Annual Report of the Inter-American Commission on Human Rights 2020

VOLUME II

ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

Pedro Vaca Villarreal
Special Rapporteur for Freedom of Expression


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ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION
2020

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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
CHAPTER I: GENERAL INFORMATION

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

1. 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 office 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.

2. 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 Office of the Special Rapporteur. Since then, both the Summit of the Americas and the OAS General Assembly have shown their support to the Office of the Special Rapporteur, and have entrusted it with follow-up or analysis of some of the rights that comprise freedom of expression, as well as the monitoring and promotion of the right to access public information.\(^1\) During the last years, the OAS General Assembly has expanded its objectives’ agenda to the Office of the Special Rapporteur pursuant to the situation of the right to freedom of expression in the region.

3. In the framework of the VIII Summit of the Americas, held on April 13 and 14, 2018 in Lima, Peru, the “Democratic Governance against Corruption” commitment was adopted, through which the representatives of participating States expressed their commitment to keep on strengthening different anti-corruption measures, such as the strengthening of the transparency and access to public information bodies, the protection to plaintiffs and journalists regarding threats and reprisal for investigating or informing on corruption acts.\(^2\)

4. In 2018, the IACHR adopted resolution 1/18 on “Corruption and Human Rights,” through which it recommends the States to adopt a series of measures strengthening the access to public information as a key factor in the fight regarding corruption, protection to journalists and the media, among others.\(^3\)

5. The General Assembly of the OAS, by means of resolution 2928 (XLVIII-O/18) on “Human Rights Promotion and Protection,” requested the Office of the Special Rapporteur, together with other bodies, to prepare “practical guidelines in the form of recommendations for guaranteeing freedom of expression and

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\(^1\) With regard to freedom of expression, the General Assembly of the OAS has adopted resolutions in different years through which it restated the right to freedom of expression and acknowledged the important contributions of the Office of the Special Rapporteur for Freedom of Expression. Moreover, it urged the States to follow the Special Rapporteur’s recommendations indicated in the annual reports. In 2005, it passed resolution 2149 (XXXV-O/05); in 2006, resolution 2237 (XXXVI-O/06); in 2007, resolution 2287 (XXXVII-O/07); in 2008, resolution 2434 (XXXVIII-O/08); resolution 2523 (XXXIX-O/09); in 2011, resolution 2679 (XLII-O/11).


\(^3\) IACHR. Resolution 1/18 Corruption and Human Rights. March 16, 2018.
access to information from a variety of the Internet sources during electoral processes without improper interference."4 In 2017, the OAS General Assembly 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.

6. 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.

7. In the framework of its 163rd Period of 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.5

8. In the framework of the 173rd Period of Sessions in Washington D.C., the IACHR approved the document Directive on the performance of the IACHR’s Special Rapporteurships concerning the activities and roles held in their mandates. For the first time the Special Rapporteurships have a protocolized framework for action.

9. On September 15, 2020, the IACHR announced the designation of Pedro José Vaca Villarreal as Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, taking possession of the position on October 6, 2020, in accordance with Article 15 of its Rules of Procedure.6 The selection was the result of a broad, open, transparent and participatory process. The call was published on January 13, 2020 and closed on March 13, 2020. Of the 81 applications received, the Commission selected ten finalists at its Internal Session on April 29, 2020. This list was compiled taking into account the criteria established in the call, as well as gender parity and representation from the different regions of the Americas.7

B. Main activities of the Office of the Special Rapporteur

10. During its twenty-three 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.

11. This section of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2020:

1) Individual Case System

12. 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.

13. 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 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.

14. Likewise, 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”).8

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4 OEA. Resolution AG/RES. 2928 (XLVIII-O/18). Human Rights Promotion and Protection
5 IACHR. Periods of Sessions. Available at http://www.oas.org/es/cidh/actividades/sesiones.asp
6 IACHR. Press Releases: IACHR Chooses Pedro José Vaca Villarreal As Special Rapporteur for Freedom of Expression.
15. The cases solved by the IAHR Court in 2020 are as follows:

**A. —— Urrutia Laubreux v. Chile. Judgment of August 30, 2019.** The Inter-American Court of Human Rights issued a judgment by which it declared the international responsibility of the State of Chile for the violation of the rights to freedom of thought and expression, to judicial guarantees, and to the principle of legality, in relation to the obligation to respect and guarantee such rights and the duty to adopt domestic law provisions, to the detriment of Judge Daniel Urrutia Laubreux. In 2004, Judge Urrutia presented an academic paper for the "Diploma in Human Rights and Democratization Processes" course, which he attended with the authorization of the Supreme Court of Justice. The paper referred to the general lack of a human rights approach in the Chilean judiciary and the role played, especially by the Supreme Court, during the country's military regime and concluded that the Chilean judiciary should grant reparations for the responsibility that the institution would have had in the human rights violations during the dictatorship. On March 31, 2005, the Court of Appeals of La Serena decided to sanction the judge with a disciplinary measure of "written censure", in application of numbers 1 and 4 of article 323 of the Organic Code of Courts. This was because it considered that the academic work was "a manifestation of excessive expression by a judge of the Republic to refer to the actions of his hierarchical superiors", and that it also violated the principle of hierarchy that informs the Chilean Judiciary. Mr. Urrutia Laubreux appealed the decision before the Supreme Court and on May 6, 2005, the Supreme Court upheld the challenged decision, reduced the sentence to a "private reprimand" and ordered that the sanction imposed be recorded in the judge's résumé. The registration of the private reprimand in the judge's résumé had the consequence that the sanctioned judge could not be rated in the "outstanding" list, received a lower rating or accumulation of points, which influenced the preference in the appointments in property, in the promotion of judges to higher positions and in the appointment to different positions. In addition, more than three sanctions in a three-year period could result in removal from the judge's position. In the specific case, on the occasion of the application of the "private reprimand", they knew the victim as a "problematic judge".

In 2018, after the sanction of "private reprimand" remained on Mr. Urrutia Laubreux's résumé for more than 13 years, the Supreme Court decided to render it ineffective and remove it from his résumé. The Inter-American Court ratified that judges, like all persons, enjoy the right to freedom of expression. However, it emphasized that, due to their functions in the administration of justice, and the protection of independence and impartiality in the exercise of justice, this right could be subject to special restrictions. The Court emphasized that these restrictions must be provided for by law, respond to an objective permitted by the American Convention, and be necessary and proportional. It also emphasized that the restrictions applied must be analyzed in each specific case, taking into account the content of the expression and the circumstances of the expression, in order to determine whether they were applied in a manner compatible with the American Convention. Thus, for the Inter-American Court, although there is a possibility of greater restriction on the freedom of expression of judges, not necessarily any expression of a judge could be restricted. Hence, judges may have, for example, a greater margin for the exercise of their freedom of expression in some areas - such as academia - and less in others - such as in the media. In the case, the Court decided that "it is not in accordance with the American Convention to sanction expressions made in an academic work on a general topic and not a specific case, such as the one made by the alleged victim". The Inter-American Court concluded that, although the decision of the Supreme Court of Chile in 2018 constituted an adequate and timely control of conventionality of the sanction of private reprimand imposed on Mr. Urrutia Laubreux in 2005, because it recognized, ceased and partially repaired the...
violation of the right to freedom of expression to the detriment of Mr. Urrutia, the sanction remained on Mr. Urrutia Laubreaux’s resume for more than 13 years, which reasonably affected his judicial career.

2) Precautionary Measures

16. 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.

17. During 2020, the Office of the Special Rapporteur collaborated in the study of 27 requests for precautionary measures, five of which were granted by the IACHR. Three of them correspond to protection granted to independent journalists in Nicaragua in the context of repression and restriction of press freedom that the country has been experiencing since the protests of April 2018: MC 1606-18 (Nicaragua) - extension of the measures granted to Maria Wajeska Almendares, for threats and harassment of journalists and workers of Confidencial media; MC 399-19 (Nicaragua) - extension of precautionary measures for threats and harassment to journalist Carlos Edy Monterrey, editor of La Costeñisima radio station, MC 399-20 (Nicaragua), granted to Notimat journalist Eduardo Montenegro. On the other hand, MC 1205-19 (Venezuela) was granted in relation to threats and harassment of relatives of Armando Info journalist Roberto Deniz and finally MC 1043-20 (Cuba) was granted to Niober García Fournier.

18. 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

19. 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.

20. Below is a summary of the hearings in which the Office of the Special Rapporteur participated during 2020:

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4) **Seminars and workshops with strategic actors in the region**

21. Seminars, workshops, and training 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-three (23) 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.

22. 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.

23. 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.

24. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2020.
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<td><strong>Tuesday, February 11, 2020</strong>&lt;br&gt;London, UK</td>
<td>Expert Meeting on “Misinformation, disinformation and human rights”</td>
<td>The Carter Center&lt;br&gt;The Human Rights Big Data and Technology Project&lt;br&gt;United Nations Human Rights Office of the High Commissioner</td>
<td>Special Rapporteur Edison Lanza was invited to participate as a panelist in the forum on disinformation and human rights within the panel Disinformation and Elections where he had the opportunity to share his knowledge, expertise and the content of the Guide on disinformation in electoral contexts developed by this office together with the legal department of the OAS.</td>
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<td><strong>February 26, 2020</strong>&lt;br&gt;Tegucigalpa&lt;br&gt;Honduras</td>
<td>Conference: Honduras and the situation of freedom of expression</td>
<td>Committee for Free Expression&lt;br&gt;Honduran Association of Journalists&lt;br&gt;Partnership for Democracy and Human Rights</td>
<td>The Special Rapporteur Edison Lanza was invited to host the conference meeting: Honduras and freedom of expression, a view from the Office of the Special Rapporteur for freedom of Expression.</td>
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<td><strong>February 28, 2020</strong>&lt;br&gt;Tegucigalpa&lt;br&gt;Honduras</td>
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<td>Frente a Frente TV News Program</td>
<td>Special Rapporteur Edison Lanza participated as a panelist on the Honduran television program Frente a Frente where he addressed the concerns and legal challenges faced by journalists and human rights defenders in exercising freedom of expression.</td>
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<td><strong>March 25, 2020</strong></td>
<td>Academic collaborations</td>
<td>Espacio Público Organization – Venezuela</td>
<td>Special Rapporteur Edison Lanza wrote the prologue to the report on violations of freedom of expression in Venezuela, prepared by the organization Espacio Público entitled &quot;The fight against censorship moves into the digital space&quot;.</td>
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<td>Anniversary of the murder of El Comercio journalistic team on the Ecuador-Colombia border</td>
<td>Fundamedios</td>
<td>Special Rapporteur Edison Lanza participated as a panelist in the online event organized by Fundamedios and the relatives of the victims, in commemoration of the &quot;Anniversary of the murder of the journalists from El Diario el Comercio&quot;.</td>
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</tbody>
</table>
### April 2, 2020

| Academic collaborations | Knight Center for Journalists of the Americas (University of Austin-Texas) | Special Rapporteur Edison Lanza shared the inter-American standards and the main inputs of the Office’s monitoring for the drafting of an article by the Knight Center for Journalists of the Americas on the importance of guaranteeing freedom of expression and the press in the context of the COVID-19 pandemic. |

### April 20 to May 31, 2020

<p>| Sixth Edition of the Online Course on International Legal Framework on Freedom of Expression, Access to Public Information and Protection of Journalists | IACHR RELE and Unesco | The Office of the Special Rapporteur for Freedom of Expression launched the sixth edition of the online course for judicial operators: International Legal Framework for Freedom of Expression, Access to Public Information and Protection of Journalists”, organized by the RELE and UNESCO. The new edition had 2,348 registered judicial operators, which adds to the 10,000 that already participated in 5 previous editions. The course aims to train judicial officers in the Americas in the application of international standards on the right to freedom of expression, access to public information, protecting and combating impunity for crimes against journalists, and freedom of expression on the Internet. The Rapporteur Edison Lanza is one of the teachers of the course, along with a number of experts such as the former Special Rapporteur for freedom of expression Catalina Botero. This is a space for interaction and dialogue between the Inter-American Human Rights System and justice operators in Latin America to guarantee national justice in cases of freedom of expression. |</p>
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<th>Date</th>
<th>Event Description</th>
<th>Organization</th>
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<tbody>
<tr>
<td>April 28, 2020</td>
<td>Webinar Global Health Crisis Reporting Forum</td>
<td>ICFJ</td>
<td>Special Rapporteur Edison Lanza was invited to participate as a panelist with Silvia Chocarro, ARTICLE 19’s Protection Director in the virtual forum organized by ICFJ named How can journalists and press freedom be protected during the COVID-19 pandemic? The event addressed issues such as the challenges faced by the press and journalists in covering the health crisis at a regional and global level, the risks this implies for their health, the direct or indirect restrictions they suffer in the exercise of their daily work and the restrictions on access to public information by the state.</td>
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<tr>
<td>May 4, 2020</td>
<td>Annual Report of the IACHR 2019 and the Situation of Human Rights in Venezuela</td>
<td>Presidential Commission for Human Rights and Attention to Victims - Venezuela</td>
<td>Special Rapporteur Edison Lanza was invited to participate as a panelist, along with IACHR Executive Secretary Paulo Abrao and Dr. Carlos Ayala, in a Virtual Forum organized by the Presidential Commission on Human Rights and Care of the Victims of the Interim Government of Venezuela. The event was organized with the aim of sharing knowledge and experiences about the &quot;2019 Annual Report of the IACHR and its chapter on Freedom of Expression in the Hemisphere. Journalists, students, and legal professionals also participated in the activity.</td>
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<td>Special Rapporteur Edison Lanza participated as a speaker in the virtual event &quot;Freedom of the Press and Access to Public Information in times of COVID-19&quot; organized by Unesco and the Inter-American Court of Human Rights in commemoration of World Press Freedom Day. Together with judges of the Court and experts, topics related to the interpretation of the right to freedom of expression in the framework of the states of emergency decreed during the crisis by the COVID-19 were addressed, and the importance of the involvement of local, regional and international judicial actors in the protection of the press and the right of access to information was highlighted. The Rapporteur explained the scope of IACHR resolution 1/20 on Pandemic and Human Rights.</td>
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<td>Special Rapporteur Edison Lanza was invited to participate as a panelist in the virtual forum: &quot;Talking about the State's duty to inform during the Covid-19 pandemic&quot;, organized by the Institute of Access to Public Information (IAIP) of El Salvador. In this presentation, the Rapporteur highlighted the importance of the right to freedom of expression as a guarantee to strengthen transparency during the pandemic and presented Resolution 1/20 of the IACHR on Pandemic and Human Rights. Experts on constitutional matters and members of civil society organizations also attended the event.</td>
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<td>May 16, 2020</td>
<td>Talk for participants of the ITP Media Self-Regulation Program in Democratic Societies</td>
<td>ITP program of the Swedish cooperation for the training of journalists</td>
<td>Special Rapporteur Edison Lanza was invited to participate in the Swedish cooperation program for Central America and the Caribbean to discuss freedom of expression and access to information in the context of covid.19. At the event, the Rapporteur explained how the region is facing and living this problem, provided recommendations, recalled the inter-American standards on the matter and warned about latent threats.</td>
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<tr>
<td>May 20, 2020</td>
<td>Online Event Covid-19 and Freedom of Expression in the Americas</td>
<td>RELE_CIDH, Global Affairs Canada and Inter-American Dialogue</td>
<td>The Office of the Special Rapporteur for Freedom of Expression, together with the Inter-American Dialogue and Global Affairs Canada, organized the online event Covid-19 and Freedom of Expression in the Americas. The event is part of the agenda promoted by the Media Conference that opened in London in 2019 and seeks to address issues of global concern in the hemisphere regarding limitations and restrictions on freedom of expression, the invocation of emergency powers to fight the pandemic and to persecute critical voices or limit transparency, online misinformation, censorship, arbitrary arrests, stigmatization of the media and restricted access to information. The event included interventions by the IACHR Special Rapporteur for Freedom of Expression Edison Lanza, the Permanent Representative of Canada to the OAS, Ambassador Hugh Adsett IFEX Deputy Executive Director Rachael Kay, Google’s Senior Manager of Government Affairs and Public Policy for the Southern Cone, Eleonora Rabinovich and Frank La Rue, Director of Promotion and Human Rights at Fundamedios and former United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. The Rapporteur explained the scope of IACHR Resolution 1/20 on Pandemic and Human Rights.</td>
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<td>May 22, 2020</td>
<td>Conversation with the students of the Sixth Edition of the Online Course (MOOC) on the International Legal Framework for Freedom of Expression, on Freedoms and Covid19</td>
<td>Knight Center for Journalism of the Americas</td>
<td>Special Rapporteur Edison Lanza held an online conversation with MOOC students to explain the standards on freedom of expression and access to information and the importance of their application in the context of the pandemic.</td>
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<tr>
<td>May 26, 2020</td>
<td>Online Event: panel discussion presentation of the annual report 2019 &quot;Dissonance: voices in dispute</td>
<td>Article 19, Mexico</td>
<td>Consultant Cecilia La Hoz, senior lawyer of the Rapporteur’s Office, was invited to participate as a speaker at the discussion table on the occasion of the presentation of the annual report 2019 of the Organization Article 19 Mexico &quot;Dissonance: voices in dispute.</td>
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<tr>
<td>May 30, 2020</td>
<td>Joint Declaration by the Rapporteurs for Freedom of Expression and Opinion and for Freedom of the Media (OAS; UN; and OSCE). 2020 edition.</td>
<td>The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression; the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE); and the Special Rapporteur on Freedom of Expression of the Organization of American States (OAS); Article 19 (London); Centre for Law and Democracy (Canada)</td>
<td>For the 21st Joint Declaration of the Rapporteurs for Freedom of Expression, the rapporteurs of all protection systems elaborated and published the 2020 declaration on “freedom of expression and elections in the digital age”. The Declaration is one of the main international interpretations of the right to freedom of expression and is supported by the non-governmental organizations Article 19 and the Centre for Law and Democracy - Canada. The launch event featured interventions of the Special Rapporteur Edison Lanza, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, and the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Harlem Desir.</td>
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| June 4, 2020 | Launch of the Report of the Inter-American Commission on Human Rights on the Situation of Human Rights in Cuba | IACHR RELE IACHR REDESCA IACHR | The Inter-American Commission on Human Rights (IACHR) presented its country report "Situation of Human Rights in Cuba" which presents a general overview of the human rights situation in the State of Cuba during the period 2017-2019. The Special Rapporteur’s Office for Freedom of Expression wrote the chapter of the report referring to the situation of freedom of expression of journalists, human rights defenders and dissidents. Together with the IACHR, the office organized the participation of prominent panelists in the field of defense of freedom of expression. During the online launch event, Special Rapporteur Edison Lanza moderated the Panel on Freedom of Expression in Cuba which included interventions from the following advocates and journalists:  
• Camila Acosta, Cuban Journalist  
• Natalie Southwick, Central and South America Program Coordinator - Committee to Protect Journalists  
• Daniela Falk, Institute for War and Peace Reporting (IWPR)  
• Gina Romero, Executive Director, RedLac  
• Carlos Rodríguez, Cuban Journalist |
| June 8, 2020       | Seminar on "Challenges and Perspectives for the Hemispheric Freedom of Expression Agenda" | IACHR | As part of the selection process for the new head of the Office of the Special Rapporteur for Freedom of Expression, the Inter-American Commission on Human Rights (IACHR) organized the online event: "Challenges and Prospects of the Hemispheric Agenda for Freedom of Expression".

During the discussion, former Rapporteurs Santiago Cantón, Eduardo Bertoni, Ignacio Álvarez and Catalina Botero, together with the current Rapporteur, Edison Lanza, addressed the main standards promoted by the IACHR and the Special Rapporteur's Office during the last 20 years. They also discussed new issues on the agenda, as a way to contribute to the ongoing selection process. |
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<th>Date</th>
<th>Event Description</th>
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<tr>
<td>10 and 11 June 2020</td>
<td><strong>Virtual Training Program:</strong> Journalism and Freedom of Expression in Nicaragua in the Context of the Pandemic</td>
<td>The IACHR's Office of the Special Rapporteur for Freedom of Expression, in collaboration with Race and Equality, conducted the virtual training: Journalism and Freedom of Expression in Nicaragua in the Context of the COVID-19 Pandemic. The closed workshop was held especially for Nicaraguan journalists and included a space for conversation with the IACHR Special Rapporteurs, Edison Lanza (RELE) and Soledad García Muñoz (REDESCA). The two-day training addressed the challenges faced by Nicaraguan journalists in covering the pandemic, the persistence of violations and restrictions on freedom of expression in Nicaragua during COVID-19 and their implications for situations of poverty. Likewise, International experts also gave lectures on the phenomenon of disinformation, digital security tools and the use of the protection mechanisms of the Inter-American Human Rights System by journalists at risk. The workshops were conducted by the IACHR Special Rapporteurs, Edison Lanza and Soledad García, the Director of the George Washington University School of Communication, Silvio Waisbord, the Director of the International Fact-Checking Network (IFCN), Cristina Tardaguila and digital security expert Pablo Arcuri from (Internews). Likewise, the Executive Secretary of the IACHR, Paulo Abrao, and the coordinator of the Special Follow-up Mechanism for Nicaragua, MESENI, Alejandro Álvarez, presented the mechanisms that the IACHR had established to follow up on the situation in Nicaragua.</td>
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<tr>
<td>June 12, 2020</td>
<td>Inter-American standards on freedom of expression and the journalism card in Colombia</td>
<td>Antonio Nariño Project</td>
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<tr>
<td>June 12, 2020</td>
<td>Working meeting with CONNECTAS network of journalists in Latin America and the Caribbean</td>
<td>CONNECTAS</td>
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<td>June 22, 2020</td>
<td>Launching event of the Uruguay Leaks platform</td>
<td>La Diaria</td>
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<td>June 26, 2020</td>
<td>Webinar: Expectations for the election of the new Press Freedom Rapporteur&quot;.</td>
<td>Inter-American Press Association - IAPA</td>
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<td>July 1st, 2020</td>
<td>Webinar: Journalistic and communicational work in the response to the covid-19 crisis.</td>
<td>Office of the United Nations High Commissioner for Human Rights in Honduras</td>
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<td>July 2, 2020</td>
<td>Mexico</td>
<td>Webinar Presentation Geographies of violence: Cartography of aggressions against women journalists in Mexico.</td>
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<tr>
<td>July 9, 2020</td>
<td>Brazil</td>
<td>Webinar &quot;Attacks on journalists: the right to information is a human right&quot;.</td>
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<td>July 28, 2020</td>
<td>Washington D.C.</td>
<td>Internal Meeting Rightscon 2020</td>
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<td>July 28, 2020</td>
<td>RightsCon 2020 Session on Internet Content Moderation.</td>
<td>Observacom Article19 Mexico RightsCon</td>
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<tr>
<td>July 31, 2020</td>
<td>RightsCon 2020: Online Protest and lessons from the Pandemic</td>
<td>Office of the Special Rapporteur for Freedom of Expression IACHR RightsCon 2020</td>
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<tr>
<td>August 6, 2020</td>
<td>Webinar: &quot;The participation of civil society in the fight against corruption: a look from the IACHR report on &quot;Corruption and Human Rights&quot;.&quot;</td>
<td>DPLF Special Rapporteur Edison Lanza participated as a speaker in the seminar organized by DPLF &quot;The participation of civil society in the fight against corruption: a look from the IACHR report on &quot;Corruption and Human Rights&quot;.&quot; On this occasion, the Rapporteur was able to refer to several of the discussions addressed by the report in its chapter on freedom of expression, such as obstructions by state entities to access to public information, criminal prosecution of those who investigate, among others.</td>
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<td>August 20, 2020</td>
<td>Online Webinar: Children and adolescents and their right to freedom of thought, conscience and religion.</td>
<td>DNI Costa Rica</td>
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<td>August 20, 2020</td>
<td>8enpunto TV Interview</td>
<td>8enpunto Media</td>
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<tr>
<td>August 21, 2020</td>
<td>Master in International Human Rights Law from Universidad Diego Portales.</td>
<td>Diego Portales University</td>
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<td>August 24, 2020 Nicaragua</td>
<td>Rapporteur Edison Lanza was interviewed on the program Cinco Nicaragua where he spoke about the situation of freedom of expression in the country and the growing wave of criminalization and silencing of independent journalists. In this opportunity the Rapporteur highlighted the Inter-American standards on Freedom of Expression and free exercise of journalistic work emphasizing that those who express situations of public interest should not be criminalized and that journalists should not be subjected to criminal law for reporting or expressing themselves.</td>
<td>5 Nicaragua Media</td>
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<tr>
<td>August 28, 2020 Bolivia</td>
<td>Melissa Cabrera, Project Manager of the Rapporteur’s Office was invited to participate in the forum: Democracies of high disinformation: How fake news affects the quality of our democracies?</td>
<td>InternetBolivia.org; Southern Affairs Canada; British Embassy Bolivia</td>
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The forum, organized by InternetBolivia.org, had the objective of analyzing how disinformation affects democracies at the regional level, with emphasis on recent events in Bolivia. During the workshop, the different areas in which disinformation operates, such as the media and the digital space, were discussed. At the same time, the responses of governments at the regulatory level were analyzed. It ended with a reflection on the risks of news for the rights to freedom of expression, participation and access to information.
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<tr>
<th>Date</th>
<th>Location</th>
<th>Event</th>
<th>Participants</th>
<th>Summary</th>
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<tbody>
<tr>
<td>September 8, 2020</td>
<td>Regional</td>
<td>Latin American and Caribbean Internet Governance Forum</td>
<td>Derechos Digitales Adela Goberna</td>
<td>The Special Rapporteur Edison Lanza participated as a speaker at the Internet Governance Forum of Latin America and the Caribbean in the session &quot;Internet and Pandemic: Opportunities and impacts on human rights of deployed technologies&quot; within the segment &quot;Freedom of expression in polarized political contexts during the pandemic&quot;. In this opportunity, the Rapporteur was able to expose a little about the work the Rapporteurship has been doing on disinformation, both in electoral contexts and in pandemic highlighting the production of relevant documents such as the guide on disinformation in electoral contexts and the standards on protection and access to freedom of expression and information in pandemic contained in Resolution 1/20 of the IACHR on Pandemic and Human Rights.</td>
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<td>September 9, 2020</td>
<td>El Salvador</td>
<td>Conference: Freedom of Expression and the Situation of the Press in El Salvador</td>
<td>Special Commission, Legislative Assembly of El Salvador</td>
<td>Special Rapporteur Edison Lanza participated in a discussion of the Special Commission of the Legislative Assembly of El Salvador to investigate the harassment of journalists due to their work, editorial line and the use of public resources against opponents, where he informed the commission about the violations to freedom of expression and press by the Salvadoran State.</td>
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<td>September 23, 2020</td>
<td>Washington D.C.</td>
<td>IACHR Webinar Freedom of Expression and Access to Information during the Pandemic</td>
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<td>Inter-American Commission on Human Rights</td>
<td>SACROI-COVID19</td>
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<td>The Inter-American Commission on Human Rights (IACHR) and the Office of the Special Rapporteur for Freedom of Expression (RELE) held the virtual seminar &quot;Freedom of Expression and Access to Information during the Pandemic&quot;.</td>
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<td>This event was held as part of a series of seminars organized by the IACHR in the framework of its SACROI- COVID 19, to address international and inter-American standards regarding the effects of the pandemic.</td>
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<td>The event was attended by the President of the IACHR Joel Hernandez, the Special Rapporteur Edison Lanza and interventions by experts such as Eduardo Bertoni, Director of the National Agency for Access to Public Information of Argentina, Catharine Christie of the Inter-American Dialogue, Jose Luis Sanz, Director of El Faro and Maria Paz Canales, Executive Director of Derechos Digitales.</td>
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<td>During the event, important topics were addressed such as the main threats that civil society has been facing regarding the right to privacy of individuals during the pandemic, threats to freedom of expression during the pandemic: Which countries and situations have drawn attention? and attacks and obstacles during the pandemic for the work of the press in Central America.</td>
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<td>September 25, 2020</td>
<td>Colombia</td>
<td>Seminar: &quot;Police limits in the context of social protest&quot;.</td>
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<td>La Silla Vacia</td>
<td>ICON-S Capítulo Colombia</td>
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<td>The Special Rapporteur, Edison Lanza, was invited to participate in the seminar Limits of the Police in the context of social protest, on this occasion the Rapporteur had the opportunity to present the Inter-American standards developed in the report of the Office of the Special Rapporteur on Protest and Human Rights.</td>
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<td>October 15, 2020 Washington D.C.</td>
<td>Webinar: Takeover: Moot public hearing &quot;Internet access and online violence&quot;.</td>
<td>Inter-American Commission on Human Rights</td>
<td>Special Rapporteur Pedro Vaca participated along with Commissioners Julissa Mantilla, Esmeralda Arosemena and Acting Executive Secretary Maria Claudia Pulido in this activity that aimed to provide information on the context of vulnerability of girls and adolescents in the virtual environment. During the activity, important topics for the Rapporteurship were addressed, such as the right of access to the Internet, the need to protect the right to freedom of expression online and the duty of States to protect the most vulnerable populations.</td>
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<td>October 22, 2020 Colombia</td>
<td>Forum entitled &quot;Right of access to environmental information: Challenges regarding the entry into force of the Escazú Agreement&quot;.</td>
<td>Office of the Attorney General of Colombia XIX Meeting of the Transparency and Access to Information Network (RTA)</td>
<td>The Office of the Attorney General of Colombia invited Special Rapporteur Pedro Vaca to participate in the forum &quot;Right of access to environmental information: Challenges regarding the entry into force of the Escazú Agreement&quot;, the purpose of which was to examine the opportunities offered by the Escazú Agreement for strengthening the fundamental right of access to public information in Colombia.</td>
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| October 27, 2020 Regional | Event: Launching of the proposal "Regulation of large platforms: standards to protect freedom of expression on the Internet". | OBSERVACOM - Observatorio de Regulación de Medios y Convergencia (Regional)  
Coletivo Intervozes (Brazil)  
IDEC - Instituto Brasileiro de Defesa do Consumidor (Brazil)  
TEDIC - Technology, Education, Development, Research and Communication Association (Paraguay)  
CAinfo - Center for Archives and Access to Public Information (Uruguay)  
Digital Users (Ecuador)  
PROLEDI - Freedom of Expression and Right to Information Program of the University of Costa Rica (Costa Rica)  
Digital Development (Argentina)  
IPANDETEC - Panamanian Institute of Law and New Technologies (Panama)  
Fundación Datos Protegidos (Chile) | The Special Rapporteur Pedro Vaca was invited to participate as a special guest at the event to launch the proposal "Regulation of platforms: standards to protect freedom of expression on the Internet".  
This document prepared by various Latin American organizations expresses the need to apply an adequate, balanced and democratic regulation to the corporations in charge of the platforms, which have been applying mechanisms of healing and moderation in the content of their users.  
The proposal seeks to propose mechanisms that guarantee respect for users' freedom of expression and maintain a free and open Internet, with content moderation policies compatible with international human rights standards. |
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<th>October 29, 2020</th>
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<tr>
<td>Brazil</td>
<td>Webinar on</td>
<td>Permanent</td>
<td>The Special Rapporteur Pedro Vaca was invited by the Permanent Commission on the Right to Communication and Freedom of Expression of the National Council of Human Rights - CNDH of Brazil to participate in the forum on Disinformation, Hate Speech and Political Violence on the Internet. During the event, the Rapporteur made reference to Inter-American standards related to issues such as hate speech and limits to freedom of expression, political violence on the Internet and disinformation. The event also included interventions by - Aline Osório (Coordinator of the Group for Confronting Disinformation of the Superior Electoral Court of Brazil - TSE); - Paulina Gutierrez (Legal Officer/Law &amp; Policy Programme at ARTICLE 19).</td>
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<td>Hate Speech and</td>
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<td>Rights Council - CNDH</td>
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| October 30, 2020 Honduras | Webinar: "Limitations of the right of access to public information in the territories during the pandemic". | C-Libre | Special Rapporteur Pedro Vaca was invited to participate as a speaker in the webinar "Limitations of the right of access to public information in the territories during the pandemic" organized by the C-Libre Foundation of Honduras.

During the event, the various conditions and difficulties that Honduran communities have been facing to access public information of interest on the management and handling of the pandemic were addressed.

On this occasion, the Rapporteur had the opportunity to explain a little about the particularities of Honduras compared to the region, taking into account that it is one of the most dangerous countries for the practice of journalism, due to restrictions on free access to public information, impunity in violent attacks and the imposition of national regulations that promote secrecy. Likewise, he also referred to the standards, recommendations and State obligations regarding access to public information, making reference to the most recent standards developed on the matter, as set forth in the report of the Rapporteur's Office on Access to Public Information and National Security published in September 2020. |
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<th>Date</th>
<th>Location</th>
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<th>Panelists</th>
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</table>
Citizens' Council of the National Journalism Award  
Special Rapporteur Pedro Vaca was invited to participate as a panelist in the forum "Investigative Journalism and the Right of Access to Public Information" organized by the National Institute of Transparency of Mexico and UNESCO in the framework of the International Day to End Impunity for Crimes against Journalists.  
The purpose of this event was to analyze how the right of access to public information has become a fundamental tool for investigative journalism and to reflect on the ethical criteria that must be observed in the practice of journalism. In addition, the "Puntual" tool was presented, aimed at journalists at risk. |
| November 3, 2020   | Mexico   | Promotional activity of the General Directorate of Human Rights (DGDH) of the Mexican Supreme Court of Justice.  
Topic "Dialogue with the ISHR - The Office of the Special Rapporteur for Freedom of Expression" | General Directorate of Human Rights (DGDH) of the Mexican Supreme Court of Justice  
The Special Rapporteur Pedro Vaca was invited to participate in an academic promotion activity organized by the Directorate General of Human Rights (DGDH) of the Supreme Court of Justice of Mexico.  
This activity is carried out with the objective of strengthening dialogue and interaction between the bodies of the Inter-American Human Rights System and the Supreme Court, on this occasion it was the opportunity to talk with the Court about the mandate of the Rapporteur's Office and the projects that it develops. |
| November 6, 2020   | Argentina| 15th International Congress of Journalism FOPEA "The reconstruction of the profession: towards the human and social". | Congress of Journalism FOPEA  
Special Rapporteur Pedro Vaca was invited to participate in the 15th International Congress of Journalism FOPEA 2020, as a panelist within the segment Freedom of Expression, what 2020 leaves and what is coming.  
Ignacio Boulin (Coordinator of FOPEA's Lawyers Network) and Paula Moreno (Director of EQSnotas and Vice President of FOPEA) also participated in the panel. |
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<tr>
<th>Date</th>
<th>Location</th>
<th>Event</th>
<th>Participant</th>
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<tbody>
<tr>
<td>November 9, 2020</td>
<td>Bogotá</td>
<td>Forum: &quot;Connectivity, vital minimum and digital divide&quot;.</td>
<td>Special Rapporteur Pedro Vaca participated in the Forum &quot;Connectivity, vital minimum and digital divide. Towards a democratic and independent regulation&quot;, organized by the Center for ICT Thinking, New Media and Digital Divide of the National University of Colombia (UNAL), whose objective was to discuss the draft Law 030/2020 being processed in the Sixth Commission (Transport and Telecommunications), which proposes the establishment of a vital minimum of Internet in Colombia.</td>
</tr>
<tr>
<td>November 9, 2020</td>
<td>México</td>
<td>Latin American Conference of Investigative Journalism (COLPIN)</td>
<td>Special Rapporteur Pedro Vaca was invited to participate in the Colpin 2020 Forum, which was a space for reflection, based on the experience and vision of the participating journalists, on the risks and various forms of violence that limit and threaten freedom of expression and investigative journalism in the countries of the region, as well as the strategies and actions to be implemented to address them, taking into account the context posed by the Covid 19 pandemic.</td>
</tr>
<tr>
<td>November 11, 2020</td>
<td>Nicaragua</td>
<td>Discussion on violations of freedom of speech and press freedom in Nicaragua</td>
<td>Special Rapporteur Pedro Vaca participated in a discussion on violations of freedom of expression and press freedom in Nicaragua organized by the Human Rights Collective Nicaragua Nunca+, which was attended by independent journalists from various regions of the country. During the event, they discussed the serious situation of Nicaraguan journalists who regularly face threats, persecution, harassment and stigmatization.</td>
</tr>
<tr>
<td>Date: November 23, 2020</td>
<td>Report of the high-level panel of legal experts on the application of media freedom to provide safe refuge for journalists at risk.</td>
<td>International Bar Association's Human Rights Institute - IBAHRI</td>
<td>Special Rapporteur Pedro Vaca endorsed the Report of the high-level panel of legal experts on the application of media freedom to provide safe refuge for journalists at risk, conducted by IBAHRI.</td>
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<tr>
<td>Date: November 23, 2020</td>
<td>VIII Session: Abogado General Hernán Sanhueza Ramírez: &quot;Police role and criminal process&quot;.</td>
<td>Academia Humanitas of Chile.</td>
<td>The Special Rapporteur Pedro Vaca offered the Master Class: &quot;Police Role, Human Rights and the Rule of Law&quot;, commented by the Minister of the Supreme Court of Justice of Chile, Manuel Valderrama Rebolledo. The meeting was a platform to reflect on the challenges and opportunities related to the police duty, human rights and the demands of the Rule of Law. The activity is part of the Inaugural Session of the VIII Jornadas Policiales Abogado General Hernán Sanhueza Ramírez.</td>
</tr>
<tr>
<td>Date: November 26, 2020</td>
<td>&quot;Constitutional anti-blockade law for national development and guarantee of human rights.&quot;</td>
<td>Academy of Political and Social Sciences of Venezuela</td>
<td>The Academy of Political and Social Sciences of Venezuela invited the Special Rapporteur Pedro Vaca to participate in a conversation to discuss the implications in terms of freedom of expression of the &quot;Constitutional anti-blockade law for national development and the guarantee of human rights&quot;. The law was issued by the Constitutional National Assembly (ANC) and was published in the Official Gazette No. 6583 of October 12, 2020 of Venezuela.</td>
</tr>
<tr>
<td>Date: November 26, 2020</td>
<td>Forum to discuss the new Regime for the Protection of Users’ Rights</td>
<td>Regulatory Commission of Colombia’s Communications</td>
<td>Special Rapporteur Pedro Vaca was invited by the Colombian Communications Regulatory Commission to participate in a conversation to discuss the new Regime for the Protection of Users’ Rights.</td>
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<tr>
<td>Date</td>
<td>Event Description</td>
<td>Organizer</td>
<td>Details</td>
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<tr>
<td>December 9, 2020</td>
<td>Forum: Legal Stakeholders on Freedom of Expression and the Safety of Journalists</td>
<td>T.M.C. Asser Institute in collaboration with the Ministry of Foreign Affairs of the Netherlands, UNESCO and Free Press Unlimited</td>
<td>Special Rapporteur Pedro Vaca participated in the Legal Stakeholders Forum on freedom of expression and safety of journalists organized by T.M.C. Asser Institute in collaboration with the Ministry of Foreign Affairs of the Netherlands, UNESCO and Free Press Unlimited. The meeting was a scenario to exchange stand views and share best practices on specific issues related to the protection of the universal right to freedom of expression based on global, regional and national experiences. It was also an opportunity to facilitate the dissemination of knowledge regarding international norms governing freedom of expression, the main standards of comparative law, and the interpretation of these legal provisions in the digital dimensions.</td>
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<tr>
<td>December 10, 2020</td>
<td>Session with UN and regional Special Rapporteurs on freedom of expression mandates.</td>
<td>Article 19 - London World Press Freedom Conference</td>
<td>Article 19 London organized a session dedicated to the Special Rapporteurs on Freedom of Expression in the framework of the 2020 World Press Freedom Conference. The session was attended by IACHR Special Rapporteur for Freedom of Expression Pedro Vaca, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Irene Khan and the Special Rapporteur for Freedom of Expression and Access to Information of the African Commission, Jamesina King. During the meeting, the Rapporteurs discussed the work they have been doing in the area of freedom of expression and the issues they are addressing in their respective mandates.</td>
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<tr>
<td>Date</td>
<td>Event Description</td>
<td>Organization/Role</td>
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<tr>
<td>December 10, 2020</td>
<td>Discussion: Freedom of expression in Honduras is going through its worst crisis.</td>
<td>PEN Internacional Honduras</td>
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<td>Special Rapporteur Pedro Vaca was invited by Centro Pen Honduras and Pen International to participate as a panelist in the International Forum for Freedom of Expression. During the event, the Rapporteur presented his perspective on the situation of freedom of expression in Honduras during the year 2020 and reviewed the recommendations established on freedom of expression in the framework of the Inter-American human rights standards, calling to guarantee the exercise of freedom of expression and the protection of those who exercise it.</td>
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<td>The IACHR's Office of the Special Rapporteur for Freedom of Expression participated in the drafting of the joint declaration on peaceful assembly and democratic governance. The declaration was published in December by initiative of the United Nations Special Rapporteur on freedom of peaceful assembly and association, Clement Voule, in which the African Commission on Human and Peoples' Rights and the OSCE/ODIHR also participated.</td>
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<tr>
<td>December 10, 2020</td>
<td>Anniversary event in commemoration of the Journalists of Diario el Comercio killed in 2018 between the Ecuadorian and Colombian Border.</td>
<td>Fundamedios Ecuador</td>
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<td>The Special Rapporteur, Pedro Vaca, was invited to participate as a panelist in the forum: &quot;One year after the report, has the State complied? During the event the Rapporteur reflected on the international obligations of the Ecuadorian State in the case of kidnapping and murder of Javier Ortega, Paul Rivas and Efrain Segarra, journalists of the newspaper El Comercio murdered in 2018 between the border of Ecuador and Colombia.</td>
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December 21, 2020

Awards Ceremony: "First National Contest of Journalism, Research and Public Information Applications: The right of access to information as an instrument for a democratic, better informed and more participatory society".

National Institute of Transparency, Access to Information and Protection of Personal Data of Mexico INAI.

Special Rapporteur Pedro Vaca was invited by Mexico's National Institute for Transparency, Access to Information and Protection of Personal Data to participate with a welcome message at the awards ceremony of the "First National Competition for Journalism, Research and Applications of Public Information: The right of access to information as an instrument for a democratic, better informed and more participatory society".

5) Working visits and meetings

25. Below is a summary of the working visits and meetings carried out by the Office of the Special Rapporteur in 2020:

<table>
<thead>
<tr>
<th>Country</th>
<th>Date/Place</th>
<th>Institution</th>
<th>Description</th>
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<tbody>
<tr>
<td>Chile</td>
<td>25 to 31 January 2020</td>
<td>On-site visit of the IACHR to Chile</td>
<td>Special Rapporteur Edison Lanza participated with the Commission in the on-site visit to Chile to observe the human rights situation in the country in the context of the social protests. The IACHR and SR Rapporteur visited several such as Santiago, Arica, Temuco, Ercilla, Concepción, Antofagasta, and Valparaíso, the towns of Lo Hermida and Pudahuel Sur. Places such as the the Santiago 1 Preventive Detention Center, the 3rd Carabineros Police Station, the Temuco Penitentiary Compliance Center and the SENAME San Miguel Family Residence and CREAD Pudahuel. The Special Rapporteur Edison Lanza held meetings with about 30 journalists and members of numerous civil society organizations to monitor the state of freedom of expression in Chile. He also held bilateral meetings with State authorities, parliamentarians and members of Congress and with authorities such as the Institute of Transparency and Access to Public Information, and with representatives of</td>
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</table>
Bogotá – Cúcuta, Colombia  |  February 4 to 7, 2020 | Visit to the border between Colombia and Venezuela

Special Rapporteur Edison Lanza participated in the IACHR's visit to Colombia to address, from the Colombian-Venezuelan border, the situation of Venezuelan migrants and the serious social and political crisis that the country is going through (Venezuela).

During the visit, the Special Rapporteur attended, together with the IACHR delegation, different meetings in the border city of Cúcuta in Norte de Santander, with Colombian and Venezuelan civil society organizations, exile journalists and Venezuelan victims' groups of human rights violations.

The SR participated in visits to the Simón Bolívar Bridge, the Erasmo Meoz University Hospital, the Scalabrinian Mission and numerous meetings with international organizations such as the UNHCR, the IOM, the Pan American Health Organization, as well as deputies in exile, victims' groups living in Colombia, and others displaced from the states of Táchira and Zulia in Venezuela.

Similarly, the SR Edison Lanza held various meetings with journalists from various media outlets such as Espacio Público, Transparency International, IPYS Venezuela, and the journalists' union, among others, who sent their delegates or representatives to Cúcuta to present their reports to the Rapporteur. At the same time, the Rapporteur attended, coordinated, and gave various interviews to both Colombian and Venezuelan media outlets to discuss the situation of journalists, restrictions on the exercise of freedom of expression in Venezuela, and
The working visit to Peru took place from November 29 to December 2, 2020, with the purpose of observing on the ground the human rights situation in the context of the social protests related to the recent political and institutional crisis.

The IACHR delegation was led by its Chairman, Joel Hernández, Commissioner Stuardo Ralón, Rapporteur for Peru, the Interim Executive Secretary, María Claudia Pulido, the Special Rapporteur for Freedom of Expression, Pedro Vaca, and members of the technical team of the Executive Secretariat.

During the four-day visit, Special Rapporteur Pedro Vaca held meetings and collected testimonies from victims, received information from journalists, demonstrators and authorities about the events that occurred in the context of the protests, and visited the locations where the events occurred.

The Rapporteur also attended interviews with the President of the Republic, Francisco Sagasti, the Minister of Foreign Affairs, Elizabeth Astete and the Minister of Justice, Eduardo Vega, and meetings with the Minister of the Interior, the Director General of the Police, the Congress of the Republic, the Constitutional Court, the

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<tr>
<th>Date/Place</th>
<th>Meeting</th>
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<tr>
<td>19 December 2019</td>
<td>Meeting with Haitian journalists and</td>
<td>Special Rapporteur Edison Lanza met with journalist Franzt Duval, President of Haiti’s ANNH and the Magik 9 radio station, and other journalists to discuss issues relating to the situation of freedom of expression and the journalistic exercise in the aforementioned country.</td>
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<tr>
<td>Date</td>
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<td>Event Description</td>
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<tr>
<td>5 February 2020, Bogotá (Colombia)</td>
<td>Meeting with Venezuelan media and journalists in the framework of the IACHR's visit to the Colombo-Venezuelan border</td>
<td>Special Rapporteur Edison Lanza met with journalists from the media outlet Armando Info, who reported judicial harassment, threats and censorship by the Venezuelan government in response to his journalistic investigations into various acts of corruption committed by public officials and in state entities. The meeting was attended by the President of the IACHR Esmeralda Arosemena de Troitiño and IACHR’s Executive Secretary Paulo Abrao.</td>
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<tr>
<td>February 7, 2020, Cúcuta, Colombia</td>
<td>Meeting with Venezuelan media and journalists in the framework of the IACHR’s visit to the Colombo-Venezuelan border</td>
<td>Special Rapporteur Edison Lanza held a meeting with representatives of different Venezuelan media from El Pitazo, Diario Tal Cual, VNPTV, Diario de los Andes, and El Estimulo Media who reported about the struggle that journalists face to continue covering the humanitarian crisis on the border of Colombia and Venezuela (Tachira and Cúcuta) cities. They denounced the blocking of web pages, harassment by authorities, sabotage of radio stations and the lack of connectivity and basic supplies.</td>
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<tr>
<td>February 27, 2020, Tegucigalpa, Honduras</td>
<td>Lunch with journalists and civil society organizations on freedom of expression in Honduras.</td>
<td>Special Rapporteur Edison Lanza attended a lunch with Honduran journalists from various media outlets and members of ASOPODEHU to discuss the situation of freedom of expression and the challenges for the practice of journalism in the country.</td>
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<tr>
<td>February 27, 2020, Tegucigalpa, Honduras</td>
<td>Meeting with AIP and C-Libre organizations</td>
<td>Special Rapporteur Edison Lanza met with the Commissioners of the Institute of Access to Public Information of Honduras and with the organization C-Libre to review progress on projects and legislation regarding access to information.</td>
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<tr>
<td>Date</td>
<td>Location</td>
<td>Events</td>
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<tr>
<td>February 28, 2020</td>
<td>Tegucigalpa, Honduras</td>
<td>Meeting with the Human Rights Secretariat’s group for the protection of journalists</td>
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<tr>
<td>July 9, 2020</td>
<td>Washington D.C.</td>
<td>Meeting with Brazilian civil society organizations.</td>
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<tr>
<td>July 10, 2020</td>
<td>Washington D.C.</td>
<td>176th Period of Sessions of the Inter-American Commission on Human Rights</td>
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<tr>
<td>July 13, 2020</td>
<td>Washington D.C.</td>
<td>Bilateral Meeting</td>
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<td>Date</td>
<td>Event</td>
<td>Description</td>
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| July 13 2020 Washington D.C. | Meeting with Venezuelan civil society and journalists | 176th Period of Sessions of the Inter-American Commission on Human Rights  
The Office of the Special Rapporteur for Freedom of Expression organized a closed meeting with different civil society organizations, associations and journalists of Venezuela within the framework of the 176th Period of Sessions of the Commission.  
This event provided a space for the exchange of information and was an opportunity for the Rapporteur and his team to receive updated information on the serious situation of freedom of expression and restrictions faced by journalists in the country. |
| July 15 2020 Washington D.C. | Bilateral Meeting                                                     | 176th Period of Sessions of the Inter-American Commission on Human Rights  
Cecilia La Hoz, senior lawyer of the Rapporteurship, participated in the IACHR meeting convened by Articulo 19 on Violations of the right of access to information and transparency related to the fight against the COVID-19 pandemic in Brazil. |
| July 29 2020 | Meeting with the Brazilian Chamber of Deputies to discuss bill 2630/2020 | Participants:  
Chamber of Deputies of Brazil  
Permanent Mission of Brazil to the OAS  
Office of the Special Rapporteur for Freedom of Expression  
The Special Rapporteur for Freedom of Expression Edison Lanza was invited by the Brazilian Chamber of Deputies to offer technical advice and provide recommendations in the framework of the discussion of bill 2630/2020 in light of the Inter-American standards on Freedom of Expression and Disinformation in electoral contexts.  
The deputies recognized after the discussion that some of the provisions of the bill’s wording could result in greater power of censorship and private control of content by the platforms and committed to review the data storage obligations for messaging platforms, taking into account that these could violate the right to privacy and Freedom of Expression of citizens and that it is essential to respect the principle of purpose in the use of personal data. |
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<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>October 14, 2020</td>
<td>Meeting with the Commission for the Clarification of the Truth, Coexistence and Non-Repetition in Colombia</td>
<td>The Office of the Special Rapporteur for Freedom of Expression held a virtual meeting with the Commission for the Clarification of Truth, Coexistence and Non-Repetition (CEV) Colombia. On this occasion, the Commission had the opportunity to inform the Special Rapporteur Pedro Vaca about the difficulties faced by the institution internally to access information from several state authorities in Colombia, highlighting the impact that this situation may have on the progress of the investigations conducted by the Commission, with less than fourteen months to the end of its mandate.</td>
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<tr>
<td>October 15, 2020</td>
<td>Due Process of Law Foundation – El Salvador</td>
<td>The Office of the Special Rapporteur for Freedom of Expression held a virtual meeting with DPLF in order to inform the Office of the Rapporteur about the attacks on the independent press that have taken place during 2020 in El Salvador. The meeting was attended by journalists from the Association of Journalists of El Salvador (APES), El Faro, FocosTV, Gato Encerrado, Revista Factum, and Due Process of Law Foundation. They highlighted the increased harassment of journalists by government authorities since the beginning of the pandemic, as well as the stigmatizing discourse and the rhetoric of journalism as the &quot;enemy&quot;. The journalists reiterated the importance of obtaining a public hearing before the Inter-American Commission, given that the facts are escalating to more serious issues.</td>
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<td>November 9, 2020</td>
<td>Amnesty International</td>
<td>Amnesty International's Americas Office held a meeting with the Special Rapporteur for Freedom of Expression to discuss about the situation of freedom of expression and to present to the office its latest report on protests in the U.S. called, USA: losing the peace U.S. police failure to protect protesters from violence.</td>
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<td>Organization</td>
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<tr>
<td>November 10, 2020</td>
<td>Due Process of Law Foundation - Regional</td>
<td>DPLF requested the Office of the Special Rapporteur for Freedom of Expression to hold a virtual meeting to inform the Special Rapporteur about the difficulties in terms of transparency and access to public information that have been observed at the regional level during 2020, in the context of the health crisis caused by the coronavirus. Mainly, the organizations highlighted the importance of putting on the agenda of the Rapporteurship the problems of access to justice, accountability and exercise of citizen participation in the context of the pandemic, due to the little or no information provided by the States, especially in digital format. They pointed out that these problems are compounded by the lack of access to the Internet for many individuals and groups of people, and the few statistics that exist on the digital divide in the region.</td>
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<tr>
<td>November 11, 2020</td>
<td>International Association of Radio Broadcasters - AIR</td>
<td>Special Rapporteur Pedro Vaca met with the International Association of Broadcasters - AIR-an organization that groups private radio and television associations, television channels and radio stations of the three Americas, which permanently defends freedom of expression and information, and advocates for the development of private radio broadcasting, representing some 17,000 commercial radio and television stations. During the meeting participated Eugenio Sossa Mendoza (El Clarín-Argentina), Mr. José Luis Saca (El Salvador-1st vice-president), Mr. Tulio Angel (Colombia-2nd vice-president), and General Director Juan Andrés Lerena.</td>
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</table>
November 24, 2020

OHCHR-Guatemala

Special Rapporteur Pedro Vaca met with the OHCHR-Guatemala office to discuss the joint work that the office has been developing with this organization with respect to the follow-up of cases of attacks on journalists and for the promotion and defense of the right to freedom of expression of Indigenous Peoples and the issue of community radio stations. As well as working in synergy to provide technical assistance to the State of Guatemala: the program for the protection of journalists and the public policy for the protection of human rights defenders, including journalists.

6) Annual Report and Development of Expert Knowledge

26. 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.

27. 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), Mexico (2010 and 2015), Chile (2017), Cuba (2018) and Ecuador (2019)

28. In September 2020, the Office of the Special Rapporteur for Freedom of Expression of the IACHR published its thematic report "Right to Information and National Security", which addresses the legal and factual obstacles existing in the region to harmonize the circulation of information of public interest and national security interests. The report examines the national security exception, as well as the challenges that citizens still face in accessing information on issues of high public interest such as archives and documents on serious human rights violations, or information that can help combat corruption and abuses of power.

7) Special statements and Declarations

29. 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.

30. The Office of the Special Rapporteur receives many emails, which mainly refer to alerts, press releases, requests for information, and queries on freedom of expression in the region. Likewise, a small group of the emails refers to formal requests to the IACHR Individual Case System, and another group refers to topics that are not within the Office’s jurisdiction. The Office of the Special Rapporteur reviews, filters, and classifies the information received to establish the actions to be taken.

31. 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.

32. Joint statements constitute an important tool for the work of the Office of the Special Rapporteur. In previous years, these statements have covered different topics related to freedom of expression, according to context and time. These statements have covered different topics related to freedom of expression, according to context and time.

33. On April 30, 2020, UN, OSCE and OAS Freedom of Expression Experts presented the 2020 Joint Declaration on Elections and Freedom of Expression in the Digital Age through a virtual conference. The Declaration highlights the fundamental role that freedom of expression, access to information, independent media and a free Internet play in ensuring free, fair and transparent elections. The Declaration includes a series of recommendations addressed to States and a set of good practices that should be adopted by media, digital platforms, parties and candidates on how to address current challenges and protect freedom of expression during elections in the digital age. The Declaration was signed by the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Harlem Desir and the Special Rapporteur for Freedom of Expression of the Organization of American States (OAS), Edison Lanza.

34. In the framework of attention to the COVID-19 pandemic, the Office of the Special Rapporteur, jointly with the Special Rapporteurs for Freedom of Expression and Opinion of the UN and the OSCE, issued in March 2020 a statement on access to and free flow of information during the pandemic, calling on States to guarantee these rights without undue restrictions. The statement has been widely used by civil society and guarantor bodies around the world to prevent or reverse possible limitations to these rights.

35. Continuing the joint work with the United Nations Special Procedures and other Special Rapporteurs, the Office of the Special Rapporteur participated in the elaboration of the Joint Declaration on the Right to Freedom of Peaceful Assembly and Democratic Governance published on December 10, 2020.

36. Likewise, in the framework of attention to the pandemic, the Office of the Special Rapporteur provided expert advice to the IACHR for the preparation of Resolution 1/20 - Pandemic and Human Rights and Resolution 4/20 - Human Rights of Persons with AIDS-19. In the sections on the right of access to information, including the prohibition of censorship, and the guarantee of access to the Internet; the special care of public officials’ statements; the fight against disinformation; the role of journalism; the right to privacy and the protection of personal data; and safeguards against surveillance activities.

37. During 2020, the Office of the Special Rapporteur issued different press releases to raise awareness on facts related to freedom of thought and expression. These statements highlight especially worrying facts and the best local practices, and explain the respective regional standards. Press releases issued during 2018 can be seen in the webpage of the Office of the Special Rapporteur for Freedom of Expression of the IACHR.

2020 Press Releases:

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<tr>
<th>Country</th>
<th>Topic</th>
<th>Number</th>
<th>Tittle</th>
<th>Place / Date</th>
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<tbody>
<tr>
<td>Colombia</td>
<td>Surveillance and Internet</td>
<td>R10/20</td>
<td>IACHR and its Office of the Special Rapporteur express deep concern over complaints of espionage of journalists, human rights defenders, judges, and political leaders in Colombia</td>
<td>Washington, D.C. January 16, 2020</td>
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### C. Funding

38. 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 2020, 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 Costa Rica, Kingdom of the Netherlands, the United States of America, Uruguay, as well as the Swedish Agency for International Development Cooperation, the Swiss Confederation, Open Society Foundations, the National Endowment for Democracy (NED), Ford Foundation, and Google Inc. 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.\(^\text{11}\)

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D. Staff

39. 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. During 2020, in the capacity of interns Joselyn Rodríguez Lamas (Perú) and Galia Guajardo Góngora (México) collaborated in a constructive and enthusiastic manner to their work at the Office of the Special Rapporteur. In 2020, the Office of the Special Rapporteur has also counted on the participation of Fellow Paula Virginia Roko (Argentina) (Fellowship Orlando Sierra, 2020).
CHAPTER II: EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

1. This chapter describes some of the most important aspects of the situation of freedom of expression in the hemisphere during 2018. 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 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.


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.
7. Seditious libel continues to be a crime in Antigua and Barbuda, and journalists continue to be the target of lawsuits by public officials displeased by their investigations. The Office of the Special Rapporteur has observed accusations and disparagement from the Office of the Prime Minister toward critical journalists and media outlets.

A. Accusations against journalists, media, and political opponents

8. In 2020, media outlets were accused of publishing allegedly false information regarding the COVID-19 pandemic. In February, Prime Minister Gaston Browne asserted that the Observer newspaper “has proven to be an unreliable and very spiteful media organization, they are becoming extremely spiteful to the government trying to undermine everything we do,” alluding to a news report on its website about alleged coronavirus infections. It is extremely unfortunate that there are individuals who are seeking to score cheap political points out of what is clearly a serious risk factor that the government is trying to manage to protect the people of Antigua and Barbuda. This is no joking matter,” said the head of state.

9. In addition, the ruling Antigua & Barbuda Labour Party (ABLP) reportedly accused the opposition United Progressive Party (UPP) of spreading false news about the government.

10. The Office of the Special Rapporteur also learned that a journalist from Observer Radio was criticized by senior authorities for “asking awkward questions” at a press conference. “[T]here is a particular journalist from your organization who tries to ask awkward questions that really brings no value maybe to sound bright,” said the prime minister in an interview on Observer Radio. While he did not mention her by name, he reportedly identified journalist Gemma Handy by one of several questions she asked, directed mainly at Chief Medical Officer Dr. Rhonda Sealey Thomas. “[I]f it is that she is trying to distinguish herself as some form of superior intellect, the reality is that she cannot stand in the shoes of our health officials, people like Dr. Simon, Dr Rhonda Sealy Thomas, these are accomplished and very competent individuals.” The prime minister further dismissed as “utter nonsense” claims that COVID-19 figures were being hidden from the public.

11. In September, the prime minister threatened to sue United Progressive Party (UPP) candidate Alister Thomas for defamation after he criticized the prime minister during an interview on Observer Radio.

12. The Prime Minister’s Office also publicly hinted that it would take legal action against a media outlet that “thoughtlessly” published a defamatory and politically motivated article about a Saudi Arabian official’s visit to the country. “The website speculated wildly about the motive and made other kinds of insulting conjecture that shamed the Saudis.”

B. Progress

13. On March 4, the Government of Antigua and Barbuda ratified the Escazú Agreement on Access to Information, Public Participation, and Access to Justice in Environmental Matters in Latin America and the Caribbean and has since encouraged other Caribbean islands to move in the same direction.

14. Given the events documented during 2020, the Office of the Special Rapporteur calls on the State of Antigua and Barbuda to pay particular attention to the following:

15. **Public authorities are called upon to maintain a discourse conducive to public deliberation and freedom of expression.** The Office of the Special Rapporteur reiterates that public servants have a duty to ensure that their speech does not infringe on the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts—including journalists, the media, and human rights organizations—and must consider the context in which they express themselves. According to the Inter-American Court of Human Rights, these statements by public officials could constitute an indirect restriction on the right to freedom of expression.¹⁹

16. **Fear of criminal penalties discourages and inhibits citizens from expressing themselves on matters of public interest.** The Office of the Special Rapporteur recalls that Article 13.2 of the American Convention allows for restrictions to be placed on freedom of thought and expression through the imposition of subsequent liability for the abuse of this right. Although anyone who knowingly spreads false information resulting in harm may be subject to repercussions, this should be done through the exercise of the right of correction and reply or, if serious harm occurs, through proportionate civil liability. The Inter-American Court has also noted that criminal law is the most restrictive and severe means of establishing liability for unlawful conduct.

ARGENTINA

17. In the context of the pandemic, this Office observed with concern the massive surveillance activities on social networks carried out by the national security forces (colloquially called “cyber-patrolling”), which would have resulted in arrests and the opening of federal cases for the crime of public intimidation, for example, against people who published information about COVID-19 that differed from the official one.

18. On the other hand, the Office of the Special Rapporteur took note of the alleged illegal espionage activities against journalists, activists, academics, artists, businesspeople, and opposition leaders that took place during the previous administration of the national government. In this regard, it urges the State to carry out a thorough and independent investigation regarding these activities and those responsible. Likewise, the Office continued to monitor various attacks, threats, and intimidation of press workers, perpetrated both by individuals and by authorities and public officials.

19. The Office of the Special Rapporteur welcomes the decision adopted by the Supreme Court of Justice that reversed the conviction and rejected the lawsuit against the satirical magazine Barcelona. Citing inter-American standards, the judicial decision reinforces the constitutional protection of freedom of expression and the importance of this type of critical discourse in democratic societies.

A. Progress

20. On June 2, the Agency for Access to Public Information of Argentina (AAIP), in its capacity as the enforcement authority of Law No. 25.326 on Protection of Personal Data, dismissed a complaint from an individual against the media “La Voz del Interior S.A.”. The complaint originated from a note published in July 2019 on the “La Voz” portal titled “They caught ’Las Superpoderosas’, two women accused of selling synthetic drugs” and that, according to the plaintiff, contained allegedly false information about herself. There, she was identified as a member of a criminal gang that was under her command and sold drugs, and explicitly mentioned her name, nationality, and age. By virtue of article 16 of the aforementioned law, the person requested the disassociation or deletion of her personal data, alleging that she had already been dismissed in said criminal case. In its decision, the AAIP reviews local constitutional jurisprudence and inter-American standards and concludes that eliminating the information as requested by the plaintiff would constitute a disproportionate restriction on freedom of expression, with even detrimental consequences for journalistic work and for the community in general. It is not in dispute that the investigation existed, said the AAIP, and that the information released was objectively true and is of general interest to the public.20

21. Likewise, as this Office was able to learn, on June 11, Room III of the Federal Chamber of La Plata rejected a lawsuit by a university student against Facebook Argentina that requested that certain publications of a feminist group be removed from the platform for considering them insulting towards him.21 The plaintiff pointed out that these publications linked him to “a series of alleged sexist behaviors, psychological abuse, and manipulation” within the framework of a romantic relationship with a woman. The judges emphasized that the actor was not simply “a student” but “a social activist who actively supported feminist slogans”, as he defined himself, and therefore “an actor in university political life who has made public his commitment to certain ideas”. On the other hand, they pointed out that comprehensive legal protection for women also includes information, complaint, and protest activities that they carry out individually or collectively. Finally, the judgment highlights that the publications of claims by a group that promote and defends the rights of women and dissident identities should be considered a constitutionally protected speech insofar as it is inserted in a matter of relevance or public interest and that refers to the performance or conduct of a public figure in relation to their public activity.

22. This Office welcomes some of the progress we observe in the different branches of the State with regard to internet access. Thus, for example, on June 8, the Court of First Instance in Administrative and Tax Litigation No. 2 of the City of Buenos Aires ordered a precautionary measure that obligates the City authorities to ensure internet access and affordability of computing devices for students of the Buenos Aires


towns. In particular, the ruling mandates the government to "deliver to all male and female students who
attend educational establishments of public management or private management with zero quota and who
are in a situation of social vulnerability, an appropriate computing device (laptop, notebook or tablet) to
access the internet and perform school tasks that guarantee their pedagogical continuity in virtual or remote
mode". In addition, it orders the installation "of technological equipment for wireless internet transmission
(...) in sufficient quantity and location to provide a minimum standard of free wireless connectivity" in the
villas, emergency neighborhoods and/or settlements of the City.

23. Additionally, in June a bill was presented in the Chamber of Representatives so that Internet access,
in its fixed, mobile, and satellite broadband modalities, is considered a human right. The initiative seeks to
promote a National Connectivity Plan, the objective of which would be "to guarantee the maximization of
graphic coverage, accessibility to the entire population, digital inclusion, and the affordability of essential
service packages determined by the enforcement authority." This plan would contemplate the deployment of
free access Wi-Fi points, of public or private management, that would operate in public offices and/or places
of public interest. Finally, the project proposes that Internet Service Providers have an "inclusive plan of
differentiated rates".

24. On August 21, 2020, the president issued a decree of necessity and urgency (DNU) where he declared
the internet, pay TV, and cell phones as essential public services and decided to freeze their rates until
December 31, 2020. The DNU, which applies modifications to Law 27.078 on Information and
Communication Technologies, understands that the right of access to the internet is currently one of the
digital rights that every person possesses for the purpose of exercising and enjoying the right to freedom of
expression; and that ICTs constitute a point of reference and a fundamental pillar for the
construction of economic and social development.

25. On the other hand, the Office of the Rapporteur received with gratification the decision of the
Supreme Court of Justice to revoke the conviction and reject Cecilia Pando's lawsuit against the renowned
satirical magazine Barcelona. In August 2010, Cecilia Pando, activist and president of the "Association of
Relatives and Friends of Political Prisoners of Argentina" (a group created in defense of military and security
forces personnel prosecuted for their participation in the last military dictatorship) civilly sued the media for
considering that one of its covers had violated her rights to honor and image. The publication in question
showed a photomontage with her face attached to the naked body of another woman, with ropes intertwined
as chains, satirizing a public act that Cecilia Pando had organized along with other military relatives. The case
reached the Supreme Court after the first and second judicial instance were favorable to Cecilia Pando,
condemning the magazine to pay compensation (initially set at 40,000 Argentine pesos and later raised by the
Civil Appeals Chamber to 70,000 Argentine pesos). In both cases, the judges understood that the media had
exceeded the exercise of the right to freedom of expression, affecting the rights to the image and honor of
Cecilia Pando. By revoking the sentence for damages against the media, the Court highlighted the public
nature of both the contested publication and the person involved, who had actively participated in the
debates around crimes against humanity committed during the last Argentine military dictatorship. Likewise,
the Highest Court pointed out that the magazine Barcelona constituted "a graphic medium with satirical

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22 Asociación Civil por la Igualdad y la Justicia (ACIJ). June 8, 2020. Orden judicial: el GCCBA deberá proveer internet en todas las villas, y
computadoras y brindar Internet a los alumnos de las villas porteñas; Página 12. June 9, 2020. Cuarentena: ordenan proveer Internet y
computadoras a quienes estudian en las villas; Tiempo Argentino. June 8, 2020. La Ciudad deberá dar internet a las villas y entregar
computadoras a estudiantes que las necesiten.

23 LM Diario. 12 de junio de 2020. Impulsan un proyecto para que el acceso a Internet sea un derecho humano; En Redacción. June 14,


que declara servicios esenciales a TV, Internet y celulares: tres claves; ANRed. August 22, 2020. Declaran servicios públicos esenciales a la
telefonía, la televisión paga e Internet; Deutsche Welle (DW). August 22, 2020. Argentina: Internet, TV y telefonía son "servicios públicos y
esenciales".

26 Página 12. December 22, 2020. La corte falló a favor de la revista Barcelona tras una demanda de Cecilia Pando; Infobae. December 22,
2020. La Corte Suprema ratificó el derecho a la libertad de expresión y revocó una condena contra la revista Barcelona; La Nación.
December 22, 2020. Libertad de expresión: la Corte Suprema revocó una condena contra la revista Barcelona en una demanda de Cecilia
Pando.
characteristics (...) that tries to show a critical message of power” and that the cover in question "does not exceed the limits of the protection that the National Constitution it grants freedom of expression because it does not constitute a gratuitous insult or an unjustified humiliation”.

27. In this regard, citing inter-American jurisprudence, it recalled that “[i]n the arena of debate on issues of high public interest, not only is the issuance of expressions that are harmless or well received by public opinion protected, but also that of those that shock, irritate, or disturb public officials or any sector of the population”.

26. On the other hand, the Office positively values the decision adopted in December by the Third Chamber of the Chamber of Appeals in Civil and Commercial Matters of Salta, which, based on the standards of this Office, gave rise to an amparo writ and ordered the Municipality of the city of Salta to maintain the advertising adjudication for the journal Cuarto Poder and its web portal Cuarto Poder Salta. According to the media in its letter, the municipal administration would have removed the advertising adjudication from the media in an "arbitrary and discriminatory way". The court pointed out that the State could not distribute official advertising in a discretionary manner without implying a curtailment of the media’s freedom to inform. In their ruling, the judges held that if the State wants to withdraw advertising from any media, it can do so as long as it proves the impossibility of continuing to grant an adjudication to certain media and not to others, which in the case in question would not have been proven. "What cannot be justified in any way is that it is awarded following the 'friend-enemy' logic or the application of 'rewards and punishments,'” they said. To base their decision, they also recalled that inter-American standards establish that decisions regarding official advertising must be based on criteria "substantially related" to the purpose described and that it must be neutral in relation to the media’s points of view.

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

27. According to publicly known information, the Municipality of the city of Villa La Angostura files a claim against Mariana Fernández, a journalist for Diario Andino of Villa La Angostura (Neuquén province), for "violently breaking into" the building to request access to municipal decrees. The Municipality staff asked the chronicler to leave because she was “bothering” people, and "impeded work in the area", warning her that "if she did not leave, they would call the police." After an exchange of words and intimidation by municipal staff and officials, the journalist left without being able to finish viewing the requested information. As stated by the media itself, the Municipality of Villa La Angostura "does not publish the decrees online, but rather requested via the web or at the front desk. Only excerpts appear in the official gazettes, and the last published public access bulletin on the official website of the Municipality -at least until before this release- was October 2019”.

28. This Office also learned of the death threat received by journalist Samuel Huerga from Radio Cadena Noa in the city of Orán (Salta province) in May. “You have to be killed, southpaw,” a person told him through a phone call, from which the number could be identified. The journalist and teacher had repeatedly denounced the situation in which seasonal or "cyclical" workers are stranded in other provinces, and warned about the absence of the provincial government and the companies in the area of not generating genuine work. Also, in September, journalist Ariel Sayas, from Canal Cuatro de Posadas (Misiones province) received

72. Orán | Amenazaron a un periodista por pedir el regreso de los trabajadores golondrina


messages with death threats while he was conducting his program "Actualidad diaria", after making an editorial in which he referred to the protest actions of provincial police in demand of salary improvements.33

29. On May 7, municipal agents and police officers carried out an inspection of the home of journalist Emanuel Dumrauf, head of the FM Clon radio station and the Info Villarino portal in the town of Médanos, province of Buenos Aires.34 According to the journalist, the visit to his home happened after he reported on the state of the city’s streets and the many potholes. The Argentine Journalism Forum (FOPEA) demanded that the municipal government stop the harassment and reprisals against the media, which would also include the refusal to give interviews by officials and councilors, and citations from municipal authorities.35

30. Likewise, the Office of the Special Rapporteur was informed of the alleged intimidation suffered by journalist Luciana Natalia Piris, owner of radio station 99.9 FM Impacto and the digital portal Impacto Castex, at the hands of different police and political officials from the town of Castex, province of La Pampa.36 According to the reporter, Julio "Tato" González, a former Castex mayor and currently a provincial representative, allegedly told her that "they were very upset" because she "did not let the commissioner work." She was later threatened by Commissioner David Bazan, who considered that her questions constituted "harassment" and warned her not to "interfere" because "other things could happen to her." In turn, the communicator pointed out that they had cut the government advertising adjudication for her media by 50% as a result of an explicit order from representative Julio González "because it harmed his image," as the media undersecretary allegedly acknowledged to the journalist.

31. This Office also learned of various physical attacks against journalists. This is the case, for example, of Luis Mancini, a journalist for FM Horizonte, in the town of Villa Río Bermejito, Chaco province, who was attacked while conducting his morning show.37 While the journalist was in full broadcast of the radio program, two individuals violently entered the studio, stabbed him and beat him with chairs, and then fled, the events being recorded by the studio cameras. According to available information, in the previous days, Mancini had denounced alleged irregularities in the municipality related to public works and the collection of the Emergency Family Income, an economic aid bonus provided by the National Government in the framework of the health emergency. According to the medical report, the journalist, who was in intensive care, suffered head trauma, chest trauma, and pulmonary emphysema. The Investigation Prosecutor No. 2 of Juan José Castelli, Gerónimo Roggero, charged the former secretary of Public Works of the municipality, César Gavilán and his brother, who appeared in the videos of the radio security cameras. In addition, two other people were charged as accomplices.38

32. Also, on August 25, the journalist Martín Ciccioli of the El Trece channel was physically and verbally attacked when he made a note about the reactivation of the fair in the town of Solano (province of Buenos Aires), after 5 months of inactivity due to the pandemic. The reporter was interviewing one of the vendors at


the fair when a citizen aggressively interrupted the conversation, pushing him and threatening to “break his head”.39

33. In addition, during 2020 the Office of the Special Rapporteur documented several attacks on journalists covering protests in different cities. On July 9, a group of people broke an outdoor mobile of the CSN channel and physically attacked its journalists Lautaro Maislin and Claudio Cardozo, live and direct, while they covered “el Banderazo”, a demonstration in the Obelisk of the City of Buenos Aires against the National Government and within the framework of Independence Day.40 According to the information available, the protesters began the attack when the journalists approached to ask them about the reasons for the mobilization, and they soon had to withdraw because their physical integrity was threatened.

34. On August 26 and 27, the chronicler Ezequiel Guazzora, who works for alternative popular communication media, was attacked by protesters outside the National Congress in the City of Buenos Aires, while covering a protest in rejection of the judicial reform promoted by the Government.31 According to the information received, on the first day the journalist had been verbally attacked and threatened with lynching; while on the second day a group of people pushed him, took him away and broke the phone with which he was transmitting the manifestation. When he tried to back away, he tripped over the cord and fell to the ground, so they started kicking him. Finally, the police intervened and the reporter was removed in an ambulance.

35. Likewise, on September 20, photojournalists Sebastián Granata and Marcelo Manera, from the Télam agency and the newspaper La Nación received death threats during a demonstration held in the city of Rosario (Santa Fe province) under various slogans contrary to the policies of the government of Alberto Fernández. According to the Rosario Press Union (SPR), a man rebuked the journalists, telling them: “You, the media, are all murderers. I know each one of you and you are on a list. I’m going to kill you”.42

36. On September 21, the journalist Franco Cervera, from FM 102.5 Radio Estación, from the city of San Francisco (Córdoba province) was arbitrarily detained while he was carrying out a journalistic coverage in front of the Sixth Police Station in the city of Frontera, Santa Fe, where a group of neighbors asked for the release of a person. The journalist was also verbally assaulted, tussled, and then taken inside the police building where he was stripped of his work items.43

37. On September 24, journalist Edgar Aguirre, from the Más Contenidos portal, was attacked while covering a demonstration in Resistencia (Chaco province), in front of the Government House building. According to available information, he was attacked by a group of people who answer to a political leader. In addition to insulting him and hitting him with kicks and fists, they stole the motorcycle he was riding on.44

38. On December 18, the Office of the Special Rapporteur documented acts of violence against press workers during a protest in the province of Mendoza in rejection of the femicide of an adolescent. According to available information, in the framework of a demonstration that turned violent and culminated in incidents, the photojournalists Marcelo Aguilar (La Nación), Fernando Martínez (Diario Uno), and Mariana Villa (Los Andes), and the camerawoman María Inés Aimalé (Todo Noticias and Canal 13) were verbally harassed and physically attacked during the coverage of the mobilization, and some protesters even stripped them of their work equipment with the intention of obstructing coverage of the events.\textsuperscript{45}

39. On the other hand, the Office of the Special Rapporteur took note of the criminal complaint filed by the lawyer Alfredo Falú against the journalist Irene Benito of La Gaceta de Tucumán for the alleged commission of the crimes of fraudulent administration, attack on authority, and coercion, after publishing of a series of articles and columns in which she exposed and questioned the operation of the Criminal Justice in Tucumán in cases of public interest, and the relationship between the local political power and a sector of the local courts.\textsuperscript{46} The communicator warned that the complaint "is an attack on freedom of the press" and that "its real intention is for the press to keep silent when acts of corruption are presented in which public officials are implicated".\textsuperscript{47} For its part, the Argentine Journalism Forum (FOPEA) repudiated "the judicial harassment and the harassment campaign" to which Irene Benito was subjected for her investigations, and that "only seeks to criminalize professional journalism and curtail the coverage of incidents of public significance in that province".\textsuperscript{48}

C. Stigmatizing statements

40. The Office of the Special Rapporteur registered with concern the dissemination of a video by Vice President Cristina Fernández de Kirchner in which images of journalists who have investigated alleged acts of corruption were displayed, such as Daniel Santoro, Jorge Lanata, Luis Majul, and Nicolás Wiñaski, among other generic images of newspaper stacks. These graphic pieces were accompanied by off-screen messages from the Deputy Head of State, in which she blamed "the coverage of the hegemonic media" of "political complicity" with the previous government and its alleged espionage activities.\textsuperscript{49} For the Argentine Journalism Forum (FOPEA), this type of action "only reinforces a stigmatization that puts the safety of these professionals at risk" and constitutes a "setback in the construction of democracy".\textsuperscript{50}

41. This Office also observed with concern a series of statements by President Alberto Fernández against journalists who report on matters of public interest such as citizen security, corruption, pension and retirement systems, and the management of the pandemic in relation to the purchase and distribution of vaccines. On November 18, during a live interview, the A24 journalist, Javier Díaz, asked the president about the alleged insecurity in Argentina, mentioning his own "feeling of fear" when walking in the streets. "About your feelings, the only thing I can recommend is that you talk to a psychologist," the president replied.\textsuperscript{51} Likewise, on December 31, in the framework of an interview with the journalist Gustavo Sylvetsre from Radio 10, the head of state said that a "crazy journalism" existed in the country, which "responds to interests" and that certain journalists "need therapists to get rid of the hatred they carry", supposedly in reference to those who have been critical of the government's management of the pandemic.


\textsuperscript{47} El Tucumano. December 6, 2020. "Contra la libertad de prensa": denuncian a una periodista tucumana; FOPEA. December 7, 2020. FOPEA se solidariza con la periodista de La Gaceta de Tucumán Irene Benito.


and the authorization of the Sputnik V vaccine against the coronavirus. "What is needed is for these journalists to be treated by a psychiatrist and make them understand that they live in a community that needs them to please stop dividing us," said Alberto Fernández, who also affirmed that the way in which certain journalists exercise their profession "should be seriously rethought" since "the only thing it does is provoke discouragement towards Argentines because of the hatred they have for Cristina, Peronism, me, and they say things that really don't make sense".  

D. Communication surveillance

42. During 2020, the Office of the Special Rapporteur became aware of a series of court cases that linked former officials from the previous government administration with alleged surveillance activities against journalists, human rights defenders, academics, and opposition political leaders. In June 2020, the inspector of the Federal Intelligence Agency (AFI) denounced the previous authorities of the agency for the "production of illegal intelligence" to the detriment of approximately 500 people who participated in the Interministerial Conference of the World Trade Organization (WTO) and the G-20, held in Buenos Aires in 2017 and 2018 respectively. The list contained the names of 403 journalists from local media and foreign correspondents who were accredited to cover these international events held in Buenos Aires. According to publicly known information, personal files were found labeled with red, yellow, and green colors that represented the political orientation of each one and their affinity with the government. In addition, a photo, and a profile of each were included, based on what they published on their social media accounts. The case was sent to the Federal Criminal and Correctional Court No. 11.

43. Likewise, there is another judicial process underway for "violation of correspondence" and "violation of the computer system" against 87 people, among them journalists, political leaders, and human rights organizations, which would link high-ranking officials of the previous government. In this case, the investigation was promoted by a federal prosecutor and sent to Federal Court No. 8.

44. On the other hand, the Federal Justice investigates an alleged illegal espionage network against politicians and journalists who had developed organic and inorganic agents of the AFI in previous years, among whose victims would be the investigative journalist and deputy secretary of the newspaper La Nación, Hugo Alconada Mon. According to the available information, the alleged intelligence tasks against the journalist included personal monitoring and monitoring of his closest family environment. According to the record, they had moved to the city of La Plata, where they photographed the house where he lives with his family, as well as the home of his parents, and they inquired about the vehicle in which he rides. On June 18, a former agent of the Federal Intelligence Agency admitted before a Bicameral Commission of the National Congress that "he carried out or learned of illegal espionage tasks" against politicians and journalists by order of the head of the agency’s Special Operations area, Alan Ruiz, during the government of Mauricio Macri. In that statement, the former agent also indicated that he had been asked to focus especially on the follow-up of

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56 La Nación. May 26, 2020. La AFI denunció espionaje ilegal durante el gobierno de Mauricio Macri y entregó un listado de presuntas víctimas.


Hugo Alconada Mon, whom they referred to as “Anaconda”. At the time of the espionage, Alconada Mon was working on an investigation into the Argentine chapter of the Lava Jato case, “an investigation that bothered political and business power,” according to the journalist, in addition to other issues of high public interest, such as the financing of the political campaign of the Cambiemos alliance in 2015. According to publicly known information, among the WhatsApp messages that the Justice would have recovered is that of one of the intelligence agents, who pointed out that Hugo Alconada Mon was “fully on the issue of Brazil” so they had to deepen “their follow-up and source[s]” and extend it to his “collaborators.”

45. It was reported to this Office that this type of intelligence activities could be related to the so-called “lawfare”, a concept that refers to the abusive use of legal tools, such as the combination of the judiciary, the media, and actors of political and economic power, to manipulate public opinion and provoke repudiation against certain political figures.

46. On the other hand, the Office of the Special Rapporteur learned that on May 31, the Ministry of National Security approved the “General Protocol for the police prevention of crime with the use of open digital sources”, publicly known as the “cyber-patrolling” protocol. During a videoconference with congress representatives in April, the Minister of Security had indicated that the security forces carry out cyber-patrolls “to measure social humor”, which aroused significant criticism from different actors. Finally, the minister made a first draft of the text available to civil society organizations to receive contributions and criticism, which focused mainly on its ambiguous terms and the margin of discretion granted to those in charge of applying it. Part of the recommendations were effectively taken into account in the final text, although some of the main suggestions were not incorporated. On June 11, the representative of the Attorney General presented the first test measures, among which are requests for information from the AFI and the Ministry of National Security. In addition, she asked for the two agents who were ordered to carry out these tasks to declare.

47. The Access to Public Information Agency, in its capacity as Control Authority of Law No. 25.326 on Protection of Personal Data, was summoned to participate in the first meeting of the Advisory Board for the evaluation and monitoring of the Protocol. On July 23, it issued a communication stating that "in order to comply with current regulations on the protection of the human right to privacy, the Protocol should be reviewed," suggesting that the Ministry of Security "evaluate the suspension of the application of the Protocol until its adaptation to the current regulations on the protection of personal data is reviewed again".

48. The Office of the Rapporteur notes with concern the approval by the legislature of the Autonomous City of Buenos Aires of a facial recognition system, which provides for the installation of video surveillance systems by the City authorities. The approved norm modifies Law 5688 of the Comprehensive Public Security System, which regulates the security policies of criminal prosecution, among which is the system of video surveillance cameras in public spaces. Despite the warning from various civil society organizations, the

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65 Among those who provided feedback were Fundación Vía Libre, Instituto Latinoamericano de Seguridad y Democracia (ILSED) and Centro de Estudios Legales y Sociales (CELS).
E. Freedom of expression and COVID-19

49. In April, the Federal Justice initiated a case against Kevin Guerra, a 21-year-old who, after learning that he would not be granted the government financial aid bonus (Emergency Family Income or “IFE”), published in his account from Twitter: “Che what's up for those of us who don't collect the 10 thousand pesos bonus, the looting still stands, right?”, supposedly alluding to a “meme” that had gone viral on social networks in Argentina.68 The sub-directorate of Investigation of Technological Crimes of the National Gendarmerie would have captured the post of the young man, generating an “early warning” and a criminal complaint against the young man, based on Resolution 31/2018 that enabled the body to search for information in open digital sources to investigate some crimes, such as the sale of weapons or the sexual exploitation of children. According to the information available, in the framework of the pandemic, the Gendarmerie would have configured searches under the terms "loot / quarantine / Argentina" for which it understood the post could constitute a crime. The Balcarce provincial prosecutor agreed with the criterion of seriousness, understanding that “national security was compromised, which justifies the intervention of the exceptional jurisdiction,” and ordered the instruction of a federal criminal proceeding against Kevin Guerra for the crime of public intimidation, which provides for a penalty of two to six years in prison. The Center for Legal and Social Studies (CELS) assumed the defense of Kevin Guerra, requested the declaration of nullity, and requested the dismissal due to the absence of a crime. Finally, Federal Court No. 3 of Mar del Plata dismissed the case for lack of a crime.70

50. The Office of the Special Rapporteur also observed that several people were detained and, in some cases, criminalized for publishing supposedly false expressions on social networks. Thus, for example, on March 31, a young man was arrested in Posadas (Misiones province) by the Cybercrime Division of the Misiones Police for publishing false news on his social networks and thus "generating fear and social alarm".71 The Office of the Special Rapporteur also registered a similar arrest in the same city on September 26 of a man who allegedly spread false information about Covid-19 through WhatsApp audios.72

51. Likewise, on June 19, the journalist Ariel Barrios was notified of a resolution by which the mayor of the city of Pichanal (Salta province) fined him $40 thousand pesos for the alleged dissemination of false information related to cases of coronavirus in the city.73 The communal chief relied on a municipal ordinance that he himself had promoted last March, with the aim of combating misinformation in the context of a health emergency. The norm established in its 4th article a fine of up to $20 thousand Argentine pesos “for those who distribute, share, circulate, generate by any media or means of communication, whether oral, written, television, radio, telephone, or any other computer channel whatever whether the technological means, device, or use of written distribution, false information regarding the COVID-19 virus, and the same measure will be applied to those who alter an official publication”. The journalist’s posts would have been about the confirmation of new cases of COVID-19 and about police controls in a neighborhood of the city. According to


70 CELS. January 14, 2020. La justicia federal sobreseyó a Kevin Guerra por sus expresiones en twitter.


publicly known information, a few days after the case had media coverage, the City Deliberative Council retroactively repealed the ordinance in question, thus rendering the fine ineffective.

52. On June 23, members of the National Gendarmerie showed up at the home of journalist Gustavo Romero in the city of Roque Sáenz Peña (province of Chaco) and drew up a record of infraction against him for alleged violation of Article 211 of the Criminal Code of the Nation, which punishes with imprisonment from two to six years anyone who "makes signals, voices alarm, threatens to commit a crime of common danger, or uses other material means" to instill public fear or provoke riots or disorders.\(^{74}\) The event occurred after the journalist reported through his personal Facebook account about new cases of coronavirus, publishing a number of infected individuals that differed with the official figures.

53. On July 30, the Government of Tucumán through the Secretariat of Public Communication indicated that due to the increase in the circulation of false news on social networks, the Ministry of Security together with the Police of the province would take measures to investigate and eventually accuse those responsible with a crime of public intimidation. "These types of actions generate great discomfort and fear in society (...). We constantly monitor the circulation of information and when we are faced with such cases, the Office of the Prosecutor for Complex Crimes on Duty intervenes and investigates who is behind this, in order to request measures against them and for them to be charged in a criminal case," said the Head of the Telematic Crimes Division, Héctor Marín.\(^{75}\) Along these lines, on August 6, the provincial Legislature enacted Law 9.290, which modifies the Law on Police Contraventions and imposes penalties of up to 10 days of arrest and fines equivalent to one minimum, vital, and mobile salary to those who "spread, propagate, or disclose through social networks news that are totally or partially false, provided that the act does not constitute a crime and without prejudice to the civil or criminal liability that may correspond to it". The norm establishes that it will be a misdemeanor judge who will order the penalties.\(^{76}\)

54. In October, this Office received information about the launch of the "Nodio" Observatory by the Public Defender of Audiovisual Communication Services of the Nation. It is an observatory on disinformation and symbolic violence in media and digital platforms that "will work on the detection, verification, identification, and dismantling of the argumentative strategies of malicious news and the identification of their dissemination operations," according to an official statement.\(^{77}\) As the Office of the Rapporteur learned, the initiative was criticized by the opposition and organizations linked to freedom of expression and the press,\(^{78}\) who pointed out that actions to monitor and "dismantle" certain speeches as proposed could lead to discipline, indirect censorship, persecution, and criminalization of expression.

F. Internet and freedom of expression

55. The Office of the Special Rapporteur learned of a judicial ruling framed in the discussion on the "right to be forgotten" in Argentina.\(^{79}\) On August 11, Chamber H of the National Chamber of Civil Appeals confirmed the first instance ruling in the case "Natalia Denegri v. Google", and ordered Google to de-index images, videos, and content linked to the words "Natalia Denegri", "Natalia Ruth Denegri" or "Natalia Denegri in the


Cóppola case” and “any eventual image or video, obtained twenty years or more ago”. Denegri had requested that the “right to be forgotten” be applied urgently to her and stated that, although she was the protagonist of this fact that in 1996 it received high media attention, more than twenty years later the information continues to appear in the search results that causes her harm. She pointed out that such information "belongs to a past that she wishes to forget” and that “it is old, irrelevant, unnecessary, and obsolete, without any informational and journalistic importance.” However, as in the first instance, the judges understood that there is content that must remain due to the public relevance that the Cóppola case had and still has. In this sense, they decided to maintain the links related to the “Cóppola case”, considering that “these are events of public interest that led to the conviction of a former federal judge. It would not do well to remove this news from the search engines.”

56. On the other hand, according to available information, in October the Federal Chamber of Mendoza revoked a precautionary measure that ordered Google and Yahoo to de-index and block certain URLs linked to events of public interest, and considered that the opposite implied "an act of censorship that interrupts the communicational process because, by preventing access to said information, prevents the realization of the act of communication or at least, given the importance of Google as a search engine, makes it extremely difficult". The search results that were intended to be de-indexed and blocked referred to a criminal complaint for the alleged granting of a subsidy of 80 million pesos by the government of Alberto Rodríguez Saá in the province of San Luis to a foundation chaired by the wife of his brother, who at that time was serving as a national senator.

G. Subsequent liabilities

57. On August 13, the justice of the province of San Luis sentenced journalist Diego Masci to pay a fine of $90,000 for “violation of privacy due to the improper publication of an electronic communication”, provided for in article 155 of the Penal Code, in detriment of a public official. In 2018, the journalist had published a video of the then provincial Minister of Education (and current provincial Minister of the Environment) Natalia Spinuzza, in which she was in Amsterdam and narrated that she had consumed drugs and alcohol with her friends and partner. The San Luis Criminal, Correctional, and Misconduct, and Criminal Sentencing Judge of San Luis considered that there was no public interest in the publication made by Masci, and that the dissemination of the material in the way it was exposed was not authorized by the official, which meant an abuse of the right to freedom of the press.

58. In October, opposition representatives Waldo Wolff (president of the Freedom of Expression Commission), Fernando Iglesias, Jorge Enriquez, and Alvaro de Lamadrid filed a complaint against journalists Roberto Navarro, Ari Lijalad, and Franco Mizrahi, from the El Destape portal, for allegedly revealing intelligence information obtained based on their profession and whose secret they were obliged to keep. The case had enormous social repercussions, generating pronouncements by journalistic organizations and even the publication with the signature of more than 1,000 media workers, academics, artists, intellectuals, and political leaders in repudiation of the “judicialization of journalism”.


83 Clarín. August 14, 2020. Acusan a Roberto Navarro y a otros dos periodistas ultra K de difundir la identidad de espías de la AFI.

In his opinion, the prosecutor pointed out that the accusation "severely restricts the right to freedom of expression that corresponds to the media".86

59. On the other hand, on October 21, federal judge Ramos Padilla extended the prosecution of Clarín newspaper journalist Daniel Santoro, accusing him of being a member of a "parastatal illicit association" dedicated to illegal espionage and internal intelligence.87 Since 2019, the judge has been investigating the alleged participation of the journalist in the illegal activities carried out by a criminal organization. In August of that year, he had been prosecuted for the crimes of "coercion and extortion in an attempted degree" for his actions in some of the cases adjudicated to the illegal spy ring. When summoning him to an investigation on that occasion, the judge indicated that the journalist "not only drew on the information provided by the organization, but also had knowledge of illegal espionage activities." Upon learning of the extension of its prosecution, the Association of Argentine Journalistic Entities (ADEPA) and the Argentine Journalism Forum (FOPEA) expressed concern about the judicial resolution, which they considered "a move to criminalize journalistic activity" and that it disavows that investigative journalism regularly has contact with sources whose activities are not always legal.88

In December, the Office of the Special Rapporteur received with gratitude the decision of the Federal Court of Appeals of Mar del Plata that revoked the prosecution of the journalist.89 In its ruling, the court ruled the lack of merit, considering that "the facts attributed to Santoro could only be framed within a neutral exercise of his professional activity, which -with right or wrong- do not allow by themselves or even in the circumstantial context referred to consider them as direct contributions to the criminal plan".90 Citing inter-American jurisprudence, the judgment reaffirmed that "freedom of expression is a cornerstone in the very existence of a democratic society. It is essential for the formation of public opinion. It is also a *conditio sine qua non* so that political parties, trade unions, scientific and cultural societies, and in general, those who wish to influence the community can fully develop. It is, in short, a condition for the community, when exercising its options, to be sufficiently informed. Therefore, it is possible to affirm that a society that is not well informed is not fully free".91 The Office of the Special Rapporteur, through its Rapporteur Pedro Vaca, welcomed the decision of the federal court that "clears serious concerns about the use of the judiciary for censorship".92

60. Based on the events recorded during 2020, the Office of the Special Rapporteur calls on the Argentine State to specially observe that:

61. **Attacks and aggressions committed against journalists and against the press violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society.** The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to

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prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation."

62. **Illegal surveillance actions against journalists prevent the full development of the right to freedom of the press.** In addition to directly interfering with the freedom to seek, receive, and impart information, this type of surveillance could put informants and confidential sources of the press at risk. Any measure aimed at seizing journalistic material, which requires releasing sources or citing journalists as witnesses, has a restrictive effect on freedom of expression. According to Principle 8 of the Declaration of Principles on Freedom of Expression of the IACHR, "every social communicator has the right to keep his/her source of information, notes, personal, and professional archives confidential."

63. **The establishment or use of criminal offenses to punish misinformation or the dissemination of false news could have a strong inhibitory effect on the dissemination of ideas, criticism, and information.** This, given that the introduction of criminal offenses could bring the region back to a logic of criminalizing expressions about officials or matters of public interest, and of establishing a tool with a strong inhibitory effect on the dissemination of ideas, criticism, and information. Resolution 1/20 adopted by the IACHR highlights that in the event that subsequent liability for the dissemination of information or opinions is established, based on the protection of public health interests, it must be established by law, in a manner proportional to the imperative interest that justifies it, and must be closely adjusted to the achievement of that legitimate objective.93

64. **Freedom of expression applies to the Internet in the same way as to all media.** This Office reiterates that restrictions on freedom of expression on the Internet are only acceptable when they comply with international standards that provide, among other things, that they must be provided for by law, pursue a legitimate purpose recognized by international law, and be necessary to achieve that end (the "tripartite" test).94 In this sense, the Office of the Special Rapporteur reiterates the importance that any legislation that regulates the Internet does not contain vague and general definitions or disproportionately affect the free circulation of information, web pages, and legitimate services.95 Regarding the "right to be forgotten," this Office has considered that “the application in the Americas of a system of private removal and de-indexing of online content with such vague and ambiguous limits is particularly problematic in light of the wide regulatory margin of protection of freedom of expression under Article 13 of the American Convention on Human Rights”.96

65. **The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards.** Principle 11 of the IACHR Declaration of Principles on Freedom of Expression establishes that "[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." In addition, the IACHR has argued that the use of criminal law in these cases does not respond to a pressing social need that justifies it, is unnecessary and disproportionate, and can be a means of indirect censorship given its discouraging effect on the debate on matters of public interest.97 In the 2010 "Joint Declaration of the 10th anniversary: Ten key challenges for freedom of expression in the next decade", the Special Rapporteurs of the UN, IACHR, OSCE, and ACHR, affirmed that "[t]he maintenance of obsolete norms –such as the laws of sedition or the

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requirement of the “veracity” of the news - intended to criminalize criticism of the government” constitute “illegitimate mechanisms of government control over the media”.98

BAHAMAS

66. Throughout 2020, the Office of the Special Rapporteur continued to observe with concern the reports regarding the lack of implementation of the Freedom of Information Act (FOIA), sanctioned in 2017. This Office has also been concerned about the establishment of criminal figures to sanction the dissemination of false information within the framework of emergency regulations due to the pandemic. The Office of the Special Rapporteur continues to record the use of the crime of libel to limit freedom of expression. However, it welcomes the decision of the Supreme Court that pointed out that this criminal figure does not conform “to the structure of a modern Constitution” and asked Parliament to consider its viability.

A. Access to public information

67. In its last annual report, this Office of the Special Rapporteur reported the lack of progress regarding the implementation of the Freedom of Information Act (FOIA), which was enacted in 2017. In November 2020, the Prime Minister Hubert Minnis reiterated that his administration will fully enact the Freedom of Information Act. When asked by a journalist, the Prime Minister indicated that he was reviewing the credentials of possible candidates for information commissioner and that he hoped to make the selection and move forward with the appointment “very soon”.99 As has been pointed out by the press, both the Prime Minister and the Attorney General have reiterated their promise of the “prompt” promulgation of the rule on several occasions, although that has not yet materialized.100

68. According to available information, the Freedom of Information Act was part of an “Anti-Corruption Plan” of the Free National Movement (FNM) that Prime Minister Hubert Minnis launched on August 3, 2016, and which included, among other things, the enactment of a law for the protection of whistleblowers and transparency in the government [Transparency in Government Act], the reinforcement of the Prevention of Corruption and Bribery Act; the limitation of the terms of the prime ministers; and a system of dismissal of congress representatives with poor performance.101 In this regard, it has been noted that so far “no significant progress has been observed in the enactment of the FOIA and other promised laws that establish a strong anti-corruption regime and a more responsible government”102, with the exception of a provision of the Freedom of Information Act regarding whistleblowers that came into force on March 1, 2018.

69. Faced with the announcement by the head of state about the supposed progress towards the promulgation of the norm, civil society organizations urged legislators to act more quickly so that the law

fully enters into force soon. In this sense, they indicated that the rule will be very beneficial in the Bahamas in the context of the COVID-19 pandemic.103

70. On the other hand, as the Office of the Rapporteur learned, during the pandemic, health authorities would have limited the disclosure of information about coronavirus cases to the media and to society in general. When asked about this issue in a press conference, the Minister of Health, Renward Wells, said that "the participation of the press is not the first priority of health teams." The official pointed out that there would be no proof that the Ministry of Health is hiding information from citizens and the media, since it is "useless to do so".104

B. Freedom of expression on the internet

71. According to available information, on March 17, the Governor General issued a series of emergency executive instruments (a Proclamation of Emergency, an Emergency Powers Regulations, and an Emergency Powers Order) that basically gave the executive branch certain powers to restrict fundamental freedoms in order to contain the spread of COVID-19.105 This regulation included a provision on “publication of false statements”, which established that “[n]o one may publish or make publish, post or re-post, on any media platform, including social networks, any alleged news or report, or any alleged statement of fact, knowing, or having reasonable grounds to suspect that it: (a) is false or not true; or (b) it can incite fear, panic, or ethnic hatred”. Under these regulations, a person could be sentenced to a fine of $ 10,000 dollars and/or a prison term of 18 months. On June 29, 2020, the Government urged the Governor General to sign a new emergency proclamation and an emergency regulation in terms almost identical to those of March 17, 2020, therefore the provision concerning the dissemination of false information was extended.106

72. According to the information received, the circulation of harmful content on social networks had already been an object of concern on the part of the Bahamian authorities. At the beginning of March 2020, Pinewood Gardens congress representative, Reuben Rahming, would have criticized the “recklessness with which people communicate through social networks” and the “culture of libel” prevailing in the country, referring to among other things to the challenges of “fake news” in the context of the pandemic in the Bahamas.107 In February 2020, the Speaker of the House of Representatives, House Speaker Halson Moultrie, assured that the circulation of certain harmful content on the internet would be “eroding the moral fabric of society”.108 Also, in 2019 it had noted that the standards of quality and accuracy of media information in the Bahamas had “declined” and as a result of competition with social networks there were a “number of false reports and stories based on opinions ” in the newspaper.109 Additionally, in June 2019 the Minister of Education, Jeffrey Lloyd, suggested modifying the law or promulgating new legislation “to criminalize the use of any electronic device, which exposes the life, reputation, identity or character of a minor, to public contempt or duration”.110 Also, in 2018, the opposition leader, Philip Brave Davis, insisted that fake news and misinformation on social media represented a growing threat to democracy and its electoral process.111

73. Following emergency regulation by the Government of the Bahamas, the Organization for Responsible Governance (ORG) indicated that the measure should be closely monitored to prevent abuse. "We do not feel like these measures are unprecedented or out of left field, but we certainly will be keeping an eye on it and we do hope that this is something that they will stick to their word and it will only be for the duration of the emergency response" said the organization, adding that "when you have this consolidated

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103 Eyewitness News. November 6, 2020. Civil society urges govt. to pick up pace with FOI.
110 The Free Port News. June 17, 2019. Persons exposing minors on social media should be jailed, said Lloyd.
power in one place[the prime minister], combined with these slippery slope encroaches upon our Freedom of Speech, we are right to worry and I do hope the Bahamian will keep an eye on it”.

C. Subsequent liabilities

74. In July, when deciding a case on criminal libel, a Supreme Court judge stated that such a criminal figure did not fit “within the structure of a modern Constitution” and asked Parliament to seriously consider its viability. The judge warned that there were "serious deficiencies" in the law, including the lack of procedural mechanisms or safeguards to decide when libel reaches the level of gravity that justifies the weight of criminal law. "Perhaps the time has come for Parliament to seriously consider whether such a crime is still viable or whether there should be a more modern catalog of alternatives to criminal libel...or other legislation specifically applicable to Internet-based platforms," said Judge Loren Klein.

75. The case arose after a journalist filed a complaint with the police against Omar Archer, a Bahamian citizen, who had made allegedly offensive posts against her through Facebook. As a result, Archer was arrested by the police and charged with intentional libel. The case reached the Supreme Court after the defendant’s lawyer argued that the provision of the Criminal Code that provides for libel is unconstitutional since it violates the right to freedom of expression and that the State's accusation was disproportionate since there were adequate civil remedies.

76. The judge rejected the constitutional appeal because she understood that Omar Archer's expressions attributed several serious crimes to the journalist, including infanticide and the violation of the Sexual Offenses Law, which were capable of causing harm. However, in the operative paragraph the ruling put on the table the problems of the use of criminal mechanisms to protect the honor and reputation of people, especially in the face of the new media scenario presented by digital technologies. “As a result of a habitual episode of conflicts in social networks, an important question of constitutional law arises, namely, whether the State can, in accordance with the Constitution, apply criminal law offenses to defamatory expression, and in what circumstances, instead of letting the parties resort to civil proceedings”, indicates the court decision.

77. Section 316 of the Penal Code establishes that “a person is guilty of libel who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, either negligently or with intent to defame that other person”.

78. In light of the facts mentioned above, this Office of the Special Rapporteur calls on the State to take special consideration of:

79. Transparency and accountability of public powers strengthen democratic systems. Principle 4 of the IACHR Declaration of Principles on Freedom of Expression 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." The IACHR’s Resolution on Pandemic and Human Rights highlighted the importance of access to information in the current context due to COVID-19 and the crucial role that journalists play in the framework of the public health emergency, by reporting on critical points and monitoring government actions. In this regard, the IACHR also stressed that "states should not include communicators in freedom of movement restrictions and have the obligation to allow all media to access official press conferences, without discrimination based on editorial line, except for the necessary and proportionate measures to protect health".

115 Commonwealth of the Bahamas in the Supreme Court. Omar Archer Sr. and (1) Commissioner of Police and (2) The Attorney-General of the Commonwealth of the Bahamas. Par. 3.
80. The establishment of criminal offenses to punish the dissemination of misinformation or false news could have a strong inhibitory effect on the dissemination of ideas, criticism, and information. This, given that the introduction of criminal offenses could bring the region back to a logic of criminalizing expressions about officials or matters of public interest, and of establishing a tool with a strong inhibitory effect on the dissemination of ideas, criticism, and information. Resolution 1/20 adopted by the IACHR highlights that in the event that subsequent liability is established for the dissemination of information or opinions, based on the protection of public health interests, it must be established by law, in a manner proportional to the imperative interest that justifies it, and must be closely tailored to the achievement of that legitimate objective.117

81. Freedom of expression applies to the Internet in the same way as to all media. This Office reiterates that restrictions on freedom of expression on the Internet are only acceptable when they comply with international standards that provide, among other things, that they must be provided by law, pursue a legitimate purpose recognized by international law, and be necessary to achieve that end (the "tripartite" test). In addition, this Office has highlighted that "the mandatory blocking of entire websites, IP addresses, ports, network protocols, or certain types of uses (such as social networks) constitutes an extreme measure—analogous to the prohibition of a newspaper or a radio station or television— which could only be justified according to international standards, for example, when necessary to protect minors from sexual abuse".118

82. The exercise of the right to honor, dignity, and reputation must be harmonized with the right to freedom of expression. The Commission has indicated that although, according to Article 13.2 of the American Convention, the protection of the honor and reputation of others may be a reason to establish subsequent liabilities for the abusive exercise of freedom of expression, this must be done without prejudice to the exercise freedom of expression or the right to receive information. In this sense, the guarantee of the simultaneous exercise of rights must be carried out through a weighing and balancing exercise in each specific case. Likewise, both the IACHR and the Inter-American Court have emphasized that the principle of necessity requires that the State choose the least costly means for freedom of expression to repair the damage, so that "first, the right of rectification or response that is expressly enshrined in Article 14 of the American Convention should be invoked. Only if this is insufficient to repair the damage that has been caused, a person may resort to the imposition of more costly legal responsibilities for those who abused their right to freedom of expression, which generated a true and serious damage to rights of other persons or legal assets especially protected by the American Convention".119


83. In 2020, the Office of the Special Rapporteur observed that legislation on access to information continues to be a pending issue in Barbados. In the framework of the 2018 general elections, Prime Minister Mia Mottley committed herself to introducing a bill to guarantee this right and, during 2019, various officials stated that the government was already working to ensure greater openness and transparency. However, the law has not yet been sent to Parliament.

84. On the other hand, the Office of the Special Rapporteur observes with extreme concern the murder of the reporter Christoff Griffith of The Nation newspaper, who was murdered in the exercise of his profession, and urges the State to investigate, prosecute, and punish those responsible, as well as to adopt the measures to prevent violence against media workers.

A. Murders

85. The Office of the Special Rapporteur received with extreme concern the murder of photojournalist Christoff Griffith of The Nation newspaper, while he was exercising his profession. According to available information, on June 22, 2020, the journalist went to St. Michael, southwest of Barbados, to cover a crime scene and, upon arriving at the scene, was attacked and killed by a man, who would also be the alleged perpetrator of the original crime.120

86. As reported by the Committee to Protect Journalists and the media, both murders took place in the abandoned residence of an Anglican bishop where Glenroy James, the first victim of the attack and for which the photojournalist had approached the scene of the events, had been hired to clean. The alleged murderer was reportedly a homeless person who had been sleeping on said property.

87. On June 22, police arrested 35-year-old Dwayne Omar Gittens, charging him with the double homicide. The alleged perpetrator of the murders appeared in court on June 27, where a judge ordered that he remain in prison until at least July 24 and that he undergoes a psychiatric evaluation during his detention.121

88. The Caribbean Workers' Media Association condemned the deadly attack against the photojournalist and called on the authorities to act quickly to apprehend the perpetrator of the crime, also highlighting that the incident "reveals the vulnerability of media professionals".122 Additionally, the Barbados Association of Journalists and Media Workers (BARJAM) lamented the death of their colleague, while noting that the events

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have affected all the media “especially at a time when journalists are on the front line trying to keep the public informed during the coronavirus pandemic”. The Inter-American Press Association, for its part, pointed out that the event "should draw attention to the risks journalists face at work for informing their communities.

B. Access to public information

In 2020, civil society in Barbados continued to demand the promised legislation on access to public information that Prime Minister Mia Mottley had proposed during her election campaign in 2018. Journalists and organizations linked to the media and the press have warned that it is essential the prompt approval of this law in Barbados, which will be a “critical piece of democracy”. In March, the president of the Barbados Association of Journalists and Media Workers (BARJAM), Emmanuel Joseph, expressed concern about the obstacles that often stand in the way of media workers trying to obtain public information, including basic information that should be available. Furthermore, the president of the Association of Journalists would have called on the government to enshrine this right in the Constitution. "A free press can only help strengthen our democracy of which we are so proud," said Emmanuel Joseph in the framework of a public event. He also added that many public officials do not answer calls or respond to messages, they flatly refuse to speak or, when asked about an ongoing investigation, they are told that "there is no story there," in an attempt to persuade them to drop the issue. Likewise, police officers reportedly obstructed the work of journalists during 2020. "We all have critical roles to play in this democracy and it would be good for us if we worked together and cooperated as much as possible," insisted the president of the Association of Journalist.

According to the information available, Attorney General Dale Marshall indicated that the legislation on access to information would be sent to Parliament, and that it continued to represent a commitment by the Barbados Labor Party (BLP). The attorney general assured that "it is not a mere promise” to satisfy the electorate and get the highest number of votes possible, but rather it was a commitment that they would fulfill because they understood, during the decade they represented the opposition, “the importance of highlighting the excesses of the Government”. In this regard, he noted that what was impeding the passage of the legislation were "several practical issues that need to be addressed, for example, the workforce resources that will be needed to provide meaningful access to information,” for example, “the punctuality in the delivery of the information and the integrity of the registry”.

Based on what was observed in 2020, the Office of the Special Rapporteur calls on the State of Barbados to have special consideration that:

The murder of journalists constitutes the most extreme form of censorship, and impunity contributes to the self-censorship of the press. States have a positive obligation to identify and punish the perpetrators of these crimes. As the IACHR and its Office of the Special Rapporteur have repeatedly stated, it is essential that the State fully, effectively, and impartially investigate the murders of journalists, clarify their motives, and judicially determine the relationship they may have to journalistic activity and freedom of expression. Authorities should not rule out the practice of journalism as a motive for the murder and/or assault before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions on the development of the processes in the stages of accusation or trial. Not having completely exhausted the logical lines of investigation entails, above all, that the intellectual authors cannot be identified.

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124 IAPA regrets case of journalist killed in Barbados.
Transparency and accountability of public powers strengthen democratic systems. In this sense, principle 4 of the IACHR Declaration of Principles on Freedom of Expression 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."

BELIZE

94. In 2020, the Office of the Special Rapporteur took note of various attacks and accusations by officials and public figures against journalists and the media who were exercising their right to freedom of expression. Likewise, in the framework of the COVID-19 pandemic, the Office observed the use of criminal mechanisms to prosecute and punish those who publish allegedly false information. As reported by the Reporters Without Borders organization, coverage of political events in Belize continues to be controversial due to the existing extreme polarization.

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

95. According to the information received by the Office of the Special Rapporteur, on September 30, 2020, journalist Hipólito Novelo from the program "News Five" on Channel 5 was threatened over the phone by Brian "Yellow Man" Audinett, a recognized member of the United Democratic Party (UDP), and bearer of the ceremonial "mace" in the National Assembly. According to available information, the UDP member warned the journalist "to not mess with him on the news," later threatening to physically attack him. The threat would be linked to an investigation by the reporter in which he released a series of documents that allegedly showed that, under the government led by the UDP (which in 2020 lost the general elections after having presided over the country for three periods), he had received more than $50,000 dollars for home improvements, housing assistance, plus a stipend for National Assembly meetings, and a job on the National Sports Council. According to the media, it is not the first time that the political activist has harassed the press.

96. The news outlet noted that "while not surprising, it remains concerning because any threat, whether verbal or physical, cannot be tolerated, and a threat against a media worker can only be seen as an attack on freedom of the press".132

97. In January, Security Minister John Saldivar criticized the media for a series of articles that linked him to alleged bribery and irregularities in the context of a fraud case that was being judicially investigated in US courts. The official pointed out that the media were "from the People's United Party (PUP)", accusing them of being biased, and that the information they published was "false and unfounded" and constituted a "desperate attempt to defame his name without proof".133

B. Disinformation and COVID-19

At the beginning of the pandemic, Attorney General Michael Peyrefitte invoked Chapter 98 of the Summary Jurisdiction (Offences) Act to sanction those who disclose false information that could create panic in the population in the context of COVID-19. Section 3(1)(ix) of said law establishes that those who “maliciously manufacture or knowingly disseminate or publish, whether in writing or orally or otherwise, any false news or false report that tends to create or promote public alarm or to cause public harm” will be guilty of a petty misdemeanor. The sanctions range from fines of up to $300 Belizean dollars or imprisonment of up to six months for those who are not repeat offenders or previous offenders of the law; or up to $600 Belizean dollars and up to one year of imprisonment, for those who have committed multiple crimes.134

According to the information available, under this law Erika Yanira Vargas, a 25-year-old woman from San José, Orange Walk district, was arrested in March, she posted on her social networks: “My eyes are full of tears. Please, God protect me and my family from the next case in San José. A whole family. The news will be confirmed tomorrow”, a comment that immediately went viral.135 Likewise, the police reportedly detained Arthur Saldivar, a 48-year-old man in the capital city, Belmopán, who commented on his Facebook account that people from Los Angeles were supposedly trying to enter through the northern border, news that allegedly created a situation of significant public alarm.136 Later, Saldivar pointed out that although they finally did not manage to enter, there was a certain risk in the face of the possibility of these people entering; he assured that his publication was not intended to create alarm but simply to provide information.137 Both citizens were arrested and later released under warning.138

When asked by the press about the arrests that were being made under the Summary Jurisdiction Law, Joseph Myvette, assistant to the Police Commissioner, pointed out that there are no special units dedicated to reviewing social networks. Along these lines, he warned that although there is an Information Technology Unit, the crime in question about false news was being dealt with in an ordinary way, in the same way as other common crimes. When asked about how the police determines when a specific publication is misleading or generates panic, the police officer stated that it would be based on “the response he receives” from other users, taking the case of Arthur Saldivar as an example which “would have led to other events”.139

### C. Access to public information

According to available information, the United Democratic Party decided to restrict access to the local media to cover the National Convention that would take place on February 9, 2020.140 On the contrary, an observer from the political office of the United States embassy was reportedly allowed access. The media called this measure “archaic”, “counterproductive” and a “rare and worrying precedent”, at a time when access to timely information is crucial. In addition, they considered that it “severely limits the ability of the media to bring updated reports on this long-awaited race to their audience.” When asked about it, the outgoing president of the United Democratic Party, indicated that the National Council of the Party agreed not to allow the media to enter the venue while the party delegates were voting since there would be some delegates who preferred to not be so “unnecessarily exposed”.141

### D. Legal reforms

In 2020, the House of Representatives and the Senate unanimously passed the Cybercrime Bill. The new legislation criminalizes various crimes committed on the Internet (which would include cyberbullying, child pornography, online stalking, and online harassment), also providing for the respective rules regarding

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134 Breaking Belize News. 30 de marzo de 2020. Do new “fake news” regulations give GOB total control of the flow of public information?
the judicial process.\textsuperscript{142} Cordel Hyde, legislator of the House of Representatives said that the norm "will change the rules of the game" on social networks.\textsuperscript{143} Opposition Senator Michel Chebat was concerned about the possible collision of the norm with the right to freedom of expression, guaranteed in the Constitution. For his part, Attorney General Michael Peyrefitte pointed out that "rights do not exist in a vacuum," and that the right to freedom of expression should not collide with the intention of committing a crime on the internet. "People are free to express themselves, but not in a way that could lead to harm to another person," he added. Among other interventions, Senator Mark Lizarraga warned of the need for a public education and awareness campaign.\textsuperscript{144}

103. As a result of the various events documented during 2020 in Belize, this Office calls on the State to bear in mind especially that:

104. Attacks and aggressions committed against journalists and against the press violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society. The Office of the Special Rapporteur reminds that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation."

105. The establishment of criminal offenses to punish the dissemination of misinformation or false news could have a strong inhibitory effect on the dissemination of ideas, criticism, and information. This, given that the introduction of criminal offenses could bring the region back to a logic of criminalizing expressions about officials or matters of public interest and of establishing a tool with a strong inhibitory effect on the dissemination of ideas, criticism, and information. Resolution 1/20 adopted by the IACHR highlights that in the event that subsequent liability is established for the dissemination of information or opinions, based on the protection of public health interests, it must be established by law, in a manner proportional to the imperative interest that justifies it and must be closely tailored to the achievement of that legitimate objective\textsuperscript{145}.

106. Transparency and accountability of public powers strengthen democratic systems. Principle 4 of the IACHR Declaration of Principles on Freedom of Expression 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, the Office of the Special Rapporteur recalls that the IACHR Resolution on Pandemic and Human Rights highlights the importance of access to information in the current context due to COVID-19 and the crucial role that journalists play in the framework of the public health emergency, by reporting on critical points and monitoring government actions. States have the obligation to allow all media to access official press conferences, without discrimination based on editorial lines, except for the necessary and proportional measures to protect health.\textsuperscript{146}

107. Freedom of expression applies to the Internet in the same way as to all media. This Office reiterates that restrictions on freedom of expression on the Internet are only acceptable when they comply with international standards that provide, among other things, that they must be provided by law, pursue a legitimate purpose recognized by international law, and be necessary to achieve that end (the "tripartite"

\textsuperscript{143} Breaking Belize News. September 26, 2020. Cyber-crime legislated: “The rules as we know it in social media will be no more”.
In this sense, the Office of the Special Rapporteur reiterates the importance that any legislation that regulates the Internet does not contain vague and general definitions or disproportionately affect the free circulation of information, web pages, and legitimate services. Likewise, this Office recalls that “in exceptional cases, when dealing with openly illicit content or speeches not protected by the right to freedom of expression (such as war propaganda and the apology of hatred that constitutes incitement to violence, direct and public incitement to genocide, and child pornography) it is admissible to adopt mandatory measures to block and filter specific content. In these cases, the measure must be subjected to a strict proportionality test and be carefully designed and clearly limited in such a way that it does not reach legitimate speeches that deserve protection. In other words, the filtering or blocking measures must be designed and applied in such a way that they exclusively impact reputedly illegitimate content, without affecting other contents”.149

BOLIVIA

Throughout 2020, the Office of the Special Rapporteur for Freedom of Expression received information about attacks, assaults, and threats against media workers as a result of their journalistic work. Likewise, the Office was informed about situations of excessive use of force by the police and military in the repression or dispersal of social protests, and about attacks against journalists in the framework of the coverage of the demonstrations. Various acts of violence against journalists were also recorded in the context of the demonstrations held in the months prior to the general elections on October 18, which led to clashes between different political sectors and situations of excessive repression by the security forces. On the other hand, within the framework of the measures adopted to prevent the spread of COVID-19 in the country, the Government of Bolivia imposed severe sanctions for those who did not comply with the quarantine established, which resulted in difficulties for the circulation of print media and journalists, who saw both their informative work and their economic viability hampered. In addition, journalists faced various obstacles and were victims of harassment in the framework of coverage of the COVID-19 pandemic and its impact on the country, as well as the management of public funds to address the crisis. During the health emergency, decrees were approved that included restrictive provisions on freedom of expression by imposing, through ambiguous concepts, criminal sanctions on those who “misinform or generate uncertainty” among the population, which were repealed in response to the concern of social organizations and the media. However, on various occasions, government authorities warned with criminal penalties those who spread false news and announced “cyber-patrol” actions to detect people who in their opinion “misinform” on social networks.

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

The Office of the Special Rapporteur received information on attacks, assaults, and threats against media workers as a result of their journalistic work, from both private individuals and public officials.

A case that was of special concern to the Office of the Special Rapporteur was the dissemination, by the Ministry of Government, of a statement on May 31 in which the journalist Junior Arias was accused of waging a “dirty war” and a “political war” against the government, and was ordered to “rectify” information on the alleged irregular purchase of chemical agents by the State, which the ministry described as “false” and damaging to their “prestige and dignity”. After the release of the statement, the journalist, who worked for the television channel Gigavisión and the portal Detrás de la Verdad, announced that he would take a temporary leave of absence to “verify if the conditions to exercise

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journalistic work exist and if the Government can provide the guarantees."\(^{151}\) The journalist has made several publications about alleged cases of corruption in the government. Weeks before, he had denounced being a victim of "political attacks" by the La Paz Mayor’s Office after questioning the mayor about a contract with a hotel to provide an isolation site for mild and suspected cases of coronavirus.\(^{152}\) The Special Rapporteur for Freedom of Expression of the IACHR expressed his "grave concern" over the statement from the Ministry of Government regarding the journalistic investigation and argued that "accusing a media outlet of waging a 'dirty war' or 'political war' is stigmatizing, instead of providing accountability on the underlying issue."\(^{153}\) On June 4, the Minister of Defense, Fernando López, affirmed in a press conference that the information disseminated was false and, although he remarked that the press workers have "guarantees" to do their work and "are in all their rights to carry out the investigations they require", he asked the journalists not to make "the mistake" that in his opinion the media made.\(^{154}\) On June 8, the La Paz Prosecutor’s Office admitted a criminal complaint filed by seven legislators of the Movimiento Al Socialismo (MAS) against Ministers Arturo Murillo and Fernando López as a result of the journalistic investigation that revealed an alleged overcharge in the purchase of tear gas. The State Attorney General, Juan Lanchipa, reported that the Prosecutor’s Office will summons the denounced authorities and the administrative personnel of the Government and Defense ministries to testify in the case.\(^{155}\) Likewise, a special mixed commission of the Legislative Assembly is investigating the purchase, with an alleged overpricing, of riot control materials and summoned four ministers to explain the details of the acquisition.\(^{156}\)

111. On May 2, the Special Federation of Rural Workers of Yanacachi warned of taking "drastic determinations" against the journalist of Radio FM Bolivia, David Quintanilla, for "creating division and damaging the dignity of the municipality" through the news report with "half-truths", after the station reported on the arrest of the mayor of Yanacachi, Wilfredo Cossío, for the alleged sale of vehicle circulation permits during quarantine.\(^{157}\)

112. The illustrator and cartoonist for the printed media Página Siete, Abel Bellido Córdova, known by his pseudonym "Abecor", was the victim of repeated threats and harassment throughout 2020. On June 13, for example, he received threats from a lawyer and a former public official during the government of the Movimiento Al Socialismo (MAS), Jarry Sacaca Garabito. "You moron, your days are numbered damned UNIEL coup plotter boy. You have an expiration date and it is September 6, as the brave Junior says," the message stated.\(^{158}\) Página Siete denounced the threats to the Minister of Internal Security and requested guarantees to protect his life and work.\(^{159}\) The Bolivian Office of the United Nations High Commissioner for Human Rights condemned the recurring threats against the illustrator.\(^{160}\)

113. In other episodes of which the Office of the Special Rapporteur became aware, on May 12, reporters from the private television channel Red Uno and the newspapers Opinion and Los Tiempos were attacked in the southern part of the city of Cochabamba, where residents blocked the entrance to the K’ara K’ara’s landfill, demanding public works and the resignation of the President and the Minister of Internal Security.\(^{161}\) Journalists Guido Vino Paco, from the radio La Voz de las Mayorías, and Yerko Blanco, from Radio Yungueña FM, reported being victims of verbal attacks, threats, and accusations by municipal officials of the city of

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\(^{153}\) Twitter account of Edison Lanza (@EdisonLanza). June 1, 2020.


\(^{155}\) La Razón. June 12, 2020. La Piscfalia citará a autoridades y administrativos en el caso de material antidisturbios.

\(^{156}\) Brújula Digital. September 2, 2020. Comisión legislativa cita a 4 ministros por la presunta compra irregular de material antidisturbios.


\(^{161}\) AnP. May 14, 2020. Comunarios amenazan a periodista en Sud Yungas; Rympa. (n.d). Periodista de Yanacachi denunció corrupción y dirigentes complices piden con amenaza que sea "suspendido".

Caranavi, on June 5 when they covered a session of the City Council; a journalist from the newspaper *El Potosí* was attacked on July 11 by residents of the rural district of Miraflores, while reporting on conflicts over the use of spaces of community interest.

114. The director and owner of *Radio Tv Apolo Bolivia*, Edgar Toro Lanza, denounced that in the early morning of May 7 the outlet, located in the Apolo municipality, Franz Tamayo province, was the victim of the theft of its equipment. The incident was reported to the police and the municipal Prosecutor’s Office.

115. On August 14, an individual tried to stab the journalist Omar Escobar, from *Red Erbol*, while he was covering a town hall meeting in the city of El Alto, called by rural organizations from the provinces of the La Paz department. According to Escobar, when the activity ended, he recorded images and videos of how some protesters threw objects at vehicles that were circulating through a nearby tollbooth. When he was preparing to interview the leaders, an individual observed that he had videos of the attacks on his phone and demanded that he delete them. Faced with the journalist’s refusal, the individual tried to stab him twice. Then a group surrounded the journalist and began to threaten and attack him with sticks, until another reporter managed to help him to leave the place.

116. On October 7, the journalist and content director of *El Potosí*, Juan José Toro, was beaten by a group of mining cooperative members while covering an inspection of Cerro Rico, after he denounced controversial silver mining activities. The attackers prevented him from carrying out his work and threatened to kill him. Toro filed a complaint against the attackers with the Prosecutor’s Office.

117. On October 12, press workers from the Guayaramerín municipality, in the Beni department, were attacked by a group of people while covering a protest by families demanding a family basket and the resignation of the highest executive authority of that municipality.

118. On November 16, alleged supporters of *Creemos* prevented the entry of congress representatives of the *Movimiento Al Socialismo* to the Departmental Assembly of Santa Cruz and attacked a journalist from the "Primera Línea" news program that was covering the event.

119. On November 17, several media workers suffered verbal and physical attacks and were prevented from doing their work while covering social protests in the city of Montero, department of Santa Cruz, following the decision of the Municipal Council to appoint a new interim mayor.

B. Obstacles to journalistic work during the COVID-19 pandemic

120. In the framework of the measures adopted to prevent the spread of COVID-19 in the country, the Government of Bolivia imposed severe sanctions for those who fail to comply with the established quarantine, which resulted in difficulties for the circulation of print media and journalists, who saw both their informative work and their economic viability hampered.

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169 The journalists assaulted were Vivian Pérez and Gabriel Roca, from *Canal 48*; Wilber Zabala, from the online version of *Zona Norte* daily, who was hit by tear gas fired by riot police, and Luis Revollo of *El Informador* website; *Unitel* and *Red Uno* press teams were prevented from doing their news coverage; and the vehicles of some media outlets were vandalized. Opinión. November 18, 2020. *Montero: periodistas fueron agredidos en medio de un conflicto municipal; ANF. November 18, 2020. Condenan agresión a periodistas durante conflicto municipal en Montero; ANF. November 18, 2020. Montero: periodistas fueron agredidos en medio de un conflicto municipal.*
121. On March 25, the Bolivian government decreed a State of Health Emergency and warned that violators of the total quarantine decree to combat the pandemic could be sentenced to up to ten years in prison for violating public health. "Those who incur in breach of duties and crimes against public health will be punished with deprivation of liberty from one to ten years," the Ministry of Justice reported in a statement. For her part, President Jeanine Áñez reported that she would mobilize the Army and the Police to control compliance with the measures. Only in March, for example, ten people in La Paz and five in Cochabamba were sent to jail, with pre-trial detention, for violating the quarantine. In addition, there were cases of abuse of force to enforce obedience to quarantine by the military and police. Along the same lines, government authorities resolved on April 10 to militarize the city of Santa Cruz de la Sierra as an emergency measure in the face of increasing cases of coronavirus. In addition, the Minister of Productive Development, Wilfredo Rojo, announced the approval of a municipal decree declaring Santa Cruz a "city of disaster and alarm." As we are at war we are not going to argue, citizens in times of war only obey. Therefore, we mandate the entire population to comply with this municipal decree," he declared. The authority warned that those who use adulterated circulation permits would be prosecuted, as well as the police and military who allow their use, and reported that to date there were 87 people imprisoned for that reason.

122. In this context, the National Press Association (ANP) warned of the danger of collapse of various media due to the halt of circulation as a result of the economic impact of the COVID-19 pandemic and the restrictions imposed. On April 27, the Inter-American Press Association (IAPA) expressed its deep concern about the state of fragility of Bolivian newspapers, which began to publish only in digital form, when, according to what was reported, 95% of their livelihood source is based on the circulation of printed editions and the sale of print advertising. On March 26, the newspaper La Razón reported that it would suspend its print edition due to restrictions applied by the Government. In mid-April the newspapers Correo del Sur and El Potosí, from Sucre, and El Deber, from Santa Cruz, announced that they would resume their printed publications but with a weekly format, instead of daily. The ANP sent a letter to President Jeanine Áñez expressing its concern about the difficulties of the printed media due to the loss of 95% of their income due to the health emergency. On April 24, the Minister of the Presidency, Yerko Núñez, invited the ANP to hold a meeting to "discuss issues of interest" in the sector.

123. Likewise, journalists faced various obstacles and were victims of harassment as part of their coverage of the COVID-19 pandemic and its impact on the country. Thus, for example, a press team from the Red Bolivisión was attacked on March 23 by merchants who were not respecting the restrictions on sale in markets imposed by the government to contain the coronavirus; On June 5, journalist Nayma Enríquez, from Red Uno de Televisión, and her press team were attacked by merchants at a street fair in the city of El Alto who violated a municipal prevention provision against COVID-19.

C. Social Protest

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179 ANP. April 26, 2020. La ANP recibió respuesta del Ministerio de la Presidencia.
124. The Office of the Special Rapporteur received information on situations of excessive use of force by the police and military in the repression or dispersal of social protests. Likewise, it was informed of various attacks against journalists and media workers in the framework of coverage of the demonstrations, in some cases by the protesters and in others by the security forces themselves.

125. Among the most serious situations reported is the attack on the cameraman Carlos Gómez, the journalist Joana Tapia, and the driver of a mobile unit of the ATB channel on May 20, when protesters, who were blocking access to the K’ara K’ara landfill, near the city of Cochabamba, threw stones, wounded the cameraman in the chest, and damaged the media’s vehicle. The journalistic team filed a complaint with the Special Force to Fight Crime. Likewise, four media workers were attacked and received death threats on June 11 in the town of Entre Ríos when they were covering a demonstration in rejection of the restrictions imposed to stop the spread of COVID-19. The journalist Rodolfo Orellana, the cameraman Joel Orellana, and the driver Iván Escobar, of the private television channel Unitel, and the journalist Soledad Prado, a correspondent for the newspaper El Deber, were prevented from carrying out their work and had to take refuge in a vehicle, which the protesters they surrounded and threatened to set fire. The journalists managed to leave the scene with the help of a police escort. The Office of the Special Rapporteur for Freedom of Expression expressed its "concern" over the attack and demanded that the Government "reinforce the security" of journalists in social protests.

126. On the other hand, the decision of the Supreme Electoral Tribunal (TSE) to postpone the date of the presidential elections, set for September, until October 18, due to the health emergency situation, generated numerous social protests during the month of August, in particular, from sectors related to the previous administration chaired by Evo Morales. Demonstrations were organized and barricades were erected to block the passage on different highways, in protest at the postponement of the elections, called mainly by the Bolivian Workers’ Central and the indigenous and rural movements, close to the Movimiento al Socialismo (MAS). During the demonstrations, various violent actions were reported, both by protesters and by the security forces and armed groups. In addition, at least seven people were arrested during the demonstrations in Oruro and El Alto.

