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2016
VOLUME II

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

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Special Rapporteur for Freedom of Expression


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

**2016**

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<td>IACHR</td>
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<td>ICCPR</td>
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<td>ILO</td>
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<td>Inter-American Court</td>
<td>Inter-American Court of Human Rights</td>
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<td>OAS</td>
<td>Organization of American States</td>
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<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<td>Office of the Special Rapporteur</td>
<td>Office of the Special Rapporteur for Freedom of Expression</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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INTRODUCTION

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

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

3. The annual report of 2016 follows the basic structure of previous annual reports and fulfills the mandate established by the IACHR for the Office of the Special Rapporteur. The report begins with a general introductory chapter that explains in detail the office’s mandate, the most important achievements of the Office of the Special Rapporteur, and the activities carried out in 2016.

4. Chapter II presents the now-customary evaluation of the situation of freedom of expression in the hemisphere. In 2016, the Office of the Special Rapporteur received information from multiple sources about situations that could affect the exercise of the right to freedom of expression as well as progress in the effort to guarantee this right. Following the methodology of previous reports, this information was evaluated in light of the Declaration of Principles on Freedom of Expression (hereinafter, “Declaration of Principles”), approved by the IACHR in 2000. The Declaration of Principles constitutes an authoritative interpretation of article 13 of the American Convention on Human Rights (hereinafter, “American Convention”) and an important instrument to help States to resolve challenges and promote, guarantee, and respect the right to freedom of expression.

5. Based on analysis of the situations reported in the hemisphere, the Office of the Special Rapporteur highlights some of the progress and challenges being faced by States in the region. In particular, Chapter II of this report highlights the adoption by national courts of judicial rulings that represent progress at the domestic level in the recognition and protection of the right to freedom of expression. For example, the Office identified efforts made by several countries to include new media actors, providing for a more diverse and plural media environment. Likewise, this Office found there was also some progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. However, despite these efforts, the majority of these crimes remain in a troubling state of impunity.

6. Indeed, this section of the report places emphasis on the murders, detentions, attacks, and threats against journalists for the exercise of their profession. The report also points to numerous attacks and threats in the context of protests. According to the information received by the Office of the Special Rapporteur, 33 journalists or media workers were killed during 2016 in the region, while several others disappeared or were dislocated from the areas in which they worked, for reasons that could have been related with their exercise of freedom of expression. States have the obligation to protect journalists who confront particular risks as a result of the exercise of their profession. States have an obligation to investigate, try, and punish those
responsible for these acts, not only to provide reparation to the victims and their families, but also to prevent future occurrences of violence and intimidation.

7. Similarly, the Office of the Special Rapporteur considers it important to draw attention to other obstacles to the exercise of freedom of expression in the Americas, such as the application of criminal legislation to prosecute those who have made declarations that offend public servants, the use of stigmatizing declarations against journalists and the media by senior state authorities, and the use of mechanisms of direct and indirect censorship to restrict the free flow of information. The report also identifies some of the obstacles that remain in the region to achieve diversity and pluralism of voices in broadcasting, and deals with some of the new challenges arising from indirect or massive surveillance and data retention practices implemented with the aim of maintaining public order and on security grounds.

8. Chapter III presents the thematic report “Standards for an open, free and inclusive Internet.” The report is based on the report on Freedom of Expression and the Internet created by the Office of the Special Rapporteur in 2013, expanding its analysis to include the new challenges facing the exercise of human rights on the Internet. The document addresses the current principles and synthesizes Inter-American jurisprudence and progress at the worldwide level, with the understanding that the right to freedom of expression is instrumental in the exercise of human rights on the Internet. The Rapporteur ship hopes that the report can aid the Member States and relevant actors in their efforts to incorporate an approach based on human rights in the design, development and implementation of policies that affect the Internet.

9. Chapter IV of the thematic report “Silenced Zones: Highly dangerous areas for the exercise of freedom of expression” focuses on the effects that violence against journalists has in remote zones of our continent that are significantly affected by violence caused by organized crime, based on three emblematic cases. It also presents the principal international obligations of States regarding prevention, protection and the fight against impunity in crimes against journalists. The chapter includes examples of good practices developed by certain countries in the hemisphere to comply with the abovementioned obligations. Finally, the report presents a series of recommendations to deal with violence against journalists and avoid the formation of silenced zones on the continent. In Chapter V the report presents a compilation of different judgments handed down over the past four years by national high courts that represent progress at the domestic level or enrich the regional doctrine and jurisprudence, while incorporating the inter-American standards in support of their decisions.

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

11. The Office of the Special Rapporteur thanks the various Member States that have collaborated with it during 2016, as well as and the IACHR and its Executive Secretariat for their constant support. The Office of the Special Rapporteur especially recognizes those independent journalists and media workers who, on a daily basis, carry out the important work of informing society. Finally, the Office of the Special Rapporteur profoundly laments the murders of journalists who lost their lives defending the right of every person to freedom of expression and information.

12. Also, the Office of the Special Rapporteur expresses its appreciation for financial contributions made by the States of Chile, Costa Rica, the United States of America, Peru, Uruguay, and France, as well as the
Swedish Agency for International Development Cooperation, the Swiss Confederation, Open Society Foundations, and the National Endowment for Democracy (NED) which allowed for the implementation of the Office’s 2016 program. The Office of the Special Rapporteur invites other States to add to this necessary support.

13. This annual report intends to contribute to the establishment of an improved climate for the exercise of freedom of expression in the region, and in this way ensure the strengthening of democracy, wellbeing, and progress of the hemisphere’s inhabitants. Its objective is to collaborate with OAS Member States in raising awareness about the existing problems and in formulating viable proposals and recommendations based on regional doctrine and jurisprudence. To achieve this aim, it is necessary that the work of the Office of the Special Rapporteur be understood as a useful tool for responding to the challenges we face and for generating a broad and fluid dialogue not only with the Member States, but also with civil society and journalists in the region.
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 Special Rapporteurship was created by the Commission as a permanent, independent office that acts within the framework and with the support of the IACHR. Through the Office of the Special Rapporteur, the Commission sought to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system and in protecting, guaranteeing, and promoting other human rights. During its 98th period of sessions, held in March 1998, the IACHR defined in general terms the characteristics and functions of the Office of the Special Rapporteur and decided to create a voluntary fund to provide it with economic assistance.

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 Special Rapporteurship. In the Declaration of Santiago, adopted in April 1998, the Heads of State and Government stated the following:

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

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

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

4. During the Third Summit of the Americas, held in Québec City, Canada, the Heads of State and Government ratified the mandate of the Office of the Special Rapporteur, adding that their governments would:

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

5. The OAS General Assembly has on various occasions expressed its support for the work of the Office of the Special Rapporteur and entrusted it with follow-up or analysis of some of the rights that comprise


freedom of expression. Thus, for example, in 2005 the OAS General Assembly approved Resolution 2149 (XXXV-0/05), in which it reafirms the right to freedom of expression, recognizes the important contributions made in the Office of the Special Rapporteur’s 2004 annual report, and urges follow-up on the issues included in that report, such as the evaluation of the situation regarding freedom of expression in the region; indirect violations of freedom of expression; the impact of the concentration in media ownership; and the way hate speech is addressed in the American Convention.\textsuperscript{4} The Office of the Special Rapporteur has analyzed these issues in different annual reports, in the context of its evaluation of the state of freedom of expression in the region and in fulfillment of its task of creating expertise and promoting regional standards in this area.

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

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

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

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

10. In 2011, the General Assembly passed resolution 2679 (XL1-O/11) reiterating the importance of freedom of expression for the exercise of democracy and reaffirming that free and independent media are fundamental for democracy, for the promotion of pluralism, tolerance and freedom of thought and expression, and for the facilitation of free and open dialogue and debate in all sectors of society, without discrimination of any kind. The Assembly invited the Member States to consider the recommendations of the IACHR Office of the Special Rapporteur for Freedom of Expression and asked the IACHR to follow up on and


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

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

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

14. In 2011, in resolution 2661 (XLI-O/11), in 2012 in resolution AG/RES. 2727 (XLII-O/12) and in 2013 in resolution AG/RES 2811 (XLIII-O/13), the General Assembly, among other matters, has entrusted the Office of the Special Rapporteur of the IACHR to continue to include in the annual IACHR report a report on the

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situation or status of access to public information in the region and its effect on exercise of the right to freedom of expression.

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

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

17. 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.

**Mandate of the Office of the Special Rapporteur**

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

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

   a) Advise the IACHR in evaluating cases and requests for precautionary measures, as well as in preparing reports;
   b) Carry out promotional and educational activities on the right to freedom of thought and expression;
   c) Advise the IACHR in conducting on-site visits to OAS member countries to expand the general observation of the situation and/or to investigate a particular situation having to do with the right to freedom of thought and expression;
   d) Conduct visits to OAS Member Countries;
   e) Prepare specific and thematic reports;
   f) Promote the adoption of legislative, judicial, administrative, or other types of measures that may be necessary to make effective the exercise of the right to freedom of thought and expression;
   g) Coordinate with ombudsman’s offices or national human rights institutions to verify and follow up on conditions involving the exercise of the right to freedom of thought and expression in the Member States;
   h) Provide technical advisory support to the OAS bodies;
   i) Prepare an annual report on the situation regarding the right to freedom of thought and expression in the Americas, which will be considered by the full Inter-American Commission for its approval and inclusion in the IACHR’s annual report, presented annually to the General Assembly;
   j) Gather all the information necessary to prepare the aforementioned reports and activities.

20. In 1998, the Commission announced a public competition for the post of Special Rapporteur. Once the process was completed, the IACHR decided to designate as Special Rapporteur the Argentine attorney Santiago A. Canton, who assumed the post on November 2, 1998. In March 2002, the IACHR named Argentine attorney Eduardo A. Bertoni as Special Rapporteur. Bertoni occupied this position from May 2002 to December 2005. On March 15, 2006, the IACHR chose Venezuelan attorney Ignacio J. Alvarez as Special Rapporteur.

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*See Articles 40 and 41 of the American Convention and Article 18 of the Statute of the IACHR.*
Rapporteur. In April 2008, the IACHR announced a competition to select Álvarez’s successor. During the period in which the post was vacant, the Office of the Special Rapporteur was under the responsibility of then-Commission Chairman Paolo Carozza. The selection process ended on June 1, 2008 and on July 21, 2008, the IACHR chose Colombian attorney Catalina Botero Marino as Special Rapporteur,⁹ who served in that post for two consecutive periods, from October 6, 2008 until October 5, 2014. On December 19, 2013, the IACHR began a selection process to choose the Rapporteur for a new period. The process ended on February 20, and the candidates preselected to hold this position were interviewed during the 151st Period of Sessions. On July 22, 2014, the IACHR chose Uruguayan attorney and journalist Edison Lanza as Special Rapporteur, pursuant to article 15.4 of its Regulation.

Principal Activities of the Office of the Special Rapporteur

21. During its nineteen 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.

22. This section of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2016.

1. Individual Case System

23. 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.

24. 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.

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

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

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

   - **Case of Herrera-Ulloa v. Costa Rica.** Judgment of July 2, 2004. This case involved a journalist who had published several articles reproducing information from various European newspapers on alleged illegal conduct by a Costa Rican diplomat. The State convicted the journalist on four defamation charges. The Inter-

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American Court found that the conviction was disproportionate and that it violated the right to freedom of expression, and ordered, among other things, the nullification of criminal proceedings against the journalist.

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

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

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

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

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

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

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

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

— **Case of Manuel Cepeda Vargas v. Colombia.** Judgment dated May 26, 2010. This case refers to the extrajudicial execution of Senator Manuel Cepeda Vargas, who was a national leader of the Colombian Communist Party and a prominent figure in the political party Unión Patriótica. The Court held that, in cases like this one, it is possible to illegally restrict freedom of expression through de facto conditions that put the person exercising freedom of expression at risk. The Court found that the State, “must abstain from acting in a way that fosters, promotes, favors or deepens such vulnerability and it has to adopt, whenever appropriate, the measures that are necessary and reasonable to prevent or protect the rights of those who are in that situation.” Likewise, the Court found that effects on the right to life or personal integrity that are attributable to the State can mean a violation of article 16(1) of the Convention when the cause is connected with the legitimate exercise of the victim’s right to freedom of association. In this sense, the Court highlighted that opposition voices are “essential in a democratic society” and indicated that “in a democratic society States must guarantee the effective participation of opposition individuals, groups and political parties by means of appropriate laws, regulations and practices that enable them to have real and effective access to the different deliberative mechanisms on equal terms, but also by the adoption of the required measures to guarantee its full exercise, taking into consideration the situation of vulnerability of the members of some social groups or sectors.” Finally, the Court found that although Senator Cepeda Vargas was able to exercise his political rights, his freedom of expression and freedom of association, “the fact that he continued to exercise them was obviously the reason for his extrajudicial execution,” meaning that the State “did not create either the conditions or the due guarantees for Senator Cepeda [...] to have the real opportunity to exercise the function for which he had been democratically elected; particularly, by promoting the ideological vision he represented through his free participation in public debate, in exercise of his freedom of expression. In the final analysis, the activities of Senator Cepeda Vargas were obstructed by the violence against the political movement to which he belonged and, in this sense, his freedom of association was also violated.”

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

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

- **Case of González Medina and relatives v. Dominican Republic.** Judgment of February 27, 2012. In this judgment, the Court found the Dominican State responsible for violating Narciso González Medina’s rights to personal liberty, personal integrity, life, and recognition of juridical personality. In May 1994, the lawyer, professor, and journalist Narciso González Medina was forcibly disappeared, and his whereabouts were still unknown as of the date of the Court’s decision. Days before his disappearance, González had published an opinion piece in a magazine called La Muralla and had given a speech at the Autonomous University of Santo Domingo (UASD, in its Spanish acronym), in both of which he had denounced corruption and electoral fraud. The Court was able to establish that the context of González Medina’s disappearance was characterized by “an extremely tense political climate owing to the alleged electoral fraud” in the May 1994 elections in the Dominican State; that the country “was almost under military control” at that time; and that “repressive methods were used against those who protested,” as were practices involving “harassment and surveillance of journalists and those who criticized the Government.” Although the Commission alleged that González Medina’s exercise of freedom of expression and his forced disappearance were related, the Court did not find the Dominican State responsible for violating article 13 because, according to the Court, it lacked competence *ratione temporis* in this case. The Court found that even though in previous cases “it has recognized that when the purpose of the violation of the rights to life, and to personal liberty or integrity is to impede the legitimate exercise of another right protected by the Convention (…), such as freedom of association (…) [or] freedom of expression, there is also an autonomous violation of these rights,” in this case it was not possible to establish international responsibility because “the beginning of the forced disappearance [had been] prior to the acceptance of the Court’s jurisdiction,” and the Dominican Republican had not acquiesced to the facts or acknowledged its responsibility during the process. Thus, the Court “lacks competence *ratione temporis* to examine the alleged violation of the freedom of expression of […] González Medina as an autonomous violation.”

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

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

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

Case of Grainer et al (Radio Caracas Televisión) v. Venezuela. Judgment of June 22, 2015. In this judgment the Inter-American Court held the State of Venezuela internationally responsible for the violation of certain rights following the closing of the television channel Radio Caracas Televisión (“RCTV”) on May 27, 2007. The closing was due to the State reserving the radio electric spectrum that RCTV had been using and thereafter barring participation in administrative proceedings of a media outlet that was critical of the government. Specifically, the Court decided it was an indirect restriction on the right to freedom of expression of the executives and journalists for that media outlet, as well as a violation of the right to freedom of expression as it relates to the duty of non-discrimination. In this regard, the Inter-American Court considered the restrictions to freedom of expression often materialize through State or individuals’ actions affecting not only the entity that makes up the media outlet but also the plurality of individuals, such as shareholders or the journalists working there reporting through the media outlet and whose rights may also be violated. Likewise the Court recognized the legal authority and need the States have to regulate radio broadcasting, which includes not only the possibility of defining the way concession, renewal or revocation of licenses are granted, but also in the planning and implementation of public policy on said activity; as long as the right to freedom of expression is respected. In addition it found that considering the radio electric spectrum is limited with only a certain number of frequencies, this restricts the number of media outlets that have access to it; therefore it is necessary to ensure that diverse visions, opinions or informational positions are represented in that number of media outlets. The Court noted that plurality of ideas in the media couldn’t be measured by the number of media outlets but rather that the broadcasted ideas and information are effectively diverse and addressed from differing positions and not by one viewpoint. The aforementioned must be considered in procedures used for granting or renewing broadcasting concessions or licenses. In addition, the Court underscored the need for States to regulate the procedures on granting and revoking broadcasting concessions or licenses in a clear and precise manner through objective criteria avoiding partiality. In particular, it considered said regulation cannot be based on “political discrepancies that could generate a government editorial line. As noted earlier, the right to freedom of expression should not only be guaranteed for favorable broadcasting or broadcasts considered inoffensive or indifferent, but should also be specially protected when they are disagreeable to the government or any other sector of the population”. Upon analyzing the instant case the Court concluded the State’s actions “imply abuse of power as a State power was used in order to align a media outlet with the government”. This opinion is based on the fact that “the decision had been made earlier and was founded on the annoyance caused by RCTV’s editorial line, in addition to the context of the deterioration of the protection to freedom of expression that was proven in this case”. The Court affirmed that said abuse of power “impacted the exercise of freedom of expression, not only to RCTV workers and executives, but also in the social dimension of the aforementioned right, in other words, citizens were deprived of access to the RCTV editorial line. In fact the true objective was to silence government criticism which in addition to pluralism, tolerance and spirit of openness are necessary for a democratic debate which is exactly what the right to freedom of expression seeks to protect”. Lastly, the Court found violations of due process and right to be heard in as much as: i) the legal procedure followed for title transformation and concession renewal “was deliberately omitted by the State”, and ii) the victims were unable to intervene directly in the legal proceedings resulting in the seizing of RCTV property and as of June of 2007 no other hearings have been held on the matter.

Case of López Lone et al v. Honduras. Judgment of October 5, 2015. In the judgment the Court recognized the existing relationship between political rights, freedom of expression, right of assembly and
freedom of association and that together all these rights make democracy possible. The relationship between these rights is manifested even more where there is rupture of institutional order after a coup d’etat. In this regard the Court also noted that protests and expressions favoring democracy must have the highest level of protection possible and depending on the circumstances these may be tied with some or all of the aforementioned rights. This Court also considered the right to defend democracy constitutes a specific manifestation of the right to participate in public matters and is likewise part of the joint exercise of other rights such as the right to freedom of expression and right of assembly. The Court underscored that the American Convention confers the protection of political rights, freedom of expression, right of assembly and freedom of association to all persons, independent from any other consideration; therefore it cannot be permitted for or restricted from a specific profession or group of people. Nevertheless, it clarified that these rights are not absolute and may be subject to restrictions compatible with the Convention. Regarding persons in the judiciary, it held that due to their duties in the administration of justice, under normal Rule of Law conditions, judges are subject to different restrictions in ways that do not affect other individuals, including other public servants. In this regard it noted that pursuant to the American Convention the restrictions to certain behaviors for judges with the object of protecting independence and impartiality in the execution of justice as a “right or freedom of others”. Nonetheless, it warned that the power the States have to regulate or restrict these rights is not discrentional and must be interpreted in a restrictive manner, in such a way that it could not bar judges from participating in all types of political discussions. In this regard, it underscored that there are situations where judges, as regular members of society, may feel the moral obligation to express themselves. In fact the Court noted that when there is a serious democratic crisis, such as the one in this case, regulations restricting the rights of judges from political participation in defense of democratic order are inapplicable. It would run counter to the very power of State branches of government and to international obligations derived from participation in the OAS to disallow judges to voice their opinion against a coup d’état. On the other hand the Court considered that the mere opening of a disciplinary action case against the judges and the appellate court judge (magistrada) for their actions against the coup d’état and in favor of the Rule of Law could have an intimidating effect and therefore constitute an undue restriction on their rights. Specifically regarding the victims in this case the Court noted: i) the disciplinary procedures against Mr. López Lone for participating in a protest against the coup d’état and his subsequent removal, and against Mr. Chévez de la Rocha for his alleged participation and subsequent detention in a protest against the coup d’état and for the comments made to Judiciary colleagues as well as not allowing his return to the bench; were a violation of their freedom of expression, right to assembly and political rights enshrined in articles 13.1, 15 and 23 of the Convention, as related to article 1.1 of the aforementioned; ii) disciplinary action against Ms. Flores Lanza, for availing herself of the amparo recourse, filling a complaint on the comments and actions of other judiciary bodies, as well as her subsequent removal, and the opening of a disciplinary action against Mr. Barrios Maldonado, for a news article wherein his opinion on the coup d’état was summarized, constitute a violation of freedom of expression and political rights, enshrined in articles 13.1 and 23 of the Convention as it pertains to article 1.1 of the aforementioned, and in prejudice thereto.

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

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

2. Precautionary Measures

27. The Office of the Special Rapporteur has worked, within its mandate, with the IACHR Protection Group with regard to recommendations on the adoption of precautionary measures in the area of freedom of expression. In this regard, the IACHR has requested on multiple occasions that OAS Member States adopt precautionary measures to protect the right to freedom of expression. It did so, for example, in the cases of (i) Matus Acuña (Chile); (ii) Herrera Ulloa v. Costa Rica; (iii) López Ulacio v. Venezuela; (iv) Peña v. Chile; (v) Globovisión v. Venezuela; (vi) Tristán Donoso v. Panama; (vii) Yáñez Morel v. Chile; (viii) Pelicó Pérez v. Guatemala; and (ix) Rodríguez Castañeda v. Mexico; (x) Leo Valladares Lanza and Daysi Pineda Madrid


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

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

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

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

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

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

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

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

19 IACHR decision adopted on July 3, 2008, for the purpose of preventing the destruction of electoral ballots from the 2006 presidential elections in Mexico.
28. During 2016, the Office of the Special Rapporteur collaborated in the study of 44 requests of precautionary measures. The following requests were granted: César Obando Flores Rodríguez regarding Honduras; Lester Toledo and family regarding Venezuela; Braulio Jatar regarding Venezuela. For

20 IACHR decision of April 26, 2011, requesting that the State of Honduras adopt any necessary measures to guarantee the life and personal integrity of Leo Valladares Lanza and his wife, Daysy Pineda Madrid, and so that Leo Valladares Lanza could continue to carry out his activities to defend and promote human rights under safe conditions. The decision also requested that the State reach agreement with the beneficiaries and their representatives on the measures to be adopted.

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

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

23 Decisión de la CIDH de 21 de febrero de 2012 en la cual se solicitó al Estado de Ecuador suspender de inmediato los efectos de la sentencia del 15 de febrero de 2012, a fin de garantizar el derecho a la libertad de expresión. El 9 de marzo de 2012, la CIDH levantó estas medidas cautelares y archivó el expediente, después de recibir una comunicación, de fecha 29 de febrero de 2012, mediante la cual los solicitantes requerían dicho levantamiento, en vista de que habían cesado las causas de urgencia inmediata que las motivaron.

24 Ampliación de medida cautelar. Decisión de la CIDH de 25 de mayo de 2012 en la cual se solicitó al Estado de Honduras informar a la CIDH sobre la concertación con los beneficiarios y su familia de la implementación de la MC 399/09, que protege a varios trabajadores de Radio Progreso en Honduras, desglosada de la MC 196/09 el 1 de abril de 2011.

25 Decisión de la CIDH de 9 de noviembre de 2012 en la cual se solicitó al Estado de Cuba que adopte las medidas necesarias para garantizar la vida y la integridad física de Yoani María Sánchez Cordero y su familia, que concierne las medidas a adoptarse con la beneficiaria y sus representantes, y que informe sobre las acciones adoptadas a fin de investigar los hechos que dieron lugar a la adopción de medidas cautelares.

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

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

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

29 Decisión de la CIDH de 28 de abril de 2016 en la cual se solicitó al Estado adoptar las medidas necesarias para preservar la vida y la integridad del beneficiario, adoptar las medidas necesarias para que César Obando Flores Rodríguez pueda desarrollar las actividades relacionadas con su labor periodística, sin ser objeto de actos de violencia y hostigamientos, concierne las medidas a adoptar con el beneficiario y sus representantes e informar las acciones adoptadas a fin de investigar los hechos que dieron lugar a la adopción de la medida cautelar.

30 Decisión de la CIDH de 4 de junio de 2016 en la cual se solicitó al Estado adoptar las medidas necesarias para garantizar la vida y la integridad personal de Lester Toledo y su núcleo familiar, adoptar las medidas necesarias para garantizar los derechos políticos de Lester Toledo a fin de que pueda desarrollar sus actividades como diputado del concejo legislativo en el estado de Zulia y líder de la oposición, sin ser objeto de actos de hostigamiento, amenazas y actos de violencia; concierne las medidas con el beneficiario y sus representantes e informe las acciones adoptadas a fin de investigar presuntos hechos que dieron lugar a la adopción de la medida cautelar y evitar su repetición.

31 Decision of the CIDH of 22 de diciembre de 2016 en la cual se solicitó al Estado adoptar las medidas necesarias para garantizar la vida e integridad personal del señor Braulio Jatar. En particular se proporcionó una atención médica adecuada, de acuerdo a sus
additional details regarding these precautionary measures, please consult the Annual Report 2016 of the IACHR.

29. 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

30. 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.

31. Within the framework of the 157th Period of Sessions that took place April 2 to 15, several hearings took place on topics associated with the right to freedom of expression in the Americas. On April 5th, a hearing requested by the Foundation for Freedom of the Press (FLIP, for its initials in spanish) on the case of Colombian journalist Jinethe Bedoya was held. Also on April 5th, a hearing was held on “The Right to Freedom of Expression and Regulation of Audiovisual Communications Media in the Americas”. This hearing was requested by the civil society organizations Observacom and the International Association of Broadcasting (IAB). On April 7th, a hearing was held on “Student Protests and Human Rights in São Paulo, Brazil requested by the civil society organizations Article 19 Brazil and Comité De Mâes E Pais Em Luta. On April 7th, a hearing requested by the ministry of Culture of Brazil was held on “Cultural Rights and the Internet in Brazil”. The organizations Association for Progressive Communications (APC), División de Asistência Judiciária da Universidade Federal de Minas Gerais (DAJ/UFMG), Clínica de Direitos Humanos da UFMG (Cdh/UFMG), Grupo de Estudos em Direito Internacional dos Direitos Humanos (GEDI-DH/UFMG), Article 19 Brazil, and Public Knowledge were present during this hearing. Furthermore, also on April 7th, a hearing was held on “Access to Information and Indirect Restrictions on Freedom of Expression in Mexico”. The hearing was requested by a group of civil society organizations consisting of: Asociación Mexicana de Derecho a la Información (AMEDI), Centro de Análisis e Investigación A. C. (Fundar), Article 19 Mexico & Central America, Red por la Defensa de los Derechos Digitales (RED3D), Centro por la Justicia y el Derecho Internacional (CEJIL), Colectivo por la Transparencia, Transparencia Mexicana and the State of Mexico. Finally, on April 8, a hearing was held on the “Right to Freedom of Expression and Changes in the Law on Audiovisual Communication Services in Argentina” requested by the Centro de Estudios Legales y Sociales (CELS) and various organizations under the name Coalición por una Comunicación Democrática (CCD).

32. The IACHR held its 158 Extraordinary Period of Sessions in Santiago de Chile from June 6 to 10. During these sessions, the IACHR held meetings with Chilean senior authorities and civil society organizations. In addition, it also held ten public hearings and various events for the promotion of human rights. On June 9, a hearing was held on freedom of expression titled “Right to Freedom of Expression and Criminal Laws Regarding Defamation in South America”, requested by the Program for the Americas of the Comité para la Protección de los Periodistas; the Press and Society Institute (IPYS, for its initials in spanish), the Consejo Directivo del Centro Libre, Perú; and Fundamedios. Also in the framework of the sessions, the IACHR and the Special Rapporteur held official meetings with the President of the Republic, Michelle Bachelet; the Minister of Foreign Relations, Heraldo Muñoz Valenzuela; the President of the Senate, Ricardo Lagos Weber; the President of the National Congress, Osvaldo Andrade Lara; the Minister of Justice, Javiera Blanco Suárez and the Chief Justice of the Supreme Court of Justice, Hugo Enrique Dolmetsch Urra. The IACHR
also met with the Argentine delegation in Santiago de Chile and the Ambassador for Human Rights of Argentina, Leandro Despouy.  

33. Within the framework of the 159 Ordinary Period of Sessions of the IACHR in Panama City, various hearings were held that dealt with topics associated with the right to freedom of expression. On December 2, a hearing took place about the situation of the rights to freedom of expression in Venezuela at the request of the following organizations: Espacio Público and the Centro de Derechos Humanos of the Universidad Católica Andrés Bello (UCAB), who presented the violations of the right to freedom of expression recorded in Venezuela during 2016, and particularly in the context of public demonstrations. Also on December 2, a hearing was held on the “Situation of the right to freedom of expression in Paraguay”, requested by the Sindicato de Periodistas de Paraguay (SPP) (Journalists Union of Paraguay), Foro de Periodistas de Paraguay (FOPED) and VOCES Paraguay, who presented information about the alleged situation in Paraguay in terms of impunity regarding crimes committed against journalists in the country, the lack of public policies for prevention and protection for the practice of journalism, and media concentration. Finally, also on December 2, a hearing took place about the situation of the right to freedom of expression in Ecuador. The hearing was requested by various Ecuadorian civil society organizations, including Fundamedios, Asociación Ecuatoriana de Editores de Periódicos (AEDEP) and Unión Nacional de Periodistas de Ecuador (UNP) who spoke of the difficulties facing the practice of freedom of expression in that country. The hearing specifically focused on application of the Organic Communications Law in Ecuador. In addition, the Special Rapporteur also participated in the hearing “Situation of Human Right Defenders in Cuba”, requested by the CPJ, Cubalex, Damas de Blanco, among others.  

34. During the 160th Extraordinary Period of Sessions of the IACHR held in Washington DC, the Office of the Special Rapporteur for Freedom of Expression held a hearing on December 9 on the “Right to Freedom of Expression and Antiterrorist Legislation of Canada”. The hearing was requested by the organization Canadian Journalists for Free Expression (CJFE), who discussed the national security norms of Canada and the impact of the antiterrorism law approved in 2015 (Bill C-51) on the rights to freedom of expression and privacy. The hearing addressed the topics of freedom of expression, national security and privacy. Additionally, the Special Rapporteur also participated in the hearing “Human Rights Situation of Indigenous Persons in the Context of Projects and Extractive Industries in the United States”.  

4. Seminars and Workshops with Strategic Actors in the Region

35. Seminars are a critical tool the Office of the Special Rapporteur uses to promote the inter-American system for the protection of human rights and the right to freedom of expression. In the last nineteen (19) 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.  

36. 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.  

37. 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.
38. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2016.

39. The Special Rapporteur, traveled to Buenos Aires on February 1 to 4, to gather information on the measures of the new Argentine government in matters associated with the right to freedom of expression and access to information. During his stay, the Rapporteur met with senior government officials of the Republic of Argentina. On February 2, at the Casa Rosada, he met with the Secretary of Public Communication, Dr. Jorge Grecco, and the Head of the Cabinet of Ministers, Lic. Marcos Peña, along with the Secretary for Strategic Affairs, Lic. Fulvio Pompeo, to discuss changes made to the Audiovisual Communication Services law and held on the 3rd a meeting with the ex-president of the Federal Audiovisual Communication Services Authority (AFSCA), Martin Sabbatella. The Rapporteur also participated as a lecturer in the workshop entitled “ADC Privacy- Quantifying Societies: An exploration of data exploitation in the Data Driven Society” organized by the Association for Civil Rights (ADC) and Privacy International. The event featured participation by diverse experts in the realm of privacy, such as Dr. Gus Hosein of Privacy International, Mr. Torcuato Sozio, Executive Director of ADC, and Mr. Claudio Ruiz, Executive Director of Digital Rights. The Rapporteur also met with the following civil society organizations: ADC, Abuelas de Plaza de Mayo Línea Fundadora, Foro de Periodismo Argentino (FOPEA, for its initials in spanish), Center for Legal and Social Studies (CELS), the Argentine communications trade unions, the Center for Freedom of Expression (CELE) of the Universidad de Palermo, the Association of Argentine Journalistic Entities (ADEPA), the Fundación LED and the trade associations of the audiovisual media.

40. From February 4 to 5, the Rapporteur was invited to participate as an expert in the workshop on “Concentration of Media and digital convergence in Latin America”, organized jointly by Observacom and the Association for the Progress of Communications (APC), which was held in Montevideo, Uruguay. The purpose of the workshop was to analyze digitalization and the convergence of media services and freedom of expression, particularly in open access to the Internet, diversity and pluralism of information and opinions in the era of convergence, identifying problems and potential strategies along with their solutions. The workshop brought together 30 experts and representatives from the civil society and academia from eight countries of Latin America. The participants included Guillermo Mastrini and Martin Becerra, professors from the Universidad de Quilmes; Mike Jensen, APC; and the former commissioner of the Telecommunications Market Commission of Spain (CMT, for its initials in Spanish), Ángel Garcia Castillejo.

41. On February 26, 2016 the Special Rapporteur participated, along with the Specialist Attorney of the LGBTI Rapporteurship of the IACHR, Fanny Gómez, and the Specialist Attorney of the Rapporteurship for Freedom of Expression, Ona Flores, via videoconference in the workshop entitled “The Role of the Media in the promotion of respect and nondiscrimination towards LGBTI persons”, which was held at the headquarters of the Office of the Human Rights Prosecutor of Guatemala. The workshop was organized jointly by the Office of the Human Rights Prosecutor of Guatemala (PDH), the Special Rapporteur for Sexual Diversity, Gabriela Tuch, and the Office of the United Nations High Commissioner and was attended by more than 30 people. The event was inaugurated by Prosecutor Jorge de León Duque, and counted with the participation of media, including: El Periódico, Prensa Libre, Publinews, Emisoras Unidas, Al Día, Radio Punto, Nuevo Mundo, TN23, and TV Azteca.

42. On March 13 and 14, the Special Rapporteur Edison Lanza traveled with IACHR President James Cavallaro, Commissioner Enrique Gil Botero and Fiorella Melzi, attorney for the Executive Secretariat of the IACHR, to Guatemala city to present the IACHR report on the “Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion”. The launching took place on March 14 at the Palacio Nacional de la Cultura and featured participation by the President of Guatemala, Mr. Jimmy Morales Cabrera, the Minister of Foreign Affairs Carlos Raúl Morales and Vice president Jafeth Cabrera Franco. During his stay, the Rapporteur held meetings with Guatemalan organizations such as Cerigua, the Cámara Guatemalteca de Periodismo, the Association of Guatemalan Journalists, directors of the Media Chamber and the Broadcasting Chamber of Guatemala. He also gave interviews to the media channels Guatevisión, Plaza Pública and El Periódico and had a working meeting with the Guatemalan civil society organizations Civitas, Instituto DEMOS and various community radio stations.
From March 14 to 16, the Special Rapporteur and the Office of the Special Rapporteur attorney, Tatiana Teubner, participated as experts in the capacity building seminar "Regional RTA Seminar: Public Policy for Access to Information and Transparency", which was held in San Salvador. The workshop was jointly organized by the Office of the Special Rapporteur for Freedom of Expression of the IACHR with the Instituto de Acceso a la Información Pública (IAIP for its initials in spanish) of El Salvador, and the Network for Transparency and Access to Information (RTA). The event consisted of two seminars, the first was of a public nature and was attended by over 100 people from different sectors (public, NGOs and media), while the second day was aimed at 40 professionals and government officials associated with implementation of the law for access to public information of El Salvador. Also on March 16, the Rapporteur attended a work breakfast with social and institutional actors in the field of freedom of expression that was held at the Fundación Friedrich-Ebert Stiftung of El Salvador. Additionally, he met with the Director of the General Superintendency for Electricity and Telecommunications (SIGET) Balanca Coto, and the President of the Legislative Assembly of the Republic Lorena Guadalupe Peña.

On March 16 to 19, the Special Rapporteur Edison Lanza and Senior Attorney Ona Flores, visited Tegucigalpa to carry out a capacity building workshop on “Inter-American Standards of Freedom of Expression and the Role of the Judicial Branch”, aimed at more than 80 Honduran prosecutors. The workshop was organized jointly by the Office of the Special Rapporteur for Freedom of Expression and the Office of the Public Prosecutor of the Republic of Honduras and addressed topics about “the Safety of Journalists and the Fight against Impunity and the Use of Criminal Law and the Right to Freedom of Expression” in the Inter-American Human Rights System. Paolo Tavarone, General Director for Protection Mechanisms of the Human Rights, Justice, Government and Decentralization Secretariat of the Office of the Public Prosecutor; Lic. Andres Guzmán, Director of Prosecutions of the Attorney General’s Office of Colombia; Linda Rivera, Deputy Delegate of the Conadeh; and Edy Tabora, the Director of C-Libre, all participated in the workshop.

On March 30, the Rapporteur participated as an expert in the panel "A Free and Accessible Internet: Freedom of Expression on the Web" in the framework of the event “Cyber Security and Freedom of Expression on the Web”. The event was jointly organized by the OAS and the South School on Internet Governance (SSIG), and took place at OAS headquarters on March 29 and 30. The panel was moderated by Ambassador Albert R. Ramdin, current advisor to the ministry of Foreign Affairs of Suriname, and counted with the participation of Ross Lajeunesse, Global Director of International Relations of Google; Guilherme Canela, Communications and Information Advisor for Mercosur of UNESCO; and Christoph Steck, Director of Public Policies and Internet at Telefónica S.A.

During the 157th Period of Sessions of the IACHR, diverse hearings were held on topics associated with the right to freedom of expression. On April 5, a hearing on the case of Colombian journalist Jineth Bedoya and a hearing on “The Right to Freedom of Expression and Regulation of Audiovisual Communications Media in the Americas” were held. On April 7, the hearings on “Student Protests and Human Rights in São Paulo, Brazil”; “Cultural Rights and the Internet in Brazil” and a hearing on “Access to Information and Indirect Restrictions on Freedom of Expression in Mexico” were held at IACHR headquarters. Finally, on April 8, the hearing on the “Right to Freedom of Expression and Changes in the Law on Audiovisual Communication Services in Argentina” was held.

In the framework of the 157th Period of Sessions, the Special Rapporteur also held diverse hearings with delegations from different governments and visiting civil society organizations, including; Fundamedios, Observatorio de Derecho y Justicia de Ecuador, representatives of the NGO Libertad de Expresión de Venezuela (IPYS Venezuela, Espacio Público, Colegio de Periodistas y Sindicato de Trabajadores de la Prensa), Reproductive Rights, Foundation for Freedom of the Press (FLIP), IFEX, Alianza Regional, representatives of Redlamyc and a meeting with the Vice-Minister of Culture of Brazil, João Caldeira Brant Monteiro de Castro. The Office of the Special Rapporteur also took part in meetings with the attorneys in the case of journalists’ Jaime Garzón and Claudia Julieta Duque.

On April 5, the Office of the Special Rapporteur for Freedom of Expression of the IACHR launched its 2015 Annual Report in a conference titled “2015: A Key Year for Freedom of Expression in the Hemisphere”. The seminar was held at the Elliott School of International Affairs at George Washington University (GW).
Opening remarks on freedom of expression and democracy were given by the Secretary General of the OAS Luis Almagro, who was followed with presentations by the Special Rapporteur for Freedom of Expression Edison Lanza and the President of the Inter-American Commission on Human Rights, James Cavallaro. Regional experts such as the Director of Fundamedios, Cesar Ricaurte; the Executive Director of IPYS Venezuela, Marianela Balbi; and the General Director of Observacom, Gustavo Gómez; presented the challenges faced by the region. The event was moderated by Silvio Waisbord, Professor at the School of Public Affairs and Communications, George Washington University, and was attended by over 30 representatives of civil society organizations such as FLIP, Alianza Regional, Fundamedios, CELS, Fundación Led and Article 19.

49. On April 5, the Special Rapporteur participated as moderator in the launching of the documentary “In the Middle: the Silences of Colombian Journalism”, organized by the FLIP. The screening was held at the offices of Freedom House in Washington D.C. and included remarks from the newspaper El Tiempo journalist, Jineth Bedoya, the Executive Director of the FLIP Pedro Vaca, and Colombian journalist Richard Vélez.

50. On April 6, the Office of the Special Rapporteur for Freedom of Expression in collaboration with Open Society Foundation, the Centro de Estudios Legales y Sociales (CELS) and Article 19 Brazil, organized a consultation aimed at civil society organizations in relation to exercise of the right to social protest in the Americas. The event took place at the headquarters of Open Society Foundation in Washington D.C. Over 15 regional civil society organizations that work in the field of human rights, such as the Instituto DEMOS, Foundation for Freedom of the Press (FLIP), Espacio Público, Due Process Law Foundation (DPLF), Centro de Análisis e Investigación (Fundar), Centro por la Justicia y el Derecho Internacional (CEJJIL) and Justicia Global, among others participated in the consultation. Additionally, the Center for Legal and Social Studies (CELS for its initials in Spanish), Article 19 Brazil, and the International Network of Civil Liberties Organizations (INCLO) and the Special Rapporteur Edison Lanza presented the work they had develop on the matter. The objective of this meeting was to gather information on problems in the region with respect to social protest and public demonstrations to be incorporated into the IACHR and OSR Annual Report.

51. From April 11 to 12, the Special Rapporteur traveled to Asunción, Paraguay to participate in the workshop “Judicial Schools and Training Centers for Ibero-American Magistrates and Protection and Promotion of Freedom of Expression, Access to Information, Transparency and Safety of Journalists”, jointly organized by UNESCO in cooperation with the Office of the Special Rapporteur for Freedom of Expression, the Red Iberoamericana de Escuelas Judiciales RIAEJ, the Superior Council for the Judiciary and School of Magistrates of Paraguay and the Supreme Court of Justice of Paraguay. The Rapporteur presented alongside the Regional Advisor of UNESCO, Guilherme Canela; and the Director of Transparency of the Supreme Court of Justice of Paraguay, José María Costa the results achieved until now in the framework of the initiative. The Rapporteur also moderated the panel on “Possibilities for Future Cooperation: Sustainable Development Objectives. Projects for 2016: Control of Conventionality and Training for Trainers” which counted with the participation of Guilherme Canela, and Sergio Palacio of the Judicial School of Argentina.

52. On April 20, the Special Rapporteur participated in an informative session at the State Department on the situation of freedom of expression in the Americas. The session was aimed at representatives of the USAID offices, the Office for Democracy, Human Rights and Labor, the Office for Western Hemisphere Affairs and the Office for Policy Planning at the State Department, who had particular interest in the current situation of Central American countries, Cuba and Venezuela.

53. From April 25 to 26, the Office of the Special Rapporteur journalist, Felipe Llambias, developed an academic visit to Asunción, Paraguay, where he took part in the seminar “Without Freedom of Expression there is no Democracy”, organized by the Journalists Union of Paraguay (SPP for its initials in Spanish) with the support of the Fundación Friedrich Ebert. The Office of the Special Rapporteur participated in the roundtable “Narco-politics and the Mafia threaten freedom of expression. From Santiago Leguizamón to Gerardo Servian: What changed? Who protects journalists? With Dante Leguizamón, Attorney and son of murdered journalist Santiago Leguizamón”. Llambias spoke about acts of violence against journalists and employees of media outlets, pursuant to Inter-American standards and national practices for prevention, protection and imprisonment of perpetrators, published by the Office of the Special Rapporteur in 2013. The seminar was held the day before the “Day of the Journalist in Paraguay”, and was attended by 40 journalists.
54. On May 2 to 5, the Rapporteur traveled to Helsinki, Finland to participate in the "World Press Freedom Day", jointly organized by the UNESCO and the Government of Finland. Invited by Article 19, the Special Rapporteur participated in the launch of the "Joint Declaration on Freedom of Expression and Countering Violent Extremism". The presentation was moderated by Thomas Hedges, Executive Director of Article 19 (United Kingdom and Northern Ireland), and counted with the participation of the Director of Law and Policy for Article 19 Barbora Bukovska; the Executive Director of the Center for Law and Democracy (Canada) Toby Mendel; and the Director of the Office on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Frane Maroevic. The joint declaration demonstrates the collective effort by these experts to safeguard and advance standards regarding freedom of expression and the right to public information. Annually adopted since 1999, the declaration serves as a reminder of the commitments that the interested parties must make in the defense of freedom of expression and strengthens efforts to defend, enlarge and maintain this right. The Rapporteur met on May 3 with the Assistant Director General of the Department of Asia and the Americas of the ministry of Foreign Affairs of Finland, Ms. Eija Rotinen, and with Ari Mäki.

55. On May 11, the Special Rapporteur Edison Lanza participated via skype in a session jointly organized by Calinfo and the UNESCO aimed at judges, prosecutors and journalists. The course was held in Montevideo, Uruguay, and addressed diverse topics associated with freedom of expression, such as access to public information, protection of personal information, communication crimes, and the Internet.

56. On May 12, the Rapporteur participated via skype in the "V National Forum Let’s Talk about Peru", held in Lima. The event had over 150 participants, including government authorities, social communicators, teachers, researchers and journalists from all regions of the country. Organized by the General Office for Social Communication of the Office of the Presidency of the Council of Ministers, the event dealt with the subject of modernization of public communications and generated a space for discussion about democracy, public media, and digital journalism. The forum featured the participation of the Special Rapporteur for Freedom of Expression Edison Lanza, George Washington University Professor Silvio Waisboard, and the Professor of the Pontificia Universidad Católica del Perú, Hugo Aguirre Castañeda.

57. From May 16 to 19, the Special Rapporteur and attorneys Tatiana Teubner and Ona Flores developed an academic visit to Bogotá, Colombia, where they participated in various seminars associated with freedom of expression and access to public information. On May 17, the Special Rapporteur and attorney Tatiana Teubner dictated the seminar “RTA: Public Policy in the Field of Access to Information and Transparency” jointly organized by the Office of the Special Rapporteur for Freedom of Expression, the Group for Transparency of the Entity, the Network for Transparency and Access to Information (RTA for its initials in Spanish), and the Secretariat for Transparency of the Presidency of the Republic, sponsored by the International and Iberoamerican Foundation for Public Administration and Public Policies (Fiiapp). The seminar was held on May 17 and 18, and counted with presentations from RTA experts who conducted modules on theoretical and applied aspects and concepts on access to information. The purpose of the seminar was to generate a space to debate, share experiences, lessons learned among the authorities of Latin America and those attending the event, in order to develop essential tools to promote the effective enjoyment of the human right of access to public information in Colombia. The event featured participation by Tito Contreras, European Commission’s Official Cooperation in Colombia, Martha Isabel Castañeda Curvelo, Attorney General’s Office of Colombia, and Camilo Enciso, Secretary of Transparency of the Presidency of the Republic.

58. On May 17 the Rapporteur participated in the event “Freedom of Expression on the Internet: Challenges in Colombia and the Americas”, co-organized by the Foundation for Freedom of the Press (FLIP), Fundación Karisma and the Universidad del Rosario. Moderated by Pedro Vaca, the Executive Director of the FLIP, the discussion counted with the participation of Amalia Toledo, Fundación Karisma; German Ortiz Leiva, Observatorio para la Libertad de Expresión del Rosario and the Fundación D’Artagnan; and Ana Lucia Lenis, policy manager for the Andean region of Google. Over 40 people from the academic realm attended the event.

59. On May 18 and 19, the Office of the Special Rapporteur, with support from the FLIP, organized three working groups on various topics associated with freedom of the press and access to information in
On May 18, a discussion on the “Right and Access to Information, International Standards of Freedom of Expression” was held at the headquarters of Fescol. The seminar addressed topics related to the prevention and protection for journalists, social protests and subsequent responsibilities. Participants included civil society organizations such as Reporteros Sin Fronteras Colombia; Somos Defensores; Asociación de Periodistas Independientes de Colombia; Colombia-Europe-United States Coordination; Centro de Investigación y Educación Popular; Dejusticia, among others. On May 19, a discussion was held on “Inter-American Standards in the Field of Access to Information and their Applicability to Environmental Topics” and “Access to information and women’s rights”. Present in the discussion were: SISMA Mujer; Casa de la Mujer, Humanas Colombia; Conferencia Nacional de Mujeres afrocolombianas; and Center for Reproductive Rights, among others. Also present were institutions from the Secretaria de la Mujer Bogotá, the Attorney General’s Office and the Office of the Presidential Adviser on Equality for Women. The topics addressed included debates on women and peace, sexual and reproductive rights as well as violence against women.

Moreover, on the environmental rights working group, the Special Rapporteur stated the standards and recommendations in the field of access to information associated with environmental topics, the right to prior consultation for indigenous populations, and access to information in the context of extractive activities for exploitation and development. Among the organizations present were; Transparencia por Colombia; Proyecto Antonio Nariño; Inter-American Association for Environmental Defense (AIDA); Asociación Ambiente y Sociedad; Tierra Digna. The State was represented by the Secretariat of Transparency and the ministry of the Environment.

During his stay, the Special Rapporteur met with senior officials of the Government of the Republic in coordination with the Colombian Mission to the OAS. On the 18th, Rapporteur Edison Lanza and attorney Ona Flores held meetings with members of the ministry of the Interior responsible for public policies in the field of freedom of expression. Additionally on the 18, they met with Paula Gaviria of the Unit for Comprehensive Attention and Reparation for Victims, which works to assist the victims of the armed conflict in Colombia and to contribute towards social inclusion and peace as a whole. During the meeting, the members of the Office of the Special Rapporteur were informed about the program for collective reparations for journalists and the media and specifically about progress made and the challenges that persist in the program. On May 19, the Rapporteur met with the team from the Minister of Information and Communications Technologies of Colombia, David Luna. The conversation focused on the current situation of community radio stations in Colombia. During his visit, the Rapporteur also met with Attorney General Jorge Perdomo and with advisors to the Director of the National Protection Unit of Colombia Diego Mora, Doctor Tania Buitrago and Doctor Juan David Bello.

From May 19 to 22, the Office of the Special Rapporteur for Freedom of Expression along with Colombia’s Attorney General’s Office organized a capacity building seminar on “Inter-American Standards for Freedom of Expression and the Case of Colombia”, which was held in Medellín. The workshop was divided into two main topics; on the first day, the Special Rapporteur spoke about “crimes against life and personal integrity and freedom of expression” while on the second day attorney Ona Flores held a workshop on “crimes against honor, privacy and freedom of expression”. More than 25 people took part in the workshop.

From May 31 until June 5, a delegation from the Office of the Special Rapporteur for Freedom of Expression made an On-Sight visit to Chile at the invitation of the country’s government. The delegation was headed by Special Rapporteur Edison Lanza, and included senior attorney Ona Flores. During the official visit, the Office of the Special Rapporteur visited Santiago de Chile and the city of Temuco, where they met with officials from public and state institutions from the executive, legislative and judicial branches. On May 31, the Rapporteur met with the High Commissioner for Human Rights. That same day, at the National Institute for Human Rights of Santiago (INDH for its initials in spanish), the Rapporteur met with local civil society organizations. Over 20 civil society organizations took part to receive information on matters relevant to freedom of expression in the country. The meeting was divided into four spaces: the exercise of critical journalism and diversity and pluralism in the media; freedom of expression and the Internet; social protest and transparency; and access to public information. The participating organizations included: Manuela Gumucio of Fucatel; Patricia Peña of the Instituto de la Comunicación e Imagen Universidad de Chile; Raúl...
Rodríguez of AMARC Chile; Paulina Acevedo of the Observatorio Chile; Juan Carlos Lara of Derechos Digitales; Alberto Precht of Chile Transparente; and Javiera Olivares of the Colegio de Periodistas, among others.

64. On June 1, the Special Rapporteur met with senior representatives of more than 10 Chilean institutions in the framework of the official visit to that country. During the visit, the Rapporteur met with the Chief Justice of the Supreme Court, Hugo Dolmestch Urrea, the Minister of Foreign Relations Heraldo Munoz Valenzuela, the Minister of Justice Javiera Blanco, and with the Under Secretary for Transport and Telecommunications, Minister Cristián Bowen. The Rapporteur also held meetings with the Council for Transparency and with the Undersecretary of Interior, Luis Correa Bluas. On June 2, the Special Rapporteur and attorney Ona Flores made an official visit to the city of Temuco, where they held meetings with State institutions such as the Mayor of Araucaria and the Director of Conadi, Alberto Pizarro Chañilao. The Office for the Special Rapporteur further organized a consultation with local civil society organizations to gather information about the situation of the right to freedom of expression and the indigenous peoples in Chile. The meeting took place at the headquarters of the Instituto Nacional de Derechos Humanos (INDH) and more than 15 civil society organizations participated: Elias Paillan, journalist of medios mapuche; Mireya Manquepillan Huanquil, Representative of the Kimche Mapu community radio; Raúl Rodríguez, AMARC and Jose Aylwin, Co-Director of the Observatorio Ciudadano, among others, to generate a venue for dialogue and gather information. Additionally, during the official visit to that country, the Special Rapporteur gave interviews to media outlets such as CNN Chile, the daily newspaper La Tercera, and other local media.

65. At the invitation of the Chilean State, the IACHR held its 158 Extraordinary Period of Sessions in Santiago de Chile from June 6 to 10. During these sessions, the IACHR held meetings with Chilean senior authorities and civil society organizations. On June 9, a hearing was held on freedom of expression titled “Right to Freedom of Expression and Criminal Laws Regarding Defamation in South America”. Also in the framework of the sessions, the IACHR delegation attended official meetings with the President of the Republic, Michelle Bachelet; the Minister of Foreign Relations, Heraldo Muñoz Valenzuela; the President of the Senate, Ricardo Lagos Weber; the President of the National Congress, Osvaldo Andrade Lara; the Minister of Justice, Javiera Blanco Suárez and the Chief Justice of the Supreme Court of Justice, Hugo Enrique Dolmetsch Urrea. The IACHR also met with the Argentine delegation in Santiago de Chile and the Ambassador for Human Rights of Argentina, Leandro Despouy.

66. During the 158th Period of Sessions, the Rapporteur also participated in different events associated with the right to freedom of expression. On June 6, the Special Rapporteur was invited by the Instituto de Comunicación e Imagen of the Universidad de Chile to give a keynote address on the situation of freedom of expression in the hemisphere. On June 9, the Rapporteur participated in the “VII International Forum on Public Media in Latin America: Public Media and its Audiences, Challenges to Convergence and Development”, jointly organized by the World Bank and Chile’s National Television Council. The Rapporteur spoke about pluralism, diversity and public media. The panel was moderated by Aleida Calleja of Observacom Mexico and counted with the participation of Guilherme Canela, Advisor for Communications and Information for Mercosur of UNESCO, and Hernán Lombardi, Head of the Federal System of Media and Public Content, Argentina. In addition, the Rapporteur participated as a guest speaker in the presentation of the ADC regional report on digital rights “Freedom of Expression in the Digital Realm: Status of the Situation in Latin America”. In attendance were men and women representatives of organizations that took part in drafting the report: Valeria Milanes (ADC), Juan Carlos Lara (Digital Rights), Laura Tresca (Article 19) and Juan Diego Castañeda (Fundación Karisma).

67. From June 11 to 15, the Special Rapporteur attended the XLVI General Assembly of the OAS in Santo Domingo, where he participated in various meetings with Member States and Permanent Observers. The Special Rapporteur accompanied President James Cavallaro and the Executive Secretariat of the IACHR in various meetings with observer countries and visiting organizations, to address the serious economic situation the IACHR is currently facing. On June 14, the Rapporteur held a meeting with the new ambassador of the Federal Department of Foreign Affairs of Switzerland, Bénédict de Cerjat, and the Regional Assistant for the United States and the OAS, Yves Dominique Reymond. During his stay in the country, the Rapporteur also held meetings with the foreign ministers of Colombia, Mexico, Dominican Republic and Uruguay as well as with representatives of the European Union and Sweden.
From June 22 to 24, the Special Rapporteur developed an academic visit to Caracas, Venezuela. Invited by the civil society organization Transparencia Venezuela, the Rapporteur participated in the forum on “Law on Transparency, Dissemination and Access to Public Information”, approved by the National Assembly of Venezuela in its first debate. During his stay in the country, he held a meeting with the Media Commission of the National Assembly and provided technical assistance for the draft legislation on access to public information. In addition, on June 22 the Rapporteur dictated a conference at the forum “The Right to Know on the Continent”, alongside the counselor of the Council for Transparency of Chile, Marcelo Drago; Deputy José Simón Calzadilla; Director of Ecoanalítica Asdrúbal Oliveros, and journalist Liseth Boon. Moreover, on June 23 the Rapporteur gave a conference at the Universidad Andrés Bello (UCAB) about inter-American standards in the field of broadcasting and held an academic meeting with professors and students from the School of Law and the School of Communications of the Universidad Central. The conference featured executive directors of civil society organizations such as Alianza Regional and the Coalición Pro-Acceso.

From July 7 to 9, the Special Rapporteur traveled to Panama to participate in the open consultation “Draft Legislation for the Protection of Information of a Personal Nature” organized by the National Authority for Transparency and Access to Information (ANTAI for its initials in Spanish). The forum was held on July 8 at the Centro de Capacitación de la Procuraduría de la Administración (CECPA) in collaboration with the National Authority for Governmental Innovation (AIG for its initials in Spanish). The draft legislation seeks to safeguard and guarantee the fundamental right to protection of personal information of citizens and its harmonization with exercise of the right of access to public information. The event marked the start of the public consultation and counted with the participation of the Special Rapporteur, who spoke about “The Protection of Personal Information, its Background and Evolution in the Region”. The event was attended by Angélica Maytín, (General Director of ANTAI), Alfredo Castillero Hoyos (Ombudsman), Oscar García (Authority for Consumer Protection, Defense and Competition Acodeco), representatives of civil society, private enterprises and the media, among others.

On July 12, the Special Rapporteur participated via videoconference in the international seminar “Freedom of Expression, the Right to Universal Communication and Plural Media for the Democracies of the World”, organized by the Colegio de Periodistas de Chile and UNESCO in Santiago de Chile. The Rapporteur offered welcoming remarks at the inaugural ceremony alongside the president of the Colegio de Periodistas, Javiera Olivares. The seminar featured Wikileaks journalist Joseph Farrell and Professor Omar Rincón of the Ebert Foundation, among other experts.

On August 2, the Rapporteur Edison Lanza participated in the International Meeting of Parliamentarians, organized by the Colombian ministry of Information Technologies and Communications, the Colombian National Television Authority (ANTV, for its initials in Spanish) and the Iberoamerican Audiovisual Platfama (PRAI, for its initials in Spanish). The event titled “Building an enabling environment for the development of pluralistic and independent media in Latin America” was held in Bogotá, and was attended by parliamentarians from a dozen countries in the region. The Special Rapporteur along with Frank La Rue, Assistant Director-General for Communication and Information of UNESCO, spoke about how the OAS and UNESCO could support could support its Member States to address regional challenges in the field of freedom of expression. The event counted with the participation of the Deutsche Welle Akademie; PRAI; Observacom; UNESCO; the Office of the Special Rapporteur for Freedom of Expression; the Center for International Media Assistance (CIMA), Members of the National Television Board of Colombia, as well as various deputies in representation of Latin American countries.

On August 3, a closed meeting organized by the FLIP was held regarding the regulatory framework for the allocation of official advertising in Colombia. The meeting was attended by the Special Rapporteur and by the Communications and Information Advisor for Mercosur of the UNESCO, international experts and civil society organizations associated with the defense of freedom of expression.

From August 3 to 6, the Special Rapporteur held an academic visit to Tegucigalpa to participate as a speaker in the International Forum “The Status of Freedom of Expression in Honduras”, organized by the civil
society organization C-Libre. The purpose of the event was to promote a dialogue between civil society actors and the State on the defense and protection of freedom of expression in Honduras. The encounter was attended by different sectors of civil society, authorities, academics and media outlets. On August 4, the Special Rapporteur gave a keynote speech on the “Role of Freedom of Expression in a Democracy”. He also participated in a panel on standards for the classification of public information, alongside the director of C-Libre, Edy Tabora; Gustavo Manzanares of the Institute of Access to Public Information and Julio Cesar Arbizu, anticorruption prosecutor from the Attorney General’s Office of Peru. Other guests included Moisés Sánchez, Executive Secretary of the Alianza Regional and Mariana Mas of the Open Society Foundation.

74. During the academic visit to Honduras, the Special Rapporteur participated in a dialogue with parliamentarians and political party representatives about freedom of expression, specifically regarding international standards and norms for the protection of honor and Internet regulations. The activity was promoted by C-Libre and the Fundación Friedrich Ebert and counted with the participation of the PAC and PINU SD parties as well as deputies from the Honduran National Congress. Additionally, on August 5 the Rapporteur held a working meeting with the officials in charge of the Protection Mechanism for human rights workers, journalists, operators of the justice system and public officials. The Rapporteur also met with the president of Penn Internacional, Ambassador Juan Jiménez, Director Mission to Support the Fight against Corruption and Impunity in Honduras (Maccíh) of the OAS, and local civil society organizations such as Copinh.

75. On August 19, the Special Rapporteur held a videoconference about the situation of freedom of expression in the region as part of the Master’s program in International Human Rights Law at the Diego Portales University in Chile. The class was part of the course on freedom of expression taught by Professor and former IACHR Commissioner, Felipe González.

76. From August 24 to 27, the Special Rapporteur and OSR attorney Viviana Ordoñez, held an academic visit to La Paz, Bolivia. The Special Rapporteur was invited by the President of the Internet Society (ISOC) Rodrigo Saucedo Linares, to participate as a lecturer in the forum “Regulation of Internet and Social Media - Freedom of Expression and Digital Rights”, which was held on August 25 at the Franz Tamayo University. In attendance were the President of the Foundation REDES, Eduardo Rojas; the representative of the Municipal Government of La Paz, Roberto Argamont; journalist Amalia Pando; and Executive Director of Agetic, Nicolás Laguna, among others. Additionally, the Special Rapporteur participated in a working group on inter-American standards for freedom of expression and protection of media communicators. The event was held at the headquarters of the Journalists Association of La Paz (APLP, for its initials in Spanish), and was jointly organized by the Office of the Special Rapporteur for Freedom of Expression and the UNIR Foundation. 70 representatives from civil society organizations, media and journalists were present at the meeting. This activity enabled the Office of the Special Rapporteur to gain a better understanding of the difficulties and challenges currently facing journalists in Bolivia.

