

EXECUTIVE SUMMARY OF THE 2016 ANNUAL REPORT

A critical year for democracy and freedom of expression in the Hemisphere

At least 33 journalists who reported on matters of public interest were murdered in the Americas in 2016. In addition to this most vicious form of censorship, dozens of journalists and media workers were assaulted, harassed, and attacked in a variety of ways; others were the victims of communications surveillance, in attempts to reveal their sources and frustrate their work. In some countries, public servants—many of them senior officials such as presidents, ministers, and political leaders—were on record making offensive and stigmatizing statements as a way of singling out journalists and media outlets.

For the fourth consecutive year, the Office of the Special Rapporteur for Freedom of Expression has documented an increase in murder, the most condemnable way of silencing reporters' voices. This year saw 33 reported murders of journalists in the hemisphere; in 2015, there were at least 27; in 2014 there were 25 such murders, and in 2013, there were 18. Although in most of these cases there was a clear connection between the murder and the practice of journalism, it is still difficult to verify this nexus in every case given the high degree of impunity with which these crimes are so often met.

Although it was not the rule, a small number of countries saw cases involving state censorship of the media, the blocking of Internet news sites, and denial of service attacks against websites belonging to media outlets and non-governmental organizations. The media and the Internet are vehicles through which society accesses and disseminates information and opinions on issues that are unquestionably relevant—socially, politically, and otherwise. In this regard, the States have the obligation to allow and guarantee that this can be done freely.

The use of the criminal law to punish speech concerning matters of public interest persists in some countries as a disproportionate response to potential conflicts with honor and reputation, and includes legal actions that have resulted in prison sentences exercising freedom of expression. In some jurisdictions where criminal defamation offenses have been amended or repealed, civil lawsuits filed by businesspersons or political leaders seeking exorbitant sums of money from journalists and activists have been successful, and the potential threat of such judgments can have a chilling effect similar to criminal penalties.

In this annual report, the Office of the Special Rapporteur also charts with special interest the verified progress made in the hemisphere's States with respect to freedom of expression and access to public information. There is good news in the growing role of the high courts of several countries that have handed down judgments incorporating stronger protections for freedom of expression. This report thus discusses judgments that have overturned the convictions of journalists, political figures, and social leaders for criminal defamation offenses when the lower courts had failed to give proper weight to the disclosure of information in the public interest, as well as judgments in which high courts have declared the offense of *desacato* [insult] contrary to the right to freedom of expression. We note the enactment of laws and reforms favoring the exercise of the right to access to public information in various countries of the hemisphere, which continues to be a positive trend. Decisions made by the bodies charged with ensuring access to public information during 2016 have also continued to strengthen and guarantee this right for millions of inhabitants in the region.

Nevertheless, the Office of the Special Rapporteur wishes to underscore through its annual monitoring of freedom of expression that, in spite of the progress, it is necessary to continue promoting changes in the legal frameworks that are still not in line with the inter-American legal framework on freedom of expression. The

right of each person to seek, receive, and disseminate information plays a critical role for individuals and for democratic society, and therefore all government operations must be adapted in this regard.

In its 2016 evaluation of the situation of freedom of expression, the Office of the Special Rapporteur observes that the American continent continues to be one of the most dangerous regions in the world in which to practice journalism. Together with the report on the situation of freedom of expression, the Office published a new thematic report that addresses this issue, entitled “**Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression.**” This report documents the strategy adopted by organized crime groups in different regions of the continent with the aim of forcing journalism to align with their criminal objectives or silencing entire zones so that their infiltration into State institutions goes unreported.

2016 was a critical year for democracy in the region, where many countries faced political crises and corruption scandals. Thousands of people resorted to social protest for causes and demands that in their view required urgent action, such as the defense of democracy and transparency, discontent with education reforms, the defense of the homeland, and calling for an end to gender-based violence in the region, among other things. Nevertheless, protest as an exercise of the rights to freedom of expression and peaceful assembly were not always understood as such by some States. On repeated occasions, there were documented cases of serious assaults with grave consequences for demonstrators and journalists, including death in some cases. The inappropriate response on the part of State agencies and the excessive use of force against demonstrators is cause for concern: the right to participate in public demonstrations is one of the freedoms that make up a democratic society and should be facilitated by the States.

This Office also remains concerned over the improper concentration of media ownership and the lack of pluralism in the media systems of different countries in the region, which curtails public debate and the opportunity for all stakeholders to express themselves. The recognition of the community sector of the media continues to be a challenge and a pending task to be addressed in many of the hemisphere’s countries.

Another latent challenge has to do with the initiatives in some States to regulate the Internet. Such regulation must always take account of the inherent features of the web, must be necessary from the perspective of democracy, and must be strictly proportional, in order to prevent violations of the right to freedom of expression in one of the main forums for the exercise of this right.

This report does not purport to cover every advance, restriction, and potential violation of freedom of expression in the hemisphere during the past year; rather, it seeks to document trends and critical events in order to be able to have an impact on public administration in the States, with a view to accomplishing specific improvements. For this reason, in addition to monitoring the region and investigating the aforementioned silenced zones, we also present two chapters on issues notably affecting the exercise of freedom of expression at this time: the **Standards for a Free, Open, and Inclusive Internet** and a systematization of **National Case Law on Freedom of Expression**. The annual report closes with several recommendations addressed to all of the OAS Member States.