127. On August 7, the Inter-American Commission on Human Rights (IACHR) urged the Bolivian State to establish a dialogue with the political agents involved in the demonstrations and to prevent the escalation of violence. Both the IACHR and the Bolivian Ombudsman’s Office expressed concern about the creation of armed groups that acted violently against various protesters.

128. There were also attacks and harassment against the press workers and situations of abuse of force by the security forces. Thus, for example, on August 5, militants from the Movimiento al Socialismo (MAS) intimidated, verbally assaulted, and damaged the work equipment of journalists from Radio y Televisión Popular (RTP), Erbol, and UNO, according to reporters from those media. Also, that day, photojournalist David Sapiencia was attacked by a group of people who injured his head and stole his work equipment, while he was covering a roadblock in the Mairana municipality organized by alleged MAS sympathizers who protested against the postponement of the general elections. The journalist announced that he would file a complaint with the police and military in the repression or dispersal of social protests.
complaint with the Prosecutor’s Office for attempted murder. On August 8, situations of violence were reported in Plaza Abaroa, in La Paz, when a group of young people identified as Resistencia Juvenil tried to evict MAS’ protesters who had been on strike against the postponement of the elections for days. The journalists and television cameramen covering the protest reportedly suffered various attacks from activists of the so-called “resistance”. On August 9, the mobile unit of the Christian television channel VTV, in the city of El Alto, was vandalized with stones thrown by young people who blocked Costanera Avenue in rejection of the postponement of the general elections. On August 12, a press team from Red Uno television was surrounded and attacked by protesters who were interrupting the vehicle traffic in the Santa Fe de Ypacarí region, in the municipality of San Carlos.

On August 17, congress representative Betty Yañíquez, from the Movimiento Al Socialismo (MAS), presented a draft bill for the Protection and Non-Criminalization of Social Protest. According to the legislator, the proposed rule seeks to “ratify” constitutional rights and guarantees, as well as “more favorable rights contained in international treaties and instruments on human rights in favor of social leaders, trade union leaders, and any mobilized person”.

On September 28, the Police repressed with gas and allegedly excessive use of force workers of the Abya Yala channel who were demonstrating in Murillo Square to demand that the government pay debts for government advertising.

D. Stigmatizing statements

According to the information received, former president of Bolivia Evo Morales described the media as “number one enemies” and attributed complicity to them in the alleged coup in the country, during a videoconference held on 8 October. “Something has to be done in the media,” declared Morales, who resigned from the presidency on November 10, 2019 in the context of a political and institutional crisis. The National Press Association (ANP) rejected Morales’ statements and urged the candidates to publicly declare their respect for freedom of the press.

Likewise, the Fides News Agency (ANF) denounced the dissemination of a smear campaign that linked the financing it received from the US organization National Endowment for Democracy (NED) for journalistic reports with an alleged plan to destabilize the government of Evo Morales. The version disseminated through social networks arose after independent media denounced that during the previous government, millionaire advertising contracts were favored by certain political parties.

The Office of the Special Rapporteur was also informed that the Minister of Government, Arturo Murillo, accused community radio stations such as Radio Kausachun Coca (RKC) of “stirring up” attitudes of sedition, terrorism, and violence that resulted in the destruction of radio bases or telecommunications antennas. Murillo said that these media cover the main leaders who encourage violence and identified former President Evo Morales as the main agitator. “What they use for this is the communications through Kawsachun Coca, through community radio stations (...). These radios like RKC stir up violence, terrorism,
E. Subsequent liabilities

134. On September 11, the Human Rights Watch organization released a report titled "Justice as a Weapon: Political Persecution in Bolivia," in which it surveyed situations in which it understood that the government used the justice system to persecute collaborators and supporters of former President Evo Morales. The document indicates, among other aspects, that criminal proceedings were initiated to curtail the freedom of expression of political supporters of Morales. It mentions, for example, the case of Mauricio Jara, a sympathizer of the former president who was charged by the Prosecutor’s Office for the crimes of sedition, public instigation to commit a crime, and attacks against public health, and detained in a preventive manner, because he allegedly had admitted supporting the Movimiento al Socialismo (MAS), had used WhatsApp groups to "misinform"; had referred to the government as a "tyrant" and "dictator"; and had urged the people to protest.198

F. Legal Reforms

135. Supreme Decrees No. 4199, of March 21, and No. 4200, of March 25, approved by the Government to establish measures against the spread of COVID-19, included a restrictive provision of freedom of expression, which generated concern in civil society, since its broad wording could enable the authorities to prosecute those who criticize the public policies adopted regarding the pandemic.199 The provision, contained in point II of article 13 of Decree No. 4200 and in point II of article 7 of Decree No. 4199, establishes that "persons who incite non-compliance with this Supreme Decree or misinform or generate uncertainty to the population, will be subject to a criminal complaint for committing crimes against public health". Supreme Decree No. 4231, of May 7, modified the wording of that provision, which went on to specify that those who "disseminate information of any kind, whether in writing, printed, artistic, and/or by any other procedure, which put at risk or affect public health, generating uncertainty in the population, will be subject to charges for the commission of crimes typified in the Criminal Code". The new wording did not correct the issues and caused alarm in journalists and national and international human rights organizations, who through press releases and social networks expressed their concern about the negative effect of the Decree on freedom of expression and information.200 On May 14, the Government, through Supreme Decree 4236, repealed the restrictions on freedom of expression contained in the three mentioned decrees. "At the request of human rights organizations and the media, we have repealed the articles of decrees that created susceptibility to freedom of the press. We respect and defend freedom, just as we defend and respect democracy", informed the Minister of Government, Arturo Murillo, in a message on Twitter.201

G. Censorship

136. The Minister of Public Works, Iván Arias, warned that people who spread false news about the health emergency caused by COVID-19 would be taken to hospitals to help care for infected patients and, in addition, they would be imprisoned for 10 years. "With the Ministry of Government, we are going to ‘catch’ these criminals who spread (false) news who only generate anxiety," said Arias.202 Likewise, the Minister of

Government, Arturo Murillo, announced the implementation of "cyber patrol" to detect those who misinform through social networks about the coronavirus. After the government announcement, the Ombudsman’s Office warned that "cyber-patrolling" could lead to criminal prosecutions that would be contrary to freedom of expression, enshrined in national and international human rights standards. On April 15, Minister Murillo reported that "67 political actors who have been attacking health, waging virtual war, and destabilizing movements had been identified and apprehended by the Prosecutor’s Office."204

137. The executive general director of the Bolivian Football Federation (FBF), Freddy Téllez, announced his resignation on June 18, considering his right to freedom of expression had been affected, after receiving that day an instruction from the president of the Federation, César Salinas, who informed all the area directors, coordinators, and staff of the FBF that it was "strictly forbidden to hold press conferences on the current situation that soccer is going through" in Bolivia.205

138. On August 9, the state channel Bolivia Tv interrupted the transmission of a meeting within the framework of the “Dialogue for Life” initiative, at the moment when a candidate questioned President Jeanine Áñez. The meeting sought to define, among other things, the date of the next elections.206

139. The Ombudsman’s Office reported that it is investigating a complaint filed by the Abya Yala Workers’ Union about an alleged restriction on the operation of the channel by the Telecommunications and Transportation Regulation and Supervision Authority (ATT), by omitting the authorization of the License of Added Value, which prevents the media from being part of the cable signal grid in the city of La Paz. Likewise, the ATT would have issued an order to cable operators to require national channels to present said license, and since they did not have it, that channel was eliminated from the grid, affecting their operations and the payment of social security contributions in favor of their employees. "This case draws attention, if the ATT's delay in responding to the license request is verified, it would become a flagrant violation of freedom of expression, since legal means and state control would be generating a real limitation to the work of Abya Yala," said the Ombudsman, Nadia Cruz.207

140. The Deputy Minister of the Interior and Police, Javier Issa, reported on August 31 that the Government decided to reactivate the Anti-Terrorist Group (GAT), under the Police, with the aim of containing possible demonstrations and riots that would arise as a result of the elections of the October 18. "I do not know who will win in the general elections, but I do not believe that the MAS (Movimiento al Socialismo) will win and after the elections I believe that it will try to activate everything it has to destabilize the country," declared Issa.208

141. On September 24 in the city of Cochabamba, journalist Edwin Soria, from the Univalle television channel, suffered first and second degree burns on his hand after being hit by a burning coal, while covering a confrontation between political sectors related to the MAS and Unidad Nacional. The leader of the Press Federation, David Ovando, described the act as "cowardly" and announced that he would file a complaint with the Prosecutor’s Office and Human Rights Ombudsman against those responsible for the injuries.209

H. Freedom of expression in electoral contexts

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142. The journalist from the *Gigavisión* television network, Rimar Bejarano, was attacked on September 26 by MAS sympathizers while covering a proclamation ceremony for the candidates Luis Arce and David Choquehuanca in the city of Sucre. Bejarano filed a complaint with the Departmental Electoral Tribunal (TED) of Chuquisaca\(^{210}\). Following the attack, the Bolivian National Press Association (ANP) demanded that the presidential candidates, through a public message, call on their militants to stop the attacks on journalists in the electoral campaigns\(^{211}\).

143. On October 19, the political alliance Creemos called a press conference and upon arrival the press team of the *Red Unitel* was the victim of verbal attacks and threats by alleged sympathizers of that political force. Subsequently, the Creemos communication team made a public apology and stated that the attackers were not part of its political structure\(^{212}\).

144. Journalists Bertha Portal Pimentel and Sonia Sánchez, from the *La Voz del Campesino* community radio station in the city of Tarija, were detained for four hours at a police station during the general elections on October 18. The arrest occurred after both tried to prevent the retention of the vehicle in which they were transported. Both denounced that they were victims of physical aggression by the troops and that their work equipment was damaged\(^{213}\).

145. At least fifteen journalists from the city of Cochabamba suffered physical attacks and intimidation during journalistic coverage of blockades carried out by sectors that questioned the results of the general elections of October 18. The Federation of Press Workers of Cochabamba filed a complaint with the Prosecutor’s Office for the events that occurred between the end of October and the first days of November\(^{214}\).

I. Access to public information

146. The Departmental Ministerial Health Authority communicated on April 23 to the director of the health centers in the department of Beni that only he and the ministerial authority would be official spokespersons on the situation of COVID-19 in the department, and that the health or administrative staff who provide information to the press should be administratively sanctioned. Likewise, it ordered the initiation of criminal proceedings against people who “indiscriminately and irresponsibly circulate information on social networks”\(^{215}\).

147. In the framework of the 177\(^{9}\) Period of Sessions, the IACHR and its Office of the Special Rapporteur received information from a group of civil society organizations about the situation of the right of access to public information and institutional transparency in Bolivia.\(^{216}\) According to the organizations requesting the hearing, although the country has formally guaranteed this right in its Constitution and in various international treaties that are part of the constitutionality bloc, this is not enough in the face of multiple and varied threats. In this sense, they stated that to date not only has a law on access to public information not been enacted, but also the provisions of the Constitution that establish that human rights in Bolivia have direct application and do not require development laws are not being complied with. On this point, the organizations indicated that any request for public information is systematically denied on the grounds that there is no specific procedure that regulates the right of access to public information. For their part, the representatives of the State had no qualms and recognized that access to information is an essential element to promote justice and the fight against corruption. In this sense, they recognized that there are tasks to be fulfilled, and that there are structural issues that must be resolved by the incoming government as of the

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\(^{211}\) Opinión. September 27, 2020. *Diarios exigen cese de agresiones a periodistas en campañas electorales*.


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October elections. During the hearing, the Office of the Special Rapporteur, through its Rapporteur Pedro Vaca, indicated its availability for technical cooperation on this issue, although it warned that the law by itself will not solve all problems. For example, to advance in active transparency policies, technology, internet access, and digital literacy are required, aspects on which there are deficits that must be addressed.

J. Government advertising

148. According to the information received, after the dissemination of several investigations and reports on alleged cases of corruption that would involve government officials, the Minister of Communication, Isabel Fernández, ordered the interruption of government advertising to the Red Gigavisión media.²¹⁷

149. In the framework of a lawsuit initiated by the television station PAT (Periodistas Asociados Televisión), on June 29, the first chamber of the Constitutional Court of the Court of Justice ordered the Vice Ministry of Communication and the Ministry of the Presidency to guarantee, in the adjudication of government advertising in the media, “the participation of the greatest number of media”, with adjudication processes “where they can be treated on equal terms” and that are “transparent in order to guarantee the right of expression”.²¹⁸

K. Other relevant situations

150. According to a survey carried out within the framework of the Scenario Analysis and Dialogue project, promoted by the Friedrich Ebert Foundation, the majority of Bolivians believe that the Government exercises political persecution and uses the health emergency to criminalize dissent and freedom of expression. The study was carried out between June 1 and 17 with the participation of political actors, analysts, journalists, and different specialists. 78.68% of those surveyed believed that the Government exercises political persecution (16.18% answered no and 5.15% did not know). Regarding whether the Government uses the health emergency to criminalize dissent and freedom of expression, 41.91% said they strongly agree, 29.41% agree, 9.56% strongly disagree, and 18.38% disagree.²¹⁹

151. On November 1, the Police allegedly aggressively evicted a performance carried out by the groups Teatro de los Andes, Teatro El Animal, and the Centro Juana Azurduy, at the gates of the Sucre general cemetery, in memory of the victims of femicide. Despite the fact that the activity had permits from the Mayor’s Office, about 30 members of the Police Operations Tactical Unit interrupted it, cut off the sound, and tussled with some of the women present who tried to carry on with the performance. They also dumped water with a tanker on the artists.²²⁰

152. Journalist Casimira Lema, whose home was burned in the incidents that occurred in November 2019, when then-President Evo Morales resigned to his mandate, was the target of hollering and harassment when she gave her testimony before the Group of Experts of the Inter-American Commission on Human Rights (IACHR) in La Paz, on November 25. A group of people who attended the collection of testimonies shouted at the journalist’s statement, accusing her of lying and of being “part of the coup”.²²¹

153. This Office continues to observe a pattern of attacks, threats, and disqualifications against media workers as a consequence of the exercise of their profession. In addition, during 2020, situations of excessive use of force in the context of social demonstrations were observed, as well as attacks on journalists who were covering the events. Additionally, the Office of the Special Rapporteur documented obstacles to journalism derived from the measures established by the Government of Bolivia in the context of the pandemic. On the other hand, a regulatory deficit, and a lack of proactive public policies on access to public information and


transparency in accordance with current standards on the matter continue to be observed. In view of this, this Office considers it vitally important to remind the State that:

154. **Attacks and aggressions committed against journalists and against the press violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society.** The Office of the Special Rapporteur Principle reminds that 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.”

155. **Social protest, which includes the rights to peaceful assembly without arms, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights.** In this sense, it has been indicated that "the criminalization in itself of demonstrations in public streets when they are carried out within the framework of the right to freedom of expression and the right to assembly is in principle inadmissible". The Office of the Special Rapporteur recalls that it is the duty of the State to guarantee the exercise of the right to protest and that no participant may be subjected to illegal or arbitrary detention. States must refrain from engaging in practices of mass, collective, or indiscriminate detentions in public demonstrations. Likewise, they must bear in mind especially that freedom of expression protects the right to record and disseminate any incident, and that they must provide journalists with the highest degree of protection so that they can carry out their work freely and keep society informed about matters of high public interest. Finally, this Office reiterates that the protection of the right to freedom of expression requires that the authorities ensure the necessary conditions for journalists to be able to cover events of notorious public interest, such as those related to social protests.

156. **Public authorities are called upon to maintain a speech favorable to public deliberation and freedom of expression.** The Office of the Special Rapporteur reiterates that public officials have the duty to ensure that their statements are not infringing on the rights of those who contribute to public deliberation by expressing and disseminating their thoughts, such as journalists, the media, and human rights organizations, and they must be aware of the context in which they express themselves. According to the Inter-American Court of Human Rights, these types of statements made by public officials could constitute an indirect restriction on the right to freedom of expression.

157. **The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards.** The IACHR has repeatedly maintained that the application of criminal law to sanction expressions referring to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest and violates the right to freedom of expression.

158. **The distribution of government advertising must be guided by democratic criteria and pre-established, public, and transparent procedures that guarantee conditions of equal opportunities.** The Office of the Special Rapporteur recalls that the Declaration of Principles on Freedom of Expression of the IACHR, in its 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."

159. **Transparency and accountability of public powers strengthen democratic systems.** In this sense, Principle 4 of the IACHR Declaration of Principles on Freedom of Expression 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

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previously established by law in case of a real and imminent danger that threatens national security in
democratic societies." The IACHR and the Office of the Special Rapporteur have called on States to guarantee
the exercise of the right to freedom of expression and access to information during the pandemic, and to
guarantee the transcendental role played by the press in the context of an emergency, by reporting on critical
points and monitor government actions. The restriction of journalists to access press conferences, the
creation or use of criminal figures to sanction the dissemination of ideas and information classified as false,
and digital cyber-patrol measures can affect fundamental freedoms. Likewise, the IACHR and its Office of
the Special Rapporteur recall in a special way that, based on the obligation of active transparency, States must
proactively provide truthful and reliable information on all aspects of public interest related to the pandemic,
in open formats and in a manner accessible to all. Given the existence of the digital divide, States must find
effective ways to fulfill the obligation of active transparency in such circumstances.

BRAZIL

160. In 2020, the context of hostility toward journalism and the free functioning of the media intensified in
Brazil. President Jair Bolsonaro has continued using stigmatizing language toward the media, including verbal
attacks and threats, especially against women journalists. According to reports from several civil society
organizations, this has encouraged his followers to carry out physical attacks against journalists, some of
them while they were covering protests. Likewise, multiple social media attacks and threats against
journalists and their families have been documented. The Office of the Special Rapporteur notes with concern
the increase in criminal prosecutions of journalists, which in some cases have included the application of the
national security law and the use of court orders to censor reporting. Lastly, this Office has documented
severe restrictions on the right to access to information during the pandemic, as regards both requests for
access and the State's duty of transparency.

A. Stigmatizing statements

161. During 2020, the Office of the Special Rapporteur documented an increase in stigmatizing language
toward the media used by President Jair Bolsonaro, including verbal aggression and threats. Relatives of the
president who hold public office and other public officials have also attacked the media on several occasions.
According to the Federação Nacional dos Jornalistas (FENAJ), 299 attacks on the media by President
Bolsonaro were documented between January and September. According to reports from several civil
society organizations, this has encouraged his followers to attack journalists, both physically—while they
covered protests—and over social media, through multiple attacks and threats. RSF also notes that these
attacks on the media aim to "encourage and sustain mistrust of the work journalists do, undermining their
credibility and little by little constructing a common enemy." For its part, the organization Article 19 monitored the statements of the president, his children, and
other public officials between January 2019 and September 2020. It documented 449 attacks and aggressions
against communicators, including stigmatizing statements, attempts to discredit the work of the media, and
the release of journalists’ personal information, leading to mass attacks on their social media accounts. Of the
449 attacks documented, around 102 were from President Bolsonaro via social media, press conferences,
speeches, and interviews, among other avenues. Likewise, Bolsonaro's children, who hold public offices,
where the perpetrators of around 220 attacks.

about restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic.
about restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic.
2020. Abrapi condena ameaça de Bolsonaro de agressão física a jornalista.
228 Globo. Profissionais de imprensa são agredidos durante manifestação antidemocrática com a presença de Bolsonaro. May 3, 2020;
FENAJ. Sindjors e FENAJ repudiam agressão de jornalistas por apoiaores de Bolsonaro. April 20, 2020; Sindicato dos Jornalistas
163. Additionally, according to a study by Aos Fatos, President Jair Bolsonaro had issued 1682 false or misleading statements, an average of 4.3 per day. Forty-one point six percent of his statements involved misleading information on the coronavirus. For example, the president promoted remedies and treatments whose efficacy was not proven, defending the use of hydroxychloroquine on at least 28 occasions.231

164. During the public hearing held on October 6 during the 177th Period of Sessions of the IACHR, Special Rapporteur Pedro Vaca recalled that the State has an obligation to foster an environment that welcomes public discussion and warned that stigmatizing speech coming from the most senior State authorities can lead to self-censorship, especially among journalists and activists.232

165. The Office of the Special Rapporteur notes with concern that the attacks on the media have been directed mainly at women journalists. This office learned of a March 13 report from the Associação Brasileira de Jornalismo Investigativo (Abraji) requested by the United Nations analyzing the situation of women journalists in the country. The report found that they have been subjected to misogynist and machista attacks, the publicizing of their personal information, and the discrediting of their work. The document lists at least 20 attacks against women journalists between January 2019 and February 2020, including 16 attacks perpetrated by public officials directly.233 During the 44th session of the United Nations Human Rights Council, held on January 7, 2020, journalist Bianca Santana reported that women journalists had been attacked by President Jair Bolsonaro or other public officials at least 54 times since the start of his term.234

166. This Office was informed during the public hearing held on October 6 during the 177 Period of Sessions of the IACHR of the situation of journalist Patricia Campos Mello, a reporter with São Paulo’s Diario Folha. On February 11, 2020, Hans River do Nascimento, a former employee of one of the digital marketing companies that have been implicated, testified before a Parliamentary Committee on the Investigation of Fake News and made accusations of a sexual nature against Campos Mello, which she denied.235 Deputy Eduardo Bolsonaro, the president’s son, stated at that time that he had no doubt about what Hans River do Nascimento had alleged and then published it on social media.236 Later, President Bolsonaro repeated the accusations, saying the journalist wanted an exclusive about him at any cost, using a word that is a double entendre in Portuguese.237 The statements led to an online harassment campaign against the journalist, including misogynist threats and insults. Regarding this, during the aforementioned hearing, Campos Mello said that Internet memes had been circulating since February with her face pasted into pornographic images, and she was called a prostitute.238

167. The journalist had already been the victim of attacks, insults, and threats on social media after she reported on the 2018 election campaign on the use of WhatsApp for the purposes of spreading disinformation, as described by the Office of the Special Rapporteur in its 2018 Annual Report.239

168. According to the information available, on February 8 outside Alvorada Palace, President Bolsonaro criticized the media and made an obscene gesture toward the journalists.240 On March 4, the journalists asked the president about the country’s gross domestic product; he had a comedian impersonator answer for him. The comedian also handed out bananas to the journalists.241


169. On March 24, in a nationally televised speech, President Bolsonaro called COVID-19 a "slight cold" and accused "a large portion of the media" of spreading "feelings of fear" and disseminating "the perfect script (...) for spreading hysteria" in the country.242 Similarly, on March 28, the health minister at the time, Luiz Henrique Mandetta, met with journalists and said Brazilians should "turn off the TV a little bit," as sometimes it is "too toxic," adding that the media were "sordid."243

170. On April 22, President Jair Bolsonaro stated outside Alvorada Palace that he would not speak to the press because they "make everything up," calling them "scoundrels." He later posted a video with his comments on Twitter, reaffirming that the media "makes things up" and "exaggerates."244 Also, on May 5, President Jair Bolsonaro criticized the newspaper Folha de São Paulo, accusing them of being "scoundrels" and publishing lies. In response to journalists' questions about changes to the Federal Police, the president told them to "shut your mouths."245

171. As reported during the IACHR's October 6 public hearing, on May 18, the president of the Palmares Cultural Foundation, a public body whose mission is to promote the preservation of cultural, social, and economic values arising from the influence of black culture, posted a tweet attacking the journalist Pedro Borges, cofounder of the Alma Preta news agency, calling him as a "defender of bandits," "segregationist," and "racist."246

172. Additionally, during a live stream on YouTube on May 28, the president accused journalist Bianca Santana of spreading "fake news" after she published an article in UOL alleging a connection between Bolsonaro and the murder of Marielle Franco. The journalist denounced this situation, saying his statements put her and her three children in danger.247 Two months later, the president apologized for his statements.248 In response to the situation, the journalist filed a lawsuit for nonpecuniary damages, and on December 10, Judge César Augusto Vieira Macedo of the 31st Central Civil Court of São Paulo found in her favor and ordered the president to pay the journalist compensation of 10,000 reais.249

173. On August 23, President Jair Bolsonaro ignored a question from a Globo journalist about his wife during a visit to the Brasília Cathedral, answering instead with a grave threat of physical violence: "what I want is to shut your mouth with a beating."250 The IACHR Special Rapporteur at the time called it "the grossest example of hostility of a senior official toward the media and of exposing a journalist to violence."251

174. On August 24, President Bolsonaro posted a tweet sharing a video of journalist Maria Júlia (Maju) Coutinho covering a meeting on COVID-19 and saying that government authorities had not paid homage to the victims or their families. The president commented on the video: "Globo lying, as always." This led to the journalist receiving a large number of threats and insults on social media, with the hashtag "MajuMentirosa" used at least 33,000 times.252

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175. Additionally, on September 22, during the 75th UN General Assembly, in discussing the coronavirus pandemic, President Bolsonaro accused the Brazilian media of "politicizing the virus," "spreading panic among the population," and "bringing social chaos to the country." 253

176. On December 8, the Military Police of Rio de Janeiro posted a video on its twitter account criticizing the work of journalist Rafael Soares published in Extra and O Globo after the journalist published an article on the alleged increase in the use of munitions by the 15th BPM of Caixas. The video accuses him of having done a report that was "malicious," "irresponsible," "cowardly," "lying," and "unscrupulous," leading to numerous attacks on the journalist on social media. According to the information available, the next day, the lieutenant colonel who appeared in the video was removed from the position of spokesperson. 254

177. On December 18, President Jair Bolsonaro attacked the media during a speech at an event with the Military Police of Rio de Janeiro, calling them "liars," "a fake news machine," and "an international embarrassment," adding that the media are not "on the side of truth, honor, and the law." 255

B. Attacks, arrests, threats, and harassment perpetrated against journalists and media outlets.

178. In 2020, the context of hostility toward journalism and the free functioning of the media intensified in Brazil. Civil society organizations report that the stigmatizing statements by senior authorities have encouraged Bolsonaro's followers to carry out physical attacks against journalists, some of them while they were covering protests. According to the Federação Nacional dos Jornalistas (FENAJ), 428 incidents of violence against journalists and the media in general were documented during 2020, an increase of 105.77% compared to the previous year. According to the report, 152 cases of attempts to discredit the media were documented, and President Jair Bolsonaro was identified as the attacker in 175 cases. 257 The following are some of the cases reported to this Office of the Special Rapporteur during this year.

179. This Office was informed of multiple attacks and threats against journalists and their families using social media and instant messaging applications. Examples of this include the aforementioned cases of journalists Patricia Campos Mello and Maria Júlia (Maju) Coutinho. According to Article 19, 2020 saw an increase in online violence: of the 160 violations documented during the first half of 2020, 86 of them were digital in nature. 258

180. According to the information available, on April 19, demonstrations were held in multiple cities demanding military intervention, and journalists and media workers covering the events were subjected to aggression. 259 Likewise, on May 3, several journalists and photographers covering a demonstration in support of President Bolsonaro were attacked by individuals presumed to be his supporters. O Estado de S. Paulo photographer Dida Sampaio was twice knocked off a small ladder from which he was taking photos and physically and verbally assaulted. O Estado de S. Paulo driver Marcos Pereira, Folha de S. Paulo reporter Fabio Pupo, Poder 360 reporter Nivaldo Carboni, and photographer Orlando Brito were also attacked. 260
181. On May 14, representatives of the Journalist Professionals Union of Minas Gerais and of the NGO Casa del Periodista reported the appearance of graffiti in the Santa Efigênia neighborhood threatening journalists, including with expressions like "cooperate in the cleansing of Brazil, kill a journalist." 261

182. This Office of the Special Rapporteur was informed of numerous incidents of verbal aggression by followers of President Bolsonaro against journalists outside the Alvorada Palace. For example, on May 25, after President Bolsonaro criticized the media, a group of followers verbally harassed the journalists. 262 This situation has led several media outlets to suspend their daily coverage in front of Planalto Palace, 263 and several organizations have brought legal action asking the government to guarantee the safety of journalists covering Bolsonaro interviews there. 264

183. On September 29, Diário do Centro do Mundo journalist Pedro Zambarda received a message on his cell phone with a death threat. This was after the journalist published an article on the new "wave of hate" and the violent posts on social media by members of the extreme right. The case has been under investigation by the Civil Police of São Paulo after Zambarda filed a criminal complaint through a police report. 265

184. Additionally, on October 26, Romano dos Anjos, a journalist with the TV Imperial news program "Mete Bronca," was kidnapped from his home. The journalist, who covers corruption, crime, and the police, was found the next day with injuries to his legs and arms, and his vehicle had been set on fire. 266 According to information from the Federação Nacional dos Jornalistas (FENAJ), the investigations indicate that the crime is related to his professional activities. 267

185. On October 29, reporter Arcênio Corrêa and cameraman Stanley Mathias, with TV Integração, were attacked by two municipal employees while they were covering the pandemic in the city of Prata. According to the information available, a doctor tried to take Corrêa’s microphone and cell phone, and a supervisor grabbed him by the throat. 268

186. On November 2, reporter Bárbara Barbosa and cameraman Renato Soder, with NSC TV, were attacked at Campeche Beach, in Florianópolis, while reporting on failure to comply with regulations prohibiting crowds. A group of people threatened to break their equipment if they kept recording and took Barbosa’s cell phone, which she later recovered. 269

C. Subsequent liability

187. During 2020, the Office of the Special Rapporteur documented numerous judicial actions brought against journalists.

188. According to the information available, on January 21, the Ministry of the Public Prosecutor of Brazil brought a criminal complaint against the journalist Glenn Greenwald, director of The Intercept-Brasil, for his alleged participation in hacking a device, illegal communications interception, and criminal conspiracy. The charges were related to articles published by The Intercept in 2019 that were based on a series of

conversations between former federal judge Sergio Moro and prosecutors of “Operation Car Wash,” which had been leaked to the journalist by a confidential source. Prosecutor Wellington Divino Marques de Oliveira alleged the existence of messages exchange between Greenwald and Luiz Molição in which the journalist said he would delete the messages that had presumably been sent to The Intercept. Based on this, he alleged that the journalist “helped, incited, and guided” the group of hackers during the operation with the cell phones, suggesting actions "to make the investigations more difficult and reduce the chances of criminal liability.” Mr. Greenwald denied the accusations.270

189. On January 27, this Office of the Special Rapporteur and the United Nations Office of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent the State a request for information on the criminal complaint brought by the Office of the Public Prosecutor against Glenn Greenwald. They later published a press release expressing concern at the criminal complaint and recalling that journalists who investigate cases of corruption or improper actions by public officials must not be the target of judicial harassment or any other type of harassment in retaliation for their work.271

190. Lastly, on February 6, Federal Judge Ricardo Leite dismissed "for now" the criminal complaint against Glenn Greenwald based on a provisional decision of Federal Supreme Court Judge Gilmar Mendez establishing that the journalist cannot be investigated or found guilty by government authorities and administrative or criminal investigative bodies in connection to the “receipt, attainment, or transmission” of the information published in the media.272

191. Elsewhere, the Office of the Special Rapporteur was informed of the use of article 26 of the National Security Act—legislation enacted by the military regime that criminalizes slander and defamation—to prosecute journalists.

192. For example, on June 15, Minister of Justice André Mendonça announced on his Twitter account that he had asked to the Federal Police and the Office of the Attorney General to open an investigation into journalist Ricardo Noblat, a columnist with the magazine Veja, for printing a caricature showing President Bolsonaro with a brush in one hand and a red cross transformed into a swastika.273 Likewise, the Office of the Secretary of Communication used its Twitter account to accuse the journalist of committing the crime of false accusation.274

193. Also, on July 7, André Mendonça posted on his Twitter account that he would ask the Federal Police to launch an investigation against Folha de Sao Paulo journalist Hélio Schwartsman over an article headlined "Por que torço para que Bolsonaro morra,” in which he said he hoped President Jair Bolsonaro—who had COVID-19—died, as it would mean no longer having a government that minimized the pandemic or sabotaged measures to mitigate it.275 On August 25, Supreme Court of Justice Judge Jorge Mussi suspended the police investigation until the habeas corpus presented for the journalist was resolved on the merits, indicating that it was impossible to establish in preliminary review whether there was a political motivation or real or potential harm to the rights protected by the National Security Act.276

194. This Office was also informed of the launch of an investigation in August against lawyer Marcelo Feller, who, during a TV program, had cited a study finding that President Bolsonaro was responsible for the spread of the COVID-19 pandemic. Feller, who, during a TV program, had cited a study finding that President Bolsonaro was responsible for the spread of the COVID-19 pandemic.


some of the COVID-19 deaths in Brazil. This was after André Mendonça sent a request to the director of the Federal Police asking for an investigation of the lawyer for violating article 26 of the National Security Act.\textsuperscript{277}

195. Additionally, on June 19, the Federal Supreme Court ruled 9 to 2 that the codification of the criminal offense of desacato in article 331 of the Criminal Code did not violate freedom of expression guarantees. It therefore declared the Motion of Failure to Comply with a Fundamental Precept filed by the Conselho Federal da Ordem dos Advogados do Brasil (OAB) inadmissible.\textsuperscript{278}

196. On August 26, journalist Reinaldo Azevedo, a columnist with 
* Folha de São Paulo* and the host of a radio program on BandNews FM, was ordered to pay compensation of 35,000 reais after Deltan Dallagnol, the coordinator of the Operation Car Wash investigation in Curitiba, sued him for nonpecuniary damages, alleging that close to 50 articles published by the journalist in 2017 had affected his reputation.\textsuperscript{279}

197. On November 11, federal prosecutor Ailton Benedito announced on his Twitter account that he was bringing suit against the website Aos Fatos—which he called a "self-styled" fact-checking website—for having violated his fundamental rights. He also urged other people to take legal action to protect their rights, stating that fact-checking projects and their owners do not have immunity. This was after Aos Fatos named the prosecutor in a May 2020 report on spreaders of false information.\textsuperscript{280}

D. Censorship

198. On June 15, Judge Daniel da Silva Luz de Espumoso issued an order blocking the broadcasting of a report on irregular emergency relief payments, which was to be disseminated on June 16 on RBS TV, a Globo affiliate, granting a request by one of the individuals mentioned in the report. Globo appealed the decision, and it was upheld by the Rio Grande do Sul Court of Justice on June 19.\textsuperscript{281} In the end, Federal Supreme Court Justice Alexandre de Moraes authorized RBS TV to broadcast the report.\textsuperscript{282}

199. On August 28, Judge Leonardo Grandmasson Ferreira Chaves, of the 32nd Civil Court of Rio de Janeiro, ordered Jornal GGN and its editor, Luis Nassif, to retract 11 articles mentioning the bank BTG Pactual, in the framework of a defamation lawsuit. The articles in question reported certain irregularities like a lack of transparency and favoritism in procurement by BTG Pactual in a Banco do Brasil loan portfolio.\textsuperscript{283} Later, Judge Fernando Foch of the Third Civil Chamber of the Rio de Janeiro Court of Justice overturned the decision on October 9, finding Jornal GGN had a right to republish the withdrawal material and to publish new material, as well as guaranteeing BTG Pactual its right to reply.\textsuperscript{284}

200. On September 4, and at the request of Senator Flávio Bolsonaro, Rio de Janeiro Court Judge Cristina Feijó blocked TV Globo from including documents in its reports from the investigation into Flávio Bolsonaro for embezzlement of public funds and corruption. The president’s son announced this decision on his social media accounts, referring to the media outlet with the hashtag #Globolixo and accusing the media of


inventing things to smear him and the president. On September 16, Judge Fábio Dutra denied the motion submitted by Globo and upheld the censorship order by the lower court.

201. According to the information received by this Office, on November 10, elections courts censored the publication of a survey by DataFolha on the elections in São Paulo, granting the request for suspension filed by candidate Celso Russomanno. The decision was upheld on November 11 by elections Judge Marco Antonio Martin, of the First Electoral Zone. After DataFolha appealed to the Regional Electoral Tribunal, on November 11, Judge Afonso Celso da Silva authorized the publication, finding that it should be made clear that the survey was being challenged before elections authorities. The following day, the Regional Elections Court upheld the decision unanimously.

202. The Office of the Special Rapporteur documented multiple requests for removal of content in the framework of municipal elections. For example, on November 17, The Intercept reported that the judge coordinating electoral advertising for the Regional Electoral Court of Amazonas, Alexandre Henrique Novaes de Araújo, ordered removal of an article about Ricardo Nicolau, a candidate in the Municipality of Manaus on finding that it contained obviously false information. In an article published on November 13, The Intercept reported that the candidate had taken advantage of his access to the inside of the city’s municipal hospital to record images for his campaign dressed in white and visiting the beds of patients as if he were a doctor, and that one of his relatives had a close relationship with an elections judge.

203. Additionally, on November 27, the Ninth Chamber of Private Law of the São Paulo Court of Justice ordered the removal of two articles published on the websites Ponte Jornalismo and Alma Preta. In September, both sites had published articles on the situation of a woman of African descent who had been ordered to pay compensation to a company where she had worked in the past and remove posts from her social media accounts in which she alleged racial defamation by her former boss. The suit, which was filed by the owner of communications agency PR Newswire, had been ruled inadmissible by a lower court, but the decision was appealed and later modified by Judge Piva Neto.

204. According to the information available, on December 18, Judge William Costa Mello, of the 30th Civil Court of Goiânia, ordered the removal of an article from the website and Instagram account of Atilados, a project recently created by young professionals to encourage investigative reporting in the state of Goiás. The judge also ordered the removal of recordings disseminated via the YouTube account of Rádio Sucesso FM. The suit was filed by attorney and former judge Maria Luíza Póvoa Cruz after Atilados revealed in a report her connection to an alleged incident of real estate fraud. Although the lower court judge dismissed the lawsuit, Judge William Costa Mello granted the request, ordering the content removed and that they refrain from publishing any other news or information on the plaintiff.

205. On December 11, alternate judge Cleni Serly Rauen Vieira of the Third Civil Court of Florianópolis, Santa Catarina Court of Justice, ordered The Intercept Brasil and Notícias do Dia - ND Mais to edit the reports they had published about hearings in the case of Mariana Ferrer, in which she had supposedly been humiliated by a lawyer when she accused a businessman of statutory rape. The decision was issued in the context of a lawsuit brought against The Intercept, ND+, and journalist Schirlei Oliveira for non-pecuniary damages. The editors of The Intercept Brasil criticized the decision, saying that "controlling what the media


can publish is what dictatorships do.” Likewise, Abraji stated that direct interference in how news articles are written is unprecedented and extremely concerning.291

206. Additionally, as this Office documented in its 2019 annual report, on April 9, 2019, the Empresa Brasil de Comunicação (EBC), merged the country’s main public television channel, TV Brasil, with government broadcaster NBR (TV Nacional do Brasil), which was in charge of broadcasting the government’s official acts.292 According to the information available, this has led to an increase in cases of censorship of media outlets run by the EBC. Some of them are described hereinafter.

207. Regarding this, on September 21, the Federação Nacional dos Jornalistas (FENAJ), a committee of EBC employees and journalist unions, released a report stating that there had been 138 reports of censorship between January 2019 and July 2020. According to the investigation, the most censored topics were politics and human rights, including suppression of the coverage of the murders of Marielle Franco and Anderson Gomes and the violation of indigenous rights; bans on using organizations like Amnesty International and Human Rights Watch as sources; and editing of statements from the president and his ministers to minimize the seriousness of official statements.293

208. According to publicly-available information, on January 6, the program “Fique ligado” on TV Brasil broadcast a report on the exhibition “O Pasquim 50 anos” and removed a part mentioning the imprisonment of nine journalists for two months during the military dictatorship. The ECB later clarified that the material was removed to meet with the time requirements of the program, which features short and dynamic segments.294

209. According to reports from a number of civil society organizations, Agência Brasil officials were informed that they could not publish any reaction of authorities to Bolsonaro’s March 2020 speech in which he criticized the closing of schools and attacked governors and the media for the COVID-19 pandemic.295

210. In June 2020, a reporter with Radio Nacional was taken off the Health Ministry beat after asking a question about the appointment of military personnel and businessmen with no public health experience. The question, sent by the reporter to a WhatsApp group created by the Ministry to receive questions during press conferences, was not answered.296

211. According to the information available, on November 20, the EBC ordered Agência Brasil not to mention on its social media accounts the murder of João Alberto Freitas, a man of African descent who was brutally beaten and suffocated by security guards at a Porto Alegre supermarket.297

E. Access to public information

212. As reported by this Office in its 2019 annual report, there have been setbacks on the right to access to public information since January 1, 2019. This situation has worsened considerably in the context of the COVID-19 pandemic.

213. On March 23, the federal government issued Provisional Measure 928/2020 limiting the right to access to information in the context of the pandemic. Specifically, the order suspended the deadlines for responding to requests for access to information in cases where the public employees responsible were in

293 Fênaj. 2º Dossiê Censura EBC – Inciso VIII. September 2020.
295 Document sent to the IACHR by civil society in the context of a public hearing on Freedom of Expression in Brazil of the 177 Period of Sessions. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.
quarantine or teleworking and the request required they have in-person access, or when the request involved public employees or sectors involved in the measures to deal with the pandemic. Additionally, it placed a priority on requests related to the pandemic, and made it impossible to appeal denials. Several civil society organizations came out against the measure, saying it was disproportionate and opened up the possibility of improper omissions and request for access to information and violated the constitutional right to access to information in the public interest.

On March 26, Supreme Federal Court Justice Alexandre de Moraes preliminarily suspended the effects of article 1 of the provisional measure, finding that the article in question did not establish exceptional and specific situations that would prevent access to information, but rather changed the constitutional rule of publicity and transparency into the exception. In the end, on April 30, the full Supreme Federal Tribunal upheld this decision unanimously.

According to the information provided by the Fórum de Direito de Acesso a Informações Públicas, 95 requests for access to information sent to the federal executive branch between March 27 and April 27 received adverse responses that used the pandemic as a pretext. In 66% of the cases, the response indicated that it was not possible to provide the information because of the emergency, and in 22%, only part of the information was provided. Likewise, according to information published by ABRAJI, a Ministry of Health office denied at least 54 requests for access to information between March and September.

On June 5, the Ministry of Health announced that it would change the time at which its bulletins were released, releasing them to the media at 10 p.m. rather than 7 p.m. According to reports from several media outlets, the objective was to prevent the information from being broadcast on evening news programs. Regarding this, President Bolsonaro said "Jornal Nacional is out of material." Likewise, the Ministry of Health made changes to the methodology for disseminating data on the total number of people infected with and dead from COVID-19, deleting public databases. As a result of this change, the official website was taken down between the night of June 5 and the afternoon of June 6. The new website no longer showed the total number of infections and deaths and the infection rate and mortality per 100,000 residents and made it impossible to download the information.

On June 8, Federal Supreme Court Justice Alexandre de Moraes ordered the government to go back to fully disclosing accumulated data on infections and deaths on the Ministry of Health’s website. Lastly, on June 9, the Ministry of Health once again began disseminating detailed information on the pandemic through its website. Likewise, on June 12, the Ministry of Health launched a new interactive platform for disseminating information on cases and deaths broken down by region and municipality.

In response, several of the country’s media outlets—UOL, O Estado de S. Paulo, Folha de S. Paulo, O Globo, G1, and Extra—created a partnership to work together to obtain information directly from local health authorities from the different states so as to release information on a daily basis on how the pandemic was

303 STF derruba restrições à Lei de Acesso à Informação previstas em MP editada por Bolsonaro. April 30, 2020.
The coalition revealed on June 21 that only 8 of the 27 states included ethnic-racial identification indicators for persons infected and dead from COVID-19.\textsuperscript{310}

219. In view of information received on the potential violation of the duty of active transparency, on June 29, the Inter-American Commission sent the State a request for information on the measures taken to publicly document and disseminate information on deaths and infections from COVID-19 that could violate the duty of transparency and the right to health. In the letter, the IACHR expressed concern at the methodological change in the dissemination of information and the removal of 550,000 records of deaths and their causes from the "Transparency Portal" that had been recorded by the country's civil registry offices between 2015 and 2018. Regarding this last point, the State indicated that the "Transparency Portal" of the civil registry is maintained by the Associação Nacional dos Registradores de Pessoas Naturais (ARPEN), a private association.

220. Additionally, according to publicly available information, on June 8, the Office of the Comptroller General of the Union ruled to restrict access to certain public documents, establishing that legal memos issued by the different ministries to guide the president on whether to sign or veto bills passed by Congress would be considered confidential.\textsuperscript{312}

221. As reported by the media on August 31, an arrangement was organized through WhatsApp known as "Guardians of Crivella" where Rio de Janeiro municipal employees could stand guard outside the city’s public hospitals to block the media from working, preventing them from doing interviews and reporting on problems with the municipal health system.\textsuperscript{313} In response to the situation, the Public Elections Ministry of Rio de Janeiro filed suit on December 16 against the mayor of Rio de Janeiro and other officials for abuse of political power.\textsuperscript{314}

222. According to a report from Fórum de Direito de Acesso a Informações Públicas, the frequency of press conferences on the pandemic offered by the Ministry of Health slowed throughout the year. Between January 23 and May 23, the average time between press conferences was 1.6 days, and after that, it increased to 4.3 days. However, there was a period of 13 days between October 29 and November 12 during which no press conferences were held.\textsuperscript{315}

223. The report also indicated that the Ministry of Health website with the data on the distribution of COVID-19 tests saw significant delays in publishing information. For example, as of the beginning of December, the latest data available was from the week of August 16-22. On December 3, the information was updated through the week of November 15-21.\textsuperscript{316}

224. Additionally, on September 29, Economy Minister Pablo Guedes denied a request for information from the newspaper Globo regarding documentary support for the proposed administrative reform constitutional amendment before the National Congress. As grounds, the denial indicated that the subject remains pending final determination, and therefore could only be divulged once the procedure before Congress concluded.\textsuperscript{317}

blocked as a precaution, some states had difficulties accessing the federal government system and entering their numbers for at least eight days.318

226. The Office of the Special Rapporteur was informed of the exclusion of the indicators on police violence from the annual human rights report published by the federal government in June. The Ministry of Women, the Family, and Human Rights explained that the information was not released because of inconsistencies in how it was collected. On June 13, the Federal Office of the Public Prosecutor sent a letter to the minister asking for an explanation for the exclusion and saying the indicators are crucial for setting public policy on the issue and constitute a fundamental transparency instrument.319

227. Lastly, according to the information received by the Office of the Special Rapporteur, the lack of information on the pandemic was accompanied by statements by President Jair Bolsonaro that allegedly contributed to creating a climate of disinformation. President Bolsonaro referred to COVID-19 as “the flu” at least twice during a social media livestream and comments on radio and television in March.320 President Bolsonaro also defended and promoted the use of hydroxychloroquine as a COVID-19 treatment on several occasions.321

F. Freedom of expression and the Internet

228. The Office of the Special Rapporteur has been informed that a significant portion of the Brazilian population still does not have access to the Internet, which has seriously impacted access to information in general and information on health during the pandemic.322 A number of civil society organizations have indicated that persons of African descent, persons with few resources, indigenous persons, and quilombola communities are particularly affected.

229. According to the survey TIC Domicílios 2019, conducted by the Comitê Gestor da Internet no Brasil (CGI.br) and published in 2020, 28% of Brazilian households do not have access to the Internet, a figure that increases to 47% in rural areas. The survey also highlighted a second level of digital exclusion: although access to the Internet has increased, 75% of indigenous persons, 65% of “preta” persons, and 61% of “parda” persons only have access through their cellular phones. Likewise, only 48% of indigenous persons, 55% of “preta” persons, and 57% of “parda” persons have used a computer at least once in their lives.323

230. Regarding quilombola communities, the Coordenação Nacional de Articulação de Quilombos (Conaq) and Intervozes conducted a study on the right to communication and access to information. They reported that the majority of communities consulted receive information from social media and private television and radio channels, which offer a narrative that is distant from the lived reality in these communities.324

231. Regarding this, this Office has indicated that access to the Internet during the pandemic is of necessity central, as it is the perfect tool to continue with daily tasks that previously required in-person


322 Lack of Internet access has also impacted the right of access to education. According to the TIC Educação 2019 survey, 39% of students in urban public schools do not have a computer or tablet at home. Among private schools, the rate is 9%. See: https://cetic.br/pt/pesquisa/educacao/indicadores/


contact, in addition to being crucial for the exercise of civil, political, economic, and cultural rights. In the case of Brazil, civil society organizations have reported that quilombola communities, persons of African descent, and people who live on the outskirts or in rural areas have had difficulties getting emergency help from the government, as in order to receive it, people have to register using a cellular phone app.

On March 20, the National Telecommunications Agency and a group of telecommunications companies signed a public commitment to keep Brazil connected. According to the information received by the Office of the Special Rapporteur, on March 19, the organization Intervozes filed a petition before Anatel asking that the agency order a 90-day ban on the suspension of Internet connection services and on overage fees where people exceed the data limits in their contracts. This request was rejected by Anatel on June 22.

The Office of the Special Rapporteur has held that the principle of universal access to the internet "refers to the need to guarantee connectivity and access to the network infrastructure and other IT services that is universal, ubiquitous, equitable, truly affordable, and of adequate quality, all throughout the State’s territory." Likewise, the Twentieth Anniversary of the Joint Declaration: Challenges to Freedom of Expression in the Next Decade established that "the right to access and use the Internet [should be recognized] as a human right as an essential condition for the exercise of the right to freedom of expression.

Likewise, in a 2011 joint declaration on freedom of expression and the Internet, the special rapporteurs from the UN, the OSCE, the IACHR, and the ACHPR stated that "Giving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the right to education, health care and work, the right to assembly and association, and the right to free elections."

Additionally, on April 1, Bill 2630/2020, on “Internet Freedom, Responsibility, and Transparency” was brought before the Senate. After 152 proposed amendments, it was approved by the Senate on June 30. At that time, civil society organizations criticized the lack of discussion with stakeholders and pointed to the existence of grave risks to freedom of expression online.

On July 3, this Office of the Special Rapporteur joined the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in sending a letter to the State of Brazil regarding the bill. The experts pointed to certain provisions they viewed as particularly problematic with regard to the principles of the right to freedom of expression, in accordance with Brazil’s obligations

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under the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights. A number of the points called into question are reviewed hereinafter.

237. First, they indicated that although they have encouraged technology companies to detect and discourage the use of automated accounts for the purpose of distributing deliberately false information or when they are used in a coordinated manner to harass persons exercising their freedoms on the Internet, the generic prohibition of using automated accounts is a disproportionate restriction on the circulation of information. In their view, the law lacked clarity and was fraught with ambiguity.

238. They noted that the imposition of excessive charges for the creation and use of accounts in social networks or messaging services had a direct impact on the right to freedom of expression and access to information for users, and also affected the exercise of other fundamental rights, such as the rights to education, health, as well as access to online goods and services, at a crucial age of digitalization. They also stated that the obligation to link an account with an identity document and/or a mobile phone number directly undermines the right to anonymity in the legitimate exercise of freedom of thought and expression.

239. Likewise, the experts said the requirement to store data from the origin of "bulk" messages (traceability) could constitute an interference with the right to privacy as well as the right to freedom of expression. Lastly, they expressed concern at the provisions related to content moderation and responsibility of Internet service providers, which could make intermediaries responsible for the content that third parties share on their platforms, imposing a vague and ambiguous obligation that may lead to greater private censorship on the Internet.334

240. Later, the Special Rapporteur at the time held a meeting with Brazilian members of Congress on July 29 to offer recommendations on the bill based on inter-American standards on freedom of expression and disinformation in the context of elections.335

241. Also, the Associação Brasileira de Jornalismo Investigativo (Abraji) recorded at least 54 cases of journalists being blocked on social media by public authorities during 2020.336 On February 23, Education Minister Abraham Weintraub posted screen caps on his Twitter account showing that he had blocked journalists on the social network after they published reports on his possible exit from the ministry.337

242. In November 2020, two cases related to the blocking of journalists on social media by President Bolsonaro reached the Federal Supreme Court. On November 11, the Procurator General of the Republic sent a brief to the Federal Supreme Court on the case of lawyer Leonardo Medeiros Magalhães arguing that the president could block his followers on social media. However, on November 13, Judge Marco Aurélio Mello, the Rapporteur for the process, voted in favor of the present unblocking the lawyer on Instagram, arguing that the president could not take on the role of censoring statements on social media. In this case, the virtual voting was suspended on November 16.338 Additionally, on November 27, Federal Supreme Court Justice Cármen Lúcia voted in favor of President Bolsonaro unblocking journalist and former council candidate William de Lucca on Twitter. The justice concluded that the President had excluded a citizen from a public place of expression and discussion in which content of a governmental and administrative nature was released and stated that the representative cannot hide from the represented, nor exclude someone from the virtual arena who they do not like or whose interests they do not share.339

243. Elsewhere, on December 1, UOL journalist Rubens Valente revealed the existence of a report called the "map of influencers" on the behavior of certain persons on social media. The map included 44 journalists. The map was prepared by a communications company at the request of the Ministry of the Economy under a

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contract between the company and the Ministry of Science and Technology. The report classifies the journalists and "opinion leaders" as detractors, favorable, or neutral, and suggests different ways of relating to them based on their classifications.340

G. Government advertising

244. On January 15, Folha de Sao Paulo published a report indicating that the director of the Social Communications Secretariat of the Presidency of the Republic (hereinafter, "Secom"), Fabio Wajngarten, had directed the distribution of government advertising to clients of the company FW Comunicação e Marketing, of which he is a majority partner. According to the article, FW Comunicação e Marketing had contracts with at least five communications companies that receive funding for issuing government advertising, whose portion of the Secretariat's advertising budget had increased since the beginning of President Bolsonaro's term.341 In a follow-up report, Folha de Sao Paulo indicated that the head of Secom had had at least 67 meetings with representatives of FW Comunicação e Marketing clients and former clients, paying for at least 20 trips with public money.342

245. In response to these complaints, and at the request of the Federal Office of the Public Prosecutor of Brasilia, on February 4, the Federal Police opened an investigation into Secom head Fabio Wajngarten for passive corrupt practices, embezzlement, and promotion of private interests through public administration.343 For its part, the Public Ethics Committee of the Presidency of the Republic decided by majority on February 18 not to open an investigation into Fabio Wajngarten.344

246. On May 26, the Office of the Public Prosecutor opened an investigation at the request of the Federal Ombudsman's Office into Secom's alleged placement of advertising with websites aligned with the federal government.345 This came after Sleeping Giants Brasil revealed that Banco do Brasil had paid for advertising on the website Jornal da Cidade Online, which had published false news on the 2018 presidential elections.346

247. Likewise, the Court of Auditors of the Union (hereinafter “TCU”) conducted an audit and issued a finding during the virtual seminar on August 11 that there was a lack of technical and objective criteria for the distribution of government advertising by the federal government and that the pattern for allocating resources had changed to favor television channels openly aligned with the Bolsonaro administration.347

248. Additionally, on June 10, Provisional Measure 980 was published, making Secom part of the new Ministry of Communications.348 Multiple civil society organizations have expressed concern at the lack of public debate when making this decision and indicated that placing Secom under the Ministry of Communications could lead to even greater conflicts of interest when allocating resources.349 To head the new ministry, President Jair Bolsonaro named Fábio Faria, a deputy and the son-in-law of businessman Silvio Santos, the owner of SBT, the second largest over-the-air television network in Brazil.350

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343 BBC News Brasil. February 6, 2020. As suspeitas sobre Fabio Wajngarten, chefe da Secom de Bolsonaro investigado pela PF; O tempo.
As an initial measure, on June 25, Decree 10,405 was published, amending the country's broadcasting legislation. According to the information received by the IACHR during the 177th Period of Sessions, the decree weakened mechanisms of State control, thus making public control of concessions more difficult, encouraging the abusive use of them by political actors, and making the sale of concessions easier.

### H. Other relevant situations

On May 25, the Jornal da Cidade Online filed suit against Twitter, seeking the identification of the Sleeping Giants Brasil and Sleeping Giants Rio Grande do Sul account owners and the removal of the accounts. In May, the Sleeping Giants movement began publicly holding advertising companies responsible for combating "fake news" in Brazil, pressuring them to not advertise on websites that disseminate such content. According to the information available, the Jornal da Cidade Online has been repeatedly called to account over the truth of the information it publishes. Specifically, it was included in the National Congress Parliamentary Investigation Committee's investigation into fake news.

On May 27, Judge Anna Paula Caimi of the Fifth Civil Court of Passo Fundo partially granted an emergency injunction, ordering Twitter to turn over to prosecutors the records of the users who created the profiles and to preserve the data until the judicial process concluded. The decision rejected the request to remove the profiles, finding no abuse of the right to freedom of expression. Twitter appealed, which was rejected by Judge Gelson Rolim Stocker, of the Rio Grande do Sul Court of Justice. Twitter appealed again. In the framework of this process, a series of entities specializing in freedom of expression and the right to information asked to participate with an amicus brief. The request was rejected by the Rio Grande do Sul court in October.

In response, supporters of the Jair Bolsonaro administration launched a social media campaign against the companies who removed their advertising from websites aligned with the administration. According to a study conducted by Netlab of the Universidade Federal do Rio de Janeiro, a large portion of the accounts that participated were to some degree automated.

On December 13, two members of Sleeping Giants Brasil decided to reveal their identities in an interview with Folha de Sao Paulo.

In view of the facts documented during 2020, the Office of the Special Rapporteur calls on the State of Brazil to take special note that:

**Government authorities are called to maintain a discourse that favors public debate and freedom of expression.** The IACHR and its Office of the Special Rapporteur recall that public officials have the duty to ensure that their pronouncements do not cause harm to the rights of those who contribute to public deliberation by expressing and disseminating their thought, such as journalists, media outlets, and human rights organizations, and should heed the context in which they express themselves to ensure that their expressions do not amount to, in the words of the Court, “a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of its thought.”

**Attacks and aggression against the media violate the right to freedom of expression in both its individual and collective dimension and cannot be tolerated in a democratic society.** Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "[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."

257. **The use of criminal mechanisms to punish speech on matters of public interest, especially speech related to public officials, is incompatible with inter-American standards.** The IACHR has held that "[t]he sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of, and even offensive to those who hold public office or are intimately involved in the formation of public policy." Therefore, according to Principle 10 of the Declaration of Principles, "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." In addition, the IACHR has held repeatedly that the application of the criminal law to punish expression referring to public officials is disproportionate when involving protected speech, such as information or expression about matters of public interest, and violates the right to freedom of expression.358

258. **The inter-American human rights system explicitly prohibits prior censorship.** 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."

259. **Government transparency and accountability strengthen democratic systems.** Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, "Access 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." Taking into account the principle of maximum disclosure, the law must guarantee access to public information that is effective and as broad as possible, and the exceptions must not, in practice, become the rule. Additionally, the exceptions regime must be interpreted restrictively, and any questions must be resolved with transparency and access.

260. **Freedom of expression applies to the Internet the same as to other media outlets.** The Office of the Special Rapporteur recalls that human rights—and in particular, the right to freedom of expression—have found in the Internet unique tool for extending their enormous potential to broad sectors of the population. The importance of the Internet as a platform for enjoying and exercising human rights is directly linked to network architecture and the principles governing it, including the principle of openness, decentralization, and neutrality.359

261. **The distribution of government advertising must be guided by democratic criteria and preestablished procedures that are public and transparent and that guarantee equal opportunity.** Article 13(3) of the American Convention establishes: "The 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." Likewise, the Inter-American Commission on Human Rights' Declaration of Principles on Freedom of Expression states in its Principle 13 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."


CANADA

While Canada is one of the safest States in which to practice journalism, the Office of the Special Rapporteur observed repeated obstructions to the work of the press during 2020, especially in relation to indigenous issues. The Office of the Special Rapporteur also notes the national Supreme Court rulings interpreting so-called “anti-SLAPP” laws, which aim to prevent or mitigate the impacts of strategic lawsuits brought by individuals or corporations to discourage or preclude speech about matters of public interest that could harm their reputation.

A. Progress

The Office of the Special Rapporteur was informed that, in June 2020, the criminal mischief charge against journalist Justin Brake related to his 2016 coverage of an indigenous protest at the Muskrat Falls hydroelectric plant for the TV channel The Independent was dismissed. The journalist’s trial had been scheduled to begin in July. According to information provided by the media, this decision marked the end of a nearly four-year legal battle for Justin Brake, who faced both civil and criminal charges after entering and staying for a few days at the Muskrat Falls hydroelectric plant to report on an occupation of the industrial zone by indigenous nations. The civil charges were dismissed in 2019 by the Newfoundland and Labrador Court of Appeal, which underscored the importance of ensuring the fullest availability of independent information on Aboriginal issues, including Aboriginal protests. In the criminal proceeding, the charges of contempt of court had already been dropped; only the criminal mischief charge, which carried a penalty of more than $5,000, remained.

The Office of the Special Rapporteur additionally learned that on September 10, the Supreme Court of Canada issued two complementary rulings on Ontario’s anti-SLAPP (strategic lawsuit against public participation) law: Bent et al. v. Platnick, et al. and 1704604 Ontario Ltd. v. Pointes Protection Association, et al. This is the first time that the Supreme Court has interpreted this type of legislation, which aims to prevent or mitigate the harmful and chilling effects of SLAPPs, or “strategic lawsuit against public participation,” on speech in the public interest. In these decisions, the Court established principles for the interpretation of Ontario’s anti-SLAPP legislation and stressed the importance of protecting freedom of expression in matters of public interest. It further held that the law can be invoked in any proceeding involving speech in the public interest and not just in defamation suits.

B. Restrictions on and criminalization of the practice of journalism


The Office of the Special Rapporteur was informed that, on February 6, 2020, the Royal Canadian Mounted Police reportedly obstructed the work of journalists attempting to cover police operations in indigenous protest camps in northern British Columbia, where Wet’suwet’en land defenders have been resisting a court order to vacate their land and unblock roads for the construction of the Coastal GasLink pipeline project. In addition to preventing them from filming or photographing the protests and arrests, the police reportedly threatened members of the press with arrest, ordering them to leave the scene. According to reports, when they refused to leave, Vice News freelance writer and photographer Jesse Winter and an unnamed Mutual Aid Media filmmaker were placed in police vehicles against their will and taken to a fast-food restaurant away from the protests. The journalists said they were not formally arrested or charged with any crime.

Police also reportedly detained Jerome Turner, a reporter for the local news website Ricochet, near the protest camp and held him for eight hours. The officers argued that the journalist was within the media “exclusion zone.”

In the wake of public reaction to the limitations on journalistic work, a police spokesman issued a statement saying that the Royal Canadian Mounted Police “respects the fundamental freedom of the press” and that “the RCMP will make every reasonable effort to allow media personnel to get as close as possible to the enforcement area.”

On February 24, Royal Canadian Mounted Police officers also arrested U.S. documentary filmmaker Melissa Cox while she was covering the blockade by Wet’suwet’en land defenders of a railroad track near New Hazelton, British Columbia, in opposition and resistance to the construction of the natural gas pipeline. The reporter was capturing the events for her next documentary, Yint’aah. According to a statement released by her colleagues and producers of the documentary, Melissa Cox was wearing her press credential from the National Association of Press Photographers, which was clearly visible. Her colleagues reported that the police used excessive force to arrest the documentary filmmaker as she was filming the arrest of Gitxsan’s hereditary chief, Spookw.

On March 16, the Committee to Protect Journalists (CPJ) expressed concern about the repeated harassment of journalists covering the protests against the construction of the gas pipeline and urged police authorities to allow them to do their job and report freely on matters of public interest.

The Office of the Special Rapporteur was also informed that, on August 21, Canadian immigration authorities at Vancouver International Airport denied entry to Kristian Lindhardt, a Danish journalist working on an independent documentary about indigenous resistance to the construction of the Trans Mountain pipeline in British Columbia. Lindhardt, who also works for the Danish Broadcasting Corporation and other media, was planning to do a radio report on the subject. Upon his arrival at the airport, guards from the Canadian Border Services Agency interrogated him for about four hours, mainly about whether he qualified as an essential worker during the COVID-19 pandemic. Despite presenting his journalistic credential from the National Association of Press Photographers, which was clearly visible. Her colleagues reported that the police used excessive force to arrest the documentary filmmaker as she was filming the arrest of Gitxsan’s hereditary chief, Spookw.

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365 Committee to Protect Journalists (CPJ). March 16, 2020. CPI calls on Canadian police to allow journalists to freely cover matters of public interest.

credentials—among other documents and forms—he was forced to board a flight back to Copenhagen the next day. Various local and international journalists’ organizations and unions condemned the incident and stressed that the pandemic should not be used to hinder journalistic work. In a statement sent to the media, the Canadian Border Services Agency said that journalists are allowed into the country “if they can prove there is a requirement for them to be physically in Canada,” and that the decision is made by border officials on a case-by-case basis.

271. On September 2, Ontario police brought criminal charges against indigenous journalist Karl Dockstader for allegedly defying a court order and damaging property after he had spent several weeks covering demonstrations by the Six Nations of the Grand River indigenous group against the McKenzie Meadows housing construction project in Caledonia, Ontario. According to information received by the Office of the Special Rapporteur, Dockstader has been covering the demonstrations since July for a program on indigenous affairs which he co-hosts on the Niagara regional radio station 610 CKTB. The program focuses on local indigenous issues in Caledonia, which includes the Six Nations of the Grand River, a community with a long history of land disputes. The reporter is also said to have camped out at the site from August 23-29 to report on the protests. When he went to the Ontario Provincial Police Headquarters at the request of the officers, Karl Dockstader was arrested. According to the information available, the court order barred him from communicating with the owners or employees of Foxgate Developments, the company behind the construction project.

272. Two other journalists who had covered these demonstrations were also arrested on the same charges. Courtney Skye, a media commentator and indigenous policy researcher at the Yellowhead Institute at Ryerson University in Toronto, was arrested on September 3 and barred from communicating with the project developer. In addition, Starla Myers, an indigenous journalist and reporter for Real People’s Media, was arrested on September 16, 2020. According to the media outlet where she works, Myers was also barred from returning to the site or communicating with Foxgate employees. They also alleged that the journalist had not signed the summons to appear in court.

C. Freedom of expression on the internet

273. In August 2020, the Ontario Superior Court granted PEN Canada permission to intervene in the Canadian Constitutional Foundation’s (CCF) 2019 constitutional challenge to section 91 of the Canada Elections Act. The law makes it a crime to attempt to influence an election by making or publishing certain false statements about candidates or “public figures associated with a political party” during elections. It imposes the penalties of a fine of up to $50,000 and imprisonment of up to five years. “Free speech is the cornerstone of any democratic society, and fake news is a real and serious problem,” said Brendan de Caires, Executive Director of PEN Canada. “Our intervention in this case will assist the Court in understanding how Canadian law recognizes freedom of expression in the context of the growing threat of fake news and the potential future impacts on the democratic process.” In the lawsuit filed last year, the CCF argued that the

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prohibitions and penalties provided for in the Electoral Law constitute a violation of the right to freedom of expression under the Canadian Charter of Rights and Freedoms, making it unconstitutional. They also contend that it is overly broad and an ineffective weapon against fake news.

274. During 2020, the Office of the Special Rapporteur also became aware of several instances of court-ordered internet domain blocking. In November 2019, Canada’s Federal Court had issued the first nationwide “pirate” site blocking order, directing the country’s major internet service providers to block several domains whose content allegedly violated copyright law. The order was requested by the media companies Bell, Rogers, and Groupe TVA. In January 2020, the companies asked the court to amend the order to block additional domains. Their request was granted, resulting in the blocking of 11 other domains and sub-domains. The Office of the Special Rapporteur learned that the multimedia companies have asked the court several times to change the list of blocked sites, so between June and July several sites were unblocked and new ones were added to the list. The B.C. Civil Liberties Association has stated that the constitutional right to freedom of expression "hangs by a thread" due to this court battle.376

275. The Office of the Special Rapporteur also took note that the Law Commission of Ontario (LCO) published its final report on “Defamation Law in the Internet Age" in March. The LCO is a legal reform agency whose mandate focuses on improving access to justice and promoting legal reform in Ontario. This final report is the end product of a four-year process in which the LCO considered how best to reform Ontario’s defamation law in response to rapid technological advances. The report notes that “the internet is now the arena in which much, if not most, defamation occurs," which "has had an unprecedented impact on the two core values underlying defamation law: freedom of expression and protection of reputation.” After examining a wide range of substantive and procedural issues, the document makes 39 recommendations aimed at updating defamation laws, promoting access to justice, and involving internet intermediaries in the handling of defamatory speech on the web. Some of the main recommendations include (a) repealing the Libel and Slander Act and replacing it with a new Defamation Act; (b) imposing positive obligations on internet intermediaries, such as taking down allegedly defamatory content if the person who posted it does not respond within two days of receiving notice; (c) providing that actions for defamation may only be brought against a party who has performed an "intentional act," eliminating the potential liability of intermediaries who merely host the speech but play no "active" role; (d) establishing a sort of government-created “online dispute resolution” tribunal, which provides a quick and inexpensive means of resolving defamation claims and other forms of online harm, as an alternative to costly and time-consuming court proceedings.

D. Academic freedom

276. In October, Verushka Lieutent-Duval, a professor in the Faculty of Arts at the University of Ottawa, was suspended after using a term considered racist while teaching a virtual class on art and sexual identities. In explaining the concept of "reappropriation”—how some communities have appropriated terms used against them in the past to give them a new meaning—the professor cited the example of the word "nigger," considered the worst insult to the Black population because of its past linked to slavery, but currently used in some community circles, such as hip-hop.378

277. Verushka Lieutent-Duval’s suspension sparked a protest at the university, as well as an extensive national debate. A group of professors at the University of Ottawa published a letter in the professor’s defense, emphasizing that "it is important that university administrations, while helping to uncover and abolish all forms of systemic racism, ensure that the transmission of knowledge, the development of critical

thinking and academic freedom is protected." Similarly, the Canadian Association of University Professors described the action taken by the University of Ottawa as worrying, noting that the professor’s words were spoken in the context of a class, were related to the subject matter being studied, and had a pedagogical intent, and were therefore protected by academic freedom. “A higher education institution does not fulfill its mission if it forbids ideas expressed in the classroom, however controversial they may be,” they underscored. For his part, Quebec’s Prime Minister François Legault expressed concern about the administrative measure taken by the university, warning that it violates academic freedom and could become a “slippery slope.”

278. Based on the events documented in 2020, which mainly include restrictions on journalistic coverage, judicial measures that would appear to clash with the open, plural, and decentralized nature of the internet, and the undermining of academic freedom, the Office of the Special Rapporteur wishes to recall that:

279. **Journalism is the primary and principal manifestation of freedom of expression and States have a positive obligation to provide a safe working environment for the press.** In this regard, the Inter-American Court has also held that “it is essential that journalists […] should enjoy the necessary protection and independence to exercise their functions comprehensively, because it is they who keep society informed, and this is an indispensable requirement to enable society to enjoy full freedom.” In the context of social protests, journalists, videographers, photojournalists, and other media workers covering the protests play a key role in gathering and disseminating information, including on the actions of the security forces and potential violence. As the IACHR has stated, freedom of expression protects the right to record and disseminate any incident. For all these reasons, the State must provide the press with the highest level of protection so that it can carry out its work freely and keep society informed about matters of public interest.

280. **Freedom of expression applies to the internet in the same way as it does to all media.** This Office reiterates that restrictions on freedom of expression on the internet are only acceptable when they comply with the international standards that provide, *inter alia*, that they must be prescribed by law, pursue a legitimate aim recognized by international law, and be necessary to achieve that aim (the “three-part” test). They further emphasized that “[m]andatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure—alike 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.”

281. **Academic freedom is fundamental to the strengthening of democracy.** The IACHR has emphasized the vital role of universities as centers of critical thinking and the exchange of ideas. On this subject, the U.N. Committee on Economic, Social and Cultural Rights has stated that “the right to education can only be enjoyed if accompanied by the academic freedom of staff and students.” It added that “[m]embers of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfill their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights (…)"

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Social demonstrations, against the backdrop of restrictions triggered by the COVID-19 pandemic, were also one of the defining features of the year in Chile. Once again, the Office of the Special Rapporteur documented the excessive use of force during these demonstrations, resulting in members of both the security forces and violent groups being injured and detained. Victims included local and international reporters and camerapeople.

This Office also tracked the various impacts of the COVID-19 pandemic on the country. Of particular concern are the barriers to accessing public information on the management of the health crisis itself and the numbers of people infected. There were also reports of obstacles to journalistic practice, vulnerability of media professionals to the pandemic, mass layoffs in different public and private media, and the closure of print media outlets.

The Office of the Special Rapporteur has also taken note of at least two legal initiatives that seek to curb the spread of so-called fake news: one in the context of elections and the other in connection with managing health crises.

A. Progress

In a July 6 decision, the Supreme Court denied an amparo action [petition for a constitutional remedy] that had been filed against Red de Televisión Chilevisión S.A (CHV) after the April 14, 2019 airing of “The History of Kidnapping under Dictatorship,” which reported on a series of alleged irregular adoptions that took place in the 1970s and 1980s. The Third Chamber of the Supreme Court concluded that in this case freedom of information prevailed over the right to honor. The action had been filed by Teresa Edenholm Elmgren on behalf of her mother Anna-María Elmgren Söderquist who, from Chile, had allegedly helped in the adoption process of several children during the dictatorship and who, according to the plaintiff, had been defamed in the report. In its ruling, after highlighting the role of freedom of expression, the Supreme Court noted "[that], in the instant case, the respondent has merely produced and aired a television program on the investigation of allegedly irregular adoptions, currently before the respective criminal court, in which reference is made to the plaintiff. This case, then, involves the disclosure of a publicly relevant fact. As such, freedom of information takes precedence over the right to honor, given the citizens’ right to know about those publicly relevant events and acts, which stems from the importance or general significance of the facts themselves.” The Court added, “[c]onsequently, interference in the sphere of another’s honor is justified on the grounds of public interest, by the public relevance of the matter; precisely because, in such cases, the right that has been infringed (another’s honor) is considered to be of lesser value than society’s right to form an opinion on the denouncing of potentially criminal acts (SCS Case N°s 18.748-2018; 17.732-2016 & 37.505-2015).”

On July 17, a petition for a constitutional remedy that was filed in November 2019 against the Minister of the Interior, Gonzalo Blumel, and the Chief of the Chilean National Police (Carabineros de Chile),

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Mario Rozas, for the indiscriminate use of buckshot during the social protests, was admitted. The action was filed by the Chilean Association of Journalists, the Medical College, the University of Chile Student Federation, and the Pontifical University of Chile Student Federation, among other organizations, in the midst of mass protests in which hundreds of people were injured (especially with eye injuries) as a result of the indiscriminate firing of bullets and buckshot by the Chilean police. The petition sought an immediate halt to the use of shotguns using steel, lead, or rubber bullets or buckshot and an order for the police to suspend the use of these weapons against demonstrators.  

287. In addition, the Office welcomes the preparation of the report “Guidelines for Quality Communication in a Pandemic” that the University of Chile submitted to the Social Roundtable led by the Ministry of the Interior. The document, written by journalists and academics, reflects the public’s need for true and accurate information, and establishes criteria and measures for different stakeholders including authorities, public and private organizations, the media, and citizens. The authorities are given the task of communicating a strategy for dealing with the crisis and providing timely information on an ongoing basis. It calls on the media to seek greater pluralism as well as “orienting coverage toward the needs of audiences, clearly establishing ethical and social responsibility criteria with vulnerable groups, communicating with a gender perspective and local relevance, delivering specialized information that is accessible to the general public, and preventing the risks of sensationalism and the stigmatization of specific groups.”  

288. On January 13, El Mercurio of Antofagasta was attacked by a group of masked individuals. The newspaper was ransacked, its equipment destroyed, and the premises set on fire. A group of employees who were on site took shelter and had to put out the fire. The newspaper had already been attacked at least three times in recent months.  

289. The Office of the Special Rapporteur received information about an alleged case of intimidation and threats against journalist Angelo Auil, a correspondent for Cooperativa and member of the Regional Council of Arica and Parinacota, after he published an article about alleged wrongdoing in the issuing of safe passes needed for travel during the quarantine. According to the information received, the journalist’s mother, who is an employee of the Ministry of Housing and Urban Development, received a warning call from the regional housing secretary complaining about the article published by her son.  

290. On July 13, journalist Nicolás Poblete Riesco of the digital media outlet Capsular reported that he had been subject to intimidation by Luis Emilio Pino, a property developer on the coast of Valdivia and owner of the company Pilolcura Limitada y Agrícola Curiñanco Ltda. Pino filed a petition for a constitutional remedy against Poblete after the journalist published a video report in which Lafkenche communities denounced alleged “irreparable” environmental harm to their surroundings. According to the businessman’s complaint, the journalist has published “totally biased” information. Poblete Riesco considered the legal action to be an attempt to harass and persecute journalists.  

291. The Office was also informed about alleged cyberattacks on media outlets. For instance, Chile Today News reported a cyberattack against it that began on October 3 and brought down its website for at least 10 days. On October 15, the news portal of La Razón suffered a cyberattack that prevented them from accessing content for several hours until the paper’s technical staff was able to restore the server.  

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395 La Razón. October 25, 2020. La Razón denuncia un ataque informático a su sitio web de Noticias.  

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292. The Office of the Special Rapporteur received information about threats and intimidations directed at journalists and the media in the days leading up to the national plebiscite. Carolina Trejo Vidal, a foreign correspondent and journalist for various community and academic media, as well as the leaders of various organizations, received a pamphlet allegedly from an ultra-right-wing group that contained personal information and accused them of treason. Claudio Salinas, Marcelo Osses, and Juan Guillermo, members of Radio Plaza Dignidad, were also threatened, as was Monica Pizarro of Radio 1 de Mayo in La Victoria. Dutch correspondent Boris van der Spek of Chile Today News received explicit death threats via email from an unknown person.

293. In Iquique, journalist Gonzalo Oñate received threats via social media during the October 25 plebiscite. The fake account from which the threat was made published personal information and the number of the polling station where he was assigned to vote that day.

294. The Office of the Special Rapporteur was informed of various obstacles to the work of the press during the coverage of the national plebiscite on October 25. These obstacles reportedly ranged from attempts to deny press credentials to independent journalists, to the absence of lists of media outlets authorized to enter polling stations, to the banning and expulsion of journalists from polling stations and during the vote count, and even the detention of some media workers. One journalist was arrested in Aysén and his mobile phone was also confiscated.

295. On November 5, journalist Jenny Pérez, from the German channel Deutsche Welle, reported that she had been threatened with death after publishing an interview with a political leader. According to the information available, the journalist is said to have questioned "his highly apocalyptic outlook on the likelihood of a new Chilean constitution."

C. Social protest

296. During 2020, the country witnessed the continuation of demonstrations that first started in October 2019 in response to fare increases in the public transportation system. However, due to the crisis caused by the COVID-19 pandemic, social demonstrations have been restricted by general measures such as quarantines and a ban on gatherings.

297. During the coverage of the protest of students from the Liceo Bicentenario Mercedes Fritis Mackenney in Atacama, who were demanding the elimination of the University Selection Test (PSU), police officers reportedly arrested photographer Israel Chávez of Diario Atacama and assaulted independent journalist José Manuel Gutiérrez. According to reports, police officers hindered the work of the media by putting up shields. A local prosecutor reportedly told the media that Chavez would be released, but that he could be summoned at any time by the Prosecutor's Office to provide details on the case. The prosecutor also reportedly said that there was no evidence that the photographer had been injured. At the same event, equipment belonging to cameraman Felipe Piñones of Desierto de Atacama Televisión was also damaged.


298. On March 8, the Association of International Press Correspondents in Chile—which represents journalists based in Chile who work for international agencies and media—denounced attacks on the foreign press during the protests that have been taking place throughout the country since October 2019. The statement notes that on March 6 two journalists were injured during a protest. One of them was French Press Agency (AFP) cameraman Jaime Esquivel, who was beaten and pepper-sprayed by a group of eight people after refusing to stop recording the events.403 Marcelo Hernandez, then a photographer with the ATON Agency, was also hit in the face by a tear gas canister, resulting in an eye injury.404

299. On April 26, police arrested Damian Trujillo, a cameraman with the Prensa Latina Latin American News Agency, while covering a protest in the Plaza de la Dignidad—popularly known as Plaza Italia—in Santiago.405 At the same time, journalist Grimanesa Riquelme was also harassed and verbally abused by a police officer who threatened to arrest her.406 Riquelme had asked Trujillo to film police officers who were trying to obstruct her work, and almost immediately six other officers jumped on him, forced him into a van, and took him into custody. A TeleSUR correspondent managed to capture the arrest on video and posted it on social media.407 The cameraman was taken to the 19th Police Precinct, located in the municipality of Providencia, where he was detained for approximately three hours and then released. The cameraman was visibly wearing his credential and had a valid safe-conduct pass to be in the square.408

300. On May 1, police personnel detained media workers who were covering a live Labor Day demonstration in Santiago’s Plaza Dignidad and tried to block the protest with water cannons.409 Demonstrators and union leaders were also reportedly arrested at the same event. At least 57 people were reported to have been arrested.410 The Association of International Press Correspondents (ACPI) reported that 15 media professionals were “put in a police van and taken to the 9th Police Precinct in Providencia.”411 Later, after the demonstration was over, at least five other reporters were arrested—one of whom had already been arrested hours earlier. According to the Chilean Observatory on Communication Rights, Señal 3 de La Victoria responded to these events by filing a petition for a constitutional remedy with the Santiago Court of Appeals, which was dismissed on May 29.412 General Enrique Bassaletti, Chief of Police for the Eastern Metropolitan Zone, justified the police action, saying that “Not all of them had their credentials and cell phones, and therefore it was appropriate in this case to make sure that they were indeed journalists.”413 However, the journalists maintained that they did have valid credentials and safe-conduct passes, and that they performed their work under the proper health conditions as required during the COVID-19 pandemic;414 some videos and images reportedly show the journalists explaining to the officers that they had the right to be in the streets because of their journalistic profession.415

301. Some of the detained journalists were representatives of international media, including cameramen Jaime Esquivel of Agence France Presse, Luis Hidalgo of the Associated Press, and Ivan Alvarado of Reuters; others were members of the local media, such as journalist Rodrigo Pérez and producer Alejandra Pacheco of TVN (Chilean public television), and journalists Francisca Sandoval Astudillo, Gabriel Cardozo Silva, Gerardo

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410 ANRed. May 1, 2020. *Carabineros de Chile detienen a reporteros en actos de 1 de mayo*.
411 Diario Uchile. May 1, 2020. *Periodistas y dirigentes son detenidos durante manifestación por el Día del Trabajador*.
412 Chilean Journalists’ Association. May 1, 2020. *Colegio de Periodistas denuncia que el Estado de Chile viola la libertad de prensa y el derecho a la información*; ANRed. May 1, 2020. *Chile: 15 comunicadores fueron detenidos por cubrir protesta en Plaza Dignidad*.
413 CNN Español. May 1, 2020. *Protesta en Chile termina con 57 detenidos, incluida una persona que dio positivo a coronavirus*.
414 CNN Español. May 1, 2020. *Protesta en Chile termina con 57 detenidos, incluida una persona que dio positivo a coronavirus*.
Cortes, and Gonzalo Barrido of Señal Tres La Victoria, among others.416 Some of them were even able to make cell phone recordings as they were arrested and placed in the police vehicle.417

302. That same day, in demonstrations organized in Aníbal Pinto Square in Valparaíso, police arrested journalist Danilo Ahumada, a reporter for UPLA TV (a television channel of Playa Ancha University) who also serves as regional president of the Chilean Journalists’ Association. Ahumada was covering these demonstrations.418 Although he was later released, the Public Prosecutor’s Office and the Valparaíso Regional Government filed a criminal complaint against him for disorderly conduct.419 Also in Valparaíso, a reporter from CNN Chile was attacked with pepper gas and several reporters had water cannons directed at them at close range.420 A photographer from La Estrella de Valparaíso was detained.421

303. The Deputy Secretary of the Interior, Juan Francisco Galli, reportedly justified the police actions against the press during the May 1 demonstrations on Radio Cooperativa. He is reported to have said, “If the press fails to comply with the rules of public order, it is appropriate.” In response to these statements, the Chilean Journalists’ Association sent a letter on May 8 to the ministry’s spokesperson, demanding clarification of “the executive’s position on the role and practice of the press.”422

304. On May 12, journalist Dino Pancani was arrested and taken to the Peñalolén police station.423

305. On May 15, police officers allegedly assaulted journalist Marc Dezinord while he was covering a gathering of workers demanding their wages from a food company.424

306. On the night of May 22, Victor Torres, a news photographer from Señal 3 de La Victoria, was detained in the municipality of Pedro Aguirre Cerda while investigating a distinctive smell of tear gas that numerous neighbors were complaining about on social media. He was intercepted by police officers who—despite the fact that he had a safe-conduct pass—arrested him, threw him on the floor of their van, and took him to the police station. He was beaten and his work tools were damaged. At the police station he was handcuffed and all his belongings were confiscated.425

307. On the night of May 29, a cameraman from the TeleSur crew was allegedly subjected to an identity check by police, which was intended to prevent him from documenting a protest that was taking place in the Lo Hermida neighborhood, in the Metropolitan region. The police officer reportedly failed to return the cameraman’s identification card to him.426

308. On July 22, during coverage of protests against the decision to grant house arrest to Martin Pradenas—a man accused of raping a young woman named Antonia Barra—Ufromedios cameraman Carlos Morales Cárdenas was reportedly arrested and assaulted by police in Temuco, in the region of La Araucanía. As recorded by other media, Morales Cárdenas was violently detained while doing his job by a group of police

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421 Soy Chile. May 1, 2020. Credencial en mano carabineros detiene a reportero gráfico de La Estrella de Valparaíso.
officers who also destroyed his equipment and arrested him on charges of disorderly conduct. There are photos that show the cameraman’s bloodied face.\textsuperscript{428}

309. Two reporters who were covering a protest near Plaza Italia were reportedly arrested by police on July 31. One of the detainees was broadcasting live for Radio Plaza de la Dignidad, which allowed the incident to be recorded.\textsuperscript{429}

310. The Office of the Special Rapporteur was informed that at least 28 people were arrested during the September 4 demonstrations in Plaza Baquedano (Plaza Dignidad) in Santiago, including “several journalists.” According to the information available, law enforcement officers dispersed the demonstration with water cannon trucks and made random arrests. People were allegedly forced into police vans while the Prosecutor’s Office authorized the arrests. According to reports, the police beat and pepper sprayed members of the press and arrested Prensa OPAL journalist Gianco Raglianti in an incident that was recorded.\textsuperscript{430} The magistrate’s court reportedly found the journalist’s arrest unlawful based on videos of the event. The NGO Defensoría Popular announced that it would file a complaint against those involved.\textsuperscript{431}

311. A group of popular and independent media released a statement on September 21 denouncing police “persecution and repression” of popular journalists and foreign correspondents. In the statement, the group noted that “since before October 18, 2019, but with greater intensity after the beginning of the popular revolt, independent media workers have been detained, gassed, beaten, and subjected to abuse by the militarized police of the Chilean State.” The statement mentions the cases of Damián Trujillo, of Prensa Latina-AhoraTV; Víctor Torres, of Señal 3; Milko Caraccio, of Radio de Acción (San Antonio); Samuel Muñoz, of Diario el Ithüe; Carlos Escobar, of Radio Plaza de la Dignidad; and Gianco Raglianti, of Prensa OPAL, who, according to the statement, “have been arrested in recent weeks, handcuffed, and subjected to abuse.”\textsuperscript{432}

312. On September 25, 16 people were also reportedly arrested in Plaza Baquedano (Plaza Dignidad) during a protest by health workers and nurse technicians (TENS), including photojournalist Daniela Parra. Police reportedly dispersed the demonstration that day with tear gas and water cannons.\textsuperscript{433}

313. The Office of the Special Rapporteur was concerned about reports that a 16-year-old boy had been pushed by a policeman from the Nono Bridge into a very shallow part of the Mapocho River during the October 2 demonstrations. According to the information available, the young man remained unconscious for several minutes until some demonstrators managed to reach him and render assistance. The Eastern Police Station [Prefectura Oriente de Carabineros] reported that the incident occurred when several officers dispersed a group of demonstrators who were allegedly creating disturbances on the bridge. The young man was admitted to a clinic with multiple fractures.\textsuperscript{434} On October 3, the North Central Prosecutor’s Office announced the arrest of a police officer after he was charged with “attempted murder” in this case.\textsuperscript{435} In light of these events, the Association of International Press Correspondents in Chile (ACPI) spoke out about excessive “police zeal” toward “the work done by journalists, camerapersons, and photographers at social demonstrations.”\textsuperscript{436} At the same time, the Chilean Journalists’ Association alleged that news media were banned from showing the video that documented the incident.\textsuperscript{437} In the October 5 demonstrations held to...


\textsuperscript{429} Observatory on Communication Rights. August 3, 2020. Newsletter No. 3 of the Observatory on Communication Rights, p. 3.


\textsuperscript{431} Observatory on Communication Rights. October 9, 2020. Newsletter No. 5 of the Observatory on Communication Rights.

\textsuperscript{432} El Regionalista. September 21, 2020. Medios de comunicación independientes denuncian represión y persecución.

\textsuperscript{433} Nodal. September 26, 2020. Carabineros reprimió a trabajadores de la salud en Plaza de la Dignidad; Twitter account of Prensa Prensa TV (@PrensaPrensa); September 25, 2020.


\textsuperscript{436} El Descubierto. October 5, 2020. Correspondentes extranjeros alertan por el trato policial a comunicadores que cubren las manifestaciones sociales.

protest the incident and support the young man, 48 people were arrested across the country. On October 4, the Chilean Human Rights Commission (CCHDH) reported that it had filed a complaint against President Sebastián Piñera, Interior Minister Víctor Pérez, and the Chief of Police, Mario Rozas, accusing them of attempted murder in this case.

314. Reporter Jimmy Ureta recorded the moment he was attacked by police officers while he was filming the arrest of a young man in the middle of the October 14 protests in Puente Alto.

315. On October 18, major demonstrations were held in cities including Valparaíso, Viña del Mar, Antofagasta, Concepción, and Santiago to commemorate the first anniversary of the outbreak of the so-called "social uprising." The government reported 580 arrests throughout the country. Some of the arrests reportedly involved journalists. This was the case of Javier Castro, of La Voz de Maipú, who was arrested while documenting the arrest of some demonstrators. The journalist was reportedly taken to the Maipú police station despite identifying himself as a member of the press, although he was released an hour later without charge. Photojournalist Nicolás Valdebenito was reportedly arrested while covering a church fire. He was released hours after being taken to the 33rd Police Precinct.

Sebastián Silva, a contributor to Agencia EFE, was allegedly beaten by police, arrested, and taken to the 3rd Police Precinct where he spent the night. He was reportedly brought before the court more than 24 hours later. The court ruled that his detention was unlawful and ordered his release. According to the information available, the Government of the Metropolitan Region filed a criminal complaint against Silva for disorderly conduct. Also on October 18, Vladdy Cortés of La Voz de Maipú was allegedly assaulted by police officers who intercepted him while he was covering a protest in the Cuatro Álamos neighborhood. The officers reportedly asked him for identification; then one of them asked him to remove his mask and pepper sprayed him. On October 18, demonstrators also attacked reporter Raúl Gamboni in the Plaza Italia and took his camera, while Rasec Pachecho, a photojournalist for El Tipógrafo de Rancagua, was allegedly attacked by masked men. Photographer Antonio Kadima was hit by a projectile thrown by a demonstrator and had to be treated in a hospital emergency room. In one of the most serious incidents, the Office of the Special Rapporteur notes the death of Aníbal Villarroel Rojas amidst clashes with police in the town of La Victoria. According to the information available, the young man was shot several times in the chest with buckshot by police officers who were allegedly trying to disperse a group of people who were attacking a police car.

316. After the polls closed in the national plebiscite held on October 25, the police reportedly cracked down on the demonstrators who had gathered in the Plaza de la Dignidad in Santiago. According to reports,

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438 CNN Chile. October 6, 2020. 48 detenidos por incidentes a nivel nacional el lunes: 26 corresponden a la RM.
440 La voz de los que sobran. October 15, 2020. VIDEO I Notero de radio 7 de Puente Alto registró en vivo el momento en que fue agredido por Carabineros.
the police fired tear gas at people. Damage to work equipment belonging to journalists from alternative media outlets was also reported.450

317. The Office of the Special Rapporteur has received information about different arrests during the demonstrations that take place every Friday. Journalist Claudia Aranda was reportedly detained for five hours on October 23 in the Plaza Italia by police officers who also allegedly took her cell phone.451 She was reportedly arrested again on October 30.452 Demonstrations on November 23 in Santiago were reported to have resulted in the arrest of 46 people nationwide. In the capital, 23 people were arrested, a bus was burned and four police officers were injured.453 Police also reported the arrest of 74 people during demonstrations in Santiago on November 27. Ten of them had previously been arrested for offenses such as robbery with violence.454 Throughout that day, police used water cannons and tear gas to disperse the crowd.455

318. The Office of the Special Rapporteur also received information about different arrests in the city of Concepción. For example, one reporter captured images showing the arrest of another reporter by the military on October 19.456 A radio reporter from Señal Tentación 106.9 FM was arrested twice—one on October 5 during a day of demonstrations,457 and then on October 25 near a polling station.458

319. On November 12, in the town of Bonilla, department of Antofagasta, a member of Kiwicha Comunicaciones was violently arrested, thrown to the ground, and handcuffed while an officer pinned him down with a knee to the head. The journalist had recorded the arrest of a group of rescue workers in the middle of the demonstrations that day. At the police station, the journalist was reportedly bullied into deleting his material. The police released him once the material was no longer available for broadcast.459

320. On November 18, in Santiago, a photojournalist from the Libre Edición newspaper was sprayed with pepper gas by police.460

321. Journalist Alison Vivanco reported that she was attacked with a chemical agent sprayed from a police water cannon while covering a demonstration calling for the president’s resignation on November 20 in Santiago.461

322. On November 27, in Santiago, a photojournalist was attacked by a police water cannon from a distance of approximately 20 meters. The jet of water was aimed directly at his body, knocking him to the ground. The journalist sustained bruises on his body and his equipment was broken.462 On the same day, in an area where there were no reports of any altercations, a reporter from Piensa Prensa was assaulted by a police officer.463

323. Finally, the Office of the Special Rapporteur was also informed of the violent eviction carried out by police and armed civilians on August 1 in the five municipalities of La Araucanía that had been taken over by members of the Mapuche community seeking to bring attention to the plight of Mapuche political prisoners. In the course of these events, ancestral symbols of the Mapuche community were also burned. It also came to

461 Twitter Account of Libre Edición (@libre_edicion). November 18, 2020, 9:03 p.m.
light that journalist Paola Dragnic had received threats due to her ongoing coverage not only of this event but of all the demands of the Mapuche community.464

D. Subsequent liability

324. The Office of the Special Rapporteur received with concern information about criminal proceedings brought against the artistic group LasTesis, which could lead to the criminalization of artistic and protest speech protected by the right to freedom of expression.465 According to the information available, on June 12, the National Police of the Fifth Zone filed a criminal complaint with the Public Prosecutor’s Office of the city of Valparaíso alleging threats, attacks on authority, and incitement to violence against the police, and accusing four members of the feminist group LasTesis of committing these alleged crimes. The complaint called into question several songs and audiovisual performances produced by this group and disseminated on social media. In particular the police mention the song “Un violador en mi camino” [“A rapist in my way”] which has become a powerful symbol of expression condemning gender violence in different parts of the region; and a second video in which this group of activists denounce police abuse in Latin America.466

325. The Chilean State informed this Office of the Special Rapporteur that this is a specific complaint about certain events that may constitute common crimes. The State added that, in particular, there are questions about potential incitement to violence that may meet the elements of specific criminal offenses, including calls to “set fire to the pacos [police officers].”467 However, the members of the group have disputed this content and said that this phrase was not part of the work referred to in the complaint.468 The complaint was publicly backed by Chile’s Minister of the Interior.469

326. Various local media outlets also reported that the Valparaíso Prosecutor’s Office had opened an investigation and ordered a series of proceedings, including a request to amend the information provided by the complainant, the National Police. The Valparaíso Prosecutor’s Office reportedly has not yet decided whether to open the investigation.470

327. The Office of the Special Rapporteur was informed that the members of the LasTesis Collective had been summoned to a January 4, 2021 court hearing for the dismissal of the criminal case with prejudice.471 That morning, the Valparaíso Magistrate’s Court dismissed with prejudice the case against the members of LasTesis originally charged by the Public Prosecutor’s Office with assaulting or threatening authorities. At the dismissal hearing, Judge Ingrid Alvial Figueroa granted the prosecution’s request to drop the charges, after agreeing that the facts under investigation did not constitute a crime.472 In the judge’s opinion, the prosecution could not prove any link between what LasTesis said and subsequent attacks on members of the police. She added that it had also not been proven that the statements created a danger for the police, finding that “everything was done in an artistic context.”473 LasTesis stated, “We hope that no artist in Chile will have

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to face trial for the content of their work, and that all of us will be able to create freely and without fear of
persecution and censorship.”

328. The Office of the Special Rapporteur was also informed that the director of Radio Bío Bío, Tomás
Mosciatti Olivieri, was sued for 870 million Chilean pesos (approximately US $1 million) by political operative
Eugenio Gonzalez Astudillo. The lawsuit came after the July 6 publication of the article “Secret Whatsapp: Political operative who pulled strings for Girardi in the Supreme Court threatened Felipe Harboe,” that exposed an alleged network of influence surrounding the upcoming nomination of a new Supreme Court Justice.

329. Communist Party representative Hugo Gutiérrez filed a petition with the Inter-American Commission
on Human Rights (IACHR) and requested a precautionary measure to suspend a possible ruling by the
Constitutional Court that would strip him of his parliamentary immunity. According to the information available, members of Congress from another party filed a petition to have Gutiérrez removed from office after he posted some children’s drawings on Twitter depicting President Sebastián Piñera being shot. The Office of the Special Rapporteur learned that the Constitutional Court, in a decision published on November 17, denied the request made by ten members of Congress to remove Gutiérrez from office. The allegation was that Gutiérrez had incited public disturbances and endangered many people by supporting marches, the occupation of the subway, and general strikes, in violation of Article 60 of Chile’s Constitution. The Court found that there was insufficient evidence to show that the congressman’s social media posts had any consequences or that he exercised leadership over the people who saw his posts. The Court noted that the decision required an analysis of the principles of constitutional supremacy and fidelity in harmony with the
guarantee of freedom of expression, which leads, precisely, to the conclusion that a person cannot be subject to prior censorship. Citing the American Convention on Human Rights, it added that limitations on freedom cannot be broad but—on the contrary—must be narrow. It also notes that speech expressed in a virtual
environment is constitutionally protected but recognizes that the speech of a public official is particularly sensitive. The judgment states that “In the case of representatives or senators who, as depositaries of the nation’s sovereignty, take part in the legislative process and represent the will of the people, the configuration of freedom of expression is particularly sensitive. Political speech is enriched by the exchange of opinions, an essential matter in a democratic society, especially if it is done publicly so that citizens are informed about the opinions of elected officials entrusted with representing the will of the people.”

330. In an October 6 decision, the Santiago Court of Appeals upheld a fine of 100 Monthly Tax Units (about 5 million Chilean pesos) that had been assessed against Chilevisión Noticias by the National Television Council (CNTV) on May 29, 2020. The CNTV fine stemmed from a report on the phenomenon known as “El que baila pasa” (“Those who dance may pass”) that became popular during the social demonstrations of October 2019. According to the CNTV, the report, which aired in November 2019, was “biased and was shown during children’s hours—which are designated for the protection of minors under 18 years of age—and it downplayed the so-called ‘El que baila pasa’ phenomenon and its consequences.” The Court found that “the punishable conduct is established by the levity with which the report was presented, disregarding the effect and influence that it could have on the audience.” In the Court’s opinion, the report was intended “to make behavior that is totally at odds with respect for others, with dictatorial and despotic overtones, look as if it
were humorous and peaceful,” thus failing to condemn “the violence that it subsequently entailed.”

E. Freedom of expression and COVID-19

479 Publimetro. October 14, 2020, Corte de Apelaciones ratificó multa contra CHV por nota segada sobre “El que baila pasa”; Cooperativa.cl. October 14, 2020. Corte confirmó multa a Chilevisión por nota "locosa" sobre "El que baila pasa."
The Office of the Special Rapporteur has noted with concern the different effects that the contingency arising from the new COVID-19 virus has had on freedom of expression in Chile. According to the available information, the media sector has been affected financially—with mass layoffs and the shutdown of print editions—as well as obstacles in covering issues in general or the pandemic specifically. The authorities have imposed restrictions on movement as a contingency measure in response to the health crisis and, despite being exempt from such measures, journalists have in some cases been detained for allegedly violating them. Journalists have also reported greater difficulty in accessing public information about the pandemic and asking questions at press conferences.

There are also reports of disproportionate harassment and controls on the movement of journalists during the pandemic. On June 15, the so-called Single Group Permit came into effect for public utility, security, and media companies. This affected journalists, especially those who work independently. While the Chilean Journalists’ Association has called on the government to lift the requirement for this permit, it has also been working to secure safe-conduct passes for journalists who work independently or do not have an employer.

According to the information received by the Office of the Special Rapporteur, one of the mass layoffs took place at the national channel TVN Chile, which then had a second wave of layoffs due to the deepening of the crisis that started in late 2019. In late April 2020, the state-owned channel announced the layoff of 71 employees, 35 of them in the press department. In total, TVN Chile has laid off some 164 workers since the end of last December.

This Office also learned of at least 200 layoffs at other media outlets due to the pandemic crisis. For example, the free newspaper Publimetro reportedly suspended at least 61 contracts until May 15. There were also layoffs at media outlets such as El Mercurio, where 36 of the 143 people who were let go were journalists. Mega, and La Red. On May 31, it was announced that journalist Monica Gonzalez, who had been critical of the handling of the COVID-19 crisis on previous broadcasts, was leaving the program Mesa Central on Canal 13.

On April 6, the Employment Protection Act went into effect. It is intended to protect workers’ incomes and employment relationships when authorities take measures that prevent workers from providing their services—such as quarantines or business closures—for six months or for the duration of the State of Disaster. However, the Metropolitan Council of the Journalists’ Association opposed the application of this law to the media because it would allow employers to suspend contracts and reduce wages “arbitrarily by putting pressure on media colleagues and workers to accept such a situation.”

The crisis created by the pandemic reportedly also brought the circulation of some print media to a halt. This was the case of La Discusión de Chillán, the second oldest newspaper in the country, founded in 1870. The only other time it had ever stopped circulating was in 1939 because of an earthquake. On May 15, the free newspaper Publimetro went out of print as did the print editions of Grupo DF’s magazines.
There have been complaints during the COVID-19 pandemic about the lack of information for the management of the health crisis. For instance, when it was reported that the country was moving to Phase 4—the point at which infection is no longer traceable—it took more than a week for the disease management protocol to be released. Journalists have also noted an increased difficulty in carrying out their work as press conferences began to be held virtually because of the health contingency. Journalists from the city of Iquique have been questioning this practice since April, since it does not allow for live questions but requires that questions be sent in advance. Some media outlets have said that their questions have been excluded. They have also drawn the attention of the head of National Defense of Tarapacá, who has been hostile to the press and has accused them of disinformation, leading to further stigmatization of the role of the press. These same concerns have been raised by the Aysén Regional Council of the Journalists’ Association, which claimed that region’s authorities have placed restrictions on the holding of press conferences. In Atacama, the regional Journalists’ Association alleged that the Regional Government was systematically obstructing access to information in the midst of the pandemic. According to reports, some of the obstacles journalists face are the inability to ask questions, changing schedules for the release of information, and poor communication management.

Complaints about lack of pandemic management information were ongoing. In the October 20 report from the Council for Transparency (CPLT), an entity that has been monitoring the Chilean Government’s official website on the management of the pandemic, it was noted that there are still gaps in the information provided—even though the government had already been made aware of them. For example, it notes that no information is provided on the total number of negative cases, sources of exposure of newly confirmed cases, type and amount of medical and hospital supplies used, number of tests available, or number of actively employed medical and health care personnel. The report further observes that the official site does not disaggregate data on deaths by gender, nor does it disaggregate data on hospitalization by sector (public/private), municipality, or gender. Nor does it specify the measures for monitoring individuals who are under quarantine orders, or the mechanisms for monitoring compliance with such orders.

The CPLT also identified violations of the Transparency Act after auditing 25 health agencies and hospitals. According to the CPLT, 76.6% violated the Act as a result of late responses, lack of response, late extensions, and multiple extensions. The audit also found that 87.1% of the requests were registered as expired and unanswered. The CPLT requested a summary investigation by the Undersecretaries of Public Health and Health Care Networks due, specifically, to this repeated failure to respond to requests for access to public information.

Chilean journalists have also been exposed to the virus during the pandemic while performing their jobs. One of the most notable cases took place in the Araucanía region where at least eight journalists were infected with COVID-19 after a press conference organized by the Regional Health Ministry without the necessary biosafety precautions and where they had direct contact with people who were infected with the virus, including the regional health secretary. In time, it was reported that one of the journalists was in serious health condition at the regional hospital. The Araucanía regional chapter of the Chilean Journalists’ Association announced that it was taking three legal actions, including filing a petition for a constitutional

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495 RCT Televisión / Facebook. May 20, 2020. El peligro de las “fake news” y las rencillas entre el gobierno y periodistas marcan última semana de pandemia en Tarapacá.
496 Journalists’ Association of Aysén. Twitter account @AysénPeriodista. May 23, 2020.
remedy that seeks to ensure that journalists and their families receive health care, including testing and possible treatment, and that the Regional Health Ministry takes responsibility for the situation. It will also file a complaint with the Prosecutor’s Office and take action with the Superintendence of Health Services. The Court of Appeals of Temuco ordered all journalists who were at the press conference to take the test. On April 9, journalists who had been invited by the Regional Government of Ñuble for a press conference in Chillán’s Plaza de Armas demanded that the government take biosafety measures, holding up what happened in the Araucanía region as a lesson.

The Office of the Special Rapporteur learned about a bill that is in the initial stages of the constitutional process, under study by the Constitution, Legislation, Justice, and Regulations Committee of the House of Representatives, which seeks to amend the criminal code “to directly penalize the spread of fake news related to the current health crisis in our country.” The bill, drafted in the midst of the COVID-19 pandemic, is based on the premise that the country lacks “modern legislation capable of effectively prohibiting conduct that promotes the destabilization of government mandates by means of false or biased news.” The initiative would impose a term of imprisonment ranging from a medium term of ordinary imprisonment to a minimum term of rigorous imprisonment and a fine of 200 Monthly Tax Units (UTM) on any person who publishes, reproduces, or disseminates, through social networks or other media, fake news intended to hinder the work of the authorities during a health crisis.

F. Censorship

In a May 20 decision, the Third Chamber of the Supreme Court ordered Radio Bío Bío to remove the recording of a conversation between a judge and a political operative from its site—and from any other place where it had been published—on the grounds that it had been published illegally. The radio station had made the telephone conversation and its transcript public in April 2019. The conversation reportedly involved local judge Marcela Guerra and political operative John Campos making plans to influence judicial appointments and disciplinary proceedings. In May 2019, Campos sued the station because the recording had been made without his consent and because he believed it violated his right to honor. In October 2019, the Court of Appeals dismissed the lawsuit on the grounds that it considered the recording to be in the public interest and on the basis of a constitutional prohibition against prior censorship. This decision was reversed by the Supreme Court. Radio Bío Bío removed the audio and deleted parts of the transcript.

The Office of the Special Rapporteur also learned of the attempted censorship of Delight Lab, a group that produces art related to social and environmental crises. The group became known for projecting illuminated words on the buildings of the Plaza Dignidad in Santiago. On May 19, while they were projecting the word “Humanity” a truck with white lights appeared—apparently under police protection—which lit up the spot where the word was being projected to keep it from being visible. Following their artistic

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presentation, the group was reportedly targeted with stigmatizing remarks by Congressman Diego Schalper. He called them "miserable" and requested an investigation to find out who was behind the projections, which, in the Congressman’s words, reflected a “political ideology and agenda, including violence.”

Similarly, an art installation by Francisco Tapia was removed by police during the exhibition "Al Aire Libre" ["Outdoors"]. The work depicted a policeman hanging from a balcony about to shoot himself in the mouth.

G. Internet and freedom of expression

The Aurora project of the NGO Amaranta released a report showing that 73% of the 531 women interviewed (cisgender, transgender, and non-binary) had experienced some form of violence on the internet. The most commonly reported attacks included verbal violence, harassment or stalking, the nonconsensual sending of sexual images, defamation, threats, and the loss of or nonconsensual access to accounts. Some of the main culprits were anonymous users or users with fake profiles, partners or former partners, and male acquaintances. According to the report, “digital spaces continue to be hostile to women and dissidents, who not only are more exposed to violence on the internet and different platforms but also face a variety of access and knowledge gaps, depending on the particularities of their experiences.” The NGO believes it is important to re-appropriate technology and to generate active knowledge-sharing to prevent, defend against, and resist violence without falling into self-censorship or leaving the internet.

Also, according to the information available, on May 17 the Instagram account of the artistic group Delight Lab was hacked and later deleted. On May 18, after projecting the word “Hunger” in reference to the people affected by the COVID-19 crisis, they received emails, personal messages, and insults through social media and their personal accounts. Some users uploaded photos of the group’s members as well as personal data including home addresses.

The Pliegue Collective reported that it might have to postpone the premiere of the documentary “18-10,” about the social uprising of 2019, after reportedly discovering an organized strategy aimed at bringing down the internet transmission. The first part of the documentary was released on YouTube after the plebiscite.

H. Legal reforms

The Office of the Special Rapporteur took note of a bill under debate in the Senate that seeks to criminalize the denial of human rights violations committed during the military dictatorship that ruled Chile from 1973 to 1990. The bill went to the Senate after Chile’s House of Representatives passed legislation on September 22 that would impose penalties of up to three years in prison on anyone who "justifies," "approves of" or "denies" those violations. The penalties would apply to speech that “disturbs public order” or "unlawfully prevents, obstructs, or restricts" others’ exercise of their rights. The bill passed with 75 votes; there were 66 votes against it, and on one abstention. A group of lawmakers filed a request for the Constitutional Court to rule on the constitutionality of the article. On November 5, the Constitutional Court declared unconstitutional the article that seeks to penalize the denial of human rights violations during the dictatorship. The Court found that the article’s provisions were beyond those applicable to the bill that

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511 Amaranta, Proyecto Aurora. Informe preliminar. Chile y la violencia de género en Internet: experiencias de mujeres cis, trans y no binarias.
512 El Mostrador. August 4, 2020. Informe revela que un 73% de las mujeres ha sufrido algún tipo de violencia de género en espacios digitales.
penalizes incitement to hatred. Furthermore, the Court determined that the article passed with a simple quorum when it should have had a qualified majority (i.e., 88 votes) because it amends the constitutional right to freedom of expression. The decision is unappealable. The Court said, “It should be noted that hate speech and incitement to violence have nothing to do with denialism, as is clear from the Human Rights Committee’s General Comment No. 34 on the International Covenant on Civil and Political Rights, of 2011. General Comment No. 34 makes a distinction, stating that Articles 19 and 20 of the Covenant (enshrining freedom of expression and opinion and the prohibition of propaganda for war and the advocacy of national, racial, or religious hatred, respectively) are compatible with and complement one another. However, it establishes an exception in this regard in point 49 of the aforementioned Comment, which states that ‘Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression. The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events.’” The decision clarifies “There is no doubt that speech that directly incites violence can be penalized. In our case, doing so is also an unavoidable objective of the principle of constitutional supremacy that the Constitution and the law have entrusted us with guaranteeing. Nevertheless, the contested provision violates the freedom to express an opinion guaranteed by the Constitution. It does this by introducing a statutory offense that threatens to allow for the prosecution of mere ideas, opinions, or assessments that, because they are controversial, or even opprobrious or unlawful, may be legally sanctioned in other venues—but criminalizing such speech affects freedom of expression, which, as we have said, cannot be subject to conditions.”

I. Other relevant situations

349. The Committee for the Defense of Public Television held a demonstration on January 16 in front of the TVN building to express their dissatisfaction with the state-owned channel’s situation and to demand that it fulfill its social role. Some committee members made their way into the channel’s offices and voiced their discontent and grievances during the live morning broadcast. They demanded, among other things, that 50% of the high-audience programming be geared exclusively toward reporting on the constitution-drafting process; that the composition of the current board of directors be reevaluated to “reconfigure its membership based on criteria of pluralism and parity, as required by law; and that a broad debate be opened with a view to changing the signal financing model.”

350. On March 11, Senators Felipe Harboe, Ximena Rincón, and Kenneth Pugh introduced a bill to regulate access to personal data by politicians and to punish the online publication of lies, fabrications, and anything considered “fake news” intended to influence voter decisions. The bill reportedly asserts that it is “essential for our country to have laws specifically designed to limit political parties’ access to personal data. Global experience shows that democracy can be seriously eroded otherwise, as evidenced by the Cambridge Analytica case.” It also states that “the globalized world has demonstrated that the collection and processing of personal data by political organizations can be detrimental to democracy. In this connection, the freedom of each voter to vote in an informed manner is severely limited if political advertising based on each person’s personal preferences and ideologies is being offered.” According to the bill, “Twenty websites were detected in Chile between August and November 2017 that created at least 80 fake news items, which were shared, viewed, or read 3,507,083 times.”

351. The law provides that “accusations, charges, or news referring to facts that may alter the integrity of the upcoming vote and that are deliberately, artificially, automatically, and massively disseminated through a

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mass communication channel or social network” are not considered election advertising. Telemarketing is also prohibited, as is sending mass instant messaging “without the express consent of the recipient.” Penalties include minimum to medium terms of ordinary imprisonment and fines of 10 to 100 Monthly Tax Units (UTM). In addition, the candidate for the position will be disqualified from the electoral process, and if the person has already been elected, he or she will lose the position.520

352. In addition, the country’s telecommunication companies have spoken out against the Undersecretary of Telecommunications (Subtel) because of two requests that reportedly involve turning over users’ personal data. According to available information, Subtel asked these companies for data on their users, including contact information, in order to conduct a satisfaction survey. The president of the Association of Telecommunications Companies reportedly told Subtel that it was “unnecessary and dangerous” to provide this type of information. The companies were also against the Guaranteed Minimum Speed Act that would implement a system for measuring services to ensure minimum standards. The law would involve installing software in cell phones and computers that would enable speed measurement but would also allow for access to personal customer data, such as georeferencing information, type of technology, hours of use, and other data.521

353. According to available information, one year after the social uprising, alleged secret meetings between media directors and government officials—including President Piñera and various ministers—came to light. At these meetings, the participants reportedly reached agreements on how to cover the 2019 demonstrations. The journalists had allegedly been taken off the streets and forbidden from saying “Plaza Dignidad,” among other provisions.522 Also in October, it was alleged that at least five closed-door meetings between TV channel and print media executives and National Police Chief Mario Rozas Córdova had taken place in July 2020.523

354. The Office of the Special Rapporteur learned of a video game that reportedly simulated killing people such as actress Daniela Vega, journalist Rafael Cavada, and members of the LasTesis Collective, as well as other people associated with the social uprising of 2019. Daniela Vega and Rafael Cavada announced that they would file criminal complaints against the game’s creators.524

355. The Movement for Homosexual Inclusion and Liberation (Movilh) asked the mayors of Santiago and Valparaíso to prevent the circulation of a bus called the “Freedom Bus” financed by the NGO Christian Legislative Observatory. According to Movilh, the bus features hateful messages against sexual and gender diversity.525

356. Based on what has been observed in Chile during 2020, including, inter alia, attacks, intimidation, and threats to journalists and the media; restrictions on social protest; court decisions and government practices that endorse censorship; and the use of criminal mechanisms against critical speech, the Office of the Special Rapporteur believes it is especially important to highlight that:

357. Attacks and assaults on journalists violate the right to freedom of expression in both its individual and collective dimensions and cannot be tolerated in a democratic society. The Office of the Special Rapporteur recalls that principle 9 of the IACHR Declaration of Principles on Freedom of Expression states that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the

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523 Verdad Ahora. October 20, 2020. Las reuniones del General Mario Rozas con los directores de canales y medios de comunicación.


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.”

Social protest, which includes the rights to peaceful and unarmed assembly, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights. In this regard, the IACHR has said 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.” In its report on Protest and Human Rights, the Commission noted that criminalization has an intimidating or chilling effect on all of society and can lead to the prevention or inhibition of this type of speech. Furthermore, the IACHR has understood the use of force to be “a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that caused by the State’s reaction. Within that framework, characterized by exceptionality, both the Commission and the [Inter-American] Court have agreed that for the use of force to be justified once must satisfy the principles of legality, absolute necessity, and proportionality.” The IACHR and its Office of the Special Rapporteur have stressed the need to guarantee women’s right to freedom of expression and access to information as a tool to combat gender-based violence. As the Office has stated, “the right to freedom of expression is key in the redress by vulnerable groups of the balance of power among the components of society.” Finally, this Office reiterates that protecting the right to freedom of expression means that the authorities must ensure the necessary conditions for journalists to be able to cover events of notable public interest, such as those related to social protests.

The use of criminal mechanisms to punish speech on matters of public interest, especially as it relates to public officials, is incompatible with inter-American standards. Under Article 13 of the American Convention, speech on matters of public interest enjoys enhanced protection, especially speech that expresses essential elements of identity or denounces violence and structural discrimination. Principle 11 of the IACHR Declaration of Principles on Freedom of Expression states that “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials [...] restrict freedom of expression and the right to information.” Likewise, both the IACHR and the Inter-American Court have repeatedly held that States have a more limited scope when it comes to imposing restrictions on the right to freedom of expression “whenever dealing with expressions concerning the State, matters of public interest, public officials in the performance of their duties, candidates for public office, private citizens involved voluntarily in public affairs, or political speech and debate.” They are subject to a greater degree of public scrutiny and criticism, which is justified by the public interest nature of their activities, because “they have exposed themselves voluntarily to heightened scrutiny, and because they have an enormous capacity to call information into question through their power to appeal to the public.” The Office of the Special Rapporteur has also insisted on the need not to use vague or ambiguous statutory definitions to criminalize speech that, while it may be offensive, shocking, or irritating to public officials or some part of the population, is an expression of public interest that should not be criminalized in a democratic society.

The inter-American human rights system explicitly prohibits prior censorship. This is derived from Article 13(2) of the American Convention on Human Rights, and Principle 5 of the Declaration of Principles on Freedom of Expression, which states that “[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

527 IACHR. Annual Report 2015, Ch. IV A, para. 7. 
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."

361. **Freedom of expression applies to the internet in the same way as it does to all media.** This Office reiterates that restrictions on freedom of expression on the internet are only acceptable when they comply with the international standards that provide, inter alia, that they must be prescribed by law, pursue a legitimate aim recognized by international law, and be necessary to achieve that aim (the “three-part” test).\(^{531}\) Moreover, the Office of the Special Rapporteur has noted that online violence has a chilling effect on the exercise of freedom of expression and, when directed at women, can exacerbate discrimination and inequality.\(^{532}\)

**COLOMBIA**

362. Since the beginning of 2020 and throughout the year, the Office of the Special Rapporteur documented various acts of surveillance and profiling of journalists, the media, activists, and political opponents by the State. In June, the Rapporteurs for Freedom of Expression of the IACHR and the UN sent a letter to the Colombian State requesting its urgent attention to the alleged activities of irregular use of military intelligence capabilities for the surveillance and profiling of different groups of people between February and December 2019.

363. This Office also observed that there is a worrying pattern of death threats against journalists due to their information work, which in some cases forced them to forcibly leave their cities. Likewise, stigmatizing statements are of particular concern, as well as the use of legal actions by public officials that directly or indirectly violate the right to freedom of expression.

A. **Murders**

364. This Office was informed about the death of the judicial reporter for the newspaper *Q'hubo* Felipe Guevara, on December 23, after being shot by unknown individuals in the city of Cali, department of Valle de Cauca.\(^{533}\) According to the Police, the journalist received four bullet wounds: two in the stomach, one in the thorax, and one in the leg. According to the available information, Felipe Guevara had received threats on different occasions, for which reason he had left the Mariano Ramos neighborhood. At a press conference, the Mayor of Cali, Jorge Iván Ospina, pointed out that in 2017 the photojournalist had denounced "threats against his life that were directed to the competent authority".\(^{534}\) According to the information available, the threats are related to his journalistic coverage of criminal gangs operating in that area.

365. The IACHR and its Office of the Special Rapporteur received with particular concern the information on the death of Abelardo Liz, a reporter for the indigenous radio station *Nación Nasa*, on August 13, after receiving several shots while covering a demonstration by indigenous peoples in the municipality of Corinto, department of Cauca. According to information published by the Committee to Protect Journalists (CPJ), community spokespeople indicated that the troops had "fired indiscriminately" at the protesters and had shot


\(^{534}\) France 24. December 24, 2020. **Muere reportero gráfico colombiano tras recibir varios disparos**.
Abelardo Liz in the chest. It also added that the Corinto hospital lacked the necessary equipment to operate on him and that therefore he died on an ambulance on the way to a hospital in the city of Cali. 535

B. Prosecution

366. As the Office of the Special Rapporteur has reiterated in several of its reports, high levels of impunity persist in Colombia with respect to crimes and attacks committed against journalists for reasons related to their information work. It is observed that in many of these cases the reason why these crimes tend to go unpunished is related to the excessive delays in the investigations that lead to the statute of limitations of the cases.

367. In this context, the Office of the Special Rapporteur views with concern the decision of the Municipal Criminal Court of Tumaco (Nariño) to grant freedom to two of those accused of the kidnapping and murder of Javier Ortega, Paúl Rivas, and Efrian Segarra, journalistic team of the newspaper El Comercio, which occurred in March and April 2018 on the border between Colombia and Ecuador. Gustavo Alonso Ospina Hernández, alias Barbas, and Gustavo Angulo Arboleda, alias Cherry, were released from jail in June and August 2020, respectively, due to the expiration of the legal terms to start the trial stage.536

368. The journalist Javier Ortega, the photographer Paúl Rivas, and the driver Efrian Segarra were kidnapped on March 26, 2018 in Mataje, an Ecuadorian town on the border with Colombia, by the Óliver Sinisterra front, a FARC dissidence led by Walter Patricio Arzala Vernaza, alias Guacho. On April 13, 2018, President Lenín Moreno confirmed the death of the journalistic team at a press conference. Two years after what happened, their relatives are still waiting to get answers from the governments of Ecuador and Colombia.

369. The Colombian Attorney General's Office questioned that "due to the congestion registered by the Criminal Court of Tumaco" the alleged perpetrators of the attack on the journalists' lives have been released. The agency also said that "the freedoms granted by expiration of terms unquestionably harm the rights of the victims, who demand prompt and timely justice".537

370. Among other judicial decisions that weaken the investigation, punishment of those responsible, and reparation to the victims by the State, in 2020 the Prosecutor's Office ordered to preclude the investigation against Jhon Jairo Veláquez Vázquez, alias Popeye, as the alleged co-author of the murder of the journalist and director of El Espectador, Guillermo Cano Isaza. According to the investigating body, "the State loses punitive power after Veláquez Vázquez's death has been proven (on February 6, 2020) since the action cannot continue against him." In any case, it ordered that the investigative effort be continued to determine the other authors or participants in the homicide of the communicator. In addition to Gustavo Adolfo Gutiérrez Arrubla, alias Maxwell, the two would be the only ones investigated so far for the murder of journalist Guillermo Cano Isaza.538

371. In February 2020, a FLIP report indicated that, apart from some documented achievements, the climate with regard to the administration of justice is generally negative, and that the number of cases of journalists who remain in impunity continues to be very high. According to what they indicate, there are 88 cases, in addition to the cases that continue to prescribe.539


Likewise, on December 10, 2020, several civil society organizations presented a report to the Commission for the Clarification of the Truth, Coexistence, and Non-Repetition (CEV) in which they document six cases of serious human rights violations. Among them is that of the journalist and comedian Jaime Hernando Garzón Forero, murdered by two hitmen on August 13, 1999 in Bogotá, near the Radionet station where he worked. After more than 20 years of his murder, the entire criminal chain that participated in the murder has not yet been sentenced. The report of this group of organizations documents various findings that can help clarify these crimes. It also maintains that in all the investigations that followed there were mechanisms of impunity, preceded by a long inactivity of the Prosecutor's Office, repeated reassignments of the investigating office, reluctance to link state agents or formulate lines of investigation that point in this regard and identify to top managers, added to an inadequate methodology in the investigation.

Despite the persistence of high levels of impunity for attacks and violence against the press for reasons related to their work, in 2020 the Office of the Special Rapporteur registered important judicial decisions that constitute progress in its obligation to prosecute.

In August, the Administrative Court of Cundinamarca determined that the Administrative Department of Security (DAS), the Prosecutor's Office, and the Ministry of the Interior are responsible for the damage caused to the journalist Claudia Julieta Duque Orrego and her next of kin, as a result of the kidnapping, threats, and psychological torture of which she was a victim since August 1999 for her informative work on the murder of comedian Jaime Garzón. The ruling ordered these entities to compensate the victims. Likewise, it ordered the Prosecutor's Office: (i) to design a booklet to share the analysis of the State's responsibility set forth in the judgment; and (ii) to design policies and instructions to carry out criminal investigations in the shortest time possible so that the continuous violations of fundamental rights related to the exercise of journalistic work cease.

In 2012, the journalist had filed a claim for direct reparation to the National State for the illegal actions taken against her, as well as for the lack of protection and delays in judicial investigations. The persecution suffered by Julieta Duque was such that for nine years she had to go into exile away from the country three times. In the ruling, the court noted that "The State not only did not protect the plaintiff from said interference or attacks, but it was the same official institutions that carried out such arbitrary and illegal interference in Claudia Duque's private life. Not only for having intercepted her phone calls and for having checked her emails, but for having infiltrated human sources into her security scheme, having built a whole database with unauthorized intelligence information, for having followed up on movements within and outside the country that the applicant made and, in general, because of the siege of which she was a victim".

The Office of the Special Rapporteur received with gratification the distinction to Jineth Bedoya with the Guillermo Cano Unesco Freedom of the Press Award, becoming the first Colombian journalist to receive such distinction. The investigative journalist was a victim of kidnapping, rape, and torture in 2000, when she was working on an investigation into arms trafficking for the newspaper El Espectador. Three years later, while working for the newspaper El Tiempo, she was kidnapped by militants of the former Revolutionary Armed Forces of Colombia (FARC). "The courage and commitment of Jineth Bedoya Lima, doubly exposed to unacceptable risks as a woman and as a journalist, inspire deep respect," said Audrey Azoulay, Director-General of UNESCO. In July 2019, the IACHR submitted to the Inter-American Court Case 12.954 of Jineth Bedoya Lima, which documents various findings that can help clarify these crimes.

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543 Radionet.
Bedoya with respect to the State of Colombia for failure to comply with a series of recommendations to the State that aim to carry out a complete, impartial, and effective investigation within a reasonable time.\textsuperscript{546}

\section*{C. Threats and harassment of journalists}

377. The Office of the Special Rapporteur documented several death threats, harassment, and stigmatizing statements against journalists that cover issues of public interest related to corruption and drug trafficking in different regions of Colombia.

378. On February 13, Wilfer Moreno, journalist from the CNC Noticias TV channel from the town of Arauca, received a call from a man identified with the pseudonym “Marcos” who ordered him to suspend the transmission of his news space for the 72 hours duration of the armed strike by the guerrillas announced by the National Liberation Army (ELN), which began the following day.\textsuperscript{547} Given the journalist’s refusal, the stranger declared him a military target and warned him that he had one hour to leave the city. After the threat, the communicator had to leave the municipality immediately to protect his life. As the Office of the Rapporteur learned, the intimidation occurred after repeated complaints and coverage by the journalist about the ELN’s criminal actions.

379. Likewise, journalists Gonzalo Guillén, Julián Martínez, Diana López Zuleta, and Daniel Mendoza Leal have received death threats after revealing the alleged irregularities in the financing of the presidential campaign. According to public information, on March 10, they received a call from a senator who warned of an alleged criminal organization plan for “the three journalists who uncovered the deepolítica”.\textsuperscript{548} The case acquired this term in the media after the audios of José Guillermo “Ñeñe” Hernández were published, who claimed to be “the axis of a vote-buying operation on the north coast for today’s President Duque.” On March 7, the website La Oreja Roja, also linked to the journalistic revelations, had suffered a cyber-attack that affected the operation of the site for a weekend.\textsuperscript{549} The Office of the Special Rapporteur for Freedom of Expression joined the concern of the Foundation for Freedom of the Press (FLIP) in the face of death threats to journalists, and requested the state of Colombia to investigate the events and establish adequate protection measures.\textsuperscript{550}

380. On April 13, journalist Eder Narváez Sierra, founder and director of NP Noticias and Teleantioquia correspondent for Bajo Cauca Antioqueño, received death threats from a person who identified himself as Manuel, commander of “Los Caparrapos”.\textsuperscript{551} The threat came after the journalist published a story about the murder of two men that occurred the previous day in the Loma Fresca neighborhood in Caucasia. Through WhatsApp messages, Narváez was warned to “stop talking so much”, that the recent murders (for which he assumed responsibility) were “just the beginning” and that “the only news you will hear in a few days is that the guy from NP was killed”. Narváez, who has already received death threats on previous occasions due to his information work, filed a criminal complaint with the Attorney General’s Office and also requested assistance from the National Protection Unit, a government entity that executes protection measures for people at risk for political, journalistic, or union activities, among others. On April 19, after continuous threats, the journalist had to forcibly leave his place of residence in the Caucasia municipality.


381. On June 17, a threatening pamphlet signed by FARC dissidents arrived at the home of journalist Dubán García, addressed to him and four other journalists, where they are accused of being accomplices of the Putumayo Government. The pamphlet was also accompanied by two 5.56 caliber rifle cartridges, all of which were sent to the judicial authorities for their pertinent investigation.

382. On July 7, unknown persons painted the facade of the house of journalist Phillip Moreno, director of the Confidencial Noticias portal, with the insignia of the National Liberation Army (ELN). The acts of intimidation occurred after the publication of two investigations on issues related to this guerrilla.

383. On the morning of July 17, the journalist from the Nueva Era Algeciras community radio station, Juan Alejandro Loaiza, was intercepted and threatened with death while on his way to the center of the municipality of Algeciras, in the department of Huila. According to the journalist, an unknown man on a motorcycle stopped him and warned him that he had to leave Algeciras or else he was going to pay with his life. Two days later, he had to leave the municipality to protect his life and his integrity. Juan Alejandro Loaiza participates in the morning newscast of the Nueva Era radio station, where he has criticized the management of some councilors of the municipality and reported on the difficult public order situation in Algeciras.

384. According to available information, on August 7, eight journalists from the department of Magdalena received death threats from alleged members of the guerrillas of the National Liberation Army (ELN). On August 7, the journalists received a pamphlet signed by the ELN in which they declared them a “military municipality to protect his life and his integrity. Juan Alejandro Loaiza, eight journalists from the department of Magdalena, received death threats from alleged members of the guerrillas of the National Liberation Army (ELN). On August 7, the journalists received a pamphlet signed by the ELN in which they declared them a “military objective” and warned them that they had a period of 48 hours to leave the country with their families or else “they will face the consequences”. The reporters mentioned in the pamphlet had reported acts of corruption on the part of the departmental administration. According to public information, those affected would be communicators Lina María Peña (El Artículo), Cipriano López (Radio Magdalena), Yannis Moscote (Contraportada), Victor Polo (Caracol Radio), Miguel Martínez (El Mono TV), Victor Rodríguez (Opinión Caribe), Aristides Herrera (Revisita 7), and Leopoldo Díaz Granados (Seguimiento).

385. As this Office learned, journalists Amalfi Rosales, Gonzalo Guillén, and Diana López Zuleta were also victims of death threats as a result of the journalistic reports they have made against “Kiko” Gómez. On August 5, a source reportedly contacted Diana López Zuleta to alert her to an assassination plan that was taking place at the “La Curva” farm, owned by Juan Francisco “Kiko” Gómez, located in Fonseca (La Guajira). The Office of the United Nations High Commissioner for Human Rights in Colombia made a public call to the Prosecutor’s Office to clarify the report.

386. Likewise, on August, journalist Jhonny Coral Bernal from CNC Noticias in Nariño and two other journalists whose names were not publicly disclosed, received death threats through calls and WhatsApp messages. The reporters assured that the intimidations began after the publication of a series of journalistic investigations related to the irregular transport of foreigners during the pandemic from the border with Ecuador to the border with Venezuela.

387. The journalist Óscar Castaño, director of the Oriéntese program, broadcasted by the Coredi 90.5 FM station and the Acuario Televisión channel, reported having received a death threat on September 29 from...
unknown individuals, who left a pamphlet at his home with his name and two photographs. There, they would have signaled him out for being a "snitch" and of being "getting into what does not concern him." The journalist has made complaints about alleged irregularities in hiring, in the framework of the pandemic, by the municipal governments of Algeria and Granada, department of Antioquia. According to the available information, the communicator has been part of the protection scheme of the National Protection Unit for some years, due to threats previously received.

