰⁰⁹. Indeed, the IACHR and its Office of the Special Rapporteur received information regarding the issuance of judgments in which, contrary to the provisions of the inter-American standards, the courts ruled inadmissible the appeals filed by citizens against the authorities' refusal to provide them with public information, based on a criterion adopted by the Constitutional Chamber of the TSJ, in June 2010, according to which, "even though the constitutional text recognizes the citizen's right to be informed, it establishes external limits to the exercise of such right, in the understanding of that there are no absolute rights." Based on this criterion, national courts systematically deny access to information held by the State.

1283. For example, the Political-Administrative Chamber of the TSJ declared inadmissible a claim filed by the civil organization Espacio Público, against the Minister of People's Power for Prison Services [*Ministra del Poder Popular para los Servicios Penitenciarios*], Iris Varela, through which it was intended to obtain statistical information regarding the cases of death and the state of health of the inmates that are in the detention centers that the aforementioned unit administers²⁰¹⁰. This is because, in the opinion of said Court, the request did not comply with the requirement "that the magnitude of the information requested be proportional to the use and intended use of the requested information"²⁰¹¹. The organization Espacio Público has reported that of the 26 lawsuits that it has filed over the course of eight years, in no case have the courts ruled in favor of the publication of the information requested²⁰¹².

1284. The foregoing evidences, as noted throughout this report, that there is a policy of secrecy and control of information on public affairs, which has serious consequences for the demand and promotion of other human rights in many different areas. The essential information on the operation of the State and public policies that must be published proactively by the authorities, such as data on annual food production, maternal and infant mortality rates, homicide rates, among others, is subject to reserve without legal basis or effective claim mechanisms.

1285. In view of this, the IACHR and its Office of the Special Rapporteur reiterate their recommendation to the State to adopt legislation on access to public information, in accordance with inter-American standards, with the purpose of granting all persons the tools to perform an effective monitoring of the state functioning, public management, and control of corruption, essential in the democratic process. Likewise, the IACHR and its Office of the Special Rapporteur call on the judicial authorities to guarantee this right and, at all times, to direct their judgments in accordance with international standards that govern the matter.

²⁰⁰⁹ Information provided by civil society organizations at the public hearing on the "Situation of the right to freedom of information in Venezuela", held during the 156th Session of the IACHR.

²⁰¹⁰ Ipys Venezuela, [Espacio Público demandó a ministra Iris Varela por negar cifras de muertes en centros penitenciarios](#), August 18, 2015; Espacio Público, [TSJ declara inadmisibile demanda contra Iris Varela](#), March 7, 2016; and TSJ, [Magistrada ponente: María Carolina Ameliach Villarroel. Exp. N° 2015-0877](#), February 10, 2016.

²⁰¹¹ TSJ, [Magistrada ponente: María Carolina Ameliach Villarroel. Exp. N° 2015-0877](#), February 10, 2016.

²⁰¹² Espacio Público. Situación sobre el derecho de acceso a la información pública (AIP) en Venezuela. Enero-Septiembre 2017.

CHAPTER III: CONCLUSIONS AND RECOMMENDATIONS

1. As on previous occasions, the Office of the Special Rapporteur closes its annual report with a chapter of conclusions and recommendations. The objective of this practice is to begin a fluid dialogue with Member States that will enable the Americas to emerge as an example in the area of respect, protection, and promotion of the right to freedom of expression.

A. Violence Against Journalists and Media Outlets

2. According to the information received by the Office of the Special Rapporteur, 22 journalists or media workers were killed during 2017 in the region, while several others disappeared or were dislocated from the areas in which they worked, for reasons that could have been related with their exercise of freedom of expression. In addition to these tragic events, there were dozens of complaints of violence, attacks, threats, and intimidation against communicators and media outlets, presumably in connection with their exercise of freedom of expression.