The Office of the Special Rapporteur commends all of the States that undertook specific and effective efforts in 2016 to respect and promote the right to freedom of expression and recognized the enormous need to move forward in bringing their national laws into line with the inter-American standards. We are grateful to the States, civil society organizations, and media outlets for their ongoing support and the information offered throughout the process of preparing this report.

The Office of the Special Rapporteur would also like to highlight the cooperation of the Chilean State in facilitating an on-site visit in 2016, which resulted in an extensive analysis of the situation of freedom of expression in Chile and recommendations to the State that are also presented together with the annual report.

A. Violence against Journalists

In 2016, there were cases of journalists killed in Brazil, Honduras, Mexico, Guatemala, the United States, El Salvador, Peru and Venezuela. The men and women journalists who were killed and harassed mostly covered actions by organized crime, matters of political corruption or represented a robust voice in their local communities. Linked to the situation of violence, high rates of impunity persist in many countries in terms of identification and punishment of the perpetrators and masterminds of these crimes, which generates a widespread inhibiting effect that limits the right to freedom of expression in entire zones of the continent.

While homicides are the most extreme form of censorship, the 2016 Annual Report of the Office of the Special Rapporteur refers to hundreds of aggressions, threats and harassments among other acts of violence against journalists or employees of media outlets in the course of their professional activities or as a result of denunciations made or information disseminated.

The IACHR and its Office of the Special Rapporteur recommends that the States adopt adequate mechanisms for prevention to avoid violence against men and women journalists, including public condemnation of all acts of aggression; the adoption of effective measures for protection to guarantee the safety of those who are subject to a particular risk due to exercise of their right to freedom of expression; the carrying out of serious, impartial and effective investigations into acts of violence against journalists and employees of media outlets; the trial and conviction of all those responsible for such events, and adequate reparation for the victims and their families.

B. Social Protest

During 2016, demonstrations and protests were a key factor for the exercise of freedom of expression and the channeling of social demands such as those associated with the fight against corruption and nondiscrimination, and respect for the rule of law in the Americas. In many of these demonstrations, a disproportionate use of force to disperse or silence those protesting in the streets was recorded. The Inter-American Commission and its Office of the Special Rapporteur observe that in contexts of social protest, certain groups face greater risks of suffering human rights violations.

The IACHR and its Office of the Special Rapporteur condemned the deaths of demonstrators and state agents that occurred in the context of the protests. During 2016, the Office of the Special Rapporteur documented the deaths of three miners in Bolivia along with the killing of the Vice Minister of the Interior, Rodolfo Illanes Alvarado; in Colombia the deaths of three indigenous persons who took part in the agrarian strike were reported along with that of a student who participated in a strike by cargo transporters; in Mexico, 8 people died in protests in Oaxaca; and in Venezuela 4 people who were demonstrating because of shortages in that country.

The Office of the Special Rapporteur also views with concern the persistence of aggressions against journalists in the framework of social protests. As in previous years, the Office of the Special Rapporteur documented dozens of aggressions against journalists who were covering protests, and which in many cases were committed by agents of the security forces but in others also by demonstrators. Thus in Brazil, and particularly in Sao Paulo, at least 16 journalists were injured or attacked by agents of the security forces, some of whom despite identifying themselves as members of the press; an additional 15 journalists were physically and verbally attacked by demonstrators. The Commission publicly expressed its concern over aggressions against journalists who were covering demonstrations against the scarcity of basic products in Venezuela, and the Special Rapporteurs for Freedom of Expression of the IACHR and the UN also expressed their concern over attacks suffered by journalists and media outlets that were covering the effects of the economic crisis in Venezuela. In the protests in North Dakota in the United States, journalist Amy Goodman was arrested by State Police on trespassing charges, however, upon appearing before a judge, the charges against her were dismissed and she was freed. The Office of the Special Rapporteur also documented dozens of aggressions against members of the press during protests in Bolivia, Canada, Colombia, El Salvador and Paraguay.

Finally, the Office of the Special Rapporteur observes that in certain countries, social protests have been criminalized along with those who lead them.

The IACHR and the Office of the Special Rapporteur recommend that the OAS Member States design regulatory frameworks aimed at protecting and facilitating the exercise of social protest and adopt special measures to protect men and women journalists who cover situations of acute social conflict and guarantee that they not be arrested, threatened or attacked nor that their rights be limited in any way when exercising their profession; and that their working equipment or material not be destroyed or confiscated by the authorities. They also recommend that the States ensure protection for people and abstain from stigmatizing or stereotyping demonstrators and their grievances, and avoid making generalizations based on the behavior of particular groups or isolated events. If the security forces must act during a demonstration, they must use safer measures that are less harmful to people's rights.