77. In the context of the academic visit, the delegation of the OSR also met with senior officials of the Government of the Plurinational State of Bolivia. On August 24, the Rapporteur met with Vice Chancellor Juan Carlos Alurralde, the Minister of Communications, Marianela Paco Durán, and with the Vice-Minister for Institutional Transparency and Fight against Corruption, Jorge Flores. On August 26, the Rapporteur further met with the representative of the United Nations High Commissioner for Human Rights in Bolivia, Denis Racott, to exchange information about the status of the situation of freedom of expression in the country. On that same day, the Embassy of Sweden in Bolivia coordinated a series of informative meetings with international organizations, civil society and representatives of embassies accredited in the country. On August 26, the Rapporteur met with Jorge Velásquez, representative of the local civil society organization Diakonia, and with members of the international organizations Save the Children and Plan Internacional. In these meetings, he maintained an open dialogue about the challenges faced by Bolivian society in the field of freedom of expression and the right of association, as well as the need to establish a dialogue between the State and civil society. During his stay in La Paz, the Rapporteur Edison Lanza held interviews with Channel Anoticiando, radio station RED UNO and newspaper Página Siete.
78. OSR attorney Viviana Ordoñez, held two workshops on the dissemination of inter-americ standards in the field of violence against journalists and employees of media outlets in Guatemala City, during an activity coordinated with the Office of the United Nations High Commissioner for Human Rights. The workshops were held from August 29 to September 2, with the purpose of disseminating inter-americ standards on freedom of expression. On August 31 the first workshop on prevention, protection and justice was held in the municipality of Mazatenango entitled "Violence against Journalists and Media Workers". The encounter counted with the participation of 40 journalists, some of whom had been victims of aggressions and threats and who, as part of their concerns, spoke of the job insecurity under which they currently work. The workshop was replicated on September 1 in Guatemala City and was attended by journalists and civil society representatives.

79. During its stay in the country, the Office of the Special Rapporteur held a meeting with Erick Cardenas, Head of the Prosecutors Unit dedicated to the investigation of crimes against journalists, and the Director of the Training School of the Public Prosecutor's Office. Additionally, the Office of the High Commissioner organized a meeting with the civil society organizations so that the Special Rapporteur could gain knowledge of the concerns that exist, particularly regarding the regulation of community radio stations and violence against journalists that remain in impunity. The meeting was attended by several civil society organizations such as Instituto Centroamericano de Estudios para la Democracia Social (DEMOS), Civitas Center, and Prensa Comunitaria. OSR lawyer further with the organization Centro de Reportes Informativos sobre Guatemala (Cerigua).

80. From August 29 to September 1, the Special Rapporteur for Freedom of Expression Edison Lanza traveled to Mexico City to undertake various academic activities and attend meetings held by the IACHR and the Inter-American Court of Human Rights. The Rapporteur participated as a lecturer in the "Héctor Fix-Zamudio Training Diploma on the Inter-American Human Rights System", organized by the Institute for Legal Research of the Universidad Nacional Autónoma de México where he taught a seminar on "Violence against Journalists and the Exercise of Freedom of Expression". The Rapporteur also held various meetings with members of the IACHR's new team and the Inter-American Court for Human Rights, professors from the program and also a working lunch with the Dean of the University, Dr. José Navarro Robles. During his to stay in Mexico, the Special Rapporteur participated in the Governing Board of the Mechanism for the Protection of Human Rights Defenders and Journalists held at the ministry of Interior in the context of the 39 Ordinary Session.

81. Additionally, on September 1, the Rapporteur was invited by 'El Colegio de México' to participate in the seminar on Violence and Peace. The Rapporteur participated alongside the President of the Human Rights Commission of the Federal District, Perla Gómez Gallardo, and journalist Carmen Aristegui, in the panel "Civil suits against journalists and the use of laws against freedom of expression", which was moderated by Lorenzo Meyer. The seminar counted with the participation of the following civil society organizations: Freedom House (Mari Clare Acosta), Article 19 (Ana Cristina Ruelas), Amnesty International Mexico (Amnistía Internacional México) (Perseo Quiroz), Onudh Mexico (Jan Jarab), Periodistas de a Pie (Daniela Pastrana) and Propuesta Cívica (Pilar Tavera).

82. On September 9, Special Rapporteur Edison Lanza gave a virtual class titleed "The scope of freedom of expression on the Internet", for the Spanish Open Internet Course, organized by 'Public Knowledge' in collaboration with P2PU. The objectives of the course include training a new generation of thinkers to influence the agenda on a Free and Open Internet, through applying skills developed by global organizations for the promotion and defense of human rights.

83. From September 13 to 14, 2016, the Rapporteur and the attorney from the Office of the Special Rapporteur, Tatiana Teubner, participated as experts in the regional training seminar "Inter-American Seminar on Transparency and Access to Information", held in Brasilia. The workshop was organized by the Office of the Special Rapporteur for Freedom of Expression of the IACHR in coordination with the Controlaría General de la Unión (CGU) as a full member of the RTA in representation of Brazil, and the Network for Transparency and Access to Public Information. During the first day, the Special Rapporteur held a panel on the evolution of the right of access to public information in the region and also participated as moderator in
the panel “local regulatory frameworks and institutional changes”. The event was attended by 340 officials and members of Brazilian civil society, 70 attendees for the workshops on practical cases and dozens of people who followed the activities by streaming. The objective of the capacity building seminar was to provide public officials and professionals with theoretical-practical elements in the realm of access to information and transparency, in order to consolidate the capacities, theoretical and practical skills of the officials regarding access to information in relation to this topic associated with good governance and the development of modern democracies.

84. On September 19, the Special Rapporteur participated in an informative session with USAID about the status of freedom of expression in Central America. During the session, the Rapporteur explained the work of the OSR in addressing existing deficiencies in the application of Inter-American legislation and standards in the field of freedom of expression.

85. From September 20 to 22, the Project Coordinator of the Office of the Special Rapporteur, Melissa Cabrera, traveled to Miami to participate in the international forum “Open Voices: Latin American Journalism in Restrictive Societies”, organized by the Institute for War and Peace Reporting (IWPR), with the aim of addressing the topics of censorship, social work of the media, and the future of Cuban journalism. On September 20, the Rapporteur Edison Lanza participated via videoconference in the panel “The Status of Freedom of the Press in Latin America”. The panel was moderated by Luis Botello of the International Center for Journalists (ICFJ), and counted with the participation of Miriam Herrera (Asociación por Libertad de Prensa, APLP), Carlos Lauría (Comité para la Protección de Periodistas, CPJ), Normando Hernández (Instituto Cubano por la Libertad de Expresión y Prensa), and Moisés Sánchez (Alianza Regional por la Libertad de Expresión e Información). The event was attended by civil society organizations, such as Alianza Regional, ICFJ, Participación Ciudadana, Fundamedios, Internews and COJ, along with important Cuban journalists such as Henry Constantin (Hora de Cuba, Diario de Cuba; Cubanews; Cubanet; On Cuba; El Estornudo; Periodistas de Barrio), Normando Hernandez, Instituto Cubano para la Libertad de Expresión y Prensa en Cuba (ICLEP); and Regina Coyula (blogger of La mala letra; Hablemos Press).

86. From September 21 to 23, the attorney specialist in human rights from the Office of the Special Rapporteur, Viviana Ordoñez, traveled to Mexico DF to take part in a cross-border gathering of journalists titled “Freedom of Expression in Times of Organized Crime”. The event, which was held in the Museo Franz Meyer was attended by 12 journalists from Mexico, El Salvador, Guatemala, Honduras and Germany, was organized by the DW Akademie to analyze challenges for freedom of the press and opinion. During the encounter, attorney Ordoñez exhibited the current challenges of freedom of expression in Mexico and the Northern Triangle.

87. From September 23 to 27, a delegation of the Office of the Special Rapporteur traveled alongside Commissioner Margarete Macaulay to the cities of Brasilia and São Paulo to participate in freedom of expression and social protest consultations in Brazil. Invited by the civil society organization Article 19 Brazil and the Open Society Foundation, Special Rapporteur Edison Lanza, Commissioner Macaulay and the attorney from the Office of the Special Rapporteur, Tatiana Teubner, provided technical support in three consultation meetings. On March 24, the consultation on property land rights in the context of social protest was held in Brasilia. The meeting provided opportunities to identify challenges faced by people demanding land rights in the context of social protests, as well as recommendations on how to deal with such challenges. Additionally, the team from the Office of the Special Rapporteur and Commissioner Macaulay held a meeting with the Office of the Federal Public Prosecutor for Citizens’ Rights (PFDC, from its Portuguese acronym).

88. On September 26, a consultation was held in São Paulo on women and social protest at the headquarters of the Lawyers’ Association of the state of São Paulo (APESP, for its Portuguese acronym). The meeting was attended by Brazilian organizations: Marcha das Vadias, Marcha da Maconha, Terra de Direitos, RENAP Brasilia, Tambores de Safo, Marcha Mundial das Mulheres and Brigadas Populares, among others, who spoke of the current challenges faced by women in exercising their rights. Finally, the third consultation covered the issue of youth and social protest in Brazil. The meeting provided a space for identifying challenges faced by students in the context of social protest and also concluded with recommendations for consideration by the IACHR. In São Paulo, the OSR delegation, along with Commissioner Macaulay and the
representatives of Article 19 Brazil, held meetings with media outlets, civil society organizations, and promoters from the Public Prosecutor’s Office. Also on September 26, the Office of the Special Rapporteur, alongside Article 19, launched the report “Freedom of Expression in Brazil 2005-2015”. The document is a compilation of the chapters relating to Brazil from the OSR’s annual reports of the recent decade. Through this report, the Office of the Special Rapporteur seeks to systematize and draw attention to the relevant advances and challenges that still persist in the country for the full exercise of the right to freedom of expression.

89. Within the framework of the 71st session of the United Nations General Assembly, senior attorney from the Office of the Special Rapporteur Ona Flores, participated on September 23 in the panel “Safety and Protection for Journalists: Good Practices”, which was held at the United Nations Office in New York. The OSR was invited as part of the working group of experts on freedom of opinion and expression, which is co-chaired by the United States and Uruguay. Senior attorney Flores spoke about the work that the Office of the Special Rapporteur has been carrying out to seek justice at the level of the IACHR and the Inter-American Court of Human Rights in cases related to violence against journalists and employees of media outlets, in the framework of the system of individual cases and petitions.

90. The first Universal Day for Access to Public Information in Latin America, was held in Asunción, Paraguay on September 28 under the title “Access to Public Information: More Citizenship, More Democracy, More Development”. The event was jointly organized by the UNESCO, the Supreme Court of Justice of Paraguay, the Office of the Public Prosecutor of Paraguay, the Office of the Special Rapporteur for Freedom of Expression of the IACHR, the ministry of Justice of Paraguay, the Centro de Estudios Ambientales y Sociales (Ceamos), and the Inter-American Institute of Human Rights. Among participants were Guilherme Canela (Counselor for Communication and Information for Mercosur and Chile of the Regional Office of UNESCO), Alicia Pucheta (President of the Supreme Court of Justice of Paraguay), Javier Díaz Verón (Attorney General of the Paraguayan State), and Éver Martínez (Minister of Justice of Paraguay).

91. On September 30, the Special Rapporteur Edison Lanza traveled to Santiago de Chile in the framework of the international seminar “10 Years after the Ruling on Claude Reyes vs. the State of Chile”, organized by the Council for Transparency. After the welcoming remarks of the President of the Council, José Luis Santamaría, the Rapporteur dictated a conference entitled “A Decade after the Case of Claude Reyes and Others vs. Chile: The Impact of the Decision by the Inter-American Court of Human Rights”. The event also counted with the participation of Gillherme Canela De Souza (UNESCO); Moisés Sánchez (Alianza Regional); Juan Pablo Olmedo (ex-president of the Council for Transparency); Jorge Bermúdez (Comptroller of the Republic) and Jean Michel Arrighi (Secretary for Legal Affairs of the OAS), among others.

92. At the invitation of the Argentine Government, the Special Rapporteur travelled from October 1 to 4 to Buenos Aires to provide technical support in the drafting and discussion of various legislation on convergent communication, official advertising and access to public information. On October 3, the Special Rapporteur was received by the Minister of Communications, Oscar Aguad, the coordinator of the Drafting Commission of the new Communications Law and the director of the National Communications Entity (ENACOM, for its initials in spanish), Silvana Giudici, along with members of that Commission. The Rapporteur also attended a luncheon along with the Enacom Commission drafting the bill. The meeting was also attended by the Acting Minister of the Federal System of Public Media, Hernán Lombardi, and the Secretary of Public Communications, Jorge Grecco. In addition, the Argentine ministry of the Interior coordinated a meeting between the Special Rapporteur and the Secretary for Political and Institutional Affairs, Adrián Pérez, in charge of implementing the recently approved Law on Access to Public Information. This is the first law of its kind approved at the federal level in Argentina that embraces the Inter-American standards for freedom of expression.

93. On October 4, a meeting was held with Argentine deputies and senators to discuss various bills on governmental advertising that are currently under study by the Argentine Senate. The meeting was coordinated by the Secretary of Parliamentary Relations and Administration, Paula Bertol, and was attended by high-level government figures such as Deputy Karina Banfi. During his stay in the country, the Rapporteur also met with Santiago Kovaldoff, member of the Enacom Commission, had a lunch with the Argentine Human
Rights Ambassador, Leandro Despouy, and a work breakfast with the Under-Secretary for Human Rights, Brian Schapira and the Director of Judicial Affairs, Ramiro Badia. At the end of his official visit, the Special Rapporteur was interviewed by the Argentine daily newspaper La Nación.

94. From October 17 to 19, the Special Rapporteur for Freedom of Expression was invited by the Government of Costa Rica to participate at the Sixth Annual Freedom Online Conference in San Jose, organized by the member countries of the ‘Freedom Online Coalition’. The Special Rapporteur participated in the opening ceremony of the Conference, alongside the President of the Republic of Costa Rica, Guillermo Solís; the Minister of Foreign Affairs of Costa Rica, Manuel A. Gonzalez; the Minister of Science, Technology and Telecommunications of Costa Rica, Marcelo Jenkins Coronas, and the Assistant Director General of UNESCO, Frank la Rue, among others. Additionally on October 17, the Rapporteur participated in a panel on digital development and online openness, and on the 18th in a panel organized jointly by the Governments of Germany and the United States about hate speech and online harassment. The purpose of the event was to boost freedom on the Internet, coordinate diplomatic efforts and make commitments with the civil society and the private sector throughout the world to promote the enjoyment of human rights online.

95. From November 11 to 12, the Special Rapporteur traveled to Quito, Ecuador to participate in the “XII Network for Transparency and Access to Information Meeting (RTA)” organized by the Ombudsman of Ecuador. The event brought together more than thirty (30) representatives from 28 countries and international bodies that are part of that international association, currently chaired by Chile. The objective of the event was to follow up on the agreements and commitments made in Honduras during the XI RTA Meeting, incorporate new members, update points on the agenda for cooperation and plan the holding of new regional meetings. This international meeting also made it possible to share regional experiences on the right of access to public information and to identify challenges in this field. The encounter featured participation by Patricio Benalcázar Alarcón, Ombudsman of Ecuador; Mariana Gatti, Representative of the Executive Secretariat of the RTA Network; Daniel Navarro, Representative of the National Institute for Access to Information of Mexico; Herminia Funes, Commissioner of the Institute for Access to Public Information of El Salvador; Gilberto Waller Junior, Representative of the Office of the Comptroller General of the Union of Brazil; and Roxana Silva, Magistrate of the Constitutional Court of Ecuador, among others.

96. From November 14 to 17, the Special Rapporteur Edison Lanza made an academic visit to Montevideo, where he participated in various seminars associated with freedom of expression and access to public information. On November 15, the Rapporteur held a presentation at a work meeting with journalists entitled “Journalism and Monitoring of Human Rights”. On the 16, the Rapporteur took part in the seminar Regulation and Implementation of the Right of Access to Public Information in Uruguay. Progress and Necessary Improvements 8 Years after the Entering into Force of law 18.381”, organized by the Centro de Acceso y Archivos a la Información Pública (CAinfo) (Center for Access and Files on Public Information) jointly with the Fundación Friedrich Ebert in Uruguay (FESUR), and with support from UNESCO and the Open Society Justice Initiative (OSJI). The aim of the seminar was to analyze the status of the situation of the right of access to public information in the country, the progress and proposed challenges raised as well as to discuss possible improvements to the regulatory framework. The activity was held at the Mercosur building and featured distinguished participation by Mariana Mas, Program Officer of OSJI; Rafael Rafael Sanseviero, representative of FESUR; Fabrizio Scrollini of DATA Uruguay; Tania da Rosa of CAinfo and Gabriel Delpiazzo of the Unidad de Acceso a la Información Pública (UAIP) (Unit for Access to Public Information), among others.

97. During the 159 Ordinary Period of Sessions of the IACHR in Panama City, diverse hearings were held that dealt with topics associated with the right to freedom of expression. On December 2, a hearing took place on the situation of the “Situation of the Right to freedom of expression in Venezuela” and a hearing on the “Situation of the Right to freedom of expression in Paraguay”. Finally, also on December 2, a hearing took place on the situation of the right to freedom of expression in Ecuador. In addition, the Special Rapporteur also participated in the hearing “Situation of Human Right Defenders in Cuba”, requested by the CPJ, Cubalex, Damas de Blanco, among others.
98. Also in the framework of the 159th Period of Sessions, the Special Rapporteur also held diverse meetings with delegations from different governments and visiting civil society organizations, including: Fundamedios; FLIP; Remdmica, Committee for the Protection of Journalists (CPJ); and a breakfast with the President of the Justice Supreme Court of Uruguay and the Permanent Secretary of the Ibero-American Judicial Summit, Minister Ricardo Pérez Manrique.

99. From December 4 to 8, the Special Rapporteur Edison Lanza made an academic visit to Guadalajara, Mexico to attend the “Internet Governance Forum” (IGF). On December 5, the Rapporteur took part in a panel about “protección de la seguridad de periodistas online en el ecosistema global de Gobernanza de Internet” (Protection for the Safety of Journalists Online in the Global Internet Governance Ecosystem). The event was moderated by Carlos Tejada of the UNESCO office in Mexico and featured distinguished participation by David Kaye, United Nations Special Rapporteur for Promotion and Protection of the Right to Freedom of Opinion and Expression; Guy Berger, Director of the UNESCO Division for Freedom of Expression and Media Development; Liberto Hernández Ortiz, Deputy Attorney General for Special Investigations for Attention and Protection for Victims of Crime; Marta Duran, expert journalist on the mechanism for the defense of journalists in Mexico; and Kim Pham, Deputy director of Programs of the IREX, among others. Also, the Office of the Special Rapporteur co-organized a regional consultation about freedom of expression in the framework of the Internet Governance Forum with the Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE), Article 19, and the Office of the Special Rapporteur of the UN. The consultation took place on December 5, and counted with the participation of representatives from the countries of Argentina, Bolivia, Costa Rica and Uruguay, as well as the Undersecretary of Digital Government of the Republic of Argentina, Daniel Abadie, and the head of the Digital Government Unit of the Secretariat of the Civil Service of Mexico, Yolanda Martinez Mancilla.

100. On December 7, the Special Rapporteur participated in a panel on judicial systems and Internet governance along speakers Catalina Botero, Eugenia Díaz de León, Toby Mendel and Carlos Affonso Souza. The encounter was co-organized by the Office of the Special Rapporteur and the UNESCO. The meeting addressed the role of the judicial system in the protection of freedom of expression in cyberspace.

101. During the 160th Extraordinary Period of Sessions of the IACHR in Washington DC, the Office of the Special Rapporteur for Freedom of Expression held a hearing on December 9 on the “Right to Freedom of Expression and Antiterrorist Legislation in Canada”. The hearing was requested by the organization Canadian Journalists for Free Expression (CJFE). Additionally, the Special Rapporteur also participated in the hearing “Human Rights Situation of Indigenous Persons in the Context of Projects and Extractive Industries in the United States”.

102. On December 15, the Special Rapporteur Edison Lanza was invited by the Mission of Costa Rica to the OAS to speak at the Permanent Council in relation to the Sixth Annual Conference of the Freedom Online Coalition, which was held last October 2016 in San José. The intervention focused on the challenges in the area of freedom of expression and internet that were identified in the mentioned conference.

5. Annual Report and Development of Expert Knowledge

103. 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.

104. Besides its annual reports, the Office of the Special Rapporteur periodically produces specific reports on particular countries. For example, it has prepared and published special reports on the situation regarding the right to freedom of expression in Paraguay (2001), Panama (2003), Haiti (2003), Guatemala (2004), Venezuela (2004), Colombia (2005), Honduras (2009, 2010 and 2015), Venezuela (2009 and 2010) and Mexico (2010 and 2015).
105. The Office of the Special Rapporteur has also prepared thematic reports that have led to a significant process of debate in the region, as well as the implementation of legislative and administrative reforms in many States throughout the Americas. In 2016, the Office of the Special Rapporteur worked on the thematic reports included as thematic chapters of this report.

106. During 2016, the Office of the Special Rapporteur drafted three thematic reports on “Standards for an open, free and inclusive Internet”, “Silenced Zones” and “National case law on Freedom of Expression.”

107. In 2016, the Office of the Special Rapporteur worked alongside the Unit on Economic, Social and Cultural Rights as well as the Rapporteurships on the Rights of Women, on the Rights of the Child, on Human Rights Defenders and on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons in the production of expert knowledge regarding the exercise of freedom of expression of these groups and communities.

6. Special Statements and Declarations

108. 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.

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

110. 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.

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

36 The abovementioned joint declarations are available for consultation at: http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&ID=1
112. On June 24, 2016 Freedom of expression experts expressed their concern in a joint press release at measures taken by the interim Federal Government in Brazil intervening in the administration of the Brazilian Public Broadcaster (EBC) and the converting the National Controller’s Office (CGU) into a new ministry of Transparency, Monitoring and Oversight.37

113. On August 4, 2016 the Special Rapporteur for Freedom fo Expression of the IACHR Edison Lanza, published a joint press release with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (UN), David Kaye regarding the Venezuelan crisis and the alarming deterioration of media freedom.38

114. On November 3, 2016 the Office of the Special Rapporteur issued a joint press release with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (UN), David Kaye on the arbitrary application of the Organic Communications Act with regard to freedom fo expression in Ecuador.39

115. During 2016, the Office of the Special Rapporteur issued thirty-six (36) press communiqués40 to call attention to incidents associated with freedom of thought and expression. These pronouncements emphasized events of particular concern along with the best local practices, and explain the respective regional standards. The press communiqués issued in 2016 may be consulted at the website of the Office of the Special Rapporteur, available at: http://www.cidh.org/expresion.

Funding

116. The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) in October 1997, during its 97th session. The IACHR deemed it essential to create this office, considering the role that the right to freedom of expression plays in consolidating and developing the democratic system and in denouncing and protecting other human rights. As was explained at the beginning of this chapter, the creation of the Office of the Special Rapporteur as a permanent office found full support among the OAS Member States.41


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

118. In terms of international cooperation projects, it is important to mention that the Office of the Special Rapporteur develops them in strict adherence to the agenda or work plan that has been approved by the IACHR. Based on that work plan, the Office of the Special Rapporteur develops specific projects that are subject to rigorous procedures within the OAS so that they meet the approval of the Project Evaluation Committee (CEP) and the office of legal affairs and the financial office, among others. Once a project has successfully undergone these procedures, it is presented for the open, public competitions held by cooperation agencies. This process ensures that the cooperation funding exactly matches the Office of the Special Rapporteur’s own priorities. Through this technical mechanism for obtaining funds, the Office of the Special Rapporteur has managed to increase its income by more than 50 per cent in recent years. On this same subject, it is pertinent to add that 12 per cent of the funds obtained by the Office of the Special Rapporteur (13.6 per cent of all funds executed by the office) must be designated for central administration of the OAS as indirect cost recovery or ICR.42

119. 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 2016, the Office of the Rapporteur calls attention to the projects that have been carried out satisfactorily thanks to the financial contributions made by the States of Chile, Costa Rica, the United States of America, Peru, Uruguay, and France, as well as the Swedish Agency for International Development Cooperation, the Swiss Confederation, Open Society Foundations, and the National Endowment for Democracy (NED). This funding has allowed the Office of the Special Rapporteur to fulfill its mandate and continue its work of promoting and defending the right to freedom of expression. Once the OAS has released the official figures on the resources received and executed by this office, they will be published in the audited financial statements available on the webpage of the organization.43


Staff

120. The Office of the Special Rapporteur has worked under the coordination of the Special Rapporteur, with a team of two or three lawyers who are experts in subjects related to freedom of expression, a journalist in charge of monitoring the situation of freedom of expression in the region, and a person who performs administrative assistance tasks. Since July of 2009, the Office of the Special Rapporteur has had a person in charge of managing projects and mobilizing resources. Any additional resources that have been obtained have served to provide greater stability and better working conditions for the members of this team. The Office of the Special Rapporteur has also benefited from the presence of interns who have been an essential part of the team. At different times in 2016, Adrián Vergara (Chile), Eloise Oulelet (Canada), and Cristina Narváez (Colombia) contributed their work and enthusiasm very constructively to the Office of the Special Rapporteur. The Rapporteurship has also counted with the work of fellows, Marisol Marin (Fellowship Orlando Sierra, 2015) until July 2016, and Carlos Arreondo (Coahuila University Fellowship, 2016) until December 31, 2016.
CHAPTER II
EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

B. Introduction and Methodology

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

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

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

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


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

1. ANTIGUA & BARBUDA

A. Subsequent Liabilities

7. During a radio interview with Observer Media on February 12, 2016, opposition Senator Damani Tabor claimed that government officials had misappropriated funds from the Citizenship by Investment Unit. A month later, merely hours after Prime Minister Gaston Browne called on Senator Tabor to retract his claims, he was served with a search warrant, arrested and charged with “making a false statement” and “effecting a public mischief”. Under the Public Order Act, Senator Tabor faces up to two years in prison or a maximum fine of US$ 15 thousand if found guilty of making false statements about public officials.1

8. Principle 11 of the IACHR’s Declaration of Principles on Freedom of Expression states: “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” Furthermore, the IACHR has held repeatedly that the application of criminal law to sanction expressions about public officials is disproportionate when dealing with protected speech, such as information or expression regarding matters of public interest, and infringes the right to freedom of expression.2

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2. ARGENTINA

A. Progress

9. On April 4, 1st Supervisory Judge [jueza de Garantías Nº 1] Alejandrina Herrero of Entre Ríos acquitted journalist Juan Carlos Botta of criminal defamation charges [calumnias e injurias] brought by the Treasury Secretary of the Municipality of Concepción del Uruguay [secretario de Hacienda de la Municipalidad de Concepción del Uruguay], Oscar Colombo. The secretary filed a complaint against Botta following a September 20, 2015 publication on the web page of the digital weekly newspaper El Disparador Uruguay, for which Botta is responsible, in which a reader called into question Colombo’s actions and his alleged irregular “enrichment.” In her decision, the judge found that statements referring to matters of public interest did not amount to criminal defamation under the Criminal Code. Citing the criteria set forth by the Inter-American Court of Human Rights in the case of Kimel v. Argentina, the judge determined that the conduct “attributed to the defendant journalist is not statutorily defined as criminal conduct, and his duty to inform takes precedence over the honor or privacy of a public servant.” In addition, citing a decision of the Supreme Court of Entre Ríos, she held that the facts disclosed are “closely linked to issues of public interest and make the complainant’s professional undertakings in the municipal government matters that frankly go beyond his sphere of privacy.”

10. On September 14, the Argentine Congress enacted the first federal Public Information Access Act [Ley de Acceso a la Información Pública Federal]. The law, which passed with 182 votes in favor and 16 against. The Executive Branch introduced a legislative bill to Congress on April 7. Its objective is “to guarantee the effective exercise of the right to access public information, and to promote citizen participation and transparency in government.” It further establishes that “every individual or legal entity, whether public or private, has the right to request and receive public information, without the requester being required to provide a reason for the request in order to prove the private right or legitimate interest, or to be represented by counsel.” It establishes a period of 15 days, which in exceptional cases may be extended for another 15 days, for entities to respond to the request for information. It also created the Access to Public Information Agency, an entity that will operate autonomously within the Executive Branch and ensure compliance with the law. Additionally, it provides for the creation of access to public information bodies in the Legislative Branch, the Judiciary, and the Offices of the Attorney General, with operational autonomy and powers and duties identical to those of the Access to Public Information Agency.

11. The Office of the Special Rapporteur commended the enactment of a Public Information Access Act. As it stated in a letter sent to the State on July 22 to request information on the progress of the legislative bill, and in a press release issued on September 22 after the law was passed, this Office has recommended since its inception that the States of the region enact laws that guarantee effective access to public information and foster their effective and efficient implementation, in accordance with the relevant international standards. In this regard, the Office of the Special Rapporteur notes with satisfaction that the law contains standards developed both by the IACHR and its Office of the Special Rapporteur and in the case law of the Argentine Supreme Court with regard to access to public information.

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12. On other occasions, the Office of the Special Rapporteur has recognized that the creation of an autonomous and specialized agency for supervision, responsible for promoting implementation of legislation on access to public information and for reviewing negative responses by the administration with the aim of adopting a decision in this respect is essential to achieve effective satisfaction of the right.\(^8\) Comparative practice and experience have demonstrated the importance of having these types of authorities in order to support efforts to comply with access to public information laws.

B. Attacks, Threats and Harassment against Journalists and Media Outlets

13. In the early morning hours of December 11, two individuals reportedly broke into the home of journalist Sergio Hurtado, director of the FM Luna radio station in San Antonio de Areco, and sexually assaulted his wife while he was restrained. According with the information the assailants stole various items and warned Hurtado to stop reporting on the subject of drugs or they would return to kill him. The attack had reportedly been in retaliation for Hurtado’s journalistic work reporting on narcotrafficking in the area and on the alleged corruption of municipal employees and the police.\(^9\)

14. On February 13, photojournalist Luciano Barrera of the newspaper elesquiuiu.com in the Province of Catamarca was allegedly detained and beaten by police officers from that province while covering a traffic accident, in order to keep him from taking photographs. Barrera was taken to a police station, where he reportedly remained in custody for five hours. The police officers allegedly removed the memory card from his camera.\(^10\)

15. Journalist Roberto Navarro of C5N reported that on March 19 he was intimidated by two individuals while walking down the street, and that the previous day he had received a death threat in a telephone call. The journalist believed that the threats were connected to a program revealing details about businesses of President Mauricio Macri’s, scheduled to air over the following days.\(^11\) Later, the journalist reported on his Facebook page that he had decided to suspend the broadcast after the channel’s executives told him not to air the report about the President’s businesses, which would be postponed until “conditions allowed for its broadcast.”\(^12\)

16. On March 21, journalist Antonio Ruiz and cameraman Hugo Pérez, of the media outlets Televisión Orientada (TVO) and Formosa Exprés, were reportedly threatened with firearms by a group of some 20 men. The incident took place minutes after they arrived in the neighborhood of República Argentina to cover a news story for the program Algo Está Pasando on QTH Radio about a crime that had occurred in the area.\(^13\)  

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12 Roberto Navarro/Facebook. March 20, 2016. Se suspendió el programa especial de tres horas de Economía Política de esta noche.

17. On March 23, journalists Romina Manguel and Eduardo Anguita of the Radio Nacional program Poné Primera were the victims of an attack when an individual reportedly broke into the studio shouting threats and claiming to have explosives, while the program was on air.¹⁴

18. On March 24, journalist Mercedes Ninci of Radio Mitre was reportedly assaulted by demonstrators while covering the march commemorating the 40-year anniversary of the 1976 coup d'état.¹⁵ On April 11, during the coverage of former President Cristina Fernández de Kirchner's departure from the city of El Calafate to the Federal Capital to testify in a court case, various journalists reported having been assaulted and prevented from doing their jobs by sympathizers of the former president. Among them were journalist Marcos Barroca, cameraman Matías Rebella, and assistant Leandro Giacono, of Todo Noticias, and photographer Osvaldo Fantón of Télam.¹⁶ On April 13, during the former president’s appearance before a federal court to testify in a case investigating alleged irregularities during her administration, journalist Mercedes Ninci of Radio Mitre was allegedly assaulted by persons identified as members of the pro-Kirchnerismo organization “La Cámpora” who were at the scene preventing several journalists from reaching the court to cover the events.¹⁷ Other journalists also denounced aggressions, including Diego Ricciardi of Crónica TV, Marcela Ojeda of Radio Continental, and Rosa Mourelle and Gonzalo Aziz of Canal 13 and Todo Noticias.¹⁸

19. On April 1, an employee of the Office of the Communications Secretary of the Governor of Tucumán [secretaría de Comunicación de la Casa de Gobierno de Tucumán] reportedly verbally accosted journalist Carolina Ponce de León of Radio Universidad. Journalist would have done a request to the Governor for improving the conditions of the venue for the press that cover the state authority and later to learn about the request the official would have reacted in negative and aggressive manner.¹⁹

20. Journalist Gabriela Carchak of CSN was the victim of threats and harassment on social media after reporting, on April 6, about a demonstration that was reportedly going to take place outside the home of federal Judge Claudio Bonadio, who leads the proceedings against the former President Cristina Kirchner.²⁰

21. On April 12, journalist María Ester Romero of Radio Nacional was reportedly assaulted while covering a case of drug trafficking at the headquarters of the Federal Courts in the city of Córdoba involving

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the prosecution of police officers of the Counternarcotics Division [División de Lucha Contra el Narcoatráfico] of the Córdoba Police.21

22. On April 22, journalist Cintia Alcaraz of Radio Kermes was detained while photographing a police operation in downtown Santa Rosa, in the Province of La Pampa. The journalist was reportedly taken to a police precinct and let go three hours later, after various members of the press went there to demand her release.22

23. On the night of May 1, unknown persons threw a Molotov cocktail into the building where the FM Cielo radio station’s studios are located, in the city of Comodoro Rivadavia, Province of Chubut. The bomb caused minor damage. The radio station’s executives maintained that the attack may have been related to reports that were aired concerning alleged irregularities in the Oil Workers’ Union of Santa Cruz.23

24. In June, the mayor of the city General Roca and chairman of the Justicialista Party of Río Negro, Martín Soria, reportedly made discrediting and threatening remarks against journalist Hugo Alonso, host of the Palabra de Radio program on FM Show and director of the newspaper La Comuna, for publishing information that, in the politician’s opinion, sought to harm his administration.24 According to reports from the Foro de Periodismo Argentino (FOPEA), Soria has maintained a hostile attitude toward the press and on several occasions has sought to discredit the work of media outlets and reporters.25

25. In the early morning hours of July 1, in Cañada de Gómez, Province of Santa Fe, unknown persons fired shots at the home of journalist Emanuel Soverchia, who works for El informe de la ciudad and La imprenta.26

26. In July, journalist Luciano Mascali, a host on the radio stations Radio Ideal and FM Ciudad of Reconquista, Santa Fe, filed a criminal complaint alleging that he and his partner, attorney Luciana González, had been receiving threats for some two months. The journalist was intercepted in his car by unknown persons who made shooting gestures at him, and he also received threatening phone calls and text messages. The Office of the Public Prosecutor arranged for protection for the journalist and his partner while it investigated the complaint.27

27. In August, journalist Luis Majul, host of the program ‘La Cornisa’, broadcast on América TV, was allegedly threatened while conducting a live interview with businessman Leonardo Fariña, a protected witness who availed himself of the “repentance law” and provided information to the State about alleged acts


22Diario de la Pampa. April 22, 2016. Detienen a una periodista por fotografiar un operativo; Radio Kermes. April 24, 2016. ADU repudió la detención ilegal de Cintia Alcaraz; El Intransigente/Télam. April 24, 2016. La Pampa: arrestan a periodista por fotografiar un procedimiento policial.


of corruption in connection with the former administration of Cristina Fernández. The threats were made in a text message sent to Fariña’s telephone.\(^{28}\)

28. In the early morning hours of July 4, a group of individuals broke into and caused damage to the facilities of the newspaper *Tiempo Argentino* and the *Radio América* radio station. According to the information disclosed by the press and civil society organizations, the attack was led by businessman Mariano Martínez Rojas, who claimed to be the owner of the newspaper and the radio station after supposedly purchasing them from their previous owners, Grupo 23, headed by businessmen Sergio Szpolski and Matías Garfunkel. However, according to the information disseminated, Martínez Rojas did not legally demonstrate that he was the owner of the media outlets and had not taken responsibility for paying the salaries or operating costs that the previous owners still owed. In view of this situation, in April the ministry of Labor authorized the employees to form a cooperative and take over management of the paper and the radio station.\(^{29}\)

29. Following the attack, the security guards from *Tiempo Argentino* filed a complaint at the police station. The Sixth Office of the Prosecutor for Criminal Offenses and Misdemeanors [Fiscalía Penal, Contravencional y de Faltas N° 6] of the city of Buenos Aires ordered the eviction of the media outlets. It later brought charges against Martínez Rojas and ten other suspects for the offenses of unlawful occupation of real property and property damage for the destruction that took place in the building.\(^{30}\)

30. The employees complained that several police officers reported to the scene at the time of the attacks, but had maintained a passive attitude and failed to prevent the damage from being done. They had even escorted the attackers when they left the area. On July 6, the Prosecutor’s Office for Institutional Violence [Procuraduría de Violencia Institucional](Procuvin) of the Office of the Attorney General filed a criminal complaint against the police officers after representatives of the employees’ cooperative raised the issue before the Office of the Attorney General. In the body of the complaint, Procuvin alleged that the police officers “did not avail themselves of any of the powers provided for in the applicable provisions in view of the potential commission of a crime.”\(^{31}\)

31. The attack on the facilities of *Tiempo Argentino* and *Radio América* were widely rejected by civil society organizations, journalists, press associations, legislators, and political leaders—both pro-government and from the opposition—which condemned the acts and expressed solidarity with the workers.\(^{32}\) Similarly, international human rights and freedom of the press organizations, like Amnesty International, Reporters Without Borders, and the Committee to Protect Journalists, condemned the acts.\(^{33}\)

32. The *Foro de Periodismo Argentino* (FOPEA) “forcefully” repudiated the attack. The LED Foundation and Amnesty international called it “an attack on the right to freedom of expression.” The *Asociación de Periodistas y especialistas en comunicación repudiaron el ataque a Tiempo en las redes*; Clarín. July 5, 2016.

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\(^{29}\) Diario Tiempo Argentino on Facebook. July 4, 2016. *Comunicado de los trabajadores de la cooperativa Por Más Tiempo – Diario Tiempo Argentino; Committee to Protect Journalists (CPJ)*. July 6, 2016. *Newspaper and radio station offices damaged during forced entry linked to ownership dispute; Reporters Without Borders (RSF)*. July 7, 2016. *RSF condena el ataque a las instalaciones del diario El Tiempo Argentino*.


\(^{33}\) Committee to Protect Journalists (CPJ). July 6, 2016. *Newspaper and radio station offices damaged during forced entry linked to ownership dispute; Reporters Without Borders (RSF)*. July 7, 2016. *RSF condemns violent attack on Buenos Aires daily*. 

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Entidades Periodísticas (ADEPA) also condemned the attack and demanded a prompt investigation, “especially of the alleged inaction of the police while these events were unfolding.”

33. The National Government, through the Secretariat of Public Communications, expressed “its strongest repudiation of the attack on the facilities of the newspaper Tiempo Argentino” and stated that “it declares its support for the members of that editorial staff, who have been victims for several months now of the irresponsible actions of a group of businessmen.” Vice President Gabriela Michetti expressed her “repudiation” of the attack and her solidarity with the newspaper’s staff. The Media Secretariat of the government of the city of Buenos Aires also added its voice to the repudiation and emphatically condemned the attack.

34. Prior to this episode, businessman Martínez Rojas had already been responsible for another incident at the Radio América facility. On June 11, he stormed onto the premises with a group of people, alleging that he was the owner of the radio station and that he had a court order to enter. Based on available information he ordered the interruption of the live radio broadcast, demanding that it be replaced with music. The employees continued with an emergency broadcast via Internet, and would have filed a criminal complaint against the employer.

35. At the close of this report, six months after these events took place, there has been no progress in the investigations. According to a communication from the State, the case is pending before the Supreme Court, which must resolve the issue of competing jurisdiction between two Federal Courts. The Office of the Special Rapporteur has not received any information about any disciplinary investigations arising from the police actions in question.

36. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.

37. The authorities responsible for an investigation should conduct their activities in an expedited manner, avoiding delays or unnecessary hindrances in the proceedings which could lead to impunity and infringe on judicial protections under the law. In the Joint Declaration on Crimes against Freedom of Expression the Special Rapporteurs pointed out that “authorities should make all reasonable efforts to


expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.  

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

C. Social Protest

39. On January 8, law enforcement officers suppressed a demonstration held outside the Municipality of La Plata to protest the layoff of hundreds of State cooperative employees. The police reportedly removed the protesters with rubber bullets and tear gas.

40. On January 16, activist Milagro Sala, leader of the Tupac Amaru group, was arrested pursuant to a complaint filed by Governor Gerardo Morales of Jujuy for the alleged “incitement of crimes and disturbances.” That day, the activist’s home was searched by police officers and court officials. The complaint was filed after Sala and other activists set up a camp outside the Governor’s Office on December 13 to protest changes in the distribution of subsidies to cooperatives initiated by the Morales administration. On January 18, the governor amended the complaint and accused Sala of “aggravated conspiracy” and of committing fraud and perjury against the government. The complaint alleged that Sala was part of a conspiracy that diverted public funds earmarked for housing construction. On January 29, Sala was arrested pursuant to this case. Human rights defense organizations, trade associations, and political groups criticized Sala's detention and demanded her release. In addition, Amnesty International asserted that Sala was being criminalized for peacefully exercising her rights to freedom of expression and protest, and asked for her release. The activist’s defense attorney filed a petition with the Court seeking her release from custody, but on February 12 Supervisory Judge No. 1 of San Salvador de Jujuy, Gastón Mercau, ruled the request inadmissible. On March 29, the Appellate and Supervisory Chamber of the Court of Jujuy dismissed a motion for appeal filed by the defense and upheld the decision issued by Judge Mercau. On April 28, at the request of investigating prosecutor Diego Cussel, the judge ordered Sala’s pretrial detention for the alleged offenses of “conspiracy, defrauding the government, and extortion.”

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40La Nación. January 8, 2016. La Plata: reprimen frente a la municipalidad una manifestación por despidos; La Prensa. Incidentes en La Plata: reprimen frente a la municipalidad una protesta por despidos.


41. On October 28, it was learned that the UN Working Group on Arbitrary Detention—which had determined that Milagro Sala’s detention was arbitrary—urged the State of Argentina to release her. The Working Group found that Milagros had been detained as a consequence of exercising her rights, since she was deprived of her liberty as a consequence of the protest encampment she led in December 2015. The Group also found the existence of a legal arrangement to keep her in custody. On December 2, the IACHR issued a statement in which urged the State of Argentina to give prompt attention to the decision issued by the United Nations Working Group on Arbitrary Detention.

42. On February 17, the Interior Security Council adopted the “Protocol for State Security Force Action during Public Demonstrations.” The protocol, signed by Minister of Security Patricia Bullrich, establishes that when there is a public demonstration—whether “planned” (with notice to the competent authorities) or “spontaneous”—law enforcement must “immediately” inform the ministry of security or the provincial government authorities. Then, “a forum for negotiation will be established in order to cease cutting off (traffic), and the justice authorities will be notified.” The head of the security operation will inform the demonstrators that they should “desist from blocking the roads to traffic” and “withdraw and assemble in a specific area” in order to ensure free circulation. In the event of noncompliance with the order, the protocol says that “they will be in violation of article 194 of the Criminal Code.” If the demonstrators do not comply with the order received, they will be asked to abstain from blocking traffic, with the warning that the authorities will proceed as established for cases of criminal offenses committed in flagrante delicto (…) and the authorities will proceed to dissolve the demonstration.” Once the streets are cleared for traffic to circulate, the protocol provides that the authorities will establish “a forum to negotiate with the leader or representative of the group of demonstrators, for purposes of channeling their claims to the appropriate areas.” In addition, if there are persons and/or groups among the demonstrators “who incite violence and/or carry blunt objects and/or weapons of any kind, or use fire, fuel, explosive or flammable items, chemical agents, pyrotechnics, or any other item that could jeopardize the physical safety of individuals,” law enforcement “will proceed to isolate and identify such persons, take the necessary measures to prevent the possible commission of crimes, and confiscate the blunt instruments.” The protocol further establishes that “the use of force should always be limited to the minimum possible degree, as a response with which to overcome, in an orderly manner, the resistance of those who commit crimes subject to public prosecution and in situations of legitimate defense.” In addition, the protocol states that “the participation of the media will be organized so that journalists, media workers, and members of their teams conduct their news reporting work in a specific area, where the protection of their safety is ensured, and they do not interfere in the proceedings. Their work and equipment shall not be destroyed or confiscated by government authorities.”

43. Upon its approval, representatives of the opposition and civil society called the protocol into question on the grounds that it restricted the right to demonstrate. The government opened a public consultation period, to run through March 3, and invited the interested parties to submit their suggestions and concerns about the protocol to the Ministry.


41 IACHR. December 2, 2016. Press Release 181/16. IACHR Urges the State of Argentina to respond to the Case of Milagro Sala.

42 ARTICLE 194. “Any person who, without creating a situation of common danger, prevents, obstructs or hinders the normal operation of transport by land, water or air or services of public communications, water supply, electricity or energy substances, shall be repressed with three months to two years imprisonment.” Código Penal de la Nación argentina.


44. On February 23, ruling on a writ of *amparo* [petition for a constitutional remedy] filed by the Association of State Workers [*Asociación de Trabajadores del Estado* (ATE)] for the organization of an anti-government protest, the Appeals Chamber for Criminal Offenses and Misdemeanors of the city of Buenos Aires found that the protocol was not valid because it had not been published in the Official Gazette.\(^5\)

45. With respect to public consultation, the Center for Legal and Social Studies [*Centro de Estudios Legales y Sociales* (CELS)] sent a letter on February 29 to Minister Bullrich containing its opinions on the protocol. In the organization’s opinion, “It presents serious problems insofar as it is a limitation on fundamental rights, and fails to comply with the State’s obligation to properly regulate police action in the context of public demonstrations.” CELS affirmed that “It is concerning that it has been drafted without the participation or consultation of social and political actors (...) Only *a posteriori*, with the protocol already drafted and considered by the authorities to be in force, was a very limited channel opened up for consultation purposes,” which “is far from the institutional proceedings warranted for a measure of such social, political, and institutional relevance.” The organization maintained that by establishing that “public order,” “social harmony,” and “freedom of movement” are values that are superior to the obligations of the State to respect and protect the physical integrity of persons, the right to freedom of expression, freedom of assembly, or the exercise of freedom of the press, the protocol “is incompatible” with the Constitution and the international human rights treaties. It further stated that the protocol “also affects the work of journalists, since the police will tell press workers where they can be located so as ‘not to interfere in the proceedings.’” The organization considered that one of the most serious aspects of the resolution is that it “does not explicitly prohibit the police officers who intervene in demonstrations from carrying and/or using firearms and/or lethal ammunition, or from using rubber bullets to disperse groups of people.” In addition, the organization called into question the fact that the police force “would be authorized to disperse or remove protesters from public demonstrations without the need for the prior intervention of any judicial authority.”\(^5\)

46. During protests and situations of heightened social unrest, States must adhere to the strictest international standards on freedom of expression in order to fully guarantee this right, without improper interventions against individuals, in keeping with Principle 2 of the IACHR’s Declaration of Principles.\(^5\) The Inter-American Commission has recognized the right to engage in public demonstrations or social protest, including in articles 13 and 15 of the American Convention.\(^5\)

47. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”\(^5\) and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”\(^5\)

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\(^5\) *Principle 2 of the Declaration of Principles on Freedom of Expression*: “[e]very person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”


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

49. Lastly, the Inter-American Commission has found that any type of arbitrary or abusive interference affecting the privacy of human rights defenders and their organizations is prohibited under the Declaration and the American Convention.

D. General Protocol of Action for the Protection of the Journalistic Activity

50. On September 27, the ministry of Security adopted, through Resolution 479 - E/2016, a “General Protocol of Action for the Protection of Journalistic Activity,” the purpose of which is to establish the measures and procedures to be implemented by the police and security forces to “guarantee the free development of journalistic activity” in the country. The Ministry worked in conjunction with the Argentine Asociación de Entidades Periodísticas (ADEPA) and the Foro de Periodismo Argentino (FOPEA) in drafting the protocol, which provides a mechanism for the establishment of preventive measures for journalists that may be at risk because of journalistic missions connected to crimes of federal interest. ADEPA and FOPEA will establish an independent commission to evaluate the risk of journalistic investigations and to cooperate with the Ministry in determining the type of preventive measure that is appropriate in each case. According to the resolution, the preparation of the protocol involved “fostering an approach based on respect for human rights, public access to information, privacy and the protection of personal data, the confidentiality and security of communications, and the protection of journalistic sources, as well as the gender perspective and the protection of women journalists.” Journalists who believe that their journalistic work jeopardizes or could reasonably jeopardize their life, health, physical integrity, or property, that of their relatives, or of a third party, may ask the Ministry to implement protection measures. The Ministry and the Commission will jointly develop a Risk Matrix for the determination of risk, which will indicate, based on a scoring system, the assessed level of dangerousness and the measures applicable to each level. Ordinary protection measures may consist of distributing communications equipment such as cell phone or satellite phone equipment; the installation of security systems or early alert systems in homes and vehicles; surveillance by security forces; or the distribution of equipment for their personal safety. The protocol also provides for urgent protection measures, including the temporary residential relocation of journalists and/or their families, and the guarding of persons or properties by specialized security forces.

51. The National Press Workers’ Roundtable [Mesa Nacional de Trabajadores de Prensa], made up of over 40 press unions from all over the country, challenged the drafting of the protocol and criticized the government for leaving out the organizations that represent media workers and only inviting the participation of organizations representing media companies. In a press release issued on October 1, the unions expressed their rejection of the proposal and maintained that the government “should know that in order to reduce risk in situations of conflict, it is better to have proper training and knowledge of the context, and for companies to provide the appropriate working conditions and materials. And if the risk, the threat,
the attacks arise, press workers should avail themselves of the courts, not of the security forces.” For its part, the International Federation of Journalists (IFJ/FIP) expressed “concern” over the content of the security protocol, stating that it is “fundamental for press workers to be represented in the forums of discussion on measures that affect their own safety.”

52. The Office of the Special Rapporteur appreciates the initiative that represents recognition by the State of the work carried out by investigative journalists and the risk involved in conducting investigations on some subjects of public interest. However, the Protocol must ensure the participation of all actors social and professional involved with the security of journalists.

53. Pursuant to the human rights laws of the inter-American system, States have an obligation to protect those who face special risk to their fundamental rights. The obligation to adopt specific measures of protection is dependent on the knowledge that there is a situation of real or imminent risk to a particular individual or group of individuals and reasonable possibility of preventing or avoiding harm. In this sense, the obligation to protect an at-risk journalist can be satisfied through the individual application of the measures necessary to ensure, among other things, the beneficiaries’ right to life, to personal integrity and to freedom of expression.

54. The Office of the Special Rapporteur notes that it is important for the programs for protection to take into account the need to guarantee that communicators are able to continue to perform their journalistic activities, as well as take into account the specific needs of the profession (such as the privacy necessary to meet with sources) when designing the protective measures available. The programs should do this while taking into consideration the circumstances of each specific case and in consultation with the potential beneficiary. Likewise, it is crucial for risk studies and decisions on the adoption of protective measures to be carried out taking into account the content of the journalistic work and the investigations that the potential beneficiary or the media outlet to which he or she belongs is carrying out.

E. Subsequent Liability

55. On April 29, Judge Susana Novile, presiding over Civil Court No. 108 [juzgado civil N° 108], ordered the satirical magazine Barcelona to pay ARS$ 40 thousand (approximately US$ 2 thousand) in compensation to Cecilia Pando, president of the Association of Relatives and Friends of Argentine Political Prisoners [Asociación de Familiares y Amigos de los Presos Políticos de la Argentina] (organization that defends former members of the military prosecuted for human rights violations), for “non-pecuniary damages” after the publication of a photomontage that affected her honor. In the August 13, 2010 edition of the magazine, Barcelona published a photomontage on its back cover with Pando’s face and the body of a naked, chained woman, satirizing a demonstration at which Pando and other members of the association chained themselves up outside the ministry of Defense to protest the situation of several members of the military prosecuted for serious human rights violations during the last Argentine dictatorship. Pando filed a lawsuit seeking damages, alleging that the publication affected her honor. The magazine defended itself by arguing that “The only thing it did was reflect the news using satire and parody, and in no way intended to affect the honor and reputation of the plaintiff, much less humiliate her.” The judge, citing the case law of the Argentine Supreme Court, held that “The exercise of the right to the expression of ideas or opinions cannot be extended to the detriment of the necessary harmony with all other constitutional rights, including the right to moral integrity, honor, and personal privacy. (...) Therefore, the special constitutional recognition of the right to seek, provide, receive, and disseminate information and ideas of any kind does not eliminate responsibility before the courts for the crimes and harm committed in its exercise.” She found that, “In spite of the fact that it is a satirical magazine, the photo and the phrases placed there go beyond a sarcastic and mocking tone and make an exaggerated display of the plaintiff,” and concluded that the plaintiff had demonstrated that her “honor had been

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affected.” On May 13, the magazine’s director, Ingrid Beck, reported through her Twitter account that the magazine’s filed an appeal of the trial court’s decision.

56. In June, Judge María Alejandra Echeverría, of the Second Chamber for Civil, Commercial, and Mining Matters [Cámara Segunda en lo Civil, Comercial y de Minas] of La Rioja, granted a precautionary measure requested by the Lieutenant Governor of La Rioja, Néstor Bosetti in a Civil action for moral damages against media, and ordered journalist Julio Laboranti, director of the digital media outlet Rioja Libre, to “abstain from publishing, referring to, and/or using images that contain crude or derisive references, using abusive or offensive language” about the Lieutenant Governor, his family life, or his “activity as a public servant,” in “any local press medium, whether written or oral.”

57. On June 23, the Civil and Commercial Chamber [Cámara Civil y Comercial] of Formosa upheld a trial court decision ordering a group of journalists to pay AR$ 2 million (approximately US$ 127 thousand) to provincial Governor Gildo Insfrán, for “damages.” On May 29, 2015, Civil and Commercial Court No. 1(Juzgado Civil y Comercial No.1) of Formosa convicted the journalists for an act that took place on January 21, 2013, when an anonymous listener called the program Mano a Mano, hosted by journalist Gabriel Hernández on Radio Fantasía, and accused the governor of Formosa of being involved in the death of his own son 10 years earlier. The official filed a lawsuit against Hernández, Andrea Cóspito, César and Alicia Orué, and María de los Ángeles López of Radio Fantasía. He also sued Julián González, of the newspaper La Opinión Ciudadana, and Carlos Varela, director of La Corneta Noticias, for playing the listener’s remarks. The Chamber’s decision was appealed to the Superior Court [Superior Tribunal de Justicia] of Formosa.

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

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

F. Reforms in the Telecommunications Sector and Changes to the Audiovisual Communications Services Law

60. On December 10, 2015, the new administration of President Mauricio Macri created the ministry of Communications through Decree 13/2015, and granted it jurisdiction over “all matters inherent to information technologies, telecommunications, audiovisual communications services, and postal services.” The Federal Audiovisual Communications Services Authority [Autoridad Federal de Servicios de Comunicación Audiovisual] (AFSCA) and the Federal Information Technologies and Communications Authority [Autoridad Federal de Tecnologías de la Información y las Comunicaciones] (AFTIC), which had previously reported to the Office of the President of Argentina, were included within its purview.70 The AFSCA was created in 2009 through Law 26.522 on Audiovisual Communications Services [Ley 26.522 de Servicios de Comunicación Audiovisual] as a decentralized and autonomous body tasked with implementing and enforcing the Law,71 and the AFTIC was created in December 2014 through the “Digital Argentina” Law (Law 27.078) [Ley 27.078 Argentina Digital] as a decentralized and autonomous body responsible for enforcing the Law.72 The AFSCA was managed by a board of directors composed of a chairperson and a director appointed by the national Executive Branch; three directors nominated by the Bicameral Committee for the Promotion and Monitoring of Audiovisual Communications at the suggestion of the parliamentary blocs—one corresponding to the parliamentary majority or first minority, one to the second minority, and one to the third minority; two directors proposed by the Federal Audiovisual Communication Council, one of whom must be an academic representing the schools or faculties of information sciences, communications sciences, or journalism of national universities. The chairperson and the directors were appointed for four-year terms, and may be reelected for one additional term.73

61. On December 22, the Executive Branch ordered a 180-day intervention in both bodies through Decree 236/2015, and designated a comptroller for each one.74 On December 29, the President approved Necessity and Urgency Decree 267/2015, which dissolved the AFSCA and the AFTIC and created a new authority to enforce the laws, the National Communications Agency [Ente Nacional de Comunicaciones] (Enacom). The Enacom is a decentralized and autonomous entity, which operates within the sphere of the ministry of Communications and is subject to the oversight of the office of the Comptroller General of the Nation and the General Accounting Office of the Nation. It operates as a board consisting of a chairperson and three directors appointed by the Executive Branch and three directors proposed by the Bi-Chamber Commission for Promotion and Monitoring of Audiovisual Communications.75

62. The decree also amended some aspects of the Audiovisual Communications Services Law [Ley de Servicios de Comunicación Audiovisual] and the Digital Argentina Law [Ley Argentina Digital]. For instance, it amended the provision that limited the extensions of audiovisual licenses in order to allow for successive extensions to be granted by the Enacom. In addition, the decree amended the provision that limited the...
partial transfer of licenses to extreme cases, authorizing their transfer with Enacom’s approval. It also loosened the restriction that the Law had set on the number of licenses that a single open-signal TV and AM and FM radio operator could have. It eliminated the 35 per cent market share limit that had been in effect for private broadcasting; lifted the ceiling on the number of cities in which the cable companies can operate, and eliminated the limit according to which cable operators and free-to-air TV or radio license holders could not have more than one signal. It also eliminated the limitations on the composition of private radio and television networks.  

63. On December 30, 2015, the Office of the Special Rapporteur sent a communication to the State, pursuant to the authority established in article 41 of the American Convention on Human Rights, to request information on the situation resulting from the changes introduced in the institutional position and operation of the Federal Communications Services Authority and the Federal Information Technologies and Communications Authority. The Office of the Special Rapporteur recalled the standards developed by the IACHR and its Special Rapporteurship to the effect that regulatory bodies that apply and control broadcasting legislation must be independent of the State and of economic interests, above all “should be so constituted as to protect them against political and commercial interference”. Also recalled that “the regulation on broadcasting must be established by a law drafted in a clear and precise manner”. It requested information on the legal bases for the measures adopted and the scope of those measures, as well as on the measures the State would take to ensure compliance with its obligations to limit oligopolies in the communications sector and to promote diversity and pluralism, among other issues.

64. In a communication sent by the Public Defender of Audiovisual Communication Services [Defensora del Público de Servicios de comunicación Audiovisual] to the Office of the Special Rapporteur, it was alerted on the effect that the Decrees issued could have as “dismantling the entire institutional framework that the Audiovisual Communication Services bill had created to guarantee the autonomy, independence and pluralism of the Enforcement Authority.” Likewise, it pointed out that these Decrees constituted “a setback in standards of plurality and diversity of communication, as well as a serious affectation to different social sectors historically marginalized from the social exercise of freedom of expression and access to information.”

65. On February 1, the State replied to the Office of the Special Rapporteur’s request for information. The government indicated that the procedures carried out with respect to the AFSCA and the AFTIC were due to an “adaptation to the new objectives of the government administration.” In this regard, it reported that the ministry of Communications was created in response to the “growing complexity, volume, and diversity of the work relating to the development of communications and their regulation” and to the “need for an organizational agency that could respond effectively to current and future challenges in the field.” It also cited the “absence of progress” by the AFSCA and the AFTIC “toward the accomplishment of aims and objectives concerning media and telecommunications.” It stated that within the framework of the “review process” conducted by the new government “a number of failures to comply” were detected in those bodies, which justified “the temporary intervention for one hundred eighty days.” “The objective of the intervention was to obtain a full analysis of the actions of both entities from the time of their creation in order to confirm


anomalies and failures to comply with the current rules, which were detected *a priori* by the new administration, as well as to make them more efficient and ensure greater supervision of compliance of the legal and administrative obligations of the oversight bodies,” indicated the State. The irregularities the State claimed to have detected were: a) lack of progress in the implementation of the laws; b) noncompliance with the obligation to conduct the regulatory reviews pursuant to article 47 of Law 26.522; c) arbitrariness and irregularities in the allocation and assignment of radio spectrum in the main jurisdictions; e and d) irregularities in the Transition Plan and in the Technical Plan; e) position of the company Arlink S.A.

66. Based on the “shortcomings” detected and with the objective of “adapting the regulatory framework to the new context of convergence,” the government dissolved the AFSCA and the AFTIV and created the National Telecommunications Agency [Ente Nacional de Telecomunicaciones] (Enacom), a body that “replaces and subsumes” the areas of responsibility of the old entities, reported the State. “It was determined that the existence of one single oversight entity for the entire system is indispensable, because otherwise (as was starting to happen) the system would become ineffective at defending the scope and protection of the rights to freedom of expression and information,” it stated.

67. In addition, the State reported that it had ordered the creation of a Commission to draft a Bill for the Reform, Updating, and Unification of Laws 26.522 and 27.078 [Proyecto de Ley de Reforma, Actualización y Unificación de las Leyes 26.522 y 27.078]. This Commission for the “study, treatment, and approval of a new law in the interest of technological convergence will ensure that the laws are in line with democratic and participatory criteria,” indicated the State, and underscored that the project will be addressed by Congress “with the appropriate procedures and the broad debate that characterizes this area.” A period of one year is anticipated for the study and approval of the new regulations.

68. With respect to the legal bases for the measures adopted, the State reported to the Office of the Special Rapporteur that the decrees used to make the detailed changes “fall within the powers of necessity and urgency granted to the President of the Nation by article 99(3) the Constitution.” It specified that “A decision adopted in this manner in no way dispenses with the intervention of Congress; Congress merely acts ex-post the issuance of the regulation, with full authority to approve or reject the President’s action.” “Provisions issued by the President, for reasons of security and urgency, are for all purposes legislative acts with the value of a statute; it is simply that the timing of the participation of Congress is reversed due to exceptional circumstances,” said the government.

69. It further reported that the measures ordered have enjoyed the approval of different business groups in the audiovisual sector, such as the Asociación de la TV por Cable [Asociación de la TV por Cable] (ATVC), the Argentine Tele-radio Broadcasters Association [Asociación de Telerradiodifusoras Argentinas] (ATA) and the Association of Private Argentine Broadcasters [Asociación de Radiodifusoras Privadas Argentinas] (ARPA).