3. The Office of the Special Rapporteur observes with concern the manner in which journalists must increasingly stop investigating and disseminating information of great public interest for their local communities in order to avoid reprisals against their lives or physical integrity or that of their families. Over the last decade, diverse zones and communities in the hemisphere have become totally silenced due to the paralyzing effect generated by the climate of violence and impunity. In these places, journalists and many media outlets choose to abandon coverage of diverse topics or adapt their information lines to subjects that do not come into conflict with de facto local powers, which creates zones of silence. This situation gives rise to restrictions on information, with the end result that the societies in those localities are not sufficiently informed.

4. It is important to highlight that during 2017 there was also important progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. This shows that it is possible to investigate as a priority the line linked to the professional work of these victims and punish those responsible. However, despite these efforts, the majority of these crimes remain in a troubling state of impunity.

5. Likewise, during 2017, the General Assembly of the OAS adopted the Resolution AG / RES. 2908 (XLVII-O / 17) on the promotion and protection of human rights, which recognizes the importance of the work carried out on the security of journalists and the fight against impunity by the Office of the Special Rapporteur during its 20 years of existence, and urges States to implement comprehensive measures of prevention, protection, investigation and punishment of those responsible and put into practice strategies to end impunity for crimes against journalists.

6. On this point, the Office of the Special Rapporteur recommends that member States:

a. Adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, omitting any statement that may increase the risk for journalists; the respect for journalists' right to keep their sources of information; the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines on the respect for the right of freedom of expression, determining appropriate sanctions proportionate to the damage done; as well as the development of accurate statistics on violence against journalists.

b. Adopt the measures necessary to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals. Measures or protection programs must be suitable and sufficient for its purpose, in accordance with the views expressed in this report.

c. Carry out serious, impartial, and effective investigations into the murders, attacks, threats, and acts of intimidation committed against journalists and media workers, in accordance with this report. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.

d. Bring to trial, before impartial and independent tribunals, all those responsible for the murders, attacks, threats, and acts of intimidation based on the exercise of freedom of expression, remove legal obstacles to the investigation and punishment of these crimes, and provide the victims and their family members ample participation during the investigation and prosecution, as well as adequate compensation, and eliminate gender barriers that obstruct access to justice.

e. Adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the States must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

f. Adopt specific, adequate and effective measures to prevent attacks and other forms of violence perpetrated against women journalists, and prosecute and punish those responsible. States must adopt effective measures to encourage reporting of cases of violence against women journalists and combat the impunity that characterizes those crimes.

B. Social Protests

7. The Office of the Special Rapporteur also views with concern the manner in which certain state authorities reacted to social protests in the Americas in 2017. In particular, information was received about dozens of detentions, threats and aggressions committed against journalists, communicators, protesters and users of social networks who reported on demonstrations.

8. In a similar vein, the Office of the Special Rapporteur notes that it is necessary for States to design regulatory frameworks to protect and facilitate the exercise of social protest. States must not fail to take into account that, when faced with institutional frameworks that do not favor participation, or with serious barriers to the access of more traditional mass communication forms, public protest may become the only medium that actually allows disgruntled sectors of the population - but not aligned with political parties - and groups discriminated against or marginalized from public debate to voice their views and influence public debate.

9. On this point, the Office of the Special Rapporteur recommends that member States:

a. Guarantee the legitimate exercise of social protest and prevent the application of disproportionate restrictions that can be used to inhibit or suppress critical or dissident expressions. In order to be consistent with international obligations on human rights, any national regulation affecting the right to social protest must meet requirements of legality, necessity and proportionality.

b. Initiate the necessary legislative reforms to eliminate from the legal system requirements for the previous authorization or permission to carry out demonstrations and protests in public spaces, and expressly establish the general presumption in favor of the exercise of this right.