388. On October 27, journalist Mario Manuel Ubarnes, director of a radio program on the community radio station Palmitos Estéreo, reportedly received a threat at his home located in the municipality of San Antonio de Palmito, Sucre, where unknown individuals left a black bag containing a funeral wreath. According to the information available, the threatening message would be related to reports that the communicator has been making about the theft of cattle in that region, as well as irregularities related to hiring in the municipal administration. Additionally, a municipality leader also received a similar wreath on the same day with a death threat.

389. In mid-November 2020, the journalist Arlex Piedrahíta, from Noticias Caracol, had to go into exile after receiving new death threats for the work he does in the departments of Cauca and Valle del Cauca, in the southwest of the country. According to the information available, on October 16 the journalist received a text message on his cell phone in which they declared him a military target and threatened to kill him and his family. The cameraman had already received threats and harassment in 2019 that would be related to his coverage of judicial issues, public order, and drug trafficking. On that occasion, Arlex Piedrahíta also had to leave his place of residence due to the lack of security guarantees for him and his family, and the lack of diligent and timely responses from the authorities. According to FLIP, although in November 2019 the communicator was at high risk and it was urgent to implement suitable measures, the National Protection Unit took a year to re-evaluate the journalist's risk situation and, according to the organization no progress is yet known in the investigations carried out by the Office of the Attorney General of the Nation into the events.

390. On the other hand, according to the information received by the Office of the Special Rapporteur, Ricardo Calderón Villegas, who until November 2020 was a journalist and director of investigations of the Revista Semana, would have been subjected to constant threats and harassment by the Government and Army agents due to his coverage related to issues of corruption, drug trafficking, paramilitarism, among other issues. The situation would have become even more complex after on January 11, 2020, the media published an investigation that denounced illegal interceptions allegedly carried out by the Army against defenders, judges, politicians, and officials, during 2019.

D. Stigmatizing statements

391. As discussed in previous reports, the Office of the Special Rapporteur notes with concern the increase in stigmatization of journalists and the media that publish or disseminate information criticizing the Government of Colombia. This context, which arises from high-ranking authorities of the State and public officials, puts at risk the free exercise of journalistic work and undermines the obligation to "adopt a public speech that contributes to preventing violence against journalists."

392. Among other cases, the Office learned that on November 26, former Attorney General Néstor Humberto Martínez Neira, discredited the investigative work carried out by different journalists in the


563 Information received by the IACHR and its Special Rapporteurship in the framework of the request for precautionary measure 207-20. 2020.
framework of a debate session on political control in the First Committee of the Senate. In particular, he singled out Edinson Bolaños, a reporter for El Espectador, questioning his independence as a journalist and baselessly accusing him of not having published all of the information to cover up someone.\textsuperscript{564} Likewise, he had publicly announced his intention to file a claim against the journalist María Jimena Duzán for mentioning the alleged order that he had given to intercept politicians and negotiators of the Peace Agreement. FLIP indicated that it is aware that due to this matter, Néstor Humberto Martínez “has already judicially harassed Duzán, through various protection actions that seek to muzzle the press and prevent it from reporting on matters related to his management, alleging the violation of his fundamental rights to honor and good name”. These remedies have already been ruled in favor of the journalist.

E. Arbitrary detentions and physical violence against journalists

\textsuperscript{393} According to information reported to the Office, on June 15, photojournalists were illegally detained by the National Police in Medellín while covering the demonstrations against the measures taken by the national government in the face of the COVID-19 pandemic, and also for cases of corruption and police abuse. The reporters, who belonged to Periferia Prensa, AquinoTicias, Ab, zurdo Colectivo, among others, were physically attacked and saw some of their work equipment damaged by the police forces, and later seven of them were detained and transferred to different police stations and Immediate Reaction Units.\textsuperscript{565} Juan Carlos Londoño, one of the detained reporters, described the police as “totally out of control,” according to the Committee to Protect Journalists (CPJ).\textsuperscript{566} Hours later, four reporters were released and another three were transferred to the premises of the Attorney General’s Office in Medellín to begin the judicial process. After being detained for 24 hours without their legal status being defined, they were released without charge, although they were fined 932,320 Colombian pesos (US $255) each for violating the quarantine measures imposed in Medellín. This despite the fact that journalists fall within the exceptions to isolation according to the government decree.

\textsuperscript{394} This Office of the Special Rapporteur also learned of the acts of harassment suffered by the journalist Natalia Archila on May 14, who was on the radio station Latina Comunicaciones about to start her program when former councilor Juan Carlos Sánchez entered the media office and sexually assaulted her. According to the journalist, when he noticed that she was alone, the former councilor took her by force and touched her abusively with his genitals.\textsuperscript{567} After what happened, Natalia Archila filed the complaint with the Attorney General’s Office, backed by the Foundation for Press Freedom (FLIP). Former councilman Sánchez had already been denounced for sexual harassment in February 2019 by journalist Diana Cantillo.

\textsuperscript{395} In relation to the case of Natalia Archila, the Office of the Special Rapporteur has given special follow-up to the impact of gender-based violence on women journalists in Colombia. A study prepared by the Democracy Observatory of the Department of Political Science of the Universidad de los Andes and the initiative ‘It’s not time to shut up’ published in November 2020 revealed that at least six out of ten Colombian journalists have suffered gender-based violence.\textsuperscript{568} The report identified that only a small percentage of the participants considered that they have mechanisms or instances to complain and to receive support in their workspaces. In this sense, they found that reporting mechanisms are not usually specific protocols to handle gender-based violence, which can contribute to re-victimization or impunity. Likewise, it emerged from the


\textsuperscript{566} Committee to Protect Journalists (CPJ). July 7, 2020. \textit{Three photographers arrested while covering protests in Medellín, Colombia}.


\textsuperscript{568} Observatorio de la Democracia de la Universidad de los Andes. \textit{Violencia de género en contra de las mujeres periodistas en Colombia}. November 2020.
report that numerous women journalists had to abandon topics, sources, or workspaces due to situations of gender-based violence. As the IACHR addressed in the report "Women journalists and freedom of expression," gender-based violence against women journalists implies violations of the right to freedom of expression and the right to receive information from society as a whole. In addition to the risks of threats and violence faced by all human rights defenders and journalists in the region, women belonging to these groups are exposed to additional or specific risks. In the report, the IACHR called on the States to adopt positive measures in order to combat any discriminatory practice and, in particular, to strengthen and apply legal, public policy, and other measures that promote and protect women's leadership in society and their participation in public debate under conditions of equality, including in the exercise of journalism and management of the media. Among other recommendations, it also urged States to integrate a gender perspective into all initiatives aimed at creating and maintaining a safe and conducive environment for free and independent journalism.

F. Subsequent liabilities

On September 16, journalist Gonzalo Guillén was notified of a three-day arrest warrant and a large fine for contempt. In 2019, the journalist had published a tweet in which he linked a citizen to drug trafficking, later rectifying himself on his social networks based on amparo remedy order. However, according to Municipal Civil Judge 57, the lack of rectification in the national media implies contempt. The Office of the Special Rapporteur expressed concern about the judicial decision, and recalled that the application of criminal law and the prison sentence to punish the exercise of freedom of expression in cases of speech on matters of public interest is incompatible with inter-American standards. In addition, the Office warned that the right to rectification or response must be interpreted in harmony with freedom of expression, necessity, and proportionality.

On September 9, journalists Catalina Ruiz-Navarro and Matilde Londoño, who had revealed in the magazine Volcánicas the anonymous complaints of eight women who say they have suffered sexual harassment and abuse by the filmmaker Ciro Guerra, were summoned by the Attorney General’s Office after a

572 Twitter account of Vice President of Colombia Marta Lucía Ramírez (@mluciaramirez). July 29, 2020.
claimed was filed against them for slander.\textsuperscript{576} According to available information, the summons came after a conciliation procedure between the journalists and the filmmaker's lawyers failed. The communicators, who decided not to attend the proceedings, stressed that they did not want to put themselves "in a situation that could expose sources because, for us, the most important thing is the right to protect our sources".\textsuperscript{577} On September 21, the 31st Criminal Court of the Bogotá Circuit convicted Gustavo Rugeles to two days of arrest and a fine of two minimum wages for breaching an \textit{amparo} remedy that required him to eliminate and rectify a publication published on Facebook, Twitter, and on the portal \textit{El Expediente}, which he directs.\textsuperscript{578} In June 2019, the media had published a right to petition that it had sent to the then director of the National Protection Unit (UNP), Pablo Elías González, who subsequently filed an \textit{amparo} remedy for understanding that the publication contained "serious remarks disguised as questions" and violated hi human dignity, privacy, honor, and good name.

400. On the other hand, this Office observed with special concern the Attorney General's Office investigation against journalist Diana Marcela Díaz, who in 2018 had denounced a case of censorship in the Public Media System (RTCV).\textsuperscript{579} According to available information, the case dates back to December 6, 2018, when the journalist recorded a conversation in which the then manager of RTCV, Juan Pablo Bieri, decided to take the program "Los Puros Criollos" off the air. On January 23, 2019, the alliance of journalists \textit{La Liga Contra el Silencio} published an article titled "Juan Pablo Bieri, a pure and creole censor" in which it recounted what happened at that meeting, accompanied by the audio that Diana Díaz had recorded. which culminated in the resignation of Juan Pablo Bieri on January 25, 2019. On March 15, 2019, Juan Pablo Bieri filed a complaint against Diana Díaz before the Attorney General's Office for the crime of using a matter under secrecy or confidentiality (Art. 419 of the Penal Code). In his presentation, he accused the journalist of having illegally recorded and disclosed the conversations in the framework of that meeting.

401. On October 5, 2020, Diana Díaz was questioned by the Prosecutor's Office about the meeting in question and how the audio had been disclosed and, finally, on October 14, she was notified of the summons to the indictment hearing, scheduled for November 18. However, three weeks later a Legal Technical Committee was formed that decided to withdraw the request for a hearing in order to continue collecting material evidence, to make a decision on the merits.\textsuperscript{580}

402. On the other hand, within the framework of said case, on October 8, 2020, the Prosecutor's Office requested FLIP to inform a date for conducting a judicial inspection at its facilities, as well as to access documents that control the entry and departure of visitors in a certain period, in order to establish the entry of Diana Díaz. Likewise, in the following days, it would have summoned three members of the FLIP team to attend a face-to-face interview in the criminal proceedings against the journalist.\textsuperscript{581}

403. On the other hand, in November, journalist Adriana Villegas was summoned by the Ayacucho Army Battalion, located in the city of Manizales, to testify in a disciplinary process, after she denounced misogynistic military chants.\textsuperscript{582} A month earlier, on October 18, the journalist had published a column in the newspaper \textit{La Patria}, titled "It's not a joke, it's violence." There, she said she had the opportunity to listen to the soldiers' songs while they carried out their training and that they spoke of "hanging their own mothers or gouging out the eyes of their respective girlfriends." According to the available information, in the notification she was not informed about what facts she was summoned to testify, nor was it clarified what disciplinary


\textsuperscript{577} El Espectador. September 14, 2020. \textit{Citaron a interrogatorio a los periodistas que revelaron supuestos acosos de Ciro Guerra}.


\textsuperscript{579} El Tiempo. October 19, 2020. \textit{Fiscalía no imputará, por ahora, a la periodista que reveló censura de Bieri en RTVC}.

\textsuperscript{580} Semana. November 13, 2020. \textit{Fiscalía retira imputación contra periodista que denunció caso Bieri}.

\textsuperscript{581} El Espectador. November 13, 2020. \textit{Fiscalía no imputará, por ahora, a la periodista que reveló censura de Bieri en RTVC}.

\textsuperscript{582} El Espectador. October 19, 2020. \textit{Fiscalía ordenó inspección a Fundación para la Libertad de Prensa}.
process she was dealing with and who it involved. Subsequently, the Army issued a press release in which they assured that the communicator was not being investigated and clarified that it was a disciplinary proceeding in which she was a witness. In an interview with the newspaper El Tiempo, Adriana Villegas noted: “I observe that every day in the media colleagues make complaints that involve institutions and subsequent actions are focused on verifying the information and facts and not on summoning journalists. This may be legal, but it doesn’t mean it’s not intimidating.”

404. Likewise, this Office was informed that on November 20, the Sixth Criminal Court of the Bogotá Specialized Circuit ordered Las Igualadas, journalist Fidel Cano, and El Espectador to rectify an opinion issued on October 28 in a video of the channel Las Igualadas, in which several women who filed a criminally complaint against José Francisco Jacomo Ángel, senior pastor of the El Shaddai religious congregation, recounted their experiences of gender-based violence. As a result of the publication of the video, the pastor initiated an amparo remedy for considering his rights to privacy, honor, good name, and the presumption of innocence violated. On November 10, before the amparo was ruled, the journalists published a second video in which they specified that there is no firm conviction against the pastor, whom they described as "allegedly guilty of sexual violence" and "alleged perpetrator.” Despite this, according to FLIP, “the judge ignored that the journalists made a clear expression of opinions and distinguished them from information in a transparent manner.” They also warned that the case constitutes judicial harassment against the press on matters of public interest and seeks to frighten journalists who make visible human rights violations and gender-based violence, increasing the risk of self-censorship.

G. Monitoring and profiling of journalists, human rights defenders, and activists

405. At the beginning of the year, the Office became aware of the surveillance and computer profiling actions of journalists, activists, trade unionists, social leaders, and opposition politicians, carried out by different units of the National Army between February and December 2019. As the Office of the Rapporteur learned, the surveillance and computer profiling of journalists, human rights defenders, and activists, including “false positives”). The information collected would include phone number, home and work addresses, emails, friends, family, colleagues, traffic violations, and polling places, among other data. In addition, in the case of journalists, they were carried out with the objective of accessing their sources of information; for example, georeferencing had been carried out on at least one photojournalist who had made a photographic report on the ELN guerrilla in Chocó.

406. According to public information, "profiles" were created through the collection of public and private information regarding at least 130 people whose identity was later disclosed- without their prior authorization, according to a journalistic investigation carried out Revista Semana. Among them would be at least 43 Colombian journalists and foreign press correspondents, politicians from opposition parties, people linked to the negotiations of the peace accords, human rights defenders, trade unionists, former officials of the Presidency of the Republic, judges, and people who have carried out investigations into extrajudicial executions (the so-called “false positives”). The information collected would include phone number, home and work addresses, emails, friends, family, colleagues, traffic violations, and polling places, among other data. In addition, in the case of journalists, they were carried out with the objective of accessing their sources of information; for example, georeferencing had been carried out on at least one photojournalist who had made a photographic report on the ELN guerrilla in Chocó.

407. On December 18, 2019, a commission from the Investigation Chamber of the Supreme Court of Justice and judicial police from the Special Investigations Directorate of the Attorney General’s Office raided the Cyber Intelligence Battalion in Facatativá, in search of evidence regarding the complaint of illegal surveillance. The officers who were at the facilities allegedly denied carrying out illegal activities and having computer software or tools, but several pieces of equipment were seized, including ten hard drives, five cell phones, eight sim cards, 12 USB sticks, a micro-SD memory, 316 DVDs and compact discs -including eight

found inside a gray safe-. 189 pages of documents and five Arduinos (boards that can be programmed for Windows, Mac, or free software). Said raid was ordered by the Supreme Court of Justice, some of whose judges were as well victims of interceptions and monitoring. Since January 16, 2020, the Delegate to the Supreme Court of Justice of the Attorney General's Office opened an investigation for the crimes of illegal violation of communications and illegal use of transmitting or receiving equipment, among other crimes.588

408. In relation to the raid, according to information revealed by the press, the Special Investigations Directorate of the Attorney General’s Office sent the Supreme Court judge Cristina Lombana Lombana a report that gathers some conclusions on the raid. For example, that from the evidence analyzed it can be inferred that the Cyber Intelligence Battalion (BACIB) of the Colombian National Army, in Facatativá (Cundinamarca) “has the ability to access email accounts. Likewise, the technical report indicates that evidence was found of three technical tools that the Army has supposedly used to intervene in communications: Perseus, Orisis, and Cerberus.

409. The Colombian Attorney General’s Office announced on January 13 that they would initiate investigations to establish whether such illegal activities were indeed carried out and whether the former Army Commander, General Nicasio Martínez, who resigned from his post on December 27, 2019, was involved or knew the facts.589 On the other hand, on May 1, Defense Minister Carlos Holmes Trujillo announced that they were removed from active duty and that a brigadier general requested their voluntary retirement for alleged “irregular use of military intelligence capabilities”.590 On May 2, President Iván Duque stated that he had asked Trujillo "to carry out a rigorous investigation of the intelligence work of the last 10 years," and that it would already be producing results.591 In this context, on June 15, a group of UN and IACHR Rapporteurs sent the State a letter expressing their deep concern over the alleged surveillance and profiling activities, also requesting information and comments on certain points.592

410. However, the Office of the Special Rapporteur notes with concern that the judicial investigations in this regard have not progressed significantly. Civil society organizations have warned about the lack of speed in the process, as well as the limitations in access to information regarding the progress of the investigations by the Attorney General’s Office. According to public information, in August the Office of the Attorney General of the Nation stated, in response to a right to petition, that contrary to what was published in Revista Semana "there were not 130 targets the objects of illegal actions of monitoring, follow-ups, interceptions, profiling, and special tasks by the National Army, but a number of people that does not exceed 20", which would not match with the conclusions of the expert opinion ordered by the Supreme Court and carried out by the Attorney General’s Office.593

411. On the other hand, the Office of the Special Rapporteur noted with concern the information published on August 22 by the journalist Juan David Ortiz on his social networks, from which it appears that the Mayor of Medellín had signed a contract with the company Selecta Consulting Group for the “analysis of the behavior in networks of profiles that are defined in such a way that the social and political impact is measured”, by which journalists and political opponents would be monitored.594 Among the people monitored were journalists José Guarnizo, Pascual Gaviria, Clara Giraldo, and Ana Cristina Restrepo, as well as the media outlet Juan Paz. Telemedellín, the contracting entity on behalf of the administration, made it clear that this contracting was done by express order of the Ministry of Communications and that the type of contracting

was requested to be direct. For his part, the Secretary of Communications Juan José Aux indicated that there would be no intention to carry out specific follow-ups but that it was a strategy to "measure public opinion" and make decisions based on the opinion of citizens.595

412. On August 24, the Medellin Public Management Control Observatory also made a public complaint on the monitoring and follow-up that Daniel Quintero's administration in Medellín would be doing on those profiles "that generate negative comments that affect the image of the local leader and his team",596 As the Observatory learned, more than $138 billion pesos would have been allocated between the two signed contracts.

H. Progress

413. On May 7, the Plenary Chamber of the Constitutional Court ruled in favor of a group of journalists who had filed an amparo remedy after a court prohibited them from entering a hearing for the indictment of the then director of the La Modelo Prison, César Augusto Ceballos, for alleged acts of corruption. The Court understood that their freedom of expression, information, and the press had indeed been violated and provided guidelines for future cases.597

414. In its ruling, the high court noted that the general rule is that journalists must be allowed access to all public court hearings. In order to be able to close it to the media, the judges must first analyze whether there is any "reservation cause". The reservation must be founded on a law and must pursue an imperative, suitable, necessary, and proportional objective. Second, the Court pointed out that the restriction must be justified on the basis of a certain and current risk of damage. Third, the degree of impact on citizens' information that this limitation entails must also be considered. Finally, if it is decided to restrict the presence of the press at the hearings, the Court specified that the judges must propose alternative measures so that the information can be accessed.

415. The previous decision is added to the one issued by the Supreme Court of Justice on June 16, in which it ordered a court to deliver recordings of a hearing to a journalist, and reiterated that journalists have the right to attend hearings in judicial proceedings, and to request a copy of these proceedings to be able to fully exercise their work.598 The case originated from an amparo remedy filed by Daniel Geovany Neira, who identified himself as a digital journalist, teacher, and lawyer in Rovira (Tolima) and who was denied a copy of a hearing held in 2019 in which the Prosecutor's Office indicted the then mayor of that municipality for a case of misuse of public resources. The Criminal Chamber of the high court pointed out that the media "exert a counterweight that should prevent arbitrariness and injustice from both the Judge and those involved in their behavior within the criminal process."

416. The Office of the Special Rapporteur received with great satisfaction the decision of the Supreme Court of Justice that ordered authorities to adopt various actions to guarantee the exercise of the right to peaceful protest.599 In a ruling considered "historic" and "unprecedented", the Civil Cassation Chamber of the Supreme Court of Justice accepted an amparo remedy presented by several citizens in which they affirmed that the State, from 2005 to the present, "has displayed a constant, repetitive, and persistent conduct to undermine, discourage and weaken their right to express themselves without fear" in protests or peaceful demonstrations, for which they demanded policy changes from the Government and the National Police. Among other measures, the majority ruling ordered the National Police, the Prosecutor’s Office and the

Attorney General’s Office to issue a protocol of preventive, concomitant, and subsequent actions compatible with human rights standards, which will be called "Statute for the reaction, use, and verification of the legitimate use of force by the State and protection of the right to peaceful citizen protest". It also ordered the suspension of the 12-gauge shotguns used by the Mobile Anti-riot Squads of the National Police (ESMAD); the creation, by the Government, of a working group to restructure the guidelines related to the use of force in the face of peaceful demonstrations, so that it listens and addresses the proposals of any person interested in the subject; and the neutrality of the national executive branch in the context of non-violent demonstrations and the refraining from stigmatizing those who protest.

417. Despite this progress, the Office of the Rapporteur took note that Defense Minister Carlos Holmes Trujillo publicly stated that in Colombia “the Public Force has protocols adjusted to international standards on human rights”, and that ESMAD “does not institutionally incur in excesses”, but rather that their action occurs "exclusively in the face of violent and irrational actions that constitute crimes, violate people’s rights and are not peaceful demonstrations”. He also announced that he will ask the Constitutional Court to review the Supreme Court ruling.600

418. Likewise, on September 24, the Administrative Court of Cundinamarca issued an amparo judgment in which it ordered the President of Colombia, the Minister of Defense, and the Director of the National Police to prepare and deliver, within a period of ten working days, a protocol that stipulates urgent measures to guarantee the right of citizens to publicly manifest.601 In this framework, on October 20, the Government issued Resolution 1139 of 2020 through which it established a protocol for social protest with immediate effect. According to the information received, this protocol -which was called "express"- would have been issued to deal with the situation urgently, although the Government was reportedly working on a more complete and structural protocol, which complies in detail with what is ordered by the Supreme Court of Justice.602 Among other aspects, the document imposes responsibilities on the governors and mayors in the face of the protests, provides training in human rights for members of the Police, and reiterates the duties that the participants of a demonstration have as citizens, by virtue of article 95 of the Political Constitution.604

I. Social protest

419. The Office of the Special Rapporteur specially followed the series of massive protests in different parts of Colombia as a result of the death of lawyer Javier Ordoñez on September 9, as a result of the beatings and electric shocks with Taser guns by agents of the Metropolitan Police of Bogota.605 Ordoñez was reportedly detained for allegedly failing to comply with the isolation rules established by the COVID-19 pandemic. According to publicly known information, between September 9 and 10, demonstrations took place in Medellín, Barranquilla, Cali, Cúcuta, among other cities, in rejection of police violence. According to public sources, reportedly at least 13 people died during the protests and, as of September 11, more than 209 civilians were injured, and 194 police officers were injured.606 Among the civilians injured on September 9, 19 of them were reportedly injured by firearms. According to audiovisual records, police officers allegedly fired shots in the direction of the protesters in different situations. On the other hand, according to the information received by the IACHR, as of September 11, 75 people were detained for events associated with the development of the demonstrations. Within the framework of these procedures, according to public sources, there are various complaints about police actions related to situations of mistreatment, beatings, torture, and

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602 El Espectador. October 20, 2020. _Así es el protocolo exprés para protestas expedido por el Gobierno Nacional_. RCN Radio. October 20, 2020. _Lo que debe saber del protocolo exprés para la protesta social expedido por el Gobierno_.
603 070 / Universidad de los Andes. October 21, 2020. ABC del protocolo exprés para la protesta social
605 Amnesty International Colombia. September 11, 2020. _Amnistía Internacional condena actos de tortura y el uso excesivo de la fuerza por parte de la policía_.

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a case of sexual abuse. Likewise, within the framework of these demonstrations, at least six journalists were reportedly attacked and insulted in different locations by members of the Police. According to the information received, the attacked and intimidated press workers were Julián Gómez, a reporter for ABC Noticiero Virtual, Juan Pablo Pino from Publimetro, Óscar Pérez and José Vargas from El Espectador, Javier Jiménez Rojas, a journalist from Colombia Informa, and the photographer Juan Camilo Rubiano, who was working freelance.

The IACHR expressed its emphatic condemnation of the acts of police brutality and abuse that occurred on September 8, 9, and 10, as well as its concern over the alleged use of firearms by National Police agents in the context of the demonstrations that took place in several cities in Colombia. In this regard, it urged the State to investigate and clarify these facts, as well as to prosecute and punish those responsible. Likewise, it called on the authorities to order the immediate halt of the disproportionate use of force by the State security forces; and stressed that the actions of the police in maintaining public order must be strictly based on international human rights standards that govern the use of force under the principles of exceptionality, proportionality, and absolute necessity.

According to public information, on September 21 a new day of demonstrations was held in different parts of the country in rejection of various acts of violence that occurred in the country, including the death of Javier Ordóñez and the violence that occurred in subsequent protests, massacres that occurred in Buenos Aires and El Charco, municipalities of Cauca and Nariño, which left 11 dead, and the death of social leaders. In the context of these social mobilizations, the independent photographer Andrés Torres was attacked by members of the Mobile Anti-Riot Squads of the National Police (ESMAD) while covering the events in Bogotá. According to the reporter, when he was taking photographs of him, the officers shot him twice, totally damaging his camera and also leaving a bruise on one of his legs. The journalists Fabián Yáñez and César Posada from the Revista Semana were also attacked by the security forces while they were carrying out their work.

J. Access to information on serious human rights violations

On September 30, 2020, the Commission for the Clarification of Truth, Coexistence, and Non-Repetition of Colombia (CEV) indicated, when rendering accounts for the first semester of the year, that they would be encountering barriers to access the information in custody of certain state entities. In particular, it stated that in repeated circumstances, certain State institutions were delaying the responses and finally refusing to deliver the requested information based on the reserve or other justifications contrary to domestic legislation. Additionally, the CEV indicated that in some cases it would be receiving responses to its requests for information whose content is not related to the data requested. According to the information available, this contradicts basic principles of internal legislation on transparency, in addition to causing delays in the work of the Commission, considering above all that the passage of time waiting for important information is especially sensitive in an entity with a temporary mandate. Likewise, the Truth Commission would have been informed of the alleged destruction, by orders and directives and/or as an institutionalized practice, of files that account for human rights violations, in breach of the provisions of the Archives Document Management Protocol on this matter.

In October, the IACHR sent a letter to the State of Colombia, requesting information on the aforementioned obstacles, and recalling the important commitment it assumed with the endorsement of the Final Agreement and the implementation of a new transitional justice system, of which the CEV is a fundamental part.

In the framework of the 178th Period of Sessions, the IACHR also received information about alleged messages of discredit and public accusations towards the Truth Commission and its members, attacks and accusations that deteriorate the legitimacy of its work and, eventually, the findings and recommendations.  

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610 Comisión de la Verdad. September 30, 2020. *Las barreras para el acceso a la información que enfrenta la Comisión de la Verdad.*
that it will include in its final report. In particular, they highlighted statements by a senator and members of the president’s party who affirmed that the members of the Truth Commission “would have ideological links with paramilitary groups and questioned its legitimacy as an institution, as well as the impartiality and veracity of its findings and statements”.611

K. Internet and freedom of expression

425. On July 24, the Superior Court of Cali ordered President Iván Duque to remove from his Twitter account @IvanDuque, within a period of no more than 48 hours, a message alluding to the commemoration of the Virgin of Chiquinquirá. Likewise, it asked him to refrain from making any other manifestation that would give precedence to his professed religion. The amparo remedy had been filed by a citizen who understood that the rights to secularism of the State, freedom of worship, and the principle of separation between the State and religion had been violated. According to the Court, despite not being the official account of the Presidency, official information is broadcasted through that channel and the president’s message corresponded to an invocation of Catholicism that could be offensive to those who do not feel identified and discriminatory to the other beliefs, cults, and religious minorities.612 However, on August 19, the Supreme Court reversed the ruling and argued that there were not enough elements to determine that Duque incurred any constitutional violation, although it reminded him that he must preserve religious neutrality as head of state in the use of his personal social networks.613

426. Regarding internet access, this Office learned that on March 23, in the framework of the emergency due to the Covid-19 pandemic, the National Government issued decree 464 of 2020, declaring telecommunications as essential public services.614 By virtue of this rule, while the state of emergency lasts, its provision may not be suspended during the state of emergency, among other measures that benefit users. Some non-governmental organizations questioned the decree for allegedly having elements that would be unconstitutional (such as the discrimination of users of prepaid plans versus those of postpaid plans, or the suspension of net neutrality).615 However, on May 27, the Plenary Chamber of the Constitutional Court supported the constitutionality of Decree 464 of 2020.616

427. According to the Ministry of Information and Communication Technologies, Colombia currently has 24.3 million internet connections (between fixed and mobile 4G) with a speed greater than 10 Mbps, compared to 23.8 million who are in the more remote areas and cannot access the benefits of ICTs.617 However, the figures provided by the International Telecommunications Union (ITU) place Colombia below the regional average in population with internet access.618

428. As a result of the events observed in 2020, this Office calls on the Colombian State to specially note that:

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611 Archive of the Office of the Special Rapporteur for Freedom of Expression. Information supplied by the Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición de Colombia (CEV) in request for a hearing for the 178th Period of Sessions; 178 Period of Sessions. Audiencia 11: Comisión de la Verdad, la Convivencia y la No Repetición de Colombia. December 8, 2020.
617 Ministerio de Tecnologías de la Información y las Comunicaciones. April 28, 2020. Colombia tiene 8,1 millones de nuevas líneas de Internet móvil 4G; MotITC.
429. **The murder of journalists constitutes the most extreme form of censorship, and impunity contributes to the self-censorship of the press.** States have a positive obligation to identify and punish the perpetrators of these crimes. As the IACHR and its Office of the Special Rapporteur have repeatedly stated, it is essential that the State fully, effectively, and impartially investigate the murders of journalists, clarify their motives, and judicially determine the relationship they may have to journalistic activity and freedom of expression. Authorities should not rule out the practice of journalism as a motive for the murder and/or assault before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions on the development of the processes in the stages of indictment or trial. Not having completely exhausted the logical lines of investigation entails, above all, that the intellectual authors cannot be identified. Likewise, the Office of the Special Rapporteur recalls that the States must ensure that crimes against freedom of expression are subject to independent, prompt, and effective investigations and judicial procedures. As has been pointed out on other occasions, the lack of sanctions for those who are materially and intellectually responsible for the homicides, assaults, threats, and attacks related to the exercise of journalistic activity encourages the occurrence of new crimes and generates a notorious effect of self-censorship.

430. **Attacks and aggressions committed against journalists violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society.** The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation."

431. **The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards.** The Office of the Special Rapporteur recalls that "[t]he type of political debate to which the right to freedom of expression gives rise will inevitably generate certain critical or even offensive speeches for those who hold public office or are intimately linked to the formulation of public policy." Therefore, as stated in Principle 10 of the Declaration of Principles, "[t]he 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". Likewise, principle 11 establishes that "[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." The IACHR has repeatedly argued that the application of criminal law to punish expressions referring to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom of expression.

432. **Illegal surveillance actions against journalists prevent the full enjoyment of the right to freedom of the press.** In the Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression of June 2013, the Rapporteurs of all human rights protection systems made known their concern about the existence of security programs and practices that may cause serious harm to the rights to privacy and freedom of thought and expression. There they pointed out that the surveillance of communications and interference with privacy that exceed what is stipulated in the law, that are oriented to purposes other than those authorized by it, or those that are carried out clandestinely should be drastically sanctioned. This Office recalls that in addition to directly interfering with the freedom to seek, receive, and impart information, this type of surveillance could put informants and confidential sources of the press at risk. Any measure aimed at seizing journalistic material, which requires releasing sources or summoning journalists as witnesses, has a restrictive effect on freedom of expression. According to Principle 8 of the Declaration of Principles on

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Freedom of Expression of the IACHR, "every social communicator has the right to keep his/her source of information, notes, personal, and professional archives confidential."

433. Social protest, which includes the rights of peaceful assembly and without arms, association and freedom of expression, is a fundamental tool in the defense of democracy and human rights. In this sense, it has been pointed out that "the criminalization per se of demonstrations in public streets when they are carried out within the framework of the right to freedom of expression and the right of assembly is, in principle, inadmissible"622 and that "the exercise of the right of assembly through social protest should not be subject to authorization by the authorities or to excessive requirements that make it difficult to carry out".623 The Office of the Special Rapporteur reiterates the recommendation to adopt regulatory frameworks aimed at protecting and facilitating the exercise of social protest. As has been pointed out on other occasions, sometimes public protest can become the only means that really allows disgruntled sectors of the population, but not aligned with political parties, and groups that are discriminated against or marginalized from the public debate, to make their point of view heard and to influence public debate. Likewise, in relation to the protests, the IACHR has stated that it is a fundamental tool for the defense of human rights and essential for the political and social critical expression of the activities of the authorities. Likewise, it indicated that "the criminalization per se of demonstrations in public streets when they are carried out within the framework of the right to freedom of expression and the right to assembly, in principle, is inadmissible"624 and that "the exercise of the right of assembly through social protest should not be subject to authorization by the authorities or excessive requirements that make it difficult to carry out".

COSTA RICA

434. In 2020, the Office of the Special Rapporteur welcomes that many of the reports on regressions to the guarantees of the right of access to information of public relevance to journalists and the media, mainly on issues related to the pandemic, were analyzed and supervised by state entities that serve as checks and balances within the rule of law. This Office recognizes as positive the decisions issued by the Constitutional Chamber of the Supreme Court of Justice that reiterate the importance of accountability and transparency in public management as values that should govern in a democratic society. On the other hand, the Office of the Special Rapporteur noted with concern various acts of attacks against journalists who were exercising their work in the context of public demonstrations. Finally, the Office carefully observes some of the provisions of the new law "to provide legal certainty regarding the strike and its procedures," which establishes new regulations for the exercise of the right to freedom of peaceful assembly, arguing that it is the State's obligation to guarantee the continuity of the provision of public services during strikes.

A. Access to public information

435. Throughout the year, the Office of the Special Rapporteur observed various acts of obstruction of access to public information by the government and its agencies. Thus, for example, on May 12, Diario Extra filed an amparo writ before the Constitutional Chamber against President Carlos Alvarado, Minister of Labor Geannina Dinarte, and the Executive President of the Mixed Institute for Social Assistance (IMAS) and Minister of Human Development and Social Inclusion José Luis Bermúdez, for hiding the lists of citizen

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beneficiaries of the “Proteger” bonus, a subsidy implemented by the government in the context of the pandemic.625

436. In July, Diario Extra filed an amparo before the Constitutional Chamber to order the President Carlos Alvarado Quesada, the Minister of Communication, Agustín Castro Solano, the Minister of Health, Daniel Salas Peraza, and the president of the Costa Rica Social Security Fund (CCSS), Román Macaya Hayes, for violating the right of access to information and freedom of the press, as well as the right to petition, all constitutionally recognized. The remedy seeks that the Government immediately adopt a comprehensive, effective, and transparent information system that enables access to information by the authorities and state agencies. The Costa Rican Association of Journalists and the Ombudsperson Catalina Crespo joined the remedy in cooperation.626

437. As the Office of the Rapporteur learned, in June, the then executive president of the Costa Rican Institute of Aqueducts and Sewers (AyA), Yamileth Astorga, within the framework of a meeting with the AyA union made a call to "not feed" the media Extra and CRHoy.com, since in their publications "they only publish things that weaken the image of the institution and what they want is the privatization of it."627 On August 28, the Constitutional Chamber of the Supreme Court of Justice convicted the president of the Institute for violating freedom of the press and expression by urging other officials to deny information of public relevance to the media. Unanimously, the judges concluded that the "call not to feed the media" is particularly serious given the hierarchical rank of the person who expressed it and that in practice it could become a kind of veiled censorship, since it is encouraged for two media to not receive public information from AyA officials. "The exposed situation hurts the general population, since it prevents the public from accessing information concerning the provision of essential public services, which is unacceptable in a society that is governed by the democratic principle, accountability, and transparency in public management," said Judge Paul Rueda Lea. Thus, the Court ordered Yamileth Astorga Espeleta, in her capacity as executive president of the Costa Rican Institute of Aqueducts and Sewers, or whoever occupies that position in her place, to refrain from incurring again in the facts that gave rise to the amparo writ.628

438. Also, in October, a group of 28 journalists from La Nación, Delfino.CR, Monumental, Columbia, ElperiódicoCR, Bsnoticias, Telenoticias, Diario Extra, CRHoy, Repretel, El Financiero, Multimedios, Elmundocr, Costa Rica Noticias, PulsoCR, and El Observador, among others, joined to ask the Legislative Assembly to provide them with the conditions to be able to carry out their journalistic work in Congress. For example, that they be allowed access to the legislative offices of the representatives, as well as to common areas and meeting spaces. According to the signing communicators, these are the "minimum conditions for journalistic work, necessary to ensure freedom of expression and freedom of the press".629

439. According to publicly known information, on July 31 the Constitutional Chamber ordered the Minister of Health Daniel Salas to deliver within a month the public information that he had denied to journalists David Antonio Bolaños, Edgar Chavarría Hernández, and Hulda Miranda Picado from the digital media Interferencia, belonging to Radio Stations of the University of Costa Rica.630 The judgement came after the communicators asked the state agency for a depersonalized database of all confirmed COVID-19 patients, receiving a denial response based on workload that attention to the pandemic requires. "It is materially

impossible to provide information treated in a different way, as requested by the appellant, without removing resources that are currently used to provide relevant and timely information for decision-makers; in this sense, it deprives the protection of human life as the greatest asset protected by the State over the particular interests of the appellants", indicated the Minister of Health in the report sent to the Constitutional Chamber. 631

440. As the Office of the Special Rapporteur learned, the journalists had requested data such as risk factors, days of hospitalization and people’s contagion links, as well as whether the virus was imported; in all cases, they did not ask for the patients’ identity to be indicated. The judges considered that what was put forward by the Ministry did not constitute a valid justification for denying the right of access to public information. In a ruling unanimously resolved, the judges indicated to the agency that “the scarcity of human or material resources, or the high demand for work, are not valid justifications to deny or condition the delivery of information, much less in a context such as the one we currently live in where, the threat to which public health is exposed and the difficult economic situation experienced by many families, make enforceable an absolute transparency in the conduct of the public power, and an uninterrupted flow of information to the press and other civil society actors”.632 In compliance with the ruling, on September 4 the Ministry of Health published a depersonalized database on patients with COVID-19, with general information such as age, sex, nationality, geographical location of the person, and their migratory condition, as well as information related to the disease, such as the type of contagion, the epidemiological link, among others.633

441. The Office of the Special Rapporteur observed with concern the president’s statement in which he accused the press of “using him to talk about insipid things”, after the media warned him about the little and increasingly reduced space they are offered for consultations on different topics of public relevance. When addressing the press, the president stated that “when it is to build an agenda that is not the agenda of the pandemic or the best interests of Costa Rica, I see a rivalry in my time. I have much to do”. According to journalists and the media, since last year, the head of state would only answer questions that are preselected by his press advisers, which would be mostly those of the media with an editorial line close to his government.634

442. In this context, the Costa Rican Association of Journalists issued a statement in which it warned about the "evident ... setback in the rights to freedom of information, the right to obtain truthful information, and the professional exercise of journalism", protected by the Constitution of Costa Rica. The institution urged the Government to "find a dialogue" between those responsible for state communication and the media, reminding them that “it is necessary for the media to have access to a real press conference, to different spokespersons and leaders responsible for their respective areas, beyond the health sector, so that journalists may fully fulfill their role without detriment to their right to question the source, and to contradict and contrast the source”.635

B. Attacks against journalists and the media

443. The Office of the Special Rapporteur learned that on August 25, journalists from the television channels Noticias Columbia, Noticias Repretel, and Teletica were subjected to verbal and physical attacks in San José, while covering a protest called by the National Rescue Movement against the government’s health measures to contain the spread of COVID-19.636 According to journalist Alejandro Arley, from the program “Por Tres Razones” (Noticias Columbia), a group of protesters became violent and, after telling them that he felt harassed, the journalist began to receive shoves and insults. The journalist reportedly appealed to a police officer, but the attacks continued, and he had to be transferred to a place with a greater police presence, for which reason some protesters later rebuked the police, asking them to "better get him out of

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632 Radioemisoras UCR. August 3, 2020. Sala IV ordena a ministro de Salud entregar datos de pandemia que negó a periodistas.
there.” Likewise, in this context, the journalist Yahaira Piña and the cameraman Jorge Paniagua from “Telenoticias” (Teletica) received insults like “corrupt” and “sell out” by the protesters. A video that circulated through social networks on Twitter shows the moment when a group surrounded and verbally attacked the reporters, who were trying to interview the Costa Rican politician and former parliamentarian José Miguel Corrales. On the other hand, according to the available information, the Noticias Repretel team would have been intimidated in the vicinity of the Presidential House, where the communicators Gabriel Cordero, Sigifredo Cerdas, and Rodrigo Ramírez also faced attempts of physical aggression with shoves and insults.

On the other hand, the Office of the Rapporteur also received information that the Ministry of Labor and Social Security had ordered its dependencies not to buy Diario Extra anymore. According to the available information, a letter was sent to the Extra Group, notifying that the subscriptions would be canceled, supposedly in response to superior instructions and in compliance with the new guidelines issued by the Government on mandatory budget cuts in the context of the COVID-19 pandemic. The measure would have been adopted after the amparo filed against Geannina Dinarte, Minister of Labor, for refusing to provide the data of the beneficiaries of the Proteger bonus subsidy. In response to the complaint by Diario Extra, who described the event as a “new blow to freedom of expression,” the Ministry of Labor issued a public statement in which they assured that the health emergency would have led to an unprecedented economic impact in Costa Rica and that is why the Executive presented “the largest historical cut in public spending.” According to the portfolio, the cut forced them to release costs in some specific items, which included the cancellation of the subscription that was maintained with some newspapers of national circulation (Diario Extra, La Nación, El Financiero, and La República), prioritizing instead the spending on hygiene supplies. “With this we want to be very clear that we are not in the face of an exercise of obstruction of freedom of expression or discrimination against a specific media. We will always respect the serious and responsible work of the media and we recognize the value they have in our democracy,” the Ministry concluded.

C. Legal reforms

On January 16, 2020, the Legislative Assembly of Costa Rica approved in debate Law No. 9808 to provide legal certainty regarding the strike and its procedures, which was later sanctioned by the Executive Power on January 21 and entered into force on January 27. The law provides in its article 371 that only three types of strike will be considered legal: (1) one whose purpose is to defend and promote economic and social interests; (2) the defense of rights in collective legal conflicts defined in article 386 of the Labor Code; and (3) strikes against public policies, only once, and for a maximum period of 48 hours. Strikes that do not fall into any of these categories will be considered “illegal.” In addition, the same article states that any strike that entails blockades in public roads or that prevents access to public facilities or services, the carrying out of sabotage of public property, the perpetration of conduct that involves a criminal offense, or that prevent the right to work of workers who are not on strike, will not be considered peaceful.

The law also establishes the prohibition of strikes in certain essential services (article 376) and limitations on strikes in other services considered of transcendental importance (article 376 ter), which it defines as “those that, due to their strategic nature for development socioeconomic status of the country, its paralysis or suspension implies a significant damage to the living conditions of all or part of the population”. This last category includes, for example, the education sector, which will not be able to carry out a strike for more than one month. Finally, it points out that the strike suspends the employment contracts with respect to the workers who are participating in the movement; consequently, the employer shall not be obligated to pay the remuneration, except when a court ruling declares that the reasons for the strike are attributable to the employer.

In 2019, the Office of the Rapporteur had taken note of the constitutionality query submitted by the opposition representatives to the approval of the project, which at that time was pending resolution by the Constitutional Chamber of the Supreme Court of Justice. On that occasion, the Office observed with concern

the direct and indirect restrictions that the initiative provided for the rights of trade unions and their union members. Finally, when reviewing the queries, Chamber IV of the Supreme Court of Justice (Constitutional Chamber) unanimously declared unconstitutional the provisions of article 350 regarding the dissolution of trade unions. Finally, said reform was eliminated from the project by order of the Constitutionality Consultation Commission in a session of December 17, 2019.

448. Based on the various facts observed by this Office regarding the obstructions to access to public information, the attacks and assaults against journalists and the media, and the legal reforms that could affect the right to peaceful assembly, the Office of the Special Rapporteur considers that the State should note with special observance that:

449. **Transparency and accountability of public powers strengthen democratic systems.** In this regard, Principle 4 of the IACHR Declaration of Principles on Freedom of Expression 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, the Office of the Special Rapporteur recalls that the IACHR’s Resolution on Pandemic and Human Rights highlights the importance of access to information in the current context due to COVID-19 and the crucial role that journalists play in the framework of the public health emergency, by reporting on critical points and monitoring government actions. States have the obligation to allow access to official press conferences to all media, without discrimination based on editorial lines, except for the necessary and proportional measures to protect health.

450. **Aggressions committed against journalists violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society.** The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.”

451. **Social protest, which includes the rights of peaceful assembly without arms, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights.** In this sense, the IACHR has considered that "the exercise of the right to assembly through social protest should not be subject to authorization by the authorities or to excessive requirements that make it difficult to carry out". Therefore, the legal requirements that establish a basis for a meeting or demonstration to be prohibited or limited are not compatible with the right of assembly or with the exercise of freedom of expression in the Inter-American System.

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During 2020, the Office of the Special Rapporteur for Freedom of Expression observed an ongoing pattern of restrictions on freedom of expression and access to public information on the island. We have seen threats, harassment, and the persecution of journalists, dissidents, activists, artists, and teachers who question the regime or disseminate information or opinions on issues of public interest. While the forms of harassment and official restrictions are not new, the IACHR and its Office of the Special Rapporteur note that they have increased in 2020 against the backdrop of the pandemic. In most cases, the persecution of critical speech by the Department of State Security was based on Decree-Law 370 “on the computerization of society in Cuba.” The Office of the Special Rapporteur also received reports alleging that the government had blocked certain applications and websites and tampered with and altered mobile data balances. Many of these incidents took place in an agitated social climate and amid calls for protests, hindering communication and coordination among citizens.

A. Persecution of the independent press

During the pandemic, state authorities have used the serious crisis arising from COVID-19 to systematically intimidate and harass journalists working for independent media outlets. Restrictions on press freedom were often covered by Decree-Law 370 “on the computerization of society in Cuba,” which, according to the government, is aimed at enhancing cybersecurity, technological sovereignty, and national security and defense.
454. In March 2020, a few weeks after the outbreak of the COVID-19 pandemic, State Security and the national police sent a summons to independent journalists Yoe Suarez and Camila Acosta to appear for questioning, without giving them any explanation. In April, journalist Waldo Fernández Cuenca of Diario de Cuba was summoned and questioned by police at the Aguilerá police station in the municipality of Diez de Octubre, Havana, where he was threatened with prosecution for being “unemployed.” The police then visited him at his home to warn him that he would be monitored because he was a “potential criminal.”

455. In April, journalist Camila Acosta alleged that four doctors, in charge of treating patients who had respiratory symptoms or were linked to confirmed cases of COVID-19, visited her at her residence because they had supposedly received a complaint from a neighbor. According to the journalist, it was an attempt by State Security to isolate her. Throughout 2020, the Office of the Special Rapporteur noted repeated acts of harassment by Cuban State Security against independent journalist Camila Acosta, who was fined, summoned for interrogation, warned, and evicted on several occasions.

456. Imposing steep fines has been another way the government has attempted to limit independent journalism. On April 6, Esteban Rodríguez, a contributor to ADN Cuba, was fined US$120 for publishing posts critical of the regime on his Facebook account. According to the reporter, “the Cuban regime, instead of paying attention to what is happening in the country because of the coronavirus, is more concerned about us opponents. They fined me because, according to them, I am slandering them.”

457. The harassment of independent journalists also includes intimidation of their family members. In April, intellectual and journalist Julio Aleaga Pesant reported that his wife had been summoned by the police for interrogation at a police station in Havana’s Plaza de la Revolución municipality, where she was allegedly threatened with deportation to Santiago de Cuba, where she is from. The journalist also said that, as of March 2020, the police had called him in for questioning at least six times.

458. On January 8, officers of the National Revolutionary Police and the Cuban Intelligence Directorate raided the home of CiberCuba reporter Iliana Hernández in the town of Cojímar, east of Havana. According to available information, the officers took several of her personal belongings, including her personal computer and cell phone, and fined her for violating Decree-Law 370 “on the computerization of society in Cuba.” After the raid, the officers handed Iliana Hernández a summons indicating that she was charged with the crime of receiving stolen property and ordered her to report to the police on January 13. According to a
report by Article 19, in the last three years the journalist has been detained at least 13 times by Department of State Security agents, sometimes violently, on others just to intimidate her.654

459. According to information obtained by this office, between April and May, Niober García Fournier, an independent journalist with the Palenque Visión agency and collaborator of People in Need, was summoned for interrogation by State Security twice in the space of a little over a month. Both times, he was fined 3,000 pesos (US$120) for violating Decree-Law 370.655

460. On April 8, State Security threatened independent journalist Osniel Carmona Breijo with "making him disappear indefinitely, from prison cell to prison cell with no one knowing his whereabouts" because of his reports on the coronavirus crisis in Havana. The reporter regularly publishes information on the pandemic and its impact on the population of the Cuban capital in the newspaper Amanecer Habanero.656

461. On April 17, Mónica Baró, a journalist for the magazine El Estornudo, was fined for allegedly violating Decree-Law 370. According to the information received, she was summoned to a National Revolutionary Police station in Havana and interrogated for about two hours.657 She was also accused of working for media outlets that accept financing from foreign organizations that aim to "overthrow the Cuban revolution."658

462. On April 18, Jorge Enrique Rodríguez, a journalist for Diario de Cuba and correspondent for the newspaper ABC, was intercepted on the street and taken to the Zanja police station in Havana, where he was interrogated for over two hours. There, State Security informed him that he was being investigated for "disseminating fake news," which is punishable by a prison sentence of between one and four years.659 On June 28, Rodríguez was detained at the Vivac criminal processing center in Havana. According to available information, his arrest was linked to news coverage of the death of Hansel Hernández and the alleged police involvement in his death, as well as demonstrations to demand justice.660 Cuban authorities reportedly prevented a protest that had been announced and implemented measures to obstruct all media coverage surrounding the event. Some 48 journalistic and human rights organizations alerted the IACHR and the United Nations about the arrest of the Diario de Cuba reporter.661 A group of activists—led by the coordinator of the Cuban Youth Dialogue Table, Kirenia Yalit Núñez Pérez, and scientist and activist Oscar Casanella—filed a writ of habeas corpus with the Havana Court on behalf of Jorge Rodríguez.662 On July 2, the IACHR and its Office of the Special Rapporteur expressed grave concern over the journalist's imprisonment for alleged contempt of authority [desacato], and recalled that detaining journalists for practicing their profession is

incompatible with the principles of freedom of expression. According to information obtained by the Office of the Special Rapporteur, on April 24, repressive forces from the State Security Department and the National Revolutionary Police arrived at the home of CubaNet journalist Enrique Díaz Rodríguez and took him to the Playa Territorial Investigations Unit, where he was interrogated about several journalistic articles. The officers then brought him before an inspector from the Ministry of Communications who, under Decree-Law 370, fined him 3,000 pesos.

According to publicly available information, on May 1, 2020, journalist Héctor Miguel Sierra was summoned, interrogated, and threatened with imprisonment for publishing a photo of a National Revolutionary Police (PNR) officer without a mask in the community media outlet Cimarrón de Mayabeque. The reporter was again violently detained by police officers on July 24.

On June 1, journalist Emilio Almaguer de la Cruz was arrested by authorities in Baracoa municipality (Guantánamo province) for alleged defamation of a local government official. According to available information, the arrest took place days after the journalist posted on social media that Mayor Norge Rodríguez Delgado was being investigated for embezzlement of public funds.

On July 27, Yadisley Rodríguez Ramírez, a reporter for Palenque Visión, was detained by State Security in Camagüey province. The Office of the Special Rapporteur also learned that police and State Security officers had entered her home without a warrant, confiscating two telephones and a personal computer. According to the journalist, she was taken to the headquarters of the Ministry of the Interior, where she was detained for 15 hours while the officers questioned her about the whereabouts of Rodríguez Lobaina, a political activist, director of Palenque Visión, and political activist and member of the Eastern Democratic Alliance [Alianza Democrática Oriental]. She was eventually released with a warning letter.

According to publicly available information, on October 2, Abraham Jiménez Enoa, a freelance journalist, founder of El Estornudo and a contributor to The Washington Post and Gatopardo magazine, presented himself for police questioning when State Security agents allegedly posing as civilians forced him to undergo a strip search, handcuffed him, and took him to the agency headquarters. There he was questioned for nearly five hours and threatened with prosecution for “unauthorized practice” if he continued to publish in The Washington Post because “the media outlet was not accredited in Cuba.” They also allegedly told him they would “start a war” against his family and relatives. The journalist said that the harassment and intimidation is due to his being “regulated,” a term used in Cuba to refer to people who are arbitrarily prevented by the authorities from leaving the country. In June, Abraham Jiménez Enoa had complained that several State Security agents and a patrol car with four officers had “stationed themselves” at his home to prevent him from covering the protest over the death of the youth Hansel Hernández.

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Between November and December, State Security agents reportedly besieged the building where 14 y Medio journalist Luz Escobar lives in Havana, preventing her from leaving her home. According to available information, the siege is said to have lasted at least 10 days. Similarly, Carlos Manuel Álvarez, the editor of El Estornudo magazine and a contributor to El País, was reportedly placed under de facto “house arrest” for at least 17 days, on the pretext of mandatory COVID-19 isolation after having traveled to the country from abroad, even though he had a negative PCR test result. On December 14, when he tried to leave his home in the city of Cárdenas, Matanzas province, he was reportedly arrested by two plainclothes policemen who prevented him from leaving his house and took him to a police station, from where he was released six hours later. On December 21, the journalist and writer was reportedly summoned by State Security to a local police station in Havana, where he was questioned for over two hours and then forcibly taken to Cárdenas, where his family lives. The reporter further alleged that the political police threatened his family with prosecution and imprisonment if he left the city of Cárdenas. According to the information available, the siege and intimidation of the two journalists were related to their participation in the November protest of the San Isidro Movement against the arrest of Denis Solís.

On December 11, Reinaldo Escobar, journalist and editor-in-chief of 14 y Medio, was reportedly detained by State Security outside the building where he lives in Havana and taken to the National Revolutionary Police (PNR) station at Zapata and C, in Vedado. He was released nearly five hours later. According to information provided by the media, the arrest occurred hours after the journalist participated, along with other representatives of Cuban civil society, in an extraordinary session of the European Parliament to analyze the results of the Political Dialogue and Cooperation Agreement between the European Union and Cuba, signed in December 2016.

Independent media outlets reporting on COVID-19 were persecuted amidst allegations of misrepresentation of infection figures, as well as errors and inaccuracies. On several occasions, Inventario, an independent data journalism initiative, exposed misreporting by the Ministry of Public Health (MINSAP) and called for greater transparency. In an April press release, the Office of the Special Rapporteur expressed concern about restrictions on the work of the press during the pandemic at the regional level, and made special mention of Cuba and the enforcement of Decree-Law 370. The IACHR and its Office of the Special Rapporteur called on States to guarantee the right to freedom of expression and access to information, and to guarantee the critical role of the press in a pandemic, in keeping with Resolution 1/20 on Pandemics and Human Rights issued by the Inter-American Commission on Human Rights.
Finally, the Office of the Special Rapporteur welcomed the news of the release of journalist Roberto Quiñones on September 4, 2020, a few days after he had served a year in prison. The independent journalist said that in prison he had been denied “all the benefits” to which he was entitled, and he condemned the overcrowded conditions, poor quality of water and food, and lack of adequate medical care. The Cubanet reporter was convicted on August 7, 2019 by the Guantanamo municipal court and sentenced to one year in prison for the crimes of resisting arrest and disobedience. According to information monitored by the Office of the Special Rapporteur in 2019, Roberto Quiñones was reportedly detained and beaten by National Revolutionary Police (PNR) officers while covering a trial that the Cuban State was conducting against the Rigal-Exposito couple, who were prosecuted for their decision to homeschool their children, among other older cases.

According to information received by the Office of the Special Rapporteur, after his release Roberto Quiñones continued to be subjected to intimidation by State Security. For example, he was allegedly threatened with the airing on state television of a video that would harm his personal reputation if he continued his work as an independent journalist. He also reported that his internet access has been blocked, including his email and other platforms where he does his work. According to Quiñones, he was prevented from accessing his email and video platforms he uses for work.

B. Politically motivated threats and persecution of activists, artists, and members of the opposition

In 2020, the Office received reports of artists, activists, and members of the opposition being fined and threatened by State Security because of their political opinions or their criticism on social media of the regime’s handling of the pandemic. Penalties were generally imposed under Decree-Law 370 of 2018 “on the computerization of society in Cuba,” published in July 2019 in the Official Gazette of the Republic.

In 2019, the Office of the Special Rapporteur for Freedom of Expression expressed concern about some provisions of this Decree-Law. For example, Article 68, which establishes “violations associated with information and communication technologies,” could establish a censorship regime in the country and serve as a legal instrument to punish the independent press. The penalties in Chapter II could also be disproportionate, as they include, for example, the “confiscation of the equipment and means used to commit the violations,” the “temporary suspension or permanent cancellation of the license,” the “closure of facilities,” and fines of up to several hundred U.S. dollars, which are substantial amounts in Cuban pesos.

Visual artist Luis Manuel Otero Alcántara was arrested on March 1 while on his way to a protest called “public kissing” in front of the Cuban Institute of Radio and Television, in response to the censorship of a gay kiss in a film aired on Cuban television. According to information obtained by the Office of the Special Rapporteur, the artist had been harassed multiple times in recent years, including 21 arrests in connection with his public protests. This time, Otero was charged with the crimes of insulting patriotic symbols and property damage because of an artistic performance in which he was photographed with the Cuban flag in

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different situations. The prosecution reportedly sought a prison sentence of two to five years. According to available information, the artist was detained for two weeks and released on March 14.

476. On April 1, Ovidio Martin Castellanos, a member of the leadership of the Patriotic Union of Cuba (UNPACU) and organizer of Cuba Decide was detained for a few hours at the second police unit in Santiago de Cuba. The opposition activist had already been arrested once that day and fined under Decree-Law 370 for his anti-regime publications on social media. He was also fined 200 Cuban pesos for the alleged offense of “enemy propaganda.”

477. In April, José Aguiar González, a Cuban citizen and resident of the city of Cienfuegos, was fined 3,000 pesos under Decree-Law 370 for recording and posting a video online showing the risks of infection faced by some groups of people living on the street. The Office of the Special Rapporteur documented numerous similar incidents of arrests and threats of fines against citizens who denounced the substandard conditions in which coronavirus patients were being treated or made other critical statements on matters of public interest.

478. On April 13, after leaving a police interrogation, YouTuber Yander Serra was arrested while livestreaming in the city of Manzanillo (Granma province) and condemning the threats he had received. The young man had reportedly been called in for questioning because of his social media posts about the epidemiological situation in Manzanillo. On June 8, he was again interrogated for two hours in connection with one of his latest public videos and fined 3,000 pesos.

479. On April 17, rapper Maykel Osorbo was arrested while livestreaming on Facebook outside his home in Old Havana and taken away in a patrol car driven by National Revolutionary Police (PNR) officers and State Security Department agents. The artist was released four days later. In July, he was detained again and held for 12 hours at the San Miguel del Padrón police station, accused of the crime of “defamation of institutions and organizations and of heroes and martyrs.” According to the information received, the charges were related to his social media posts after the musician “El Dany” died as a result of alleged medical negligence. In his posts, he questioned President Miguel Díaz-Canel and the Ministry of Public Health and called for an explanation of what had happened. Days later, he and his partner were summoned to a police station in Old Havana by an official from the Ministry of the Interior’s Directorate of Minors, who threatened to take custody of their 4-year-old daughter.

480. According to information received by the Office of the Special Rapporteur, artist Denis Solís was arrested by the police on November 9 after several days of harassment. In the previous weeks, the artist had tattooed “Cambio Cuba Libre” on his torso, sharing it on social media and expressing his disagreement with the regime’s policies. A few days before his arrest, the police had reportedly entered his home without...
his consent or a warrant. Solís reportedly recorded his discussion with the police officer and then broadcast it on his social media accounts. According to media reports, on November 11, the activist was tried by the Municipal Court of Old Havana, which sentenced him to 8 months in prison for allegedly committing the crime of “contempt of authority” [desacato], a decision upheld by the Provincial Court of Havana.698

481. On November 10, members of the San Isidro Movement, of which Denis Solís is a member, reportedly filed a writ of habeas corpus with the Havana Provincial Court to request his release.699 On November 13, art curator and teacher Anamely Ramos went to the police station on Cuba and Chacón to inquire about Denis's status. There, an officer told her, without further details, that a trial had already been held for contempt of authority and, following the conviction, Denis had been ordered transferred to the Valle Grande prison, where he was “waiting for the judgment against him to become final.” The Movement released a statement condemning the accelerated proceedings against the activist. “In just three days, a citizen of this country was violently arrested without charges, transferred to three institutions of the repressive forces and prosecuted on fabricated grounds. All of this occurred without him being allowed a single phone call,” they stated.700

482. For several consecutive days, dozens of artists, activists, and academics held demonstrations demanding the release of Denis Solís, which reportedly led to a wave of arbitrary arrests and police violence lasting more than three days.701 Since November 16, State Security agents in civilian clothes have had the block where the San Isidro Movement is headquartered in Old Havana under siege and cordoned off. Over 15 artists, activists and independent journalists gathered inside the building for a poetry reading to demand the release of the artist and opposition leader. The IACHR and its Office of the Special Rapporteur received with particular concern reports that Daylys Bandera Rodríguez, a neighbor supplying them with food, had been intercepted. This reportedly led to the declaration of a hunger and thirst strike by some activists at the event, which is ongoing. Anamely Ramos stated that the hunger strike would continue until Denis's release. On November 22, at least fifteen people, including activists and journalists, were reportedly detained by the authorities during a demonstration supporting the San Isidro Movement. Among them was 14 y Medio journalist Luz Escobar, who was broadcasting the demonstration live from Havana's Central Park. Two women dressed in Ministry of Interior uniforms approached her and asked her to “accompany them to the corner” to which the journalist replied that she was not breaking the law. A few seconds later the transmission cut out as she was detained. The reporter was released around 7 p.m., after about four hours in custody.

483. On November 26, Cuban police reportedly entered the headquarters of the San Isidro Movement and violently evicted its members, who had been occupying the premises for 10 days to demand the release of Denis Solís, citing the risk of epidemiological contagion. According to available information, the group’s leader, Luis Manuel Otero Alcántara, and curator Anamely Ramos, were reportedly detained again for resisting police abuse.702 After the dispersal of the protest, on November 27, a group of Cuban visual artists, theater performers, and filmmakers gathered outside the Ministry of Culture in Havana, where they called for more “dialogue” with the authorities.703 According to public information, the young people demanded a meeting with the Minister of Culture to repudiate what happened to the San Isidro Movement and advocate for greater respect for fundamental freedoms. A few hours later, some 30 young people were finally greeted by ministry officials. The demonstration ended in the early hours of November 28, after the protesters stated that they had succeeded in opening an “unprecedented” channel of dialogue with the government.704 "If

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anything. 30 people have just spoken to them honestly about what is happening," about how "they are mistreating us, they are beating us, they are hurting us," said Michel Matos, of the San Isidro Movement, and "they (the government) listened."705

484. In the days and weeks following these events, the artists and activists who participated in the demonstrations, and the journalists who expressed their support, complained of prolonged harassment by the regime.706 According to the information available, several were besieged in their homes by State Security agents, who prevented them from leaving and moving outside the premises, sometimes for over 10 days. This happened, for example, to Luis Manuel Otero,707 Maykel Castillo,708 Iliana Hernández,709 Katherine Bisquet,710 and Héctor Luis Valdés Cocho.711

485. On November 29, Cuban President Miguel Díaz-Canel stated that the protest in Havana by young artists constituted "a strategy of unconventional warfare" by the U.S. government, then presided over by Donald Trump, "to overthrow the Cuban revolution."712

486. The IACHR and its Office of the Special Rapporteur have also noted with concern the selective use of Decree-Law 370 on the computerization of society in Cuba to persecute and criminalize many people for critical speech, often related to COVID-19. the decree was widely criticized and rejected by Cuban civil society and specialized civil society organizations. In June, a group of Cuban journalists, artists, and activists delivered the petition "Declaración contra el Decreto Ley 370: Ley Azote" ["Declaration against Decree-Law 370: Scourge Law"] to the National Assembly, the Council of State, the Supreme Court, the Attorney General’s Office, and the President of the Republic, calling for Decree-Law 370 to be declared unconstitutional. The declaration stated that "aware that providing information, expressing opinions, and speaking freely are not crimes, and that unjust laws should be changed, not obeyed, we declare that, from this moment on, we refuse to pay the fines resulting from the enforcement of this law and all those that violate our human rights."713 In June, more than 50 non-governmental organizations and media outlets endorsed the petition.714 The signatories urged members of the international community, governments, civil society, and international human rights protection organizations to demand that the Cuban government immediately end online surveillance of people expressing their opinions on social networks and other media, and end the persecution of journalists and human rights activists.

487. In a March 17 press release, the Office of the Special Rapporteur condemned the increased criminalization and harassment of journalists, activists, and artists exercising freedom of expression in Cuba, and urged the State to immediately release all those detained for exercising their rights to freedom of opinion and expression. It also reminded the State that using criminal law as a mechanism to prosecute those who express opinions, information, or criticism of government authorities or policies, or speak out on issues of public interest, has a chilling effect that limits freedom of expression.715 On April 25, The IACHR and its Office of the Special Rapporteur also condemned the use of Decree-Law 370 to punish journalists and activists for reporting on or questioning government responses to COVID-19 online. They recalled that imposing penalties
for critical speech or information of public interest on vague legal grounds is incompatible with international human rights obligations and the values of a democratic State.\footnote{Twitter account of Inter-American Commission on Human Rights (@CIDH). April 25, 2020.}

488. The Office of the Special Rapporteur notes that health professionals have also been victims of government persecution and censorship in retaliation for their social media posts. For example, on May 20, Cuban nurse Pedro Ariel García Rodríguez reported that he had been forced to resign from the National Institute of Oncology and Radiology after refusing to delete his Facebook posts. A few days earlier, the nurse had reportedly been summoned by agents of the regime and by the deputy director of the hospital to warn him that they were monitoring his social media posts.\footnote{Cubanet. May 29, 2020. Denuncian en Cuba bloqueo de la plataforma de peticiones Avaaz. IACHR. Special Report on the Situation of Freedom of Expression in Cuba and the 2020 Country Report. OEA/SER.L/V/II CIDH/RELE/INF.21/18.} On May 29, physician Ramón Zamora was detained by State Security and taken to the police station known as El Anillo, where he was interrogated and threatened with the enforcement of Decree-Law 370 for “false publications against the government.” According to available information, his arrest was tied to a social media post about an outbreak of human rabies that caused the death of three people in the municipality of Mayarí.\footnote{Cubanet. May 27, 2020. “Bajan los precios de Internet”, tutuazo contra ETECSA el próximo fin de semana; CiberCuba. May 29, 2020. Convocan campaña para exigir a ETECSA que baje los precios de Internet; CiberCuba. May 30, 2020. Cubanos inician tutuazo de 3 días para exigir a ETECSA que baje los precios de internet; Agenda Pública. July 9, 2020. CiberCuba. July 20, 2020. Periodistas, profesores y activistas cubanos se quedan sin datos de Internet el día de la protesta pacífica; CiberCuba. July 20, 2020. Periodistas independientes en Cuba denuncian vigilancia del Estado y corte de datos móviles; CiberCuba. October 29, 2020. Periodista Roberto Quiñones denuncia que el régimen cubano le bloquea Internet.}

### C. Internet access and freedom of expression

489. As noted in the 2018 Special Report on Freedom of Expression in Cuba and the 2020 Country Report on the Situation of Human Rights in Cuba, if anything has changed recently in the field of freedom of expression, it has been due to the slow and gradual development of communication technologies which, despite severe restrictions, has gained particular relevance on the island. In recent years, internet use and the development of digital media have opened up spaces for the circulation of information and ideas outside of official control. Thanks to these technologies, a growing number of journalists have launched digital media outlets in the past few years outside the official discourse and state control to disseminate their work and promote the exchange of information and opinions.\footnote{Cubanet. April 21, 2020. Expulsan a enfermero de hospital en La Habana por “contrarrevolución”; Radio Televisión Martí. April 21, 2020. Periodista independiente Rolando Rodríguez Lobaina acusa a ETECSA de ser cómplice de hostigamiento; CiberCuba. May 7, 2020. Denuncian que ETECSA roba datos móviles a Tania Bruguera; CiberCuba. May 29, 2020. ETECSA ofrece explicaciones tras numerosas denuncias de robo de saldo y datos.}

490. The Office of the Special Rapporteur notes that internet blackouts by the State are one of the most frequent infringements of freedom of expression. This problem became more relevant during 2020 due to the social distancing and isolation measures that forced citizens to conduct most of their daily activities virtually.

hacking of activists’ social media accounts.\textsuperscript{725} According to the information obtained, this type of problem occurs especially during social demonstrations, protests, and activities organized by independent activists or regime opponents.\textsuperscript{726} For example, on November 29, an “intermittent blocking” of social networks and internet services was reported, allegedly in connection with the events of the previous days, including the eviction and arrests of activists occupying the San Isidro Movement headquarters in protest and the artists’ demonstration outside the Ministry of Culture.\textsuperscript{727}

492. In October, the Office of the Special Rapporteur also learned of the alleged blocking of the instant messaging service Telegram. In a statement on Twitter, the company said that users in Cuba were reporting connection problems that prevented them from using the app normally. “We are monitoring the situation but the problem is not on our end. We hope that the provider responsible for this issue can offer a prompt solution,” said the company.\textsuperscript{728} Cuban users reacted to the cuts through the hashtag #NiMeCallasNiMeCallo as a protest to demand the unblocking of Telegram.\textsuperscript{729}

493. Regarding the high costs of Internet service, a report by the Regional Alliance for Free Expression and Information and the Cuban Observatory for Human Rights notes that there is a widespread consensus about the price of internet access in Cuba. According to the report, considering that the minimum monthly salary established by the Cuban government in mid-2019 is US$16, one GB of data amounts to over 80% of the minimum wage.\textsuperscript{730}

494. In view of the facts observed during 2020, the Office of the Special Rapporteur reminds the State of Cuba that:

495. **Journalism is the primary and principal manifestation of freedom of expression and States have a positive obligation to provide a safe working environment for the press.** The IACHR and its Office of the Special Rapporteur have indicated in their Special Report on the Situation of Freedom of Expression in Cuba that State agents are the main source of threats and attacks on the press in the country, a practice that must be dismantled and punished. The Inter-American Court has held that “it is essential that the journalists [...] enjoy the necessary protection and independence to exercise their functions comprehensively, because it is they who keep society informed, and this is an indispensable requirement to enable society to enjoy full freedom.”\textsuperscript{731} In the context of social protests, journalists, camerapersons, photojournalists, and media workers covering the demonstrations play a fundamental role in gathering and disseminating information, including on the actions of the security forces and possible acts of violence. As the IACHR has stated, freedom of expression protects the right to record and disseminate any incident.\textsuperscript{732} Therefore, the State must provide the press with the utmost protection so that they can carry out their work freely and keep society informed on matters of public interest.

496. **Social protest, which includes the rights of peaceful and unarmed assembly, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights.** The IACHR has affirmed that Cuba shows “intense intolerance of works of art that might raise questions as to the virtues of the political system or the correctness of the ruling group.” The Commission and its Office of the Special Rapporteur have continued to receive information indicating that ideological disagreement has been a motive for inhibiting artistic expressions of various kinds that are intended to be a form of protest. The IACHR

\textsuperscript{725}Cibercuba. May 11, 2020. *ETECSA deja sin internet a activista cubano en primer aniversario de marcha reprimida por el régimen.*


\textsuperscript{730}Alianza Regional por la Libre Expresión y Observatorio Cubano de Derechos Humanos. October. 2020. *Informe sombra sobre la evolución de los compromisos asumidos. Examen periódico universal (EPU) de Cuba.*

\textsuperscript{731}I/A Court H. R. *Case I/CH-BR/00 v. Peru, Merits, Reparations and Costs.* Judgment of February 6, 2001. Serie C No. 74, par. 147-150.


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has recommended that the Cuban State put an end to harassment, including subpoenas, detentions of any duration, and judicial harassment of any person for reasons related to the exercise of their freedom of expression, freedom of association, assembly, or other related reasons. The Office of the Special Rapporteur recalls that both the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man, as well as Article 19 of the International Covenant on Civil and Political Rights, signed by Cuba on February 28, 2008, protect journalistic and artistic work and the defense of human rights. Thus, those who express themselves legitimately should not be subjected to pressure when carrying out their work or covering and disseminating matters of public interest.

497. **Access to the internet is a sine qua non condition for the effective exercise of human rights.** The Office of the Special Rapporteur recalls that in their 2011 Joint Declaration on Freedom of Expression and the Internet, the Special Rapporteurs of the UN, OSCE, IACHR, and ACHPR noted that States have the obligation “to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections.” They further recalled that “[m]andatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure—analogous to banning a newspaper or broadcaster—which can only be justified in accordance with international standards.”

733 The IACHR and its Office of the Special Rapporteur have underscored that “[i]n the current health emergency context generated by the COVID-19 pandemic, people’s access to quality Internet acquires an inevitable central role. Based on the isolation and/or social distancing measures imposed by governments at a global level and their extension over time, Internet connection emerges as the predilect tool to continue with daily tasks that previously required in-person contact, in addition to being crucial for the exercise of civil, political, economic, and cultural rights.”

734 In this regard, the IACHR has emphasized that States must guarantee that “everyone has the broadest possible access to the Internet, and develop affirmative measures to close the digital divide facing vulnerable, lower-income groups quickly.”

DOMINICA

498. The Office of the Special Rapporteur welcomes the progress made during 2020 on the electoral reform in Dominica, which could have a positive impact on freedom of expression. This Office also observes that despite the right to freedom of expression being constitutionally guaranteed in Dominica, defamation continues to be a crime punished with prison or fines. According to the organization Freedom House, complaints for defamation are filed against media workers, something that has the potential to lead to self-censorship.

A. Legal reforms


735 IACHR. Resolution No. 1/20. Pandemic and Human Rights in the Americas. April 10, 2020. Par. 31; IACHR. RIRCU Practical Guides to COVID-19 02. How to ensure access to the Right to Education for Children and Adolescents during the COVID-19 Pandemic?
In 2019, Dominica’s government requested assistance from the CARICOM Secretariat (CARICOM), the Commonwealth Secretariat (COMSEC), and the General Secretariat of the Organization of American States (GS/OAS) to conduct an electoral reform, and in August, they carried out a Joint Special Mission to the country. As documented by the Office of the Special Rapporteur in its last annual report, the three organizations issued a series of recommendations and highlighted citizens’ lack of information on the electoral form and the right to vote, stating that "not all persons had received sufficient, accurate information to allow them to understand the issues and to form considered opinions," underscoring the need to improve and level the playing field for all parties in their access to public and private media.

On February 10, 2020, at the opening of the sessions of Parliament, Dominica President Charles Savarin called on the members of the Parliament’s different parties and on society as a whole to set aside differences and approach the debate on electoral reform without political animosity, quarrels, or hateful speech, as it was "a continuing process and not a short-term once and for all exercise." In this regard, the President underscored the need to encourage confidence in the institutions of the State and the mechanisms they provide for resolving differences.

The opposition United Workers Party (UWP) recommended the “urgent” implementation of reforms in key aspects that will "save Dominica from the pitfalls of a defective electoral system." Among other reforms aimed at “free and fair elections,” opposition leader Lennox Linton suggested fair media access for the opposition in terms of news coverage of all state-owned media, a campaign finance reform, an accurate register of voters and voter ID cards.

Caribbean jurist Sir Charles Michael Dennis Byron was chosen to perform the service of sole commissioner for electoral reform in Dominica. In March, Prime Minister Roosevelt Skerrit said that the first visit to Dominica would be an information-gathering exercise, and that he would be exposed to all the relevant stakeholders, including the media. In August, it was announced that the cabinet had approved the engagement of the Caribbean jurist, who would begin serving in September as a sole commissioner to advance efforts towards electoral reform.

“Electoral reform is important; it is important for the country and we are hoping that once Sir Dennis would have submitted his report, then we can go to the Parliament to effect the necessary changes as he will recommend to the country to move forward,” the Prime Minister said. Also, in October, the Prime Minister announced he had invited both the Organization of American States (OAS) and the Commonwealth, asking that they provide two experts to work alongside eminent Caribbean jurist Sir Dennis Byron, to ensure that all international best practices with electoral reform are met.

**B. Subsequent liabilities**

In November, Parry Bellot, the former press secretary of the government of Dame Mary Eugenia Charles and currently a businessman and the owner of Link Magazine, announced he would sue the leader of the Dominica Freedom Party (DFP), Kent Vital, and the party’s president, Johnson Boston, over a series of statements made in which they supposedly attacked his personal and political integrity by saying “that I’m a bourgeois, that I don’t care for poor people.” According to the information available, during a DFP radio show, one of the political leaders asked on air if it was true that he received $3,500 a month from Prime Minister Roosevelt Skerrit to spread propaganda. “It is my reputation that they are defaming. All I have at my..."

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738 Dominican News Online. January 27, 2020. The UWP has recommended “urgent” implementation of electoral reforms in key aspects.
739 Dominican News Online. January 27, 2020. The UWP has recommended “urgent” implementation of electoral reforms in key aspects.
742 Winn FM. September 1, 2020. Dominica Cabinet approves appointment of Sir Dennis Byron as sole electoral reform commissioner.
age is my reputation,” Parry Ballot said, adding: “I don’t want people thinking all along I have been getting money from Mr. Skerrit. I have worked hard, very very hard for Dominica. I have always been a nationalist. Very often doing things for free. (…) we cannot have politicians just say things against people they think are working against them. That has to stop.”

Likewise, in July, the former president of the Concerned Citizens Movement (CCM), Loftus Durand, took legal action against two CCM members for defamation of character. According to Loftus Durand, two CCM members defamed his name in the public by accusing him of not being accountable and transparent as it relates to CCM funds. Initially, they were both sent letters asking them to retract their statements, but when the two members refused, the matter was brought before the courts.

Based on the foregoing, this Office calls on the State of Dominica to take special note that:

Freedom of expression is linked directly to political rights and their exercise, with both kinds of rights reciprocally strengthening each other. In order for citizens to be able to make decisions when casting votes, the greatest possible circulation of ideas, opinions, and information on the candidates, their parties, and their platforms is crucial. It is necessary for everyone to be able to question and investigate the abilities and suitability of the candidates, disputing and confronting their proposals, ideas and opinions so that the electorate can form an opinion on how to vote. As the IACHR has noted, free speech and political debate are essential for the consolidation of democracy in societies, which is why they are of compelling social.

The use of criminal mechanisms to punish speech on matters of public interest, especially speech related to public officials, is incompatible with inter-American standards. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials [...] restrict freedom of expression and the right to information.” Likewise, the IACHR and the Inter-American Court have repeatedly indicated that States have more limited scope to impose restrictions on the right to freedom of expression “whenever dealing with expressions concerning the State, matters of public interest, public officials in the performance of their duties, candidates for public office, private citizens involved voluntarily in public affairs, or political speech and debate.” Such individual subject themselves to greater public scrutiny and criticism, in view of the fact that the activities they engage in are in the public interest and because they have voluntarily exposed themselves to stricter scrutiny and have enormous capacity to challenge the information through their convening power. In the “Tenth Anniversary Joint Declaration: Ten key challenges to freedom of expression in the next decade,” of 2010, the Special Rapporteurs of the UN, IACHR, OSCE, and ACHPR stated that “[t]he retention of antiquated legal rules – such as sedition laws or rules against publishing false news – which penalise criticism of government” constitute illegitimate “mechanisms of government control over the media.”

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743 Dominica News Online. 19 de noviembre de 2020. DFP not concerned about Parry Bellot’s defamation suit; Kairi FM. 20 de noviembre de 2020. Local businessman decides to sue two leading members of the Dominica Freedom Party; Dominican Vibes. 20 de noviembre de 2020. Parry Bellot Announces Decision to Sue Two Members of DFP for Defamation.


746 IACHR. Arguments before the Inter-American Court in the case Canese v. Paraguay. Transcribed at: I/A Court H. R., Case of Ricardo Canese v. Paraguay.


748 I/A Court H. R. Case of Palamara Iribarne v. Chile; Judgment of November 22, 2005. Serie C No. 135; I/A Court H. R., Case of Ricardo Canese v. Paraguay.


750 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
The Office of the Special Rapporteur noted with concern the increase in aggressions and attacks against the press, in a year in which more than 800 journalists were victims of some type of aggression. Attacks on the press range from death threats to bomb attacks. At least two explosive devices were detonated: one at a journalist’s home and the other at a television channel.

The COVID-19 pandemic had negative effects on the exercise of freedom of expression, such as access to public information. The country, which was one of the most affected especially at the beginning of the year, put journalists in a vulnerable situation not only due to the dismissals registered in different media but also due to the number of journalists infected. In fact, at one point, the country led the region with the highest number of journalists killed by the virus. Additionally, the pandemic deepened the economic crisis of the
media that had been affected since the last administration, which with fines and sanctions was affecting independent media.

510. The Office of the Special Rapporteur received with concern information on the little progress in the prosecution of the murder of the team of the newspaper El Comercio that took place on the border between Ecuador and Colombia. Additionally, the Office of the Special Rapporteur has noted the little progress in the development of the Inter-Institutional Committee for the Protection of Journalists that was created after the murder.

511. This Office also noted with concern government decisions such as suspending the Pichincha Universal radio license. This Office was also aware of important decisions such as the legal reform that approved the change in the Organic Law of Communication that established communication as a human right and not as a public service. Likewise, this Office learned of the ruling against an aggressor of a journalist, as well as the declaration of unconstitutionality of a fine imposed on a media outlet.

A. Progreso

512. On July 24, José Manuel Guacho Anilema was sentenced to four months and 18 days in prison, accused of assaulting journalist Freddy Paredes, under the crime of injury with incapacity of 31 to 90 days. In October 10, 2019 when he was leaving the Agora of the House of Ecuadorian Culture, when Guacho Anilema brutally beat him with a stone that resulted in a broken collarbone and a concussion with an open wound to the head. Guacho Anilema was a fugitive from the attack until March 5, 2020, when he was captured. In addition to his prison sentence, he was sentenced to pay a fine of four unified basic salaries (US $ 1,600) and a comprehensive reparation of US $ 1,900.

513. On September 2, the Constitutional Court of Ecuador declared unconstitutional a 2012 ruling by the Contentious Electoral Tribunal (TCE) in which it fined Vistazo magazine US$80 thousand dollars for an editorial published in 2011. The Constitutional Court also ordered the TCE to apologize to the magazine. On May 6, 2011, Vistazo magazine published the editorial 'Un NO Rotundo' where it established its position on the Popular Consultation and Referendum that took place on May 7 of that year, promoted by then-President Rafael Correa. In the editorial, the magazine indicated, according to its concept, why one should vote "No" in some of the proposals. In June and August 2011, five complaints were filed against Editores Nacionales S.A. ENSA (which publishes Vistazo magazine) which were dismissed as inadmissible on December 12, 2011 by a judge of the TCE. After an appeal, on September 26, 2012, the TCE ruled again, this time against the magazine, considering that the editorial constituted "electoral propaganda" and violated the electoral silence of 48 hours prior to the elections. On October 11, 2012 ENSA filed an extraordinary protection action against the TCE ruling. On July 4, 2013, the Admission Chamber of the Constitutional Court admitted the action ordering that the respective draw be carried out for the merit. However, Vistazo's file was frozen for six years until the new Plenary of the Constitutional Court was inaugurated on February 5, 2019. On March 19, 2019, according to the draw made by the Court, the merit was assigned to the judge Teresa Nuques Martínez, who called for a hearing on the case through an order of June 20, 2019. Finally, in the recent decision of September 2, it annulled the ruling of the Court of September 26, 2012 and ordered the TCE to offer a public apology through a poster located in a visible place at the entrance of the main building of the Court and of a banner published on the Tribunal's website, which must remain on for 30 consecutive days. In this decision, the

756 Corte Constitucional anuló proceso contra Vistazo por editorial que pedía votar No en consulta popular de 2011.
Constitutional Court determined that the TCE ruling violates freedom of expression and highlights its importance, especially during electoral processes, for which it ordered the Court, through the CNE, "within a period of 6 months, to implement a training program to its members on the protection of freedom of expression, emphasizing the validity of this right in electoral times and contexts". On September 22, the TCE published its public apology for the violations caused to ENSA.

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

514. The Office of the Special Rapporteur has viewed with concern how Ecuador has had a violent year against the press with attacks ranging from threats to the manufacture of bombs. According to available information, as of December 15, 954 media outlets, journalists, activists, or citizens were attacked. Of this number, 863 were journalists, 36 media, and 6 photojournalists.763

515. Thus, for example, at dawn on February 8, an explosive device exploded in the home of journalist Víctor Aguirre, in the city of Naranjal, Guayas province in the south of the country. Although Aguirre and his pregnant wife were at home, neither was injured. Aguirre covers politics for VA Televisión, a Facebook page-based outlet he founded and runs. On February 10, the mayor of Naranjal, Luigi Rivera, in a speech uploaded to his Facebook page, attacked VA Televisión and claimed that this and other media were “corrupt media that try to misinform the public” due to their coverage of the protests against a public housing project that, according to critics, is being built in an ecologically sensitive area of Naranjal. Already in December 2019, the journalist had denounced a threat from Rivera after publishing an article in October of that year and had denounced other activities that he considered suspicious outside his home, like an attempted robbery. The article allegedly reported a meeting between the mayor and a group of protesters. That same day, the journalist denounced that the mayor and his brother had put him in a car. Rivera threatened him and tried to physically attack him. Although the mayor's brother offered him an apology, he would have told him to take down the content of the site because “something bad” could happen to him.

516. Also in Naranjal, Andrés Mendoza, journalist and general manager of the Facebook channel Judío TC, reported receiving death threats. According to the information available, on February 19 two individuals went to the house of the communicator's parents with the alleged intention of killing him. Mendoza connects the threat to his work covering smuggling activities in the city.

517. On April 28, journalist Henry Córdova Correa, news presenter for the UNITV television channel and news videos on his Facebook channel Judío TC, was allegedly attacked by a relative in retaliation for his journalistic work in which he criticized the mayor of Quinindé, where the communicator resides. According to the information available, that day he and his wife were walking down a city street when two brothers-in-law began to yell and insult him for one of his videos, although they did not specify which one. Then one of them hit his wife with a broomstick, and someone threw their motorcycle helmet at Cordova Correa who hit his head and ankle on cobblestones. The journalist suffered a broken leg and had to be transferred to Quito to be treated.

Córdova Correa filed the complaint with the Prosecutor’s Office, but there were no arrests. One of his brothers-in-law would be close to the mayor and the journalist believes that the attack was caused by a video in which he had criticized the mayor’s response to the coronavirus crisis.

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518. In the early morning of May 31, an explosive device exploded at the entrance to the Teleamazonas channel in Guayaquil. No one was injured. According to available information, channel executives believe that the attack could be related to a series of reports that would account for alleged cases of corruption in the purchase of medical supplies for the management of the coronavirus pandemic.769 Regarding this case, on July 10, seven people suspected of carrying out the attack were arrested. According to the Minister of Government, three of the people have a criminal record and one person is a foreigner. She also reported that the attack was planned from the Guayaquil jail.770 The Minister added that the causes of the attack and who hired the men for the attack are still unknown.771 The Ecuadorian Prosecutor's Office tried six people for the alleged crime of damage to the property of others with the use of explosives. A judge of Criminal Guarantees ordered pre-trial detention for five of them on July 13. For the sixth person, he issued alternative measures such as a ban on leaving the country and a weekly presentation before the authorities.772 In December, three of these people were sentenced to 3 years and 4 months in prison. The judge also ordered them to pay a fine of ten unified basic salaries (US$4,000 dollars) and US$1,800 dollars as reparation to the channel. On the other three people, the judge dismissed one of them, and the Prosecutor's Office issued an abstaining opinion on the other two, unable to determine their participation in the attack.773

519. During a report, journalist Henry Dueñas, from Ecuavisa, was attacked by a group of women in the city of Guayaquil on July 14. According to available information, the journalist and two cameramen went to an area of the city where its inhabitants complained that the place had become an area for prostitution. Before a first approach and when noticing the rejection of some women, the reporters decided to enter the place with hidden cameras, but after almost 40 minutes they were discovered. When trying to leave the place, a vehicle with a man and three women surrounded them, and despite the fact that the journalist tried to intercede and explain his work, the insults and beatings began. At one point it would have been 30 women who attacked him. The women allegedly dragged him to a sidewalk where they beat him and one of them broke his nose. The journalist filed the complaint with the Prosecutor's Office on July 15.774

520. Cartoonist Xavier Bonilla 'Bonil' was threatened by Jacobo Bucaram Pulley, son of former President Abdalá Bucaram, on August 6 in response to a work by the cartoonist775. Bucaram Pulley is a fugitive from justice for being involved in possible acts of corruption in the purchase and sale of medical supplies for hospitals in Guayaquil.776 That August 6, Bonilla published a cartoon in the newspaper El Universo titled "El Huyecaminos" in which he referred to the case and which he also posted on his Twitter account with the message "Where is Jacobo?" The son of the former president responded through that social network with insults and wrote "God save you and protect you, and hope I don't find you because as a man you are going to have to defend yourself damn son of a bitch (sic)"). Although the tweet was deleted, there are screenshots.777 The Office of the Special Rapporteur notes with concern that other types of harassment and violence have also occurred in this case, for which it considers that this threat should be responded to seriously. Thus, for example, the Fundamedios organization denounced the cyberbullying of the journalist Dayanna Monroy of...
the Teleamazonas channel and who has investigated this corruption scandal. The attacks would be driven by Jacobo Bucaram. Likewise, one of the foreign citizens who denounced Bucaram Bulley was assassinated on August 8 inside the Litoral Penitentiary. The other foreign national who also complained was injured in this attack.

521. The journalist Gonzalo Rubén Piña Burneo was allegedly the victim of verbal and physical attacks on August 29 at the Reina del Cisne stadium in Loja by the public relations officer of the Provincial Sports Federation, Roberto Castro. The aggression was motivated by an investigation broadcasted on the Radio Zapotillo program "Deportivísimo" on the functions of the public relations officer. According to the publication, Castro reportedly did not comply with teleworking, and it was questioned that during 2020 he was granted two months and three weeks of leave (1 month without pay, 1 month of vacation, and 3 weeks for other reasons such as illness or domestic calamity). The official allegedly took the cell phone from a journalist to erase evidence of the attack and then returned the device. The Núcleo de Loja Circle of Sports Journalists of Ecuador expressed its rejection of the physical and verbal aggression suffered by one of its members.

522. The Office of the Special Rapporteur draws attention to the case of journalist Dayanna Monroy. In addition to the cyberbullying of which she would be a victim -previously mentioned- this Office has learned of several occasions in which the journalist was threatened and/or intimidated by her journalistic work. Thus, for example, on July 14, Daniel Salcedo’s lawyer, accused of being involved in a corruption scheme in hospitals in the country, accused the journalist of lying in several reports and assured that she would have to "answer for everything". In October, new threats against Monroy were known through social networks allegedly promoted by former President Abdalá Bucaram. This time it would be caused by a series of reports published by the journalist on the alleged irregular marketing of medical supplies for a hospital of the Ecuadorian Institute of Social Security in Guayaquil. A friend of the Bucaram family, Dalo Bucaram, who is currently a fugitive from Ecuadorian justice, is involved in the events. In a tweet that was later deleted, the former president would have written "We will present criminal charges against the Monroy rat of teleamazona, who, outraged by the ruling of the national north, launches false accusations against my son. This cheap slut will pay for this, scoundrel cheap slut". On November 17 and 18, again after a publication by the journalist Monroy, she received two verbal attacks from former President Abdalá Bucaram. On this occasion it had as its cause an article that would account for some irregular requests made by the inmates of Prison 4 and that would involve Jacobo Bucaram Pulley, son of the former president, imprisoned in that place for a case of organized crime.

523. Also, at the end of November, the journalist Wilson Cabrera, correspondent for Teleamazonas in Morona Santiago and director of the journalistic platforms Conectados y Verificado, was reportedly threatened by Iván Francisco Rivadeneira Torres, who is the National Police Commissioner of the canton Santiago, city of Méndez, in Morona Santiago. Through six voice notes via WhatsApp, the official warned him that he was going to file legal actions after the journalist made comments on the social network Facebook about alleged abuses by the official. In his voice messages, the Commissioner reminded him that he is the authority and deserved
respect. In subsequent statements, the official indicated that he would not file any legal action, that his messages were made to express his position.784

524. On December 8, the journalist Franklin Soria, from Prensa Minera, filed a complaint with the Imbabura Prosecutor's Office for physical and verbal attacks against native citizens of Buenos Aires, a parish of the Urcuquí canton (Imbabura). According to available information, the journalist was attacked while covering a sit-in in which they demanded that the Prosecutor's Office not proceed with sanctions against several people accused of illegal mining. The journalist reported that it is not the first time he has received attacks, as he said, 15 days before these events, he and his father received calls to "stop meddling in what doesn't concern you" after having published a report on illegal mining.785

525. On December 13, two sticks of dynamite were found on the balcony of the home of journalist Mario Pinto, director of the digital medium MPNoticias, in the city of Machala, El Oro province. The device did not explode.786

C. Censorship

526. On January 3, the media in the city of Macas, in the province of Morona Santiago (Ecuadorian Amazon), were prevented from covering the election of Mónica Heredia as the new president of the Sports Federation of that territory by an order of the delegate of the Provincial Federation of Morona Santiago, Harry Yumbla. The election was reportedly full of scandals and would have been held completely behind closed doors.787

527. In February, the journalistic portal 4Pelagatos reported on a complaint against them by a person who works as a technician for the Directorate of Synthesis and Alerts of the Presidency of the Republic for allegedly using an image owned by the Presidency. According to the media, it would be a legal technique to use European copyright laws in order to take down critiquing content, in a process in which there were reportedly also several irregularities, such as, for example, that this person posed as a worker of the Embassy of Ecuador in Spain.788 The General Secretariat for Communication of the Presidency issued a statement on February 4 in which it expressed its "absolute respect" for the freedom and expression of citizens and the media and added that it does not carry out censorship actions. It added that it does have copyright over the images and information it generates, and that it "safeguards the proper use of such content, without impairing the right of the media to inform." It regretted that the fact had been "misrepresented by an official who has been immediately separated from the institution".789 However, on February 25, the La Historia portal reportedly received a notification from Twitter also for allegedly violating copyright after publishing a video made by the Presidency of the reopening of a hotel. The claim would have been initiated by the same official who filed the case against 4Pelagatos.790

528. Likewise, on July 23, the portal La Historia reported on a complaint filed by the company Lomart Group PLC - based in Glasgow (United Kingdom) - for five articles published by the portal. The notification has to do with an alleged copyright violation for using photos of the Presidency of the Republic and the General Secretariat of Communication (Segcom). The reports that they were trying to take down791 had to do with President Lenín Moreno, his family, other politicians, as well as alleged cases of corruption in hospitals. According to available information, on July 24, the portal received another notification reiterating the need to remove the notes, adding an additional one, in which the portal denounces this alleged attempt at censorship.792

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792 Fundamedios. July 24, 2020. Presidencia de la República intenta censurar a portal La Historia por supuestas infracciones de "copyright".
The journalist Andrés López, presenter of the program “Andrés ‘el mono’ López” that was broadcasted by Radio Visión, announced on his Twitter account that his space was canceled as he was informed on June 24. The reason was reportedly for having used the station’s logo in a note about the mayor of Quito, Jorge Yunda, which gave an account of alleged acts of corruption on the part of the official. It was also argued that the journalist presented the note as an editorial, so it did not represent the position of the media. A day after publishing the note, the journalist reportedly received a text message from the director of the radio who told him that if he wanted to continue working at the station, it would be under the guidelines of the media. The journalist considered it an act of censorship. On June 30, the Ombudsperson’s Office announced that it had opened a defense investigation on Radio Visión for alleged violation of the right to freedom of expression of the journalist Andrés López. As reported by the Ombudsperson, it asked the legal representatives, manager, and directors to send the documentation they have on “the reasons and arguments that prevailed to terminate the Andrés ‘el mono’ López program” within eight days.

D. Stigmatizing statements

This Office received information that the Minister of Government, María Paula Romo, reportedly dedicated at least eight minutes of her presentation on the night of August 30 to question and to criticize Luis Eduardo Vivanco and Andersson Boscán, founders and directors of the digital platform La Posta. The Minister responded with a video to a publication that the media made on August 26 about an alleged distribution of hospitals in 10 provinces of Ecuador. These alleged negotiations put the official in the middle of this and were reportedly done with leaked information from a former congressperson who is currently prosecuted for corruption. La Posta also published a series of chats between that former legislator and the Minister as proof of this distribution. In addition to giving explanations in her statements, the Minister reportedly used phrases such as "crime disguised as information", "false journalism disguised as propaganda" and released commercial information on the platform and family relationships of its directors. Likewise, she reportedly made comparisons with journalists that would hint at acts of corruption. Among other phrases, she reportedly said: "It is like saying that (the journalist Andersson) Boscán is part of the hospital corruption network because his aunt is (Daniel) Salcedo’s lawyer, or infer that, because Telconet paid a spot to the journalists Boscán and (Luis) Vivanco, then, they would be linked to the investigations made on their manager".

E. Diversity and pluralism

On January 17, the hearing in the Civil and Commercial Chamber of the Court of Pichincha that reviewed the appeal to the Protection Action procedure presented by Televicentro was concluded. The channel seeks to recover the temporary frequency of its signal in Guayaquil (channel 11) that was reversed by the Agency for the Regulation and Control of Telecommunications (ARCOTEL), on July 2, 2019.

The Agency for the Regulation and Control of Telecommunications (ARCOTEL) issued a resolution on January 23 through which it revoked the enabling title of Radio Pichincha Universal in the Pichincha region. According to ARCOTEL, the decision was based on information from the Council for the Regulation, Development, and Promotion of Information and Communication and the Ministry of National Defense, which reported that the radio was allegedly used against public and State security, "a fourth-class infraction typified in article 120, numeral 5 of the Organic Law of Telecommunications". According to the organism, "the National Government, framed in the fundamental norms of the democratic coexistence that governs us, always rejected –and rejects- chaos, sabotage, and coup, wherever they come from. And it also keeps in mind the importance of values related to freedom of the press and opinion, not with communication practices that align with these destructive tendencies". The radio is operated by the local government that is part of the
political party opposed to President Lenín Moreno. The general manager of the station denied having transmitted information of illegal content and assured that this media is "known for disseminating information ‘that is not aligned with the regime of [President] Lenín Moreno’". In the ARCOTEL resolution, it mentions that in the broadcast of October 3, 2019, which covered the wave of protests that took place in the country from October 3 to 13 of that year, they would have used "phrases that incite the paralysis of the public services” and declared that the station participated “as an inciter to the strikes". On October 9, 2019, Radio Pichincha received an order from the Presidency's Communication Secretariat to adhere to the public radio signal, a measure that was later replaced by a judicial request to suspend the broadcast transmitted by ARCOTEL as a provisional precautionary measure. Its facilities were also raided. Radio Pichincha finally returned to the air after 16 days after Judge Mario Cadena accepted a protection action in favor of the radio on October 25, 2019.

533. Following the resolution of January 23, 2020, ARCOTEL’s executive director, Ricardo Freire, reported in public statements on January 27 that the organization has not yet arranged to cease broadcasting on Pichincha Universal radio. On the afternoon of January 27, a hearing was held before the Court of Pichincha in which the defense of the radio station indicated that ARCOTEL violated constitutional rights.

534. On February 19, the director of ARCOTEL did not attend the Committee on Collective, Community and Intercultural Rights of the National Assembly, before which he had to explain the reasons for having withdrawn the enabling title from radio Pichincha Universal. Instead, he would have sent the Commission an official letter in which he mentions the appeal of the radio station and assured that he was prevented "from making any value judgment outside of due administrative process, with respect to the resolution by means of which the Decentralized Organism of the Agency for the Regulation and Control of Telecommunications resolved to revoke the enabling title” to that radio station. The director did not attend the appointment that had been made for him on February 5 either.

535. On August 18, the Special Criminal, Military Criminal, Police, and Traffic Chamber of the Provincial Court of Justice of Pichincha notified Radio Pichincha Universal that the protection action filed by the media against ARCOTEL was revoked. According to the document, the appeals filed by ARCOTEL and by the Attorney General of the State had been accepted, so the sentence handed down by Judge Mario Cadena Escobar was revoked, "because there was no violation of the alleged rights”. Before the announcement, at a press conference on August 19, the prefect of Pichincha, Paola Pabón, announced that she will file an extraordinary protection action before the Constitutional Court to guarantee the rights of freedom of expression. The radio has reported having suffered more than 2,000 attacks and 262 complaints from the government. In the span of a year, the outlet has been suspended three times.

536. On May 15, the Telecommunications Regulation and Control Agency (ARCOTEL) began the competitive process of assigning 3,196 FM radio frequencies, of which 2,212 are for private media and 984 for community media. However, some organizations manifested irregularities in the process carried out in the midst of the pandemic. A group of community media, social organizations, human rights organizations, among others, released a statement in which they expressed their concern that the process would be carried out in the midst of the conditions of the pandemic, such as, for example, that they would not have the...
resources, time, and access to places due to the restrictions of the health crisis. For this reason, they
demanded the extension of the term to apply for the process, “we also demand that telecommunications
policies allow the full participation of social organizations, peoples, and nationalities, in order to achieve a
transparent and plural process, as stated in the Constitution, and it is recommended by organizations such as
the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human
Rights” and that the process guarantees the democratization of communication.807 621 interested parties
reportedly applied to the process, the contest was postponed for a month, and finally ended in the alleged
concentration of frequencies by the businessman Ángel González, who reportedly used a scheme of garage
companies, as well as the mayor of Quito, Jorge Yunda, who reportedly used relatives and close people for the
distribution of companies.808

537. For the Office of the Special Rapporteur, it is especially worrying that organizations denounce
irregularities similar to the failed 2016-2017 contest, especially due to the lack of transparency about who
the owners of television channels and radio stations are.809

F. Impunity

538. The Office of the Special Rapporteur received with concern information on the investigation into the
crime against the team of the newspaper El Comercio that took place on the border between Ecuador and
Colombia. Thus, for example, June 18 marked two years since the investigation of this crime was opened by
the Ecuadorian Attorney General’s Office, however, so far no charges have been filed against any person.
Additionally, on June 30 it was reported that Nelson Guano will be the new prosecutor in charge, replacing
Belén Corredores, who led the investigation since 2019.810

539. This Office also received with concern the information on the two persons prosecuted for the kidnaping and murder of the El Comercio team in Ecuador who were released in Colombia. According to
available information, Gustavo Alonso Ospina, alias ‘Barbas’, and Gustavo Angulo Arboleda, alias ‘Cherry’,
were released from jail in June and August 2020, respectively, due to the expiration of legal terms to start the trial stage, according to the criminal process in Colombia.811 In a statement on August 25, the Colombian
Attorney General’s Office condemned that due to congestion in the Criminal Court of the Specialized Circuit of Tumaco, Colombian department of Nariño, in the last four months more than a hundred people deprived of liberty have been released, including the two prosecuted for the crime of the Ecuadorian journalistic team.812

G. Internet and freedom of expression

540. The Andean Foundation for Media Observation and Study (Fundamedios) reported that their
Facebook account was hacked on January 5 and was fully recovered on January 8. During that time, the
organization’s Instagram account did not work properly, and its website was also hacked by redirecting to a
site with malicious information.813

541. The Twitter account of the Yasunidos collective (@Yasunidos) was suspended by the organization on
November 26 after a series of publications denouncing the oil spill in the Coca River and the impunity in the
treatment of this case. According to available information, Yasunidos along with other organizations working
on the same issue, made a “tweet storm” about the spill case. Although the account had been restored a few
days later and its tweets were visible, its administrators were unable to post.814 On December 13, the Yasunidos account announced that after 15 days they had recovered the account. A tweet from the account states: "We suffered an attack by trolls to silence us while we made visible the April 7 spill and how the State continues to perpetrate impunity. Today we do it again: #SOSDerrameAmazonía,"815 The spill in the Coca River occurred on April 7, affecting the indigenous communities of the area. It is the largest spill in the Ecuadorian Amazon in 15 years.816 Spokespeople for the Yasunidos collective have pointed out that the suspension of their account has prevented them from giving information about the case.817

H. Protection mechanism

542. On August 11, the Inter-Institutional Committee for the Protection of Journalists and Communication Workers was reactivated as an articulated response to the series of attacks that journalists have suffered in recent months. During the first seven months, the NGO Fundamedios registered 106 alerts of attacks and assaults on journalists. One of the agreements during the reactivation would be the integration of a representative of the Attorney General’s Office and the Council of the Judiciary and, if applicable, police intervention to provide protection and support to journalists. Government Minister María Paula Romo has committed to making the necessary approaches to comply with this agreement.818

543. Since its creation in 2018 as a result of the murder of three members of the El Comercio journalistic team on the border with Colombia, the Committee has been activated twice: in 2019 in the framework of protests in which there were at least 115 attacks on journalists and on April 20, to discuss "a draft Protocol of good practices for coverage in risk areas, proposed by the Ministry of Government." However, the document agreed at that time would remain in draft since May 3 and support for journalists did not arrive in time.819

I. Legal reforms

544. On December 10, the plenary session of the National Assembly, with 126 votes, approved the report of the second debate of the bill of reforms to the Organic Law of Communication. The reform determines that communication is a human right and not a public service by modifying articles 5 and 44.1 of said law.820 The proposal, which lasted two years under discussion, was made by President Lenín Moreno in January 2019, taking as a reference decisions and recommendations of the Inter-American Court and the Inter-American Commission, which indicated that since communication is considered a public service, control resided exclusively within the state. Article 5 establishes that "social communication media are considered to be public, private, and community organizations, as well as radio and television frequency concessionaires, who carry out the mass dissemination of communicational content, through printed media, radio, television, and audio or video by subscription, whose contents can be generated or replicated by the means of communication through the internet. The radioelectric spectrum will not be considered means of communication, since they are concessions by the State". Article 44.1 determines that the Social Communication System is "the articulated set of public, private, and community organizations that exercise the massive diffusion of communicational content, in a stable and periodic way, through printed media, radio, television, and audio or video by subscription, whose contents can be generated or replicated by the means of communication through the internet."821 The Office of the Special Rapporteur welcomes this decision, which

817 Fundamedios. December 7, 2020. Twitter bloquea cuenta de Yasunidos y otras cuentas aliadas tras alertas de un derrame de petróleo en el Río Coca.
modifies a provision that gave the State exorbitant powers to regulate the exercise of the fundamental right to express freely through the means that each person chooses to do so, as stated previously by this Office.\textsuperscript{822}

### J. Subsequent liabilities

This Office considers it worrying that during 2020 the process against the computer activist Ola Bini has continued to be suspended, whose preparatory trial hearings were suspended and rescheduled at least five times, on some occasions due to the health emergency caused by COVID-19.\textsuperscript{823} The last deferral registered by this Office took place on December 16, 2020, a date that had been set in a hearing held a few days earlier, on December 3, after Ola Bini's defense presented elements for the possible nullity of the trial for lack of evidence. Again, on December 16, at the North Judicial Complex, in Quito, the evaluation hearing and preparation for the trial was suspended.\textsuperscript{824} According to the information available, the judge of criminal guarantees in charge of the case declared the validity of the process and announced that she would notify the parties for their reinstatement and inform their resolution.

Likewise, the Office of the Special Rapporteur learned that on October 8, 2020, the legal defense of Ola Bini had filed a habeas data action, with precautionary measure, against the Minister of Government, María Paula Romo; General Patricio Carrillo, commander of the National Police; the Quito Police Commander, Fausto Salinas; the director of the Judicial Police, Manuel Íñiguez; the Director General of Police Intelligence, Mauro Vargas; and the director of the Center for Strategic Intelligence (CIES-ex Senain), Juan De Howitt.\textsuperscript{825} Through the promotion of this legal action, the activist asks the Justice to be informed if there would have been any order to carry out follow-ups against him, as well as interceptions of his electronic equipment, such as cell phones and computers. On October 30, allegedly without any prior notice, the habeas data hearing requested by Ola Bini’s lawyer was suspended, which was even going to be broadcasted live on social networks to guarantee the publicity of the hearing.\textsuperscript{826}

Civil society organizations dedicated to the defense of human rights in the digital environment have drawn attention to irregularities and obstacles raised by the Ecuadorian Prosecutor’s Office and have formed an observation mission to guarantee that the right to a fair, independent, and impartial trial is respected.\textsuperscript{827} This group is made up of the Regional Human Rights Advisory Foundation (INREDH), the Ecuadorian Rights and Justice Observatory, the NGO Derechos Digitales, Article 19, and the Intervozes collective, and includes media outlets such as Marcha Noticias from Argentina and Ecuador Today.\textsuperscript{828}

On April 11, 2019, Ola Bini was detained by officers from the Technological Crimes Investigation Unit of the National Police, at the Mariscal Sucre airport in Quito.\textsuperscript{829} The arrest came just hours after journalist Julian Assange was evicted from the Ecuadorian embassy in London. The activist was processed with pre-trial detention for 70 days and on June 20 of that year a provincial court ordered his release after accepting a habeas corpus action. Since then, he has been on probation. Initially, the Prosecutor’s Office had accused him of attacking the integrity of computer systems and later reformulated the charges to non-consensual access.

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\textsuperscript{826} Confirmado.net. October 30, 2020. [Experto Carlos Soria denuncia nuevo atropello del sistema de justicia ecuatoriano. Suspenden sin previo aviso audiencia en caso Ola Bini; Twitter account of Carlos Soria (@calll084). October 30, 2020.]

\textsuperscript{827} ALAI. December 4, 2020. [Ecuador: La audiencia de Ola Bini fue suspendida nuevamente.]


\textsuperscript{829} BBC Mundo. April 12, 2019. [Julian Assange: Ecuador arresta a un "collaborador cercano" de WikiLeaks; Plan V. August 24, 2019. La Fiscalía apunta contra Ola Bini con la tesis del Pantallazo; CNN. August 16, 2019. Fiscalía de Ecuador presentó nuevos hallazgos del celular de Ola Bini.]
549. Among other events, the Office of the Special Rapporteur also received information about a new lawsuit against the journalist Fernando Villavicencio, founder of the online portal Periodismo de Investigación, which originated in an investigation signed by him and by fellow journalist Cristian Zurita; the lawsuit reportedly has a series of irregularities in its procedure. On August 1, 2019, the journalists published the article “The return of Odebrecht: how, who, and for how much they negotiated” which would reveal alleged irregularities and acts of corruption in the agreement with the Brazilian firm Odebrecht through which it had avoided civil and criminal responsibilities in the country. Following the article, Juan Falconí Puig, former Ecuadorian ambassador to the United Kingdom during the administration of former President Rafael Correa and a lawyer for the Odebrecht company, only sued Villavicencio for the crime of slander and false accusation of crimes. According to the information available, the process would have had several irregularities as well. Although the complaint was made on September 2, 2019 before Judge Yadira Proaño, of the Quito Criminal Judicial Unit, it would not have been notified to Villavicencio in the three months established by the Ecuadorian Penal Code. The trial hearing, for example, was scheduled for November 21 but did not take place because Villavicencio had not been notified until then. In 2020, on January 8, after the judge indicated that if the process prescribed, it would not be due to the justice operators, an attempt was made to notify Villavicencio through his Twitter account and an email that did not belong to the journalist. Finally, Villavicencio learned of the complaint on July 9 after publishing a tweet in which he allegedly rebuked Falconí for using a disability card. He would have responded that they would face each other in court, and later former President Correa intervened in the conversation and made mention of the trial supporting Falconí. Villavicencio’s defense also denounced having not had access to the physical process once he learned of the complaint until several hours later and after several requests by Villavicencio. The trial hearing was set for July 13, but Villavicencio requested the postponement of the hearing, which was postponed to July 21. On the same July 13, the journalist submitted a letter in which he requests the statute of limitation of the case. The hearing was scheduled once again for August 3, but it did not take place either. The journalist had requested that the hearing be held via video conference because his lawyer has health problems and could face complications due to the coronavirus pandemic.

550. On September 9, General Fabián Santiago Salas Duarte, National Director of Legal Advice of the Police and Delegate of the Ministry of Government, filed a claim against the journalist Andersson Boscán, co-founder of La Posta, for the publication of a tweet in which he reportedly criticized the protection received by police officers from the pandemic. According to the complaint, the journalist’s publication had “violated the privacy of the Police”. Congressman Jimmy Candell filed a claim against Luis Eduardo Vivanco, another co-founder of La Posta, for dishonor and discredit. The publication on social networks of the media would be related to the leak of information in a corruption scheme in which at least 19 legislators were reportedly involved, including Candell. The complaint is based on article 396 of the Comprehensive Organic Criminal Code which establishes a custodial sentence of 15 to 30 days.

551. The Office of the Special Rapporteur received worrying information about the situation of journalist Juan Sarmiento, who until December 9 had a valid prison order. The conviction against the journalist has its origins in the complaint filed on July 30 by the governor of Napo, Patricio Espíndola Lara, against Sarmiento for moral damage, damage to human dignity, and emotional damage. In his program “Tendencia Digital”, Sarmiento reported on the complaints and questions about Espíndola’s handling of the COVID-19 crisis, such as inefficiency in its response, the real number of infected people, management to provide biosecurity elements to the health personnel of the department, among others. The then governor requested in his complaint that the maximum sanction provided for in the Comprehensive Organic Criminal Code (COIP) be established, which establishes a prison sentence of 15 to 30 days for the person who, by any means, utters
expressions in disrepute or dishonor against another. On August 18, Sarmiento presented his response to the lawsuit. On September 30, the Oral, Public, and Contradictory Trial Hearing was held, but it was suspended by the judge. Subsequently, on October 1, Cristian Pala Cárdenas, judge of the Tena Canton Criminal and Contraventions Judicial Unit, suspended the trial hearing again, and it was postponed until October 5. In a decision of October 8, the same judge Pala Cárdenas sentenced Sarmiento to 10 days in prison, to pay 25% of a Basic Remuneration (US$ 100 dollars) and to offer a public apology to Governor Espíndola Lara. The journalist appealed the decision.

On November 12, the Multicompetent Chamber of the Napo Court of Justice ratified the ruling of the Tena Canton Criminal and Contraventions Judicial Unit that stipulated the conviction against Sarmiento. Because it is a second instance decision, it is final, and it means the journalist's imprisonment is ordered once the first instance judge executes the conviction. The Office of the Special Rapporteur learned that in this case, President Lenín Moreno reportedly asked Governor Espíndola to resign, assuring that the political representatives of the government should be aware of government policies such as tolerance and respect for freedom of expression. "With his right, he launched a trial against the journalist and that the Government with his right has asked the Governor of Napo to present his resignation. From his category of citizen, he will be able to file all the trials he wants, but as representatives of the policy of a government of tolerance and respect, he cannot do so", the president was quoted as saying on November 23 during the radio program 'De Frente con el Presidente'. On December 9, the Tena Penal Unit ordered the Napo Judicial Police to locate and capture the journalist to execute the conviction. Sarmiento has indicated that his life is at risk in prison because several prisoners of high-impact crimes - such as rape, drug trafficking, among others - were denounced by him. The journalist reportedly received messages from prisoners who were waiting for him. On November 24, the NGO Fundamedios asked the IACHR for precautionary measures in favor of Sarmiento given his imminent arrest.

K. Journalism and COVID-19

Ecuador was one of the countries most affected by the COVID-19 pandemic on the continent, especially in the first months of the year. The journalists said they were in a vulnerable situation not only because of the economic aspect - due to the dismissals in various media - but also because of the high possibility of contagion of the disease.

According to the information available, part of the economic crisis of some media would come from the decade of the Rafael Correa administration, which with fines and sanctions was affecting independent media. This situation, added to the crisis of the pandemic, had even greater effects on the media. This was the case of the newspaper La Hora, which has had financial problems since the Correa administration. Since February of this year, they stopped paying wages and later made massive layoffs. On May 1, 35 former employees of the Editorial Minuto company, to which the newspaper La Hora belongs, sent a letter to the Ecuadorian president Lenín Moreno, the president of the National Assembly, César Litardo, and other government officials complaining about the massive dismissal of La Hora workers, which also would have

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840 Fundamedios. December 9, 2020. Fundamedios condena orden de prisión contra Juán Sarmiento y ante las serias amenazas contra su seguridad anuncia que se lo ha puesto bajo la protección de un programa internacional para periodistas en riesgo.
843 BBC Mundo. April 1, 2020. Coronavirus en Ecuador: el drama de Guayaquil, que tiene más muertos por covid-19 que países enteros y lucha a contrarreloj para darles un entierro digno.
been done without payment of termination. The dismissal was reportedly based on article 169, numeral 6, of the Labor Code. Other media that fired workers were the newspaper El Universo, which reported on the dismissal of 200 press workers, as well as Canal Uno, which reported layoffs. On July 29, the dismissal of 500 workers of the Medios Públícos was known. The General Manager of Medios Públícos also announced that the printed edition of the newspaper El Telégrafo will disappear to be totally digital, as well as Ecuador TV and Pública FM radio, which will become totally digital, with the exception of the Ecuador TV newscast, which will continue being broadcasted by Gama TV. According to figures as of December, there have been more than 700 dismissals of journalists, including 500 from Medios Públícos.

554. The crisis also led to the interruption of the print editions of nine media. Two of them reprinted with fewer runs: El Heraldo and El Espectador. Other media closed operations permanently, such as Radio Ondas Azuay and Radio Splendid. Ecuavisa’s “Telemundo” program stopped being broadcasted.

555. The Office of the Special Rapporteur finds worrying the information that the closure of some media (such as Radio Ondas Azuayas and Radio Splendid) as well as the decrease in circulation of others (La Hora newspaper) was reportedly due to the crisis caused by the pandemic added to an alleged debt that the National Electoral Council reportedly has with the media.

556. According to available information, Fundamedios, in conjunction with the organizations Nos Faltan Tres, Periodistas sin Cadenas, the Ecuadorian chapter of Chicas Poderosas, and the Guayaquil civil society coalition, SOS Familias, provided financial assistance through vouchers to journalists in vulnerable situations in the city of Guayaquil, one of the cities most affected at the beginning of the pandemic. As of May, the initiative had identified 113 journalists in a vulnerable situation in Guayaquil alone. Those registered are relatives of journalists who died from COVID-19, relatives of journalists who died from COVID-19, or journalists who had lost their jobs due to the pandemic.

557. The pandemic also made press workers vulnerable to contagion. On May 1, according to the NGO Press Emblem Campaign (PEC), it gave figures of journalists killed by coronavirus and Ecuador was the country with the highest number of deaths from this cause with 9 journalists who had died of COVID-19. According to the same organization, until mid-April there had been 16 infected communication professionals and 18 in isolation in Ecuador. Until August, the NGO Fundamedios registered 39 infected journalists, but it is believed that there is an under-registration. As of June 2, the death toll was 12 journalists. As of December 20, the same NGO Press Emblem Campaign had registered 41 journalists who died of COVID-19.

558. On March 25, the death of the first journalist in the country, Olmedo Méndez Tacuri, of Radio Universal Guayaquil, was reported; and on March 27, the death of Víctor Hugo Peña, news coordinator of the
Ecuavisa channel. Among other reported cases are those of Pedro Valdivieso Barrezueta, producer and director of photography, who died on April 6, as well as the sports communicators of the radio Centro, Julio Rodríguez and Carlos Alberto Panguil who died on July 3 in the city of Ambato, Tungurahua province. On July 24, the death of sports journalist Javier Eduardo Culcay Villena was reported. On August 30, the death of radio journalist from Riobamba (Chimborazo) Pedro Daniel Sanaguano Llangari was reported.

559. On June 16, the Maintenance Unit of the National Police prevented the entry of at least 12 journalists to the headquarters of the State Attorney General’s Office in Quito where they had arrived to cover the statements of the mayor of the city Jorge Yunda who was going to submit his free and voluntary version of the acquisition with an alleged surcharge of PCR tests to detect COVID-19. According to the available information, reportedly there was no place for journalists to ask their questions, there was a police barrier that prevented the coverage, and despite the rules of social distancing, there were some 200 supporters of the mayor in the place. In the midst of the chaos there was allegedly shoving of journalists, a reporter denounced having been kicked by a police officer.

560. Access to public information during the pandemic has also been affected. Information on the evolution of the disease in the country as well as other issues have not been delivered on time or have not been delivered.

561. On March 10, the journalist María Sol Borja, Policy editor of the GK City site, denounced through her Twitter account the difficulty and obstacles to accessing public information from the Government and Economy ministries, and at the State Comptroller General’s Office (CGE). According to her, she said, the Comptroller’s Office had not answered to her request four months ago, the Ministry of Government had not answered for two months, and the Ministry of Economy a month. The journalist herself told an NGO that when requesting information from the ministries, they usually “give you the wrong or incomplete information or simply don’t answer.” The journalist added that in the response to her tweet, several journalists indicated that they had the same problem and that even within her media GK City, there are also several examples. On July 1, Borja on her Twitter account indicated that the Ministry of Public Health had closed a chat that she had enabled for journalists to ask questions "after weeks of ignoring requests for information and questions from journalists." According to her, she said, the MSP opened a “one-way” channel and added that the Foreign Ministry would have done the same. The journalist wrote: "This is how two public institutions that, although they are obligated to be held accountable through the press, they prefer not to." On March 16, virtual press conferences began as a security measure. However, some media have denounced that the process for asking questions is not clear and the established rules are not being followed. Journalists should send questions through a WhatsApp group of the National Secretariat of Communication (Secom) that are then sent to a journalist from the public media who is in charge of asking them to the corresponding authority. However, it is not known how these questions are chosen, what is the order, which are allowed, or which are discarded. One of the rules of asking one question per media would be disrespected. There have been reports of occasions in which questions by three journalists from the same media are asked.

563. According to available information, the Ministry of Public Health (MSP) would have reduced the information on deaths and infections from COVID-19. According to the complaints, the MSP was reportedly issuing very general reports, not updated its communication channels, and even had removed some reports.

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862 Fundamedios. July 15, 2020. [Director de fotografía y exproductor de medios nacionales falleció con COVID-19](https://www.fundamedios.org/2020/07/15/director-de-fotografia-y-exproductor-de-medi-os-nacionales-fallecio-con-covid-19/)


867 Fundamedios. March 10, 2020. [Periodista denuncia que instituciones públicas no entregan información solicitada](https://www.fundamedios.org/2020/03/10/periodista-denuncia-que-instituciones-publicas-no-entregan-informacion-solicitada/)

868 Fundamedios. March 27, 2020. [Las preguntas que el gobierno no responde](https://www.fundamedios.org/2020/03/27/las-preguntas-que-el-gobierno-no-responde/)

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from its website. This information problem affects the work of journalists, but also of academics, specialists, social organizations, and even local governments. On July 11, it was reported that the page designed by the government to disseminate information about the pandemic (www.coronavirusecuador.com) had been out of date for a month. On July 4, the MSP reportedly removed a page where it published the epidemiological bulletins of each province that it had issued up to that moment. The bulletins were not daily, but they offered data on the most populated provinces and cantons, breaking down the figures by parish. On its website it has a repository of these newsletters updated until May 29. Information was also received that the MSP’s National Epidemiological Surveillance Directorate, in charge of monitoring the spread of the virus, had stopped updating information in an account on Tableau.870

564. On July 1, journalist María Sol Borja on her Twitter account indicated that the Ministry of Public Health had closed a chat that it had enabled for journalists to ask questions "after weeks of ignoring requests for information and questions from journalists." According to her she said, the MSP opened a "one-way" channel.871

565. The information provided by the country’s Minister of Health, Juan Carlos Zevallos, has also been criticized for inconsistencies. According to available information, the Minister reportedly gave different figures, for example on the number of ventilators available, beds in Intensive Care Units, and even on the number of infections. Thus, for example, between May 7 and 8, 1,480 confirmed cases disappeared in the infographics that record confirmed cases of COVID-19. When asked by journalists, he would not have given an answer. Later, through a bulletin, he explained that the reduction was due to a change in the measurement of positive cases. Journalists have complaints due to lack of information: the group created on WhatsApp to ask questions was closed and instead a one-way channel was created on Telegram. Even when the WhatsApp group was active, officials allegedly did not respond in time and asked to send a request for information to the communication director’s email. Additionally, this position would have been held by five different people between March and July 2020. The attitude towards the media and journalists continued even after the Vice Minister of Health, Xavier Solórzano, promised to improve communication channels after a discussion he had with journalists.872

566. On August 10, the Confederation of Indigenous Nationalities of the Amazon (Confeniae) activated a link to update regularly and thus know the progress of COVID-19 in their towns. Until that date, there was no public information on the progress of the disease in the 11 Amazonian nationalities of Ecuador, which by August already had 2,000 infections. According to Andrés Tapia, Confeniae’s communication leader, said to a media outlet, the organization insisted on its request for disaggregated information on the impact of COVID-19 on Amazonian indigenous communities at government press conferences. Confeniae carried out its own registry because the government would not have given a positive response to that request. According to their records, the Kiwchua, Shuar, and Waorani nationalities are the most affected by COVID-19, with more than 300 cases.873

567. In a hearing on August 24, an Ecuadorian judge ordered the Ministry of Public Health (MSP) to deliver information on COVID-19 cases to the municipality of Guayaquil. The decision comes after the municipality filed a constitutional action for access to public information on the data of patients infected with COVID and their home address. The objective, according to the Municipality, is to be able to "intervene in those areas and provide the help that is required." According to the information available, the municipality would have received data such as the tests carried out and the addresses of the new infections during the months of March and May. However, weeks before the hearing, the MSP reported that it would stop releasing the information because the legal framework prohibits the disclosure of this type of information without the express authorization of the owner.874

M. Social protest

In the framework of the evolution of the pandemic, a repression of a demonstration in Guayaquil on May 14 was reported. According to the information available, the sit-in was held “against the budget cut, the lack of measures and protocols for the removal and identification of corpses in Guayaquil, the absence of an efficient health budget, the dismissal of workers, and the prioritization of the payment of the external debt”. During the sit-in, the National Police allegedly pushed and attacked people who were playing music, and later attacked those who sought to document these alleged abuses. At least four human rights defenders whose whereabouts were uncertain for several hours were allegedly detained. Among the journalists attacked are the photographers Valentina Encalada and Miguel Canales, from the newspaper Expreso.875

N. Other relevant situations

The Inter-American Court of Human Rights announced the processing of the case Emilio Palacio Urrutia and others against the State of Ecuador. The case stems from the 2012 ruling against the directors of the newspaper El Universo, Carlos, César and Nicolás Pérez, and their former Opinion editor, Emilio Palacio. In 2011, then-President Rafael Correa sued Palacio for slander after publishing the column ‘No to lies’, published on February 6, 2011, which referred to the alleged attempted coup of September 30, 2010 and that Correa denounced at the time. The complaint also included the directors of the newspaper as contributing authors. The Ecuadorian Justice ruled in first and second instance in favor of the former president, and the four were sentenced to three years in prison and to pay US$40 million dollars in compensation.876 The case was presented to the IACHR, which on its merits report determined that the conviction against El Universo, issued by an Ecuadorian court in 2011, had constituted a violation of freedom of expression. On October 16, 2019, the IACHR referred the case to the Inter-American Court.877

On October 1, the provincial director of the Pastaza Judicial Council asked Radio MIA for a copy of the programs that were broadcasted on September 25, 29, and 30 between 6 a.m. and 8 a.m. According to the official letter sent to the station, the official indicates that the opinions of the journalist Nicolás Méndez Barahona threaten his honor, reputation, and good name; as well as "collaterally harming" the Council. According to the information available, the journalist has an interview and opinion space where he reportedly criticized the justice system and the fact that this official had taken office without holding a contest of merits and opposition. The letter also states that "he will know how to adopt the corresponding measures to avoid this type of action, which not only could entail subjective legal responsibilities against those who comment, but which in turn could have administrative consequences against the respective media".878

According to the events recorded in Ecuador during 2020, this Office reminds the State that:

Attacks and aggressions committed against journalists violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.” Particularly in the case of crimes against journalists and social communicators, the IACHR has indicated that impunity contributes to the self-censorship of the press.

The inter-American human rights system explicitly prohibits prior censorship. The Office of the Special Rapporteur recalls that Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship. Further, Principle 5 of the Declaration of

877 IACHR. February 24, 2020. Press Release 048. IACHR Brings Ecuador Case before the IA Court.
878 Fundamedios. October 6, 2020. El Director del Consejo de la Judicatura solicitó copias de los programas de Radio MIA.
Principles on Freedom of Expression establishes that "[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."

574. **Public authorities are called upon to maintain a speech favorable to public deliberation and freedom of expression.** The IACHR recalls that public officials have the duty to ensure that their statements are not infringing the rights of those who contribute to the debate by expressing and disseminating their thoughts, such as journalists, the media, and human rights organizations. According to the Inter-American Court of Human Rights, this type of statements from public officials could constitute an indirect restriction on the right to freedom of expression.879

575. **Transparency and accountability of public powers strengthen democratic systems.** Access to public information is a fundamental right of individuals and States are obligated to guarantee its exercise. In the context of the health emergency, based on the obligation of active transparency, States must proactively provide truthful and reliable information on all aspects of public interest related to the pandemic, in open formats, and in a manner accessible to all. Given the existence of the digital divide, States must find effective ways to fulfill the obligation of active transparency in such circumstances. The IACHR Resolution on Pandemic and Human Rights in the Americas highlighted the crucial role that journalists play in the context of the health emergency, by reporting on critical points and monitoring government actions, for which the States have the obligation to allow access to official press conferences to all media, without discrimination by editorial line, except for the necessary and proportional measures to protect health. Even the questions posed in virtual spaces must be answered by the authorities with due diligence, because the press is the main channel for submitting questions or queries to the authorities in the face of the emergency situation and the isolation of the population.880

576. **Direct or indirect pressures aimed at silencing the informative work of social communicators are incompatible with freedom of expression.** The Office of the Special Rapporteur recalls that the allocation of radio and television licenses must be guided by democratic criteria and pre-established, public, and transparent procedures, which serve as a brake on the possible arbitrariness of the State and guarantee conditions of equal opportunities for all persons and stakeholders. In this regard, Principle 12 of the Declaration of Principles has highlighted that "[t]he concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals." Principle 13 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."

577. **Community journalism contributes to diversity and information pluralism.** This Office emphasizes that the community media in our region play a fundamental role in the exercise of freedom of expression and access to information by different sectors of society.881 For this reason, it is necessary that the States legally recognize them and that spectrum reserves are contemplated for this type of media, as well as equitable conditions of access to licenses that differentiate the different realities of non-commercial private media.

578. **The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards.** In accordance with principles 10 and 11 of the Declaration of Principles on Freedom of Expression of the IACHR, this Office recalls that the

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protection of reputation must be guaranteed only through civil sanctions", particularly "in cases where the offended person is a public official or a public or private person who has voluntarily become involved in matters of public interest" by virtue of the fact that officials “are subject to greater scrutiny by society”. Furthermore, the IACHR has repeatedly held that the application of criminal law to punish expressions referring to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom of expression.882

EL SALVADOR

579. Threats to the right to freedom of expression intensified during 2020 in El Salvador. The Office of the Special Rapporteur notes with particular concern the constant disparagement by high-level authorities of journalists and media outlets whose editorial lines are critical of the government, which undermines and erodes the crucial role of the press in democratic societies and prevents a reasonable and pluralistic deliberation on public affairs.

580. Restrictions imposed by government agencies on access to public information have also increased since the outbreak of the pandemic. In March, the Legislative Assembly suspended deadlines and administrative hearings, including those related to access to public information. They extended the measure in subsequent decrees. By mid-year, El Salvador remained one of the few democratic countries in the region whose Access to Information Law was still suspended due to the public health crisis.

A. Access to public information

581. Since the outbreak of the COVID-19 pandemic, the media and civil society organizations in El Salvador have reported an increase in the existing government restrictions on the right of access to information, such that there has been an almost total shutdown of institutional public response and information channels. This was seen in the suspension of administrative deadlines for requests for access to information, as well as in not being able to ask questions at official press conferences.