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83 Article 99.- “The President of the Nation has the following attributions: […] 3. He takes part in the formation of laws in accordance with the Constitution, promulgates them and has them published. In no case may the Executive Power, under penalty of absolute and insurmountable nullity, issue legislative provisions. Only when exceptional circumstances make it impossible to follow the ordinary procedures foreseen by this Constitution for the sanction of the laws, and they are not rules that regulate criminal, tax, electoral matters or those of political parties regulations, may he issue decrees for reasons of necessity and urgency, which will be decided in a general agreement of ministers who will have to endorse them, together with the chief of Cabinet of Ministers. The chief of Cabinet of Ministers personally and within ten days shall submit the measure to the consideration of the Permanent Bicameral Commission, whose composition shall respect the proportion of the political representations of each House. This commission shall send its dispatch within ten days to the plenary of each Chamber for its express treatment, which shall be immediately considered by the Chambers. A special law sanctioned with an absolute majority of the totality of the members of each House will regulate the process and the scope of the intervention of the Congress”. Constitución de la Nación Argentina. Ley Nº 24.430.
On April 6, the House of Representatives [Cámara de Diputados] ratified Decree 267/2015. Under Argentine law, Decrees of Necessity and Urgency are definitively enacted with the approval of one of the two chambers of Congress, and have the force of law. 

On April 8, during the 157th Session of the Inter-American Commission on Human Rights, a hearing was held on the “Right to freedom of expression and changes to the Audiovisual Communications Services Law in Argentina,” at the request of several civil society organizations. The participating organizations placed emphasis on the alleged unlawfulness of the decrees that amended part of the Audiovisual Communications Services Law, which had passed following extensive debate in the Argentine Congress in 2009. They alleged that a participatory and multisectoral system was replaced by a purely governmental system of regulation and management. The civil society organizations further complained that, through the decrees of necessity and urgency, “must carry” obligations (obligation to carry local and open television signals through paid television providers) and the limitations on media cross-ownership were suppressed. They also maintained that media ownership in Argentina is highly concentrated, with nearly 40 per cent of licenses in the hands of two major groups. They noted that the changes would seriously affect pluralism and sources of employment. Representatives of community radio stations said that the Audiovisual Communications Services Law addressed many of their historical demands, and stated that it had been substantially modified, ignoring and violating the legal framework for community media outlets, which they considered “a clear regression.” They asserted that their participation as members of the Federal Board on behalf of non-profit providers was shut down. Among other functions, the Federal Board had to appoint the panel for awarding licenses under the competitive process and for the community and indigenous media Development Fund, they added. They maintained that the Development Fund has ceased functioning and that at that date there were more than 300 organizations that won the competitions, signed the agreements, and never received the subsidies. They further asserted that there are more than 200 competitive processes for digital television and radio that are pending decision. Similarly, some 180 radio stations that were recorded in a census and recognized are awaiting the possibility of obtaining their licenses, they stated.

During its presentation, the Argentine State referred to the previous government’s infringements on freedom of expression, especially the stigmatization of media outlets and media workers, and the misuse of government advertising as a punishment or reward for journalists and media outlets. The State’s representatives indicated that the decrees amending the Audiovisual Communications Services Law were constitutional and added that days before the hearing they had been ratified by the National Congress. The State agreed to draft a new law, which would be discussed with civil society and others in the communications sector, and expressed its position in favor of respecting the inter-American standards on freedom of expression. The Special Rapporteur for Freedom of Expression, Edison Lanza, expressed his concern as a result of some of the government’s changes, including the potential effects on the diversity and pluralism of subscription-based television as consequence of the repeal of the standard must carry referred to the duty of them companies of television for subscribers of transmit the signal of free-to-air TV which included the signal generated from the states provincial, municipalities and universities and the exclusion of civil society from the oversight bodies. He also referred to the need to provide the National Communications Agency with independence from both government influence and from the influence of economic groups in the communications sector, as part of the measures to bring the laws into line with the inter-American standards.

In addition, during the hearing on “The right to freedom of expression and the regulation of audiovisual communications media in the Americas,” held on April 5, the International Association of Broadcasting (AIB) expressed its support for the decrees adopted by the government to amend the

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84 La Nación. April 7, 2016. Ley de medios: ratificaron el DNU; Diario Registrado. April 6, 2016. Diputados ratificó decreto de Macri que reforma la Ley de Medios y disuelve la Afsca; Infobae. April 6, 2016. El Congreso puso punto final a la ley de medios del kirchnerismo.

Audiovisual Communications Services Law, especially the removal of licensing limits, as they provide an incentive for providers to improve their services so they can maintain priority for the extensions.86

74. On April 15, the National Communications Agency [Ente Nacional de Comunicaciones] adopted the General Regulations on Subscription-based Broadcasting Services through physical and/or radio link [Reglamento General de Servicios de Radiodifusión por Suscripción mediante vínculo físico y/o radioeléctrico], which determines that paid television service providers must have a Sole Argentine Digital License [Licencia Única Argentina Digital] and guarantee “must carry” obligations to transmit public and open TV signals free of charge. The resolution restored the rebroadcasting obligation established in the Audiovisual Communications Services Law [Ley de Servicios de Comunicación audiovisual], which had been eliminated through decree 267/2015.87 However, the rebroadcasting obligation not included the signals generated by universities and indigenous peoples.

75. In July, the United Nations Human Rights Committee adopted the concluding observations on the fifth periodic report of Argentina. In the section on freedom of expression, the United Nations expressed its “concern [over] recent changes in the Audio-visual Communications Services that could result in the concentration of media ownership and adversely affect the enjoyment of the right to freedom of expression.” The Committee urged Argentina to “review the recent changes made in the Audio-visual Communications Services and prevent a concentration of media ownership in order to avert any harmful impact on the diversity of sources and views,” as a way to “guarantee the full and effective exercise of the right to freedom of expression and freedom of the press.”88

76. The coordinator of the Drafting Committee [Comisión Redactora] that was working on drafting a new Communications Law [Ley de Comunicaciones], Silvana Giudici, presented 17 principles that would govern the future law. She stated that the principles, presented during the II Academic Debate on Freedom of Expression and Communications Convergence, which was held at the School of Law of the National University of Cuyo, will be used as a basis for debate on the law in the participatory forums organized by the commission. The main pillars of the law will be “plurality, diversity, access to information, freedom of expression and of the press, federalism, and the national production of content.”89

77. In October, at the request of the Drafting Committee [Comisión Redactora] of the new communications bill, the IACHR’s Office of the Special Rapporteur for Freedom of Expression, Edison Lanza, paid a visit to Argentina, where he held a working meeting with Communications Minister Orscar Aguad, drafting committee coordinator and Enacom Director Silvana Giudici, and members of the drafting committee. The Special Rapporteur provided recommendations on some issues he thinks should be observed in the drafting of the new media law, including the importance of guaranteeing and promoting media pluralism on every platform, limiting the concentration of media ownership, and guaranteeing the full exercise of freedom of expression.90 He added that a specific regulation should be maintained that allows community media and public (state and university) media to operate on any platform and ensure the space for access to them. He reiterated, as he stated at the public hearing, that the new law should ensure that the regulatory entity is independent from political interference and economic interests.

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88 Enacom aprueba reglamento de TV paga en Argentina y retoma obligaciones de “must carry”.


78. On October 27, the ministry of Communications passed resolution 1098 - E/2016, granting a 180-day extension to the deadline set for the “Commission to draft a Bill for the Reform, Updating, and Unification of Laws 26.522 and 27.078,” created through Resolution No. 9 of March 1, to draft a proposed Regulatory Framework Law for Telecommunications and Audiovisual Communications Services.91

79. On October 29, in statements made on a radio program, Communications Minister Oscar Aguad said that the government anticipates that “the convergence will be applied” in 2018, and “the barriers to free competition will be lifted.” He also stated that the new law to regulate audiovisual communications services, which is in the drafting process, “is not going to be for any medium in particular” but rather “will promote freedom of expression with the fewest possible restrictions.” The new bill will be taken up by Congress in March 2017, he reported. The minister also said that “The best Media Law is the one that does not exist, and that is the idea. The war against the media is over, peace has been assured.” The minister also asserted that community and alternative media “have lived off favors from the State,” and said that “that is over.” “Today, opening a media outlet entails the responsibility of sustaining it. It is not a game for the State to be responsible for production and communication. The media have to support themselves, through the advertising they sell,” he maintained.92

80. The Office of the Special Rapporteur expects as was announced in the public hiring during the 157 period of sessions the Argentine State to submit to Congress for consideration a legal text establishing a predictable regulatory framework for telecommunications services in accordance with international standards on pluralism and diversity, as well as those related to the need to guarantee independence and autonomy of regulatory bodies.

G. Internet and Freedom of Expression

81. On November 2, the Senate [Cámara de Senadores] passed a bill on the liability of intermediaries on the Internet. The measure, which must still be examined by the House of Representatives [Cámara de Diputados], establishes that web site providers are not responsible for content created by third parties, with the exception of cases in which they have received a court order to delete a link.93

82. In the Joint Declaration on Freedom of Expression and the Internet by the The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, it was noted that regarding the liability of intermediaries “no 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.” “At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression.” 94

H. Media Concentration


92 Política Argentina. October 29, 2016. Oscar Aguad: “La mejor Ley de Medios es la que no existe”.


Although a new Communications bill has not been developed, the organ in charge has taken regulatory decisions that could have long-term consequences on the exercise of the right to freedom of expression.

On March 3, the National Communications Agency [Ente Nacional de Comunicaciones](ENA COM) approved the takeover of Telecom Argentina by the investment fund Fintech, headed by Mexican businessman David Martínez, which acquired a majority of shares in the telephone company. The agency also approved the acquisition of the telecommunications company Nextel by Cablevisión, a cable operator owned by Grupo Clarín. Fintech is also involved in Cablevisión, owning 40 per cent of its shares. Some media outlets speculated that these acquisitions could result in the eventual merger of the two companies, but Grupo Clarín has maintained that that is not the objective; rather, the aim is reportedly to develop a fourth operator besides Nextel, which would increase competition in the cell phone market.95

In January, the government, which holds the broadcasting rights to local soccer games, granted the broadcasting rights to the games of the teams River, Independiente, Boca, and Racing (considered the “big clubs”) to television channels Canal 13 and Telefé, owned by Grupo Clarín and Telefónica, which will pay ARS$ 180 million (approximately US$ 11 million 456 thousand). The concession was for the 16-date tournament that started on February 5, and will be reviewed for upcoming tournaments. In this way, the government intends to cover part of the costs charged by the Argentine Football Association [Asociación del Fútbol Argentino] (AFA) for the broadcasting rights to the local soccer games. The agreement is in effect until 2019.96 The government originally acquired the TV broadcasting rights in 2009, during the presidency of Cristina Fernández de Kirchner, through the government program Soccer for All [“Fútbol para Todos”] that aired all of the games on open-signal television.

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

1. Community Broadcasting

On September 1, Martín Miguel Sande, the former president of the cooperative that manages the Buenos Aires community television station Antena Negra TV, was bound over for prosecution by Division 2 of the Federal Court for Criminal and Correctional Matters [Cámara Criminal y Correccional Federal]. With respect to journalist Antonella Benedetti, the judges of that Court overturned the order of dismissal issued by the trial court judge, Martínez de Giorgi. The judge summoned both of the accused to a hearing for October 20, and on November 7 ordered Benedetti to stand trial.97

The case was brought last year by a security company that accused the television station of interfering in its communications. In September 2015, Judge de Giorgi reportedly ordered the federal police to conduct a search and seizure of the community channel’s broadcasting equipment; however, in late October he dismissed the measure and ordered the return of the equipment, which was recovered on

November 2.98 Nevertheless, in view of the company’s appeal, on May 11, 2015 the judge ordered the community television station to turn over its broadcasting equipment to the National Communications Agency [Ente Nacional de Comunicaciones] (Enacom). On May 31, he ordered Sande’s prosecution without pretrial detention and issued a writ of attachment.99

89. The Court held that although the security company did not have the right to use the frequency in dispute, and that it must migrate to the band assigned to it in Decree 2456/14, “It does not entitle Antena Negra TV to use that frequency.” The judgment urges Enacom to “mediate between the media outlets to facilitate that migration,” and to take “all necessary precautions to prevent the prolongation over time from creating situations like the one examined herein.”100

90. Two community television channels reported interference in their signals by the channel El Trece. The Barricada TV and Urbana TV stations in the city of Buenos Aires applied through the public bidding process in May 2015 and obtained licenses to operate on Free-to-Air Digital Television [Televisión Digital Abierta] (TDA), on channel 33 (33.1 and 33.2). Nevertheless, according to their complaint, El Trece was causing interference in those signals, which reportedly blocked their broadcasts. The private channel had been previously authorized to operate on channel 33 during a probationary period, but that period had reportedly expired and it had to move, by order of the State, to channel 35 on the digital television grid. El Trece filed a petition in court alleging the unconstitutionality of the TDA provision and the resolutions issued pursuant to it.101

91. In addition, backed by several press organizations, the channel Barricada TV filed a writ of amparo (petition for a constitutional remedy) with Federal Administrative Court of Appeals No. 12 [Juzgado Contencioso Administrativo Federal N° 12] seeking to lift the impediments preventing it from beginning to broadcast, and to put a stop to the interference by El Trece in the frequency allocated to the community television station. On November 2, the Court ordered the National Communications Agency [Ente Nacional de Comunicaciones] (Enacom) to explain the delay in the authorization of community channels that had been awarded licenses to broadcast on TDA. In its answer, Enacom maintained that Barricada TV had failed to complete the requirements for its authorization, and moved for the dismissal of the action.102

92. A third community channel, Pares TV, of Luján, was also awarded a permit in the competitive bidding process to air on TDA, but it still has reportedly not been given the go-ahead.103

93. The IACHR and the Office of the Special Rapporteur have recognized that community media perform an essential function in our hemisphere for different sectors of society to exercise their rights to freedom of expression and access to information. In those declarations they have established that it is necessary for States to legally recognize community media, for spectrum to be reserved for these types of media, and for there to be equal access to licenses that recognize the distinct nature of private noncommercial media. Given the existing conditions of exclusion, the States must take positive measures to include the non-commercial

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100 Defensoría del Público de Servicios de Comunicación Audiovisual. No date. La Defensoría del Público pidió la descriminalización del Caso Antena Negra TV y la devolución de equipos. Antena Negra TV. September 9, 2016. Antena Negra TV irá a juicio.


sectors in the communications media. These measures include ensuring broadcast spectrum frequencies for the different types of media, and providing specifically for certain frequencies to be reserved for the use of community broadcasters, especially when they are not equitably represented in the spectrum. On this note, the Office of the Special Rapporteur has insisted upon the need for broadcasting regulations to establish the duty to allocate part of the spectrum to community media.

J. Government Advertising

94. The Supreme Court [Corte Suprema] dismissed on April 12th an extraordinary appeal filed by the Argentine State against decision ordering the restoration of government advertising to the content producer La Cornisa Producciones S.A., owned by journalist Luis Majul. The case began in 2011, when the producer asked for government advertising to be returned to its programs after having been interrupted “abruptly and without justification.” The First Division of the National Federal Administrative Court of Appeals [Sala I de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal] overturned a trial court decision against the plaintiff and upheld the petition for a constitutional remedy [amparo] action, ordering the State to devise, within 30 days, a plan for the allocation of government advertising “that provides, to the extent reasonable, for the allocation of advertising to the plaintiff’s products.”

95. On August 24, the Secretariat of Public Communications of the Office of the Head of the Cabinet of Ministers [Secretaría de Comunicación Pública de la Jefatura de Gabinete de Ministros] passed a resolution regulating the use of government advertising by the Executive Branch. The resolution establishes that “in order to guarantee the right to freedom of expression” it is “necessary to establish clear, fair, and objective criteria for the allocation and distribution of government advertising.” It further states that “it is essential to set forth in a law the criteria established by the Office of the Special Rapporteur for Freedom of Expression of the Organization of American States for the placement of government advertising, seeking to prevent the shortcomings that the international body has detected in different countries of the region.” The resolution mentions that the Office of the Special Rapporteur has rejected the “improper use of government advertising to impose conditions on content,” “the indiscriminate use of a system of ‘patronage’ to benefit some to the detriment of others,” and the “use of government advertising for propagandistic purposes.” Among other things, the provision establishes that only those media outlets, content producers, or marketers of advertising space registered in the National Registry of Providers of Government Advertising at the time of ad placement can be the recipients of government advertising. Budget items earmarked for government advertising will be allocated by campaigns, which will be planned by the Secretariat of Public Communications through an Annual Government Advertising Plan. Government advertising will be allocated according to objective criteria such as the medium’s circulation or audience, the relevance of the message, the geographic area, the promotion of federalism, and the plurality of voices. Additionally, the Secretariat of Public Communications must disclose information on the allocation of government advertising twice a year, specifying the recipients of that advertising.

96. Representatives of the community media sector called into question the fact that the criteria established by the government to allocate its advertising would leave out the vast majority of non-profit


media outlets. The community sector asserted that the regulations should include popular and alternative media and not exclude them by using criteria based on reach, audience, or duration of operation.106

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

K. Other Relevant Situations

98. In a press release issued on February 29, the Foro de Periodismo Argentino (FOPEA) publicized the situation of scores of media workers who lost their jobs during the first few months of the year. FOPEA reported on the layoff of 136 employees of the CN23 news channel, dozens of layoffs at the newspapers Crónica and BAE and at the Crónica TV channel, as well as the potential loss of jobs at the newspaper La Mañana of Córdoba. It also reported that the employees of Radio América and the newspaper Tiempo Argentino held demonstrations when they did not receive their Christmas bonuses and wages from December and January, and noted the repeated problems that the employees of Radio Rivadavia and news channel 360TV reportedly faced in getting paid.107

99. Similarly, the Federación Argentina de Trabajadores de Prensa issued a press release that day “repudiating” the dismissals at the news channel CN23, and called for the intervention of the ministry of Labor, Employment and Social Security to protect their jobs.108

100. On March 3, a demonstration was organized by the Buenos Aires Press Union to protest the hundreds of jobs lost and the uncertain situation faced by many other media workers, in particular at the media outlets owned by Grupo Veintitrés, such as CN23, Radio América and Tiempo Argentino.109

101. The Ombudsperson for Audiovisual Communications Services [Defensora del Público de Servicios de Comunicación Audiovisual], Cynthia Ottaviano, sent a note to the Office of the Special Rapporteur, dated May 13, informing of the “serious situation that has arisen within the last six months” in Argentina, affecting the rights of more than 2,500 audiovisual communications media workers through what She considered “massive and arbitrary layoffs, job insecurity, and ideological and trade union persecution.” She specified that media workers and their union representatives had reported the layoff and/or voluntary separation of 123 people at news channel CN23; 126 employees of Radio América, 7 dismissals at the State Digital Television System and 14 at the newspaper El Argentino; 32 at La Mañana in Córdoba; 2 at BAE-Crónica; 50 at InfoNews, more than 200 at Tiempo Argentino and 30 at the newspaper’s regional publications; 24 at Infojus Noticias; 13 at Canal 26; more than 10 at Crónica TV; 8 at Radio Continental, and 20 at Radio Nacional. They also reported


107 Foro de Periodismo Argentino (FOPEA). February 29, 2016. Foro repudia los despidos masivos de periodistas en todo el país.


that wages were owed to workers at news channel 360TV and Radio Rivadavia; that salaries were being paid in installments at Radio Splendid and Radio del Plata, and that job positions were at risk at media outlets in Córdoba and the radio station El Mundo. She added that, “Around 1000 job positions were lost due to the discontinuation of audiovisual projects fostered by public policies of the State.”

102. On May 17, Ottaviano took part in a meeting announced by the Freedom of Expression Committee of the House of Representatives [Comisión de Libertad de Expresión de la Cámara de Diputados] and asked the members of that Commission to implement “urgent and effective measures against the mass and arbitrary layoffs” in the audiovisual communications media.

103. According to information received by the Office of the Special Rapporteur, the staff reductions at various media outlets is explained, in large measure, by the substantial decrease in the revenue that one sector of the media had been receiving from government advertising because their editorial line was sympathetic to the previous administration, and those media outlets had failed to meet their employment obligations following the decrease. The new administration headed by President Mauricio Macri, who took office in December 2015, reduced expenditures on government advertising by more than half, according to various media outlets. As a consequence, the media outlets that had most benefited from government advertising during the prior administration of ex-President Cristina Fernández de Kirchner now had significantly reduced revenues and had to lay off employees. The distribution of government advertising during Fernández de Kirchner’s administration had been called into question by the Supreme Court, civil society organizations, and media outlets who pointed out the unfairness and opacity of the allocation process, which presumably benefitted pro-government media.

104. After the new President Mauricio Macri took office in December 2015, some journalists who worked in public media were fired or their programs were suspended. In December 2015, the TV Pública channel canceled the program “6, 7, 8,” which was critical of the Macri administration and defended the administration of former President Cristina Fernández. According to numerous media reports, the decision not to renew the contract with the program and its journalists was made by its producer, Pensado para Televisión (PPT) of the company Indalo Media, owned by businessman Cristóbal López.

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111 Defensoría del Público de Servicios de Comunicación Audiovisual. No date. La Defensoría del Público pidió medidas urgentes y efectivas a diputados y diputadas en la Comisión de Libertad de Expresión.


114 According to a study carried out by La Nación newspaper on the distribution of official advertising during July 2009 and June 2015, based on data released by the head of the Cabinet of Ministers and others obtained through access to information requests by organizations Poder Ciudadano and Fundación LED, the amount allocated to advertising in that period was 6,578.9 million Argentine pesos. Fifteen media groups concentrated approximately 50 per cent of these resources and twelve of them were in the hands of businessmen friendly to the then government party.

According to a report by the Commission of Freedom of the Press and Information of Asociación de Entidades Periodísticas Argentinas (Adepa), “the government of Fernández de Kirchner spent 12 million pesos per day on official propaganda, and the beneficiaries were mainly “groups born or raised under the warmth of State money, with scarce ratings but anabolized with huge budget allocations, that mock all reason.” In a report on the situation of press freedom in the Americas, the Inter American Press Association (IAPA) reported that government advertising expenditures during the first half of 2015 exceeded $ 145 million dollars, and its allocation was “arbitrary” and responded, to a large extent, to “electoral interests.” IACHR. Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Párrs. 120-124.

suspended from the public radio stations Radio Nacional and Nacional Rock, putting several journalists out of work at those stations. In addition, on January 6, President Macri issued a decree setting aside the appointment of journalist Alberto Cantero as the director of Radio y Televisión Argentina (RTA). On April 1, journalist Pedro Brieger reported on air on TV Pública that the authorities had informed him that they did not want him to continue working on the news program.

105. Federal Judge Luis Rodríguez amended the prosecution of José Sbatella, the former president of the Financial Information Unit [Unidad de Información Financiera] (UIF), to include the alleged “abuse of authority and breach of confidentiality,” based on the dissemination of supposedly confidential reports that involved Grupo Clarín. The case began in 2010 pursuant to a complaint brought by Grupo Clarín after Sbatella reportedly provided information in a press release about a UIF complaint against companies in the group that he was supposed to keep confidential. He reportedly expanded upon this information later on the television program “6,7,8” which was broadcast on TV Pública. “The evidence gathered indicates that the defendant’s real intent was precisely that complained of herein: to harm the interests of Grupo Clarín S.A., the companies it controls, and its directors,” established Rodríguez in the prosecution of the former official.

106. On April 18, the II Division of the Federal Criminal Court of Buenos Aires [Sala II de la Cámara Federal penal de Buenos Aires] upheld the conviction of former Domestic Commerce Secretary Guillermo Moreno for the offense of “misuse of public funds,” based on the alleged use of public funds to purchase advertising material against Grupo Clarín and to make statements with hostile content against the company at various official functions during the government of Cristina Fernández de Kirchner. “It is well known that the objective assigned here to these State funds—materialized in a public smear campaign against a private company, carried out in different institutional forums—was wholly unrelated to the objectives for which they could legitimately have been used,” maintained the judges. The judgment upheld the conviction that had been handed down by federal Judge Claudio Bonadío on February 11.

107. On May 31, the government introduced a bill to Congress on a tax amnesty for undeclared assets and the payment of debts owed to retirees. Article 85 of the bill caused concern among media outlets, journalists, and organizations engaged in the defense of freedom of expression, since it prohibits any person from disseminating documentation or information about the income tax returns filed by taxpayers, and punishes violations of the provision with jail time and fines. According to the bill, judges, court staff, employees of the Federal Administration of Public Revenues, tax returnfilers, and “third parties,” that “disclose or display documentation or information in any way related to the tax returns” regulated by the law will be punished in accordance with article 157 of the Criminal Code, which establishes a term of imprisonment between one month and two years. The bill establishes that “third parties” will additionally be subject to a fine equal to the value of the assets disclosed by the filer whose information may have been revealed. The extension of the prohibition to “third parties,” noted various organizations and academics,
infringes upon freedom of expression and affects journalistic work. On June 7, in a meeting with journalists, President Mauricio Macri agreed to debate and amend the wording of the article during the parliamentary proceedings.


3. **BAHAMAS**

A. **Subsequent Liabilities**

108. According to the information available, in a parliamentary debate in March 2016 the Education Minister Jerome Fitzgerald disclosed private emails and confidential financial information of members of Save The Bays (STB) and Zachary Bacon. The sources report that the Education Minister’s intention was to portray that STB was part of a plot to destabilize the government.

109. In response to Fitzgerald action of disclosing their private emails and confidential information, STB and Bacon filed a lawsuit against him. On August 4, 2016, the Supreme Court of The Bahamas ruled for STB and Bacon and reasoned that the Members of the Parliament and Government are subject to the law and cannot breach the Constitution. Furthermore, the Court held that it had the power to decide on the scope and application of the Parliamentary Privilege, reasoning that Members of the Government could not breach the Constitution and shield under their Privileges. The Court granted a permanent injunction against the government that prohibits further release or publication of any information of STB and Bacon, as well as the permanent destruction of all the records containing said information. Finally, the Court ordered the Education Minister to pay damages to STB and Bacon. According with the information available the Government appealed the decision.

110. Faced with the Supreme Court’s decision, lawmakers and government officials argued that the ruling was a violation of the separation of powers. On the other hand, STB Chairman Joseph Darville in an open letter reported that the Minister of Foreign Affairs and Immigration, Fred Mitchell, had threatened Darville and other STB Members with imprisonment for contempt.

111. Consequently, Fitzgerald moved a resolution in the Parliament to create a Committee on Privilege. The Parliament Speaker Kendal Major created the Committee on Privilege to address the Supreme Court’s decision. STB Chairman Joseph Darville indicated that senior members of Government expressed an interest in having STB members being held in contempt of parliament and imprisoned and Members of the STB fear that the hearing before the Parliamentary Privileges Committee will be used to justify further disclosure of private information.

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127 Dealbreaker. August 9, 2016. The Bahamas Owe Louis Bacon A Serious Apology.

128 Dealbreaker. August 9, 2016. The Bahamas Owe Louis Bacon A Serious Apology.


130 Save the Bays. Summary of the Judgement by The Supreme Court on the Constitutional Right to Privacy.


135 The Nassau Guardian. September 1, 2016. Committee on Privilege Now Fully Constituted; Tribune242. April 7, 2016. Mitchell Warns Activist Could Be Imprisoned; Save the Bays. September 14, 216. Fears that Parliamentary Committee will defy Court Order.

112. On September 6, The Grand Bahama Human Rights Association filed a request for precautionary measures seeking that the IACHR require the Commonwealth of The Bahamas to adopt the necessary protective measures to safeguard the lives and personal integrity Fred Smith, Joseph Darville, Reomauld Ferreira, Kirkland Bodie, and Francisco Nuñes, all of them members of the STB advocacy group. Pursuant to Resolution 54/2016 dated November 4, the IACHR granted the requested precautionary measures, and ordered The Bahamas to adopt the necessary measures to protect the lives and personal integrity of the identified members of the Save the Bays and the members of their respective nuclear families as ensure that the identifies members of Save the Bays may persuade their work as human rights defenders.

113. Furthermore, in August 2016 a local rapper released a song that made negative references to the Prime Minister Perry Christie, his family, parliamentarians, the police, women, and people with special needs. The song went viral on the Internet and, on August 11, 2016, two singers were arrested in connection with the song, presumably the artist and the producer. According to the information available, the criminal charges against the two men were unclear, although the Chief Superintendent Clayton Fernander declared that the police was working with the Attorney General’s Office to determine “whatever offenses this falls under.” On August 12, 2016, the two men were released without charges, pending further investigations. On August 19, 2016, the composer of the rap song known as Gee was detained and interrogated by the police. Gee was released on August 21, 2016, without being charged with any offense.

114. Moreover, between August 26 and August 30, 2016, the attorney and former police officer Maria Daxon made several statements criticizing the conduct of senior police officers. Daxon was arrested on September 1, 2016, and charged with two counts of criminal libel. On September 2, 2016, Daxon was released on bail but the criminal prosecution continues.

115. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism, because “they have voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call information into question through its convening power.” In this regard, the Inter-American Commission stated that “[t]his kind of political debate encouraged by the right to freedom of expression will inevitably

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140The Nassau Guardian. August 12, 2016. Police Investigating Explicit Song About the PM.


142The Bahamas Weekly. September 7, 2016. GBHRA: Daxon case will 'end criminal libel' in The Bahamas.

143Anotao. September 2, 2016. Lawyer charged with libel.


generate some critical speeches or even offensive to those who hold public office or are intimately involved in
the formation of public policy.” Therefore, as stated in Principle 10 of the Declaration of Principles on
Freedom of Expression adopted by the Inter-American Commission in 2000, “[t]he protection to reputation
should only be guaranteed through civil sanctions in those cases which the person offended is a public
official.” That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially
public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and
disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters
of public interest

B. Access to Public Information

116. In April this year, the government of the Bahamas announced a series of Town Meetings for public
consultation on the new Freedom of Information Bill. A committee of experts was asked to review the existing
Freedom of Information Act and submit recommendations after analyzing best practices in other jurisdictions.
The government affirmed that the Bill would probably be tabled in the House of Assembly by November. In
the meantime, citizens are invited to participate in Town Meetings scheduled across the country and submit
suggestions to the Committee of experts via email or mail. However, civil society groups have expressed
concern over the quality of the public consultation process as well as some provisions of the Bill, notably the
fact that the “independent information officer” would be selected by the Prime Minister and that the Minister
of Information is granted extensive power to withhold information from the public.

117. Principle 4 of the IACHR’s Declaration of Principles of Freedom of Expression provides 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.” Bearing in mind the principle of maximum disclosure, the law must guarantee the
effective and broadest possible access to public information, and any exceptions must not become the general
rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be
resolved in favor of transparency and access.

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Freedom Information Act consultation needed.
4. BARBADOS

A. Harassment Against Journalists and Media Outlets

118. On October 24, the photographer Wharren Christopher from *Nation News* was reportedly subject to harassment by a member of the Police’s Special Branch when covering a meeting of the Prime Minister regarding a hotel development project on Bay Street. Christopher was taking photos of the meeting when the Prime Minister Freundel Stuart asked her to leave the place. When Christopher insisted in taking pictures a member of the Police’s Special Branch reportedly pushed her away. Christopher filed a criminal complaint before the Central Police.¹⁵⁰

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

¹⁵⁰ *Nation News*. October 25, 2016. *Full story: We will not tolerate abuse of our journalists.*
5. BELIZE

A. Harassment against journalists and media outlets

120. On September 28, 2016, school officials reportedly met with the ministry of Education at the Institute for Technical and Vocational Education and Training (ITVET) in Belize City. Media workers, including Amandala journalist Micah Goodin and Krem news director Marisol Amaya, reportedly gathered at the ITVET to cover the meeting. Reportedly the police arrived and requested media workers to leave, reportedly saying that they were loitering and threatening to detain them.151

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

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6. BOLIVIA

A. Attacks, Threats, and Harassment Against of Journalists and Media Outlets

122. On April 1, the mayor of the city of Santa Cruz, Percy Fernández, was reported to have had removed reporters and cameramen who were attending a press conference he and the governor of the department of Santa Cruz, Rubén Costas were giving. Following the questioning performed by journalists regarding to alleged acts of corruption committed in the process of procurement of one drone and one police vehicle, the mayor supposedly blasted on the journalist after his collaborators took-off their microphones. On April 5, local journalists held a march to protest the verbal aggression and interference with their work.\textsuperscript{152}

123. On October 13 \textit{Bolivisión} reporter Graciela Reque was physically assaulted, on October 13, by Nicolas Mitru, assistant director of the Instituto Gastroenterológico Boliviano Japonés (Bolivian-Japanese Institute of Gastroenterology) of La Paz while trying to get a response from him to an alleged lack of diligence on the part of the institution's staff in handling a case in the emergency area. The physician, who refused to answer questions, tried to keep the cameraman from recording, which resulted in an altercation between him and the press team. He apologized the next day.\textsuperscript{153}

124. On November 2 journalist Sergio Mendoza and photographer Álvaro Valero, who work for the daily newspaper \textit{Página Siete}, were detained while they were covering a hearing on precautionary measures in a trial against the former commander of the Army and the Armed Forces, Omar Salinas, accused in an alleged case of corruption in the construction of military posts. According to the information available, the military officer's family members had asked the Police to keep the press from entering, which is why they were first evicted removed from the hearing room at the Court and subsequently detained.\textsuperscript{154} Both were released after being held for three hours.

125. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.\textsuperscript{155}

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

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B. Social Protest

127. On February 17 journalists Heidy Tarqui of Católica TV, Juan Siñani of El Diario, Rolando Rivas of La Razón, Dámaso Sirpa of Canal 24, and cameraman Máximo Catumo of Católica TV were assaulted while covering a demonstration of parents in front of the main building of the local government of the city of El Alto. The demonstrators initially gathered to call for an increase in the education budget, but the protest turned into a takeover of the government building that ended in the looting and arson of the building, resulting in six dead. The demonstrators, on learning of the presence of the media, tried to keep them from recording the events; they verbally and physically assaulted the journalists.156

128. A group of persons with disabilities marched from the city of Cochabamba to La Paz to demand that the government increase their monthly subsidies, while also calling for actions to ensure them access to employment. The protesters were allegedly subject to physical assaults by the police, who on several occasions attempted to break up the demonstration. On April 27 local police allegedly used tear gas to disperse the demonstration while they sought to reach the Plaza Murillo, where the Palace of Government [Palacio de Gobierno] is located.157 El Deber journalist Jesús Alanoca, who was covering the demonstration, denounced that he was held for at least 30 minutes by the police and, according to the information reported, he was forced to erase all the journalistic material recorded, having been warned that otherwise “something serious” could happen to him.158 On April 29 photographer Álvaro Valero of the digital outlet Página Siete was beaten by a purported public servant with the National Agrarian Reform Institute [Instituto Nacional de Reforma Agraria] (INRA) while covering the demonstration. According to the journalist the assailant tried to take his camera from him to erase the images he had recorded.159 On May 25, the police used water cannons to disperse the demonstrators when they once again tried to access Plaza Murillo. During that day, six demonstrators were detained.160

129. At least four journalists from the television channels RTP and ATB were physically assaulted by members of the police on June 3 while covering the operation by which a demonstration by persons with disabilities was broken up in the city of La Paz. The journalists had indicated that before beginning the operation the police had taken photographs and video of the media workers present.161

130. Furthermore, Australian filmmaker Dan Fallshaw, who made a documentary on the protest, had been assaulted by members of a group of civilians known as ‘Los Satucos’, presumably of an official nature, who had approached him carrying placards bearing phrases such as “What is a gringo doing filming a protest march by the disabled?” [“¿Qué hace un gringo filmando la marcha de los discapacitados?” (...) Making a documentary financed by the NGOs to speak ill of the country and deny the progress and criticize president Evo” [Haciendo un documental financiado por las ONGs para hablar mal del país, negar los avances y criticar al presidente Evo”]. The events were denounced by his wife, Violeta Ayala, who is also a Bolivian filmmaker, who

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160 20 Minutos/AP. May 25, 2016. Dispersan a discapacitados con chorros de agua en La Paz; Los Tiempos. April 29, 2016. Personas con discapacidad intentan romper cerco a la plaza Murillo; Policía dispersa con agua.


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on April 28 had been assaulted by a motorist, had her camera stolen and was attacked by an unknown individual at the end of a day of protests in the city of La Paz.\textsuperscript{162}

131. Three persons were wounded due to an explosion of dynamite during the demonstrations held by employers of the state enterprise Enatex on May 19. The demonstration, held in La Paz, occurred after the announcement that the company would be closed due to economic difficulties, which meant the dismissal of some 800 employees. According to the information available, while Police tried to disperse the demonstration by the use of tear gas, some of the demonstrators set off dynamite cartridges (a practice decriminalized on May 1 at the initiative of President Evo Morales, since it is a “trade union tradition in the country” \textit{[“una tradición sindical en el país”]} after it was prohibited in 2012), resulting in one of the workers losing a hand and a cameraman suffering lesions in one eye. Tens of people were detained for their participation in the events.\textsuperscript{163}

132. On August 26, Vice Minister of the Interior, Rodolfo Illanes Alvarado, had been killed by miners from the cooperative movement, who had kidnapped him the day before, when he had gone to meet with them to negotiate the lifting of the roadblock of the La Paz – Oruro Highway, which the group had installed beginning on the 23rd, in protest for the enactment of reforms of “General Cooperatives” Law 356, which permits the creation of trade unions in cooperative.\textsuperscript{164} According to the known information, during the previous days, there had been diverse confrontations between members of the cooperatives and the police, which had caused the death of miners Severino Ichota, Germán Mamani and Rubén Aparaya Pillco, allegedly due to firearms. The authorities on August 26 confirmed the death of a fourth miner due to a dynamite detonation. Additionally, dozens of police officers and miners had been injured.\textsuperscript{165} Also on the 26th, the demonstrators lifted the roadblocks and days later demanded the release of 59 of their colleagues, who, they said, had been arrested in relation to the events.\textsuperscript{166}

133. At least six employees of different media outlets had suffered physical aggressions and the theft of their equipment while covering incidents associated with protests by miners from the cooperative movement. According to the National Press Association \textit{[Asociación Nacional de la Prensa]}, on August 23, Roger Salazar, a cameraman from the \textit{Unitel} network, had been assaulted and had his equipment taken from him while trying to aid his companion, journalist Carmen Camacho, who was being threatened by the demonstrators; on August 25, the photographer for the daily newspaper \textit{La Razón}, José Lavayén, and the cameramen from the \textit{Red Uno}, Marcos Ayllón, had been assaulted during a confrontation between police officers and cooperative activists in the locality of Panduro. An attempt was made to steal the camera of Lavayén and Ayllón was struck by sticks and stones, causing the fracture of his nasal septum; that same day, Erick Salazar and Óscar Lira, who worked for \textit{Red Uno}\textsuperscript{167}, were also assaulted.


\textsuperscript{163} EFE. May 18, 2016. \textit{La dinamita vuelve a la protesta boliviana con heridos y decenas de detenidos}; Opinión. May 19, 2016. \textit{Heridos y detenidos en protesta por cierre de textilera Enatex}.


\textsuperscript{165} Página Siete. August 26, 2016. \textit{Cronología del conflicto minero: Todo inició con el pedido de no modificar la ley de cooperativas}; El Mostrador/EFE. August 28, 2016. \textit{Gobierno boliviano confirma la muerte de un cuarto minero por conflicto}.


134. During protests and situations of heightened social unrest, States must adhere to the strictest international standards on freedom of expression in order to fully guarantee this right, without improper interventions against individuals, in keeping with Principle 2 of the IACHR’s Declaration of Principles.168 The Inter-American Commission has recognized the right to engage in public demonstrations or social protest, including in articles 13 and 15 of the American Convention.169

135. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"170 and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”171

136. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression "are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”172

137. Lastly, the Inter-American Commission has found that any type of arbitrary or abusive interference affecting the privacy of human rights defenders and their organizations is prohibited under the Declaration and the American Convention.173

C. Stigmatizing Statements

138. Throughout the year the Office of the Special Rapporteur received information on numerous statements made by National Government officials, among them President Evo Morales; Vice-President Álvaro García Linera; Minister of the Presidency Juan Ramón Quintana; and Minister of Communication Marianela Paco Durán, who signaled out members of the opposition, as well as some media outlets and journalists, as alleged members of what the Government called a "cartel of lies" – which they also referred to as the “cartel of the media." The purpose of the alleged "cartel" is said to carry out a "covert operation," promoted “by the United States government,” whose goals are said to be, among others, to destabilize the

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168 Principle 2 of the Declaration of Principles on Freedom of Expression: “[e]very person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”


government of President Evo Morales and to discredit Chinese investment in Bolivia and Latin America. As part of the alleged cartel the government officials have point to the Agencia de Noticias Fides (ANF), the daily newspapers El Deber and Página Siete, and the Erbol network of broadcast outlets. In addition, they have individually pointed to journalists Carlos Valverde Bravo, Amalia Pando, and Andrés Gómez as part of it. Subsequently, minister Quintana affirmed that the U.S. network CNN was added to the list; its inclusion led the officials to consider the existence of a “transnational cartel of lies.”

The statements on the alleged existence of the “cartel” began after the denounce by journalist Carlos Valverde, in the February 3 edition of his program “Eso es todo por hoy,” of an alleged existence of a case of influence-peddling stemming from the fact that Gabriela Zapata Montaño, who supposedly had a sentimental relationship and a child with President Morales, held the position of commercial manager of the Bolivian branch of the Chinese company China CAMC Engineering Co. Ltd., to which the government of Bolivia awarded at least seven contracts, totaling more than US$ 570 million, most of them no-bid contracts; this incident subsequently provoked the beginning of a criminal proceeding against Zapata Montaño and her arrest on February 26, on several charges. Valverde himself said, on May 16, that the purported child of President Morales and Gabriela Zapata “does not exist.” Also, Parliament determined the non-existence of influence-peddling by President Morales.

After the February 21 referendum by which the electorate voted against President Evo Morales being able to run for a third re-election in 2020, the government attributed the defeat to the impact of the alleged influence-peddling. The accusations led to an intensification of the accusations regarding the existence of the so-called “cartel of lies” through multiple declarations, special television programs, and the printing of an insert (a tabloid-size print publication) eight pages long, under the seal of the ministry of the Presidency and the ministry of Communication, with the title “The Cartel of Lies,” allegedly exposing the chronology of the facts, and individually noting the opposition politicians, media outlets, and journalists considered to be part of it. In addition, there has been information according to which the ministry of the Presidency had

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178 Página Siete. May 16, 2016. Carlos Valverde dice que el hijo de Morales y Zapata “no existe”; BBC. May 18, 2016. Bolivia: el periodista que destapó el escándalo del supuesto hijo de Evo Morales ahora dice que el niño “no existe”.


ordered the production of a documentary with the same title, which it entrusted to journalist Andrés Salari.\textsuperscript{183}

Stemming from these events, journalist Carlos Valverde decided to leave the country and reside temporarily in Argentina. On May 27, during an interview broadcast by Infobae, Valverde said that even though he did not feel persecuted, he felt “ Pressured” and decided to leave Bolivia “for the ease of mind of my friends, my family, and my journalist colleagues, who asked me to take some distance for a time.”\textsuperscript{184} As of the closing date of this report, he was continuing to reside in Argentina.

141. On May 28 the organization Reporters without Borders (RSF) reported that there was a climate of mounting hostility against the press referring, among other incidents, to what it characterized as a “veritable campaign of defamation, marked by verbal attacks” that targeted journalists Amalia Pando and Raúl Peñaranda. RSF noted in its communication that “the environment in which Bolivian journalists work has deteriorated considerably since the beginning of the year.”\textsuperscript{185}

142. Minister of the Presidency Juan Ramón Quintana said on March 2 that the news network CNN made the role of journalism look ridiculous given its lack of ethics and responsibility in its interviews, and announced that he sent the network all the information regarding the status of the supposed former intelligence agent and now journalist Carlos Valverde.\textsuperscript{186} On March 8 he apologized but called into question that CNN had not used protocols that he considered appropriate for the exercise of journalism.\textsuperscript{187}

143. On March 3, in an interview on the program ‘Democracia Directa’, on Bolivia TV, minister Quintana said: “The one denouncing has a first name and a last name. The one who denounces is Carlos Valverde. He is not denouncing a political leader of the right, because they are characterized precisely by their discredit in the eyes of the population... In 1993 he was tried and found guilty of drug trafficking associated with Nando Gutiérrez, a drug trafficker he had served, and then he entered the Chonchocoro prison, served his sentence, for a year more or less, and got out as a matter of a political benefit.”\textsuperscript{188}

144. On March 5, President Evo Morales declared that “the correspondent of CNN in Bolivia is a drug trafficker tried by the Bolivian justice system.” The assertion was made during the speech that Morales made when participating in the ceremonies marking the death of former president of Venezuela Hugo Chávez, and without identifying any specific person. On March 7 CNN rejected the president’s statements indicating that its correspondent in Bolivia is Glória Carrasco, “a recognized and respected journalist... For many years she has reported for CNN en Español and we categorically reject the false and dangerous accusation made by President Evo Morales.”\textsuperscript{189} After the statement by CNN President Morales stated that “in actuality the correspondent in Bolivia of CNN is drug trafficker Carlos Valverde” since CNN offers space to the versions that Valverde disseminates through his programs, without checking them “as required by serious journalism.”\textsuperscript{190}


\textsuperscript{185}Reporters Without Borders (RSF). May 28, 2016. RSF decries mounting hostility towards media in Bolivia.


\textsuperscript{187}La Razón. March 8, 2016. \textit{Quintana pide disculpas y cuestiona a CNN por entrevistar a Valverde sin conocer sus antecedentes}; Panam Post. March 8, 2016. \textit{Bolivia: Gobierno arremete contra CNN por entrevistar a Carlos Valverde}.

\textsuperscript{188}Ministerio de Comunicación Bolivia/Official You Tube channel. March 3, 2016. \textit{Entrevista Ministro Juan Ramón Quintana I}.


145. On May 20, the Government of Bolivia issued a communiqué denouncing a media campaign against Evo Morales and noting as follows: “The Bolivian government considers that the media and opposition leaders act as sounding boxes of lies with a political objective, to discredit the Bolivian president. The Minister of Presidency of Bolivia, Juan Ramón Quintana, denounced a campaign of media and political conspiracy against President Evo Morales by the opposition in Bolivia.”

191 That same day journalists from Santa Cruz, Tarija, El Alto, Potosí, and Sucre mobilized in defense of the freedom of expression and to support enforcement of the Press Act [Ley de Imprenta], the country’s statutory protection for the freedoms of press and expression.

146. On June 30 President Evo Morales noted in a press conference that journalist Fernando del Rincón, as well as the CNN network for which he works, were part of “a political conspiracy” and that del Rincón had committed the offenses of public advocacy of a crime, criminal association, aiding and abetting, complicity, and trafficking and smuggling of persons in the visit he made to Bolivia May 4 to 6, and during which he interviewed the supposed son of the president and Gabriela Zapata, an interview in which a child under 5 years of age participated, having been used to supplant the child of the president who, if he existed, would have been 9 years old.

193 Although the purported interview was never broadcast by CNN, the Office of the Attorney General [Fiscalía] of Bolivia summoned del Rincón to testify on July 21; as he did not appear, President Morales called him a “confessed criminal” during a press conference that he offered the next day.

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

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

149. Public servants, like all people, are entitled to the right to freedom of expression in its many forms. Nevertheless, in their case, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized in the Inter-American case law, particularly with respect to:

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192 La Razón. May 20, 2016. Periodistas marchan en defensa de la Ley de Imprenta.


The special duties they acquire by virtue of their status as state officials; (b) the duty of confidentiality that may apply to certain types of information held by the State; (c) the right and duty of public officials to denounce human rights violations; and (d) the particular situation of members of the Armed Forces. 

150. With regard to the impact of the statements of public servants on the rights of others, the Inter-American Court has held that, under certain circumstances—even if the official speech does not expressly authorize, instigate, order, instruct, or promote acts of violence against specific citizens—its reiteration and content can increase the "relative vulnerability" of those groups and the risks they face. 

D. Subsequent Liabilities

151. On April 20, Judge José René Quezada, of the city of Santa Cruz de la Sierra, referred the proceeding brought against journalist Carlos Valverde Bravo to a Court of Publishing [Tribunal de Imprenta] and in this way discarded the regular jurisdiction, an action applauded by Valverde, who denounced a case of alleged influence-peddling that would involve President Evo Morales. The journalist was accused of the crimes of discrimination, racism, and attack on the freedom to work by the prosecutorial authorities of Santa Cruz [ministerio Público de la Fiscalía de Santa Cruz] after Gabriela Zapata, who had filed a complaint against the journalist on February 24, decided to withdraw the charges on March 10. Despite the dismissal, the Office of the Prosecutor of Santa Cruz decided to carry out an investigation for 60 days. In that context Valverde was called to testify and in an interview stated that he asked the Office of the Prosecutor to set aside the action since the withdrawal of the complaint means that I am not a person against whom a complaint has been lodged. He added that if the prosecutorial authorities insisted, "we will appeal to uphold our right in the tribunales de imprenta." 

152. On May 10, Wilson García Mérida, who directs the Sol de Pando, denounced through his Facebook account that he had been notified of the start-up of a judicial proceeding against him as allegedly responsible for the crime of sedition. The complaint that gave rise to the process was lodged by minister of the Presidency Juan Ramón Quintana, who he had repeatedly criticized in the media outlet of which he is the director. According to the information known, García was ordered to appear at the office of the prosecutorial authorities of Cochabamba on May 11. Nonetheless, on May 19 he revealed that he was in Brazil "safeguarding my physical integrity and my liberty." On December 13 once again he denounced via his Facebook account that he was at risk, for he was alerted to a new incursion of hit men into Brazil to look for him, which is why he decided to go to the city of Brasilia, where he would seek to meet with the federal government of Brazil.

153. On September 28 the National Tribunal of Journalistic Ethics [Tribunal Nacional de Ética Periodística] declared partially true the complaint submitted by Minister of Health Ariana Campero against journalists Amalia Pando and Roxana Lizárraga. The minister's complaint apparently originated from comments made by the journalists during the March 23 broadcast of the radio program 'Cabildeo', which they co-host, asserting that the minister was pregnant and that the father of the purported child was another member of the presidential cabinet. The Tribunal recommended that the journalists make the "clarifications or rectifications

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200 Correo del Sur/ANF. April 7, 2016. Valverde pide ser procesado por la Ley de Imprenta porque argumenta ser periodista.

they consider relevant in relation to the information and opinions publicized by that program last March 23.”

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

155. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of 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.”

E. Legal Reforms

156. On July 5, the Asociación Nacional de la Prensa declared it was “on alert” given the purported attempt to reform the Bolivian Criminal Code that would repeal article 296, which is considered the only provision that protects the freedom of expression, for it provides that “one who unlawfully impedes or disrupts the free dissemination of thought by any means of dissemination, as well as the free circulation of a book, newspaper, or any other printed item shall be sanctioned with confinement of six (6) months to three (3) years and a fine of thirty (30) to two hundred (200) days.” Legislator Lino Cárdenas, chairperson of the Committee on Plural Justice, Office of the Attorney General, and Legal Defense of the State, of the Chamber of Deputies, denied that there was an initiative in that regard and said that the proposed reform that was under study in the legislative organ considered only the procedural part.

F. Prior Censorship and Direct and Indirect Censorship

157. The Authority for Regulation and Oversight of Telecommunications and Transport [Autoridad de Regulación y Fiscalización de Telecomunicaciones y Transporte] (ATT) declared on January 19 as illegal the signal of a radio station, “Exitosa, la más sabrosa,” of La Paz when journalist Amalia Pando, inaugurated a new program. According to information from local media, both Exitosa and the radio station Líder, owned by the Office of the Governor [Gobernación] of La Paz, suffer constant cut-offs and interference, and in very few neighborhoods of La Paz can one follow the programming; and that the only way for Pando to be able to express herself without problems is through the Internet.

158. On December 11 the president of the Asociación Nacional de la Prensa indicated that the content of article 16 of Law 045 “Against Racism and All Forms of Discrimination” [Ley 045 “Contra el Racismo y toda forma de Discriminación”], requires the media to engage in prior censorship in relation to certain content due to their being held liable for the likely racist or discriminatory content of opinion articles, even when signed by their authors. During the “Days of freedom of expression for the struggle against racism and all forms of
discrimination” ["Jornadas de libertad de expresión para la lucha contra el racismo y toda forma de discriminación"], organized by the ministry of Decolonization, the same person, who is also the director of the daily newspaper La Patria, recalled that the above-referenced article establishes that "Any media outlet that authorizes and publishes racist and discriminatory ideas may suffer economic sanctions and the suspension of its operating license, subject to regulation."  

G. Internet and Freedom of Expression

159. Following the results of the referendum held February 21, when 51.3 percent of the voters rejected the constitutional change that would have made possible the indefinite re-election, proposed by organizations to support the fourth re-election of Morales, activists of the governing party the Movimiento al Socialismo (MAS) suggested regulations or controls on digital media such as Facebook and Twitter. On the part of the minister of Communications Marianela Paco in public statements said that the Government was studying the form in which the social networks might be regulated, this after in the referendum campaign would have been observed racist manifestations through the above-mentioned networks.

160. The configuration and architecture of the Internet are relevant insofar as the Internet offers space for strengthening the exchange of information and opinions. The Internet has been developed using design principles which have fostered and allowed an online environment that is decentralized, open and neutral. It is important for all regulation to be based on dialog among all actors and to maintain the basic characteristics of the original environment, strengthening the Internet’s democratizing capacity and fostering universal and nondiscriminatory access.

161. In this regard, the Office of the Special Rapporteur deems of particular importance that public policy and regulations seek to preserve the original architecture of the Internet, not only directly but also through the private parties that influence and develop it. Any measures which could, in one way or another, affect the access to and use of the Internet must be interpreted according to the primacy of the right to freedom of expression, at all times, especially in regard to speech that is protected pursuant to the terms of article 13 of the American Convention.

H. Government Advertising

162. On August 10, during a press conference, Vice President Álvaro García Linera had acknowledged that the Government of the Republic does not purchase advertising from certain media outlets because of their editorial lines. According to the known information, the minister had declared: “we say this openly: there are media that lie, there are media that do not inform but instead engage in partisan politics... there are media that engage in politics, which are political parties, or quasi-parties, or para-parties and, of course, we are not going to fund certain media that are political para-parties on top of which they lie.” The organization Reporters Without Borders stated that this decision by the Bolivian Government “is a further step toward reducing the independent and opposition press in Bolivia to silence.”

163. Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the

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205 La Patria. December 11, 2016. ANP observa a la Ley 045 que obliga a los medios a ejercer “censura previa”; El Diario. December 9, 2016. ANP observa "censura previa" en Ley 045.

206 Infobae. February 22, 2016. Evo Morales culpó a redes sociales por el resultado del referéndum y quiere controlar su uso; El País. Evo culpa a la “guerra sucia” y a las redes sociales de su derrota.


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

I. Other Relevant Situations

164. On Sunday, January 4, President Evo Morales appeared on the premier of the television program ‘Democracia Directa’, broadcasted on the official local channel of the state-owned Bolivia TV. The program’s alleged mission was to be a platform for the participation, in addition to Morales, of directors of the state-owned media and noted Bolivian journalists from different media, as guests, in discussions related to the democratic process experienced in Bolivia during the past 10 years.209

165. On May 20, members of the National Police went to the facilities of the radio station Radio Líder while the program ‘Cabildeo’ was being broadcasted, conducted by journalists Amalia Pando and Roxana Lizárraga, to notify Pando of an order issued by prosecutor Rudy Terrazas for her to turn over to his office any audios or videos she might have regarding the events of February 17 in the community of El Alto when a protest purportedly by parents demanding more public investments turned into the takeover and arson of the building of the Mayor’s office [Alcaldía]; six persons died in the blaze. At that time she was not at the radio station, which is why the purported notice was received by journalist Roxana Lizárraga.210

166. On November 13, the Bolivian Attorney General’s Office began criminal proceedings against 16 ex-government officials, including entrepreneur and opposition leader Samuel Doria Medina, who heads the Frente de Unidad Nacional party, of which he has been the presidential candidate. Doria Medina has been charged with the crimes of Non-fulfillment of Duties, Contracts Harmful to the State and Anti-economic Conduct [Incumplimiento de Deberes, Contratos Lesivos al Estado y Conducta Antieconómica], for actions allegedly carried out by him in 1992, when he served as minister of Planning in the Government of the Republic [ministro de Planeación en el Gobierno de la República]. According to the known information, the accusations against Doria Medina stemmed from a report by a special commission of the Plurinational Legislative Assembly [Asamblea Legislativa Plurinacional] (ALP), which investigated the capitalization processes of the National Railroad Company [Empresa Nacional de Ferrocarriles] (ENFE) and the Capital Formation in Secondary Areas project [Formación de Capital en Áreas Secundarias] (FOCAS) project, in which decisions had been made that affected state assets. Samuel Doria has stated that the proceedings begun against him are part of a process of “political persecution” due to his status as an opposition politician, a process during which 15 trials had been initiated against him.211 On November 28, the Office of the Special Rapporteur sent a letter to the State requesting information about these events.212

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7. BRAZIL

A. Progress

167. On April 13, Marcos Bruno Silva de Oliveira was tried on charges of “formation of a criminal gang” [formação de quadrilha] and participation in the April 23, 2012 murder of journalist and blogger Décio Sá. Silva de Oliveira was accused of driving the motorcycle on which Jhonathan de Souza Silva fled after shooting the journalist. The judgment was handed down by Judge Osmar Gomes of the 1st Division of the Jury Court of São Luís [1ª Vara do Tribunal do Júri de São Luís]. Silva de Oliveira had already been sentenced to the same punishment in February 2014, but his conviction was overturned after his defense attorney filed an appeal alleging that the audio recorded during the initial trial was inaudible. The Jury Court sentenced him to 18 years and 3 months in prison. According to the information available, three other people involved in the case are reportedly awaiting trial [julgamento]. The confessed murderer of Décio Sá, Jhonathan de Souza Silva, was convicted in February 2014 and sentenced to 25 years and three months in prison, and his sentence was increased in November 2015 to 5 years and 5 months in prison under a closed system.

168. On May 11, regulations were issued to Law 12.965 of 2014, also known as “Civil Rights Framework for the Internet” [“Marco Civil da Internet”]. Civil society took part in the process of drafting the text of the regulations, as it did with Law 12.965, which was the product of an initiative spearheaded by the ministry of Justice [Ministério da Justiça] and the Center for Technology and Society of the Getulio Vargas Foundation [Centro de Tecnologia e Sociedade da Fundação Getulio Vargas]. The process included extensive and public consultation with Brazilian society. The text establishes guarantees, principles, rights, and duties for Internet use in the country. It also sets rules on the protection of personal data – such as the treatment of data and the introduction of a definition of personal data.

169. Decree No. 8.724 of April 27, 2016 created the Program for the Protection of Human Rights Defenders [Programa de Proteção aos Defensores de Direitos Humanos] “for purposes of coordinating measures for the protection of persons who are threatened because of their human rights defense work,” and established its Deliberative Council, composed of two representatives of the Special Human Rights Secretariat of the ministry of Women, Racial Equality, Youth, and Human Rights [Secretaria Especial de Direitos Humanos do Ministério das Mulheres, da Igualdade Racial, da Juventude e dos Direitos Humanos], one of whom serves as the coordinator and the other as the representative of the National Public Security Secretariat of the ministry of Justice [Secretaria Nacional de Segurança Pública do Ministério da Justiça]. The decree similarly provides that one member of the Office of the Attorney General [Ministério Público Federal] and one representative of the Judiciary [Poder Judiciário] may be invited to join the Council. According to the decree, both the Council and the Program would be within the purview of the Special Human Rights Secretariat of the ministry of Women, Racial Equality, Youth, and Human Rights.
also provides protection to at-risk journalists. Civil society considers some aspects of that decree problematic—for example, it does not provide for the participation of public agencies or civil society in the program's coordination or deliberative council, nor does it cover institutions or groups that defend human rights, as it only provides protection to individuals. Also, the decree is limited to covering "threatened persons," not people "facing risk or vulnerability."  

170. In a July 4 decision, Judge Alfredo José Marinho Neto of the Special Criminal Court of the District of Belford Roxo [Juizado Especial Criminal Adjunto a 2ª Vara Criminal da Comarca de Belford Roxo] decided to shelve a complaint from the Office of the Attorney of Rio de Janeiro [Ministério Público do Rio de Janeiro], declaring the unconstitutionality and unconventionality of the offense of criminal insult [desacato]. He observed that this offense is "quite antiquated, drafted in light of the reality of the times, and not in any way consistent with the contemporary legal system."  

He held that "citizens have the right to criticize and examine the actions and attitudes of public servants in the exercise of their duties." The judge affirmed in his decision that the Federal Constitution protects the expression of thought, freedom of expression, and the right of reply. In addition, he noted that Brazil is party to several international treaties that protect this right, such as the American Convention, and cited Principles 1 and 11 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights. In performing “conventionality control,” Judge Marinho Neto observed that the IACHR has already concluded that insult [desacato] laws are incompatible with the American Convention, and has asked the States to repeal them. He held that “the Brazilian State, which acceded to the American Convention on Human Rights, is subject to its system of International Justice and must observe the American Convention on Human Rights, as well as the deliberations of the Inter-American Commission and the Inter-American Court of Human Rights.” The judge thus acknowledged the unconstitutionality and inconsistency with the American Convention ["unconventionality"] of the criminal offense described in article 331 of the Criminal Code, and dismissed the complaint based on article 1(II), (III), and (V) and its sole paragraph, article 5, IV, V, and IX, and article 220, all of the Constitution of the Republic; article 13 of the American Convention on Human Rights (Pact of San José, Costa Rica); article 27 of the Vienna Convention on the Law of Treaties, and article 395(III) of the Code of Criminal Procedure. He additionally invoked the Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission on Human Rights in October 2000, in support of his decision.