c. Ensure protection of individuals and refrain from stigmatizing or stereotyping protesters and their demands, avoiding generalizations based on the behavior of particular groups or isolated events. If security forces must act in a demonstration, they shall use the safest and least harmful measures to individual rights. The response of security forces should aim to protect and facilitate rights, not to repress them. The general principles on the use of force, applied to the context of protests and demonstrations, require that security operations be carefully and thoroughly planned by persons with specific experience and training for this type of situation.

d. In the context of positive obligations to guarantee the right and protect the person exercising it as well as third parties, States should establish specific rules and action protocols for security forces acting in situations of social protest and public demonstrations. These guidelines should aim for police agents to act in the knowledge that their obligation is to protect the participants in a public meeting, demonstration or concentration, to the extent that it is the exercise of a human right.

e. Guarantee that firearms are excluded from the devices used to control social protests. The ban on carrying firearms and lead ammunition by officials who may come into contact with protesters has been proven as the best measure of preventing lethal violence and deaths occurring in a context of social protests. Operations may provide for the availability of firearms and lead ammunition somewhere outside the range of the demonstration for those exceptional cases in which a violent situation warranting such use occurs. In this extreme scenario, there shall be explicit rules regarding who has the power to authorize their use and the ways in which this authorization is to be properly documented.

f. Adopt special measures to protect journalists who are reporting on situations of armed conflict and social unrest, and guarantee that they are not detained, threatened, attacked or have their rights limited in any way for the exercise of their profession; that their work materials and tools are not destroyed nor confiscated by the authorities, according to what was laid out in this report; and create special protocols to protect the press in circumstances of social unrest.

C. Criminalization of Expression and Proportionality of Subsequent Liability

10. Some Member States witnessed criminal complaints filed by State officials in response to the publication of opinions or information related to matters in the public interest. It is true that in some of the cases studied, the criminal proceedings were dismissed. In others, however, judges issued criminal convictions against the journalists. The Office of the Special Rapporteur verifies that there are still criminal codes that have yet to be adjusted to inter-American standards on the subject of freedom of expression because they criminalize speech related to public officials and public interest matters, and other criminal provisions that allow for the imposition of disproportionate measures that can have the kind of chilling effect that is incompatible with a democratic society. Similarly, the Office of the Special Rapporteur received information on the need to adjust civil laws to prevent the disproportionate use of pecuniary sanctions.

11. In regard to statutes that criminally or civilly sanction expression, the Office of the Special Rapporteur recommends that Member States:

a. Promote the repeal of contempt (*desacato*) laws, whatever their form, given that these norms are contrary to the American Convention and restrict public debate, an essential element of the practice of democracy.

b. Promote the repeal of laws on criminal defamation, and in particular abstain from using criminal proceedings to protect honor and reputation when information is disseminated about issues of public interest, about public officials, or about candidates for public office. Protecting the privacy or the honor and reputation of public officials or persons who have voluntarily become involved in issues of public interest, should be guaranteed only through civil law.

c. Promote the inclusion of inter-American standards in civil legislation so that civil proceedings against individuals who have made statements about public officials or about matters of public interest apply the standard of actual malice, in accordance with principle 10 of the Declaration of Principles, and are proportionate and reasonable.

d. Promote the modification of ambiguous or imprecise criminal laws that disproportionately limit the right to freedom of expression, such as those aimed at protecting the honor of ideas or institutions, with the aim of eliminating the use of criminal proceedings to inhibit free democratic debate about all issues of public interest.

D. Statements of High-Level State Authorities

12. In 2017, the Office of the Special Rapporteur continued to receive information on statements made by high-ranking State officials discrediting and stigmatized the journalistic work of some communicators, media outlets and non-governmental organizations. It is particularly concerning that in some of these cases, the statements were followed by violence or the opening of disciplinary procedures that threatened the permanent withdrawal of operating concessions, permits, or licenses of critical media outlets. The Office of the Special Rapporteur exhorts State authorities to contribute decisively to building an environment of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for them.