582. This office paid particular attention to this issue. The Special Rapporteur expressed concern about the restrictions on journalists’ right to ask questions and people’s right to know about matters of public interest such as the COVID-19 pandemic and emphasized that the emergency cannot justify keeping people from asking questions about the public health situation and the government’s measures.883

583. Since the beginning of the year, according to media reports, the Information and Response Offices have denied information on issues such as hiring statistics, quarantine centers, emergency public procurement, tests to detect the advancement of COVID-19, requests for shelter or economic compensation, and people detained for driving on public roads, among others.884 They also note that the information proactively published by the State on emergency purchases, the availability of supplies, and direct contracting is minimal.885

584. In March, through Legislative Decree 593 and Decree 599, the Legislative Assembly suspended the deadlines and holding of administrative hearings for 30 days, including those scheduled by the Institute for Access to Public Information. It extended the measure in subsequent decrees.886 On May 14, the Institute for Access to Public Information (IAIP) filed a writ of amparo [petition for a constitutional remedy] with the Constitutional Chamber of the Supreme Court of Justice against the Legislative Assembly seeking to invalidate the suspension of administrative deadlines for the processing of requests for access to public information and personal data protection, as well as the processing of administrative proceedings at IAIP headquarters.887 The agency contended that Legislative Decrees 599 and 593 violated the constitutional right of access to information, protection of personal data, and nonjudicial protection of the population. In statements to the press, the IAIP president said that “health care and respect for the right of access to information are not

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883 Twitter account of Special Rapporteur Edison Lanza (@EdisonLanza). March 25, 2020; Twitter account of Special Rapporteur Edison Lanza (@EdisonLanza) May 14, 2020
mutually exclusive” and that the coronavirus crisis should not be an excuse to hide data on public management.888

585. On June 10, this office, through its Special Rapporteur Edison Lanza, emphasized that El Salvador remained one of the few democratic countries in the region whose Access to Information Law was still suspended due to the pandemic.889 In a joint statement with the freedom of expression experts of the United Nations and the Organization for Security and Cooperation in Europe, the Office of the Special Rapporteur called on States to vigorously promote and enforce access to information laws during the pandemic. The rapporteurs underscored the crucial role of journalism during a public health emergency, particularly when it seeks to inform the public about critical information and monitor government actions.890

586. This Office has also noted complaints about alleged irregularities in the election of candidates to serve as commissioners. The Grupo Promotor de la Ley de Acceso a la Información Pública [Group to Promote the Access to Public Information Law] and civil society organizations alerted the public and the Office of the Special Rapporteur about the executive branch’s attempt to take control of the Institute for Access to Public Information (IAIP), which would undermine its independence.891 The organizations said there was evidence of wrongdoing in the election of commissioners to the institution, and that the deadlines the government set for universities and journalists’ associations to present their candidates for the shortlists did not give them enough time to do so. According to public information, the Salvadoran government also concealed the vote for the new IAIP commissioner by the journalists’ sector. The general meeting was held in secret and with the exclusive participation of the representatives of two unions that proposed candidates, in violation of the Law on Access to Public Information and its regulations on deadlines, the number of participating organizations, and the principles of openness and maximum transparency.892 For this reason, the Association of Journalists of El Salvador (APES), which was excluded from the process, demanded the nullification of the vote.

587. The Office of the Special Rapporteur received information on amendments to the Regulations to the Law on Access to Public Information that the executive branch reportedly made by executive decree, granting more powers to the president of the IAIP, undermining collective decision-making in the institute’s plenary sessions. The decree also reportedly repealed the provisions that allowed citizens to challenge candidates in the election of commissioners and made it more difficult for citizens to request the declassification of classified information. According to several independent media, this was another way to reduce the State’s transparency and accountability obligations.893 The IAIP rejected the president’s amendments as a “risk” to the protection of the right to information. According to IAIP representatives, the main risk lies in the amendment to the article that provides for the “resolution of disputes on the classification or declassification” of documents requested by citizens.894

588. The state of emergency due to COVID-19 showed that the government and its communication offices were controlling information more tightly. The Office of the Special Rapporteur observed restrictions on information during press conferences, where journalists from different media outlets were prevented from asking questions about the country’s public health situation. The independent press and small media outlets were particularly affected in terms of access to official sources of information.

589. Regarding requests to open archives to investigate crimes committed during the armed conflict, in March the Ministry of Defense prevented commissioners from the Institute for Access to Public Information

from entering military facilities to carry out a scheduled administrative inspection of military archives. The Institute for Access to Public Information complained that while they were trying to enter the Armed Forces Chief of Staff Headquarters, they were watched and photographed with cameras, cell phones, and a drone.

590. The Special Rapporteur for Freedom of Expression congratulated the Institute for making progress in auditing and opening the archives on repression during armed conflict, expressed concern about the Ministry of Defense's obstruction of on-site inspections, and recalled that records on serious violations cannot remain secret for reasons of national security.

591. The Office of the Special Rapporteur also highlights the importance of the judgment handed down on August 28 by the Examining Court of San Francisco Gotera [Juzgado de Instrucción de San Francisco Gotera] in Morazán, ordering that inspections of the archives of different military bases in that country be carried out between September 21 and November 13. The purpose of examining the archives is to find evidence to help establish the truth about the El Mozote massacre, which occurred in December 1981 in a village near San Salvador. The judge also issued a preventive precautionary measure "requiring those officials with custody of the files chosen for inspection to prevent the relocation, removal, or concealment of any document from those files."

592. Despite this, the armed forces blocked the judge in the case, Jorge Guzmán, from access on at least six occasions. He was first blocked on September 21, when a FAES colonel informed the judge of the government's refusal to allow access to the archives. That same week, the chief of staff stated in a national broadcast that the refusal to comply with the court ruling was justified for several reasons, including that the judge in San Francisco Gotera did not have jurisdiction over the Joint Chiefs of Staff of the Armed Forces and that it would be a risk to reveal information of strategic value to the State. The second time access was denied was on October 12 at the First Air Brigade in Ilopango; the third instance was on October 13, at the Second Air Brigade of the Air Force, based in Comalapa; the fourth time the judge was barred from entry was on October 14, this time at the Artillery Brigade "Teniente Coronel Óscar Osorio," located in San Juan Opico; the fifth unsuccessful attempt to inspect the files was made on October 27 at the Third Infantry Brigade in San Miguel; finally, the sixth denial of access occurred on October 29 at Military Detachment Number 4, in San Francisco Gotera, Morazán.

593. On October 8, the IACHR and its Office of the Special Rapporteur for Freedom of Expression voiced serious concern over the refusal of the Ministry of National Defense to comply with a court order to allow a judicial inspection of the archives of the Armed Forces of El Salvador in the case of the Massacre of El Mozote and nearby places. They also urged the Salvadoran State to comply with its obligation to order, systematize, and release the documentation and archives related to the serious human rights violations under investigation as a guarantee of the right to truth and justice.

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897 Twitter account of Special Rapporteur Edison Lanza (@EdisonLanza) March 6, 2020.
According to publicly available information, on August 4, the Institute for Access to Public Information ordered the Ministry of Defense to conduct a new search for information on human rights violations at the University of El Salvador between 1970 and 1995, within 50 days.\textsuperscript{901}

In 2019, the IACHR repeatedly expressed its concern about the lack of access to the archives of the Ministry of Defense to investigate crimes committed during the armed conflict. The court decision represents an important step toward the effective exercise of the right of access to information and the right to the truth by the victims, their representatives, and other interested sectors of society.

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

The hostile climate toward the work of the press, largely encouraged by the government, intensified in El Salvador during the COVID-19 pandemic. The Office of the Special Rapporteur is particularly concerned about physical attacks, threats and intimidation, and the obstruction of reporting. The Office also received information on alleged monitoring and surveillance of journalists and the interception of telephone communications.\textsuperscript{902}

On February 9, during a public event organized by the President of the Republic, Nayib Bukele, several journalists gathered outside the Legislative Assembly and requested access to the building, but were denied by the National Civil Police, who guarded all the entrances and barred the press from access. Initially, the security forces refused to let them in, alleging that they were not carrying their credentials; when they showed their credentials, they were still detained without cause.\textsuperscript{903}

The Office of the Special Rapporteur observed numerous threats and acts of intimidation by both the Armed Forces of El Salvador (FAES) and the National Civil Police (PCN) against journalists working during the pandemic. For example, although Executive Decree No. 15 authorized the free movement of journalists and media personnel, police officers warned them in threatening tones that they were prohibited from traveling or that they “should not be out.”\textsuperscript{904} This was due, according to Salvadoran journalists, to the government’s improvisation and lack of clarity in its measures.\textsuperscript{905}

According to information received by this office, State security forces obstructed journalistic activities on several occasions. On March 22, FAES agents asked for the cell phone of a reporter from Radio Segundo Montes, who was taking pictures on the bypass in the municipality of Jocoteique, in the department of Morazán and erased all his photos even though he was carrying his press credentials.\textsuperscript{906} On July 10, police officers asked a journalist who was taking pictures of the exterior of the Central Reserve Bank for a report on response plans, as well as allegations of wrongdoing and corruption. The Human Rights Institute of the José Simón Cañas Central

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On July 2, unidentified individuals forced their way into the home of journalist Julia Gavarrete, of the Gato Encerrado portal, in San Salvador, and stole her personal computer. According to available information, she had returned home after covering a press conference at the Presidential Palace and noticed that her work computer was missing. The journalist asserted that the theft was an attempt to intimidate her in response to her critical articles, some of which dealt with the National Government’s pandemic response plans, as well as allegations of wrongdoing and corruption. The Human Rights Institute of the José Simón Cañas Central


\textsuperscript{904} APES. April 7, 2020. \textit{PNC obstruye libre circulación a periodista de Cadena Cristiana de Radio y Televisión CRET}; APES. April 9, 2020. \textit{PNC intimida y agrede verbalmente a corresponsales de una agencia internacional de noticias}; APES. April 15, 2020. \textit{Agentes de la PNC amenazan a corresponsal de Radio Victoria}.


\textsuperscript{907} APES. March 22, 2020. \textit{FAES restringe ejercicio periodístico a reportero de Radio Segundo Montes}.

\textsuperscript{908} APES. July 10, 2020. \textit{Agentes de la PNC restringen labor informativa de un periodista freelance}.
American University (Idhuca) filed a criminal complaint with the Public Prosecutor’s Office for the crime of aggravated theft, and described the act as a form of intimidation against the journalist.908 On July 13, also, a man entered the apartment of Óscar Luna, editor of Disruptiva magazine, and removed two computers and a map of San José Villanueva, the municipality where the magazine has been conducting research on COVID-19 infections.909 Columnist, feature writer, and anthropologist Juan Martínez d'Aubuisson, who writes for El Faro, reported on social media that on October 12 he was the victim of an armed attack and that, according to “sources from the State apparatus,” the incident “was orchestrated within the government.”910 According to his public account, “the attack was very violent. Four armed men insisted that I throw myself to the ground, without asking for my cell phone or wallet.”

601. José Apolonio Tobar, the head of the Office of the Human Rights Ombudsman [Procuraduría para la Defensa de los Derechos Humanos] of El Salvador, warned about restrictions on the work of the press by members of the National Civil Police (PNC) and the Armed Forces (FAES) during the COVID-19 pandemic.911 According to the Ombudsman, they have destroyed journalistic material, restricted reporters’ ability to ask questions at press conferences, and prevented some officials from being interviewed. The Association of Journalists of El Salvador (APES) has complained about this situation on several occasions.

602. This office also documented incidents where members of the press were physically attacked while working. On March 2, an assistant to the Minister of Health, Ana María Orellana, violently pushed Sol TV journalist Jorge Álvarez, who was covering a government vaccination campaign in the city of Oiscala (department of Morazán), after he asked her for a statement on the coronavirus situation.912 On July 31, a Canal 12 crew was attacked by alleged gang members in the Sierra Morena neighborhood in the city of Soyapango on their way to a press conference.913

603. On April 17, journalist Menly Cortez of El Diario de Hoy was assaulted by a police officer while photographing an accident involving a tractor-trailer at the Integración traffic circle in San Salvador. As she prepared her equipment and began to take photographs, a police officer grabbed her by the arms to violently remove her from the scene.914

604. This office was also informed of online attacks on journalists. For example, journalist Yaneth Estrada of Diario Co Latino reported that her email, Twitter, and Facebook accounts were hacked. The reporter had already had her social media accounts taken over by hackers in the past and had been the target of online attacks because of her public condemnation of some topical issues.915

605. Similarly, unknown persons allegedly tried to hack into the email of Krissia Girón, a journalist with the Asociación de Radiodifusión Participativa de El Salvador [Participatory Broadcasting Association of El Salvador] (ARPAS) and representative of the Colectiva de Mujeres Periodistas de El Salvador [Women Journalists’ Collective of El Salvador]. According to the journalist, the hacking attempts occurred after she
published several articles on the spike in violence against women during the national COVID-19 emergency, refuting data offered by President Nayib Bukele on national television about an alleged 61% reduction in femicides nationwide.

C. Disparagement of journalists and independent media

During 2020, the Office of the Special Rapporteur continued to follow up on the stigmatizing statements made by high-ranking authorities against press workers and independent media on social networks, and even by the President during press conferences and national broadcasts. According to the information received, these types of accusations and statements typically follow publications or journalistic investigations documenting alleged cases of government corruption, the arbitrary use of public funds, secret negotiations with unlawful groups, or the conduct of members of the executive branch. These acts are also followed daily by thousands of replies on social media in anonymous campaigns.

This office has documented smear campaigns, disparagement, and stigmatizing statements mainly against independent journalists, media outlets with editorial stances that run counter to the official line, or media outlets that expose abuses of authority, nepotism, mismanagement of the state of emergency, and corruption, among other issues of great public interest. The media outlets El Faro, Revista Factum, El Diario de Hoy, and La Prensa Gráfica have been especially harassed and stigmatized by the president and government officials because of their articles, coverage, and investigative reporting. “Reporters on the take are hard to reach,” “if anyone believes that [...] you do real journalism,” “Don’t you feel sad that you have fallen so low and thrown your whole career away?,” “Elections are coming [...] Everyone is starting to take sides. Which you have always done,” “Are you going to apologize for continuing to share fake news, or have you made a habit of it?” are some of the statements made by President Nayib Bukele to the media that criticize his administration. He has also repeatedly amplified comments criticizing journalists from these media outlets, including a comment that referred to journalists from El Faro as “trash.”

On May 31, the head of state verbally attacked journalists from El Faro and Factum during a press conference. “I already know who finances you Factum, El Faro. We already know who it is, we know what you are looking for, we know what you want. You’re free, do it! What you tried to do to the country will weigh on your hearts, your souls, and your lives,” he said.

On September 24, in a national broadcast, the president singled out the media outlets El Faro, Revista Factum, Gato Encerrado, and La Prensa Gráfica, accusing them of lying and “attacking” his administration. He also announced that El Faro was under investigation for money laundering. According to the news portal, although they have been under a tax audit by the Internal Revenue Service of the Ministry of Finance since July 2020, the authorities had never informed them that they were being investigated for money laundering. According to the information received, the audit included a request for the media outlet’s complete minute book, project execution reports, and even the names of subscribers.

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610. According to publicly available information, on August 9, the president of the Autonomous Executive Port Commission (CEPA) launched a scathing attack on Twitter against journalist Jorge Beltrán of El Diario de Hoy. "Look at you, you paid hack with a complex [...] you should be treated like trash," "you should ashamed to be called a journalist' (sic), "you are pitiful," were some of the statements the CEPA head made against the journalist.927

611. The office also learned of the social media harassment directed against Gato Encerrado journalist Carmen Valeria Escobar, due to her investigations into several cases that revealed corruption by national executive branch officials.928 The journalist was allegedly threatened and insulted on social media by the congressional candidate of the Nuevas Ideas party, Carlos Hermann Bruch, and by pro-government users. Escobar's mother was also allegedly subjected to a polygraph test and forced by her superiors to leave her job in a public office of the executive branch, eight days after her daughter published an investigation on how the national Minister of Health allegedly purchased government supplies from a company owned by her cousins.

612. As this office was able to document, the government’s official social media—such as the Twitter accounts of the Office of the President’s Press Secretary and the National Council for the Comprehensive Care of Persons with Disabilities (CONAIPD)—reportedly selectively blocked certain independent journalists and media outlets critical of the government’s actions.929 President Nayib Bukele also adopted this practice on his Twitter account.930

613. In September 2020, Fundación Gabo sent the then Special Rapporteur for Freedom of Expression, Edison Lanza, a letter signed by the members of its Board of Governors and some 500 journalists, writers, media, and non-governmental organizations from around the world, condemning the escalating attacks against the independent press and the rule of law in El Salvador, and requesting that the office specially monitor this situation and take a public position on the matter.931

614. The Office of the Special Rapporteur for Freedom of Expression voiced concern about the unwarranted stigmatization of the media and journalists in El Salvador by officials who, instead of engaging in public debate or accountability, use their positions of power to disparage.932 It also warned about the government’s persistent vilification of the press and the retaliatory measures taken against critical media.933

615. On August 13, the Legislative Assembly of El Salvador authorized the creation of a special commission to investigate the harassment of journalists. The group was established to investigate cases of harassment and threats to the press by officials, State agents, and public servants because of their work or editorial line, and to investigate the alleged use of state funds to finance digital attacks on opponents.934 On November 12, the commission presented its final report, which was approved by the full legislature.


concluding that "the President of the Republic, Nayib Bukele, and several of his senior officials," appear to be the main perpetrators of the systematic attacks on journalists, for which public resources were allegedly used.\textsuperscript{935} The commission stated that, taking advantage of their positions, they had "intimidated" and "denigrated" the journalists' work, "suggesting the probable commission of acts constituting crimes." It further noted that the audit of \textit{El Faro} could amount to an indirect restriction on the right to freedom of expression and the press. Finally, they recommended that Nayib Bukele, his ministers, deputy ministers, and other officials "cease the harassment, discrimination, insults, and mistreatment of journalists." The investigation, which is not binding, was carried out by the special commission without the presence of pro-government members of congress and was mainly based on interviews with journalists from various media and representatives of national and international associations.

616. Some of this had been observed by the IACHR during its on-site visit to El Salvador from December 2 to 4, 2019. During that visit, the Commission received information citing several concerns about freedom of expression related to stigmatizing speech on social media targeting human rights defenders, the media, and journalists.\textsuperscript{936}

617. Based on the facts observed in El Salvador during 2020, this Office of the Special Rapporteur reminds the State that:

618. The transparency and accountability of public authorities strengthen democratic systems. Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR 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 established by law in case of a real and imminent danger that threatens national security in democratic societies." In the context of the pandemic, the IACHR noted that States may give priority to requests for information related to COVID-19 but should not establish general limitations on other requests. If deadlines are extended, the States must provide reasons for the denial, establish a time frame for compliance with the obligation, and allow decisions to be appealed.\textsuperscript{937} The Commission also reminded States that they have the obligation to allow all media access to official press conferences, without discrimination based on editorial line, except when necessary and proportional measures are warranted to protect the health and safety of the media.\textsuperscript{938}

619. Attacks and assaults on the press violate the right to freedom of expression in both its individual and collective dimensions and cannot be tolerated in a democratic society. The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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."

620. Public authorities are called upon to maintain a discourse conducive to public deliberation and freedom of expression. Public servants have a duty to ensure that their speech does not infringe on the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts—including journalists, the media, and human rights organizations—and must consider the context in which they express themselves. It is also especially important that they condemn attacks against the press and promote the role that the media play in democratic societies. According to the Inter-American Court of Human Rights, these statements by public officials could constitute an indirect restriction on the right to freedom of expression.\textsuperscript{939} The Resolution "Pandemic and Human Rights" adopted by the IACHR similarly


\textsuperscript{936} IACHR. \textit{Press_Release_335/19}. IACHR presents its preliminary observations following its in loco visit to El Salvador. \url{http://www.oas.org/es/cidh/prensa/comunicados/2019/335.asp} December 27, 2019.


states that public servants should take special care when making statements and declarations about the evolution of the pandemic and be aware that they are exposed to heightened scrutiny and public criticism, even during special periods.
During 2020 in the United States, journalists and media outlets continued to face conditions adverse to the exercise of freedom of expression, characterized by an increase in stigmatizing statements against the media from the president and senior authorities as a result of the COVID-19 health crisis, social protest, and the elections. The year 2020 was a year in which the number of journalists and/or media workers attacked and arrested increased exponentially. A significant number of violations of the right to freedom of expression were reported by the media during coverage of the social protests that exploded after the death of George Floyd in police custody on May 25, 2020, as well as during coverage of the presidential campaign and elections. The Office of the Special Rapporteur underscores that the constant statements from the president disparaging the media produced a hostile climate among supporters of the administration and broad sectors of society.

The Office of the Special Rapporteur is also concerned at the excessive use of force during protests and the attacks perpetrated by security forces on peaceful demonstrators legitimately exercising their rights to freedom of expression and to peaceful and unarmed assembly and association.

Additionally, the Office of the Special Rapporteur highlights with concern the continued issuing of subpoenas ordering journalists reveal their sources, turn over documents or materials, or appear as witnesses in matters that they investigated or reported on. It also expresses its concern at the rise in civil defamation suits seeking substantial awards against journalists and media outlets critical of the administration. Additionally, the Office of the Special Rapporteur is concerned at the charges brought under the Espionage Act against Julian Assange for the publication of “government secrets” that was the basis for the United States’ request for extradition of the Wikileaks founder. Nevertheless, this Office highlights the legal and legislative progress made, both federally and at the state level, with favorable decisions handed down protecting freedom of expression and legislative initiatives aiming to protect and guarantee this right.

The Office of the Special Rapporteur notes that time and again, the judiciary has fulfilled its role as protector of the right to freedom of expression.

A. Progress

Both the House of Representatives and the Senate have proposed different legislative resolutions or initiatives to protect the exercise of freedom of the press and access to public information, as well as to ensure the existence of a free press.

On May 21, 2020, several senators submitted a draft resolution to commemorate World Press Freedom Day by declaring “the importance of a free press to an informed, transparent, and safe society; condemning threats to freedom of the press and free expression around the world; and, in remembrance of journalists who lost their lives carrying out their work [and the importance of investigating crimes against journalists], calling for actions by the President, the Department of State, and foreign governments to protect and promote freedom of expression globally.”

Likewise, several members of the House of Representatives submitted a draft resolution in support of freedom of the press and against attacks on journalists in the framework of the coverage of protests over the death of George Floyd. The resolution: a) calls on law enforcement to protect freedom of the press and refrain from targeting journalists and media workers; b) calls on government entities to clarify that credentialed press are exempt from curfews enacted in response to protests and public demonstrations; c) stresses the need for accountability where law enforcement entities or protesters violate the Constitution, laws, or regulations in their treatment of journalists and media crews during protests; and d) reaffirms the centrality of freedom of the press to supporting democracy, exposing corruption, and promoting good governance.

940 United States. Congress (Senate). May 21, 2020. S.Res.600 - A resolution recognizing widening threats to freedom of the press and expression around the world, reaffirming the centrality of a free and independent press to the health of free societies and democracies, and reaffirming freedom of the press as a priority of the United States in promoting democracy, human rights, and good governance in commemoration of World Press Freedom Day on May 3, 2020. As of the date of this report, the bill had not been passed.

941 United States. Congress (House of Representatives). June 18, 2020. H.Res.1009 - Recognizing the threats to press freedom in the United States in the wake of protests following the killing of George Floyd, an unarmed Black man, by police in Minneapolis on May 25, 2020, reaffirming the centrality of a free and independent press to the health of democracy, and reaffirming freedom of the press as a
Likewise, a group of senators proposed a resolution condemning the violence committed against people exercising the right to freedom of expression and peaceful assembly, including journalists, and asked local, state, and federal authorities to take measures to ensure that members of the media are able to do their work safely, without interference, without censorship, and without threats of violence or physical harm.\textsuperscript{942}

\textbf{627.} The Office of the Special Rapporteur also underscores the importance of the draft law entitled the Jamal Khashoggi Press Freedom Accountability Act of 2020, which was introduced by a group of members of the House of Representatives on October 20, 2020, as well as by a number of senators on December 9, 2020. The bill proposes establishing additional sanctions for those who commit grave human rights violations against journalists anywhere in the world and publishing the names of those responsible for violence against journalists and members of the media. The legislation also proposes amending the 1961 Foreign Assistance Act to include online harassment and surveillance, in addition to direct physical violence, as actions that could constitute human rights violations.\textsuperscript{943}

\textbf{628.} In the courts, the Office of the Special Rapporteur highlights several rulings in favor of the right to freedom of expression and access to public information.

\textbf{629.} On March 10, 2020, in the case \textit{Committee on the Judiciary v. Department of Justice}, the United States Court of Appeals for the District of Columbia Circuit upheld the ruling of the District Court ordering the Department of Justice to allow the House of Representatives Judiciary Committee access to two specific categories of grand jury materials that had been edited /removed from the special prosecutor report on the investigation into Russian interference in the 2016 presidential elections (the Mueller report) for the purposes of confidentiality. Although the Committee had received a version with fewer redactions than the public version, specific sections of the report were still redacted. The Court of Appeals confirmed the importance of the right to access to information, finding that the Committee’s "particularized need" to access information in order to reach a determination on the conduct of the President with regard to the facts that were being investigated outweighed the grand jury secret interests in this case. The Department of Justice asked the Supreme Court of the United States through a writ of certiorari to review the ruling, and the request was admitted by the Supreme Court on July 2, 2020.\textsuperscript{944}

\textbf{630.} Likewise, on July 13, 2020, the Dutchess County Supreme Court of the State of New York annulled the temporary restraining order on Mary L. Trump (President Donald Trump’s niece) and denied a motion for a preliminary injunction filed by the president’s brother against her and against Simon & Schuster. The motion was filed to prevent them from publishing, printing, or distributing any book or part of a book titled \textit{Too Much and Never Enough, How My Family Created the World’s Most Dangerous Man}, in any media containing descriptions or stories of Ms. Trump’s relationship with the president or other of her relatives.

\textbf{631.} The Supreme Court found that the plaintiff had not met any of the requirements for a preliminary injunction, such as irreparable harm or the likelihood of success on the merits and determined that the agreement preventing Ms. Trump from discussing family matters was no longer relevant for the case, as what was at issue now involved the president of the United States, who is seeking reelection. It was therefore in the public interest, and the people’s right to hear about such matters had to be protected.\textsuperscript{945}

\textsuperscript{942} United States. Congress (Senate). June 15, 2020. \textit{S.Res.622 - A resolution condemning attacks against members of the media and reaffirming the centrality of a free and independent press and peaceful assembly to the health of democracy in the United States.} As of the date of this report, the bill had not been passed.


The Office of the Special Rapporteur also highlights the ruling of the Circuit Court of Henrico County of June 24, 2020, dismissing a lawsuit filed by a member of Congress against Twitter for allegedly false and defamatory statements from three Twitter accounts, two anonymous accounts among them. The lawsuit was dismissed based on article 230(c)(1) of the Communications Decency Act which grants immunity to such platforms for the content published by third parties. This Office also underscores that on November 12, 2020, the United States District Court for the Northern District of Georgia Atlanta Division dismissed the lawsuit filed by Donald J. Trump for President, Inc. for defamation against a CNN article reporting that the Trump campaign was considering seeking Russia's help for the 2020 elections. According to the lawsuit, CNN acted with actual malice because it knew the article was false. The Court determined that while the article referred to facts and not opinions, it was not defamatory because the applicable standard of actual malice (applicable because the president was a public figure) could not be proven. That is, it could not be proven that CNN was aware of the falseness or acted in gross negligence in seeking out the truth or falseness of the information at the time of publication.

Lastly, this Office highlights the October 9, 2020, decision of the United States Court of Appeals for the Ninth Circuit restoring a district court's injunction prohibiting federal agents from dispersing, resting, or using physical force against journalists and legal observers during protests in the city of Portland. The lawsuit was submitted by journalists, photographers, and legal observers who alleged that the security forces attacked journalists and legal observers in violation of their first and fourth amendment rights. The Court underscored the importance of the right to protest and the broadly-accepted importance of the media's coverage of it.

B. Stigmatizing statements

The year 2020 saw a continuation of the pattern of stigmatizing statements from senior government officials toward the media and journalists, including during official events, press conferences, political rallies, and through their social media accounts. This Office observes that the number of attacks against the media even increased with coverage of the COVID-19 pandemic and the management of the crisis by the president's administration, social protests, and because it was an election year and the elections were held on November 3, 2020.

According to the database created by the U.S. Press Freedom Tracker, since President Trump announced he would run for president of the United States on June 16, 2015, during his four years in power, and through January 8, 2021, the date on which Twitter permanently suspended his account, he had posted at least 2,520 tweets against the media criticizing his administration, calling them "enemies of the people" at least 56 times, and calling them "fake news" more than 930 times. Through Twitter alone, the president posted at least 623 tweets during 2020 insulting or demeaning the work of journalists. The president continued to insult the media and different journalists on a number of occasions, calling them "real garbage," "dumb bastards," "a true dummy who was thrown off Network News like a dog," "dumber than hell,"

636. Daily press conferences began again on March 16, 2020, to provide information on the activities of the COVID-19 working group. During these press conferences, the president relaunched his direct attacks on the media that was criticizing his administration’s management of the health and economic crisis caused by COVID-19. During a televised press conference on March 19, the president said that the American media was on China’s side when they criticized him for calling COVID-19 “the China virus.” He specifically mentioned newspapers like The Wall Street Journal, The New York Times, and The Washington Post, and said their coverage of the pandemic was “more than fake news, it was corrupt news”.\footnote{The Washington Post. March 19, 2020. Opinion: Trump’s latest attack on the media is more heinous than usual; Committee to Protect Journalists (CPJ). April 16, 2020. The Trump Administration and the Media.} Likewise, on March 25, the president posted on his Twitter account that the media were the ones pressuring to maintain restrictions to limit the spread of the coronavirus for as long as possible—even though these restrictions were supported by experts—in order to affect his chances at reelection.\footnote{The Hill. March 25, 2020. Trump charges media wants businesses closed to defeat him; The Washington Post. March 26, 2020. When the president is the problem.}

637. Trump also reacted aggressively against the media in a series of press conferences in response to questions from journalists about the health crisis and his administration’s management of it. For example, on March 20, after he was asked what message he had for Americans concerned about the coronavirus, the president attacked NBC news journalist Peter Alexander, saying: “I’d say that you’re a terrible reporter, that’s what I’d say,” and “I think it’s a very nasty question.” On March 30, he attacked CNN journalist Jim Acosta after he asked a question about per capita coronavirus testing in the United States and his opinion on criticism of him for not caring about the coronavirus. Trump called it a “nasty, snarky question.” The president reacted similarly on April 1, when PBS journalist Yamiche Alcindor sought clarity about President Trump’s comments on the governors requesting medical equipment they did not actually need. He said “that’s a nasty, snarky question.” On April 6, he attacked two journalists in comments to Fox News journalist Kristen Fisher in response to her question about the lag in hospitals receiving COVID-19 test results, saying: “You should say ‘congratulations, great job,’ instead of being so horrid in the way you ask a question.” He also called ABC reporter and White House Correspondents’ Association President Jon Karl a “third-rate reporter” who will “never make it.” He also said of New York Times journalist Maggie Haberman “She is a third rate reporter who has nothing going. A Fake News ‘journalist’.”\footnote{MSNBC. March 20, 2020. @peteralexandertv responds to Pres. Trump’s insults during press briefing; The Guardian. April 1, 2020. That’s a nasty, snarky question; Trump’s media assault rages on in midst of coronavirus crisis; The Guardian. April 1, 2020. Trump reacting to questions about his handling of the coronavirus crisis; Reporters Without Borders (RSF). April 8, 2020. RSF calls on Trump to end attacks on journalists, encourages news outlets to assess coverage of COVID-19 briefings; The Washington Post. March 26, 2020. When the president is the problem.} Trump also said that with social distancing, the media was much more agreeable, and that the number of journalists in the briefing room should be reduced drastically, by 75% or 80%, to leave only "two or three that I like in this room."\footnote{The Guardian. April 1, 2020. Trump reacting to questions about his handling of the coronavirus crisis; Committee to Protect Journalists (CPJ). April 16, 2020. The Trump Administration and the Media.}

638. Also, in the framework of the coverage of protests over the death of George Floyd, police abuse against African-Americans, and racial injustice, the president said the “lamestream media” was doing everything in its power to foment hate and anarchy and that “as long as everybody understands what they are doing, that they are FAKE NEWS and truly bad people with a sick agenda, we can easily work through them to GREATNESS.”\footnote{The Last Trump Tweet Against the Media. October 17, 2020. The Last Trump Tweet Against the Media.} He also accused the “Far Left Fake News Media” of having no problem with the pandemic
“with the Rioters & Looters” destroying Democrat-run cities, but criticizing his big rallies because of COVID-19.959

639. The president also attacked infectious disease experts like Anthony Fauci, the epidemiologist and director of the National Institute of Allergy and Infectious Diseases after Fauci criticized Trump’s campaign for taking some of his comments out of context in an advertisement. During a press conference with journalists in October 2020, Trump called Fauci a “disaster,” saying “He’s been here for 500 years,” “People are tired of hearing Fauci and these idiots.”960 Doctor Fauci, who was also an advisor to the COVID-19 working group, pushed back on false, erroneous, or deceptive information shared by the president on issues related to the pandemic,961 garnering criticism from Trump.

640. Additionally, during the presidential campaign, the president blamed several media outlets (ABC, Fox, and the Times) of wanting to hurt his campaign, accusing them of conducting “fake” surveys.962 Also, on October 19 during a rally in Arizona, he said CNN only reported on the pandemic to “talk everybody out of voting,” but “People aren’t buying it,” calling them “poor bastards.”963

641. Likewise, on January 24, 2020, Secretary of State Mike Pompeo criticized veteran reporter Mary Louise Kelly, with NPR’s program “All Things Considered,” saying in a formal statement from the State Department that the media was “unhinged.” The journalist interviewed Pompeo on the record about the Trump administration’s policies toward Iran and Ukraine. According to public information, Pompeo expressed anger and used profane language toward the journalist after the interview, expressing his anger at the questions over the Ukraine episode. In a formal statement from the Secretary of State, he said the journalist had violated the basic rules of the interview and that it was “shameful that this reporter chose to violate the basic rules of journalism and decency,” adding that it was “no wonder that the American people distrust many in the media when they so consistently demonstrate their agenda and their absence of integrity.”964 Something similar happened in October 2020 when President Trump cut off an interview with journalist Lesley Stahl on the program “60 Minutes” because of the nature of the questions she was asking him, after which he attacked her on Twitter.965

642. In this context of stigmatizing statements, supporters of President Trump have also acted with hostility toward media outlets that he has publicly demeaned. During his administration, the terms the president used to insult and denigrate the media have not only eroded the credibility of the press in the eyes of his faithful supporters,966 but also made journalists and employees of certain media outlets the targets of attacks while doing their work. This has been the case not only during campaign rallies but also during the


coverage of the elections and protests over racial injustice. The Office of the Special Rapporteur observes that the violence unleashed against journalists was clearly on display in the Capitol insurrection, during which the message "murder the media" was scrawled on a door inside the Capitol by followers of the president. The Office of the Special Rapporteur highlights that even some prominent Democrats, like the mayor of Chicago, have said that Trump's statements—such as a tweet from April 2020 calling on people to "free Michigan" in response to the Michigan governor's emergency measures to stop the spread of the coronavirus—contributed to the individuals who plotted to kidnap the Michigan governor in October 2020, a plot that was discovered by the Federal Bureau of Investigation (FBI). A number of people are being investigated for the plot, which was allegedly aimed at reining in what the plotters called the governor's "uncontrolled power." Also in response to the emergency measures to prevent the spread of the coronavirus adopted by the Michigan governor, on April 30, demonstrators—some of them armed— barged into the Michigan State Capitol to protest.

C. Social protest, freedom of expression during elections, and attacks, threats, and intimidation aimed at journalists and media while they work

a. Black Lives Matter protests and attacks, threats, and intimidation aimed at journalists and media while they worked

The death of George Floyd while he was in police custody in Minneapolis on May 25 sparked widespread anger, and from May 26 onward, citizens joined mass protests as part of the "Black Lives Matter movement in hundreds of cities around the country and in all 50 states. Many of the protests grew less intense and frequent in the months after the death of George Floyd. However, they continued in several cities, and in the city of Portland, went on without interruption for more than 100 days. Although most of the demonstrators were peaceful, several cities saw isolated acts of vandalism and looting. In some cases, incidents of violence were caused by demonstrators or counterdemonstrators, or by the police themselves when using force to disperse the demonstrators or trying to enforce curfews in many places. All this was taking place in the context of the COVID-19 pandemic, which was also the cause of a number of protests in which people expressed their disagreement with a series of measures adopted to stop the spread of the coronavirus.

The 2020 Black Lives Matter protests intensified discussions of systematic racism, structural discrimination, and police brutality and abuse in the United States against persons of African descent. Although the death of George Floyd led to more intense and frequent protests, many protests were also citing the death of Breanna Taylor and the shooting seven times of Jacob Blake, and they were generally an expression of citizens’ anger at similar incidents committed by the police against African-American persons.


969 According to the Chicago Tribune, Chicago Mayor Lori Lightfoot said: “I think all roads lead back to Donald Trump”, […] “Unfortunately, every single time he attacks a public official, and I know this personally, there are those who take that as license to come after us”. Chicago Tribune. October 8, 2020. 6 men charged in plot to kidnap Michigan Gov. Gretchen Whitmer at her vacation home; 7 others charged with plan to attack police, state Capitol; Fox News. October 9, 2020. Chicago mayor blames Trump for plot against Michigan Gov. Whitmer.


In this regard, the IACHR reaffirmed that the murder of George Floyd (Minnesota, 2020), and those of Trayvon Martin (Sanford, 2012), Michael Brown (Missouri, 2014), Eric Garner (New York, 2014), Tamir Rice (Ohio, 2014), Alton Sterling (Los Angeles, 2016), Philando Castile (Minnesota, 2016), Terence Crutcher (Oklahoma, 2016), Breonna Taylor (Kentucky, 2020), as well as all other assassinations of Afro-Americans due to racial police violence, are not isolated acts of violence, but rather part of a historical and structural process of systematic discrimination based on ethnic-racial origin in the United States. The Commission observed that these serious crimes are framed in a context of historical impunity; and of insufficient or no accountability by the criminal justice system and police institutions, respectively.975

645. Although, as indicated, there were protests in all 50 states, some of the cities in which they were the most intense were the following: Minneapolis, Minnesota; New York, NY; Miami, Florida; Denver, Colorado; Los Angeles, California; Nashville, Tennessee; Salt Lake, Utah; Cleveland, Ohio; Raleigh, North Carolina; Louisville, Kentucky; Atlanta, Georgia; Austin, Texas; Dallas, Texas; Philadelphia, Pennsylvania; Washington DC; Kenosha, Wisconsin; and Portland, Oregon.976 In Portland, they continued for more than 100 days and all throughout the rest of 2020.977

646. According to public information, for pollsters estimated that between 15 and 26 million people participated in the protests over the death of George Floyd and the deaths of other African-Americans at the hands of the police or in their custody, which could make these demonstrations the largest in the history of the United States.978 The Office of the Special Rapporteur notes that although several cities saw isolated acts of vandalism and looting, or in some cases, incidents of violence provoked by the police themselves, or by demonstrators or counterdemonstrators, the majority of the protests were peaceful.979 In response to the high number of protests in cities throughout the country, at least 31 states and the District of Columbia decided to deploy the National Guard and security personnel from various federal agencies to support state and local police in dealing with the protests and enforcing the curfews ordered in a number of cities.980 Likewise, President Trump, who called himself the "law and order president," called the governors "weak" and urged them to use more aggressive tactics to control violence and unruly protests.981 The president also said he would mobilize all the federal forces available, "civilian and military," to put an immediate end to the violent protests.982

647. Like other human rights organizations, the Office of the Special Rapporteur observes that security forces made excessive and disproportionate use of force against demonstrators, journalists, and media personnel.983 As an Amnesty International report indicates, "In many cities law enforcement confronted

980 ABC News. June 4, 2020. US protests map shows where curfews and National Guard are active; PBS. June 9, 2020. 'Optics matter.' National Guard deployments amid unrest have a long and controversial history.
protesters while wearing riot gear as a first level of response, rather than in response to any particular acts of violence. Again, and again, law enforcement used physical force, chemical irritants, kinetic impact projectiles, and arbitrary arrest and detention as a first resort against largely peaceful demonstrations. In several cities, law enforcement resorted to physical force against largely peaceful protesters to enforce hastily rolled out curfews. [...] These acts of excessive force were committed by members of state and local police departments, as well as by National Guard troops and security force personnel from several federal agencies. Among the abuses documented were beatings, the misuse of tear gas and pepper spray, and the inappropriate and at times indiscriminate firing of ‘less lethal’ projectiles, such as sponge rounds and rubber bullets.” One of the most salient examples of the use of force took place on June 1 in Lafayette Square, in Washington DC, when security forces dispersed a peaceful protest with tear gas and other tactics minutes before the president gave a speech calling on mayors and governors to aggressively deploy their security forces to put an end to the violence or he would call in the military to do so. After the demonstrators were removed from Lafayette Square by force, the president went to St. John’s Church to take a photograph holding a Bible. 

Additionally, in cities like Washington DC and Portland, Oregon, unidentified federal agents were present, and they refused to identify themselves when asked to by the media. In Portland, some of these unidentified agents even snatched civilians off the street, taking them away in unmarked vehicles.

According to an investigation by Physicians for Human Rights, during the initial months of the protests (May 26 two July 27), at least 115 people were injured in the head and neck from the use of sponge grenades and rubber bullets by security forces. Likewise, at least 25 people died during the protests and the political instability during 2020, including some members of security forces. According to journalism sources, 11 people died while participating in peaceful demonstrations and another 14 died in other incidents related to political disturbances. “Nine of the people killed during protests were demonstrators taking part in Black Lives Matter protests. Two were conservatives killed after pro-Trump ‘patriot rallies.’ All but one were killed by fellow citizens.”

This Office also expresses concern at the mass arrests and detentions carried out by police forces. According to public information, it is estimated that more than 14,000 people were arrested/detained while exercising their right to protest. The Office of the Special Rapporteur highlights that, according to journalism sources, the vast majority of the people arrested were charged with minor nonviolent offenses, most of them for violating curfews or emergency orders. A small number of people were charged with crimes related to acts of violence or threats of acts of violence against people, businesses, or property, including misdemeanor or felony charges related to rioting, theft, looting, attempted assault, assault on police officers, weapons, and arson.

The Office of the Special Rapporteur notes that there were also violent confrontations between demonstrators and counterdemonstrators who were members of the extreme right (white supremacists). These clashes led to the deaths of two people in Kenosha, Wisconsin, on August 25, 2020, after they were allegedly shot by 17-year-old Kyle Rittenhouse. According to a report from Amnesty International, Rittenhouse and other armed militia members traveled to Kenosha to “to protect local businesses, allegedly shot by 17-year-old Kyle Rittenhouse. According to a report from Amnesty International, Rittenhouse and other armed militia members traveled to Kenosha to "to protect local businesses, allegedly shot by fellow citizens." The police shooting of [...] Jason Blake. While neither Rittenhouse nor those he allegedly killed or injured were

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participating in conventional peaceful assemblies, their violent clash clearly illustrated the high risks of confrontations between politically opposed armed groups or individuals, especially in the lead-up to already polarized general elections, and in some cases traveling across jurisdictions for the fight.991 Another concerning incident took place in Minneapolis, when a tanker truck plowed into thousands of people marching on a highway to protest the death of George Floyd.992 Amnesty International has documented and verified violent confrontations between approximately 200 different protests and counterprotests from May to September 2020, "in approximately 75% (37) of all US states. In almost half of all US states (23), Amnesty International also confirmed cases of police forces demonstrably failing to keep assemblies peaceful and to protect participants from violent confrontations between protests."993

652 For the Office of the Special Rapporteur, it is especially concerning that the repression and excessive use of force by security forces during protests over the death of George Floyd, as well as the violence from nonstate actors, has come at a tumultuous moment for freedom of the press in the United States, in which journalists and media workers throughout the country have faced a constant avalanche of attacks, aggressions, arrests, detentions, and other acts limiting in one way or another the exercise of their work. A shocking and unprecedented number of journalists have been arbitrarily arrested and detained, beaten, sprayed with pepper gas, teargas, and shot with projectiles like rubber bullets. The US Press Freedom Tracker said it had received more complaints of freedom of expression violations over the last six months than in the three years since its creation combined,994 making it an unprecedented situation.

653 The US Press Freedom Tracker has received a total of more than 960 reports from journalists of violations of their right to freedom of expression when doing their work covering protests.995 So far, the Tracker has confirmed and documented at least 616 violations of freedom of the press in 2020, including physical attacks, arrests, detentions, and searches, and confiscation and destruction of equipment. The majority of these incidents took place while the journalists were covering the Black Lives Matter protests. The number is significantly higher than in other years.996 The organization continues to corroborate the reports received during 2020.

654 Additionally, the US Press Freedom Tracker confirmed that during 2020, there were at least 392 attacks on journalists and media workers, most of them physical attacks,997 as well as 98 incidents of the police searching, confiscating, or destroying their equipment.998 Likewise, at least 126 arrests of journalists were confirmed (on charges like failure to disperse, disturbing the peace, disorderly conduct, resisting or obstructing police, impeding traffic, and curfew violations, even though journalists were exempt),999 and although the charges were either not filed or dropped quickly in the majority of cases, at least 16 journalists continue facing charges related to the arrest or detention.1000 The majority of attacks and arrests or detentions were reported to have taken place in the context of covering protests over racial injustice since the death of George Floyd, as well as during the elections.1001 The US Press Freedom Tracker also confirmed that

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1002 USA: Losing the Peace. P. 11.
at least 19 subpoenas had been issued to journalists and media outlets, many of them with the objective of obtaining materials collected while covering the protest (see the section on source confidentiality, infra).

655. The Office of the Special Rapporteur observes that in a significant majority of cases, journalists were detained, arrested, or assaulted by security forces, even in situations where they had clearly identified themselves as members of the media, where they were some distance from demonstrators, or where they were doing their reporting in observance of the law. They also highlight that in several cases, the attacks were carried out by nonstate actors.

656. According to information provided to this Office, and without prejudice to the seriousness of the more than 960 reports of violations of the right to freedom of expression of journalists during exercise of their work, the Office of the Special Rapporteur highlights the cases of Brendan McDermid, a Reuters photographer who was attacked by the police while taking photographs of arrests during a protest in central Brooklyn; Chris Mathias, a senior HuffPost reporter who was violently arrested by police officers in New York City; and Tyler Blint-Welsh, a Wall Street Journal reporter who was struck in the face several times with riot shields and pushed to the ground by New York City police. In all these cases, the media workers were clearly identified as such. Also of note are the cases of photojournalist Linda Tirado, in Minneapolis, who was shot in the face with a sponge grenade that went through her protective glasses, leaving her permanently blind in her left eye. In Los Angeles, a police officer pushed photojournalist Barbara Davidson to the ground, causing her to hit her head on a fire hydrant. And in New York City, the police repeatedly struck Wall Street Journal reporter Tyler Blint-Welsh in the face, pushing him to the ground, even though he had a press credential issued by the NYPD that was clearly visible. Additionally, CNN correspondent Omar Jiménez and two other members of his team (Bill Kirkos and Leonel Méndez) were arrested on camera in Minneapolis even though they identified themselves as journalists and offered to comply with any police order should they need to move. NBC News photojournalist Ed Ou was sprayed with pepper spray by the police and shot with a projectile, causing a head injury; MSNBC’s Ali Velshi was hit by a rubber bullet while covering a protest in Minneapolis; and Gustavo Martínez of the Asbury Park Press was tackled and arrested despite having been identified as media after he used his cell phone to record how several police officers had violently tackled and arrested two minors who were withdrawing as the police advanced. The Office of the Special Rapporteur also highlights that in Portland, a federal agent in full military gear knelt on the back of photojournalist Rian Dundon; and two other photojournalists—Jon House, of the Portland Tribune, and Alex Milan Tracy, who was working for cable TV services—were struck by impact munitions fired by federal officers. Mike Baker, who covered the protests for the New York Times, also reported that a federal agent had struck him in the head and that he had been affected by the use of tear gas. Likewise, journalist Josie Huang—like at least 123 other journalists—was arrested and held for five hours for filming an arrest that the police were conducting in Los Angeles.

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 Angeles. She was later released with charges of obstructing police. Several days later, the charges were dropped by the prosecutor.\textsuperscript{1006}

\textsuperscript{657} The Office of the Special Rapporteur underscores that these attacks, aggressions, arrests, and detentions carried out against journalists covering Black Lives Matter protests took place in an environment of stigmatization and negative statements against the media from senior government authorities, particularly from President Donald Trump and his administration. As mentioned previously, according to a January 2020 study, Americans are increasingly polarized in terms of how they view the credibility of the mainstream media. This mistrust, questioning of credibility, contempt, and disdain for media outlets critical of the government have manifested in physical violence and extreme repression during the 2020 protests.

\textsuperscript{658} Instead of the leaders at all levels of government—including the president of the United States—clearly stating the role that a free press plays in a democratic society, they called the media "the enemies of the people," describing the information they provided as "fake news" and even blaming them for the increase in violence, all of which increased the risk that journalists already faced when doing their work. For example, in the context of the protests, President Trump joked about an American TV news host being shot with a rubber bullet during protests in Minnesota. The president said: "I remember this guy Velshi, he got hit in the knee with a canister of tear gas and he went down. He was down. 'My knee, my knee.' Nobody cared, these guys didn't care, they moved him aside. And they just walked right through. It was the most beautiful thing [...] after we take all that crap for weeks and weeks, and you finally see men get up there and go right through them, wasn't it really a beautiful sight? It's called law and order."\textsuperscript{1007} He also blamed Antifa and called the demonstrators "terrorists" and "subversives."\textsuperscript{1008}

\textsuperscript{659} In addition to the physical and legal threats against journalists, the economic crisis resulting from the coronavirus pandemic and the already difficult financial state of local journalism mean that many journalists have had to cover the worst public health crisis in a century and transformative protests demanding racial justice under imminent threat of furloughs and layoffs.

\textsuperscript{660} The Office of the Special Rapporteur also highlights as progress certain measures and court rulings adopted to protect the media while they covered protests. These include the October 9, 2020, decision of the United States Court of Appeals for the Ninth Circuit prohibiting federal agents from dispersing, arresting, or using physical force against journalists and legal observers during protests in the city of Portland (see section on progress, supra). This Office also views as progress the December 15, 2020, decision of the U.S. Court of Appeals for the First Circuit finding it unconstitutional for the state of Massachusetts to ban secret audio recordings of officers of the law performing their official duties in public spaces. The court found that "regardless of whether a recording is made secretly or openly, recording police officers in the public performance of their duties falls within the scope of newsgathering activities protected by the First Amendment and [...] can sometimes be a better tool for observing police officer conduct than recording that is done openly."\textsuperscript{1009} The Office of the Special Rapporteur also welcomes that Congress has passed a new requirement for federal military and civilian law enforcement personnel involved in the federal government’s response to a “civil disturbance” to wear visible identification of themselves and the name of the government entity employing them. The requirement was added to the National Defense Authorization Act, which just became law.\textsuperscript{1010} Additionally, this Office has information indicating that the California State Assembly passed a law that would protect journalists from attacks during protests, explicitly granting them protection from law enforcement officers by prohibiting them from assaulting, obstructing, arresting, or interfering with the

\begin{footnotes}
\footnotetext{1006} NPR. September 13, 2020. KPCC Journalist Tackled, Arrested While Trying to Cover L.A. Protest; Buzzfeed News. September 24, 2020. Sheriff's Deputies Falsely Said This Reporter Had Failed to ID Herself; A Prosecutor Has Now Dropped The Case Against Her.
\footnotetext{1009} Reporters Committee for Freedom of the Press (RCFP). December 17, 2020. First Circuit: Massachusetts can’t ban secret recording of law enforcement in public.
\end{footnotes}
reporting process (SB629). However, on September 30, the governor vetoed the measure, arguing that certain of its language could be interpreted very broadly.\textsuperscript{1011}

Lastly, regarding access to justice and accountability, this office notes that, according to public information, at least 40 lawsuits for police violence and excessive use of force have been filed against various police departments.\textsuperscript{1012} For example, on June 2, the American Civil Liberties Union (ACLU) filed a lawsuit in the United States District Court against the city of Minneapolis, listing the injuries suffered by journalists and arguing that police participated in "an extraordinary escalation of unlawful force deliberately targeting reporters," violating the First Amendment. On June 10, the ACLU filed a lawsuit before the United States District Court, Western District of Washington at Seattle, alleging that the Seattle Police Department had deployed "unnecessary violence" against peaceful demonstrators. The complaint argues that the attacks were not limited to demonstrators, saying accredited journalists have said they were gassed or attacked with flash bangs simply for being present and documenting the protest for the public. The ACLU also filed suit in the cities of Omaha, Nebraska; Portland, Oregon; Denver, Colorado; and Boston, Massachusetts.\textsuperscript{1013}

**b. Freedom of expression during elections, social protest, and attacks, threats, and intimidation aimed at journalists and media while they work**

The year 2020 was an election year in the United States. The presidential primaries began in February and lasted until August 2020,\textsuperscript{1014} and the general elections were held on November 3, 2020. Democratic candidate Joseph Biden beat Republican candidate Donald Trump after a campaign marred by polarization of the electorate and accusations by the Republican candidate that the elections had been "rigged."

In view of this polarization and the adverse environment for the media, the Office of the Special Rapporteur highlights the work the media did covering the election, which was broad and extensive for both candidates. This work enabled the dissemination of an array of information and opinions from multiple sources to inform voters and help them decide on and cast their votes. This Office also recognizes that the use of social media platforms during elections to disseminate information and opinions in the public interest and as a source for them has increased exponentially in recent years, and with it, the potential for disseminating false or misleading information. It therefore welcomes the initiatives of companies like Twitter and Facebook to implement new internal rules and policies to address and attack the phenomena of disinformation, misinformation, and misleading information during elections.\textsuperscript{1015}

Without prejudice to this, according to public information, several incidents were documented of limitations to journalism activities and to access to information during the elections, as well as the dissemination of false, erroneous, or misleading information regarding the integrity of the country's electoral system, particularly regarding mail-in ballots, the deadlines for receiving them and counting them, the deadlines for absentee voting,\textsuperscript{1016} and the election results.

\textsuperscript{1012} CBS News. June 23, 2020. \url{At least 40 lawsuits claim police brutality at George Floyd protests across US}; University of Michigan Law School. Civil Rights Litigation Clearinghouse. (n.d.). Database available for consultation at: \url{Civil Rights Litigation Clearinghouse}
\textsuperscript{1014} USA Today. May 27, 2020. \url{When are the 2020 presidential election primaries?}; National Conference on State Legislators (NCSL). November 3, 2020. \url{2020 State Primary Election Dates}

\textsuperscript{1016} “Much of the litigation for the 2020 elections concerned modifications to the electoral process as a result of the pandemic, and whether these modifications preserve or expand voting rights, or restrict them. Many complaints were filed in state courts regarding absentee ballot deadlines, including in Montana, Massachusetts, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin, with different
The Office of the Special Rapporteur underscores, for example, that according to public information, on January 30, 2020, at least 30 journalists from different media outlets were prohibited from entering one of President Donald Trump’s reelection campaign rallies in Des Moines, Iowa, despite having been pre-accredited.\(^{1017}\) Additionally, on February 3, President Trump’s reelection campaign prevented two BuzzFeed News journalists from reentering the Iowa caucus watch party in West Des Moines, Iowa, telling them that they had been “uninvited.” Also, a Bloomberg News journalist was ejected from a press conference in the same city shortly after the start of the state caucuses based on a policy of not issuing more press credentials to the media.\(^{1018}\) Something similar happened on September 10, when Trump’s reelection campaign removed a New York Times correspondent because, according to the campaign, she had not applied for credentials through the regular process and was covering the event from the general seating. The correspondent said that while she covered the event, she was tweeting about the large number of people at the rally who were not wearing masks.\(^{1019}\) On May 21, Joe Biden’s campaign banned reporters from attending a question-and-answer session during a virtual fundraiser with Wall Street donors, a departure from the regular practice of letting them participate in these events and from previous statements on promoting transparency. An hour after the journalists lost their connections to the event, the deputy campaign manager reiterated the campaign’s commitment to allowing them to participate in the future and to transparency, although he did not explain the reasons for losing the connection.\(^{1020}\)

Additionally, the Office of the Special Rapporteur notes that peaceful marches were held to encourage the citizens of North Carolina to vote (“North Carolina March to the polls”), but they were met with pepper spray and other demonstrations both supporting and opposing Donald Trump.\(^{1021}\)

On election day, the Democratic candidate called for people to remain calm and await the national vote count, while the Republican candidate declared the process was a “major fraud in our nation,” said he had won the elections, and said to “stop the count.” After November 3, while the votes were still being counted in different states, the president continued to claim there had been election fraud, without any basis or evidence, calling into question the integrity of the electoral system and the vote count and accusing Democrats of having “rigged” the elections. The Republican candidate said “[they are] trying to steal the elect” and that “we will never let them do it,” reiterating that his campaign would file lawsuits.\(^{1022}\) Also, according to public information, pressure was being placed on elections officials in some states to block the certification of the vote count, among other reprehensible acts.\(^{1023}\) Statements like “[they are] trying to steal this election”, “rigged elections” and “voter fraud” joined the list of false statements that the president issued during the election year, particularly since the month of April, claiming that mail-in ballots would contribute to elections fraud, that voting by mail was “corrupt” and “dangerous,” even though states were implementing this type of voting outcomes, including on appeal with the Federal Supreme Court. There were also cases relating to signature matching requirements for absentee ballots in Ohio, Texas, and North Dakota. See, Organization of American States (OAS). November 6, 2020. Preliminary Statement of the OAS Electoral Observation Mission for the November 3, 2020 General Elections in the United States of America. Pp. 5 - 6. Available for consultation at: http://www.oas.org/EOMDatabase/MoeReport.aspx?Lang=En&Id=428&MissionId=509


\(^{1023}\) The Guardian. December 12, 2020. After the fact: the five ways Trump has tried to attack democracy post-election.
and absentee voting as safe alternatives during the pandemic. In this context, the Office of the Special Rapporteur highlighted the findings of the Electoral Observation Mission of the Organization of American States (OAS) as regards the satisfactory work of "electoral authorities in the days after the poll to provide clear, fact-based information on their progress in the counting process, and to explain the applicable state law and certification processes in the different jurisdictions." 

Likewise, although according to the preliminary report of the Electoral Observation Mission of the OAS, the candidates had the right to appeal to the corresponding internal mechanisms and judicial authorities should they believe there to be irregularities, it is also critical that "candidates act responsibly by presenting and arguing legitimate claims before the courts, not unsubstantiated or harmful speculation in the public media." In this regard, the Office of the Special Rapporteur concludes the statements of the Republican candidate and other authorities contributed to creating an environment of disinformation in an electorate that was already divided and polarized.

The Office of the Special Rapporteur notes that the preliminary report of the OAS Electoral Observation Mission notes that vote recounts were conducted in Georgia and Wisconsin and that President Trump filed several lawsuits before the corresponding courts, and although they did not rule in his favor, they ruled in an independent, orderly, and timely manner, demonstrating the "strength of the U.S. electoral justice system." In this regard, 538 members of the Electoral College met in different states on December 14, 2020, to issue their votes for president and vice president, giving the victory to the Democratic Party. The Electoral Observation Mission emphasized that it did not directly observe irregularities that would have called into question the results of the election.

As indicated previously, in the days both before and after the elections, the protests held in favor of and against Trump increased. Many of them focused on denying the projected results and echoing the president’s claims with slogans like "stop the steal," "count the votes," "stop the count," "rigged elections," and others. In this context, more than 60 reports of violations of the right to freedom of expression related to the electoral process were received in 2020. Many of these violations involved destruction of equipment, aggressions, physical attacks, detentions, and arrests against journalists covering protests before and after the election, as well as against demonstrators, both by security forces and nonstate actors. Journalists were sprayed with pepper spray and chemical irritants, pushed, harassed, prevented from doing their reporting work, and threatened with arrest. For example, on October 31, 2020, while photojournalist Jintak Han of the News & Observer was covering a march to the polls and rally in Graham, North Carolina, a police officer grabbed her camera to push her. The police tried to disperse the March by warning the demonstrators, after which they used pepper spray as a means of crowd control. Something similar happened on the same day to a Los Angeles photojournalist Jintak Han, who was pushed to the ground by a police officer, damaging

1029 The Office of the Special Rapporteur has registered assaults, physical attacks, arrests, detentions and destruction of journalistic equipment during the coverage of protests related to the 2020 elections. According to information available by U.S. Press Freedom Tracker, more than 60 reports of freedom of expression violations related to the electoral process were received in 2020. U.S. Press Freedom Tracker. December 1, 2020. Our December 2020 Newsletter.
his camera, while he was covering confrontations between demonstrators at protests in Beverly Hills, California. Similar incidents were reported in Portland, New York City, and Seattle. Likewise, followers of President Trump also acted with violence against the press. For example, two women journalists—among many others—were attacked by Trump followers while covering the “Million MAGA” march on November 14 in Washington, DC. One of them was struck on the side of the head, causing her to bleed from her ear, while the other was insulted and surrounded by a group of demonstrators after one of them recognized her as a critic of extreme right groups and called her a “bitch.” Likewise, several journalists were temporarily detained or arrested on charges like “pedestrians on roadways,” “resisting, delaying or obstructing a public officer,” or “failure to disperse.”

D. Censorship, restrictions on freedom of expression, disinformation, and access information during the COVID-19 pandemic

671. According to public information, on January 18, 2020, the U.S. National Archives publicly apologize for having altered images criticizing President Donald Trump in a photograph included in an exhibit commemorating the 100-year anniversary of the recognition of women’s right to vote. At the entrance to the exhibit in Washington, DC, photographs were on display of a march for women’s suffrage in 1913, juxtaposed with the women’s march that took place on January 21, 2017, each one visible from a different angle. In the 2017 photograph, the word “Trump” had been blurred out in at least two signs carried by demonstrators, including one that originally said “God hates Trump.” Other signs with words or images relating to female anatomy had also been altered. The National Archives acknowledged having edited the 2017 photograph so as “not to engage in current political controversy.” However, the federal agency apologized and recognized having committed a mistake. It withdrew the edited photograph and replaced it with the original, saying it would review its applicable internal policies.

672. At the same time, the Office of the Special Rapporteur notes that the Sergeant at Arms of the Senate placed restrictions on the coverage of the first impeachment trial of the President, which began on January 16, 2020. According to public information, journalists who were used to covering the Capitol with more freedom and access to the building had reported that for the impeachment trial, they had been confined to small, cordoned-off areas where unrestricted access was typically the rule. They were prevented from walking with Senators to continue conversations, even when the senator involved was willing to participate voluntarily, and they were prohibited from approaching Senators for interviews in the hallways. Nearly 60 news organizations signed a request to Senate authorities asking for the restrictions to be relaxed.

673. Likewise, March 11, 2020, marked one year since the Trump administration had held a televised press conference in the White House led by a press secretary, a drastic break with long-time White House tradition. Daily press conferences began again on March 16, 2020, to provide information on the activities of the COVID-19 working group.

674. This Office also expresses concern at the decision to not renew J-1 visas for foreign journalists working for Voice of America (VOA)—the federal government’s international broadcaster—after they expired. VOA broadcasts in 47 languages and uses the specialized regional knowledge, contacts, and linguistic abilities.

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of its journalists from throughout the world, and they are therefore crucial for its operations. In July 2020, individuals who had learned of the decision reported that the new Executive Director of the U.S. Agency for Global Media-USAGM, Michael Pack, had said he would not approve the visa extensions. In July, the USAGM, which supervises Voice of America and four other media outlets,\(^{1041}\) said it was conducting a case-by-case evaluation of J-1 renewal request. According to VOA, USAGM had said the review’s purpose was to improve the agency’s management, protect the national security of the United States, and guarantee that contracting authorities were not misused. As a result, at least 15 journalists were forced to leave their jobs and return to their countries of origin.\(^{1042}\)

675. This was one of several measures adopted by the new USAGM Executive Director, confirmed by the Senate on June 4, 2020, in an attempt to “purge the organization of career officials, censor criticisms of President Trump and withhold congressionally appropriated funding from a subsidiary of the media organization” and “ politicize(...) the federal agency intended to promote independent and credible journalism.”\(^{1043}\) Although the USAGM is a federal agency that operates with government funding, “The agency’s mandate is to promote unbiased news in support of freedom and democracy abroad.”\(^{1044}\) The new director had removed several members of the USAGM’s bipartisan Board of Directors to replace the officials with his own political appointees; he also dismissed the heads of the Middle East Broadcasting Networks, Radio Free Asia, Radio Free Europe/Radio Liberty and the Office of Cuba Broadcasting.\(^{1045}\) Under the new USAGM administration, VOA was heavily criticized after posting a tweet in support of Vice President Mike Pence that some called state propaganda; VOA said the tweet was published "prematurely" and that the language used was unfortunate.\(^{1046}\) Michael Pack resigned on January 20, 2021, at the request of President Biden, who had a plan to undo several of Pack’s measures. This has resulted in the launch of administrative investigations and lawsuits against the former executive director.\(^{1047}\)

676. Along with this, the Department of Homeland Security issued a proposal toward the end of September to tighten visa regulations for foreign journalists working in the country and reduce the number of days they are allowed to stay. The move was harshly criticized by civil society, which asked that the proposed measure be dropped, as it would endanger foreign journalists’ ability to report independently. DHS received comments on the proposal through the end of October.\(^{1048}\)

677. Regarding access to information during the COVID-19 pandemic, according to the information received, and especially toward the beginning of the pandemic, a number of federal, state, and local agencies suspended or extended the deadlines for processing requests for access to public information. For example, the FBI initially said it would neither accept nor answer electronic requests for access to information because of the health emergency; however, shortly afterward, it posted on its website that it would accept requests for information and respond to them with delays.\(^{1049}\) Other federal, state, and local agencies announced that they

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\(^{1046}\) TheWrap. August 12, 2020. Pro-Pence Voice of America Tweet Sparks Anger: Is This ‘State Propaganda’?

\(^{1047}\) VOA. January 20, 2021. USAGM Head Resigns Following Biden Request; NPR. January 20, 2021. Defined By Scandal At Voice of America, CEO Resigns At Biden’s Request; NPR. January 8, 2021. Voice of America CEO Accused Of Fraud, Misuse Of Office All In One Week.


would extend the deadlines for turning over information, sometimes to up to 40 days or as the public agency "deems necessary." In some cases, the deadlines were even suspended. For example, the District of Columbia adopted emergency legislation allowing DC government agencies to delay responding to requests for access, with something similar happening in the states of Rhode Island, Maryland, and Texas. Philadelphia suspended the response deadlines indefinitely, as did the State Department, the city governments of Fresno and Sonoma County, California, and Boise, Idaho; and the Hawaii State Judiciary. The governors of Hawaii and Pennsylvania informed their state agencies that they were not required to respond to requests until their offices were functioning normally.1050

679. Likewise, government agencies in charge of handling the pandemic did not provide information to organizations like Open the Government and its allies, who sent at least 600 FOIA requests starting in March for access to public records on pandemic response and how the government was handling the coronavirus. After receiving no responses from any federal agencies, the organization filed lawsuits in connection with some of the requests.1051

679. Nevertheless, the Office of the Special Rapporteur highlights the creation of information databases on COVID-19 and its spread by private entities like Johns Hopkins University, as well as the information provided by the media itself. This Office also highlights the efforts made by states and their governors to hold press conferences and/or provide reports on the pandemic and the measures to contain and address it, for example in New York and in Washington, DC.1052 At the federal level, the Office of the Special Rapporteur notes as particularly positive the publication of a Department of Health and Human Services report in December 2020 in which the federal government reported on the status of the coronavirus outbreak in the United States, publishing data that had previously only been available to government employees pursuant to its obligation of active transparency.1053

680. In addition to placing limits on the processing of requests for information, the Office of the Special Rapporteur observes that some governments limited certain journalists’ access to government sources in their coverage of the health crisis. On April 30, 2020, an internal email of the U.S. Centers for Disease Control and Prevention (CDC), made public in response to a request under the Freedom of Information Act, said its workers were banned from granting interview requests to “anyone affiliated with Voice of America,”1054 specifically because the White House condemned the broadcaster’s work and accused it of disseminating Chinese propaganda about the virus.1055 Likewise, some members of the White House coronavirus working group, such as Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, and Dr. Deborah Birx, coronavirus response coordinator, were briefly prevented from giving interviews on CNN or giving public statements without prior approval from Vice President Mike Pence.1056

681. At the state level, several limitations on access to press conferences about the coronavirus were documented, along with restrictions on the questions that could be asked to authorities. In Hawaii, according to a journalist from Maui Alert, the governor did not allow his media outlet to ask questions during remote press conferences, apparently in retaliation for its criticism of coronavirus testing and misinformation from the government. Something similar was reported by journalists from other states, who had been kept out of

1051 Open the Government. August 28, 2020. COVID-19 secrecy rampant as agencies clampdown on FOIA.
1056 Business Insider. February 28, 2020. The Trump administration briefly barred a top US disease expert from speaking freely to the public after he warned the coronavirus might be impossible to contain; The Hill. April 9, 2020. Pence bars coronavirus task force members from appearing on CNN; CNBC. April 9, 2020. Pence bars top health experts Fauci and Birx from appearing on CNN, the network says.
press conferences given by their governor in retaliation for critical questions or articles. In Florida, the head of the *Miami Herald's* Tallahassee bureau was prohibited from entering COVID-19 press conferences because she had complained about the implementation of social distancing measures in the press conferences of governor Ron DeSantis. Likewise, Puerto Rican governor Wanda Vázquez, who gave press conferences on the coronavirus working group, received questions from journalists that, according to the media, after they became very critical—especially regarding the money invested in rapid testing—were not accepted. While some states like Texas and Hawaii limited the number of live questions and follow-ups, other states eliminated real-time questions completely. For example, in Rhode Island, the governor's administration initially required all questions for informational sessions about the coronavirus to be submitted beforehand, sparking harsh criticism from the media. They were then allowed to send questions by text during a 15 minute question-and-answer session at the end of the presentation, followed by a teleconference after the presentation. In Missouri, journalists were prevented from attending the daily press conferences given by Governor Mike Parson, whose staff preselected certain questions to be answered by the governor, sent ahead of time; likewise, Pennsylvania Governor Tom Wolfe initially limited the questions from journalists to those sent ahead of time, through an online form, with no opportunity for follow-up questions.\(^{1057}\)

682. Despite State authorites’ responsibility to inform the public appropriately and based on science, President Trump disseminated false or erroneous information on, among other things, the pandemic and the integrity of the country's elections system, particularly with regard to mail-in ballots, as described above. Regarding COVID-19 in particular, for example, "Trump has touted false treatments for COVID-19, such as suggesting that disinfectants and ultraviolet light were possible cures. He has also repeated in several instances that hydroxychloroquine could be used to treat COVID-19, despite scientific evidence to the contrary."\(^{1058}\) Likewise, he downplayed the seriousness of the virus, saying it would be under control by April because of increasing temperatures, that it was similar to the flu, that children were "virtually immune" to the coronavirus, that the United States had the lowest virus mortality rates, and that it was under control and receding, among many other statements.\(^{1059}\) Dr. Anthony Fauci pushed back on some of these incorrect, false, or erroneous statements shared by the president,\(^{1060}\) causing Trump to criticize him.

683. This came in addition to the series of false, erroneous, or misleading statements made by the president throughout his term. According to an investigation by the *Washington Post*, which built a fact checker database, Trump made 30,573 false or misleading statements during his four years as president, of which almost half were made during 2020.\(^{1061}\)

684. The Office of the Special Rapporteur is also concerned at the passage of an amendment to Puerto Rico's Public Security Act criminalizing the media or social media accounts that "transmit or allow the transmission" of "false information" on government programs or executive orders related to COVID-19 or other disasters. The amendment uses broad and vague terminology and criminalizes the sharing of information that the government considers to be false on emergencies in Puerto Rico, including the current COVID-19 global pandemic. Violators can face up to three years in prison and a fine of up to $5000. The

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\(^{1059}\) The Washington Post. 14 de marzo de 2020. Tracking Trump’s false or misleading coronavirus claims; The Atlantic. 2 de noviembre de 2020. All the President’s Lies About the Coronavirus.

\(^{1060}\) Newsweek. 2 de septiembre de 2020. As Fauci Debunks Trump’s Death Toll Retweet, Here Are 4 More Times He’s Contradicted President on coronavirus; NBC News. 6 de octubre de 2020. Dr. Fauci contradicts Trump’s false claim that Covid-19 is as deadly as flu; Business Insider. 25 de octubre de 2020. Dr. Fauci contradicted Trump’s repeated claims that the US is ‘rounding the corner’ on COVID-19, It’s ‘actually going in the wrong direction’.

American Civil Liberties Union (ACLU) and ACLU Puerto Rico file a lawsuit alleging First Amendment violations in response to the amendment against "fake news" in Puerto Rico.\textsuperscript{1062}

E. Freedom of expression and the Internet

The Office of the Special Rapporteur recognizes that the use of social media platforms to disseminate information and opinions in the public interest and as a source for them has increased exponentially in recent years, and with it, the potential for disseminating false, erroneous, or misleading information, especially during the pandemic and the election held this year. In response, the platforms had to adopt specific measures to address the dissemination of this type of information and receive both criticism and pressure over the role they could play as content moderators. The Office of the Special Rapporteur has followed the public debate on the role that social media platforms play in moderating content and the right to freedom of expression and welcomes the initiatives of companies like Twitter, Facebook and YouTube to implement new rules and policies to address and attack the phenomena of disinformation, misinformation, and misleading information, as well as to create oversight bodies like the Facebook Oversight Board.

In response to the COVID-19 pandemic, the leading platforms have adopted a variety of measures and made decisions to limit the scope of false information through moderation and the elimination of content and contextualization of disinformation by promoting verified public health content from sources like the WHO.\textsuperscript{1063} This was also done for the 2020 elections.\textsuperscript{1064}

In February 2020, Twitter announced it would tag or remove content considered synthetic media or deepfakes.\textsuperscript{1065} Likewise, in March 2020, it announced a policy of moderating and removing tweets with information that could cause harm or contradict the authorized global and local sources of information on public health with regard to the COVID-19 pandemic.\textsuperscript{1066} Later, in May 2020, the company also announced that it would post labels or warnings on tweets that shared information that was disputed, misleading, or went against the guidance of public health authorities on COVID-19,\textsuperscript{1067} providing a link to trustworthy sources.\textsuperscript{1068} YouTube also announced it would remove medical disinformation on COVID-19, and that with repeat violations, the user’s channel would be deleted.\textsuperscript{1069}

In April, Facebook and Instagram began using tags to redirect their users to trustworthy sources of information about the pandemic on posts containing COVID-19 content, especially those considered questionable.\textsuperscript{1070} The tag directs users to information produced by the WHO and Facebook’s "Coronavirus Information Hub." Additionally, Google has prioritized fact checked information, including a collection of texts and graphics that are updated daily. Likewise, YouTube strengthened its content moderation and took measures.\textsuperscript{1071}

Facebook and Twitter have also removed posts with information considered false, including regarding the vaccines.\textsuperscript{1072} For example, both Twitter and Facebook removed the video in which Donald


\textsuperscript{1066} Twitter. March 16, 2020. \textit{An update on our continuity strategy during COVID-19.}


Trump said children were practically immune from the virus. However, in April, "Facebook, Twitter and YouTube (...) declined to remove Mr. Trump’s statements posted online in video clips and transcriptions of the briefing, saying he did not specifically direct people to pursue the unproven treatments." Likewise, the Twitter account of President Trump’s lawyer, Rudy Giuliani, was temporarily suspended for quoting a conservative activist who said hydroxychloroquine was "100% effective in treating the coronavirus."  

For the 2020 presidential election, Twitter expanded its policies against disinformation to content on the elections, tagging tweets and limiting interactions. Twitter tagged a post by Donald Trump for the first time after he posted tweets saying that mail-in voting would enable elections fraud. The tag read "get the facts about mail-in ballots." For its part, Facebook created an information hub on the candidates and the latest official polling and starting in September 2020, it began publicizing new internal policies for contributing to guaranteeing the integrity of the elections and providing or referring users to "authoritative" information on the elections and their results.  

Following the vote, Twitter tagged posts with content related to the vote count, with the tags reading "official sources may not have called the race when this was Tweeted." In other cases, Twitter used a tag that did not allow access to the post until the user agreed to view the content and saying that the information could be in dispute. Several of Donald Trump’s tweets were tagged during the vote count. Facebook and YouTube also took action regarding false information following the vote, but with less restrictive measures. On Facebook, a tag highlighting that the presidential race had not yet finished could be seen on posts on the subject, without a specific content classification. For example, a post by Joe Biden and Donald Trump received the same type of tag on Facebook. YouTube showed panels with live information.  

Several of the measures adopted by the platforms, especially the Twitter tags on the president's tweets about the election, garnered a reaction from Trump, who called the measure of violation of the right to freedom of expression that he would not allow. In May 2020, Trump signed an Executive Order requesting a number of federal agencies adopt measures to amend Section 230 of the Communications Decency Act of 1996 and regulate platforms’ responsibility for content published by their users or due to moderation decisions. The current law establishes that intermediaries have immunity for the publication of information provided by third parties—that is, platforms are not liable for content published by third parties. Following the issuing of the Executive Order, the Department of Justice prepared recommendations on regulating Internet platform activities, and in September, sent a bill to reform the Communications Decency Act. The Justice Department said: "The proposal makes clear that, when interactive computer
services willfully distribute illegal material or moderate content in bad faith, Section 230 should not shield them from the consequences of their actions."\footnote{US Department of Justice. September 23, 2020. The Justice Department Unveils Proposed Section 230 Legislation.}

For their part, in response to the heightened debate on the subject, in October 2020, days before the elections, Facebook, Twitter, and Google testified before the Senate about their positions on content moderation, antitrust, and online extremism.\footnote{The Washington Post. October 28, 2020. Facebook, Google, Twitter CEOs clash with Congress in pre-election showdown; Reuters. October 2, 2020. Facebook, Twitter, Google CEOs will testify before U.S. Senate committee; Facebook and Twitter CEOs will testify before Congress; The Washington Post. October 22, 2020. Facebook and Twitter CEOs will testify before U.S. Senate committee.} That same month, the Department of Justice filed an antitrust lawsuit against Google.\footnote{US Department of Justice. October 20, 2020. Justice Department Sues Monopolist Google For Violating Antitrust Laws.} Likewise, following the elections, on November 17, 2020, the Twitter and Facebook CEOs again testified before the Senate, this time on the actions taken by companies during the 2020 presidential elections, particularly on content moderation during the elections and their alleged anti-conservative bias.\footnote{The Guardian. November 17, 2020. Twitter and Facebook CEOs testify on alleged anti-conservative bias; CBS. November 17, 2020. Facebook and Twitter CEOs face Senate questions on election measures.} Effectively, one of the more significant discussions was the alleged difference in treatment in the way content was moderated and the anti-conservative bias of the platforms. For example, in October, Facebook and Twitter limited sharing of a New York Post report alleging that large Ukrainian companies had influenced the policy decisions of Joe Biden during the Barack Obama administration. According to news reports, Twitter blocked the newspaper’s main account because the report, published days prior to the election, violated its rules in that it was based on information that could have been obtained through hacking.\footnote{New York Post. October 14, 2020. Twitter, Facebook censor Post over Hunter Biden exposé; Reuters. October 14, 2020. Twitter, Facebook restrict users' dissemination of New York Post story on Biden.}

The tension reached its height with the permanent suspension of Trump’s Twitter, Facebook, and YouTube accounts. After the demonstrations and violence against Congress on January 6, 2021,\footnote{IACHR. January 8, 2021. Press Release 005/21. IACHR Condemns Violence Against Congress and Against the Democratic Processes in the United States; https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/005.asp.} the social media network suspended the president’s accounts temporarily to prevent what they called incitement to violence.\footnote{CNN. January 7, 2021. Facebook and Twitter temporarily block Trump's account after riot on Capitol Hill; Time. January 7, 2021. Facebook and Twitter Finally Locked Donald Trump's Accounts. Will They Ban Him Permanently?} However, on January 8, 2021, after three new posts from Donald Trump calling his followers patriots and saying he would not attend the inauguration, and based on the existing context, Twitter permanently suspended the president’s account.\footnote{Twitter. January 8, 2021. Permanent suspension of @realDonaldTrump. New York Times. January 8, 2021. Trump’s Twitter Account Permanently Suspended.} According to a public statement, they did so “After close review of recent Tweets from the @realDonaldTrump account and the context around them — specifically how they are being received and interpreted on and off Twitter.”\footnote{Twitter. January 8, 2021. Permanent suspension of @realDonaldTrump; NBC. January 8, 2021. Twitter Bans Sidney Powell, Mike Flynn For Sharing QAnon Conspiracy Theories.} After Twitter, Facebook and YouTube followed suit.\footnote{Forbes. January 8, 2021. Twitter Bans Sidney Powell, Mike Flynn For Sharing QAnon Conspiracy Theories; NBC. January 8, 2021. Twitter bans Michael Flynn, Sidney Powell in QAnon account purge.} Twitter has also permanently suspended the accounts of other public figures allied with Trump.\footnote{Protocol. January 21, 2021. Facebook’s Oversight Board will review the decision to ban Trump; Fox. January 21, 2021. Facebook oversight board to review Trump ban decision.} This has been called “deplatforming.”

Facebook’s decision will be reviewed by its Oversight Board.\footnote{CNBC. May 6, 2020. These are the people Facebook put in charge of deciding whether to delete controversial posts; Reporters Without Borders (RSF). May 20, 2020. Oversight Board – “big step for Facebook, small (side) step for humankind”.} The Oversight Board is comprised of 20 external specialists, and its purpose is to review Facebook’s decisions to restrict content or users, as well as to issue advisory opinions.\footnote{Twitter. January 8, 2021. Permanent suspension of @realDonaldTrump; New York Times. January 8, 2021. Trump’s Twitter Account Permanently Suspended.} Its members were selected in May 2020.\footnote{The Washington Post. January 13, 2021. Trump has been suspended from youtube; NPR. January 13, 2021. YouTube Joins Twitter, Facebook In Taking Down Trump's Account After Capitol Siege.} During December 2020, the committee announced its first cases\footnote{Twitter. January 8, 2021. Permanent suspension of @realDonaldTrump; Facebook. January 28, 2021. Facebook censorship review of recent Tweets from the @realDonaldTrump account and the context around them.} and issued its first decisions in January 2021, overturning 4 of 5 of the cases.
social media company’s decisions, including a case of alleged dissemination of disinformation surrounding
COVID-19.\textsuperscript{1103}

696. The events surrounding the January 6, 2021, demonstrations at the Capitol also have repercussions for the social network Parler, known for having users that lean conservative.\textsuperscript{1104} Apple and Google removed the app from their app stores on the grounds that Parler did not take sufficient action to moderate content, allowing posts that fomented violence and crime.\textsuperscript{1105} Later, Amazon told Parler that it would not be allowed to obtain a domain and hosting through Amazon Web Services because of repeated violations of its rules, a move that is currently being challenged by Parler in court.\textsuperscript{1106} Some argue that the actions of Apple, Google, and Amazon reveal the power of the big tech companies to drive the public debate.\textsuperscript{1107}

F. Subsequent liability

697. The Office of the Special Rapporteur notes that during 2020, senior authorities continued to file civil suits against journalists or media outlets seeking substantial monetary damages for civil redress. However, it highlights that in most of the defamation suits, judges have defended the right to freedom of expression based on the First Amendment of the Constitution by dismissing the suits or finding that the actual malice standard had not been met. The Office of the Special Rapporteur underscores that although during 2020 and in years prior to the Trump administration, the number of suits for defamation filed by senior officials had increased compared to the number of suits filed by previous administrations, it should be noted that since 1980, only 27 defamation suits filed by public officials have been won, thanks to the doctrine of actual malice, according to data compiled by civil society organizations.\textsuperscript{1108}

698. According to public information, Congressman Devin Nunes has filed eight defamation lawsuits since 2019 against media outlets, Twitter (see supra, Progress), individuals who have criticized him, and an investigation firm.\textsuperscript{1109} Among the lawsuits are one filed against CNN for $435 million on December 3, 2019, which was transferred to New York’s jurisdiction in 2020,\textsuperscript{1110} and a lawsuit for $75 million against Esquire and a journalist, which was dismissed by a judge in August 2020. The latter lawsuit was dismissed when the judge concluded that the statements described as defamatory by the plaintiff were true, were opinions, had no direct relation to the Congressman, or were protected by the First Amendment.\textsuperscript{1111} Also of note are the two lawsuits filed against the Washington Post and its journalists in March—seeking $255 million—and in November 2020. The March lawsuit was filed after Nunes claimed he was defamed by an article in the Post referring to an alleged conversation he had with the president on an intelligence briefing in which he informed the president that “A senior U.S. intelligence official told lawmakers last week that Russia want[ed] to see President Trump reelected.” A federal judge dismissed the lawsuit on December 24, 2020, finding that

\begin{footnotesize}
\begin{enumerate}
\item[1103] Oversight Board. January 2021. \textit{Announcing the Oversight Board’s first case decisions}; NBC. January 28, 2021. \textit{Facebook’s ‘Oversight Board’ overturns 4 cases in first rulings.}
\item[1111] The Hill. October 3, 2019. \textit{Nunes files $75M lawsuit over Esquire story about ‘secret’ Iowa dairy}; Courthouse News. August 6, 2020. \textit{Federal Judge Dismisses Nunes Defamation Case Over Iowa Farm.} The lawsuit was filed over an Esquire article from September 2018, titled “Devin Nunes’ Family Farm is Hiding a Politically Explosive Secret,” which the plaintiff claims was riddled with lies, including that it “falsely states or implies that plaintiff owned an interest in his family’s farm in Sibley, Iowa, and that plaintiff was involved in hiding a ‘politically explosive secret.’
\end{enumerate}
\end{footnotesize}
the standard of actual malice had not been met. The defamation suit filed in November 2020 argued that an article published by the Post falsely accuse the Congressman of having been involved with a White House official, who had helped him in the middle of the night (which is why the episode has been dubbed the "midnight run") to access intelligence files that "would buttress his baseless claims of the Obama administration spying on Trump Tower." The lawsuit remains pending.

699. This Office has also learned of and expressed its concern over four defamation suits filed by President Trump’s campaign for reelection against the New York Times, Washington Post, CNN, and an NBC affiliate. The lawsuit against the New York Times was filed on February 26, 2020, and it alleges that a column published in the newspaper in 2019 falsely stated that the 2016 campaign worked with Russia to defeat Hillary Clinton in exchange for a favorable policy toward Russia. One day later, on March 3, 2020, the reelection campaign filed a similar lawsuit against the Washington Post for two opinion articles published in 2019 that, according to the lawsuit, implicated the president in Russia’s electoral interference and accused his 2016 campaign of seeking help from foreign governments like Russia and North Korea. A third lawsuit, this one against CNN, was filed on March 6 over the publication of an article reporting that Trump’s campaign was considering seeking Russia’s help with the 2020 elections. This lawsuit was dismissed on November 12, 2020 (see supra, Progress). The fourth lawsuit was filed on April 13 against WJFW-NBC, a small TV station and NBC affiliate in Wisconsin, for broadcasting an anti-Trump ad that the campaign called “false and defamatory,” including that, according to the advertisement, the president had called the coronavirus "a hoax." After Trump lost the election, his campaign decided to drop the lawsuit.

700. Likewise, the office of the Special Rapporteur highlights that a federal judge dismissed a $400 million defamation suit filed by the lieutenant governor of Virginia against CBS for statements alleged to be defamatory in its reporting on two accusations against the official for alleged sexual violence. The official appealed the decision. Additionally, this Office highlights that on August 28, 2020, a federal judge ruled that a defamation suit filed by former Republican candidate Sarah Palin over a New York Post editorial linking one of her political action committee ads with a 2011 mass shooting in which Arizona Congresswoman Gabby Giffords was seriously injured would go to trial, where it must meet the actual malice standard. The Office of the Special Rapporteur underscores that the process continued despite the fact that the newspaper quickly issued a correction acknowledging that no link had been established between Palin’s advertisement and the shooting.

6. Publication of classified information and whistleblowers

701. The Office of the Special Rapporteur emphasizes its particular concern at the situation of WikiLeaks founder Julian Assange, who was deprived of liberty in the United Kingdom and whose extradition was requested by the United States on accusing him of crimes committed under the Espionage Act. Although the request for extradition was recently denied by British judge, the ruling does not end the underlying matter of the criminal charges brought by the governments of the United States, which puts his right to the exercise of freedom of expression in jeopardy. The Office of the Special Rapporteur also notes that the government of the United States appealed the court ruling, and the appeal is currently being processed.

1116 CNBC. March 6, 2020. Trump 2020 campaign sues CNN for libel over opinion article, following suits against Times and Post; First Amendment Watch at New York University. March 10, 2020. President Trump Files Third Defamation Lawsuit Targets CNN.
The Office of the Special Rapporteur recalls that on April 11, 2019, Julian Assange was arrested by the Metropolitan Police in London, the United Kingdom, in the execution of an arrest warrant issued after he violated the conditions of his bail by entering the Ecuadorian Embassy in London to avoid extradition to Sweden in 2012 on charges of sexual assault and rape. He was also arrested on request by the United States for his extradition, initially for charges of conspiracy to commit a computer intrusion in connection with the publication of classified military information obtained by whistleblower Chelsea Manning. Julian Assange, the founder of WikiLeaks, had been living in the Ecuadorian Embassy in London since June 2012. He was arrested after Ecuador withdrew the diplomatic asylum it had granted him in August 2012.1120

This Office also recalls that on May 1, 2019, the founder of WikiLeaks was sentenced by a British court to 50 weeks in prison for violating his bail and failing to voluntarily turn himself over to the authorities.1121 Additionally, as mentioned previously, the first charge filed by the United States alleges a conspiracy to crack a password stored on U.S. Department of Defense computers connected to the US government’s network it uses to store classified documents and communications, the Secret Internet Protocol Network (SIPRNet).1122 However, on May 23, the government of the United States presented a superseding indictment including 17 more charges under the Espionage Act. The new charges focused on the role the WikiLeaks founder played in obtaining and publishing secret military and diplomatic documents in 2010, information obtained by former U.S. Army intelligence analyst Chelsea Manning. According to the press release from the Department of Justice, the charges against Assange say he was complicit with Manning in unlawfully obtaining and disclosing classified documents related to the national defense and that he conspired with her, aided and abetted her, and received and attempted to receive classified information having reason to believe that such materials would be obtained contrary to law. The various charges say Assange “attempted to receive classified information” and “actively encouraged” Manning to provide more information. The Office of the Special Rapporteur notes that although the majority of the new charges were related to obtaining classified documents, some of them focus on the publication of certain documents that revealed the names of journalists, religious leaders, dissidents, and other persons in dangerous locations—such as war zones—who provided information to the United States.1123 The United States government formally requested Assange’s extradition in June 2019.1124

In February 2020, the extradition hearings began, but were temporarily suspended due to the COVID-19 pandemic. They recommenced in September 2020.1125 On June 24, 2020, the Department of Justice of the United States filed a second superseding indictment. According to the Department of Justice, “The new indictment does not add additional counts to the prior 18-count superseding indictment returned against Assange in May 2019. It does, however, broaden the scope of the conspiracy surrounding alleged computer intrusions with which Assange was previously charged. According to the charging document, Assange and

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1123 The United States Department of Justice. May 23, 2019. WikiLeaks Founder Julian Assange Charged in 18-Count Superseding Indictment Charges Related to Illegally Obtaining, Receiving and Disclosing Classified Information, in May 2019, since the statute of limitations on the other allegations had lapsed, in November 2019 the investigation was closed, since the prosecutor considered that "the evidence has weakened considerably due to the long period of time that has elapsed since the events in question." See, CNN. May 13, 2019. Sweden re-opens Julian Assange rape investigation; BBC News. May 13, 2019. Julian Assange: Sweden reopens rape investigation; CNN. November 19, 219. Sweden drops investigation into Julian Assange over rape allegation; BBC News. November 19, 219. Julian Assange: Sweden drops rape investigation.


others at WikiLeaks recruited and agreed with hackers to commit computer intrusions to benefit WikiLeaks.”

7.05. On January 4, 2021, a British judge ruled to deny the request to extradite Julian Assange to the United States, finding that his mental health and the conditions in which he would probably be held in the United States could put him at extreme risk of committing suicide. The United States appealed this decision in January 2021, and the appeal is being processed. The judge also denied bail to Julian Assange that would have allowed him to be released while the appeal was decided.

7.06. This Office takes note of the decision by British authorities to not extradite Mr. Assange due to his mental health, but notes that the court ruling does not resolve the matter at hand regarding the scope of freedom of expression for the publication of matters significantly in the public interest and the charges by the United States government, which seeks to punish Mr. Assange for, among other things, the exercise of his right to freedom of expression by publishing classified information of significant public interest that was provided to him. The court decision found that Assange's actions went beyond the protection offered to a free press and he was not immune from criminal responsibility by simply arguing that he was acting as a journalist. Like other organizations have noted, the Office of the Special Rapporteur highlights that this is the first time the United States has charged a person under the Espionage Act for receiving and publishing information considered to be in the public interest, directly challenging First Amendment protections.

7.07. The Office of the Special Rapporteur expresses concern at the precedent that these types of charges and the British court’s ruling could set for the exercise of freedom of expression by journalists and individuals who perform journalism work and research, especially on national security matters. Although the Office of the Special Rapporteur condemns the irresponsible publication of information that could endanger and expose the identities of sources—actions of which Mr. Assange is accused—this Office highlights that the reasoning of the British courts ruling sets a dangerous precedent for freedom of expression. Essentially, several of the actions and activities on which the charges are based are standard practice for investigative journalists and traditional media outlets, which seek to publish information even if it is classified or confidential, and likewise protect their sources, all with the objective of informing society as a whole on matters of public interest. This sets a concerning precedent for investigative journalism and for people who work in journalism, who are also protected by the right to freedom of expression, as it puts them at risk of being prosecuted for receiving and publishing classified information, causing a chilling effect on journalism.

H. Source confidentiality

7.08. The Office of the Special Rapporteur observes with concern that journalists and media outlets continue to be subpoenaed during 2020, which has implications with regard to maintaining source confidentiality. The Office of the Special Rapporteur observes that several subpoenas aimed to secure material collected while covering protests. According to civil society, because these subpoenas are not public or are kept confidential, the figures do not necessarily reflect reality. As reported by the US Press Freedom Tracker and other organizations, at least 19 subpoenas were issued to journalists, media outlets, or third

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parties (including social media networks and mobile phone companies) seeking testimony before courts, identification of sources, or the turning over of journalism materials, phone records, or private data.1130

709. The New York Police Department (NYPD) ordered Twitter to produce and turn over private data from October 9–14, 2019 (connection records, IP address history, and other related information) connected to the account of the New York Post’s police bureau chief under the Patriot Act (an antiterrorism law passed after 9/11). The subpoena was related to photos of a crime scene that the journalist had tweeted. The NYPD withdrew the subpoena on February 12 after it was contacted by the newspaper’s attorneys.1131 Also, on July 14, a freelancer for the Daily News received a letter stating that their phone records had been obtained from their cellphone provider, AT&T, on orders from the NYPD. The records were being used in a leak investigation within the police department, which identified an NYPD officer who had been interrogated on threat of suspension as the individual allegedly responsible for the leak. The officer’s alleged responsibility could not be proven. The journalist asked the company for a copy of the subpoena, but it refused citing company policy. An NYPD official told the Daily News that the subpoena was issued before the department changed its regulations about acquiring journalists’ phone and social media records earlier this year, after the incident with the New York Post reporter. The NYPD Commissioner issued an apology for subpoenaing the information.1132

710. On December 1, U.S. Immigration and Customs Enforcement (ICE) subpoenaed BuzzFeed News, seeking information on the sources used in its reports on immigration programs and asking that the subpoena not be made public. BuzzFeed News refused to reveal its sources. After the report was published and the subpoena was criticized by several media outlets, on November 9, ICE said it would not enforce it and continue its investigation via other means.1133

711. The Office of the Special Rapporteur also observes that several subpoenas were issued ordering journalist or media outlets to turn over reporting material collected while covering various protests throughout the country over the death of George Floyd while in Minneapolis police custody. For example, on June 5, the Cuyahoga County Prosecutor in Ohio ordered news website Cleveland.com and The Plain Dealer to turn over unpublished material, including video footage, photographs, and audio recordings, on any "potential criminal activity" during the May 30, 2020, protests in Cleveland over Floyd’s death.1134 A similar subpoena was issued on June 18 by the Seattle Police Department (SPD), ordering four large media outlets (KIRO 7 News, KING 5 News, KOMO 4 News, KCPQ News and the Seattle Times) to attend the hearing on June 29 with unpublished video footage and photographs taken during coverage of the May 30 protests from 3:30 to 5 p.m. The idea was that the media would contribute to an ongoing investigation to identify individuals who had allegedly stolen guns from police vehicles and started fires in the area and to recover two of the guns that had been stolen. The media outlets filed a motion for the subpoena to be dismissed based on the First Amendment, Washington state’s Shield law, and because turning over the information would place them in a position that would discredit their independence in the eyes of the public and place journalists at risk in terms of their physical safety.1135

712. On July 31, 2020, the Seattle King County Superior Court granted the SPD’s request and ordered the five media outlets to turn over the information, with some restrictions. The court concluded that the SPD “had fulfilled the statutory requirements of the qualified Washington shield law to obtain the material as it was relevant and necessary to their investigation; all alternative means to obtain the evidence had been exhausted

and there was a compelling public interest in the disclosure.” The media outlets appeal the decision, and a suspension of the subpoena was granted while the Supreme Court of Washington reviewed the appeal. The SPD dropped the subpoena for information, as the appeal would delay the release of the requested images on till 2021 and one of the suspects had been arrested on September 4. The SPD therefore said it would not seek execution of the subpoena.

More recently, on December 16, 2020, a photojournalist from the *Democrat & Chronicle* was subpoenaed to testify before a grand jury in Rochester, New York, on the images she took during protests in Rochester sparked by the deaths of George Floyd and Daniel Prude. The photojournalist complied with the subpoena, but did not give information to compromise any of her sources.

Additionally, according to publicly available information, the Office of the Special Rapporteur observes that former American intelligence analyst Chelsea Manning, who was again deprived of liberty in May 2019, was released on March 12, 2020, one day after a suicide attempt, according to her legal team. The judge concluded that her testimony before a grand jury was no longer necessary, and therefore her detention had no coercive purpose. However, the judge left in place the requirement to pay the fines imposed for her refusal to testify, amounting to $256,000. The whistleblower was detained for civil contempt on having refused to testify before a grand jury and answer questions on the confidential information provided to Julian Assange, as well as the government’s investigations into the actions of Assange and WikiLeaks.

In view of the facts documented during 2020, this Office reminds the State that:

**Government authorities are called to maintain a discourse that favors public debate and freedom of expression.** The Special Rapporteurs of the IACHR and the UN, in their joint communication have "urged [the President] and his administration to cease efforts to undermine the media’s role of holding government accountabile, honest and transparent," indicating that “[t]hese attacks run counter to the country’s obligations to respect press freedom and international human rights law.” Although it is legitimate for politicians and public officials to criticize, correct or object to specific media reporting, when doing so, they should always be careful to ensure that their comments are accurate, avoid stigmatizing and discrediting the media, and do not threaten journalists or undermine respect for the independence of the media. This Office reiterates that public officials are called on to maintain a discourse that fosters public debate and ensure that their statements are not causing damage to the rights of those who contribute to the public debate through the expression and circulation of their thoughts. Public officials must refrain from making statements that expose journalists and media workers to greater risk of violence and must emphatically condemn attacks on journalists. The most senior officials must consistently, clearly, publicly, and firmly recognize the legitimacy and value of the work that journalists do, even when the information they disseminate is critical of the government or inconvenient to its interests.

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Social protest, which includes the rights to peaceful, unarmed assembly, association, and freedom of expression, is a fundamental tool for the defense of democracy and human rights. 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.” Likewise, the Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests, adopted in 2013, states that the rights of freedom of assembly and 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.” Consequently, the State has a duty to guarantee that journalists and communicators working during a public demonstration are not detained, threatened, attacked, or limited in any way with regard to their rights as a result of exercising their professions. Their work materials and tools must not be destroyed or confiscated by the authorities. The protection of freedom of expression requires authorities to ensure the necessary conditions for media workers to be able to cover noteworthy events of interest to the public, such as those involving public protests. On June 8, 2020, the UN and IACHR Special Rapporteurs for Freedom of Expression issued a joint statement condemning the use of force against journalists covering protests in the United States, recalling that “[l]aw enforcement has the duty to ensure the safety of journalists who are covering protests and to guarantee the right of the public to seek and receive information about these social mobilizations.” Also, the IACHR and its Special Rapporteur expressed grave concern at the number of reports of attacks on and arrests of journalists covering protests and indicated that the communicators were playing a central role in documenting the demands of demonstrators and in oversight of police actions.

Government transparency and accountability strengthen democratic systems. The Office of the Special Rapporteur underscores that, in the framework of the pandemic, “it is essential that governments provide truthful information about the nature of the threat posed by the coronavirus. Governments everywhere are obligated under human rights law to provide reliable information in accessible formats to all, with particular focus on ensuring access to information by those with limited internet [...]” Likewise, “the right of access to information means that governments must be making exceptional efforts to protect the work of journalists. Journalism serves a crucial function at a moment of public health emergency, particularly when it aims to inform the public of critical information and monitors government actions. [...]”

Press release 128/20. The IACHR and UN, United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression issued a joint statement condemning the use of force against journalists covering protests in the United States. The press release states: “First, federal, state and local authorities must afford media workers the highest degree of protection in order for them to perform their work freely. This obligation includes both the duty to avoid the use or threat of force against journalists and to protect journalists against third party violence. The targeting of media workers with lethal or less-lethal force for doing their work is prohibited under international human rights law and contrary to best policing standards. Those violating such rules must be subject to accountability and disciplinary processes. Second, public authorities should condemn attacks against journalists and promote the role played by the press. We repeat our previously raised serious concerns that statements by the President of the United States, especially his years-long attack on the media as an ‘enemy of the people,’ contribute to an environment of hostility and intolerance. Third, we are deeply concerned that the militarization of policing in the United States not only interferes with the right to peacefully assemble but also limits the ability of the press to cover protests. It encourages law enforcement to see protesters and journalists as belligerents, and we strongly encourage demilitarization and a reliance on international standards for the management of protests.”

United States: UN and OAS experts condemn use of force against journalists covering protests in the US.
governments [must] to robustly implement their freedom of information laws to ensure that all individuals, especially journalists, have access to information."  

Likewise, the IACHR has held in its Resolution 1/20 on the Pandemic and Human Rights in the Americas that "States should not include communicators in restrictions on movement of people, and are obliged to allow all access to official press conferences, without discrimination based on editorial stance, with the exception of necessary and proportionate measures to protect health." The resolution also underscored that "The bodies and officials that guarantee this right should give priority to requests for access to information related to the public health emergency, and also proactively report in detail on the impact of the pandemic and on emergency spending, and do so in an open format accessible to all vulnerable groups, in accordance with best practices internationally. If deadlines for requests for information on matters not linked to the pandemic have to be extended, governments should explain the denial, set a time period in which the obligation will be met, and allow for appeals against such decisions."  

Likewise, the IACHR has held in its Resolution 1/20 on the Pandemic and Human Rights in the Americas that "information coming from the government, especially by social media, States also have an obligation to protect their own and their communities’ health.” The IACHR has also underscored that Internet platforms have a duty to combat and be transparent with regard to false or erroneous information about the pandemic.  

In the context of the pandemic, senior authorities must take special care with their statements and inform the population diligently and based reasonably on scientific information. This is because false, erroneous, and misleading information and deliberate disinformation can be harmful to public health. The duty State authorities have to inform appropriately is based on the high degree of trust the public has in the information coming from the government, and therefore, governments must be sure to provide truthful and trustworthy information on the nature of the coronavirus threat.  

The Office of the Special Rapporteur observes that the role the State plays in this regard is crucial for citizens to have trustworthy information, especially in emergency contexts like the current one, where the dissemination of false, erroneous, or misleading information and deliberate disinformation on the Internet can lead to an “over-abundance of information – some accurate and some not – that makes it hard for people to find trustworthy sources and reliable guidance when they need it.” This has led the WHO to refer to the health emergency as an "infodemic,” in addition to the aforementioned State obligations, and in view of the proliferation of false and erroneous information, especially by social media, States also have an obligation to "counter misinformation regarding the pandemic in order to equip citizens with the information they need to protect their own and their communities’ health.” The IACHR has also underscored that Internet platforms have a duty to combat and be transparent with regard to false or erroneous information about the pandemic.  

The establishment of criminal offenses for punishing the dissemination of disinformation or fake news could have a strong chilling effect on the dissemination of ideas, criticism, and information. The establishment of criminal offenses could roll the region back to a time of criminalizing expression.


Freedom of expression is linked directly to political rights and their exercise, with both kinds of rights reciprocally strengthening each other. Healthy democratic debate requires the existence of a greater degree of circulation of ideas, opinions, and information with regard to the candidates, their parties, and their platforms during the period preceding an election, mainly via the media, from the candidates, and those wishing to express themselves. It is necessary for everyone to be able to question and investigate the abilities and suitability of the candidates, discussing and challenging their proposals, ideas and opinions so that the electorate can form an opinion on how to vote. As the IACHR has noted, free speech and political debate are essential for the consolidation of democracy in societies, which is why they are of imperative social importance. Without prejudice to this, the Commission has urged "public officials to cease speeches that encourage hatred or violence against officials and institutions that embody the rule of law."

Freedom of expression applies to the Internet the same as to other media outlets. The IACHR and its Office of the Special Rapporteur have underscored that "Mass blocking, content removal, the permanent suspension of users, or what has come to be known as "deplatforming," are severe measures that should be assessed in light of international standards on freedom of expression, particularly in the case involving information of public interest or public officials in the exercise of their duties. [...] In their role as guarantors of human rights, States are called upon to support this process by ensuring intermediary liability regimes that encourage technological development, provide legal certainty, and facilitate the implementation of human rights standards in all sectors while also respecting proposed mechanisms of multisectoral, open, and pluralistic internet governance." The Special Rapporteurs of the IACHR, the UN, and the ACHPR and the representative of the OSCE established in their 2016 Joint Declaration on Freedom of Expression and the Internet that "[n]o one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so ("mere conduit principle")." Regarding intermediary responsibilities, the special rapporteurs have indicated that "States should not subject Internet intermediaries to mandatory orders to remove or otherwise restrict content except where the content is lawfully restricted in accordance with [international] standards. States should refrain from pressuring, punishing or rewarding intermediaries with the aim of restricting lawful content. [...] At a minimum, intermediaries should not be required to monitor user-generated content and should not be

1159 IACHR. Arguments before the Inter-American Court in the case of Canese v. Paraguay. Transcribed at: I/A Court H. R. Case of Ricardo Canese v. Paraguay.
subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression (which is the case with many of the 'notice and takedown' rules currently being applied).”

723. **The use of criminal mechanisms to punish speech on matters of public interest, especially speech related to public officials, is incompatible with inter-American standards.** Regarding this, the IACHR and its Office of the Special Rapporteur have established that although using civil procedures as mechanisms of subsequent liability is less restrictive to freedom of expression for redressing any harm alleged, they must comply with the strict conditions derived from Article 13(2) of the American Convention. Likewise, it should be recalled that the fear of a disproportionate civil penalty may, in any case, be 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. Likewise, according to Principle 10 of the Declaration of Principles of the IACHR Declaration of Principles on Freedom of Expression, “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.”

724. **Whistleblowers should be protected from legal, administrative or employment-related sanctions if they act in good faith.** In a 2010 joint statement, the UN and IACHR Special Rapporteurs said that “[a]ny attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.” Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information.

725. **Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.** The Office of the Special Rapporteur expresses concern at these situations and recalls that any measure aimed at confiscating journalism materials that would involve turning over sources or calling journalists as witnesses has a chilling effect on freedom of expression.

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1165 I/A Court H. R, **Case of Tristán Donoso v. Panama**, supra. par. 129, and **Case of Fontevecchia and D’Amico v. Argentina**, supra. par. 74.

1166 IACHR, **Special Rapporteurship for Freedom of Expression**, December 6, 2004. **International Mechanisms for Promoting Freedom of Expression, Joint Declaration**, “Whistleblowers” are individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy.
GRENADA

726. Although in 2012, Grenada became the first Caribbean country to decriminalize defamation, “seditious libel” remains codified as a crime. In this context, Freedom House points to cases in which public officials have filed criminal defamation complaints against media outlets and opposition politicians. Likewise, in 2020, the Office of the Special Rapporteur continues to note restrictions placed on journalism coverage of matters in the public interest.

A. Access to public information

727. According to publicly available information, in July, a journalist was refused entry to the Grenville Magistrate’s Court upon having gone to cover a murder case. The journalist said that murder trials in Grenada are open to the public, and therefore, denying the media access to the court amounts to withholding that right as guaranteed under the constitution. The journalists recalled that both the media and the police have a role to play in the preservation of the democratic process, and denying access to a public court proceeding is an infringement on their right to inform and the public’s right to know.\footnote{1167}

728. Additionally, according to the Inter-American Press Association (IAPA), during 2020, the media was denied access to Parliament, supposedly because of physical distancing guidelines implemented for the pandemic and the lack of space in the building. However, according to the IAPA, the building is designed to handle 200 visitors during sessions, along with 15 MPs, the Speaker, and the houses of parliament staff for sittings of the house.\footnote{1168}

B. Subsequent liability

729. According to publicly available information, Prime Minister Keith Mitchell filed a libel lawsuit against attorney Claudette Joseph, who is currently in charge of public relations for the National Democratic Congress (NDC), an opposition political party.\footnote{1169} The head of State accuses Claudette Joseph of making defamatory statements against him insulting his good name, his position, and his reputation. According to a letter sent by a law firm hired by the Prime Minister, the statements are "completely false and malicious in all respect and were intentionally made by you to cause damage to our client’s reputation." The lawsuit refers to a public statement made by Claudette Joseph in which she expressed concern at some of the facts set forth in an Al Jazeera documentary called "Diplomat Passports For Sale," which, in the segment on Granada, commented on the failed Grenada Sustainable Aquaculture Project, in which foreign investors are supposedly being investigated for the disappearance of EC$52.4 million from the project. When mentioning the matter,
Claudette Joseph said that the Prime Minister was also an investor in the project and suggested watching a YouTube video giving more information.¹¹⁷⁰

730. According to the information available, the Prime Minister is seeking with his lawsuit for this statement to not be repeated. He is also seeking an apology and payment of an indemnity of EC$350,000. The NDC called the Prime Minister's decision to file a libel lawsuit against the party's public relations director "frivolous (...) vindictive (...) sinister, and vulgar." "This sinister and vulgar attempt is solely to subdue someone whom he perceives as a formidable political opponent standing against public corruption." In a public communication, the NDC urged the Prime Minister to "cease the vengeful practice that he has promoted for years during his time in public office" and called on the citizens of Granada to "protect our freedom of speech and defend our fundamental rights and liberties."¹¹⁷¹

731. In view of the facts set forth herein, the Office of the Special Rapporteur calls on the State of Granada to take special note that:

732. **Government transparency and accountability strengthen democratic systems.** In this regard, Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, "Access 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." This Office also recalls that journalism is the primary and principle manifestation of freedom of expression, and in the context of the pandemic, it plays the crucial role of informing on critical issues and monitoring government actions. States have an obligation to permit all media outlets access to official press conferences, without discrimination based on editorial stance, with the exception of necessary and proportionate measures to protect health.¹¹⁷²

733. **The use of criminal mechanisms to punish speech on matters of public interest, especially speech related to public officials, is incompatible with inter-American standards.** Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR establishes: "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." This is justified by the fact that the activities they engage in are in the public interest and because they have voluntarily exposed themselves to stricter scrutiny and have enormous capacity to challenge the information through their convening power.¹¹⁷³ Likewise, the IACHR has held that the use of criminal law in these cases does not meet a pressing social need that would justify it; is unnecessary and disproportionate; and could be a means of indirect censorship, given its chilling effect on debate surrounding matters of public interest.¹¹⁷⁴

¹¹⁷⁰ Now Grenada. August 6, 2020. NDC objects to PM's EC$350,000 defamation lawsuit against its PRO. NDC. August 6, 2020. Solidarity message for our sister PRO.
¹¹⁷¹ NDC. August 6, 2020. Solidarity Message for our Public Relations Officer (PRO), Sister Claudette Joseph.
GUATEMALA

734. Throughout 2020, journalists and the media continued to face a generally adverse scenario for the exercise of the right to freedom of expression, characterized by stigmatizing statements against the press from high-ranking authorities and the increase in aggressions, acts of harassment, and restrictions on the exercise their right to freedom of expression and access to information, particularly in the context of the health crisis caused by COVID-19. Likewise, the obstacles journalists have faced in carrying out their work since the pandemic began stand out, as well as the deficit in the availability of complete, timely, adequate, and necessary public information on the management of the health crisis.

735. On the other hand, the Office of the Rapporteur is concerned about the excessive use of force in the protests and the attacks perpetrated against journalists in the context of their coverage. In 2020, two journalists were murdered in Guatemala for reasons that, according to public information, could be related to the exercise of their journalistic work, facts that are aggravated by the lack of legal consequences showed by the impunity of these crimes. Finally, this Office is alarmed by the lack of progress in the implementation of protection mechanisms for journalists and social communicators, as well as the lack of adoption of a more just and inclusive legal framework for community radio broadcasting.

736. Based on the above, the Office of the Special Rapporteur observes with concern the continuous use of stigmatizing statements against journalists in Guatemala; the increase in attacks, threats, and acts of harassment against them, particularly to the detriment of women journalists; the use of criminal law as a mechanism for subsequent liabilities, the lack of legal recognition of community radio stations to guarantee the exercise of freedom of expression by indigenous peoples in their native languages, as well as the obstacles journalists have faced in accessing public information during the pandemic.

A. Progress

737. The Office of the Special Rapporteur for Freedom of Expression positively values the prominent role of the Human Rights Prosecutor in documenting restrictions on freedom of expression and journalistic work, as well as the implementation of mechanisms within the domestic legal system for the protection of this right. On April 4, 2020, the Human Rights Prosecutor [Procurador de los Derechos Humanos] (PDH) filed an amparo before the Constitutional Court of Guatemala (CC) against the Congress of the Republic due to the restriction it imposed on journalists from various media to access parliamentary sessions on April 2, 2020, under the pretext of compliance with the health measures adopted due to the pandemic caused by COVID-19 to avoid contagion. That day, parliament would have been discussing an international loan to face the crisis due to the coronavirus. The PDH filed the amparo claiming a “firm and imminent threat that access to journalists would

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be restricted" and because in its opinion "Congress violated human rights and freedom of information, access to sources of information, and the right to freedom of freedom of expression by restricting the entry of journalists to the legislative chamber".

738. As a result of this action, on May 5, 2020, the Constitutional Court granted a provisional amparo and ordered Congress to allow the access of journalists and their technical teams to directly cover the sessions and highlighted that, in the context of the coronavirus, it was necessary to adopt "sanitary measures to protect health and maintain the distance between the staff of the communication and broadcast media that are present to cover the source." The Constitutional Court emphasized that "Article 35 of the Constitution establishes that the free emission of thought and free access to sources of information cannot be limited by any authority" and stressed that the Executive's provisions by virtue of the coronavirus health emergency contained exceptions to the restrictions on freedom of movement and curfew, which included media personnel.1176

B. Murders

739. In 2020, the Office of the Special Rapporteur learned of two murders of journalists for reasons that could be related to their work. On February 27, 2020, the young journalist of the cable news channel TLMCom, Bryan Leonel Guerra, was the victim of an armed attack by unknown individuals in Chiquimula, Guatemala. The journalist died a few days later, on March 3, as a result of this attack. According to public information, he would have denounced death threats via social networks. The Attorney General's Office informed on the start of the murder investigation1177, to date no progress has been reported.

740. Likewise, on November 10, two unidentified individuals shot Mario Ortega outside his home, in the southwestern city of San José, who died on November 14 from his injuries. Ortega was the founder of San José Total, a TV channel and digital news outlet where he also worked as a reporter in charge of covering local social and political issues, and reportedly received threats. The determination of the link between the crime and the journalistic work is in the hands of the Guatemalan authorities, who indicated that they had initiated the investigation.1178

C. Attacks, threats, intimidation, and criminalization as a mechanism of judicial harassment against journalists and the media

741. The Office of the Special Rapporteur observes that civil society reported at least 124 attacks against journalists and the media during 2020. In this regard, cases of obstruction of source were recorded in the country in the framework of the coverage of the COVID-19 pandemic, as well as threats, including death threats1179, attacks on women journalists, filing of defamation suits, physical and verbal assault, arbitrary detention, censorship, cyber-attack, and judicial harassment. In addition, two journalists were killed, as mentioned above.1180


1178 Committee to Protect Journalists (CPJ). November 18, 2020. Guatemalan journalist Mario Ortega shot and killed; La Hora. November 14, 2020. PDH condena asesinato de periodista Mario Ortega. The Office of the Attorney General stated that "through the Municipal Agency of the Port of San José, in coordination with the Office of the Prosecutor for Crimes against Journalists, investigative procedures are being carried out after the armed attack against journalist Mario Ortega." Twitter account of Ministerio Público de Guatemala @MPguatemala November 12, 2020 7:42 PM.

1179 Journalist Otoniel Esau Rivera, current vice president of the Asociación de Periodistas y Comunicadores Sociales of Alta Verapaz, reported to the MP he had received death threats against him and his son, through Facebook, when he was livestreaming from that platform his testimony as a person suffering from Covid-19. CRN Noticias. September 1, 2020. Cobán: Periodista denuncia amenazas de muerte tras compartir testimonio de COVID-19; Asociación de Periodistas de Guatemala (APG). September 23, 2020. Comunicado de prensa APG 45-16-10-2020. La APG alerta ante el incremento de ataques y amenazas a periodistas. Available for consultation at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

1180 Information shared by Convergencia por los Derechos Humanos with the Office of the Special Rapporteur for Freedom of Expression in July 2020. Available for consultation at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Asociación de...
The Office of the Special Rapporteur learned of various situations referring to episodes of attacks, threats, arbitrary arrests, and criminalization of journalists for reasons that could be linked to the exercise of journalism. It is highlighted, among many, the threats and harassment messages posted on Twitter against Sonny Figueroa of the digital medium Vox Populi and against Marvin del Cid of the medium Article 35 stand out, as well as the sending of a threatening note on December 7, 2020 against both. The note was received in the mailbox of Marvin del Cid’s home and it read “Marvin and Sonny stop investigating and publishing shit or you’ll see”. In addition, Sonny Figueroa was arrested and beaten on September 11 after he requested help from police personnel for having been robbed. When he pointed out that he was a journalist, the police officers refused to provide him with support and when he complained about this the police arrested him for an alleged scandal on public roads. According to the communicator, while he was detained a police agent, who had harassed him previously, arrived at the scene and began to record him without an official purpose. Photos of his arrest were leaked and posted on social media. Figueroa’s arrest was carried out in circumstances of continuous harassment against him, allegedly because of his publications critical of the government. The journalist was released by a judge 17 hours later for lack of evidence, and two police officers allegedly responsible for his arrest were arrested on charges of abuse of authority.

The Office of the Special Rapporteur also expresses its concern over the arrest of community journalist Francisco Choc Xum, on June 11 while he was covering protests about a land dispute in Solalá, after the journalist was detained and beaten by protesters, which would have caused fractures in his ribs and bruises on various parts of his body. It is argued that, during said detention, ammunition was planted in Chox’s bag, which is why the Police detained him for the alleged illegal possession of ammunition. After 8 days of detention, a judge released him because there was no merit to the charges. On the other hand, on April 18, an unknown individual allegedly entered the home of journalist Carlos Ernesto Choc in Izabal, and would have stolen only his work equipment. This act was considered by the journalist as an act of intimidation that could be related to his work due to his investigations regarding the shortage of water in a community near El Estor. Likewise, the Office of the Special Rapporteur observes that online threats and acts of harassment, as well as those coming from the so-called “netcenters” continued during 2020.

Similarly, according to information provided by civil society, women journalists reportedly were the target of attacks on social networks, as well as within the framework of their journalistic coverage on the “International Day for the Decriminalization of Abortion.” Journalist Carolina Gamazo of the digital media No-Ficción would have been insulted on social networks, where she would have been classified as a “prostitute” or “marijuana”, also attacking her because of her nationality. Likewise, journalist Jovanna García (Ruda) was


Prensa Comunitaria. April 21, 2020. Roban en la casa del periodista Carlos Choc al sureste de Guatemala; Committee to Protect Journalists (CPJ).


threatened by a false profile, who told her that they knew where she was moved around and that "if they saw her, they would beat her and destroy her camera. The individual also told her that they expected she would be raped, or they would do it themselves." For her part, Mercedes Vaidez (Prensa Comunitaria) reported being the victim of insults and harassment while she was covering a mobilization of the group "Chicas al Pedal".\footnote{Asociación de Periodistas de Guatemala (APG). November 29, 2020. Estudio de situación de la libertad de expresión en Guatemala 2020. Un año desolador para la prensa en Guatemala. P. 48 y ss. Available for consultation at: https://twitter.com/APG_1947/status/1333050665573167104; Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. October 1, 2020. Insultan, hostigan y amenazan físicamente y a través de redes sociales a periodistas feministas por dar cobertura a acciones en el marco de Z5S.}

745. The Office of the Special Rapporteur highlights in a particular way, the detention of the community journalist Anastasia Mejía while she was covering protests, who was released after a house arrest measure was ordered, after being detained for approximately 38 days without pre-trial detention being ordered, and was linked to the process for the alleged commission of the crimes of sedition and attack, with aggravation of the penalty.\footnote{IACHR. Office of the Special Rapporteur for Freedom of Expression. October 22, 2020. Press release R258/20. The Office of the Special Rapporteur considers inadmissible the delay in the detention process of indigenous journalist Anastasia Mejía Triquis in a pandemic context and calls on the State of Guatemala to respect and guarantee her right to personal liberty and due process of law; Prensa Comunitaria. September 22, 2020. Detienen a periodista Anastasia Mejía en Joyabaj, Quiché; teleSUR. October 29, 2020. Envián a arresto domiciliario a comunicadora guatemalteca.} The Office of the Special Rapporteur for Freedom of Expression pays special attention to the process against Anastasia Mejía given the public allegations about the use of criminal law as a potential tool to show a lesson to critical voices, a process that also takes on special importance when carried out with delays and against an indigenous journalist who did community journalism in native languages and for her status as a woman journalist and community leader. The prevalence of violence and an environment adverse to the exercise of freedom of expression raise serious concerns for the Office of the Special Rapporteur due to the lack of adequate measures for the prevention and protection of communicators and the media.

D. Prosecution

746. The Office of the Rapporteur highlights the creation of the Prosecutor's Office for Crimes against Journalists, in December 2019, a Section Prosecutor's Office, in order to strengthen and guarantee the right to freedom of expression and freedom of the press in the country. This Prosecutor's Office will be in charge of "hearing, investigating, and prosecuting the crimes committed against journalists when the facts aim to limit their human rights in the exercise of their functions, acts of intimidation, harassment, or retaliation for their activity".\footnote{IACHR. Office of the Special Rapporteur for Freedom of Expression. October 22, 2020. Press release R258/20. The Office of the Special Rapporteur considers inadmissible the delay in the detention process of indigenous journalist Anastasia Mejía Triquis in a pandemic context and calls on the State of Guatemala to respect and guarantee her right to personal liberty and due process of law; Prensa Comunitaria. September 22, 2020. Detienen a periodista Anastasia Mejía en Joyabaj, Quiché; teleSUR. October 29, 2020. Envián a arresto domiciliario a comunicadora guatemalteca.} According to the Attorney General's Office, the files that were active in the Unit for Crimes against Journalists of the Human Rights Prosecutor's Office will be transferred with the respective control and registration to the Section Prosecutor's Office.\footnote{Ministerio Público. December 6, 2019. Ministerio Público inauguró Fiscalía de Delitos contra Periodistas; DW. December 7, 2019. Guatemala inaugura Fiscalía que investigará delitos contra periodistas.}

747. While the Office of the Special Rapporteur considers the creation of a specialized Section Prosecutor's Office as positive, which would have previously consisted of an Unit under the Human Rights Prosecutor's Office, it highlights that during 2020 no significant progress has been identified in access to justice for murders and crimes against journalists. In this context, the IACHR highlights that, although investigations and criminal proceedings have been delayed due to the pandemic, despite virtual hearings in some cases,\footnote{Ministerio Público. December 6, 2019. Ministerio Público inauguró Fiscalía de Delitos contra Periodistas.} high rates of impunity persist in Guatemala regarding crimes against journalists in the exercise of their professional work for many years, which generates a chilling effect for the exercise of freedom of expression. The foregoing also has serious consequences for democracy, which depends on a free, open, and dynamic exchange of ideas and information.\footnote{IACHR. 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. Par. 287.} At least 23 journalists were killed between 2007 and 2020 for reasons...
allegedly linked to journalistic work, of which little progress has been observed in the investigations, identification, and punishment of those responsible. 1193.

748. In 2020, the Office of the Special Rapporteur learned of two murders of journalists for reasons that could be related to their work, as mentioned above. The murder of Bryan Leonel Guerra occurred on March 3, 2020, and while the Attorney General’s Office reported on the opening of the corresponding investigation 1194, to date no progress has been reported.

749. With regard to the obligation to prosecute the murders committed in previous years, the IACHR identifies progress in relation to the criminal proceeding derived from the murder of journalists Danilo Zapón López and Federico Salazar, which happened in 2015 and who worked as correspondents for Prensa Libre and Radio Nuevo Mundo in Mazatenango, department of Suchitepéquez. According to public information, the trial against the accused as the intellectual author of the crime, congress representative Julio Antonio Juárez Ramírez, began on November 16, 2020 before the High-Risk Court “B” 1195, after the accusation by the Attorney General’s Office and the closing of the intermediate stage 1196. The start of the trial was moved up, as it was scheduled to start in January 2021.

750. According to the information available in the press, according to the investigations of the Attorney General’s Office, the congress representative would have hired hitmen through intermediaries in order to assassinate Danilo Zapón López due to the investigations that the journalist carried out on the representative, including his problems with the tax administration 1197.

751. On the other hand, the investigations carried out by the Office of the Prosecutor for Crimes against Journalists into the murder of journalists Álvaro Alfredo Aceituno López and Hamilton Hernández Vásquez and their families were transferred to the Special Prosecutor against Impunity [Fiscalía Especial contra la Impunidad] (FECI). The investigations will be carried out at the headquarters of the Prosecutor’s Office located in Quetzaltenango, the department where the crimes took place. According to public information, “the FECI was strengthened with the Directorate of Criminal Investigations, criminal and financial analysts, as well as support personnel,” which was “created to receive and follow up on investigations initiated by the CICIG” 1198.


E. Protection Mechanisms

752. The Office of the Special Rapporteur observes that the creation of the program to protect journalists and social communicators is a commitment adopted by the State of Guatemala, ratified by President Alejandro Giammattei1199, which has not been finalized to date. During the IACHR’s on-site visit from July 31 to August 4, 2017, and on repeated occasions, both the IACHR and its Office of the Special Rapporteur have recommended to the State the creation of a program for the protection of journalists and media workers in Guatemala based on the situation of violence and the aggressions that journalists and communicators have faced for more than a decade in that country and have highlighted some of the guidelines that must be taken into account in the design and operation of protection programs for journalists1200.

753. The State informed the IACHR that “through the Division for the Protection of Persons and Security [DPPS] of the National Civil Police, protection is provided in accordance with risk analysis [...] and the specific security needed by the victim [is determined] either of personal protection, perimeter, or mountain range”1201. While the IACHR considers these measures to be positive, it highlights the importance of creating a special protection mechanism, due to the particular circumstances of violence against journalists in Guatemala. As indicated in previous reports1202, although the Office of the Special Rapporteur received from the Government on February 21, 2018 a draft decree that would launch the program, and sent a technical analysis and a series of recommendations, there was no progress or concrete actions on the matter of prevention and protection of violence against journalists during 2020. Given that the situation of violence against journalists continues and there is a commitment to structure a protection program, the Office of the Special Rapporteur for Freedom of Expression invites the State of Guatemala to consider the opening of spaces to promote and facilitate the implementation of the mechanism to protect journalists; and if the State so considers it, the full availability of this Office to provide technical support is anticipated.

F. Stigmatizing statements

754. The Office of the Special Rapporteur for Freedom of Expression notes with concern the ease with which public leaders and persons occupying positions as guarantor of human rights resort to stigmatizing statements that in themselves affect the conditions for a plural public debate and have the potential to increase the risk for journalists.

755. The Office of the Special Rapporteur notes that in Guatemala there has been a trend towards the stigmatization and disqualification of journalists and the media critical of the Government that stems from the highest-ranking authorities, which puts at risk the free exercise of journalistic work and undermines the obligation to “adopt a public discourse that contributes to preventing violence against journalist”.1203 Stigmatizing statements, on the contrary, expose journalists to a greater risk of acts of violence1204 and place them in a greater situation of vulnerability than they might already be due to the nature of their work, since the content of such statements can even be interpreted by individuals and groups of individuals in such a way that acts of violence are committed and obstacles to their journalistic work are placed.1205 This situation has...

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1201 República de Guatemala. Informe del Estado de Guatemala sobre el cumplimiento de las recomendaciones contenidas en el Informe “Situación de los derechos humanos en Guatemala” de la CIDH del 31 de diciembre de 2017. Received on October 23, 2020.
persisted with the new government, after the inauguration of President Giammattei on January 14, 2020, in particular, due to journalistic government during the COVID-19 pandemic.

756. It is of particular concern to the IACHR and its Office of the Special Rapporteur that on January 20, shortly after the start of the new government, the President of Guatemala, during a press conference, questioned the journalistic work of Marvin del Cid, a contributor to the newspaper Prensa Libre, by publicly expressing: "[I]t seems to me that this man has it out for us. Yes, he's out for us [...], because he has dedicated himself to doing a series of investigations based on, I don't know what and we ourselves consider that he is exceeding his limits. I can document your last four investigations, which have a dedication, I wish I knew who is telling you to investigate us in that way". This statement was made within the framework of investigations carried out by the journalist on close friends and the president's circle of influence.1206

757. Likewise, in March, when leaving Congress, the president sprayed with a bactericide the journalists who were at the entrance to the compound, saying it was an "anti-journalist" spray.1207 A few days later, when he referred to the curfew that would be imposed, he said: "I would like to put a curfew on the media, but it can't be done".1208 Likewise, on April 11, the president announced that he would only disclose the sex and age of people infected with coronavirus, in order to prevent the press from publishing sensitive information about patients, since it only seeks to "create scandals"1209 which was denied by the press. In addition, he accused the press of trying to generate divisions in the framework of the measures adopted for the coronavirus1210 and pointed out that he has been the president most criticized for the work for which he was elected, despite "the 20 pelones [baldies]" who oppose what he is doing and "to the fake news" that he claims has been published against him.1211 Other authorities have also spoken out against La Hora journalists and a Prensa Libre cartoonist.1212

758. On the other hand, President Alejandro Giammattei, in a solemn session before the Congress of the Republic on September 15, 2020, on the occasion of the celebration of 199 years of independence, made a speech in which he referred in a special way to the right to freedom of expression. In the framework of a generally adverse scenario for the exercise of the right to freedom of expression, characterized by stigmatizing statements against the press by high-ranking authorities in Guatemala, the president declared that "we believe in the freedom that some bad Guatemalans have confused and they take advantage of to intimidate, attack, defame, and even commit crimes against their neighbor. Freedom is part of the essence of

1212 When a reporter for La Hora requested a statement from Congressman Alejos, he replied "We do not give statements to media that are mired in corruption." La Hora. May 28, 2020. Felipe Alejos contesta con narrativa de video anónimo publicado en "enero. On the other hand, Alfredo Morales better known as "Fo", a cartoonist for Prensa Libre, posted a cartoon in which he portrayed the chairman of Congress alongside a map of Guatemala, with the legend "state of calamity", connected to the same tank of oxygen. "Fo's criticism took place in the context of the chairman of Congress's hospitalization in the Centro Médico Militar [for having been infected with Covid-19], although Congress itself did not authorize the use of this hospital to care for non-military patients affected by Covid and the publication of a journalistic piece on this hospital having received funds meant for the health emergency, but that had not cared for a single civilian". Cartoonist Fo's drawing provoked criticism among some deputies who "condemned" the post and even asked for sanctions against the person responsible. These congressmen's reaction also served as a pretext for net centers to attack Fo and Prensa Libre. Asociación de Periodistas de Guatemala (APG). November 29, 2020. Estudio de situación de la libertad de expresión en Guatemala 2020. Un año desolador para la prensa en Guatemala P. 30. Available for consultation at: https://twitter.com/APG_1947/status/133050665573167104. One deputy tweeted: "One thing is freedom of expression and another is making fun of a person who is fighting for his life. This cartoon is frankly reprehensible. I demand that PDH @JordanRodas publicly condemn this as a violation of human dignity. What a shame on @prensa_libre for publishing this." Twitter account of congressman Álvaro Arzú @AlvaroArzuE. July 30, 2020, 9:42 AM.
the human being and it is its ability to decide freely.”. Likewise, he expressed that “freedom is one of our most precious assets because it gives us the happiness to think, to express ourselves without coercion and without fear, it would be useless to speak of freedom of thought if it is not possible to express ourselves but expressing oneself means a very great responsibility that should be taken seriously. The development of ideas, ideologies, and different ways of understanding our reality, represents a fundamental part of freedom of expression. Freedom of expression has a limit, and the limit is the truth”.