171. On August 8, Federal Judge Augusto Carneiro Araújo of the 12ª Federal Court of Rio de Janeiro [12ª Vara Federal do Rio de Janeiro] granted an injunction [liminar] allowing “peaceful” political demonstrations during the Olympics in Rio de Janeiro and prohibiting the repression and removal of demonstrators. This decision was in response to a public civil action [ação civil pública] filed by the Federal Office of the Attorney General [Ministério Público Federal] (MPF) against the Federal Government, the State of Rio de Janeiro, and the Rio 2016 Organizing Committee. According to the MPF, the practice used by the three respondents to prevent Olympic Games spectators from displaying signs or wearing shirts bearing political statements in the sports arenas—removing them from the place by Military Police [Polícia Militar] or national police officers—was a violation of the constitutional principle of freedom of expression. In his decision, the judge stated that the law regarding the Olympics only prohibited racist or xenophobic expressions, and that repressing peaceful political demonstrations “is contrary to the inviolable core of the fundamental right to freedom of...
expression.” In addition, in the event of noncompliance, the judge ordered the imposition of a fine of BRL$ 10 thousand (approximately US$ 3 thousand) for every repressed protest.\(^{224}\) According to reports, the Federal Government withdrew its appeal of the injunction.\(^{225}\) For its part, the Rio 2016 Committee’s appeal of the injunction was denied by judge Marcello Granado, chief judge of the 5\(^{th}\) Specialized Division of the Federal Regional Court of the Second Region [Tribunal Regional Federal da Segunda Região] (TRF2), who upheld the legality of protests in the sports stadiums.\(^{226}\)

172. The Fifth Panel of the Superior Court of Justice of Brazil [Quinta Turma do Supremo Tribunal de Justiça do Brasil] (STJ), unanimously declared by its members, the nonconventionality of contempt offense [desacato] (established in article 331 of the Brazilian Penal Code) with article 13 of the American Convention on Human Rights, on December 15. The ministers followed the vote\(^ {227}\) of Minister Rapporteur Ribeiro Dantas, in the context of an appeal filed by the Public Defender’s Office of São Paulo before the STJ, against a decision of the Court of Justice of São Paulo [Tribunal de Justiça de São Paulo] that sentenced a man to five years and five months of detention for stealing a bottle of spirit valued at BRL$ 9 (approximately US$ 3), for contempt [desacatar] of the Military Police who had arrested him and for resisting detention. The ministers decided on the partial appraisal of the appeal, rendering null and void the condemnation for the offense of contempt [desacato].\(^{228}\)

B. Killings

173. Radio host João Valdecir de Borba was murdered on March 10 in the municipality of São Jorge do Oeste, State of Paraná. According to the information available, Borba was on air, hosting his program on Rádio Difusora 1490 AM, when he went to the door and two men shot him in the abdomen. Borba was taken to a hospital, where he died. Colleagues said that he had stopped covering police news at their request six months earlier and had switched to musical programs, although he had not publicly stated the reason.\(^ {229}\)

174. On April 9, blogger Manoel Messias Pereira, known as Manoel “Benhur,” was murdered in the municipality of Grajaú, State of Maranhão.\(^ {230}\) He was the author of a blog about local politics on the website sediverte.com.br, and also worked for the Municipal Housing Secretariat [Secretaria Municipal de Habitação]. According to public information, Manoel “Benhur” was reportedly shot by unidentified men while he was riding his motorcycle.\(^ {231}\)


\(^{225}\) Agência Brasil. August 9, 2016. *União desiste de recorrer de liminar que liberou protestos na Olimpíada; G1.* August 9, 2016. *Recurso para voltar a proibir protesto político na Olimpíada é retirado.*


175. On July 24, journalist João Miranda do Carmo was murdered in the municipality of Santo Antônio do Descoberto, State of Goiás. According to the information available, on the night of July 24, unknown persons shot him in the doorway of his house. Miranda do Carmo had reportedly received threats and someone had set fire to his car in an earlier incident. According to relatives, the journalist had reported those incidents to the police. João Miranda do Carmo was the owner of the digital media outlet SAD Sín Censura, which published local news and reported on the city’s problems.232 The police arrested two suspects, and indicated that his murder may have been related to his journalistic work.233

176. On August 17, businessman and journalist Maurício Campos Rosa was murdered in the city of Santa Luzia, in the State of Minas Gerais. According to the information available, unknown persons shot him five times as he was leaving a friend’s house. The journalist later died at a local hospital. Campos Rosa, 64 years old, was the owner of the newspaper O Grito, known for covering regional political activity and for exposing cases of corruption. According to the Civil Police, a homicide investigation has been opened.234

177. According to public information, on October 16 broadcaster Jairo de Oliveira Silva was murdered in the city of Salvador, in the state of Bahia. According to reports, in the early morning hours of October 16, Oliveira Silva’s neighbors heard gunshots and saw unknown persons wearing black clothing and hoods leaving his house. The unknown persons reportedly searched his house, taking only his cell phone. According to the broadcaster’s relatives, there was no sign of forced entry into the house, leading them to suspect that the murderers were known to him. Oliveira Silva was the owner and announcer on community radio station Vorgel FM, which he had been operating for more than 10 years. According to the information available, the Civil Police [Polícia Civil] opened a homicide investigation.235

178. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.236

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

C. Attacks, Threats and Harassment Against Journalists and Media Outlets

180. On February 9, Clóvis Miranda, a photographer for the newspaper A Crítica, was reportedly detained and assaulted by a State Transit Department [Departamento Estadual de Trânsito](Detran-Am) officer after documenting an action carried out by transit officers in Amazonas.237 That same day, journalist Juliana Barbassa and photographer Bear Guerra, of the magazines Americas Quarterly and US News & World Report, had their work equipment stolen from them. The incident reportedly occurred after the government of the State of Rondônia ordered the police not to cooperate with the work the journalists were doing in Ariquemes, as it could have negative repercussions on the state.238

181. On February 13, journalist Bernardo Tabak of the newspaper O Globo was reportedly assaulted by members of the Municipal Guard of Rio de Janeiro during Carnival festivities in the Plaza Mauá while he was filming the assault of a woman. According to the journalist’s statements, he was handcuffed and taken to a police station for the offense of desacato.239

182. On March 9, cameraman Davi Ferreira and journalist Patricia Sonsin, both of TV Tarobá, an affiliate of Band in Cascavel, State of Paraná, were allegedly held hostage and threatened by members of the Landless Workers’ Movement [Movimento dos Trabalhadores Rurais Sem Terra] (MST) who had occupied a rural property in Quedas de Iguazú. The team of journalists was reportedly filming the events when they were surrounded by a group of people armed with rocks, shotguns, and machetes, who forced them to go to a campement where they were threatened with having their equipments damaged and held hostage for around 20 minutes.240

183. On March 10, journalist Kenedy Salomé Lenk’s vehicle had shots fired into it while it was parked in the garage of his house in Afonso Cláudio. The journalist works for the radio Educadora AM and is a correspondent for Montanhas Capixabas in the state of Espírito Santo. According to public information, the Civil Police of Espírito Santo [Polícia Civil do Espírito Santo] informed that an investigation would be started in order to find out whether the attack was related to his journalistic work.241


184. On March 27, radio broadcaster Jair Pereira Teixeira, known as “Jair Kovalik,” was shot in Forquilha, State of Ceará. According to the Military Police, he was shot three times at a bar.\textsuperscript{242} The police suspected that the attack was motivated by the journalist’s condemnation of illegal activities on his program on Radio Pioneira. According to reports, Teixeira had received threats previously.\textsuperscript{243} Two people were reportedly detained in connection with the incident.\textsuperscript{244}

185. On April 4, journalist Ivan Pereira Costa was shot on front of his house in the city of Cujubim, Rondônia. According to the information received, the crime may have been related to the reports made on his website Jeja Notícias.\textsuperscript{245} Similarly, on April 11, in the same city, unknown persons reportedly entered the home of journalist Lucas Bueno and shot him three times. He managed to flee, and only the memory card on his camera was stolen. According to reports, the crime was related to reports the journalist posted on his website.\textsuperscript{246}

186. On July 26, TV Em Tempo cameraman Walfran Leão and journalist Bruno Fonseca were reportedly assaulted and their equipment was damaged while they were filming the scene of a crime in Manaus, State of Amazonas. According to public information, people close to the victim had attacked them, and the police on the scene failed to intervene.\textsuperscript{247}

187. On August 5, reporter Daniella Laso of radio CBN reportedly had her cell phone seized and was threatened with arrest by members of the Military Police of São Paulo [Polícia Militar de São Paulo] while covering a police action in “Cracolândia” an area of downtown São Paulo. According to the journalist’s statements, even though she and the driver of the radio station’s car had identified themselves as members of the press, they were searched by the police. According to the information available, the journalist’s phone was later returned to her without the images she had taken of the police throwing tear gas at residents on the street.\textsuperscript{248}

188. On September 26, journalist Edvaldo Oliveira was shot while distributing copies of his newspaper in the city of Franco da Rocha, in the State of São Paulo. According to the information available, Oliveira, the founder and editor of the newspaper Voz das Cidades, had reportedly received threats after publishing reports about irregularities amongst politicians in the city of Franco da Rocha and its neighbor Caireiras.\textsuperscript{249}


\textsuperscript{243} Portal Imprensa. April 1, 2016. \textit{Radialista cearense sofre tentativa de assassinato por denunciar crimes}; Committee to Protect Journalists (CPJ). March 31, 2016. \textit{Brazilian radio reporter survives shooting}.

\textsuperscript{244} Committee to Protect Journalists (CPJ). March 31, 2016. \textit{Brazilian radio reporter survives shooting}; Knight Center for Journalism in the Americas. March 31, 2016. \textit{Two arrested in attempted murder of radio host in northeastern Brazil}.


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On October 1, Rene Silva, founder and editor-in-chief of the community newspaper *Voz da Comunidade*, and photographer Renato Moura were reportedly detained by Military Police on allegations of desacato and disobedience. According to reports, the two were identified as members of the press while recording a police action to evict residents of “Favelinha Skol,” when a Military Police officer approached them, asking them to leave and to turn their equipment off. Silva and Moura reportedly refused to do so and had allegedly been detained as a result. Both were released hours later.\(^{250}\) In addition, Military Police officers reportedly shot at a reporter from the newspaper *O Globo* to prevent him from filming a group of police officers who were beating a young man. According to the information available, the Office of the General Public Prosecutor of the State of Rio de Janeiro requested the opening of a police-military inquiry [*Inquérito Policial-Militar*] to investigate the actions of the Military Police who had fired the shots.\(^{251}\)

On October 12, in the State of Santa Catarina, Sandro Silva of the newspaper *Diarinho* was reportedly assaulted, kicked, and hit in the knee by a rubber bullet while covering an action of the Military Police, even though he had identified himself as a member of the press.\(^{252}\)

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

D. Social Protest

Because of the political instability arising from the removal of Dilma Rousseff from the Presidency of the Republic by means of an impeachment process, and the resulting change in government, Brazil saw a significant increase in the cases of violence against journalists and demonstrators in 2016 in the context of the different social protests and demonstrations that took place throughout the country. The Office of the Special Rapporteur received information about the increased presence of the Military Police at protests in different states of the country, which was said to have an intimidating effect on the demonstrations in support of ousted President Dilma Rousseff.

During the year, the “Pase Libre” Movement [*Movimiento Pase Libre*] (MPL) against public transportation fare increases held various demonstrations in the State of São Paulo. During protests held on January 8, there were alleged confrontations between the so-called *black blocks* and the Military Police. According to public information, the *black blocks* reportedly threw rocks at the Military Police, who responded with tear gas. In addition, 17 people were reportedly detained for alleged criminal acts [*práticas criminosas*].\(^{253}\) On January 12, some nine media professionals were reportedly assaulted by police.\(^{254}\)
According to the information available, the police threw tear gas in the direction of a group of cameramen, reporters, and photographers and hit them with nightsticks, even though they had identified themselves as members of the press.\footnote{255} In addition, some 20 people were reportedly injured.\footnote{256} The confrontation apparently began after the demonstrators tried to take a different route from the one imposed by the Military Police.\footnote{257} Student Gustavo Mascarenhas Camargos was reportedly hit by a tear gas canister thrown by the Military Police, resulting in a compound fracture in his finger, some broken hand bones, and a torn tendon.\footnote{258} According to reports, 49 tear gas canisters were thrown by the Military Police in a 6 minute interval.\footnote{259}

Moreover, Military Police allegedly had used a tactic known as “kettling” [\textit{Caldeirão de Hamburgo}], which is prohibited by the Manual for the Control of Civil Disturbances of the Military Police of the State of São Paulo. That technique consists of isolating demonstrators through police cordons that do not allow for anyone to enter or leave the demonstration, attacking them with tear gas.\footnote{260} On January 14, CBN reporter Cinthia Gomes was reportedly hit by a rubber bullet in downtown São Paulo.\footnote{261} The demonstration was reportedly peaceful until there was a confrontation between demonstrators and security guards from the Consolação metro station. The Military Police reportedly threw non-lethal bombs. At least eight people were detained and at least two people were injured.\footnote{262} On January 21, seven media professionals, including photographers and reporters, were reportedly attacked by the Military Police in \textit{Praca da Republica} in São Paulo during an action against demonstrators. According to public information, even though they had identified themselves as reporters, the journalists were attacked with rubber bullets, devices, pepper spray, and explosives.\footnote{263}

\footnote{194} According to the information received by the Office of the Special Rapporteur, on March 3 the Federal Police opened an inquiry \cite{264} against Maria do Rosario Barbato, an Italian national and professor at the Federal University of Minas Gerais (UFMG). A report was filed against the professor alleging activism in political parties and participation in partisan and labor union activities, in violation of Law 6.815/1980, also known as the Law on Foreigners \cite{265}. Under articles 106 and 107 of that law, which was

\cite{266}


enacted during the dictatorship in Brazil, foreigners are barred from engaging in political activities, organizing marches, or taking part in labor unions or demonstrations. Pursuant to the complaint against her, Barbato was summoned to give testimony. The Office of the Attorney General reportedly filed a writ of habeas corpus with a request for a protective measure on her behalf, for purposes of closing the investigation against her, stating that such an investigation would be contrary to fundamental articles of the Federal Constitution. It further indicated that the law contained provisions that were incompatible with the democratic rule of law. It maintained that her right to join unions is protected not only by the Constitution but also by different international treaties to which Brazil is party. The protective measure was reportedly granted on May 17, and the investigation was suspended pending a decision on the merits. In April, the National Federation of Federal Police [Federación Nacional dos Policías Federales] (Fenapef) publicly stated that foreigners who participate in political acts are subject to arrest and expulsion from the country pursuant to article 107 of the Law on Foreigners. The statement was issued after it was learned that foreigners might travel to Brazil to protest the impeachment of ousted President Rousseff.

195. On March 4, at least eight media professionals who were covering the testimony of former President Luiz Inácio Lula da Silva were reportedly assaulted by protesters in São Paulo.

196. On May 10, journalists Geilson Ferreira and Sérgio Porto of Tribuna, and André Falcão of TV Gazeta, were reportedly assaulted and kicked during a protest against the impeachment proceedings of deposed President Dilma Rousseff in Vitória, in the state of Espírito Santo. The protester who had allegedly assaulted them was identified and taken to the police station. Journalist Suelen Araújo of TV Vitória was also reportedly assaulted by protesters during a live broadcast of the demonstration.

197. On May 31, José Valdir Misnerovicz, a leader of the Landless Workers’ Movement [Movimento dos Trabalhadores Rurais Sem Terra] (MST) of Goiás, was reportedly detained by Military Police while visiting one of his movement’s camps in Veranópolis, Rio Grande do Sul, on charges of “criminal organization, robbery and harm.” The same thing happened to Luiz Batista Borges, who was detained in Goiás on April 14 on similar charges. The arrests took place pursuant to a complaint filed by the Office of the Attorney General, and were reportedly motivated by the occupation of the Santa Helena Plant. A warrant was also issued for the arrest, under the same charges, of two other members of the group, Diessyka Santana and Natalino de Jesus. According to the information available, it was the first time that those charges, established in Law 12.850/2013 [Lei de Organizações Criminosas], were filed against a social movement. On October 18, the


Sixth Chamber of the Superior Court of Justice [6ª Turma do Superior Tribunal de Justiça] revoked the pre-trial detention of Misnerovicz, but denied the request to release Batista Borges and upheld the arrest warrant for Santana and De Jesús, who are allegedly fugitives from justice.272

198. On June 1, the Military Police reportedly fired tear gas canisters during the protest held by members of the Homeless Workers’ Movement [Movimento dos Trabalhadores Sem Teto] (MTST) who had occupied the building of the Office of the President of the Republic in São Paulo. At least six people were reportedly detained, including one woman. Erika Fontana Sampaio was reportedly detained for desacato and resisting arrest after a police officer had overpowered her by force.273 According to reports, the police fired tear gas canisters and pepper spray to disperse the crowd after some participants in the demonstration attempted to prevent the arrest of a fellow demonstrator.274 At the same protest, CBN reporter Hermínio Bernardo and a journalist from TV Globo were reportedly harassed and assaulted by protesters.275

199. On August 10, Judge Olavo Zampol Jr. of the 10th Public Treasury Court [10ª Vara da Fazenda Pública] of the Court of Justice of São Paulo [Tribunal de Justiça de São Paulo] dismissed the request for non-pecuniary damages filed by photographer Sérgio Silva against the State of São Paulo. In June 2013, the photographer was reportedly hit by a rubber bullet while covering a protest, resulting in the loss of sight in his left eye.276 According to the trial court’s decision, “by placing himself in the middle of the confrontation between the police and protesters, [Sérgio Silva] consciously and voluntarily took the risk of being targeted by one of the groups involved in the confrontation.”277 The Brazilian State informed the Office of the Special Rapporteur that Silva had appealed that decision in August 2016, and that the case was pending before the Court of Justice of the State of São Paulo. It additionally reported that the police investigation that had been opened with regard to potential charges of felonious injury [lesão corporal dolosa] was reported and forwarded to the Criminal Court on May 18.278

200. There have been numerous demonstrations in Brazil this year by students who, among other things, have protested against proposed changes to the country’s educational system.279 In particular, proposed

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272 Rota, October 18, 2016. STJ mantém prisão de três integrantes do MST acusados de organização criminosa; Agencia Br. October 18, 2016. STJ mantém prisão preventiva de três integrantes do MST; Brasil de Fato. October 19, 2016. La justicia concede habeas corpus a preso político del MST de Guadaíra.


Constitutional Amendment [Proposta de Emenda à Constituição] (PEC) 241, which would limit public spending for the next 20 years, adversely affecting the education budget and other items. They also demonstrated against several proposals to interfere in the school curriculum, backed by the movement known as “Escola Sem Partido.”

201. During the hearing on student protests and human rights in São Paulo, held on April 8 during the 157th Session, the Commission received with concern the information presented by the requesting organizations about the “persistent and systematic situation of restriction and abuse of force against protests in Brazil,” involving assaults on demonstrators and journalists covering these events, as well as the use of an “excessive number” of police officers for these operations. According to reports, the victims of the disproportionate use of force by the police in many cases were children and adolescents who were taking part in student protests. The organizations reported that during the past three years there were more than 1,500 protests in Brazil, and that they had taken place in a “true context of repression.” Students who had taken part in the protests participated in the hearing and reported cases of abuses committed by police officers, as well as an attempt to silence their dissident voices. For its part, the Brazilian State indicated that the occupation of public space—in this case the schools—is not a right, and that police force had not been used to vacate the premises. It added that the discussion is not about the right to protest, but rather the right to occupy public property. It also stated that the demonstrators had not given prior notice to the authorities, which was necessary in order to keep the streets as clear as possible and, for instance, protect other people’s right to health by keeping access to hospitals unobstructed. The Special Rapporteur for Freedom of Expression, Edison Lanza, noted that the State has the obligation to facilitate demonstrations, and he asked what the protocols would be for handing those situations. The Special Rapporteur also stated that the use of criminal legal concepts like desacato is incompatible with the American Convention on Human Rights.

202. On April 28, journalist Annie Zanetti of radio CBN was reportedly assaulted by Military Police officers while using her cell phone to film the student protest against the State’s governor in downtown São Paulo. According to reports, in spite of being identified as a journalist, a police officer sprayed her in the face with pepper spray.

203. On April 28, the Paula Souza Center was reportedly occupied by students, who were protesting to demand improvements in the food served at the state Technical Schools [Escolas Técnicas Estaduais](ETECS). On May 2, the Military Police reportedly entered the building with a court order to retake possession of it, issued by Judge Fernão Borba Franco of the 14th Public Treasury Court [14ª Vara de Fazenda Pública]. However, the order allegedly had not been sent previously to the students. Therefore, Judge Luis Manuel Pires of the Central of Warrants of the Court of Justice [Central de Mandados do Tribunal de Justiça] ordered the police to leave the student-occupied building, and for the Secretary of Public Security of the State of São Paulo to clarify, within 72 hours, whether it had been responsible for executing the court order “in advance,” by deciding to have the Military Police enter the building without a court officer having

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283 Associação Brasileira das Emissoras de Rádio e Televisão (Abert); Relatório de Liberdade de Imprensa; CBN. April 28, 2016. Repórter do DCM é agredido por PM com spray de pimenta durante manifestação em SP; Associação Brasileira de Jornalismo Investigativo (Abrai). April 28, 2016. PM ataca repórter da CBN com spray de pimenta em SP.

given notice of the decision to the parties involved. On May 5, a new decision from the court reportedly prohibited the use of any type of weapons (lethal or non-lethal) by the Military Police during the removal of the demonstrators. It also ordered, *inter alia*, that the Secretary of Public Security [*Secretario de Segurança Pública*] had to be present in order to oversee the action in person. However, the Secretary of Public Security appealed that decision, managing to obtain an injunction as well as authorization for the police to enter the building without complying with the two aforementioned conditions. Accordingly, on May 6, the Military Police retook possession of the building and removed the students. Reporter Mauro Donato of *Diário do Centro do Mundo* was reportedly injured after being hit in the face with a nightstick by the Military Police while covering their actions during the operation. According to reports, the Military Police barred journalists and photographers from approaching the school.

204. According to the information available, on May 10, the Office of the Attorney General of the state of São Paulo [*Procuradoria Geral do Estado*] issued a legal opinion [*parecer*] instructing the state secretariats to retake possession of public buildings occupied by demonstrators without court authorization. The Public Defender’s Office of the state of São Paulo [*Defensoria Pública do Estado de São Paulo*] and the Brazilian Bar Association section São Paulo [*Ordem dos Advogados do Brasil seção São Paulo*] reportedly stated that the decision was “concerning.” For its part, the government argued its “self-protection” right to possession, which was established in the law and allowed people to regain possession of their invaded properties. On May 13, the Military Police reportedly cleared out three regional education offices and a state technical school occupied by students in São Paulo. According to the information available, at least 50 youths were detained and taken to the police station. The Secretary of Public Security reportedly maintained that they were taken to provide statements and were later released.

205. On May 18, three journalists were reportedly assaulted by the Military Police during a student demonstration protesting against of occupied educational centres. Gabriela Biló of the newspaper *Estado de São Paulo* was reportedly photographing the arrest of a student when a police officer attempted to seize his camera by force. As he resisted and continued to photograph, the journalist was allegedly sprayed in the face with pepper spray. Similarly, *Futura Press* photographer André Lucas Almeida reportedly got pepper sprayed in the face and was hit with a police baton. His notebook computer was also reportedly damaged by a Military

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Police officer. According to reports, press photographer Marcelo Campos of TV Globo was hit with a police baton while filming the actions of the police officers who were allegedly beating students at the protest.

206. This year in Brazil there were also protests against the Olympics and Paralympics, which were held in Rio de Janeiro in August and September. On August 5, during protests in São Paulo and Rio de Janeiro, confrontations were reported between demonstrators and the police. According to reports, in São Paulo the Military Police used pepper spray on the demonstrators and made them sit on the ground surrounded by a cordon of police officers. In addition, various individuals were reportedly detained. The police alleged that the demonstrators threw rocks and sticks at them, and had not provided the itinerary for the protest. According to reports, the demonstration in Rio de Janeiro was peaceful, and when the demonstrators were near the spot where they planned to end the march, the Military Police used tear gas and pepper spray to disperse the crowd. The confrontation between the police and the demonstrators reportedly occurred after demonstrators burned a Brazilian flag. At least one person was reportedly detained during the protest in Rio de Janeiro.

207. According to public information, demonstrators and journalists were arrested during the protests held in late August and early September in São Paulo in opposition to the impeachment proceedings against Rousseff, and there were allegations of excessive use of force by the Military Police against demonstrators and journalists. On August 29, demonstrators at the protest in downtown São Paulo were reportedly subjected to non-lethal bombs and tear gas by the state Military Police. They were also reportedly hit by a water cannon mounted on a Military Police truck. Numerous people were reportedly injured as a result. According to reports, the Military Police justified their actions on the argument that the route followed by the demonstrators had not been reported in advance.

208. Similarly, at the demonstrations held on August 30 and 31, there were reports of new incidents of police violence against demonstrators and new arrests. On August 31, student Deborah Fabri—who was taking part in the demonstration—was allegedly injured by fragments of a non-lethal bomb thrown by Military Police, losing sight in her left eye. In addition, two journalists who were documenting the protest on Consolação Street were reportedly detained and the camera belonging to one of them was damaged. According to the information available, the journalists were detained on charges of assaulting law enforcement officers, which they denied. One of them also stated that he had been assaulted.

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298 Artigo 19. August 31, 2016. Em conjuntura polarizada, direito de protesto deve ser assegurado; G1. September 1, 2016. Ferida em ato contra Temer em SP diz que perdeu a visão do olho esquerdo; O Dia. September 1, 2016. Estudante atingida em protesto contra governo...
209. With respect to the demonstration held on September 1, there was a video report of a Military Police vehicle intentionally running over a demonstrator taking part in the protest. Later, the demonstrator was handcuffed and placed inside the police vehicle. The Ombudsman’s Office of the Military [Ouvidoria da Polícia Militar] Police of São Paulo reportedly concluded that the Military Police struck the demonstrator intentionally.299 In addition, photographer Fernando Fernandes reportedly sustained an injury to his mouth when he was hit by a rubber bullet.300

210. According to the information available, on September 4, 26 people were reportedly detained, including some minors, prior to the start of a demonstration in São Paulo. The group was reportedly held for a number of hours without access to an attorney or contact with their relatives. According to a press release from the Secretary of Public Security of São Paulo, the detainees had been found with rocks, hoods, and other objects “used in acts of vandalism.” The 16 adults were charged with “criminal conspiracy” [associação criminosa] and “corruption of minors” [corrupção de menores], and the 10 adolescents were charged with “the offense of criminal conspiracy” [ato infracional versando sobre associação criminosa].301 According to the detained demonstrators, the Military Police used an undercover agent to infiltrate the group and arrest them. According to reports, an Army captain had used social networks to monitor demonstrators. In a public statement, the Army confirmed that the Captain belonged to the Southeast Military Command and that his participation in the act was being investigated.302 In addition, according to the information available, the Brazilian Army admitted that it conducted ongoing “intelligence operations” at street demonstrations; nevertheless, it was not confirmed whether they used that intelligence during this incident. For its part, the Secretary of Public Security of São Paulo reportedly stated that he was unaware of any intelligence action being conducted by any other security agency.303 The detainees were reportedly released from custody on the night of September 5, after it was considered that there were no evidences against them.304

211. On September 4, at the end of a demonstration in São Paulo against the government of President Michel Temer that, according to reports, had taken place peacefully, the Military Police fired tear gas canisters and water cannons as the demonstrators were dispersing.305 Photographer Maurício Camargo of Agência

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300 Portal Imprensa. September 2, 2016. Fotógrafo é atingido por bala de borracha durante manifestação contra Temer; Correio Braziliense. September 2, 2016. ANI critica agressões a jornalistas e ameaças à imprensa.


Eleven of Rio de Janeiro reportedly sustained a leg injury from a rubber bullet. In addition, BBC Brazil reporter Felipe Souza was allegedly assaulted by four police officers who hit him with their batons while he was covering the demonstration in São Paulo, even though he had identified himself as a journalist. According to reports, Souza was wearing a photographer’s vest with press credentials. The Secretary of Public Security of the state of São Paulo stated that the events alleged by the journalist would be investigated and asked him to file an incident report [boletim de ocorrência].

212. On September 7, journalist Leandro Prazeres and cameraman Kleyton Amorim, both of UOL, were reportedly physically and verbally assaulted by demonstrators while conducting an interview during a protest in Brasilia against the government of President Temer.

213. With respect to those demonstrations held in late August and early September in São Paulo, the Special Human Rights Secretariat of Brazil maintained in a public statement issued on September 9 that, “the rights to peaceful assembly and to freedom of expression are enshrined in article 5(XVI) and (IV) of the Federal Constitution, as well as in articles 19 and 21 of the International Covenant on Civil and Political Rights and articles 13 and 15 of the American Convention on Human Rights – international protection instruments ratified by Brazil in 1992. Those rights are a condition, requirement, and onus of the democratic system. Freedom of expression, the right to peaceful assembly, to hold demonstrations without violence or destruction, and public criticism are essential components of democracy, which assumes divergence and dissent, in a plural environment. Resorting to violent methods in the exercise of the rights of assembly and freedom of expression is incompatible with the exercise of democracy.” In addition, the Special Human Rights Secretariat noted “the importance of the Basic Principles on the Use of Force by Law Enforcement Officers. Pursuant to article 30 of the Code of Conduct for Law Enforcement Officers, the use of force is admissible only ‘when strictly necessary and to the extent required for the performance of their duties.’ The use of force by law enforcement officers must be evaluated with the proper respect for the human rights of demonstrators, human rights defenders, and media professionals. The States must ensure that the potential arbitrary use or abuse of force is properly investigated, prosecuted, and penalized. The principles of proportionality, reasonableness, and moderation in the use of force, with respect for human rights, are fundamental for the democratic rule of law, based on the culture of non-violence, dialogue, respect, pluralism, and peace.”

214. On September 28, the Office of the Attorney of the state of São Paulo [Ministério Público do Estado de São Paulo] held a public hearing to listen to the accounts of journalists who were assaulted or whose journalistic work was restricted by the Military Police during demonstrations or public events. The hearing was held by the Office of the Attorney General [Ministério Público] in conjunction with the Sindicato dos Jornalistas do Estado de São Paulo, the Fórum Brasileiro de Segurança Pública, Artigo 19, Sou da Paz, and Núcleo de Estudos da Violência da Universidade de São Paulo (USP). 18 testimonies were officially received by the Office of the Human Rights Prosecutor [Promotoria de Justiça dos Direitos Humanos] and will reportedly
be included in the civil inquiry [inquérito civil] that the office opened at the end of June. According to reports, in most of the testimonies the reporters stated that they believed that since the 2013 demonstrations journalists have become the object of violent police actions because they have publicize the way in which state agents have behave during the protests. According to the information available, these cases will be referred to the offices of the criminal prosecutors of the Office of the Attorney General [Promotorias Criminais do Ministério Público] (MP). At the end of the hearing, the MP reportedly provided the opportunity for the police to speak, but no police representative was present.311

215. On November 21, the State of Brazil informed the IACHR of the measures taken to facilitate the exercise of the right to participate in public demonstrations and to ensure the safety of demonstrators, media workers, and journalists covering social demonstrations in Brazil.312 The State indicated that Resolution No. 6 of June 18, 2013 provides recommendations for guaranteeing human rights and applying the principle of non-violence in the context of demonstrations and public events, as well as in the execution of court orders [mandados judiciais] for maintenance and possession. It stated that the National Council of the Office of the Attorney General [Conselho Nacional do Ministério Público] (CNMP) issued Recommendation No. 20 of June 26, 2012, providing that “the members of the Brazilian Office of the Attorney General, in observance of the respective constitutional and legal provisions, shall act in a prompt, rigorous, and preferential manner to expedite the handling of crimes that constitute intentional attempts on the lives of journalists and similarly situated persons in connection with the practice of their profession, as such acts are in express violation of the fundamental right to freedom of expression, without prejudice to all other legal priorities.” Similarly, in Resolution No. 129 of September 22, 2015 the CNMP established “minimum rules” of action for the Office of the Attorney General in the external oversight of the investigation of deaths resulting from police interventions. In addition, the State stated, among other things, that the actions of the Military Police of the state of São Paulo “have the objective of prevention as a way to ensure collectivity in the exercise of their constitutional rights and guarantees, as well as respect for international treaties and conventions.”313

216. According to the State, the Office of the Human Rights Ombudsman [Ouvidoria Nacional de Direitos Humanas] (ONDH) received 93 reports of human rights violations against journalists between April 2013 and August 2016, which were forwarded to the competent bodies. It further indicated that in 2016 no reports had been received in relation to the demonstrations surrounding the impeachment proceedings. The State additionally observed that the Ombudsman’s Office of the police of the state of São Paulo [Ouvidoria da Polícia do Estado de São Paulo] handled 54 complaints between 2013 and November 3, 2016 alleging assaults committed by police officers during demonstrations. The State also noted the 2012 creation of the Working Group on the Human Rights of Media Professionals, which presented its final report in 2014.314

217. Regarding the demonstrations reported in August and September, the State indicated, inter alia, that no complaint had been lodged with the Military Police of the state of São Paulo concerning the demonstrator who suffered an eye injury during a protest. Nevertheless, it indicated that it had verified a personal injury report made on September 2 in an incident report [boletim de ocorrencia], and a police inquiry [inquérito

311 Brasil 247. September 29, 2016. MP de São Paulo ouve relatos de jornalistas agredidos pela PM em manifestações; Agência Brasil. September 29, 2016. MP de São Paulo ouve relatos de jornalistas agredidos pela PM em manifestações; Terra. September 29, 2016. MP-SP ouve relatos de jornalistas agredidos pela PM; Ministério Público do Estado de São Paulo. September 28, 2016. Press release on the public hearing held on September 28 with journalists who were assaulted or whose journalistic work was restricted by the Military Police during demonstrations or public events. Available at: http://www.mpsp.mp.br/portal/page/portal/noticias/publicacao_noticias/noticias.2016/2016.setembro/Jornalista%20agredido%20na%20sede%20do%20Minist%C3%A9rio%20de%20Justi%c3%a7a


On October 19, Judge Valentino Aparecido de Andrade of the 10th Public Treasury Court [10ª Vara de Fazenda Pública] of the Court of Justice of São Paulo found the state of São Paulo liable for the acts of violence that took place during eight demonstrations in São Paulo in 2013. The judge ordered the state to pay collective non-pecuniary damages [dano moral coletivo] of BRL$ 8 million (approximately US$ 2 million 300 thousand) and to devise a plan of action for police in the context of protests. The decision also prohibited the use of firearms, rubber bullets and tear gas, allowing them only in "extremely exceptional" situations in which the protest "completely" loses its peaceful nature. In that judgment, which ruled the public civil action filed in April 2014 by the Public Defender’s Office of the state of São Paulo partially admissible, the judge stated that "the state cannot be the repressive agent that, on the pretext of protecting public safety, and acting with excess, creates the suitable conditions for the protest to become aggressive, thus acting as the real cause of violence involving demonstrators." He affirmed that, "the element that gave rise to the violence at the protests was the lack of training on the part of the Military Police." The judge gave the state 30 days to comply with the judgment, and ordered the imposition of a fine of BRL$ 100 thousand (approximately US$ 29 thousand) per day in the event of noncompliance. On November 7, the Court of Justice of São Paulo [Tribunal de Justiça do Estado de São Paulo] (TJ-SP) stayed the trial court's decision. According to the Chief Judge of the TJ-SP, "Standardizing and bureaucratizing specific conduct, and in such a thorough manner, hindering the action of the Military Police and even preventing them from using means of defense, as the Public Defender’s Office intends, jeopardizes public safety and order, as well as the lives and safety of the public and the Military Police officers themselves." At the closing of this report, the case is allegedly pending a decision by the Special Division of the Court of Justice [Corte Especial do Tribunal de Justiça].

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219. In October, nearly one year after the occupations of the public schools in São Paulo to protest the state government’s proposed educational reorganization, there were new reports of school takeovers in different places around the country. According to the information received, at least 1000 schools around the country were occupied, at least 800 of them in the state of Paraná. The new occupation movement was reportedly in response, among other things, to the secondary education reform bill in Brazil and proposed Constitutional Amendment [Proposta de Emenda à Constituição] (PEC) 241/2016, which would allegedly limit public spending for the next 20 years, affecting the education budget. About this particular, during the 159 Extraordinary Period of Sessions the civil society organizations reported an excessive use of force by the police in breaking up these demonstrations. The organizations denounced a setback in economic, social and cultural rights is linked to a scenario of violations of civil and political rights, such as the rights to freedom of expression and association.

220. On October 30, Judge Alex Costa de Oliveira of the Juvenile Court for the Federal District and Territories [Vara da Infância e da Juventude do Distrito Federal e dos Territórios] authorized the Military Police to force protesters out of the Asa Branca School [Centro de Educação Asa Branca] (Cemab) in the city of Taguatinga, Brasilia, by cutting off the water, electricity, and gas service, and by blocking food deliveries and access by third parties to the premises – especially relatives and friends of the demonstrators. They also directed noise devices at the occupied premises continually, “to keep them from sleeping.” According to reports, the school was occupied by students who opposed a proposed amendment to the Federal Constitution [Proposta de Emenda à Constituição] (PEC 241). According to reports, the school was peacefully vacated on November 1.

221. On November 2, photojournalist Marlene Bergamo of Folha de São Paulo was reportedly struck in the abdomen by a rubber bullet. According to the information available, in spite of having identified herself as a journalist, Bergamo was allegedly hit while investigating a Military Police action to remove a group of homeless people who were occupying a building in the central region of São Paulo.

222. In addition, the Office of the Special Rapporteur has monitored legislative initiatives that may infringe upon the exercise of the right to freedom of expression in Brazil. Law 13.260/2016, known as the Anti-terrorism Law, was enacted in March. That law was an initiative of the Executive Branch and vigorously challenged by civil society on the grounds that its provisions are vague and ambiguous and may criminalize social movements and affect the right to protest. The final text was approved without some provisions that were vetoed by then-President Rousseff, including the article that made “advocating
terrorism” [apologia ao terrorismo] punishable by a term of imprisonment.\textsuperscript{325} Regulations classifying damage to public or private property and the sabotage of data bank information systems as terrorist practices was also removed.\textsuperscript{326} In spite of those measures, at the close of this report two legislative bills (PL 5065/2016 and PLS 272/2016) were pending in the National Congress that reportedly seek, \textit{inter alia}, to enact provisions that have been vetoed by Rousseff.\textsuperscript{327}

223. On May 4, the Conversion Bill [Projeto de Lei de Conversão] was adopted with respect to Provisional Measure [Medida Provisória] 699/2015, which increased the penalty for using vehicles to block public thoroughfares, thus amending the Brazilian Traffic Code (Law No. 9.503 of September 23, 1997) and Law No. 13.146 of July 6, 2015. The bill will take effect as Law 13.281/2016.\textsuperscript{328} This law provides for a fine of $BRL 3 thousand 830 (approximately US$ 1 thousand) and the suspension of the privilege to drive for 12 months.\textsuperscript{329} In addition, Law 13.284, known as the Olympics Law, was signed into law in May by then-President Rousseff. The law was harshly criticized by civil society because, among other reasons, it prohibited, in official sites of the Olympic Games, the display of flags, symbols, or other signs with content considered "offensive" in public places.\textsuperscript{330}

224. The IACHR has reiterated that social protest is a fundamental tool for human rights defense work and is essential for critical political and social speech regarding the activities of the authorities. The Commission has maintained that "in principle, criminalization \textit{per se} of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the right to freedom of expression and to freedom of assembly,"\textsuperscript{331} and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."\textsuperscript{332}

225. In addition, the Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, states that the rights of assembly and freedom of expression "son fundamentales y su garantía es una condición necesaria para la existencia y el funcionamiento de una sociedad democrática. Un Estado puede imponer limitaciones razonables a las manifestaciones con el fin de asegurar el desarrollo pacífico de las mismas o dispersar aquellas que se tornan violentas, siempre que tales límites se encuentren regidos por los principios de legalidad, necesidad y proporcionalidad. Además, la desconcentración de una manifestación debe justificarse en el deber de protección de las personas, y deben utilizarse las medidas más seguras y menos lesivas para los manifestantes. El uso de la fuerza en manifestaciones públicas debe ser excepcional y en circunstancias estrictamente necesarias conforme a los principios internacionalmente reconocidos."\textsuperscript{333} Finally, the Inter-American Commission has found that any type of arbitrary or abusive interference that might affect the privacy of human rights defenders and their organizations is prohibited.

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\textsuperscript{325} Global Voices. April 27, 2016. \textit{Brasil sancionou sua primeira lei antiterrorista}; El Diario/EFE. March 19, 2016. \textit{Rousseff sanciona la ley antiterrorista con vetos pero sin satisfacer a los críticos.}

\textsuperscript{326} Global Voices. April 27, 2016. \textit{Brasil sancionou sua primeira lei antiterrorista}; El Diario/EFE. March 19, 2016. \textit{Rousseff sanciona la ley antiterrorista con vetos pero sin satisfacer a los críticos.}


under the Declaration and the American Convention.\textsuperscript{334}

\textbf{226.} With respect to the use of force in contexts of social protest, the IACHR and its Office of the Special Rapporteur for Freedom of Expression developed relevant standards in their 2015 report on the Use of Force.\textsuperscript{335} In that report, the IACHR stated that “The social interest imperative associated with the right to participate in public demonstrations is such that there is a general presumption in favor of its exercise.” The IACHR maintained that “The presumption in favor of the exercise of social protest implies that states must act based on the legality of the protests or public demonstrations and under the assumption that they do not constitute a threat to public order, even in those cases in which they are held without prior notice.” In the same report, the IACHR underscored that, “Whatever the format adopted by those who exercise this right, the action of the police should have as its main objective facilitating demonstrations and not containing or confronting the demonstrators. Hence, as a general rule police operations organized in the context of protests should be geared to guaranteeing the exercise of this right and to protecting the demonstrators and third persons who are present.” In this regard, the Commission has considered that breaking up a demonstration does not, in itself, constitute a legitimate aim that justifies the use of force by security forces. “When a demonstration or protest leads to situations of violence it should be understood that the State was not capable of guaranteeing the exercise of this right. [...] The State’s obligation is to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims.”

\section*{E. Subsequent Liability}

\textbf{227.} On March 1, Facebook’s Vice President for Latin America, Diego Dzodan, was arrested in São Paulo by the Federal Police. The pretrial detention order was issued by Judge Marcel Montalvão of the District of Lagarto, state of Sergipe, after the company allegedly refused to share information related to a criminal investigation. According to reports, the judge had asked the company four months earlier to report the names of the users of a WhatsApp account that was being used to exchange information about drugs. The company reportedly refused to turn over the information, and consequently the judge imposed a fine of BRL$ 50 thousand (approximately US$ 15 thousand) per day, which increased to BRL$ 1 million (approximately US$ 330 thousand)\textsuperscript{336} due to the company's failure to comply. On March 2, the Court for the state of Sergipe granted the writ of \textit{habeas corpus} filed on Diego Dzodan’s behalf, and the pretrial detention order was reportedly vacated.\textsuperscript{337}

\textbf{228.} On April 26, Judge Montalvão ordered telephone companies in Brazil to suspend access to the instant messaging app WhatsApp for 72 hours. This decision was reportedly part of a criminal investigation pursuant to which Facebook’s vice president was detained. According to the judge, his injunction was based on the Civil Rights Framework for the Internet.\textsuperscript{338} On May 3, judge Ricardo Múcio Santana de Abreu Lima of the Court of Justice of Sergipe lifted the ban on the use of WhatsApp in Brazil.\textsuperscript{339} The judge reconsidered the decision of Judge Cezário Siqueira Neto, who had denied the appeal filed by the company seeking to restore use of the messaging app.\textsuperscript{340}

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{338} G1. May 2, 2016. \textit{WhatsApp deve ser bloqueado por 72 horas, ordena Justiça}; Folha de São Paulo. May 2, 2016. \textit{WhatsApp sai do ar por 72 horas no Brasil por determinação da Justiça}.
\end{itemize}
\end{footnotesize}
229. For the fourth time in less than two years, the instant messaging service WhatsApp was blocked by a court order in Brazil. On July 19, Judge Daniela Barbosa de Souza of the 2nd Criminal Court for the District of Duque de Caxias [2ª Vara Criminal da Comarca de Duque de Caxias], Rio de Janeiro, ordered the telephone companies to temporarily suspend access to the instant messaging app WhatsApp in Brazil. The judge additionally assessed a fine of BRL$ 50 thousand (approximately US$ 15 thousand) per day against Facebook, the company that controls WhatsApp. The court order was issued after the company refused to share information related to criminal investigations. According to the company, it did not have the requested information in its possession, because in April it had implemented an encryption system in the messaging service. The same day, July 19, the chief justice of the Supreme Court of Brazil [Supremo Tribunal Federal] (STF), Ricardo Lewandowski, set aside the decision of Judge Daniela Barbosa de Souza.341

230. According to public information, the newspaper Gazeta do Povo has been named the respondent in at least 42 court cases alleging non-pecuniary damages, filed systematically by judges and prosecutors of the state of Paraná, due to articles published in the newspaper in February 2016 about their salaries. The cases were reportedly filed in 19 cities in Paraná, requiring five of newspaper’s professional staff members – Chico Marés, Euclides Lucas Garcia, Rogério Galindo, Evandro Balmant, and Guilherme Storck – to personally appear at mediation hearings in different places around the state. The action was reportedly coordinated by the Office of the Attorney General Association of Paraná [Associação Paranaense do Ministério Público] (APMP) and the Association of Judges of Paraná [Associação dos Magistrados Paranaenses] (AMAPAR) as evidenced by an audio recording of the chairman of Amapar speaking to a group of judges. The judge reportedly advised them to file individual actions “to the extent possible,” using the petition model that was created for that purpose.342 On May 3, the newspaper’s lawyers reportedly filed an action [Reclamação] with the Federal Supreme Court of Brazil [Supremo Tribunal Federal] (STF) asserting that the judicial actions and decisions were contrary to the precedent set in the STF’s judgments related to freedom of the press (ADPF 130 and ADI 4.451). In her initial decision of May 20, Judge Weber rejected this argument, citing an absence of case law that would allow her to analyze violations of STF precedent. That decision was appealed [Agravo Regimental]. According to the appeal, on May 25 there was a judgment in the judges’ favor, ordering the newspaper to pay BRL$ 20 thousand (approximately US$ 5 thousand 800) in damages for having acted in a “pejorative” manner. In addition, they submitted an audio recording in which a judge reportedly stated that they had been “mobilized to file the actions,” and that he expected more than “200 judges for the next actions.” On June 30, Judge Rosa Weber reconsidered her decision and granted interim relief, staying the proceedings and effects of decisions in those court cases that had been filed as a result of that news article until a decision was rendered on the merits. According to the Justice, the decision ordering non-pecuniary damages lent legal plausibility to the theory of noncompliance with STF precedent. She similarly stated that the audio evidence included in the case file proved that many of the judges had been influenced to bring the actions, which constitutes a potential violation of the right to a defense of Gazeta do Povo and its journalists in the pending actions, with serious financial and personal harm to the respondents (the newspaper and the journalists).343

231. According to reports, Erik Silva, editor-in-chief of the news page Folha MS, was reportedly facing a judicial process under due to to supposed crimes of slander, libel and defamation [injúria, calúnia e difamação] after having published a report in April that revealed the salary received in 2016 by a public servant of the City Council of Corumbá [Câmara Municipal de Corumbá], in Mato Grosso do Sul. After the


report was published, the Office of the Attorney of the state of Mato Grosso do Sul [Ministério Público do Estado do Mato Grosso do Sul] reportedly opened an inquiry [inquérito] to investigate alleged irregularities in the Corumbá Legislature. The lawyer for the public servant who filed the complaint argued that the report had “publicly tarnished” his image. For his part, the journalist stated that the report was based on public information released through the Transparency Portal, which is an official government website. He also stated that the public servant’s name had not been mentioned in the report.344

232. On October 31, the Judge Antônio Silva Pereira of the 15th Criminal Court of Salvador [15ª Vara Criminal de Salvador] sentenced journalist Aguirre Talento to six months and six days in jail and ordered him to pay a fine of BRL$ 293 (approximately US$ 96) for defamation stemming from a 2010 exposé on environmental crimes allegedly committed by a corporation. The jail sentence was replaced by community service. According to reports, this was the journalist’s second conviction in just over two years. According to the information available, Aguirre faced three defamation cases filed by businessmen associated with that company who felt “offended” by the article published in the newspaper A Tarde, of Salvador, in the state of Bahia. In the article Talento had erroneously stated that the complaint alleging environmental crimes filed by the Office of the Attorney General against the company’s owners and directors included a request for their arrest. According to the journalist's lawyer, the businessmen did not invoke their right of reply, and asserted that the error was due to “legal ignorance.” One year after the publication of the report, Aguirre was reportedly fired from the newspaper A Tarde, according to him, because of pressure exerted by the businessmen. Aguirre's defense attorney reportedly appealed the October 31 decision.345

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

234. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of 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.”

F. Confidentiality of Sources

235. On August 17, Judge Pollyana Kelly Alves of the 12th Federal Court of Brasilia [12ª Vara Federal de Brasília] authorized lifting the confidentiality of the telephone communications of journalist Murilo Ramos of the magazine Época. The request was reportedly made by Federal Police [Polícia Federal] chief João Quirino Florio, with the backing of the Attorney General of the Republic for the Federal District [Procuradora da República do Distrito Federal], Sara Moreira de Souza Leite. According to reports, the Police chief was attempting to find out which public servants had leaked to Época the report of the Financial Activities


Oversight Council [Conselho de Controle das Atividades Financeiras] (COAF), which mentioned Brazilians who allegedly had secret accounts with Swiss bank HSBC, in the case known as SwissLeaks. The article about the case was published in February 2015 in the magazine Época and Ramos was one of the contributors. In July, Ramos had reportedly given a statement to the Federal Police and invoked the constitutional right to protect the confidentiality of sources. On October 7, the National Association of Magazine Editors [Associação Nacional dos Editores de Revista] (ANER) filed a writ of habeas corpus against the decision.346 On October 10, Judge Ney Bello of the Federal Regional Court of the 1st Region [Tribunal Regional Federal da 1ª Região] ordered the judge of the 12th Federal Court of Brasilia to respond within 48 hours to explain why she had authorized violating the confidentiality of the journalist’s telephone. Bello wanted to know, among other things, whether the Federal Police had used “other means of investigation” prior to requesting the violation of the journalist’s confidentiality.347 On October 26, Judge Bello reportedly granted an injunction [liminar] on the journalist’s behalf, and suspended the lifting of the confidentiality of Ramos’s telephone communications, as well as the investigations seeking to identify his source.348 On December 1, the Third Division of the Federal Regional Court of the 1st Region [3ª Vara do Tribunal Regional Federal da 1ª Região] upheld the habeas corpus that had been granted by Judge Bello as a form of injunctive.349

236. On November 8, the Court of Justice of the state of São Paulo reportedly ordered the lifting of the confidentiality of the telephone communications of Andreza Matais, of Estado de São Paulo, in order to identify the source for a series of reports she had published in the newspaper Folha de São Paulo in 2012. According to reports, the judge of the Department of Police Inquiries [Departamento de Inquéritos Policiais] allegedly held that lifting the confidentiality of the journalist’s telephone communications was “essential for the advancement of the investigations” that had been opened at the request of the former vice president of the Bank of Brazil [Banco do Brasil].350 On December 2, the same judge granted the motion for reconsideration filed by the journalist’s defense attorney and revoked the decision authorizing the lifting of the journalist’s communications confidentiality.351

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


349 Rota Jurídica. December 1, 2016. Com atuação da OAB, TRF-1 suspende quebra de sigilo de jornalista; Agenda Capital. December 2, 2016. TRF-1 confirma suspensão de quebra de sigilo de jornalista, após atuação da OAB; Época. December 1, 2016. TRF suspende quebra de sigilo telefônico do jornalista de ÉPOCA.


G. Freedom of Expression in Electoral Contexts

238. On August 16, journalist José Maria Portilho Borges was reportedly detained in the city of Patrocínio, state of Minas Gerais, after Judge Ana Régia Santos Chagas of the 211th Electoral District of Minas Gerais [211ª Zona Eleitoral de Minas Gerais] ordered his pretrial detention for “conduct violating the honor of another and flagrant disregard for the law and court decisions.” The arrest warrant was issued pursuant to a court case brought by the Electoral Office of the Attorney General [Ministério Público Eleitoral], which accused him of engaging in negative electoral propaganda against political opponents on his website Portilho Online. The website was temporarily taken down by order of the electoral court. In addition, it was reported that the journalist was a candidate for municipal councilman, but his political rights were suspended by the court. On August 31, the Superior Electoral Court [Tribunal Regional Eleitoral] reportedly granted the writ of habeas corpus filed on his behalf. Nevertheless, on September 2 he was transferred to the region of Santa Catarina, after Judge A. R. Santos Chagas of the Zona Eleitoral de Joinville ordered his pretrial detention for “conduct violating the honor of another and flagrant disregard for the law and court decisions.” The sentence was reportedly six months in a “semi-open” detention facility.352 Because there is no prison in the city of Patrocínio in which to serve a “semi-open” sentence, Portilho is reportedly under house arrest. According to reports, he has more than 80 court cases pending against him because of his journalistic activity—mostly for crimes against honor—and he has also received threats.353

239. On October 5, Electoral Judge Renato Roberge of the 19th Electoral District of Joinville [Zona Eleitoral de Joinville] of the city of Joinville in the state of Santa Catarina, ruled, inter alia, that a user with an anonymous profile who was publishing satirical messages about Mayor Udo Döhler, who was up for re-election, was to be removed from Facebook for the duration of the election campaign. Moreover, he asked the National Telecommunications Agency [Agência Nacional de Telecomunicações] (Anatel) to suspend the social network in Brazil for 24 hours, and for the company to inform all of its users that the site would be down because of “failure to comply with the electoral laws.” He also ordered the assessment of a fine of BRL$ 30 thousand (approximately US$ 8 thousand 400) per day for noncompliance with the court order. The legal action was brought by Döhler to request the removal of a page from Facebook that he considered offensive, as it had “tarnished his image.” Facebook reportedly complied with the order to remove the anonymous page without any reference to the 24-hour suspension.354 At the close of this report, Facebook had not been suspended, as the company appealed the court’s decision and the case is currently pending before the Regional Electoral Court [Tribunal Regional Eleitoral].355

240. In electoral contexts, freedom of expression is directly connected to political rights and their exercise, and both types of rights mutually strengthen one another.356 Reasoned democratic debate requires the greatest possible circulation of ideas, opinions and information about the candidates, their parties, and their platforms during the period preceding an election, principally through the media, the candidates, and others who wish to express themselves. Everyone must be able to question and investigate the capacity and suitability of the candidates, disagree with and confront their ideas and opinions, so that voters can form their

352 Semi-open regime: the sentence must be served in an agricultural, industrial or similar establishments. In this case, the convicted person can be housed in collective facilities and his sentence will be related to his work. A common example of this type of imprisonment is a one-day reduction of the sentence for every three days worked.

353 Artigo 19. October 1, 2016. Violações à liberdade de expressão no período eleitoral: o caso Portilho; G1. August 17, 2016. Candidato a vereador e dono de site em Patrocínio é preso; Rede Hoje. September 1, 2016. CALADA. Defesa Social de Minas lava as mãos sobre pedido de investigação de maus tratos a Portilho; Rádio Rainha da Paz. September 1, 2016. 01/09 - Defesa Social não responde sobre pedido de apuração de maus tratos a Portilho.


355 BBC Brasil. October 10, 2016. 'Liberdade de expressão tem limites', diz juiz que pediu suspensão do Facebook.

241. The UN, OSCE, OAS, and African Commission’s Rapporteurs for Freedom of Expression made similar assertions in their 2009 Joint Statement. Indeed, on May 15, 2009, the four rapporteurs issued the “Joint Statement on the Media and Elections.” In the Joint Statement, the rapporteurs underscored the importance of open and vigorous debate, access to information, and electoral processes, as well as the fundamental role of the media to raise election issues and inform the public. But they stated that only diverse and independent media, including the public service broadcasters that are independent of the government, can fulfill this role. Among other points, the Joint Statement urges the States to: (i) implement measures to create an environment in which a pluralistic media sector can flourish; (ii) repeal laws that unduly restrict freedom of expression and provisions that hold the media liable for disseminating unlawful statements made directly by parties or candidates that the media could not prevent; (iii) establish effective systems for preventing threats and attacks against the media; (iv) enact laws that prohibit the discriminatory allocation of paid political advertisements based on political opinion; (v) create independent bodies for the oversight of rules relating to the media and elections; and (vi) establish clear obligations for the public media, including: ensuring that the electorate is sufficiently informed about all the indispensable aspects for participating in the electoral process; respecting strict rules of impartiality and balance, and ensuring equitable media access for all political parties and candidates.

H. Access to Public Information

242. According to the report Access to Information and Rights of Women [Acesso à Informação e Direitos das Mulheres] published by the organization Article 19, there are still barriers to access to public information by women. According to the organization, one of the biggest obstacles is that many women are unaware that they can seek and demand from the public power information of public interest. They are also unaware where this information is available. This has the consequence that there are fewer requests to information made by women. Other challenges identified by the organization were the lack of active transparency in information related to women’s rights; as well as a percentage of response to their requests for information lower than the responses of requests made by men: 57 percent versus 72 percent.

243. In February, the Secretary of Public Security of the state of São Paulo [Secretaria de Segurança Pública] (SSP) released a list of 22 documents related to that agency that would remain confidential. The government of the state of São Paulo ordered that the information from police incident reports [boletins de ocorrência] (BOs) recorded by the police shall remain classified for 50 years. According to reports, the impossibility of accessing that information would, among other things, make it impossible to verify the crime statistics data disclosed by the SSP. For its part, the SSP stated that the content of the incident report will be kept confidential only when it reveals the citizen’s personal information or makes it possible to identify...
involved parties and witnesses. Similarly, police training and procedure manuals were reportedly classified as confidential. In view of those decisions, the Court of Auditors of the state of São Paulo [Tribunal de Contas do Estado de São Paulo] (TCE) reportedly decided to conduct an audit to verify whether Governor Geraldo Alckmin’s order to classify documents related to public security violates Access to Information Law [Lei de Acesso à Informação]. The same month, the government of São Paulo also published the new time periods for which documents related to the metro, the São Paulo Metropolitan Train Company [Companhia Paulista de Trens Metropolitanos] (CPTM) and the Secretariat of Prison Administration [Secretaria de Administração Penitenciária] (SAP) would remain confidential.

244. Later, on February 18, state of São Paulo’s governor announced that the state’s governor would publish a decree to repeal the confidentiality of documents related to the Secretary of Public Security of the state of São Paulo [Secretaria de Segurança Pública] (SSP), public transportation, and the Secretariat of Prison Administration [Secretaria de Administração Penitenciária] (SAP). The decree was published on February 19, and states, inter alia, that “Information about conduct that involves human rights violations committed by State agents or by order of government authorities may not be classified at any level of secrecy, and access to it may not be denied.” According to reports, it remains prohibited to disclose the names and personal information of victims and witnesses contained in the incident reports [boletins de ocorrência] (BO). That information may only be released subsequent to police and judicial investigations.

245. On May 9, the state of São Paulo launched the “SSP – Transparência” portal, through which it will provide “broad access to more than 120,000 pieces of information on crime.” According to the government, “All of the incident reports, including supplemental ones, may be consulted by month and year, starting from 2003, in relation to murders, larcenies, and felonious assaults resulting in death, both with respect to death resulting from resisting police intervention [morte decorrente de oposição à intervenção policial] and cases of suspicious deaths. There are more than 64,000 reports.” In addition, on May 10, the government of São Paulo complied with the decision of Judge Teresa Ramos Marques of the 10th Public Law Chamber of the Court of Justice of São Paulo [10ª Câmara de Direito Público do Tribunal de Justiça de São Paulo], which denied the request of the Secretary of Public Security of the state of São Paulo to set aside an injunction granted to the newspaper Folha de São Paulo. The injunction had ordered the government to turn over to the newspaper the police records used as the basis for the monthly crime statistics for the state of São Paulo.

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365 Veja. February 18, 2016. Tribunal de Contas questiona Alckmin sobre sigilo de documentos policiais; G1. February 17, 2016. TCE diz que sigilo de dados da polícia vai na contramão de Lei da Informação.
369 Assembleia Legislativa do Estado de São Paulo. Decreto Nº 61.836; February 18, 2016, art. 9.
On May 12, a Provisional Measure (Medida Provisória No. 726/2016) was published, ordering the elimination of the Comptroller General of the Union [Controladoria-Geral da União], and replacing it with the ministry of Transparency, Oversight, and Control [Ministério de Transparência, Fiscalização e Controle], later called the ministry of Transparency, Oversight, and Office of the Comptroller General of the Union [Ministério da Transparência, Fiscalização e Controladoria-Geral da União]. On June 17, the Special Rapporteur for Freedom of Expression de the IACHR and the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression sent a joint letter, and subsequently published a joint release, to the Brazilian State expressing their concern that such a measure would be a setback in the progress made in Brazil on this issue.

On June 21, the State of Brazil sent a letter to the Inter-American Commission on Human Rights, reporting that the recent institutional developments in Brazil did not have a negative impact on the country’s transparency and accountability framework. It stated that the ministry of Transparency, Oversight, and Office of the Comptroller General of the Union [Ministério da Transparência, Fiscalização e Controladoria-Geral da União] had retained all of the legal authority and prerogatives of its predecessor. It maintained that there were no changes in the operation of this agency, and that all of the activities that previously had been conducted by the Office of the Comptroller [Controladoria Geral da República] would continue to be conducted by the Ministry. This applies, for instance, to the legal prerogative of requesting information from other federal government bodies and agencies, an essential element of the auditing and inspection work. It also applies to the central role that the Ministry plays in the implementation of the Access to Information Law. The State reported that most of the Ministry’s staff consists of career public servants. It indicated that the recent institutional developments in the country had no impact on their activities. According to the State, these State institutions will discharge their duties with professionalism and independence, in keeping with the rule of law, thus helping to foster transparency and accountability.