13. Regarding statements of high-level State officials, the Office of the Special Rapporteur recommends that member States:

a. Encourage democratic debate through public declarations, practices, and policies that promote tolerance and respect of all individuals, under equal conditions, whatever their thoughts or ideas.

b. Exhort the authorities to refrain from making public statements or using state media outlets to carry out public campaigns that can encourage violence against individuals because of their opinions. In particular, avoid statements that could stigmatize journalists, media outlets, and human rights defenders.

E. Prior Censorship

14. The Office of the Special Rapporteur received information about judicial decisions and government measures that prohibited the exercise of journalism, the operation of media outlets or the circulation of information of public interest this year. Member States must take into account that article 13.2 of the American Convention explicitly establishes that the exercise of the right to freedom of expression shall not be subject to prior censorship.

15. On this point, the Office of the Special Rapporteur recommends that member States:

a. Eliminate any norm that enables prior censorship by any state organ, and also any prior condition that may imply censorship of freedom of expression, such as prior requirements of truthfulness, timeliness, or impartiality of information.

F. Indirect Censorship

16. The Office of the Special Rapporteur received complaints pertaining to distribution of government advertising that was intended to punish or reward media outlets according to their editorial positions. It is necessary for member States to have statutory frameworks that establish clear, transparent, objective, and non-discriminatory criteria for determining the distribution of official advertising. The Office of the Special Rapporteur received complaints about the use of other mechanisms of state power, such as tax and administrative control, in order to pressure and punish or reward and provide privileges to journalists and media outlets depending on their editorial position.

17. On this point, the Office of the Special Rapporteur recommends that member States:

a. Abstain from using public power to punish or reward media and journalists in relation to their editorial stance or coverage of certain information, whether through the discriminatory and arbitrary assignment of government advertising or other indirect means aimed at impeding communication and the circulation of ideas and opinions.

b. Regulate these matters in accordance with the current inter-American standards on freedom of expression.

c. Adopt legislation to regulate the State's authority to control and supervise the allocation of public goods or resources related directly or indirectly with the exercise of freedom of expression. On this point, the task is to adjust institutional frameworks with two central objectives: first, to eliminate the possibility that State authority is used to reward or punish media outlets according to their editorial positions, and second, to foster pluralism and diversity in the public debate.

G. Internet

18. The Office of the Special Rapporteur observes that various States in the region have promoted attempts to regulate some aspect of Internet use and access or have adopted decisions in this regard, in response to the need to prevent crime and protect the fundamental rights of third parties. It must be pointed out that many of these initiatives fail to take into account the special characteristics of this technology and, as a result, unduly restrict freedom of expression. In evaluating the proportionality of a restriction on freedom of expression on the Internet, the impact that said restriction could have on the capacity of the Internet to guarantee and promote freedom of expression must be weighed against the benefits that the restriction would provide for the protection of other interests.

19. Furthermore, the Office of the Special Rapporteur highlights the promotion of regulation in certain countries of the hemisphere to ensure there is no discrimination, restriction, interference or blocking in the transmission of Internet traffic, in accordance with the principle of net neutrality.

20. In this sense, the Office of the Special Rapporteur recommends that the Member States:

a. Abstain from applying regulatory approaches to the Internet that have been developed for other communications media – such as telephony or radio and television – and design an alternative regulatory framework specifically for this medium, addressing its particularities, pursuant to currently-in-effect international standards in the field of freedom of expression.

b. Encourage self-regulation as an effective tool to deal with defamatory expressions that could be disseminated on the Internet.

c. Protect the actors who participate as Internet intermediaries and provide technical services from any responsibility for contents generated by third parties and which are disseminated through these services, pursuant to international standards on the matter.

d. Promote universal Internet access to guarantee universal and effective enjoyment of the right to freedom of expression through this medium.

e. Ensure that the processing of data and Internet traffic is not subject to any discrimination based on factors such as devices, content, author, source and / or destination of the material, service or application, in accordance with the principle of net neutrality.