759. In this regard, the Office of the Special Rapporteur recalls that the inaccuracy or lack of objective adaptation to the truth of information is not, by itself, illegitimate nor does it escape the protection granted under freedom of expression. In the first place, it is necessary to distinguish between concrete facts and possible factual verification of value judgments. In the latter case, which are also part of the right to freedom of expression, it is impossible to talk about the veracity of the information.

760. Second, with respect to the facts that can be factually verified, the Inter-American Court established since the Advisory Opinion OC-5/85 on compulsory association of journalists that the requirement of a control system for the right of expression in the name of an alleged guarantee of correctness and veracity of the information that society receives can be a source of great abuses and, ultimately, violates the right to information that that same society has. This requirement not only generates self-censorship and inhibition of social communicators and the limitation of the maximum flow of information in society, but also implies the imposition of an understanding of the truth in accordance to the will of the State, when deciding on the limits of the right. Likewise, the Commission has considered that a norm that obligates whoever criticizes of public officials to guarantee factual statements has disturbing consequences for the criticism of government conduct and has considered that the accuracy of the news in general is an end that can be achieved more effectively through positive governmental measures, such as guaranteeing plurality of information, than through the imposition of sanctions in the event of information that is perceived as “inaccurate” or "lacking in veracity".

G. Social Protest

761. Through Government Decree 5-2020, of March 5, 2020, the president decreed a “State of Public Calamity” throughout the national territory, as a consequence of the pandemic caused by the COVID-19 virus, which ended as of 1 October 2020. Although the aforementioned decree did not limit the right to freedom of expression, it restricted, among others, the freedom of movement and the right of assembly and demonstration. Likewise, the IACHR and its Office of the Special Rapporteur note that during 2020 states of siege and prevention were issued in different municipalities, in order to combat organized crime, which has been interpreted by some sectors as an excuse to repress social movements and limit the right to protest. Through the ordered states of siege, the rights to freedom of movement, demonstration, and assembly, among

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1214 República de Guatemala. Informe del Estado de Guatemala sobre el cumplimiento de las recomendaciones contenidas en el Informe “Situación de los derechos humanos en Guatemala” de la CIDH del 31 de diciembre de 2017. Received on October 23, 2020.  
1218 República de Guatemala. Informe del Estado de Guatemala sobre el cumplimiento de las recomendaciones contenidas en el Informe “Situación de los derechos humanos en Guatemala” de la CIDH del 31 de diciembre de 2017. Received on October 23, 2020. See also, CNN Español. March 5, 2020. Giammattei decreta el estado de calamidad en Guatemala como prevención ante el coronavirus; Prensa Libre. September 30, 2020. Giammattei anuncia el fin del estado de Calamidad y llama a cumplir y exigir que se cumplan los protocolos  
others, were also restricted.\textsuperscript{1220} Both the state of public calamity, siege, and prevention were dictated based on the Public Order Law of 1965.

762. The Office of the Special Rapporteur observed the development of different social protests in Guatemala during the current year in demand for measures adopted by the Government in the framework of the COVID-19 pandemic due to lack of access to food; due to the criminalization and censorship to which the profession has been subjected; and in particular, due to the protests that took place during the month of November due to popular discontent of the approval of the national budget for 2021 by the Congress of the Republic.

763. As a sign of protest and citizen claim for the lack of access to food due to the sanitary measures ordered by the pandemic, different individuals and families placed white flags outside their homes. The white flags represent a symbol of hunger. This measure initially arose in the small community of Patzún, about 50 kilometers from Guatemala City, which was replicated in other areas of the capital and the country, and also in El Salvador.\textsuperscript{1221}

764. Likewise, a parade of victims, simulating a "funeral procession", as well as blocking streets took place as protest to the government policies aimed at preventing the spread of the coronavirus and the lack of social and economic support to address the health crisis.\textsuperscript{1222} In the same way, doctors and health personnel declared themselves in a general assembly due to the lack of payment of salaries and the shortage of materials and medical supplies for their safety and care for the sick. "The main response has been the disqualification of doctors, coupled with the government’s remarks that hospitals are supplied".\textsuperscript{1223}

765. Likewise, on November 3, 2020, a score of journalists expressed their dissatisfaction in front of the Attorney General's Office for the criminalization and censorship of their profession, as well as for the arrest and criminal proceedings initiated against their indigenous k’iche’ colleague Anastasia Mejía Tiriquiz.\textsuperscript{1224}

766. On the other hand, it is of special concern the repression, detentions, attacks on journalists, and the excessive use of force in the development of the protests that began on November 21 in different parts of Guatemala\textsuperscript{1225}, on the occasion of the approval of the budget for the 2021 year. While this fact was the trigger, there were also "claims of rejection of corruption, questions about the destination of resources to tend to the Covid-19 pandemic and in general a social, economic, and political crisis that is dramatically worsened by hurricane season".\textsuperscript{1226} The days of protests brought together high numbers of protesters, who were indiscriminately repressed with excessive use of force, including tear gas, pressured water, beatings, and arbitrary arrests were reportedly made. The Office of the Special Rapporteur learned of the attacks on the part of individuals and/or the police against at least seven journalists while they were carrying out their work


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in the coverage of the protests. The attacks against the documentary filmmaker Melissa Mencos stand out. She was beaten and detained by the police, however, later released, when the inadmissibility of her arrest was declared due to her condition as a journalist; against the feminist journalist Jovanna García, who was allegedly reprimanded by a hooded man who yelled at her "infiltrated feminist" and who hit her with an iron pipe in the abdomen; and against the photjournalist Carlos Sebastián, who was beaten with batons by the police on various parts of the body, including in the head, which caused a serious injury. The Office of the Special Rapporteur highlights that a fragment of the video of the attack on Carlos Sebastián was disseminated on social networks that, in a decontextualized way, implied that the photojournalist had attacked the police. However, the video with the complete sequence of the attack was later released, in which the Office of the Special Rapporteur identified that an anti-riot police agent attacked the photojournalist, so he reacted by arguing over the damage to his journalistic equipment, after which several agents hit him with clubs, causing a head injury.

These abuses against the press led a group of 133 Guatemalan journalists, communicators, and analysts to demand that the government, in a public statement, respect freedom of the press and end the threat of police abuse. The Office of the Special Rapporteur appreciates that the Office of the Prosecutor for Crimes against Journalists announced the initiation of an ex officio investigation, following the attacks against journalists during the demonstration on Saturday, November 21.

H. Censorship, restrictions on freedom of expression, and access to information during the COVID-19 pandemic

As previously mentioned, on March 5, 2020, through Government Decree 5-2020, the president decreed a "State of Public Calamity" throughout the national territory, as a consequence of the pandemic caused by the COVID-19 virus, which concluded on October 1, 2020. In the context of the health emergency, a group of journalists publicly denounced that access to information had been restricted during the crisis and that virtual channels for directing questions about the response to COVID-19 had also been restricted.

In a letter published on April 12, 2020, more than 100 journalists and human rights organizations denounced the obstacles journalists have faced in carrying out their work since the COVID-19 pandemic began and the lack of complete, timely, adequate, and necessary information to learn about the management of the health crisis. Faced with the pandemic, the authorities would have created WhatsApp groups through which they communicated official information however, the administrators of these groups expelled several journalists who reportedly made them uncomfortable for their questions regarding the actions of the State on the crisis and the measures taken in that regard. For example, according to public information, the government would have censored a journalist from Nómada by removing her from the WhatsApp group of the Ministry of Health, where information about the coronavirus was shared, while the two WhatsApp groups of the Government, administered by the Secretary of Communication Social, would have been restricted so that the press could not ask questions or make comments. Journalists and social communicators have argued that they face a great opacity from the authorities to obtain information, that despite the change of head in the Secretariat of Social Communication of the Presidency, requests for information and interviews with cabinet ministers on social networks that, in a decontextualized way, implied that the photojournalist had attacked the police.

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1228 Soy 502. November 24, 2020. Difunden nuevo video de la agresión de PNC contra un periodista; "Photographer Carlos Sebastián was doing his job and was attacked by an agent of the @PNCdeGuatemala, Carlos responded to the attack and was beaten by more agents. They smashed his head open with a baton". Twitter account of journalist Marvin del Cid @marvindelcid. November 21, 2020 8:56 PM.


officials are not answered, and that the president has limited himself to offering messages on the national
chain, most of them prerecorded and has given very little space to direct exchange with journalists.\[1232\]

770. Likewise, civil society reported that “it is noteworthy the practice of Executive branch authorities of
resorting only to the official media and the de facto monopoly of the González family for their social
communication activities, since they reproduce their speeches without questioning them, actions that they
are detrimental to the right to receive quality information”.\[1233\]

771. In addition, according to information provided by civil society, during a virtual press conference in
August, days after accusing the press of trying to generate divisions in society, within the framework of the
measures adopted for the coronavirus\[1234\], the president would not have allowed the participation of certain
reporters who wished to participate. Similarly, on July 17, the president met with indigenous authorities from
Sololá, from Chichicastenango, Quiché, and from San Juan Comalapá, Chimaltenango. During the meeting, one
of the authorities read a series of demands, some referring to the management of the health crisis in the area,
which the president described as a “series of inconsistencies”, without allowing the indigenous leader to
continue with the presentation\[1235\]. Likewise, according to information provided by civil society, state
authorities of different levels in various departments of Guatemala have limited the work of reporters by
hiding data on infections, preventing access to public meetings or facilities, or refusing to provide
statements.\[1236\]

772. For its part, the State informed the Office of the Special Rapporteur that the president held daily
press conferences and instructed the Secretariat of Social Communication to inform the population with
graphics and including the languages of the Maya, Garifuna, and Xinca peoples. The State also reported that,
although the state of public calamity was established and various regulations were adopted to face the health
crisis, it established “exceptions in which all the media and broadcasting personnel are included, so that the
media can carry out their work and can mobilize throughout the Guatemalan territory, even at times that are
restricted for the rest of the Guatemalan population”\[1237\]. Likewise, the Office of the Special Rapporteur
considers as very positive that article 19 of Decree 12-2020, Emergency Law to protect Guatemalans from the
effects caused by the COVID-19 coronavirus pandemic, indicates that the deadlines established in the access
to public information law were exempted from the suspension of administrative terms according to the
aforementioned rule. Given this, due to the concern expressed by some authorities about the practical
impossibility of meeting the deadlines for providing the requested information due to the limitations imposed
by the pandemic, the PDH asked the Government to comply with the obligation of active transparency and
adopt the necessary measures so that within the framework of the pandemic, it is possible to continue
receiving, processing, and providing public information, in accordance with the access to public information
law.\[1238\]


On the other hand, on March 14 the president declared that according to the Public Order Law “while any of the states of emergency [calamity, siege, prevention] lasts, the publicity organs are obligated to edit the publications that could cause confusion, panic, or aggravate the situation, as well as biased comments to the current circumstances; the director will be reprimanded by the respective authority and in the event of a repeat offense, censorship may be imposed on the body in question. We do not want to get there, I appeal to the media and citizens to hear what the government is saying”.

In this regard, the Office of the Special Rapporteur is concerned about the validity of Article 35 of the Public Order Law of 1965, to which the president referred, and whose text served as the legal basis for the fifteenth provision of the presidential provisions in the event of public calamity of April 12, 2020. The Office of the Special Rapporteur considers that the text of said regulation is in conflict with the prohibition of prior censorship explicitly set forth in Article 13.2 of the American Convention, since the provision which intends to limit some areas of freedom of expression resorts to vague and ambiguous concepts and therefore comes into direct conflict with inter-American standards in this regard.

Finally, the Office of the Special Rapporteur became aware of bill 5792 that sought to modify the Law on Access to Public Information, Decree 57-2008. Although it had an initial favorable opinion from the Congressional Transparency Commission and on November 18 it was decided to give priority to the first debate, the opposition bench decided to withdraw two signatures from the opinion, in order for it to return to the worktable to be able to debate it in more depth and resolve the harsh criticism that the project has received. As of the closing date of this report, the debate has not been resumed.

The bill in question sought, among other things, to create the National Office for Access to Public Information [Oficina Nacional de Acceso a la Información Pública] (ONAIP), a unit that would be in charge of ensuring compliance with the access to public information law, replacing the Secretariat for Access to Public Information (SECAI), an entity that operates under the supervision of the Human Rights Prosecutor’s Office (PDH). The ONAIP would be a dependency of Congress and its authorities would be elected by this institution. This proposal has been widely criticized internally for the potential loss of independence that it could cause and has been interpreted as an attempt to weaken the PDH. In addition, the bill would not meet the minimum requirements required by the Model Law of the Organization of American States, in particular those referring to the creation of an independent guarantor body to ensure the right of access to public information.

Finally, in relation to the creation of bodies that guarantee the right of access to public information, the Office of the Special Rapporteur has stated that the creation of these supervisory bodies must be accompanied by a series of measures to guarantee their autonomy and independence, as well as their specialized character. The foregoing, in order to avoid diminishing efforts in complying with the obligations of access to public information. Likewise, these bodies must have the power to promote the implementation of access laws and review the refusals of public institutions in order to adopt decisive decisions, without prejudice to judicial control regarding refusals in the provision of public information.

Likewise, in accordance with the Model Inter-American Law on Access to Information, there are a series of provisions such as the inability and incompatibility of certain persons to be elected as members of the supervisory body, regarding the duration of their selection, the possibility of re-election for a period, and immunities. These provisions are aimed at ensuring that the guarantor body has sufficient autonomy so that the members of said body can carry out their functions with total independence. The Office of the Rapporteur also recalls that technical, functional, and administrative independence, including the budgetary dimension, is important to guarantee to the best possible extent the autonomy and institutional independence of the supervisory body.

I. Subsequent liabilities


Quichelense journalist Marlon Chitop was sued for slander and defamation and summoned by a justice of the peace on September 22, after having refused to withdraw a substantiated publication from the media for which he works\textsuperscript{1242}. Likewise, journalists from Plaza Pública were criminally sued for "threat, harassment, and extortion" by the relatives of the head of the Guatemalan Government Center after they tried to carry out a journalistic profile of this public official, according to a public statement by the own head of the Center of Government of Guatemala, Miguel Martínez\textsuperscript{1243}.

The Office of the Special Rapporteur for Freedom of Expression recalls that there are solid inter-American standards on subsequent responsibilities for the exercise of freedom of expression that are not compatible with the announcement by the Government that "it could charge people for incitement to sedition, if it considers that their expressions misinform or generate panic through social networks, in accordance [with] the provisions of the Public Order Law and the presidential provisions in the event of public calamity of April 12, 2020"\textsuperscript{1244}.

### Internet and freedom of expression

The pandemic caused by the COVID-19 virus has highlighted, not only in Guatemala, but in the rest of the region, the serious impacts of the digital divide for the exercise of the right to freedom of expression, access to information, right to education, health, among many others, with a differentiated impact on the most vulnerable sectors of the population. According to the last National Population and Housing Census that was carried out in Guatemala, only 62% of the population over seven years old uses a mobile phone. Meanwhile, 21% of households have access to computers and 29% of households have Internet access. Internet access is higher in Guatemala City, compared to other areas of the country. For this reason, in many rural areas with low rates of Internet access, radio or television, it is unfeasible to adopt a distance education methodology through electronic devices, for example\textsuperscript{1245}.

### Communications surveillance during the COVID-19 pandemic

On March 24, 2020, President Alejandro Giammattei announced that an application was available for mobile devices that would serve to provide the population with official information on actions related to COVID-19, emergencies, or natural disasters. This app was called "Alerta Guate" and was developed by the American company In-telligent LLC and financed by Tenlot Group. The app received several criticisms, in particular for certain permissions it requested from the user\textsuperscript{1246}, which could put their privacy at risk. Even, according to public information, it generated suspicions regarding the state surveillance that could be launched, based on the occurrence of this type of events in previous governments\textsuperscript{1247}.

While this app, according to the Government, was created with the intention of combating the health crisis and keeping the population informed, it generated certain alerts by some experts in mobile security and


\textsuperscript{1246} Such as email, geographic location, access to microphone, to device files, permission to make calls, to link with social media profiles, with which it could also access personal information from said source. Republica. March 24, 2020. Alerta Guate es la App oficial para emergencias en Guatemala; PSCP.TV. Noticias e información del Gobierno de Guatemala. March 2020. Presidente anuncia creación de app “Alerta Guate”. Available for consultation at: https://www.pscp.tv/GuatemalaGob/1ypKdQAEYrGW7t=29m11t

privacy and handling of personal data, as well as by civil society. In a study carried out by one of these organizations it was highlighted that the application had some insecurity problems, it collected information about the geographical location, even when the app was closed, and that the developer’s privacy policy allowed it to keep the data collected for up to ten years, that is, long after the duration of the pandemic. According to the aforementioned study, the company “In-telligent assured that it did not share the application data with the government or with Tenlot and that the information collected was the property of In-telligent and “was kept... strictly confidential”, [...][however] “the privacy policy of the developer also indicates that the data could [be] shared with third parties when the company reasonably believed [it] that it was necessary to protect the security of In-telligent, of [the] users, or other people”.1249

On the other hand, on November 11, the Attorney General’s Office (MP) published two events in Guatecompras to acquire a cell phone geolocation software license and another for social network investigations, both for the use of the investigating entity. The “Acquisition of a Cellular Geolocation Software License for use by the Attorney General’s Office” would allow “the geolocation of Guatemalan subscribers in Guatemalan territory by extracting remote locations of subscribers in 2G, 3G, 4G, and 5G technologies”. Likewise, the “Acquisition of a Software License for Social Network Investigations for the use of the Attorney General’s Office ” would allow “early detections of criminal events that are generated on social networks or throughout the” global computer network to be able to monitor and analyze who they are the ones involved in such criminal acts”.1250

The bidding processes would have generated criticism due to the lack of information on the objectives of the purchases of these software and the use of personal data collected, as well as the consequences that their use could cause on people’s privacy.1251 Given this, the Communication Department of the Attorney General’s Office (MP), highlighted that both events are in the second phase of the bidding process stage and that “the only entity authorized by law to generate these actions is the Special Methods Unit of Investigation, which can be carried out solely and exclusively by prior authorization from a competent judge”, when “the judge deems [that individuals] may be possibly involved in the commission of a criminal act”,1252

L. Community Broadcasting

At the time, the Office of the Special Rapporteur expressed its concern about the raid and unsuccessful attempt to confiscate the equipment, carried out at the Xyaab 'Tzultaq'a community radio station in September 2019, without a court order, by the Attorney General’s Office, the police, and the military of El Estor, Izabal, within the framework of a State of Siege. The authorities were unable to seize the radio equipment as the staff, fearing a raid by authorities, decided to remove the equipment from the premises as a security measure.1253

The raid was against a radio that broadcasts in the Q'eqchi language, in modulated frequency and through an Internet page, with a significant presence in the indigenous community of the areas and surrounding areas, which was also used by the authorities themselves to inform the local population on various topics. Due to the raid, the station was not able to broadcast until January 2020, which had a negative impact on the communities, but also on the state entities that benefit from its operation. "For many residents, this community media is of special importance given the inaccessibility of the Internet or the telephone network, but also, unlike television media or corporate radios, this station broadcasts in their mother tongue and allows the transmission of oral culture". A few months after resuming broadcasts, a protest was held by

1252 Twitter account of journalist Javier Estrada Tovar @JavierETo December 7, 2020 11:56 AM
alleged employees of the nickel mining company affected by dismissals outside the radio station and the Ombudsman’s Office, because they held them responsible for the dismissals that occurred in the company. The protesters insulted the staff of both entities and threatened to enter the property by force, and later, “community radio staff denounced that before and after the threats made by the alleged mining employees, defamatory campaigns, insults, and racist messages towards their staff, circulated on social networks”, which categorized them as those responsible for spreading the coronavirus in the municipality, and as a “rebel radio”, “guerrilla radio”. Likewise, the radio had to suspend broadcasts again for a month, between the end of July and mid-August, due to the approval of a State of Prevention in the area.1254

789. On the other hand, the Office of the Special Rapporteur notes that to date there has been no progress with respect to the law on community communication media, part of bill 4087, or with respect to any other initiative to legalize and make community radio stations adopt positive measures in their favor and give them space in the radio spectrum. The foregoing, as well as the raids, confiscation of equipment, and the opening of criminal proceedings against community radio stations that operate without licenses, will be analyzed by the Inter-American Court in the case of Maya Kaqchikel of Sumpango Indigenous Peoples et al. V. Guatemala, following the merits report of the case submitted by the IACHR on April 3, 2020.

789. In this regard, since the year 2000, the IACHR and its Office of the Special Rapporteur have issued recommendations to the Guatemalan State in two particular aspects, that is, the need for a fairer and more inclusive legal framework for community broadcasting and the decriminalization of broadcasting without license in the country. It should also be noted that within the framework of the pandemic caused by the COVID-19 virus, community radio stations have acquired an even more transcendental role, due to the fact that “indigenous community radio stations are the main mean to inform, educate, motivate, and organize Indigenous communities in their own languages, with cultural relevance, and with their own knowledge to prevent and act in the face of the COVID-19 pandemic” and allow their participation and decision-making in the face of the pandemic.1255

790. Based on the facts mentioned, this Office considers that the State should deem of special relevance that:

791. The murder of journalists constitutes the most extreme form of censorship, and impunity contributes to the self-censorship of the press. States have a positive obligation to identify and punish the perpetrators of these crimes. It is essential that the Guatemalan State fully, effectively, and impartially investigate the murders of journalists, clarify their motives, and judicially determine the relationship they may have to journalistic activity and freedom of expression. Authorities should not rule out the practice of journalism as a motive for the murder and/or assault before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions on the development of the processes in the stages of accusation or trial.1256 Not having completely exhausted the logical lines of investigation entails, above all, that the intellectual authors cannot be identified.1257 Likewise, the Office of the Special Rapporteur recalls that the States must ensure that crimes against freedom of expression are subject to independent, prompt, and effective investigations and judicial procedures. As it has been pointed out on other occasions, the lack of sanctions for those who are material and intellectually responsible for homicides, assaults, threats, and attacks related to the exercise of journalistic activity encourages the occurrence of new crimes and generates a notorious self-censorship effect.


Attacks and aggressions committed against journalists and against the press violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.” Likewise, the Office of the Special Rapporteur reiterates to the State the importance of combating violence against journalists through a comprehensive policy of prevention, protection, and prosecution. This last obligation includes the duty to investigate, prosecute, and criminally convict all those responsible for these crimes and make comprehensive reparations to the victims. These obligations complement each other to guarantee the existence of a free, robust, and unrestricted democratic debate. In turn, with regard to violence against women journalists, the Office of the Special Rapporteur has highlighted that "women journalists disproportionately and routinely face gender-based violence in the workplace and on the field” and face differentiated forms of violence by state and non-state actors, as well as lack of protection and obstacles in access to justice, also differentiated from their male counterparts. In this sense, the Office of the Special Rapporteur has highlighted the importance of integrating a gender perspective to guarantee that women journalists are adequately protected and can exercise their right to freedom of expression without undue restrictions.

The adoption of adequate prevention mechanisms to avoid violence against communicators is crucial. The Office of the Special Rapporteur has defined some of the requirements for the protection mechanisms to be effective. For example, to emphasize: 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 prosecution; 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.

Public authorities are called upon to maintain a speech favorable to public deliberation and freedom of expression. While it is legitimate for politicians and public officials to make criticisms, corrections, or objections regarding specific reports in the media, when they do so, they should always take care to ensure that their comments are precise, avoid stigmatization and discrediting of the media, and not threaten journalists or undermine respect for the independence of the media.

Social protest, which includes the rights to peaceful assembly without arms, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights. States have the obligation to respect, guarantee, and protect the right to freedom of expression and peaceful protests for all the people who live in the country, as well as to facilitate that these rights are exercised in accordance with the principles of a democratic society. Likewise, the State has the duty to guarantee that journalists and communicators who are carrying out their information work in the framework of a public
demonstration, are not detained, threatened, attacked, or limited in any way in their rights because they are exercising their profession. Their material and work equipment must not be destroyed or confiscated by public authorities. The protection of the right to freedom of expression requires that authorities ensure the necessary conditions so that press professionals can cover events of notorious public interest, such as those related to social protests.\textsuperscript{1264}

\textbf{796. The inter-American human rights system explicitly prohibits prior censorship.} This arises from Article 13.2 of the American Convention on Human Rights, and Principle 5 of the Declaration of Principles on Freedom of Expression, which establishes that “[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.”

\textbf{797. Transparency and accountability of public powers strengthen democratic systems.} In this regard, the Office of the Special Rapporteur emphasizes that in the context of a pandemic “[i]t is essential that governments provide truthful information on the nature of the threat posed by the coronavirus. Governments around the world are obligated under human rights law to provide reliable information in formats accessible to all, paying particular attention to ensuring access to information by people with limited access to the Internet or to those people with disabilities to whom access is difficult”. Likewise, “the right of access to information means that governments must make exceptional efforts to protect the work of journalists. Journalism plays a crucial role in a time of public health emergency, particularly when it aims to inform the public of critical information and monitor government actions. We urge all governments to firmly enforce their access to information laws to ensure that all people, especially journalists, have access to it.” Likewise, the IACHR has established in its Resolution No. 1/20 on Pandemic and Human Rights in the Americas that “States should not include communicators in the restrictions of circulation and have the obligation to allow access to official press conferences to all media, without discrimination on account of editorial line, except for the necessary and proportional measures to protect health”.\textsuperscript{1265}

\textbf{798. The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards.} Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials [...] restrict freedom of expression and the right to information.” Likewise, both the IACHR and the Inter-American Court have repeatedly indicated that States have a more limited scope to impose restrictions on the right to freedom of expression “whenever they are expressions pertaining to the State, to matters of public interest, to public officials in the exercise of their functions or candidates for public office, or to individuals voluntarily involved in public affairs, as well as to political speech and debate”.\textsuperscript{1266} They are subjected to a greater degree of scrutiny and criticism from the public, which is justified by the public interest nature of the activities they carry out, because they are voluntarily exposed to a more demanding scrutiny and because they have an enormous capacity to dispute the information through its power of public congregation”.\textsuperscript{1267} Furthermore, the IACHR has repeatedly argued that the application of criminal law to punish expressions referring to public officials is disproportionate when it comes to protected speech, such as information or expression on matters of public interest, and violates the right to freedom expression.

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The creation of criminal offenses to punish the dissemination of misinformation or fake news could have a strong inhibitory effect on the dissemination of ideas, criticism, and information. This, given that the introduction of criminal offenses could bring the region back to a logic of criminalizing expressions about officials or matters of public interest and establishing a tool with a strong inhibitory effect on the dissemination of ideas, criticism, and information. Resolution 1/20 adopted by the IACHR highlights that in the event that subsequent liability is established for the dissemination of information or opinions, based on the protection of public health interests, it must be established by law, in a manner proportional to the imperative interest that justifies it and must be closely tailored to the achievement of that legitimate objective.\textsuperscript{1268}

Internet access is a \textit{sine qua non} condition for the effective exercise of human rights. The IACHR and its Office of the Special Rapporteur have highlighted that “in the current context of the health emergency generated by the COVID-19 pandemic, people’s access to a quality Internet acquires an unavoidable centrality. Based on the isolation and/or social distancing measures imposed by governments at a global level and its extension over time, internet connection appears as the tool \textit{par excellence} to continue with daily tasks that previously required face-to-face contact, in addition of being crucial for the exercise of civil, political, economic, social, and cultural rights”.\textsuperscript{1269} In this regard, the IACHR has emphasized that States must guarantee “the broadest and most immediate access to the Internet service to the entire population and develop positive measures to rapidly reduce the digital divide faced by vulnerable groups and those with lower income”,\textsuperscript{1270}

States must protect the right to privacy and personal data of the population, especially during the pandemic. “States, health providers, companies, and other economic actors involved in the efforts to contain and treat the pandemic, must obtain consent when collecting and sharing sensitive data from such persons and should only store the personal data collected during the emergency with the limited purpose of combating the pandemic, without sharing them for commercial or other purposes. Affected persons and patients will retain the right to cancel their sensitive data”. States must also “ensure that, when resorting to digital surveillance tools to determine, monitor, or contain the spread of the epidemic and the monitoring of affected people, these must be strictly limited, both in terms of purpose and time, and rigorously protect individual rights, the principle of non-discrimination, and fundamental freedoms. States must make transparent the surveillance tools they are using and their purpose, as well as set up independent monitoring mechanisms for the use of these surveillance technologies, and the secure channels and mechanisms for receiving complaints and claims”\textsuperscript{1271}. The Office of the Special Rapporteur has highlighted that “the use of any surveillance program or system in private communications must be clearly and precisely established in the law, be truly exceptional, and be limited according to what is strictly necessary for compliance with imperative purposes such as the investigation of serious crimes defined in the legislation, and having prior judicial control. The surveillance of communications and interference with privacy that exceed what is stipulated in the law, that are oriented to purposes other than those authorized by it, or those that are carried out clandestinely should be drastically sanctioned”\textsuperscript{1272}

Community journalism contributes to diversity and news pluralism. Community broadcasters can play an extremely important role in offering public interest programming and complementing the content offered by commercial broadcasters. However, they face various obstacles, such as: the lack of specific recognition based on adequate criteria for this sector and the decision not to reserve sufficient frequencies


\textsuperscript{1270} IACHR. Resolution No. 1/20. \textit{Pandemic and Human Rights in the Americas}, April 10, 2020. Par. 31; IACHR. RIRCU Practical Guides to COVID-19 02. \textit{How to ensure access to the Right to Education for Children and Adolescents during the COVID-19 Pandemic?}


Community broadcasting must be expressly recognized in law as a differentiated form of communication media, it must benefit from fair and simple procedures for obtaining licenses, it must not have to comply with severe technological or other requirements for obtaining licenses, it must benefit from licensee fees, and it must have access to advertising.

GUYANA

803. During 2020, the main challenges to freedom of expression were related to the lack of decisive results for the March 2 general and regional elections, which, along with the pandemic, posed difficulties for journalism work. A general animosity toward the media persists in Guyana, caused by its politicization. The Office of the Special Rapporteur observes that journalists continue to be the targets of attacks and threats from both the government and members of multiple political parties. Likewise, although Guyana's government reiterated its commitment to decriminalize defamation in its legal system, the laws remain on the books and are used frequently by public officials against journalists and opposition politicians.

A. Freedom of expression during elections

804. During 2020, the Office of the Special Rapporteur noted that journalists and media outlets in Guyana had particular difficulties covering the 2020 elections. Although the general and regional elections were held on March 2, a number of suspected irregularities in the tally forced a recount. In this context, it has been noted that the pandemic posed additional challenges to the media in Guyana in a context of social unrest. 1275

805. This Office was informed of a number of incidents of threats, aggression, and intimidation directed against media workers in the framework of post-electoral coverage, as well as during their coverage of the protests over the extended wait for results. Also, restrictions on and obstruction of their work was observed. 1276 For example, journalist Andre Hayne, editor of the Stabroek News, said public officials had taken advantage of understandable pandemic limitations to avoid accountability. He said that more control was being exercised over the questions allowed at press conferences, converting them into "a one-sided conversation where they are speaking to you as opposed to having that back and forth." 1277 In this regard, the Guyana Press Association called on leaders from all political parties and State authorities to

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According to the information available, the Guyana Elections Commission (GECOM) limited journalists’ access to information on the elections. According to the information provided by the Guyana Press Association, spokeswoman Yolanda Ward had not responded to key and critical questions, and both Chief Elections Officer Keith Lowenfield and Chairman Claudette Singh were almost entirely unavailable for questions. According to the Press Association, GECOM is “complicit” and “responsible for imbalanced coverage,” especially in cases in which election commissioners, political parties, and other stakeholders filed serious accusations and claims.1279

On March 13, 2020, supporters of political parties gathered outside the Secretariat of the GECOM, blocking media access and impeding their work even as police officers and political leaders looked on.1280 According to accounts, the journalists were verbally harassed for the media outlet they represented and their ethnicities. The Guyana Press Association stated that from the start of the tally of the election results, GECOM and the Guyana Police ignored the journalists’ security and rejected requests for a safe place for the media away from the vote counting center. The Office of the Special Rapporteur also received information on the lack of supplies and health protocols to prevent COVID-19 provided to the media during the postelection coverage.1281 Based on all this, the organization alleged that “The political leaders through speech and silence continue to bait and incite supporters to act against opposing groups and the media.”1282

In August, two journalists were threatened by Prince Holder, the president of the Partnership for National Unity/Alliance for Change (APNU/AFC) in Pomeroon-Supenaam (Region 2).1283 According to the information available, journalist Romario Blair, with the Kaieteur News, and TV host Ravi Mohan were threatened on social media by the political leader after they published and disseminated a recording of former Regional Executive Officer (REO) Dennis Jaikarran threatening an employee. In the recording in question, he can be heard telling an employee that if he did not work with him, the only other option was to quit and commit suicide.

Additionally, in the framework of a highly politicized media environment, the Office of the Special Rapporteur noted warnings about the alleged improper use of State resources by the Department of Public Information (DPI), a government agency that was supposedly used to promote the campaign activities of the governing coalition.1284

The Office of the Special Rapporteur monitored the protests and confrontations between ruling and opposition parties during the days following the March 2, 2020 elections. The tensions flared after the administration declared victory over the objections of the judges, international observers, and opposition, and prior to verification of the vote tally. On March 6, at multiple locations throughout the country, supporters of the People’s Progressive Party/Civic took to the streets alleging electoral fraud and demanding verification of the Statements of Poll (SOPs) of Region 4, as well as a recount of the votes.1285 Hundreds of people set up street barricades and blocked highways using agricultural machinery and tree branches, demanding the resignation of David Granger, the sitting president who was seeking reelection under the Partnership for National Unity/Alliance for Change. In this context, on March 6, police officers fired on and discouraged actions that could undermine the work of journalists and media outlets and perpetuate violence.1278


killed an 18-year-old demonstrator in West Coast Berbice, who had allegedly attacked two police officers first with a bladed weapon.1286

B. Subsequent liability

811. On August 18, Justice Priya Sewnarine-Beharry ordered the Guyana Chronicle and its former editor-in-chief, Nigel Williams, to pay damages of $1.5 million to former deputy chief elections officer Vishnu Persaud in the framework of a defamation lawsuit.1287 According to the information available, Vishnu Persaud had sued the newspaper over an article in which one of the sources (opposition ts, Reparations and Costs
obustly implement their efforts to protect the work of journalists. Journalism serves a central function at a moment of public health emergency, particularly when it aims to inform the public of the greatest possible circulation of ideas, opinions, and information on the candidates, their parties, and their platforms is crucial. It is necessary for everyone to be able to question and investigate the abilities and suitability of the candidates, disputing and confronting their proposals, ideas and opinions so that the electorate can form an opinion on how to vote. As the IACHR has noted, free speech and political debate are essential for the consolidation of democracy in societies, which is why they are of compelling social interest.1291

813. Freedom of expression is linked directly to political rights and their exercise, with both kinds of rights reciprocally strengthening each other. In order for citizens to be able to make decisions when casting votes, the greatest possible circulation of ideas, opinions, and information on the candidates, their parties, and their platforms is crucial.1289 It is necessary for everyone to be able to question and investigate the abilities and suitability of the candidates, disputing and confronting their proposals, ideas and opinions so that the electorate can form an opinion on how to vote. As the IACHR has noted, free speech and political debate are essential for the consolidation of democracy in societies, which is why they are of compelling social interest.1291

814. Government transparency and accountability strengthen democratic systems. Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, "Access 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 the framework of the pandemic, the IACHR and its Office of the Special Rapporteur have underscored that "governments must be making exceptional efforts to protect the work of journalists. Journalism serves a crucial function at a moment of public health emergency, particularly when it aims to inform the public of critical information and monitors government actions. We urge all governments to robustly implement their

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1291: IACHR. Arguments before the Inter-American Court in the case Canese v. Paraguay. Transcribed at: I/A Court H. R. Case of Ricardo Canese v. Paraguay.

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freedom of information laws to ensure that all individuals, especially journalists, have access to information.”

815. The use of criminal mechanisms to punish speech on matters of public interest, especially speech related to public officials, is incompatible with inter-American standards. The Office of the Special Rapporteur recalls that, as set forth in Principle 10 of the Declaration of Principles on Freedom of Expression, “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.” Likewise, as regards potential civil sanctions, the Inter-American Court has established that they must be strictly proportional such that they do not have a chilling effect on this freedom, given that "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.”

HAITI

816. In 2020, the Office of the Special Rapporteur observed the continuation in the trend of attacks and threats directed against the media in Haiti, framed within a large-scale social and political crisis. This Office observes that, in general, independent journalism lacks sufficient resources and infrastructure for its full and free exercise, partly due to the natural disasters the country has suffered and that have inflicted enormous damage and increased poverty. Likewise, State support for journalism is weak, and accessing public information is extremely difficult. According to the organization Reporters without Borders (RSF), in 2020, Haiti experienced the greatest setback in freedom of the, dropping 21 places in the global index.

A. Administration of justice

817. According to what this Office was able to establish, in November 2020, Investigating Judge Samson Jean, who was looking into the October 2019 murder of Radio Méga and Radio Panic FM journalist Néhémie Joseph, withdrew from the case for security reasons. The reporter was found shot to death in his private vehicle in the town of Mirebalais, northeast of Port-au-Prince and along the border with the Dominican Republic. In its 2019 report, the Office of the Special Rapporteur noted that one month prior to his murder, Néhémie Joseph had alleged through social media accounts that he was being threatened by politicians who accused him of inciting the protests. He had also told members of his family about the threats he had allegedly been receiving. In his work, he criticized the government and often reported on the mismanagement of the political crisis by local authorities.
818. According to the information available, only one person has been arrested for the murder of the Radio Mégà correspondent, Clairjeune Juste Chandou was arrested on January 17 in the Dominican Republic and identified as one of the alleged murders. According to media reports, Chandou confessed to the police that he was the perpetrator of the murder and had received money from a senior political figure from Centre Department and been ordered to murder the reporter.1296

819. A number of journalists have denounced the lack of progress made prosecuting attacks and murders perpetrated against journalists. They have said Haiti is no place for investigative journalism as long as "the judicial system remains weak and incapable of protecting journalists and witnesses."1297 At the same time, media workers say they are working in an environment of fear and insecurity, surrounded by systematic problems and a lack of protection.1298

B. Attacks, threats, and intimidation aimed at journalists and media

820. According to information received by the Office of the Special Rapporteur, in 2020, Haiti saw a number of attacks against journalists that came from inside the government and from armed groups.

821. Among other concerning incidents, on February 23, a group of masked individuals carrying firearms who said they were members of the National Police of Haiti attacked the offices of private broadcaster Radio Télévision Caraïbes, located in Port-au-Prince. The group set fire to several vehicles, fired shots at the building, and destroyed windows and broadcasting equipment. According to the information available, the attack took place amidst a demonstration held by the National Police of Haiti to demand better pay. The radio and TV broadcaster was covering the events live when the armed group broke into the offices and ordered them to shut down the drone they were using to film the protest. It was after journalists refused that the attack took place.1299

822. The Association Nationale des Médias Haitiens and the Association des Médias Indépendants d’Haiti condemned the violent attack perpetrated against the media outlet’s facilities and recalled that “all media must be able to do their job with total freedom, in accordance with their editorial stance and the rules of the profession.” They also reiterated to the authorities that “it is your duty and responsibility to guarantee security and protection for journalists and media outlets.” According to the information provided by the Committee to Protect Journalists, the director of the National Police, Normil Rameau, said an investigation would be conducted into the attack.1300

823. Among other incidents of concern, on March 24, several unidentified men attacked a group of eight reporters at the Office National d’Identification—the governmental department responsible for managing citizen identification documents—as they were doing their job.1301 According to what this Office was able to establish, the journalists were investigating reports that the government entity was violating COVID-19 prevention guidelines by keeping citizens seeking ID cards crowded into small spaces. The attack started when the journalists began taking photographs of the crowds gathered at the public offices and was halted by an officer of the Police Nationale d’Haïti / Direction Départementale de l’Ouest (PNH / DDO), who escorted the reporters to the exit.

1297 AyiboPost. November 14, 2020. Pourquoi le journalisme d’investigation est-il si rare en Haïti?
According to the information that the journalists presented to the Office of the Public Prosecutor and that was released to the public, some of the attackers wore shirts identifying them as staff members of the National Identification Office, while others wore shirts identifying them as employees of the Ministry of the Interior and Public Security [Ministère de l'Intérieur et de la Sécurité Publique]. Radio Télé Zénith (RTZ) journalist Robest Dimanche said the attackers had struck him in the head and the face, seriously injuring his mouth and eyes, for which reason the attending physician told him to take time off to recover. Robest Dimanche also said that afterwards, he went to the Port-au-Prince public prosecutor to file a criminal complaint against the attackers.  

The Office of the Special Rapporteur received information also indicating that, similarly, a reporter for digital newspaper La Brève was verbally assaulted by National Identification Office officials while doing her work at the Lycée National de Carrefour-Feuilles, when they pressured her to leave. Jessica Jourdain was investigating containment measures adopted by the authorities to prevent COVID-19.  

On April 28, journalist Georges Emmanuel Allen, with Haiti 24 and Radio Televisión del Caribe (RTVC), was physically attacked by officers of the National Police of Haiti after an altercation outside the Hôpital Universitaire de la Paix while a curfew was in effect. Although the journalist showed his press credential and his circulation permit issued by the Ministry of Communication, the police intercepted him when he returned home for the night, fining him for violating the curfew, leading to a violent altercation. The Association of Independent Media of Haiti and the National Association of Haitian Media condemned the incidents and demanded that the government and the Inspector General of the National Police open an investigation into what happened to identify and punish the officers responsible. 

Likewise, according to the Association of Haitian Journalists, Cenès Joseph, a journalist with Radio Phénix Inter and correspondent for Radio sans fin (RSF) in Maïssade, Cenès Joseph, reported receiving threats from a militant group that claims to be close to the Tet Kale Party of Haiti [Parti haitien Tête kale (PHTK)].  

Additionally, on July 28, at around 8:45 p.m. in the neighborhood of Drouillard, Cité-Soleil, Port-au-Prince, Radio Télé MegaStar journalist and photographer Setoute Yvens was returning home on a motorcycle after work when two armed men intercepted him and forced him to stop. They aggressively accused him of having published information on them in his reports on criminal activity in the area. The journalist was able to escape thanks to a vehicle that was passing by. Upon leaving, Yvens heard gunshots nearby, and as a local justice of the peace was able to verify, the bullets struck the motorcycle. The journalist said he plans to file a criminal complaint over the incident, which he called an "attempted murder."  

Likewise, that same day, during a program on Radio Delta Stéréo, the alleged head of a criminal gang operating in the neighborhood of Savien, Petite Rivière, Artibonite department, threatened to kill journalist Pradel Alexandre, a Radio Nationale d’Haiti correspondent in Saint-Marc and the general coordinator of the Artibonite Journalists Federation. He said he was tired of Alexandre’s reports connecting him to kidnappings in the region. The Bajo Artibonito Journalists Union condemned these threats, saying they
"obstructed freedom of expression." It also recalled that freedom of expression was one of the fundamental rights, as without it, the public's opinion could not be properly informed.1309

830. In a public statement issued on July 30, the Office of the Secretary of State for Communication [Bureau du Secrétaire d'État à la Communication] condemned the attack on Setoute Yvens and the death threat against Pradel Alexander, adding that "the government will do everything it can to fight insecurity." He also urged the journalists to file the pertinent criminal complaints with the courts "so the perpetrators can be identified and punish."1310

831. On September 13, Patrick Moussignac, the president and general director of Radio Télévision Caraïbes (RTVC), denounced the threats of all kind to which his station had been subjected. He also highlighted alleged threats that it had received over social media, warning of supposedly "imminent attacks" against the television broadcaster's building.1311

832. On December 28, in the metropolitan region of Port-au-Prince, Groupe Média Alternatif journalist Vario Sérant was attacked by unidentified armed men as he traveled by car with another person. According to publicly-available information, the journalist was shot and had to be taken urgently to the hospital. His companion died at the scene after being hit several times. Several days after the attack, Vario Sérant was transported to Costa Rica to receive the necessary treatment. The director of Groupe Média Alternatif said the attack on their partner and cofounder had had a significant impact on the institution.1312

C. Access to public information

833. Human rights organizations and journalism organizations have noted the opacity of government institutions and officials, the difficulties they face when trying to access information on COVID-19, and the difficulty in securing other information in the public interest.1313 In a context in which the information is almost completely in the hands of the government, journalists say they depend entirely on press conferences to obtain trustworthy information. Communicator Robenson Sanon, who often covers natural disasters, social disturbances, murders, and other matters says that in Haiti, information is not guaranteed. Instead, "you have to fight to get it" and it is "really difficult to obtain information from the government."1314 The journalist told the Committee to Protect Journalists that government institutions often tell journalists to get an appointment every time they ask for information.

834. That said, the Office of the Special Rapporteur welcomes the creation of the Center for Current Information on Government Affairs [Centre d'Informations Permanentes sur l'Action Gouvernementale (CIPAG)] which, in coordination with the Ministry of Culture and Communication, aims to provide more transparency and hold public authorities accountable. On June 10, in the framework of the introduction of the CIPAG, Minister of Communication Pradel Henríquez said the transparency "helps strengthen the public's trust in the State and its institutions, improve government efficiency, facilitate information management, and promote citizen participation," which he called central pillars to any government action. The minister also noted that in the context of an unprecedented health emergency, health crisis management requires effective

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1314 Committee to Protect Journalists (CPJ). April 8, 2020. Haitian journalist Robenson Sanon says covering COVID-19 feels like being 'soldiers in the battlefield.'
communication with the public. The new office would join the Center for Current Coronavirus Information [Centre d’Information Permanente sur le Coronavirus (CIPC)] launched in March 2020 by the Prime Minister of Haiti.

835. Based on the facts documented by the Office of the Special Rapporteur in Haiti during 2020, mainly regarding limits on access to public information in the framework of the coronavirus pandemic, attacks and aggression against journalists and media outlets, and persistent impunity for attacks on the press, this Office deems it important to recall that:

836. The murder of journalists is the most extreme form of censorship, and impunity contributes to media self-censorship. States have a positive obligation to identify and punish the perpetrators of such crimes. As the IACHR and its Office of the Special Rapporteur have indicated repeatedly, it is crucial for the State to investigate the murders of these journalists fully, effectively, and impartially to discover the motives and legally establish any connection there may be to journalism activity and freedom of expression. The authorities must not preclude the practice of journalism as a motive for the murder and/or attack before the investigation has concluded. The omission of logical lines of investigation or lack of diligence in collecting evidence along these lines may have serious repercussions during the charging or trial processes. In particular, a failure to fully pursue all logical lines of investigation would mean that the masterminds behind the crimes could not be identified.

837. Attacks and aggression against journalists violate the right to freedom of expression in both its individual and collective dimension and cannot be tolerated in a democratic society. States have a positive obligation to identify and punish the perpetrators of such crimes. As the IACHR and its Office of the Special Rapporteur have indicated repeatedly, it is crucial for the State to investigate the murders of these journalists fully, effectively, and impartially to discover the motives and legally establish any connection there may be to journalism activity and freedom of expression. The authorities must not preclude the practice of journalism as a motive for the murder and/or attack before the investigation has concluded. The omission of logical lines of investigation or lack of diligence in collecting evidence along these lines may have serious repercussions during the charging or trial processes. In particular, a failure to fully pursue all logical lines of investigation would mean that the masterminds behind the crimes could not be identified.

838. Government transparency and accountability strengthen democratic systems. In this regard, Principle 4 of the Declaration of Principles on Freedom of Expression states: “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.”


HONDURAS

839. The Office of the Special Rapporteur noted with concern the persistence during 2020 of significant levels of violence against journalists and media workers, a situation that was aggravated during the COVID-19 pandemic because of the restrictions and obstacles imposed by the government and security forces on the free practice of journalism. The excessive use of force by state security forces in the repression of citizen protests also continued to be reported.

840. According to the information received, access to public information was limited during the COVID-19 crisis, with restrictions on journalists’ access to events and information of public interest and a lack of transparency about government spending in handling the crisis, among other situations.

841. The entry into force of a new Criminal Code containing provisions that may infringe on the rights to freedom of expression and assembly, among others, was also of concern to the Office of the Special Rapporteur. In addition, the use of the criminal law to sue journalists for the dissemination of information or opinions of general interest was noted as a cause for concern.

842. The pandemic also affected the health and working conditions of media workers. The death of journalist David Ellner Romero after he contracted COVID-19 while serving a sentence for criminal defamation—despite being the beneficiary of precautionary protection measures from the IACHR—raised particular concern in the Office of the Special Rapporteur.

A. Murders

843. On July 1, journalist Germán Vallecillo and cameraman Jorge Posas of Canal 45 in La Ceiba, Atlántida department, were murdered. According to available information, the journalists were intercepted by a vehicle and shot by unknown assailants. Both died immediately. Local media reported that Vallecillo was on his way to a family gathering because it was his birthday that day. The State reported that the Public Prosecutor’s Office and the Police Investigations Bureau took several immediate actions. On July 4, the police arrested five people allegedly involved in the attack, including Ramón David Zelaya Hernández. The police subsequently
released the other detainees but kept Zelaya in custody and identified him as one of the main suspects. On July 7, police captured a second suspect in the crime, Edward David Zalavarria.\textsuperscript{1318}

844. Human rights advocate Marvin Damián Castro Molina, a member of the Coordinating Committee of the Southern Social Environmental Movement for Life (MASSVIDA) and coordinator of the Pespirense Youth Network, was abducted from his home on July 12 and later found dead with signs of violence, according to information released by authorities. He had been the beneficiary of collective precautionary protection measures granted by the National Protection Mechanism since January 2019.\textsuperscript{1319}

845. On September 28, journalist Luis Alonso Almendares, 35, was shooting a video on the streets of Comayagua while on his way to a food shop when he was intercepted by two individuals on a motorcycle who shot him repeatedly. The journalist was initially transported to the Santa Teresa Hospital in Comayagua, and then to the Hospital Escuela Universitario in Tegucigalpa, where he died hours later. Public information indicates that the journalist recorded and published a video on social media at the time of the attack, in which he can be heard asking for help from a group of people. Although he had received protection from the Protection Mechanism, the State reported that he withdrew from the protection on February 26, 2019. After working for local media and as a correspondent for radio stations nationwide, Almendares worked independently and used social media to report news from the city of Comayagua. Over 20,000 users followed his account. According to available information, the journalist had filed at least 10 complaints of death threats with the police and the government’s mechanism for the protection of journalists. The State reported that the Office of the Prosecutor for Crimes against the Person [Fiscalía de Delitos contra la Vida] is in charge of the investigation and that several proceedings and searches have been carried out. The police also announced that they have begun efforts to determine the whereabouts of the two individuals who shot Almendares.\textsuperscript{1320}

846. The Honduran Journalists Association (CPH) withdrew from the Protection Mechanism for journalists and media workers in protest of the crime against Almendares. The association complained about the lack of guarantees offered by the mechanism. “We have been in a situation in recent years where we are defenseless against murder and this is the straw that broke the camel’s back, we can no longer continue to watch how they are killing our people,” said CPH president Dagoberto Rodriguez in a public statement. “Given the risks to which members of our profession are exposed, we have decided as a national board of directors to withdraw our representatives from the protection mechanism until there are guarantees to protect the lives of journalists, media workers, and human rights defenders,” he stated. According to statistics from civil society, Almendares’s death brings the total number of journalists killed since 2001 to 87.\textsuperscript{1321}

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

847. According to the Office of the Special Rapporteur’s monitoring, journalists and media outlets faced various obstacles and attacks that hindered or prevented them from carrying out their news reporting work as a result of the COVID-19 pandemic and measures restricting the movement of citizens. The economic impact of the public health crisis also affected the operation of the media and the job stability of its workers.


\textsuperscript{1321} La Tribuna. September 28, 2020. CPH se retira del mecanismo de protección a periodistas y comunicadores sociales.
848. On April 17, for example, journalists Olman Uclés and Francisco Zúñiga, of Noticiero Hoy Mismo, were attacked by members of the National Police while reporting on the crowded conditions—contrary to measures to prevent the spread of the virus—in two markets in Comayagüela.1322

849. The director of the digital portal Criterio, Emy Padilla, reported that during the state of emergency ordered by the government, the outlet was the target of several smear campaigns because of its news coverage.1323 The television channel UNE TV also complained, in a statement released on May 4, of a smear campaign against it on Facebook, with posts that falsely reported the non-payment of wages and announcements of layoffs.1324

850. Journalists in the department of Santa Bárbara announced a “precarious” situation after the suspension of advertising contracts that left them without money to pay for reporting and personal living expenses.1325 Similarly, the Santa Barbara Journalists Network reported constant restrictions on the practice of the profession by local police, who imposed requirements limiting their ability to move about freely.1326

851. Journalist Dassaev Aguilar, a correspondent for HISPAN TV, endured a string of attacks and was detained for several hours by police officers on May 18 in Tegucigalpa while on his way to cover the news, even though he had a press pass entitling him to travel.1327 Journalist Óscar Morán Méndez of Radio Cadena Voces (RCV) in Tegucigalpa reported that his work was hindered by an official from the Honduran Bank for Production and Housing, who ignored his questions at a May 13 press conference during which she announced actions to be taken in response to the public health emergency. The journalist, who allegedly made the official uncomfortable by asking her about the bank president's salary, was removed from the premises by a security guard.1328 On the same day, Santiago López, a journalist with the local television station Canal 49 Telecaes and correspondent for HCH Televisión Digital, reported that the regional authorities of the National Risk Management System (SINAGER) in the municipality of Santa Rosa de Copán had refused to give him interviews or provide him with information on the management of the COVID-19 pandemic, in alleged retaliation for his reports on the crisis that were not to the agency's liking.1329

852. Media outlets Radio Globo and Confidencial HN complained that their reporting was being obstructed by government officials, as the Ministries of Economic Development and Labor and Social Security did not respond to several requests for safe conduct passes for their journalists to travel during the quarantine. Security forces have detained journalists from the newspaper and the radio station for not having passes, which were granted to other press workers.1330

853. Several journalists have been threatened, attacked or prevented from doing their work by public servants, members of the security forces, or private citizens, in various news reporting contexts. For instance, on January 12, Elder Cortés, the director of Canal Copaneco TV in Santa Rosa de Copán, had his vehicle set on fire.1331 A member of the National Police reportedly physically assaulted journalist Mauricio Ortega on February 1 when he went to file a complaint at police headquarters in the municipality of Omoa, Cortés.1332 After the digital audiovisual media outlet El Perro Amarillo published leaked recordings on February 19 that allegedly showed officials from the Office of the Prosecutor General concealing evidence in organized crime cases and collaborating with criminal groups, social media users have repeatedly threatened the outlet’s

1326 Information supplied to the IACHR by Asociación por la Democracia y los Derechos Humanos (ASOPODEHU) of Honduras. Decretos de excepción y restricciones contra la libertad de expresión, derecho a la protesta y otros derechos humanos. July 16, 2020
1327 Pasos de Animal Grande. May 19, 2020. Policías detienen, amenazan con arma de fuego y tratan de quitarle la cámara al periodista Dassaev Aguilar de HISPAN TV.
director, Milton Benítez, and other journalists on the team. On July 4, the outlet reported that its offices had been attacked by unknown persons, who also stole documents and technical equipment. Photojournalist Alex Fernando Destephen Soto, of the digital newspaper Criterio, was assaulted and prevented from taking photographs by an individual who also damaged his camera while covering a March 8 International Women’s Day event in Tegucigalpa. On April 24, the same photographer was detained for several minutes by two Preventive Police officers after he took photographs of a fire in the Comayagüela markets in Tegucigalpa, allegedly because they mistook him for an intelligence agent. Journalist Carlos Lara was the victim of a gunshot attack on March 12 near his residence in the municipality of Tocoa, department of Colón. Journalist Paola Cobos was assaulted by members of the National Police on March 23 while reporting on the arrest of a couple in downtown Tegucigalpa. On April 7, journalist Selvin Euceda reported having received a death threat on his cell phone after exposing the actions of the chairman of the Water Board and the councilwoman of the Marcovia municipal corporation. Journalist Danilo Osmaro Castellanos, director of the news program ATN Noticias on Canal 32 Multivisión, was verbally assaulted by the mayor of Corquín, in the department of Copán. On April 13, Canal 6 cameraman Javier López was verbally assaulted by members of the Public Order Management and Municipal Police of the Central District, while reporting on attacks against citizens. On April 29, members of the Public Order Military Police obstructed the work of journalists in Colonia La Esperanza, Tegucigalpa, who were covering the murder of three people inside a house. On April 30, a member of the National Police impeded the work of Canal 36 correspondent Ely Vallejo, who was covering a traffic checkpoint in San Pedro Sula. The reporter was photographed and filmed by the police officer, who refused to answer his questions. On June 15, journalist Isaac Calix, a correspondent for the Hoy Mismo news program, said that authorities from the Property Institute in Roatán, in the department of Islas de la Bahía, obstructed his reporting by denying him access to the institution. He also reported that he was subjected to physical and verbal abuse.

On June 2 the newspaper El Libertador reported on an alleged plan to assassinate its editor, journalist Jhonny José Lagos Henríquez. According to the newspaper, the order came from the executive branch. A source linked to the Honduran police and military high command warned the journalist to “take strict security measures” because he had been under surveillance for some time.

Members of the National Police assaulted journalist Henry Fiallos and his cameraman, from Corporación Televiscente, to prevent them from covering an attempted prison break on July 28 at the La Esperanza penitentiary in the department of Intibucá.

Journalist Rony Pineda stated on August 20 that he had to quit reporting in the department of Cortés due to multiple threats against his work, his life, and the lives of his family. He said he has been receiving these threats since 2017. The actions against him intensified on July 29, when he received death threats along

1335 Criterio. March 26, 2020. Durante cobertura informativa, desconocido daña cámara fotográfica de reportero de CRITERIO.HN; C-Libre.
1336 C-Libre. April 24, 2020. Policías retienen a fotorreportero el “confundirlo” con un supuesto agente de inteligencia.
1344 Periódico “EL LIBERTADOR” alerta plan de asesinar a su director.
1346 Tn5 Matuíno miércoles 29 julio 2020.
with photographs of himself, his wife, and the vehicle he drives, from a Facebook profile using the name “Armando Chirino.”

857. On August 24, journalist Santiago López, HCH correspondent for the department of Copán, reported that a member of the National Police made hand gestures to him that alluded to gunshots. On HCH news, López claimed that the same police officer had previously threatened to “gas him” in mid-2019 if he continued “covering the teachers’ marches.” In connection with the COVID-19 pandemic, the journalist reported on members of the National Police infected with the virus, including the officer who threatened him. The journalist is a beneficiary of protection measures from the National Protection Mechanism, but, he said, his police liaison did not return his calls.1347

858. Journalist Renata Espinal reported being a victim of cyber harassment after she published several posts on topics of personal interest in August.1348 Journalist Thelma Mejía also received death threats through social media on September 27, after sending a Tweet with a message of solidarity to a colleague whose work was being criminalized in Guatemala.1349

859. It was reported to this office that members of the National Police assaulted and obstructed the work of journalists Wilmer Montoya, of Canal 6, and Fernando Lanza, of CHTV, on September 27, when they were gathering information on a violent incident at the police station in the municipality of La Ceiba, department of Atlántida.1350

860. Two journalists and human rights advocates, members of the Committee for Free Expression (C-Libre), were arbitrarily detained and assaulted by the National Police on November 2 in Tegucigalpa. Miriam Elvir was detained at a police checkpoint at the entrance to the La Esperanza neighborhood for allegedly disrespecting police officers, while journalist Cesario Padilla was arrested for recording his colleague's arrest.1351

C. Arbitrary arrests

861. Journalist and human rights advocate Leonel George was detained for approximately one hour at the Police Investigations Bureau (DPI) in Tocoa, department of Colón, on January 27, after going to report a robbery at the headquarters of the Coordinating Committee of Popular Organizations of Aguán [Coordinadora de Organizaciones Populares del Aguán], an organization of which he is a board member. "They let me go, but they were very interested in detaining me and bringing me before the courts," said George, who has been the target of criminal proceedings because of his activism. He is the beneficiary of precautionary measures granted by the Inter-American Commission on Human Rights (IACHR) due to the smear campaigns and criminalization he has been subjected to because of his work. On July 25, the journalist reported that he was chased by a vehicle at night in the city of Nacaome, department of Valle. He blamed the mayor of the municipality, who he alleged was retaliating against him for reporting on and defending human rights.1352

862. On March 17, police officers detained human rights defender Aleyda Huete at her home and took her to the offices of the Police Investigations Bureau in Choluteca. She was released on bail hours later on charges of "illegal possession of a homemade weapon" and "storage of explosive devices." On March 31, Huete was

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acquitted of the charges. On March 24, police detained advocate Evelyn Castillo, the deputy coordinator of the Ojojona Women’s Network and a member of the National Network of Women Human Rights Defenders in Honduras, as she was returning from food shopping with her husband and daughter. A police officer intercepted her and allegedly reprimanded her for being out during the public health emergency, even though the curfew was not yet in force. When the police noticed that Ms. Castillo’s daughter was recording the incident on her cell phone, they demanded the phone and erased the information. Ms. Castillo was arrested in an aggressive manner, with forceful pushing and shoving, and remained in custody until the next morning.

863. On July 22, journalist Mauricio Ortega was arrested in the municipality of Puerto Cortés while, as part of his humanitarian work, he was transporting a group of Hondurans who had returned to the country. Ortega, director of Noti Omoa and a correspondent for several media outlets, alleged that this was police retaliation for his exposure of police abuses. Although the police initially said they would be charging him with human trafficking, they later told him he had violated the Law on Police and Social Coexistence and ultimately charged him with a traffic infraction. Ortega has been harassed several times by the police and various organizations have raised concerns about the risks to his safety.

864. On August 10, Dr. Marco Eliud Girón, who has been critical of the government’s handling of the COVID-19 pandemic, was arrested. He was detained for over 20 hours and physically assaulted. The Ministry of Security issued a statement indicating that the doctor had been arrested for allegedly threatening a couple with a firearm.

D. Social protest

865. The Office of the Special Rapporteur of the IACHR has received reports of excessive use of force to disperse multiple demonstrations held in Honduras during 2020 in connection with the economic and health crisis resulting from the COVID-19 pandemic. According to a complaint received by the IACHR from the Association for Democracy and Human Rights (ASOPODEHU), the March 15 issuance of Executive Decree No. PCM-021-2020, which suspended several constitutional guarantees, led to serious human rights violations, arbitrary detentions, torture, and cruel, inhuman, and degrading treatment, at a time of intensified social protests over food shortages and unemployment caused by the COVID-19 crisis. In this context, the right to protest was one of the most frequently violated, with excessive use of repressive force by police and military personnel against demonstrators. According to information gathered by ASOPODEHU, between March 23 and June 22, 2020, at least 19 demonstrations were suppressed by the police and the Army. A survey by the organization C-Libre found that there were at least 83 social protests linked to the COVID-19 emergency in 12 departments of Honduras between March 23 and April 2.

866. The Office of the Special Rapporteur received information on the repression of different citizen protest actions by police forces on January 29 in El Progreso, department of Yoro, and in Tegucigalpa. On April 1, three journalists were detained by the police while covering a protest by residents seeking to prevent the entry of vehicles from San Pedro Sula for fear of being infected with COVID-19. The police confiscated the journalists’ work equipment and erased recorded material documenting alleged police abuses against

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1358 Information supplied to the IACHR by Asociación por la Democracia y los Derechos Humanos (ASOPODEHU) of Honduras. Decretos de excepción y restricciones contra la libertad de expresión, derecho a la protesta y otros derechos humanos.
1359 C-Libre. (n.d.) Situación de la libertad de expresión y acceso a la información pública: Protestas por el hambre.
citizens. Journalists Alejandro Aguilar, press director of Metro TV, and Cinthia Macyeritt García, of TVS, were attacked with tear gas by members of the National Police while covering a cab drivers' protest on May 28 in the city of Choluteca. On July 21, members of the National Police used tear gas bombs against residents of the Garífuna community of Sambo Creek who were demonstrating to demand the release of four leaders of the community of El Triunfo de la Cruz who had been abducted from their homes on June 18.

In August and September, public outrage over the government’s alleged mismanagement of funds allocated to the fight against the COVID-19 pandemic led to several demonstrations under the slogan “Where is the money?” According to the information received, three people were arrested on August 8 in San Pedro Sula for allegedly painting the slogan in a public space. On August 18, the mayor of the municipality of Utila, in Islas de la Bahía, Troy Bodden, offered a reward of 25,000 lempiras for information on those responsible for painting the phrase at the entrance of the municipal building. On September 7, a member of the National Police snatched the cell phone of journalist Bartolo Fuentes while he was covering a citizen protest over the management of public funds in connection with the pandemic in the city of El Progreso, department of Yoro. On September 15, members of the National and Municipal Police repressed a massive demonstration in downtown Tegucigalpa, organized by workers’ unions, students, and other sectors to commemorate Independence Day in Honduras, by firing tear gas and water with chemicals. Cristián Espinoza, a 26-year-old protester, suffered eye injuries and had to be admitted to the Escuela Universitario Hospital. Human rights defenders Marcela Licona, Irma López, and Elizabeth Medina of Human Rights Without Borders (DHFH) were attacked by the National Police while they were evacuating elderly people affected by the tear gas. Demonstrators and human rights defenders were injured and several students were arrested. Media workers from Criterio.hn were threatened by police officers to leave the area. Agence France Press (AFP) photojournalist Orlando Sierra was hit by a tear gas bomb thrown by members of the National Directorate of Special Forces (DNFE).

E. Stigmatizing statements

Journalist and advocate Dina Meza was the victim of a social media smear campaign after intervening to defend three members of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH) in the Comayagüela Trial Court following their arrest. Human rights defenders Juan López, Reinaldo Domínguez, Leonel George, and the social organizations Fundación San Alonso Rodríguez (FSAR) and the Coordinating Committee of Popular Organizations of Aguán (COPA), from the municipality of Tocoa, department of Colón, were the targets of a smear campaign on Facebook. Posts on the pages of Tocoa Exclusivas and La Voz de Tocoa, on April 8 and 14, accused the advocates of preventing “food donations from reaching families in Guapinol.”

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1361 The journalists assaulted were Roger David Iraheta, of Canal 6, Onán Zaldívar of Patepluma Televisión and Edward Fernández, of Canal 26. Pasos de Animal Grande. April 1, 2020. Detienen tres periodistas en Santa Bárbara, les decisan su equipo y les borrar el material sobre desalojo; C-Libre. April 1, 2020. Policía agrede y detiene a periodistas en Santa Bárbara.


1366 HONDUSA TV. August 16, 2020. DENUNCIA! Detienen a médicos en SPS por pintar rótulos de «¿Dónde está el dinero?»; La Voz de Tocoa.


1369 C-Libre. (n.d.) Informe Trimestral. Alertas por violaciones a la libertad de expresión.

When asked about the alleged concealment of the numbers of positive cases and deaths due to the coronavirus in Honduras, the government commissioner for COVID-19, Lisandro Rosales, called the journalists “bitter people who are not even registered professionals” during an April 10 interview with journalist Edgardo Melgar on Televicentro’s news program “Hoy Mismo.”

The Minister of Finance, Rocío Tábora, accused Radio América of invading her privacy by broadcasting an audio message she had sent to the then director of the public-private partnership Inversión Estratégica de Honduras (INVEST-H), Marco Bográn, related to the procurement of mobile hospitals during the public health emergency. The official sent a letter, dated July 16, to the station’s general manager, Susiel Muller, and to journalists Mauricio Ortega and Rodolfo Colindres, questioning their access to and disclosure of the recording.

On July 29, after congressman and journalist Rony Martínez posted information on his Twitter account about alleged wrongdoing in government contracting with thermal power generation companies involving members of the Energy Committee of the National Congress, lawmaker and committee chairman Oscar Nájera declared that the journalist’s accusations were made because “he is gay” and that he “dislikes them.” He added, “I think that may be why he has personal animosity toward a member of the Energy Committee,” and threatened legal action against Martínez.

F. Subsequent liability

The Office of the Special Rapporteur received information on complaints and criminal proceedings brought against journalists for their work in the news media. For example, journalist Milton Benítez, director of the program El Perro Amarillo, was sued for defamation by Banco Atlántida after he reported on alleged wrongdoing involving the bank’s operations in a Central American country. The complaint was admitted by the Trial Division of the Supreme Court of Justice (CSJ) [Tribunal de Sentencia de la Corte Suprema de Justicia] on January 14. The bank’s president, Guillermo Bueso, later filed new defamation complaints against Benítez. According to Bueso’s lawyer, the head of the bank has filed a total of 33 lawsuits against the journalist.

Journalist Jairo López reported that the Public Prosecutor’s Office has brought a new criminal case against him, accusing him of “possession of commercial explosives, possession of homemade devices, unlawful possession of controlled substances (gunpowder with chlorate), and attacks against the domestic security of the State.” According to a press release from the Public Prosecutor’s Office, he was indicted on October 22 on charges of possession of commercial explosives, unlawful possession of controlled substances (gunpowder with chlorate) and possession of police equipment. The journalist has been barred from leaving the country and must report to court authorities every 15 days.

The director of Inversión Estratégica de Honduras (INVEST-H), Marco Bográn, threatened on May 4 to file a criminal complaint against the directors of the National Anticorruption Council (CNA), Gabriela Castellanos and Odir Fernández, after the organization submitted a report on April 24 denouncing the...
procurement of masks at a price higher than what the Ministry of Health (SESAL) had paid for them. “When this is all over, they will have to face me in court, to answer for the defamation and harm they have caused my family,” said Bográn. According to the CNA, the elevated price at which INVEST-H acquired the masks cost the State 45,200,088 lempiras. During the COVID-19 pandemic, civil organizations have identified several alleged acts of corruption in the handling of funds to manage the crisis.\textsuperscript{1379}

876. On July 21, the Criminal Chamber of the Supreme Court of Justice (CSJ) upheld the conviction of Police Commissioner and National Congresswoman, María Luisa Borjas, who was sentenced to two years and eight months in prison for criminal defamation. The chamber denied the lawmaker’s cassation appeal and ruled the February 18, 2019, judgment of the Tegucigalpa Trial Court [Tribunal de Sentencia Designada de Tegucigalpa] “final and enforceable.” The criminal action against the congresswoman was brought by businessman Camilo Átala, after she accused him of being the mastermind behind the murder of environmentalist Berta Cáceres, and questioned the inaction of the Public Prosecutor’s Office in this and other crimes.\textsuperscript{1380} In a press release, the National Network of Women Human Rights Defenders in Honduras and C-Libre condemned the silencing “through violence or criminalization, of themselves or of those who dare to raise their voices with them to condemn the situation.”\textsuperscript{1381} In October, the congresswoman reportedly left the country to seek medical treatment after being diagnosed with COVID-19 and in the face of a possible arrest warrant.\textsuperscript{1382}

G. Confidentiality of sources

877. In a statement released on June 1, the Board of Directors of the Chamber of Commerce and Industry of Comayagua asked journalist Luis Almendares to provide the name of the person who told him about changes in the board’s membership. The board also asked the journalist “to provide the evidence or documents” he mentioned in his publication and warned that it reserved “the right to go to the authorities” if he continued with such “irresponsible and completely false publications.”\textsuperscript{1383}

878. The intervening commission of Inversión Estratégica de Honduras (INVEST-H) summoned the newspaper La Prensa to reveal the source of information for the publication of a report on so-called mobile hospitals. In a press release issued on August 26, the commission asked the media outlet to publish information on the technical assessment of hospital conditions it supposedly carried out to support its article, which warned of alleged risks to the safety of physicians.\textsuperscript{1384}

879. Journalist Pedro González, a UNE TV correspondent, was summoned by the Public Prosecutor’s Office on September 11 to appear as a witness at its offices in San Pedro de Sula, as part of an investigation into the government’s procurement of mobile hospitals to treat people infected with COVID-19.\textsuperscript{1385}

H. Legal reforms

880. As part of the State of Emergency decreed by the Government of Honduras because of the COVID-19 pandemic, on March 15, the President of Honduras signed Executive Decree No. PCM-021-2020,\textsuperscript{1386} suspending constitutional guarantees for seven days, including the right to freedom of expression enshrined in Article 72 of the Constitution and the rights to freedom of movement and the organization of social gatherings, among others. National and international organizations expressed concern over the scope of the measures taken. While recognizing that the circumstances warranted exceptional measures, they pointed out that such measures must meet the criteria of necessity and proportionality: “Limiting freedom of expression at this time of crisis is disproportionate and contrary to the objective of combating the pandemic, causing


\textsuperscript{1384} Confidencial. August 3, 2020. MP cita a periodista en condición de “testigo” en investigación contra la administración pública.

unnecessary harm to human rights and public health.” According to a March 16 statement issued by United Nations human rights experts, “restrictions taken to respond to the virus must be motivated by legitimate public health goals and should not be used simply to quash dissent.”

Later, on March 21, the Honduran government issued Executive Decree PCM-022-2020-159, lifting the suspension of the guarantees established in Article 72 of the Constitution. The measures restricting fundamental rights contained in Executive Decree No. PCM-021-2020 and its subsequent amendments were extended in successive decrees.

The Office of the Special Rapporteur also received information on the entry into force, on June 25, of a new Criminal Code in Honduras. The new code was questioned by national and international civil society organizations for its restrictive content on freedom of expression, assembly, and association. The concerns are based on the inclusion of crimes against honor such as criminal libel and slander and provisions that impose criminal liability for offenses committed while exercising the right to protest, which could affect rights such as freedom of expression and access to information. Against the backdrop of the COVID-19 pandemic, articles of the code that impose prison sentences on anyone who “spreads a human epidemic through the dissemination of pathogenic agents or germs,” which could result in limiting the exercise of citizen protests over scarce resources and economic crisis, and that criminalize the dissemination of “fake” economic news or rumors, caused particular concern.

The National Anticorruption Council sent a letter to the IACHR expressing its concern about provisions of the code that could encourage impunity and criminalize the defense of human rights. The executive branch also expressed concern about some aspects of the code and sent the legislature a proposal for its amendment.

On August 27, the Committee for Free Expression (C-Libre) filed an action challenging the constitutionality of Legislative Decree 130-2017, which created the new Criminal Code, on procedural grounds. The action alleges that the National Congress failed to follow the constitutionally established procedure for the enactment of a law.

During a virtual session convened by the legislature on June 9 to debate the content of the Criminal Code with opinion leaders, journalist Nelyi Larice was reportedly kicked out when he voiced his criticism of the legislation. The journalist complained that it was not an electrical or internet signal failure.

I. Access to public information

The Office of the Special Rapporteur received information on various situations that hindered access to information for journalists and the general public, especially information related to the impact and management of the COVID-19 pandemic. Journalist Ricardo Patiño was removed from a session of the municipal corporation of Tela, Atlántida department, on March 2, at the request of councilman Mario Fuentes.

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According to the journalist, the action was a reprisal for several investigations implicating the councilman—who served as mayor of the municipality from 2014 to 2018—in corrupt acts.1396 Journalists from Radio Globo and ConfidencialHN were denied access to cover an event on transparency on February 10 at the Institute for Access to Public Information (IAIP) in Tegucigalpa.1397 Similarly, Radio Progreso reported on November 11 that a journalist from the station was denied entry to the headquarters of the Emergency Operations Center (COE) to report on local authorities’ emergency response to tropical storm Eta in the department of Yoro.1398

887. The Institute for Access to Public Information (IAIP) suspended its activities during the COVID-19 crisis, under the guidelines approved in Executive Decree PCM-021-2020. In a statement dated March 21, the IAIP said it had decided to “suspend the services this institution provides to citizens and place its public servants on leave” until a return to work is authorized. The processing of requests for information through the Electronic Information System of Honduras (SIEHLO) was also suspended.1399

888. Authorities from the National Port Authority (ENP) and the Central American Port Operator (OPC) determined on July 9 that no media could witness the unloading of the mobile hospitals for the treatment of coronavirus patients in Honduras. The authorities indicated that a link would be set up to broadcast the ship’s arrival. The media restriction was announced hours after Turkey’s honorary consul in Honduras publicly stated that what was arriving on the ship was only the “shell” of a mobile hospital. The purchase of the mobile hospitals was the subject of controversy due to accusations of fraud and profiteering, which led to the intervention of the National Congress and the resignation of the responsible senior official.1400 Later, in a July 27 press release, the INVEST-H intervening commission barred the attendance of journalists, photographers, and videographers during the process of moving and installing a mobile hospital in the city of San Pedro Sula, citing issues related to “occupational and physical safety.”1401

889. In an official letter issued on July 17, Dinorah Nolasco, head of the Health Region in the department of Cortés, prohibited medical personnel from giving statements on behalf of the Ministry of Health to journalists, or to judicial and human rights entities, without authorization.1402

890. On November 3, the Government created the Ministry of Transparency, which will be in charge of “coordinating, facilitating, promoting, and institutionalizing the implementation of the National Probity, Integrity, and Prevention Policy of the Transparency and Anti-Corruption Strategy.” According to Decree PCM 11-2020, published in the Official Gazette on November 6, the new Ministry “will issue general guidelines on transparency and accountability, which will be mandatory for public institutions,” and “will assist the President of the Republic” in matters related to transparency and the fight against corruption. The decree would thus remove powers from the Institute for Access to Public Information (IAIP)—a body established in the Law on Transparency and Access to Public Information, enacted by Legislative Decree 170-2006, to regulate compliance by government agencies—and would transfer part of its duties to a ministry reporting directly to the executive branch. This has been called into question by civil society organizations, which note that the ministry will be a parallel body to the IAIP, with less independence from the executive branch, and that it was created to diminish the IAIP’s powers.1403

891. This office also took note of several restrictions on recording and accessing information of significant public interest that could affect human rights. For example, staff working at the Gabriela Alvarado Hospital in Danlí, department of El Paraíso, had to sign a “letter of confidentiality” as a pledge not to disclose information


on activities at the hospital. The memorandum, issued on April 1 by the hospital’s chief of staff, Dinabel Ávila, is said to have originated in an official letter (number 053-DHGA-2020) sent by the hospital's Executive Director, calling on all staff to sign the confidentiality document. The organization C-Libre criticized the fact that “the right to free expression and access to information” is being limited during the health crisis.  

892. An order from the Chief of the Joint Chiefs of Staff of the Armed Forces (FFAA) also banned military personnel from expressing themselves through videos, according to information released by the institution on May 12. According to the organization C-Libre, a memorandum was issued stating that, on the instructions of Chief of Staff Tito Livio Moreno, it is “strictly forbidden to make and upload videos of any kind through the Tik Tok app.” The same memorandum reportedly stated that disobedience “will be sufficient grounds for disciplinary proceedings under military laws and regulations.” According to media reports, a member of the Army, Esdras Samuel Berrios, was discharged for uploading a video to Tik Tok that dishonored the Armed Forces. According to reports, the decision was later reversed to clear his record. The National Human Rights Commissioner (CONADEH) is said to have opened an investigation into the case.  

893. The Office of the Special Rapporteur notes that such prohibitions may conflict with international freedom of expression obligations when it comes to the recording and reporting of serious human rights violations. The Inter-American Court has held that, to guarantee the right to information, public authorities must act in good faith and diligently carry out the actions needed to ensure the effectiveness of this right, especially for purposes of learning the truth about what has occurred in cases of serious human rights violations.  

J. Internet and freedom of expression  

894. The organization Reporteros de Investigación asserted on April 9 that during the COVID-19 pandemic “the government has used its communication tools to spread propaganda to discredit and undermine internet freedom and communication through social media, manipulating public opinion and provoking attacks from the public against the alternative media that use the internet responsibly as a communication tool because we oppose the control of the media by the government, the army, and power groups that have historically distorted and manipulated the truth.”  

895. On April 22, the Social Forum on Foreign Debt and Development in Honduras (FOSDEH) condemned attempts to hack the personal account of one of its spokespersons, economist Alejandro Kaffati, who has been critical of the government’s management of the budget during the COVID-19 pandemic.  

896. On May 26, the feminist platform Somos Muchas reported that it was the target of a cyber-attack while giving a presentation on the criminalization of abortion in Honduras. According to an alert issued by the National Network of Women Human Rights Defenders in Honduras, four individuals broke into the researchers' Zoom presentation and posted Nazi symbols, scribbled on the researchers’ presentation, and played videos of men exposing their genitals, causing the presentation to be temporarily suspended. According to the National Network of Women Human Rights Defenders, this is not the first time that members of the feminist platform Somos Muchas, and its spokeswomen, “have been victims of cyber-attacks related to their feminist activism and defense of the sexual and reproductive rights of women and girls.”  

897. The press team of the newspaper El Libertador reported in August that Facebook had blocked certain actions on its page on the social network.  

K. Other relevant situations  

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1404 C-Libre. April 9, 2002. Obligan a firmar confidencialidad en Hospital de zona oriental hondureña.  
1407 Information received by the Office of the Special Rapporteur.  
1410 C-Libre. August 29, 2020. Bloqueos en página de Facebook denuncia periódico EL LIBERTADOR.
According to monitoring by the organization C-Libre, at least 19 journalists and media workers have tested positive for COVID-19 since the first case was reported in the country on April 15.  

Several lawmakers complained that they were blocked and prevented from participating in a virtual session of the National Congress held on April 24, in which 10 bills were passed under the framework of the COVID-19 emergency.

According to the organization C-Libre, at least seven media workers died of COVID-19 in Honduras. They included four journalists, a photographer, and an administrative employee. Photojournalist Pedro Boquín died on June 26. Days earlier, he had been admitted to the Honduran Institute of Social Security (IHSS) after testing positive for COVID-19, besides suffering from diabetes. During the month of July, several journalists died in the southern region and in the capital of Honduras. On July 2, Francis Jaqueline Bojórquez, founder of the Honduran Press Association (APH) and the Alert and Protection Network of Journalists and Media Workers (RAPCOS) in the southern region, died in Choluteca of health complications after being diagnosed with COVID-19 and admitted to the southern city’s hospital. In Tegucigalpa, Pablo Gerardo Matamoros, news director and news anchor of Canal HCH, died after being hospitalized in a private clinic. On July 25, journalist Edilberto Zelaya died of COVID-19 after being hospitalized at the National Cardio Pulmonary Institute (El Tórax) in Tegucigalpa.

Journalist David Romero died on July 18 after several days in the National Cardiovascular Institute after testing positive for COVID-19. The journalist had been held in the Támara National Penitentiary since March 2019, serving a 10-year prison sentence for the crime of defamation against prosecutor Sonia Gálvez. On March 21, 2019, the IACHR had granted precautionary measures to Romero, and had requested that the State suspend the execution of the sentence handed down on March 15, 2016 by the Tegucigalpa Trial Court [Tribunal de Sentencia de Tegucigalpa].

Based on the facts observed in Honduras, this Office of the Special Rapporteur calls on the State to pay special attention to the following:

The murder of journalists is the most extreme form of censorship, and impunity contributes to self-censorship of the press. States have a positive obligation to identify and punish the perpetrators of these crimes. As the IACHR and its Office of the Special Rapporteur have noted repeatedly, the State must fully, effectively, and impartially investigate the murders of journalists, identify the motives behind these crimes, and determine in court whether they are related to journalistic activity and freedom of expression. The authorities should not rule out the practice of journalism as a motive for the murder or assault before the investigation is completed. Omitting logical lines of investigation or failing to properly collect evidence can have serious repercussions on the development of a case at the indictment or trial stage. This office has repeatedly taken note of violence against journalists and media workers in Honduras. In its 2019 Report on the Situation of Human Rights in Honduras, the IACHR emphasized that violence against journalists and impunity for these crimes continue to undermine the right to freedom of expression in the country.

Social protest, which includes the rights of peaceful and unarmed assembly, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights. The Office of the Special Rapporteur reiterates that it is inadmissible in principle to criminalize per se demonstrations on public thoroughfares when carried out within the framework of the right to freedom of expression and the

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1412 Proceso. April 24, 2020. Diputados denuncian que les negaron el ingreso a la sesión virtual del CN.
right to assembly. It recalls that it is the State's duty to guarantee the exercise of the right to protest and that no participant may be subjected to illegal or arbitrary detention. States should not engage in practices of mass, collective, or indiscriminate arrests at public demonstrations. They should also be especially mindful that freedom of expression protects the right to record and disseminate any incident, and that they should provide journalists with the highest protection so they can carry out their work freely and keep society informed on matters of significant public interest. The Office of the Special Rapporteur calls upon the Honduran authorities to order an end to the disproportionate use of force by State security forces and to protect journalistic activity and recalls that the actions of the National Police in maintaining public order must strictly comply with international standards governing the use of force under the principles of exceptionality, proportionality, and absolute necessity.

905. **Using criminal mechanisms to punish speech on matters of public interest, especially in relation to public officials, is incompatible with inter-American standards.** The IACHR and its Office of the Special Rapporteur emphasize that under Article 13 of the American Convention, speech on matters of public interest enjoys enhanced protection, especially when it expresses essential elements of identity or condemns situations of violence and structural discrimination. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that "[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.” The use of criminal law as a mechanism to prosecute those who express opinions, information, or criticism of government authorities or policies, or speak out about issues of public interest, has a chilling effect that limits freedom of expression.

906. **The transparency and accountability of public authorities strengthen democratic systems.** Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR 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 established by law in case of a real and imminent danger that threatens national security in democratic societies.” The IACHR Resolution on Pandemic and Human Rights highlighted the importance of access to information in the COVID-19 pandemic and the crucial role of journalists in the public health emergency by reporting on critical issues and monitoring government actions. The IACHR and its Office of the Special Rapporteur recall in particular that, based on the obligation of active transparency, States must proactively provide truthful and reliable information on all aspects of public interest related to the pandemic, in open formats and in a manner accessible to everyone. Given the digital divide, States must find effective ways to implement the obligation of active transparency in these circumstances.

907. **States have a positive obligation to provide the press with the highest protection to enable them to carry out their work freely.** The Office of the Special Rapporteur notes its particular concern about violations of freedom of expression and restrictions on the right to information resulting from measures that States in the region have implemented in response to the COVID-19 pandemic. The IACHR and the Office of the Special Rapporteur call upon States to guarantee the right to freedom of expression and access to information, and strongly urge them to guarantee the critical role of the press in a pandemic. The Office of the Special Rapporteur cautions that restricting journalists’ access to press conferences, creating or using criminal offenses to punish the dissemination of ideas and information labeled “fake,” and implementing digital cyber-policing measures may undermine fundamental freedoms.

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In the context of the pandemic, the Office of the Special Rapporteur took note of a series of acts of harassment against the media by government officials. This Office welcomes the sanction of a Data Protection Act in Jamaica, although it shares the concerns of journalism organizations regarding the risks that some of the law’s provisions pose to the exercise of freedom of expression. The Office of the Special Rapporteur also views positively the government's focus on Internet access issues in the country in the context of the pandemic, particularly for rural populations and other intersectionalities, like school-age children and adolescents.

A. Threats to and restrictions on journalists and media outlets

On August 18, prior to the general elections in Jamaica, the police detained a TVJ cameraperson while he was covering Nomination Day activities in South Central St. Catherine. The videographer had been recording the nomination of the People's National Party (PNP) candidate, Kurt Matthews, at the Seventh Day Adventist Church on Old Harbour Road in Spanish Town. According to the information available, shortly after the cameraman emerged from the building, the police told him he had committed a breach, detained him, and confiscated his camera, which they later returned to him. The cameraman was later released.1422

The Press Association of Jamaica (PAJ) along with editors and executives at the island’s major media houses, called for Prime Minister Andrew Holness to rescind the order prohibiting members of the media from moving about during the period of lockdown in St. Catherine. PAJ President George Davis said it was of vital public interest that the media be allowed to continue reporting, especially during a moment of crisis. “The very fact that the measures taken by the state to contain the spread of the coronavirus have involved far-reaching curtailment of constitutional rights makes it even more important that the state does not fetter the

media’s work at this time,” said Davis. In response, the Government agreed to change the measure restricting the movement of media workers to contain the spread of the virus.

B. Stigmatizing statements

On February 13, the mayor of Lucea, Sheridan Samuels, said “I hate the media.” The official, who was chairing the monthly meeting of the Hanover Municipal Corporation (HMC), attacked the media in response to recent reports on the dirty and unhealthy state of the parish of Hanover. “I am not just bitter, I hate the media. I hate the media, and as a matter of fact, not just the media. I hate some people who work in the media,” he said, according to information received by the Office of the Special Rapporteur. Mayor Sheridan Samuels is one of the four councillors of the People’s National Party (PNP) in the Hanover Municipal Corporation, and according to the information available, he alleges a media plot to make his administration look bad. “You must report and report correctly,” he said.

Local Government Minister Desmond McKenzie rejected Mayor Sheridan Samuels’ criticism of the media, calling it “completely unacceptable,” especially having done so in an official meeting of the municipal corporation, which he chairs. He said discussion about political affairs should not be allowed to descend into "hatred and personal offence.”

C. Censorship

On October 30, 2020, the Supreme Court of Civil Appeal of Jamaica ruled that broadcasters Television Jamaica Limited and CVM Television Limited had acted in accordance with the law on declining to broadcast an ad called “Love & Respect,” produced by the international organization AIDS-Free World, which promoted respect for the human rights of LGBT persons. In his lawsuit, attorney and human rights defender Maurice Tomlinson argued that the TV chains had violated his right to freedom of expression and to disseminate information, opinions, and ideas in any media, as guaranteed by the Charter of Fundamental Rights and Freedoms of Jamaica. The attorney indicated that pursuant to the Charter, companies cannot refuse to broadcast an advertisement for arbitrary, discriminatory, or unreasonable motives. For their part, the TV channels argued that the content could represent a form of support for a criminal activity (sexual activity between persons of the same sex, which remains criminalized in Jamaica) and that it “could incite violence or breach of the peace.” Although the Court's judgment indicated that the Charter of Fundamental Rights and Freedoms of Jamaica requires private parties to respect constitutionally protected rights, in its final judgment, it found that the TV broadcasters had not violated those rights.

As indicated, this was the first time the Court has weighed how rights protected by the Charter of Fundamental Rights and Freedoms—in this case, freedom of expression and the right to disseminate information and ideas through the media—should be interpreted with regard to private enterprises and not the State. The organization HIV Legal Network, which provided support for the defense in the case, said it was profoundly disappointed by this new case of LGBT persons silenced by the justice system. "In this case, after years of litigation, justice for LGBT people has been both delayed and now denied outright."

D. Freedom of expression on the internet

The COVID-19 pandemic posed particular challenges to the right to freedom of expression, which was exercised mainly over the Internet. Jamaica's rural populations were disproportionately affected by lack of Internet access. In May 2020, Minister of Science, Energy and Technology Fayval Williams said COVID-19 had brought into sharp focus the need to make access to the Internet a right for every Jamaican citizen, and

1423 Jamaica Gleaner. April 16, 2020. PAI wants gov't to roll back order curtailing media access in St Catherine.
1426 Jamaica Gleaner. April 16, 2020. PAI wants gov't to roll back order curtailing media access in St Catherine.
1430 Jamaica Observer. October 1, 2020. Administrators worried about Internet access as schools prepare to reopen.
1431 Rural students not being treated equally - Casserly calls for more Internet access in rural Hanover.
that science and technology are crucial in the fight against COVID-19 and the current social issues. “While we have experienced some challenges, I want Jamaica to know that the COVID setback is not a step back. Where there are challenges, we see opportunities; where there is lack, we see plenty; and where there are impossibilities, we see tremendous possibilities,” she said, reiterating her commitment to upgrade and strengthen the country's information and communications technology infrastructure.¹⁴³¹

Likewise, in December 2020, representatives of the Government said they were implementing three important technology initiatives aimed at increasing access to the Internet and electronic educational content for students living in rural and inner-city communities. Speaking in the House of Representatives, Minister of Science, Energy, and Technology Daryl Vaz said the Government would be providing the Public Broadcasting Corporation of Jamaica (PBCJ) with the capacity to broadcast digitally, enabling it to offer multiple channels with educational content 24 hours a day. “This decision is grounded in the fact that digital broadcast can reach over 85% of households who own a Smart TV set,” he said.¹⁴³²

E. Legal reforms

On June 12, Jamaica’s Senate passed the Data Protection Act, which sets guidelines on how physical or electronic data should be collected, processed, stored, used, and released, in order to protect citizen privacy and personal information. The law is the fifteenth on data privacy in the Caribbean.¹⁴³³ The bill, which was passed the Lower House on May 19 without amendments, was greenlit by the senators with three amendments. According to the information available, Clause 76 of the bill establishes a transition period to allow data controllers time to take the steps necessary to ensure full compliance with the legislation. At the conclusion of debate on the legislation, the Leader of Government Business, Senator Kamina Johnson Smith, said a “public education” exercise would be undertaken during the two-year transitional period before the legislation came into effect.¹⁴³⁴ Senator Johnson Smith noted the campaign would be important for promoting the positive aspects of the bill.

In an editorial on June 29, the Jamaica Gleaner published an editorial saying the law would be "a threat to free press.”¹⁴³⁵ According to the newspaper, although the law establishes standards for which firms must protect users’ data, the provisions as to how they would be applied to the media are problematic. It notes that while Section 36 of the proposed law purports to exempt personal information used in a journalistic pursuit, if the data controller (journalist) “reasonably believes” that publication of the information is in the public's interest, then the bar set for determining that standard is extremely high. In this regard, it notes that in the absence of a broad exemption of media institutions from the law, journalists could face the peril of a subjective determination of sanctions. It also notes that the law could pose a risk to freedom of the press and investigative journalism by punishing with prison and fines those who refuse to reveal their sources or hand over documents or files.

On August 3, the Press Association of Jamaica joined the call by the editorial writers of the Jamaica Gleaner for the government to “pull back” and revise the "problematic provisions" of the Data Protection Act. The organization said there were serious concerns about the overly-broad powers of the Information Commissioner created by the law. “Legal action after the fact cannot be the answer. (...) Forcing disputes through the court system may well result in killing important pieces of journalism and will, arguably, amount to giving a license to the imposition of prior restraint, long regarded as almost always unacceptable in journalism,” the Press Association of Jamaica warned. It also expressed its concern at the references to the implementation of data protection legislation in Europe that ignore the “negative and problematic effects of that legislation.”¹⁴³⁶

In view of the aforementioned facts, the Office of the Special Rapporteur calls on the State of Jamaica to take special note that:

¹⁴³¹ Jamaica Observer. May 29, 2020. Gov’t committed to making Internet access a right, says minister.
¹⁴³² Jamaica Observer. December 15, 2020. Major technology initiatives to increase Internet access to students in rural areas.
Attacks and aggression against journalists violate the right to freedom of expression in both its individual and collective dimension and cannot be tolerated in a democratic society. The Office of the Special Rapporteur recalls that Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[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.”

States have a positive obligation to provide the media with the greatest possible level of protection so they can do their work freely. In this regard, the Inter-American Court has also found that “it is essential that the journalists [...] enjoy the necessary protection and independence to exercise their functions comprehensively, because it is they who keep society informed, and this is an indispensable requirement to enable society to enjoy full freedom.” In the Resolution on Pandemic and Human Rights in the Americas, the IACHR underscored the importance of access to information during the public health emergency and the crucial role that journalists play by reporting on critical issues and monitoring the government’s actions. States have an obligation to permit all media outlets access to official press conferences, without discrimination based on editorial stance, with the exception of necessary and proportionate measures to protect health.

Government authorities are called to maintain a discourse that favors public debate and freedom of expression. The Office of the Special Rapporteur reiterates that public officials have a duty to ensure that their statements are not causing damage to the rights of those who contribute to the public debate through the expression and circulation of their thoughts, such as journalists, media outlets, and organizations for the defense of human rights, and must pay attention to the context in which they express themselves. According to the Inter-American Court of Human Rights, such statements from public officials may constitute an indirect restriction on the right to freedom of expression.

The inter-American human rights system explicitly prohibits prior censorship. This prohibition arises from Article 13(2) of the American Convention on Human Rights and Principle 5 of the Declaration of Principles on Freedom of Expression, which 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.”

Access to the internet is a condition sine qua non for the effective exercise of human rights. The IACHR and its Office of the Special Rapporteur have emphasized that, “In the current health emergency context generated by the Covid-19 pandemic, people’s access to quality Internet acquires an inevitable central role. Based on the isolation and/or social distancing measures imposed by governments at a global level and their extension over time, Internet connection emerges as the predilect tool to continue with daily tasks that previously required in-person contact, in addition to being crucial for the exercise of civil, political, economic, and cultural rights.” In this regard, the IACHR has emphasized that States must guarantee “that everyone has the broadest possible access to the Internet, and develop affirmative measures to close the digital divide facing vulnerable, lower-income groups quickly.”

Criminal law is the most restrictive and severe means of establishing responsibility for illegal conduct. The Office of the Special Rapporteur recalls that Article 13(2) of the American Convention provides for the possibility of placing restrictions on freedom of thought and expression through the application of

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1441 IACHR. Resolution No. 1/20. Pandemic and Human Rights in the Americas. April 10, 2020. Par. 31; IACHR RIRCU Practical Guides to COVID-19 02. How to ensure access to the Right to Education for Children and Adolescents during the COVID-19 Pandemic?
subsequent liability for the abusive exercise of this right. In this regard, although violations of the Data Protection Act may be repudiated, this should preferably be done through the exercise of the right to rectification or reply, or, if the harm caused is serious, through proportional civil liability.

MEXICO

927. During 2020, lethal violence against journalists continues to be one of the main problems the union faces. The Office of the Special Rapporteur registered the murder of eight journalists for causes related to their work and is monitoring other homicides in which there could also be a relationship. To these serious figures are added the numerous attacks of different types that journalists and the media receive during when carrying out their work, ranging from threats, physical and digital attacks, temporary kidnappings, obstacles to journalistic work, and detentions. The Office of the Special Rapporteur has reiterated on several occasions that attacks against journalists persists, aggravated by the lack of legal consequences expressed in the impunity of these crimes. Although this Office also highlighted some progress in this matter -such as those registered in the crime against the journalist Lydia Cacho and the murders of Miroslava Breach and Javier Valdez- nevertheless, the Office of the Special Rapporteur has highlighted the delay in many of these decisions and even the subsequent reversal of small progress.

928. Along the same lines, the Office of the Special Rapporteur received worrying information about the uncertainty in which the Protection Mechanism for Human Rights Defenders and Journalists would be after the country’s Congress approved the elimination of a series of public trusts in the country that financed different agencies and programs, including the Fund for the Protection of Human Rights Defenders and Journalists, and the Fund for Comprehensive Assistance, Attention, and Reparation to Victims. Different organizations have drawn attention to the lack of clarity on how these protection programs will continue to function. For the Office of the Special Rapporteur, this decision is worrying, especially in the context of the violence that journalists and other press workers continue to be victims of.

A. Prosecution

929. On January 15, Juan Sánchez Moreno, former commander of the Puebla State Attorney General’s Office, received a conviction for the crime of torture against journalist Lydia Cacho, which occurred in 2005.
Sánchez Moreno was sentenced to five years and three months in prison, and to pay a fine of 12,133 Mexican pesos (approximately US$644)\(^{1442}\). On December 16, 2005, Cacho was detained and tortured by the Puebla Police under the instruction of the then governor, Mario Marín, in complicity with businessman Kamel Nacif, in retaliation for the publication of the book *Los demonios del Eden*\(^{1443}\). However, the Office of the Special Rapporteur finds it worrying that the case continues without major progress. For example, April 11, 2020 marked one year since the arrest warrant was issued against Moreno, Marín, Nacif, and Hugo Adolfo Karam, former director of the then Judicial Police of the state of Puebla. However, Marín, Nacif, and Karam are at large\(^{1444}\). On December 3, new arrest warrants were issued against Nacif, Marín and Karam by the Judge of the First Unitary Court. The decision comes after the April 2019 orders were canceled in November of that same year after the Third Collegiate Circuit Court in Cancun confirmed an *amparo* granted by the Second Unit Court. With these orders, the country’s Attorney General’s Office would be in charge of executing the arrests\(^{1445}\). On March 22, the Financial Intelligence Unit of the Ministry of Finance and Public Credit froze the accounts of Marín, Karam, and Nacif, as well as their companies and relatives\(^{1446}\). However, in September two federal judges based in Puebla unfrozen the accounts of former governor Marín and businessman Naci\(^{1447}\). Likewise, the Office of the Special Rapporteur received with concern information that on June 15 the judicial police of the state of Puebla, María Irene Arteaga Rangel, who was implicated in the torture of Cacho, was released from prison. According to the available information, Arteaga Rangel had been detained since November 2019, but the Judge of the First Unitary Court of the Twenty-Seventh Circuit in Cancun, Quintana Roo, favorably resolved the appeal filed against the formal prison order issued by the Judge Second District of the State of Quintana Roo. According to the Judge, "the police cannot be criminally responsible for the crime of torture since they 'only' testified to said acts committed by third parties but did not directly commit them"\(^{1448}\).

930. Heriberto Picos Barraza, alias 'El Koala', was sentenced to 14 years and eight months in prison on February 27 by a federal court in Culiacán, Sinaloa, after admitting to being one of those responsible for the murder of journalist Javier Valdez that occurred on May 15, 2017\(^{1449}\). Picos Barraza had been captured as a suspect in the murder of Valdez on April 23, 2018 in Tijuana and later transferred to Culiacán\(^{1450}\). The Special Prosecutor's Office for Crimes committed against Freedom of Expression (Feadle) had requested a minimum sentence of 22 years for Picos Barraza, but this was reduced by a third because he had accepted his participation during an abbreviated procedure of the trial\(^{1451}\). Although Juan Francisco Picos Barrueta, alias 'el Quillo', is in pre-trial detention accused of being the main perpetrator of the journalist's murder, his trial has not been carried out due to the pause of activities of the Federal Judicial Power as a health measure due to of the COVID-19 virus\(^{1452}\). Because the conviction of Picos Barraza was carried out in an abbreviated trial, he was not obligated to give more information about the crime that could help find with the intellectual authors or help in the trial against Picos Barrueta\(^{1453}\).

931. On July 16, a Yucatán judge convicted one of the police officers accused of committing abuse of authority as well as of having provided false information against journalist Ricardo Neftalí Cárdenas Palomo,
also known as Félix Bigman. On October 26, the journalist was detained by José ‘N’ and other policemen for allegedly entering a public building without permission. However, José ‘N’ wrote false information in the report. That day, the journalist was distributing courtesy copies of the media Tu espacio del sureste Kanabin, where a report on alleged nepotism in the local government was published.1454

The Officce of the Special Rapporteur received with satisfaction information about the conviction against Juan Carlos Moreno Ochoa, alias ‘El Larry’, to 50 years in prison as he was considered a material co-author of the murder of journalist Miroslava Breach that occurred on March 23, 2017 in the state of Chihuahua. In the sentence of a federal court in Chihuahua of August 21, federal judge Néstor Pedraza Sotelo considered that Breach was murdered because of her work as a journalist, specifically her investigations into the activities of the criminal group Los Salazar, linked to the Sinaloa Cartel. The ruling also determined an intellectual author who is reportedly a drug trafficking leader with political ties1455. On March 18, the court had already determined that Moreno Ocho was criminally responsible for the journalist’s murder. According to the information available, the judge determined that Moreno Ochoa “is fully responsible for the crime of qualified homicide, with premeditation, treachery, advantage, having left intimidating messages, and to the detriment of a journalist for her freedom of expression”1456. However, the individual hearing for sentencing was rescheduled at least six times1457. The Office of the Special Rapporteur finds it worrying that despite the fact that Moreno Ochoa was detained in December 2017, the order to open the case was made in December 2018, and the first oral judicial hearing was postponed several times due to amparo appeals filed by the defense1458. The hearings were resumed in October 2019, but due to a further postponement the trial did not begin until February 17, 20201459. Despite the conviction, the Office of the Special Rapporteur also finds it worrying that other co-authors have not been tried, as well as the intellectual authors of the crime. Thus, for example, and according to available information, the judge determined that Moreno Ochoa would have received help from at least two other people: Jaciel Vega Villa, who is a fugitive, and Ramón Andrés Zavala Corral, who would have fired the eight shots that fatally wounded the journalist1460. Zavala Corral was found dead in December 20171461. Likewise, one of the alleged intellectual authors was mentioned during the trial against Moreno Ochoa1462. The Office of the Special Rapporteur also received information about the arrest of another person for his alleged participation in assisting the intellectual author and material authors in the Breach crime. According to available information, the Office of the Attorney General of the Republic through the Office of the Special Prosecutor for Human Rights (FEMDH) arrested Hugo Amed “S” on December 17, 2020. The extraditions for that crime were rescheduled at least six times1463. Some media have identified the person as Hugo Schultz Alcaraz, former mayor of the Chínipas municipality, Chihuahua state. The crime was reportedly planned after the journalist published the report “Organized Crime Is Imposed on Candidates for Mayor’s Office in Chihuahua” that would report cases of candidates from the PRI and PAN parties allegedly supported by criminal groups. The article highlighted the case of the municipality of Chínipas, where the candidate was a nephew of the leader of Los Salazar.1464
933. The Attorney General of the State of Tabasco announced the arrest on December 8 of the chief of the ministerial police Uriel ‘N’ for his alleged responsibility in an act of extortion in the municipality of Huimanguillo. The individual would be implicated in the murder of journalist Norma Sarabia Garduza, which also occurred in Huimanguillo in June 2019. Uriel ‘N’ could be the intellectual author of the crime against the journalist who was investigating extortion in which the aforementioned individual was reportedly implicated. The journalist, a correspondent for the local newspaper Tabasco Hoy, was outside her home when hooded individuals aboard a motorcycle shot her repeatedly and fled the scene.

### B. Murders

934. The Office of the Special Rapporteur continues to record with concern the murder and disappearances of journalists and communicators when carrying out their work in the country. So far in 2020 at least eight journalists have been killed for exercising their journalistic work. Fidel Ávila Gómez, an announcer and radio manager in the state of Michoacán, was found dead along a highway near Guerrero state on January 7. Ávila Gómez, 46, was last seen on November 29, 2019 in Huatamo, Michoacán state, but was reported missing on December 2 of that same year. On April 8, a "cephalic limb" was found that was identified as corresponding to the journalist Víctor Fernando Álvarez Chávez and who had been reported missing on April 2 in the state of Guerrero. According to the information received, organized crime of the port of Acapulco had threatened Álvarez Chávez days before his disappearance. Jorge Miguel Armenta Ávalos, CEO of the Medios Obson corporation, was killed in an armed attack in Ciudad Obregón, in the state of Sonora on May 16. Armenta Ávalos was under the Federal Protection Mechanism for Human Rights Defenders and Journalists. One of the policemen protecting him was killed in the attack and another was seriously injured.

935. On March 30, journalist María Elena Ferral was shot and killed in Papantla, Veracruz state. According to the available information, Ferral, who was a correspondent for the Diario de Xalapa and director of the newspaper Quinto Poder, was attacked by unknown persons as the journalist went to her vehicle in the center of the municipality of Papantla. The journalist herself died hours after being operated on, in a hospital in the region due to injuries caused by the attack. Different organizations have denounced that Ferral had reported on several occasions death threats against her, which is why she filed a complaint in 2015, on that occasion the journalist would have mentioned that the threats would come from a politician in her area who always appeared escorted by armed men. Likewise, in 2016 the journalist alleged direct death threats during a meeting with the same political leader in a restaurant. The Mexican State reported that in 2018 the Protection Mechanism contacted Ferral to invite her to join it, but the journalist had not submitted the petition to the mechanism requires to assign protection measures to her. Both the Prosecutor’s Office and the governor of Veracruz, Cuitláhuac García, reported that an investigation folder on the murder was opened to find those responsible for the fact as soon as possible. They also indicated that the State Government will provide all the attention to the Ferral family. Likewise, the State of Veracruz reported that it currently provides protection measures for the journalist’s son and daughter.

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The Office of the Special Rapporteur learned that on May 24, Ferral’s daughter, Fernanda de Luna Ferral, who is also a journalist and current director of Quinto Poder, was attacked by unidentified armed individuals in the town of Gutiérrez Zamora, Veracruz state. Since the murder of her mother, De Luna Ferral is part of a federal protection program, coordinated by the Protection Mechanism for Human Rights Defenders and Journalists, which depends on the Ministry of the Interior. According to the journalist, the State Commission for Attention to Victims of Veracruz had also assigned her police protection. The journalist’s security repelled the attack.1472

The Office of the Special Rapporteur also registered with concern the murder of journalist Pablo Morrugares Parraguirre, who was a beneficiary of the Mechanism for Human Rights Defenders and Journalists of the Ministry of the Interior in the state of Guerrero. The journalist’s escort, who had been provided by this mechanism, also died in the attack. According to the information received, in the early hours of Sunday, August 2, Morrugares was in a restaurant in the city of Iguala accompanied by an officer attached to the Secretary of Public Security of the state of Guerrero who was acting as his security escort, when a group of armed men suddenly broke into the scene and shot both of them. In the previous hours, around midnight, the journalist had made a transmission on his Facebook page called “PM Noticias”, in which he assured that the criminal group ‘Los Tlacos’, linked to the trafficking and sale of retail drugs, reportedly had “control” over the mayor of Huitzuco, José Luis Ávila López, “subjected”, as well as taxi drivers and municipal police.1473 Also, journalist Anabel Hernández reported that Morrugares was a “key witness” in the case of the 43 disappeared students from Ayotzinapa because he was reporting on the day of the disappearance of these students in 2014. Precisely because of the coverage of that case, Morrugares would have received threats, which is why they had entered the Protection Mechanism in 2015.1474 The journalist had already suffered an attack in 2016 from which he escaped unharmed. Among the precautionary measures that were granted was that of having a security guard. He was also relocated to several cities, but the journalist reportedly told the mechanism that he wanted to return to Iguala.1476 The Guerrero State Attorney General’s Office reported that it is investigating the murder of the journalist as well as the policeman who accompanied him, identified as Roberto Hernández. It also indicated that 55 R-15 rifle cartridges were recovered at the scene of the attack.1477 Subsequently, the Attorney General of the State of Guerrero announced the capture of eight people allegedly linked to the Morrugares murder. According to the authorities, at the place of capture, they found parts of a car that was allegedly used in the crime and that the individuals captured reportedly wanted to destroy.1478

The Protection Mechanism for Human Rights Defenders and Journalists of the Ministry of the Interior informed the Office of the Special Rapporteur that it published a press release on August 2, 2020, condemning the murder of Pablo Morrugares Parraguirre and his bodyguard, and urged the authorities and the Guerrero State Prosecutor’s Office for the prompt clarification of the case, as well as care and comprehensive support

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to their family members. The State also reported that the Protection Mechanism maintains communication with the next of kin and will provide the corresponding support to the victims. 1479

939. Morrugares is the second journalist to benefit from the protection mechanism who was murdered in 2020. The first was Jorge Miguel Armenta Ávalos assassinated in the state of Sonora on May 16. The Office of the Special Rapporteur has recommended that the Mexican State continue to strengthen the Protection Mechanism for Human Rights Defenders and Journalists and ensure the effective application of its decisions and measures. It has also recommended providing the Special Prosecutor’s Office for Attention to Crimes against Freedom of Expression (FEADLE) with more resources due to the magnitude of the problem of violence they face and that this prosecutor’s office exercise with determination its power to investigate serious crimes against the press.

940. After the Morrugares murder, at least four other journalists have expressed fear for their life and the need to flee from Iguala. However, they would not have been able to leave the city because the Mechanism for the Protection of Human Rights Defenders and Journalists did not provide them with the assurance and that they and their families would receive the care they require. 1480

941. The Office of the Special Rapporteur received with concern information about the murder of journalist Julio Valdivia Rodríguez, 44, in the state of Veracruz. According to available information, on September 9, his beheaded body was found in a remote area of the municipality of Tezonapa, between the communities of Motzorongo and Paraíso, near the railroad tracks. The journalist covered news related to crimes and violence for the newspaper El Mundo de Córdoba and the day before the communicator had told a colleague that he would leave directly from his home to report on a news item in Tezonapa but did not give any further details. 1481. The State Commission for the Attention and Protection of Journalists (CEAPP) said in a statement that the communicator had not previously reported any assault or threat to his life or integrity, and that therefore he did not have special protection measures. 1482. The State Attorney General’s Office announced that it opened an investigation file that “will begin by addressing the protocols related to his journalistic work as one of the possible lines to follow.” 1483. According to available information, the experts of the Prosecutor’s Office have ruled out an accident with the railroad and considered that someone tried to accommodate the body to make it look like an accident. Some colleagues have indicated that the journalist did receive threats because he was covering a very dangerous area in the border area between Veracruz and Oaxaca. 1484

942. Arturo Alba Medina, presenter of the newscast ‘Telediario’ on Multimedios Televisión and spokesman for the Technological Institute in Ciudad Juárez, was murdered on the night of October 29 in Ciudad Juárez, Chihuahua state, while driving his vehicle when leaving the studio. The journalist received at least 11 bullet wounds. According to available information, the 49-year-old journalist was finishing his shift in which he reported on alleged cases of corruption and crime within the Police, 1485 including the murder of a minor, allegedly by members of the public force. 1486. The Office of the Attorney General of the State of Chihuahua reported that “elements of the Zona Norte Special Unit for the Investigation of Crimes Against Life are working in coordination with the Office of the Special Prosecutor for Human Rights through the Unit for the Protection of Journalists and Human Rights Defenders, to clarify this event” and that no line of investigation will be ruled out. They also pointed out that at least two people had participated in the crime. 1487. The

On November 6, the Sonora State Attorney General’s Office reported that it apprehended Francisco Bernardo “N.”, ‘El Foca’, as responsible for the murder; ‘El Foca’ opted for an abbreviated trial and received 25 years in prison, however, the motive for the murder was not addressed.

On November 4, relatives of journalist Víctor Manuel Jiménez Campos filed a complaint with the Prosecutor’s Office for the disappearance of the communicator who was last seen on November 1 in the municipality of Celaya, Guanajuato state. Jiménez Campos is the creator of the Digital Guanajuato pages. According to the available information, until November 11, the Prosecutor’s Office had not made the file public for his search and location.

On November 9, journalist Israel Vázquez Rangel, a reporter for El Salmantino, was attacked with gunshots in the municipality of Salamanca, Guanajuato state, while he was doing journalistic coverage. The journalist had arrived at the scene to carry out the coverage, after he had been notified of the discovery of human remains, when he was attacked by armed people who fled the scene. Although he was transferred to a hospital, he died hours later as a result of his wounds. According to the organization Article 19, the portal has faced information blocking and smear campaigns during several municipal administrations, apparently due to its coverage of political and security issues. Salamanca is an industrial corridor that would be a space for dispute between drug cartels. Some of Vázquez Rangel’s latest publications were about the apparent discovery of bodies in plastic bags in various parts of the city, apparently carried out by organized crime groups. He had also posted a video about executions in the city.

Journalists and correspondents from Guanajuato symbolically closed the facilities of the State Attorney General’s Office (FGE) and the Government Palace in the form of protest over the murder of Israel.

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Vázquez. They also demand to find alive journalist Víctor Manuel Jiménez Campos, who had disappeared since November 1. El Universal. November 11, 2020. Periodistas clausuran Fiscalía de Guanajuato por asesinato de reportero; POPLabMx. Facebook account. November 11, 2020. #JusticiaParIsrael #NoQueremosInformarConMiedo prensa de Guanajuato exige que nos escuchen; el fiscal Carlos Zamarrón.

947. For the Office of the Special Rapporteur, the levels of lethal violence against journalists in the country are extremely worrying, where in a period of 10 days three murders were registered in different states. This Office reiterates the call to the Mexican State to strengthen protection mechanisms as well as to implement all the measures within its reach to combat impunity. These homicides appear in a particularly worrying context due to the recent elimination of 109 public trusts in Mexico, including the Fund for the Protection of Human Rights Defenders and Journalists, which administered resources for the implementation and operation of “preventive measures, protection measures, and urgent protection measures”. As the Office of the Special Rapporteur has stated, this measure adopted by the Mexican Congress diminishes the institutional capacity to protect journalists threatened for doing their work.

948. On December 9, Jaime Daniel Castaño Zacarías, director of the digital portal Prensa Libre, was murdered in Jerez, Zacatecas state. According to available information, at approximately 10 in the morning, the journalist was shot after taking photographs of two bodies abandoned on public roads. Castaño also worked in the department of Social Communication of the presidency of Jerez. On the day of the crime, Castaño left an event at City Hall after which he allegedly found the two bodies that he proceeded to photograph. As reported, two unknown individuals would have rebuked Castaño for having taken the images. The journalist allegedly refused to hand over his photographs, got on his motorcycle and left the crime scene. However, he was hit by the attackers who shot and killed him. The unknown individuals would have removed the memory from the camera. As of December 10, neither the Zacatecas Attorney General’s Office nor the state’s Secretary of Public Security had made a statement on the case. The city would have become a disputed territory between the Sinaloa and Jalisco Nueva Generación drug cartels. On the day of the murder and the days before, there were several shootings.

949. This Office also registered the murder of other communicators where, in principle, it is not clear from the available information that the mobile is linked to journalistical work, although the lines of investigation remain open and a relationship with their profession could be determined. As the Office of the Rapporteur has repeatedly maintained, the authorities should not rule out the exercise of journalism as a motive for the murder and/or assault before the investigation is completed. Thus, for example, on June 10, the body of journalist Alma Angélica Aguilar was found in a motel in Ciudad Obregón. According to the information, the body of the journalist, who worked for the culture section of the Diario de Yaque was found in one of the rooms accompanied by that of a man. According to the Attorney General’s Office of the State of Sonora, the two people died from carbon monoxide poisoning. The following day, the murder of journalist José Luis Castillo Osuna, owner of the digital portal Prioridad Máxima, was reported. The journalist’s body was found outside his home with stab wounds and several blows. The Office of the Special Rapporteur also learned of the death of journalist Juan Nelcio Espinoza Menera, who was in police custody in Piedras Negras, Coahuila.

1500 El Universal. November 11, 2020. Periodistas clausuran Fiscalía de Guanajuato por asesinato de reportero; POPLabMx. Facebook account. November 11, 2020. #JusticiaParIsrael #NoQueremosInformarConMiedo prensa de Guanajuato exigen que nos escuchen; el fiscal Carlos Zamarrón.


state, on August 21. According to available information, the journalist, who published on his Facebook page called Valedor TV, was circulating through the streets of the city together with his colleague Néstor Guerra to cover the violent events between the night of Thursday 20 and the early hours of 21 of August. On that journey, the communicators were allegedly detained. While in police custody, Espinoza Menera died in circumstances that are not clear. According to a government statement, the police had set up several checkpoints in the cities after being shot at. At one of those checkpoints, they would have stopped the vehicle in which the communicators were travelling, who allegedly were in a state of drunkenness and who allegedly had verbally and physically assaulted the policemen at the scene. For this reason, they were reportedly detained to be transferred to the Prosecutor's Office. Along the way, Espinoza Menera reportedly had trouble breathing, so he was taken to a local hospital where the doctors reported that he had arrived at the scene without vital signs. However, the journalist’s family denies this version and demands a thorough investigation for what they consider to be a murder by excessive use of force. According to them, the journalist was arrested after covering a confrontation between police and criminals, a coverage that was recorded in a video broadcasted live through his media. The family added that the journalist’s body allegedly bore marks of torture, information that was not given in the official version. The other reporter who was also detained was later released. The National Human Rights Commission announced that it would appeal the case of the journalist’s death.

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

For example, on January 9, members of the Municipal Police of Chimalhuacán physically attacked journalists David Deolarte Salto of the newspaper La Prensa and Leonardo Sánchez Madrid of the newspaper Metro, the latter was also arbitrarily detained at the Municipal Command of Chimalhuacán, Mexico state. On January 20, journalists Misael Torres, a Minuto por Minuto reporter; Iván Cortés, reporter for Central Informativa; and Ángel Calderón, a Mini Noticias reporter, were physically attacked by members of the Michoacán State Police. Cortés and Calderón were arbitrarily detained at the Municipal Command of Uruapan, Michoacán. The work equipment that had been confiscated during the detention were returned, except for Misael Torres’ camera and cell phone. During the coverage of a social mobilization on January 27, municipal police from Tapachula Chiapas arbitrarily attacked and detained Cinthia Alvarado, correspondent for the digital medium Portal Revolución. Alvarado had previously reported threats against her from public officials to the Chiapas Prosecutor's Office for Journalists. In that same event, Damián Sánchez, an independent reporter, and Alejandro Gómez, a reporter for the digital medium Diario del Sur, were also physically attacked.

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1507 La Jornada. August 23, 2020. **ONU-DH lamenta muerte del periodista Juan Nelcio Espinoza.**

1508 Aristegui Noticias. August 21, 2020. **Muere reportero luego de ser detenido en retén de la policía de Piedras Negras.**


1510 Aristegui Noticias. August 20, 2020. **Muere reportero luego de ser detenido en retén de la policía de Piedras Negras.**


1512 These assaults included blocking or alteration of information (27.8%); intimidation and harassment (22.2%); deprivation of liberty (19.4%); illegitimate use of public power (16.7%), and physical attacks (13.9%). See Artículo 19. July 9, 2020. **Informe especial C.O.V.I.D: Libertad de expresión e información durante pandemia de COVID-19 en México y CA.** P. 91.


953. This Office also received information about alleged harassment of the newspaper *El Diario de Juárez* by the governor of Chihuahua Javier Corral, through different actions ranging from threats of lawsuits to not answering their questions at press conferences. On January 9, the governor threatened to sue the newspaper after it published a series of articles in which it gave an account of real estate operations in Ciudad Juárez in which Corral allegedly acquired a property for its use without complying with legal requirements. Through lawyers based in El Paso and San Antonio (Texas, United States), the governor requested that the newspaper publish a note "to correct, clarify, or retract the information published or to comply with an eventual lawsuit for libel and defamation".1517 The text would establish that "if the newspaper does not comply with this request, my client is prepared to exercise his litigation rights, which could include –but will not be limited– to a lawsuit for slander and defamation." Likewise, on at least two occasions - on February 17 and 24- the governor has refused to answer questions from Lucy Sosa, a journalist for said medium. Sosa filed a discrimination complaint with the Chihuahua State Human Rights Commission.1518 Subsequently, the general director of *El Diario de Juárez*, Osvaldo Rodríguez Borunda, filed a lawsuit against the governor for alleged threats and acts of harassment, discrimination, and attacks on freedom of the press and the right to information before the Office of Parties of the District Courts of Ciudad Juárez.1519

954. Death threats to journalists, columnists, or other press workers continue to be a recurring practice in Mexico. On January 4, the general director of *Diario Alternativo*, Julián Chepe, received death threats via telephone from alleged members of the Jalisco Nueva Generación Cartel in Marquelia, Guerrero. Since 2017, 14 attacks against members of this medium have been documented. The media was incorporated into the Protection Mechanism for Human Rights Defenders and Journalists. However, according to available information, Chepe has not received the necessary protection1520. The journalist, writer, and columnist Héctor de Mauleón received a threat on January 16 after writing a column about the singer Joan Sebastián.1521 Ezequiel Flores, a correspondent for *Proceso* in the state of Guerrero, received a threat and was the victim of a smear campaign on March 28. This would have been retaliation for his coverage of the armed confrontations that had occurred in Chichihualco, head of the municipality of Leonardo Bravo, in Guerrero.1522 The journalist said that he had contacted the Protection Mechanism for Human Rights Defenders and Journalists to receive protection measures.1523 During the coverage of a land conflict in the Agrarian Court of Oaxaca, members of 12 media outlets were threatened with sharp objects and beaten with tubes and belts. Two of them were forced to delete their recordings in which an attack on two older adults by the demonstrators was allegedly seen.1524

955. Likewise, on March 11, Alina Navarrete Fernández, a contributor to the medium *Réplica*, Guerrero’s digital newspaper, was the subject of a smear campaign and threats by academics from the Autonomous University of Guerrero, Guerrero state. The events were caused by the journalist’s coverage of a feminist protest that took place at the Philosophy Faculty of the aforementioned university on March 4. In this event, students and former students reported alleged cases of sexual assault by students and teachers who were identified. A group of academics published through Facebook six letters addressed to the journalist and the medium in which, in addition to defending the accused, they demanded that they offer a public apology as well as give the names of the complainants and pointed out that they could start legal proceedings.1525

956. The Office of the Special Rapporteur received worrying information about death threats with firearms and attacks by members of the Civil Force against journalists and protesters on February 11 in the municipality of Isla, Veracruz state. According to the information received, residents of the place were

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1519 Informador. March 5, 2020. *Demandan a Javier Corral por ataques a la libertad de prensa*.


1525 Artículo 19. March 12, 2020. *Integrantes de la Universidad Autónoma de Guerrero amenazan e inician campaña de desprestigio en contra de periodista que cubrió una protesta feminista*.
protesting in front of the Federal Police facilities motivated by complaints of alleged police abuses, including rape. The protesters would have thrown sticks and stones at the facilities, but when the situation had calmed down and they spoke with the authorities, a Civil Force patrol would have arrived behind the protesters and opened fire on them and journalists who were reporting in the place. Journalists Julia Santín, Brígido López and Edna López received death threats with firearms. Reporter Alberto Carmona was beaten by members of the Civil Force and journalists Sergio Herrera and César Estrada were illegally deprived of their liberty. Twelve people were detained, and two policemen and five journalists were injured.1526

957. Adrián Fernández Guerra, businessman and CEO of Revista Perfil in the state of Morelos, was rescued in an operation conducted by state and federal authorities on February 20 after being kidnapped by armed men the day before. Fernández Guerra was kidnapped from the Mexico Lindo bar around 8:30 p.m. on February 19 while celebrating his birthday.1527

958. Cristian Pérez Ojeda, director of the newspaper Sin Censura Noticias, was detained, physically attacked, and threatened with death by unknown individuals in San José del Cabo, Baja California Sur, on February 29. According to available information, the journalist noticed that he was followed by hooded men, who forced him to get into a truck, took to a desolate place where he was interrogated and beaten, while he was threatened with a knife. The unknown persons allegedly demanded to know the editorial line of the media, asked him from whom he received money to speak ill of the local administration, and informed him that his family was being watched. The journalist would have managed to escape when the strangers where inattentive. Previously, on January 7, Pérez Ojeda reportedly received a threat through his cell phone.1528

959. The newspaper Reforma released an audio of a call made on May 13 in which a man, who claims to be from an organized crime group, threatened to “blow up” the newsroom of this group if they did not stop criticizing the president of the country Andrés Manuel López Obrador.1529

960. On May 27, unknown individuals set Marco Antonio Duarte Vargas’s car on fire at his home in Ciudad Obregón, Sonora state. Duarte is the founder and director of the Ciudad Obregón Sin Censura news portal. The attack left no casualties.1530

961. Two days after the murder of journalist Pablo Morrugares, armed men shot at the front of the newspaper Diario de Iguala, in the state of Guerrero, on August 4. At the time of the attack, there were no workers on site. In a statement, the newspaper reported that in 32 years of work they had never suffered an attack and that due to the economic situation it has had the need to print other newspapers. As a protection measure, the Diario de Iguala and El Diario de la Tarde, which is also printed in that building, stopped transcribing messages between groups and only published video or photographs of the acts of violence. El Diario de la Tarde also stopped publishing its printed edition as a measure to protect its spokespersons. According to the information, in the last five years five spokesmen have been assassinated in retaliation for something published by the media.1532

962. The Office of the Special Rapporteur received with concern information about a collective threat against journalists in the city of Iguela, Guerrero state, allegedly by drug traffickers. According to available information, a group of communicators sent a letter to the president, Andrés Manuel López Obrador, and to the governor of that state, Héctor Astudillo Flores, in which they demand guarantees to carry out their work. Communicators reported that on the night of October 5, several journalists received calls through the

WhatsApp application from people who had identified themselves as members of a criminal group. The calls would have been made hours after several journalists had covered a protest at the Regional Prosecutor's Office. The journalists' complaint also indicates that these people had told them that a member of the union would be assassinated, as happened with Pablo Morrugares, whose crime took place on August 2. They would also have sent them photographs to indicate that they had already been "located." They said, out of fear after the threat, journalists from the city stopped covering a 'March for peace' that had been organized by citizens and transporters for October 7.1533 According to available information, violence in the state would have increased due to the division of the criminal group known as Guerrerros Unidos when one of its leaders was assassinated. The sides would be upset with the reporters for publishing information about the violence between them.1534

963. A group of reporters from Guerrero protested in Chilpancingo, the state capital, to demand the safety of the approximately 150 journalists who work in Iguala. On October 14, authorities and representatives of the Federal Protection Mechanism for Defenders and Journalists met to define actions such as reinforcing security in the area, as well as locating journalists who are under the Protection Mechanism. They also agreed to meet with the authorities to "establish a joint route of intervention not only with individual cases but for the entire union," and offer a protection course.1535

964. The Office of the Special Rapporteur received information on alleged cases of workplace harassment within the public media Agencia de Noticias del Estado Mexicano (Notimex). The directors of the media have also been accused of leading smear campaigns against workers and former workers through social networks. One of the reported cases warns of a journalist who was temporarily detained, and her cell phone was illegally confiscated. According to the available information, on February 21 the Notimex Single Union of Workers began a strike for lack of agreements with the director Sanjuana Martínez and violation of the Collective Bargaining Agreement. According to their demands, in 11 months there had been at least 241 dismissals that would lead the media to face 85 labor lawsuits. In its response, the entity reportedly said that "a small group of former employees of the Mexican State News Agency (Notimex) tried to start a strike without any success".1536 On May 12, the Federal Board of Conciliation and Arbitration (JFCA) ordered Notimex to suspend work and considered that the agency "violated the right to strike" by maintaining its activities even after the strike was declared legal on March 4 by the labor authorities. The JFCA determined if they did not stop work, the agency could receive a fine greater than 400 thousand Mexican pesos.1537 That same day, Aristegui Noticias, Signa_Lab of the Instituto Tecnológico y de Estudios Superiores de Occidente (ITESO), and the organization Article 19 published an investigation that would account for an alleged series of attacks on social networks through false accounts that would be coordinated by the directive of the agency against various journalists and critics of Notimex. The information would have been offered by former employees of the agency and two employees of Notimex at that time. A complaint rejected by agency directives1538. Later, more complaints of this type would have been filed.1539 Notimex announced that as of June 9 it would suspend activities after being so agreed by the Governing Board in compliance with a requirement of the labor authority for the strike of its workers that began last February. The creation of a Technical Committee was also announced to establish a dialogue table with the union that started the strike1540. On August 21, six months after the strike began, workers belonging to the Single Union of Notimex Workers (SutNotimex) symbolically closed the alternate headquarters of the agency where some officials

would be working despite the strike and despite having announced the cease of operations. They demanded a dialogue with the directives who reportedly walked away from the dialogue table. On October 6, a video of Notimex workers allegedly forced to work by the directives despite the strike at the agency’s alternate headquarters circulated on social networks. They also reported that journalists do not have biosafety measures such as social distancing established by the Ministry of Health. Notimex managers reportedly retaliated against some workers who they reportedly dismissed. On October 9, journalist Ingrid Sánchez was summoned by agency officials, including Sanjuana Martínez, to a meeting. The journalist was asked to leave her cell phone outside the office and once inside she was accused of being the one who recorded the images of the journalists working despite the strike. For more than an hour they did not let her leave the place and when she was about to leave, her cell phone was not where she had left it. Given the refusal of Agustín Lozano, editorial director of the medium, to return it, a colleague called 911. The Police reportedly demanded to return the cellphone, or they would be charged with the crime of robbery. The directives would have wanted to force the journalist to sign an administrative act with a minimum penalty of "working 6 days without pay." Sánchez would have refused to sign it and moments later all the people were forced to vacate the facilities. Subsequently, on October 12 and 13, through the Twitter accounts of the executive director and the director of the Independent Union of Notimex Workers, Luis Monroy, a smear campaign began against the journalist Ingrid Sánchez.

On the night of November 14, the photojournalist Carlos Zarañá, of the Noroeste newspaper, was kidnapped in the city of Mazatlán, Sinaloa state. The journalist was taken from his house by two heavily armed men, who also took two other people. On Sunday, November 15, a group of journalists protested demanding his release. On the same night of Sunday, November 15, and in an apparent response to pressure, the photojournalist was released. Along with him, one of the kidnapped people was released, while the Prosecutor’s Office continued in search of the third person.

D. Arbitrary detentions

On February 11, Jorge Contreras Sánchez, a reporter for the newspaper Continuamos.MX, was the victim of arbitrary detention by municipal police from Cuautitlán Ixcalli, State of Mexico. The journalist was documenting an alleged extortion by the police to the driver of a trailer. According to the information received, they first accused him of "usurpation of functions", but when he was brought before a judge, the police accused him of "disturbing order" by carrying out his journalistic work. They told the judge that although he did not affect the work of the police, "he was gossiping." The judge released him with a "verbal reprimand."