C. Use of Criminal Law and Subsequent Liabilities

In certain member States, criminal complaints filed by state officials or candidates for elected offices have been reported, due to the publication of opinions or information associated with matters of public interest. In several of the cases studied, the trials have ended with prison sentences for journalists or political or social activists involving the application of criminal definitions that protect honor, such as defamation, insult or slander. In some of these cases, punishments were commuted for less restrictive penalties or the charges were finally dismissed. In other countries, where the crimes of slander and libel are no longer part of the legal system, civil penalties imposed on journalists as a result of complaints filed alleging moral damages stemming from publication are disproportionate and have an intimidating effect. Some of the proceedings documented in the Annual Report by the Office of the Special Rapporteur include the arrest and conviction of Dutch journalist Okke Ornstein in Panama along with his subsequent release; the conviction in the first instance against journalist Ariel Armando D'Vicente in Honduras, which not only led to a prison sentence but also an accessory punishment prohibiting him from practicing journalism for three years. Also the conviction and prison sentence imposed upon a Counselor of Loja in Ecuador as a result of a communication made on Twitter questioning the governance by the Mayor of that locality. In Peru, journalist Valencia Osorio was convicted of the crime of aggravated defamation against former president Alan García, however, the sentence was overturned on appeal. The same occurred in the case of Peruvian journalist Rafael León. Also, in 2016 multiple cases were documented of journalists sentenced to onerous civil reparations in Mexico, including Carmen Aristegui and Sergio Aguayo. The Office of the Special Rapporteur continued to follow up on application of the Organic Communications Law of Ecuador and observed that during this period, numerous punishments were imposed on media outlets in a manner incompatible with Inter-American standards in the field of the right to freedom of expression.

The Office of the Special Rapporteur documented various cases of journalists and activists arrested in Cuba in 2016, who belonged to, among others, the following publications and/or organizations: *Damas de Blanco*; *CubaNet*; *Comisión de Atención a Presos Políticos and Familiares* (CAPPF); the agency *Hablemos Press*; *Instituto Cubano por la Libertad de Expresión y Prensa* (ICLEP); the *Unión Patriótica de Cuba* (Unpacu); the platform *#Otro18*; *Foro por los Derechos y Libertades* (Foro Dyl); the independent bulletin *Voz Santiaguera*; the collective *Periodismo de Barrio* and the platform *#TodosMarchamos*. The Office of the Special Rapporteur expressed concern over the arrest of artist Danilo Maldonado, known as "*El Sexto*", for the crime of damages to property after painting graffiti critical of Fidel Castro.

In a fully democratic system, public deliberation must be promoted along with guarantees for greater openness to expressions and appreciations by citizens in exercising democratic control, and therefore, the Office of the Special Rapporteur recommends that the States abolish laws that enshrine contempt and criminal defamation in cases involving the public interest, modify ambiguous or imprecise criminal laws that limit freedom of expression, and incorporate Inter-American standards into civil legislation so that criminal trials against people who have made declarations about matters of public interest will apply the standard of actual malice, pursuant to Principle 10 of the Declaration

of Principles of Freedom of Expression of the IACHR, and which would be proportionate and reasonable.

D. Stigmatizing Declarations

In diverse countries in the region, attacks continued against journalists and media outlets by means of stigmatizing declarations towards those who publish information that is not to the liking of the authorities. During 2016, this occurred mainly in Bolivia, Colombia, Honduras, El Salvador, Ecuador and Venezuela, where the most senior officials criticized employees of media outlets for their news or opinions.

In this regard, state authorities are urged to abstain from making declarations that could stigmatize journalists, media outlets and human rights defenders, particularly those that could endanger people's lives and integrity.

E. Freedom of Expression and the Internet

The Office of the Special Rapporteur observes that various States of the region have promoted attempts to regulate some aspect of Internet use and access or have adopted decisions in that regard, in response to the need to prevent crime and protect the fundamental rights of third parties. Warning is made that many of these initiatives fail to take into account the particular characteristics of this technology and, as a result, unduly restrict freedom of expression in the Internet space.

In Brazil, the vice president of Facebook for Latin America, Diego Dzodan, was arrested in São Paulo for the company's alleged refusal to share information on WhatsApp associated with a criminal investigation. The judge imposed a daily fine of 50 thousand reais (some 15 thousand US dollars), the total amount of which reached 1 million reais (some 330 thousand dollars) for noncompliance by the company; the arrest was overturned by means of Habeas Corpus. In Venezuela, civil society organizations denounced that websites were found to be systematically blocked by one or more of the country's main internet service providers, in addition to the systematic blocking of websites that contain content that is prohibited by article 27 of the Law on Social Responsibility in Radio, Television and Electronic Media [*Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos*] (known as the Resorte Law [*Ley Resorte*]).

In this sense, the Office of the Special Rapporteur recommends that the Member States abstain from applying regulatory approaches to the Internet that have been developed for other communications media - such as telephony or radio and television - and design an alternative regulatory framework specifically for this medium, addressing its particularities, pursuant to currently-ineffect international standards in the field of freedom of expression. Promote universal Internet access to guarantee universal and effective enjoyment of the right to freedom of expression through this medium and ensure that the processing of data and Internet traffic is not subject to any discrimination based on factors such devices, content, author, source and / or destination of the material, service or application, in accordance with the principle of net neutrality.