H. Surveillance Programs and Confidential Sources

21. The Office of the Special Rapporteur has expressed concern over the existence of security programs and practices that can generate serious damage to the universal rights to privacy and freedom of thought and expression. As a result, the Office of the Special Rapporteur has urged the corresponding authorities to review relevant legislation and modify their practices, with the aim of ensuring their adjustment to international principles in the field of human rights.

22. The Office of the Special Rapporteur recommends that the Member States:

a. Review their legislation to establish limits on the power to oversee private communications, their necessity and proportionality, pursuant to the public's universal rights and the principles of international law that have been taken up in this report.

b. Ensure that the public can have access to information on programs for surveillance of private communications, their scope and the existing controls to guarantee that they cannot be used arbitrarily. In any case, States must establish independent control mechanisms to ensure the transparency and accountability of these programs.

c. Abstain from punishing journalists, members of the media or members of civil society who have access to and disseminate reserved information about this type of surveillance programs, considering it to be of public interest. Confidential sources and materials associated with dissemination of reserved information must be protected by law.

d. Establish regulations to guarantee that individuals who expose wrongdoing, serious maladministration, a breach of human rights, humanitarian law violations or other threats to the overall public interest, for example in terms of safety or the environment, should be protected against legal, administrative or employment related sanction, even if they have otherwise acted in breach of a binding rule or contract, as long as at the time of the disclosure they had reasonable grounds to believe that the information disclosed was substantially true and exposed wrongdoing or the other threats noted above.

I. Access to Public Information

23. During this period, the Office of the Special Rapporteur once more noted the incorporation of the inter-American system's standards on access to information into the domestic legal regimes of several States, either through the approval of special access to information laws or through decisions by their domestic courts. However, it was noted that in several Member States there continue to be difficulties in regulating the exceptions to the exercise of this right and in the implementation of some laws.

24. With regard to access to information, the Office of the Special Rapporteur recommends that Member States:

a. Continue promulgating laws that permit effective access to information and complementary norms that guarantee its adequate implementation, in conformity with the international standards in this area.

b. Guarantee effectively, both *de jure* and *de facto*, the right of *habeas data* of all persons, this being an essential element of freedom of expression and the democratic system.

c. Encourage the effective and efficient implementation of norms on access to information, adequately training public employees and informing the citizenry in order to eradicate the culture of secrecy and provide citizens the tools to effectively monitor state activities, public administration and the prevention of corruption, all essential to the democratic process.

d. Strengthen the institutional structure for supervision of the implementation of laws regarding access to public information, pursuant to the highest standards in this field, such as those adopted by the General Assembly of the OAS, in its Resolution AG/RES. 2607 (XL-O/10), by means of which it adopts the "Model Inter-American Law on Access to Information."

e. Promote the widespread dissemination of information on the human rights of women and how to uphold them, the mechanisms of protection available to women at potential risk of suffering violence and how to access them, the programs for free legal assistance available to women victims of violence and discrimination, and all other mechanisms for addressing these issues.

f. Step up efforts to move towards the effective implementation of comprehensive systems for compiling information on discrimination and violence against women that incorporate information from all State organs with authority in this area, especially the judicial systems. Based on the information collected, States should produce complete statistics on violence and discrimination against women, as well as other kinds of quantitative and qualitative information in this respect. Those statistics should be updated

periodically and should include information that is disaggregated at least by sex, gender identity, age, race, ethnicity, sexual orientation, socioeconomic status, and situation of disability so as to make it possible to construct an accurate image of the specific forms in which violence and discrimination affect the women in most vulnerable situations. The statistical information produced should be proactively published.

g. Establish systematic policies for the education and training of state officials, in particular judicial officers, on international standards in relation to access to information and violence and discrimination against women. In addition, train the civil society organizations in the use of the mechanisms available to make requests of information to the state.