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

I. Internet and Freedom of Expression

In February the Office of the Attorney General [Ministério Público Federal] issued a technical note indicating that Facebook’s Internet.org project—which allegedly seek to spread Internet connectivity freely among handicapped communities—would be contrary to the principle of net neutrality. According to the Ministry, the project should be presented to the competent authorities, such as the National Telecommunications Agency [Agência Nacional de Telecomunicações] (Anatel), the Internet Steering Committee [Comité Gestor da Internet] (CGI) and the ministry of Science, Technology, Innovation and

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Communications [Ministério da Ciência, Tecnologia, Inovações e Comunicações] (MCTIC) prior to being implemented.\(^{378}\) In November 2015, the MPF had already held that “the project is not the Internet because it does not allow for broad and unrestricted access to the services available on the web, as provided in article 5 of Law 12965/2014 [Marco Civil da Internet].”\(^{379}\) Civil society organizations from the region have similarly called the Internet.org initiative into question in relation to, inter alia, (1) the impact it would have on net neutrality; (2) the access that Facebook would have to data about the users of sites that are on the platform; and (3) the alleged creation of an unfair model of Internet access.\(^{380}\)

250. On March 31, the National Congress presented the Final Report of the Parliamentary Inquiry Commission on Cybercrime [CPI dos Crimes Cibernéticos],\(^{381}\) proposing the enactment of eight new laws. The report proposed amendments to the Civil Rights Framework for the Internet [Marco Civil da Internet], to require, among other things, that websites and social networks remove defamatory content within 48 hours of notice from a plaintiff or person adversely affected by such content. In the event that they fail to comply with such requests, the websites could face civil—and in some cases criminal—sanctions. The proposed amendments would also require ISP and app providers to reveal user IP addresses to the police without a court order.\(^{382}\) The Final Report was adopted on May 4 by the Parliamentary Inquiry Commission on Cybercrime.\(^{383}\)

251. On April 8, during the 157\(^{th}\) Session of the IACHR, a hearing was held on Cultural Rights and the Internet in Brazil. During the hearing—which was requested by the State—Brazil stated that the policies set by the companies that own the most widely used social networks in the region for downloading supposedly indecent content posed a threat to the preservation of the cultural memory of indigenous peoples, cultural rights, and the guarantee of freedom of expression. The State cited the censorship that had been imposed by Facebook with regard to an antique photograph of an indigenous couple belonging to the Botocudos people, based on its policy on nudity, as the woman’s torso was uncovered in the photograph. According to the Brazilian State, that censorship violated the Indian Law and the Federal Constitution of Brazil. In addition, it noted the importance of the participation of the States in Internet issues, and the need to enforce the guarantees of article 13 of the American Convention on Human Rights and the Unesco Convention on Cultural Diversity in order to guarantee freedom of expression in those spaces that are public forums under the control of private corporations. It further asserted the need to understand the extent to which social networks are a matter of public interest, and asked what would be the appropriate sphere for addressing these issues. For their part, the civil society organizations in attendance cited the importance of the incident discussed, in particular for socially excluded persons, as digital exclusion denies the rights of people who are not online. They also observed that the Internet must be safeguarded and must protect human rights. They noted the problems involved in protecting the rights of women on Internet platforms. The organizations in attendance asked the State to establish public policies to promote universal Internet access without entering into agreements with companies that limit the access of those sectors that are currently excluded. Finally, they raised their concerns to the Brazilian State about the country’s Internet surveillance policies.\(^{384}\)


252. On September 21, the Military Police [Polícia Militar] of the state of Rio Grande del Norte reportedly ordered the administrative detention of Military Police officer João Figueiredo for 15 days due to a remark he had made on Facebook. On April 26, the digital platform “Mudamos” – where citizens can express opinions about public policies in Brazil – conducted a survey asking whether “Monitoring police actions is an urgent demand of society. What do the police think?” According to reports, in the opinion of the institution, Figueiredo’s response “seriously” offended the Military Police and his colleagues, what meant a disciplinary transgression.\textsuperscript{385} Previously, on July 22, the president of the Association of Military Firefighters of Rio Grande del Norte, Dalchem Viana do Nascimento Ferreira, had also been penalized with three days in detention for sending an audio file to a WhatsApp group calling the associated members to an assembly.\textsuperscript{386} Two people were also reportedly detained in late June for criticizing the Military Police of their cities on social networks. Both individuals – an adolescent in São Paulo and another in Ceará – were reportedly taken to the police station and charged with the offense of desacato [insulting the authorities]. The Brazilian Bar Association of the state of Ceará reportedly said that the police had committed excesses, and that the “[offense of] desacato can only be characterized individually.”\textsuperscript{387}

253. As of the closing date of this report, legislative bills PL 1676/2015 and PL 2712/2015 on the so-called “right to be forgotten” were being debated in the House of Representatives.\textsuperscript{388} In a legal opinion [parecer] of June 11, 2016, the Attorney General of the Republic [Procurador-Geral da República], Rodrigo Janot Monteiro de Barros, stated that “The right to be forgotten results in the impediment of access to information, not just by society in general but also by scholars such as sociologists, historians, and political scientists. Preventing circulation and disclosure eliminates the ability of those social actors to have access to facts that allow society to know its past, revisit it, and reflect upon it.”\textsuperscript{389} He further observed that the “constitution prohibits all kinds of censorship or prior authorization in the media, including on the radio and on television.”\textsuperscript{390} He stated that “A claim for damages can be entertained when the disclosure of information by a third party results in the violation of privacy, one’s private life, honor, and image (art. 5(X) of the Constitution of the Republic); the acknowledgement of the so-called right to be forgotten is not essential to this end.”\textsuperscript{391} Nevertheless, the Attorney General [Procurador Geral da República] observed that “It is not a matter of denying the existence of the right to be forgotten, nor of asserting its incompatibility with the Constitution. Rather, it is about stating that an alleged right to be forgotten—both in the criminal and in the civil sphere—is not defined with clear parameters in the case law or in scholarly works in the absence of action by the legislature.”\textsuperscript{392} This legal opinion was presented against the suit for damages brought by relatives of Aida Curi, who was murdered in 1958 in Rio de Janeiro, and portrayed by Rede Globo in one of its programs. The relatives asked the Federal Supreme Court of Brazil [Supremo Tribunal Federal] (STF) to recognize the right to be forgotten and order the television station to pay compensation for having exploited an event that occurred several decades ago, for “merely commercial purposes.” The request had already been

\textsuperscript{385}The Intercept Brasil. September 26, 2016. Comentário no Facebook criticando a polícia rende prisão no Rio Grande do Norte; G1. September 27, 2016. Comandante manda prender PM que usou rede social para criticar a polícia.

\textsuperscript{386}The Intercept Brasil. September 26, 2016. Comentário no Facebook criticando a polícia rende prisão no Rio Grande do Norte; G1. September 27, 2016. Comandante manda prender PM que usou rede social para criticar a polícia.


dismissed by the STF; however, the plaintiffs argued that the case involved constitutional issues, such as the rights to honor and privacy.  

On July 25, the Brazilian Association of Investigative Journalism [Associação Brasileira de Jornalismo Investigativo] (Abraji) disclosed that, according to its project called Ctrl+X—which maps judicial actions requesting the removal of content from the Internet—of the 1,017 cases of politicians who asked the electoral courts to exclude some type of information from web pages, at least 105 (10 per cent) also requested prior censorship. In other words, in addition to requesting the removal of the information, they also reportedly asked the judge to order the media company or the journalist to screen the content in advance, not publishing terms related to the politician.

On November 9, the 5th Private Law Chamber of the Court of Justice of São Paulo [5ª Câmara de Direito Privado do Tribunal de Justiça de São Paulo] released Ricardo Fraga, agronomist engineer and activist, to protest on the Internet against the effects of a real estate development project in the Vila Mariana neighborhood in south São Paulo. The Court ruled that Fraga would be allowed manifest himself on the Internet and social networks, and to participate in on-site demonstrations as long as they did not take place on the same block as the development’s buildings. The Court of Justice also dismissed the construction company’s request for pecuniary and non-pecuniary damages. On September 19, 2014, the 34th Civil Court of the District of São Paulo [34ª Vara Civil da Comarca de São Paulo] had issued a judgment on the merits upholding the imposition of a measure, dated March 2013, prohibiting the activist from making statements on the Internet against the real estate development or participating in any other activity near the project construction site. Oliveira maintained an initiative on Facebook called “O Outro Lado do Muro – Intervenção Coletiva”, which he used to protest against the construction of the development. The Court’s decision also ordered him to remove from the web any content about matter, on penalty of a fine in the amount of BRL$ 10 thousand (approximately US$ 3 thousand) for each violation.

In November, it was learned that the Supreme Court [Tribunal Superior de Justiça] (STJ) had unanimously ruled that Google and other search engines could not be forced to comply with decisions based on the so-called “right to be forgotten.” According to the information received, the judgment held that requiring web search engines to remove data or links is tantamount to forcing them to become digital information censors.

J. Community Radio Stations


257. According to information from Brazil’s ministry of Communications [actually named ministry of Science, Technology, Innovations and Communications (Ministério da Ciência, Tecnologia, Inovações e Comunicações), (MCTIC), during the January 26 meeting between the Minister of Communications and the new executive directors of the Community Broadcasting Association of Brazil (Associação Brasileira de Radiodifusão Comunitária) (Abraço), it was determined that all Brazilian municipalities will have a broadcasting station by the end of 2017. According to the Ministry, it will seek solutions to facilitate the operation of community radio stations in the country through ongoing dialogue.398

258. On February 15, the ministry of Communications published the third announcement of the National Grants Plan (Plano Nacional de Outorgas) (PNO) 2015/2016 for community broadcasting. That selection will seek to authorize new community radio stations in the municipalities of the northern and northeastern regions of Brazil.399 According to the schedule for the National Grants Plan for Community Broadcasting, more announcements will be launched by early 2017, thereby encompassing every region of Brazil, with 766 municipalities benefiting from new stations.400 In addition, the fourth selection announcement was reportedly published on April 18 to authorize community radio stations in 89 municipalities of the northern and central-western regions of Brazil.401 On April 28, the ministry of Communications published the 2016 National Grants Plan (PNO) for Traditional Communities and Peoples.402 According to that document, two selection announcements would be made in 2016 to provide 126 Brazilian municipalities with new community radio stations.403 According to the ministry of Communications, the PNO has been developed in conjunction with entities representing traditional communities and peoples. Similarly, the 2016/2017 National Grants Plan (PNO) for FM radio stations and educational TV was reportedly published on May 2.404 That document reportedly specifies the cities in which public calls will be put out for the creation of stations with exclusively educational purposes. According to the ministry of Communications, 744 cities throughout the country will be included within the PNO.405

259. On May 2, the mayor of the city of Nova Olinda, in the state of Ceará, reportedly ordered the announcers of Radio Gravatá FM to leave the area, and ordered the station’s closure. The Mayor’s Office alleged that it had asked the community radio station to regularize its status in October 2015, and that the station failed to do so. For his part, the chairman of ACRENO – the entity that administers the radio station’s public concession – stated that he had attempted to officially record the documentation to renew its operating license [alvará de funcionamento], but that it had not been received by the Finance Secretary of the Mayor’s Office. Later, Judge Vanessa Moura Pereira de Carvalho issued a temporary order for the station’s reopening.406


399 Ministério da Ciência, Tecnologia, Inovações e Comunicações. February 17, 2016. MINICOM lança edital de Radcom no Norte e Nordeste; Agência Abraço. February 17, 2016. MINICOM lança edital para rádios comunitárias no Norte e Nordeste.

400 Ministério da Ciência, Tecnologia, Inovações e Comunicações. February 17, 2016. MC lança edital de Radcom no Norte e Nordeste; Ministério da Ciência, Tecnologia, Inovações e Comunicações. April 18, 2016. MC lança edital para novas rádios comunitárias no Norte e Centro-Oeste.


406 Agência Abraço. May 5, 2016. Prefeita do PSDB invade Rádio Comunitária no Sertão do Ceará, expulsa funcionários e corta energia; Paraíba Hoje. May 10, 2016. Juíza determina reabertura de emissora de rádio fechada por prefeita no sertão do PB; Diário do Sertão. May 9,
260. According to the Community Broadcasting Association of Brazil [Associação Brasileira de Radiodifusão Comunitária], the Communications Secretariat of the Office of the President of the Republic [Secretaria de Comunicação Social de la Presidencia de la República] (SECOM) had allegedly started assigning advertising funds for community radio station web pages and blogs. The Association reportedly negotiated with the SECOM for those funds to be earmarked for community radio stations throughout the country.407

261. The ministry of Science, Technology, Innovation and Communications [Ministério da Ciência, Tecnologia, Inovações e Comunicações] (MCTIC) published a list on the Internet that would be periodically updated, showing the phases of the adaptation processes for the granting of AM broadcasting service for FM. According to information made available on July 29 by the ministry of Communications, of the 1,781 AM stations in Brazil, 1,384 reportedly asked to migrate to an FM frequency. This number is said to account for 77 per cent of all AM radio stations in the country.408

262. The IACHR and the Office of the Special Rapporteur have recognized that community media perform an essential function in our hemisphere for different sectors of society to exercise their rights to freedom of expression and access to information. In those declarations they have established that it is necessary for States to legally recognize community media, for spectrum to be reserved for these types of media, and for there to be equal access to licenses that recognize the distinct nature of private noncommercial media. Given the existing conditions of exclusion, the States must take positive measures to include the non-commercial sectors in the communications media. These measures include ensuring broadcast spectrum frequencies for the different types of media, and providing specifically for certain frequencies to be reserved for the use of community broadcasters, especially when they are not equitably represented in the spectrum. On this note, the Office of the Special Rapporteur has insisted upon the need for broadcasting regulations to establish the duty to allocate part of the spectrum to community media.

K. Government Advertising

263. In June then interim President Michel Temer reportedly suspended federal advertising in digital media that the new government considered friendly toward former President Dilma Rousseff’s political party. The amount of money advertised in these media totalled BRL$ 11 million 200 thousand (approximately US$ 3 million 600 thousand) and represented 0.6 per cent of the budget of the Presidency’s Secretariat of Social Communication [Secretaria de Comunicação Social da Presidência] (SECOM). According to information in the public domain, the press questioning questioned the government about the measure, which replied that "from the point of view of communication, the government was advertising only in blogs that reflected a part of public opinion, not representing the multiplicity of opinions". Journalist Luis Nassif, editor of the blog under his name and of GGN website - some of the media affected by the measure - said that digital media were "undergoing a process of censorship."409

264. 97. Also, on August 16, Carta Maior, one of the digital media affected by the suspension of federal advertising contracts, submitted a request for information to SECOM based on the Access to Information Law (Law No. 12.527) in order to seek clarification on "[i]ts 'new' policy, whose first consequence was the bankruptcy of advertising contracts, in the amount of R$ 11.2 million, signed between direct and indirect administration bodies and the set of vehicles (websites and blogs) of alternative media."410

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410 Carta Maior. August 18, 2016. Querem Calar a Nossa Voz II.
reported to the Office of the Special Rapporteur that once the deadlines had expired, the state agency did not reply to the request for information.411

L. Other Relevant Situations

265. On February 2, the decree whereby the National Telecommunications Agency [Agência Nacional de Telecomunicações] (Anatel) authorized the Armed Forces to use radio communication signal blockers during the 2016 Olympics in Rio de Janeiro was published in the Official Gazette. According to that decree, the Armed Forces were allowed to use radio-communication signal blocking equipment (RSB) during the 2016 Rio Olympic and Paralympic Games, at test events and related subordinate events, as well as in operations to ensure public law and order. Such use must be restricted to "specific, episodic, urgent, and temporary operations related to the security of the sporting events referred to in the caput, or potential operations to ensure public law and order in which specific evidence of potential or imminent risk is identified that requires immediate action to preserve public order and the safety of people and property.412

266. According to public information, through Decree [Portaria] 611 of June 10, signed by Minister of Justice Alexandre de Moraes, "delegations of authority to enter into contracts, agreements, or similar instruments, the appointment of public servants, the authorization for the transfer of any uncontracted value, expenditures involving per diems and transportation, and the holding of events shall be suspended for a period of 90 days at the ministry of Justice and Citizenship."413 According to reports, the only departments of the ministry of Justice that were not affected by that Decree were the National Public Security Force [Força Nacional de Segurança Pública], the Federal Police [Polícia Federal] and the Federal Highway Police [Polícia Rodoviária Federal].414 In view of this measure, on June 17 the Office of the Federal Prosecutor for Citizens' Rights [Procuradoria Federal dos Direitos do Cidadão] (PFDC/MPF), attached to the Office of the Attorney General, reportedly requested information on the reasons for the drafting of the Decree, as well as clarifications regarding the scope of the measure, in particular with respect to human rights.415 On September 5, through Decree 794/2016, the Minister ordered the extension of Decree 611 to December 31, 2016. According to civil society, one of the principal areas affected by the measure is the Program for the Protection of Human Rights Defenders [Programa de Proteção aos Defensores de Direitos Humanos] (Pddh).416 With respect to the extension, the National Human Rights Council published a note reiterating the terms of the


Representación del Consejo Nacional de los Derechos Humanos, que a través de un comunicado de prensa el 15 de junio de 2016, manifestó su preocupación sobre la renuncia de los altos cargos de la empresa EBC y la supuesta cesión de algunos periodistas considerados críticos hacia nuevos empleos privados.

267. On June 17, in conjunction with David Kaye, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, this office expressed its concerns over the removal of the director of the Brazilian Communications Company [Empresa Brasil de Comunicação] (EBC) who had recently started his four-year term, the alleged suspension of journalists’ contracts due to alleged political bias against the new government, and the reported cancellation of some television programs. According to the information received, on May 17, the then-interim President of Brazil had replaced the EBC Director. On June 2, the EBC Director was reportedly reinstated to his position by means of an injunction [liminar] issued by the Supreme Court of Brazil [Supremo Tribunal Federal] (STF). Prior to his return, the new directors had reportedly fired some journalists considered to be critical of the new government and cancelled some television programs. The Special Rapporteurs stated, among other things, that “International standards require States to ensure that public broadcasting services operate in an independent manner. This means fundamentally guaranteeing their administrative autonomy and editorial freedom.”

268. On June 22, the State of Brazil sent a letter to the IACHR informing it of the decision made by the Vice President of the Republic, in his capacity as Interim President, to replace the Chairman of the EBC, in order to “redirect the operation and functioning of the company with internationally accepted standards for the proper development of a free and impartial public press compatible with the right to freedom of opinion and expression.” He stated that the decision had been motivated by preliminary evidence gathered during internal investigations, showing a deficit of more than US$ 17 million in the company’s finances, and had been based on the ad nutum nature of the position of Chairman of the EBC. The State indicated that the decision was consistent with the national legal framework and that it was necessary in order to reestablish the company’s economic and financial position so that its operation would not be in jeopardy. In addition, it observed that the decisions made by Laerte Rímoli while he was in charge of the EBC aimed to restore an impartial journalistic production to the public press, oriented toward the public interest. The Brazilian State indicated that “it considers them to be fundamental values for full respect for the right to freedom of opinion and expression as internationally protected rights.” The State maintained that it was necessary to rescind the EBC’s with journalists Paulo Moreira Leite and Tereza Cruvinel. It indicated that there was no employment relationship between those journalists and the EBC. Later, their dismissals were “materially impossible” and reportedly did not occur. According to the State, what had happened was that the contractual relationship had ended between the EBC and the private broadcasting companies belonging to the aforementioned journalists, “above all due to the strong political bias applied to their editorial line, both in the work done by those companies and in the services provided to the EBC.” Finally, it indicated that Rímoli’s decision to appoint career public servants to the positions of Journalism Directors of the EBC, Agência Brasil, and Radio Nacional was also in line with the values promoted by the Human Rights Council and the Inter-American Commission on Human Rights for the proper observance of the right to freedom of opinion and expression in Brazil. According to the information provided by the State, its intention was to appoint career public servants to 70 per cent of the senior positions within the EBC. It stated that the ongoing connection of these public servants to the Brazilian State—which their predecessors reportedly did not have—would be “a more decisive step toward independent, impartial journalistic production oriented toward the public interest.”

269. In July, the Secretary of Public Security and Social Defense of the state of Pará [Secretaria de Segurança Pública e Defesa Social do Estado do Pará] (SSP) announced the course entitled “Strategic
Interventions in Social Movements” for agents of the state’s Shock Battalion [Batalhão de Choque] that would be held from September 16 to October 4. This activity raised concern on the part of social movements and human rights organizations. Through a document signed by over 150 organizations and social movements, the Pará state section of the Brazilian Bar Association [Ordem dos Advogados do Brasil seção Pará] (OAB-PA) reportedly asked the State Public Security Council of Pará to provide explanations about the course, as they were reportedly concerned about the content and the potential that it could lead to the criminalization of social movements. According to the Secretariat, this was not the first time a course with this content has been held in Brazil, given that in 2013 the Military Police of Minas Gerais held a course with the same name. It also asserted that during the course the Military Police would meet with leaders of social movements and representatives of organized civil society, in order to "reflect on the oversight of potential incidents during conflicts, the violation of constitutional rights, disturbances of the peace, actions of security forces at large events such as soccer games, the obstruction of public thoroughfares, and actions to retake possession of property.”

270. On August 31, the Supreme Court of Brazil [Supremo Tribunal Federal] (STF) ruled in a majority opinion to admit Unconstitutionality Action ADI 2.404/DF challenging article 254 of Law 8.069/90, the Child and Adolescent Statute [Estatuto da Criança e do Adolescente], which establishes a fine and the suspension of radio and television broadcasters that aired programs in unauthorized time. The majority of the STF joined Justice Dias Toffoli, who delivered the opinion on November 30, 2011, in finding that “The subordination of the program to the ministry of Justice cannot be a condition for it to be shown. It is not a matter of government permission or authorization for its showing, which is strictly prohibited by the Federal Constitution. The exercise of freedom of programming by the broadcasters prevents the airing of a specific show from depending on prior state action.” Dias Toffoli added that, “The presentation takes place, exclusively, in order for the Federal Government to exercise its administrative authority provided for in article 21 (XVI) of the Constitution; that is, to classify public entertainment and radio and television programs for indicative purposes, which must not be confused with authorization.” In addition, he maintained that “There is no doubt that the challenged provision, in addition to turning the indicative classification into an act of authorization or government permission—which, as previously explained, is unconstitutional—turned the classification, constitutionally qualified as indicative, into a mandatory classification.” Accordingly, it would not be “compatible with the constitutional intent to make the [aforementioned] classification binding and mandatory, so as to create a theory of prohibition or to impose punishment of an administrative nature;” “the constitutional authorization is for the Federal Government to classify, inform, indicate the age and/or time slots that are not recommended, rather than to prohibit, ban, or censor.” With respect to the penalty

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provided for in the challenged article, Toffoli indicated that “By establishing the punishment of broadcasting companies for airing a program at a time other than the ‘authorized’ one, [the article] incurs in constitutional abuse. Let us recall: there is no authorized schedule, but rather a recommended schedule.” In his opinion, the Justice further observed that “It follows that radio and television broadcasters have a duty to show the public the age classification notice, prior to and during the broadcasting of the content, a rule that is provided in the sole paragraph of article 76 of the ECA; noncompliance is an administrative infraction pursuant to article 254, now called into question (although this part was not subject to challenge). To think otherwise would frustrate the very purpose of the classification—that is, to indicate to the viewer the content conveyed and, consequently, the segment of the public to which it is ideally directed.” He maintained that “It will always be possible to hold broadcasters liable in court for abuses or potential harm to the welfare of children and adolescents, including taking account of the recommendation of the ministry of Justice with respect to the time slots in which such programming is shown to be inappropriate.”

271. According to reports, through Provisional Measure No. 744/2016, published on September 2, 2016, the Brazil Communications Company [Empresa Brasil de Comunicação] (EBC) was restructured. The EBC, which was previously subordinate to the Communications Secretariat of the Office of the President of the Republic, became connected to the Civil Affairs. The composition of its Board of Directors was also reformed to have more government representatives; that is, a Director/Chairperson and a member appointed by the Chief Minister of Civil Affairs, who will preside over the Board. Similarly, the Ministers of Education, Culture, Planning, Development, and Management; Science, Technology, Innovation, and Communications may each appoint a member to the Board, which shall also have a representative of the EBC’s employees. According to the original rules, the Chairperson of the Board was appointed by the Communications Secretary of the Office of the President of the Republic. The new measure establishes that the Board of Executive Directors will consist of the Director/Chairperson, Director General, and four directors, all appointed and removed by the President of the Republic. The members of the Board of Executive Directors serve for a term of four years, but now there is no possibility for renewal. Previously, according to the original Law, the EBC's Board of Executive Directors was made up of one Director/Chairperson and one Director General, both appointed by the President of the Republic, and up to six directors, elected and subject to removal by the Board of Directors. In addition, its Board of Trustees has reportedly been eliminated, which, according to the information received by this Office of the Special Rapporteur, would be a setback in terms of the public nature of the EBC, as the Board was composed of representatives of different sectors of civil society, the government, Congress, and EBC officials.  


8. CANADA

A. Progress

272. On June 22, 2016, the Superior Court of Quebec invalidated two provisions of Montreal By-law P-6 concerning the prevention of breaches of the peace, public order and safety, and the use of public property that were added in May 2012 in the wake of the student protests. The Court concluded that the requirement of prior communication of itinerary to police forces unduly restricted spontaneous protests. Similarly, the Court found that the prohibition of face covering in public constituted an unjustified infringement of the rights to freedom of expression and peaceful assembly protected by the Canadian Charter of Rights and Freedoms and the Quebec Charter of Human Rights and Freedoms.  

273. The Office of the Special Rapporteur also notes that article 500.1 of the Quebec Highway Safety Code, which made illegal any “concerted action intended to obstruct in any way vehicular traffic on a public highway, occupy the roadway, shoulder or any other part of the right of way of or approaches to the highway or place a vehicle or obstacle thereon so as to obstruct vehicular traffic on the highway or access to such a highway” became invalid in May 2016. The Court ruled in November 2015 that the provision violated the rights to freedom of expression and peaceful assembly, but suspended the declaration of invalidity for six months to allow modification of the law.

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

B. Attacks, Threats and Harassment Against Journalists and Media Outlets

275. In October, the Mississauga Gazette editorial team had allegedly received a death threat following an article on the Muslim community and Mississauga’s Major Bonnie Crombie. On October 7, Mississauga Gazette editor-in-chief Acton Michaels published an article regarding an alleged assault committed by a Muslim teenager. On October 10, the Mississauga Gazette released a statement reporting that a man called the media and threatened the staff with death and, consequently, a journalist had resigned. Mississauga Gazette also informed that the article had been taken down from their platform and that it is on the public domain for free circulation.

276. On August 15, 2016, the reporter Tara Bradbury wrote an article for The Telegram regarding the FemFest NL, a local feminist comprehensive conference held in St. John’s, N.L. Bradbury’s article prompted a backlash against her and other journalists that supported her on the Internet. Bradbury reported alleged hostile, sexist reactions from readers through social networks and her personal email, due to her report on
the feminist conference.\textsuperscript{437} The Telegram rejected the lack of respect for female journalists on its front page of the newspaper printed version.\textsuperscript{438}

277. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression, approved in 2000, establishes that "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

278. The Office of the Special Rapporteur notes that "violence committed against female journalist as a result of their work has a particular characteristics streaming from the social constructs of gender and discrimination."\textsuperscript{439} The United Nations Special Rapporteur in the Promotion and Protection of Freedom of Opinion and Expression stated in his report on the protection of journalist and media that a "gender-sensitive approach is therefore needed when considering measures to address the issue of violence against journalists."\textsuperscript{440} The Office of the Special Rapporteur reiterates that States have a reinforced obligation to act with due diligence to prevent violence against female journalists.\textsuperscript{441}

279. Moreover, the Office of the Special Rapporteur acknowledges that online violence and harassment has a different impact on female journalist than male journalist. The OSCE Representative on Freedom of the Media has acknowledged that online harassment and attacks against female journalists challenge the realization of freedom of expression and gender equality.\textsuperscript{442} The Office of the Special Rapporteur affirms that the State duties applicable in relation to harassment and attacks on female journalists in the physical world must be extended to the digital media. As the OSCE Representative on Freedom of the Media affirmed, the States should ensure a comprehensive prevention strategy or public policy framework for prevention of online harassment and attacks against female journalists "through a range of measures, including appropriate education and training of state officials, especially those involved in law enforcement duties, clear public condemnations of such gendered attacks by public gestures and innovative initiatives to actively promote women's freedom of expression online."\textsuperscript{443}

C. Social Protest

280. According to the known information, police supposedly had used tear gas against protesters and arrested at least 10 people during 'May Day' demonstrations on May 1\textsuperscript{st}, 2016. Police presence was heavy and included officers on horseback and on bicycles and minor injuries were reported to at least two protesters, according to the same sources.\textsuperscript{444} According to Canadian Journalists for Free Expression (CJFE), members of the press reported being allegedly prevented by police officers from taking photographs or filming the protest, particularly during arrests.\textsuperscript{445}

\textsuperscript{437} The Telegram. August 22, 2016. \textit{Tara Bradbury: Hate, misogyny and sexism — all in a day's work.}

\textsuperscript{438} CBCNEWS. August 26, 2016. \textit{This is not OK: N.L. newspaper uses front page to blast sexist 'trolls'.}


\textsuperscript{442} OSCE. Representative on Freedom of the Media. \textit{Countering Online Abuse of Female Journalists.}

\textsuperscript{443} OSCE. Representative on Freedom of the Media. \textit{Countering Online Abuse of Female Journalists.}


\textsuperscript{445} Canadian Journalists for Free Expression (CJFE). May 17, 2016. \textit{Montreal police making improvements, but there is still work to be done.}
281. The IACHR has indicated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. Furthermore, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”

D. Ulterior Responsibilities

282. On January 22, 2016, the Superior Court of Quebec dismissed the claim that the alleged surveillance of reporter Éric-Yvan Lemay and his wife and the subsequent search of his residence by the provincial police forces were wrongful. The reporter had allegedly published an investigation in 2012 showing easy access to confidential medical records in several hospital of the Montreal region. The police was held liable for defamation and ordered to pay compensation to the journalist after posting a video online seeking to justify the search of Lemay’s residence and insinuating his guilt and breaches of deontological obligations.

283. In October, Mississauga's Major Bonnie Crombie filed a hate-crime complaint with the police following Mississauga Gazette's article regarding the Muslim community and Mississauga's Major Bonnie Crombie. Both Major Crombie and the National Council of Canadian Muslims deemed that the article was an act of crime and contained several islamophobic and baseless claims.

284. In a democratic society, states should protect freedom of expression while also guaranteeing equality and the safety of others. Principle 10 of the IACHR’s Declaration of Principles establishes that, “[p]rivate laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

285. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of 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." In fact, in a democratic society entities and public servants of the State are subject to greater scrutiny and criticism, therefore their activities are subject to societal control. In that regard the Commission has established 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."452

E. Confidentiality of Sources

286. On March 1st, 2016, the Superior Court of Ontario rendered its decision in the case R. v. Vice Media Canada Inc, ordering reporter Ben Makuch to hand over to the Royal Canadian Mounted Police (RCMP) all his alleged correspondences with a suspected ISIS fighter via an online instant messaging app. Between June and October 2014, Makuch wrote a series of articles for Vice Media about Farah Shirdon, a Canadian citizen tried in absentia on terrorism-related charges. In February 2015, Canadian security officials obtained ex parte a production order from the Ontario Court of Justice demanding that the reporter produces "unedited copies of any electronic records" and "paper printouts, screen captures or any other computer records" pertaining to online exchanges with Shirdon. The March 2016 decision dismissed Vice Media Canada’s application to quash, revoke or vary the production order.453 On April 28, 2016, Vice Media filed a notice of appeal before the Ontario Court of Appeal, which will hear the appeal on February 2017.454

287. On May 6, 2016, the Office of the Special Rapporteur sent an information request to the State of Canada regarding the protection of the confidentiality of the sources of journalist Ben Makuch in the context of the production order issued by the Ontario Court of Justice and confirmed by the Superior Court of Ontario.455 In a communication received on August 5, the State of Canada explained that "both of the decisions are incidentally related to the prosecution of Farah Shirdon on terrorism-related criminal offences", which limits the ability of the State to comment on the matter as the litigation is ongoing. The State nonetheless transmitted copies of the written arguments on the validity of the production order submitted by the parties during the proceedings at the Superior Court of Ontario.456

288. Regarding the protection of the confidentiality of journalistic sources, the State of Canada responded that the production order sought by the RCMP did not aim to identify a confidential source, as Farah Shirdon’s identity was known, but rather was designed to obtain copies of messages exchanged between the journalist and his source. It added that the fact that Farah Shirdon is being investigated on terrorism-related criminal offences had no impact on the applicable law resulting in the production order or the subsequent decision to uphold the order, since under Canadian law, “these types of offences are prosecuted in the same

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ways as all other criminal offences, subject to the usual Canadian criminal law and procedure, as well as the *Canadian Charter of Rights and Freedoms*.457

289. Furthermore, the State of Canada explained the legal framework applicable to the protection of confidential journalistic sources, noting that, although Canadian courts have recognized the unique position of the press in embodying freedom of expression, as guaranteed by section 2b) of the *Canadian Charter*, the protection of the confidentiality of journalistic sources comes from the common law of privilege, which stands as an exception to the principle of openness and availability of information that governs the administration of justice. As such, it maintained that under Canadian law, "there is no absolute media privilege" and affirmed that "any information that could identify a confidential media source can be protected as privileged on a case-by-case basis", if the following four conditions are met: (1) the communication between the source and the media representative must originate in a confidence that the identity of the source will not be disclosed; (2) this confidence must be essential to the relationship in which the communication arises; (3) the relationship must be one that is diligently fostered in the public good; and (4) the public interest in protecting the identity of the source outweighs the public interest in getting at the truth. The State of Canada added that there also exist a range of measures available to protect witnesses and facilitate their participation in the criminal justice system, ranging from publication bans to witness protection programs.458

290. Moreover, in 2012, the journalist Ian Mulgrew wrote for The Vancouver Sun an article about the performance of Thomas Harding as attorney in a personal injury case. Based on Mulgrew’s article, the Law Society of British Columbia opened an investigation on Harding’s conduct and issued two orders of production requesting Mulgrew and The Vancouver Sun to provide information and materials regarding the article about Harding.459 On July 11, 2016, the Supreme Court of British Columbia confirmed the production orders to compel The Vancouver Sun and the journalist Mulgrew to produce their research notes on Harding.460

291. On August 17, 2016, the journalist Michael Nguyen published an article in *Le Journal de Montréal* reporting on alleged abusive behavior of Judge Suzanne Vadboncoeur.461 A search warrant was obtained after the Judicial Council of Quebec filed a complaint to verify Nguyen’s sources on suspicions that he illegally accessed the Council’s website to obtain the information. On September 21, 2016, Quebec Provincial Police seized the computer of the reporter Michael Nguyen at the offices of *Le Journal de Montréal*. The computer will remain under seal until a judge rules on the validity of the search warrant.462

292. On October 31, *La Press* reported that the Special Investigations Unit of Montreal Police allegedly had spied on the journalist Patrick Lagacé to identify his sources within Montreal Police. According to the information available, the police allegedly obtained 24 warrants to look into Lagacé’s phone logs and remotely activate the GPS on Lagacé’s smart phone to follow him in real time. Pursuant to public information, the police had obtained the warrants to investigate an alleged leak of information within the Anti-Gang Police Department. The Police explained that the probe began when they found Lagacé’s cell phone number in the phone records of a particular police officer that supposedly had been fabricating evidence. According to the

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police, several articles had been published short time after the phone calls. However, La Press said that Lagacé did not write said articles.463

293. After surveillance of Lagacé had been revealed, Public Security minister Martin Coiteux reported that, in 2013, the Montreal Police also tracked the call logs of at least six journalists to identify their sources. Among them were La Press reporter Denis Lessard, Presse Canadienne journalist Isabelle Richter, and the Journal de Montreal correspondent Eric Thibault, and two Radio-Canada journalists Marie-Maude Denis and Alain Gravel. According to the available information, Quebec’s provincial police force had supposedly obtained warrants to trace the reporters’ call records as part of a supposed internal probe on potential information leaks to the media regarding high-profile cases, including the case of alleged relationship between Michel Arsenault, the former President of Quebec’s Labor Union, and members of organized crime.464 In this context, Quebec Premier Philippe Couillard announced that he would appoint experts to recommend measures to ensure journalist safety and confidentiality of their sources. Additionally, Couillard stressed that a directive would be issued to raise the bar on the requirements to obtain warrants against journalists.465

294. The Office of the Special Rapporteur notes with concern the chilling effect of these cases on press freedom and the independence of journalism in Canada. By forcing the essential investigative function of the press to be put at the disposal of law enforcement, the Canadian authorities set a troubling practice for the protection of journalistic sources. In this regards, the Office of the Special Rapporteur reiterates that the perception that journalists can be forced to assist with police investigations not only limits their ability to access sources of information, undermining their ability to play the press's fundamental role in a democratic society, but also increases their risk of being targets of violence.

F. Access to Public Information

295. On January 25, 2016, the Office of the Information Commissioner of Canada, along with the information and privacy commissioners from all ten provinces and the three northern territories jointly proposed the creation of a legislated duty to document that would apply to all public entities. The resolution noted “[a]ccess rights depend upon the creation of records that document the affairs of government. The lack of a legislated duty to document continues to produce an accountability gap in Canada’s access to information and records management legislation. By not creating and retaining records, public entities can effectively avoid disclosure of documents and public scrutiny. Defining the duty to document key actions and decisions of public entities in legislation would ensure that citizens have a meaningful and effective right of access.”466

296. In May 2016, the government of Canada began a consultation process to review and improve the federal Access to Information Act and implemented the Interim Directive on the Administration of the Access to

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297. The Office of the Special Rapporteur also notes that the government of Quebec announced on May the creation of an open data website, which enables easy public access to data and statistics from a dozen of ministries, organisms and municipalities, including the cities of Montreal and Quebec.

298. Similarly, the Office of the Special Rapporteur observes that the government of Saskatchewan followed the recommendations of its Information and Privacy Commissioner in introducing amendments to its access to information legislation, notably to extend its reach to police forces and government officials.

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

G. Communication Surveillance

300. In January 2016, the Ontario Superior Court of justice ruled that broad police search warrants, commonly known as “tower dump” production orders, forcing telecommunications companies to provide the cellphone records of thousands of customer’s are a breach of privacy and violates the Canadian Charter of Rights and Freedoms. The decision also sets out a series of guidelines that police forces must follow when seeking a production order from telecommunications companies in order to ensure that only information about cellphone users relevant to their investigation are divulged.

301. In June 2016, the Canadian government introduced Bill C-22, a new legislation to create a joint oversight committee with extraordinary access to scrutinize all the national security and intelligence operations across the government of Canada with the goal of ensuring that Canadian moral standards are respected. Bill C-51, commonly referred to as the Anti-Terrorism Act, provoked widespread criticism when it was passed last year and is viewed as overextending the surveillance powers of intelligence and security agencies at the detriment of fundamental rights, including freedom of expression. As announced earlier this year, the Government of Canada launched public consultation from September 8, 2016, until December 1, 2016, to undertake an expansive revamping of national security legislation.
302. The Office of the Special Rapporteur reiterates that surveillance programs must be designed and implemented in accordance with international human rights standards. Notably, States must guarantee that the interception, collection and use of personal information are clearly authorized by law in order to protect individuals from arbitrary or abusive interference with their privacy. Moreover, the decision to undertake surveillance activities that intrude upon individual privacy must be authorized by an independent judiciary and justified in terms of the objectives pursued in the specific case and the proportionality of the measure in relation to necessity and the interests pursued. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that States should establish independent oversight mechanisms over the authorities in charge of conducting surveillance in order to ensure transparency and accountability.475

H. Internet and Freedom of Expression

303. On May, the Canadian Radio-Television and Telecommunications Commission (CRTC) opened a public consultation on net neutrality issues, particularly zero rating. The CRTC received consultations before a public hearing held from October 31 to November 4, 2016. The consultation process would help the CRTC to better understand the impact of zero-rated practices on both internet service providers and users. As of the closing date of this report, the CRTC has not reached a final decision regarding net neutrality and zero rating policies.476

304. The Joint Declaration on Freedom of Expression and the Internet, adopted in June 2011, states that according to the Principle of Net Neutrality, there “[s]hould be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.”477 The purpose of this principle is to ensure that free access and user choice to use, send, receive or offer any lawful content, application or service through the Internet is not subject to conditions, or directed or restricted, such as blocking, filtering or interference. This is a necessary condition for exercising freedom of expression on the Internet pursuant to the terms of article 13 of the American Convention.

305. Also, said Declaration states that while freedom of expression, including on the Internet, is not absolute, tailored approaches must be developed that respond to illegal content while recognizing the Internet’s unique characteristics and its ability to deliver positive freedom of expression outcomes. The Declaration states that intermediaries should not be required to monitor user-generated content, and stresses the need to protect them from liability unless they specifically intervene in content or disobey a court order to remove such content. The Declaration further states that jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection. In addition, all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect legitimate websites and services.


I. Other Relevant Situations

306. Early this year, contributors to Rebel Media, a news website, supposedly had not been granted entry into the Alberta legislature’s press gallery and allegedly been prevented from covering a technical briefing meeting and a press conference. In a letter, the procurers of the government of Alberta justified the refusal by explaining that Rebel Media contributors are not considered journalists and, as such, are not entitled to access media events.\(^{478}\) The government of Alberta however back tracked quickly and asked a senior journalist to study media accreditation across the country to resolve the controversy.\(^{479}\)

307. In May 2016, the minister who oversees Canada Post, a public company which is the country’s primary postal operator, issued a prohibitory order to stop the distribution of Your Ward News, a Toronto publication self-described as “anti-Marxism” and accused of misogyny, homophobia and racism by its critics. The minister indicated in a statement: “I have issued an interim prohibitory order to this individual, who is its editor-in-chief, advising him that he can no longer use Canada Post to spread this offensive material.” The order was allegedly rendered following a complaint at the Canadian Commission of Human Rights which alleged that the distribution of the publication by the federal postal service breached anti-discrimination laws.\(^{480}\)

308. Furthermore, on October 28, 2015, the government of Ontario enacted the Protection of Public Participation Act, 2015 (PPPA), which came into force on November 3, 2015.\(^{481}\) The legislation on protection of public participation protects journalist and activists from bearing frivolous and expensive lawsuits filed by well-funded individuals or corporations. Under the PPPA, when moving to dismiss the defendant must show that the lawsuit rose from an expression related to a matter of public interest. To overcome the motion, the plaintiff must show that the proceeding has substantial merit, the moving party has not valid defense, and the dismissal of the lawsuit would cause serious harm. Furthermore, the PPPA provides that the plaintiff cannot amend the lawsuit once the defendant moved to dismiss and, if the judge dismisses the proceeding, the moving party is entitled to recover the costs on a full indemnity basis. These provisions apply on proceedings commenced on or after December 1, 2014.

309. On April 25, 2016, the Ontario Superior Court heard a motion to dismiss filed by the defendants under the PPPA in 1704604 Ontario Ltd. v. Pointes Protection Assn. In this case, the plaintiff 1704604 Ontario Ltd. owned certain lands in the Pointe Louise area of Sault Ste. Marie, Ontario. 1704604 Ontario Ltd. planned to build a project in Pointe Louise and applied for its approval before the Sault Ste. Marie Region Conservation Authority. The defendant, Pointes Protection Association, is a non-profit organization for the preservation of nature in Sault Ste. Marie and challenged the Conservation Board’s decision to approve the project before Ontario Divisional Court for Judicial Review. The parties settled the dispute in 2013 and Pointes Protection Association agreed to withdraw the proceeding with prejudice and not to contest the validity of the project approval. However, Sault Ste. Marie City Council denied the permit and 1704604 Ontario Ltd. filed an appeal before the Ontario Municipal Board. The Board granted Pointes Protection Association party status in the proceeding and presented evidence on the environmental damage that the project would cause. The Board dismissed the application for development approval. 1704604 Ontario Ltd. filed a lawsuit against Pointes Protection Association, arguing that the defendants breached the settlement by providing evidence against the development approval. Pointes Protection Association moved to dismiss the


\(^{479}\) HuffPost Alberta. February 21, 2016. N otley won’t limit media access to government news conferences; CBC News. February 17, 2016. Rachel Notley’s NDP Lifts ban on The Rebel, says it made a mistake.


lawsuit under the PPPA. The Ontario Superior Court reasoned that Pointes Protection Association has expressed on a matter of public interest by filing evidence regarding the environmental impact of the project. However, the Ontario Superior Court ruled not to dismiss the lawsuit. The Court found that the parties have the ability to waive participatory rights by contract and the lawsuit had substantial merit.\textsuperscript{482}

9. COLOMBIA

A. Progress

310. On December 2, 2015, the National Center for Historic Memory [Centro Nacional de Memoria Histórica] published its report entitled “La Palabra y el Silencio”, which recounts the killings, kidnappings, threats and other types of attacks against journalists from 1977 until 2015 with the aim of reconstructing the truth about these events. According to the report, between December 1977 and August 2015, 152 journalists were killed in Colombia because of their work; along with the numerous journalists, particularly in remote regions, who have been threatened, kidnapped and forced into exile by illegal armed groups, guerrillas and agents of the State. Additionally, the report affirms that most of the crimes committed against media outlets and journalists in Colombia remain in impunity, sending a negative message to the society and the perpetrators that killing journalists does not lead to major consequences. Although since 2004 there has been a decrease in killings of journalists, the report says that conditions persist that make the practice of journalism difficult, requiring the implementation of security schemes to enable them to carry out their work.483

311. The National Center for Historic Memory [Centro Nacional de Memoria Histórica] formulated a set of recommendations, including strengthening memory and continuing with the documentation of the cases of journalists who were killed, along with making them available to the public in documents through different formats. The report also stresses the importance of the regions, where the majority of acts of violence against the media and journalists have occurred, with the aim of strengthening local and regional communication mechanisms. With the goal of combating impunity regarding acts of violence against journalists, it urges that follow-up be made on the respective justice proceedings. It also stresses the efficiency of the system for warning and protection of journalists, but suggests that it be transformed to enable journalism to be carried out without interferences, promoting a better interrelationship among the entities that support journalistic work. It recognizes the role of journalism in the post-conflict, while indicating that greater support must be provided to journalistic entities and there must be greater understanding of the situations surrounding the practice of the profession. Finally, the report emphasizes the need to strengthen local media and encourage independent journalism, making known its challenges and weaknesses at the national and international levels. The report therefore concludes that freedom of expression must be appropriated as a social interest and a matter of national interest.484

312. On March 4th, the Council of State ruled against the nation for the murder of journalist Alberto Efraín Varela Noriega, which occurred in Arauca in 2002. The Council of State established the responsibility of the State in the death of the journalist, as it found that there was proven cooperation and acquiescence of state agents that allowed for the attempt on the journalist’s life by members of paramilitary groups. According to the decision, on the day of the murder the army removed the checkpoint and surveillance from the area through which the men from the Autodefensas Unidas de Colombia (AUC), Arauca Victors’ Front [Frente Vencedores de Arauca] who murdered Efraín Varela were to pass. Furthermore, at the time of the events, a criminal defamation [injuria] and calumnia complaint had been filed by the commander of Battalion Number 18 against Efraín Varela. On one of his programs, Varela had reported on an alliance between the paramilitaries in the area and several members of the Army. In the view of the Council of State, this report was the cause of the animosity that led to the actions taken by the members of the Army implicated in his death. Although the high court found that neither the journalist nor his family had reported the threats that he received to the authorities, it found that this did not exempt the State from responsibility and it was completely understandable that the victim would not trust the State.485


On September 14, 2016, the Council of State ruled against the nation for state responsibility in the murder of journalist and humorist Jaime Hernando Garzón Forero.\textsuperscript{486} In the aforementioned judgment, the Council of State acknowledged that Garzón’s murder was an extrajudicial execution committed by a paramilitary group with the acquiescence of the Colombian State, affirming that “members of the regular forces of the State allied with illegal groups—paramilitaries—in order to allow and cooperate with the criminal activities of these groups. This occurred in the crime against the well-known journalist Jaime Garzón, the execution of whom—as shall be seen—was abetted by members of the National Army.”\textsuperscript{487} Additionally, the Council of State concluded that “the extrajudicial execution of journalist Jaime Hernando Garzón Forero, which occurred in this context of generalized and systematic human rights violations, is a crime against humanity.”\textsuperscript{488} In the aforementioned ruling, the National Army and the Police were given two months to publicly acknowledge responsibility and ask forgiveness of Garzón’s family. However, as of the drafting of this report, the Office of the Special Rapporteur has no knowledge of any official act conducted by the National Government to ask forgiveness for the crime against humanity.

As a result of the foregoing, on September 28 the Office of the Prosecutor General of the Nation issued Resolution No. 048-2016 whereby it declared that the murder of journalist Jaime Garzón is a crime against humanity, and therefore, imprescriptible.\textsuperscript{489} The Office of the Prosecutor General recognized that Garzon’s murder occurred in a context in which human rights defenders were being persecuted in a generalized and systematic fashion, under the auspices of the Colombian State.\textsuperscript{490}

**B. Attacks, Threats, and Harassment Against Journalists and the Media**

In February, journalist Javier Gaviria from la Voice of Yopal [Voz de Yopal] in Yopal, Casanare, reported that he had received death threats via his personal phone and at the station’s phone. The journalist stated that the calls began after he reported the crimes allegedly committed by the director of the sports institute in that town. Additionally, other journalists in Yopal, had reported incidents of intimidation and stigmatization by the municipal mayor’s office, which were allegedly in retaliation against the reports of the press regarding the problems of current mayor Jhon Jairo Torres.\textsuperscript{491}
316. On March 28, journalists, politicians, public officials and leaders of social organizations in the department of Cauca received a pamphlet via e-mail, signed by las the Black Eagles [Aguilas Negras], which contained death threats and in which they were given a week to leave the area. In the pamphlet, the leaders and journalists were accused of being subservient and supporters of the peace process, which referred to the peace negotiations underway between the government and the FARC guerrillas. The Popayan Metropolitan Police [Policía Metropolitana de Popayán] announced that it was investigating the source of the pamphlet. 492

317. On April 14, the newspaper El Heraldo and civil society organizations publicly denounced the intimidation by Galdino Orozco, the former mayor of the municipality Palmar de Varela, department of Atlántico, against journalist German Corcho, the editor of the newspaper. The journalist was investigating Orozco’s alleged involvement in the murder of an attorney. The journalist contacted the former mayor to obtain his version of events, and after the call, Orozco contacted the journalist to intimidate him so that he would not publish the story. 493

318. On April 15, unknown persons entered the home of journalist and human rights advocate Bladimir Sánchez and took his computer, hard drives and cameras. This equipment would contained information about the journalist’s sources, graphic material and information the journalist was using for a documentary on the human rights violations allegedly committed by national and multinational companies in the extractive industry in some regions in Colombia. 494

319. On May 21, journalist Salud Hernández-Mora, a columnist for the newspaper El Tiempo in Bogotá and a correspondent for El Mundo in Madrid, was reporting in the Catatumbo area in the department Norte de Santander when she was kidnapped by the National Liberation Army [Ejército de Liberación Nacional] (ELN). On May 20, the journalist was in the area conducting a series of interviews of peasant farmers in the Tarra municipalities when ELN guerrillas allegedly took her equipment. The following day, unknown persons approached her, asking her to go with them to get her equipment back, and then her trace was lost. She remained captive and under the power of ELN guerrillas for almost a week. 495

320. On May 23, reporters for television stations RCN and Caracol TV and the EFE news agency went to the area to cover the incident and were kidnapped for several hours by ELN guerillas. Journalist Diego Velosa from Caracol TV, his cameraman and the EFE reporter were released the same day, while journalist Diego D’Pablos and cameraman Carlos Melo from the RCN channel were kidnapped by the guerrilla group. The Office of the Special Rapporteur expressed its concern about this situation in a press release in which it


reiterated the fundamental role of journalists in situations of armed conflict, as well as the obligation of the State to provide them with as much protection as possible so that they may continue to assert their right to the freedom of expression, so as to fulfill society’s right to be adequately informed.496

321. President Juan Manuel Santos ordered that the authorities work on finding the three journalists, and the government of Norte de Santander offered a reward of COP$ 100 million (approximately US$ 32 thousand) to anyone providing information so that the three reporters could be found. On May 26, the minister of Defense confirmed that the journalists had been kidnapped by ELN guerrillas.497

322. On May 27, journalist Salud Hernández-Mora was released after she was turned over to representatives of the Catholic Church and of the Ombudsman Office [Defensoría del Pueblo]. The same occurred in the case of journalists Diego D’Pablos and Carlos Melo.498 However, on July 11, Channel RNC reported that journalists Diego D’Pablos and Carlos Melo were threatened, presumably by ELN guerrillas.499 Civil society organizations denounced the threats and asked the National Government to guarantee the journalists’ safety.500 Through its Twitter account, the ELN denied that the message sent to D’Pablos came from the armed illegal group.501

323. On August 4, journalist Victor Ballestas, cameraman David Romero and assistant cameraman Jorge Mercado from the Noctámbulo team from channel CityTV news were assaulted by members of the National Police, presumably to prevent them from covering a theft in the city of Bogotá.502 According to the information available, on August 6 Ballestas and Romero went to the Office of Forensic Medicine to report the assaults, and when they did, members of the National Police allegedly threatened them to prevent them from filing the report.503 In a public statement, the National Police said that it would open disciplinary investigations against the members of the National Police who have been reported as perpetrators of the assault.504


500 Amnesty International. July 12, 2016. Colombia: Amenaza contra periodistas podría menoscabar más el proceso de paz con el ELN; Fundación para la Libertad de Prensa (FLIP). July 11, 2016. Correspondientes de RCN que fueron secuestrados por el ELN son declarados objetivo militar; NTN24. July 11, 2016. ‘Es obligación del Estado colombiano castigar a los responsables’: Director de Human Rights Foundation a NTN24 sobre amenazas a periodistas de Noticias RCN.


502 #Equipo de #Noctámbulo fue víctima de una golpiza propinada por algunos uniformados durante cubrimiento de ciclovía nocturna #CityNoticias, Twitter account of Canal Citytv @CityTV. August 5, 2016; El Tiempo. August 5, 2016. Citytv pide investigar violencia contra periodistas del Noctámbulo; Federación Colombiana de Periodistas (Fecolper). August 5, 2016. La Fecolper rechaza agresión de la Policía Nacional al equipo periodístico de CITY TV; BluRadio. August 5, 2016. A bolillo y patadas, policías agreden a periodista en Bogotá, Las2Orillas. August 5, 2016. En video: hasta con un arma de fuego Policía habría agredido a periodistas de CityTV.

investigations of the agents involved, denounced the officers’ actions, and apologized to the entire journalism profession, and reaffirmed its commitment to defend the right to freedom of expression.\textsuperscript{504} The mayor of Bogotá, Enrique Peñalosa, regretted the aggressive behavior of the members of the National Police.\textsuperscript{505} Later, on August 26, Ballestas reported having received several intimidating messages via social networks.\textsuperscript{506}

324. On August 16th, residents of the township of Puerto Cachicamo in the department of Guaviare prevented a team of journalists from the Los Informantes program of Caracol TV from reporting on forest deforestation. According to information in the public domain, upon arriving at Puerto Cachicamo, some members of the township’s Community Action Board \textit{(Junta de acción Comunal)} allegedly prevented the journalists from recording in a public space. Later, Puerto Cachicamo residents demanded that the journalists turn over the video and prevented them from leaving the area until they turned over their reporting material. The reporters did not comply with the request and were allegedly held for five hours, until, under pressure, they signed a document in which they stated that they had not been detained by area residents.\textsuperscript{507}

325. On September 26, during the Presidential event for the signing of the Peace Agreement with the FARC, a member of Government security prevented national media workers from entering the place where the event was being held.\textsuperscript{508} Also, the security agent allegedly assaulted photographer Andrés Rozo from Revista Semana.\textsuperscript{509}

326. The IACHR and the Office of the Special Rapporteur received information about alleged threats against and the persecution of journalist and human rights advocate Claudia Julieta Duque, stemming from the ongoing criminal case against three of the people involved in the illegal wiretapping and monitoring against her. On February 25, members of the European Parliament requested that the Colombian government guarantee the protection of the journalist and human rights advocate, and that it proceed with the investigations that aimed to arrest those involved in the crimes committed against the journalist, as they were currently at large.\textsuperscript{510}

327. The Office of the Special Rapporteur is concerned about the assaults and attacks against journalists by public officials and private citizens. \textit{Federación Colombiana de Periodistas} (Fecolper) reported that between January and April, 70 incidents of violence and assault against journalists had been recorded, which would represent an upward trend in cases of violence against reporters compared to the same quarter in
328. On November 13, journalist Lucy Flórez, was threatened via text message. Flórez received the message after capturing, with her cameraman, the assistant of the Congresswoman Karen Cure - Katherine Contreras, visiting Hospital Cariri in Barranquilla, where Enilece López, aka “La Gata,” is hospitalized. On November 17, groups of journalists held a march in Barranquilla to protest the threat received by Flórez.515

329. On November 20, the news website Onda Opita publicly announced it would cease its operations and close its page due to threats received after it published an article reporting the alleged involvement of Neiva Mayor, Rodrigo Lara, in an act of corruption. In reaction to the article published on November 19, Mayor Lara had allegedly stated on his Facebook account that he rejected it for containing falsehoods and that he would resort to the competent authorities. Afterward, Onda Opita website received a direct message requesting in an intimidating way the removal of the article, while an unidentified man reportedly shouted a death threat in front of its facilities.516

330. Red de Comunicadores Populares del Sur (Recpsur) publicly denounced that the mayor of San Vicente del Caguán, Humberto Sánchez, used his Facebook account to signal against it. On November 26, Recpsur published on its Facebook account that the community had seen a group of people dressed in black allegedly identified as members of an illegal armed group. According to Recpsur’s statement, Mayor Sánchez used his Facebook account to challenge the professional approach of Recpsur’s journalistic team and accuse them of "creating media and psychological terrorism, and panic in social media networks in an irresponsible way”.517

331. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and


517 Red de Comunicadores Populares del Sur (RECPUR). 26 de noviembre de 2016. Comunicado: Intimidación y estigmatización contra la libertad de prensa: HSB Noticias. 29 de noviembre de 2016. Alcalde de San Vicente del Caguán amenaza a medio de comunicación: ¡Atención #ParamilitaresEnSanVicente Poblabores del barrio prensa Villa Norte de San Vicente del Caguán denuncian que anoche patrullaban las calles del sector, un grupo de personas vestidas de negro, encapuchadas y con un brazalete que tenía un logo visible de la AUC. La comunidad pide la presencia institucional que garantice la garantía la vida y tranquilidad de los habitantes y el acompañamiento permanente de Organizaciones Defensoras de Derechos Humanos Nacionales e Internacionales con el fin de evitar hechos de violencia en el sector: ¡Noticia en desarrollo!: Cuenta de Facebook de Red de Comunicadores Populares del Sur @recpsur. 26 de noviembre de 2016.
case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.\textsuperscript{518}

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

C. Social Protests

333. On May 30, the Campesino, Ethnic and Popular Agricultural Summit [\textit{Cumbre Agraria, Campesina, Étnica y Popular}] called for a national “strike” to demand that the National Government fulfill the commitments it made in 2013.\textsuperscript{519} The strike lasted until June 12.\textsuperscript{520} During the strike there were protests and crowds of indigenous communities and peasant farmers in different areas of the country, mainly in the departments of Cauca, Meta, Huila, Nariño, Antioquia, Arauca and Norte de Santander.\textsuperscript{521}

334. According to information available, three indigenous people died as a result of the confrontations between protesters and the police in the departments of Valle del Cauca and Cauca.\textsuperscript{522} On May 30, in Buenaventura, in the department of Valle del Cauca, Willington Quibarecama Naquirucama died when he fell of a bridge. According the reports of the Quibarecama indigenous community, he fell off the bridge after he was run over by a Mobile Anti-riot Squadron [\textit{Escuadrón Móvil Antidisturbios}](ESMAD) armored vehicle, while the Valle Police Commander claimed that it was an unfortunate accident.\textsuperscript{523} On June 2, Gersain Cerón and Marco Aurelio Díaz died in the department of Cauca. The Agricultural Summit stated that the bullets were fired by members of the police.\textsuperscript{524} On June 2, the Ministry of Defense made a public statement and advised


that a reward would be offered to anyone with information about the deaths of indigenous men Gersaín Cerón y Marco Aurelio Díaz and it confirmed that a humanitarian commission made up of members of the United Nations, the Judicial Police, the Technical Investigation Corps from the Office of the Prosecutor and the Office of the Ombudsman, would be tasked with establishing the circumstances surrounding their deaths.

On June 4, a ruling of the National Institute of Legal Medicine and Forensic Science Legal [Instituto Nacional de Medicina Legal y Ciencias Forenses] indicated that the deaths of Gersaín Cerón and Marco Aurelio Díaz would have occurred due to projectile impact of artisanal weapons. As of the closing date of this report, there is no information about the reports of this humanitarian commission.

335. According to available information, hundreds of people were allegedly injured during the agricultural protest as a result of the clashes between protesters and ESMAD agents. According to the World Organization Against Torture (OMCT), at least 205 people may have been injured during the protest as a result of the excessive use of force by ESMAD and the Army. In addition, after six days of protests in the Ranchadero area, on the road between Pamplona and Bucaramanga in the department of Santander, 121 protesters were allegedly arrested and turned over to the Office of the Prosecutor for allegedly detonating explosive devices and lighting the cab of a tractor-trailer on fire, and the police allegedly seized their ammunition. In the aforementioned report, the OMCT stated that more than 172 arbitrary arrests were made during the protests in the departments of Santander, Antioquia, Cesar, Nariño, and Cauca. In a public statement, Minister of Defense Luis Carlos Villegas stated that through June 7, 145 people, 15 of whom were minors, were allegedly brought up on charges.

336. According to information published some days before the protests, several indigenous leaders were allegedly threatened by the illegal armed group Black Eagles [Águilas Negras], via e-mail and pamphlets that were openly distributed in the departments of Cauca and Cesar. On June 3, the Consejo Regional Indígena del Tolima (CRIT) had allegedly received an e-mail from the illegal armed group Águilas Negras in which it was ordered to end the protests and in which the main leaders from different social organizations that defend the rights of indigenous groups in Colombia were declared military targets.