E. Stigmatizing statements

The Office of the Special Rapporteur learned of a series of stigmatizing statements on the part of President Andrés Manuel López Obrador as well as other public officials against the media and civil society organizations that had published critical information or had shown themselves against the mega project led by the President known as the Maya Train.
Thus, for example, in his morning press conference on April 2, the president would have criticized a tweet by columnist Denise Dresser and compared her to a scavenger animal, for reportedly demanding from the Undersecretary of Health to know the reality and magnitude of the pandemic. Just after President Andrés Manuel López Obrador declared that the country had entered phase 3 of the pandemic, in his April 22 conference the president would have dedicated at least 20 minutes of it to criticize the press that had been critical of the management of the pandemic. A similar situation would have occurred at the July 24 conference when journalist Carlos Loret de Mora was criticized for about 20 minutes. During the conference, two columns by the journalist were almost entirely read and videos of interviews made by the reporter in the past were presented.

On August 28, in a morning press conference, the spokesman for the Presidency, Jesús Ramírez Cuevas, accused a media outlet and eight civil society organizations of receiving funding from foreign foundations for the purpose of criticizing and opposing the Maya Train project. This project, which is presented as the great work of President Andrés Manuel López Obrador, seeks to connect the main archaeological centers of Mayan culture in the southeastern states of the country. The project announced in November 2018 would cost between US$6,000 millions and US$8,000 millions. The Office of the United Nations High Commissioner for Human Rights in Mexico has indicated that the indigenous consultation process for the project has not complied with international human rights standards. According to Animal Político, the media mentioned in the morning conference, Ramírez Cuevas called the Ford, Kellogg, NED, Rockefeller, and Climate Works Foundations “Benefactors and Opponents”. Of Animal Político, the spokesman for the Presidency reportedly said that they had received US$213,751 from the Kellogg Foundation and US$490,000 from the Ford Foundation as part of the opposition to the Mayan Train. With documents published on its site, Animal Político denied this claim and added the Agreement made with the Kellogg Foundation aimed at a project carried out between October 2017 and November 2018, “before the administration” of the current president began. According to them, that money was used to create content in a section called Mexico Desigual and to make visible the problem of racism and inequality in the country. Likewise, Animal Político said that the resources of the Ford Foundation correspond to the years 2016-2020. The agreement with that foundation established workshops and training for journalists in different states of the country, some of this was carried out in 2017. They also pointed out that with that money they made a Journalistic Methodology and Investigation Manual disseminated among journalists and students. They stated that they are currently receiving a grant to investigate issues of impunity, corruption, and continue research work on inequality and climate change. According to Animal Político, the Presidency spokesman said that this information was based on a private investigation that the administration took as a starting point to carry out its own investigation. However, the outlet assured that they had never been consulted.

Information on the financing of the media and organizations would have begun to circulate in a regional newspaper and later in one with national coverage. However, civil society organizations have indicated that the data on this money is public information because it is declared before the country’s tax authorities.

1571 The organizations and the media outlet involved are: Consejo Regional Indígena y Popular de Xpujil (CRIPX), Diálogo y Movimiento (DIMO), Indignación, Promoción y Defensa de los Derechos Humanos, Consejo Civil Mexicano para la Silvicultura Sostenible (CCMSS), Centro Mexicano de Derecho Ambiental (CEMDA), Mexicanos Contra la Corrupción y la Impunidad (MCCI), México Evalúa, Fundación para el Debido Proceso (DPLF) and the outlet Animal Político.
1572 Animal Político. August 28, 2020. Gobierno de AMLO acusa a Animal Político y a OSC de recibir recursos para atacar el Tren Maya. Archive of the Office of the Special Rapporteur for Freedom of Expression. COMUNICACIÓN URGENTE SOBRE RECENTES ATAQUES A ORGANIZACIONES DE SOCIEDAD CIVIL EN MÉXICO. E-mail sent to the Special Rapporteur on September 11, 2020; Archive of the Office of the Special Rapporteur for Freedom of Expression. El Estado mexicano estigmatiza y criminaliza la labor de personas defensoras de derechos humanos y periodistas. E-mail sent to the Special Rapporteur on September 17, 2020
1574 UN. Office of the High Commissioner for Human Rights Mexico. December 19, 2019. ONU-DH: el proceso de consulta indígena sobre el Tren Maya no ha cumplido con todos los estándares internacionales de derechos humanos en la materia.
The Office of the Special Rapporteur received information on the use that President López Obrador would make of some of his morning press conferences to single out media, journalists, and columnists who in his perception would be critical of his administration. On April 22, he allegedly criticized the newspapers *El Universal and Reforma* for publishing only bad news from the government. He also mentioned journalists who allegedly "defend" him. He would also have criticized media such as *Milenio* and journalists such as Carlos Marín, Pascal Beltrán del Río (*Excelsior*), and Ciro Gómez Leyva (*Radio Fórmula*). In August, the former CEO of Petróleos Mexicanos (Pemex), Emilio Loyola Austin, during his statement before the Attorney General’s Office, singled out the journalist Lourdes Mendoza on behaviors that do not have a judicial conclusion. The columnist denied the claim through her social networks, which she described as "absolutely false", and called on Emilio Loyola Austin to provide evidence of his statements. "My columns speak for me, for my daughter, my work, and my dignity. I’m going to defend myself to the last consequences (...)", the journalist asserted. Subsequently, both the president and various public officials and representatives of Congress made stigmatizing remarks against the journalist aimed at discrediting her work, in which she has criticized the authorities. "I don’t know if the bad faith [of Lourdes Mendoza] is natural or well paid"; "your so-called work is increasingly irresponsible and pathetic," "it turns out that those of the old regime gave bags of five thousand dollars to Lourdes Mendoza, alias Lady Channel, to write columns applauding structural reforms. Now we understand" were some of the comments of public representatives on social networks. The stigmatization from the highest-ranking authorities of the State has added to a very violent environment against him, mainly on social networks. On September 2, they allegedly signaled out the journalist Carlos Loret de Mola whom he asked to clarify who finances his program. The journalist had made a parody with a comedian where he criticizes the situation in the country and the López Obrador administration. The journalist also revealed recordings of the president’s brother allegedly receiving illegal campaign contributions for Morena. On September 8, the president showed figures of how much money the *Nexos* and *Letras Libres* magazines and *Editorial Clio* received from official advertising in previous governments. The president pointed out that because they do not receive this publicity, the intellectuals who run the magazines "are angry." The president would not have explained that they were legal contracts. Days later, the president would have criticized the newspaper *Reforma* again, which he would have called "filthy newsletter". The president’s annoyance would be for having published alleged cases of corruption in the state of Tabasco that would benefit his family. Also, on the morning of September 25, the president would have analyzed 148 articles to determine who wrote in a positive, neutral, or negative way. On October 15, during his morning conference, President López Obrador would have used at least 10 minutes of it to present a list of media that he considers "critical" of his administration. According to available information, the president would have shown a count of articles written during the first two years of the previous governments (Felipe Calderón and Enrique Peña Nieto) and his own. Based on that information, he would...
have said that he is "the most attacked president by the media since [Francisco] Madero." He would also have shown a table of publications made by 60 columnists about his government.  

972. On October 22, the organizations Article 19, Regional Office for Mexico and Central America, Reporters Without Borders (RSF) and the Committee to Protect Journalists (CPJ) signed an open letter to President López Obrador asking him to "comply with his commitment not to stigmatize journalistic work". In the letter, the organizations highlighted the level of insecurity in the country to carry out the work and reported that they have documented "cases of media and journalists who, as a result of stigmatizing speeches, suffered death threats, harassment, and intimidation. We are also referring to those cases where different journalists who have questioned you during the morning conferences of your government have immediately been attacked on social networks and even threatened".  

F. Impunity  

973. The Office of the Special Rapporteur has documented with concern the high levels of impunity in crimes against journalists, and the limited progress made by the State in eradicating this problem. Impunity for murders and other attacks against journalists has been documented by government institutions and civil society organizations, and these data suggest that at least 99.6% of these crimes have not yet been clarified. According to figures from Article 19, from the year 2000 to November 3, 2020, 135 journalists have been murdered in the country because of their journalistic work. In the cases there would be 99.13% impunity rate.  

974. In three years of existence, the Special Prosecutor’s Office for Crimes Committed against Freedom of Expression (Feadle) has obtained 18 convictions in crimes against journalists, including those in the cases of Miroslava Breach and Javier Váldez. There would also be 80 people subject to trial and dozens more investigated.  

975. 2020 marks the fifth anniversary of some emblematic crimes such as that of Moisés Sánchez, who was taken from his home and later murdered in January 2015 in the municipality of Medellín de Bravo, Veracruz state. The Feadle investigation "remains without substantial progress". It has also been five years since the so-called "Nalvarte Case", the multi-feminicide of Mile Martín, Yesenia Quiroz, Nadia Vera, and Alejandra Negrete, and of the photojournalist Rubén Espinosa, who had arrived in Mexico City seeking refuge from Veracruz after being threatened. However, "the lines of investigation are far from being exhausted and the motive for the crime remains unknown". It has also been a year since the raid on the home of journalist Lydia Cacho and her subsequent forced displacement. The raid took place three months after the arrest warrants of the former governor of Puebla, Mario Marín; the businessman, Kamel Nacif Borge; the former director of the then Judicial Police of the state of Puebla, Hugo Adolfo Karam Beltrán; for the responsibility in the commission of torture against the journalist. The Feadle investigation "has not yielded conclusive data on the identification of those responsible." Likewise, Feadle "has not considered, despite the express request, that the raid was part of the activities planned by the power organization that caused the torture against Lydia after unveiling the criminal organization responsible for pedophilia and human trafficking".  

976. The country dropped one spot on the 2020 Global Impunity Index from the Committee to Protect Journalists. Various organizations and experts have pointed out that at the federal level the tools that the State would have are not used, such as exercising its authority so that the Attorney General’s Office has jurisdiction and investigates crimes against journalists.  

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1568 Latinus. October 15, 2020. AMLO usa su conferencia para exponer a los medios y columnistas que lo han criticado.  
1569 Reporters Without Borders (RSF). October 22, 2020. RSF, ARTICLE 19 y CPI piden a AMLO cumplir con su compromiso de no estigmatizar el trabajo periodístico.  
1572 Artículo 19, January 2, 2020. Moisés Sánchez, cinco años de IMPUNIDAD.  
1574 Artículo 19, July 21, 2020. A un año del allanamiento al domicilio de Lydia Cacho, se mantienen la impunidad y el desplazamiento forzado.  
975. According to information provided by the National Human Rights Commission, despite the fact that a structural situation of violence is recognized, exacerbated by the level of impunity and self-censorship, "most of the states do not have specialized agencies for the investigation of crimes against journalists and human rights defenders". Likewise, the CNDH highlighted that "the law enforcement bodies do not consider or evaluate the level of risk related to their work, much less the context associated with it, which are fundamental aspects to be able to identify the real causes and material and intellectual authors, which means that the investigations of crimes committed against them are not effective, thus perpetuating the cycle of impunity and the repetition of such crimes".1576

976. The CNDH added that the entity has insisted that "there is nothing more permissive to the repetition of violence against the press than the absence of a strong institutional reaction - and therefore it is important that the authorities at the highest level continue to emphatically repudiate this escalation of violence - and nothing is more encouraging and reassuring for people who exercise violence than impunity for crimes against journalists".1577

G. Internet and freedom of expression

977. The coronavirus pandemic also made clear the existing gap in access to internet. According to available data, there are reportedly 32 million Mexicans who do not have internet access. This has been particularly serious for students who have seen a change in the educational model and who, since they do not have the means to access it, are excluded. In the municipality of Tecomanapa, in Guerrero, students have been forced to return to work in the fields or join the Army because they cannot continue with their studies. In Huamuchapa, also in Guerrero, for example, there are only two internet cafes and not 10 percent of the people have a cell phone1578. In the start of the school year scheduled for August 24, it was determined that millions of students will begin their educational cycle through television. The decision would have been made because television coverage is 94% compared to 70% or 80% on the internet, according to government figures1579. The project is carried out in partnership with four private television stations, and also giving books for free. Precisely with the beginning of this school year, on August 24, a family from Puebla went viral who went to a field of a housing unit to take classes using the free internet1580. The concern is also for traditionally vulnerable populations such as indigenous communities. Thus, for example, a federal representative assured that a program is needed to provide computers and televisions with open channels and the Internet for students from indigenous communities that allow them to continue with their study program. He also made a call to the Ministry of Education so that the "Aprende en casa II" program rethinks a strategy that allows these communities to learn in their languages.1581

H. Protection mechanism

978. The Office of the Special Rapporteur received with concern information on the decision of the Mexican Congress that on October 21 approved the elimination of 109 public trusts in the country that financed different organizations and programs, including the Fund for the Protection of Human Rights Defenders and Journalists, and the Comprehensive Assistance, Attention, and Reparation Fund (FAARI) for Victims1582. The vote took place in the alternate seat of the Senate because protests by the opposition,

1581 Infobae. August 18, 2020. Comunidades indígenas necesitarán acceso a TV e Internet ante nuevo modelo educativo.
activists, and victims had closed the entrance to the Senate building.\textsuperscript{1583} The information available would show that the affected sectors were not heard by the parliamentarians\textsuperscript{1584} and several civil society organizations as well as officials alerted about the disappearance of the fund for the protection of journalists and human rights defenders.\textsuperscript{1585} Trust 10232 for the Protection of Human Rights Defenders and Journalists had the “purpose of allocating economic resources exclusively for the implementation and operation of preventive measures, protection measures, and urgent protection measures dictated by the Protection Mechanism, and other acts established by law, which guarantee the life, integrity, liberty, and security of people who are at risk as a consequence of the defense or promotion of human rights and the exercise of freedom of expression and journalism”.\textsuperscript{1586}

\textsuperscript{979} According to the information received, on April 2, President Andrés Manuel López Obrador signed a decree to eliminate the trusts established by agreements or decrees of the Executive power. This first decree did not seek to eliminate those created by law\textsuperscript{1587}, which would include the protection of journalists and human rights defenders. In a statement dated April 3, the Mechanism for the Protection of Human Rights Defenders and Journalists stated that “there is no risk whatsoever for the permanence and operation of Trust 10232 of the Fund for the Protection of Human Rights Defenders and Journalists (in hereinafter the Trust for Protection), the foregoing by virtue of the fact that it is mandated by the Law”\textsuperscript{1588}. However, on May 20, the ruling Morena party presented a bill to modify laws that would allow the elimination of 44 trusts with the aim of using the money to face the crisis generated by the COVID-19 pandemic.\textsuperscript{1589} Despite the fact that the bill was withdrawn at one point due to controversy\textsuperscript{1590}, legislators were modifying the bill to modify a total of 109 trusts\textsuperscript{1591}, which was subsequently approved by Congress on October 21. In a statement dated September 28, the Mechanism for the Protection of Human Rights Defenders and Journalists urged that Trust 10232 not disappear and assured that the Mechanism "is a public policy instrument that, given the climate of violence facing the country it has been recognized by international organizations as a necessary institution to guarantee freedom of expression and the right to defend human rights in Mexico, alleviating violence against journalists and human rights defenders". For the Mechanism, the disappearance of the Trust "would have negative implications in the development of protection actions, such as the increase in administrative procedures or the loss of flexibility in the adoption and implementation of measures in the face of emerging risk situations." By that date, the Mechanism had 1,304 people under its protection, 418 of them journalists and 886 human rights defenders.\textsuperscript{1592} In a discussion in Parliament on June 8, a consensus was given to respect Trust 10232.\textsuperscript{1593}

\textsuperscript{980} According to the organization Article 19, the decree does not clearly establish "where the resources obtained from the extinction of the trusts will be and how they will be used, once they are returned to the
Federation Treasury and does not specifically indicate what Regulatory frameworks have to be modified or reformed, what new financial mechanisms are going to be applied or in what terms, to ensure resources to the beneficiaries of the trusts that are going to disappear. For the organization, the decision implies “inability to adopt protection measures for human rights defenders and journalists with the urgency that dangerous situations demand, as well as financing their cost and accessing resources with the immediacy that is required. Obstacles for the development of protection actions, such as the increase in administrative procedures and loss of flexibility in the adoption and implementation of measures in the face of imminent risk situations. Elimination of padlocks that prevented resources from being used for purposes other than protection measures or attention to victims. By passing into the hands of SEGOB, the door is left open to arbitrary use of resources and, therefore, to opacity and corruption. Violation to the rights of victims, defenders and journalists at risk since the operation will be subject to political priorities and criteria”.

981. On November 6, President López Obrador published the decree eliminating the 109 trusts in the Official Gazette. According to this, the entities would have 30 calendar days, from the day following its publication, to send to the Federal Treasury “all the federal public resources that are part of the trusts, mandates, and public analogues provided for in the provisions that are abrogated, amended or repealed by virtue of this Decree, unless the Ministry of Finance and Public Credit determines a different date for the concentration of resources”. According to the decree, in the case of the Law for the Protection of Human Rights Defenders and Journalists “the denomination of Chapter X and articles 48, 50, 54 and 63, last paragraph are reformed; and articles 2 sixth paragraph, 8 section XVII, 49 51, 52, 53, and 54 of the Law for the Protection of Human Rights Defenders and Journalists are repealed”. It establishes in Article 48 that “to fulfill the purpose of this Law, the Ministry of the Interior shall provide the necessary resources in the preliminary draft budget for each fiscal year for the Protection of Human Rights Defenders and Journalists” and in Article 50 that “the resources provided will be used exclusively for the implementation and operation of the Preventive Measures, Protection Measures, and Urgent Protection Measures and the performance of the other acts established by the Law for the implementation of the Mechanism, such as independent evaluations.” According to the decree, the surplus received by the Treasury would be used in measures to counteract the COVID-19 pandemic.

982. The Office of the Special Rapporteur draws attention to this measure adopted by the Mexican Congress, which diminishes the institutional capacity to protect journalists threatened for doing their work. In its 2019 Annual Report, the Office of the Special Rapporteur warned that the government’s response to implement improvements and provide resources to the Protection Mechanism for Human Rights Defenders and Journalists was insufficient given the magnitude of the violence carried out against these groups. For this reason, the Mexican State has been repeatedly recommended to continue strengthening the Mechanism and ensure the effective application of its decisions and measures. Along these lines, the Office of the Special Rapporteur has also recommended that the Special Prosecutor’s Office for Attention to Crimes against Freedom of Expression (FEADLE) be provided with more resources and that it exercises with determination its power to have jurisdiction over serious crimes against the press. A situation that is doubly worrisome due to the high numbers of violence against journalists in the country. In 10 days, between October and November, the country registered three murders and the disappearance of one more journalist. Likewise, the
Office of the Special Rapporteur draws attention to the murder of two journalists this year who were under the Protection Mechanism.

983. In this context, on November 19, journalist Omar Bello Pineda, who has been displaced in Mexico City for three years and threatened with death, along with other people started a sit-in in front of the Ministry of the Interior. The journalist has denounced that the Mechanism for the Protection of Human Rights Defenders and Journalists had refused to provide him with bodyguards. On December 14, protesters drew blood from their arms with a catheter and painted the walls for officials of the entity to receive them. Bello Pineda was a reporter for the ABC newspaper of Zihuatanejo in the state of Guerrero and left the city in 2017 after criminal groups harassed him into writing what they said, or they would kill him.

984. The National Human Rights Commission, a permanent member of the Mechanism's Governing Board, informed this Office that the Government of Mexico had informed that from September 2019 to June 2020 actions of "institutional reengineering" had been taken for the Mechanism, which include the application of the organizational structure, the redesign of the risk analysis to include a gender perspective. Likewise, state diagnoses were carried out on the situation of journalists and human rights defenders in the states of Puebla, Veracruz, and Guanajuato.

985. Notwithstanding this, within the framework of the 178° Period of Sessions of the IACHR, the State of Mexico emphasized that, beyond the legal reforms that led to the extinction of certain trusts, the resources for the Mechanism for the Protection of Human Rights Defenders and Journalists are guaranteed and that there was no decrease in resources. The Mexican State insisted that in no way will it stop serving the beneficiaries of the Mechanism; and stressed that the new legal provisions will facilitate the control of public spending and accountability.

I. Social protest

986. This Office received information about the excessive use of force by the Guanajuato State Police to dissolve a demonstration by different groups and relatives of the disappeared who were protesting the appointment of the head of the State Search Commission and seeking to speak with the governor of the state, Diego Sinhue Rodríguez Vallejo. According to the information sent, those who demonstrated were beaten and pushed for several minutes. Five people were detained: three women from the search groups, a member of the Guanajuato Despertó Collective, and a deputy visitor from the National Human Rights Commission (CNDH). Although the four women were released the same day, they were linked to an investigation for "blocking communication channels and injuries." During the day, another member of the group "A tu Encuentro" ended up with a broken leg.

987. The Office of the Special Rapporteur received information about the repression by the police of a feminist social protest that took place on August 22 in León, Guanajuato state, which left at least four reporters injured and 22 people arrested. The protest was called by different groups and was called to demand justice for Evelyn, a young woman who had reported being sexually abused by members of the police
from León on August 14 when she had left a bar.1604 According to the information available, towards the end of the day of the demonstration, some of the reporters covering the event began to record alleged acts of police abuse and arbitrary detentions. The journalists Melissa Esquivias Espinosa, from the Informativo Agora; Alfonzina Ávila Ramírez, from Zona Franca; Martha Silva Moreno and Brenda Orozco Hernández, from the PopLab medium, were harassed, threatened, and even allegedly victims of physical violence by officials of the Municipal Public Security. Cases of arbitrary detentions were also reported, including of people that may not have participated in the demonstration.1605 The four journalists filed a complaint with the Guanajuato State Attorney General’s Office for attacks and restriction on freedom of expression. They also filed a complaint with the Human Rights Prosecutor’s Office1606. This institution already has an investigation open for this case.1607

988. The Office of the Special Rapporteur draws attention to the stigmatization of social protest by public officials. On the day of the protest, the León Public Security Secretariat denounced the protest and its participants by consecutively calling it a “violent demonstration” on social media. Subsequently, on August 25, the Secretary of Public Security of Guanajuato, Alvar Cabeza de Vaca, criminalized the forms of expression of the women who demonstrated and justified the disproportionate use of force and the actions of the police.1608 The mayor of León publicly apologized to Evelyn and the four journalists on August 26 and assured that respective investigations will be carried out. However, he called on citizens to demonstrate “respecting the rule of law”.1609

989. On September 10, women activists in the municipality of Ecatepec, state of Mexico, seized the city offices of the Human Rights Commission as a protest to pressure authorities into investigations into cases of women victims of crime.1610 Between threats and shoves, agents of the State of Mexico prosecutor’s office evicted the group and detained at least 13 people. After the detainees were released, a group of women set fire to the Commission’s facilities in response to the police brutality of the previous night.1611 For this, the National Human Rights Commission sent a recommendation to the Attorney General of the State of Mexico, Alejandro Jaime Gómez Sánchez, and to the president of the Human Rights Commission of the State of Mexico (CODHEM), Jorge Olvera García, after the Commission “accredited violations of the human rights of freedom of assembly and of dignified treatment and personal integrity, attributable to elements of the Investigative Police of the Attorney General’s Office of the State of Mexico to the detriment of members of the Ehécatl Collective, in defense of women’s rights and the Iris Foundation”. According to the Commission, the Prosecutor’s Office did not seek channels of dialogue and solutions to the activists’ complaints, in addition to violating their right to dignified treatment and personal integrity by having been evicted “with excessive use of force.” For their part, the Commission staff failed to protect and guarantee human rights by abandoning them and not following up on the precautionary measures they requested for the children who were in the place, according to the Commission. The National Commission asked both the Prosecutor’s Office and the local Commission for all collaboration in the investigation of the case, adding that the Prosecutor’s Office must fully repair the victims, register them in the state registry of victims, and provide them with medical care, among some measures. Finally, it pointed out that the Office of the Prosecutor should “design and impart a comprehensive course on training and education in human rights specifically to prevent and effectively identify behaviors that violate the human dignity of the victims and the freedom of assembly, in the case of demonstrations and social protests, with a gender perspective and addressing the right to the best interests of children”.1612

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Three people, including two reporters, were injured on the night of November 9 after a group of 50 municipal police officers from Cancún, Quintana Roo state, repressed and shot down a feminist protest that was taking place in front of the Municipal Palace. According to available information, at least 2,000 people protested the death of two women in less than 24 hours in the city. The protesters would have broken windows and burned wood that protected the Municipal Palace and when they tried to enter the building, hooded uniformed individuals with bulletproof vests and long weapons suddenly burst in and fired in the central square a few meters from those who were demonstrating\textsuperscript{1613}. The police officers allegedly chased and beat those who tried to record the attack. The telephones and cameras were also taken away from the journalists who were covering the protest\textsuperscript{1614}. At least two journalists Roberto Becerril, from \textit{La Verdad}, who received a bullet in the shoulder, and Cecilia Solís, from \textit{Radio Turquesa}, who received a bullet in the foot, were injured in the incident. Two other journalists were treated at a hospital due to the beatings by the police\textsuperscript{1615}. Although the authorities announced investigations to determine what happened in the operation, the Office of the Special Rapporteur finds it worrying that there is no one responsible for giving the order to disperse the demonstration because the authorities have dissociated themselves from the events. According to the available information, in the state of Quintana Roo the Single Command is established, which means that the State Secretariat of Public Security has control of all the police, including the municipal ones\textsuperscript{1616}. The mayor of Cancún, Mara Lezama, and the governor of the state, Carlos Joaquín González, assured on their social networks that they had not done so. The Secretary of Public Security of Quintana Roo, Alberto Capella, reported that he had ordered an investigation into what happened. The director of Public Security of the Benito Juárez City Council (municipality whose head is Cancún), Eduardo Santamaria, was separated from his position. And the Secretary General of the City Council, Issac Janix Alanís, announced his resignation from office for not agreeing with the repression\textsuperscript{1617}.

\textbf{J. Government Advertising}

On April 23, in the Official Gazette of the Federation, the decree of President Andrés Manuel López Obrador was published in which he returns 7 minutes of fiscal time to television and 14 minutes to radio. According to the decree, as of May 15, the official times that radio and television stations pay to the Treasury will decrease.\textsuperscript{1618} The announcement about this decision had been made by the president in his daily conference on April 3. In this he would have said that his government did not need "propaganda" and that this decision was in tune with his purpose of reducing spending on government advertising. At the time, several organizations protested against this decision, emphasizing that the fiscal time was not only used by the President, but also by different State institutions. It was also criticized that these spaces were designated as "propaganda" taking into account that these spaces are made to communicate information of public interest. Finally, it generated criticism that this decision was made in the midst of the COVID-19 pandemic amid complaints due to lack of public information.\textsuperscript{1619}

Due to this decision, on May 7, the National Electoral Institute (INE) filed a constitutional controversy remedy against this decree before the Supreme Court of Justice of the Nation, considering that the president "invaded its powers" taking into account that the INE is the authority in the administration of official times that correspond to the State. According to the INE, these spaces would have the purpose of guaranteeing fairness in the contest, equal treatment in the dissemination of ideas, and that citizens exercise their right to

\textsuperscript{1613} Diario Oficial de la Federación. April 23, 2020. \textit{Decreto por el que se autoriza a la Secretaría de Hacienda y Crédito Público a recibir de los concesionarios de estaciones de radio y televisión el pago del impuesto que se indica}; El Universal, April 24, 2020. \textit{AMLO regresa tiempos fiscales a radio y TV}.

\textsuperscript{1619} Artículo 19. April 3, 2020. \textit{Eliminar tiempos fiscales en medios de comunicación es un retroceso al derecho a la información}.
vote in an informed manner. The INE asked the Supreme Court to suspend the decree while it rules on the merits. Although the SCJN did not suspend the entry into force of the decree, it admitted the case.

President Andrés Manuel López Obrador has emphasized on several occasions that he wants to reduce the government advertising budget, although he has not said how much it would be. However, the budget for 2020 is 2,600 million Mexican pesos, which is reduced by almost half of the presumed 2019 budget, which was 5,200 million Mexican pesos.

K. Subsequent Liabilities

On January 28, the Civil Judge 16 of Mexico City ordered the seizure of the assets of the researcher and academic Sergio Aguayo Quezada in the event that he did not pay the compensation of 10 million Mexican pesos (about US$530,000) that the Sixth Civil Chamber Mexico City ordered to pay in favor of the former governor of Coahuila, Humberto Moreira, in October 2019. In 2019, the Office of the Special Rapporteur included this case in its annual report. At the time, it was known that the judges of the sixth civil court revoked the sentence that the journalist had already won in March 2019 and agreed with former Governor Moreira. The sentence concluded that Aguayo "has caused moral damage to the plaintiff Humberto Moreira Valdés, affecting his honor", and condemned him to "publication or dissemination of the conviction at his expense, in the newspapers Reforma and Siglo de Torreón," and personal twitter of the defendant Sergio Aguayo Quezada, as it was in said media and formats where the facts and opinions that constituted the damage to the moral patrimony of the act were disseminated". As well as to pay the 10 million Mexican pesos "for punitive damages", in addition to the payment of "expenses and costs (expenses that must be paid in a judicial process) generated", which were not specified. Aguayo paid 450,000 Mexican pesos to stop the seizure order.

On July 29, the First Chamber of the Supreme Court of Justice of the Nation decided to hear the Aguayo case as part of the amparo that he filed against the sentence of the Sixth Civil Chamber of the Superior Court of Justice of the City of Mexico. The Court accepted the proposal of Minister Alfredo Gutiérrez Ortiz Mena, considering that "the matter raised has the characteristics of interest and significance, since when solving it, it could rule on constitutional issues and transcendental aspects of legality, dealing with matters where the right of freedom of expression and rights to the image and honor of individuals are in tension".

The Office of the Special Rapporteur also took note that on April 15, the Ministry of the Interior published a statement -which now appears to have been eliminated- in which it announced that it would initiate an administrative sanctioning procedure against newspapers in the state of Chihuahua El Diario de Juárez and El Diario de Chihuahua, both from the same company, "for the false information disseminated in their respective editions of April 14, 2020". That day, El Diario de Juárez published an article titled "Proof of COVID deaths with photos" in which it stated that the authorities would be "making up" the death toll in the border city. The article was accompanied by a photograph of several corpses stacked up claiming had been taken at a local hospital. However, the photograph actually corresponded to a hospital in Ecuador. On the cover of April 15, El Diario de Juárez published a clarifying note in which it apologized to...
its readers and assured that "the information was received in good faith without being subjected to the necessary verification of the authenticity of the photo, passing deceptively by other instances in the editing and publishing process. Without a doubt, the inclusion of the photo was in any way unjustifiable a mistake".

On April 16, the Ministry of the Interior issued a statement in which it announced that following instructions from President Andrés Manuel López Obrador to "privilege freedom of expression and exhort the professional ethics of journalists," the sanctioning against the two media would not be carried out.

The Office of the Special Rapporteur also learned of a warning of "possible legal consequences" that the Ministry of the Interior made to the TV Azteca channel for statements about the federal health authority. According to the available information, on the nightly stellar newscast, the presenter Javier Alatorre told the public not to follow the instructions of Hugo López-Gatell, undersecretary of Prevention and Health Promotion, because in his opinion the statistics shown by the official were not true. As alleged evidence, he would have shown how local authorities had denied the figures given by López-Gatell.

L. Misinformation and COVID-19

The Office of the Special Rapporteur also received information on cases in which some public officials made statements that could contribute to creating a climate of disinformation. Thus, for example, on March 25, the governor of Puebla, Miguel Barbosa, stated at a press conference that the coronavirus mainly attacks people who are "well-off" and that "the poor are immune". On March 14, the same governor reportedly said: "They told me that the vaccine that has already been discovered against the coronavirus is a plate of turkey mole. We are going to throw ourselves a plate of vaccine against that virus that threatens the world." The President also reportedly provided information contrary to that given by the Undersecretary of Health. On March 4, for example, he would have recommended hugging, despite the fact that it is a measure that contradicts the indications of social distancing. On March 18, the president would have said that the protective shield against COVID was "stop", honesty, not allowing corruption", and he would have shown protective amulets that he called his "bodyguards".

M. Access to public information

Access to public information was affected by the pandemic. The National Institute of Transparency, Access to Information and Protection of Personal Data (INAI) suspended the periods and terms in which the obligated subjects must respond to requests for information and review resources due to the health contingency as of 23 of March. The entity reported that although it did not stop working, it understood that other organizations had suspended face-to-face work and that this meant that they could not respond to requests at the same pace. The deadline was lifted on April 30 for those public institutions that continue their operations and whose activities are considered essential. The public institutions that stopped because their activities are not essential, this period of suspension was extended until May 30.

Along the same lines, the Office of the Special Rapporteur received information from the Mexico Justo Civil Association, the Michoacán Center for Evaluation (Cemide), and the Regional Observatory Zamora A.C. on the lack of response to several requests for information related to the coronavirus pandemic in the

1610 Artículo 19. April 16, 2020. ARTICLE 19 expresa preocupación por procedimientos de SEGOR contra medios por información falsa.
1619 INAI SUSPENDE TÉRMINOS Y PLAZOS POR COVID-19.
1620 El Universal. May 1, 2020. INAI determina reanudar plazos para atender solicitudes de información.
country. According to a document sent to this Office, Cemide made five requests for information to different government agencies, related to the number of hospital deaths and the causes of death, registered from December 31, 2019 to April 8, 2020, both at the state and municipal level. Likewise, the Zamora Legal Observatory made four requests for information to the Michoacán State Congress, on the regulations approved by Congress to deal with COVID-19, the extraordinary resources assigned to public entities to deal with the pandemic, public purchases and contracting made, and expenses incurred until June 3, 2020 with the same objective. However, none of these requests were answered for "not being considered essential in the context of the crisis".1640

1000. On the other hand, the director of the magazine Zeta, Adela Navarro, in Tijuana state of Baja California denounced that there is also hostility towards the media in the framework of the pandemic. According to her, the media do not receive the information they request and there are inconsistencies in the figures provided by the authorities. Something similar denounced an independent journalist in Querétaro, Querétaro state, who assured that she did not receive official figures of confirmed people because, according to the authorities, they wanted to prevent "discrimination against infected people in smaller communities".1641

1001. For the Office of the Special Rapporteur, the lack of information for indigenous communities, one of the most affected by the pandemic, has been particularly worrying. According to the information received, in the country, information on the pandemic, its symptoms, effects, and protection measures has been disseminated by the federal and state governments through media such as television and social networks. Only until the end of March, some information related to the pandemic had been translated into some indigenous languages, “but its dissemination was mainly limited to content in text format, through the internet, on official pages and social networks, demonstrating, once again, the lack of cultural relevance and its late diffusion”1642. In April, the National Institute of Indigenous Languages launched a microsite with translation into 64 indigenous languages with the message "Stay home"1643 and other basic information about the pandemic1644. Members of a community in Chiapas have produced radio capsules to be broadcast by peripherals based on official information. However, the translation would have been difficult because the language is very technical. Civil society organizations in Oaxaca and Chiapas reportedly had to file amparo claims for local authorities to translate information about the pandemic. Although the amparos were granted, it would not be known until May that they had been complied with.1645

N. Other relevant situations

1002. In the context of the pandemic, the safety of press workers has been a matter of concern in Mexico. Journalists expressed a general concern about the vulnerability in which they are to exercise their journalistic work. Reporters, for example, would not have good protective measures as exposure to the virus is increasing and would have requested greater access to testing for COVID-19. In Monclova, Coahuila state, a group of reporters asked for tests to be carried out on at least 50 workers who covered two protests by medical personnel from a hospital demanding protective equipment and after some of these protests tested positive. However, none of these requests were answered for "not being considered essential in the context of the crisis". Some journalists have reported having to pay for safety items.1646 As of May 27, 13 journalists’ deaths by COVID-19 had been registered1647. By November 12, the figure had already risen to 32 journalists’ dead, making the country the second highest in the region. Organizations such as the International Federation

1640 Archive of the Office of the Special Rapporteur for Freedom of Expression. E-mail sent to the Office of the Special Rapporteur on June 17, 2020.
of Journalists pointed out as the cause the lack of a social policy to protect reporters as well as precarious working conditions.\textsuperscript{1648}

\textsuperscript{1003.} The health contingency has also affected the media and journalists financially. According to available information, some media have cut their payroll, reduced salaries, or completely closed their editions, exacerbating the economic situation of journalists in the country, which had already been affected by the economic crisis in Mexico, and the widespread lack of protection for journalists in the country. For example, Grupo Crónica announced the end of its printed editions due to the coronavirus emergency. Since April 1, the newspapers \textit{La Crónica de Hoy}, \textit{Crónica Hidalgo}, and \textit{Crónica de Jalisco} are no longer published.\textsuperscript{1649}

\textsuperscript{1004.} The information presented shows that Mexico continues to be one of the most dangerous countries in the region to practice journalism, registering at least seven murders in the course of 2020, in addition to others in which there could be some link with the exercise of information. The Office of the Special Rapporteur also observed that high levels of impunity persist, which perpetuates violence. Likewise, the tendency of hostility and intimidation towards the media and journalists has been highlighted. The lack of access to information and the accusations by authorities towards the media for allegedly not fulfilling their role have stressed this relationship. The Office also noted with concern the excessive use of force by the Police to resolve various demonstrations, which left several people injured, some of them journalists. In view of this, the Office of the Special Rapporteur reminds the State that:

\textsuperscript{1005.} \textbf{The murder of journalists constitutes the most extreme form of censorship, and impunity contributes to the self-censorship of the press.} States have a positive obligation to identify and punish the perpetrators of these crimes. As the IACHR and its Office of the Special Rapporteur have repeatedly stated, it is essential that the State fully, effectively, and impartially investigate the murders of journalists, clarify their motives, and judicially determine the relationship they may have to journalistic activity and freedom of expression. Authorities should not rule out the practice of journalism as a motive for the murder and/or assault before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions on the development of the processes in the stages of indictment or trial. Not having completely exhausted the logical lines of investigation entails, above all, that the intellectual authors cannot be identified.

\textsuperscript{1006.} \textbf{Attacks and aggressions committed against journalists and against the press violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society.} The Office of the Special Rapporteur reminds that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.” Likewise, the Office of the Special Rapporteur reiterates to the State the importance of combating violence against journalists through a comprehensive policy of prevention, protection, and prosecution. This last obligation includes the duty to investigate, prosecute, and criminally convict all those responsible for these crimes and make comprehensive reparations to the victims. These obligations complement each other to guarantee the existence of a free, robust, and unrestricted democratic debate.\textsuperscript{1650}

\textsuperscript{1007.} \textbf{Public authorities are called upon to maintain a speech favorable to public deliberation and freedom of expression.} The Office of the Special Rapporteur reiterates that public officials have the duty to

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\textsuperscript{1648} MVS Noticias. November 12, 2020. Ubican a México como el país más peligroso para ejercer el periodismo.


ensure that their statements are not infringing on the rights of those who contribute to public deliberation by expressing and disseminating their thoughts, such as journalists, the media, and human rights organizations, and they must be aware of the context in which they express themselves. According to the Inter-American Court of Human Rights, these types of statements made by public officials could constitute an indirect restriction on the right to freedom of expression. 1651

1008. Social protest, which includes the rights to peaceful assembly without arms, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights. In this sense, it has been indicated that “the criminalization in itself of demonstrations in public streets when they are carried out within the framework of the right to freedom of expression and the right to assembly is, in principle, inadmissible”. 1652 Furthermore, the IACHR has understood that the use of force constitutes “a last resort that, qualitatively and quantitatively limited, seeks to prevent an event of greater gravity than the one provoked by the State’s reaction. Within this framework characterized by exceptionality, both the Commission and the Inter-American Court have agreed that, for the use of force to be justified, the principles of legality, absolute necessity, and proportionality must be met.” 1653

1009. Inter-American human rights standards impose special responsibility on public officials when speaking on matters of public interest. The Resolution on Pandemic and Human Rights issued by the IACHR highlights that “in the current circumstances it is a duty for state authorities to inform the population, and when speaking on the matter, they must act diligently and have a reasonable scientific basis. 1654

1010. The fear of criminal sanctions necessarily discourages and inhibits citizens from expressing themselves on matters of public interest. The Office of the Special Rapporteur recalls that Article 13.2 of the American Convention provides for the possibility of establishing restrictions on freedom of thought and expression through the application of subsequent liabilities for the abusive exercise of this right. In this sense, although whoever spreads false information knowing that it is false and causes damage may be subject to reproach, this should preferably be through the exercise of the right of rectification or response or, in the event that the damage produced is serious, through provided civil liabilities. Likewise, the Inter-American Court has indicated that criminal law is the most restrictive and severe means to establish liabilities regarding illegal conduct.

NICARAGUA

1011. Throughout 2020, the Nicaraguan government maintained a hostile climate towards the exercise of freedom of expression and access to public information in the country, through repressive actions that directly restricted these rights. Among the attacks on journalists and independent media, there were recurrent stigmatizing speeches by high-ranking authorities, numerous criminal cases against journalists, harassment of journalists and the media, threats and physical attacks, among others. Likewise, the Office of the Special Rapporteur notes with concern that congress approved regressive and restrictive regulatory frameworks, which directly threaten the exercise of freedom of expression by citizens and journalists and

against the survival of independent media. Finally, in the context of the pandemic, this Office became aware of a very serious lack of transparency, which has prevented obtaining accurate information on the situation of COVID-19 in Nicaragua, and which has led to the dismissal of at least 16 doctors who reportedly did not agree with the ruling party’s speech.

A. Violence and attacks against journalists and the media

1012. According to information received by the IACHR and its Office of the Special Rapporteur, during 2020 there was an increase in attacks against journalists and the media. The Violeta Barrios de Chamorro Foundation (FVBCH) registered at least 338 cases of press freedom violations between January and November 2020.1655 For its part, the Nicaraguan Independent Journalists and Communicators Movement (PCIN) registered 351 crimes against press freedom between March 1 and July 151656, and 943 between July 15 and December 15.1657 According to the FVBCH, at least 50 journalists remain in exile.1658

1013. According to the information available, different media have been repeatedly besieged by the National Police. On January 20, around 30 officers besieged Radio Corporación’s facilities, and photographed its journalists and guests1659. In the same way, Aníbal Toruño, director of Radio Darío, denounced on June 6, 8, and 9 the presence of police patrols and riot control agents in the surroundings of the media’s facilities, who had taken photographs of the vehicles and security cameras1660. Between July 25 and 27, the facilities of Radio Darío were once again besieged by the police and riot police, who hijacked two vehicles belonging to collaborators of the media1661. Likewise, Aníbal Toruño denounced situations of harassment to the facilities of the media on August 171662 and 221663, September 121664 and December 51665. On August 1, the newspaper La Prensa denounced that at least three police patrols and dozens of riot police were in the vicinity of its facilities “with a harassing attitude”1666. That same day, patrols and armed agents remained in the vicinity of Radio La Costeñísima and the home of Kalúa Salazar, their press officer1667. On September 15, two patrols and at least 15 police officers besieged the surroundings of the Notimatv television channel in Matagalpa.1668 In turn, on December 3, police officers aboard two patrol cars besieged the facilities of Radio Mi Voz, according to the director and owner of the media, Álvaro Montalván.1669 On December 10, anti-riot agents and at least

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three police patrols once again surrounded the facilities of the newspaper *La Prensa* with a harassing attitude.\textsuperscript{1670}

Likewise, the Office of the Special Rapporteur has registered a siege in the homes of journalists in 2020. On June 7, the independent journalist Gerall Chavez, who is in exile in Costa Rica, denounced the presence of police patrols outside his family's home and stated that it was an intimidating action for having initiated a campaign of collection and delivery of hygienic kits to prevent the spread of COVID-19.\textsuperscript{1671} Similarly, on June 22, around 20 police officers were installed in front of the home of journalist Carlos Eddy Monterrey, a beneficiary of precautionary measures, while he was working on radio *La Costeñísima*.\textsuperscript{1672} Likewise, journalist Ileana Lacayo denounced that between September 11 and 14, her home was besieged by police patrols.\textsuperscript{1673} On the other hand, the photojournalist Frank Cortez was the victim of a police siege between Tuesday 20 and 23 October at his home. Cortez affirmed that he was under "house arrest" since they had not allowed him to leave his home, but that no court order had been presented to him.\textsuperscript{1674} On November 6, police patrols besieged the homes of journalist Carlos Eddy Monterrey and journalists Kalúa Salazar, and Ileana Lacayo Ortiz.\textsuperscript{1675} The home of journalist Kalúa Salazar was also besieged on November 20 and December 6.\textsuperscript{1676} Similarly, journalist Josué Garay denounced that on December 7, a patrol and two motorized vehicles set up in front of her house for more than three hours to besiege him.\textsuperscript{1677}

On January 22, the journalist Joseling Rojas and the cameraman Ronald Reyes from Channel 10 were insulted, photographed, and held for 30 minutes by police officers, when they were in Nagarote, León, covering a complaint.\textsuperscript{1678} The following day, the journalist from the same channel Wilih Narváez was attacked (kicked and pushed) by a group of riot police while he was covering an event at the Hotel Maracas, in Managua.\textsuperscript{1679}

On January 30, the independent journalist from *Boletín Ecológico* David Quintana and a Channel 10 cameraman were pushed and expelled from the Ministry of the Interior building, while covering a petition made by the Permanent Commission on Human Rights.\textsuperscript{1680}

On March 3, as part of the coverage of the mass in honor of the poet Ernesto Cardenal in the Cathedral of Managua, the journalist Leonor Álvarez, from *La Prensa*, the journalist Hans Lawrence, from *Nicaragua Investiga*, and David Quintana, from *Boletín Ecológico*, were insulted, threatened, physically attacked, and stripped of their equipment by people who reportedly sympathized with the government.

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\textsuperscript{1670} La Prensa. December 10, 2020. \textit{LA PRENSA bajo sitio policial en el Día Internacional de los Derechos Humanos.}


Quintana and Lawrence were reportedly admitted to a hospital after the attack, the latter having re-admitted days later due to health complications that would be related to the beatings they received. In turn, Arnaldo Arita, from CNN, and Roberto Fletes, from Univisión, were also reportedly stripped of their equipment. On that occasion, the IACHR and its Office of the Special Rapporteur condemned the violence by civilian supporters of the government and urged the State of Nicaragua to restore freedom of assembly, religion, press, and expression.

1018. On March 8, the reporter Nayel Martínez and the driver Eddy Dávila, a journalistic team for the newspaper La Prensa, were detained by police officers in Boaco, who searched their documentation and belongings, and took photographs of them. On the other hand, several women journalists have received threats through social networks from people related to the Nicaraguan government. The Mesoamerican Initiative of Women Human Rights Defenders alerted on April 6 about the complaints they received from Nicaraguan women journalists about various attacks they received due to the exercise of their profession, which would include "smear campaigns, signaling out, and hate speech" through social media and explicit threats of sexual violence. (1019. On March 7, journalist Jennifer Ortiz, director of Nicaragua Investiga, posted on her Twitter the death threats she had received in recent days, as a result of her complaints about attacks on other journalists. Likewise, on February 25, Aminta Ramírez, presenter of Canal 10, received a threat while she was carrying out a live broadcast in which she criticized the actions of the Police. Attacks on journalists have in some cases included attacks on their families. The journalist Winston Potosme, who is in exile in the United States, denounced that in the early morning of April 16, supporters of the government had gone to his father's house and had physically attacked and seriously injured him, and then sent threats to the journalist through his father's cell phone. The IACHR and its Office of the Special Rapporteur condemned this attack and recalled that the State has the duty to prevent and investigate these events, punish the perpetrators, and ensure an adequate reparation for the victims.

1020. On April 19, police agents raided the house of cameraman Denis Alanís Dormus of the Notimatv channel, in Pantasma, without a warrant. Alanís, who had already been threatened on previous occasions, was reportedly detained for at least four days. On June 17, the IACHR granted precautionary measures in favor of Eduardo Walter Montenegro Chavarría, his family members, and the Notimatv journalistic team, including...
Denis Alanís Dormus, and urged the Nicaraguan State to adopt the necessary measures to guarantee that they can carry out their journalistic work without being subjected to acts of intimidation, threats, or other acts of violence in the exercise of the same.1692

1023. The IACHR and its Office of the Special Rapporteur have recorded various situations in which journalists were prevented from reporting on COVID-19. For example, on May 6, journalists Yasser Leiva and Marcelo Conde were detained and interrogated by intelligence police, when they were filming outside a public hospital in Managua.1693

1024. On the other hand, on July 12, Radio Corporación reported that unidentified individuals had stolen the copper tapes that were found at the base of the AM transmission antenna, which caused the AM frequency to be off the air for several days.1694 This had already occurred in September 2019, as reported by this Office of the Special Rapporteur in its last annual report1695. Likewise, the community radio station Radio Camoapa denounced on September 5 an attempt to sabotage its transmission system, after they found damage to the air conditioning that is in the booth where they keep their equipment. The station was reportedly forced to go off the air, uninstall its equipment, and relocate it.1696

1025. On June 24, the journalist from Radio Única, Suyen Sánchez, was attacked by the Chief Commissioner Valle Corea, while covering a murder in Bluefields. According to the information available, the Chief Commissioner reportedly pushed her and tried to take her cell phone away, preventing her from covering the event.1697

1026. According to what was reported, on July 25, the aforementioned journalist, Gerall Chávez, received a death threat through a letter and a USB memory that was handed over to his relatives. The letter stated that when he returned to Nicaragua they were going to “cut out his tongue” and that they would also take it out on his family, while the video shows an animation of the journalist being beheaded. The journalist blamed “the Sandinista dictatorship” for having sent the threat.1698

1027. On August 21 radio La Costeñísima reported that they had a power cut between 5:00 and 7:00 am, which prevented them from going on the air precisely at the time when the morning news program is broadcasted.1699

1028. According to public information, Verónica Chávez of 100% Noticias was seriously injured in Masaya on October 11, after a meeting of the National Coalition. Government supporters allegedly threw stones at the truck in which the journalist was with Miguel Mora, causing injuries to her head. On October 19, Miguel Mora

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filed a complaint for attempted murder, serious injuries, abuse of authority, and failure to perform duties to the detriment of Verónica Chávez.\footnote{1029}

1029. In turn, on October 17, journalist Maryorít Guevara, director of the digital medium La Lupa, who is in exile in Spain, denounced that her home in Managua was marked with the phrase "ojo plomo" [lead eye]. The journalist explained that this is a phrase used by government groups as a death threat, and that she has already been threatened in the past.\footnote{1030} Similarly, on November 27, Eduardo Montenegro, director of NotimaTv, denounced that the media's facilities were painted with the word "plomo" [lead], which was captured by security cameras.\footnote{1031}

1030. On October 27, the journalist Noel Miranda from Artículo 66 denounced that he was reportedly threatened by police officers while he was covering the trial of tiktokker Kevin Monzón outside the Managua courts. According to the information available, the officers asked him about his work, took pictures of him, and told him to stop recording or "face the consequences".\footnote{1032}

1031. In the framework of the coverage of hurricanes Eta and Iota, the Office of the Special Rapporteur was informed of multiple restrictions on the practice of journalism. Marisol Balladares, reporter for Radio Corporación, was arbitrarily detained at 145 police checkpoints when she traveled from Managua to the North Caribbean on November 8 to deliver donations and document the situation of the people affected by Hurricane Eta, and upon arrival she was not allowed entrance to a shelter where the victims were. In addition, the journalist denounced that the cameraman Fernando Duván Rivera had been physically attacked by a shelter director while recording the conditions of a shelter.\footnote{1033} Likewise, on November 18, armed agents of the National Police prevented a group of independent journalists from covering the landslide caused by Hurricane Iota in the Peñas Blancas massif, Matagalpa, allowing only official media to enter. The agents allegedly intimidated, photographed, and expelled the journalists.\footnote{1034} The Office of the Special Rapporteur also received information on verbal and physical attacks by a State worker against the reporter Flor de Liz Ordóñez and the cameraman Exael Arista from NotimaTV on November 19, who were covering the burial of three people who died in the mentioned landslide.\footnote{1035}

1032. On the other hand, the Office of the Rapporteur received information on the decision of the director of NotimaTV Eduardo Montenegro and press officer Sandra Elena Martínez, beneficiaries of precautionary measures, to go into exile in the United States. The journalists reportedly left Nicaragua on December 11, together with their four children, as a result of the siege and threats they received.\footnote{1036}

1033. This Office was informed about the attacks suffered by Carlos Fernando Chamorro, director of Confidencial, the media's journalistic team, and Vilma Nuñez of the Nicaraguan Center for Human Rights


(CENIDH) on December 14, while giving a press conference on the outskirts of the offices of the media, which were confiscated two years ago. According to the information available, the National Police set up a human cordon at the entrance to the offices and pushed them out. The IACHR and its Office of the Special Rapporteur condemned this event and called on the Nicaraguan State to guarantee the exercise of freedom of expression.

1034. According to available information, on December 28, the León Police detained journalist Henry Blanco for more than 24 hours. This occurred after the radio host returned from Costa Rica, where he had been in exile since the beginning of 2019 as a result of the threats he had received for practicing his profession.

B. Subsequent liabilities

1035. The IACHR and its Office of the Special Rapporteur have expressed their concern over the increase in judicial proceedings against journalists. On September 23, Judge Deyanira Traña, of the Bluefields Local Criminal Court, convicted journalist Kalúa Salazar, press officer of La Costeñísima, of the crime of slander, and sentenced her to pay a fine of 7,684 cordobes, equivalent to 120 working days. According to the information available, three former officials of the El Rama mayor’s office reportedly filed a claim against the journalist after La Costeñísima denounced acts of corruption in said mayor’s office. The oral and public trial was allegedly carried out with a strong presence of police agents and preventing access for journalists.

1036. The journalist Elsa Espinoza, from the Executive Commission of Independent Journalists and Communicators of Nicaragua (PCIN) was reported for the crime of threats by her neighbor María del Pilar Vallejos, who reportedly is a government supporter. According to the journalist, her neighbor shouted at her "coup plotter and tranquera", physically attacked her, and then filed a complaint against her. Faced with this situation, the journalist reportedly changed her address. On September 21, the trial was held, in which the judge ruled in her favor. According to Espinoza, the trial was carried out with the aim of intimidating and silencing voices that make the regime uncomfortable.

1037. Likewise, the journalist and director of the digital media Boletín Ecológico, David Quintana, was reported for slander and insults in July, after he interviewed a family that had been evicted. The complaint was presented to the Fifth Criminal Court of Managua by Nelson Enrique Oporta, a former Canal 8 cameraman, and his wife Junieth Dávila Cruz, who are now occupying the property that was evicted. According to available information, the initial hearing was scheduled for July 30 and then postponed to August 11, while the official notification to the journalist only occurred on November 6. On November 24, the Court admitted the accusation, sent the journalist to an oral and public trial, and applied an immigration restriction and the obligation to appear every two weeks before the court. The hearing was reportedly scheduled for December 18, and then postponed to January 15, 2021.


1038. According to available information, William Aragón, a former correspondent for La Prensa and a member of the board of the Independent Journalists and Communicators of Nicaragua, is reportedly facing a process for libel and slander, accused of having affirmed that a citizen died from COVID-19. The journalist pointed out that it was fabricated information and that he never mentioned anything about it.\(^{1715}\)

1039. Journalist Sergio León was accused of the crime of slander and insults by the citizen Juana Álvarez Mayoga, after the program "Tras la Noticia" of Radio La Costeñísima released the statements of a mayor who had expressed concern over the death of two people suspected of COVID-19. The journalist was summoned on May 28 to the Directorate for Alternate Conflict Resolution (Dirac) of Bluefields and requested a rescheduling of the appointment. Sergio León died on June 14, with symptoms of coronavirus.\(^{1716}\)

1040. On the other hand, this Office was informed that Kevin Monzón, who publishes messages against corruption and complaints of human rights violations on the social network Tik Tok, was detained three times between August 2019 and December 2020. The Tik-Toker was detained between July 31 and August 9, and a trial was initiated for the crime of threats with weapons, in which he was found not guilty on November 18. The last detention took place between December 16 and December 22; Kevin Monzón reported that he was beaten and threatened by a General Commissioner of the Police.\(^{1717}\)

### C. Stigmatizing statements

1041. This Office has registered multiple stigmatizing statements against the press by senior public officials. The government published on May 25 a document called "To the people of Nicaragua and to the world, report on COVID-19 and a singular strategy-White Book", in which they accused the media of carrying out "informational terrorism" that was reportedly "conceived in the United States." They also affirmed that there is a "massive disinformation campaign" in Nicaragua, and that opponents "have seen the pandemic as a great opportunity to scare and misinform the population".\(^{1718}\)

1042. On May 13, Rosario Murillo accused the media of "creating fear and hatred pandemics, with false news" and described them as having "small brains" and "deviled souls".\(^{1719}\) Similarly, on August 21, she referred to journalists and the media as "forces of darkness".\(^{1720}\) Also, on October 21, she accused the international press of being "means of international defamation" that "serve to distract and slander." This, affirming that these media would give a voice to people opposed to the government, whom she considered as "faces disfigured by hatred".\(^{1721}\)

1043. On the other hand, in the context of the debate on a reform to the General Water Law on November 12, Congress representative Wálmaro Gutiérrez accused a newspaper of "slandering, insulting, misrepresenting" and "carrying out sewer journalism".\(^{1722}\) Likewise, during a ceremony to deliver credentials to ambassadors held on December 15, Daniel Ortega assured that certain television programs and newspapers say "any falsehood" and "invent anything", and affirmed that "it is no longer freedom of expression but debauchery".\(^{1723}\)


D. Political control and undue interference in the media

1044. On October 15, the Foreign Agents Regulation Law was approved, which obligates natural or legal persons that receive funds directly or indirectly from foreign governments, agencies, foundations, companies, or associations to register as "foreign agents." This entails the obligation to present reports, and the impossibility of intervening in matters of internal politics and of "being civil servants, public employees, or candidates for public office." Finally, it provides for the possibility of establishing, in the event of non-compliance, fines, cancellation of legal personality, criminal liability for the commission of crimes against the security of the State, and even the seizure of movable and immovable property and the prohibition of activities.1724

1045. In this sense, the regulation could seriously affect the exercise of freedom of expression and the survival of various independent media in Nicaragua, which receive funds from international cooperation. This occurs in a context of human rights crisis, in which these media are excluded from accessing government advertising and suffer various restrictions from the State. This Office received information about the filing of unconstitutionality actions by various civil society organizations.1725

1046. The Office of the Special Rapporteur notes with concern that the equipment and facilities of Confidencial, Niú, Esta Semana and Esta Noche, and 100% Noticias have been confiscated since December 2018. Although on January 9, a magistrate of the Supreme Court of Justice declared that there would be a draft judgment on the confiscated media and that it would come out "soon"1726, the Court has not yet resolved the amparo writs filed. According to the information available, on December 23, posters were placed in the offices of the 100% Noticias and Confidencial media, informing them that the properties belong to the Ministry of Health. This, according to the journalists affected, constitutes a de facto confiscation since the Supreme Court ruling has not yet been issued.1727

1047. Likewise, as has been pointed out by this Office in its latest reports, in Nicaragua there is a duopoly of television and radio communication media, where the majority of the communication media are under the political control of the presidential family or of a government-related businessman.

E. Censorship

1048. According to available information, in February the General Directorate of Customs (DGA) authorized the return of the raw material of the newspaper La Prensa, which was held at customs for 75 weeks.1728 As reported by this Office of the Special Rapporteur in its 2019 annual report, in the face of the customs blockade, La Prensa had been forced to reduce its number of pages, modify its format, and had a reduced number of journalists.1729 In the letter sent to Nicaragua in May, this Office, together with UN Special Rapporteurs, expressed their concern about this situation.

1049. This Office of the Special Rapporteur was informed of an embargo on Nicavisión S.A., the company that owns Canal 12, for an alleged tax debt of 21 million cordobas. According to the information available, on September 11, the Third Judge of Execution and Embargoes of the Municipality of Managua appeared in the central studies of Canal 12 to proceed to seize their assets, due to a direct request from the General Directorate of Revenues ("DGI"). The seized assets would include a bank account, a television antenna, and

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other assets of Canal 12, as well as vehicles and properties of Mariano Valle, owner of Nicavisión S.A., and would greatly exceed the sum owed. Valle has affirmed that they do not owe the imposed amounts, that it is an unfair and arbitrary objection, and that it constitutes "an attempted confiscation". On September 16, Nicavisión submitted an opposition brief to challenge the embargo. However, on September 30, a hearing was held in which Judge Silvia Elena Chica Larios rejected the defenses presented by Nicavisión and established that it must pay the amount owed, which was appealed by the company on October 9.

On the other hand, on October 4, Canal 12 reported that the DGI imposed a new fiscal objection against them, which would amount to 6 million 800 thousand córdobas, and that on October 5 they presented an opposition appeal. On November 23, an opposition hearing was held, in which the lawyer for Canal 12 presented the evidence that would show that the fiscal objection is unjustified, which was declared inadmissible by Judge Silvia Elena Chica Larios, who dismissed the opposition appeal and ordered for the execution of the fiscal objection to continue.

Likewise, the DGI reportedly imposed an additional tax on Canal 10 for 110 million cordobas and on 100% Noticias for more than 7 million cordobas, corresponding to the period in which the media was confiscated. In this regard, the IACHR and its Office of the Special Rapporteur have expressed their concern on October 7 about the imposition of fiscal sanctions against the media.

On the other hand, the independent radio station Stereo Romance of Carazo reported on October 4 that, due to "the suffocating economic situation" and the lack of financial support, it was forced to reduce its informative offer, suspending the hourly micro news programs, Noticias Romance, and news posting on their website.

F. Access to public information

On May 27, the IACHR and its Special Rapporteurs (RFOE and ESCER) expressed grave concern over the lack of reliable information and the persistence of official misinformation about the scope of the COVID-19 pandemic in Nicaragua. The IACHR and its Special Offices have recorded that the information provided by the Nicaraguan government throughout the pandemic has been confusing, unspecific, and unreliable. This, given that medical terminology is not used, the numbers of infected, recovered, and deceased persons are not clearly established, and in some cases the origin of the infected persons is not mentioned.

The Office of the Special Rapporteur observes that since the beginning of the pandemic, several independent investigations have been carried out, which question the official figures. Indeed, the COVID-19 Citizen Observatory has reported a substantially higher number of confirmed cases and pointed out in August that the Ministry of Health would have hidden between 64% and 98% of positive cases. The Nicaraguan

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1735 Twitter account of Miguel Mora (@MoraMiguel100). September 5, 2020. Gobierno le cobra 8 millones de córdobas a Miguel Mora por canal que le confiscaron.
Medical Association established through an analysis on excess mortality that the health authorities would have reported only 2% of deaths from Covid-19 as of August 31, taking into account that the data on excess mortality show 7,569 deaths, while the official data show only 155.1740

1055. Likewise, the group "Anonymous" reportedly hacked the Ministry of Health (Minsa) on August 17 and leaked 400 files, which would reveal that the Minsa had hidden 6,245 positive cases of COVID-19 between March 18 and July 24.1741

1056. According to the information available, the Ministry of Health has suspended the publication of the epidemiological bulletin on its website on two occasions, which collects data on cases and deaths from endemic diseases in the country. The first time, the Minsa stopped publishing the bulletin for 7 weeks without giving explanations, and then published the report corresponding to the week of May 18-24. Since then, it has not shared the reports on its website again.1742

1057. For its part, the Pan American Health Organization (PAHO) has repeatedly expressed its concern over the lack of detailed information in Nicaragua that does not allow a correct assessment of the situation, and has acknowledged that it had to resort to unofficial sources to understand what is happening within the country.1743

1058. Likewise, a large number of false news stories that used the names and logos of independent media outlets were reported on social networks to simulate that they had been published by them, generating confusion.1744

1059. According to available information, the Ministry of Health (Minsa) would not allow the entry of independent media and journalists to its daily press conferences. Press conferences would be extremely brief1745 and only government-related media would be allowed in, with no possibility of asking questions.1746 In addition, the then Minister of Health Carolina Dávila would have canceled an interview with Canal 10 on March 24 without providing explanations.1747

1060. Additionally, at least 16 doctors have been fired as a result of providing information on the development of the COVID-19 pandemic and criticizing the government's handling of the pandemic.1748 For example, Carlos Quant, head of the infectious diseases' unit at the Manolo Morales public hospital, denounced that he was fired on June 4 in political retaliation for providing recommendations to the population that would be contrary to the government's speech and for questioning the measures adopted in the framework of the pandemic.1749 Likewise, members of the Nicaraguan Medical Unit denounced a campaign of harassment and discredit by the government and related sectors.1750

1061. Several doctors have also denounced that they have been forced by the Ministry of Health to modify the death certificates so that there is no record that the person had died from COVID-19.1751 For example, the family of journalist Gustavo Bermúdez, who died from COVID-19, stated that the death certificate described the cause as "severe atypical pneumonia”, despite having tested positive for COVID-19.1752 In addition, the Nicaraguan Medical Unit denounced that there is a "policy of repression” and "extreme vigilance" on doctors to "prevent the disclosure of real information on the number of cases and deaths from coronavirus". 1753

1062. Likewise, the COVID-19 Citizen Observatory has expressed its concern over the recent approval of the Special Cybercrime Law, which could consider the dissemination of unofficial health information a crime.1754

G. Freedom of expression and the Internet

1063. According to the available information, the two official YouTube channels of 100% Noticias have been victims of a cyberattack that caused their closure. On March 5, YouTube reportedly notified the channel that they would close the accounts for complaints of copyright infringement, which had been presented by different pro-government media, due to the publication of images of presidential speeches. Miguel Mora, director of 100% Noticias, reported that this does not allow his employees to access the media’s video files, which would include images of government repression.1755 On June 28, Mr. Mora announced that one of the YouTube channels had been returned.1756

1064. On the other hand, the Office of the Rapporteur was informed about the approval of the Special Cybercrime Law on October 27, which entered into force on December 29.1757 The law establishes within its objectives "the prevention, investigation, prosecution, and punishment of crimes committed by means of Information and Communication Technologies”, which are defined as "set of communication media and information applications that allow the capture, production, reproduction, transmission, storage, processing, treatment, and representation of information".

1065. The Law provides in its article 30 the use of criminal law to punish acts that could be framed within the legitimate exercise of freedom of expression, by establishing as a crime the publication and dissemination of "false and/or misrepresented information" when "it causes alarm, fear, anxiety", which damages "honor, prestige, or reputation", or “incites hatred and violence, endangers economic stability, public order, public health, or sovereign security”. The Office of the Rapporteur observes that the article would not pass the tripartite test of legality, necessity, and proportionality. In all three cases, prison sentences and fines are foreseen, which is clearly disproportionate. Due to the open wording of this article, which would not exceed the minimum standards required by the principle of strict legality, this Office understands that there is a real risk that this provision will generate a chilling effect on the free circulation of information and ideas in the country. In addition, the criminalization of false or misrepresented information raises great concerns, taking into account that the Office of the Rapporteur has already recommended that the States “avoid using criminal law tools, such as the creation of new broad and ambiguous criminal figures to classify the phenomenon of

disinformation”.\footnote{This is especially worrying in a context in which senior authorities constantly accuse the media of spreading false news.

1066. According to available information, the bill would have been consulted with six public institutions that would be controlled by the government and with directors of official media. However, independent journalists did not participate.\footnote{Confidencial. October 17, 2020. Asamblea orteguista “consulta” la “Ley Mordaza” con medios oficialistas; Despacho 505. October 7, 2020. Régimen se autoconsulta para aprobar “Ley Mordaza”.

1067. Various civil society organizations and journalists have expressed their concern at the approval of this law, which is called the “Gag Law,” stating that it is specifically directed at independent journalists and citizens who express themselves on the Internet, seeking to silence them. In addition, they have indicated that there is a possibility that the number of journalists in exile will increase due to fear of being subject to criminal proceedings for exercising their profession.\footnote{Despacho 505. October 28, 2020. Ley mordaza empujará al exilio a más periodistas nicaragüenses, advierte PCIN.

1068. As a result of the events documented in Nicaragua during 2020, this Office reminds the State that:

1069. \textbf{The murder of journalists constitutes the most extreme form of censorship, and impunity contributes to the self-censorship of the press.} As the IACHR and The Office of the Special Rapporteur Principle have indicated, “[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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.” Violence against journalists not only violates the freedom of thought and expression of the affected person, but also affects the collective dimension of this right. Acts of violence that are committed against journalists (a term understood under a broad definition, from a functional perspective) or people who work in the media and who are linked to their professional activity, violate the right of these people to express and impart ideas, opinions, and information and, furthermore, violate the rights of citizens and societies in general to seek and receive information and ideas of any kind.

1070. \textbf{Public authorities are called upon to maintain a speech favorable to public deliberation and freedom of expression.} The Office of the Special Rapporteur reiterates that public officials have the duty to ensure that their statements are not infringing on the rights of those who contribute to public deliberation by expressing and disseminating their thoughts, such as journalists, the media, and human rights organizations, and they must be aware of the context in which they express themselves to ensure that their expressions do not constitute, in the words of the Court, “forms of direct or indirect interference, harmful oppression of the rights of those who seek to contribute to public deliberation through the expression and dissemination of their thoughts”.\footnote{I/A Court H. R. Case of Perozo et al v. Venezuela. \textit{Preliminary Objections, Merits, Reparations and Costs}. Judgment of January 28, 2009. Serie C No. 195. Par. 151; Case Bios et al v. Venezuela. \textit{Preliminary Objections, Merits, Reparations and Costs}. Judgment of January 28, 2009. Serie C No.194. Par. 139.

1071. \textbf{Direct or indirect pressures aimed at silencing the informative work of social communicators are incompatible with freedom of expression.} In this regard, the IACHR and the Office of the Special Rapporteur recall that Principle 13 of the Declaration of Principles on Freedom of Expression establishes that "[t]he use of the power of the State and the resources of the public finances […], with the objective to pressure and punish or reward and privilege social communicators and the media based on their news lines, violates freedom of expression and must be expressly prohibited by law. The media have the right to carry out their work independently”.

1072. \textbf{The inter-American human rights system explicitly prohibits prior censorship.} This arises from Article 13.2 of the American Convention on Human Rights, and Principle 5 of the Declaration of Principles on Freedom of Expression, which establishes that “[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.”

1073. **Transparency and accountability of public powers strengthen democratic systems.** The Office of the Special Rapporteur has highlighted the importance in the current context of the availability of public information by the communities, to save lives, adopt precautions, and monitor the government’s response from every point of view. In this regard, the IACHR reminds the State of Nicaragua that Principle 4 of the IACHR Declaration of Principles on Freedom of Expression 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.”

1074. **Freedom of expression applies to the Internet in the same way as to all media.** The Office of the Special Rapporteur recalls that human rights and, in particular, the right to freedom of expression, find through the Internet a unique instrument to unleash its enormous potential in broad sectors of the population. The relevance of the Internet as a platform for the enjoyment and exercise of human rights is directly linked to the architecture of the network and the principles that govern it, including the principle of openness, decentralization, and neutrality. Likewise, it reiterates that Principle 5 of the Declaration of Principles states that “[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.”

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1075. In 2020, the Office of the Special Rapporteur continued to observe a constant use of criminal and civil procedures against journalists and the media that investigate and publish alleged corruption acts, which could be a tool of intimidation and indirect censorship. This Office observes with special concern the decision of the Panamanian Justice to order the seizure of the assets of the corporation Corporación La Prensa S.A. (Corprensa), owners of the newspapers La Prensa and Mi Diario, within the framework of the civil process initiated by former president Ernesto Pérez Balladares. Likewise, the Office of the Special Rapporteur warns about the increase in attacks against journalists covering protests in Panama.

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

1076. On October 29, the journalist from La Estrella de Panamá, Juan Alberto Cajar, was detained by units of the National Police when he was covering a protest called by civil society groups on the premises of the National Assembly against alleged corruption in the context of the pandemic. According to publically known information, the communicator and professor from the University of Panama was transferred to the police station in the Calidonia district, then transferred to the Santo Tomás Hospital for a medical evaluation, and finally returned to the police station, from where he was released around 10:30 at night. The journalist was summoned to a hearing for the following day, accused by the authorities of "disturbing public order." Finally, on November 2, after significant pressure from journalistic unions and civil society organizations, the National Police dropped the charges against journalist Juan Cajar.

1077. Among other relevant events, the Office of the Special Rapporteur was informed that on December 14, cameraman Joshua Torres of the EcoTv news network was hit by rubber bullets in an arm and a leg, in the framework of protests organized by young people in the vicinity of the National Assembly against "hate speech towards the popular class" that the Government supposedly promotes and the "mismangement" of the response to the pandemic. Despite being outside the "crossfire zone", the communicator would have been shot at a very close range, which could eliminate the presumption of possible human error. On that same occasion, according to the information received, different journalists were affected by an unusual launch of pepper spray and pepperball shots supposedly launched with the intention of dispersing them from the "safe zone" in which they were located to protect their physical integrity and their safety equipment from the gas.

1078. Likewise, on December 16, the correspondent for the EFE network in Panama, Bienvenido Velasco, received various bullet wounds from the National Police when he was covering a student demonstration against the Government in front of the National Assembly, rejecting the exclusion of young people from the so-called "Bono Solidario" due to the pandemic. The National Association of Journalists (Conape) demanded an explanation from the National Police for what happened to the photojournalist, who in his work was beaten on his back and ribs, according to information provided by the media. In the statement, Conape stressed that the incident took place when the reporter tried "to establish that he was reporting, showing his press credential, to avoid being detained as had been the order of a police superior." According to Bienvenido Velasco, "the police tried to block his access by pushing him with their shields. "About 15

1765 “Twitter account of Félix Antonio Chávez (@felixchaveztv). December 14, 2020; Archive of the Office of the Special Rapporteur for Freedom of Expression. E-mail received on December 17, 2020.
policemen surrounded me and tried to throw me to the ground (...) an officer gave the order to handcuff me and detain me, which I answered no, I am the press, then they hit me from behind on the ribs strongly, then another officer approaches me, takes my press credential, and orders that they release me" said the reporter. 1769

1079. In the context of this protest, journalists Juan Williams Caballero, Bienvenido Velasco (EFE), Mauricio Valenzuela (FOCO Panama and Reuters) and Roberto Barrios (Mi Diario and La Prensa) indicated that they were attacked and prevented from documenting the police action. They added that the Lieutenant in charge of the operation, Andres J. Urriola, of the ALFA force, ordered their arrest to prevent or obstruct their journalistic work. 1770

1080. On December 18, journalist Aris Rodríguez Mariota of the digital portal En Segundos Panamá was scouted by security personnel from the National Migration Service (SNM), while he captured on video the line of users waiting outside to carry out their respective procedures. Although the communicator identified himself as press, the security personnel told him to come closer and enter the institution, later demanding that he show them the material he was filming. "There is an aggressive treatment against what we are recording and the work we are doing, which is reporting, and it is interrupted and attacked," said the journalist. 1771

1081. On the other hand, the Office of the Special Rapporteur also heard of the complaint presented by La Prensa journalist, Mary Triny Zea, before the Public Prosecutor's Office in order to investigate whether the lawyer and legal representative of the Panamanian company Sicarelle could be the responsible for a strategy of psychological violence against her. Mary Triny Zea, author of a journalistic investigation that revealed alleged irregularities in the services provided in hotel-hospitals by the company Sicarelle Holdings Inc, reported that she received attacks through text messages and social networks as a result of her July 15 note titled "Direct contracting puts patients at risk". 1772

B. Indirect censorship

1082. The Office of the Special Rapporteur received with concern the decision of the 15th Civil Circuit Court, which ordered the seizure of the assets of the company Corporación La Prensa S.A. (Corprensa), owners of the newspapers La Prensa and Mi Diario, within the framework of the civil process initiated by former president Ernesto Pérez Balladares. 1773 In 2012, the former president of the Republic of Panama Ernesto Pérez Balladares filed a civil lawsuit for defamation against Corprensa as a result of two articles published by the La Prensa newspaper on March 21 and 22, 2011 that would have linked him to an alleged case of money laundering. These notes reported that Pérez Balladares "could be the subject of a second criminal investigation" for alleged money laundering, for "alleged irregularities detected in a bank account in the Bahamas." In the lawsuit -which was admitted on March 22, 2012 and to date has not yet been resolved in the first instance- the former president requested a compensation for 5.5 million dollars in damages. According to the media, before publishing the articles, they contacted the defense of the head of state and they reportedly added their version of the events.

1083. On July 4, 2020, eight years after the filing of the lawsuit, Corprensa was notified of the precautionary order on its bank accounts for the value of up to $1,130 million, as well as the shares of a subsidiary that owns the land and the building where the newsrooms and the newspaper prints are located. 1774 Although Pérez Balladares’ claim would have been to seize even essential goods, including paper and the prints, Judge Lina

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1770 Archive of the Office of the Special Rapporteur for Freedom of Expression. E-mail received on December 17, 2020.
Castro De León rejected said request on the grounds that it was goods that the corporation uses in its daily work. The decision was described as a "direct censorship tool" and "a serious blow to freedom of the press". On July 6, the publishing company posted the bail for the entire amount in the Fifteenth Court and made the request to lift the seizure order, which was ultimately denied by the judge.

As the Office of the Rapporteur learned, on July 28 the justice ordered the partial lifting of the civil seizure, since the amount seized exceeded the amount ordered by the court. According to the Office of the Rapporteur, Corprensa appealed the judicial decision that ordered the seizure of their assets. However, the First Superior Court of the First Judicial District, made up of judges Miguel Espino, Nora Jovel de Espinal, and Víctor Torres, confirmed the first decision.

C. Subsequent liabilities

In October, the Inter-American Press Association (IAPA) pointed out that there is an increase in legal actions against the media, journalists, and opinion leaders or influencers, which would be used "as a tool for intimidation and to promote censorship". According to the information available, former President Ricardo Martinelli had filed 16 complaints against journalists from La Prensa and Mi Diario for the alleged commission of crimes against honor, which would represent 38 journalists and media executives accused in both media. Of the 16 lawsuits filed, 11 have been admitted, whose civil claims total more than 46 million dollars.

In February 2020, guarantees judges of the accusatory criminal system of the First Judicial District archived six complaints for the alleged commission of crimes against honor to the detriment of former President Ricardo Martinelli. The complaints were filed against I. Roberto Eisenmann, founder of the newspaper La Prensa; Mariela Ledezma and Annette Planells (one against each of them and the other jointly), hosts of the radio program "Sal y Pimienta"; the directors of Corporación La Prensa (Corprensa) Diego Quijano and César Tribaldos; Mi Diario journalists Luis Enrique Brathwaite, Martha Vanessa Concepción, and Sonia Navarro, and its director Lorenzo Ábrego; as well as against a Twitter user. The complaints were all dismissed by the guarantees judges, after considering that in none of them there was proof of the commission of a crime.

This Office values the decision adopted on February 27, 2020 by the First Superior Court of Justice that reversed the sentence of a civil judge who in 2015 convicted Corporación La Prensa y Editorial por la Democracia S.A. to pay 600 thousand dollars in moral damages to the brothers David and Daniel Ochy Díez, of the construction company Transcaribe Tranding, S.A. (TCT), for publications made in 2012 in the newspaper La Prensa about their state contracts to build a highway in Paso Canoa-Puerto Armuelles. According to available information, the day after such publications, on August 3, 2012, TCT trucks blocked the Corprensa facilities to prevent the newspapers La Prensa and Mi Diario from circulating. In the ruling, the Superior Court judges, Nelson Ruíz, Carlos Trujillo and Olga Rujano De León, indicated that the plaintiffs did not demonstrate that the news published was false and inaccurate and that it was made with the intention of harming or damaging them. "It is convenient to refer to the fact that the information revealed in the aforementioned actions against the media, journalists, and opinion leaders or influencers, which would be used "as a tool for intimidation and to promote censorship".

1775 La Prensa. July 6, 2020. Secuestro de activos de diarios es una 'herramienta de censura directa', afirma la SIP.
journalistic media related to public contracting, as well as the use of public funds, for this reason, it can be classified as news of relevance or public interest," they stated.1782

1089. Likewise, in December 2020, the Twelfth Civil Judge, Ibeth Muñoz Almanza, dismissed a lawsuit from the company Panaplatanos, S.A. and the brothers David and Daniel Ochy Diez, against Corporación La Prensa for alleged non-pecuniary damage.1783 The lawsuit originated from a series of publications in June and July 2012 in which the newspaper La Prensa reported that the Association for the Agrarian Transformation of Barú (ASTBarú), formed by former associates of the Cooperativa de Servicios Múltiples de Puerto Armuelles (Coosemupar), had decided to exploit banana production through an agreement with Panaplatanos, SA, a company controlled by brothers David and Daniel Ochy Diez. According to the judge, "It has been evidenced that the invasion of land, indeed, existed by the former workers who were looking for partners to work the land and obtain a livelihood," stated the judge.1784

1090. The Office of the Special Rapporteur noted with concern the decision adopted on June 8 by the guarantee judge Elísis Martínez, which prohibited the newspaper La Prensa from publishing the photo of the lawyer Janio Lescure and refraining from continuing to investigate him.1785 The case originated after the lawsuit of the aforementioned lawyer against the president of Corporación La Prensa, Diego Quijano, and the associate director Rolando Rodríguez, for the alleged commission of crimes against honor to his detriment. According to publicly known information, the lawsuit is linked to a series of articles in which La Prensa reproduced recordings made of Janio Lescure by Israeli detectives in Spain, in which acts of corruption in the Panamanian judiciary were allegedly exposed.

D. Other relevant situations

1091. According to the information available, in the framework of the General Assembly No. 76 of the Inter-American Press Association (IAPA) held virtually from October 21 to 23, the President of Panama, Laurentino Cortizo Cohen, signed the Declaration of Chapultepec on freedom of the press and expression, as well as the Declaration of Salta on principles of freedom of expression in the digital age, becoming the first president to sign such an instrument.1786 "In Panama, being at the service of freedom of the press and investigative journalism does not entail a mortal danger, I consider it ideal that democratic governments can exercise freedom of expression when explaining their reasoning ... I ratify and reiterate my commitment to freedom of press and expression", affirmed the Head of State.

1092. This Office learned that the public debate on the need to create a professional journalism law that legally certifies the profession has been resumed.1787 The National Association of Journalists of Panama (CONAPE) issued a statement in which it expressed its concern "about the path that some events carried out by social activists are taking, hiding behind one of the fundamental pillars of the journalistic profession, which is the right to freedom of expression". Likewise, the organization warned that "some so-called ‘digital media activists’ are not members or have any link with the National Association of Journalists" so they do not consider appropriate "to endorse the actions of groups that use or incite violence to impose "their truth" and publish information, without support from proven sources".1788

1093. The Office of the Special Rapporteur also recorded that in September the Electoral Court handed over to the National Commission on Electoral Reform (CNRE) a draft reform to the Electoral Code that criminalizes misinformation that may be detrimental to the electoral process or to the services the Electoral Court provides, with penalties of 1 to 2 years in prison. On the other hand, the bill classifies the dissemination of false news as an electoral offense, which would be punishable by fines of $2,000 to $5,000. In available information, the initiative would be presented before Congress in January 2021.

1094. According to the facts documented by this Office in Panama, it is recommended that the State takes into special consideration that:

1095. Journalism is the primary and main manifestation of freedom of expression and States have a positive obligation to promote a safe working environment for the press. In this sense, the Inter-American Court has held that “it is essential that journalists [...] enjoy the protection and independence necessary to carry out their duties fully, since they are the ones who keep society informed, an indispensable requirement for it to enjoy full freedom.” In the context of social protests, journalists, camerapeople, photo reporters, and communicators covering the protests play a fundamental role in gathering and disseminating information, including the actions of the security forces and possible acts of violence. As the IACHR has stated, freedom of expression protects the right to record and report any incident. For all these reasons, the State must provide the press with the highest degree of protection so that they can carry out their work freely and keep society informed on matters of public interest. In this sense, as indicated in the Protest and Human Rights report, the State “must formulate specific policies to prevent, investigate, and punish violence against journalists, communicators, activists, social movements, referents, and social leaders in the context of protests, based on the role that these actors play in the prevention, monitoring, and control of State actions.”

1096. The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards. Under Article 13 of the American Convention, speeches on matters of public interest have reinforced protection, especially those that express essential elements of identity or denounce situations of violence and structural discrimination. Principle 11 of the IACHR Declaration of Principles on Freedom of Expression establishes that “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, […] restrict freedom of expression and the right to information”. The IACHR and the Inter-American Court have repeatedly indicated that the States have a more limited scope to impose restrictions on the right to freedom of expression when it comes to specially protected speeches, namely: expressions pertaining to the State, to matters of public interest, to public officials in the exercise of their functions or candidates for public office, or individuals voluntarily involved in public affairs, as well as political discourse and debate. These are subject to a greater degree of scrutiny and criticism from the public, which is justified by the nature of the public interest of the activities they carry out, because they have voluntarily been exposed to a more demanding scrutiny and because they have an enormous capacity to dispute information through their power of public convocation. The Office of the Special Rapporteur has also insisted on the need not to use vague or ambiguous criminal figures to criminalize expressions that, although they may be offensive, shocking, or irritate officials or part of the population, constitute expressions of public interest that should not be criminalized in a democratic society.

The inter-American human rights system explicitly prohibits prior censorship. This arises from Article 13.2 of the American Convention on Human Rights, and Principle 5 of the Declaration of Principles on Freedom of Expression, which establishes that “[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.”
In 2020, the Office of the Special Rapporteur continues to observe the persistence of the use of criminal mechanisms against those who publicly demonstrate in social protests, as well as against journalists who cover issues of public interest that inconvenience government authorities. In particular, this Office is alarmed by the facts related to an alleged network of espionage against journalists and politicians who investigated or reported acts of corruption and irregularities in the purchase of supplies to deal with COVID-19. Likewise, the Office of the Special Rapporteur expresses extreme concern over the murder of journalist Lourenço "Leo" Veras, who was investigating issues related to organized crime and drug trafficking on the border between Paraguay and Brazil for the informative website Porã News and other Brazilian media. Finally, the Office of the Special Rapporteur welcomes the judgment of the Supreme Court which establishes that the affidavits of the highest-ranking authorities of the Republic must be freely accessible to the public.

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

The Office of the Special Rapporteur received with concern the news of the arrest of journalist Roberto Esquivel by members of the Paraguayan Military Army when he was carrying out his journalistic work. On July 18, the journalist -who works freelance for local media- was apprehended in the city of Bella Vista Norte, in the department of Amambay, near the border with Brazil, while reporting and covering border controls following the closure of the border. The communicator later stated that the officers handcuffed him, covered his head with a ski mask and beat him. According to public information, he reportedly suffered bruises on his face, torso, and one arm. Roberto Esquivel was finally released without charges pressed against him. Subsequently, the Paraguayan Army published a statement in which they reported on the arrest of a person-who matched the journalist's description- who had tried to cross the border illegally and who, when reprimanded by troops, refused to show his identity document, and began to threaten them, for which he was arrested and transferred to the police station.

Likewise, in September, the Minister of Education and Sciences, Eduardo Petta, reportedly discredited the work of journalist René González, from the Ultima Hora media, in a virtual conference. "You have to be very clear and you have to be a little more up front with this type of journalists who are quite contaminated in terms of giving true information, with the truth, to the Paraguayan citizen," the official warned. The Union of Journalists of Paraguay repudiated the statement, and indicated that "as Minister of Education, he is obligated to not issue these intimidating messages against press workers, with the only intention of conditioning any future publication by a journalist regarding his work on the portfolio".

B. Murders

On the evening of February 12, the Brazilian journalist Lourenço "Leo" Veras in charge of the informative website Porã News and a correspondent for various Brazilian media outlets, was murdered. The reporter developed his work in the border region in the city of Pedro Juan Caballero, capital of the Amambay department, Paraguay. According to the information provided by the Paraguayan National Police, the crime took place at the journalist's home, located in the Jardín Aurora neighborhood. The journalist was having dinner with his family when a van with three individuals arrived; two of them were allegedly responsible for shooting him at least 12 times, one of the shots being to the head. The reporter died later at the Viva Vida hospital in the city of Pedro Juan Caballero.
1102. The Office of the Special Rapporteur condemned the murder, and called on the Paraguayan State to fully, effectively, and impartially investigate this crime and others that have gone unpunished; clarify their motives; and judicially determine the relationship they may have to journalistic activity and freedom of expression.

1103. At the Porã News site, Leo Veras specialized among other topics in organized crime and drug trafficking on the border between Paraguay and Brazil. This Office learned that weeks prior to the assassination, on January 19, the city of Pedro Juan Caballero was the scene of the escape of 75 prisoners from the regional penitentiary, most of them linked to the Brazilian criminal organization First Capital Command (PCC). Sources close to Veras reported that the journalist expressed fear for his life as a result of the situation.

C. Prosecution

1104. In September, the Human Rights Coordinator of Paraguay (Codehupy) visited the family of young Rodrigo Quintana, a young leader of the Authentic Radical Liberal Party [Partido Liberal Radical Auténtico] who died at dawn on April 1, 2017 inside the headquarters of the aforementioned opposition party, to following shots fired indiscriminately by the police. This happened within the framework of citizen protests against the intention to enable presidential reelection through an amendment and not through the constitutionally provided path. On April 3, 2017, the IACHR issued a statement expressing deep concern over the acts of violence and repression in the context of the protests in Paraguay. Regarding the death of Rodrigo Quintana, the IACHR urged the State to promote a swift investigation into the death of the young man, to establish whether it was an extrajudicial execution and, consequently, to apply the corresponding judicial responsibilities.

1105. During the visit to the family's home in La Colmena, Paraguarí, representatives of Codehupy expressed their solidarity given the continued state impunity of the incident and reported that it had launched a monitoring of the judicial cases related to the events of March 31, 2017. The organization expressed its concern that the trial -which has not yet started- against a non-commissioned officer of the Police, to date the only one prosecuted for the death of the young man, "yields results that are not compatible with an exhaustive, sufficient investigation, to investigate and establish the responsibility not only of the alleged perpetrator, but of all the people who could have been involved in the wrongdoing at the headquarters of a party and the murder of the young Quintana".

D. Communication surveillance and source confidentiality

1106. The Office of the Special Rapporteur observed with concern the alleged network of espionage against journalists and politicians who investigated or reported acts of corruption and irregularities in the purchase of supplies to deal with COVID-19. According to the information available, a team from the Specialized Computer Crimes Unit with the support of Attorney General Sandra Quiñonez revealed that it was a network that spied on dozens of people and the investigations are still ongoing.

1107. Among the victims of espionage are Juan Clari Arias and Jorge Torres, reporters for Grupo Nación. On April 17, Juan Clari Arias denounced irregularities in the functioning of his cell phone. According to the journalist, he was missing all the content and could not make calls. At that time, he contacted the phone

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company to make a claim, and a company representative told him that the problem was that a reprint of his chip had been requested. On April 24, journalist Jorge Torres announced on Twitter that his phone had also been compromised, and that someone had tried to access his Facebook account. \(^{1805}\)

1108. On April 28, police agents and prosecutors arrested Luis Bordón and Liz Carolina Centurión González, the two allegedly responsible for hacking the journalists’ phones and also the phone of congress representative Carlos Antonio Rejala, according to the information received. Likewise, on April 30, Gerardo Fabián Martí, a lawyer affiliated with the opposition Authentic Radical Liberal Party and former director of the General Directorate of Statistics, Surveys, and Censuses in 2013 surrendered to the Police after an arrest warrant was issued against him and following a police raid in his home. According to the information available, Martí would be the alleged intellectual author of the information theft. All three individuals were arrested and charged with the crimes of criminal association and improper access to data and computer systems. \(^{1806}\)

1109. According to information provided by the Committee to Protect Journalists, journalist Juan Clari Arias assured that the hackers had accessed all the data on his cell phone, including the identity of all his journalistic sources and that therefore he was trying to rebuild his network of sources. “That is the greatest damage they have caused me,” said the reporter. \(^{1807}\)

E. Subsequent Liabilities

1110. In 2019, the former vice minister of the State Tax Undersecretariat (SET), Marta González Ayala, filed an autonomous complaint against the journalist Juan Carlos Lezcano and the director of the newspaper ABC Color, Natalia Zuccolillo Pappalardo, arguing that they had been damaged by publications of the media that denounced the alleged commission of serious irregularities in the exercise of the position, specifically in relation to the award of the contract to update the Marangatú System of the SET to the Inter-American Center of Tax Administrations (CIAT). \(^{1808}\) The former official requested in her judicial brief that prison sentences be applied in addition to a very high compensation for damages (more than USD1,400,000). The case was taken to oral trial but, the process did make progress on the merits for different reasons -superposition of public hearings, the Court suspended hearings due to the coronavirus, and a request for inhibition by the judge in the case. The Inter-American Press Association warned about this case, which could lead to a two-year prison sentence for press workers for reporting on irregularities in public management. \(^{1809}\)

F. Social Protest

1111. On July 29, after the Minister of Public Health and Social Welfare, Julio Mazzoleni, announced a setback in the relaxation of measures and the return to isolation in the department of Alto Paraná due to the increase in cases of coronavirus, a large number of people went out to demonstrate mainly in Ciudad del Este but also in other towns such as Minga Guazu and Hernandarias. \(^{1810}\) According to local media reports, in Ciudad del Este -the capital of Alto Paraná- protest concentrated on the La Amistad Bridge, which communicates with Brazil, where the protesters would have thrown stones and started fires with pyrotechnics, confronting police officers. \(^{1811}\) According to available information, members of the Paraguayan

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\(^{1806}\) ABC Color. April 29, 2020. Detenidos por duplicación de chips habrían consumado el robo de datos sensibles de periodistas.


\(^{1808}\) La Nación. September 27, 2019. Ex viceministra de la SET querella a directora y periodista de ABC Color.


National police and navy used rubber bullets to disperse the protests, leaving several individuals injured. Likewise, according to publicly known information, around 36 people have been charged by the Prosecutor’s Office for disturbance of the public peace and resistance.

1112. This Office was also informed of a series of protests that led to criminal charges against protesters for alleged attacks against a historic building and against the flag, and some people were even charged with an alleged violation of quarantine. According to the information received, on September 2, 2020, two 11-year-old Argentine girls were murdered in the framework of an alleged confrontation between the Joint Task Force (JTF), made up of police and military, and an armed group that operates in the country. The events have caused alarm and consternation in a large part of society due to alleged irregularities on the part of the state forces and the judicial and governmental authorities surrounding the case. In this context, on September 5, a group of people summoned themselves to peacefully protest at the Pantheon of Heroes of Paraguay, demanding that the events be thoroughly investigated and those responsible be punished. However, a person would have managed to cross the perimeter fence and then made inscriptions on the walls of the building and set fire to an ornament with the colors of the Paraguayan flag. In the days that followed, Judge Gustavo Amarilla charged Paloma Chaparro Panimboza, Giselle Noemi Ferrer Pasotti, and Mariángela Guidita Abdala Carísimo, three feminist activists who participated in the protest, were charged for alleged violation of quarantine, disturbance of public peace, and damage to cultural heritage. According to publicly known information, Paloma Chaparro was detained during the hearing on the imposition of pre-trial measures. On the other hand, Mariangeles Abdala and Giselle Ferrer did not appear at the hearing, for which they were pronounced in absentia. The activists had previously published on their social networks that they were leaving the country for "not having guarantees from the Paraguayan State, which today is massacring their brothers." 

G. Progress

1113. The Office of the Special Rapporteur welcomes the decision adopted on June 11, 2020 by the Supreme Court of Paraguay, which declared that the affidavits of the highest-ranking authorities of the Republic must be freely accessible to the public. In this way, with a total of eight votes, the highest court decided not to allow the unconstitutionality action brought by the former head of the Comptroller General of the Republic, Enrique García. The ruling, which extensively reviews the legal framework and national and international jurisprudence on access to information, transparency, and corruption, was cited by the local press as a "historic" ruling and "a very important precedent in terms of transparency.

1114. Among other things, the judgment highlights that "the contested resolutions allow the republican principle of the Paraguayan State to be operationalized, in its dimension of publicity of the conduct of public officials and the effectiveness of the right of access to public information (...) Ultimately, knowledge of the private or functional conduct of public officials is relevant to assess their suitability, whether technical or moral, in public management and for this purpose must provide all information on their activity to facilitate citizen control of their suitability in managing. For such control to be effective, all official activity must be

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reported to the original owners of the public power, which is the citizenry. It considered that all conducts of officials should be exposed to the public, because all conducts of official is of interest to the public to control their actions”.

1115. In 2020, the Office took note of various attacks and intimidation against journalists and the media, who are also often the target of criminal proceedings for their coverage and investigations on issues of high public interest. Furthermore, in the context of social protests motivated by government policies to prevent COVID-19, excessive use of force against protesters was observed. As a result of these events, which also includes the murder of a journalist who covered organized crime and drug trafficking, the Office of the Special Rapporteur reminds the Paraguayan State that:

1116. **The murder of journalists constitutes the most extreme form of censorship, and impunity contributes to the self-censorship of the press.** States have a positive obligation to identify and punish the perpetrators of these crimes. As the IACHR and its Office of the Special Rapporteur have repeatedly stated, it is essential that the State fully, effectively, and impartially investigate the murders of journalists, clarify their motives, and judicially determine the relationship they may have to journalistic activity and freedom of expression. Authorities should not rule out the practice of journalism as a motive for the murder and/or assault before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions on the development of the processes in the stages of accusation or trial. Not having completely exhausted the logical lines of investigation entails, above all, that the intellectual authors cannot be identified. Likewise, the Office of the Special Rapporteur recalls that the States must ensure that crimes against freedom of expression are subject to independent, prompt, and effective investigations and judicial procedures.

1117. **Attacks and aggressions committed against journalists and against the press violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society.** The Office of the Special Rapporteur Principle reminds that 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.”

1118. **The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards.** Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[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 argued that the use of criminal law in these cases does not respond to a pressing social need that justifies it, is unnecessary and disproportionate, and can be a means of indirect censorship given its discouraging effect on the debate on matters of interest public.1819

1119. **Illegal surveillance actions against journalists prevent the full development of the right to freedom of the press.** In addition to directly interfering with the freedom to seek, receive and impart information, this type of surveillance could put informants and confidential sources of the press at risk. Any measure aimed at seizing journalistic material, which requires releasing sources, or summoning journalists as witnesses, has a restrictive effect on freedom of expression. According to Principle 8 of the Declaration of Principles on Freedom of Expression of the IACHR, “every social communicator has the right to keep his/her source of information, notes, personal, and professional archives confidential.”

1120. **Social protest, which includes the rights to peaceful assembly without arms, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights.** In this sense, it has been indicated that "the criminalization in itself of demonstrations in public streets when they are carried out within the framework of the right to freedom of expression and the right to assembly is in

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principle inadmissible”. In its report on Protest and Human Rights, the IACHR noted that criminalization has a chilling effect on all of society and may lead to preventing or inhibiting this type of expression. Furthermore, the IACHR has understood that the use of force constitutes “a last resort that, qualitatively and quantitatively limited, seeks to prevent an event of greater gravity than the one provoked by the State’s reaction. Within this framework characterized by exceptionality, both the Commission and the Inter-American Court have agreed that, for the use of force to be justified, the principles of legality, absolute necessity, and proportionality must be met”.

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In 2020, Peru was one of the countries most affected by the pandemic in the region and with the highest risk for press workers. The Office of the Special Rapporteur observes with concern various acts of verbal and physical violence against journalists and the persistent use of judicial harassment through criminal figures as a mechanism to pressure and silence investigative journalism. While this Office positively values the ruling of the Constitutional Court that recognized the right to protest as a constitutional right, it also notes with concern the excessive use of police force against protesters and journalists and the detentions carried out during the protests called in November 2020. During its working visit, the IACHR and its Office of the Special Rapporteur received numerous testimonies reporting the use of rubber pellets against protesters and the injuries caused by the use of metal pellets. According to the available information, there have been at least 40 cases of attacks on journalists, of particularly seriousness the cases of the photographer from the newspaper El Comercio, Alonso Chero and of Alonso Balbuena from Ojo Público.

A. Progress

On July 3, 2020, the Constitutional Court of Peru made a transcendent decision for the country and the region, recognizing the right to protest as a constitutional right.\textsuperscript{1822} The case came to the Court due to a lawsuit of unconstitutionality presented by the Puno Bar Association against Legislative Decree 1237 that modifies the crime of extortion (art. 200 of the Penal Code), published on September 26, 2015 in the official gazette El Peruano.\textsuperscript{1823} The lawsuit was sponsored by the Institute of Legal Defense, the Association for Life and Human Dignity of Cusco, Human Rights Without Borders of Cusco, and the Human Rights and Environment Office of Puno.

The plaintiff argued that the norm in its original wording denatured the crime of extortion and was did not recognize the nature of the acts of protest in many parts of the Andes and the Amazon, allowing the preventive detention of social leaders just for participating in a protest where a public road has been taken. The Court declared the claim unfounded because it did not gather the five votes necessary to declare the challenged provision unconstitutional (it received four favorable and three unfavorable votes). However, it made an extensive interpretation of Decree 1237 in which it cites on several occasions the standards and principles elaborated by the Office of the Special Rapporteur on the recognition of the right to protest as a way to exercise the right to assembly and freedom of expression. The ruling links the right to protest with the democratic principle and that of popular sovereignty; ratifies criminal law as the ultima ratio; stresses the importance of dialogue mechanisms to deal with conflicts that may arise on the matter; and maintains that the right to protest is "connected" with the "exercise of other fundamental freedoms, such as freedom of opinion, expression, and dissemination of thought, the right to strike, freedom of movement, and the right of association". Finally, the ruling also points out the importance of any eventual regulation on protest meeting the conventional and constitutional obligations of the country in terms of respect for human rights.

B. Threats, attacks, and judicial harassment of journalists and the media

According to the information received by the Office of the Special Rapporteur, on February 13, the journalist Carlos Enríquez Salinas, host of the television program "Tierra Nuestra", was physically attacked by businessman Alfredo Quispe Muguerza when he appeared to cover a scheduled judicial proceeding. The purpose of which was to inspect a land in dispute involving the businessman, in the Nuevo Chimbote district.\textsuperscript{1824} The businessman, accused of usurpation of the land, approached the journalist with insults and asked him to leave the place, and then began to hit him hard on the head and chest.

1125. Likewise, on February 21, the reporter and news director of Radio San Pedro, Jimmy Castillo Gamarra, was attacked by an official of the municipality of San Marcos, when he was leaving the building where the station operates.\textsuperscript{1825} According to publicly known information, the aggressor -identified by the journalist as Richar Huaccho Sigueñas- reportedly hit him several times with a bottle of beer and with his fists, warning him to "stop bothering the mayor." The attack caused a deviation of the nose and bruises in various areas of his body. Weeks before the event, the communicator and his journalistic team had published a series of investigations into acts of corruption in which the mayor of San Marcos, Christian Palacios Laguna, and some trusted officials, among them Richar Huaccho Sigueñas, were involved.

1126. The Office of the Special Rapporteur has also documented harassment and threats against journalists during 2020. On January 29 in the morning, a team from the Callao No. 12 Corporate Provincial Criminal Prosecutor's Office and a team of approximately 40 agents from the Peruvian National Police (PNP) went to the home of the journalist and editor of the Politics section of Diario Expreso, María Teresa García, to request recordings of the security cameras of her home that would allow the perpetrators of a robbery that occurred in the previous days to be identified. According to the journalist, the prosecution team insistently requested that she give them the laptop, to which she refused, for which they answered that if she did not collaborate with the prosecution operation, she would have to answer to a judge for her actions. Finally, the journalist provided the prosecution team, on a USB stick, with the requested videographic material.\textsuperscript{1826}

1127. On January 31, journalists Hugo Gonzales and Yldefonso Espinoza of the Noticiero Libre portal requested protection guarantees from the Regional Prefecture of Ancash for the alleged death threats, surveillance, and intimidation of which he was being victim.\textsuperscript{1827} According to journalists, the threats occurred after various notes linking the congresswoman from Unión Por el Perú (UPP) María Isabel Bartolo Romero with the criminal organization “Los seco de la cordillera blanca”. As the journalist Espinoza pointed out in his judicial presentation, after this article he began to observe the presence of strangers and even that of a vehicle with the license plate covered at night (\ldots) with the apparent intention of intimidating or attempting an attack against his life or that of his relatives. On his side, the journalist Gonzales denounced having suffered a death threat publicly through Facebook.

1128. On February 13, journalists Javier Condor Ticllavilca -independent journalist in Pichari, Cusco- and Willy Villa Navarro -director of La Calle radio station in San Francisco, Ayacucho- reported being threatened by followers of Julián Pérez (known as “Cheldo"), a coca grower leader from Vraem, and requested guarantees from the authorities for the protection of their lives and those of their families, which were ultimately granted.\textsuperscript{1828} According to publicly known information, Pérez is the current secretary general of the Federation of Agrarian Producers of the Apurímac River Valley (Fepavrae) and on other occasions he has already threatened to kill opponents.

1129. Cartoonist Carlos Tovar -also known by the pseudonym "Carlín"- of the newspaper La República stated that he had received numerous threats and attacks after publishing a cartoon in which he portrayed former President Alan García, who committed suicide last year.\textsuperscript{1829} This Office observed with special concern...
the statements on Twitter by Salvador Heresi, former Minister of Justice of the current Government: "the threats are[sic] well deserved. Also if they beat to the ground".  

1130. On the other hand, this Office took note of several arbitrary detentions of journalists within the framework of the movement restrictions established by the Government due to COVID-19. On the night of March 18, journalist Martín Gonzales Salazar was rebuked by a police patrol when he was returning home after working hours on the Cosmos Televisión channel in the city of Pruno. According to the information received, three agents of the National Police of Peru approached him to ask him why he was walking down the street at that time, to which the journalist explained that for his journalistic work he was protected by a Decree of the Executive. After identifying himself with ID and his journalist card, and showing the safe conduct, one of the agents told him "this is not valid in the State of Emergency, it is only for the mornings", asking the communicator to get into the vehicle to be transferred to the Puno Police Station, where he was held for about half an hour.

1131. On the night of March 28, Ralph Zapata, regional editor of the Ojo Público portal, was working at his home in Villa La Legua when a group of ten police officers intervened his home and detained him, transferring him to the local police station by force, violently, and barefoot for allegedly violating the curfew. Minutes before the intervention, Zapata was working on a report on the pandemic, in coordination with Nelly Luna Amancio, general editor of the portal. At the police station, the journalist called his colleague, but they immediately asked him to stop communicating and put his cell phone away. Ojo Público was able to communicate with the Ministry of the Interior to report the act of violence against the communicator, and around 10:00 pm he was released. The Ministry of the Interior later issued a statement based on the version of the police officers, stating that the journalist was outside his home and in the company of other people when he was arrested and that at no time did the Police enter his home, a version which was later refuted by the media with evidence.

1132. Likewise, according to publicly known information, on the morning of April 10, journalist Marco Antonio Morán from Radio Integración was detained by the police and taken to the Mazamari police station, Satipo province, accused of disturbing public order. There a noncommissioned officer told him that he had committed an infraction while showing him a publication that he had made the day before. As this Office learned, several journalists from the Andina newspaper were also detained by the police for not respecting the curfew. The journalist was released minutes later.

1133. In the province of Satipo, accused of disturbing public order.


1130 Twitter account of Salvador Heresi (@SalvadorHeresi). April 22, 2020; Bolavip. April 22, 2020. Carlín denunció amenazas por su caricatura y Heresi le respondió: "Que te revienten a golpes".  


1133. This Office also took note of the disappearance of the Cable Vraem reporter, Daysi Lizeth Mina Huamán, on January 26 in the city of Ayacucho. On the day of her disappearance, the journalist had voted in the legislative elections of Peru in the town of Santa Rosa (La Mar province) and, according to publicly known information, she would have covered the elections around 3:30 pm. According to the information received, the reporter joined the Cable Vraem media two weeks before her disappearance. According to the statements of her relatives in the media, it is known that Daysi Mina was in a bus terminal in Santa Rosa, from where she would leave for Carmen Pampa, Ayna San Francisco district, to meet her partner. Days later, some of her belongings were found in areas near the Santa Rosa-San Francisco highway. The investigation is reportedly under the Criminal Investigation Division (DIVINCR) of Kimbiri (Cusco), together with the Ayna-San Francisco Prosecutor’s Office. On July 26, after six months of the disappearance of the young reporter, the National Press Association denounced in a statement the “indolence of the police authorities and the Prosecutor's Office in the investigation and search for the journalist” and stressed the "slow actions in the inquiries" by the National Police and the Prosecutor's Office.

1134. On September 3, the Ethics Court of the Peruvian Press Council declared with merits the complaint of the communicator Yanira Dávila Herrera against Grupo La República, considering that a note published on the website of the newspaper La República in which they signaled against the journalist was "questionable" in terms of journalistic ethics and a trigger for gender violence online. According to the Ethics Court, “from the content of the note it is clear that Grupo La República was or could foresee the verbal offenses and attacks that Mrs. Dávila could receive through social networks (...). The outcome noted by Mrs. Dávila, consisting of a significant number of aggressive and threatening comments to human dignity and respect for women’s rights, highlights the absence of the duty of care that the aforementioned media should have considered (...).”

1135. In October, journalists from the province of Jaén denounced harassment by senior officials of the Provincial Municipality in retaliation for their information work, which would include preventing coverage and verbal attacks. According to the available information, this would be linked to the coverage of the local channel Visión TV, which showed how municipal officials would have celebrated the birthday of the Deputy Manager of Inspection, Liz Yanet Campos Martínez, without observing the protocols and regulations in force during the state of national emergency. Days later, municipal police officers prevented the journalist Clever Monteza Hernández, from Visión TV, from accessing an official activity in which the provincial mayor, José Francisco Delgado Rivera, was present. The reporter remained outside the premises and, at the end of the activity, waited for the mayor to leave to consult him about what happened at the birthday party of the Assistant Manager of Inspection, to which José Francisco Delgado Rivera would have replied that the journalists act as an "executioner and hit man". Likewise, on October 9, police agents prevented the journalist from Radio Marañón, Cristian Oblitas García, from entering an official activity in which the Assistant Manager of Inspection, Liz Yanet Campos Martínez, participated, and they would not have allowed him to approach her to get a statement, unlike other media. According to public information, the police agents indicated to another journalist that they had an explicit order to restrict access to Cristian Oblitas.

1136. This Office was also informed that on October 27, police agents from the city of Ica together with officials from the Prosecutor’s Office had raided the privately owned television channel Cadena Sur Canal 15, Radio Sistema, and Radio La Mega, following a complaint filed by Mónica Guillén, wife of the regional governor.
of Ica, Javier Gallegos, who claimed to be the victim of alleged "trolls" attack.\textsuperscript{1842} The intelligence police reportedly detected that the alleged attacks came from devices located in the buildings of said media. According to the information provided by the media representatives, the police contingent seized computers, laptops, and cell phones. Upon entering the headquarters of Canal 15, the police contingent also tried to turn off the transmitters, causing damage to the equipment and the consequent getting the channel off the air. In Radio Sistema, the transmitter, among other technological equipment from the channel and the administrator's family, was allegedly taken, leaving the radio off the air.\textsuperscript{1843} On the other hand, in the days that followed, the journalist Ricardo Herrera, host of Radio Exíosa in the city of Ica, reportedly received threats through his wife, who received a message urging her to "tell her family to shut up."\textsuperscript{1844} The threat would be linked to a report by the journalist on the alleged irregular use of public resources that would involve the wife of the regional governor of Ica.\textsuperscript{1845}

\textbf{1137.} Likewise, on October 26, the Directorate of Inspection and Instruction (DFI) of the Ministry of Justice and Human Rights began an administrative sanctioning process against the weekly Hildebrandt en sus Trece for an alleged violation of the Personal Data Protection Law, which could derive in an economic sanction up to 215 thousand soles which, according to the media, in practice would mean their economic bankruptcy.\textsuperscript{1846} According to the information received by the Office of the Special Rapporteur, in recent years there has been a growing trend in the use of legal actions for the alleged violation of said law, with the aim of intimidating journalists and the media.

\textbf{C. Subsequent liabilities}

\textbf{1138.} During 2020, the Office of the Special Rapporteur continued to observe a trend in the use of criminal figures by officials and public persons to obstruct journalistic investigations on issues of public interest. Thus, for example, on February 1, the journalist and former editor of the newspaper Correo, Rolando Rodrich Sarango, was notified that the Third Single-Person Criminal Court of Piura admitted for processing the defamation complaint that the regional governor of Piura, Servando García Correa, had filed against him, accusing him of affecting his honor and demanding the maximum penalty and a reparation of 2 million soles. The grievance would be related to a column published by the journalist in 2019 in which he would have questioned the work of García Correa.\textsuperscript{1847}

\textbf{1139.} In addition, Maritza Adela Díaz de la Cruz, sister of the provincial mayor of Cañete, would have legally harassed journalist Ernesto Guillermo Peña Huari, from Radio y Televisión Activa, for alleged offenses to her honor, image, and good reputation through the national media. The accusation would be related to public statements by the journalist in which he claimed to have collected documents signed by the mayor’s sister that would prove alleged links of the official with land trafficking networks.\textsuperscript{1848} In her notarized letter, Maritza Adela Díaz de la Cruz indicated that the "unsupported" statements of the communicator would have affected her psychologically. According to the information available, the reporter had already been the victim of a harassment campaign on social networks, for which he had decided to go to a national media to make the public complaint. As stated by civil society, this is not the first time that Maritza Díaz de la Cruz has starred in an incident against the local press in Cañete.\textsuperscript{1849}

\begin{footnotesize}

\textsuperscript{1843} Asociación Nacional de Periodistas del Perú (ANP) / Facebook. October 29, 2020.


\textsuperscript{1845} Exitosa Noticias / Youtube. October 28, 2020. \textit{Amenazan a periodista de Exíosa Ica por denunciar presunto caso de corrupción}.


\textsuperscript{1848} Asociación Nacional de Periodistas del Perú / Facebook. September 4, 2020.

\textsuperscript{1849} Asociación Nacional de Periodistas del Perú / Facebook. September 4, 2020.
\end{footnotesize}
During 2020, this Office also received information on the different criminal and civil proceedings that journalist Paola Ugaz Cruz has faced since 2018 for exercising her work. The attacks would be linked to her participation in the book "Half monks, half soldiers" by the journalist Pedro Salinas, who denounced an alleged history of sexual, physical, and psychological abuse within the religious organization El Sodalicio de Vida Cristiana (SVC), as well as also for a subsequent financial investigation that would have identified alleged acts of corruption on the part of the religious order. Said processes were filed by persons related to the organization, for the alleged commission of the crimes of aggravated defamation, false testimony, and criminal organization.

On February 25, the provincial criminal prosecutor of Piura, Hedly Huaylinos, admitted the appeal of complaint filed by businessman Carlos Alberto Gómez de la Torre Pretell, linked to the Sodalicio de Vida Cristiana, to continue with the complaint for the alleged crime of false testimony against Paola Ugaz. According to the complainant, the journalist committed false testimony in the trial against Pedro Salinas, denying that she was the producer of the documentary "The Sodalitium Scandal" for the Al Jazeera network. According to the information available, Carlos Alberto Gómez de la Torre Pretell also reported Paola Ugaz in Piura and Lima for alleged defamation, for which he requested 3 years in prison and 2 million soles in civil reparation.

Likewise, the journalist also faces a process for aggravated defamation under the Ninth Criminal Court of Lima, derived from a complaint filed in 2019 by Luciano Revoredo Rojas, a former candidate for the Congress of Peru and director of the news and opinion website La Abeja. Luciano Revoredo Rojas maintains that the journalist allegedly defamed him and his website by qualifying it as a "defamatory media" for which he requested a civil compensation of 200 thousand nuevos soles (around 56 thousand US dollars), a sentence of three years in prison, and an additional fine for the journalist.

In this context, the Office of the Special Rapporteur was informed that in September 2020, Paola Ugaz and Pedro Salinas were subject to suspicious surveillance by unknown individuals. Likewise, on October 2, the journalist reported having received a death threat on her social networks from an unknown person. "You will die. Reds, the Peruvian Charlie Hebdo is coming. We are going to fumigate them with lead," the message indicated, alluding to the attack on the French satirical weekly in 2015. Paola Ugaz also denounced an alleged smear campaign against her launched with accusations of money laundering and participation in criminal organizations.

On the other hand, in March 2020 the journalist Daniel Yovera was also accused of alleged defamation by Carlos Gómez de la Torre Pretell, after revealing information for the Al Jazeera chain about an alleged case of land trafficking in the district of Castilla, Piura province, which would involve companies and individuals linked to the Sodalicio de Vida Cristiana. The reporter was summoned by the Judiciary to attend the first hearing on November 19, but according to the information available it was suspended due to the absence of the judge.

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1854 Asociación Nacional de Periodistas del Perú / Facebook. October 10, 2020.


D. Social protest

1145. Between November 9 and 15, a series of social protests took place throughout the country after the Peruvian Congress voted in favor of the vacancy motion against President Martín Vizcarra and declared his “permanent moral incapacity.” As a result of these events, the IACHR made a working visit to Peru from November 29 to December 2, 2020, with the aim of observing the human rights situation on the ground in the context of social protests.1859

1146. According to the information received by the IACHR and its Office of the Special Rapporteur, the protests were mostly attended by young people and students who took to the streets to express their dissatisfaction with the decision of Congress. Particularly in the city of Lima, various acts of violence were reported. The National Police allegedly used tear gas and pellets in a massive and indiscriminate manner that injured protesters, in order to disperse the protests.1860 In this context, two young men, Jordan Inti Sotelo Camargo and Jack Bryan Pintado Sánchez, lost their lives and at least 200 people were reportedly injured, including some members of the Police.1861 According to the Ombudsman's Office, at least 47 people were detained between November 10 and 14, 2020.1862

1147. It was reported to this Office that several people had been required by the police to sign acts of intervention and detention, without the presence of the Prosecutor's Office and without legal advice due to the refusal of the police to authorize, in certain cases, communication between the detainees and lawyers from the National Human Rights Coordinator (CNDDHH), aspects that call into question the right of defense. The Office of the Special Rapporteur was also informed about the presence of plainclothes police officers who allegedly infiltrated the demonstrations to detain people, despite the fact that they must be in uniform and identified. The Office of the Special Rapporteur highlights that the infiltration and other similar activities of covert intelligence on protesters without a court order is particularly serious.

1148. On the other hand, ballots were issued against the protesters with administrative sanctions for violations of the rules on confinement and social isolation, such as Supreme Decree No. 006-2020-IN.1863 Based on said rule, sanctions of S/.387 nuevos soles were imposed by equating participation in a protest with holding social and recreational gatherings. According to information received, the foregoing is being done with the aim of dissuading people from demonstrating, despite the importance of the right to protest for democracy and the existence of less restrictive measures based on criteria of necessity and proportionality, such as the use of masks and social distancing.

1149. The Office of the Special Rapporteur also received information about attacks on journalists and photojournalists as part of its work covering the protests, both in Lima and in other parts of the country. In this regard, during its working visit to Peru, the IACHR and its Office of the Special Rapporteur received information on at least 40 cases of attacks on journalists, the cases of the photographer of the newspaper El Comercio, Alonso Chero, and that of Alonso Balbuena, from Ojo Público.1864 In the first case, and according to what the Commission was informed, Alonso Chero was hit by a projectile in the back and, after surgery, a...
glass marble was extracted. In the case of Alonso Balbuena, police officers fired a tear gas canister at close range and directly at his leg, destroying a considerable part of his muscle mass.\footnote{1150}

1150. On the other hand, the Office of the Special Rapporteur also received information that on August 8, three indigenous people from the Kukama Kukamiria community were killed by shots fired by the National Police in the framework of a protest against the State and the Canadian oil company PetroTal in Lot 95, in the Amazon region of Loreto.\footnote{1151} A statement from the Regional Organization of the Indigenous Peoples of the East (ORPIO) indicated that the demonstration was intended to express rejection towards “the oil company and the State in the face of the abandonment and death of their relatives due to lack of treatment, medicines because of the COVID-19”.\footnote{1152} According to available information, the protesters were allegedly repressed by the National Police after an agent was wounded by a projectile. As indicated by the Ministry of the Interior in a statement, “the residents were provided with lances and backloads (pellets) and demanded the stoppage of the work on the referred oil camp known as Lot 95.”\footnote{1153}

E. Prosecution

1151. On September 3, the Third Transitory National Criminal Chamber Specialized in Organized Crime rescheduled the hearing at the beginning of the new oral trial against Daniel Urresti, congressman of Podemos Peru and pre-candidate for the presidency of the Podemos Peru party, for the murder of the journalist of the Caretas magazine, Hugo Bustíos, perpetrated on November 24, 1988 in the city of Ayacucho.\footnote{1154} The rescheduling of the hearing was requested by the defense of Daniel Urresti and was set for November 26, 2020.\footnote{1155} The Prosecutor's Office requested that he be sentenced to 25 years in prison as the alleged mediate perpetrator of the murder of the communicator. Prosecutor Luis Pinto Saavedra, from the first National Criminal Superior Prosecutor’s Office, considers that Urresti was the one who told his subordinates to end the life of the journalist by order of the Huanta military chief, Víctor La Vera Hernández.\footnote{1156} Likewise, according to public information, at the beginning of the new trial the Prosecutor's Office also requested a civil compensation of 500 thousand soles.\footnote{1157} On his part, the congressman and presidential candidate stated that they would be “restricting” his right to “unrestricted defense” in the new oral trial since he would not be allowed to speak orally with his lawyer during the hearing.\footnote{1158}

1152. This is the second oral trial to which the former Minister of the Interior is subjected in the case of Hugo Bustíos. On October 5, 2018, Collegiate B of the National Criminal Chamber acquitted him after considering that there were no grounds to prove his responsibility for the journalist's murder. However, in April 2019 the Permanent Criminal Chamber of the Supreme Court concluded that the judges who dismissed the accusation had not adequately assessed the testimonial and documentary evidence, for which it annulled the acquittal and ordered a new trial.

1153. As this Office was informed, Daniel Urresti would have used the criminal process for the murder of journalist Hugo Bustíos in his presidential campaign in his favor, insisting on his innocence. The candidate would have published images and messages in a humorous tone, some in response to the media. “When you cover the mouths of those who said you killed Bustíos and now they say that you are only a mediate perpetrator”, “The truth breaks through! The hoax of the witness who said that he saw Urresti kill Hugo

\footnote{1152} Organización Regional de los Pueblos Indígenas del Oriente (ORPIO). August 9, 2020. \textit{ORPIO se pronuncia ante la muerte de tres indígenas en enfrentamiento del Lote 95 en Loreto.}
\footnote{1153} Twitter account of Ministerio del Interior de Perú (@MininterPeru. August 9, 2020.)
\footnote{1154} Asociación Nacional de Periodistas del Perú (ANP). September 1, 2020. \textit{Caso Bustíos: juicio oral contra Daniel Urresti fue reprogramado.}
\footnote{1155} El Comercio. September 3, 2020. \textit{Fiscalía acusa a Daniel Urresti como presunto autor mediato del asesinato de Hugo Bustíos.}
\footnote{1157} El Comercio. October 12, 2020. \textit{Daniel Urresti sobre juicio por caso Hugo Bustíos: “Se está cortando mi derecho a una defensa irrestricta.”}
Bustios fell. The prosecutor did NOT accuse the general as the direct author of that death," some of his publications point out.1874

**F. Government advertising**

1154. The Office of the Special Rapporteur was informed about the existence of four bills that would be under discussion in the Peruvian Congress to regulate the granting of government advertising to the media, presented by Eduardo Acate Coronel of Alianza para el Progreso (APP), Luis Carlos Simeón of Acción Popular, José Luna Morales of Podemos Peru, and Daniel Osedad (Frepap). The initiatives have a common point, which is to prioritize government advertising for media that have at least 50% local programming. In general terms, the proposals were criticized by local specialists and even prompted a statement by the Inter-American Press Association that warned that government advertising must be distributed with technical, transparent, and equitable criteria, and taking into account the media in accordance with the scope of their audiences, geography, and characteristics.1875

**G. Other relevant situations**

1155. Since the beginning of the pandemic, Peru has positioned itself as one of the most affected countries in the region, both in the number of infections and deaths from the coronavirus. The National Association of Journalists of Peru estimates that at least 39 journalists have died from coronavirus, infected while doing their work.1876

1156. In June, Chris Valery Villalobos Muñoz, a former employee of the newspaper Prensa Chalaca, denounced the dismissal she suffered by the company after being diagnosed with COVID-19, as a result of her work as a reporter. When seeking support in the media, they told her that "all the responsibility for the contagion for going out without protective equipment" fell on her. According to the information received, the outlet took several weeks to provide Personal Protective Equipment (PPE) to its reporters, despite the high levels of vulnerability represented by front-line coverage work. Until then, the PPEs were the responsibility of each journalist, so until the end of March the workers of the newspaper Prensa Chalaca carried out coverage without the required sanitary protection.1877

1157. The Office of the Rapporteur observes that there are pre-existing conditions of serious labor informality for media workers in Peru, and that they were accentuated during the pandemic. The lack of income from the media in the months of quarantine triggered drastic labor measures. In this sense, there were numerous arbitrary dismissals of journalists in different media, such as Grupo La República and El Comercio; printing of the sports newspaper El Bocón was suspended; the Publimetro portal closed definitively; and significant wage cuts were applied.1878 According to the National Association of Journalists of

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Peru, journalists from the regions, as independent workers, would be the ones who suffered the greatest impact of the health, economic, and social crisis.\textsuperscript{1879}

1158. The generalized situation of dismissals in journalistic companies prompted pronouncements by the Lima Association of Journalists, the Federation of Journalists of Peru and the National Association of Journalists of Peru, who asked the Minister of Labor and Employment Promotion, Sylvia Cáceres Pizarro, to address the situation of irregular dismissals under the pretext of the health and economic crisis.\textsuperscript{1880}

1159. After the officialization of the “Reactiva Peru” Plan to support companies to continue paying salaries to their employees and suppliers, some of the main media groups requested support from these state loans, among them Grupo El Comercio, Grupo Enfoque, Grupo CRP, Grupo La República, Grupo RPP, Grupo ATV, and Grupo Capuñay, according to the data that emerge from the list of 71 thousand beneficiaries revealed by the Minister of Economy, María Antonieta Alva.\textsuperscript{1881} In this way, almost 100 million Peruvian soles (US$ 7.5 billion) went to companies related to the main media groups in the country. Even despite having accessed this type of state assistance measures or mechanisms, some media applied the perfect suspension of work, as is the case with ATV.

1160. In light of the events recorded by the Office of the Special Rapporteur during 2020, it is important to remind the State that:

1161. Attacks and aggressions committed against journalists and against the press violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society. The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.”

1162. The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards. Under Article 13 of the American Convention, speeches on matters of public interest have reinforced protection, especially those that express essential elements of identity or denounce situations of violence and structural discrimination. Principle 11 of the IACHR Declaration of Principles on Freedom of Expression establishes that “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials [...] restrict freedom of expression and the right to information.” The IACHR has understood that the use of criminal acts of slander, insult, and defamation as a mechanism for assigning subsequent liabilities, when dealing with specially protected speeches, generates a chilling effect on the exercise of the right to freedom and inhibits investigative journalists who report on matters of public interest.

1163. Social protest, which includes the rights of peaceful assembly without arms, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights. Both in its individual and collective exercise, protest is aimed at publicly expressing opinions, visions, or values of dissent, opposition, denunciation, or claim, as well as demanding the fulfillment of rights. In this sense, it has been pointed out that “the criminalization per se of demonstrations in public streets when they are carried out within the framework of the right to freedom of expression and the right of assembly is, in principle, inadmissible.”\textsuperscript{1882} Furthermore, the IACHR has understood that the use of force constitutes “a last resort that, qualitatively and quantitatively limited, seeks to prevent an event of greater gravity than the one provoked by the state reaction. Within this framework characterized by exceptionality, both the Commission and the Inter-American Court have agreed that, for the use of force to be justified, the principles of legality, absolute

\textsuperscript{1879} Asociación Nacional de Periodistas del Perú / Facebook. October 1, 2020.
necessity, and proportionality must be met".\footnote{IACHR, Annual Report 2015. Office of the Special Rapporteur for Freedom of Expression. Chapter IV A. OEA/Ser. L/V/II. Doc. 48. December 31, 2015. Par. 7.} This Office reiterates that no participant in protests may be subjected to illegal or arbitrary detention and that States must refrain from engaging in practices of mass, collective, or indiscriminate detentions in public demonstrations. In its Protest and Human Rights report, the IACHR and its Office of the Special Rapporteur indicated that any detention that is based exclusively on the act of participating in a protest or public demonstration does not meet the requirements of reasonableness and proportionality established by international standards. The deprivation of liberty during a demonstration has the immediate effect of preventing the detained person from exercising the right to protest and has an inhibitory effect on participation in public demonstrations. In addition, they highlighted that all detained persons, their families, and the persons who exercise their legal representation have the right to receive from the State precise information regarding the reasons for their arrest and the place where they will be taken in simple language, free of technicalities.

1164. The murder of journalists constitutes the most extreme form of censorship, and impunity contributes to the self-censorship of the press. States have a positive obligation to identify and punish the perpetrators of these crimes. As the IACHR and its Office of the Special Rapporteur have repeatedly stated, it is essential that the State fully, effectively, and impartially investigate the murders of journalists, clarify their motives, and judicially determine the relationship they may have to journalistic activity and freedom of expression. Authorities should not rule out the practice of journalism as a motive for the murder and/or assault before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions on the development of the processes in the stages of accusation or trial.\footnote{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, par. 116.} Not having completely exhausted the logical lines of investigation entails, above all, that the intellectual authors cannot be identified.\footnote{Ibidem, par. 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/IIDoc.51. August 31, 2005, par. 65-66.}

1165. The distribution of government advertising must be guided by democratic criteria and pre-established, public, and transparent procedures that guarantee conditions of equal opportunities. The Office of the Special Rapporteur recalls that the Declaration of Principles on Freedom of Expression of the IACHR, in its 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."
DOMINICAN REPUBLIC

1166. In 2020, the Office of the Special Rapporteur received information about attacks, threats, and intimidation against journalists by different spheres of the government, as well as the security forces. In the context of the pandemic, on several occasions the press was limited in its work due to illegitimate detentions due to the curfew, despite the fact that they were exempted from mobility restrictions by presidential decree. Press workers were also limited in their exercise during the elections, both at the municipal level and at the presidential and legislative level. The Office of the Special Rapporteur welcomed the decision of the Fourth Criminal Chamber of the National District, which declared extinct the process for alleged defamation and insult against the journalist Marino Zapete, an audiovisual media reporter and who currently works at the Teleradio América channel, promoted by Maybeth Rodríguez, sister of Attorney General Jean Alain Rodríguez Sánchez, after the journalist disclosed alleged acts of corruption committed by the siblings.

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

1167. The Office of the Special Rapporteur documented various physical and verbal attacks, as well as threats and intimidations against reporters from different media, several of which occurred in the electoral context that the country experienced in 2020.

1168. Thus, for example, in the framework of municipal elections, on March 12 the photojournalist Samuel Pichardo was attacked with stones by José Rafael Inoa, leader of the Dominican Liberation Party, when he took pictures of a truck from which they were supposedly unloaded food from the Social Plan at the leader’s home, in the city of San Francisco de Macorís. In the images broadcasted by various media, José Rafael Inoa could be seen trying to prevent the journalist from recording the event.1886

1169. On March 14, Faustino Reyes Díaz, a correspondent for Listín Diario and Grupo Telemicro, reported that he was attacked by members of the Dominican Liberation Party (PLD) when he was working in the municipality of Neyba, on the eve of the municipal elections. According to the journalist, they had tried to take away the cellphone with which he was filming in public space, but later he was helped by neighbors and police officers.1887 Likewise, on March 26, the Dominican Association of Journalists denounced that Faustino Reyes was the victim of threats with weapons by "policemen dressed in black" who were patrolling the area of his residence in Los Alcarrizos, and allegedly presented themselves violently at his door to demand he came out because "the commander wanted to talk to him," to which the communicator refused.1888 As reported by Faustino Reyes, the event would have occurred on the night of March 25, minutes after the president gave a speech on the contingencies of the COVID-19 pandemic. The Dominican Association of Journalists repudiated the threat against him and asked the director of the National Police for protection for


the journalist’s life. The journalist was again harassed and attacked on April 5, 2020 at night, when agents of the National Army detained and handcuffed him for two hours in the municipality of Neyba, when he recorded and took photos in the streets during the curfew established by the Government as a contingency measure against the pandemic. According to the available information, the communicator had been mocked and physically mistreated, as well as deprived of his cellphone, from which they erased all the audiovisual work material that he kept. The Dominican Association of Journalists condemned what happened and stressed that the arrest of Faustino Reyes Díaz was in disregard of presidential decree 135-20, which exempts press workers throughout the country from movement restrictions due to curfew.

1170. This Office learned that, in the first months of the pandemic and supposedly by virtue of the curfew restrictions, journalist Miguel Eduardo Taveras Bejarán of Santiago de Los Caballeros, would have been legally mistreated, as well as deprived of his cellphone, from which they erased all the audiovisual work material that he kept. The Dominican Association of Journalists condemned what happened and stressed that the arrest of Faustino Reyes Díaz was in disregard of presidential decree 135-20, which exempts press workers throughout the country from movement restrictions due to curfew.