J. Diversity and Pluralism in the Allocation of Radio Frequencies

25. The Special Rapporteur received complaints about the lack of recognition of the community and indigenous broadcasting sector in some countries in the region. It also received information about the absence of regulatory mechanisms to ensure access to frequencies to this type of media as well as the existence of obstacles to their proper functioning. The Office of the Special Rapporteur also noted that concentration of public and private media is still a problem in some countries in the region.

26. During this period, the Office of the Special Rapporteur continued to emphasize the need for Member States to have a competent authority in charge of radio broadcasting that is technical, independent of the government, autonomous in the face of political pressure, and subject to due process guarantees and strict judicial review. In this regard, this Offices noted that in several countries there still obstacles for allocating licenses or frequencies that are open, public, and transparent, subject to clear and pre-established rules, and only those requirements that are strictly necessary, just, and equitable, have not been implemented. Also, the Office of the Special Rapporteur observes that today, the countries in the region are transitioning from analogue to digital television, while others have just begun this process.

27. On this point, the Office of the Special Rapporteur recommends that Member States:

a. Ensure the existence of transparent, public, and equitable criteria for the allocation of radio frequencies and the new digital dividend. These criteria must take into account the concentration of ownership or control of communications media, and assign the administration of the radio electric spectrum to an organ independent from political and economic interests, subject to due process and judicial oversight.

b. Promote effective policies and practices that permit access to information and the equal participation of all sectors of society so that their needs, opinions, and interests will be contemplated in the design and adoption of public policy decisions. Additionally, adopt legislative and other measures that are necessary to guarantee pluralism, including laws that prevent the existence of public or private monopolies.

c. Legislate in the area of community radio broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The allocation of these frequencies must take into account democratic criteria that guarantee equal opportunities to all individuals in the access and operation of these media in conditions of equality, without disproportionate or unreasonable restrictions, and in conformity with Principle 12 of the Declaration of Principles and the “Joint Declaration on Diversity in Broadcasting.”

d. Ensure that respect for freedom of expression, including media diversity according to editorial position or type of property, is ensured in the digital terrestrial transition process. To that aim, States should ensure that decision-making processes relating to the digital terrestrial transition take place in a transparent and fully consultative manner, allowing for all stakeholders and interests to be heard.

APPENDIX

Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda

March 7, 2017

The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,

Having discussed these issues together with the assistance of *ARTICLE 19* and the *Centre for Law and Democracy* (CLD);

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010, 1 June 2011, 25 June 2012, 4 May 2013, 6 May 2014, 4 May 2015 and 4 May 2016;

Taking note of the growing prevalence of disinformation (sometimes referred to as "false" or "fake news") and propaganda in legacy and social media, fuelled by both States and non-State actors, and the various harms to which they may be a contributing factor or primary cause;

Expressing concern that disinformation and propaganda are often designed and implemented so as to mislead a population, as well as to interfere with the public's right to know and the right of individuals to seek and receive, as well as to impart, information and ideas of all kinds, regardless of frontiers, protected under international legal guarantees of the rights to freedom of expression and to hold opinions;

Emphasising that some forms of disinformation and propaganda may harm individual reputations and privacy, or incite to violence, discrimination or hostility against identifiable groups in society;

Alarmed at instances in which public authorities denigrate, intimidate and threaten the media, including by stating that the media is "the opposition" or is "lying" and has a hidden political agenda, which increases the risk of threats and violence against journalists, undermines public trust and confidence in journalism as a public watchdog, and may mislead the public by blurring the lines between disinformation and media products containing independently verifiable facts;

Stressing that the human right to impart information and ideas is not limited to "correct" statements, that the right also protects information and ideas that may shock, offend and disturb, and that prohibitions on disinformation may violate international human rights standards, while, at the same time, this does not justify the dissemination of knowingly or recklessly false statements by official or State actors;