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337. The Office of the Special Rapporteur was concerned upon receiving information regarding the statements of June 1, in which the Minister of Defense affirmed that the protest had been infiltrated by ELN guerrillas.\textsuperscript{534}

338. The U.N. Office of the High Commissioner for Human Rights expressed its "profound concern for the injured, from the Minga [gathering] and from law enforcement; the mass judicialization of persons, the stigmatization of those who participated in the protests and for those affected by the strikes."\textsuperscript{535}

339. During the agricultural strike on May 31, the photography reporter for daily newspaper El País, Oswaldo Páez, was covering the protests of the indigenous gathering in the department of Cauca. Several protesters prevented Páez from taking photos, sprayed him with gasoline and stoned the vehicle in which he was traveling.\textsuperscript{536}

340. On June 7, the agricultural protest was joined by a protest held by cargo truckers, who wished to voice their displeasure with the alleged breach by the National Government to the agreements with the labor union, which had been agreed a year ago.\textsuperscript{537} The cargo truckers protest lasted for 45 days until July 22.\textsuperscript{538}

341. According to available information, ESMAD used excessive force and assaulted and harassed protesters during the truckers protest.\textsuperscript{539} On July 12, in Duitama in the department of Boyacá, there was a confrontation between a protester and ESMAD during which a young man who was participating in the truckers protest died.\textsuperscript{540} Also, on July 20, Ascanio Manuel Tapia, who worked in the Office of the Ombudsman, was wounded by a stone that fell on his head during clashes between protesters and ESMAD in Bogotá.\textsuperscript{541} Additionally, the minister of Defense said in a public statement that 63 people who had


participated in the protests had been arrested.\textsuperscript{542} Some days after, the media reported that during the truckers protest, law enforcement had arrested at least 90 people.\textsuperscript{543}

342. On July 14, 38 days after the truckers strike began with no agreement having been reached with the government, President Juan Manuel Santos ordered that shock measures be implemented to discourage the blockade of public roads, namely (i) Stop and seize vehicles used to block roads or impede transportation services, (ii) Suspend the license of drivers who participated in the blockades, (iii) Suspend the operating licenses of owners and businesses and charge fines of up to COL$ 480 million, (iv) Suspend the registration of vehicles used during these events, (v) Temporarily allow private vehicles to transport cargo, (vi) Establish a logistics center to facilitate and coordinate the movement of cargo with business owners and drivers wishing to work, (vii) Double the number of law enforcement officers on the roads.\textsuperscript{544} According to available information, 977 cargo vehicle licenses where suspended during the truckers protests.\textsuperscript{545}

343. In this context, the Office of the Special Rapporteur was concerned upon receiving the statement of General Prosecutor in Charge Jorge Perdomo, who affirmed that the truckers strike “[…] is not a peaceful protest, what we are seeing on the streets and in the cities are clearly illegal acts, which leads us to believe that crimes are being committed.”\textsuperscript{546}

344. In addition, several violent episodes by protesters against reporters and media workers were also reported during the truckers’ protest.\textsuperscript{547} On July 7, in Manizales, journalist Yesid López and cameraman Albeiro Giraldo were assaulted. According to available information, López approached a protester in Plaza de Bolívar who responded aggressively, called him a guerrilla and encouraged his companions to hit him. Giraldo approached to defend him and record the events, but protesters attacked him from behind, damaged his work equipment and pushed him toward the crowd where López was being assaulted.\textsuperscript{548} On July 20, protesters allegedly physically assaulted journalist Alexei Castaño from Caracol Radio and forced him to erase the material he had obtained while covering the protests in Bogotá.\textsuperscript{549}


345. On July 29, President Juan Manuel Santos approved Law 1801 of 2016, otherwise known as the New Police Code [Nuevo Código de Policía], which will take effect in January, 2017.550 Article 53 establishes the duty to notify administrative authorities 48 hours in advance of a possible social protest, specifying the day, the date, and the location of the protest. Article 54 establishes that mayors must temporarily authorize the use of roads for peaceful public gatherings and protests. Various civil society organizations and media outlets have condemned the fact that these rules might impose a burden and restrict the exercise of social protests.551

346. On November 5, Campamento por la Paz set up in Montería was disbanded due to the fact that Elena Mercado Rodríguez, a spokeswoman for the initiative and member of the Marcha Patriótica movement allegedly received death threats. On October 12, the Peace Camp was set up in Simón Bolívar Plaza in the city of Montería, in the department of Córdoba, in order to support the negotiation of a new agreement between the National Government and the FARC guerrilla group. In the early morning hours of November 5, Mercado allegedly received a telephone call from an unidentified person who threatened her with death and made accusations against the young people in the camp. Campamento por la Paz leaders condemned the lack of assistance from the Office of the Ombudsman and the Office of the Legal Municipal Representative [Defensoría del Pueblo y la Personería Municipal].552

347. In the early morning hours of November 19, the Peace Camp was disbanded by ESMAD of Bolívar Plaza in Bogotá. On October 4, a group of young people set up the Peace Camp in Bolívar Plaza in Bogotá, in order to support the negotiation of a new agreement between the National Government and the FARC guerrilla group. According to available information, in preparation for the festival Salsa al Parque, ESMAD conducted an operation to forcefully remove at least 30 young people who were still camping. In spite of the fact that in a public statement the Bogotá Mayor’s Office [Alcaldía de Bogotá] said that the removal had been agreed upon with the camp leaders, Juliana Bohórquez, one of the leaders of the initiative, denied any such agreement.553

348. The Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, sets forth that in the context of protests and situations of great social unrest, the work of journalists and media workers and the free flow of information "is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority."554 For this reason, the authorities must provide journalists with the highest degree of guarantees for them to do their work. In that regard, the authorities must guarantee that journalists will not be arrested, threatened, or assaulted, and that their rights will in no way be restricted while they are doing their work in a public protest. Authorities must adopt public discourse


that helps prevent violence against journalists, and they must vigorously condemn assaults, investigate the facts and punish those responsible, as established in Principle 9 of the IACHR Declaration of Principles.\textsuperscript{555} It is also of special importance that the authorities have special protocols in place to protect the press in situations of social unrest and that security forces receive instruction on the role of the press in a democratic society.\textsuperscript{556}

349. The IACHR has reiterated that social protests are a fundamental tool for defending human rights and that they are essential for political and social criticism of the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”\textsuperscript{557} and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”\textsuperscript{558}

350. The Commission has also observed that the alleged use of the punitive power of the State to criminalize the defenders of human rights and peaceful social demonstrations, and to criminally prosecute political critics or dissidents, is of enormous concern.\textsuperscript{559} The Office of the Special Rapporteur reiterates that the IACHR has found that article 7.5 of the American Convention establishes that the only legitimate basis for pretrial detention is the risk that the person charged might attempt to evade justice or hamper the legal investigation. The IACHR believes that the justification of preventive pretrial detention, considering the danger the person charged poses, or the possibility that the person might commit future crimes, goes against this rule and against the right to the presumption of innocence.\textsuperscript{560}

351. Furthermore, the Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, states that the rights to freedom of assembly and freedom of speech “are fundamental and guaranteeing these rights is a necessary condition for the existence and functioning of a democratic society. A State may impose reasonable limits on protests in order to ensure that they are peaceful, or to break up those that turn violent, as long as these limits are governed by the principles of legality, necessity and proportionality. In addition, breaking up a protest must be justified by the duty to protect people, and the measures used must be those that are safest and least harmful to protesters. The use of force in public protests must be the exception and used only when strictly necessary and in accordance with internationally recognized principles.”\textsuperscript{561}

D. Protection Mechanisms

352. The IACHR appreciates the efforts of the Colombian State to reduce violence against journalists by implementing a protection program, managed by the UNP.\textsuperscript{562} According to the information available, the resources dedicated to protecting journalists and the beneficiaries of protection measures have increased

\textsuperscript{555} Principle 9 of the IACHR Declaration of Principles on Freedom of Expression: “[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.”


\textsuperscript{559} IACHR. Press Release 17/14. IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela. February 21, 2014.


\textsuperscript{562} UNP. No date. Rendición de Cuentas 2015.
over the last five years. According to the information provided by the State, as of April 30, 2016, protection arrangements were granted to 129 journalists by the UNP, with Bogotá, Antioquia, Valle del Cauca, and Arauca being the departments with the greatest number of protected journalists. According to the information available, between May and August, the UNP conducted training sessions and workshops to improve the skills and knowledge of public officials with regard to human rights, gender focus, and assessing risk to the indigenous population, among other things. The IACHR also recognizes the UNP’s efforts to incorporate differentiated focuses into the protection measures it provides to journalists. For example, the FLIP reported to the IACHR that the UNP dealt with the displacement of a journalist through the Risk Assessment and Measures Recommendation Committee (Cerrem) and decided to take action to supplement the security measures by providing psychosocial care to the journalist and her son. The IACHR also received information on a risk assessment study conducted by the UNP for an indigenous journalist who was threatened by the FARC guerrillas. The assessment concluded that the protection must include security provided by bodyguards from the same indigenous people.

353. The State informed the IACHR that in March 2016, it began preparing a “Protocol for Addressing Cases Involving Journalists and/or Social Communicators” (“Protocolo de Atención de Casos de Periodistas y/o Comunicadores Sociales”), which will establish the factors that must be taken into account at each stage of the process for assessing risk to journalists and social communicators. According to the information provided, the protocol has been drafted with the participation of civil society organizations, specifically the FLIP and Fecolper. Once it is validated and approved by the UNP Directorate and civil society organizations, the protocol will enter its final phase.

354. The Commission has taken knowledge that, by virtue of Decree 567 of April 8, 2016, the National Government eliminated its ground transportation subsidy aimed at benefiting protected individuals who do not have an automobile. To replace it, the UNP implemented a help button: an electronic device that protected people can use to send an alert to the UNP when facing a risk to which the UNP would respond by monitoring their location and offering security. According to the information available, the UNP signed a direct contract with a private telecommunications company to implement the infrastructure needed for the help button to operate. Civil society organizations have reported a lack of clarity as to the scope of the protection provided by the UNP to protected journalists through the help button. They are concerned that the device may be used to monitor the location of protected people permanently and for other types of surveillance, such as audio. In addition to not trusting the device, the protected journalists have expressed doubts as to the UNP’s capacity to respond when alerts are received, especially in remote areas.

355. Added to this, the FLIP reported a number of irregularities in the protection provided to journalist Javier Osuna, which could compromise his safety. According to the information available, the USB drive and cellular phone assigned to Osuna by the UNP for his protection were stolen. In April, Osuna asked the UNP to change one of his bodyguards, as certain questions and actions had led to mistrust. However, there were a

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564 Republic of Colombia, Note S-GAIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 66.


566 Fundación para la Libertad de Prensa (FLIP). FLIP's contribution to the third follow-up on compliance with the recommendations of the Truth Justice, and Reparation report. Sent by the FLIP to the IACHR on December 6, 2016.

567 Fundación para la Libertad de Prensa (FLIP). FLIP's contribution to the third follow-up on compliance with the recommendations of the Truth Justice, and Reparation report. Sent by the FLIP to the IACHR on December 6, 2016.

568 Republic of Colombia, Note S-GAIID-16-109909 of December 2, 2016, received on December 16, 2016, pg. 66 and 67.


number of irregularities in the procedure to change the bodyguard: rather than it being done quietly, the bodyguard had access to information on the replacement procedure.\textsuperscript{571}

356. Civil society organizations insist that the implementation of arrangements for the protection of journalists continue to be plagued by irregularities. These include delays in implementing the measures and prevention strategies, reflected in the high numbers of attacks and threats against social communicators.\textsuperscript{572}

E. Stigmatizing Statements

357. On March 29, Senator Álvaro Uribe published accusations on his Twitter account against the \textit{El Espectador} daily newspaper columnist Yohir Hakerman, saying he belonged to the ELN guerrilla group. As the journalist himself stated, the former President’s comments were in response to his column published on March 26th in \textit{El Espectador}, in which he stated that the current senator was on an intelligence agency list belonging to U.S. Forces, which noted that 104 people had links to drug-trafficking cartels.\textsuperscript{573}

358. On April 9, journalist Daniel Coronell wrote a column admonishing Senator Uribe for his accusations against Hakerman. Uribe then responded via his Twitter account, implying that Coronell had links to drug traffickers and that President Santos’s administration had benefited him by granting him with several contracts with State entities to keep him on his side.\textsuperscript{574} On October 22, Coronell published a column in \textit{Semana} magazine, in which he played audio and video recordings in which then-president Álvaro Uribe made statements in favor of FARC guerrillas’ participation in politics and of granting amnesty for horrific crimes as a consequence of a possible peace agreement.\textsuperscript{575} As a reaction to this column, Senator Uribe referred to Coronell as an “extraditable journalist” on his Twitter account.\textsuperscript{576} Furthermore, on October 25, Senator Uribe commented on Twitter that Coronell made statements against his family with impunity and published a recording in which Coronell is called an associate of alleged drug trafficker Pastor Perafán.\textsuperscript{577} On October 29 in \textit{Semana} magazine, Coronell published more evidence of statements made by Uribe during his presidency in favor of proposals that were very similar to those contained in the peace agreement negotiated by President Santos, but that Uribe had criticized as a senator for the Centro Democrático Party.\textsuperscript{578} In response, Senator Uribe published a video on his Twitter account in which Cornell appears as the associate of a drug trafficker.

\begin{footnotes}


\item[575] Semana. October 22, 2016. \textit{Los dos Uribes}.

\item[576] “Periodista extraditable vuelve con discusión pública que adelanté y que por fortuna nunca acepté que el error fuera realidad”. Twitter account of Álvaro Uribe Vélez @AlvaroUribeVel. \textit{October 23, 2016}; Pulzo. October 23, 2016. \textit{Uribe trata otra vez a Daniel Coronell de extraditable por revelar video de 2006}.

\item[577] “Daniel Coronel, extraditable, sigue en la impunidad y se luce escribiendo en contra de mi familia y de mi persona youtube/jabohZHEPPY”. Twitter account of Álvaro Uribe @AlvaroUribeVel. \textit{October 25, 2016}; Las2Orillas. October 25, 2016. \textit{El comprometedor video que le sacó Uribe a Coronell. Se reactiva la pelea}.

\item[578] Semana. October 23, 2016. \textit{Más pruebas}.
\end{footnotes}
and calls Coronell “extraditable (…) and the spokesman for some terrorists.” In this context, Daniel Coronell received threats on Twitter that came from the account of a group called the Simón Bolívar Command.

359. This environment of marked confrontation, in which there is constant disparagement and stigmatizing, creates a climate that does not allow for reasonable, diverse deliberations on all public matters. Though it is true that tension between the press and governments is a normal phenomenon that stems from the natural role of the press and happens in many States, it is also true that such acute polarization closes off forums for calm debates and does not help the authorities or the press better fulfill the roles they play in a vigorous, deliberative, and open democracy. In these cases it is the role of the State, in light of its national and international responsibilities, to help create a climate of greater tolerance and respect for the ideas of others, even when it views these ideas as offensive or disturbing.

360. The Office of the Special Rapporteur also notes that it is the duty of public officials to make sure that their statements do not infringe the rights of those who contribute to public debate by expressing and broadcasting their thoughts, including journalists, the media, and human rights organizations, and they must be aware of the context in which they make statements to ensure that these do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”

F. Subsequent Liability

361. In October, Judge 13 of the Bogotá Municipal Criminal Court with function of knowledge [Juez 13 de Penal Municipal con Función de Conocimiento de Bogotá] dismissed the criminal defamation [calumnia, injuria agracavada y contumacia] case against journalist Alfredo Serrano Zabala, which had started based on a criminal complaint filed by the former governor of Bolívar, Libardo Simancas Torres. In 2011, Serrano Zabala published a book entitled “Las siete vidas de la Gata, La historia de Enilce López” in which he publicly reported the alleged links between several political leaders of the Colombian Atlantic Coast and illegal armed groups, as well as the alleged friendship between Simancas Torres and gambling entrepreneur Enilce López. The case had been inactive for almost five years and charges were not filed against Serrano Zabala until March 2, 2016.

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

G. Confidentiality of Sources


363. On May, the Office of the Prosecutor General of the Nation [Fiscalía General de la Nación] made public Directive 0007 of 2016, which establishes “guidelines for summoning journalists to give interviews or testimony for an investigation and/or a criminal case.” The goal of the directive is to regulate and provide guidelines for prosecutors for summoning journalists to give interviews so that they may provide information voluntarily in the context of the prosecutors’ investigations. The Office of the Special Rapporteur recognizes that this initiative may be considered a good practice so that States may fulfill their obligation to protect the work of journalists and satisfy the requirements for the right to freedom of expression.\[584] In the Annual Reports published in 2014 and 2015 the Office of the Special Rapporteur documented the times the Office of the Prosecutor General had summoned journalist María Isabel Rueda to question her about information she had obtained as part of her investigative reporting.\[585]

364. According to the text of the document that the Office of the Prosecutor General provided the Office of the Special Rapporteur, the Directive 0007 of 2016 [la Directiva 0007 de 2016] aims to regulate the strictly exceptional procedure whereby prosecutors may summon journalists for an interview “when there is no different alternative that may allow for the gathering of relevant information to an investigation.” The Office of the Special Rapporteur underscores that via this Directive, the Office of the Prosecutor General recognizes that “prosecutors are constitutionally barred from summoning a journalist to provide testimony or give an interview regarding information provided by their sources” and therefore, for the summons to be allowed, “strict, rigorous judgment must be used regarding proportionality, and the measure must be demonstrated to i) pursue the achievement of imperative constitutional goals; ii) be ideal for the achievement of these goals; iii) be materially necessary in order to achieve these goals; and iv) be proportional in a strict sense.”\[586]

365. The Office of the Prosecutor General of the Nation established Directive 0007 in order to set guidelines that prosecutors must follow when issuing a summons for a journalist so that it does not constitute a violation of the right to freedom of expression and therefore of the right to protect sources. The bases of the Resolution are i) the prevailing protection of freedom of expression and information; ii) the scope of the implementation of the Directive: journalists (this section refers especially to situations in which journalists are the object of criminal investigations for subsequent liability); iii) the realm of the objective implementation of the Directive: information, not opinion; iv) the professional secrecy of journalists; v) as a general rule, summoning a journalist to provide testimony or an interview regarding information provided by a source is not justified; and vi) prosecutors must attempt to obtain the voluntary cooperation of journalists for investigative purposes.\[587]

366. The conclusion in the section of the Directive regarding foundation establishes that as a general rule, requiring that a journalist give an interview or testimony in an investigation or a criminal case, respectively, may constitute an undesired disruption of freedom of expression. However, it allows for summoning a journalist in exceptional circumstances and after strict analysis and weighing the issue in order to override

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586 Fiscalía General de la Nación. Directiva No. 0007 “Por medio de la cual se establecen pautas para la citación de periodistas a rendir entrevista o testimonio dentro de una investigación y/o proceso penal”. March 27, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

587 Fiscalía General de la Nación. Directiva No. 0007 “Por medio de la cual se establecen pautas para la citación de periodistas a rendir entrevista o testimonio dentro de una investigación y/o proceso penal”. March 27, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.
the presumption of unconstitutionality surrounding a summons for events a journalist has learned about due to the nature of his or her work.588

367. On June 2nd, the Office of the Special Rapporteur, at the request of the Office of the Prosecutor General, sent a technical note in which it made several recommendations so that in practice, implementing the directive will not constitute a means to interfere in the exercise of freedom of expression of journalists or Colombian society, which has the right to obtain the greatest amount of information regarding topics of public interest.589

368. The Office of the Special Rapporteur recommended (i) that the Directive include the standards developed by human rights protection systems regarding the protection of media sources and that these be considered in its implementation; (ii) that the Directive include the functional definitions of “journalist” set forth in the international legal framework on Human Rights regarding the freedom of expression; (iii) that crimes against honor included in Colombian criminal legislation in the area of subsequent liability be reviewed, in particular those regarding cases in which criminal offenses should not apply as a result of expression regarding topics of public interest; (iv) clarification in number 2. C. i) Crimes committed by members of the media as part of their professional duties, while crimes against honor are under review, in the event a criminal investigation were conducted against a journalist, the Office of the Prosecutor General would not be able to force him or her to reveal sources, and the standards adopted in the Inter-American system regarding the use of criminal law in cases of expression on topics of public interest should be included; (v) recognizing that the Directive itself states that the protection of sources is enshrined both in the Constitution and in Colombian legislation, it would be advisable to include a judicial check of the strict proportionality test that prosecutors have to conduct before summoning journalists; (vi) the Office of the Prosecutor General may conduct ongoing training for prosecutors on freedom of expression and the protection of sources so that when the time comes, they are able to give the issue the weight it requires in the best way possible; (vii) having a transparency mechanism to track the number of times journalists are summoned and the number of interviews actually conducted; and (viii) clarify that what is stated in the Directive at no time constitutes an exception to the prohibition regarding intercepting journalists’ communications or databases, via digital or any other type of monitoring mechanisms that aim to reveal or discover information sources.590

369. Principle 8 of the IACHR Declaration of Principles on Freedom of Expression, approved in 2000, establishes that “every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

H. Freedom of Expression and the Peace Process

370. The “Final Agreement to End the Conflict and Build Stable and Lasting Peace”, between the Colombian government and Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo (FARC – EP) was signed on August 24. The IACHR hailed the signing of the agreement, which was signed on September 26, and stated that peace-building is an essential requirement for respecting and exercising human rights. A plebiscite was held for citizens to either approve or reject the agreement. In the final draft of the agreement signed by the Government and the FARC, just as the Office of the Special Rapporteur had highlighted in its 2014 annual report, one of the issues agreed upon was political participation. Item 2 in the Agreement on the subject of political participation “is built on three pillars:” i) “a new democratic opening that promotes political inclusion”; ii) “greater citizen participation”; and iii) a rupture of the link between politics and

588 Fiscalía General de la Nación. Directiva No. 0007 “Por medio de la cual se establecen pautas para la citación de periodistas a rendir entrevista o testimonio dentro de una investigación y/o proceso penal”. March 27, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.


The Office of the Special Rapporteur for Freedom of Expression

Chapter

Peace Accord With FARC and Is Monitoring Compliance with Inter presidenciales de 2018

“No” (role the 1733 rules was therefore, disclosing have exercise the agreement was negotiated between the National Government and the FARC guerrilla group was reviewed by the Constitutional Court [Corte Constitucional] in Decision C-379/16. The Court studied article 5 of the bill, which establishes the disclosure of the Final Agreement to end the conflict and build stable, lasting peace. The article makes reference to the mechanisms that the State was able to use to ensure that citizens could access the entire contents of the agreement before voting in the plebiscite. The article establishes that the Agreement was to be made available on the websites and social medias of all agencies of the Executive Branch, both at the central and decentralized level; it was also to be published on the Armed Forces website, in the written press, radio and television, and radio and television stations were to set aside daily five minutes during the prime time schedule for this purpose.

372. In its analysis, the Court stated that the right to information is closely linked to the democratic exercise of the people, as citizens can only make free decisions in mechanisms for citizen participation if they have enough information, which must be true and impartial. 595

373. The Court stated that publishing and disclosing the contents of the Final Agreement allows for protecting the freedom of voters, as citizens must possess in-depth knowledge on issues in order to decide whether or not they support the political decision before them for their consideration. The Court clarified that disclosing information about the Final Agreement is not to be confused with promoting the plebiscite; therefore, the forums that are provided for in article 5 of the draft bill are under no circumstances to be used by the government to promote voting in favor of the plebiscite; as they were to be used exclusively as a means to ensure the right to information. According to the Court, any promotion either for or against the plebiscite was to conform to the provisions of Section 4, article 2 of the draft bill, which made reference to the special rules of the referendum for the Final Agreement. 596

374. On August 31, the National Electoral Council [Consejo Nacional Electoral] (CNE) published Resolution 1733 of 2016, which regulated ‘some issues concerning the plebiscite for the endorsement of the final agreement for the ending of the conflict and the construction of a stable and lasting peace.’ 597 Specifically, article 12 establishes that the media must send the CNE a weekly report with the times or forums provided for the coverage of the campaigns. Civil society organizations rejected the provision, arguing that it restricted the media’s editorial independence regarding its content and would place excessive burdens on the media’s role of providing information and opinions about the campaigns for and against the Final Agreement. 598

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592 BBC. October 5, 2016, Colombia: Santos comienza a negociar posibles cambios al acuerdo de paz con las FARC con los partidarios del “No”; O Globo. October 3, 2016, Santos leva ministros para negociar com opositores ao pacto com as FARC.

593 BBC. December 1, 2016, Colombia: el Congreso aprueba el nuevo acuerdo de paz con las FARC y las divisiones se trasladan a las presidenciales de 2018; IACHR. December 1, 2016, Press Release 178/16, IACHR Reaffirms its Support for the Peace Process in Colombia and Is Monitoring Compliance with Inter-American Standards; The New York Times. December 1, 2016, Colombia’s Congress Approves Peace Accord With FARC.


375. On October 1, the CNE published a resolution to "ensure full guarantees during the voting process in the Special Plebiscite [Plebiscito Especial]." Article One of the resolution prohibited the disclosure or pedagogy of the Final Agreement, "as well as all kinds of electoral propaganda for the position of YES or for the position of NO" during the voting day of the plebiscite. Civil society organizations publicly rejected the actions of the CNE, arguing that it censured content and restricted the freedom of the press. According to the information available, the president of the CNE stated later that this limitation applied to Government material and was not intended to cover the journalistic and editorial work of the media.

376. The Office of the Special Rapporteur has stated that the freedom of expression is "one of the individual rights that most clearly reflects the virtue that marks – and characterizes – human beings: the unique and precious capacity to think about the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the model of life that each one has a right to adopt, but the model of society in which we want to live." In addition, the IACHR and the Inter-American court have underlined in their case law that the importance of freedom of expression within the catalogue of human rights also stems from its structural relationship to democracy. The link between freedom of expression and democracy is so "close" and "indissoluble" that, as the IACHR has explained, the very objective of article 13 of the American Convention is to strengthen the functioning of pluralistic and deliberative democratic systems by protecting and promoting the free circulation of information, ideas and expression of all kinds. Article 4 of the Inter-American Democratic Charter characterizes the freedom of expression and the freedom of the press as "essential components of the exercise of democracy." In this regard, the Inter-American Court has reiterated that "Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a conditio sine qua non for the development of political parties, trade unions, scientific and cultural associations and, in general, those who wish to influence the public."  

I. The Internet and Freedom of Expression

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377. The Constitutional Court [Corte Constitucional] issued decision T-050-2016 in which it referred to private citizens’ right to honor and good name on social networks. The case studied by the Court had to do with a private citizen’s post on her Facebook profile, in which she said that an acquaintance was refusing to pay back a sum of money she had loaned her. The post included a photo of the alleged debtor. The woman who was the subject of the post filed a tutela (action for the protection of constitutional rights) against the poster, claiming damage to her human dignity, privacy and good name. In the court of first instance this action was denied, as the judge found that her rights had not been violated and that the Facebook post did not put the petitioner in a state of defenselessness as she claimed. However, at the second instance level, the judge believed that her rights had been violated and that since the respondent had extensive control over the post, this put the petitioner in a state of defenselessness. The Constitutional Court reviewed the file by virtue of the power to review decisions in tutela cases.

378. The Court notes that the same standards that apply to the freedom of expression in the traditional media also apply online. According to the decision, accessing social networks such as Facebook presents a greater risk to fundamental rights, because when personal information is made public on these networks, these rights are vulnerable to a greater extent. The Court finds that the ability of social networks “to communicate, publicize, disseminate, and share information, thanks to powerful tools for the exchange, analysis, and processing of information, and the reach of which users are unaware upon beginning to use them, means that the privacy of the individual is increasingly exposed, and therefore, the fundamental rights related thereto are more vulnerable.” Upon reviewing the specifics of the case, the Constitutional Court [Tribunal Constitucional] found that “publishing information via media with great social impact such as Facebook, which goes beyond the private sphere of the individual, creates a state of defenselessness, as the person who generates it has ample power to decide what to publish/what is published.” Under this assumption, the Court understands that the respondent had significant control over the post, whereas there was no mechanism that allowed the petitioner to restore her rights in a speedy fashion, placing her in a position of defenselessness.

379. The Court found that in the case, there was no conflict between the freedom of expression and the right to honor and a good name, as it was not able to determine that the respondent’s post had a legitimate purpose. On the contrary, it found that the post had a considerable impact on the plaintiff’s rights and that these had to be restored. As reparation, it ordered that the respondent post an apology to the plaintiff on her Facebook profile and that it be visible to the same number of people who viewed the first post.

380. Civil society organizations reported that on March 26, the website icetextearruina.com was deleted following a request by Icetex (a State entity that promotes higher education though student loans). The website was a platform created as a forum for people to report problems with Icetex loan fees and to contact the Student Loan Borrowers’ Association for legal and financial advice. According to the notification received by the site administrator, the request to remove the domain was based on alleged illegal trademark use and its removal was required.

381. On August 8, the ministry of Commerce, Industry and Tourism [ministerio de Comercio, Industria y Turismo] (MinComercio) published the draft bill “Amending Law 23-1982 and adding national copyright and neighboring rights legislation” [Proyecto de Ley “Por la cual se modifica la Ley 23 de 1982 y se adiciona la legislación nacional en materia de derecho de autor y derechos conexos"], often known as “Lleras Law 5” for

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Civil society organizations stated that the new version of the Lleras Law proposed reinforces copyright protection that may limit the expression of opinion and parody.

### J. Communications Surveillance

382. On April 11, the ministry of Information and Communication Technologies [ministerio de las Tecnologías de la Información y las Comunicaciones], Ministry Of National Defense [ministerio de Defensa Nacional], National Directorate of Intelligence [Dirección Nacional de Inteligencia] and the National Planning Department [Departamento Nacional de Planeación] published Conpes Document 3854, which establishes the guidelines for the National Policy on Digital Security and replaces the Conpes Document 3701 from 2011. Fundación Karisma denounced that 2016 Conpes 3854 does not take into consideration governmental practices which constitute a digital insecurity factor and omits a differential analysis on attacks suffered by sensible sectors of society, such as journalists, human rights activists, judges and others.

383. On July 29, President Juan Manuel Santos signed Law 1801 of 2016, known as the New Police Code [Nuevo Código de Policía], which will enter into force in January of 2017. Article 32 defines privacy as a people’s right to satisfy their needs and carry out their activities in an exclusive sphere and therefore private, but excludes property found in the public space, in an open or public private place, or which is used for social, commercial and industrial purposes, as well as in open public places or open to the public. Additionally, article 139 defines the public space as the set of goods aimed at satisfying collective needs. Also, article 237 determines that monitoring systems will consist of (i) information, images and data captured and/or stored by video systems or technological means located in the public space, or in spaces open to the public, which will be considered as public and shall be freely accessible; and (ii) the video systems and technological means that are private or public property, with the exception of those destined for Defense and National Security [Defensa y Seguridad Nacional], which are installed in public spaces, common areas, places open to the public or that being private transcend to the public, will be permanently or temporarily linked to the network that, for this purpose, the National Police provides. Civil society organizations have expressed concern over the limited form in which the right to privacy was defined and the broad manner in which the public space was established, which could lead to an expansive interpretation of police powers to monitor communications that circulate through the electromagnetic space, by means of the surveillance system. In the final observations on the seventh periodic report on Colombia, the United Nations Human Rights Committee expressed concern over the broad definition contained in the new Police Code, which includes the electromagnetic space.

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612 Fundación para la Libertad de Prensa. September 22, 2016. El derecho de autor no debe restringir la parodia y la crítica; Fundación Karisma. August 30, 2016. Después de 3 años, la Ley Lleras prácticamente no cambió; VICE. July 14, 2016. Se viene la nueva Ley Lleras: expertos nos explican por qué debe preocuparnos;


614 Fundación Karisma. June 3, 2016. ¿Qué es el Conpes de seguridad digital y por qué está mal?.


384. The Office of the Special Rapporteur reiterates that surveillance programs must be designed and implemented based on international human rights standards. Specifically, States must guarantee that the interception, collection, and use of personal information, including the limitations on the rights of those involved to access information about this process, must be clearly authorized by law in order to protect people from arbitrary or abusive intrusion in their private interests. The law must seek the fulfillment of a legitimate purpose and establish limits on the nature, scope and length of these kinds of measures, establish the reasons for ordering them, which authorities may authorize, execute and oversee them, and the mechanisms for challenging them. The law must also only authorize access to communications and personal information under the most exceptional circumstances defined in the legislation. When national security is invoked as a reason to monitor correspondence and personal information, the law must clearly establish the criteria that may be used to determine in which cases these kinds of limitations are legitimate. It must only be authorized when protected interests face a risk that is certain, and when potential harm is greater than the general interest of society in terms of maintaining the right to privacy and the free expression of thought and the circulation of information.618

385. The Office of the Special Rapporteur has also observed that the decisions to conduct surveillance operations that invade the privacy of persons must be authorized by independent judicial authorities who must explain the reasons why the measure is ideal for achieving the goal sought in a specific case, whether the measure is restricted enough not to affect the person’s right any more than necessary, and whether it is proportionate to the interest being furthered. Investigations that involve an invasion of privacy that is authorized by law and ordered by a judge having jurisdiction must also uphold other guarantees related to due process. States must guarantee that the judicial authority is specialized and has jurisdiction to make legal decisions regarding the lawfulness of communications surveillance, the technology used and its effect on rights that may be compromised, and that they provide enough guarantees to act appropriately. Finally, the Office of the Special Rapporteur notes that at least the criteria for decisions made by courts must be public.619

K. Diversity and Pluralism

386. After closing its 2015 Annual Report, on December 30th, 2015, the Communications Regulation Commission [Comisión de Regulación de Comunicaciones] (CRC) published Resolution 4841-2015, which established, among other provisions, measures to facilitate the process whereby private, public, regional and local television channels must allow new operators who wish to enter the television market to use their antennae and telecommunications infrastructure.620

387. On May 4th, in a public statement, the Minister of Information and Communication Technologies [Ministro de las Tecnologías de la Información y las Comunicaciones] (Mintic) and the National Television Authority [Autoridad Nacional de Televisión] (ANTV) announced the agenda for conducting the bidding process for the concession of television programs on Canal Uno and a new private television channel, known as Third Channel [Tercer Canal].621

388. In accordance with the 2014-2018 National Development Plan passed by Congress in 2015 and found constitutional by the Constitutional Court, the ANTV has the authority to license Canal Uno television

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programs to a single licensee. Therefore, on September 14, the ANTV published the bid documents from the process of licensing Canal Uno television programs. At the same day was opened the bidding process until October 27, and the date for the hearing for the awarding of the license was set for November 22. Current licensee Jorge Barón Televisión, who was registered as a bidder in the Canal Uno bidding process, requested that the hearing be suspended, as he believed that he had the right to a 10-year extension of his concession. On November 4, Jorge Barón announced that he was withdrawing from the bidding process as he did not have sufficient resources pay the minimum fee established in the documents.

389. The Third Channel bidding process is in its initial stage. The Cundinamarca Administrative Court found that it has been met the conditions established by the Council of State to continue with the bidding process, that suspended the whole process considering that there would be only one bidder. The ANTV had started the tender process of the Third Channel, which as was informed, would take place in December. As of the closing of this report, there is no information on the progress in this process.

390. The Foundation for Press Freedom (FLIP) reported that community radio stations in Chocó were having difficulty obtaining licenses to broadcast legally. According to available information, on August 8, officials from the National Spectrum Agency [Agencia Nacional del Espectro] (ANE) conducted an operating license check and at least five stations were forced to switch off their frequencies in order to avoid sanctions such as fines and the seizure of their equipment.

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

I. Freedom of Expression and Discrimination

392. On September 14, the Constitutional Court [Corte Constitucional] published the Decision T-500/16, in which it ruled on the tutela action filed by the Organización Nacional Indígena de Colombia (ONIC) against the director of the program ‘Séptimo Día’, the director of Canal Caracol and the National Television Agency [Agencia Nacional de Televisión] (ANTV), in which it requested the protection of the right to a good name, honor, autonomy, to obtain true and impartial information of the indigenous peoples associated in said organization, to non-discrimination. In addition, it requested that information broadcast on the three programs that made up the series ‘Desarmonización, la Flecha del Conflicto’ be corrected. The Court

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highlighted that expressing and broadcasting messages with content that incites hate and violence against people or certain social groups is not protected under the right of freedom of expression. However, the Court noted that it is not enough for the message to contain a negative opinion about a certain person or group, as it must be proven that the content incites violence or hate and that specific circumstances would allow one to foresee that the message would incites violence or hate. Regarding the specific case, the Court found that although some statements made on the program may have been offensive or reaffirmed social prejudices against indigenous people, value judgments against cultural practices do not in and of themselves constitute content that incites hate.629

393. However, the Court noted that the program contained generalized statements about the cultural beliefs of indigenous peoples. Thus, the Court found that “the program ‘Séptimo Día’ made deliberately arbitrary and irresponsible use of the category “indigenous” to make allegations against an entire social group. Furthermore, it did so on the basis of criteria that is suspect, i.e., ethnic or “racial” origin, [...] subject to especially rigorous constitutional scrutiny.” The Court stated that the media must distinguish fact from opinion and avoid presenting the facts in such a way that might mislead its audience. In the case that was studied, the Court found that ‘Séptimo Día’ did not distinguish fact from the channel’s own opinion, and that it presented facts inaccurately and made generalizations about indigenous people based on specific cases, in such a way that misled viewers and adversely affected the good name and honor of indigenous people and their authorities. The Court thus found that ‘Séptimo Día’ violated its duty to be impartial and violated the right of equality and dignity of persons and indigenous groups.630

394. Regarding the duty to provide truthful information, the Constitutional Court found that this duty has limited scope so as to avoid any kind of censure and allow the media to provide information in a timely fashion; therefore, journalists are under no obligation to include the causes or context of a reported event. However, although the decision to cover the causes and context of an event is an editorial one, the Court stated that it is directly related to the quality of journalistic information. From the perspective of professional ethics, the Court acknowledged that is is possible to require higher standards from investigative journalists when it comes to providing the causes of and context for an event.631

395. Based on the foregoing, the Constitutional Court ordered that ‘Séptimo Día’ and Canal Caracol correct the information that it deemed inaccurate. It also required that ‘Séptimo Día’ devote an entire episode during its usual schedule to allow the ONIC to defend itself regarding the accusations made against indigenous people and authorities. The Court also ordered Caracol channel and ‘Séptimo Día’ to adopt a written, public manual of ethics that would set forth the minimum rules for covering subjects related to ethnic groups, sexual minorities, and other vulnerable social groups. The Court ruled that it is not incumbent upon judges to set standards for strictly professional or ethical skills or duties that must be followed in different areas of journalism.632

396. The Office of the Special Rapporteur reiterates that “freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is shocking, unsettling, unpleasant or disturbing to the State or to any segment of the population. This is necessary to protect and foster the pluralism, tolerance

and spirit of openness without which a democratic society cannot exist.”  

397. However, the right to freedom of expression is not absolute and is subject to limitations. In accordance with article 13.5 of the American Conventions, States must enact laws that penalize incitements to “national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin.” In this context, the U.N. Special Rapporteur on minority issues, Rita Izsák, stated that “In order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, hateful or offensive speech.”  

As expressed by this Office of the Special Rapporteur, “speech that offends because of the intrinsic falseness of its racist and discriminatory content must be refuted, not silenced: those who promote these points of view need to be persuaded of their error in public debate. Given the unfairness of these opinions, there is no better response than the justice of arguments, and that requires more and better debate, not less.”  

M. Other Relevant Situations

398. According to information received by the Office of the Special Rapporteur, access to information for women seeking access to voluntary termination of pregnancy continues to be a challenge in Colombia. In this regard, the State informed the IACHR that the Ministry of Health and Social Protection [Ministerio de Salud y Protección Social] has managed a set of processes aimed at reducing unsafe abortion, which would include, among others, the provision of complete, truthful and timely information to women about voluntary interruption of pregnancy.

399. On February 17, it was known that journalist Vicky Dávila resigned. Dávila was director at La FM of the network RCN Radio. Her resignation took place after the events of February 16, when she and her crew were conducting an investigation about corruption and an alleged prostitution ring within the National Police. A video that allegedly proved the existence of the ring, in which the vice minister of the Interior [vice ministro del Interior] could be seen having a private conversation with a police officer, was published on La FM’s website. The video created controversy related to ethics in journalism in the country and led to the resignation of the Vice Minister and then-General of the National Police [General de la Policía Nacional].

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December, 2015, the journalist and her team had reported being followed and that their communications had been intercepted, allegedly in relation to the investigation into the National Police.\footnote{IACHR, \textit{Annual Report 2015, Annual Report of the Office of the Special Rapporteur for Freedom of Expression}, Chapter IV (Hate Speech and Incitement to Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). OEA/Ser.L/V/II. Doc. 48. December 31, 2015. Para. 402.}

400. On February 20, Dávila stated during an interview that she had resigned because the President of the Republic had pressured executives at her radio station. In her complaint, Dávila stated that on February 10, after she reported on contracts in the Office of the President that were worth millions, including a contract worth over 15 million for 400 boxes of almonds that were to be gifts for diplomatic delegations, a high executive for the radio station at which she worked gave her a box of the almonds and told her they had been sent to her from the Office of the President.\footnote{Semana. February 20, 2016. \textit{Almendras amargas: habla Vicky Dávila}; El Colombiano. February 21, 2016. \textit{“Volvería a publicar el video pero de otra manera”: Vicky Dávila}; El Universal. February 21, 2016. \textit{Vicky Dávila cree que el presidente Santos pidió su cabeza.}} President Santos responded to the journalist’s accusations via Twitter, saying that he was not asking for the “heads of journalists.” Additionally, during a forum a few days earlier, he had stated that journalists needed to exercise some restraint and refrain from publishing things like the video Dávila had published. He added that he spoke not as President but as a journalist, alluding to his profession.\footnote{W Radio. February 22, 2016. \textit{Yo no llamo a los directores de medio para pedir cabezas: Santos sobre Vicky Dávila}; La Silla Vacía. February 18, 2016. \textit{Las lecciones de periodismo de Santos}; El País. February 17, 2016. Santos rechazó video sobre viceministro Carlos Ferro; El Tiempo. February 17, 2016. \textit{Eso no es buen periodismo}; Santos sobre video de Ferro; El Espectador. February 17, 2016. \textit{Fuerte crítica de Santos a medios que publicaron video de Ferro}; Blue Radio. February 17, 2016. \textit{Eso no es buen periodismo}; Santos sobre divulgación de video de Carlos Ferro; El Espectador. February 21, 2016. \textit{Yo no pido cabezas de periodistas}; Santos: “Yo no pido cabezas de periodistas. Soy quien más valora la crítica, cuando es seria y fundamentada.” Twitter account of Juan Manuel Santos @JuanManSantos. February 21, 2016.}
10. COSTA RICA

A. Attacks, Threats and Harassment Against Journalists and Media Outlets

401. On May 10, the magistrate of the Criminal Cassation Chamber of the Supreme Court of Justice [Sala de Casación Penal de la Corte Suprema de Justicia], Celso Gamboa Sánchez, published the following message on his personal Twitter account: “imprudence and bad decisions can lead to extinction of Los Paquidermos.” The text was accompanied by a photograph of an elephant. The publication of the message was interpreted by directors of the Revista Paquidermo as an attempt at harassment that stemmed from different publications by this media outlet, criticizing the designation and actions of the official. On its Facebook page, on May 11, the magazine published the following statement: “Never before have we been harassed by a senior official. This is our first time.” The Magistrate subsequently declared to the Semanario Universidad that his tweet had nothing to do with the Revista Paquidermo.644

402. On October 24, Dinier Estrada Jimenez, alias “Ojos Bellos”, the alleged leader of a group associated with drug trafficking, threatened journalist Álvaro Sánchez of Telenoticias. Sánchez was covering the arrest of Estrada when the latter shouted intimidating affirmations against him. According to publicly known information, the Office for Attention and Protection for Victims and Witnesses of the Attorney General’s Office [Oficina de Atención y Protección a la Victima y Testigos de la Fiscalía] adopted security measures to protect journalist Sánchez645, who had already been the victim of physical aggressions in 2015.646 In that event, on October 2, the Judicial Police arrested three men and women, who allegedly had caused the injuries to Sánchez.647

403. In the context of demonstrations by organizations of taxi drivers that are described in greater detail in another section of this report, on October 9, the journalistic team from Diario Extra was verbally abused by a demonstrator. Journalist Jarmon Noguera and photographer Herbert Arley were covering the protests when a demonstrator insulted them. When the journalistic team called the police to request protection, the demonstrator left the site.648

404. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR, establishes that “[t]he murder, kidnapping, harassment or threats against journalists, as well as the destruction of material of the media outlets, violates people's fundamental rights and severely undermines freedom of expression. It is the duty of the States to prevent and investigate these matters, punish their perpetrators and ensure adequate reparation for the victims.”

B. Access to Public Information

405. On May 6th, the Constitutional Chamber of the Supreme Court of Justice [Sala Constitucional de la Corte Suprema de Justicia], it was decided that the security measures imposed by the Bank of Costa Rica [Banco de Costa Rica] (BCR) on digital documents provided to the weekly periodical El Financiero were constitutional. BCR sent an Excel document with more than 500 thousand entries, with a key that did not allow processing of the information, limiting the generation of copies to work on the file. The Court issued


resolution as a result of an action for amparo filed on April 21 by two journalists from El Financiero, who argued that the security measure applied on the document placed a disproportionate burden on the journalistic team that was equivalent to not having supplied the information. On August 3, 2015, the journalistic team from the periodical El Financiero requested information from the BCR about the salaries of its officials without their names, in order to carry out an investigation into public-sector retributions. In response to the request, on August 27, 2015, the BCR had provided the information in a digital document that had a password to prevent its modification, forcing the media outlet to invest a great deal of time and resources to process the data by hand. The Court considered that the protection of the files was reasonable, to the extent that the BCR should prevent information from being manipulated in a way that would generate errors that could be attributed to the original source of the information. The Court also stressed that the right to access the information does not establish that the data must be presented in a specific format. Civil society organizations and journalists rejected this decision, arguing that revealing information of public interest in a format that makes it difficult to consult delays journalistic work and therefore endangers exercise of the right to freedom of expression.649 El 17 de agosto el BCR comunicó al medio que estaba dispuesto a proveerles la clave necesaria para poder procesar los datos, y que se trataba de una decisión “voluntaria y soberana”.650

406. The Minister of Foreign Relations Manuel González Sanz refused to reveal 12 memoranda drafted by the Costa Rican Embassy in Brazil about the Brazilian political crisis, which had served as the justification for President Luis Guillermo Solís to make the decision to abandon the United Nations General Assembly during the speech by the President of Brazil, Michel Temer. Deputy Rolando Gonzales Ulloa of the Liberación Nacional party had requested access to those documents after Minister of Foreign Relations González Sanz had refused to reveal to the Congress the reasons for the behavior by President Solís, arguing that the aim was to protect the integrity of the relations between Costa Rica and Brazil. After Deputy Gonzales Ulloa had insisted on his request for information, the ministry of Foreign Relations sent him seven memoranda of the total of 19 that referred to the matter in question. However, on October 3, by virtue of Decree 39944, the National Government declared the 12 memoranda to be State secrets, arguing that they contained information associated with national defense and foreign relations and determined that confidentiality will be maintained until the memoranda do not compromise the country’s foreign relations. As a result, on October 4, Deputy Gonzales filed an action for amparo with the Constitutional Chamber of the Supreme Court of Justice [Corte Suprema de Justicia], requesting access to the above-mentioned 12 memoranda. On November 4, the Constitutional Chamber [Sala Constitucional] denied the action for amparo and approved the decision by the government to decree state secrecy regarding the memoranda, insofar as it involves a matter associated with the international relations and foreign policy of Costa Rica.651

407. Principle 4 of the Declaration of Principles of the IACHR affirms that “[t]he access to information in the power of the State is a fundamental right of individuals. The States have the obligation to guarantee the exercise of this right. This principle only permits exceptional limitations that must be previously established by law in cases in which there is a real and imminent danger that threatens national security in democratic societies.”


C. Government Advertising

408. On July 11, the daily newspaper *La Nación* denounced in an editorial that they were the victim of a strategy allegedly designed by directors of the Costa Rica National Bank [*Banco Nacional de Costa de Rica*] (BNCR) which would involve reducing to zero the advertising space that the institution contracted with the media outlet, for the purpose of silencing its critical voice, after the newspaper in its February 24 edition included a report titled “*Directivos del Banco Nacional intentan acaparar juntas de subsidiarias***”. According to the daily newspaper, *"La Nación* and other media have been frequent victims of this abuse, but rarely have we denounced it. The reason is simple: there is the risk of being criticized for defending economic interests with the excuse of advocating on behalf of a principle. Silence, however, has been an error.” In that same edition of July 11, *La Nación* published an extensive report with details about the story behind the alleged attempt to apply pressure. The general manager of the Banco, Juan Carlos Corrales, had admitted adoption of the measure, based on “recommendations from his personnel.” This practice was criticized by the President of the Republic and has been rejected by the Inter-American press Association (IAPA). According to the report by the 72nd General Assembly of the IAPA, the “use of official advertising to reward and punish editorial and informative lines of the media is a practice that continues.”

409. President Solís, in a public speech, called for an investigation into the use of official advertising to affect the adequate functioning of the media and emphasized that the government does not approve of measures to coerce the media about how it refers to the State. The Legislative Branch announced the opening of an investigation, while the minister of Communications revealed that he will soon send an initiative to the Congress to establish technical criteria for the publication of advertising by public entities, an initiative about which the State in March of 2015 had requested technical advice from the Office of the Special Rapporteur. According to the known information, a similar complaint was made on November 18, 2015, by the daily newspaper *Extra*, a media outlet in relation to which BNCR had canceled its advertising after it had published a report on alleged complaints by employees of the institution.

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655 Corte Suprema de Justicia. Sala Constitucional. Press Release. *Comunicado de Prensa. La Sala Constitucional declara con lugar amparo del diario La Nación contra el Banco Nacional de Costa Rica por censura indirecta*. Available at: https://www.poder
the Court’s opinion, and that “Costa Rica deserves a system in which public opinion is not censored, harmed, or pressured in any way.” 656

410. On October 12, the Inter-American Press Association (IAPA) published its report on the 72nd General Assembly, in which it reported on cases in which the right of access to information had been limited, official advertising had been used as a tool to reward and punish editorial lines of media outlets, and the informed about embargo of the broadcasting equipment of Columbia Estéreo radio as punishment for copyright infraction.657

411. Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights indicates that “[t]he use of the power of the State and public finances; the granting of tariff perks; the arbitrary and discriminatory allocation of official advertising and official credits; the granting of radio and television frequencies, among others, for the purpose of pressuring and punishing or rewarding and favoring journalists and the media in accordance with their informative lines, infringes upon freedom of expression and must be expressly prohibited by law.”

D. Other Relevant Situations

412. A group of 28 legislators, members of the five parliamentary groups, sent a letter to the President of the Republic requesting the withdrawal of certain radio and television concessions because they allegedly were being underutilized or not utilized. According to the known information, the legislators had based their proposal on an opinion by the Comptroller General’s Office of the Republic [Contraloría General de la República], issued in 2013, according to which the State must recover radio spectrum frequencies that were not being optimally used. The same issue was mentioned in the reports of the Telecommunications Superintendence [Superintendencia de Telecomunicaciones] (Sutel) dated 2014. The proposal was supported by the Red de Medios e Iniciativas de Comunicación Alternativa (RedMica).658

413. On March 27, 2015 the State formally requested technical assistance from the Office of the Special Rapporteur in the process to draft three legislative proposals associated with exercise of the rights of freedom of expression and access to information. According to the Action Plan regarding the 2015-2017 Alliance for an Open Government [Plan de Acción ante la Alianza por un Gobierno Abierto 2015-2017], issued by the government of the Republic in October of 2015, the legislative proposal for the Law on Access to Public Information [Ley de Acceso a la Información Pública] that the government committed itself to draft and promote should have been concluded in December of 2015 and would have been sent to the Legislative Branch in January.659 However, Red de Transparencia y Acceso a la Información reported on July 6 that the legislative proposal for the Law on Access to Public Information [Proyecto de Ley de Acceso a la Información] was in the final phases of construction.” In this regard, the Inter-American Press Association has warned of the initiative that would create “currently nonexistent procedures, regulations and exceptions,” in addition to eventually signify that, from now on, appeals against official refusals to provide information would be processed by the Constitutional Chamber of the Supreme Court of Justice, as is currently the case, which would make it difficult to obtain a judicial mandate to gain access to the requested information. According to


656 La Nación. October 19, 2016. Luis Guillermo Solís se suma a condena contra el BN por censura a periódico (Video).


the known information, from May of 2014 to May of 2016, the Constitutional Chamber handed down more
than one hundred judgments against refusals by public entities to provide information.660

414. Organizations of taxi drivers throughout the country have periodically held demonstrations to
demand that the government of the Republic block the service operation of the Uber company in Costa Rica,
which began operations on August 21, 2015. The demonstrations have had violent episodes, such as
aggressions by taxi drivers against other members of their own trade association, against whom they threw
eggs for not having joined a protest on February 1; the intrusion on March 17 in a job fair to demand
withdrawal of the Uber stand and a confrontation between police officers and taxi drivers. Moreover,
according to the known information a demonstration on March 9 led to the arrest of 78 taxi drivers, at least
three injured police officers, damages to police vehicles and the confiscation of some 20 taxis. The taxi drivers
have requested that the Tribunal for the Judicial Review of Administrative Action [Tribunal Contencioso
Administrativo] issue a ruling ordering the blocking of the Uber application on the Internet.661

415. In September, journalists Sergio Castro and Carolina Medina of the Radio Nacional de Costa Rica, a
media outlet that is part of the National System of Cultural Radio and Television [Sistema Nacional de Radio y
Televisión Cultural] (Sinart), filed an action for amparo with the Constitutional Chamber of the Supreme Court
of Justice against the Sinart and the National Institute of Women [Instituto Nacional de la Mujer] due to
alleged censorship. On September 13, Castro and Medina interviewed members of the Fundación Instituto de
Apoyo al Hombre in the program “Café Nacional” about domestic violence against men. The next day, the
director of Radio Nacional, Randall Vega, published a letter in which he apologized for the comments made on
the program, because during the discussion, the closing of the National Institute of Women had been
proposed and feminicide had been justified. Additionally, he affirmed that if he had been consulted about the
way in which this topic was to be addressed, he would never have permitted the interview to go on the air.
Finally, he affirmed that this type of programs would not continue to be undertaken, because future editions
would have participation by experts on gender violence to explain why everything that was said in the
previous program had a mistaken approach. Also, the Sinart issued a press release in which it apologized for
the broadcasting of the program and the way in which the topic of domestic violence was addressed.662

416. On August 18, the Grupo Columbia denounced an allegedly illegal attempted embargo of the
broadcasting equipment of the radio station Columbia Estéreo, due to a debt involving royalties for
exploitation of the copyrights of musical works owed to the Costa Rican Association of the Phonographic and
Similar Industries [Asociación Costarricense de la Industria Fonográfica y Afines] (Fonotica). The attorney for
the Grupo Columbia, Agnes Fajardo, affirmed in a public declaration that the amount charged is
disproportionate, because it would lead to the closing of the radio station. Additionally, Fajardo declared that
the attempted embargo is illegal because no expert inspection had been made to determine the amount of
money that the company owes.663

y Acceso a la Información (RTA). July 6, 2016. Agenda de Gobierno Abierto camina a paso firme en Costa Rica: Instituto de Prensa y
centenar de condenas de la Sala IV por negar acceso a información pública.

detiene a unos 78 taxistas en protesta contra Uber; El Comercio/AFP. August 9, 2016. Costa Rica: bloquean vías contra protesta por
construcción de Uber [VIDEO]; La Jornada/AFP. February 1, 2016. Taxistas exigen bloquear a Uber en Costa Rica; La Nación. February 1, 2016. Taxistas le tiran
huesos a colegas que no se sumaron a protesta contra Uber; CR Hoy. March 17, 2016. Taxistas irrumpen en feria de empleo y protestan
frente a stand de Uber; La Prensa Libre. August 10, 2016. “Frenan a taxistas”: Así informó prensa internacional sobre protesta de “fuerza
Uber.

662 El Mundo. September 28, 2016. Periodistas de Radio Nacional elevan a Sala IV censura a entrevista sobre violencia contra hombres;
El Mundo. September 15, 2016. Director de Radio Nacional pide disculpas por programa donde se pidió cierre del INAMU; Diario Extra.
September 27, 2016. Periodistas acusan al Sinart ante la Sala IV.

Grupo Columbia denuncia intento de embargo y cierre al margen de la Ley; CR Hoy. August 18, 2016. Emisora de Grupo Columbia saldría del
aire por embargo.
11. CUBA

A. Right to Freedom of Expression

417. During 2016, the IACHR and its Office of the Special Rapporteur for Freedom of Expression continued to receive concerning information about illegitimate restrictions on the independent press in Cuba and State actions designed to inhibit or punish—through the criminal justice system—criticism of government policy. Of particular concern is the increase in arbitrary detentions, threats, and acts of harassment or censorship against journalists and activists who disseminate ideas, opinions, and information critical of the government party. All of this has taken place under a legal framework that does not protect the practice of independent journalism.

418. According to the information available, Internet use and the development of digital media have begun to open new spaces for the circulation of information and ideas outside official government control. Nevertheless, access to digital media is hindered by the limited connectivity of the Cuban population and the blocking of critical news media. In this context, the IACHR and its Office of the Special Rapporteur recall how important it is for the initiatives to ensure Internet connectivity in Cuba, announced following the reestablishment of diplomatic relations with the United in December 2014, to guarantee unrestricted respect for human rights, especially the right to freedom of expression.

419. In addition, the Office of the Special Rapporteur received information that in February the Cuban government had reportedly allowed seven former political prisoners of the group of 75 detained dissidents to leave the country in March 2003 during the so-called “Primavera Negra.” They were reportedly granted exceptional, one-time authorization to leave the country. The seven leaders were part of a group of eleven who remained in Cuba under a parole. This parole is reportedly a legal concept that would maintain the validity of their convictions—of up to 25 years—that were imposed during the “Black Spring” of 2003. This clause, supported by Decree Law 62 of 1987, stipulates that the sentence may be served under house arrest, but does not provide for the suspension of the criminal penalty and leaves open the option that the beneficiary could return to prison if the authorities determine that he or she has failed to comply with the rules of “good conduct.”

B. Attacks, Threats, Harassment and Arrests of Journalists, Demonstrators, and Media Outlets

420. Non-governmental organizations condemned the increase in harassment, threats, acts of intimidation, detentions, and the house arrest of journalists, activists, human rights defenders, and opponents of the government because of their expressions and positions critical of the government. They further alleged the selective and deliberate persecution of independent media and organizations responsible for gathering and disseminating citizens’ opinions with respect to matters of national interest. Restrictions on the right to demonstrate, the excessive use of force in this context, and impunity in those cases were also reported.  

421. According to the information received by the IACHR and its Office of the Special Rapporteur, during 2016 the situation of civil and political rights in Cuba continues to be of concern. The State security agents

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664 This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2016 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.


666 Martí Noticias. April 25, 2016. Son 93 los presos políticos en Cuba, según comisión de DDHH.


669 Radio HRN. April 26, 2016. La disidencia cubana presenta una lista con los nombres de 93 presos políticos; Diario de Cuba. April 25, 2016. La CCDHRN calcula que el número de presos políticos en Cuba ha aumentado hasta los 93.
have reportedly maintained a policy of harassment against journalists, activists involved in the area of culture, human rights defenders, and political dissidents. Cuban State agents reportedly took different measures to prevent such persons from freely carrying out those activities—measures such as arbitrary detentions (generally of short duration), internal deportations, summonses to police centers, searches of activists’ homes, and the seizure of work equipment. Most of these incidents are reportedly not preceded by judicial involvement, and the criminal offenses most frequently invoked to put opponents of the Cuban government in jail are reportedly desacato [“criminal defamation”], “pre-criminal social danger,” resisting arrest, disobedience, and attacks.

422. The Office of the Special Rapporteur for Freedom of Expression has documented multiple cases of journalists and activists being detained in 2016. In these cases, the detainees belonged to the following publications and/or organizations, among others: Damas de Blanco; CubaNet; Comisión de Atención a Presos Políticos y Familiares (CAPPF); the Hablemos Press agency; Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP); Unión Patriótica de Cuba (Unpaci); platform #Otro18; Foro por los Derechos y Libertades (Foro Dyl); the independent bulletin Voz Santiaguera; Periodismo del Barrio collective and the platform #TodosMarchamos. In addition to the short-term arrests, other journalists were reportedly being held under house arrest, including, for instance, CubaNet members Augusto César San Martín, Manuel Días Mons, Osniel Carmona, and Elio Delgado.

423. In the context of the official visit of U.S. President Barack Obama in the month of March, there was a documented increase in the harassment, threats, acts of intimidation, detentions, and house arrest of journalists, activists, rights defenders, and opponents of the government. According to reports, some 498 arbitrary detentions and other intimidating actions were reported.

424. According to Asociación Pro Libertad de Prensa, since March 16 the organization has documented various attacks by the political police, who are reportedly always in plainclothes, against independent journalists. On March 19, Roberto de Jesús Guerra, director of the independent agency Hablemos Press, was reportedly detained on a public street and taken to the Fourth Unit of the National Revolutionary Police [Cuarta Unidad de la Policía Nacional Revolucionaria] (PNR) in Havana, together with Dutch journalist Erick Mauta and his cameraman. On March 20, independent blogger and activist Lázaro Yuri Valle Roca was reportedly arrested and detained for five days after attempting to cover a protest of the Damas de Blanco. In addition, Carlos Chávez Ramos, Oscar Alejandro Rodríguez and Blanca Margarita Veiga Sánchez, of the

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672 Diario de Cuba. March 21, 2016. La Asociación Pro Libertad de Prensa denuncia detenciones y amenazas a periodistas


676 Diario de Cuba. March 21, 2016. La Asociación Pro Libertad de Prensa denuncia detenciones y amenazas a periodistas; CubaNet. March 21, 2016. Asociación Pro Libertad de Prensa denuncia represión a periodistas.

677 Comité para la Protección de los Periodistas (CPJ). March 25, 2016. Encarcelan durante cinco días a bloqueador cubano que intenta cubrir una protesta; Martí Noticias. March 24, 2016. Liberan a Yuri Valle Roca tras ser acusado de “atentado”;
Independent Journalists’ Union of the Island of La Juventud [Sindicato de Comunicadores Independientes de Isla de la Juventud], were reportedly summoned to appear before Police on March 17.678

425. According to the Cuban Commission on Human Rights and National Reconciliation [Comisión Cubana de Derechos Humanos y Reconciliación Nacional] (Ccdhrn), some 6,075 politically-motivated arrests were reported in the first five months of the year. In just the first three months of the year, 3 thousand 971 arrests were reported, involving varying degrees of violence.679 On March 21, the Ccdhrn reported that 77 individuals were detained for political reasons, one under house arrest, and 11 were on parole.680

426. With respect to the issue of political detainees, when asked by a journalist during a joint press conference with Barack Obama on March 21, Raúl Castro replied: “You asked whether there are political prisoners? Give me the list of the political prisoners right now, in order to release them. Give me the names, or when the meeting is over give me a list of the prisoners. If these political prisoners exist, they will be released before night falls.”681 In April, the Cuban Commission on Human Rights and National Reconciliation [Comisión Cubana de Derechos Humanos y Reconciliación Nacional] (Ccdhrn) reported that there were 93 alleged political detainees in the country.682 Of these 93 detainees, 51 were said to be peaceful opponents convicted or prosecuted for their dissident attitudes or activities.683 At the end of 2016, that organization recorded at least 9.940 arbitrary detentions of opponents of the Cuban government, allegedly for political reasons.684

427. On January 3, activists from Comisión de Atención a Presos Políticos y Familiares (CAPPF) were reportedly detained by State security agents. The chairman and provincial delegate of that organization were reportedly taken away by plainclothes agents. Activist Yenisei Boza Garridos was also reportedly detained. They were reportedly released after a few hours. According to the chairman of CAPPF, his organization is the victim of harassment and repression by the Department of State Security [Seguridad del Estado] every Sunday.685

428. On January 9, the political police reportedly raided the home of former political prisoner and activist in the #TodosMarchamos campaign, Egberto Escobedo, in Lawton. The campaign sought the release of alleged political prisoners.686 According to reports, Police and State security agents detained his wife María Cristina Labrada, a member of Damas de Blanco and a member of the coordinating committee of the Forum for Rights


682 Diario de Cuba. April 25, 2016. La CCDHRN calcula que el número de presos políticos en Cuba ha aumentado hasta los 93; Martí Noticias. April 25, 2016. Son 93 los presos políticos en Cuba, según comisión de DDHH.

683 Diario de Cuba. April 25, 2016. La CCDHRN calcula que el número de presos políticos en Cuba ha aumentado hasta los 93.


and Freedoms (ForoDyL). Labrada was reportedly detained for more than 24 hours and, according to the activist, the agents threatened to send her to jail if she did not cease her activity in the #MarchamosMarchamos campaign. In addition, on January 10, around 200 activists from Unión Patriótica de Cuba (Unpacu) were reportedly detained while taking part in actions for the #TodosMarchamos campaign.