1171. Likewise, the journalist Robert Vargas, founding director of the Ciudad Oriental digital portal, was reportedly intimidated by a member of the security forces of the mayor of the Santo Domingo East municipality, Manuel Jiménez. As the reporter denounced in his own media, on April 24 a man from the municipal chief’s security circle approached him aggressively, minutes before he was sworn in, removing his “mask” and warning him in a threatening way “from today on Manuel Jiménez is the mayor”. This Office also received information on the threats received by the journalist from Noticias Telemicro, Sandy Familia, in the framework of an act of the Coffee Growers Association in support of the candidate of the ruling Dominican Liberation Party (PLD), Gonzalo Castillo. According to available information, members of the opposition Modern Revolutionary Party appeared to cause disturbances on the spot and, when the journalist proceeded to record the events, they began to physically and verbally attack him, calling him a “government journalist”, and tried to snatch his camera, which was damaged in the brawl.

1172. Among other worrisome events, in September officials from the General Customs Directorate (DGA) threatened journalists José Rivas and Mary Yerlin Paula with taking legal action against them if within 24 hours they did not withdraw from the digital portal Cobiertatvonline.net, that they direct, an article that signaled them as members of a group of civil servants prosecuted before the courts, which would affect their image. According to the available information, on September 4, the communicators received an “act of warning and placing in arrears”, on behalf of the director of the DGA. The Dominican Association of Journalists called the President’s attention to “instruct his officials that the right to investigate, seek, and disseminate truthful and objective information is a Constitutional right of journalists, especially when it comes to public entities and officials, who should and must be tolerant of criticism against them”.

1173. Of particular concern to this Office is the information about the statement made by the director of the Social Plan of the Presidency, Iris Guaba, against journalists Luis Eduardo -Huchí- Lora Iglesia and Altagracia Lora Iglesia and Altagracia.
Salazar, accusing them of "enemies of the government's social programs." In an audio that would have gone viral by instant messaging and whose authorship was later recognized, the official ordered to attack journalists through social networks for their criticism of the body, especially for the questioning they had made about the decision to tender for appliances and household goods, just a few days before the municipal elections. "The important thing is not that you write here, the important thing is that you write out there, that you check the networks, everywhere. Check where the newsmakers, for example, look for Huchi Lora, Altagracia Salazar, Orlando Jorge Mera, look for them and harass them, he is stupid, taking advantage of an article that is not", can be heard in the audio that circulated in social media.

Later, the journalist Luis Eduardo -Huchi- Lora Iglesia stated that it was not a "misstep" but that "it is the modus operandi of the government. They are enemies of freedom of expression and the right of citizens to free information".

B. Access to public information

In 2020, journalists and the media warned about obstacles to the fulfillment of their work by the national government. According to the information available, access of the press to the offices of senior officials in the National Palace would be limited, avoiding relevant information in a timely manner and even omitting information on events or meetings of public interest. In the framework of World Press Freedom Day, the Dominican Association of Journalists noted that in the coverage of COVID-19, several journalists from the different provinces saw their free professional practice violated. Also, in October, convened by UNESCO’s Regional Office of Culture for Latin America and the Caribbean and the Dominican Association of Journalists, a group of communicators reflected on the special relevance of access to information in the context of the pandemic. In this framework, they pointed out that they demand the deployment of better active transparency strategies by public institutions, as well as a more efficient and systematic use, by the press and citizens, of Law 200-04 on Free Access to Public Information.

C. Subsequent liabilities

On January 24, 2020, the trial against Marino Zapete, an audiovisual media reporter and who currently works for the Teleradio América channel, began in the framework of a criminal proceeding for defamation brought by Maybeth Rodríguez, sister of Attorney General Jean Alain Rodríguez Sánchez. The criminal complaint was initiated in September 2019, after the journalist informed in his news program "El Jarabe" about alleged acts of corruption committed by the siblings in the framework of public infrastructure projects. According to information provided by the Committee to Protect Journalists, after the broadcast of the program in question, the Attorney General had called the owner of Teleradio América, threatening to file a legal action against the television channel. A month later, the journalist was fired from the channel, after refusing to retract.

In the framework of the hearing held on January 24, the defense of Marino Zapete challenged Judge Franny González Castillo, of the Fourth Criminal Chamber of the National District, alleging that he would not be impartial in the matter as he had rejected most of the evidence presented in favor of the journalist without
notifying him.\textsuperscript{1900} The request was accepted by the Court of Appeal, designating Judge Teófilo Andújar to hear the case.\textsuperscript{1901}

\textbf{1178.} The Office of the Special Rapporteur welcomes the decision taken on September 18, 2020 by the Fourth Criminal Chamber of the National District, which declared the process for alleged defamation and insult against the journalist extinguished and ordered Maybeth Rodríguez the payment of the costs of the process.\textsuperscript{1902}

\section*{D. Other relevant situations}

\textbf{1179.} As in several of the countries in the region, the pandemic posed a difficult scenario for the economic survival of the media. In the framework of its 76th General Assembly, the Inter-American Press Association pointed out that in the Dominican Republic the crisis led to a high number of television and radio programs going off the air. Likewise, many of the national printed newspapers registered temporary and definitive reductions and suspensions of journalists, designers, and distributors, which affected the ecosystem of independent journalism.\textsuperscript{1903} In a virtual discussion organized by the Dominican Association of Journalists, Nelson Peralta, the director of the economic and political sections of the newspaper \textit{La Información} in the city of Santiago de los Caballeros, indicated that more than 20 journalists were suspended. However, hewarned that the situation of the media "carries an economic crisis due to the elimination or cutback of advertising by important economic sectors and the migration of the audience to digital media", which in many cases resulted in a reduction of personnel in the printed newspapers.\textsuperscript{1904}

\textbf{1180.} Based on the attacks, threats and intimidations observed against journalists during 2020 in the Dominican Republic, as well as the illegitimate and disproportionate limitations to their work in the context of the pandemic, the obstacles in access to information, and the judicial progress in the matter of subsequent liabilities against the press, the Office of the Special Rapporteur reiterates that:

\textbf{1181.} \textbf{Attacks and aggressions committed against journalists and against the press violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society.} The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation."

\textbf{1182.} \textbf{The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards.} Principle 11 of the IACHR Declaration of Principles on Freedom of Expression establishes that "[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." In addition, the IACHR has held that the use of criminal law in these cases does not respond to a pressing social need that justifies it, is unnecessary and disproportionate, and can be a means of indirect censorship given its discouraging effect on the debate on matters of public interest.\textsuperscript{1905}

\begin{itemize}
\item \textsuperscript{1901} Acento. February 14, 2020. \textit{Acogen recusación y apartan a juez Franny González de caso Marino Zapete}; El Caribe. February 14, 2020. \textit{Acogen recusación contra juez conoce caso Marino Zapete}.
\item \textsuperscript{1902} Últimas Noticias. September 18, 2020. \textit{Marino Zapete demandará a Maybeth Rodríguez}; Proceso. September 21, 2020. \textit{Tras extinción de juicio en su contra, Zapete demandará a Maybeth Rodríguez}.
\item \textsuperscript{1904} Colegio Dominicano de Periodistas. \textit{May 11, 2020}.
\end{itemize}
Transparency and accountability of public powers strengthen democratic systems. In this sense, Principle 4 of the IACHR Declaration of Principles on Freedom of Expression establishes that "[access 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, the Office of the Special Rapporteur recalls that the IACHR Resolution on Pandemic and Human Rights highlights the importance of access to information in the current context due to COVID-19 and the crucial role that journalists play in the context of the health emergency by reporting on critical points and monitoring government actions. States have the obligation to allow access to official press conferences to all media, without discrimination based on editorial lines, except for the necessary and proportional measures to protect health.

SAINT KITTS AND NEVIS

The Office of the Special Rapporteur observes that the failure to implement the Freedom of Information Act two years on from its passage remains a pending challenge in St. Kitts and Nevis. Additionally, this Office observes that the political opposition faces a number of restrictions on access to State media, especially in electoral contexts. As in other countries of the Eastern Caribbean, defamation remains a criminal offense used by public officials to protect their honor and reputation in response to criticism from journalists, the media, and opposition politicians.

A. Access to public information

Although the Freedom of Information Act was passed in 2018, it has yet to be implemented. In its last annual report, the Office of the Special Rapporteur noted that, according to Attorney General Vincent Byron, the law has yet to be implemented due to a lack of government funding to develop protocols and hire staff. He also said a "profound cultural change" among public servants with regard to government transparency was needed to ensure the law is implemented correctly.

On December 22, the Attorney General and Minister of Justice and Legal Affairs, Vincent Byron, told Parliament that the Integrity in Public Life Commission would meet in 2021 with the Office of the Attorney General to iron out several issues that needed to be addressed as the government pushes forward with its good governance agenda, including implementation of the Freedom of Information Act. The Attorney General added that efforts were ongoing to strengthen the legal framework to promote the system of transparency, good ethics, and accountability, and to fight against corruption.

Likewise, on October 27, during the Fifth Caribbean Economic Forum, Minister of Information and Communications Technology Akilah Byron-Nisbett remarked on the importance of reviewing certain existing legislation and policies, including the Freedom of Information Act, in order to achieve full digital transformation in St. Kitts and Nevis. She said they were "in the process of undergoing a review of our current legislation that are in place, many of which are scattered across a number of different legislation.” She also said that the government had submitted a new Electronic Communications Act to Parliament that aims to replace the Telecommunications Act and "provide a more upgraded regulatory framework for our
Telecommunications and ICT sectors.”\textsuperscript{1910} The minister also underscored the progress made by the government on transparency and access to public information in digital spaces.

\section*{B. Freedom of expression and COVID-19}

\textsuperscript{1988} On March 17, following the outbreak of the pandemic and the circulation of presumably false information on the first cases of COVID-19 in St. Kitts and Nevis, Prime Minister Timothy Harris stated publicly that they would be a strong penalty for such “unpatriotic behaviour.”\textsuperscript{1911} The Prime Minister said that attempts at disinformation during a moment of crisis cause confusion and disruption, putting citizens at a “disadvantage.” He also accused the opposition of being the ones mainly responsible for creating a "scare" and disrupting "the peace and calm of our country."\textsuperscript{1912} In this regard, he said that the law would be reviewed to ensure that such behavior is punished severely. "We will ask the Attorney General to spend some time looking at the legislative framework to deal with this, and other issues that are emerging,” he said.

\textsuperscript{1989} Likewise, on April 8, the Director-General of the St. Kitts and Nevis Information Service (SKNIS) and Chair of the COVID-19 Communications Task Force, Lesroy Williams, urged the media to access the accurate information provided by the government's official sources. In response to a number of criticisms about the alleged scarcity of information on the management of the pandemic, he said there has been no "information vacuum" and that the daily briefings include the media to provide the public with "accurate, reliable, and timely information."\textsuperscript{1913}

\textsuperscript{1990} In the context of World Press Freedom Day, Labour Party leader Denzil Llewellyn Douglas said the government continues attacking freedom of the press and preventing media workers from accessing information. According to the former head of State, "Dissenting views are not tolerated and are routinely denounced as fake news, whilst pronouncements in favour of the government, however fictitious, are promoted as fact.”\textsuperscript{1914}

\textsuperscript{1991} Also, in May, representatives of the Labour Party, filed a constitutional claim before the High Court against the Government of St. Kitts and Nevis and ZIZ Broadcasting Corporation, a State media company, for infringement of the rights and liberties of the Labour Party, its candidates and supporters, and society in general.\textsuperscript{1915} The claim called for an urgent hearing of the Court and sought a declaration that the State of Emergency Resolutions published by the Government on May 18 and May 13, 2020, were unconstitutional, and thus null, void, and of no effect on being passed contrary to section 19(7) of the Constitution. Labour Party representatives also asked the Court to find that the COVID-19 Emergency Regulations published by the government on May 8 were unlawful, disproportionately restrictive, and discriminatory against the St. Kitts-Nevis Labour Party and its supporters. The members of the opposition said that since the announcement of elections in May, despite the fact that the Emergency Regulations were in place, members of the Government and their supporters had been gathering in large numbers, while the police had been directed by their "superiors" to suppress similar opposition activities. Both allegations were rejected by the Eastern Caribbean Supreme Court.\textsuperscript{1916}

\textsuperscript{1992} The Labour Party of St. Kitts and Nevis also requested a court order against State-owned media company ZIZ Broadcasting Corporation (ZBC), for violating its rights to equal protection, freedom of


\textsuperscript{1911} St. Kitts and Nevis Observer. March 18, 2020. \textbf{PM, There Will be a Strong Penalty for COVID-19 Scaremongering}

\textsuperscript{1912} Times Caribbean Online. March 19, 2020. \textbf{St. Kitts Opposition Labour Party condemned for scaremongering and dissemination of fake news in effort to use COVID-19 to score political points}; SKN Vibes. March 18, 2020. \textbf{Prime Minister Harris: There will be strong penalty for COVID-19 scaremongering}

\textsuperscript{1913} Nevis Pages. April 9, 2020. \textbf{No Information Vacuum On COVID-19, Says SKNIS Director General; Urges Media To Access Accurate Information From Official Sources}

\textsuperscript{1914} Antigua Newsroom. May 4, 2020. \textbf{ST KITTS: Former PM Douglas Renews SKNLP's Commitment To Press Freedom; Documents Several Initiatives Of His Administration}


\textsuperscript{1916} Eastern Caribbean Supreme Court. \textbf{Marcella A. Liburd et al v The Attorney General Of Saint Christopher And Nevis et al}; Par. 31 and 65.
expression, freedom of association, and nondiscrimination. They argued that the company continued to discriminate against the Labor Party and its supporters based on their political opinions. They state that ZIZ refused to cover the opinions and political events of the Labour Party or provide access free of charge to the media with the same terms it offered to the Government. In this regard, the Supreme Court issued a declaratory remedy recognizing that the rights of the claimants had been violated, but concluding that the State took subsequent action to redress the violations, making compensation for damages unnecessary.  

In view of these facts, the Office of the Special Rapporteur reminds the State that:  

1193. **Government transparency and accountability strengthen democratic systems.** In this regard, Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, “Access 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.”  

1194. **Journalists and the media play a crucial role in the context of the pandemic.** The Office of the Special Rapporteur recalls that the IACHR Resolution on Pandemic and Human Rights in the Americas underscores the importance of access to information during the pandemic and the crucial role that journalists play by reporting on critical issues and monitoring the government’s actions. States have an obligation to permit all media outlets access to official press conferences, without discrimination based on editorial stance, with the exception of necessary and proportionate measures to protect health.  

1195. **The establishment of criminal offenses for punishing the dissemination of disinformation or fake news could have a strong chilling effect on the dissemination of ideas, criticism, and information.** This is because the establishment of criminal offenses could roll the region back to a time of criminalizing expression regarding officials or matters of public interest and establishing a tool with a significant chilling effect on the dissemination of ideas, criticism, and information. Resolution 1/20 adopted by the IACHR underscores that any subsequent liability for the dissemination of information or opinions, based on the protection of public health interests must be established in law, in a way proportionate to the compelling interest behind it, and that it is strictly geared to the achievement of that legitimate objective.  

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SAINT VINCENT AND THE GRENADINES

1197. The Office of the Special Rapporteur observes that the media environment in St. Vincent and the Grenadines is heavily influenced by political interests. According to Reporters without Borders, this tends to be the case in the Organization of East Caribbean States (OECS), where in some cases, the political parties even own or hold significant stakes in media outlets, compromising their journalistic independence. This Office has documented the use of criminal defamation—expanded to the digital space in 2016 through the Cybercrime Act—against those who make statements against the government or powerful public figures. In this regard, the Office of the Special Rapporteur is concerned that the increasing control and monitoring of this type of content on social media may lead to self-censorship.

A. Access to public information

1198. The Office of the Special Rapporteur observes that almost 17 years since the sanctioning of the Freedom of Information Act, it has yet to take effect. Toward the end of 2019, during a meeting of Parliament, opposition MP Daniel Cummings asked Prime Minister Ralph Gonsalves to explain the situation. The prime minister said there are two acts that are "inextricably bound together," the Freedom of Information Act and the Privacy Act, which were both passed roughly the same time in 2003 and neither of them has been put into effect. He said the reason was that shortly after the passage of the act, he was informed of an attempt to coordinate similar legislation across the region, the Organization of Eastern Caribbean States (OECS), and the Caribbean Community (CARICOM), and that there were changes that would be required to these existing laws. "That is the reason why — that they have not been proclaimed. The government is still interested and I, personally, am still interested in both of those bills."

1920 The media have also urged the government of Ralph Gonsalves, who was reelected prime minister in 2020, that—in addition to what the legislation establishes—those in government accept as a habit the provision of unfettered and unbridled information on matters of state.

B. Subsequent liability

1199. The media and journalism organizations indicate that one of the main challenges currently facing St. Vincent is that they operate in a climate of criminal defamation (libel) laws. In this regard, they indicate that such laws are a "legacy of colonialism" that successive administrations across the region have found it fit not to touch, and whose continuing entrenchment has become a hindrance and a constraint on freedom of expression used frequently against the media. The 2016 Cybercrime Act broadened the definition and
The scope of defamation to include online publication. Violations can carry a fine of as much as EC$500,000 (US$185,000) and up to seven years imprisonment.

1200. According to information received by this Office, Kengson King, a prison officer, was detained on May 22, 2020, held for more than 36 hours, and then released without charges after a post on his Facebook account that supposedly caused “fear and alarm to the public,” in violation of the 2016 Cybercrimes Act. In his post, Kengson King commented on a domestic dispute involving one of his uncles and denounced alleged interference in police procedures for granting licenses to carry firearms, alleging the participation of the Prime Minister in the incidents. The Vincentian reported on the case and quoted King, who said the Prime Minister had the clout to call the station and tell the police to give back the guns that had been confiscated. The news item also described irregularities in Kengson King’s detention, indicating that “someone can only be arrested on the basis of probable cause of having committed an offense. We know of no crime Kenson King has committed and he has not been charged.”

1201. On June 15, the Prime Minister asked The Vincentian Publishing Company, which publishes The Vincentian, to pay no less than EC$10,000 (equivalent to US$3,700) to the Zero Hunger Trust Fund within two weeks. The managing editor and editor of the newspaper were also asked to apologize to the Prime Minister in the newspaper. The request is related to the story published by the newspaper alleging that Prime Minister Ralph Gonsalves had abused or misused his power or authority to give instructions improperly to the police to return the firearms confiscated from an individual who was threatening violence against his family members. The Prime Minister’s attorney denied the allegation, calling it “a fictitious invention” that has “caused immense damage” to the Prime Minister’s reputation and official standing. Additionally, the attorney told the newspaper that should the sum not be paid, they could be sued for a much greater amount, EC$150,000 (equivalent to US$55,000) plus legal costs.

1202. Likewise, according to the information available, Kengson King was also told to pay half his monthly salary to the Zero Hunger Trust Fund within two weeks or be sued for defamation. Grahame Bollers, the attorney of Prime Minister Ralph Gonsalves, also asked for a “full and unqualified apology” to the Prime Minister for his “outrageous defamation.”

1203. According to the information available, on June 26, The Vincentian published its apology to the Prime Minister. They indicated they accepted that the allegation was defamatory and should not have been published. “THE VINCENTIAN (...) offers our sincere apologies to the Prime Minister, for the distress and embarrassment caused by the publication of the defamatory allegation,” they stated.

1204. In view of the facts documented herein, this Office reminds the State of St. Vincent and the Grenadines that:

1205. **Government transparency and accountability strengthen democratic systems.** In this regard, Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, “Access 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.”

1206. **The use of criminal mechanisms to punish speech on matters of public interest, especially speech related to public officials, is incompatible with inter-American standards.** Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “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.” The IACHR and the Inter-American Court have repeatedly indicated that States have more limited scope to impose restrictions on the right to freedom of expression “whenever dealing with expressions concerning the State, matters of
public interest, public officials in the performance of their duties, candidates for public office, private citizens involved voluntarily in public affairs, or political speech and debate.”1929 In this regard, it has been held that the use of criminal law in these cases does not meet a pressing social need that would justify it; is unnecessary and disproportionate; and could be a means of indirect censorship, given its chilling effect on debate surrounding matters of public interest.1930

SAINT LUCIA

1207. The relationship between the media and the current governments of the United Workers Party (UWP) and its supporters continues to be problematic in St. Lucia, according to media workers and members of the opposition. The Office of the Special Rapporteur took note of the multiple smears and threats against journalists investigating matters significantly in the public interest that involve State officials.

A. Attacks, threats, and smears against journalists and media outlets

1208. On July 19, 2020, journalist and UTV host Tresha Lionel was threatened by Stephen Dorelien, a supporter of the United Workers Party, in Pierrot, Vieux Fort, in the south of Santa Lucía.1931 In the video that was released to the public, Stephen Dorelien can be heard threatening to spit on the journalist and hit her with his walking stick. Prime Minister Alan Michael Chastanet told local journalists “It is certainly behavior that I would not condone,” and called on the parties president, Oswald Augustin, to investigate the matter as quickly as possible. The Prime Minister also described the parties treatment of the press as "pretty good" and said that "I try to give [journalists] as much access as possible" to information in the public interest and that “I’ve certainly not tried to curtail any of your stories.”1932

1209. On July 21, 2020, outside the Parliament, St. Lucia Minister for Economic Development Guy Joseph lashed out at MBC reporter Miguel Fevrier, refusing to answer his questions.1933 Since June, the journalist had been investigating the officials alleged participation in unpaid National Insurance Corporation (NIC) contributions on behalf of the employees at an early learning childhood center in Sarrot, which is financed by the Minister unofficially.1934 When the journalist asked him if he had any connection to the childhood learning center in question, the official answered: “You’re not the media, you’re an ex-convict in my eyes,” adding that he would not answer any questions about it and that the matter “is going to be before the courts and the courts will deal with it.” According to the information available, Minister for Economic Development Guy Joseph filed a defamation claim against Miguel Fevrier and MBC after the station published a report titled “Schooled or Played? Staff at a school supposedly run by a minister say their NIC deductions have not been paid.”


1934 MBC Television St. Lucia / Facebook. June 17, 2020. Staff of pre-school allegedly run by a Minister, say NIC deductions have not been paid.
paid." The official’s attorney described it as "criminal defamation" and asked the broadcaster to issue a retraction, which it refused to do.\textsuperscript{1935}

1210. In 2019, the Office of the Special Rapporteur documented similar actions by Guy Joseph. According to what this Office documented in its last annual report, the official refused to answer a question from \textit{Choice Television} journalist Janeka Simon about a conflict in Parliament. The minister said that he would not answer the question because he did not consider the person a journalist, calling her a politician "posing at as an objective journalist."\textsuperscript{1936}

1211. In response to these cases, the Saint Lucia Labour Party called on the government and its surrogates to apologize for the abhorrent behavior, stating that "The verbal abuse and intimidation by this UWP government towards the press are aimed at distracting the public from the malefascism which is rampant in this society, especially under the guise of contracts and capital works projects." In the press release, the opposition leaders indicated that in a free and democratic country, the press remains important as a watchdog on behalf of the citizens, monitoring the behaviour of government, Opposition and public institutions.\textsuperscript{1937} They also recalled that elected Members of Parliament and ministers are "accountable to the people" and "ought to conform to respectable standards of comportment and discourse."\textsuperscript{1938}

1212. In conjunction with the aforementioned facts, the Office of the Special Rapporteur reminds the State of St. Lucia that:

1213. **Attacks, intimidation, and aggression against the media violate the right to freedom of expression in both its individual and collective dimension and cannot be tolerated in a democratic society.** The Office of the Special Rapporteur recalls that Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "[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."

1214. **Government authorities are called to maintain a discourse that favors public debate and freedom of expression.** The Office of the Special Rapporteur reiterates that public officials have a duty to ensure that their statements are not causing damage to the rights of those who contribute to the public debate through the expression and circulation of their thoughts, such as journalists, media outlets, and organizations for the defense of human rights, and must pay attention to the context in which they express themselves. According to the Inter-American Court of Human Rights, such statements from public officials may constitute an indirect restriction on the right to freedom of expression.\textsuperscript{1939}


\textsuperscript{1937} St. Lucia News Online. July 22, 2020. \textit{SLP condemns government’s attack on the media}.

\textsuperscript{1938} St. Lucia News Online. August 9, 2020. \textit{SLPYO condemns violent UWP threats against youth in media}.

Although the Office of the Special Rapporteur notes that there is a high degree of respect for the exercise of freedom of expression in Suriname, obstacles persist with regard to access to public information. In its 2018 and 2019 reports, the Office of the Special Rapporteur noted the lack of legal mechanisms requiring accountability from officials. This Office reported the existence of a trend toward State restrictions on journalism work, as well as allegations of political actors providing erroneous information.

A. Harassment of journalists and media outlets

On August 26, 2020, the newspaper Dagblad Suriname (DBS) published a cartoon depicting Ronnie Brunswijk, the president of the ABOP and the country’s vice president, as a monkey. According to the information available, this led to an attempted boycott by the leaders of the General Party for Liberation and Development [Algemene Bevrijdings- en Ontwikkelingspartij (ABOP)] and Pertjajah Luhur (PL) against the Rapar Broadcasting Network (RBN), of which Dagblad Suriname is a part. The Office of the Vice President called the illustration offensive because of its racist content. However, the newspaper said the caricature was not intended to be racist or insulting, but rather an attempt to depict the proverb “proud as a monkey,” in reference to the vice president’s attitude towards his recent appointment. The Suriname Journalists Association [Surinaamse Vereniging van Journalisten (SVJ)] rejected any form of media boycott by the government from public officials, calling it unacceptable and issuing a call for de-escalation of the harassment. According to the information available, the director of Dagblad Suriname, Faried Pierkhan, was even called to meet with the vice president after the publication of the caricature.

B. Access to public information

According to information received by the Office of the Special Rapporteur, during 2020, journalists and media encountered obstacles imposed by the government to the exercise of their work and to access to information in the public interest.

Thus, for example, in December 2020, representatives of the government placed restrictions on the media’s coverage of “Bigisma Dey” (old-age day), a popular event in Suriname for older persons organized by the office of the president under the auspices of the office of the first lady and that the media usually covers every year. According to the information available, the reporters from a number of media outlets were denied

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access and told that only the Suriname Communications Service [Communicatie Dienst Suriname (CDS)] were authorized to cover the event. They were then sent a press release on the activity. Likewise, a journalist and photographer from Ware Tijd who had been able to get in were removed by the CDS, which told them it was a "private meeting." 1943 Journalist and former president of the Suriname Journalists Association Wilfred Leewin said that "the right to freedom of expression is a fundamental right. A free press is a pillar of democracy because the right to freedom of expression is exercised through the media. However, what we have seen is that governments—and not only in Suriname—want to control the news." 1944 Ricardo Carrot, a journalist and the former editor-in-chief of Ware Tijd, from 2007 to 2008, said the government's behavior "smells of another form of censorship of the independent and free press." 1945 Through its director, Alven Roosveld, the Suriname Communication Service apologize for what had happened and called it "a grave error," adding that "keeping the media out is not something we can defend, nor is it the policy of this government. There has been some outrage; we are going to learn from it."

1219. The Suriname Journalists Society repudiated the government's conduct and indicated that not having an invitation to the activity is not a valid reason to restrict media access. "Although the government has new ideas about admitting the media to government events, it must communicate it to the media adequately beforehand," they said in a press release. 1946 According to the journalism organization, during the electoral period, the leaders of the incoming coalition said the new government would communicate transparently with the media; however, in practice, there seem to be many shortcomings in this regard. "The government must realize that no democratic society can prosper when it closes off, restricts, and/or obstructs the free press from doing its job," they said. 1947

1220. Similarly, according to the Journalists Association of Suriname, the media outlets in Nickerie District were not authorized to cover the arrival of the first lady there on December 12, 2020. Instead, only employees of the CDS and the Nickerie Citizen Information Center (Burger Informatie Centrum van Nickerie) were allowed access. 1948

1221. On April 15, 2020, journalists did not attend the regular daily press conferences of the National COVID-19 Management Team and government in an act of protest over the limited space provided to them for asking questions and because of the unclear or partial answers offered by officials. 1949

1222. On May 3, World Press Freedom Day, the Journalists Society of Suriname said that the work of journalists and the media was being subjected to a certain degree of pressure in the context of the election, the coronavirus health crisis, and the country's financial and economic problems. 1950 Civil society organizations also noted that society was increasingly hostile toward journalists.

1223. In view of the facts set forth, the Office of the Special Rapporteur calls on the State of Suriname to take special note that:

1224. Attacks on journalists violate the right to freedom of expression in both its individual and collective dimension and cannot be tolerated in a democratic society. The Office of the Special Rapporteur recalls that Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "[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.”

1225. **Government transparency and accountability strengthen democratic systems.** In this regard, Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, “Access 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, the Office of the Special Rapporteur recalls that the IACHR Resolution on Pandemic and Human Rights underscores the importance of access to information in the current context caused by COVID-19 and the crucial role that journalists play by reporting on critical issues and monitoring the government’s actions. States have an obligation to permit all media outlets access to official press conferences, without discrimination based on editorial stance, with the exception of necessary and proportionate measures to protect health.  

**TRINIDAD AND TOBAGO**

1226. During 2020, the Office of the Special Rapporteur for Freedom of Expression took note of a number of incidents of attacks, aggression, and intimidation against journalists and media outlets due to their COVID-19 coverage or investigations into matters involving government officials. The Office was also informed of the alleged statements of the Prime Minister and other public officials accusing the media of not being independent and of deceiving the public. This Office is especially concerned at the move by the Trinidad and Tobago Police Service to search the offices of the *Trinidad Express*.

A. **Attacks, threats, and intimidation aimed at journalists and media.**

1227. On March 11, seven members of the Trinidad and Tobago Police Service searched the offices of the *Trinidad Express* for three hours, confiscating a number of electronic devices. The officers arrived at the offices with a court order and proceeded to search the offices of the editor-in-chief, Omatie Lyder, who was not present at the time. According to the information available, the officers were looking for information on a source that the newspaper had supposedly used for an article published in the Sunday edition—*Sunday Express*—that reported that acting police commissioner Irwin Hackshaw had been implicated by local banks that flagged transactions worth close to TT$2 million. According to publicly available information, the same police officer who was being investigated by the newspaper had supervised the officers during the search.

1228. The Police said they had acted in accordance with the terms of Section 2 of the Financial Intelligence Unit (FIUTT) Offences and Penalties Act, titled "Tipping Off," which gives the police the authority to investigate whistleblowers. For their part, both Minister of National Security Stuart Young and Police Commissioner Gary Griffith denied having any prior knowledge of the facts.

1229. That same evening, the newspaper asked High Court Judge Kevin Ramcharan for a court order to prevent new searches, which was granted the next day. Editor-in-chief Omatie Lyder said that under no circumstances would he reveal his source, as sources were a central part of his work and he would protect them "with all our journalistic integrity.” The Media Association of Trinidad and Tobago (MATT) issued a press release rejecting the incident, calling it "a frontal attack on the Constitution of the Republic of Trinidad and Tobago that guarantees free speech and press freedom."

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1955 Media Association of Trinidad and Tobago. *March 12, 2020*. 

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Broadcasters Association (TTPBA) also called attention to what happened and said it was an act of intimidation that eroded freedom of the press.\textsuperscript{1956} For its part, the Inter-American Press Association said "the action by the Trinidad and Tobago Police Service is nothing short of intimidation and must be condemned as a serious threat to the freedom of the press."\textsuperscript{1957}

1230. One Caribbean Media Group Ltd (OCM), its newspaper the \textit{Trinidad Express}, and Editor-in-chief Omatie Lyder brought legal action against the Office of the Attorney General, the Commissioner of Police and Supt. Wendell Lucas of the Financial Investigations Bureau (FIB), challenging the constitutionality of the search of the newspaper’s newsroom.\textsuperscript{1958} They alleged that the order issued by the justice of the peace was unconstitutional, illegal, arbitrary, unnecessary, and disproportionate, violating the right to freedom of expression guaranteed in the Constitution. They underscored that the police have parameters when seeking a court order that could violate a constitutional right. For their part, the police’s defense, led by attorney Fyard Hosein, argued that the search warrant was obtained to determine who was leaking to the media, and the logical place to obtain that information was at the offices. He also argued that the newspaper was part of the \textit{actus reus} in the case, as the individual who leaked the information provided it to the newspaper.

1231. The Office of the Special Rapporteur welcomes the ruling issued on January 13, 2021 by Supreme Court Justice Frank Seepersad, who held that the two search warrants obtained by the police for the \textit{Trinidad Express} newspaper in search of information which could lead them to a journalist’s source were “plainly irregular,” unlawful, and unconstitutional as they disproportionately infringed on the media outlet’s right to freedom of the press.\textsuperscript{1959} The ruling found that the decision to search the newspaper needed “an informed and measured determination as to whether the public interest in identifying and prosecuting the journalist’s source was of greater importance than the public’s right to know that a serious investigation was looming over the head of a very senior police officer,” an analysis that, according to Justice Seepersad, that Police did not provide. The Media Association of Trinidad and Tobago called the ruling “a win for the public interest, a win for every journalist in the country and every media house, a win for whistleblowers and a big win for democracy.”\textsuperscript{1960}

1232. This Office received with concern information about the threats received by \textit{Newsday} journalist Darren Bahaw after he worked on an investigation into the alleged participation of the police in a shooting incident that ended with the death of three young people on June 27 in the community of Morvant. The website reported that measures were taken for the journalist’s security and that reports were filed on the attempts to deter him from publishing the story with the Commissioner of Police, the Police Complaints Authority, and the Director of Public Prosecutions. Official investigations are under way.\textsuperscript{1961}

1233. The Office of the Special Rapporteur also received information on alleged attacks on journalists covering stories related to COVID-19. For example, on March 24, a reporter for \textit{TV6 South}, Cindy Raghobar-Teekersingh, and other colleagues from State TV station \textit{Trinidad and Tobago Television}, from the \textit{Trinidad Express}, and from \textit{CNC3} were physically and verbally assaulted by security guards at that San Fernando General Hospital.\textsuperscript{1962} The journalists were in the parking lot doing video shoots when the guards approached them and told them that they could not stay there. The journalist responded that yes she could, and that even though the hospital’s parking lot was a public space, she had informed the South West Regional Health Authority’s (SWRHA) Corporate Communications Department. Despite the threat, the journalists continue to do their work, in response to which the guards once again berated them and threatened them more

\textsuperscript{1957} Inter-American Press Association (IAPA). March 12, 2020. \textit{IAPA strongly condemns police raid against newspaper in Trinidad and Tobago}.
\textsuperscript{1960} Newsday. January 13, 2021. MATT: Court ruling on Express raid a big win for democracy.
aggressively, pushing them and causing a struggle. According to the information available, damage was caused to the equipment. The officials of the South West Regional Health Authority who arrived after the facts said the communicators had a permit to be in that part of the complex. The entity then issued a statement indicating that an investigation had been launched to find out what led to the incident and take the measures necessary.

1234. The Media Association of Trinidad and Tobago urged security staff to respect the right of journalists to do their work and inform society. Likewise, Reporters without Borders called on the authorities to allow journalists in Trinidad and Tobago to report on and investigate matters related to the coronavirus without fear of attacks or interference, underscoring that journalism work is more important than ever.

B. Stigmatizing statements

1235. On May 27, the Prime Minister accused the media of not being independent, answering only to private interests and "harassing people with lies." During a press conference, the Prime Minister said his interest was "to protect the interest of the people of Trinidad and Tobago," while the interest of the media was "to protect their financial bottom line," and that negative coverage of his administration was a response to government pressure on those private interests. The Prime Minister accused the media of speculation and "misrepresentation" of facts, and of publishing falsehoods on, among other issues, meetings of senior officials, National Security Minister Stuart Young, Venezuelan Vice President Delcy Rodríguez and Asdrúbal Chávez, who was appointed head of Venezuelan oil company Petróleos de Venezuela S.A. (PDVSA). He said this was reproachful, as citizens should not take positions based on "fictions and falsehoods." Throughout his comments, the Prime Minister singled out the Trinidad and Tobago Guardian and Trinidad Express, attacking their reporting.

1236. In response to the Prime Minister’s statements, the president of the Media Association of Trinidad and Tobago said "Journalists will persist in their questioning on behalf of the public, on this and other matters, no matter how inconvenient," as that is their role in a democratic society. "We will not be censored or forced into self-censorship. Journalists will continue to hold power to account and to pursue transparency on behalf of the public," she added. For its part, the Association of Caribbean Media Workers underscored that “by definition, independent media are entitled, if not expected, to hold independent views on things, including matters of self-interest.” For the Inter-American Press Association (IAPA), the Prime Minister's comments “appear to be intended to broadly undermine media in a public forum,” and his “hostile attitude appears to be a retaliation for critical publications about his government and the posing of uncomfortable questions about matters of public interest.”

1237. Among other concerning facts, in August, Security Minister Stuart Young accused the Trinidad Express of deliberately misleading the public with an article it had published on alleged multimillion dollar transactions in which his father, Richard Young, had acted as a broker. The report also said that, according to documents that the newspaper was able to access through a public information request, between 2015 and 2020, Minister Stuart Young had recused himself 57 times in the Cabinet on matters involving the financial institution NCB Global Finance, whose CEO is his brother, Angus Young. The official expressed annoyance at the article, which he described as misleading, inaccurate, and an attempt to smear the good name of his family, saying he was part of a media strategy to publish the article days before the general elections to influence voters. He also said that his father never acted as a broker in Cabinet transactions. "This dishonesty of the Express is astounding and I have advised my father to seek legal redress," he said.

C. Access to public information

1238. During 2020, and especially because of the pandemic, media workers have encountered obstacles to the exercise of their profession. For example, they said the accreditation standards for government press conferences were not clear, and several journalists had to wait a long time before being selected to ask a question. Among other complaints, the Media Association of Trinidad and Tobago indicated that the congestion of questions, persons, and information at the virtual news briefings diminish the capacity to address not only issues related to COVID-19 but also other government matters, including energy, trade, agriculture and fisheries, works, women and children, public utilities.\(^{1969}\)

**D. Subsequent liability**

1239. In 2019, this Office observed that the debate surrounding the Sedition Act, which criminalizes any individual or publication for committing "seditious acts" or for communicating with "seditious intent" had renewed.

1240. In January 2020, High Court Judge Frank Seepersad ruled that sections 3 and 4 of the legislation, which was passed in 1920, were unconstitutional.\(^{1970}\) In his ruling, he emphasized that the legislation was vague, uncertain, and could lead to arbitrary application, and was not compatible with a sovereign democratic state as it limited constitutional rights to freedom of thought and expression and freedom of the press. As this Office indicated in its previous annual report, the Constitutional challenge was filed by SDMS Central Broadcasting Services Ltd—the holding company of *Radio and TV Jaagriti*—and Satnarayan Maharaj, the radio stations general manager, after the Police came in April 2019 to the media outlet's offices with a search warrant on suspicion of a possible act of sedition.\(^{1971}\) Among the results of this court ruling, the charges of sedition against the president of the Public Services Association, Watson Duke, were suspended.\(^{1972}\)

1241. The Office of the Special Rapporteur observes with concern that despite the progress represented by the High Court's decision, the ruling was immediately appealed by the Office of the Attorney General, and in February, Appeal Court Judge Justice Alice Yorke-Soo Hon suspended Justice Seepersad's order, putting the sedition law back in effect.\(^{1973}\) According to Attorney General Faris Al-Rawi, the ruling finding multiple parts of the law unconstitutional was "dangerous," and he said he would appeal it to the highest courts.\(^{1974}\)

1242. Based on the facts observed by the Office of the Special Rapporteur during 2020 and Trinidad and Tobago, the Office of the Special Rapporteur deems it particularly important to recall that:

1243. **Attacks, intimidation, and aggression against the media violate the right to freedom of expression in both its individual and collective dimension and cannot be tolerated in a democratic society.** The Office of the Special Rapporteur recalls that Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "[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.” This Office reiterates the important role that the media play in democracy, especially active investigative journalism. Consequently, journalists who investigate cases of corruption or improper actions by public officials must not be the target of judicial or any other type of harassment in retaliation for their work. As indicated in the 2012 Joint Declaration on Crimes against Freedom of Expression, "[w]hen a crime against freedom of expression takes place, States should launch an independent, speedy and effective investigation, with a view to bringing to trial, before impartial and independent tribunals, both perpetrators and instigators of these crimes. The investigation should be carried out by a body that is independent from those implicated in the crime.” \(^{1975}\)

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\(^{1969}\) Media Association of Trinidad & Tobago / Facebook. *April 15, 2020.*


in the events. This implies both formal hierarchical and institutional independence, and practical arrangements to secure independence."1975

1244. **The protection of journalists’ sources is a principle that is part of the right to freedom of expression.** Its importance rest in the fact that, without this protection, it would be difficult for certain information to reach the public. Principle 8 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential." Also, Article 13(3) of the American Convention establishes: “The 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.”

1245. **Government authorities are called to maintain a discourse that favors public debate and freedom of expression.** The Office of the Special Rapporteur reiterates that public officials have a duty to ensure that their statements are not causing damage to the rights of those who contribute to the public debate through the expression and circulation of their thoughts, such as journalists, media outlets, and organizations for the defense of human rights, and must pay attention to the context in which they express themselves. According to the Inter-American Court of Human Rights, such statements from public officials may constitute an indirect restriction on the right to freedom of expression.1976

1246. **Government transparency and accountability strengthen democratic systems.** In this regard, Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that, "Access 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, the Office of the Special Rapporteur recalls that the IACHR Resolution on Pandemic and Human Rights in the Americas underscores the importance of access to information in the current context caused by COVID-19 and the crucial role that journalists play by reporting on critical issues and monitoring the government’s actions. In this regard, the IACHR has also underscored that "States should not include communicators in restrictions on movement of people, and are obliged to allow all access to official press conferences, without discrimination based on editorial stance, with the exception of necessary and proportionate measures to protect health."1977

1247. **The use of criminal mechanisms to punish speech on matters of public interest, especially speech related to public officials, is incompatible with inter-American standards.** Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “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.” Likewise, the IACHR has held that the use of criminal law in these cases does not meet a pressing social need that would justify it; is unnecessary and disproportionate; and could be a means of indirect censorship, given its chilling effect on debate surrounding matters of public interest.1978 In the "Tenth Anniversary Joint Declaration: Ten key challenges to freedom of expression in the next decade," of 2010, the Special Rapporteurs of the UN, IACHR, OSCE, and ACHPR stated that “[t]he retention of antiquated legal rules – such as sedition laws or rules against

publishing false news – which penalise criticism of government” constitute illegitimate “mechanisms of government control over the media.”

URUGUAY

1248. The Office of the Special Rapporteur took note of the provisions of the Urgent Consideration Law, promoted by the Government in the first months of the year, which involves restrictions on fundamental rights related to freedom of expression, the rights of assembly and association (public demonstrations and peaceful protest) and the right of access to information on intelligence, national security, and defense matters. In this framework, and in accordance with the powers established in Article 41 of the American Convention on Human Rights, the Office of the Special Rapporteur sent a letter to the State of Uruguay requesting information on the provisions of the norm, at that time subject to legislative discussion.

1249. Likewise, the Office of the Special Rapporteur observed with particular concern a context of massive dismissals of journalists, both in public and private media, as a result of the economic crisis generated by COVID-19. On the other hand, this Office welcomes the fact that the Unit for Access to Public Information, the body that guarantees the right of access to information in Uruguay, has promoted consultation by virtual means in the context of the pandemic.

A. Legal reforms

1250. The Office of the Special Rapporteur gave special follow-up to the Urgent Consideration Law (LUC) presented on April 23, 2020 by the new president Luis Lacalle Pou and the parliamentarians of his National Party, and finally approved by the Senate on July 8, 2020. The new norm modifies the Criminal Code and establishes a penalty of three to eighteen months in prison for anyone who “offends”, “undermines”, “threatens” or “insults” the police authority in the exercise of their functions or for any of these reasons (art. 11). On the other hand, it declares illegitimate “strikes that impede the free movement of people, goods or services, in public or private spaces for public use” (art. 468) and empowers the police to use force when “they must dissolve meetings or demonstrations that seriously disturb public order, or that are not peaceful, insofar as they involve people who carry their own or improper weapons or who show violent behavior” (art. 45 F). Regarding public information, the law provides that certain information in the possession of the State will be of a reserved nature, of restricted and secret circulation, and limits the possibilities of requesting the declassification of the information produced by certain State agencies, as well as the guarantee of access to justice in these cases (arts. 125 and 126).


1251. According to public information, on July 24 the law came into force and at the judicial level some of its precepts began to be applied, although there are still doubts among law enforcement.1981 The legislative process by which the LUC was approved is the urgent consideration procedure provided by Article 168.7 of the Uruguayan Constitution. This is an exceptional procedure in which Parliament has very short deadlines for the study of the bill and when these expire the initiative is considered approved.

1252. The IACHR’s Office of the Special Rapporteur for Freedom of Expression, experts from the United Nations, the Committee to Protect Journalists, and local human rights organizations such as the Center for Archives and Access to Public Information (Cainfo) and Observacom expressed concern about the initiative.1982 Likewise, before the bill was approved, the Office of the Special Rapporteur for Freedom of Expression sent a letter to the State in accordance with the powers established in Article 41 of the American Convention on Human Rights, in order to request information on the provisions of the LUC that could affect the guarantees for the exercise of freedom of expression as well as formulate some recommendations in light of the standards emanating from the American Convention. On that occasion, the Office of the Special Rapporteur pointed out that although the initiative contains a series of provisions aimed at protecting legitimate interests, its wording involves restrictions on fundamental rights related to freedom of expression, the rights of assembly and association, and the right of access to the information on intelligence, national security, and defense matters. Likewise, the provisions could affect the right to social and political participation.1983

1253. On the other hand, different actors questioned the not very transparent legislative process that was followed, and the “constitutional weaknesses” that surround it, as it has remained urgent despite the emergence of COVID-19 and given the shallowness of the debate.1984

1254. In August 2020, different social organizations and unions from various sectors demonstrated in favor of holding a referendum to repeal the LUC.1985 On December 14, 2020, at the headquarters of the Inter-Union Plenary of Workers-National Workers Convention (PIT-CNT), and with the participation of organizations and unions linked to workers, university students, and feminist movements, they announced the launch of a Pro Referendum commission that seeks to repeal 133 articles of the LUC.1986 According to the information available, the objective of this commission would be to reach the signatures of 25% of the electorate before July 2021, as required by the regulations, and then promote a referendum in which it will be decided to repeal the LUC or not.

1255. Likewise, the Office of the Special Rapporteur learned that on April 24, 2020, the Executive Branch presented the draft Law on Audiovisual Content Diffusion Services that would modify the current Media Law, approved in 2014.1987 In the framework of the debates held in the Industry Commission of the Chamber of


Deputies, civil society organizations warned that, if approved, the bill would sharpen media concentration and affect news pluralism.

1256. According to Observacom, who participated in the session of October 7, 2020, the initiative presented by President Luis Lacalle Pou "promotes more concentration, less pluralism, and curtails freedom of expression through different mechanisms such as tripling the amount of media that the same person or company can currently accumulate by going from 3 to 8 licenses, exempt from the accumulation limits those who have less than 30% of share capital in each medium; repeal all anti-concentration provisions on pay TV; promote the foreign ownership of pay TV companies; eliminate the prohibition of cross ownership between TV and Internet access, freeze, and eternalize the ownership of the current owners and block any entry of new operators, among other aspects". Likewise, in a position paper, the Coalition for Democratic Communication (CCD) pointed out that "key elements are lost in terms of the independence of the enforcement agencies with respect to political, economic, and media power, transparency and citizen participation in the processes of assignment and renewal of frequencies and exercise of citizen rights. We return to a situation that the country experienced previously, in which the allocation of radio and television frequencies was an exclusive decision of the Executive Power, without the participation or control of independent organizations or citizens, and without taking into account communicational criteria. Instances provided for the exercise, defense and promotion of the rights of citizens in matters of information and communication disappear". According to the CCD, it undermines citizen participation and transparency by eliminating the Honorary Advisory Commission for Audiovisual Communication Services (CHASCA) and eliminating holding public hearings to assign frequencies. In addition, the document emphasizes that "the proposed changes in anti-concentration regulation imply a huge setback in terms of pluralism and diversity of media in Uruguay, expressly violating inter-American recommendations and standards on freedom of expression".

1257. According to various media outlets, although government authorities intended for the project to be dealt with by Congress representatives before the end of 2020, this was not achieved and was postponed to 2021. According to the information available, one of the reasons why for postponing the vote in the Chamber of Representatives’ Committee on Industry, Energy, and Mining, is that it was not possible to receive all the delegations presented by the political opposition and they understood that it was appropriate that all interested voices can be expressed in this matter.

1258. The Office of the Special Rapporteur received with concern the information on a provision of the Budget Law 2020-2024 proposed by the Executive Power and approved by Congress in December, which could enable the blocking and taking down audiovisual content on the internet without a court order. Specifically, article 672 would grant the Communications Services Regulatory Unit (URSEC) the power to adopt "sanctioning and preventive measures" aimed at "preventing the dissemination" of audiovisual content for reasons of copyright infringement. In November, when the project only had the half approval of the Chamber of Representatives, a group of more than 20 organizations that defended human rights in the digital environment sent a letter to the Chamber of Senators to demand that the aforementioned article be withdrawn from the Budget Law draft bill.

1259. This Office took note of a bill, finally approved by Congress on December 21, 2020, which the Executive Branch sent to regulate Article 38 of the Constitution on the right to peaceful assembly without...
weapons, supposedly in order to combat the increase in COVID-19 cases. Law No. 19.932 establishes in its article 1 that the right of assembly will be temporarily limited for public health reasons, thus suspending "the agglomerations of people that generate a notorious health risk for a period of sixty days from the publication of this law, understood as such, the concentration, permanence or circulation of people in public or private spaces for public use in which the health social distancing measures are not respected, nor the appropriate personal protection elements are used (...)." In this context, CAinfo expressed its concern about the scope of the law and warned that the norm has an ambiguous and open wording, and does not clearly establish some definitions for its application. In addition, it questioned that its approval was sought through an emergency mechanism "that prevents a public debate where all political parties, academia, civil society, and citizens can contribute their point of view".

B. Censorship

1260. As the Office of the Rapporteur learned, the second-shift prosecutor of the department of Tacuarembó, Claudia Lete, ordered the journalist Sebastián Ríos from the community radio station La Kandela not to publish "assessments" on the radio without "the proper documentary evidence", in order to avoid complaints. According to available information, on September 16 the radio had announced on its Facebook profile that in the program that night they were going to report on a municipal official who was trying to evict three families to "take over a public property." Hours later, Juan Manuel Maneiro, the official involved, despite the fact that his name did not appear in the publication, called Sebastián Ríos to tell him to remove the publication or else he would file a claim against him for defamation. The journalist refused and reported on the case on the radio program, for which he was finally summoned to testify by the Tacuarembó Police the next day. When he declined to report the facts to the Police, he was summoned again 24 hours later, at which time he was given a notification from the second-shift prosecutor in Tacuarembó, Claudia Lete, who ordered him "when they make appraisals through the radio do so with the proper documentary evidence in order to avoid complaints such as this one", also providing that he remains "summoned", pending questioning by the Prosecutor's Office.

1261. Likewise, according to the media, the partner of the prosecutor Claudia Lete would be an official of the Municipality of Tacuarembó, working in the Health and Hygiene Division, the same one in which Maneiro works, as confirmed by various sources.

1262. The lawyer who assumed the defense of the reporter pointed out that the actions of the Prosecutor's Office were "irregular" and that it was a case of prior censorship, constituting a threat for the station to stop reporting on certain issues. For her part, when consulted in this regard, the Prosecutor Claudia Lete stated that "it was not the intention" to censor the journalist and that the measure had not been taken against a media but against "a private person", despite the fact that the notification refers to the opinions disseminated "through the radio."

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

1263. On June 17, journalist Gabriel Pereyra, from VTV, Radio Sarandí, and Semanario Búsqueda, received a death threat over the phone after presenting himself to testify at the Montevideo Flagrancia Criminal Prosecutor's Office in the context of a case of threats involving the 1st Shift Narcotics Prosecutor, Mónica Ferrero, and that he had disclosed. The person who called anonymously told the journalist that he was getting involved "with some people" and that he was going to "end up in a ditch like Cano," alluding to


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1264. According to available information, the journalist usually covers public safety issues such as drug trafficking, confrontation between criminal gangs, and child sexual abuse. Likewise, according to Radio Sarandi, the journalist reportedly "insinuated that he has relevant information on other issues that have not yet been made public." The complaint was placed under investigation by the Flagrancia Prosecutor Rodrigo Morosoli and members of the Police Intelligence. The Office of the Special Rapporteur for Freedom of Expression, through the then Rapporteur Edison Lanza, expressed its solidarity with the communicator and recalled that the State has the obligation to investigate and punish those material and intellectual authors responsible for the events, in addition to providing police protection given the existence of a certain risk.

1265. Likewise, the Office of the Special Rapporteur learned of the online harassment that Canal 12 journalist Iliana da Silva suffered in June after a coverage in the area near the Legislative Palace during a mobilization of transporters to protest the salary cuts, where they would have assaulted a person with a disability. According to publicly known information, the journalist reportedly received insults, threats, and accusations through Twitter that denoted a clear component of gender-based violence. Some messages even asked that she be fired by the media.

D. Access to public information and COVID-19

1266. After the outbreak of the pandemic, the media reported that the Government did not provide detailed and complete information on the coronavirus; for example, unlike other States in the region, it does not present data disaggregated by age and sex, nor does it provide distribution by departments, nor does it report suspicious cases. In addition, the local press pointed out that the Ministry of Public Health (MSP) allegedly had declared "confidential" the information regarding the progress of the disease in the country, specifically about which are the mathematical models used by the health authority to calculate the progress of infections in the national territory. On this issue, CAinfo urged the authorities to comply with transparency in the handling of information on the coronavirus. As reported by the organization, the MSP would have responded that they have not formally declared the information requested as "confidential" and that, if circumstances warrant it, it would be done according to the law and with justification.

1267. The Office of the Special Rapporteur observed that the State did not promote regulatory or operational changes to the Access to Public Information Unit (UAIP), the body that guarantees access to public information, in the context of the health emergency. On the other hand, the Office welcomes the creation of the Access to Public Information System (SAIP), through which any natural or legal person can make requests to public bodies. As reported by the Government, currently the project only reaches the Central Administration, but it is expected that it will be extended to all subjects required by law. In this sense, the Regional Alliance for Free Expression and Information highlighted in a regional report that the Uruguayan body that guarantees the right of access to information has promoted consultation through virtual means.

E. Prosecution

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2002 CAinfo. March 20, 2020. CAinfo exhorta a las autoridades a cumplir con la transparencia en el manejo de la información sobre el coronavirus.
1268. The Office of the Special Rapporteur welcomes the decision of the Montevideo Criminal Court of First Instance that sentenced former Lt. Col. José Gavazzo to 25 years in prison when it found him to be the co-author of the "very especially aggravated" homicide of the educator and journalist Julio Castro, committed in 1977 during the dictatorship. Julio Castro was last seen by his family 43 years ago and his remains were found in 2011 on a military property. In the sentence, the judge recalled that when analyzing his remains there were "certain indications that he had been handcuffed, tortured, and executed with a shot to the head." In December 2006, at the end of its working visit to the Eastern Republic of Uruguay, the IACHR's Office of the Special Rapporteur for Freedom of Expression had recommended that the State promote investigations related to the disappearance of the teacher and journalist Julio Castro.2006

1269. The IACHR welcomed the decision of the Uruguayan Justice, highlighting that the decision is consistent with the State's obligation to investigate and punish serious human rights violations that occurred during the Uruguayan civil-military dictatorship, as well as guarantee the rights to truth, justice, and reparation.2007

F. Other relevant situations

1270. The Office of the Special Rapporteur observed with particular concern a context of massive dismissals of journalists from some media outlets as a result of the economic crisis generated by COVID-19. In April 2020, at the beginning of the pandemic, the president of the Uruguayan Press Association (APU) warned about the number of dismissals and pointed out that there would be more than 350 press workers sent to the total or partial unemployment insurance, which according to the information available would come mainly from the newspapers El País, La República, El Observador, as well as some audiovisual media such as Canal 10 and Canal 12, the Océano FM radio and other AM radios.2008

1271. In July, more than 20 workers from the TV company Equital were arbitrarily dismissed. According to publicly known information, the dismissals would mainly affect workers who were members of trade unions or put the activities of trade union organizations on their agendas, such as journalists associated with the Single Union of Subscribers and Related TV Workers (SUTTAA), members of the Uruguayan Press Association (APU) and even its vice president. The president of APU, Fabián Cardozo, expressed concern about the "union repression" and explained that it would be a way of "beheading the union organization in places where there are many technical workers so that the union has no influence". On the other hand, the Office of the Special Rapporteur received information that the Romay Group (Canal 4) reportedly fired 28 workers from its cable TV company, Montecable.2010

1272. Additionally, on November 4, 49 employees of public radio stations (Radio Uruguay, Babel, Radio Clásica, and Emisora del Sur) received the news that their employment contracts will not be renewed after they expire on December 31, 2020. According to the information available, the National Audiovisual Communication Service (Secan) explained that the decision responds to their intention to improve the proposal of the public media and to renew the programming to improve the ratings, in addition to


“rationalizing the investment of human capital”. The director of the Secan, Gerardo Sotelo, stated in an interview with the press that “nobody celebrates that there are people who are left without a contract and without a program, but it seems clear that we have acted with prudence and consideration. Unless it is intended to deny the right of this administration to guide the programming of the public media according to its own definitions”. Following this announcement, the International Federation of Journalists (FIP) and its affiliated organization, the Uruguayan Press Association (APU), expressed their concern over the cutbacks and urged a dialogue to retain jobs. "In the current circumstances of serious generalized crisis in the media, with several dozen workers dismissed, media closures, job insecurity, and deterioration in the quality of information, this decision by a state agency further deepens this unfortunate reality," the APU said in a statement.

1273. The economic crisis also affected the sustainability of the media. The newspaper *El Observador* decided to keep the paper format only on weekends from April 6, while from Monday to Friday it began to operate in an exclusively digital version. Also, some TV channels canceled some of their programming.

1274. Finally, among other relevant situations, the Office of the Special Rapporteur highlights the decision of the Supreme Court of Uruguay adopted on August 17, 2020, which dismissed the unconstitutionality appeal filed by the Uruguayan Football Association (AUF) against article 39 of Law No. 19,307 (Media Law) that requires broadcasting by open television the matches of the soccer and basketball teams in “defining instances of national tournaments”. The Court emphasized that the AUF’s right to television “is not an absolute right that, for the benefit or patrimonial gain of the AUF, obligates the State to completely refrain from regulating how such right is exercised, if it is intended to protect and reconcile with other constitutionally protected values”. In this sense, it recalled that “the particular (economic) sacrifice attributed to the holder of the television right (in this case transferred by legal business for certain events to the plaintiff company) appears as an essential measure in order for the population to access sensitive information that serves as a relevant cultural contribution to society. It is about guaranteeing access to relevant data for public opinion due to the values that sport extols”. In this way, the Highest Court understood that the fact that certain sporting events specifically foreseen are not covered by exclusivity clauses does not imply a "decline in business", and that "it is not true that the subsistence of the entity or the price obtained by the cession of the television rights is unreasonably liquefied". On the other hand, the Court did declare paragraph 3 of article 39 of the Media Law unconstitutional, which exceptionally enables the Executive Branch to include additional events in this modality "by means of a founded resolution and prior report from the Audiovisual Communication Council."

1275. In view of the aforementioned facts, this Office calls on the State of Uruguay to take into special consideration that:

1276. **Social protest, which includes the rights of peaceful assembly and without arms, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights.** Protest is usually an important means of action and pursuit of legitimate objectives by organizations and groups, and as such it is also protected by the right to freedom of association, provided for in Article XXII of the American Declaration and Article 16 of the American Convention on Human Rights. The IACHR has indicated that States are obligated to guarantee and facilitate the exercise of human rights that are put into play during demonstrations and protests and to implement measures and mechanisms so that these can be exercised in practice, not as a way to obstruct them.

1277. **The allocation of radio and television licenses must be guided by democratic criteria and pre-established, public, transparent, and equal procedures.** Article 13.3 of the American Convention

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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.”. Also, Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights 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”.

1278. **Freedom of expression applies to the Internet in the same way as to all media.** The Office of the Special Rapporteur reiterates that limitations on the operation of websites, blogs, applications, or other information dissemination systems on the internet will be admissible only to the extent that they are compatible with the conditions provided for the limitation of freedom of expression. Only in exceptional cases, when dealing with openly illegal content or speeches not protected by the right to freedom of expression, is it admissible to adopt mandatory measures to block and filter specific content, for which it must be subjected to a strict test of proportionality and be carefully designed and clearly limited in such a way that it does not reach legitimate speech that deserves protection.

1279. **The inter-American human rights system explicitly prohibits prior censorship.** The Office of the Special Rapporteur recalls that Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship. Further, Principle 5 of the Declaration of Principles on Freedom of Expression, which establishes that “[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.”

1280. **Transparency and accountability of public powers strengthen democratic systems.** Finally, the Office of the Special Rapporteur recalls that access to public information is a fundamental right of individuals and the States are obligated to guarantee its exercise. In the context of the health emergency, based on the obligation of active transparency, States must proactively provide truthful and reliable information on all aspects of public interest related to the pandemic, in open formats and in a manner accessible to all. Given the existence of the digital divide, States must find effective ways to fulfill the obligation of active transparency in such circumstances.

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VENEZUELA

1281. Throughout 2020, serious violations to the right to freedom of expression continued to be the rule in Venezuela. The IACHR and its Office of the Special Rapporteur registered an unprecedented increase in arbitrary detentions of journalists and citizens as a result of publications of information or opinions that questioned the ruling party’s version.

1282. The impact of the COVID-19 pandemic in the country exacerbated the political and social conflict, as it aggravated the shortage of services and basic supplies, such as fuel, food, electricity, and medicines, with the consequent increased risk for journalists and for the exercise of citizen protests. In this context, the IACHR and its Office of the Special Rapporteur observed with concern the increase in arbitrary detentions for reporting or expressing criticism in the digital space, without due process guarantees, and that in addition to affecting journalists, it extended to political opponents, health personnel, or citizens who expressed critical opinions on social networks or disseminated information about the crisis in various sectors of the country.

1283. The IACHR and the Office of the Special Rapporteur observe that most of these detentions resulted in the accusation of crimes contained in the Constitutional Law against Hate, for Peaceful Coexistence, and Tolerance, known as the “Law Against Hatred”, and were accompanied by pre-trial detention measures and prohibition of expression on different issues related to the crisis in the country. Likewise, on numerous occasions, members of the security forces temporarily detained or attacked press workers to scrutinize their work equipment and eliminate photographs or videos that documented events of public interest, such as protests against the difficulties of Venezuelans to obtain basic supplies. The security forces have also restricted access of the press to health centers and, in general, medical and hospital officials have been prevented from providing information to the media about the health situation in the face of the pandemic.

1284. Likewise, during 2020 the IACHR became aware of alleged state orders to Internet providers to systematic block and censors the websites of journalistic media, social organizations, and digital platforms,
which particularly affected the media that report on political and social issues with independence, or that included in their coverage the opposition leader and president of the National Assembly, Juan Guaidó. In addition, there were recurring failures in Internet connectivity and interruptions in the electric power service, which limited the flow of information and hampered the work of the media. The closure of several stations ordered by the National Telecommunications Commission (Conatel), the raid of different media by police officers in the framework of criminal investigations, and the departure of the DirecTV television service from the country due to sanctions imposed by the United States, further reduced citizens’ access to a variety of information sources, not controlled by the state.

A. Murders

1285. On August 22, journalists Andrés Eloy Nieves Zacarías and Víctor Torres were murdered during an operation by the Special Actions Forces (FAES) at the headquarters of the community channel Guacamaya TV, in Cabimas, Zulia state. Víctor Torres is the son of the channel’s director, Franklin Torres, who denounced that the security forces entered the channel’s headquarters "violently" and, after the murder, seized all the equipment from the television floor. The Office of the Special Rapporteur condemned the murder of the journalists and urged the State to fully, effectively, and impartially investigate the material and intellectual authors of these crimes, and the link to journalistic activity. 2022

1286. The attorney general, Tarek William Saab, reported on August 25 that the Prosecutor's Office (MP) charged two officials of the Special Actions Forces (FAES) of the Bolivarian National Police (PNB) for the murder of the communicators. Attaché officers José Contreras and Néstor Olano were charged with the crimes of homicide classified as treachery, improper use of organic weapons, simulation of a punishable act, and violation of the domicile by a public official. The MP also ordered the judicial arrest of seven other public officials for their connection to the case. 2023

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

1287. The Office of the Special Rapporteur learned of repeated episodes of attacks, intimidation, and harassment against journalists and media workers, committed both by individuals and by State officials, in order to prevent or obstruct journalistic work and the dissemination of information and opinions contrary to the official speech. 2024

1288. On February 11, at least 14 press workers were attacked by government supporters in the vicinity of the Simón Bolívar International Airport while waiting for the arrival of the president of the National Assembly, Juan Guaidó. According to available information, several press workers suffered physical injuries as a result of the attacks, which allegedly occurred due to the inaction of officials from the Bolivarian National Police (PNB) and the Bolivarian National Guard (GNB). Two days later, the president of the National Constituent Assembly and first vice president of the United Socialist Party of Venezuela (PSUV), Diosdado


Cabello, reportedly made fun of the attacks, describing the aggressors as “patriotic people” in his program “Con el mazo dando”, broadcasted by the State channel, *Venezolana de Televisión (VTV)*.2025

1289. On April 16, the journalist and host of the digital media *Venezolanos por la Información* (VPI TV), Sergio Novelli, denounced that officials from the General Directorate of Military Counterintelligence (DGCIM) came to his previous address, where another family now resides, with an "order for an alleged investigation" and took four computers and five telephones. The night before, the president of the National Constituent Assembly, Diosdado Cabello, had referred to Novelli and four other journalists as "palangristas" in the program "Con el Mazo Dando." Likewise, on April 21 on *VTV*, President Nicolás Maduro described Novelli as a "mercenary of communication" after he conducted an interview with Venezuelans who were returning to the country and warned them about the confinement conditions they would have to face.2026

1290. In other worrying events registered by the Office of the Special Rapporteur, on March 4, the journalist Bleima Márquez of the *La Nación* newspaper was detained for two hours for taking photographs of a traffic jam;2027 unknown groups painted threatening messages in areas in Caracas near the residence of journalist Federico Black, on April 26, the correspondent of *Russia Today* (RT) in Venezuela, Érika Ortega, was threatened through the Twitter account of the company Silvercorp USA, on May 3, journalist Esther Yáñez, from the Russian media *Sputnik Mundo*, was intimidated by a GNB official while on a tour of a service station in the La Florida urbanization in Caracas on April 2 and later, she received threats through social networks;2031 a *Última Hora* press team was held for an hour and a half by DGCIM and GNB officials in Chuo, Caracas, on June 5;2032 social communication student Roger Luna, a reporter for *El Bus TV*, was forced by a policeman to delete photographs he took after taping a flip chart on a wall in the center of the city of Trujillo, on May 22;2033 Users on the social network Twitter attacked the *Diario Tal Cual* and the reporter Carlos Seijas with threatening and homophobic messages, after they published a series of reports about the LGBT community.2034 Journalists from the media *ImpactoVE*, *NTN24*, *Univisión*, *El Pitazo* and *Venezolanos por la Información* (VPI tv) were attacked by violent groups on August 10 while covering the repercussions of an attempted assault on the headquarters of the Democratic Action party in the urbanization La Florida, Caracas.2035

1291. In particular, the IACHR and its Office of the Special Rapporteur noted that the news coverage on the fuel shortage and the difficulties derived from it was the subject of constant actions by security force officials to silence it, from the detention of reporters and press workers or citizens who registered the long waits at the fuel stations, to the elimination of photographs and videos that documented the difficulties in the supply. The complaints and criticisms about the shortage situation were silenced by the government authorities even through the use of criminal law.2036

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2027 La Patilla. 4 de marzo de 2020. *Política Chirigüeha detuvo a la periodista Bleima Marquez en San Cristóbal.*


2036 Among other registered cases, on May 8, Guardia Nacional Bolivariana (GNB) guards held Rolando Rodríguez, driver of the *La Prensa de Lara* information website, for an hour when he was about to get fuel for his car at a gas station in Barquisimeto, state of Lara, and he filmed with his cell phone while he was being removed from the site (Espacio Público. May 10, 2020. *Funcionarios de la GNB detienen a chofer de La Prensa de Lara*). A GNB colonel deleted the material that Pedro García, a journalist from regional channel *UniTV*, recorded during a routine tour of a gas station in Nueva Esparta state, on May 27. (Espacio Público. May 28, 2020. *Coronel de la GNB intimidó a periodista María Bolívar en una estación de servicio*). On August 16, two GNB guards harassed and threatened reporter Fabiola Matheus and cameraman María Fernanda Bolívar, a journalist for the *Todos Ahora* website, was intimidated by a GNB guard while collecting testimonies from people who wanted to get gasoline in Anzoátegui state, on June 3. (Espacio Público. June 4, 2020. *GNB intimida a la periodista María Bolívar en una estación de servicio*).
According to public information, authorities continued the practice of preventing access to journalists and of eliminating the records and images of episodes whose dissemination was not of interest to the authorities. For example, Trujillo State Police (Politrujillo) officials reportedly intimidated the Polpitar Trujillano’s journalistic team when they were covering a lynching on May 19, asking them to leave and hand over their work equipment. On July 9, the supervisor of PoliIndependencia in Santa Teresa, Manuel Acevedo, reportedly called the newspaper La Voz of Tuy and threatened journalist Jean Carlos Rodríguez, warning the receptionist that he was going to “screw him up” and that “he would send for him with the Interpol,” after the reporter denounced on Twitter alleged irregular privileges granted to a detained councilwoman. As the IACHR and its Office of the Rapporteur learned, Rodríguez has been exiled from the country due to the repeated threats that he has received in the exercise of his profession.

The journalist for Crónica Uno, Gregoria Díaz, a correspondent for the Press and Society Institute (IPYS), suffered repeated harassment by officials of the city hall and the town halls of Aragua state, after she published a tweet in February about a person hospitalized in the Hospital Military of Maracay.

Likewise, the mayor of Puerto Cabello, Juan Carlos Betancourt, threatened the correspondent of El Pitazo, Francisco Chirinos, journalist Alexandra Rojas of the digital medium Pateando la Calle, and the announcer Juan Vargas of the station Modulación 100.3 FM, for publishing information that linked him to an alleged network for the sale in dollars of medicines that were from the public hospital network. “Get ready because I am coming with everything against you. You will have to answer for accusing me without proof,” he said on September 23 on his radio program, where he called Rojas a “pseudo-journalist” and called Chirinos a “fool.”

The mayor of Tinaco, Cojedes state, José Rivas, threatened journalist Eduardo González during a phone call he made to his radio program, broadcasted by the Ritmos 96.9 FM station, on October 6: “I’m coming for you if you don’t behave well. And I’ll go after the station too,” he warned the journalist.

Jamel Louka was attacked with a grenade and shot by armed individuals on December 2, in the town of Altagracia de Orituco, Guárico state, while on his way to work. Louka, a reporter and photographer for Diario La Antena and a collaborator of El Pitazo, was shot at twice and required medical attention. Louka stated that he did not know the motive for the attack but said that he frequently received criticism from local government officials for his articles on the shortages of food, water, medicine, and electricity in the wake of the economic crisis. The National Association of Journalists, like other national and international organizations, condemned the attack.

Richard Mantilla, from the newspaper El Tiempo, while they were touring gas stations in Valera, Trujillo state. The guards seized the journalist’s cell phone and deleted the material she had filmed. (Espacio Público. August 26, 2020.


Same story: journalist’s cell phone deleted. The mayor of Tinaco, Cojedes state, José Rivas, threatened journalist Eduardo González during a phone call he made to his radio program, broadcasted by the Ritmos 96.9 FM station, on October 6: “I’m coming for you if you don’t behave well. And I’ll go after the station too,” he warned the journalist.

Other reported cases: Journalists from Venezolanos por la Información (VPITV), Caraota Digital and Termómetro Nacional in Carabobo state were intimidated and persecuted by workers of the Instituto de Ferrocarriles del Estado (IFE) in Guacara, on July 14, while they were reporting on a section of the railway system that is not working. (IPYS. July 19, 2020.

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Periodistas en Carabobo fueron perseguidos e intimidados en Guacara.
international organizations, demanded that the authorities urgently initiate an investigation into the incident.

C. Arbitrary detentions

According to monitoring by the NGO Espacio Público, between January and August there were 135 arbitrary detentions in Venezuela, the majority of journalists, media workers, or ordinary citizens exercising their freedom of expression.

According to the information received, several journalists were detained for reporting on fuel shortages in different regions of the country. Some of the most serious cases that the Office of the Special Rapporteur became aware of are the detention, on April 15, of journalist Eduardo Galindo, director of the web portal Senderos de Apure, by agents of the National Anti-Extortion and Kidnapping Command (Conas). The journalist’s brother and his wife were also detained, and computers and home phones were confiscated. Galindo’s detention would be related to his reports on the fuel shortage in the region. He was released from detention on May 4, after being charged with the crimes of “spreading false information.”

Radio host Wilfredo Rodríguez was also detained by Conas on May 7 for denouncing irregularities in the sale of gasoline in the Delta Amacuro state on his Facebook. He was accused of the crime of “insult to the public official” and released five days later, under the precautionary measure of presentation every 30 days.

On August 31, President Nicolás Maduro granted a pardon to more than 100 political prisoners, legislators, journalists, human rights defenders, health workers, union workers, and members of civil society in general, several of whom had been convicted or were subject to criminal proceedings for exercising their right to freedom of expression. "The intention is to deepen the process of national reconciliation for the next electoral process," declared the Minister of Communication, Jorge Rodríguez, during the reading of the grace measure on television. Among those pardoned from judicial proceedings initiated based on the exercise of their freedom of expression are Marco Antoima, Luisa Mimi Arriaga, Elio Mendoza, Tania Rodríguez, Fernando Marcano, Wilmer Quintana, Nicmer Evans, Andrea Sayago, and Rubén González.

In addition, the IACHR and its Office of the Special Rapporteur received information that officials from the Directorate of Military Counterintelligence (Dgcim) detained Rafael Hernández, a photojournalist from the news channel NTN24, on September 1, for taking a photograph of an officer in Boleíta, Caracas, within the framework of the coverage of the release of political prisoners after the pardon granted by Nicolás Maduro. The photographer was detained for about an hour and had to delete the photograph.

It was also reported to this Office that on September 9, officials of the Bolivarian National Police (PNB) beat and detained doctor Williams Arrieta Nava after he complained they were letting vehicles that were not in line to load fuel pass at a service station in Puerto Ordaz, Bolivar state. The doctor’s wife was also injured in attack.


On May 8, Rolando Rodríguez, a driver of the La Prensa de Lara information website, was arrested by GNB guards for filming how he was being removed from a gas station when he tried to get fuel for his car in Barquisímetro, Lara state. (Espacio Público. June 4, 2020. Mayo: confinamiento, intimidación y detenciones; Twitter account of La Prensa de Lara (@laprensalaral). May 8, 2020.) On June 1, GNB guards arrested Eduard Rojas, director of the Mérida Tremenda 105.7 FM radio station, after he aired on his talkshow La Prensa the tape of an argument between two individuals and a soldier at a gas station in Merida. Rojas was allegedly detained without a court order and his relatives reported that he was beaten and transferred to Tovar municipality. He was released the night of June 4 (Espacio Público. June 2, 2020. Funcionarios de la GNB detuvieron al director de Tremenda 105.7 FM, Espacio Público. June 5, 2020. Liberan al locutor Eduard Rojas tras estar más de 48 horas detenido).


detained and later released. According to the official record of the PNB, the doctor was detained for "incitement to hatred, resistance to authority, and insult against an official." A day later the doctor was released, and a measure of protection was granted for him and his family. Likewise, the Prosecutor’s Office requested an arrest warrant for the officials involved in the attack.

1302. Likewise, according to available information, officials from the Aragua state Intelligence and Preventive Strategies Directorate (DIEP) detained Professor Fidel Martínez after he called his acquaintances to protest through WhatsApp and Facebook, with the message: "Bring your slogans and banners with your demands, no violence. Enough of the abuse and mockery by the authorities. It is now or never". The teacher was charged with the alleged crime of public instigation.

1303. According to the information provided to this Office, on November 18, officials from the General Directorate of Military Counterintelligence (Dgcim) detained the president of the Unitary Federation of Petroleum Workers of Venezuela (Futpv), Eudis Girot, at his home in Puerto La Cruz, Anzoátegui state. He was reportedly charged with the alleged crimes of terrorism, conspiracy, disclosure of confidential information, and conspiracy. The trade unionist, known for his constant complaints about the conditions of the oil installations in the country, carries out a weekly update on the state of the refineries and disseminates information on the demands of oil workers for better wages. On November 23, he was transferred to the Dgcim in Caracas, where he was reportedly presented before the Third Special Court in Control Functions with crimes associated to Terrorism.

1304. On November 24, the First Control Court of San Carlos released Dr. Ligia Salcedo, who was detained for 24 hours allegedly for demanding fuel at the Los Pinos service station, in Tíquaquillo, Cojedes state. She was accused of resisting authority and disturbing public order, her cell phone was seized, and she had to be put in a cast due to a knee injury caused by the blows she received during detention.

D. Stigmatizing statements

1305. This Office was informed that on May 4, during an address broadcasted by state channels, President Nicolás Maduro accused the human rights organization Provea of receiving funding from the US intelligence agency CIA and of defending the rights of "terrorists" and "mercenaries" that make up the security forces of President Donald Trump. Maduro referred to people who had been detained the day before for allegedly attempting an invasion of the country from Colombia, and regarding whom Provea, in a post on his Twitter, had requested that their rights be respected. The president of the National Constituent Assembly, Diosdado Cabello, endorsed Maduro’s accusations and affirmed that the human rights organization was "justifying terrorism" and serving the interests of North American intelligence.

1306. According to the information available, the representative of the National Assembly for the Anzoátegui state, José Brito, would have called Roberto Deniz, journalist of the investigative medium Armando Info, a "criminal" and a "journalism dog", after he reported on his relationship and that of other representative with the Colombian businessman Alex Saab, who is being investigated for various acts of corruption and was arrested on June 12.

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2050 Espacio Público. September 9, 2020. PNB golpeó y detuvo a médico por reclamar corrupción en una cola de gasolina.
On August 22, the governor of the state Delta Amacuro, Lizeta Hernández, described a publication by journalist José Gregorio Ruiz, from El Periódico del Delta, as an act “of gaffeity and Mongolism”, after he published images on his Facebook that showed the transfer of a dead body to the Tucupita morgue.\textsuperscript{1308}

Additionally, journalist and producer Luis Olavarrieta was the victim of two attacks by the Lechuguinos portal linked to the ruling party, on September 14 and 29. In the publications on social networks and on the website of the media, the communicator was signaled out for apparently breaking the law and calling for violence, after the publication of a tweet about the protests that took place in various regions of the country.\textsuperscript{1309}

The governor of Carabobo state, Rafael Lacava, published a tweet on October 17 in which he attacked and incited his supporters to initiate a persecution through online networks against the regional newspaper Notitarde, because he was upset with the headline of the newspaper.\textsuperscript{1310}

### E. Obstacles to journalistic work during the COVID-19 pandemic

In the specific framework of the health emergency generated by the COVID-19 pandemic, the IACHR and its Office of the Special Rapporteur received information about a climate of harassment and detentions of journalists and citizens promoted by authorities and public officials to hinder journalistic work and freedom circulation of information regarding the impacts of the health crisis in the country and in different vulnerable groups.

For example, journalists in the state of Mérida warned of failures and deficiencies in basic services, limitations in circulation, cases of censorship, restrictions on access to local information on COVID-19, job insecurity and salary reductions, and impacts to the health of press workers.\textsuperscript{1311} At the beginning of April, the National Association of Journalists, Caracas section (CNP) tallied 34 journalists attacked by security officials during the first 15 days of quarantine.\textsuperscript{1312}

On the other hand, restrictions on the supply of gasoline have affected the circulation of various press media. The newspapers La Prensa de Lara, La Calle in Carabobo, El Periódico de Monagas and Diario La Nación in Táchira, plus the radio stations Luz Radio 102.9 FM in Zulia and Frenesi 107.9 FM in Carabobo, made the decision to stop the distribution of their main informative product after access to fuel was not guaranteed.\textsuperscript{1313} The lack of fuel also made it difficult for journalists to cover the situation on the streets.

Since the Venezuelan government decreed the state of alarm and adopted various measures to prevent coronavirus infections, an increase in arbitrary detentions has been registered in the country, both of

journalists in the exercise of their informative work, as well as citizens or political opponents who questioned the state’s response to the emergency or protested the shortage of goods such as fuel. According to available information, dozens of journalists and media workers were detained and, in most cases, subsequently subjected to criminal proceedings. Several reporters were also temporarily detained and forced to erase the photographic or video material to regain their freedom. Also, at least 26 people were detained for publications made on social networks and through the WhatsApp messaging application, according to a report by the Espacio Público organization. Doctors, human rights defenders, and students, among others, have also suffered arrests and have received criminal charges for disseminating information and opinions about the difficulties in the supply of goods and other problems derived from the health situation.

Likewise, according to publicly known information, sometimes press workers were detained for publishing information on the impact of the coronavirus in the country, and, in some cases, for disseminating data that differed from those officially reported.

Communicator Jesús Hidalgo Rincón was detained by Conas officials at the Canal Sur TV facilities, in Santa Bárbara del Zulia, for criticizing the situation caused by the coronavirus, on April 23. He was released the next day. The director and announcer of Radio Criolla 92.9 FM, José Galindo, was detained by Conas on May 12 in San Fernando de Apure. That station was closed by Conatel in 2019.

The journalist and coordinator of the 800Noticias digital portal, Luisa Mimi Arriaga, was detained on June 18 by officials of the Scientific, Penal, and Criminal Investigations Corps (CICPC) at her residence in El Hatillo, Miranda state. On June 20, journalist Marco Antoima was detained, in the framework of the same investigation, for the alleged handling of anonymous accounts on social networks from which hatred would be instigated. On June 22, they were presented before the 47th Court of Control of the Metropolitan Area of Caracas, where they were accused of crimes under the "law against hatred" and were ordered to be under house arrest, prohibition of leaving the country, and prohibition of disclosing in the media a speech that incites hatred or disrespects.

Carolina Villanueva, a reporter for the digital media Noticias 24 Mundo, was detained on July 6 for more than three hours when she was traveling on public transportation. Zamora municipality police officers

2066 On August 8, a Guardia Nacional Bolivariana (GNB) guard seized his phone, beat and detained a citizen who filmed him when he was collecting identity cards from customers who were waiting to refuel at a gas station in Catia, Caracas. Espacio Público. August 8, 2020.


2070 On August 30, Regional Police (PoliBarinas) agents arrested four people who demanded the provision of gasoline at a station in the state of Barinas. Espacio Público. September 2, 2020. Detuvieron a cuatro personas por protestar por gasolina en Barinas; Bolivarian National Police agents attacked several people who, after several days of waiting, were protesting for fuel at a gas station in the Tinaco municipality, Cojedes state. Two people were arrested for "disturbance of public order" and "obstruction of the public thoroughfare"; Espacio Público. August 30, 2020. Funcionarios de la PNB agreden y detienen a ciudadanos por protestar.

2071 On September 3, a GNB guard detained an individual for two hours for complaining at a gas station in Santa Teresa del Tuy, Miranda state. (Espacio Público. September 3, 2020. Detienen a un ciudadano por reclamar en estación de servicio).

2072 On August 8, a Guardia Nacional Bolivariana (GNB) guard seized his phone, beat and detained a citizen who filmed him when he was collecting identity cards from customers who were waiting to refuel at a gas station in Catia, Caracas. Espacio Público. August 8, 2020.

2073 On July 7, Cicpc agents once again arrested Arriaga, who was under home arrest, because the police system still had an arrest warrant for the journalist. Arriaga was transferred to Cicpc offices in Parque Carabobo, and remained there until the arrival of her lawyers with the precautionary measure that ordered her to be detained at home. Espacio Público. July 8, 2020. Cicpc detuvo nuevamente a la periodista Mimi Arriaga.

2074 On June 11, 2020. ONG Espacio Público registra 26 detenciones por “mensajes de odio” durante la cuarentena.

2075 On August 8, a Guardia Nacional Bolivariana (GNB) guard seized his phone, beat and detained a citizen who filmed him when he was collecting identity cards from customers who were waiting to refuel at a gas station in Catia, Caracas. Espacio Público. August 8, 2020.

2076 On August 8, a Guardia Nacional Bolivariana (GNB) guard seized his phone, beat and detained a citizen who filmed him when he was collecting identity cards from customers who were waiting to refuel at a gas station in Catia, Caracas. Espacio Público. August 8, 2020.

took her identity card and forced her to get out of the vehicle, claiming that the press workers were not part of the priority employees who had permission to circulate.2074

1318. On July 13, officials from the DGCIM and the CICPC raided the residence and arrested Nicmer Evans, political scientist, journalist, and opposition politician. In addition, they held his family for several hours. On July 17, the 21st Court of First Instance of the Metropolitan Area of Caracas mandate pre-trial detention for alleged "incitement to hatred." Evans, director of the news portal Punto de Corte, was allegedly accused of having made a comment on Twitter about some Chavista politicians infected with COVID-19.2075

1319. The photography coordinator of the Crónica Uno portal, Gleybert Asencio, was detained along with two other media workers by GNB and PNB officials while they were covering the Hotel La Palma in Los Caobos, Caracas, on July 15, about complaints from neighbors on social networks who claimed that COVID-19 patients were staying at the hotel. The team was detained for more than two hours for allegedly not having "authorization" to carry out this coverage, and they were threatened with imprisonment if the situation happened again.2076 On July 31, members of the DGCIM arrested Correo del Caroní photojournalist William Urdaneta while he was taking photographs of the traffic on an avenue in Ciudad Guayana, Bolivar state, to document the effects of the radicalization of the quarantine. An hour later he was released, without his phone and his camera memory, which were seized by officials.2077

1320. In addition to the journalists detained while doing their work, dozens of people have been detained for expressing criticality or making complaints on social networks linked to the government’s management of the health crisis.2078

1321. The IACHR and its Office of the Special Rapporteur observed that health personnel also faced arbitrary detentions for questioning the situation of the health system or criticizing the authorities. According to figures from the United Doctors of Venezuela, at least 12 doctors and nurses were detained for making public comments about the coronavirus.2079

1322. On April 6, PNB officials arrested the coordinator of the NGO Redes Ayuda, Luis Serrano, when he was receiving medical supplies at his residence in the San Bernardino urbanization, Caracas. Serrano pointed out that together with the organization they were donating material such as masks, gloves, and antibacterial gel for social communicators who must carry out their work during the coronavirus pandemic.2080 On June 24 in Barquisimeto, Lara state, lawyer Eva Leal was arbitrarily attacked, detained, and transferred to a GNB...
barracks. She received five stitches on her forehead for the wound sustained in the assault. On June 25, DGCIM officials detained the director of Citizen Security of the Mayor’s Office of El Hatillo, Javier Gorriño, and the director of the Municipal Police of El Hatillo, Sergio González. The detention occurred after Gorriño reported on Twitter that he had not been able to disperse a party -held in the Los Naranjas urbanization, in violation of the quarantine- due to the presence of the Presidential Military Guard [Casa Militar].

F. Social protest

The situation of social, political, and economic crisis, exacerbated by the COVID-19 pandemic and the shortage of services and basic supplies, led to an increase in citizen protests throughout the country. The Venezuelan Observatory of Social Conflict (OVCS) documented 4,414 protests during the first half of 2020, which is equivalent to an average of 25 per day. According to the Observatory’s survey, the state of Táchira ranked first with 488 protests, followed by Mérida with 454. Miranda (355), Distrito Capital (349) and Anzoátegui (304), followed the count of the main entities with the greatest conflict. The human rights organizations Foro Penal and Provea register at least 214 people detained and at least four deaths in the framework of the protests reported between January and September to demand the restitution of public services.

In this context, the Office of the Special Rapporteur received information on the disproportionate use of force to suppress protests by police and military officials, and on various situations in which journalists and media workers were prevented from covering the demonstrations. According to the Venezuelan Observatory of Social Conflict, during the first semester of 2020, 221 protests were repressed by state security bodies and paramilitary groups, 129 people were arrested, another 62 injured, and two protesters were allegedly killed by the use of firearms by the GNB.

Regarding the limitation of journalistic work in the framework of social protests, on March 12 the journalist Jonathan Useche of La Prensa de Táchira was intimidated by GNB officials, who seized his cell phone and erased the material he had recorded while he was in a protest over the lack of fuel on Antonio José de Sucre avenue. GNB officials forced journalist Luis López, from the newspaper La Verdad de Vargas, to delete the material he recorded during a protest by doctors on Soublette avenue in La Guaira, Vargas state. Journalist Carol Romero was detained by the GNB when she was covering a protest over the fuel shortage in Junquito, and on April 15, journalist Arnaldo Sumoza was arrested while covering a protest over a lack of water in Guárico state. The human rights defender and member of the NGO Movimiento Vinotinto, Henderson Maldonado, was detained after documenting on video a protest by kidney patients and health personnel in front of the police station 121 of the GNB in Barquisimeto, Lara state, demanding access to fuel. The journalists Ricardo Tarazona, from Qué pasa en Venezuela, Astrid Pérez Dudamel, from Noticias Yaracuy, Luis Rodríguez, from El Impulso, and Anthony Mujica from Radio Hispana, were attacked with pepper spray by state police officers while covering the protests that took place on September 26 in the vicinity of the barracks. She received five stitches on her forehead for the wound sustained in the assault. On June 25, DGCIM officials detained the director of Citizen Security of the Mayor’s Office of El Hatillo, Javier Gorriño, and the director of the Municipal Police of El Hatillo, Sergio González. The detention occurred after Gorriño reported on Twitter that he had not been able to disperse a party -held in the Los Naranjas urbanization, in violation of the quarantine- due to the presence of the Presidential Military Guard [Casa Militar].


municipality of Independencia, Yaracuy state.\textsuperscript{2093} GNB officials persecuted Lucelys Rodríguez, correspondent for the digital portal \textit{Todos Ahora} in Anzoátegui state, on October 8, after she covered a protest for fuel on the Intercommunal Avenue in the Diego Bautista Urbanjana municipality. The reporter entered a business premises to protect herself and left the place once the troops had left.\textsuperscript{2094} Other cases also followed the same pattern.\textsuperscript{2095}

1326. Between August and September, protests intensified in different states of Venezuela, motivated by the economic crisis and the scarcity of resources and services affecting the country. According to the information received, some of the demonstrations were suppressed with excessive use of force by state security agents.\textsuperscript{2096}

G. Subsequent liabilities

1327. Roland Carreño, journalist coordinator of Popular Will (VP), the opposition party of Leopoldo López, was arrested by members of the Bolivarian National Police on October 26. The Fourth State Court of First Instance in Control Functions with National Jurisdiction and competence in cases related to Crimes Associated with Terrorism, charged him with the alleged crimes of Conspiracy, Illicit trafficking in weapons of war and ammunition, and Financing of Terrorism. As reported on Twitter by the attorney general, Tarek William Saab, "in a preliminary manner", the investigations indicate that Carreño allegedly gave "weapons of war and cash to certain subjects to promote violent actions in the national territory." Additionally, he is accused of coordinating "the financing of the logistics used in Leopoldo López's escape plan from the Spanish embassy in Venezuela." Multiple organizations that defend human rights and politicians opposed to the government of Nicolás Maduro have denounced the arrest as irregular and motivated by Carreño's political activity. The journalist spent more than 24 hours without having contact with lawyers or relatives, and no one knew his whereabouts until the authorities reported his arrest.\textsuperscript{2097}

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\textsuperscript{2093} Espacio Público. September 16, 2020. \textit{Efectivos de seguridad agreden a la prensa en Yaracuy.}

\textsuperscript{2094} IPYS. October 8, 2020. \textit{Efectivos de la GNB persiguieron a la corresponsal de \textit{Todos Ahora} en Anzoátegui.}

\textsuperscript{2095} GNB forces prevented the work of reporters Virginia Serrano, from newspaper \textit{El Tigre}, and Shiley Gómez, from Radio Fe y Alegria, while they were covering a protest in El Tigre, Anzoátegui state, on June 5 (IPYS. June 10, 2020. \textit{Efectivos militares impidieron labor de periodistas en El Tigre}). PNB agents prevented several journalists from Maracay, Aragua state, from covering a demonstration of pensioners and retirees in the city's Bicentennial Square, on July 23. (IPYS. July 27, 2020. \textit{PNB impide a periodistas cubrir protesta de pensionados y jubilados en Maracay}). An GNB member intimidated journalist Marianel Moro and cameraman Jesús Fonseca, from \textit{Venezolanos por la Información} (VPITV), when they were covering a protest in Acarigua, Portuguesa state, on September 28. The guard filmed the journalistic team while it was working and also individuals who were being interviewed about the fuel shortage in the region. (Espacio Público. September 30, 2020. \textit{Funcionario de la GNB intimidó al equipo de VPITV en Portuguesa}). On October 10, photojournalist Elena Fernández was detained by Carabobo Police agents when she was covering a demonstration of cyclists in the state. (Twitter account of Venezolana de Prensa (@VENPRENSA) \textit{October 10, 2020}; IPYS. October 16, 2020. \textit{Detenida fotógrafa en manifestación de ciclistas carabobeños}). A GNB guard filmed and followed journalists from \textit{Venezolanos por la Información} (VPITV), Caraota Digital and Voces de la Ciudad FM, while they were covering a protest in Bolívar Square on October 13 (Espacio Público. October 14, 2020. \textit{Funcionario de la GNB intimidó a periodistas durante protesta en Mérida}).


In addition, according to the information received, on November 23 the economist and former leader of the Primero Venezuela political party in Puerto Ayacucho, Romel Despas, filed a complaint with the Prosecutor’s Office against the announcers Kisme Evaristo and Ana Muñoz, from Balance Informativo and El Radar Informativo, broadcasted by the stations Autana 90.9 FM and Raudal Stéreo 92.9 FM, in Puerto Ayacucho, Amazonas state, for the alleged crime of defamation and insult. The reporters were denounced after they reported on their radio programs about the reasons for Despas’s expulsion from his party. Both communicators made reference to an act of the party that was publicly disclosed, in which it was mentioned that the expulsion of the economist was due to mismanagement of money, which would have revealed “an embezzlement of funds and diversion of logistics”.\textsuperscript{2098}

H. Censorship

According to the survey of social organizations, between January and August 2020, approximately 11 stations were closed by Conatel. For example, agency officials took off the air the Kariñosa 106.1 FM radio station, located in the Guanipa municipality of Anzoátegui state, on April 7\textsuperscript{2099}. On May 15, Conatel ordered the closure of the Rumbera 106.9 FM station in Los Valles del Tuy, Miranda state. For the president of the radio Eliú Ramos Ortega, it was a retaliation for the diversity of ideas and opinions that they spread, since the station had all its documents up to date\textsuperscript{2100}. On July 31, the station Pura Candela 93.3 FM, based in Carrupano, Sucre state, was closed. Officials of the state entity went to the radio station accompanied by members of the National Guard, drew up a record, and seized all the electronic equipment. The closure came two weeks after a radio journalist, Otilio Rodríguez, was arrested for posting complaints about the illegal sale of gasoline on the station’s social networks.\textsuperscript{2101}

Conatel took the portal of the Portuguesa newspaper Ultima Hora off the web on May 14. Miguel Villavicencio, director of the media, denounced that Conatel suspended the storage and domain provider of the newspaper’s website, alleging non-compliance with the rate increase, without being allowed to catch up.\textsuperscript{2102}

The information program “De Frente”, broadcasted by Roscio TV, was taken off the air on May 15. According to his host, the journalist Víctor Hugo Donaire, the director of the channel told him that the decision to take his program off the air responded to alleged pressure from the Guárico state government.\textsuperscript{2103} The opinion program of the journalist Vladimir Villegas, Vladimir a la I, broadcasted by the Globovisión news channel, was taken off the air on May 27. According to the journalist, the decision to terminate the program responded to pressure from the national government.\textsuperscript{2104} The journalist Reyes Theis denounced that the website of the newspaper El Nacional censored an interview that he conducted with the former Minister of Petroleum and former President of Petróleos de Venezuela S.A (PDVSA), Rafael Ramírez. The interview was published on June 7 on the media’s website, but hours later it was reportedly deleted.\textsuperscript{2105}

Likewise, as the IACHR and its Office of the Special Rapporteur learned, the mayor of Barbacoas, Urdaneta municipality, Aragua state, Antonio Lugo, fired Ramón González, director of the El Cantar Revolucionario 98.3 FM radio station, and ordered the closure of the radio station. This occurred a day after the son of the radio director, seminarian Anthony González, denounced in a broadcast from the station the lack of ambulances in the municipality.\textsuperscript{2106}


\textsuperscript{2099} Espacio Público. April 8, 2020. Conatel deja fuera del aire a Kariñosa 106.1 FM en Anzoátegui.


\textsuperscript{2104} Espacio Público. May 20, 2020. Conatel deja fuera del aire el portal Última Hora de Portuguesa.

\textsuperscript{2105} Espacio Público. May 19, 2020. Suspenden el programa “De Frente” transmitido por Roscio TV.

\textsuperscript{2106} Twitter account of Vladimir a la Carta (@vladialacarta). May 26, 2020; Espacio Público. May 26, 2020. Vladimir a la I sale del aire por presiones del Gobierno de Maduro.
On October 11, officials from the National Telecommunications Commission (Conatel) and the Military Counterintelligence Directorate seized and opened an administrative procedure against the Médano 95.5 FM station in the city of Coro, Falcón state, because it was allegedly operating clandestinely, for not showing the documentation indicating the provision of services as a radio operator. The owner of the radio, Fito Areñó, indicated to the officials that the required documentation has been at Conatel’s headquarters in Caracas for two years, waiting for the concession to be renewed, and described the event as “political harassment” because the station offers spaces to candidates opposed to Chavismo.

On October 26, the local channel Telesol, in Sucre state, suspended the talk show and community complaints DNoticias. According to the producer and moderator of the space, Miki González, the closure would have been due to alleged political pressure from the Sucre state government.

I. Freedom of expression in electoral contexts

The government led by Nicolás Maduro called elections to elect a new Parliament on Sunday, December 6. According to the information received, on election day there were limitations to journalistic work and freedom of expression. A survey carried out by the organization that defends freedom of expression, Espacio Público, tallied 15 cases in which the coverage by press workers was intimidated, harassed, censored, or prevented by security officials and the National Electoral Council (CNE), while the organization IPYS Venezuela counted 21 cases of violations to freedom of expression. Thus, for example, in Naguanagua, Carabobo state, the journalist Leomara Cárdenas, a correspondent for Crónica Uno, was verbally harassed near a polling station by an official who barred her from taking pictures and demanded that she hand over her cell phone. Another reporter from Crónica Uno, Omarela Depablos, was prevented from taking photographs by an official of the Bolivarian National Guard (GNB) while covering the vote at a center in Los Teques, Miranda state, and in Sucre state the journalist from the same outlet, Monica Salazar was verbally assaulted by a militiawoman. In Vargas state, Plan República officials prevented the La Verdad Vargas team from recording the arrival of candidate Lauren Caballero at the Marapa electoral center. The journalist from RoscioTV and Notipascua, Jairo Alcalá, was prevented from accessing a voting center in Guárico state. In the state of Táchira, journalists Rosalinda Hernández from the newspaper El Estímulo, Bleima Márquez, from the La Nación Web portal, and Judith Valderrama, from the Diario los Andes, were verbally intimidated by members of the Plan República. In Cumaná, Plan República officials prevented Azulejos Digital journalists Johan Ramírez, Bárbara López, and Miguel Brito from covering the arrival of candidate Goyo Noriega at the Francisco de Miranda voting center. In Lara state, CNE officials prohibited the Notifalcón press team from taking photographs in a polling place. The Todos Ahora reporter, Sydney Díaz, was forced by two GNB officers to erase the photographs she had taken during her coverage at a polling station in the Valencia municipality, Carabobo state. Officials from the Bolivarian National Intelligence Service (Sebin) detained and assaulted Antonio Betancourt, coordinator of the radio station Sonora 107.7 FM, when he was taking photographs at a voting center located in Acarigua, Portuguesa state. Likewise, journalistic teams from the media El Pitazo, Crónica Uno, Todos Ahora, El Universal, Cima 360, and Noticias de Aquí denounced that they were excluded from the fuel distribution schedule in the northern area of Anzoátegui, which made it difficult for them to move around during the election day coverage.

On the other hand, the Internet Measurements Laboratory (MLAB) platform revealed that 10 states of the country present precariousness in Internet navigation, according to 64 tests carried out. Likewise, IPYS Venezuela found evidence of digital censorship from a series of measurements carried out under the methodology of the Open Observatory of Interferences in the Network (OONI), which, together with the National Network of Correspondents, executed 66 tests that demonstrated difficulties in accessing information of public interest in 21 national information portals, four foreigners, two institutions, and the

2107 El Pitazo. October 14, 2020. Cuachimán Electoral | Conatel incauta equipos a emisoras que respaldan a disidentes del chavismo; Colegio Nacional de Periodistas. October 26, 2020. Conatel incautó equipos de la emisora Médano 95.5 FM.
social networks Twitter, Instagram, and Facebook, from public and private providers Cantv, Movilnet, Digitel, and Movistar.\textsuperscript{2111}

\textbf{J. Access to public information}

\textsuperscript{1337}According to the report of various local organizations, since the COVID-19 pandemic reached Venezuela, official information on the impact of the disease, the number of infections, and the situation of the health system was scarce. For example, no details were reported on the assessment of potential COVID-19 cases or the status of diagnosed patients. Neither was specific and detailed information disseminated on the situation of the health centers to deal with the high number of patients. In addition, social organizations and the journalistic media faced enormous difficulties in accessing information related to the impact of the pandemic. According to the NGO Espacio Público, the circulation of unconfirmed and confusing information about the disease and its severity was accentuated in the Venezuelan case “by the threats and indirect restrictions imposed by the national government, which, far from dispelling rumors and generating certainties, increased uncertainty due to the little official information”.\textsuperscript{2112}

\textsuperscript{1338}On October 8, the National Constituent Assembly of Venezuela approved the Anti-Blockade Constitutional Law, for National Development and the Guarantee of Human Rights, which aims to establish a special and temporary regulatory framework that provides the Executive Power with tools to “counter, mitigate, and reduce, in an effective, urgent and necessary manner, the harmful effects generated by the imposition, against the Bolivarian Republic of Venezuela and its population, of unilateral coercive measures and other restrictive or punitive measures”. To that end, the norm would grant a wide range of discretionary powers to the National Executive. Thus, for example, article 19 establishes that “when it is necessary to overcome the obstacles or compensate the damages” of the sanctions, the Executive will proceed to “not apply for specific cases those norms of legal or sublegal rank whose application is impossible or counterproductive”.\textsuperscript{2113}

\textsuperscript{1339}The norm, in addition to granting broad powers to the government, eludes compliance with transparency as a principle of public management. Article 37 creates a “transitory regime for the classification of documents with confidential and secret content designed to protect and ensure the effectiveness of the decisions made by the Venezuelan Public Power.” Article 38 specifies that access to administrative files and records "may be exercised by individuals in such a way that the effectiveness of the measures to counteract the effects of unilateral coercive measures is not affected." Article 39 establishes that "the highest authorities of the organs and entities of the National Public Administration (...) may grant a reserved, confidential, or limited disclosure status to any file, document, information, fact, or circumstance, which they are aware of in compliance with their functions", in order to “counteract the adverse effects of unilateral coercive measures”. Article 42 declares “secret and reserved the procedures, acts and records carried out on the occasion of the implementation of any of the measures established in the second chapter of this Constitutional Law, which imply the non-application of rules of legal or sublegal rank, up to 90 days after the cessation of unilateral coercive measures and other restrictive or punitive measures that have led to the situation”.\textsuperscript{2114}

\textbf{K. Internet and freedom of expression}

\textsuperscript{1340}Several sites linked to response actions, support, and information on the coronavirus pandemic -such as the Héroes de la Salud platform, created by Juan Guaidó’s administration to provide monthly financial assistance to health personnel- suffered frequent attacks and blockades that made it difficult for users of the
state provider Compañía Anónima Nacional Teléfonos Venezuela (CANTV) to access it. Similar attacks were suffered by numerous media outlets on their digital platforms. On April 1, the page of the Venezuelan Observatory of Justice was suspended for alleged complaints against its content. On April 22, the website of the National Assembly (AN) was blocked by CANTV after publishing information on the situation of COVID-19 in Venezuela. It was the third blockage that the AN page suffered in the context of the pandemic. On May 7, Twitter users reported the total drop in the telephone service of the state telecommunications company Movilnet throughout the national territory. The state company CANTV and the company Inter blocked access to the information portal Runrun.es, on May 15. The Internet Observatory Ve Sin Filtro warned about the blockade, stating that it was a restriction of the domain name system (DNS). The website of the NGO Caracas Mi Convive and that of its coordinator, Roberto Patiño, were blocked by the main Internet providers in Venezuela on May 18. On May 31, access restrictions were registered to the YouTube and Instagram platforms, when an extraordinary session of the Legislative Power was held online. The DNS blocking, reported by Ve Sin Filtro and Netblocks, and corroborated by IPYS Venezuela, lasted for more than one hour, which restricted users who were connected through the CANTV Internet service. Said Internet service provider blocked the YouTube and Periscope platforms while the “Transition in Venezuela is Possible” forum was being held, an event promoted by the Guaidó administration. The telephone company Movistar applied a DNS blockade to the alternative web domain of the news portal alberthonews.com, on July 1. The main domain of the portal was blocked by the main Internet providers on April 1. The portal of the digital media El Diario suffered a DDoS attack that lasted for approximately 10 hours on July 26. The digital media portal Efecto Cocuyo was the victim of a blockade applied by the state Internet providers CANTV and Movilnet, on October 3. The journalistic portal has been subject to blockades on repeated occasions since the quarantine due to the pandemic began.

**L. Other relevant situations**

On September 7, the Special Actions Forces (FAES) raided the headquarters of the NGO Acción Solidaria and detained eight members of its Humanitarian Action Program for allegedly “selling expired medicines.” A group of members of the FAES broke into the headquarters of Acción Solidaria in a procedure of which we have no information or knowledge about their motives or purposes,” reported Feliciano Reyna, representative of the NGO and human rights defender, on his networks social. The eight detainees were released.

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1343. The IACHR and its Office of the Special Rapporteur were also informed that on October 12, officials from the Bolivarian National Intelligence Service (Sebin) raided the house of the director of the newspaper Correo del Caroní, David Natera Febres, who was detained and interrogated at the Sebin headquarters in San Félix. The search warrant was issued by the Special Court of First Instance in control functions with competence in crimes associated with terrorism, under Judge Carol Padilla, although the police officers did not explain the reasons for the measure.2129 On October 14, Sebin officials raided the offices of digital media 15 Minutos, in Caracas, under an order issued by Judge Padilla. Officials seized the computers, work equipment, and closed the office. Through its social networks, the digital media indicated that it does not know the reasons for the procedure. David Natera, owner of 15 Minutos, is the son of the owner of Correo del Caroní, who was arrested on October 12.2130 On October 20, Sebin raided the headquarters of the Correo del Caroní, in Puerto Ordaz, Bolivar state. The editor of the newspaper, Clavel Rangel, denounced that it was an "arbitrary, illegal, and unfair action against freedom of the press and expression." The reasons for this operation were also not disclosed. The National Union of Workers of the Press, Espacio Público, IPYS, Provea, and other human rights organizations denounced these actions as attacks on freedom of expression and the journalistic work of one of the main media outlets in Bolivar state. They also warned that the reasons for both raids are not known.2131

1344. On November 11, officials from the Bolivarian National Intelligence Service (Sebin) entered the newsroom of the Venepress media, whose headquarters in Caracas was closed in December 2019, and took all their work equipment, including computers, televisions, and professional cameras. The media's lawyers assured that the operation did not have a court order.2132 As the chief editor of Venepress, Israel Barbuzano, explained to the EFE agency, despite the fact that one year has elapsed since the start of the investigations against the media, the reasons are still unknown. The media presumes that it is a retaliation from the authorities because they link the media with the opposition leader Juan Guaidó.2133

1345. According to the information registered in 2020, this Office of the Special Rapporteur calls on the State of Venezuela to specially note that:

1346. The murder of journalists constitutes the most extreme form of censorship, and impunity contributes to the self-censorship of the press. States have a positive obligation to identify and punish the perpetrators of these crimes. As the IACHR and its Office of the Special Rapporteur have repeatedly stated, it is essential that the State fully, effectively, and impartially investigate the murders of journalists, clarify their motives, and judicially determine the relationship they may have to journalistic activity and freedom of expression. Authorities should not rule out the practice of journalism as a motive for the murder and/or assault before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in the collection of evidence in this regard can have serious repercussions on the development of the processes in the stages of accusation or trial.2134

1347. Attacks and aggressions committed against journalists and against the press violate the right to freedom of expression both in its individual and collective dimensions and cannot be tolerated in a democratic society. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states 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 States to prevent and investigate such occurrences, to punish their perpetrators, and to ensure that victims receive due compensation.” This last obligation includes the duty to investigate, prosecute, and criminally convict all those responsible for these crimes and make

comprehensive reparations to the victims. These obligations complement each other to guarantee the existence of a free, robust, and unrestricted democratic debate.2135

1348. Public authorities are called upon to maintain a speech favorable to public deliberation and freedom of expression. While it is legitimate for politicians and public officials to make criticisms, corrections, or objections regarding specific reports in the media, when they do so, they should always ensure that their comments are accurate, avoid stigmatization and discrediting of the media, and not threaten journalists or undermine respect for the independence of the media.2136

1349. Social protest, which includes the rights to peaceful assembly without arms, association, and freedom of expression, is a fundamental tool in the defense of democracy and human rights. The Office of the Special Rapporteur reiterates that the criminalization per se of demonstrations in public streets when they are carried out within the framework of the right to freedom of expression and the right to assembly is in principle inadmissible.2137 In this sense, it recalls that it is the duty of the State to guarantee the exercise of the right to protest and that no participant may be subjected to illegal or arbitrary detention. The States must refrain from engaging in practices of mass, collective, or indiscriminate detentions in public demonstrations. Likewise, they must especially bear in mind that freedom of expression protects the right to record and disseminate any incident, and that they must provide journalists with the highest degree of protection so that they can carry out their work freely and keep society informed about matters of high public interest.

1350. The inter-American human rights system explicitly prohibits prior censorship. This arises from Article 13.2 of the American Convention on Human Rights, and Principle 5 of the Declaration of Principles on Freedom of Expression, which 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."

1351. The use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with inter-American standards. The IACHR and its Office of the Special Rapporteur emphasize that under Article 13 of the American Convention, speeches on matters of public interest have enhanced protection, especially those that express essential elements to identity or denounce situations of violence and structural discrimination. 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 [...] restrict freedom of expression and the right to information." The use of criminal law as a mechanism to prosecute those who express opinions, information, or criticism of government authorities or policies, as well as on issues of public interest, generates a chilling effect that limits freedom of expression.

1352. Transparency and accountability of public powers strengthen democratic systems. Principle 4 of the IACHR Declaration of Principles on Freedom of Expression 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." In this regard, the IACHR Resolution on Pandemic and Human Rights2138 highlighted the importance of access to information in the current context due to COVID-19 and the crucial role that journalists play in the framework of the public health emergency, by reporting on critical points and monitoring government actions. Likewise,


the IACHR and its Office of the Special Rapporteur recall in a special way that, based on the obligation of active transparency, States must proactively provide truthful and reliable information on all aspects of public interest related to the pandemic, in open formats and in a manner accessible to all. Given the existence of the digital divide, States must find effective ways to fulfill the obligation of active transparency in such circumstances.\textsuperscript{2139}

1353. \textit{Internet access is a \textit{sine qua non} condition for the effective exercise of human rights.} The IACHR and its Office of the Special Rapporteur have highlighted that “in the current context of the health emergency generated by the COVID-19 pandemic, people’s access to a quality Internet acquires an unavoidable centrality. Based on the isolation and/or social distancing measures imposed by governments at a global level and its extension over time, internet connection appears as the tool \textit{par excellence} to continue with daily tasks that previously required face-to-face contact, in addition of being crucial for the exercise of civil, political, economic, social, and cultural rights”.\textsuperscript{2140} In this regard, the IACHR has emphasized that States must guarantee “the broadest and most immediate access to the Internet service to the entire population and develop positive measures to rapidly reduce the digital divide faced by vulnerable groups and those with lower income”.\textsuperscript{2141}

\textbf{CHAPTER III: CONCLUSIONS AND RECOMMENDATIONS}

1. The Office of the Special Rapporteur closes its Annual Report 2020 with a chapter of conclusions and recommendations. The objective of this section 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.

\textbf{A. Violence and threats against journalists and the media}


\textsuperscript{2141} IACHR. Resolution No. 1/20. \textit{Pandemic and Human Rights in the Americas}, April 10, 2020. Par. 31; IACHR. RIRCU Practical Guides to COVID-19 02. \textit{How to ensure access to the Right to Education for Children and Adolescents during the COVID-19 Pandemic?}
2. The Office of the Special Rapporteur notes with extreme concern the continued high levels of violence against journalists in the region. Attacks, threats and intimidation of journalists and media outlets linked to their coverage continued to be an issue to which the Office gave special attention in 2020.

3. According to the Office's reports, at least 19 press workers were murdered in the exercise of their profession, in addition to other murders whose motive could be linked to their work as journalists. Murders of journalists were recorded in Mexico (8), Honduras (3), Venezuela (2), Guatemala (2), Colombia (2), Paraguay (1) and Barbados (1). Crimes against journalists, in addition to threats, intimidation and other attacks on their lives and integrity, demonstrate the persistence of patterns of violence in several States of the region.

4. In this regard, the Office the Special Rapporteur also notes with concern the lack of progress in judicial investigations into the murders of journalists, which contributes to widespread self-censorship of the press. Although some countries with persistent patterns of violence against the press, such as Colombia, Mexico and Honduras, have made progress in prevention and protection measures, the Special Rapporteurship is alarmed by the trend of impunity, which seriously jeopardizes any policy or action on the part of the States. This Office has warned on other occasions that many journalists choose to stop investigating and disseminating information of high public interest for their local communities to avoid reprisals against their lives or physical integrity or that of their family members. The role of the Justice in cases of crimes against the press is crucial for this Office, because it is the most important link in the rule of law to stop the repetition of violence against journalists.

5. Notwithstanding that, the Rapporteurship highlights that during 2020 there was some progress in the investigation, prosecution and punishment of those responsible for crimes committed against journalists in previous years. In this regard, the Office received with satisfaction information about the conviction against Juan Carlos Moreno Ochoa, alias 'El Larry', to 50 years in prison as he was considered a material co-author of the murder of journalist Miroslava Breach that occurred on March 23, 2017 in the state of Chihuahua.

6. Gender-based violence against women journalists continues to be of great concern to the Office. The Rapporteurship emphasizes that death threats, harassment and stigmatizing messages against journalists who cover issues of public interest related to corruption and drug trafficking, and those who denounce gender-based violence, continue to be a major challenge in several States, in some cases forcing them to leave their cities.

7. With regard to this point, the Office of the Special Rapporteur recommends Member States to:

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 protest

8. 2020 was also a year marked by protests and citizen demonstrations in different parts of the region. The Office of the Special Rapporteur noted with concern several episodes of excessive use of police force to disperse protests, which in some cases resulted in injuries, detentions and deaths.

9. The IACHR and its Office of the Special Rapporteur noted with extreme concern the situation in Peru, where between November 9 and 15, a series of social protests took place throughout the country after the Peruvian Congress voted in favor of the vacancy motion against President Martín Vizcarra and declared his "permanent moral incapacity." As a result of these events, the IACHR made a working visit to Peru from November 29 to December 2, 2020, with the aim of observing the human rights situation on the ground in the context of social protests.

10. They also gave special attention to the series of mass protests carried out in different parts of Colombia following the death of lawyer Javier Ordoñez on September 9, as a result of the beatings and electric shocks with Taser guns by agents of the Metropolitan Police of Bogota. Between September 9 and 10, demonstrations took place in Medellín, Barranquilla, Cali, Cúcuta, among other cities, in rejection of police violence. According to public sources, reportedly at least 13 people died during the protests and, as of September 11, more than 209 civilians were injured, and 194 police officers were injured.

11. Also, in 2020 Chile continued to experience demonstrations that first started in October 2019 in response to fare increases in the public transportation system. However, due to the crisis caused by the COVID-19 pandemic, social demonstrations have been restricted by general measures such as quarantines and a ban on gatherings.

12. In the context of these protests, journalists were physically attacked and faced various types of impediments, either by the actions of security forces or demonstrators, and in some cases their equipment and work elements were also violated, being stripped, destroyed or stolen. On this point, the Office of the Special Rapporteur documented attacks on journalists in the protests that exploded in the United States after the death of George Floyd on May 25, 2020, as well as during coverage of the presidential campaign and elections. A significant number of violations of the right to freedom of expression were reported by the media during coverage of these protests.

13. This Office again expresses the recommendation to adopt regulatory frameworks aimed at protecting and facilitating the exercise of social protest. The Office of the Special Rapporteur recalls that States should not fail to take into account that when faced with institutional frameworks that do not favor participation, or in the face of serious barriers to access to more traditional forms of mass communication, public protest can become the only means that really allows discontented sectors of the population, but not aligned with political parties, and discriminated or marginalized groups in the public debate to make their point of view heard and influence public debate.

14. In relation to this point, the Office of the Special Rapporteur recommends Member States to:

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 warrants 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.

C. Criminalization of expression and proportionality of subsequent liabilities.

15. In 2020, the Office recorded in several member States the use of criminal law by public figures, state officials or candidates for elective office for the publication of opinions or information related to issues of public interest. In this regard, the Office of the Special Rapporteur followed with special attention the case of Brazil, Chile, Ecuador, Guatemala, Panama, Peru and the Dominican Republic.

16. As has been noted on previous occasions, despite the fact that several countries in the region have made considerable progress in adapting their legal framework to inter-American standards, some States still have laws that seek to disproportionately protect the honor and reputation of public officials. In this regard, the Special Rapporteurship once again highlights the persistence in the use of regulations contrary to the provisions of the American Convention in Caribbean countries such as the Bahamas, Barbados, Grenada, St. Kitts and Nevis, St. Vincent and the Grenadines, St. Lucia, and Trinidad and Tobago.

17. On the other hand, in the context of the pandemic, the Office noted that criminal regulations intended to protect health and public order were used in numerous States as mechanisms to harass journalists who covered issues related to COVID-19 and corruption, such as the irregular handling of public funds or irregular actions of public officials in the management of the health crisis. Likewise, in some States, these regulations were also used to persecute journalists, activists or citizens in general who questioned the official data on contagion in the different jurisdictions. In a press release published on April 18, 2020, the Office of the Special Rapporteur considered particularly worrying the facts observed in Argentina, Bolivia, Cuba, Colombia, Guatemala and Venezuela in this regard.

18. Finally, the Office of the Special Rapporteur observes with concern the tendency to use criminal offences such as “sedition”, “terrorism”, and “incitement to violence” in countries where systematic practices of persecution of journalists and dissidents have been established, such as Nicaragua and Venezuela.

19. In relation to this point, the Office of the Special Rapporteur recommends Member States to:
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 disproportionally 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 by public leaders

20. Stigmatization and accusations by high-level officials against journalists, especially those investigating corruption and irregularities in the management of public funds during the pandemic, increased in several parts of the region. In 2020, the Office of the Special Rapporteur received information on declarations from high-level state authorities that disqualified and stigmatized the work of some communicators and media outlets, especially in El Salvador, Nicaragua, Honduras, Venezuela, México, Guatemala, Argentina, Bolivia, Brazil and Estados Unidos. Such statements were followed, in several cases, by acts of harassment and threats on social networks by sympathizers of the governing political parties or even by other public officials.

21. The Office of the Special Rapporteur urges state authorities to contribute decisively to the construction of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for it.

22. In relation to the pronouncements of public officials, in the context of the pandemic, the Office also called attention to the duty of public officials not to make, sponsor, encourage, or further disseminate statements which they know or reasonably should know to be false, that constitute disinformation, or demonstrate a reckless disregard for verifiable information. In this regard, States have been reminded that official information should, within reason, be scientifically based. On this point, during 2020, the cases of the United States, Brazil, Nicaragua and Venezuela have received particular attention from the Special Rapporteurship.

23. In relation to this point, the Office of the Special Rapporteur recommends Member States to:

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. Freedom of expression on the Internet

24. In 2020, this Office observed new attempts by several States in the region to regulate the circulation of content on the Internet, in order to prevent certain speech considered "harmful" to public conversation in digital spaces. In this way, the Rapporteurship closely followed the legislative process of Bill No. 2630/2020 on "Internet Freedom, Responsibility and Transparency". On July 3, this Office of the Special Rapporteur
joined the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in sending a letter to the State of Brazil regarding the bill. The experts pointed to certain provisions they viewed as particularly problematic with regard to the principles of the right to freedom of expression, in accordance with Brazil’s obligations under the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights. A number of the points called into question are reviewed hereinafter.

25. Likewise, the Office of the Special Rapporteur notes with extreme concern the approval of regressive laws for freedom of expression online, highlighting particularly the new Special Law on Cybercrime of Nicaragua, approved on October 27, 2020 and in force since December 29, 2020. The law establishes within its objectives "the prevention, investigation, prosecution, and punishment of crimes committed by means of Information and Communication Technologies", which are defined as "set of communication media and information applications that allow the capture, production, reproduction, transmission, storage, processing, treatment, and representation of information". Various civil society organizations and journalists have expressed their concern at the approval of this law, which is called the "Gag Law," stating that it is specifically directed at independent journalists and citizens who express themselves on the Internet, seeking to silence them.

26. The Office of the Special Rapporteur has been following closely the public debate on the role of social media platforms in content moderation and the right to freedom of expression and takes note of the initiatives of private companies such as Twitter, Facebook and YouTube to enact new internal rules and policies to address and attack the phenomenon of deliberate disinformation [disinformation], misinformation [misinformation] and misleading information [misleading information], as well as to create oversight bodies, such as the Oversight Board [Content Advisory Board] on Facebook. Since the outbreak of the pandemic, the main platforms have adopted various measures and decisions to limit the scope of misinformation through content moderation, in addition to promoting sources of information from health institutions such as the WHO.

27. Finally, the Office gave special attention to policies on connectivity and digital literacy in the context of the pandemic. As noted in a press release published on August 31, 2020, the global health emergency revealed the serious limitations and marked differences that exist in the region for access to the Internet and, consequently, for the exercise of freedom of expression and fundamental rights such as the right to education, health, work and culture. On that occasion, the IACHR and its Rapporteurship recognized the adoption of positive measures by various governments and regulators of the continent to ensure access and continuity of Internet access and telecommunications services during the global health crisis. However, they warned that this type of transitory measures must be accompanied by solid, planned, long-term public policies and plans, with special emphasis on vulnerable groups such as indigenous peoples, Afro-descendants, women, children and adolescents, and the elderly, among others. In relation to this issue, the Rapporteurship has contributed to the work of the Room for Coordination and Timely and Integrated Response to the crisis in relation to the COVID-19 pandemic (SACROI COVID-19) with the Practical Guide No. 3 "How to promote universal access to the Internet during the COVID-19 pandemic".

28. In relation to this point, the Office of the Special Rapporteur recommends to the Member States:

A. Avoid regulatory frameworks that hold internet intermediaries responsible for user content circulating on their platforms, which may encourage the dynamics of "private censorship".

B. Avoid the creation of general and/or ambiguous laws in order to combat disinformation on the internet, as well as the use of criminal prohibitions to punish the dissemination of "falsehoods" or "non-objective information".

C. Promote universal access to the Internet to ensure universal and effective enjoyment of the right to freedom of expression through this medium.

D. Carry out positive actions for literacy, awareness and development of digital competencies and skills.
E. Ensure that the treatment of data and Internet traffic should not be subject to any kind of discrimination based on factors such as devices, content, author, origin and/or destination of the material, service or application, in accordance with the principle of net neutrality.

F. Access to information

29. The outbreak of the pandemic brought significant challenges to the exercise of the right of access to public information. In 2020, the Office of the Special Rapporteur recorded restrictions to the exercise of this right based on the declaration of states of emergency that restricted fundamental freedoms to prevent the spread of the virus. Thus, for example, as highlighted in a press release published on April 18, 2020, the IACHR and its Special Rapporteurship identified restrictions on the access of journalists to press conferences and the possibility of asking questions about the pandemic; as well as the suspension of deadlines for processing administrative procedures for requesting public information.

30. Likewise, the Rapporteurship notes once again that, despite the advances in the incorporation of standards of the Inter-American system, in some member states there are still important challenges in relation to restrictions on access to public information and the so-called "culture of secrecy". Of particular concern to the Rapporteurship are the restrictions on access to information on serious human rights violations registered during 2020 in Colombia and El Salvador. In these cases, institutional barriers and systematic non-compliance with Inter-American obligations and standards have been observed.

31. In relation to this point, the Office of the Special Rapporteur recommends to the 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.

G. Censship

32. The Office of the Special Rapporteur learned of judicial actions that suspended or prohibited the publication of information of public interest or artistic manifestations, especially in Brazil, Chile, Panama, and Uruguay. Censorship actions have also occurred through pressure from high-level authorities to cancel certain content or journalistic space.

33. As noted in the 2019 annual report of the Office of the Special Rapporteur, in Venezuela, Cuba and Nicaragua there is a pattern of coordinated attacks by the State against journalists, independent media and opposition activists in order to silence them. In these States, there are different forms of censorship of national and foreign media, arbitrary arrests of journalists and human rights defenders, as well as different forms of blocking websites.

34. The Rapporteurship has also noted that criminalization and censorship of women who denounce male violence is on the rise in the region. In particular, there are actions of persecution against women’s groups that make gender violence visible through artistic interventions.

35. In relation to this point, the Office of the Special Rapporteur recommends to the 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.
   B. 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.

H. Cyberpatrolling operations

36. Increasingly, the Office of the Special Rapporteur continued to receive information about a trend in the region of practices of official parameterization of the expression of those who express themselves through social networks and the use of various technologies to monitor journalists, activists and social and political leaders in some countries of the region. In 2020, the Rapporteurship was particularly concerned about various acts of "cyberpatrolling" publicly denounced in Argentina and Colombia. Likewise, this Office continues to observe strategies of control and surveillance of citizens' communications on social networks in Cuba, Nicaragua and Venezuela.

37. In relation to this point, the Office of the Special Rapporteur recommends to 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.
ANNEXES
NATIONAL SECURITY AND THE RIGHT TO INFORMATION

July 2020

Capítulo I – INTRODUCCIÓN Y METODOLOGÍA

1. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) is pleased to publish this report. It presents, through a systematized approach, the principles applicable to the protection of the right of access to information in the public interest and the scope of the exceptions raised by state actors on the grounds of preserving national security. Because access to information is so crucial for democracy and the protection of human rights in the region, the Office of the Special Rapporteur believes that the issues discussed here are particularly important among the complex phenomena affecting the human rights situation in the Americas.2142

2. The right of access to information is a fundamental pillar of democracy. It is through the full and effective guarantee of the right to seek, receive, and impart information and ideas of all kinds that it becomes truly possible to build active and participatory citizenship. The right of access to information and freedom of expression are “the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.”2143 Within the inter-American framework, the Inter-American Democratic Charter reafirms the importance of transparency in government activities, participation, and freedom of expression as fundamental components of democracy.2144 These are vitally important elements for the consolidation and functioning of the democratic rule of law.2145

2142 Some examples that illustrate the increased importance for the region of access to information of public interest regarding the activities of the State in relation to national security and the functions of national security bodies are: the weakening of the rule of law and democratic institutions in various countries and the serious impact this has had on human rights in recent years; impunity and corruption; increased violence and crime, with several of the world’s most violent countries being located in the Americas, and with Latin America and the Caribbean having the world’s highest homicide rate; the militarization of public security and the implementation of “iron fist” policies in response to these serious phenomena, which in turn exacerbate and perpetuate cycles of violence and crime; the construction of “domestic enemies” to justify the persecution of political dissidence and the repression and criminalization of protest in different countries of the region; the expansion of the national security agenda and its impact on human rights; the continuing need to ensure effective access to records in order to fully and effectively satisfy the right to information, the right to the truth, to facilitate justice, repair, and guarantees of non-repetition with respect to the serious human rights violations that have occurred in the region; the lack of cooperation and the withholding of information from victims, families of victims, and in the framework of the transitional justice processes that have taken place in different countries, and in general, the lack of adequate and comprehensive mechanisms for independent monitoring of the workings and activities of intelligence agencies. IACHR. *Annual Report 2017, Chapter IV, Human Rights Developments in the Region*, OEA/Ser.L/V/II. Doc. 210. December 31, 2017; IACHR. *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, OEA/Ser.L/V/II. Doc. 86 June 21, 2018; IACHR. *Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II. Doc. 208/17 December 31, 2017; IACHR. *Democratic institutions, the rule of law and human rights in Venezuela*, OEA/Ser.L/V/II. Doc. 209 December 31, 2017; IACHR. *Situation of Human Rights in Mexico*, OEA/Ser.L/V/II. Doc. 44/15 December 31, 2015; IACHR. *Situation of Human Rights in Honduras*, OEA/Ser.L/V/II. Doc. 42/15 December 31, 2015; IACHR. *Resolution 1/17, Human Rights and the Fight against Impunity and Corruption*, September 12, 2017; IACHR. *Resolution 1/18, Corruption and Human Rights*, March 2, 2018; Inter-American Development Bank. *Crime and Violence: Obstacles to Development in Latin American and Caribbean Countries*, November 2018; IACHR. *170th Regular session, Public Hearing on the ‘Militarization of Public Security’*. December 6, 2018; IACHR. *Interdisciplinary Group of Independent Experts, Nicaragua. Report on the violent events that took place between April 18th and May 30th, 2018*, pp. 178; CELS. *The Internal War: how the fight against drugs is militarizing Latin America 2018*; IACHR. *Press Release 26/2019, IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua*. February 6, 2019; Lesa, Francesca (2019). Investigating Crimes against Humanity in South America: Present and Future Challenges. Latin American Centre, Oxford University. 2143 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. 70; I/A Court H.R., *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*, Series C No. 194. Para. 105; I/A Court H.R., *Case of López Lone et al. v. Honduras*, Series C No. 302. Para. 165; I/A Court H.R., *Case of Carvajal Carvajal et al. v. Colombia. Merits, Reparations and Costs*; Judgment of March 13, 2018. Series C No. 352. Para. 177 [only in Spanish]. 2144 Article 4 of the Inter-American Democratic Charter provides: “Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.”
3. The inter-American system has played a key role in the process of consolidating and developing the right of access to public information in the region. In the 2006 case of Claude Reyes v. Chile, the Inter-American Court became the first international court to recognize that the right of access to public information is protected under international law and that the State is required to guarantee it through a set of specific obligations. By expressly stipulating the rights to “seek” and “receive” “information,” Article 13 of the American Convention protects the right of every person to request access to information under the control of the State, with the exceptions permitted under the restrictions regulated in the Convention. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights also impose legal obligations on states to fully and effectively guarantee the right to seek and receive information.

4. In the last two decades a significant number of states in the Americas have amended their legal framework to recognize the right of access to public information as a fundamental right and to regulate its exercise and implementation through access to public information laws. Various countries in the region have created institutions to oversee these laws and have taken other initiatives to promote openness on the part of governments and public authorities.

5. Notwithstanding these developments, the Office of the Special Rapporteur has noted that ensuring the adequate and effective implementation of access to public information laws continues to pose a major challenge for the region. Indeed, there are still challenges associated with the international obligation to adopt the national legal framework to the requirements of access to public information. Opacity about the
State’s activities in certain areas provides fertile ground for the occurrence and recurrence of serious human rights violations.  

6. In particular, several states in the region have been incorporating provisions into their legal systems that establish or strengthen the classification and secrecy of information concerning national security matters, under definitions or conditions that are incompatible with inter-American standards on the right of access to information. One of the factors that continues to favor the discretionary use of restrictions on access is the absence of clarity and precision in the regime of exceptions. This situation is exacerbated by the lack of strict compliance with the harm and public interest test in classifying information, all of which hinders public oversight and creates the potential for illegal behavior, human rights violations, and concealment.

7. The Office of the Special Rapporteur recognizes that national security is an essential interest for states and the protection of democratic society, but it should not be overlooked that some of the serious human rights violations that have been committed—and which in some cases are being repeated in the region—have been and are justified in the name of national security. National security interests have also been invoked to defend restrictions on privacy, freedom of expression, and individual rights. The use of a broad and vague concept of national security to limit the enjoyment of human rights is one of the contemporary legal threats to freedom of expression. It has also been used as the rationale for targeting groups such as human rights defenders, journalists, and activists, or to shroud the operations and activities of security agencies in unwarranted secrecy.

8. In addition, within the arduous process of consolidating the region’s democracies, the Office of the Special Rapporteur recognizes the role of the judiciary and access to information oversight bodies in the development of a democratic concept of national security. This report highlights court decisions and information on best practices submitted to the Office of the Special Rapporteur by states, civil society, and


academia as part of the online consultation held between March and April 2018. The Office received written contributions from eight states and from eight civil society organizations and academic institutions.