Highlighting the importance of unencumbered access to a wide variety of both sources of information and ideas, and opportunities to disseminate them, and of a diverse media in a democratic society, including in terms of facilitating public debates and open confrontation of ideas in society, and acting as a watchdog of government and the powerful;

Reiterating that States are under a positive obligation to foster an enabling environment for freedom of expression, which includes promoting, protecting and supporting diverse media, something which has come under growing pressure due to the increasingly difficult economic environment for the traditional media;

Acknowledging the transformative role played by the Internet and other digital technologies in supporting individuals' ability to access and disseminate information and ideas, which both enables responses to disinformation and propaganda, while also facilitating their circulation;

Reaffirming the responsibilities of intermediaries, which facilitate the enjoyment of the right to freedom of expression through digital technologies, to respect human rights;

Deploring attempts by some governments to suppress dissent and to control public communications through such measures as: repressive rules regarding the establishment and operation of media outlets and/or websites; interference in the operations of public and private media outlets, including by denying accreditation to their journalists and politically-motivated prosecutions of journalists; unduly restrictive laws on what content may not be disseminated; the arbitrary imposition of states of emergency; technical controls over digital technologies such as blocking, filtering, jamming and closing down digital spaces; and efforts to "privatise" control measures by pressuring intermediaries to take action to restrict content;

Welcoming and encouraging civil society and media efforts aimed at identifying and raising awareness about deliberately false news stories, disinformation and propaganda;

Concerned about some measures taken by intermediaries to limit access to or the dissemination of digital content, including through automated processes, such as algorithms or digital recognition-based content removal systems, which are not transparent in nature, which fail to respect minimum due process standards and/or which unduly restrict access to or the dissemination of content;

Adopt, in Vienna, on 3 March 2017, the following Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda:

1. General Principles:

a. States may only impose restrictions on the right to freedom of expression in accordance with the test for such restrictions under international law, namely that they be provided for by law, serve one of the legitimate interests recognised under international law, and be necessary and proportionate to protect that interest.

b. Restrictions on freedom of expression may also be imposed, as long as they are consistent with the requirements noted in paragraph 1(a), to prohibit advocacy of hatred on protected grounds that constitutes incitement to violence, discrimination or hostility (in accordance with Article 20(2) of the *International Covenant on Civil and Political Rights*).

c. The standards outlined in paragraphs 1(a) and (b) apply regardless of frontiers so as to limit restrictions not only within a jurisdiction but also those which affect media outlets and other communications systems operating from outside of the jurisdiction of a State as well as those reaching populations in States other than the State of origin.

d. Intermediaries should never be liable for any third party content relating to those services unless they specifically intervene in that content or refuse to obey an order adopted in accordance with due process guarantees by an independent, impartial, authoritative oversight body (such as a court) to remove it and they have the technical capacity to do that.

e. Consideration should be given to protecting individuals against liability for merely redistributing or promoting, through intermediaries, content of which they are not the author and which they have not modified.

f. State mandated blocking of entire websites, IP addresses, ports or network protocols is an extreme measure which can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, including in the sense of that it is proportionate, there are no less intrusive alternative measures which would protect the interest and it respects minimum due process guarantees.

g. Content filtering systems which are imposed by a government and which are not end-user controlled are not justifiable as a restriction on freedom of expression.

h. The right to freedom of expression applies "regardless of frontiers" and jamming of signals from a broadcaster based in another jurisdiction, or the withdrawal of rebroadcasting rights in relation to that broadcaster's programmes, is legitimate only where the content disseminated by that broadcaster has been held by a court of law or another independent, authoritative and impartial oversight body to be in serious and persistent breach of a legitimate restriction on content (i.e. one that meets the conditions of paragraph 1(a)) and other means of addressing the problem, including by contacting the relevant authorities of the host State, have proven to be demonstrably ineffective.