429. On February 19, Elio Delgado Valdés, a photojournalist from CubaNet, was reportedly approached in the doorway of his house by a Police officer. According to reports, the officer asked him to go with him to the 2nd Police Station, located in the municipality of Central Havana. The photojournalist was reportedly interrogated about his work at Havana Times, Hablemos Press, and CubaNet. Valdés had been working as a photographer for three decades on contracts for the government press service and the foreign press accredited in the country.

430. During 2016, the organization Damas de Blanco continued to be subjected to different kinds of harassment, arrests, and attacks. According to the organization, hundreds of women were arbitrarily detained each month by police officials. Their main office was also reportedly pelted with rocks by brigades organized by the police. The movement—which consists of the wives, mothers, and children of men and women incarcerated for reasons they consider unjust. It was created in 2003, following a “massive wave of arrests against peaceful dissidence” and demands the release of political prisoners. On March 9, the leader of the movement Damas de Blanco, Berta Soler, condemned the reported increase in repression against dissidents in the days leading up to the visit of President Barack Obama. According to Soler, on March 8, 17 women from the movement and other activists involved in the #TodosMarchamos platform were violently detained in Havana when they attempted to attend the trial of Jaqueline Heredia, a member of Damas de Blanco, who had been arrested on March 2 and accused of criminal defamation.

431. Damas de Blanco reported serious attacks against members Rosa Escalona Gómez and Aliuska Gómez Garcia in 2016. According to reports, Escalona Gómez was beaten on March 19 and still had a fractured. On March 29, Gómez García was reportedly beaten and required stitches in her ear as consequence. On May 23, Berta Soler reported that the police opened a file on her, accusing her of “resistance,” and ordered her to remain reachable and not to leave the country. According to Soler, the day before she and another 27 human rights activists were detained. Similarly, on May 29, members of the PRN and the Department of State Security detained 13 members of the movement and 4 activists at the movement’s national headquarters in Havana.

432. “Lady in White” Leticia Ramor Herrera was barred from traveling to a UN human rights event in

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687 Diario de Cuba. January 9, 2016. La policía política allana el domicilio del exprisionero político Egberto Escobedo, según la oposición
688 Diario de Cuba. January 13, 2016. El régimen amenaza con la cárcel a una Dama de Blanco si continúa su activismo en #TodosMarchamos.
691 CubaNet. July 18, 2016. Atacan a pedradas sede de las Damas de Blanco y hieren a activista; Cuba en Miami. July 18, 2016. La Policía cubana ataca a pedradas a activistas de las Damas de Blanco.
692 Damas de Blanco. April 1, 2003. ¿Quiénes son las Damas de Blanco?
693 EFE. March 9, 2016. La líder de las Damas de Blanco denuncia un aumento de la represión antes de la visita de Obama.
694 EFE. March 9, 2016. La líder de las Damas de Blanco denuncia un aumento de la represión antes de la visita de Obama.
697 Damas de Blanco. May 24, 2016. El régimen prohíbe a Berta Soler salir del país y le anuncia un juicio bajo la acusación de ‘resistencia’.
698 Damas de Blanco. May 30, 2016. Policía política detiene a 13 Damas de Blanco y 4 activistas, entre estos la líder Berta Soler y el exprisionero político Ángel Moya.
Panama on July 2, allegedly due to an investigation into disorderly conduct and incitement of crime, which had been opened following a peaceful protest she organized together with other activists.\textsuperscript{699}

432. Additionally, according to what was informed, 2,543 arrests against Damas de Blanco were reported in 2015 and for the first trimester of 2016, 2,783 arbitrary detentions were reported.\textsuperscript{700}

433. According to information that is public knowledge, State security agents have allegedly been threatening journalists from the Hablemos Press agency with deportation to their places of origin and with the destruction of their equipment.\textsuperscript{701} According to Magaly Norvis Otero, director of the Center, the members of that organization have been subject to repression in different ways. She asserted that, from January 2016 to early April, 22 reporters from Hablemos Press were detained without "even the minimum due process guarantees."\textsuperscript{702} Likewise, 16 of 46 reporters that Hablemos Press had as plant workers would have stopped working due to reprisals.\textsuperscript{703} In addition, on January 20, reporter Nidia Dallet Urgelles was apparently deported to the Province of Guantánamo by police authorities. Dallet Urgelles had been detained on January 17, after taking part in a march together with the Damas de Blanco and report on the activities.\textsuperscript{704} On March 16, two journalists were reportedly detained while working on a report in the vicinity of Ernest Hemingway's house.\textsuperscript{705} Carlos Chiong Ramos, Óscar Ramos Madán and Raúl Ramírez Puig, also journalists from Hablemos Press, were reportedly summoned to the Department of State Security.\textsuperscript{706} On June 17, Ramírez Puig was reportedly detained in Mayabeque by the National Police and the Department of State Security to be interrogated about the work they were doing for that media outlet. According to information in the public domain, the journalist was called in for questioning three times in the month of June.\textsuperscript{707}

434. On March 27, independent journalist and coordinator of the group Candidatos por el Cambio (CxC), Julio Aleaga Pesant, was reportedly detained by the Department of State Security [Seguridad del Estado] in the Province of Ciego de Ávila upon his arrival to teach a seminar on community journalism and present the purposes and objectives of CxC to the Partido 30 de Noviembre. He was reportedly taken to the police station along with Roberto Valdívía, president of the Partido 30 de Noviembre. According to Pesant, they were searched “from head to toe,” and their computer, a flash drive, journalism teaching materials, and a credential identifying him as a journalist were confiscated. He also stated that since he began to engage in civic work offering to make presentations to interested parties in order to develop community journalism in the provinces, and had allegedly been subject to pressure from the political police. Pesant was deported to his province of origin, Havana, after spending six hours in detention, and Valdívía was released the following day.\textsuperscript{708} Members of the Unión Patriótica de Cuba (Unpacu) reported that on March 19 they were surrounded in Parque Central de La Habana by supposed political police officers who had threatened to detain them if they held any sort of demonstration.\textsuperscript{709} The same day, some 209 activists were reportedly detained in public


\textsuperscript{700} IACHR. 157 Period of Sessions. Hearing Situation of Human Rights Defenders in Cuba. April 8, 2016. Available at: https://www.youtube.com/watch?v=Q3BoQrBVbXY

\textsuperscript{701} Diario de Cuba. March 21, 2016. La Asociación Pro Libertad de Prensa denuncia detenciones y amenazas a periodistas.

\textsuperscript{702} IACHR. 157 Period of Sessions. Hearing Situation of Human Rights Defenders in Cuba. April 8, 2016. Available at: https://www.youtube.com/watch?v=Q3BoQrBVbXY

\textsuperscript{703} IACHR. 159 Period of Sessions. Hearing Situation of Human Rights Defenders in Cuba. December 1, 2016. Available at: https://www.youtube.com/watch?v=3uDnLrjZhW4

\textsuperscript{704} Hablemos Press. January 21, 2016. Deportada a Guantánamo reportero de HABLEMOS PRESS.

\textsuperscript{705} Diario de Cuba. March 16, 2016. La policía política detiene a dos periodistas independientes y cita a varios.

\textsuperscript{706} Diario de Cuba. March 16, 2016. La policía política detiene a dos periodistas independientes y cita a varios.

\textsuperscript{707} Hablemos Press. June 17, 2016. Arrestan a reportero cubano por informar problemas sociales.


\textsuperscript{709} 14 y medio. March 19, 2016. Más de 200 activistas detenidos a lo largo de la Isla.
places while demanding the end of the repression against the Damas de Blanco and the release of political prisoners.\(^710\) Other activists were also said to be prevented by police operations from leaving their homes.\(^711\)

435. According to the Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP), its journalists have been surveilled, harassed, detained, and threatened with imprisonment and even with death.\(^712\) In September, the Institute published a report on “Monopoly of the Mass Media in Cuba and the Alternative Press.” According to that report, from June 2015 to August 2016, there were 249 arbitrary detentions, 85 threats and psychological attacks, 428 “violations,” and 33 instances involving the destruction of work material in Cuba. The report additionally stated that there were no alternative radio or television broadcasters in the country.\(^713\) According to an October 24 press release\(^714\) issued by ICLEP, on September 29, the political police reportedly summoned and threatened to detain ICLEP’s legal director Raúl R. Pérez and journalist Claudia Cristina Ortega. On September 30, Leovánis Correa Moroso, director of the media outlet Voz Santiaguera, was reportedly detained, handcuffed, and beaten about the face by a political police officer in Santiago de Cuba. According to reports, he was detained for three days and had been threatened to be put in prison if he continued with his journalistic work. Similarly, on October 13, Osmany Borroto Rodríguez, director of the media outlet El Espírituano, was summoned by the political police in Jatibonico. Borroto Rodríguez was reportedly accused of distributing the bulletin of Jatibonico and had been threatened with arrest. The same day in Havana, journalist Ada María López was detained by the political police and taken to a police station because she was distributing a bulletin put out by the media outlet Amanecer Habanero. Some 50 copies of the bulletin were seized by the authorities. On October 14, the journalist Yosdany Blanco, of the media outlet El Majadero de Artemisa was reportedly detained because—according to the police—he they had received a complaint about him. The news article also states that, on October 21, four journalists and associates of the ICLEP had their homes searched simultaneously, and the political police as well as the National Revolutionary Police reportedly confiscated their work materials. According to reports, one of the homes searched served as the main office of the media publication Panorama Pinareño, and as the residence of its director Dianelys Rodríguez Morejón. The journalist was reportedly taken to a police station, where she was issued an official warning. They threatened to arrest her if she continued with her work as a journalist, and told her that they had orders to “make the ICLEP disappear.”\(^715\) The same day, Ricardo Fernández Izaguirre, the editor of Panorama Pinareño was reportedly detained. Fernández was allegedly summoned to the Pinar del Río technical office, where he was reportedly threatened with prison and told that the “ICLEP would disappear.” Earlier, on September 23, his house had been searched and his laptop and cell phone were seized. Finally, on October 21, political police officers reportedly detained ICLEP’s Executive Director, Raúl Velázquez, and took him to the provincial police station. He had been in Pinar del Río investigating the alleged police repression that had taken place in that town against Panorama Pinareño and its journalists. His cell phone was reportedly seized, and he had been given an “official warning threatening a criminal investigation for the alleged offense of criminal defamation [desacato] if he ever visited Pinar del Río again.”\(^716\)

436. The IACHR and its Office of the Special Rapporteur also received information indicating that the Cuban government was continuing to develop an arbitrary policy for the entry into the country of Cubans or foreigners associated with the practice of journalism, freedom of expression, or human rights defense. On

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\(^713\) Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). No date. Monopolio de los medios de comunicación de masas en Cuba y la prensa alternativa.

\(^714\) Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). October 24, 2016. NOTA DE PRENSA: Aumenta la violencia contra los medios de comunicación y periodistas del ICLEP.

\(^715\) Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). October 24, 2016. NOTA DE PRENSA: Aumenta la violencia contra los medios de comunicación y periodistas del ICLEP; Hablemos Press. October 25, 2016. NOTA DE PRENSA: Aumenta la violencia contra los medios de comunicación y periodistas del ICLEP.

\(^716\) Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). October 24, 2016. NOTA DE PRENSA: Aumenta la violencia contra los medios de comunicación y periodistas del ICLEP.
March 19, hours before President Obama’s visit, five Cuban journalists arriving from Costa Rica were detained upon arrival at the Havana Airport. In June, Cuban activist Ana Margarita Perdigón Brito, who worked with independent publications like CubaNet, reportedly had to return to Miami after the government denied her entry into Cuba after her arrival in José Martí International Airport. In January, two journalism students from the University of São Paulo (USP) were reportedly forced to return to Brazil before the end of their trip to Cuba because of an interview they had conducted with Ailer González, the wife of opposition figure Antonio Rodiles and member of the Estado de Sats project.

437. On May 5, three activists from the platform Otro18 were reportedly detained by State security agents. Carlos Amel Oliva, youth leader of Unión Patriótica de Cuba (Unpacu), independent journalist Boris González Arenas, and attorney Rolando Ferrer Espinosa of Foro Anti totalitario Unido (FANTU), were reportedly detained in Havana. Other activists were also reportedly prevented from going to a meeting of the organization.

438. According to information that is public knowledge, on May 13, activist Eladio Martínez Perez questioned the management of the district 32 delegate to the 26 de julio People’s Council at the accounting assembly. As a result, the activist was reportedly summoned by the sector chief of the National Police of his town, and detained for 26 hours. Similarly, on May 28, activist Eliosbel Garriga of the Province of Pinar del Río was reportedly transferred as he was preparing to travel to Havana to meet with CxC promoters and taken to the town of La Coloma, after allegedly having received threats.

439. Raids on the homes of independent journalists and opponents of the regime were also reported this year. On May 28, a group of ten uniformed and plainclothes police officers reportedly searched the home of independent journalist Ysmila Reyna Ferrera in Santiago de Cuba. The police officers failed to present a police search order. According to Ferrera, they removed a number of items related to her journalistic work. That same day, searches were also conducted at the house that served as the headquarters of the José María Heredia cell of Unión Patriótica de Cuba (Unpacu) and at the home Unpacu activist Karel Reyes, who coordinates the audiovisual magazine ‘La Verdad Versus La Mentira’.

440. On June 18, Rolando Reyes Rabanal, an activist with the Foro por los Derechos y Libertades (Foro Dyl), was reportedly detained by State agents upon returning from Bogotá where he had taken part in a human rights workshop. According to reports, he was intercepted at the Havana Airport prior to going through immigration, and after having an argument with a State official he was reportedly taken to a police station and accused of “disorderly conduct.”

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717 According to the information, the five Cuban journalists were: Magalys Norvis Otero, Neobel García Borniel, Yanelis Rodríguez; Arcelia de Morejon, Yampier Pérez and Ernesto Morales. Diario de Cuba. March 21, 2016. La Asociación Pro Libertad de Prensa denuncia detenciones y amenazas a periodistas; Cuba Prensa Libre. March 19, 2016. Retienen a periodistas cubanos en aeropuerto de La Habana.

718 El Nuevo Herald. July 21, 2016. Cuba utiliza el permiso de entrada como chantaje hacia los emigrados; Ciber Cuba. No date. Detienen y devuelven a EEUU a una exiliada cubana que viajó a la isla; CubaNet. June 29, 2016. Detenida y devuelta a EEUU exiliada cubana que viajó a la isla. 


720 As reported, project #Otro18 would collect “citizen proposals for new laws on elections, associations and political parties; the demand for a democratic electoral system presented by the Urna Transparente [Transparent Ballot Box] initiative of Foro Anti totalitario Unido and the holding of a Plebiscite, a proposal by the Cuba Decide platform, which will allow citizens to define the legitimacy of political processes in Cuba.” Available at: http://alternativacuba2018.com/project/otro-18/


441. According to information in the public domain, in July, journalists from Santa Clara presented a document denouncing censorship, political persecution, and low wages. The text, entitled “Why do we collaborate?” began circulating via email. According to reports, the letter was written after directors of the Unión de Periodistas de Cuba (UPEC) had demanded that journalists cease their collaborations with the digital magazine OnCuba because they considered it to be “work hyper-critical of the image of the Revolution.”

442. On July 12, the journalists and directors of the Asociación Pro Libertad de Prensa (APLP), José Antonio Formaris and Odelín Alfonso Torna were reportedly detained while traveling from the province of Las Tunas to Bayamo. According to reports, they were given an official warning and certificates of confiscation, which they did not sign. Their cell phones were also confiscated.

443. According to reports, activists from the platform #Otro18 and from Mesa de la Unidad de Acción Democrática (MUAD) reportedly had their homes surrounded by State agents in order to prevent a Jornada Cívica Democrática conference from taking place, scheduled for July 19-22.

444. On July 22, three journalists from CubaNet were reportedly detained. Ana León, Augusto César San Martín, and Elio Delgado Valdés were intercepted at the Santa Cruz del Norte Checkpoint by officers of the National Revolutionary Police (Policía Nacional Revolucionaria) (PNR) and the Department of State Security (Departamento de Seguridad del Estado) (DSE), and taken to the La Lisa Police Station. The journalists apparently had their work implements confiscated, and were accused of the crime of receiving stolen property. According to reports, the journalists were released the same day, but their work materials were not returned to them.

445. 2016 saw a continuation of the reprisals, acts of harassment, and arrests of journalists, activists, and human rights defenders who expose the situation of freedom of expression in Cuba in international forums. In April, Cubalex director Laritza Diversent was reportedly detained without explanation prior to boarding a plane to the United States to participate in a hearing before the IACHR during its 157th session, among other activities. Upon her return, authorities confiscated books and pamphlets from her. In August, upon returning from Geneva, Switzerland, Diversent reported that she had once again been detained and that the authorities had confiscated, among other documents, the report on the “Situación del derecho a la libertad de opinión y expresión en Cuba,” that have been presented by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye.

446. On September 23, officers from the Department of State Security and the National Revolutionary Police (PNR) reportedly conducted a raid on the offices of the organization Cubalex in Havana on the basis of a search warrant that failed to meet the legal requirements—in addition to having previously cut off all of the

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office’s communications and the mobile phones of its members.\footnote{CubaNet/EFE. September 29, 2016. Instituto checo denuncia vejaciones a CUBALEX; Marti Noticias. September 24, 2016. Asaltan consultoría CUBALEX; de abogada cubana que se reunió dos veces con Obama; 14 y medio. September 23, 2016. La policía irrumpe en la sede de CUBALEX; IACHR. Office of the Special Rapporteur for Freedom of Expression. October 13, 2016. Press Release R149/16 IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression.} The search and seizure was apparently part of a tax investigation linking the organization to unlawful economic activities.\footnote{CubaNet/EFE. September 29, 2016. Instituto checo denuncia vejaciones a CUBALEX; Marti Noticias. September 24, 2016. Asaltan consultoría CUBALEX; de abogada cubana que se reunió dos veces con Obama; 14 y medio. September 23, 2016. La policía irrumpe en la sede de CUBALEX; IACHR. Office of the Special Rapporteur for Freedom of Expression. October 13, 2016. Press Release R149/16 IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression.} In addition, it was reported that during the search of the premises, which lasted around an hour, authorities confiscated five computers (including a server), four laptops, three printers, a number of mobile phones, and the security cameras, as well as confidential documents and records on various cases handled by the office. The members of CUBALEX had also been subject to interrogations, and five of them—four women and one man—had reportedly been required to remove their clothing for a strip search. The members of the organization were not allowed to eat for 13 hours. It was additionally reported that two members of the team were detained. Activist Dayán Alfredo Pérez Noriega was released, while independent attorney Julio Alfredo Ferrer Tamayo, as of the closing of this report, reportedly remains in a Havana prison.\footnote{Diario de Cuba. October 12, 2016. Maykel González Vivero: ‘Uno no se imagina cómo es un calabozo’. Diario las Américas. October 12, 2016. Cuba: Detenidos periodistas que informaban sobre el huracán Matthew; Diario de Cuba. October 13, 2016. Liberados los integrantes de ‘Periodismo de Barrio’.}

447. In September, State Radio station Sagua reportedly terminated the contract of journalist Maykel González for having collaborated with independent media such as Diario de Cuba. The journalist had reportedly been admonished previously when he condemned what he called a supposed “the ‘homophobia’ of the Population and Homes Census [Censo de Población y Viviendas]” carried out in 2012. According to González, he was punished for criticizing an event prioritized by the country. In addition, he stated that “there is ‘a crusade’ against journalists who had established ties with unofficial media outlets.”\footnote{CubaNet/EFE. September 29, 2016. Instituto checo denuncia vejaciones a CUBALEX; Marti Noticias. September 24, 2016. Asaltan consultoría CUBALEX; de abogada cubana que se reunió dos veces con Obama; 14 y medio. September 23, 2016. La policía irrumpe en la sede de CUBALEX; IACHR. Office of the Special Rapporteur for Freedom of Expression. October 13, 2016. Press Release R149/16 IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression.}

448. On September 23 and 24, the event II Festival del Arte y la Literatura Independiente de La Habana was held, organized by independent writers, artists, intellectuals, and others interested in art. The event was reportedly held under “severe political scrutiny,” and there was “strong surveillance” by the Police from the street and the surrounding area. Minutes before the start, Police reportedly entered the area in order to interrogate Víctor Manuel Domínguez, writer and the director of the festival. The organizer denounced that policemen had allegedly tried to suspend and subsequently obstruct the event.\footnote{CubaNet/EFE. September 29, 2016. Instituto checo denuncia vejaciones a CUBALEX; Marti Noticias. September 24, 2016. Asaltan consultoría CUBALEX; de abogada cubana que se reunió dos veces con Obama; 14 y medio. September 23, 2016. La policía irrumpe en la sede de CUBALEX; IACHR. Office of the Special Rapporteur for Freedom of Expression. October 13, 2016. Press Release R149/16 IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression.}

449. On October 12, nine members of Periodismo del Barrio were reportedly arrested in Guantánamo, including its director, Elaine Díaz. They were reportedly released hours later. According to the information available, the team was detained for attempting to report on the damage caused by Hurricane Matthew in Baracoa.\footnote{CubaNet/EFE. September 29, 2016. Instituto checo denuncia vejaciones a CUBALEX; Marti Noticias. September 24, 2016. Asaltan consultoría CUBALEX; de abogada cubana que se reunió dos veces con Obama; 14 y medio. September 23, 2016. La policía irrumpe en la sede de CUBALEX; IACHR. Office of the Special Rapporteur for Freedom of Expression. October 13, 2016. Press Release R149/16 IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression.} The day before, journalist Roberto Jesús Quiñones Haces was called in by the Department of State Security and warned that he could not go to the areas affected by the hurricane. In addition, he was reportedly told that some news stories he had filed about the Damas de Blanco and the Unión Patriótica de
Cuba (Unpacu), in Guantánamo, were “not entirely true.” On October 12, journalist Maykel González Vivero was reportedly released after having been held for 72 hours in a prison cell, also for having tried to report on the hurricane damage. According to the journalist, his laptop and camera were confiscated.

According to reports, Ignacio González, an independent journalist and the director of the *En Caliente Prensa Libre* (ECPL) agency, was released on October 11 after some 48 hours in detention. González stated that he was detained “arbitrarily” at his office, while conducting an interview with independent journalist Serafín Morán, who was equally detained temporarily.

On November 28, independent journalists Lisbey Lora and Manuel Guerra Pérez, from the *Cimarrón de Mayabeque* bulletin, were allegedly arrested. According to the report, police searched their residences and allegedly confiscated materials and equipment from their work. Both journalists were released on December 5.

During the 157 Ordinary Period of Sessions of the Inter-American Commission, at the public hearing on the “Situation of Human Rights Defenders in Cuba”, the IACHR received worrisome information regarding the situation of journalists and freedom of expression. During the session, it was informed that 3 *Hablemos Press* journalists were already incarcerated and harassment against activists, journalists and opposition had allegedly increased during 2016. Since 2011, Government had allegedly blocked access to the website *Hablemos Press* in the country. In addition, it was received with concern information about the use of violence to restrict the right of assembly and the use of arbitrary detentions to obstruct free circulation of members of organizations such as *Mesa de Diálogo*, *Juventud Cubana* and *Cubalex*. Moreover, some speakers mentioned the restriction of the right of assembly by the means of denying the legal recognition of these organizations. It was also presented information about governmental actions against members of the movement *Damas de Blanco*, framed in the context of the #Todosmarchamos campaign. During the 159 Ordinary Period of Sessions, at the public hearing on the “Situation of Human Rights Defenders in Cuba”, the IACHR received information regarding an alleged intensification of general repression directly related to the work of denunciation that Cuban organizations have carried out before international bodies. Additionally, the petitioners stated that Cuban media outlets such as *Hablemos Press*, *Prensa Libre*, *Palenque Visión*, among others, had been the target of various arrests of reporters. According to the reports, the human rights activists had also been victims of harassment, arrests for prolonged periods and monitoring of their communications, among other restrictions on their labors.

In that same vein, information was also provided about diverse restrictions that hinder progress regarding freedom of the press, such as legal provisions, fear of reprisals and limited and costly access to the Internet. In this regard, the above-mentioned report: “Connecting Cuba: More Space for Criticism, but Restrictions slow press freedom progress” published in September of 2016, contains recommendations to the Cuban Government and to the Organization of American States, including a call for the government to

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743 IACHR. 159 Period of Sessions. Hearing Session of Human Rights Defenders in Cuba. December 1, 2016. Available at: https://www.youtube.com/watch?v=3uDnLrjZhW4

744 IACHR. 159 Period of Sessions. Hearing Session of Human Rights Defenders in Cuba. December 1, 2016. Available at: https://www.youtube.com/watch?v=3uDnLrjZhW4
implement legal reforms and modify the restrictive legal framework that prohibits private property in press outlets. The petitioners submitted recommendations to the IACHR, such as, for example, requesting authorization for the Special Rapporteur for Freedom of Expression of the IACHR to carry out a mission to Cuba to assess the situation of freedom of expression and of the press and publicly communicate his findings and recommendations. The Special Rapporteur, Edison Lanza, among other things, regretted the absence of the State because it would have permitted a dialogue about the situations presented during the hearing, and expressed his solidarity with respect to the situation of persecution, stigmatization and harassment that they are experiencing for defending human rights and freedom of expression. He also affirmed that the situation of freedom of expression in Cuba is the backbone of a solution and the rebuilding of democracy, which would include all parties.\footnote{\textit{IACHR. 159 Period of Sessions. Hearing Situation of Human Rights Defenders in Cuba. December 1, 2016. Available at: https://www.youtube.com/watch?v=3uDnLrjZhW4}}

\textbf{454.} The Inter-American Commission reiterates that Principle 9 of the IACHR’s Declaration of Principles establishes that “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” In addition, as stated by the United Nations (UN) UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission of Human Rights of the Organization of American States (OAS), the State “has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities.” In addition, “the authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from making generalizations based on isolated events.”\footnote{\textit{United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. Joint declaration on violence against journalists and media workers in the context of protests.\textit{IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights. OEA/Ser. L/V/II/88. Doc. 9 rev. February 17, 1995.}}}

\textbf{A. Subsequent Liabilities}

\textbf{455.} The IACHR and its Office of the Special Rapporteur have maintained that the laws on criminal defamation [desacato] are incompatible with the Inter-American System of Human Rights, as they present “abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions.”\footnote{\textit{IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights. OEA/Ser. L/V/II/88. Doc. 9 rev. February 17, 1995.}} In addition, they have stated that it is the right of citizens “to criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office.”\footnote{\textit{IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights. OEA/Ser. L/V/II/88. Doc. 9 rev. February 17, 1995.}} During 2016, the IACHR and its Office of the Special Rapporteur continued to receive troublesome information about the use in Cuba of the criminal law—both substantive and procedural law—and the offense of desacato as a mechanism of subsequent liability against journalists and activists who disseminate ideas, opinions, and information critical of the government party. In this context, it was also observed that dismissal from employment was used as a penalty in administrative proceedings for criticism of the government, and common crimes were used to prosecute such persons.

\textbf{456.} On June 27, Resolution No. 20 of the Cuban ministry of Culture [\textit{ministerio de Cultura de Cuba}] (Mincult) reportedly sanctioned Yanelys Núñez Leyva with permanent dismissal from her position of employment at the magazine \textit{Revolución y Cultura}, the official publication of Mincult, because she gave an interview to CubaNet about her artistic work \textit{Museo de la Disidencia en Cuba} and made use of the office’s Internet connection to visit “irrelevant” web pages in relation to her task of cultural promoter. The interview

\footnote{\textit{IACHR. 159 Period of Sessions. Hearing Situation of Human Rights Defenders in Cuba. December 1, 2016. Available at: https://www.youtube.com/watch?v=3uDnLrjZhW4}}
was described as “an ill-intentioned communication action” that “damages” the image “of the system, agency, or country.” Journalist and historian of art, Núñez Leyva is co-author of *Museo de la Disidencia en Cuba* along with the artist Luis Manuel Otero Alcántara, a web page that, as informed, troubles State Security officials. 749 *CubaNet* is a web portal about Cuban reality that seeks to practice alternative journalism, offering forums to civil society. In addition, the sanction established that Núñez Leyva will have a period of fours years to “rehabilitate” herself before being able have her job again.750 On August 25, Núñez Leyva filed a lawsuit against the Labor Justice Organ’s [Órgano de Justicia Laboral] ruling of the ministry of Culture, which ratified his expulsion from the magazine *Revolución y Cultura*. At the close of this report, the Old Havana Municipal Tribunal [Tribunal Municipal de La Habana Vieja] had not yet ruled on the suit. 751

457. On September 29, the National Ethics Commission of the Union of Cuban Journalists [Comisión Nacional de Ética de la Unión de Periodistas de Cuba] (UPEC) reportedly approved the expulsion of journalist José Ramírez Pantoja from *Radio Holguín*. The journalist was dismissed from his job on July 11 after having transcribed on his personal blog the words of the deputy director of the official government newspaper *Granma*, warning of possible protests in Cuba if there were new power outages due to supply shortages. 752 According to reports, Pantoja was punished with a five-year suspension from his position, after which he may return to work “provided that he has an attitude consistent with the code of ethics of the UPEC.” 753 On October 19, the People’s Municipal Court of Holguín [Tribunal Municipal Popular de Holguín] had reportedly upheld the decision. 754

458. According to publicly known information, on November 26, artist Danilo Maldonado, known as “El Sexto”, was arrested in Havana for the crime of damage to property. Maldonado performed graffiti on a wall of the Hotel Habana Libre, following the announcement of the death of Fidel Castro, which read He’s gone [*Se fue*] and published a video on his Facebook page celebrating his death. According to the available information, at the close of this report, the artist remained in custody, even though the crime of which he was accused would be punishable by a fine and not detention. 755 After the closing of this report, the Office of the Special Rapporteur learned that on January 21, 2017, the artist was released. 756

459. In January, it was learned that the People’s Supreme Court [Tribunal Supremo Popular] dismissed the petition for cassation and affirmed the Provincial Court [Tribunal Provincial] of Havana’s conviction of independent attorney Julio Alfredo Ferrer Tamayo, an advisor to the Cubalex legal information center, to three years in prison for the alleged forgery of public documents in connection with the deed to his house.

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According to reports, the judgment was illegal because he was accused of an act that does not constitute a crime—conducting a procedure of a personal nature to obtain ownership of his house. Ferrer Tamayo apparently had been detained previously for six months for a criminal defamation [desacato] offense against three judges of the Supreme Court’s Division of Crimes against State Security [Sala de los Delitos contra la Seguridad del Estado del Tribunal Supremo]. According to information in the public domain, the penalty was in retaliation for having demanded that the authorities respect the national laws and his right to due process.  

460. The Inter-American Commission recalls that Principle 1 of the Declaration of Principles the IACHR’s establishes that “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.” Furthermore, Principle 5 of the Declaration establishes that “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” In turn, Principle 13 states that “The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

B. Internet and Freedom of Expression

461. Access to the Internet and digital communications are an essential principle for being able to effectively exercise the right to freedom of expression online. The Internet is a tool that allows for the realization of other rights and public participation, and it facilitates access to goods and services. On this point, the IACHR and its Office of the Special Rapporteur continued to receive information that the Cuban State has maintained its policy of control and harassment toward the critical press on the Internet, and continues to block content that the regime decides to censor. On August 25, the director of the United States division of Cuba’s ministry of Foreign Affairs [ministerio de Relaciones Exteriores de Cuba para Estados Unidos], Josefina Vidal, reportedly stated that a meeting organized by the Office of Cuba Broadcasting (OCB) in Miami with regard to Internet use in Cuba sought to foment “domestic subversion.”

462. It bears recalling that access to the infrastructure and hardware needed to seek, receive, and share information and ideas on the Internet in Cuba remains under State control through the State-run Telecommunications Company of Cuba S.A [Empresa de Telecomunicaciones de Cuba SA] (Etecsa), which restricts cultural expression, access to information, and the discussion of ideas that Cubans may access through the radio, Internet, and the press. Mobile phone service reportedly offers most users voice and SMS text messaging services, but not data services. Nevertheless, Etecsa apparently offers its users an email service that is accessible from mobile phones, called NAUTA. With respect to Internet service, Etecsa reportedly offers access through different cybercafés (“web browsing rooms”), which provide connection to Cuban websites for US$ 0.60 per hour, and more expensive services (US$ 4.50 per hour) for those who wish to connect to the World Wide Web. Permanent Internet connection, a service also provided by Etecsa, is limited to companies, universities, and other State bodies and entities that have obtained the respective authorization.

463. According to the information available, barely 5 per cent of the population has an Internet connection at home, given the high cost of obtaining an Internet connection. Similarly, only about 2 million out of a

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population of 11 million reportedly have mobile phones, and therefore Internet access is still not within the reach of most Cubans.\textsuperscript{762} According to reports, the government has reportedly established 500,000 new mobile phone lines in 2016 expects to reach 46 per cent telephonic density as part of the plans announced by Etecsa to improve communications in the country. It is also reportedly seeking to introduce “roaming” service.\textsuperscript{763} It was further reported that Etecsa and T-Mobile USA have concluded negotiations for international voice and data service between Cuba and the United States for customers of T-Mobile USA who travel to Cuba.\textsuperscript{764} Similarly, on October 18, AT&T introduced its “roaming” service in Cuba.\textsuperscript{765} With respect to Internet service, the State company reported that within the last year efforts have focused on setting up collective public areas (“web browsing rooms” and wi-fi hotspots).\textsuperscript{766}

464. The Office of the Special Rapporteur received information that an investigation conducted by blogger Yoani Sánchez and journalist Reinaldo Escobar concluded that text messages containing phrases or words like “hunger strike,” “democracy,” or “human rights,” or that included the names of some political dissidents did not reach the recipient. However, they the users’ telephones showed that the messages had supposedly been sent. According to reports, the Reuters news agency attempted without success to send messages containing the words “Somos Más,” “democracy,” “Yoani Sánchez,” and “human rights.”\textsuperscript{767}

465. In spite of the limitations discussed, initial spaces for independent journalism are beginning to open up online in Cuba, through the use of USB memory devices, flash drives, CDs, external hard drives, or other devices. According to journalist Yoani Sánchez, through these tools, “Cubans little by little began to be virtual citizens in a country where we still have not been able to be real citizens.”\textsuperscript{768} According to the observations of the Committee to Protect Journalists (CPJ) in a recent country report, “Reporters, from the most critical—who are known as dissidents—to journalism graduates, documentary filmmakers, and pro-revolutionary bloggers are opening new spaces for free expression and entrepreneurial journalism that not long ago seemed off limits.”\textsuperscript{769}

466. As stated by the Rapporteurs for Freedom of Expression of the UN, the OSCE, the OAS, and the African Commission in their Joint Declaration of 2011,\textsuperscript{770} Mandatory 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, for example where necessary to protect children against sexual abuse. “They further recalled, inter alia, that “Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.”


\textsuperscript{762} ABC/Reuters/EP. April 1, 2016. \textit{Cuba pretende conectar a la mitad de su población a internet antes de 2020}; 14 y Medio/Agencias. March 30, 2016. \textit{El 50% de los hogares tendrá Internet en 2020, según el Gobierno cubano.}

\textsuperscript{763} CubaNet/EFE. February 20, 2016. \textit{ETECSA anuncia que instalará 500 mil nuevas líneas móviles en 2016.}

\textsuperscript{764} Granma. May 9, 2016. \textit{Nota de prensa de Etecsa.}

\textsuperscript{765} CubaNet/EFE. October 18, 2016. \textit{AT&T presenta su servicio de ‘roaming’ en Cuba.}

\textsuperscript{766} 14 y Medio/EFE. February 19, 2016. \textit{Cuba anuncia incremento de 500.000 nuevas líneas móviles en 2016.}


\textsuperscript{768} The Knight Center for Journalism in the Americas. April 16, 2016. ISOJ 2016: Yoani Sánchez explains how technology has made Cubans more free.

\textsuperscript{769} Committee to Protect Journalists (CPJ). September 28, 2016. Connecting Cuba: More space for criticism but restrictions slow press freedom progress.

12. DOMINICA

A. Attacks, Threats and Harassment Against Journalists and Media Outlets

467. Two journalists received a death threat after reporting on a scandal. The journalist Carlisle John Baptiste and radio talk show host Matt Peltier reported on local radio Q95 an alleged sex scandal that involved three businessmen and a government minister.771 On March 1, 2016, Baptiste and Peltier filed a formal report with the police regarding a threat on their lives made by a businessman. The police conducting further inquiries.772

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


13. ECUADOR

469. The IACHR received a communication on June 21 in which the State of Ecuador formulated a series of objections, comments and requests associated with the 2015 annual report by the Office of the Special Rapporteur for Freedom of Expression.

A. Threats and Harassment Against Journalists and Media Outlets

470. In June, reporter Xavier Bustamante of Canal Uno denounced being the victim of death threats from suspected members of the Transit Commission of Ecuador [Comisión de Tránsito del Ecuador], after denouncing alleged acts of corruption within the institution in a report.774

471. On July 18, journalist Jean Paul Bardellini of NTN24, revealed a threat on his Twitter account that had been made from another Twitter account. The journalist indicated that he had received the threat after being photographed by an unknown individual while reporting on the deportations of Cuban migrants in Ecuador. The Twitter account from which the threat was made was closed after the journalist shared the message with his followers on that social network.775

472. The members of portal 4 Pelagatos denounced having received threats through social networks, after publication of an article on that portal that questioned President Rafael Correa for having used the daily newspaper El Telégrafo, owned by the State, to publish an article written by his daughter.776

473. On March 29, Twitter user Alejandro Muñoz, whose Twitter account was @Edward_Coke, denounced to the Prosecutor's Office having been victim of intimidations. The façade of his house would have been stained with red and yellow paint and photos would have left under his door that showed him carrying out different day-to-day activities. Muñoz stated that he has had confrontations on Twitter with supporters of the National Government and that the events that took place at his home would have occurred after President Correa announced a meeting with Twitter users aimed at defeating Twitter.777

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

B. Social Protest

475. In its final observations about the sixth periodic report on Ecuador, the United Nations Human Rights Committee expressed concern over denunciations about excessive use of force by the security forces to respond to violence by demonstrators during the protests of 2015, as well as to disperse them. It also expressed concern over the opening of judicial proceedings under broad criminal classifications such as

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sabotage and terrorism against people who have participated in social protests. In that sense, the Council recommended that the Ecuadoran State “adopt appropriate measures to guarantee that all persons under its jurisdiction may in practice exercise their right to freedom of peaceful assembly; intensify its efforts to prevent and effectively eliminate all forms of excessive use of force by members of the forces of order and security; and adopt necessary measures to ensure that all allegations of excessive use of force will be promptly, exhaustively, independently and impartially investigated and that the alleged perpetrators will be brought to justice and, if found guilty, punished pursuant to the seriousness of their actions.”

476. On April 7, there were demonstrations in the cities of Quito and Guayaquil that had been convoked by different civil society actors to reject the draft Organic Law for Equilibrium of Public Finances [proyecto de Ley Orgánica para el Equilibrio de las Finanzas Públicas], submitted by President Correa to the National Assembly [Asamblea Nacional] and which would include various tax reforms such as increased taxes on tobacco, alcohol and sodas. President Correa convoked sectors loyal to his government to also demonstrate on that day to express their support for the government and for the proposed tax measures and to reject the so-called destabilizing attempts by the opposition. According to the available information, two people were arrested and sentenced to five days imprisonment and five days of community service, accused of attacking a police officer during the protests, which had occurred when the police tried to take away a doll from the demonstrators that represented President Correa.

477. On March 17 in the city of Quito, journalist Jean Cano denounced that he had been beaten with sticks by demonstrators who were taking part in protests by trade unions, indigenous people and citizens who rejected the economic measures adopted by the government of President Correa. The journalist had taken photos with his cellular phone and the demonstrators had struck him, even though he identified himself by showing his press credential, but the demonstrators reiterated that he must leave and attacked him.

478. On May 23, the Court of Criminal Guarantees [Juzgado de Garantías Penales] of Loja decided to summon to trial 12 of the persons accused in the “Saraguro case” who integrate a group of 29 indigenous against whom criminal proceedings had been opened for participating in an protest on August 17, 2015. Charges against the other 7 accused were dropped due to lack of evidence for their trials. On May 30, the Court of Criminal Guarantees [Juzgado de Garantías Penales] of Loja sentenced to two of the other 10 defendants indigenous, and dismissed eight. Luisa Lozano and Servío Amable Angamarca were sentenced for the crime of paralysis of public service to four years imprisonment and a fine of four basic unified salaries. The General Public Defender of Ecuador [Defensor Público General del Ecuador] expressed concern over the disproportion of the punishment imposed on Lozano and Amable.

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479. The actions for which the two members of the community of Saraguro were sentenced took place on August 17, 2015, when 35 people were arrested, including eight minors, and a number of people were wounded, including various police officers. The indigenous people were blocking the Cuenca-Loja road, and demanded various points including the opening of closed nursery schools; nomination of the directors of the intercultural educational centers and at the Ecuadoran Agency for Ensuring Agricultural Quality [Agencia Ecuatoriana de Aseguramiento de la Calidad del Agro] and not to hinder commercialization of the production of milk and cheese with the argument of requiring excellent quality products. 26 of those arrested were sentenced to 30 days of preventive imprisonment in the provisional detention center of Loja.785

480. According to information published by the Confederación de Nacionalidades Indígenas del Ecuador (CONAIE), in August eight leaders of the indigenous movement were summoned to appear at a hearing for the formulation of charges in the alleged crime of paralysis of public services in relation to protests that had taken place in 2015 in the framework of the so-called Indigenous Uprising and National Strike [Levantamiento Indígena y Paro Nacional]. The summons was issued by the Attorney General’s Office of the province of Morona Santiago.786

481. On August 11, the Court of Criminal Guarantees [Tribunal de Garantías Penales] of Morona Santiago sentenced Tomás Jimpikit, indigenous leader Shuar de Bomboiza, from the south of Amazonia in Ecuador, to 12 months imprisonment for the crime of paralysis of public services.787

482. During protests and situations of heightened social unrest, States must adhere to the strictest international standards on freedom of expression in order to fully guarantee this right, without improper interventions against individuals, in keeping with Principle 2 of the IACHR’s Declaration of Principles.788 The Inter-American Commission has recognized the right to engage in public demonstrations or social protest, including in articles 13 and 15 of the American Convention.789

483. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”790 and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”791


787 Fundación Regional de Asesoría en Derechos Humanos- Inredh. August 11, 2016. Dirigente shuar condenado a un año de prisión por levantamiento indígena; El Comercio. August 11, 2016. Un dirigente shuar es sentenciado a un año de prisión; Comisión Ecumenica de Derechos Humanos (CEDHU). No date. La lucha social de la nacionalidad indígena shuar amenazada por la criminalización y los desalojos.

788 Principle 2 of the Declaration of Principles on Freedom of Expression: “[e]very person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”


C. Stigmatizing Statements

484. On January 9, President Rafael Correa, during his ‘Enlace Ciudadano’ number 458 in the segment Freedom of expression is for everyone [La libertad de expresión es de todos], referred to press headlines indicating that two people were sentenced to 52 days in jail for comments on the Twitter social network. “Two people sentenced to 52 days, by which I do not mean to say that the sentence is correct, in fact I believe that the sentence of 30 days in jail for Jeannine Cruz, Councilmember of Loja, is exaggerated, but it is the judges who have to decide, not I, and I believe that this woman is appealing the sentence. What does bother me is the way the press lies: two people sentenced to 52 days for comments on Twitter, remember, for comments on Twitter, we will see what the comments were, this is a problem for the mayor of Loja, not for me, but I insist, please do not lie” after showing images of the tweets published by the Councilmember in which she accused the Mayor of Loja of corruption, and went on to say “please, no one has the right to say this, if they do not have proof then they must assume the consequences, (…) this is the comment, to call the mayor of Loja a thief, I can assure you that the mayor of Loja is no thief, my friends, but they have no right. But look at how the press presents this, prisoners of comments”. He later continued “we are not discussing the punishment, we are discussing the lies by the press. ‘Arrested for comments on Twitter’; someone abroad reads this, here there is no freedom of expression, there is no freedom of anything, we are crazy, you can’t comment on Twitter and what does it say on Twitter: they are accusing the mayor of being a thief, no one has the right to do that; human rights are the right to honor and reputation (…) That is not a comment, it is an offense, an insult and a serious accusation, a public official is being accused of being a thief and no one has the right to do that”. Subsequently, referring to the leader of Unidad Popular movement Sebastian Cevallos, who on his Twitter account published allegedly false information about members of the Alianza País party, he stated: “he is responsible for his expressions, to not be a coward and the press not to manipulate; these are not comments, they are very grave accusations that damage the honor of the person and human rights.” Finally with regard to Twitter user Carlos Acosta said: “these cowards that hide on the Internet to insult in the coarsest manner (…) If anyone knows who this coward Carlos Acosta is, publish it on Twitter to see if when it is shown where he lives, what he does, etc., he continues to be so brave. Pure cowardice, pure insult on the Internet, that is not freedom of expression, it is an attack on the human rights, the reputation of the person, on the truth and it is a sign of cowardice.”

485. On ‘Enlace Ciudadano’ 460 of January 30, President Correa referred to a section known as la cantinflada de la semana, a cartoon published in the daily newspaper El Universo by cartoonist Xavier Bonilla on January 27, showing white elephants representing public works carried out by the government, including the Unasur building in which the CELAC Summit was held in January. The President referred to the cartoonist as a pamphleteer and said “that is not humor that is a rag” and later telling the audience that “when you are on the street, tell them: be honest, inaugurate the decency.”

486. On February 20, during his ‘Enlace Ciudadano’ 463, President Correa referred to the meeting of the Teachers’ Network [Red de Maestros] convoked by the government and which was attended by nearly 60,000 teachers "Incidentally, this is called prior censorship if you do not receive the information from the media, because it is relevant and important information that is of public interest. (…) this that I present what is convenient for me and what not, not present is called prior censorship and in Ecuador there is prior censorship, but not from the Government, let a journalist tell me when has received a call from the President not to publish something, but instead from the media owners who, with their private businesses, are politicking, manipulating, practicing prior censorship. They do not publish what is inconvenient for them or what they do not want to publish.” His comments were in reference to presumed lack of coverage by the so-called commercial media of the meeting of the Red de Maestros [Teachers’ Network].

487. On March 26, the president in his 'Enlace Ciudadano' number 468, responded to press criticism about investments being made by his administration, to which he commented "what a shame that these people with complexes people pretend that they are journalists, but the country has to change (...) the social networks are a great step forward for humanity, but they can also be a great step forward for certain dishonest people, for certain people who only seek to do damage, certain irresponsible people who are really politicians disguised as journalists." Then, referring to the journalist Janeth Hinestroza who denounced on her Twitter account alleged irregularities in the provision of medications by the Ecuadorian Institute of Social Security [Instituto Ecuatoriano de Seguridad Social] (IESS), the chief executive, said: "she is just like those crows who are looking for carrion to try and do damage and without comparing, without any journalistic ethics". Finally, he said: "the battle on the networks is a battle that we also have to win and that we are going to win." 

488. President Correa, on April 10, asked the citizenry "not to let itself be manipulated" in the case of the so-called Panama Papers - an international investigation carried out from documents documents from the Panamanian law firm Mossack Fonseca, which were leaked to media around the world and containing information about transactions of money through tax havens by various politicians and personalities- through his Twitter account, where he commented that "the tactic of the right is to neutralize political power that does not suit it". "For Ecuador, the ‘investigation’ was made by ‘journalists’ of El Comercio and El Universo. What can we expect? We must demand all of the information. We see how they are covering up even from their own bosses. Citizens, I insist: to demand all the information and not allow us to be manipulated." 

489. During 'Enlace Ciudadano' number 478 of June 4, President Correa referred to the social networks and stated that when he is insulted on Twitter, he will expose those insults so that everyone can help to discover who the person is, to see whether or not when they no longer are anonymous "they continue to be so valiant." (…)The President added: "these social networks can be the maximum expression of freedom but they also are the refuge for a few cowards my friends." 

490. In an interview on June 3, asked President Correa was his opinion about why there was a lack of coverage in the media about the Political Ethics Pact [Pacto ético político] that was convoked on May 24. This was an initiative by the Ecuadorian government that was promoted after revelations from the case known as the Panama Papers, in which it was revealed that hundreds of people, including public officials from different countries, were able to evade taxes by using tax havens. In that sense, the President affirmed that "the companies that have more offshore or tax havens are the owners of the media, the champion being Francisco Vivanco of the daily newspaper La Hora, the Ecuadorian people must understand from whom they receive the news (...) There are the Pérez of El Universo, there is Guadalupe Mantilla who was the owner of El Comercio (...) they are defending their interests, they are not defending the truth, that is why the people must stop buying those media and organize, I think that this is fundamental for republican life." 

491. On June 6, the multistate Telesur television channel, in which Ecuador is a party, published a report that was linked to the press, journalists and organizations that defend freedom of expression with the Central Intelligence Agency (CIA) of the United States. According to the multi-state canal, some Ecuadorian
journalists and human rights defenders would be part of a so-called plan to destabilize and end the
government of President Correa. This type of affirmations had already been made by President Correa in the past.799

492. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State's job to help create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.800

493. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."801

494. Public servants, like all people, are entitled to the right to freedom of expression in its many forms. Nevertheless, in their case, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized in the Inter-American case law, particularly with respect to: the special duties they acquire by virtue of their status as state officials; (b) the duty of confidentiality that may apply to certain types of information held by the State; (c) the right and duty of public officials to denounce human rights violations; and (d) the particular situation of members of the Armed Forces.802

495. With regard to the impact of the statements of public servants on the rights of others, the Inter-American Court has held that, under certain circumstances—even if the official speech does not expressly authorize, instigate, order, instruct, or promote acts of violence against specific citizens—its reiteration and content can increase the "relative vulnerability" of those groups and the risks they face.803

D. Subsequent Liabilities

496. On April 4, in a press release, the National Secretariat of Intelligence (Senain) [Secretaría Nacional de Inteligencia] announced the filing of an action for the crime of slander against the media outlets La República and La Hora; and against Fernando Villavicencio, Cynthia Viteri, Andrés Páez and Fernando Balda. The announcement was an official response to publication of the first analyses of the leak of 11.5 million documents from the law firm Mossack Fonseca known as the Panama Papers, (an investigation led be the International Consortium of Investigative Journalists (ICIJ) involving over 370 journalists from 76 different

countries\textsuperscript{804}, that revealed financial transactions using offshore companies, in which the Secretariat of Intelligence, Rommy Vallejo and a former external advisor of the Secretariat,\textsuperscript{805} were mentioned. At the same time, President Correa from his Twitter account had urged journalists who participated in the Panama papers\textsuperscript{806} investigations to reveal all of the leaked documents and not just those in which officials or ex-officials of the government were mentioned. The published notes indicated that Attorney General Galo Chiriboga and ex-president of the Central Bank [Banco Central] Pedro Delgado would also appear in the Panama Papers. The government insisted that entrepreneurs and opposition political leaders also appeared in the Panama papers without the media having said anything about it. The Ecuadorian journalists that took part in the investigation were subpoenaed on April 19 to appear before the Council for Citizen Participation and Social Control [Consejo de Participación Ciudadana y Control Social] (CPCCS), however, those proceedings had to be postponed due to the earthquake that affected the country.\textsuperscript{807}

497. On January 4, Loja Councilwoman Jeannine Cruz was declared responsible for committing a fourth class violation for having made statements discrediting or dishonoring another person, as enshrined in section 1 of article 396 of the Comprehensive Organic Criminal Code of Ecuador [Código Orgánico Integral Penal del Ecuador]. In September of 2015, the Councilwoman on her Twitter account had questioned the work of the mayor of Loja, José Bolívar Castillo, who then denounced her for attacking his honor.\textsuperscript{808} The Councilwoman was sentenced by the lower court to 30 days imprisonment and payment of 25 per cent of a basic salary. The sentence was appealed by the defense and ratified in the second instance by the criminal chamber of the Court of Loja. On March 8, the Councilwoman went to jail and on April 13 was released after having been sequestered in a detention facility for 30 days as the sentence had ordered.\textsuperscript{809}

498. On May 25, the Legislative Administration Council [Consejo de Administración Legislativa] sanctioned opposition assemblywoman Magali Orellana to a 30 day unpaid suspension from her post. The sanction stemmed from a verbal confrontation between assemblywoman Orellana and the President of the Assembly, Gabriela Rivadeneira, a member of the Alianza País governing party, during the debate over the draft bill on solidarity and co-responsibility for the earthquake. Assemblywoman Orellana had asked for the floor when the president resolved to close the discussion and proceed to the voting, in response to which Orellana reacted with anger and approached the podium to reproach the president for not having given her the floor. According to Rivadeneira, assemblywoman Orellana used strong language against her, such as “inert”. The Special Rapporteurship views with concern the lack of proportion of the corrective measure because preventing a voice of the opposition from taking part in the assembly for a month can be harmful when corrective measures could have been employed that are much less harmful to the right of freedom of expression of the punished individual.\textsuperscript{810}

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\textsuperscript{804} El confidencial. April 4, 2016. ¿Qué son los ‘Panama Papers’? ¿Qué es una sociedad ‘offshore’? Todo lo que debes saber; CNN en Español. April 4, 2016. Las 7 cosas que debes saber sobre Los papeles de Panamá.


\textsuperscript{806} Knight Center for Journalism in the Americas. April 21, 2016. Ecuadorian journalists face “campaign of harassment” for participating in investigation of the Panama Papers; "COMUNICADO. Postergamos la cita con los periodistas del caso #panamapapers debido al #SismoEcuador. #FuerzaEcuador"; Twitter account of Edwin Jarrín @ edwinjarrin. Vicepresident of Consejo de Participación Ciudadana y Control Social. April 19, 2016; El Universal. April 13, 2016. Presidente de Ecuador pone en riesgo a periodistas por “Panama Papers”.

\textsuperscript{807} Alcalde José Bolívar Castillo lo q pedimos l@s Lojan@s es q deje de mentir y de robar”. Twitter account of Jannine Cruz @jeanninecruz. September 21, 2015.

499. The Vice Mayor of Quito, Eduardo del Pozo, was sentenced by the First Unit of Contraventions of Quito [Unidad Primera de Contravenciones de Quito] to 15 days imprisonment and made to publicly apologize to President Correa, as a result of published declarations that attacked the honor and good name of President Correa. The Vice Mayor is a member of one of the opposition parties and in a radio interview on June 10 had criticized the government’s proposal to create an ethics pact which would prohibit candidates with assets in tax havens from occupying elected office. Del Pozo had accused President Correa of having money in tax havens and arbitrarily issuing sentences.810

500. On August 9, it became known that the Civil Judge of Pichincha [juez Civil de Pichincha] had admitted the lawsuit for alleged insolvency filed by President Rafael Correa against opposition journalist Fernando Villavicencio and ex-assemblyman Clever Jiménez, for the approximately US$ 140 thousand that they must pay as compensation for the crime of judicial slander for which they were sentenced to 18 months imprisonment. The complaint stemmed from proceedings filed by President Correa against Jiménez, Villavicencio and physician Carlos Figueroa. According to Ecuadoran legislation, when a convicted person lacks funds to pay the fine, the judge may declare them insolvent and embargo their assets.811 On October 18, the court declared Villavicencio insolvent for not having fully canceled his debt and ordered the seizure of his assets.812 The IACHR issued and reiterated precautionary measures in favor of Clever Jiménez and Fernando Villavicencio, which requested the State of Ecuador to suspend the effects of the condemnatory sentence issued in 2014 until the Commission decides on the individual request.813

501. On June 7, the Criminal Chamber of the National Court of Justice [Sala Penal de la Corte Nacional de Justicia] overturned the verdict against ten young people who had been convicted of the crime of attempted acts of terrorism, after nullifying the sentence by applying new criminal legislation that decriminalized the crime for which they had been sentenced. Both President Correa and the minister of Justice, Ledy Zúñiga, clarified that the finding was based on application of the principle of favorability of criminal law and not because the Court had declared their innocence.814 The case known as the “los 10 de Luluncoto”, when in 2012, ten young people were arrested in the locality of Luluncoto, South of the city of Quito. According to information revealed in the court hearings held during the criminal trial, the arrested young people had met to discuss their participation in civic demonstrations that were to be held in March of that year. Human rights Organizations such as Amnesty International, Ecumenical Human Rights Commission [Comisión Ecuménica de Derechos Humanos] (CEDHU), the Environmental Clinic Socioenvironmental Reparation Project [Proyecto de Reparación Socio ambiental Clínica Ambiental] and the Regional Advisory Foundation for Human Rights [Fundación Regional de Asesoría en Derechos Humanos] (Inredh) had announced that enforcement of the
terrorism laws in this case ignored human rights. Finally, in late 2015, the Office of the Attorney General of the State of Ecuador published a book about social protest in which they explained that the evidence gathered by the prosecutors in this case showed that the ten who were arrested were part of the Grupo de Combatientes Populares (GCP) and attempted to commit terrorism.

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

503. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of 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.”

E. Organic Communications Law

504. Since the enactment of the Organic Communications Law [Ley Orgánica de Comunicación] in 2013, the Office of the Special Rapporteur has on diverse opportunities expressed concern about the oppressive restrictions that the law establishes and the broad margin for discretion granted to the enforcement authority to restrict contents disseminated by media outlets.

505. Thus, for example, the Law enshrines the obligation for all media outlets “to cover and disseminate matters of public interest” and indicates that “[t]he deliberate and recurrent omission of the dissemination of matters of public interest constitutes an act of prior censorship” (art. 18), which shall be subject to the corresponding sanctions. Equally, the Law makes the media outlets themselves responsible for the dissemination of information of all types of contents, which shall be “contextualized”, “precise”, “verified” and that does not harm: human rights, the reputation, honor, good name of people and the public safety of the State. The Law also establishes that it is information “of public relevance [that must be published]” which involves public affairs and is of general interest or information through which “people's right to honor or other constitutionally established rights are violated” (art. 7). Pursuant to article 24 of the Law, it is

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818 On the one hand, it states that media outlets must respect the freedom of opinion and expression of all persons and, on the other, holds them responsible in the administrative, civil and criminal spheres for publishing third-party comments that violate the rights enshrined in the Constitution and the law when, in the opinion of the authorities, the media have not adopted enough provisions to filter them (art. 20).

819 “Art. 18.- [...]The media have the duty to cover and disseminate matters of public interest. The deliberate and recurrent omission of the dissemination of matters of public interest constitutes an act of prior censorship” [Los medios de comunicación tienen el deber de cubrir y difundir los hechos de interés público. La omisión deliberada y recurrente de la difusión de temas de interés público constituye un acto de censura previa...].”

820 “Art. 24.- Right of reply.- "Any human person or group that has been directly alluded through a means of communication, in a way that affects their rights to dignity, honor or reputation; has the right that the media outlet disseminate its reply for free, in the same space, page and section in written media, or in the same program in audiovisual media and within a period of no more than 72 hours..."
sufficient for one person to feel offended by any reference or editorial note for the media outlet to have the obligation to publish, in the same space, that person’s opinion on the matter. The enforcement authority charged with defining whether or not a violation of honor has occurred as well as the consequent obligation to publish a replica or rectification is the Superintendence of Information and Communication [Superintendencia de la Información y Comunicación] (Supercom), which is part of the Executive Branch.

506. In its annual reports for 2013, 2014 and 2015, the Office of the Special Rapporteur documented the sanctions imposed on journalists, cartoonists, newscasters and media in the enforcement of that law. At that time, the Office of the Special Rapporteur reiterated that the ambiguity in the terms of the restrictions and the exorbitant amount of the fines imposed could have an intimidating effect on exercise of the right to freedom of expression in Ecuador. 821

507. On October 14, the Special Rapporteur for Freedom of Expression of the IACHR and the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression sent a joint letter to the Ecuadorian State expressing their concern in relation to the Organic Communications Law of that country, and the adverse effects on freedom of expression and opinion resulting from its implementation. In particular, their concern that certain obligations contemplated in the Law lack a precise legal content, and that their enforcement, along with the severe sanctions provided for non-fulfillment, seriously inhibits freedom of expression and opinion in Ecuador. 822

508. The United Nations Human Rights Committee in its final observations about the sixth periodic report on Ecuador expressed its concern regarding diverse provisions of the Organic Communications Law [Ley Orgánica de Comunicación] (LOC from its Spanish acronym). In its observations on the right to freedom of expression, the Council pointed out: “while it and shrines important principles associated with the right to freedom of expression, it has certain provisions that could affect the full exercise of that right, including the imposition of certain obligations that could be ambiguous or disproportionate, such as for example the obligation of the media outlets to cover and disseminate matters of public interest or the prohibition against disseminating published information that directly or through third parties is produced in a concerted manner and repeatedly published through one or more media outlets for the purpose of discrediting a natural or legal person or reducing their public credibility (“media lynching”), and whose nonfulfillment could give rise to severe sanctions. At the same time, they are concerned about allegations that indicate that certain people who criticize the Government, including journalists and users of social networks, could suffer from harassment and anonymous threats after specifically being mentioned by government officials in public media and that the judicial system could be used to silence criticism through the filing of lawsuits (art. 19).” 823 The Committee therefore recommended that the Ecuadorian State ensure that the Organic Communication Law is fully compatible with article 19 of the Universal Declaration of Human Rights and “that any restriction on the exercise of freedom of expression fully comply with the strict requirements established in article 19,

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paragraph 3, of the Pact and those developed in General Observation number 34 of the Committee (2011) on freedom of opinion and freedom of expression.”

509. In this part, the Office of the Special Rapporteur documents the sanctions applied in 2016 against media outlets and journalists in enforcement of the law. Its concern over the effect that some of these cases could have on freedom of expression, which was reported to the State through a joint letter, sent on October 4. While it involves the imposition of ulterior liabilities, the ambiguity in the terms of the law and the exorbitant amount of the fines imposed could have an intimidating effect on exercise of the right to freedom of expression in Ecuador.

510. From January to November of 2016, the Supercom issued 274 resolutions through its different authorities and imposed sanctions on television, radio and press outlets in 240 cases. In 79 cases, it sanctioned media outlets for non-fulfillment of the provisions associated with classification of audiences and timeslots pursuant to title IV of the Organic Communications Law (hereinafter the LOC) on the regulation of contents; in 32 cases it sanctioned media outlets for having infringed article 28 of the LOC, which establishes that “any person who feels affected by information from a media outlet may reasonably request copies of the programs or publications”, a request that shall receive a response “in no more than 3 days”. It also sanctioned media outlets in 55 cases for non-fulfillment of ethics standards enshrined in article 10 of the LOC, and in 11 cases sanctions were imposed for non-fulfillment of articles 23 and 24 of the law regarding the right to rectification and reply. In 37 cases, the complaints were dismissed or archived. The Organic Communications Law provided for the imposition of fines for non-fulfillment of the above-mentioned norms. In that sense fines were imposed through 166 resolutions, and some media outlets have been made to pay fines ranging from US$ 366 to US$ 3 thousand 666.