9. On this as on other issues, the IACHR and its Office of the Special Rapporteur recognize the role that civil society organizations and groups in the hemisphere play in defending, promoting, and protecting the right of access to information. In 2013, the Office of the Special Rapporteur for Freedom of Expression participated in the international dialogue that led to the adoption of the Global Principles on National Security and the Right to Information. These principles, known as the Tshwane Principles (hereinafter, Thswane Principles), were drafted by 22 organizations with the assistance of the four Special Rapporteurs on the promotion and protection of freedom of expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The then Special Rapporteur for Freedom of Expression of the IACHR, Catalina Botero, welcomed these Principles “as the appropriate balance to ensure State capacity to protect security and the protection of individual freedoms.” This report expressly embraces these principles in view of their robust drafting process and with the understanding that they serve as a key tool for ensuring the proper implementation of the inter-American standards on the right to information in national legislation and practices.

10. Similarly, the Office of the Special Rapporteur held a meeting of experts on December 3, 2018, to gather additional information and input for this report. The IACHR also convened several public hearings between 2015 and 2018 to address this issue. A survey was conducted of national high court judgments, reports, and resolutions of UN human rights bodies and thematic mandates on the various topics addressed, as well as lower court decisions issued at the national level.

Chapter II – REGIONAL CHALLENGES IN ENSURING ACCESS TO INFORMATION OF PUBLIC INTEREST RELATED TO NATIONAL SECURITY

11. International instruments and standards protect the right of all persons to access information held by the State. At the same time, they acknowledge that this right is not absolute and that, in order to protect legitimate interests, states may need to classify certain information. National security is one of the narrowly defined exceptions under international law. An appropriate balance between the disclosure and classification of information based on national security considerations is essential for the consolidation and functioning of democratic societies, their security and sustainable development, and for ensuring the full enjoyment of human rights.

12. In the inter-American sphere, Article 13(2) allows restrictions to be imposed on the freedom to seek, receive, and impart information of all kinds for “the protection of national security,” but at the same time requires strict compliance with the following: any limitations on the exercise of the right of access to

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2157 The Office of the Special Rapporteur received information from the following agencies: Argentina: Access to Public Information Agency; Ministry of Defense; Mexico: National Institute for Transparency, Access to Information and Personal Data Protection; Uruguay: Access to Public Information Unit; Panama: National Authority for Transparency and Access to Information; Guatemala: Human Rights Ombudsman; El Salvador: Access to Public Information Institute.

2158 The Office of the Special Rapporteur received information from the following organizations: Centro de Estudios Legales y Sociales. Asociación por los Derechos Civiles (Argentina); Red en Defensa de los Derechos Digitales, R3D, and Equis (Mexico); Espacio Público y Transparencia Venezuela (Venezuela); Fundación Datos Protegidos (Chile); Grupo de Acciones Públicas de la Universidad del Rosario (Colombia).


2162 The Office of the Special Rapporteur is grateful for the special cooperation of the Red de Transparencia (RTA), which is a network of public entities that monitor transparency and access to information in the region, civil society organizations that specialize in access to information and human rights, and the academics, experts, and experts who have contributed to this report.

information must be expressly set out in a clear and precise law, must pursue one of the legitimate aims provided for under international law—in this case national security—and must be strictly necessary, suitable, and proportionate. The Inter-American Court of Human Rights has been emphatic in saying that failure to comply with these conventional limits creates fertile ground for the State to take discretionary and arbitrary action in classifying information as secret, reserved, or confidential, and creates legal uncertainty about the exercise of that right and the State’s powers to restrict it.

13. According to the information gathered, there are ongoing tensions in the region due to the culture of secrecy surrounding national security matters, as well as normative and implementation in access to information laws. All of the above operates as a real obstacle to the effective enjoyment of the right of access to information, ultimately affecting the lack of transparency and accountability in this area. This chapter seeks to highlight those challenges arising from the legal framework and its implementation, specifically with regard to information of public interest that concerns national security or is held by security sector bodies in a democratic state.

A) Challenges arising from the legal framework and the regulation of national security exceptions

Lack of clarity and precision in the legal framework

14. In several countries, the exceptions to access to information based on national security interests do not exist within a clear and precise legal framework, as required by Article 13(2) of the American Convention on Human Rights. One of the most recurrent factors is the vague definition of “national security” in the respective national laws.

15. Indeed, some laws include a wide range of risks and threats under the heading of national security and defense, such as the security, integrity, stability, and continuity of the State and its territory; national defense against external threats; international and diplomatic relations; maintenance of constitutional order and governance; national development, conservation of strategic resources; security, and the lives of citizens. One academic study on this topic concluded that “[t]he definition of national security varies according to the security threats faced by states, the interests they seek to protect at any given time, foreign defense policy (and in some cases, domestic security policy) adopted by governments, and the theoretical schools of thought behind the concept of security. Therefore, on a comparative level, it is difficult to find consensus on the scope of the definition of national security.”

16. In different national laws, terms such as “defense,” “state security,” “national security,” or even “public security” or “domestic security” are often grouped together under this exception. Since these concepts are not usually expressly defined in access to public information laws, but in other legal provisions relating to security or intelligence matters, this vagueness creates significant legal difficulties in classifying or declassifying information under this exception.

17. For instance, in Chile, Article 8 of the Constitution states that “The acts and resolutions of state bodies are public, as are their legal bases and the procedures they use. However, only a law passed by absolute majority may establish the confidentiality or secrecy of those legal bases and procedures, when

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2166 A comprehensive response must include the set of positive obligations derived from the State’s obligation to create a culture of transparency and appropriate implementation.
public disclosure would affect the performance of those bodies’ duties, the rights of individuals, the security of the Nation, or the national interest.” Additionally, the 2008 Law on Transparency and Access to Government Information [Ley de Transparencia de la Función Pública y de Acceso a la Información de la Administración del Estado de 2008] regulates the grounds for “secrecy or confidentiality under which access to information may be denied in whole or in part,” and provides that the right of access to information may be limited “when its disclosure, communication, or knowledge affects the security of the Nation, particularly if it concerns national defense or the maintenance of public order or public safety.” The denial of a request for information must be reasoned and must specify the relevant legal provision. However, the concept of "security of the Nation" and its operational content is not defined in regulations, which has created difficulties of interpretation.

18. The Council for Transparency [Consejo para la Transparencia] has determined that the fact that information is related to a legally protected national security interest is not enough to justify a restriction on the right of access to information; rather, it is also necessary to prove a reasonable expectation of harm—that is, that its disclosure would cause certain, probable, and specific harm, and that the potential harmful effects of its disclosure on any of the interests enshrined in the Transparency Act is proportionate to the potential harmful effects of its withholding on free access to information and the principle of openness. According to the information available, in different cases the Council took a “narrow” approach to the concept of national security in order to limit its content, referring to it as “the protection of military strength and the foreign relations necessary to prevent threats to territorial integrity.”

19. In El Salvador, Article 19 of the Access to Public Information Act [Ley de Acceso a la Información Pública] provides that “secret military plans and the political negotiations referred to in Article 168(7) of the Constitution” (political negotiations that must be kept confidential) and “anything that undermines or endangers national defense and public security,” “is confidential information.” The National Defense Act defines the concept of national security as the “[s]et of ongoing actions that the State undertakes to create the conditions to effectively handle international conflicts, disturbances of the public peace, natural disasters, and vulnerabilities that limit national development and jeopardize the achievement of national goals.” Article 21 requires the performance of a harm test and specifies the required content of a decision on secrecy or confidentiality.

20. In Mexico, the concept of national security is defined in the National Security Act [Ley de Seguridad Nacional], which provides that “National Security is understood as the actions directly and immediately aimed at maintaining the integrity, stability, and continuity of the Mexican State, which entails: “protecting...”

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2169 Republic of Chile. Access to Public Information Act [Ley sobre acceso a la información pública], 2008 (Updated).
2170 Contreras, Pablo (2014), Secretos de Estado. Transparencia y Seguridad Nacional (State Secrets: Transparency and National Security). (Thomson Reuters). Ch. II. La seguridad de la Nación como causal de reserva de información pública [National security as grounds for keeping public information confidential].
2171 The Co...nmente...-13 & C116
2172 Republic of El Salvador. Legislative Assembly. Access to Public Information Act, Decree No. 534.
2173 Article 168 states: “The powers and duties of the President of the Republic include: [...] 7.- Providing the Legislative Assembly with the reports it requests, except in the case of secret military plans. The President of the Republic must inform the Legislative Assembly of any political negotiations that need to be kept confidential, so that the Legislative Assembly can be briefed on them in a closed session.”
the Mexican nation from the threats and risks it faces; “[p]reserving national sovereignty and independence and defending the national territory”; “[m]aintaining the constitutional order and strengthening democratic institutions of government”; “[m]aintaining the unity of the constituent parts of the Federation as set forth in Article 43 of the Constitution of the United Mexican States”; “[a]sserting the lawful defense of the Mexican State against other States or subjects of international law,” and “[p]reserving democracy, based on the economic, social, and political development of the country and its inhabitants.”2176 According to the information received, the ambiguity of the concept of national security arising from the National Security Act has resulted in “very broad justifications for not providing information” related to the military budget, disappeared persons, crime victim statistics, and state actions related to anti-drug policies, among other matters.2177

21. Another factor identified by the Office of the Special Rapporteur relates to the breadth of circumstances and categories in which information may be classified for national security reasons, and which are also often not defined in legislation. The government is thus given a wide margin of discretion to include information of public interest in these categories, preventing its disclosure.2178

22. In Argentina, Article 16 of the National Intelligence Act [Ley de Inteligencia Nacional]2179 provides that: “Intelligence activities and the personnel involved in them, as well as the documentation and data banks of intelligence agencies, shall be classified appropriately in the interests of domestic security, national defense, and the foreign affairs of the Nation. Access to that information shall be authorized case by case by the President of the Nation or the official to whom such power is expressly delegated, with the exceptions provided for in this law.” Article 16 bis (a) states that the classification of “secret” is “[a]pplicable to any information, document, or material which, if known by unauthorized personnel, could seriously affect the fundamental interests or vital objectives of the Nation, including its sovereignty and territorial integrity; constitutional order and state security; public order and the lives of citizens; the combat capability or security of the Armed Forces or their allies; the effectiveness or safety of law enforcement operations; the diplomatic relations of the Nation; and the specifically determined and well-founded intelligence activities of the agencies of the National Intelligence System.” Subparagraph (b) defines as “confidential” information “which, if known by unauthorized personnel, could partly affect the fundamental interests of the Nation or violate principles, plans, and operational methods of state authorities, including sovereignty and territorial integrity; constitutional order and state security; public order and the lives of citizens; the combat capability or security of the Armed Forces or their allies; the effectiveness or safety of law enforcement operations; the diplomatic relations of the Nation.” Argentine civil society has called attention to the fact that the grounds specified in the Act for the classification of information are vague and imprecise and give the intelligence system broad discretion. It has also noted that the National Intelligence Act establishes a minimum but not a maximum time limit for the declassification of information.2180

2176 United Mexican States. Official Gazette of the Federation. National Security Act [Ley de Seguridad Nacional]. December 26, 2005. Article 3. The law also identifies the following as threats to national security: (i) acts of espionage, sabotage, terrorism, rebellion, treason, genocide, against the country within the national territory; (ii) acts of foreign interference in national affairs which may be prejudicial to the State; (iii) acts that prevent the authorities from combating organized crime; (iv) acts intended to destroy the unity of the constituent parts of the Federation; (v) acts intended to hinder or block military or naval operations against organized crime; (vi) acts against aviation security; (vii) acts against diplomatic personnel; (viii) any act committed in furtherance of the illegal trafficking of nuclear materials, or chemical, biological, and conventional weapons of mass destruction; (ix) unlawful acts against shipping; (x) any act of financing terrorist actions and organizations; (xi) acts intended to hinder or block intelligence or counterintelligence activities; and (xii) acts intended to destroy or disable infrastructure that is strategic or essential for the provision of public goods or services. (Cfr: Article 5).


2180 IACHR. 156th Session. Public Hearing: “Access to Information and National Security in the Americas.” October 20, 2015; CELS & ADC, information provided during the online consultation conducted by the Office of the Special Rapporteur for the preparation of this report. Under the National Intelligence Act, the time limit for declassifying information, documents, or materials must be at least 15 years from the decision that led to their security classification by any of the agencies of the National Intelligence System.
23. In Colombia, the Law on Transparency and the Right of Access to Public Information [Ley de Transparencia y del Derecho de Acceso a la Información Pública Nacional] (Law No. 1712 of 2014) establishes “national defense and security” as one of the “circumstances” under which access to public information may be denied; however, these concepts are not defined in the legislation. According to the law, regulated entities must keep an updated index of the acts, documents, and information labeled classified or secret. The index must specify their titles, the reasons for classification, and the identification of the classification decision.

24. Another barrier to access to security-related information is the fact that, while public information access laws often explicitly subject legal exceptions to so-called “harm tests,” some statutory provisions governing secrecy or confidentiality in the military or intelligence field are drafted to say that all information “related” to security or to the “nature” of the activity will be kept confidential, or that information will be classified simply because it is “held” by a particular entity. The legal provisions neither impose nor make explicit the requirement that the entity holding the information prove or base its denial on the actual, material, and imminent national security impact that would result from the disclosure of the requested information, thus establishing a generic and automatic confidentiality.

25. In Colombia, Article 33 of the Intelligence and Counterintelligence Act [Ley sobre Inteligencia y Contrainteligencia] provides that “[d]ue to the nature of the duties performed by the intelligence and counterintelligence agencies, their documents, information, and technical personnel shall be protected as confidential for a maximum of 30 years from the time the information is collected and will be treated as classified information.” These terms are vague and ambiguous and have been the subject of several public complaints by civil society organizations. It is also contrary to inter-American standards to establish that all documents held by intelligence agencies will be considered confidential and, therefore, to determine that a document is confidential by virtue of its belonging to a security agency rather than on the basis of its content. This provision also fails to consider the possibility of partial disclosure, with the appropriate redactions of information legitimately deemed confidential. Under the law, the classification may be extended for 15 years, “when its disclosure poses a serious domestic or external threat to national security or defense, when it involves information that would undermine international relations, when it relates to illegal armed groups, or when it endangers the personal safety of agents or sources.” Nevertheless, the Constitutional Court ruled that these provisions were enforceable.

2181 Republic of Colombia. Law 1712, creating the Law on Transparency and the Right of Access to Public Information and other provisions [Ley 1712 por la cual se crea la Ley de Transparencia y del Derecho de Acceso a la Información Pública Nacional y se dictan otras disposiciones], March 6, 2014.
2182 The Colombian Constitutional Court has held repeatedly that any limitations on access to information “must satisfy the principles of reasonableness and proportionality” (Judgment C-274 of 2013). The Court has also emphasized that access to information cannot be restricted simply on the grounds that it is a matter of national security, but rather that in each case it is necessary to “prove that such rights or interests would be seriously affected if certain information were disclosed, making it necessary to keep it confidential” (Judgment C-491 of 2007). According to the information available, the Constitutional Court has referred to the protection of national security or defense “as a fundamental undertaking of the States, which necessarily includes protecting the people’s fundamental rights” (Judgment C-540 of 2012) and has stated that national security includes “the defense of national integrity and the preservation of public order and peaceful coexistence,” as well as intelligence and counterintelligence actions aimed at “preventing threats such as terrorism and organized crime, and protecting vital interests of the Nation.” Information submitted by the Grupo de Acciones Públicas (GAP) of the Universidad del Rosario.
2183 Republic of Colombia. Law 1621 of 2013, issuing regulations to strengthen the legal framework to enable intelligence and counterintelligence agencies to carry out their constitutional and legal mission, and other provisions.
2184 See oral presentation by Fundación para la Libertad de Prensa during the constitutionality review of the draft statute before the Constitutional Court.
2185 See oral presentation by Fundación para la Libertad de Prensa during the constitutionality review of the draft statute before the Constitutional Court.
2186 The Constitutional Court clarified, among other things, that: (1) in a democratic society, state authorities must be governed by the principle of maximum disclosure, which establishes a presumption that all information is accessible and subject to a limited system of exceptions designed to protect constitutional legal interests; (2) evidence must be provided that such rights or interests would be seriously affected if certain information were disclosed, making it essential to keep it confidential; (3) where the classification of information is appropriate, it should be temporary and the classification period should be reasonable and proportionate to the constitutional legal interests to be protected. Republic of Colombia. Constitutional Court of Colombia. Judgment C-540 of 2012.
26. The lack of clear processes for classifying information, in line with the guarantees set out in access to information laws, is another critical issue. Often, when regulated entities classify information as confidential for national security reasons, they misinterpret, misapply, and misrepresent the “harm to the public interest” test—or skip it altogether. The problems associated with providing the rationale for national security exceptions have also meant that security agencies have defied some of the decisions of national supervisory bodies and courts or have sought legal reforms that would exempt them from the oversight of the bodies that are supposed to guarantee transparency.\textsuperscript{2197}

27. Colombia’s Intelligence and Counterintelligence Act (Law 1621) has often been invoked “to keep information confidential even when it is requested by judicial bodies in the course of their investigations.”\textsuperscript{2198} According to a study by the organization Dejusticia, “the various intelligence and counterintelligence agencies have simply resorted to an incomplete and partial interpretation of section 33 of the Intelligence and Counterintelligence Act to withhold many categories of information.”\textsuperscript{2199} Accordingly, through an overly broad and groundless classification process, the intelligence community “imposes absolute secrecy for a lengthy period on all information, material, files, and data it produces, disregarding the fundamental right of citizen access to information that is not specifically, reasonably, and proportionately exempt.”\textsuperscript{2190}

28. In Argentina, the Access to Public Information Act\textsuperscript{2191} does not mention the term “national security.”\textsuperscript{2192} Article 8 of the Act states that “[r]egulated entities are exempt from providing information only in the following cases: (a) Information expressly classified as secret or confidential for defense or foreign policy reasons. Secrecy may in no case extend to information needed to evaluate the definition of the security, defense, and foreign affairs policies of the Nation; nor information whose disclosure does not pose a real and identifiable risk of significant harm to a legitimate interest linked to those policies (...).” According to the Agency for Access to Public Information, the Act does not establish procedures for the classification and declassification of information for national security reasons, as “[t]he management of requests for access to information is covered by Articles 5, 9, et seq. However, this refers to general rather than specific management in the area of national security. If an entity receives a request for information that covers national security-related matters, it must interpret the scope of the request, determine whether any exceptions apply, establish a redaction system for the partial provision information, or carry out the public interest test to decide which right prevails in the particular case.”\textsuperscript{2193}

29. Another example of this is the successive legal reforms adopted in Uruguay to exempt information generated by the intelligence community from the guarantees offered by the access to information law. In 2018, Parliament passed Law 19.696 on the “National State Intelligence System,” which contained regressive provisions on the right of access to public information.\textsuperscript{2194} The legal reform excluded the intelligence bodies

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\textsuperscript{2192} Agency for Access to Public Information (\textit{Agencia de Acceso a la Información Pública}), information provided during the online consultation conducted by the Office of the Special Rapporteur for the preparation of this report.

\textsuperscript{2193} Information provided during the online consultation conducted by the Office of the Special Rapporteur for the preparation of this report.

from the oversight of the Access to Public Information Unit, beyond the very broad parliamentary supervision created by the law itself. Article 29 provided that “[t]he background data, information, and records held by the bodies of the National State Intelligence System and their personnel, regardless of their position, shall be considered confidential and restricted, for all legal purposes, in accordance with Article 9 of Law No. 18,381 of October 17, 2008. In addition, any other background information of which the personnel of those bodies, for whatever reason, become aware in the course of their duties shall be deemed to be confidential and restricted.”

30. A more recent legal reform, also in Uruguay, expanded the powers of the National Intelligence System within the Presidency of the Republic and enhanced the secrecy of information produced and systematized by this agency. It creates new categories of information such as “absolutely secret” and curtails existing guarantees for citizens to request and access information in this area. Under Article 125 of Law 19,889, “the acts, documents, records, activities, and any other material or inputs of the bodies that make up the State's National Intelligence System, the dissemination of which may undermine international cooperation agreements on intelligence matters, the independence of the State from other states or international bodies, or relations with other states or international bodies, shall be considered secret. This classification will be made by the Director of the Ministry of Strategic State Intelligence, and the classified information will only be accessible upon the issuance of a reasoned order by the President of the Republic acting in the Council of Ministers.”

31. Article 126 of that law states that “the information produced and systematized by the agencies of the National State Intelligence System is absolutely confidential. Such information may be accessed only by court order, and only if requested by the defense counsel of a person under criminal investigation, a suspect, or a defendant.” In a letter to the State, the Office of the Special Rapporteur noted its concern about the reform, given that a body under the authority of the Presidency of the Republic, and at the head of the State's intelligence agencies—with broad powers to collect information—is automatically granted absolute secrecy for the information it collects and orders to be systematized, without the possibility for citizens, the media, or even lawmakers to request the declassification of such information when a compelling public interest is at stake or when fundamental rights may have been violated. The current wording of the law also makes it impossible for those denied access to information held by that agency to challenge its secrecy before a judicial authority.

32. These difficulties are often accentuated by the lack of independent oversight mechanisms to supervise security sector agencies, as well as by the controversy in some cases over the powers of supervisory bodies to adjudicate claims involving national security-based restrictions on the right of access to information imposed by security sector agencies.

33. In this regard, a controversy has arisen over the public release of the minutes of Chile's National Security Council (COSENA) and the application of the Transparency and Access to Public Information Act [Ley de Transparencia y Acceso a la Información Pública] to COSENA. While the Council for Transparency

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2195 Eastern Republic of Uruguay. Law 19696 of 2008, Approving and Regulating the National State Intelligence System [Aprobación y Regulación del Sistema Nacional de Inteligencia del Estado], October 29, 2008. During the parliamentary debate on this legislative initiative, the Center for Archives and Access to Public Information had warned that although the bill on the creation of the National Intelligence System sought to establish certain safeguards against the misuse of information collection and processing, it contained regulations that “are a step backwards in terms of the standards for protecting the right of access to public information.” According to civil society, the bill gives rise to a “generic confidentiality that may allow for the inclusion of information that, strictly speaking, would not cause harm if disclosed and could be in the public interest.” Centro de Estudios para la Información Pública, Proyecto de ley de inteligencia puede ser un ‘retroceso’ en los estándares de acceso a la información pública [Intelligence Bill May Be a ‘Step Backwards’ in Access to Public Information Standards], January 17, 2017.


2197 A constitutional advisory body to the President of the Republic on national security issues.

2198 See, e.g.: Republic of Chile. Council for Transparency [Council for Transparency], Rodrigo Orrego con Estado Mayor Conjunto, Case file: C566-18 November 15, 2018; Catalina Gaete Salgado con Estado Mayor Conjunto Case file: C2803-15 March 29, 2016; Mauricio Sepúlveda González con Estado Mayor Conjunto Case file: C474-16 October 25, 2016. See also: Supreme Court, Third Chamber. CDE- Fisco, Estado Mayor Conjunto contra Integrantes de la Sexta Sala de la Corte de Apelaciones de Santiago, Case file: 9219-2017, November 29, 2017; Supreme Court, Third Chamber. CDE- Fisco, Estado Mayor Conjunto contra Integrantes de la Sexta Sala de la Corte de Apelaciones de
(CPLT) ordered the declassification of COSENA minutes that would not affect national security, the Joint Chiefs of Staff (ESMACO) has argued that COSENA is not considered a government agency and therefore access to information in its possession should not be governed by the Transparency and Access to Public Information Act. The Council for Transparency dismissed these arguments, stating that: (I) COSENA is part of the government, since it performs “public service” as a body responsible for advising the President of the Republic on national security matters and for performing the other duties assigned to it by the Constitution, all of which are eminently public; (II) it is an body composed of state authorities; and (III) it is publicly funded.

34. This controversy was litigated, and between November 2017 and March 2018, the Third Chamber of the Supreme Court (with a different composition) handed down two conflicting rulings on access to information and national security, affecting COSENA’s minutes from 1989 to 2012. The Joint Chiefs of Staff refused to turn over those minutes to two requesters. In addition, the Council for Transparency decided to deny the release of some minutes “on the grounds that their disclosure would undermine the security of the nation or the national interest,” but ordered “the release of most of them.” In a ruling issued on March 20, 2018, the Third Chamber of the Supreme Court reportedly decided to change its criteria regarding the Council’s authority to decide on the release of information, and exempted COSENA from the Transparency Act, finding that the institution itself had to decide whether the minutes were public or confidential. Some of the records were reportedly made public as a result of the first judgment.

35. In the case of Mexico, civil society organizations have said that the concept of national security that emerges from the National Security Law is “very ambiguous,” and leads to, as mentioned above, “very broad justifications for not providing information.” The National Institute for Transparency, Access to Information, and Personal Data Protection (INAI), informed the Office of the Special Rapporteur that although the Transparency and Access to Public Information Act [Ley General de Transparencia y Acceso a la Información Pública] provides that the decisions of the oversight body “are binding on regulated entities, final, and unappealable,” the government’s legal advisor may file an appeal for review with the Supreme Court of Justice of the Nation if INAI’s decisions could potentially endanger national security.

This authority has been exercised on several occasions. It should also be noted that, in 2018, in an important regional precedent, the Supreme Court struck down the 2017 Domestic Security Act, Article 9 of which...
stipulated that information produced as a result of its application “shall be considered a matter of national security, under the terms of the applicable legal provisions.”

36. Over the past four years, civil society organizations have repeatedly reported to the IACHR various conflicts between laws that protect access to public information and laws on national security, intelligence, or records. The traditional tensions between access to public information and national security have been exacerbated by new regulations and intelligence practices aimed at tackling drug trafficking and organized crime in the region, as well as by the lack of independent oversight of security sector agencies. These factors—among others—have fostered a “high degree of secrecy” in the region that continues to characterize the workings of security and intelligence forces.2205

37. In Argentina, matters related to intelligence, domestic security, and national defense are regulated by three laws: the Intelligence Act (Law No. 25.520), the Domestic Security Act (Law No. 4.059), and the National Defense Act (Law No. 23.554), and their respective regulations.2207 The latter defines national defense as “the integration and coordinated action of all the forces of the Nation for the resolution of those conflicts that require the use of the armed forces, as a deterrent or operationally, to counter foreign aggression. Its purpose is to permanently ensure the sovereignty and independence of the Argentine Nation, its territorial integrity, and its capacity for self-determination, and to protect the life and freedom of its inhabitants.”2208 According to the information provided to the Office of the Special Rapporteur by the Center for Legal and Social Studies (Centro de Estudios Legales y Sociales) (CELS) in Argentina, the new Access to Public Information Act (Law No. 27.275) covers all three branches of government; nevertheless, “it is the interpretation of the Executive Branch” that intelligence activities “and the activities of the bodies of the national intelligence system in general, are not subject to the obligations arising from the Access to Public Information Act,” but rather are covered by the specific regulations to the Intelligence Act—thus disregarding the constitutional and conventional protection of the right of access to information.2209

Secrecy laws on matters related to national security

38. In Honduras, the Law for the Classification of Public Documents related to National Security and Defense, Decree 418-2013, entered into force in 2014.2210 Under Article 3 of that law, “Matters, acts, contracts, documents, information, data, and objects whose disclosure to unauthorized persons could harm or jeopardize national security or defense, and the achievement of related objectives, may be declared Classified Matters.” The law gives the exclusive power to classify information to the National Defense and Security Council and specifies four possible levels of classification (information: “restricted, confidential, secret, and top secret”).2211 These different classification levels should be “based on the degree of protection required” according to a set of weighting factors that range from the potential “undesirable institutional effects” of disclosure to “exceptionally serious internal and external harm” to national security.2212 In 2015 the Honduran Institute of Access to Public Information issued a ruling ordering the amendment of the 2014 law and the repeal of certain articles.2213 In that ruling, the Institute held that the Law for the Classification of Public Documents contains provisions that violate the constitution and the Access to Public Information Act, among other laws, “making national security an insurmountable obstacle to transparency, the exercise of the

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2207 Information provided by Centro de Estudios Legales y Sociales (CELS).
2209 CELS, information provided during the online consultation conducted by the Office of the Special Rapporteur for the preparation of this report.
right of access to public information, accountability, and citizen participation in government.” The Institute
considered that “jeopardizing the achievement of objectives” is a “highly ambiguous” definition that is
“subject to the discretion of the authority that will determine the classification, which could lead to the
concealment of acts of corruption and consequently undermine the transparency of government.” In 2016,
the Committee for Freedom of Expression, C-Libre, challenged the constitutionality of the law in the Supreme
Court. At the time of this writing, the case has reportedly not yet been decided.2214

39. In Peru, civil society organizations informed the IACHR of major obstacles to access to public
information based on Legislative Decree 1129 of December 6, 2012. In its original drafting, Article 12 of that
decree provided that: “Resolutions, minutes, recordings, transcripts and, in general, any information or
documentation generated on matters related to national security and defense, and those containing the
deliberations conducted at the meetings of the National Security and Defense Council, are secret.”2215
According to the information available, this legislative decree was amended in 2013 by Legislative Decree
1353, which reads as follows: “Resolutions, minutes, recordings, transcripts and, in general, any information or
documentation generated on matters related to national security and defense, and those containing the
deliberations conducted at the meetings of the National Security and Defense Council, are governed by the
Transparency and Access to Public Information Act, with regard to their disclosure, public access, and
exceptions, insofar as they are applicable.” The constitutionality of the legislative decree was challenged in
2013 by the People’s Ombudsperson, who alleged, inter alia, before the Constitutional Court that the
executive branch had used Article 12 of Legislative Decree 1129 to strip away the right of any person to
access public information on the National Defense System, regardless of whether it creates a risk to national
security. In a June 2018 ruling, the Constitutional Court partially upheld the claim and declared
unconstitutional the phrase “insofar as they are applicable” in the most recent version of the article. The
decision stated that this expression “creates an exception, which is parallel to those exceptions regulated in
the Constitution and the law of constitutional development, where there is only the mere discretion of the
Council of Defense and National Security.” The Constitutional Court held that “[n]ational security, as a
constitutional objective, must be protected not through general, vague, defective, or illegitimate exceptions,
but through narrow exceptions that clearly and specifically identify the cases in which national security may
be jeopardized, in which the security of persons, the risk to territorial integrity and the stability of the
democratic system, as well as the respective intelligence and counterintelligence activities, among other
things, are guaranteed—as they are under the Transparency and Access to Public Information Act.”2216

40. Among the obstacles that remain in most countries in the hemisphere, it is possible to highlight that
laws on secrecy, particularly those concerning national security or defense, have not been the subject of
robust and participatory public discussion. Some states even still have provisions that were enacted during
dictatorships, as in the case of Chile.2217 In fact, Chile still has a set of laws establishing the secrecy of various
subjects and documentary collections for alleged national security reasons, and even several secret legal
provisions that continue to be applied under democratic rule.2218 In 2016, the Office of the Special Rapporteur

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2214 During its on-site visit to Honduras in 2018, the IACHR took note of the fact that the executive branch had sent Congress a bill to
amend the Law. The IACHR was informed by civil society organizations that despite introducing positive changes, the amendment leaves
the executive branch with broad powers to restrict access to public information. IACHR, Annual Report 2018, Report of the Office of the
Special Rapporteur for Freedom of Expression, Ch. II (Evaluation of the State of Freedom of Expression in the Hemisphere).

2215 The original text of the Decree and the subsequent amendment have been taken from the ruling of the Constitutional Court. Case file

sociedad civil [Secrecy Law should be repealed, say civil society organizations].

2217 IACHR, Office of the Special Rapporteur for Freedom of Expression. Informe especial sobre la situación de la libertad de expresión en
According to information provided by the Council for Transparency to the Office of the Special Rapporteur in 2016, Chile reportedly has
203 legal texts that are classified as secret for national security reasons and are not accessible to the general public. While most of these
texts (which include laws, decrees with the force of law, and executive orders) were enacted during the 1973-1990 military dictatorship
and would no longer be in force, two secret laws and one secret decree with the force of law were allegedly issued after the transition to
democracy. According to the information presented by the Office of the Special Rapporteur in its report on the situation of freedom of
expression in Chile, “for some 29% of the secret legal texts, there is no information on which to base even a preliminary determination of
their subject matter.” The remaining 7% of the laws “are clearly associated with national defense and, more specifically, with the Armed
recommended that the State revise the laws that establish blanket secrecy for national security reasons and immediately make public those regulations whose text remains secret to this day on national security grounds.

B) Obstacles to access to information on human rights violations

41. As documented by the IACHR and its Office of the Special Rapporteur, access to information held by the State regarding serious human rights violations continues to be an enormous challenge when it comes to obtaining information to pursue the investigation of past human rights violations. The same holds true with respect to the current situation of many groups that are victims in cases of gender-based violence or violence affecting Afro-descendent groups and indigenous peoples.2219 This also affects the rights to truth, justice, and effective reparation for such violations, as well as guarantees of non-repetition.

42. The inter-American bodies have established that obstacles persist in guaranteeing access to information related to serious human rights violations in Guatemala,2220 El Salvador,2221 Bolivia,2222 Uruguay,2223 and Brazil.2224 These obstacles reflect the States’ resistance to facilitating access to information requested by victims of serious human rights violations and their families, the lack of open records, and the failure to provide information needed by the bodies in charge of investigating and prosecuting these acts. Disproportionate restrictions have reportedly been imposed on the grounds of protecting personal data contained in documents that are vitally important to establishing the truth. Requesters have also complained of the destruction of information and the lack of policies to ensure real and public access to state archives containing information on serious human rights violations.

43. The cases of Guatemala and El Salvador are typical examples of how the armed forces in various countries of the region have resisted providing access to military archives in the context of transitional justice processes and the search for truth. Thus, for example, Guatemalan society had access to the information collected in both the Diario Militar and the Historical Archives of the National Police thanks to leaks and academic research—not because of any voluntary state action to provide this data to the victims of the serious human rights violations that took place during the internal armed conflict.2225

44. El Salvador’s Institute for Access to Public Information has received 23 complaints in the last 6 years against the Ministry of Defense for declaring "the non-existence" of information on military operations

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2219 In the Report on Access to Information, Violence against Women and the Administration of Justice, the IACHR noted the existence of specific problems with regard to the availability, quality and integrity of public information on violence and discrimination against women. Among other problems, it identified the lack of comprehensive information on all forms of violence and discrimination in different State organs, the lack of production of comprehensive statistics from that information, and the absence of disaggregation of statistical information. In particular, the report mentions the case of Haiti, where obtaining statistics on violence is difficult because of the existence of rudimentary and uncoordinated data systems, and the case of Bolivia, where there is a disparity in the figures on violence between the various civil society organizations and State entities, particularly in relation to violence against indigenous and rural women. The integration of a National Data and Information Bank on Cases of Violence against Women (BANAVIM) in Mexico, which creates unique electronic files for each woman in a situation of violence, and the Cooperation Treaty between the National Council of Women and the National Institute of Statistics and Censuses (INEC) of Argentina, implemented on September 11, 2012, in order to produce statistics on gender violence, were also highlighted. IACHR, Report on Access to Information, Violence against Women and the Administration of Justice. OAS/Ser.L/V/II.154 Doc. 19, March 27, 2015, paras. 77-84.

2220 OSI. Supporting document. 156th Session. Public Hearing “Access to Information and National Security in the Americas.” October 20, 2015; I/A Court H.R., Resolution. 12 Guatemalan cases. Supervision of compliance with judgement regarding the obligation to investigate, prosecute and, if applicable, punish those responsible for human rights violations [Resolución. 12 casos guatemaltecos supervisión de cumplimiento de sentencias respecto de la obligación de investigar, juzgar y, de ser el caso, sancionar a los responsables de las violaciones a los derechos humanos]. November 24, 2015. Paras. 127 et seq.

2221 IACHR. Public Hearing. 25 Years of the Truth Commission for El Salvador, February 27, 2018; IACHR, Annex to Press Release 41/18, April 6, 2018.


during the armed conflict; the Institute recently ordered the reconstruction of the information.\textsuperscript{2226} The UN Human Rights Committee expressed concern about reports of the armed forces’ resistance to allowing access to historical archives in connection with serious human rights violations.\textsuperscript{2227} The IACHR has followed these persistent obstacles with concern and has urged the Salvadoran State to comply with the recommendations of the Final Report of the Salvadoran Truth Commission, 25 years after its publication.\textsuperscript{2228}

45. The destruction of information related to serious human rights violations is another recurrent obstacle. In 2017, \textit{The New York Times} reported that in 2000 the Chilean Army Intelligence Directorate (DINE) had incinerated microfilms containing tens of thousands of documents pertaining to the main intelligence bodies of the military dictatorship (1973-1990), which had been produced by the National Intelligence Directorate (DINA) and its successor, the National Information Center (CNI).\textsuperscript{2229} The Council for Transparency condemned the destruction of records, microfilms, and documents handled by the former National Information Center, calling it “a serious violation of the right of access to information of all Chileans that reveals serious and reprehensible conduct on the part of those responsible for safeguarding public records that belong to all of society. It is a blow to Chile’s historical memory.”\textsuperscript{2230}

46. Also in Chile, in December 2017, in a split decision, the Constitutional Chamber of the Supreme Court upheld the claim of the Commander-in-Chief of the Army against an \textit{amparo} [petition for a constitutional remedy] decision of the Council for Transparency that had granted access to information about a list of people who had been members of the secret police during the dictatorship and who remained in the institution as civilian employees.\textsuperscript{2231} The Chamber’s majority found that the release of such information could infringe on the constitutionally guaranteed rights of officials and their families, in particular their security, health, and privacy. According to the judgment, disclosure of the information could be “meant to publicly confront, rebuke, and castigate persons accused of human rights violations in order to discredit them in the eyes of the community.”\textsuperscript{2232}

47. The decision raised concerns about the protection of the right of access to information and the right to truth. The Transitional Justice Observatory of the Diego Portales University Human Rights Center said that it was “extraordinary that fully lawful civic demonstrations against repressive practices are cited as a reason for not providing society with information about people who have a past linked to dictatorial repressive forces and are now in fact public employees who draw salaries from the State.”\textsuperscript{2233}

48. In \textit{Colombia}, there have been a number of reports that information illegally collected by the now-defunct Administrative Department of Security (DAS) in the course of spying on judges, journalists, opposition politicians, and human rights defenders was destroyed or concealed.\textsuperscript{2234} In every society, especially those in transition and those that have experienced the atrocities of war, access to information and

\textsuperscript{2226} Institute for Access to Public Information, information provided during the public consultation.


\textsuperscript{2231} Transitional Justice Observatory, Universidad Diego Portales, Santiago de Chile. \textit{Boletín informativo N° 44}, Noviembre y diciembre 2017 [Newsletter No. 44, November - December 2017].


\textsuperscript{2233} Transitional Justice Observatory, Universidad Diego Portales, Santiago de Chile. \textit{Boletín informativo N° 44}, Noviembre y diciembre 2017 [Newsletter No. 44, November - December 2017].

\textsuperscript{2234} El Tiempo. March 14, 2019. \textit{Investigan seis casos de destrucción de datos de inteligencia del DAS} [Six cases of destruction of DAS intelligence data investigated]; RCN Radio. January 30, 2019. \textit{UN y víctimas piden a IEP proteger y hacer públicos archivos del DAS} [UN and victims ask IEP to protect and release DAS files]; El Espectador/ Colombia 2020. October 23, 2018. “Es casi imposible que se hayan perdido archivos del DAS” [Director of the National Archives: “It is nearly impossible for DAS files to have been lost”].
the role of journalism are fundamental to the construction of memory and the search for truth. Hence, in recent years, Colombian civil society has repeatedly stressed the need to guarantee the right to information and access to public information as part of the implementation of the Final Agreement between the government and the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP), and the implementation of the various components of the Comprehensive System for Truth, Justice, Reparation and Non-Repetition.2235

49. On different occasions the Office of the Special Rapporteur has received information on the persistence of obstacles to access information in Mexico related to serious human rights violations.2236 The arbitrary use of personal data protection in historical archives and the use of national security exceptions have made it difficult to access information on serious past violations.2237 During their joint visit to the country in 2017, the UN and IACHR Special Rapporteurs for freedom of expression found that some documents that were not cataloged as historical documents had been classified as confidential for up to 70 years. In many of these cases, personal data protection was invoked to withhold or conceal the names of public officials and other information about abuses and serious human rights violations.2238

50. In addition, Mexico’s Ministry of National Defense (SEDANA) denied access to information on civilians killed, injured, and detained in more recent “confrontations” with the military and reportedly stopped documenting and disclosing these figures in 2014. In March 2019, INAI ordered partial access to the information and ordered the security agency to carry out an exhaustive search for this information.2239 Civil society pointed to the decision as a step in the right direction, albeit an “insufficient” one, since the information gap had to be filled by the obligation to “produce the information that, by virtue of their duties, powers, and functions, they should have in their possession.”2240 When the State has the obligation to preserve or collect information and then claims that it does not exist, it must attempt to recover and if possible reconstruct the lost or illegally removed information.2241

51. In this scenario, guaranteeing access to military or security agency files on human rights and humanitarian law violations, as well as the need to establish special archival policies for the defense of human rights, continues to be a critical issue.2242 The IACHR and its Office of the Special Rapporteur have also welcomed progress and best practices, such as the inclusion in various regional access to public information laws of clauses barring exceptions when the information requested is linked to the determination or investigation of violations of human rights or international humanitarian law. There have also been a variety

2235 See: Más Información Más Derechos. ¿Cuáles documentos son secretos en Colombia? [What documents are secret in Colombia?]. July 31, 2014; Proyecto Antonio Nariño. Los retos para el acceso a la información en los componentes del Acuerdo Final entre el gobierno y las Farc [Access to information challenges in the implementation of the Final Agreement between the government and the FARC]. April 2017; Dejusticia. Documentos Dejusticia 31. Acceso a los archivos de inteligencia y contrainteligencia en el marco del posacuerdo [Access to intelligence and counterintelligence files within the framework of the post-agreement]. January 2017.


2242 Meeting of experts convened by the Office of the Special Rapporteur for the preparation of this report. December 3, 2018, Washington DC.
of court decisions that have recognized the priority of the public interest over national security in the reporting of human rights violations.

52. For instance, Peru’s Transparency and Access to Public Information Act (2002) provides that “classified information shall not include information relating to the violation of human rights or the Geneva Conventions of 1949 by any person under any circumstances.”\textsuperscript{2243} The Uruguayan Access to Public Information Act (2008), states that exceptions are not applicable “where the information requested relates to human rights violations or is relevant to investigating, deterring, or preventing human rights violations.”\textsuperscript{2244} Guatemala’s Access to Public Information Act (2008) provides that “[i]n no case may information relating to the investigation of violations of fundamental human rights or crimes against humanity be classified as confidential or restricted.”\textsuperscript{2245} Brazil’s Access to Public Information Act (2011) specifies that access to information necessary for the judicial or administrative protection of human rights may not be denied and that information or documents concerning conduct involving human rights violations by public officials or on the orders of public authorities may not be restricted.\textsuperscript{2246} In Colombia, the Law on Transparency and the Right of Access to Public Information (2014) provides that “[t]he exceptions to access to information contained” in that law “do not apply in cases of human rights violations or crimes against humanity, and in all cases the rights of the victims of such violations must be protected.”\textsuperscript{2247} Mexico’s Transparency and Access to Public Information Act (2015) states that “[i]nformation related to serious human rights violations or crimes against humanity cannot be classified as restricted under national law or the international treaties to which the Mexican State is a party.”\textsuperscript{2248} The Argentine Law on the Right of Access to Public Information (2016) stipulates that exceptions “shall not apply in cases of gross human rights violations, genocide, war crimes, or crimes against humanity.”\textsuperscript{2249}

53. In the United States, in more than 30 years of work, the National Security Archive has filed over 50,000 requests under the U.S. Freedom of Information Act (FOIA). These requests have brought to light more than 10 million pages of once-secret government documents.\textsuperscript{2250} This information has been key to documenting many of the serious human rights violations in Latin America and to the work of truth commissions and transitional justice processes in different countries.

54. In addition, years of litigation by the American Civil Liberties Union (ACLU) succeeded in getting the government to publish over 100,000 pages of documents on the abuse and torture of detainees by the CIA and the Department of Defense.\textsuperscript{2251} Organizations such as the Electronic Frontier Foundation (EFF) and the Electronic Privacy Information Center (EPIC) have also filed numerous FOIA requests and actions to demand


\textsuperscript{2246} Brazil. Palácio do Planalto/Presidency of the Republic. Law 12.527, November 18, 2011.


\textsuperscript{2250} National Security Archive. 30+ Years of freedom of information action. Accomplishments. [Last retrieved on 2/28/2019].

transparency about government surveillance programs and to help the public learn more about government activities in this area.2252

55. The Office of the Special Rapporteur reiterates that “In the event of gross violations of human rights, the information these archives can bring together has an undeniable value and is indispensable not only for pushing investigations forward but also for preventing these deviant actions from being repeated.”2253

C) Obstacles to access to information on state surveillance activities

56. Major challenges remain in the Americas in terms of transparency and access to information about surveillance activities carried out by states.2254 This is clear from the many cases of illegal spying on human rights defenders, journalists, lawyers, and members of the opposition that have taken place in various countries in the hemisphere, even under democratically elected governments—for instance, the major disclosures in 2013 on the scope and operation of U.S. National Security Agency surveillance programs, and the 2015 leaks of Hacking Team documents, which revealed that some governments had acquired surveillance software known as Galileo or DaVinci, among others.2255

57. According to allegations made public in 2017 by a group of Mexican civil society organizations, between January 2015 and August 2016, Pegasus software was allegedly used in Mexico to spy on journalists, human rights defenders, lawyers, and politicians.2256 In October 2017, the organization R3D filed a request for information from the PGR, asking to access the public version of all available documentation on the procurement of software and computer tools developed by the firm NSO Group and its subsidiaries—information that according to the agency’s response had been classified for national security reasons.2257 In a more recent case, the Colombian magazine Semana published an exposé on the profiling of journalists and human rights defenders by certain segments of the Colombian Army.2258

58. In short, the obstacles to access to public information and the persistent lack of transparency surrounding the surveillance activities of the States of the Americas are often barriers to accountability for their lawful use, which should follow the requirements of prior judicial authorization and be strictly necessary and proportionate to the legitimate interests the State seeks to protect.

59. Access to public information laws require states to proactively publish key information related to the activities and workings of government agencies, but these obligations do not include specific transparency regarding the use of state surveillance measures.2259 In Mexico, Article 70, section XLVII of the

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2257 According to the ruling, the request for information processed through the National Transparency Platform [Plataforma Nacional de Transparencia] (PNT) established: “For the 2000-2017 period: public versions of any documents related to the procurement of any software, license, or technological tool developed by NSO Group or any of its affiliates and/or subsidiaries including public versions of the respective contracts are requested” (3rd conclusion of law. 1.).


2259 The Office of the Special Rapporteur was only aware of the existence of such provisions in the Mexican Transparency and Access to Public Information Act.
Transparency and Access to Public Information Act mandates the disclosure of certain information on surveillance measures ordered by the authority and requested from telecommunication licensees and Internet service or application providers; however, in practice, the information available is insufficient and compliance with the Act is very limited.

60. In the case of Argentina, referring to the challenges of active transparency, civil society organizations have said that the access to information law “does not impose any positive obligation on the executive branch regarding the transparency of intelligence or national security information; in fact, it may even facilitate the opposite.” While the Domestic Security and National Defense Act and its regulatory decree do not contain specific provisions on active transparency, agreements with other states that include national security and intelligence issues among their provisions have been made public. They are officially published on the website of the Foreign Ministry.

61. As for passive transparency in the area of enforcement, understood as the State’s obligation to respond to requests for information, the obstacles have been no less significant. However, the Office of the Special Rapporteur notes the case law developments in this area. For example, Mexico’s Supreme Court of Justice ruled that the Center for Investigation and National Security must report the number of people or telephone devices that were wiretapped in 2014. The judgment declared that “not all the information about the Center’s activity related to the interception of private communications should be considered confidential under the National Security Law.” The decision arose from an appeal for review filed by the Office of Legal Counsel to the Federal Executive against the decision of the National Institute for Transparency, Access to Information and Data Protection (INAI).

62. In the malware surveillance case mentioned above, the organization R3D filed an appeal for review challenging the INAI decision that ordered the Office of the Attorney General of the Republic (PGR) to turn over a public version of a contract entered into in 2014 with the Pegasus surveillance company. At the time of its ruling, INAI considered that the technical specifications of the software and the methods of operation should be classified as confidential. It further stated that the “[n]ames, positions, and signatures of those individuals who were involved in the procurement and who have privileged, concrete, and specific knowledge have been made public. The list in question is insufficient and does not provide the actions and responsibilities of those involved, as well as a detailed technical description of the software.”

2260 The cited provision states: “Article 70. The federal and state laws shall require regulated entities to make information available to the public and keep it updated in the respective electronic media, according to their powers, attributes, functions, or corporate purpose, as appropriate, pertaining, at a minimum, to the topics, documents, and policies specified below: (...) XLVII For statistical purposes, the list of requests to telecommunication licensees and Internet service or application providers for the interception of private communications, access to communications records, and the real-time geographic location of communications equipment, containing exclusively the purpose, duration, and legal grounds of the request, as well as, if applicable, a reference to the appropriate judicial authorization (...)”

2262 CELS, information provided during the public consultation. In this regard, the organization noted that the Access to Public Information Act establishes the general principle of active transparency but stressed that the exceptions to the right of access to public information provided for in Article 8 of this regulation will apply where appropriate. “The State hides behind these exceptions so as not to take an active role in the dissemination of this type of information, except in relation to management outcomes that it chooses to show.”


2265 According to the abovementioned ruling, INAI’s resolution stated that [disclosing] the software’s technical specifications and methods of operation could create a potential risk or threat to national security: “insular as it would publicize technology or equipment that is useful in generating intelligence, this being understood as the knowledge obtained from the collection, processing, dissemination, and use of information for the investigation and prosecution of organized crime. Thus, since there are parts that describe the procured good [software], its maintenance, and updating, as well as technical aspects of the system called ‘Pegasus 500’ related to its operation, it is clear that it contains technical specifications, operating procedures, and information on the maintenance of technological equipment used by the government—information that is protected by the confidentiality under analysis, since its public disclosure would undermine national security.” [Eighth District Judge for Administrative Matters in Mexico City. Judgment in amparo proceeding 592/2018 of December 13, 2018. 3rd conclusion of law. 5. Available at: https://es.scribd.com/document/339535163/Sentencia-Pegasus (Retrieved on 3/14/2019)].
about [the] procedures, methods, technical specifications, technology, and equipment used for intelligence production should be protected.”

63. In December 2018, the Eighth District Judge for Administrative Matters in Mexico City overturned the above-cited INAI ruling that allowed the PGR to deny access to information about the acquisition of Pegasus malware, as well as the technical specifications of the equipment and procedures related to its use. The court found that “[t]he INAI ruling that the technical specifications and operating methods of the Pegasus software were confidential on the grounds of ‘national security’ is unconstitutional, as INAI failed to recognize that information related to serious human rights violations and acts of corruption should not be classified as confidential.” It further stated that “[t]he relevance of the information requested would provide more evidence of whether institutions, public resources, and the State apparatus in general are being used for clearly unlawful purposes such as hacking ordinary citizens to obtain all their private information without a court order.” Finally, the court stressed that “in a constitutional state, the concept of national security is equivalent to the security of the members of society and the lawful protection of democratic institutions.”

D) Obstacles to access to information on the budget and expenditures of intelligence agencies.

64. According to the information available, the actual possibility of accessing information on confidential funds or expenditures through which part of the budgets of intelligence agencies are executed remains very limited. It is important to note that secrecy or confidentiality cannot cover all the activities of intelligence agencies.

65. In 1997, the Federation of American Scientists filed a FOIA complaint against the Central Intelligence Agency (CIA). This lawsuit resulted in the declassification and publication of the total intelligence budget for the first time in 50 years.

66. In the case of Argentina, the Federal Intelligence Agency (AFI) has refused to provide information on the management of confidential funds. AFI reportedly said that “all [of the Agency’s] information” is confidential and that the access to information law does not apply to it. The Citizens’ Initiative for Intelligence System Oversight (ICCIS) contends that there is no democratic oversight of intelligence activities in the country “unless the rationale for the secrecy under which AFI and the rest of the national intelligence system operates is redefined. Therefore, it is essential to repeal Decree 656/2016 and establish new public rules on the scope of secrecy, specifying who can order it, under what terms, and how the declassification of

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2266 According to the abovementioned ruling, INAI’s resolution stated in this regard that “to reveal the names, positions, and signatures of the public servants with operational functions who participated in the procurement of the software in question and who have technical knowledge about it, would pose a risk to their safety, health, and life, as they could be subject to attack by criminals in retaliation for operations carried out against them, obstructing the functions carried out by that entity.” [Eighth District Judge for Administrative Matters in Mexico City. Judgment in ampaso proceeding 592/2018 of December 13, 2018. 3rd conclusion of law. 5. Available at: https://es.scribd.com/document/395959163/Sentencia-Pegasus (Retrieved on 3/14/2019)].


2272 Information provided by el CELS, as part of the online consultation conducted by the Office of the Special Rapporteur. See also: Saba, R. Acceso a la información y seguridad nacional [Access to information and national security], in Estudios en derecho a la información, No. 3, January-June 2017, Legal Research Institute of the UNAM.
According to the information available at the close of this report, through Resolution 2019-46-APN-AAIP, the Agency for Access to Public Information reportedly asked the Federal Intelligence Agency to report on its classification of information and the basis for doing so.

E) Absence of public information access laws and systematic restrictions on the right to freedom of expression and information

67. In the 2006 case of Claude Reyes v. Chile, the Inter-American Court of Human Rights emphasized that under Article 2 of the American Convention, states have a duty to take the necessary measures to guarantee the rights protected in the Convention. This entails eliminating rules and practices that violate those rights, as well as issuing rules and developing practices that lead to effective compliance with those guarantees. In particular, this means that regulations governing restrictions on access to information under state control must comply with conventional criteria. Although there has been significant progress in this area, as described at the beginning of this report, the enactment of access to public information laws is not a consistent reality in the hemisphere.

68. In this regard, for example, as noted by the Office of the Special Rapporteur in its recent special report on the situation of freedom of expression in Cuba (2018), the country still lacks rules to guarantee citizens the right of access to public information, which is a fundamental tool for citizens to participate in decisions that concern them, to monitor the performance of government functions, and to protect other fundamental rights. According to the report, Decree Law No. 199 of 1999 establishes a System for the Security and Protection of Official Information that severely restricts the ability of journalists and members of the general public to access information produced or held by the State. The decree law and the Ministry of the Interior’s “Regulations on the Security and Protection of Official Information” of December 26, 2000 provide the legal basis for the protection of official government information and establish, inter alia, the competent authority in this area (Ministry of the Interior), as well as the procedures for handling official information, including its classification and declassification. Classified official information is also protected by provisions of the Criminal Code. In addition, most ministries and government agencies do not have press offices, do not issue news bulletins, and only hold press conferences on their own initiative and on topics of their choosing.

69. The violation of the right of access to information in Venezuela is also serious, and has been aggravated by the weakening of democratic institutions. In its report entitled Democratic Institutions, Rule of Law, and Human Rights in Venezuela (2018) the IACHR noted that in the last decade the National Assembly and the executive branch “have issued dozens of regulations establishing vague and ambiguous exceptions to access to public information.” Some of these regulations, such as Presidential Decree No. 458, granted broad powers to the Strategic Center for Homeland Security and Protection (CESPPA), to designate as “confidential, classified, or restricted any information, fact, or circumstance handled by [that entity] that is of strategic interest for the Security of the Nation [...]”

70. The decree law of the Central Bank of Venezuela (2015) authorizes the bank's board of directors, “when requested by the National Executive, [to] temporarily suspend the publication of information for the period during which there is an ongoing domestic or foreign situation that poses a threat to national security and the economic stability of the Nation.” It further establishes that for the duration of domestic or foreign circumstances that threaten national security and the economic stability of the nation, the Bank may agree with the executive branch on “a framework for the provision of information” regarding the performance of

the national economy, the level of international reserves, and economic measures taken.”2277 According to the information received by the Office of the Special Rapporteur while preparing this report, the failure of national courts to protect the right of access to public information has been a constant in recent years.2278

Chapter III – THE RIGHT OF ACCESS TO INFORMATION AND THE NATIONAL SECURITY EXCEPTION

A) General and specific principles governing limitations based on national security exception

71. In previous reports, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have comprehensively addressed the guiding principles, scope, and content of the fundamental right of access to public information held by the State, as well as the admissibility of strict and exceptional limitations.2279 However, given their complexity and specificity, this report systematizes and reviews these principles, which are applied specifically to the competing interests between access to information and the protection of national security interests.

72. Following the inter-American standards on the right of access to information and the release of the Tshwane Principles, the Office of the Special Rapporteur presents a set of principles aimed at providing certainty and strengthening the protection of the right of access to public information related to national security and to the operation and activities of security sector agencies in the region’s countries. In view of the obstacles outlined above, this set of principles can serve as a guide for the States of the Americas in the review and implementation of legal provisions that strike an appropriate balance between the right of access to information and the safeguarding of legitimate national security interests.

73. First, the Office of the Special Rapporteur wishes to emphasize that security sector entities, being public bodies, are subject to the same rule of law and accountability as any other public institution. In a democratic society, no information can be excluded a priori from potential public scrutiny, but it is vitally important to ensure that reasoned consideration is given to each individual case.

74. The inter-American instruments establish that access to public information should always be governed by the principle of maximum disclosure, whereby the right of access to information is the rule and secrecy is the exception. As the Office of the Special Rapporteur has noted, this principle, and the principle of good faith,2280 are guiding principles for the right of access to public information under the inter-American legal framework and should therefore be properly interpreted and applied by security sector bodies.2281

75. According to the case law of the Inter-American Court of Human Rights, in a democratic society it is essential that state authorities “are governed by the principles of good faith and maximum disclosure,”2282 so that all information held by the State is presumed to be public and accessible, subject to a limited regime of

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2278 Information provided by Transparency Venezuela and Espacio Público as part of the consultation conducted by the Office of the Special Rapporteur for Freedom of Expression.

2280 “To guarantee the effective exercise of the right of access to information, it is crucial that those bound to guarantee this right act in good faith; that is, that they ensure the strict application of the right, provide the necessary measures of assistance to petitioners, promote a culture of transparency, contribute to making public administration more transparent, and act with due diligence, professionalism, and institutional loyalty. They must take the actions necessary to serve the general interest and not betray the people’s confidence in State administration” IACHR. Office of the Special Rapporteur for Freedom of Expression. The Inter-American legal framework regarding the right to access to information. Second edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 15.


exceptions. Second, as established by the inter-American bodies, the concept of national security must be interpreted within the limits of “just demands of the general welfare in a democratic society”, in line with Article 32 of the American Convention and various decisions of the inter-American system. This rule is necessary to ensure an appropriate balance between the right to information and the protection of legitimate national security interests, and imposes an absolute limit on the State’s ability to restrict the right of access to information to certain categories of information in which there is an overriding public interest, such as information about serious human rights violations.

77. Finally, under Article 13(2) of the American Convention, exceptions limiting the right of access to information must meet a three-part test containing three basic conditions: (1) they must have been defined clearly and precisely by a law, in the formal and material sense; (2) they must pursue one of the legitimate aims specified by the American Convention (i.e., to ensure respect for the rights or reputation of others, to protect national security, public order, public health, or morals); and (3) they must be necessary in a democratic society to achieve the compelling aims pursued, which requires proof that the limitation is strictly proportional to that aim, and suitable for its achievement.

78. It follows that, when applying a restriction to the right of access to public information, not only the requirements of legality and the protection of a legitimate aim must be met, but also the requirements of necessity and proportionality. The necessity of the measure will be met when the limitation is not only conducive to achieving the intended goal, but also imperative. This means that among several options for accomplishing the legitimate aim, the one least restrictive to the right to seek and receive information must be chosen from all the possible alternatives. Moreover, whoever decides the confidentiality of information must not only demonstrate that the disclosure of the information effectively threatens to cause substantial harm to that legitimate aim, but also weigh that the harm to the interest protected by the exception is greater than the public interest in the information. Likewise, the regime of exceptions must set a reasonable time limit and, once it has expired, the information must be available for public consultation; the restriction may only be kept in place as long as there is a real and objective risk that the disclosure of the information would undermine one of the legally protected interests covered by Article 13(2) of the Convention.

79. The Inter-American Court of Human Rights has held that restrictions on the right of access to state-held information “without respecting the provisions of the Convention (…) creates fertile ground for discretionary and arbitrary conduct by the State in classifying information as secret, reserved or confidential, and gives rise to legal uncertainty concerning the exercise of this right and the State’s powers to limit it.”

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80. Based on the standards developed below, and as outlined in the Tshwane Principles, “[n]o restriction on the right to information on national security grounds may be imposed unless the government can demonstrate that: (1) the restriction (a) is prescribed by law and (b) is necessary in a democratic society (c) to protect a legitimate national security interest; and (2) the law provides for adequate safeguards against abuse, including prompt, full, accessible, and effective scrutiny of the validity of the restriction by an independent oversight authority and full review by the courts”.\(^{2292}\)

**Exceptional nature of national security limitations**

81. The right of access to public information protects the right of every person to access information held by public authorities, including information relating to national security. On an exceptional basis, access to this information may be restricted under clear and precise exceptions set out in the law, provided that they are necessary in a democratic society to safeguard legitimate national security interests. National security interests are favored in practice when society is properly informed about the activities of the State, including those carried out to safeguard national security.\(^{2293}\)

82. These fundamental principles have been reflected in the laws passed at the national level for the protection of the right of access to information. In this regard, for example, Article 4 of Colombia’s Law on Transparency and the Right of Access to Public Information states that “[a]ccess to information may only be restricted in exceptional cases.” It adds that exceptions “shall be limited and proportional, shall be provided for by law or by the Constitution, and shall be consistent with the principles of a democratic society,” and it explicitly mentions the principle of “maximum disclosure”.\(^{2294}\) Article 1 of Argentina’s Access to Information Law also expressly provides for the exceptional nature of limitations, stating that “limits to the right of access to public information should be exceptional, established in advance as stipulated in (the) law, and formulated in clear and precise terms; the responsibility for proving the validity of any restriction on access to the information lies with the entity from which the information is requested.”\(^{2295}\) Article 7 of Mexico’s Transparency and Access to Public Information Act provides that “in the application and interpretation” of the Act “the principle of maximum disclosure shall prevail (...) affording individuals the broadest possible protection at all times.” Article 105 provides that “[r]egulated entities shall apply the exceptions to the right of access to information in a restrictive and limited manner” and “shall demonstrate their origin. Regulated entities shall have the burden of proving the rationale for any denial of access to information that is based on the updating of any of the specified grounds for confidentiality.”\(^{2296}\)

**Legal establishment of clear and precise exceptions based on national security reasons**

83. The rules for the admissibility of restrictions on the right of access to public information apply to all the constituent elements of freedom of expression.\(^{2297}\) In this regard, it is important to consider the Inter-American Court’s definition in Advisory Opinion OC-6/86, according to which the expression “laws” does not mean any legal norm, but rather general normative acts passed by the constitutionally established and democratically elected legislature, under the procedures prescribed by the constitution, tied to the general welfare.

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84. The law must be “accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to understand what information may be withheld, what should be disclosed, and what actions concerning the information are subject to sanction.”2298 The national law should “define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label ‘secret’ for purposes of preventing disclosure of information which is in the public interest.” The laws should also set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret. Such laws should be subject to public debate.2299

85. States must therefore clearly and precisely define legitimate national security interests in their legislation. The definition should note that the concept of national security needs to be interpreted through a democratic lens. Exceptions must be regulated according to the principle of maximum disclosure, and they must be truly exceptional. Finally, when the exceptions are defined, they must be subject to specific terms and conditions in each case, so that the law makes clear that information cannot be withheld from the public domain indefinitely.

86. The Tshwane Principles are also a helpful guide for states to implement the necessary measures when it comes to protecting national security “in a manner consistent with a democratic society.”2300 Principle 9 presents a set of limited categories of information to which the authorities may temporarily restrict access, if strictly necessary to protect legitimate national security interests, and only if such restrictions comply with all the other Principles.2301 Legislation should also require the publication of categories of information which should be proactively disclosed, as well as those for which there is a strong presumption in favor of disclosure (See Principle 10 of the “Tshwane Principles”).

87. The need for a strict proportionality test means that no information can be excluded a priori from public scrutiny simply because it is held by or relates to a national security agency, or because it falls within a

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2301 Principle 9 states: “(a) Public authorities may restrict the public’s right of access to information on national security grounds, but only if such restrictions comply with all of the other provisions of these Principles, the information is held by a public authority, and the information falls within one of the following categories:

(i) Information about on-going defense plans, operations, and capabilities for the length of time that the information is of operational utility.

Note: The phrase “for the length of time that the information is of operational utility” is meant to require disclosure of information once the information no longer reveals anything that could be used by enemies to understand the State’s readiness, capacity, or plans.

(ii) Information about the production, capabilities, or use of weapons systems and other military systems, including communications systems.

Note: Such information includes technological data and inventions, and information about production, capabilities, or use. Information about budget lines concerning weapons and other military systems should be made available to the public. See Principles 10C(3) & 10F. It is good practice for states to maintain and publish a control list of weapons, as encouraged by the Arms Trade Treaty as to conventional weapons. It is also good practice to publish information about weapons, equipment, and troop numbers.

(iii) Information about specific measures to safeguard the territory of the State, critical infrastructure, or critical national institutions ([institutions essentielles]) against threats or use of force or sabotage, the effectiveness of which depend upon secrecy.

Note: “Critical infrastructure” refers to strategic resources, assets, and systems, whether physical or virtual, so vital to the State that destruction or incapacity of such resources, assets, or systems would have a debilitating impact on national security.

(iv) Information pertaining to, or derived from, the operations, sources, and methods of intelligence services, insofar as they concern national security matters; and;

(v) Information concerning national security matters that was supplied by a foreign state or inter-governmental body with an express expectation of confidentiality; and other diplomatic communications insofar as they concern national security matters.

Note: It is good practice for such expectations to be recorded in writing. Note: To the extent that particular information concerning terrorism, and counter-terrorism measures, is covered by one of the above categories, the public’s right of access to such information may be subject to restrictions on national security grounds in accordance with this and other provisions of the Principles. At the same time, some information concerning terrorism or counterterrorism measures may be of particularly high public interest: see e.g., Principles 10A, 10B, and 10H(1).”
certain category of information. 2302 In addition, states must ensure that any decision regarding classification can be reviewed by the supervisory bodies for the right of access to public information. The role of these technical bodies is key to controlling this type of information list and its implementation, as well as to ensuring the availability of suitable and effective judicial remedies so that those requesters who are denied access to information that they believe should be public can challenge the denial in court. 2303 The courts are called upon to play a fundamental role in guaranteeing the right of access to information and to exercise conventional and constitutional control over the rules that limit access to information.

88. Finally, it is important to ensure that laws regulating restrictions on the right of access to information are subject to public debate. In case of discrepancies or conflicts of law, the access to information law should prevail over all other legislation. 2304

**Legitimate aim, necessity, and proportionality**

89. The protection of national security is one of the legitimate aims for which Article 13(2) of the American Convention authorizes the limitation of the right of access to information as long as all requirements are met. Neither the Convention nor the Covenant on Civil and Political Rights defines the concept of national security. The IACHR has reiterated that this concept cannot be interpreted indiscriminately, but must be done from a democratic perspective, which, for example, can never allow for secrecy about serious human right violations such as torture or the forced disappearance of persons. 2305

90. The Commission has established that it would be unacceptable, for instance, to consider the protection of “national security” a legitimate state objective under the criteria of the so-called “national security doctrine,” which underpinned a repressive policy adopted by various authoritarian regimes in Latin America in the 1970s and 1980s. 2306 The IACHR has interpreted this concept restrictively, distinguishing it from matters strictly related to public order and public security, and rejecting its use to justify the criminalization of migration. 2307 In this regard, the Office of the Special Rapporteur emphasizes that when the concept of national security is used to limit the right of access to information, it must be interpreted in a manner consistent with the human rights obligations of states, 2308 and should not be based on an idea of national security that is incompatible with a democratic society. 2309


2307 For example, in the report “Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America” (2015), the Commission shared the view of the UN Special Rapporteur on the Human Rights of Migrants that “irregular entry or stay should never be considered criminal offences: they are not per se crimes against persons, property, or national security” [IACHR. Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America. OAS/Ser.L/V/IL.155 Doc. 16 July 24, 2015, paras. 61-62]. Also, in its report “Citizen Security and Human Rights” [2009], the Commission stressed the need for states in the region to enact domestic legislation that draws a clear distinction between national defense and public security functions [IACHR. Report on Citizen Security and Human Rights, OEA/Ser.L/V/IL. Doc. 57. December 31, 2009]. The Commission noted that “[w]ithin the region, it is sometimes suggested—or even carried out directly—that military troops take over internal security based on the argument that violence or criminal acts are on the rise,” and maintained that “arguments of this type ‘confuse the concepts of public security and national security, when there is no doubt that the level of ordinary crime, however high this may be, does not constitute a military threat to the sovereignty of the State’” [IACHR. December 4, 2017. Press Release 200-2017. IACHR Expresses Concern regarding Draft Law on Internal Security in Mexico].

2308 American Convention on Human Rights. Arts. 1, 2.

91. The Tshwane Principles define “legitimate national security interest” as “an interest the genuine purpose and primary impact of which is to protect national security, consistent with international and national law.” Thus, a national security interest will not be legitimate when, for example, its real objective or main effect is to prevent governments or officials from being exposed for wrongdoing or to conceal information about human rights violations.\textsuperscript{2310}

92. In addition to being provided for by law and serving a legitimate aim, limitations on the right of access to information must comply with the principles of necessity, suitability, and proportionality. Indeed, the limitation must be necessary in a democratic society to satisfy a compelling public interest. Among the options for accomplishing the compelling objective, the one least restrictive of the protected right should be chosen. The restriction must: (i) be conducive to the attainment of the objective; (ii) be proportionate to the interest that justifies it; and (iii) interfere to the least extent possible with the effective exercise of the right. With regard to the proportionality requirement, the IACHR has asserted that any restriction to access to information held by the State, in order to be compatible with the Convention, must overcome a three-part proportionality test.\textsuperscript{2311} Thus it has stated that the restriction: (a) must be related to a legitimate aim that justifies it; (b) must be demonstrated that the disclosure of the information effectively threatens to cause substantial harm to this legitimate aim; and (c) must be demonstrated that the harm to the objective is greater than the public’s interest in having the information.\textsuperscript{2312}

93. When public authorities resort to a restriction based on national security grounds, it is neither sufficient nor conclusive that they simply assert “that there is a risk of harm; the authority is under a duty to provide specific, substantive reasons to support its assertions.”\textsuperscript{2313} The burden of demonstrating the legitimacy of any restriction rests with the public authority seeking to withhold information.\textsuperscript{2314}

94. Therefore, when classifying information in practice, in order to lawfully limit access to certain information under an exception that has been provided for by law to protect national security under the requirements and conditions set out above, the authority in charge (i) must establish, justify, prove, and state that the information in question falls within the grounds provided for by law, i.e., it must be verified and determined that the information meets the legal definition of the rule that allows for the restriction; and (ii) must substantiate and demonstrate that disclosing the information poses a real and identifiable risk of significant harm to a legitimate national security interest and that this risk outweighs the public interest in its disclosure.\textsuperscript{2315}

95. The general guidelines on classification and declassification of information, as well as the preparation of public versions (hereinafter, “the General Guidelines for the Classification and Declassification of Information”), adopted by the National Council of Mexico’s National System of Transparency, Access to


\textsuperscript{2311} Which involves performing a so called “harm test.” For example, the general guidelines adopted in Mexico for the classification and declassification of information, as well as for the preparation of public versions, define the harm test and the public interest test in the following terms: “Harm test: The well-founded and reasoned argument that must be made by regulated entities in order to prove that the disclosure of information would harm a legally protected interest and that the harm that would be caused by releasing the information outweighs the interest served by its disclosure.” It also defines: “Public interest test: The arguments and reasoning of the supervisory bodies that, through a balancing exercise, prove that the benefit of disclosing the confidential information requested or sought outweighs the invasion of individual rights resulting from its disclosure.” See, Consejo Nacional del Sistema Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales de México. \textit{Lineamientos Generales en materia de Clasificación y Desclasificación de la Información}, así como para la Elaboración de Versiones Públicas [National Council of the National System for Transparency, Access to Information and Protection of Personal Data of Mexico. General Guidelines for the Classification and Declassification of Information, and for the Preparation of Public Versions]. ACUERDO CONAI/P/SNT/ACUERDO/EXT18/03/2016-03. Published on the Official Gazette of the Federation on April 15, 2016. Second provision.


Public Information, and Protection of Personal Data provide that, to apply the harm test, “[t]he relevant paragraph and, where appropriate, the applicable grounds under Article 113 of the Act must be cited, linking it to the specific guidelines of this law and, where appropriate, the legal basis for the confidential status of the information.” They additionally state that “[b]y weighing the conflicting interests, the regulated entities must demonstrate that disclosing the requested information would create a risk of harm, and they must prove that the risk exceeds the public interest protected by the restriction.”

96. According to these guidelines, the regulated entity “[m]ust prove the link between the disclosure of the information and the harm to the legally protected interest in question” and “[s]pecify the objective reasons why publicly releasing the information would cause harm, identifying a real, demonstrable, and identifiable risk.” In addition, “[i]n justifying the classification, the regulated entity must prove the circumstances of the time, place, and manner of the harm,” and “[s]hould choose the exception that is least restrictive to access to information, ensuring that it is suitable and proportionate to the protection of the public interest, and interfering as little as possible with the effective exercise of the right of access to information.”

97. Scholarly works in this area have noted that “harm” means a detrimental effect. For the release of certain information to be regarded as having caused harm, it must have led to an outcome that could reasonably be said to have undermined a legally protected interest. “Specificity” means the possibility of identifying the harmful effect or result so that, if the harm alleged as grounds for non-disclosure is very vague or ambiguous, the reasonable expectation of the harm test is not met. Likewise, the harm must be present or reasonably foreseeable in the immediate aftermath of the disclosure of the information. If the harm to national security does not coincide, then the nexus is lost and the claim is no longer reasonable.

98. When restrictions are imposed on the right of access to information, they should be subject to review or appeal to the supervisory body and the courts. As stated in the Tshwane Principles, in exercising judicial oversight the courts must be able to independently assess whether the public authority has properly invoked grounds to justify the limitation, the nature of any harm claimed by the public authority, its likelihood of occurrence, and the public interest in disclosure.

**Supremacy of the public interest**

99. According to the inter-American case law, “for the individual to be able to exercise democratic control, the State must guarantee access to the information of public interest that it holds. By permitting the exercise of this democratic control, the State encourages greater participation by the individual in the interests of society.” Some information may fall into the category of national security, but there is an overriding public interest in its disclosure. This could be the case, for instance, where sensitive military information exposing corruption in the armed forces must be made public. Although at first glance this

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Disclosure might appear to weaken national defense, it would in fact strengthen it by helping to combat corruption within the armed forces. 2321

100. The Office of the Special Rapporteur has acknowledged that the appropriate balance between the public interest in the disclosure of information and the protection of legitimate national security interests is not an easy task. 2322 For the purposes of protecting freedom of expression and the circulation of information in the public interest, the Court has considered the public interest to include “opinions and statements on matters of which society has a legitimate interest to be informed, in order to be aware of anything that bears on the performance of the State or impacts on general interests or rights, or of anything having significant consequences.” 2323

101. According to the Tshwane Principles, “information of public interest” refers to information “that is of concern or benefit to the public, not merely of individual interest and whose disclosure is ‘in the interest of the public,’ for instance, because it is useful for public understanding of government activities.” 2324 In seeking to determine whether the public interest in disclosure outweighs the risk of actual and identifiable harm to a legitimate national security interest, consideration should be given to whether “disclosure could reasonably be expected to (a) promote open discussion of public affairs, (b) enhance the government’s accountability, (c) contribute to positive and informed debate on important issues or matters of serious interest, (d) promote effective oversight of expenditure of public funds, (e) reveal the reasons for a government decision, (f) contribute to protection of the environment, (g) reveal threats to public health or safety, or (h) reveal, or help establish accountability for, violations of human rights or international humanitarian law.” 2325

Information about which there is a strong presumption or overriding public interest in favor of disclosure

102. Certain categories of information are of particular public interest because of their importance to the process of democratic oversight and the rule of law. As set out in the Tshwane Principles, the following categories of information should be disclosed proactively rather than classified for national security reasons; certain other categories are subject to a strong presumption in favor of disclosure.

i. Information on violations of human rights and international humanitarian law

103. There is no legitimate national security interest that justifies classifying information about serious human rights violations as confidential or secret. As the IACHR has pointed out in numerous cases involving serious human rights violations, “[i]n the framework of a criminal proceeding, especially when it involves the investigation and prosecution of illegal actions attributable to the security forces of the State, there is a possible conflict of interests between the need to protect official secret, on the one hand, and the obligations of the State to protect individual persons from the illegal acts committed by their public agents and to investigate, try, and punish those responsible for said acts, on the other hand. […] [P]ublic authorities cannot shield themselves behind the protective cloak of official secret to avoid or obstruct the investigation of illegal acts ascribed to the members of its own bodies.” 2326

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104. In its report on Access to Information on Human Rights Violations (2010), the Office of the Special Rapporteur emphasized that states cannot keep information about serious human rights violations secret. To do so would be inconsistent with their duty to guarantee human rights, as well as with the duty of prevention (art. 1 of the ACHR); the obligation to guarantee the right of access to information (art. 13 of the ACHR); the duty to investigate sua sponte, prosecute, punish and redress human rights violations in a serious, impartial, and effective manner (arts. 8 and 25 of the ACHR). Likewise, States must adapt their legal framework to guarantee the full and effective exercise of the right of access to information on serious human rights violations. Legislation must ensure that access to information is governed by the principles of maximum transparency and good faith (Article 2 ACHR).

105. The breach of these duties is incompatible with a democratic idea of national security, which can never condone the secrecy of serious human rights violations such as torture or the forced disappearance of persons, for example. In this regard, the Tshwane Principles (Principle 10. A. I) recall that “[T]here is an overriding public interest in disclosure of information regarding gross violations of human rights or serious violations of international humanitarian law, including crimes under international law, and systematic or widespread violations of the rights to personal liberty and security. Such information may not be withheld on national security grounds in any circumstances.”

106. In its report entitled The Right to the Truth in the Americas, the IACHR systematized the positive actions that the State should take when serious human rights violations have taken place or are taking place. State security sector agencies should: i) guarantee the right of victims, their relatives, and society as a whole to have direct and timely access to information about such violations under the principles governing the right of access to information; and ii) provide, on their own initiative, all information they possess about serious violations to the authorities in charge of investigating, prosecuting, and punishing those violations, and guarantee access to the information required by the respective authorities for those purposes. Public officials have a duty to report human rights violations of which they become aware in the course of or in connection with the performance of their duties. State authorities also have an obligation to help gather evidence in furtherance of the aims of an investigation and to refrain from acts that would obstruct the investigative process. Due diligence in the investigation means that all state authorities have an obligation to cooperate in the collection of evidence, providing the judge, prosecutor, or other judicial authority with all the information they need, and refraining from acts that obstruct the investigation.

107. The Commission has also stated that in transitional contexts “the State’s positive obligations in guaranteeing the right of access are heightened.” In a process of transitional justice during which the State is especially required to ensure truth, justice, reparation, and guarantees of non-recurrence, there is an overriding public interest in disclosure to society as a whole of information regarding human rights violations committed under the past regime, including for example, information related to acts of

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violence and rape committed in these contexts. The State must protect and preserve the integrity of all records containing information on such violations. 2333

108. More recently, the Inter-American Juridical Committee adopted the Proposed Model Inter-American Law 2.0 on Access to Public Information, which also recommends that the OAS member states establish that “Information related to violations of human rights is subject to a high presumption of disclosure; in no case may it be classified by invoking reasons of national security (Article 27.4).” 2334

109. The Plenary Chamber of the Colombian Constitutional Court specified that the inapplicability of limitations on access to information with respect to the Commission for the Clarification of the Truth (CEV) extends to all types of information necessary to fulfill its objectives, mandate, and functions, and not only to information on human rights violations and breaches of international humanitarian law. 2335 The Court held that “In transitional settings, the extrajudicial bodies responsible for the official investigation of the truth and the reconstruction of memory must have full and direct access to all public information, regardless of its content or whether it can be restricted or classified, as long as it is necessary to accomplish their objectives, mandate, or functions. This access is intrinsically related to guaranteeing the right of the victims and society to know the truth, without prejudice to the appropriate protection of the rights of the victims.”

110. The case law of the Inter-American Court has also upheld this position; in the judgment handed down in Myrna Mack Chang v. Guatemala (2003), the Court held that “in cases of human rights violations, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding.” 2336 Similarly, it has established that State authorities cannot legitimately rely on mechanisms such as State secrecy or confidentiality of information, or on reasons of public interest or national security, to avoid providing the information required by the judicial or administrative authorities in charge of pending investigations or prosecution. 2337

111. Similarly, in Gomes Lund et al. v. Brazil, the Inter-American Court reaffirmed the obligation to satisfy the right of victims of serious human rights violations and their families—and of society as a whole—to know

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2334 OAS, Inter-American Juridical Committee, Proposal on an Inter-American Model Law 2.0 on Access to Public Information. 96th Regular Session, OEA/Ser.Q 2 – March 6, 2020; CIJ/doc.607/20.

2335 Constitutional Court of Colombia. Judgment C-017/18 of March 21, 2018; Constitutional Court of Colombia. PRESS RELEASE No. 11, March 21, 2018; Upon a comprehensive review of Decree Law 588 of 2017 requested by the Commission for the Clarification of Truth, Coexistence, and Non-Repetition, the Constitutional Court declared Article 16 of Decree Law 588 of 2017 constitutional, except: “(i) The phrase “[u]nder Article 21 of the Statutory Law on Transparency and the Right of Access to Public Information, Law 1712 of 2014, restrictions on access to public information are unconstitutional in the case of human rights violations or breaches of international humanitarian law,” contained in paragraph 1, which is declared conditionally constitutional, with the understanding that this unenforceability as it relates to the CEV extends to all types of information, and not only to information about human rights violations and breaches of IHL.

(ii) The phrase “any restriction,” contained in paragraph 1, which is declared conditionally constitutional, with the understanding that it refers to information that is restricted, classified, or derived from any other type of limitation on its access.

(iii) The phrase “[i]n the case of information contained in intelligence and counter-intelligence documents, the legal confidentiality, security, and protection of the information must be guaranteed prior to access, in writing, with the specification that it cannot be reproduced mechanically or electronically,” contained in paragraph 2, which is declared conditionally constitutional, with the understanding that this information cannot pertain to human rights violations, breaches of IHL, or crimes against humanity, in relation to which no limitation is permitted.”


the truth, based on the right of access to justice and access to information.\textsuperscript{2338} The lack of access to information about the fate of a forcibly disappeared person, for example, implies "[t]he continued denial of the truth [which constitutes] a form of cruel, inhuman and degrading treatment for the close family".\textsuperscript{2339} It also reiterated the right of the victims of serious human rights violations and their relatives to have direct and timely access to information about those events.\textsuperscript{2340}

112. Furthermore, the Inter-American Court is of the opinion that, "the State cannot seek protection in arguing the lack of existence of the requested documents; rather, to the contrary, it must establish the reason for denying the provision of said information, demonstrating that it has adopted all the measures under its power to prove that, in effect, the information sought did not exist."\textsuperscript{2341} In this regard, "[i]t is essential that, in order to guarantee the right to information, the public powers act in good faith and diligently carry out the necessary actions to assure the effectiveness of this right, particularly when it deals with the right to the truth of what occurred in cases of gross violations of human rights such as those of enforced disappearances [and extrajudicial execution]."\textsuperscript{2342}

113. The IACHR has also found that "knowledge of the circumstances of manner, time and place, motives and the identification of the perpetrators are fundamental to making full reparation to victims of human rights violations."\textsuperscript{2343}

114. This information should include, among other things:

"(i) the conduct of those who have been involved in committing serious violations of human rights or international humanitarian law, especially in the case of mass or systematic violations; (ii) the objective and subjective elements that helped create the conditions and circumstances in which atrocious conduct was perpetrated, and to identify the legal and factual factors that gave rise to the appearance and persistence of impunity; (iii) [evidence] for determining whether the State mechanisms served as a context for punishable conduct; (iv) [the identification of] the victims and the groups they belong to as well as those who have participated in acts victimizing others; and (v) [an understanding of] the impact of impunity."\textsuperscript{2344}

115. In view of the above, the IACHR has said that it is imperative for the State to provide the necessary measures to, among other things: ensure that the competent authorities responsible for the investigation of the facts have the power to access the relevant documentation and information to do so; ensure that all state authorities provide the judge, prosecutor, or other judicial authority with all the information required and refrain from acts that would obstruct the progress of the investigation; and ensure that justice authorities and society have public, technical, and systematized access to archives containing useful and relevant information for the investigation of cases involving human rights violations.\textsuperscript{2345}


116. As reaffirmed in the Tshwane Principles, access to information on human rights violations includes the right to know "[t]he identities of all victims, so long as consistent with the privacy and other rights of the victims, their relatives, and witnesses; and aggregate and otherwise anonymous data concerning their number and characteristics that could be relevant in safeguarding human rights." In this regard, the Principles specify that: i) "[t]he names and other personal data of victims, their relatives and witnesses may be withheld from disclosure to the general public to the extent necessary to prevent further harm to them, if the persons concerned or, in the case of deceased persons, their family members, expressly and voluntarily request withholding, or withholding is otherwise manifestly consistent with the person's own wishes or the particular needs of vulnerable groups"; ii) "[c]oncerning victims of sexual violence, their express consent to disclosure of their names and other personal data should be required. Child victims (under age 18) should not be identified to the general public"; and iii) "[t]his Principle should be interpreted, however, bearing in mind the reality that various governments have, at various times, shielded human rights violations from public view by invoking the right to privacy, including of the very individuals whose rights are being or have been grossly violated, without regard to the true wishes of the affected individuals. These caveats, however, should not preclude publication of aggregate or otherwise anonymous data".

ii. Información sobre vigilancia estatal

117. When the State takes initiatives to guarantee national security and prevent or counteract other threats, it must ensure that individuals are, at a minimum, adequately informed about the legal framework for surveillance and its purpose, as well as the regulatory framework of surveillance programs; the procedures to be followed for authorization, the selection of targets and the use or handling of data; the protocols for the sharing, storage and destruction of intercepted material, as well as the entities authorized to carry out surveillance actions and statistics on the use of these actions, and the bodies responsible for implementing and monitoring such programs.2346

118. While the protection of national security may justify the use of surveillance in private communications, it must be subject to a series of requirements and guarantees, applied in a strictly proportional and necessary manner. In the digital age, surveillance can be a particularly invasive act, seriously affecting the right to privacy, freedom of thought and expression, and the procedural rights of individuals who have been or believe themselves to be targeted for surveillance, as well as journalists, human rights defenders, and whistleblowers, as the OAS and UN Rapporteurs on Freedom of Opinion and Expression have been saying since 2013.2347

119. The Tshwane Principles propose that States guarantee certain minimum standards of transparency about this increasingly invasive and widespread activity in the digital age. Therefore, States must ensure that people are informed about: i) the laws governing all forms of surveillance, both covert and overt, including indirect surveillance such as profiling and data-mining; ii) the permissible objectives of surveillance; (iii) the threshold of suspicion required to initiate or continue surveillance, as well as the procedures for authorizing and reviewing the use of such measures; iii) the types of personal data that may be collected and/or processed for national security purposes and the criteria that apply to the use, retention, deletion, and transfer of these data; and iv) the entities authorized to conduct surveillance, and statistics about the use of such surveillance.2348 The State must ensure that society is informed of all unlawful surveillance.2349

120. States should, at the very least, publicly disclose information about the regulatory framework of surveillance programs; the entities in charge of their implementation and oversight; the procedures for

authorizing, choosing targets, and using the data collected; and the use of these techniques, including aggregate information on their scope. The State must ensure program transparency and accountability and should allow service providers to provide aggregate data on the number and scope of device access requests they receive.2350

121. The growing role of the private sector in the surveillance activities of state security agencies must also be taken into consideration. The International Principles on the Application of Human Rights to Communications Surveillance call for the State to publish “aggregate information on the specific number of requests approved and rejected, a disaggregation of the requests by service provider and by investigation authority, type, and purpose, and the specific number of individuals affected by each,”2351 and note that states should not interfere with service providers in their efforts to publish their procedures for assessing and complying with state requests, as well as other statistical information. 2352

iii. Information related to corrupt acts or the management of public resources

122. A national security interest cannot legitimately be invoked when its objective or indirect effect is to protect or conceal alleged wrongdoing or violations of law, or the improper functioning of public institutions.2353 These cannot be understood as legitimate objectives to limit the right of access to information under Article 13(2) of the American Convention, nor in keeping with the obligations of the State under other instruments such as the United Nations Convention against Corruption and the Inter-American Convention against Corruption.

123. The Inter-American Court of Human Rights has emphasized that the full and effective enjoyment of the right of access to public information is essential to guarantee public oversight. This serves to prevent abuses in the exercise of public functions, to promote accountability and transparency in government, and ultimately, to provide guarantees against government abuses and corruption.2354

124. In Resolution 1/18, the Inter-American Commission on Human Rights emphasized that corruption is a complex phenomenon that affects human rights in their entirety—civil, political, economic, social, cultural and environmental—as well as the right to development; weakens governance and democratic institutions, promotes impunity, undermines the rule of law and exacerbatess inequality. The IACHR underscored that the right to access to public information and the principle of transparency of state management, protected by Article 13 of the Convention, have been recognized as one of the main tools in the fight against corruption.2355

125. The Office of the Special Rapporteur notes that Article 115 of Mexico's Transparency and Access to Public Information Act expressly provides that the confidentiality of information may not be invoked when “it is information related to acts of corruption in accordance with the applicable laws.”2356 This provision was enforced in court to establish that the information requested by a citizen regarding the acquisition and characteristics of the Pegasus software should be made public.2357 The judgment held “that there is evidence

2355 IACHR, Resolution 1/18, Corruption and Human Rights, March 2, 2018.
to suggest acts of corruption because we can establish *prima facie* that the Pegasus software was not primarily used to safeguard 'national security' but was also used as a political weapon against journalists, politicians, and ordinary citizens, i.e., a diversion of power in the State's actions.”

126. In addition, in order to guarantee the right of access to information of public interest related to national security, and to enable broad and effective citizen oversight of budgetary matters, states must proactively disclose information that allows for clear, complete, and timely knowledge of how security sector finances are managed, as well as the rules governing it.  

*The limitation must have a deadline and be subject to conditions*

127. A critical guarantee to prevent the abuse of restrictions on access to information for national security purposes is to ensure that they are temporary, lasting only as long the release of such information may pose a real threat and the conditions for classification remain in place. Any limitations that are imposed must be for a reasonable period of time, after which the public will have the right to know the respective information.  

The determination of the classification should specify the date and the conditions or events under which the information will be declassified. As suggested by the rapporteurs from all of the protection systems in 2004, the laws governing secrecy should “set overall limits on the length of time documents may remain secret.”

128. Consequently, and as reaffirmed in the Tshwane Principles, i) information may be withheld on national security grounds for only as long as necessary to protect a legitimate national security interest; ii) the decision not to disclose certain information should be reviewed periodically and it is good practice for the review to be required by law; iii) no information may remain classified indefinitely, and the presumptive maximum period of classification on national security grounds should be established by law; and iv) information may be withheld beyond the presumptive deadline only in exceptional circumstances, pursuant to a new decision to withhold, made by another decision-maker, and setting an amended deadline.

*Severability of Information and Partial Disclosure*

129. Based on the principle of maximum disclosure, when a record contains both exempt and non-exempt information, the exceptions to disclosure apply only to the specific information protected by the exception rather than to the entire document. In this case, the specific information can only be withheld when it has been proven that the restriction is valid for each section whose disclosure is sought to be prevented.

130. Several access to public information laws in the region have expressly incorporated this principle. Article 21 of Colombia’s Access Law states that “[i]n those circumstances where not all the information contained in a document is protected by an exception under this law, a public version must be made which

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preserves the confidentiality of only the essential part.” The Colombian Constitutional Court has ruled that “[t]his provision orders the creation of public versions of documents in which those sections not protected by constitutional or legal exceptions or restrictions can be made public, thus guaranteeing the principle of maximum disclosure (...) In these public versions, only the essential part must be kept secret, and public versions must be provided to anyone who requests them.”

In the case of Mexico, the “General guidelines for the classification and declassification of information, and for the preparation of public versions” indicate that when a document or file containing classified parts or sections is requested, the agency in possession of the information must prepare a public version, “stating the reasons for the classification of the parts or sections to be redacted, following established procedures.”

**States of emergency**

In its report “Terrorism and Human Rights”, the Inter-American Commission held that in lawfully declared emergency situations should take into account the importance of freedom of expression for the functioning of democracy and guaranteeing other fundamental rights when considering suspending any guarantees under Article 13 of the Convention. As the Commission stated, any restrictions on freedom of expression during an emergency situation must conform to the requirements of proportionality, scope, and non-discrimination set forth in Article 27 of the American Convention, and states must bear in mind the importance of freedom of expression in guaranteeing other fundamental human rights in emergency contexts.

The Office of the Special Rapporteur is of the opinion that access to certain categories of information in which there is a compelling public interest or about which there is a strong presumption in favor of disclosure, should be upheld even in such emergency situations. In its recent Resolution 1/20 on the global Covid-19 health emergency, the IACHR recommended that states “[e]nsure the right to access public information in the framework of the emergency caused by COVID-19, and not set general limits based on reasons of security or public order.”

In turn, Principle 8 of the Tshwane Principles states that: “[I]n a time of public emergency which threatens the life of the nation and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a State may derogate from its obligations regarding the right to seek, receive, and impart information only to the extent strictly required by the exigencies of the situation and only when and for so long as the derogation is consistent with the State’s other obligations under international law, and does not involve discrimination of any kind.” Certain aspects of the right to seek, receive, and impart information and ideas are fundamental to the enjoyment of non-derogable rights, and should therefore be fully respected even in times of public emergency.

**B) State obligations related to the right of access to public information**

States should take a series of measures to ensure access to information of public interest related to national security. The duty to guarantee the right of access to public information imposes an obligation on the

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2367 Constitutional Court of Colombia, Judgment C-274/13 of May 9, 2013.
State to include a suitable and effective remedy in its legal system that can be used by all persons to request information from all public bodies.

136. The Inter-American Court of Human Rights has highlighted “the obligation to guarantee the effectiveness of an appropriate procedure for the processing and resolution of the requests for information, that sets the dates for the resolution and presentation of information, and that this is done under the responsibility of officials that are duly qualified”. Moreover, “It is essential that, in order to guarantee the right to information, the public powers act in good faith and diligently carry out the necessary actions to assure the effectiveness of this right (...)”.

137. This means, among other things, ensuring that the formal requirements are minimal and that, adhering to the concept of “informalism” and the guiding principles of maximum disclosure and good faith, the authorities process requests for information in a way that ensures that the requester’s lack of technical knowledge about the categories of information held by the entity or its various divisions, or even about internal nomenclatures, does not become a de facto barrier to access to information.

138. Similarly, the Office of the Special Rapporteur notes, as an example, that Paraguay’s Access to Public Information Act provides that “Requests for access to information that are defective or submitted to a public source that lacks the necessary authority may not be rejected or shelved on those grounds.” Further progress can be seen in Article 1 of Argentina’s Access to Public Information Act, which, among others, provides for the principle in dubio pro petitor and states that “The provisions of this law or any regulation of the right of access to information must, in case of doubt, always be interpreted in favor of the broadest validity and scope of the right to information.”

139. As the Office of the Special Rapporteur has emphasized, the remedy provided by the State must establish an obligation to the effect that, if a request is denied, the denial must be well-founded and subject to appeal before a higher or autonomous body. Requesters must also have the option of subsequently challenging the denial in court.

140. In the context of national security interests, the authorities must process requests for information even if the information is classified and provide a well-founded response, stating the reasons invoked to restrict disclosure in the specific case. It is good practice to place the burden on officials to provide a reasoned response within the legal timeframe. This duty can be established, for example, by enacting provisions that grant approval by default or constructive approval in the absence of a response and provide that the failure to respond creates a presumption that the information should be disclosed.

141. The information that is ultimately released to the requesters must be complete and understandable, in an accessible and up-to-date language. In order to guarantee the universality of the right of access to information, States must adopt the necessary measures and provide reasonable accommodations to ensure that the information is genuinely accessible to persons with disabilities, and must meet any requirements that may arise from a community’s linguistic diversity.

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2376 See: UN. Convention on the Rights of Persons with Disabilities. Adopted in December 2006. Article 2 of the Convention provides: (...) “Discrimination on the basis of disability’ means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”; “Reasonable accommodation’ means necessary and appropriate modification and adjustments
Preventing over-classification of national security information and promoting declassification

142. The classification of information by the State is a critical issue in a democratic society. The rules on classification and declassification must be made public and the information relating to classification decisions must be publicly available.\textsuperscript{2378} Access to information laws should require regulated entities to inform the relevant supervisory bodies when information has been classified, as well as the periodic proactive publication of lists of classified information. The above, so that it is clear what information has been withheld, for what period of time, and on what basis, identifying the specific harm that could result from disclosure.

143. It is therefore essential that states develop a formal system for classifying information,\textsuperscript{2379} as well as procedures for the declassification of records, including the consolidation and periodic updating of guidelines on the declassification of information.\textsuperscript{2380} In this regard, the Tshwane Principles recommend that laws provide for the automatic declassification of different categories of classified information and a public and accessible procedure for requesting the declassification of documents.\textsuperscript{2381} Additionally, “[d]eclassified documents, including those declassified by courts, tribunals or other oversight, ombuds, or appeal bodies, should be proactively disclosed or otherwise made publicly accessible.”\textsuperscript{2382}

144. States should promote a culture of transparency and implement programs to make citizens aware of the scope and purpose of the right of access to information and how to exercise it.\textsuperscript{2383} In carrying out these actions, they should adequately address the various forms of discrimination that can affect the full and effective enjoyment of the right of access to information for certain groups in society.

Obligation to provide an appropriate and effective judicial remedy for the review of denials of information

145. While the inter-American system has recommended that states establish independent oversight bodies for access to information laws, including with the power to render final determinations, it is clear that such remedies are not always sufficient to provide guarantees to citizens. When it comes to national security exceptions in particular, the Office of the Special Rapporteur has documented that security agencies often resist the release of information through administrative and judicial remedies, fail to comply with administrative decisions or assert defenses that are not always in line with the principles of access to information.

146. Therefore, the IACHR and its Office of the Special Rapporteur have insisted that the courts must always be open to reviewing denials of access to information. The States “States should enshrine the right to administrative review and subsequent judicial review of administrative decisions through a recourse that is simple, effective, quick, and non-onerous, that allows the challenging of decisions of public officials that deny the right of access to specific information or simply neglect to answer the request. Together with that, the remedy should: i) review the merits of the controversy to determine whether the right of access was

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\textsuperscript{2378} See, e.g.: OAS. American Declaration on the Rights of Indigenous Peoples. AG/RES. 2888 (XLVI-I). Adopted on June 14, 2016.


inhibited, and ii) in the affirmative case, order the corresponding government body to turn over the information. In these cases, the recourses should be simple and quick, since the expeditious delivery of the information is indispensable for the fulfillment of the functions this right presupposes.”

147. The Inter-American Court of Human Rights has noted that the formal existence of judicial remedies is not enough; they must also be adequate and effective, which means that they must be suitable for protecting the legal status that has been infringed and capable of producing the outcome for which they were designed. Moreover, judicial authorities must be able to access the information in camera or through on-site visits in order to determine whether the arguments of other state agencies to limit access to the information are legitimate, or to verify the alleged non-existence of information.

148. The Tshwane Principles stipulate the general principle of judicial review. In view of this principle, states must ensure that the courts have “the power to examine the information” that the public authority intends to classify in order to determine whether it should be classified. The Principles also state that “the fact of classification should not be conclusive as to the request for non-disclosure of information.” In other words, “[s]hould independently assess whether the public authority has properly invoked any basis for non-disclosure.” Accordingly, the court “should assess the nature of any harm claimed by the public authority, its likelihood of occurrence, and the public interest in disclosure.”

Obligation of active transparency

149. The proactive disclosure of information by national security agencies is something that states should consider, especially for certain categories of information in which there is an overriding public interest or a strong presumption in favor of disclosure. In fact, the Inter-American Model Law includes a list of “classes of key information” that should, at a minimum, be published on a regular and proactive basis.

150. The right of access to public information requires the State to proactively disseminate information about its functions, activities, and management of public resources on a routine basis—even when there is no request for access to public information—ensuring that the information is accessible, comprehensible, and up to date. The IACHR has reiterated that “given that significant segments of the population do not have access to new technologies yet many of their rights can depend on obtaining information on how to realize them, in these circumstances the State must find efficient ways to fulfill its obligation of active transparency.”

151. As for security sector agencies, the proactive disclosure of information should not be limited to making minimal aspects of the agency’s operation transparent. They should ensure the disclosure of any information that may be needed to allow the public to be informed about the State’s national security activities and to evaluate public policy in this area. In this regard, for example, Argentina’s Access to Public Information Act, when specifying the grounds for withholding information, states that “in no case” shall the withholding “extend to information necessary to assess the definition of the nation’s security, defense, and foreign relations policies; nor to that information whose disclosure does not pose a real and identifiable risk of significant harm to a legitimate interest linked to those policies.” Similarly, Mexico’s Transparency and Access to Public Information Act states that “[t]he information published in line with transparency policies

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must allow for the creation of useful public knowledge in order to reduce information asymmetries, improve access to procedures and services, and streamline decision making by authorities or citizens; it must also have a clear purpose focused on the needs of specific or identifiable sectors of society.”

It further provides that “[i]nformation on transparency obligations should be published with a gender and disability perspective, where appropriate,” and that “efforts will be made to make the published information accessible specifically to people who speak an indigenous language.”

152. Finally, thanks to the availability of data processing, the States of the region have been adopting standards for the informal publication of open data. Thus, for example, the Argentine law provides that regulated entities “must facilitate the search for and access to public information through their official website (...) seeking to remove any barriers that hinder or make it difficult for third parties to reuse it.” In Uruguay, Law No. 19.355 makes it mandatory for public entities to publish in an open format the information they are required to disclose proactively under the law on the right of access to public information (Article 5 of Law No. 18.381).

Obligation to produce or capture information

153. In addition, the State has the obligation to produce or capture the information it needs to perform its duties, as established by international, constitutional, or legal norms. In implementing this obligation, the State should take into account that: (i) several human rights instruments impose specific obligations to generate certain information; (ii) the production of quality information, that is, information produced in a rigorous, standardized, complete, updated, and properly disaggregated manner, is a fundamental aspect of ensuring adequate monitoring of compliance with human rights treaties by the bodies that have such a mandate; (iii) it is essential to guarantee the availability of quality public information so that the State can establish public policies and other measures necessary to fully and effectively guarantee human rights on accurate grounds.

154. Under the inter-American standards, the object of the right of access to public information “covers information that is in the care of, possession of, or being administered by the State; the information that the State produces, or the information that it is obliged to produce; the information that is under the control of those who administer public services and funds and pertains to those specific services or funds; and the information that the State collects and that it is obligated to collect in the performance of its functions.”

155. It is imperative that the State produce or capture all necessary information on human rights violations and breaches of international humanitarian law that have taken place or are taking place, as well as information that may be appropriate for the prevention and investigation of such violations and, as stated above, ensure its timely disclosure. The State must also produce information that allows the public to know how security sector agencies are complying with active transparency obligations, what information


they are classifying for national security reasons, and, in general, statistical and other information that informs the public about the application of national security exceptions.

156. Among the information that the State must produce, capture and/or collect, the relevance of these obligations with respect to gender-based violence stands out. Certainly, the IACHR has recommended States in the region to improve documentation and collection of qualitative and quantitative data on the causes, consequences, and frequency of gender-based violence experienced by women, particularly those who were victims of armed conflict or who are currently being targeted because of their positions or public profile. These obligations are also in line with Indicator 16.10.1. of Target 16.10 of the Sustainable Development Goals, which requires states to provide sex-disaggregated data on the number of verified cases of murder, abduction, enforced disappearance, arbitrary detention, and torture of women journalists, human rights defenders, and activists.2397

157. Recently, some legislation has sought to avoid de facto abuse through the non-production or supposed non-existence of information. The Office of the Special Rapporteur cites Article 138 of Mexico’s Transparency and Access to Public Information Act, which provides that, when information is said not to be in the regulated entity’s files, the Transparency Committee: i) will examine the case and take the necessary steps to locate the information; ii) will issue a finding confirming the non-existence of the document; iii) will order, whenever physically possible, that the information be generated or restored in case it should exist, to the extent that it is derived from the exercise of [the regulated entity’s] powers, responsibilities, or duties, or, after verifying the impossibility of generating the information, that a well-founded and reasoned explanation be provided of the reasons why in the particular case [the regulated entity] failed to exercise such powers, responsibilities, or duties, notifying the requester through the Transparency Unit; and IV. Will notify the internal oversight body or equivalent unit of the regulated entity, which, if appropriate, must open the respective administrative liability proceedings.”

Obligation to adapt the domestic legal system

158. Finally, the State has the obligation to bring its domestic legal system into line with international standards on access to information. To that end, and in relation to the duty to guarantee the right of access to information and adopt domestic legal provisions, the State must: i) implement an adequate legal framework for purposes of guaranteeing the right of access to information; ii) remove legal or administrative obstacles that impede access to information; iii) promote the right of access within all of the State’s entities and authorities; and iv) in general terms, adopt public policy that is favorable to the full exercise of this right.2398

159. This obligation is particularly important in relation to the harmonization of laws on access to public information and rules protecting national security interests. As documented in this report, national security, intelligence, and defense regulations were enacted before any access laws existed; and in other cases, security laws do not consider the transparency obligations derived from the right of access to information, nor are they passed with the broad participation of organizations and experts on access to information.

160. More recently, the Inter-American Juridical Committee adopted the Proposed Model Inter-American Law 2.0 on Access to Public Information, which recommends that the OAS member states establish an exhaustive list of information that may be withheld for national defense or security reasons and that falls into one of the following categories:

Information on ongoing defense plans, operations and issues of capacity during the period in which the information has operational utility;

Information on the production, capacities or use of weapons systems and other military systems, including communications systems;

Information on specific measures intended to safeguard the State’s territory, critical infrastructure or fundamental national institutions (institutions essentielles) against threats, use of force or sabotage, the effectiveness of which depends on restricting its disclosure;

Information intrinsic to or derived from intelligence services’ operations, sources and methods, provided they concern matters related to national security;

Information related to matters of national security provided by a foreign state or intergovernmental agency with an express expectation of confidentiality and other diplomatic communications to the extent that they involve matters related to national security;

It is considered good practice for national legislation to establish an exclusive list of limited categories of information, such as the above.\[2399\]

Chapter IV – OTHER MECHANISMS TO GUARANTEE THE RIGHT TO INFORMATION OF PUBLIC INTEREST RELATED TO NATIONAL SECURITY

161. The right of access to information is vital for the exercise of citizen oversight of government activities and of particular importance to asserting “society’s right to know.” Although this guarantee is indispensable, the freedom to seek, receive, and impart information also protects other tools such as investigative journalism, confidential sources, and the role of whistleblowers. In the words of the United Nations Rapporteur on Freedom of Opinion and Expression, “[a] common thread ties together the right of access to information, the protection of sources of information and the protection of whistle-blowers.”\[2400\]

162. This set of guarantees, in addition to forming part of the freedoms that are the cornerstone of democratic society, makes it possible for the exercise of freedom of expression, the practice of investigative journalism, and government accountability.

A) Investigative journalism, access to information, and national security

163. An increasing number of journalists in the region are using access to public information laws as a tool for investigating and reporting on state activities in the area of national security and on the management of public resources by security sector agencies.\[2401\] The use of access to information laws has also made it

\[2399\] OAS. Inter-American Juridical Committee, Proposal on an Inter-American Model Law 2.0 on Access to Public Information. 96th Regular Session, OEA/Ser. Q 2 – March 6, 2020; CJII/ doc.607/20.


possible to obtain the release of information of public interest about state activities carried out in the name of national security.  

164. At the same time, investigative journalism has been strengthened by the possibilities of data processing offered by new technologies, which have contributed significantly to providing information and analysis on issues of public interest and to reducing information asymmetry. Hence, access to information held by public authorities becomes a critical point in guaranteeing society’s right to be informed. The Office of the Special Rapporteur has sought to support national and regional initiatives to promote the use of access to public information laws, open data, and the development of data journalism to help ensure the public’s right to know.

165. In 2006, following a FOIA lawsuit filed by the Associated Press, the Pentagon published the names and nationalities of 558 Guantanamo detainees for the first time. The case of New York Times Co. v. United States (1971), which arose from the publication of a classified report on U.S. involvement in the Vietnam War, and revelations about mass communications surveillance programs that came to light in 2013, are two other landmark cases that exemplify the extent to which the press has worked to ensure the public’s right to know.

166. In Brazil, through requests for access to public information and the construction of databases, a group of journalists found patterns to identify police officers linked to dozens of deaths in the State of Rio de Janeiro. Thanks to this reporting, the Public Prosecutor’s Office decided to investigate the 20 military police officers involved in 10% of all confrontations that resulted in people being killed in the last five years, many of whom showed signs of having been executed. In 2012 the organization Conectas used the access to information law to publish a document from the UN Subcommittee on Prevention of Torture that identified torture practices. In addition, the access to information law and other sources allowed the Fórum

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2403 IACHR. Office of the Special Rapporteur for Freedom of Expression. October 30, 2018. Relatoría Especial anuncia ganadores del concurso “Acceso a la Información Pública y Periodismo de Investigación” y destaca utilización del acceso a la información por parte del periodismo [Special Rapporteur announces winners of “Access to Public Information and Investigative Journalism” contest and highlights use of access to information by journalists].


2405 IACHR, Report on Terrorism and Human Rights


In the case of Colombia, journalists have played a fundamental role in guaranteeing the right of society as a whole to know about unlawful practices and expose spying against opposition politicians, judges, and journalists, as well as other human rights violations committed by security sector agencies. In 2008, journalist Juan Esteban Mejía of Semana requested information on the circumstances in which ten people identified by the Army as members of illegal armed groups were killed. Before the cases known as “false positives”—that is, the systematic extrajudicial executions of thousands of civilians—became public, it was the press and civil society organizations that reconstructed the stories, demonstrating “that the military was killing peasants and passing them off as guerrillas killed in combat.” In the investigation of these events, the journalist made a request for information from the Army, which was denied on national security grounds. The court that ultimately decided the case found that the National Army had failed to explain how national security could be jeopardized by the release of the information, having merely stated that it was a confidential matter. The court further held that there was no evidence of any national security concerns because the matter concerned a past event.

In February 2009, Semana magazine announced that the now defunct Administrative Department of Security (DAS) had intercepted the telephone communications of a large number of public figures, including members of the executive, legislative, and judicial branches, members of political parties, human rights defenders, and journalists, among others. Initiatives by Radio Nizkor, the Consejo de Redacción [Editorial Board] network, and projects such as Rutas del Conflicto, and others undertaken by journalists and the media, have facilitated public access to information collected by judicial bodies, as well as journalistic investigations and academic research on the war in Colombia. In 2018, Semana was awarded the “Access to Public Information and Investigative Journalism” prize for an investigation based on informants, interviews, and requests for access to information, which revealed a web of corruption in the Colombian Armed Forces. The investigation documented the embezzlement of funds earmarked for classified operations, which were used for the personal expenses of senior officials and for the illegal purchase of surveillance equipment intended...
for spying on political and social leaders and public figures who were perceived by some military leaders as enemies.\textsuperscript{2416}

169. The access to information law has also been used by journalists and organizations to investigate and expose violence and impunity for violence against journalists in the country.\textsuperscript{2417} For instance, after the 2018 kidnapping and murder of Paúl Rivas, Javier Ortega, and Efraín Segarra, journalists from the Ecuadorian newspaper \textit{El Comercio}, a petition drafted by FLIP and signed by 178 people asked the Ministry of Defense for access to a body of information related to their case. According to FLIP, although the Transparency and Access to Public Information Act establishes that information related to human rights violations may not be withheld, the Ministry failed to provide complete information. In response, FLIP filed a writ for the protection of constitutional rights [\textit{tutela}], which was denied in the first instance and partially granted on appeal, giving the organization access to additional information that the Ministry had initially refused to disclose.\textsuperscript{2418}

170. In Mexico, according to statistical data processed by the National Institute for Transparency, Access to Information and Data Protection (INAI), between 2003 and September 2018, regulated federal entities received 1,703,333 requests for access to public information.\textsuperscript{2419} During the October 2017 - September 2018 period, 0.7% of the requests for public information and personal data received were related to national security.\textsuperscript{2420} Furthermore, according to information systematized by the organization Article 19 in Mexico for 2003-2015, “the responses of the security and justice authorities are challenged before INAI three times more often than those of the other entities subject to the laws on transparency and access to information.” According to the organization, “[t]his is because the aforementioned authorities tend to withhold more information and deny a greater number of requests than other authorities. In 15.13% of all requests, security and justice authorities stated that the requested information did not exist, and in 13.54% of cases they refused to provide the information on the grounds that it was restricted or confidential.”\textsuperscript{2421}

171. In 2017, the Second Chamber of the Mexican Supreme Court ordered INAI to instruct the Office of the Attorney General of the Republic to hand over the names of the victims in each of the previous investigations into cases of the forced disappearance of persons linked to social and political movements in the 1970s and 1980s, rejecting the idea that access to such information could be restricted on the grounds of personal data protection.\textsuperscript{2422}

\section*{B) Protection of journalistic sources related to national security}


\textsuperscript{2417} See, e.g.: Claudia Julieta Duque & Marvin David Del Cid. \textit{El silenciamiento de los periodistas y la estruendosa impunidad en Colombia} [The Silencing of Journalists and Rampant Impunity in Colombia]. Special report for the International Federation of Journalists and its subsidiary FSC-CCOO, Equipo Nizkor, Bogotá, August 7, 2017.

\textsuperscript{2418} See, e.g.: Claudia Julieta Duque & Marvin David Del Cid. \textit{El silenciamiento de los periodistas y la estruendosa impunidad en Colombia} [The Silencing of Journalists and Rampant Impunity in Colombia]. Special report for the International Federation of Journalists and its subsidiary FSC-CCOO, Equipo Nizkor, Bogotá, August 7, 2017.


\textsuperscript{2420} INAI. \textit{Informe de labores 2018. Diciembre de 2018} [2018 Activity Report. December 2018], pp. 37; Table 2.1.

\textsuperscript{2421} See \textit{ibid.}, for instance, after the 2018 kidnapping and murder of Paúl Rivas, Javier Ortega, and Efraín Segarra, journalists from the Ecuadorian newspaper \textit{El Comercio}, a petition drafted by FLIP and signed by 178 people asked the Ministry of Defense for access to a body of information related to their case. According to FLIP, although the Transparency and Access to Public Information Act establishes that information related to human rights violations may not be withheld, the Ministry failed to provide complete information. In response, FLIP filed a writ for the protection of constitutional rights [\textit{tutela}], which was denied in the first instance and partially granted on appeal, giving the organization access to additional information that the Ministry had initially refused to disclose.\textsuperscript{2418}

172. Journalistic work and the media are vitally important to the functioning of democracy, as they play an essential role in ensuring that society is informed and that there is a broad and vigorous public debate. The IACHR’s Declaration of Principles on Freedom of Expression expressly states that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” Particularly in the case of journalists covering sensitive issues, such as corruption and the activities of the security forces and organized crime, the Office of the Special Rapporteur has underscored that “the protection of confidential sources not only contributes to the press’s fundamental role as watchdog but also helps to prevent journalists from becoming victims of violence.”

173. The Tshwane Principles state that “[n]o person who is not a public servant should be compelled to reveal a confidential source or unpublished materials in an investigation concerning unauthorized disclosure of information to the press or public.” Similarly, the expert rapporteurs on freedom of expression have held that “[n]ormal rules on the protection of confidentiality of journalists’ sources of information—including that this should be overridden only by court order on the basis that access to the source is necessary to protect an overriding public interest or private right that cannot be protected by other means—should apply in the context of anti-terrorism actions as at other times.”

174. States should take the necessary measures to ensure that confidential sources and materials related to the disclosure of restricted information are protected by law. In the digital era, the right to the confidentiality of sources may entail a set of additional positive obligations aimed at ensuring the privacy of communications and preventing state surveillance actions from being disproportionate and directly or indirectly violating or jeopardizing these rights.

175. The privacy of information in the digital age must be preserved. To this end, states must protect anonymity, as well as the encryption and inviolability of communications. They must set limits on the power to monitor private communications and establish the necessity and proportionality of such surveillance in accordance with individual human rights and the principles of international law. Provisions on the mandatory registration of SIM cards and cell phones and any other measure that could lead to intercepting communications outside the limits permitted by international law must also be legitimate and must not violate the confidentiality of sources.

C) Whistleblower protection


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176. Globally, in recent years, several states have enacted some form of whistleblower protection as part of their national laws.\textsuperscript{2431} However, different reports have called attention to the shortcomings of many of these regulations, as well as the fact that few countries have adopted comprehensive protections. Whistleblower protection in the security sector is generally inadequate or non-existent and exposes those who disclose information of public interest related to national security to the risk of penalties and retaliation under secrecy rules.\textsuperscript{2432}

177. The United Nations Special Rapporteur has maintained that whistleblower protections in the national security and intelligence field "are often weak, or simply unavailable,"\textsuperscript{2433} and that therefore, "[t]hose who disclose wrongdoing in national security institutions are often subject to retaliation, such as job loss or transfer, denial or revocation of security clearance, and investigation, prosecution and harsh sentencing, and they lack redress because of legal doctrines that support an infrastructure of secrecy. Whistle-blowing's main function thus loses all force, and while the lack of protection ultimately denies members of the public access to critical information about their Government, national security institutions also lose a tool of accountability."\textsuperscript{2434}

178. According to the information received by this Office during the consultation undertaken for the preparation of this report, the lack of comprehensive whistleblower protections in the area of national security is reflected in the national laws of the region.\textsuperscript{2435}

179. In some jurisdictions—such as the United States—the issue of classified information disclosure and national security has been widely discussed in recent years. The Office of the Special Rapporteur for Freedom

\textsuperscript{2431} International instruments and bodies aimed at combating corruption have recognized the importance of having whistleblower protection laws as part of an effective anti-corruption framework. See, e.g.: United Nations Convention against Corruption; Inter-American Convention Against Corruption, the OAS Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses; the African Union Convention on Preventing and Combating Corruption (2003). See also, Recommendation CM/Rec(2014)7 of the Committee of Ministers of the Council of Europe to member states on the protection of whistleblowers. A systematization of international standards in this area can be found at: UN-UNDOC. Resource Guide on Good Practices in the Protection of Reporting Persons, 2016.


\textsuperscript{2433} UN. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/70/361, 8 September 2015. Para. 43.


\textsuperscript{2435} According to the Agency for Access to Public Information of Argentina, the country’s Access to Public Information Act does not establish a regime of sanctions or penalties for the disclosure of classified information. However, penalties provided for in the National Criminal Code and specific regulations may apply. The Centro de Estudios Legales y Sociales (CELS) has stated that “there is no regulation protecting whistleblowers” who disclose information of public interest related to the security sector, and that criminal charges have been brought against those who disseminate information of public interest that was or is secret. The Asociación por los Derechos Civiles (ADC) noted that Article 17 of the Intelligence Act imposes a duty upon various officials to maintain the strictest confidentiality and secrecy, and that the law does not provide for exceptions of any kind to that duty. “This means, for example, that an intelligence agent who becomes aware of human rights violations during the course of his or her work may be subject to imprisonment for publicly reporting them.” In the case of Mexico, according to INAI, the “(Transparency and Access to Public Information) Act does not specifically establish penalties for the disclosure of national security-related information. However, it does establish a sanctions regime for failure to comply with the transparency and access to information obligations, and even authorizes the supervisory bodies to report facts believed to constitute crimes to the competent authorities. In the case of Honduras, the Institute for Access to Public Information stated that “Article 27(2)--(20) and (29) of the LTAIP establish the disciplinary and criminal regulations for the disclosure of information classified as confidential for national security reasons.” The aforementioned Article 29 provides that when the violation of the Access to Public Information Act constitutes a crime, it will be punished under the Crimes against Public Administration provisions of the Criminal Code, Article 346 of which states that “anyone who disobeys an authority by openly refusing to comply with judgments, resolutions, or orders issued within the scope of its competence is subject to a term of imprisonment of 1 to 3 years.” In the case of Guatemala, according to the information provided by the Human Rights Ombudsperson, Article 67 of the Access to Public Information Act provides for a penalty of imprisonment of 5 to 8 years and special disqualification for twice the length of the sentence imposed, plus a fine of 50,000 to 100,000 Quetzales, for the disclosure of confidential or restricted information; “there is no provision for special attention in relation to national security information or the disclosure for reasons of public interest of classified information that evidences wrongdoing.”
of Expression of the IACHR noted with concern the position taken by the United States federal government on the protection of sources and whistleblowers and the announcements of several measures aimed at stopping government leaks to the press.\(^{2436}\) The United States has legal protection for whistleblowers in various areas, but in practice it is criminalized in certain cases, mainly those related to national security. For example, the Espionage Act of 1917 continues to be enforced, and a number of individuals who have reported alleged wrongdoing by national security agencies have been prosecuted.\(^{2437}\)

180. Security sector agencies are generally less open to public scrutiny and have significant powers to safeguard large amounts of information, which can leave them more exposed to potential wrongdoing. In addition, they have significant powers to take a range of measures in the performance of their duties that may restrict or even violate human rights.\(^{2438}\) In order to ensure adequate protection in these cases, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has recommended that “whistleblower” be defined broadly to protect those who are in the best position to know about possible irregularities.\(^{2439}\)

181. In light of the events surrounding the disclosure of diplomatic communications by the Wikileaks organization and the subsequent publication of that information in the media (2010), and following the important revelations by Edward Snowden about the scope of various surveillance programs implemented by the United States (2013), the UN Special Rapporteur and the IACHR Special Rapporteur for Freedom of Expression emphasized several relevant international legal principles.\(^{2440}\)

182. In line with these principles, states should: (i) 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;\(^{2441}\) (ii) “Internal institutional and external oversight mechanisms”\(^{2442}\) (should) should provide

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\(^{2439}\) In its report on the protection of information sources and whistleblowers (2015) the Special Rapporteur explained that national laws often limit the definition of whistleblowers to those who report wrongdoing in the context of an employment relationship. However, it advised against this and adopted the following definition: a whistleblower is someone who discloses information and who, at the time of disclosure, has a reasonable belief that it is true and constitutes a threat or harm to a specific public interest, such as a violation of national or international law, abuse of authority, waste, fraud, or harm to the environment, health, or public safety. With respect to the scope of the definition of whistleblower and its differentiation from other categories such as journalistic sources and witnesses, see: Article 19, Response to the Special Rapporteur Consultation on Protection of Journalists’ Sources and Whistleblowers June 2015, p. 10.


\(^{2442}\) In this regard, the UN Special Rapporteur's report stated that these mechanisms, when working properly, internal mechanisms provide a way for someone who perceives wrongdoing to seek a competent authority's investigation. They allow for timely attention by those who may be in the best position to address problems, while also providing a basis for balancing legitimate interests in secrecy and the redress of wrongdoing. However, it stressed that internal mechanisms pose serious risks for whistleblowers. They often fail to
include strong measures to ensure confidentiality and independence from the organization in which they operate, and place informants in a situation where they may face the risk of retaliation. With that in mind, "If states aim to have working whistle-blowing procedures that reduce public disclosure, they must ensure the effectiveness and trust in the full independence of whistle-blowing processes." When whistleblowers "reasonably perceive" that these internal institutional mechanisms do not provide for effective corrective and protective measures, they should be able to use two other external ways of disseminating information, whether in a non-public manner such as through an ombudsperson, or publicly through, for example, the media (Cfr: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/70/361, 8 September 2015. Para. 34-38).

The Special Rapporteur's report stated that potentially effective internal or oversight processes may be overridden in certain cases where there is an extraordinary interest in ensuring the right to know. For example, public disclosure of serious violations of international human rights law, international humanitarian law or other fundamental rights in a State's constitutional or statutory framework should be encouraged regardless of the effectiveness of internal mechanisms. It stated that the same may hold true where the value of the public's knowledge of the information depends upon its timely or urgent disclosure. The public has an overriding interest in knowing of allegations of serious violations of fundamental legal norms (Cfr: UN. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/70/361, 8 September 2015. Para. 38).

The Principles reaffirm that the motivation for a protected disclosure "is irrelevant except where the disclosure is proven to be knowingly untrue."
Finally, the Office of the Special Rapporteur reiterates that under no circumstances may journalists, members of the media, or members of civil society who have access to and disseminate classified information because they consider it to be in the public interest be subject to subsequent penalties.\(^\text{2452}\)

### Chapter V – ROLE OF THE PRIVATE SECTOR

186. As established by the Inter-American system and reaffirmed in the Model Inter-American Law on Access to Public Information, this right is also binding on private organizations that perform public functions, provide public services, or execute public resources on behalf of the State. With respect to the latter, the right of access requires them to turn over information exclusively on the management of public resources, the provision of services under their responsibility, and the performance of the aforementioned public functions.\(^\text{2453}\)

187. Security companies are playing an increasing role in communications surveillance activities for national security purposes and in other state intelligence, military, and defense matters that have human rights implications. Various international bodies have issued statements on the responsibility of companies in the area of human rights. In 2011 the UN Human Rights Council adopted the Guiding Principles on Business and Human Rights which declare that while states are the primary holders of human rights obligations, corporations must also refrain from violating the human rights of third parties and must remedy violations in which they are directly or indirectly involved. In complying with these principles, businesses must undertake to prevent violations directly or indirectly related to their operations, products, or services and to mitigate the consequences even when they have not contributed to their creation.\(^\text{2454}\)

188. Consistent with the above, the Tshwane Principles recognize that “business enterprises within the national security sector, including private military and security companies, have the responsibility to disclose information in respect of situations, activities, or conduct that may reasonably be expected to have an impact on the enjoyment of human rights.”\(^\text{2455}\)

189. Accordingly, i) states should ensure that access to public information laws are applied broadly and within the limits set out above to guarantee access to information about the management of public resources, the delivery of services, and the performance of public functions by non-state entities; ii) as part of the duty to protect, states should promote the responsibility of security sector companies with respect to human rights and conduct adequate oversight of companies’ adherence to human rights laws, exercising the necessary regulatory powers; and iii) companies have a responsibility to disclose information that has an impact on the exercise of human rights.

### Chapter VI – CONCLUSIONS AND RECOMMENDATIONS

190. The region has achieved significant progress in recognizing the right of access to information at the constitutional level, both through laws guaranteeing its exercise and through decisions by national courts, supervisory bodies, and appellate bodies that review denials of access. Nevertheless, the Office of the Special Rapporteur acknowledges that there are significant challenges, both for those states that have made progress and for those that have yet to adapt their legal framework to recognize and protect the right of access to information.

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191. The Office of the Special Rapporteur has identified obstacles arising from the vagueness and imprecision of regimes of exceptions, including the restriction or classification of information for purposes of protecting legitimate national security interests. For example, provisions that establish or appear to establish generic and automatic classifications; problems caused by the misinterpretation or misapplication of the harm and public interest test; and the coexistence of regulations that are at odds with transparency, such as intelligence laws, laws on records and the classification of national security interests, and personal data protection laws, among others.

192. In this report, the Office of the Special Rapporteur also highlighted the serious obstacles that victims of human rights violations, their relatives, and the authorities in charge of investigating, determining the truth, prosecuting, punishing, and redressing these violations have experienced in gaining access to information held in the archives of security sector and other state agencies. There are persistent legal and de facto restrictions that hinder real and effective public access to the records whose disclosure is essential for the protection of human rights and the establishment of the truth. Among the best practices found in several countries, the Office of the Special Rapporteur highlights the adoption of provisions that explicitly prohibit the application of exceptions to information about violations of human rights and international humanitarian law.

193. Access to public information laws and other regulations have established the State's obligation to disclose certain categories of key information on its own initiative. However, gaps in compliance and the absence of provisions that encourage security sector agencies to proactively produce and disclose information of public interest mean that this remains an ongoing challenge.

194. The report also discusses restrictions resulting from the lack of oversight of the information classification procedures followed by security and intelligence agencies and bodies, which in many jurisdictions operate beyond the reach of the entities that guarantee the right of access to information and even beyond the reach of the judiciary.

195. The region also faces persistent challenges related to the adoption and appropriate implementation of whistleblower protection mechanisms and the need to reinforce the protection of journalistic sources, which have been addressed in this report because of the role these mechanisms play in guaranteeing the public’s right to know.

In view of the region’s ongoing challenges that have been highlighted in this report, the Office of the Special Rapporteur for Freedom of Expression makes the following recommendations to the member states of the OAS:

1. Laws regulating the right of access to public information should have a broad scope and states should adopt the tenets of maximum disclosure and good faith as guiding principles on the right of access to information in all areas of government. Intelligence agencies should be subject to public scrutiny and independent oversight.

2. States should take all necessary measures and remove barriers to guarantee, in their legislation and in practice, the right of individuals to access information related to national security. The exercise of this right may only be restricted under the strict requirements of Article 13(2) of the American Convention, within the limits set by the inter-American bodies.

3. Any limitations imposed on access to information must be strictly exceptional and meet the requirements of legality, necessity, and strict proportionality that have been developed in this report. Secrecy laws should precisely define the concept of national security and clearly specify the criteria for determining whether certain information can be classified as secret, in order to ensure that the classification of public interest information on alleged national security grounds is not abused. States should review and, to the extent necessary, repeal or amend legislation restricting access to information so that it is consistent with international standards in this area.

4. For the purpose of enacting, adapting, or implementing national laws and other supplemental rules governing access to information and the classification of information related to national
security, the Office of the Special Rapporteur encourages member states to follow the inter-American standards and embrace the Tshwane Principles. It is critical to establish formal procedures for the declassification of information, active transparency, and the presumption of openness in various areas that cannot have any real and effective impact on security interests.

5. The States of the region must take steps to establish a public policy on records pertaining to serious human rights violations, as a precondition for guaranteeing the right to know, the right to truth, the construction of a collective memory, and for preventing the repetition of these crimes. In addition, states should take the necessary measures to ensure, in law and in practice, that information on serious human rights violations and breaches of international humanitarian law cannot be classified for national security reasons under any circumstances, or hidden or destroyed.

6. Take the necessary measures to ensure that all human rights monitoring bodies, ombudspersons, and courts have access to national security archives—regardless of their level of confidentiality—when relevant to investigations of human rights violations under their respective mandate or jurisdiction. In these cases, they should also maintain the confidentiality of all information that has been legitimately classified under inter-American standards, until the outcomes of the investigation are known and the relevance of keeping the information confidential can be evaluated.

7. In implementing measures to strengthen the right of access to information and the protection of human rights, states should consider that there is a compelling public interest in the disclosure of information that helps ensure the transparency of the framework, conditions, and outcomes of state surveillance activities, in a manner consistent with international standards. Certain categories of information that allow citizens to have knowledge of the State's actions in this field, and to prevent and detect abuses, should be disclosed when requested—without revealing the targets of the surveillance—or published when it comes to procurement and spending on surveillance technology.

8. Promote the implementation of international principles that recognize that companies in all sectors, including private military and security companies, have a responsibility to disclose information regarding situations, activities, or conduct that may reasonably have an impact on the enjoyment of human rights.

9. Adopt the necessary legal reforms and guarantee a sufficient budget to strengthen the institutional structure for monitoring the implementation of public information access laws, in keeping with the standards and recommendations issued by this Office in its thematic report on Specialized Supervisory Bodies for the Right to Access to Public Information.

10. Adopt or adapt and effectively implement supplemental laws and regulations to guarantee, in law and in practice, the right of journalists and persons professionally engaged in the gathering and dissemination of information to the public through any media the protection of the identity of their sources of confidential information from direct and indirect exposure, including interference through surveillance.

11. Adopt, adapt, and implement national whistleblower protection frameworks. The law should ensure that those who expose wrongdoing, gross mismanagement, human rights violations, violations of humanitarian law, or other threats to the general public interest are protected from legal, administrative, or employment-related penalties, even when their actions violate a rule or contract, so long as at the time of disclosure they had reasonable grounds to believe that the information disclosed was substantially true and exposed information about harm to public interests or potential human rights violations. Measures to protect whistleblowers from retaliation should be implemented in national security institutions.

12. The Office of the Special Rapporteur reaffirms the important work of judges and the relevant supervisory bodies in ensuring the judicial and administrative protection of the right of access to public information. It encourages states to guarantee and strengthen the independence of the
judiciary and the autonomy of the supervisory bodies, in law and in practice. It also encourages states to continue to systematically train and educate public servants on the right of access to public information, its scope, and its conventional, constitutional, and legal protection.