2. Standards on Disinformation and Propaganda:

a. General prohibitions on the dissemination of information based on vague and ambiguous ideas, including "false news" or "non-objective information", are incompatible with international standards for restrictions on freedom of expression, as set out in paragraph 1(a), and should be abolished.

b. Criminal defamation laws are unduly restrictive and should be abolished. Civil law rules on liability for false and defamatory statements are legitimate only if defendants are given a full opportunity and fail to prove the truth of those statements and also benefit from other defences, such as fair comment.

c. State actors should not 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).

d. State actors should, in accordance with their domestic and international legal obligations and their public duties, 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.

3. Enabling Environment for Freedom of Expression:

a. States have a positive obligation to promote a free, independent and diverse communications environment, including media diversity, which is a key means of addressing disinformation and propaganda.

b. States should establish a clear regulatory framework for broadcasters which is overseen by a body which is protected against political and commercial interference or pressure and which promotes a free, independent and diverse broadcasting sector.

c. States should ensure the presence of strong, independent and adequately resourced public service media, which operate under a clear mandate to serve the overall public interest and to set and maintain high standards of journalism.

d. States should put in place other measures to promote media diversity which may include, as warranted by the situation, some or all of the following:

i. Providing subsidies or other forms of financial or technical support for the production of diverse, quality media content;

ii. Rules prohibiting undue concentration of media ownership; and

iii. Rules requiring media outlets to be transparent about their ownership structures.

e. States should take measures to promote media and digital literacy, including by covering these topics as part of the regular school curriculum and by engaging with civil society and other stakeholders to raise awareness about these issues.

f. States should consider other measures to promote equality, non-discrimination, inter-cultural understanding and other democratic values, including with a view to addressing the negative effects of disinformation and propaganda.

4. Intermediaries

a. Where intermediaries intend to take action to restrict third party content (such as deletion or moderation) which goes beyond legal requirements, they should adopt clear, pre-determined policies governing those actions. Those policies should be based on objectively justifiable criteria rather than ideological or political goals and should, where possible, be adopted after consultation with their users.

b. Intermediaries should take effective measures to ensure that their users can both easily access and understand any policies and practices, including terms of service, they have in place for actions covered by paragraph 4(a), including detailed information about how they are enforced, where relevant by making available clear, concise and easy to understand summaries of or explanatory guides to those policies and practices.

c. In taking actions covered by paragraph 4(a), intermediaries should respect minimum due process guarantees including by notifying users promptly when content which they created, uploaded or host may be subject to a content action and giving the user an opportunity to contest that action, subject only to legal or reasonable practical constraints, by scrutinising claims under such policies carefully before taking action and by applying measures consistently.

d. The standards outlined in paragraph 4(b) should, subject only to legitimate competitive or operational needs, also be applied to any automated processes (whether algorithmic or otherwise) run by intermediaries for taking action either in relation to third party content or their own content.

e. Intermediaries should support the research and development of appropriate technological solutions to disinformation and propaganda which users may apply on a voluntary basis. They should cooperate with initiatives that offer fact-checking services to users and review their advertising models to ensure that they do not adversely impact diversity of opinions and ideas.

5. Journalists and Media Outlets

a. The media and journalists should, as appropriate, support effective systems of self regulation whether at the level of specific media sectors (such as press complaints bodies) or at the level of individual media outlets (ombudsmen or public editors) which include standards on striving for accuracy in the news, including by offering a right of correction and/or reply to address inaccurate statements in the media.

b. Media outlets should consider including critical coverage of disinformation and propaganda as part of their news services in line with their watchdog role in society, particularly during elections and regarding debates on matters of public interest.

6. Stakeholders cooperation

a. All stakeholders – including intermediaries, media outlets, civil society and academia – should be supported in developing participatory and transparent initiatives for creating a better understanding of the impact of disinformation and propaganda on democracy, freedom of expression, journalism and civic space, as well as appropriate responses to these phenomena.