511. On January 5, the Supercom sanctioned the Ecuavisa Channel for non-fulfillment of article 24 of the LOC, which enshrines the right of reply. The reply was requested by retired noncommissioned Army officer Patricio Rodrigo Robayo Jaramillo, who was part of the personal security detail of Ex-President Febres Cordero and who in 2014, because of the protection that he provided during an assassination attempt, was recognized as a national hero. An investigation into the attempted assassination of Febres Cordero, on the ‘Visión 360’ program of the Ecuavisa Channel, questioned his role in the protection of the ex-President. The officer sent the media outlet a letter requesting rectification, and after an exchange of communications with the officer, the program made a partial reading of the letter on one of its broadcasts while referring to the channel’s webpage where the complete version could be consulted. The Supercom determined that pursuant to article 24 of the LOC, the media outlet had the obligation to fully reproduce the letter in which the rectification is requested and that the channel in not doing so committed an infraction. The channel was sanctioned to again comply with the obligation to reply and its directors were also ordered to apologize through a public letter to those offended by non-fulfillment of the legal provisions about rectification.

512. On February 29, the Supercom sanctioned the daily newspaper Extra for non-fulfillment of art. 25 of the LOC. According to that article, “the media shall abstain from taking an institutional position regarding the innocence or guilt of persons who are involved in a legal investigation or criminal justice proceeding until the ruling issued by a competent judge is executed”. The daily newspaper in October of 2015 had published a series of articles in which it referred to a person who is being investigated for the crime of swindling, in which had used the headlines “Greedy man offered visas to United States”; “Swindled from a computer in a slum”; “He tricked them using through fast talking and by speaking English”; “A genius behind bars”; “The genius who ended up in jail”. The Supercom determined that there had been non-fulfillment of the provisions of the


law because the headlines and subheadings used by the newspaper made it possible to infer that the periodical had assumed a position and found the person under investigation guilty despite having used words like "suspected" or "alleged" in the note. The newspaper was sanctioned to pay a fine equivalent to 2 per cent of average invoicing over the past 3 months, as provided for in that same article 25 of the law.827

513. On March 3, the Supercom sanctioned the daily newspaper Expreso for non-fulfillment in its edition of January 4 of article 36 of the LOC, which provides that "all media outlets have the duty to disseminate contents that express and reflect the worldview, culture, traditions, knowledge and wisdom of the indigenous, Afro-Ecuadorian and Montubian peoples and nationalities in 5 per cent of their daily programming". Failure to fulfill that duty is punished by a fine equivalent to 10 per cent of average invoicing for the past three months. The media outlet indicated that in the mentioned issue, it had included contents that promoted interculturality, including reporting on leaders who represent different minorities, and articles about agriculture and cultural festivities, among others. However, the Supercom declared that article 36 of the LOC had not been fulfilled, after verifying that none of the published articles satisfy the obligation to include "contents that express and reflect the worldview, culture, traditions, knowledge and wisdom of indigenous, Afro-Ecuadorian and Montubian peoples and nationalities". The Supercom fined the newspaper 10 per cent of average invoicing for the past three months, and stipulated that the amount had to be paid within 72 hours following notification of the resolution.828

514. The daily newspaper El Mercurio was denounced before the Supercom for non-fulfillment of the LOC. The petitioners argued that the media outlet violated the ethics standards enshrined in article 10 of that law in publishing in their April 21 issue the headline "People ask for water; Correa raises the VAT", in reference to tax measures adopted by President Correa to deal with the humanitarian crisis stemming from the earthquake of April 16.829 On May 11, the Supercom determined that the newspaper had violated not only the ethics standards provided in article 10 of the LOC but also article 22. The authority considered that even though the body of the article had on the one hand stated that the water shortage was a result of the earthquake and on the other hand addressed the governmental initiative to increase the VAT, the title of the note transmitted an idea that was confusing for society and particularly for those who had become victims, and that this situation could generate chaos and confusion. The Supercom in its resolution analyzes the news headlines and their function in the text. The sanction consisted of a reprimand of the newspaper, reminding it of its obligation to improve its practices of internal management and communications work "to provide informative quality contents that ensure full exercise of the right to communication."830 After publication of the note in question, El Mercurio denounced having received insults through social networks.831

515. On July 22, the Supercom determined that the daily newspaper La Hora Tungurahua was responsible for non-fulfillment of article 23 of the LOC. On June 11, the newspaper published a note titled "Afro people demand spaces for participation from the Government" ["Pueblo Afro exige al Gobierno espacios de participación"], in which it published the opinions of three Afro-descendent community leaders in Ecuador who demanded greater political participation. One of the interviewees submitted a request for rectification, indicating that the title of the note was imprecise and that he had not made any of the affirmations that appeared in the text. The Supercom in the resolution specified that "the title or headline assumes the function

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831 Fundamedios. April 26, 2016. Funcionarios acusan y arremeten contra diario por titular crítico. "(1) Una cosa es la crítica y otra el insulto, la provocación. Hemos sido víctimas, a lo largo del día de insultos por parte de #trolls...". Twitter account of Diario El Mercurio @mercurioec. April 21, 2016.
of informing and attracting, and involves a summary of the contents of the journalistic note, in other words, is part of the body of the news, and therefore may not be understood in a manner separate or distinct from the text or its development.” In that sense the authority found that the headline was imprecise because the denunciation referred to a situation in Tunuguragua and not that of the National Government, as suggested in the text, and therefore the right to rectify imprecise information was in order. Additionally, the Supercom determined that the rectification published by the media outlet did not comply with article 23 of the LOC because along with it, an editorial note was published stating that the original note had been published based on different sources, including the testimony of the person who requested the rectification. As punishment, the daily newspaper La Hora had to publish the rectification note along with a public apology in both its printed and web versions.832

516. On August 8, the Supercom sanctioned Teleamazonas upon determining that the media outlets had incurred in the conduct of “media lynching” [“linchamiento mediático”] pursuant to article 26 of the LOC and the journalist Janet Hinestroza for violating article 10 of the law, reporting on facts “that were not tested or contextualized”. Therefore ordered them to make a public apology. The complaint was filed with the National Public Contracting Service [Servicio Nacional de Contratación Pública] [SERCOP] because in a ‘Desayuno de 24 Horas’ television program directed by Hinestroza and the ‘Noticiero 24 Horas’, they had issued information about a public-sector medications auction stating that the quality of the pharmaceuticals had not been taken into account. The complainant authority alleged that they had only been given the opportunity to participate and express their version of the events being denounced in four spaces while there were eleven spaces that were informed about the issue without the participation of official sources.833 Organizations such as the Committee to Protect Journalists (CPJ) and the Inter American Press Association (IAPA) rejected the decision by the Supercom. Various media outlets stated that days before finding out about the sanctions, President Correa had criticized the journalist and the media outlet. Additionally, the lawyers of the journalist and the media outlet called attention to the brevity in which the complaint was resolved, taking into account the time that the Superintendence normally takes to resolve similar cases. The journalist along with civil society organizations affirmed that this decision was an example of the difficulties for the practice of investigative journalism in Ecuador, in which the official version or decisions by public officials are questioned.834

517. At the same time, the Office of the Special Rapporteur has received word that during 2016, the Office of the State Comptroller General has executed different fines imposed by the Supercom as a result of the applicable sanctions. According to the LOC, the Supercom does not have the power to collectively impose fines even in response to non-fulfillment of payment by those sanctioned; they nonetheless may require the Office of the State Comptroller General to take on that task. Among the media outlets that have been sanctioned under this modality include radio station Exa FM 92.5,835 radio station Futbol FM,836 Radio Superior 92.7,837 radio station Flama Plus 104.5 FM,838 Radio Scandalo 103.7 FM839, Radio Tropical 92.9 FM840.

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835 Supercom. August 17, 2016. Contraloría hace efectiva coactiva a radio “Exa FM”;


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and Radio la Premier 91.9 FM. In all cases the executed fines had an approximate value of between US$ 1 thousand and US$ 3 thousand 6 hundred.

518. The Office of the Special Rapporteur reiterates that the right of reply or correction enshrined in article 14 of the American Convention is, at the same time, an important mechanism for the protection of certain rights and a type of restriction on the exercise of the right to freedom of expression.

519. Although the right of reply or correction is one of the measures least restrictive to freedom of expression when compared to civil or criminal penalties, this mechanism makes it possible to force a media outlet to disseminate information it does not wish to publish. In the absence of adequate and careful regulation, it could give rise to abuses that end up disproportionately and unnecessarily jeopardizing freedom of expression. In this respect, it bears mentioning that freedom of expression not only protects the media’s right to freely disseminate news and opinions; it also protects their right not to have outside content imposed upon them. Accordingly, the right to the freedom of thought and expression must be made compatible with the right of reply or correction, so that the latter is exercised under conditions of fairness, when absolutely necessary to protect the fundamental rights of a third party.

520. Therefore, this right must be interpreted in conjunction with the right to freedom of expression in order to keep it from becoming a mechanism of indirect censorship or having a chilling effect on the media. In this respect, the Office of the Special Rapporteur has insisted that, in order to be considered lawful, correction and reply must be carefully regulated and meet the requirements of legality, necessity and proportionality, in accordance with article 13.2 of the American Convention.

521. In addition, article 14 of the Convention establishes strict conditions for its imposition on media outlets in order to respect the demands of the right to freedom of expression. Indeed, among other things, the right is not admissible in response to the mere mention of a person in a media outlet; rather, it applies where harm is caused by inaccurate or offensive information. Ordering a media outlet to disseminate information it does not wish to publish, in the application of the right of correction and reply, must be authorized by independent judicial authorities, who must state the reasons why the measure is suitable to accomplish the aims pursued by the right of reply (to offer a different version of the allegations or to reprocess the instances). Whether it is truly necessary and its application does not disproportionately restrict the right to freedom of expression of the media outlet in question.

F. Internet and Freedom of Expression

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842 Article 14 of the American Convention states: “1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish. 2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred. 3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.”


846 I/A Court H. R. Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) And 2 American Convention On Human Rights). Advisory Opinion OC-7/85 of August 29, 1986. Serie A No. 7. Para. 25. The said Advisory Opinion states that: “The fact that the right of reply or correction (art. 14) follows immediately after the right to freedom of thought and expression (art. 13) confirms this interpretation. The inescapable relationship between these articles can be deduced from the nature of the rights recognized therein since, in regulating the application of the right of reply or correction, the States Parties must respect the right of freedom of expression guaranteed by Article 13. They may not, however, interpret the right of freedom of expression so broadly as to negate the right of reply proclaimed by Article 14(1).”

522. The Facebook page of the news portal Ecuadoren Vivo was eliminated on April 23 along with its 26,000 followers after a cyber-attack. Alfonso Pérez, director of the portal, denounced that unknown individuals hacked the user page, deleted all of its contacts and subsequently eliminated the page from the media outlet.848

523. On May 9, the informative portal PlanV was the target of a cyber-attack for 24 continuous hours. According to the technical report by the web portal’s administrator, the server would have received more than 400 applications for admittance per second, which exceeded its installed capacity by 300 per cent. The administrator would have detected at least 29 IP addresses from which most of the applications for access had originated, of which 20 would be registered in China and the others are of unknown origin. The attack would have prevented access to the page by readers.849

524. The organization Ecuador Transparente on April 14 denounced that the Ecuadorian government and the Association of companies that supply services of Internet, added value, suppliers and information technologies [Asociación de empresas proveedoras de servicios de Internet, valor agregado, portadores y tecnologías de la información] (Aeprovi) had worked jointly to block access to pages such as Google and YouTube on March 28, 2014 “at the request of the National Government.” The organization said that the Government “by means of opaque agreements with this association, it has the technical capacity to block webpages throughout the national territory without having to be accountable.”850

525. In response to information from Ecuador Transparente, Aeprovi on April 14 rejected statements made in relation to blocking of the service on certain Internet portals and asserted that “the Internet is subject to temporary service interruptions caused by technical problems of different types, including: networking equipment failures, software failures or denial of service attacks.”851

526. According to inter-American standards on freedom of expression and Internet, the State has to “investigate when a website is the object of attacks such as, for example, so-called Denial of Service Attacks (DoS); those carried out through computer viruses or worms aimed at the transmitter’s equipment, among others. These types of computer attacks can be aimed at particular individuals or media outlets and can be enormously disruptive to the exercise of the right to freedom of expression. Accordingly, the State is obligated to investigate and properly redress such attacks.”852

G. Use of Intellectual Property Rights to Block Contents on the Internet

527. On May 16, organizations that defend freedom of expression and various digital media sent a letter to the Office of the Special Rapporteur in which they gave an account of the different effects on freedom of expression on the Internet in Ecuador. According to the organizations that sent the letter, the Ecuadorian government is making indiscriminate use of regulations that protect copyrights to block contents on the web:

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850 Aeprovi is made up of the majority of Internet providers in Ecuador (Claro, Movistar, CNT, Netlife, among others) and controls more than 95% of customers and Internet traffic in the country. Source: Ecuador Transparente.


852 Aeprovi. April 14, 2016. AEPROVI rechaza información errónea sobre bloqueo de sitios web.

the portals of digital communications media that have a clear editorial line that is critical of the government denounced that they were the targets of cyber-attacks.\textsuperscript{854}

528. According to information provided by diverse organizations for freedom of expression\textsuperscript{855}, the government of Ecuador directly and through intermediaries has requested diverse Internet service providers to eliminate web pages and accounts of activists and journalists on social networks, alleging unauthorized reproduction of images of public officials or audiovisual pieces that were registered by the Ecuadorian government under provisions for copyright protection. The claims aimed at eliminating contents or user accounts were made through the Spanish company Ares Rights or directly by the National Secretariat of Communication [Secretaría Nacional de Comunicación] (SECOM), and directed at social networks or platforms regarding enforcement of the Digital Millennium Copyright Act (DMCA) that is in effect in the United States.

529. Intermediaries such as Twitter and You Tube have the obligation to comply with United States copyright provisions, including the DMCA, and it is precisely the provisions of that law that are being invoked to avoid the use for informational purposes or political criticism of images of senior officials of the Ecuadorian government and audio pieces from the program ‘Enlace ciudadano’, which is broadcast every Saturday and is a venue for interlocution between the President of the Republic and the citizenry.\textsuperscript{856}

530. According to complaints received by the Special Rapporteurship, on December 28, 2015 the SECOM, through actions by the Spanish company Ares Rights, has attempted to eliminate the webpage of the Fundamedios organization for alleged copyright violation. That presidential agency argued one of its photographs was used in a screen shot of the video from an episode of ‘Enlace Ciudadano’ of President Correa, and published a photographic composition including the image of journalist Emilio Palacio to illustrate an alert after the Chief Executive called the journalist a “psychopath” on December 12 of that year.\textsuperscript{857}

531. The digital platform 4pelagatos.com on May 6 reported that the SECOM made a claim about a copyright violation over use of the image of President Correa on the webpage of that media outlet. A few days before that, the digital portal had created an interactive platform called Mashimachine, on which it used the audio from the Saturday programs directed by President Correa. The portal affirmed on April 28 that the images from the Saturday program belong to all Ecuadorians under the justification that they involve a program produced by a public agency using public funds, and therefore expressed its rejection of the copyright claims made by the government and also denounced that the use of that type of regulations is aimed at silencing critical voices.\textsuperscript{858} The SECOM had made the claim with the aim of eliminating contents on the part of the supplier that rents the Mashimachine platform in enforcing the DMCA in effect in the United States.

532. On May 9, the Fundamedios organization denounced that at least 14 user accounts on Twitter had received complaints from the SECOM for alleged violations of copyrights owned by the State regarding contents produced by public agencies, and in some cases parts of the contents were deleted and at least six of


\textsuperscript{856} Committee to Protect Journalists (CPJ). January 21, 2016. How U.S. copyright law is being used to take down Correa’s critics in Ecuador; Global Post. January 23, 2015. Is Ecuador’s ‘anti-imperialist’ president using US copyright law to censor online critics?

\textsuperscript{857} Fundamedios. December 31, 2015. SECOM intenta dar de baja página web de Fundamedios a través de reclamos de Ares Rights; Fundamedios. December 29, 2015. Ares Rights reclama a nombre de la Secom el uso de una foto de Correa por parte de Fundamedios.

\textsuperscript{858} El Universo. May 8, 2016. Secom reclama derechos de autor a los 4pelagatos; 4Pelagatos. April 28, 2016. Cómo impedir que la Secom siga robando bienes públicos; La Horla. May 6, 2016. 4Pelagatos informa que Secom los demanda por ‘Mashimachine’; 4pelagatos. May 6, 2016. La Secom quiere que Rafael Correa se calle
those accounts have received complaints over the use of parts of the Saturday program ‘Enlace Ciudadano’. The organization also denounced that some ‘tweets’ had been retained because they contained images of President Correa. The SECOM had made the complaints with the aim of eliminating the contents from the Twitter social network, in enforcing the DMCA in effect in the United States.

533. On May 11, the Network in Defense of Digital Rights [Red en Defensa de los Derechos Digitales] reported that the Digital Rights Latin America & the Caribbean Bulletin were then immediately notified about removal of eight tweets for copyright violations.

534. The head of the SECOM, Patricio Barriga, defended these procedures in a May 14 interview with the daily newspaper El Comercio. Barriga affirmed that the name of the governmental organization is registered as a trademark with the Ecuadorian Intellectual Property Institute [Instituto Ecuatoriano de Propiedad Intelectual] (IEPI). In this manner, in the framework of copyrights, the audiovisual material of President Correa that the SECOM creates with public funds is protected. The head of the SECOM affirmed that the objective is to ensure adequate and legitimate use of the images.

535. The investigative portal Focus Ecuador informed the Office of the Special Rapporteur that between March 2015 and May of 2016 it had been the target of three attacks that took it out of service. On May 6, the SECOM and the ruling party Alianza País denounced that the portal had violated copyrights by using visual images published on the social networks of the Presidency of the Republic. On May 9, the day on which a report on corruption in the oil sector was to have been published and which had been previously announced to the public, the portal was hacked.

536. The Office of the Special Rapporteur reiterated that copyright protection is undoubtedly a legitimate goal that can give rise to the imposition of limitations on the right to freedom of expression. Nonetheless, this protection must be provided while taking into account exceptions to copyrights and the public domain, in order to promote a balanced copyright protection system pursuant to the standards of the Inter-American Human Rights System. The blocking of contents as a punishment for copyright infraction is an extreme measure whose use to restrict the dissemination of specially protected speech or those that have the presumption of protection must be avoided when that presumption has not been disproven by a competent authority that provides sufficient guarantees for independence, autonomy and impartiality. In effect, the State must provide robust guarantees to maximize the number and diversity of voices that can participate in public debate through the Internet, so that any means for restriction must be designed to exclusively impact legitimate contents (such as propaganda of war and hate speech that constitutes an incitement to violence, direct and public incitement to genocide, and child pornography) and adopted when it is the only available means to reach an imperative objective that is strictly proportional to achievement of that objective.

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859 Fundamedios. May 9, 2016. Secom denuncia a tres medios digitales y al menos 14 cuentas en Twitter por uso “ilegítimo” de imágenes del Presidente. The reported Twitter accounts whose contents were deleted are: @badpons, @DavidRevelo, @FDavid_92, @Alnocu, @FrankT30, @HDelgado, @hermeitito56, @bloglicuador, @barceblaccio, @Alfredo240866, @RebecaMorla, @Silviabuendia, @CarlosWeyec and @CarlosFabbian.

860 R3D. May 11, 2016. Gobierno de Ecuador censura boletín de derechos digitales vía DMCA; Committee to Protect Journalists (CPJ). January 21, 2016. How U.S. copyright law is being used to take down Correa’s critics in Ecuador.

861 El Comercio. May 14, 2016. La Secom registró en el IEPI la información pública que produce.


H. Diversity and Pluralism

537. April 12 started the contest to award 1,472 radio and television frequencies by the Telecommunications Regulation and Control Agency [Agencia de Regulación y Control de las Telecomunicaciones] (Arcotel) and the Telecommunications Regulation and Control Agency (Cordicom), 846 of which will be for FM radio stations, 148 for AM radio stations, and 478 for UHF (ultra-high frequency channels).\footnote{Arcotel. April 12, 2016. \textit{Concurso para adjudicar 1472 frecuencias de radio y televisión: un hito en la historia de Ecuador}; Observacom. April 18, 2016. \textit{Ecuador lanzó concurso de 1,472 frecuencias de radio y televisión para medios públicos, comerciales y comunitarios}; Arcotel. No date. Bases y Formularios. Available at: \url{http://concursofrecuencias.arcotel.gob.ec/bases-archivos/}}

538. According to declarations by the Minister of Telecommunications, Augusto Espín, in this first tender, compliance with the 33/33/34 constitutional formula for radio spectrum distribution (33 per cent for public media, 33 per cent for private media and 34 per cent for community stations) stipulated by the Organic Communications Law (LOC) in its article 106 regarding fair distribution of frequencies cannot be expected because the distribution will be achieved progressively.\footnote{Teleamazonas. April 12, 2016. \textit{Inició el concurso de adjudicación de 1,472 frecuencias de radio y televisor}; El Universo. April 12, 2016. \textit{Arcotel y Cordicom abren concurso para adjudicar frecuencias de radio y TV}; Asamblea Nacional. Ley Orgánica de Comunicación. Article 106.}

539. On April 15, the Arcotel during the first forum on socialization of the process reported that there had been 160,000 online interactions about it.\footnote{Tele Ciudadanía /You Tube. April 14, 2016. \textit{Foro de Socialización del Concurso Público para la Adjudicación de Frecuencias de Radio y TV}; El Telégrafo. April 15, 2016. \textit{Hasta el 15 de junio podrán entregar la documentación las personas que deseen alguna de las 846 señales de FM, 478 canales UHF o 148 AM.}}

540. On April 29, the Fundamedios organization denounced that the tender for VHF television channels had not been opened, with the result that 180 channels whose frequencies have expired, including Ecuavisa, Teleamazonas, GamaTV and Telerama, will have to participate with a UHF frequency. The organization requested suspension of the tender in the opinion that it is not a process that includes all national media outlets and that despite its magnitude it does not guarantee impartiality by the agencies charged with evaluating the assignation and also does not have a truly independent citizen oversight.\footnote{Fundamedios. April 29, 2016. \textit{Concurso de frecuencias debe suspenderse; El Universo. June 2, 2016. \textit{Veeduría pide a la Arcotel ampliar plazo en concurso por frecuencias de radio y televisión.}}}

541. On June 1, those responsible for oversight asked the authorities to extend the deadline for applications for the frequencies, which had been set for June 15.\footnote{869 Asociación Internacional de Radiodifusión (AIR). June 27, 2016. \textit{Preocupa a la Air concurso público para la readjudicación de frecuencias de radio y televisión en Ecuador.}}

542. On June 27, the International Association of Broadcasting (IAB) expressed concern over the parallel development of the tender for re-adjudication of radio and television frequencies and the national elections scheduled for February 2017. For the organization, it is worrisome that the continuity of media outlets is being decided at the same time as the democratic debate over who will be the elected leaders for the next four years because in that context indirect pressures may be brought to bear on the media.\footnote{Asociación Internacional de Radiodifusión (AIR). June 27, 2016. \textit{Preocupa a la Air concurso público para la readjudicación de frecuencias de radio y televisión en Ecuador.}}
the service of the common good”. In that sense, the organization expressed regret over complaints about corruption in the context of the process and asked for an investigation of the facts while highlighting the importance that the process be transparent and provides clear and precise information to avoid endangering the process.871

543. The Office of the Special Rapporteur also received information about difficulties faced by community radio stations, particularly in areas that are the farthest from the capital, to participate in the tender, because the content of the application form was highly technical and failed to take into consideration the characteristics inherent to community radio stations, such as their lack of generation of an added value or that most people who work there do so voluntarily and collaboratively.872

544. On June 30, the deadline expired for those who were interested in applying for frequencies; in the provinces of Manabí and Esmeraldas the deadline was extended until July 15. On July 21, Arcotel reported that at the conclusion of the phase for receiving applications, they had received a total of 834 applications for the adjudication of 1,486 frequencies that are to be evaluated by the Multidisciplinary Work Team [Equipo de Trabajo Multidisciplinario] of the organism. However persisted the complaints of the society around them concerns for lack of transparency in the process.873

545. In a joint letter sent on October 14, the Office of the Special Rapporteur for Freedom of Expression of the IACHR and the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression expressed concern over complaints about lack of inclusion and transparency in the competition for the allocation of frequencies of radio and television frequencies.874

546. On November 14, through a press release, Arcotel and Cordicom declared that the process was being carried out with transparency, in a technical manner and without favoritism. They informed that on October 3 a citizen oversight had been carried out at the installations of Arcotel and indicated that “Cordicom has defined processes, technical and technological tools to receive the files from Arcotel on as many as 5 of the highest scores for frequencies that had achieved at least the minimum required score, and to proceed with the respective evaluation of the Communications Project in order to draft the binding technical report, to enable Arcotel to then proceed with the corresponding adjudication of the frequencies or channels.”875

547. In November, a series of denunciations was published over alleged acts of corruption committed by an ex-official of Cordicom. The National Secretariat for Policy Management [Secretaría Nacional de la Gestión Política] issued a press release stating that the agency had received a complaint by a citizen interested in participating in the tendering who claimed to have been required to pay for the adjudication of a frequency. The authority reported that as soon as it received word of the matter, the information was forwarded to the

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871 Coordinadora de Medios Comunitarios, Populares y Educativos del Ecuador (Corape), Comunicado Público. No date.
548. On August 22, president Correa ordered the merging by absorption of the public Television and Radio Company of Ecuador [Empresa pública de Televisión y Radio de Ecuador] E.P. RTV Ecuador with the public company El Teléfono E.P. The latter of which will now be called Empresa Pública de Medios Públicos de Comunicación del Ecuador-Medios Públicos E.P. The decree stipulates that the employees of the merged media may continue their work prior to a process of evaluation and selection of the talented human in order to determine who will continue in their jobs and which jobs will be eliminated as unnecessary. On May 24, the President announced that this merger along with suppression of other public institutions would be carried out to optimize expenditures by the State.

549. The assignation of radio and television licenses must be guided by democratic criteria and procedures that are pre-established, public and transparent. The criteria and procedures must serve as a check on possible State arbitrariness and guarantee equal opportunities for all individuals and sectors who wish to take part. In this regard, the Inter-American Commission’s Declaration of Principles on Freedom of Expression emphasizes that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

I. Other Relevant Situations

550. After the close of the Annual Report 2015, the Special Rapporteurship received word that on December 15, 2015, the Telecommunications Regulation and Control Agency [Agencia de Regulación y Control de las Telecomunicaciones] (Arcotel), along with the Provincial Attorney General’s Office of Loja and the National Police had searched the installations of the Ecotel TV Channel in Loja, canton of Loja in the southern part of the country. According to the authorities, the search had been made because the channel had been operating even though the then National Telecommunications Commission [Comisión Nacional de Telecomunicaciones] (body absorbed by the Arcotel) in September of 2014 had terminated the concession contract as a result of a six-month delay in payments for the concession in 2002. According to the available information, the search had been made in the early-morning hours when no one was at the installations of the channel.

551. The director and owner of the channel, Ramiro Cueva, rejected the operation and termed it illegal. Subsequently on January 6, after a decision by the directors, the channel had come back on air supported by

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the legal figure of the right to resistance enshrined in Ecuadorian legislation; however on January 7 a raid was made by the authorities alleging that the channel had acted outside of the legal framework.\textsuperscript{583}

552. On March 19, president Correa in his Saturday program asked the Attorney General’s Office to accelerate investigations into the alleged hacking of e-mails of certain public officials, an action allegedly committed by ex-assemblyman Clever Jiménez and Fernando Villavicencio. The President mentioned that he was making the request as a citizen and indicated that he was worried that in such a serious case no progress had been made in the investigation.\textsuperscript{584} In 2013 the homes and offices of Jiménez and Villavicencio were searched and the president subsequently made declarations in which he indicated that during the searches serious findings had been made, however those investigated had not had access to that evidence. In early June, it became known that the Attorney General’s Office asked for a date to be set for a hearing to formulate charges.\textsuperscript{585} The hearing was held on August 17, when the prosecution filed charges against Villavicencio and Jiménez for the alleged crime of disclosure of confidential information.\textsuperscript{586} Judge Jorge Blum summoned them to trial and on October 28 ordered their pre-trial detention.\textsuperscript{587} The defense of Villavicencio and Jiménez appealed the order of pre-trial detention but the judge rejected the appeal and, on November 14, issued an arrest warrant against both men.\textsuperscript{588}

553. On April 22, during a visit to the earthquake disaster zone in Muisne, President Rafael Correa received complaints from various citizens over the alleged lack of water and timely aid from the Government. During the visit, the chief executive said to one of the victims of the zone ‘‘[N]o one here is to lose their calm, no one is to yell, or I will have them arrested, whether they are young, old, a man or a woman! (…) no one can start to weep or complain to me (sic) about things that are lacking… unless they have lost loved ones…’’\textsuperscript{589}


\textsuperscript{586} Teleamazonas. August 17, 2016. \textit{Fernando Villavicencio y Cléver Jiménez enfrentan otro proceso judicial}.


\textsuperscript{589} Ecuador Noticias. April 22, 2016. \textit{Presidente Correa amenaza con encarcelar a damnificados del terremoto}; Infobae. April 23, 2016. \textit{La furia de Rafael Correa con las víctimas del terremoto en Ecuador}.
14.  EL SALVADOR

A.  Progress

554. On September 1, the Constitutional Chamber of the Supreme Court of Justice [Sala de lo Constitucional de la Corte Suprema de Justicia] ordered the Presidency of the Republic to publish, on its transparency portal, all information associated with international travel made using public funds by ex-president of the Republic Mauricio Funes and his wife, Vanda Pignato, jointly or separately, during the period between 2009 and 2014, including the names of the officials and/or employees who accompanied them, destination, objective, cost of the ticket, per diems assigned and any other expenditure made. It also ordered that the expenditures for the design, production and implementation of campaigns from 2010 be made public, along with the expenditures from formal activities incurred during visits by foreign officials. The ruling revoked a resolution by the Institute for Access to Public Information [Instituto de Acceso a la Información Pública], issued on December 18, 2014, in which partial confidentiality was declared regarding the information with respect to services of advertising agencies and total confidentiality of the information about the travels by the ex-president and his wife, arguing in the latter case that the publication of such information “would endanger, on the one hand, public safety and national defense and, on the other hand, the lives and safety of the persons involved”.890 In justifying its resolution, the Constitutional Chamber referred to the sentence by the Inter-American Court of Human Rights in the case of Olmedo Bustos and others vs. Chile, which established that freedom of information is part of the social dimension of freedom of expression and consequently “[while] freedom of expression is a means for the exchange of ideas and information among people [...], it also implies the right of everyone to know opinions, stories and news. For ordinary citizens, knowledge of the opinions of others or the information that other people have, is just as important as the right to disseminate their own.”891

555. Principle 4 of the Declaration of Principles 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. The 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.”

B.  Killings

556. On March 10, journalist Nicolás Humberto García was killed in the municipality of Tacuba, department of Ahuachapán. According to the available information, García was the director of the community radio station Expresa Voces al aire and had been attacked by alleged members of the criminal group known as “Mara Salvatrucha” after having refused to join that group and having prevented the use of his radio program to communicate messages by the criminal group. The journalist had a program dedicated to the prevention of violence, in which participation by members of the National Civil Police [Policía Nacional Civil] was frequent.892 According to the available information, on October 21, four alleged members of the criminal group were sentenced to 20 years imprisonment, charged with responsibility for the murder.893


On May 24, Darwin Zelaya, announcer of the *Radio Sky fm* station, was murdered. According to the known information, Zelaya was about to enter the building where the radio station is located when he was attacked by unknown individuals who fired upon him. According to the director of the radio station, Manuel Álvarez, the murdered journalist had not previously received threats.\(^{894}\)

With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.\(^{895}\)

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

C. Attacks, Threats and Harassments Against Journalists and Media Outlets

**Red Salvadoreña de Medios** (RSM) denounced on February 10 an assault against one of its journalistic teams. According to the information available National Police [Policía Nacional] agents assaulted the journalists and seized their equipment when they were covering a traffic accident on the road leading to Ataco, Ahuachapán. The National Civil Police acknowledged the event and issued an apology by means of a press release, stating that they would open an investigative process into the matter.\(^{896}\)

On March 9, journalist Claudia Campos and cameraman Walter Rivera of *Noticiero 4 Visión* were attacked by an alleged official of the National Administration of Aqueducts and Sewers [Administración Nacional de Acueductos y Alcantarillados] (ANDA). The attacked allegedly had happened while they attempted to enter the building of the public agency to cover incidents of a work slowdown organized by the Union of Workers [Sindicato de Trabajadores] of the ANDA, who had alleged the existence of irregularities in their working conditions. The alleged employee of the ANDA, who would be the secretary of the management of the Metropolitan Region [Región Metropolitana], insulted and physically attacked the journalistic team in addition to blocking their access to the building. The president of the ANDA issued an apology for the incident through his Twitter account.\(^{897}\)

On May 22, journalist Fidel Hernández of the station *TRV Noticias Canal 16*, in the municipality of San Miguel, had his cellular telephone stolen, which he used to record incidents prior to a football game in which


\(^{897}\) La Prensa Gráfica. March 9, 2016. *Anda bajo más críticas, tras agresión de empleado a periodistas*; "#IMPORTANTE Presidente de ANDA ofrece disculpas a @noticias4vision". Twitter account of Administración Nacional de Acueductos y Alcantarillados (ANDA) @anda_oficial. *March 9 2016*. 

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confrontations had occurred among those attending the event. A fan and an alleged employee of the office of the Mayor of San Salvador, who were traveling aboard a bus, had grabbed his cellular phone to avoid his filming the confrontation in which they were taking part. According to the available information, the events occurred in the presence of agents of the police who refrained from intervening.898

563. Journalist Cristian Meléndez of La Prensa Gráfica was threatened with death on November 28 from a Facebook account called “Sociedad Civil”. Meléndez denounced the threats to the Attorney General’s Office of the Republic [Fiscalía General de la República] on December 1. Civil society organizations and media outlets rejected the threats and asked the Government to protect journalists. The threats occurred after Meléndez had published an article on alleged acts of corruption in which the mayor of San Salvador, Nayib Bukele, would be implicated.899

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

D. Social Protest

565. A group of vendors gathered on April 7 in the Bulevar del Ejército to protest against the change in 19 bus routes in the city of Soyapango, San Salvador, a decision that had affected their sales. Injuries were reported along with four people who were arrested after the Unit for Maintenance of Order of the National Civil Police [Unidad de Mantenimiento del Orden de la Policía Nacional Civil] (PNC) dissolved the demonstration using teargas.900

566. During the Labor Day march on May 1, individuals with their faces covered had vandalized vehicles belonging to the television channels, Telecoporación Salvadoreña and Canal 33 and threatened to set one of the automobiles on fire. The journalistic teams were covering the incorporation into the commemorative march of a group of students who had departed from the installations of the Universidad de El Salvador. According to the available information, the events had been witnessed by agents of the police, who abstained from intervening, presumably because they require “an order from a superior” in order to do so. Through a press release, the National Civil Police [Policía Nacional Civil] issued an apology for the behavior of the agents and announced the opening of an investigation.901

567. On August 29, the journalistic team from The Newscast of Canal 6 had been attacked by members of the National Civil Police during a protest march held by police agents demanding a salary increase, the establishment of norms for retirement and the payment of a bonus. According to the available information, the police, who demonstrated wearing masks, had tried to prevent the journalists from filming images of the protest and therefore grappled with the journalists.902

898 La Prensa Gráfica. May 22, 2016. Aficionado del alianza roba celular a periodista de San Miguel frente a PNC “Ahí está el aficionado impidiendo nuestro trabajo”. Twitter account of Fidel Hernández @fidelhernandez. May 22, 2016. Periodista migueleño denuncia presunto robo de equipo de trabajo


900 La Prensa Gráfica. April 7, 2016. Vendedores se enfrentan con UMO en bulevar del Ejército; El Salvador. April 7, 2016. Enfrentamiento entre UMO y vendedores por Sitramss en Soyapango.


On September 29, the deputy from the Alianza Republicana Nacionalista (ARENA), Ricardo Velázquez Parker, had physically attacked cameraman Walter Rivera of the television channel Telecorporación Salvadoreña (TCS) while he was covering a demonstration by members of the health, education and safety trade union [Sindicato de salud, educación y seguridad] to demand better working conditions. According to the available information, Rivera had accidentally touched the lawmaker's shoulder with his camera, which had inconvenienced Velázquez who reacted by taking hold of the cameraman's back and separating him from the rest of the journalists who were covering the event.  

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

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

E. Stigmatizing Statements

On October 8, during an act to commemorate the 36th anniversary of the founding of the Frente Farabundo Martí para la Liberación Nacional party (FMLN), its Secretary General, Medardo González, affirmed that media outlets, specifically the daily newspapers La Prensa Gráfica and El Diario de Hoy, published information that aimed to “dismantle, disfigure the heads of the citizenry, even affecting people like us, militants of the FMLN” and called upon those present “to continue the battle of ideas against the lies of El Diario de Hoy, La Prensa Gráfica and all of those media outlets.”

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572. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."^908

F. Subsequent Liabilities

573. Entrepreneur José Enrique Rais López filed a lawsuit for the crimes of libel and defamation against the journalist and coeditor of the website Revista Factum, Héctor Silva Ávalos. The text of the complaint was filed on August 15 with the Sentencing Court [Tribunal de Sentencia] of Santa Tecla and was based on diverse publications by the journalist in which he had denounced the alleged relationship of the entrepreneur with the ex-Attorney General of El Salvador, Luis Martínez, to whom the former had loaned his airplanes to make multiple trips, allegedly in exchange for helping him in the investigation of a complaint filed against him by several Canadian citizens with whom he had been previously associated in a company dedicated to the handling of solid wastes.^909 Both Rais and Martínez had been arrested on August 23, accused of the crimes of "procedural fraud, ideological falsehood and bribery", accusations that would be associated with the publications made by journalist Héctor Silva.^910 As of the close of this report, the accused faced the proceedings at liberty.

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

G. Internet and Freedom of Expression

575. On November 12, 2015, the Attorney General's Office [Fiscalía General de la República] announced the arrest of Andrés Ricardo Ortiz Lara, as the alleged perpetrator of the cloning of the website of the newspaper La Prensa Gráfica, which had been denounced to that same office on July 21, 2015.^911 Based on that arrest, the Attorney General’s Office on February 16, 2016 carried out nine operations in which four other people were arrested who would be involved in the operation of an alleged marketing company that in reality operated as a "troll center". According the information available, in the investigations, the mayor of


San Salvador, Nayib Bukele, was implicated in the cyberattacks made against the daily newspaper as the actual perpetrator. The mayor has denied participation in the events and has accused his political rivals, the ARENA party, along with the “powers that be” of El Salvador, among whom he has mentioned the newspaper La Prensa Gráfica, of having undertaken a campaign against him by creating an “inexistent” case.912

576. In the context of investigations carried out in the case known as “troll center”, on February 19 a group of hooded individuals who had identified themselves as war veterans marched towards the installations of the newspaper La Prensa Gráfica and launched rockets against the parking lot of the daily newspaper. The demonstrators carried signs that said “Nayib is not alone” and “Enough slander against Nayib”. The Inter-American Press Association (IAPA) urged the State to investigate the degree of participation by Mayor Bukele in this case.913

577. The main political forces represented in the Legislative Assembly have maintained a debate about the possibility of creating a Directorate of Cybersecurity and Forensic Informatics [Dirección de Seguridad Cibernética e Informática Forense] as part of a legislative initiative to combat cybercrime. One of the aspects of the legislation that has caused the greatest controversy is that it would force Internet service companies to maintain records of the activities of their customers for 15 years.914

578. According to inter-american standards on freedom of expression and internet, the State has to “investigate when a website is the object of attacks such as, for example, so-called Denial of Service Attacks (DoS); those carried out through computer viruses or worms aimed at the transmitter’s equipment, among others. These types of computer attacks can be aimed at particular individuals or media outlets and can be enormously disruptive to the exercise of the right to freedom of expression. Accordingly, the State is obligated to investigate and properly redress such attacks.”915

H. Diversity and Pluralism

579. On April 25, a study was disseminated that had been made by the Secretariat of Participation, Transparency and Anticorruption [Secretaría de Participación, Transparencia y Anticorrupción] according to which at least 60 per cent of the radio and television frequency concessions that operate in El Salvador were not transparently granted, which is why “they have no documentary support for the concession, authorization, licenses, conventions, agreements or permits; 34 per cent have some type of document (but it is not complete) and only 6 per cent are duly supported.”916

580. On May 5, the Legislative Assembly unanimously approved diverse modifications of the Telecommunications Law that imply, among other things, the recognition of community media, which are defined as “those made up of radio and television broadcasting stations, aimed at a determined audience, installed or maintained within a single community, whose programs are not broadcast in the same manner by commercial radio and television stations that serve the same community”.917


916Observacom. April 26, 2016. 60% de las concesiones de televisión comercial de El Salvador no tienen documentos que respalden su autorización; Transparencia Activa. April 25, 2016. La mayoría de las concesiones de frecuencias de TV sin documentación.
administered by a nonprofit association or foundation, of social interest, providing them with the right to information and communication, as an exercise of freedom of expression, fostering civic participation to contribute towards accessible, fair, inclusive, sustainable development of the communities and social sectors of the country” which are also exempted from payment of the annual tariff for management of the spectrum of the radio stations and their connections. The reform also eliminated the auction mechanism as the sole way of gaining access to radio spectrum concessions, along with automatic renewal of the previously granted concessions. The reforms of the abovementioned law were made by the Legislative Branch in compliance with sentence issued on July 29, 2015 by the Constitutional Chamber of the Supreme Court of Justice, after a group of civil society and academic organizations filed an appeal to promote the unconstitutionality of that regulation. The sentence declared unconstitutionality by omission, given that the legislative body had not regulated alternative mechanisms to the auction for the selection and adjudication of concessions of radio spectrum frequencies for regulated use, and ordered the Legislative Assembly to issue said regulations by December 31, 2015, at the latest. Additionally, it declared the unconstitutionality of the system of automatic renewal of the concessions that have been granted, because it considered that said system violated the right to free competition.917

581. The executive director of the Association of Participative Radio Stations and Programs of El Salvador [Asociación de Radios y Programas Participativos de El Salvador] (ARPAS), Leonel Herrera, considered that it is “a historic event for the country, for the community radio stations that have fought for this since their emergence...”, now that after 22 years of struggle they can be part of Salvadoran legislation and “repay a historic debt.”918

582. The General Superintendence of Electricity and Telecommunications [Superintendencia General de Electricidad y Telecomunicaciones] (SIGET) emphasized in a press release that the reform of the Telecommunications Law [Ley de Telecomunicaciones] is based on nine pillars: the legal certainty of the State, private investments and compliance with the Sentence; plurality of the media; freedom of expression; process of transition towards digitalization; convergence of services; transparency and systematization of the processes; efficient use of scarce resources; transparency of the benefits of use of the technology, innovation and competition to the citizenry, and finally, the governmental agency considered it necessary to emphasize that the reform only deals with radio and television regulations and that telephony operators have not been previously contemplated within the bill.919

1. Other Relevant Situations

583. On July 14, the digital newspaper El Faro received the “Premio Gabo 2016” recognition for excellence. The award, according to the communiqué issued by the Foundation for a New Ibero-American Journalism [Fundación para el Nuevo Periodismo Iberoamericano] (FNPI), constitutes a recognition of “the courage of the journalists of El Faro, who carry out their work under risks and in very adverse conditions, to investigate and disseminate stories and topics that have unavoidable resonance in public debate”. The editorial team of the newspaper has been the target of constant threats in recent years.920

584. On March 5, the President of the Republic, Salvador Sánchez Cerén, scolded journalist Paola Alemán when she posed a question to the minister of Defense, David Munguía Payés, during a press conference about...
a celebration performed in the interiors of a penal facility. The President had allegedly stated that the question made by the reporter, who works for the newscast of *canal 6*, implied "an accusation" and therefore a lack of respect towards the official, in addition to the fact that it would be the prosecutor who should respond to the question, which was why he prevented the minister of Defense from giving an answer. The journalist had asked about a celebration that allegedly had taken place in the jail of Izalco, in August of 2013 – when the Minister served as minister of Justice and Security- and regarding which a few days before a video had circulated on the social networks showing a group of prisoners watching three nude women dance.921

585. On March 17, journalist Romeo Lemus had been fired from *Canal 12*, where he was in charge of an interview segment on the newscast 'Hechos'. Through his personal Twitter account, the journalist announced his firing, stating that "the search for the truth has its cost in a country where intolerance of justified criticism persists". Two weeks later, he was reinstated by the same media outlet, stating that he returned "under the commitment by the company to remove any obstacle that would violate the free exercise of (his) work."922

586. On August 9, the Minister of Defense, David Munguía Payés, held a press conference accompanied by the 86 officers of the High Command who are in charge of all military units and offices of the Salvadoran army. According to the known information, the Minister had stated that the purpose of the press conference was to present "to the Salvadoran people, the position of the Armed Forces regarding certain reports that have been made in relation to our institution". The day before, the daily newspaper *La Prensa Gráfica* had published a report revealing the alleged loss of 1,545 arms that were the property of the army.923

587. During the press conference, the minister of Defense had read a communiqué stating that "we have recently been witnesses to the irresponsible way and without going into details in their investigations, in which certain traditionally serious writers of the media have made efforts to discredit one of the most trusted and beloved institutions of the Salvadoran people, namely the Armed Forces, trying to damage their image and the morale of their members". He subsequently characterized as "erroneous", "inconclusive" (sic) and "biased" the information used to write the report by *La Prensa Gráfica* and affirmed that the arms are in the warehouses of the institution.924 In addition to holding the press conference, Minister Munguía Payés had sent a letter to the president and director general of *La Prensa Gráfica*, José Roberto Dutriz, complaining of the "continuous reports" published in the daily newspaper about the Armed Forces of El Salvador "that generate discredit of the institution".

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922 "Debido a las muestras de solidaridad emito el siguiente comunicado oficial ante mi despido de canal 12". Romeo Lemus on Twitter @romeolemusam. [March 18, 2016](https://twitter.com/romeolemusam); La Página. March 30, 2016. [Romeo Lemus registra mañana a canal 12](https://lapagina.com.na/2016/03/30/romeo-lemus-registra-manana-a-canal-12); Comunicado oficial por mi retorno a Canal12. Twitter account of Romeo Lemus @romeolemusam. [March 30, 2016](https://twitter.com/romeolemusam);

923 [La Prensa Gráfica. August 8, 2016. Defensa sin explicar faltante de 1,545 armas](https://www.laprensa.com.na/2016/08/08/defensa-sin-explicar-faltante-de-1-545-armas);

15. UNITED STATES

A. Progress

588. On June 30, President Barack Obama signed the FOIA Improvement Act of 2016, passed by both houses of Congress.

589. The new law limits application of the exceptions to public access to State information under subsection (b) of the FOIA. The paragraph added in subsection (a) establishes that an agency shall withhold information "only" if it "reasonably foresees that disclosure would harm an interest protected by an exception described in subsection (b)" or if "disclosure is prohibited by law;" it also establishes that an agency must "consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible" and "take reasonable steps necessary to segregate and release nonexempt information".

590. The amendment to the law also strengthens active transparency by State bodies by ordering that all information requested three or more times be made available to the public online. It also limits the ability of agencies to charge a fee for searching for the information requested when the deadline established in the law is not met. It establishes that applicants have at least 90 days to appeal decisions to refuse information to the agency head. Also, the FOIA Public Liaison offices set up to help the public make requests for information must notify requestors of their right to request the dispute resolution services of the Office of Government Information Services.

591. The memos or interagency letters that are not available to the public under the law may remain confidential "provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested."

592. The amendment extends FOIA supervision to the Office of Government Information Services. The annual report that each agency must submit to the Attorney General now must also be sent to the director of the Office of Government Information Services. The report should include the number of times the agencies have denied a request for information under subsection (c)—that is, based on the reasonable expectation that releasing the information would interfere with criminal investigations or proceedings. Similarly, agents must report annually the number of records made available to the public electronically in the form of content that the law requires to be released actively (subsection (a)(2)). The agencies also must make these reports available to the public online, and the statistical information used to prepare it must be available upon request.

593. Additionally, the amendments establish that the Attorney General must submit an annual report to the House Committee on Oversight and Government Reform, the Senate Committee on the Judiciary, and the President that includes the cases that have arisen under the FOIA law, exceptions to access to information made by State agencies, and a description of the efforts made by the Department of Justice to encourage agency compliance with the law, among other things. The report and statistical information on which it was based should be available to the public online. Likewise, the director of the Office of Government Information Services must submit an annual report to the aforementioned committees and to the president containing an analysis of the public information requested, a summary of the agency's activities, the disputes between requestors and agencies that have been resolved, and the recommendations issued, among other issues. This report must be available to the public. The new law also establishes that the director of the Office of

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Government Information Services “shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States.”

594. The Office of the Special Rapporteur was informed that the Pentagon adjusted certain aspects of the Law of War Manual it submitted in June 2015 after holding meetings with journalism organizations and freedom of the press defenders who expressed concern at certain aspects of it that could endanger the work of journalists during armed conflict. The original manual stated that journalists could be considered “unprivileged belligerents,” a legal category that provides less protection than for combatants. It also equated collection of information for the purposes of journalism with intelligence or spy activities. The revised manual explicitly recognizes the role of journalists as impartial and independent actors who inform on armed conflicts and recognizes their right to report freely, including the fact that in order to do this work, they must stay in contact or meet with the different sides in a conflict. The manual clarifies that these activities do not constitute “direct participation in hostilities.” Organizations such as the Committee to Protect Journalists and Reporters without Borders celebrated the changes.

B. Killings

595. On June 13, the body of Mexican journalist and photographer Jacinto Torres Hernández was found in Garland, Texas. According to Garland police, the journalist was allegedly murdered with a firearm. Torres Hernández was a member of the National Association of Hispanic Journalists (NAHJ) and contributed to La Estrella—the Spanish-language newspaper of the Fort Worth, Texas Star-Telegram—for 20 years. His daughter, Aline Torres said during a press conference that she believed his death could be connected to his journalism work because at the time of his murder, he was working on stories about illegal immigration and human trafficking. Toward the end of June, local police stated that the FBI, the Secret Service, and the US Marshals would work together to investigate the crime.

596. On June 27, the Office of the Special Rapporteur asked the State for information on the murder of Torres Hernández and the progress of the investigation. On August 19, the State informed that the Garland Police Department was the lead agency in charge of the investigation and that it was being assisted by federal agencies including the FBI and Secret Service. It stated that the investigation into the murder of Torres Hernández was a priority for the Garland Police Department and a number of detectives had been assigned to work the case. It also set up a hotline for information on the case and offered a reward of US$ 5 thousand to anyone who can provide information on the death of the reporter. The State maintained that so far, there was no indication that the murder was connected to his journalism work and committed to keeping the IACHR informed on the investigation’s progress.

597. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and

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case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.933

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

C. Social Protest

599. More than 400 demonstrators were arrested while participating in a peaceful protest in front of the Capitol building in Washington, DC, on April 11. The demonstrators were staging a “sit in” as part of the Democracy Spring campaign to protest the influence of money in American politics and Congress’s failure to take action.934 The Capitol Police said that day in a press release that it had arrested “more than 400 individuals” for “unlawful demonstration activity.” They were “being processed using mass arrest procedures.” It added that most arrestees were being charged with “Crowding, Obstructing, and Incommoding.”935 The demonstrations continued the following days. On April 12, police arrested 85 demonstrators;936 on April 13, approximately 90 people were arrested;937 on April 14, about 60 people were arrested;938 on the 15th, the police arrested another 12;939 and on April 18, approximately 300 demonstrators were arrested.940 In all cases, the police said that the demonstrators were processed in situ and then released. Detainees had to pay a fine of US$ 50.941

600. According to information received by the Office of the Special Rapporteur, more than 100 people were arrested for participating in protests against the construction of an oil pipeline in Morton County, North Dakota. The Native American tribes who lived there, the Standing Rock Sioux, and other residents of the area oppose the project, that crosses lands considered cared by the indigenous peoples, as it poses a risk to potable water reserves. Since August, tribes from throughout the country have been meeting there to demonstrate. The Native Americans who were arrested said the police treated them cruelly and inhumanely.942

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601. Repeatedly, the police allegedly used dogs, pepper spray and water cannons to disperse the protests in North Dakota.943 On October 27, 141 demonstrators were arrested by the Police. The police authorities of Morton County alleged that the demonstrators threw rocks, logs, bottles and rubble at the officers. Those arrested were booked and kept in custody for hours in cages that they described as similar to those found in dog kennels.944 The North Dakota Department of Corrections and Rehabilitation reported in a communiqué that they had used "temporary detention cells" at the Morton County Correctional Center that were used only for situations of "mass detention."945 On October 29, all of those arrested were released on bail after an anonymous donor contributed US$ 2 million 500 thousand to pay for their bail.946 On November 20, at least 17 people had to be taken to medical centers for treatment, some of whom for hypothermia, after the police sprayed the demonstrators with water during cold weather conditions.947 Also, some hundreds of demonstrators were injured.948 Furthermore, 21-year-old Sophia Wilansky had to receive various medical interventions at the risk of losing her arm, in the wake of injuries caused by the alleged explosion of a concussion grenade allegedly used by the security forces. The Police and the demonstrators do not agree about the cause of the explosion and the event is under investigation by state and federal authorities.949 On November 25, around 30 people who were supposedly protesting against the project in a shopping center in the city of Bismarck were arrested by the Police.950

602. On November 26, the president of the Standing Rock Sioux tribe, Dave Archambault, allegedly received notification from the US Army Corps of Engineers ordering the closure of the camp installed by activists opposed to the oil pipeline. According to a letter published by the tribe on its webpage, it was ordered to abandon the camp by December 5, and anyone resisting eviction could face trespassing charges. At a press conference organized at the camp site, where some 5000 people were installed, the demonstrators announced that they would not abandon the area.951

603. The Office of the United Nations High Commissioner for Human Rights (UNHCHR) accused the security forces of using “excessive force against demonstrators” who stand against the project for construction of the oil pipeline. In a communiqué issued on November 15, the Office of the United Nations Special Rapporteur for Freedom of Assembly and Peaceful Association, Maina Kiai, declared that the Police,
private security companies and the North Dakota National Guard “have used unjustified force in dealing with those who oppose the oil pipeline”. It also stated that some of the 400 people arrested during the demonstrations suffered from “inhumane and degrading conditions during their detention”, and that the demonstrators affirm that they were repressed using rubber bullets, tear gas and compression grenades. It is a “worrisome response against people who are taking measures to protect the natural resources and ancestral territory against an activity in search of benefits”, declared the Special Rapporteur. “The excessive use of security apparatus of the State to repress protests against corporate activities that allegedly violate human rights is incorrect and contrary to the United Nations Guiding Principles on Business and Human Rights”, he added.  

604. During a hearing on the “Situation of the Human Rights of Indigenous People in the Context of Extractive Projects and Industries in the United States” of the 160 Extraordinary Period of Sessions of the IACHR, the petitioners confirmed the above-mentioned events and also reported that the camp where the demonstrators are is lit by brilliant white lights during the night, which does not allow the demonstrators to sleep adequately. The petitioners also complained that the cellular phone signal had been allegedly cut off at the site where the demonstrators are. The United States delegation confirmed its commitment to continue working jointly to improve the quality of life of Native Americans and stressed the importance of application of the prior consultation, by means of US Federal Executive Order No 13175. They stated that they have taken diverse measures to promote and guarantee the rights of Native Americans, such as to support United Nations initiatives aimed at protecting their rights. They reported that the Office of Tribal Justice is the contact point within the Department of Justice for creating public policies associated with Native Americans, which has been working to guarantee the constitutional rights of Native Americans during the demonstrations, trying to de-escalate confrontations between demonstrators and the security forces. They also acknowledged the importance of the debate that has arisen with the aim of improving the prior consultation mechanism with Native Americans for the development of infrastructure projects, which has been materialized through public consultations held in September, in which Native Americans participated.  

605. On September 8, the State of North Dakota charged journalist Amy Goodman, a producer and host of “Democracy Now!”, with trespassing on private property supposedly after she filmed security guards using dogs and pepper gas to repress protesters demonstrating against the construction of the oil pipeline in Morton County on September 3. County police issued a statement saying that the protesters had entered private land after breaking through a fence. According to “Democracy Now!,” the video shows Goodman identifying herself as a journalist and interviewing the demonstrators. “I was doing my job by covering pipeline guards unleashing dogs and pepper spray on Native American protesters,” Goodman said. Later, prosecutor Ladd R. Erickson dropped the trespassing charges against the journalist and on October 14 sought charges against her for participating in a riot. On October 17 District Judge John Grinsteiner formally disallowed the charges.  

606. On October 11th, the IACHR sent the State a letter requesting information on the arrest of the demonstrators and the charges brought against Goodman. 

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607. According to the information received by the Office of the Special Rapporteur, the police had supposedly retaliated against a number of individuals for filming, documenting, or disseminating images of the death of African American citizens at the hands of officers. On July 5, Alton Sterling died after he was shot by the police while sitting in a shopping center parking lot in Baton Rouge, Louisiana.\textsuperscript{958} Chris LeDay, one of the individuals who distributed images of Sterling being shot, was arrested hours later after he published a video on the Internet. After he was handcuffed and taken to prison, he was told that he was being arrested because he owed traffic fines. He was released after paying the fines and spending 26 hours in jail.\textsuperscript{959} Abdullah Muhla-fi, the owner of the store where Sterling was when he was murdered, filed a complaint alleging that he had been abused by the police. According to his complaint, right after shooting Sterling, the officer had supposedly ordered the recordings on the store’s security cameras confiscated and arrested the store owner. According to his account, the police confiscated his cell phone and held him for four hours.\textsuperscript{960} On July 6, Philando Castile, also an African American, was murdered by the police during a traffic stop in St. Anthony, Minnesota. His partner, Lavish Reynolds, who recorded the encounter with the police, had allegedly been handcuffed and detained for interrogation, and her telephone confiscated.\textsuperscript{961}

608. The deaths of Sterling and Castile at the hands of the police sparked a wave of protests in a number of cities in the United States, led by the “Black Lives Matter” movement.\textsuperscript{962} During the demonstrations that took place over several days in July in dozens of cities and with greater intensity in St. Paul, Minnesota, and Baton Rouge, Louisiana, more than 300 people were arrested, according to media reports.\textsuperscript{963} One of the people arrested on July 9 in Baton Rouge was DeRay Mckesson, one of the leaders of the “Black Lives Matter” movement. He was freed on the following day.\textsuperscript{964}

609. During the protests in St. Paul, demonstrators supposedly had thrown bottles and rocks at the police and blocked certain streets. In Baton Rouge, members of the “New Black Panthers” confronted the police carrying guns.\textsuperscript{965} On July 7, during a demonstration in Dallas, Texas, a sniper shot at the police from a building, killing five officers. The attacker, identified as Micah Xavier Johnson, was killed by police.\textsuperscript{966}

610. On September 9, after a police officer in Charlotte North Carolina killed African American Keith Lamont Scott, hundreds of people took to the streets to protest. During clashes between the police and demonstrators, 16 officers were injured. Disturbances also took place as demonstrators allegedly had blocked some streets and thrown rocks and bottles at passing traffic, damaging some vehicles.\textsuperscript{967}


\textsuperscript{966} CNN. July 9, 2016. Dallas sniper attack: 5 officers killed, suspect identified; BBC. July 10, 2016. US police shootings: Protests spread with dozens of arrests.

\textsuperscript{967} The Charlotte Observer. September 20, 2016. Charlotte faces aftermath of protests ignited by fatal police shooting; 16 officers injured.
On September 10, the second day of protests in Charlotte, CNN journalist Ed Lavandera was injured. The reporter was on the air live covering the tense situation in the city following the death of Lamont Scott when someone presumed to be a protester appeared and pushed him, causing him to fall to the ground. That day, four officers were injured, as were two journalists with WLTX. The governor of North Carolina, Patrick McCrory, declared a state of emergency at the request of the local police.\(^{968}\)

The IACHR has reiterated that social protest is a fundamental tool for human rights defense work and is essential for critical political and social speech regarding the activities of the authorities. The Commission has maintained that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the right to freedom of expression and to freedom of assembly,”\(^{969}\) and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”\(^{970}\)

In addition, the Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, states that the rights of assembly and freedom of expression “son fundamentales y su garantía es una condición necesaria para la existencia y el funcionamiento de una sociedad democrática. Un Estado puede imponer limitaciones razonables a las manifestaciones con el fin de asegurar el desarrollo pacífico de las mismas o dispersar aquellas que se tornan violentas, siempre que tales límites se encuentren regidos por los principios de legalidad, necesidad y proporcionalidad. Además, la desconcentración de una manifestación debe justificarse en el deber de protección de las personas, y deben utilizarse las medidas más seguras y menos lesivas para los manifestantes. El uso de la fuerza en manifestaciones públicas debe ser excepcional y en circunstancias estrictamente necesarias conforme a los principios internacionalmente reconocidos.”\(^{971}\) Finally, the Inter-American Commission has found that any type of arbitrary or abusive interference that might affect the privacy of human rights defenders and their organizations is prohibited under the Declaration and the American Convention.\(^{972}\)

With respect to the use of force in contexts of social protest, the IACHR and its Office of the Special Rapporteur for Freedom of Expression developed relevant standards in their 2015 report on the Use of Force.\(^{973}\) In that report, the IACHR stated that “The social interest imperative associated with the right to participate in public demonstrations is such that there is a general presumption in favor of its exercise.” The IACHR maintained that “The presumption in favor of the exercise of social protest implies that states must act based on the legality of the protests or public demonstrations and under the assumption that they do not constitute a threat to public order, even in those cases in which they are held without prior notice.” In the same report, the IACHR underscored that, “Whatever the format adopted by those who exercise this right, the action of the police should have as its main objective facilitating demonstrations and not containing or confronting the demonstrators. Hence, as a general rule police operations organized in the context of protests should be geared to guaranteeing the exercise of this right and to protecting the demonstrators and third persons who are present.” In this regard, the Commission has considered that breaking up a demonstration does not, in itself, constitute a legitimate aim that justifies the use of force by security forces. “When a

\(^{968}\) CNN. September 21, 2016. CNN correspondent Lavandera knocked to ground by protester; RT. September 22, 2016. VIDEO: Atacan en directo a un periodista que cubría las protestas de Charlotte.


demonstration or protest leads to situations of violence it should be understood that the State was not capable of guaranteeing the exercise of this right. [...] The State’s obligation is to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims.”

D. Confidentiality of Sources

615. On January 22, Judge Christopher S. Sontchi withdrew an order he had issued the previous week requiring 123 people involved in negotiations over the bankruptcy of mining company Molycorp, Inc., to testify regarding any contact they had with Bloomberg journalists over the last 60 days. He issued the order after a Bloomberg journalist published articles with information on the confidential mediation the judge had ordered for Molycorp’s bankruptcy. After hearing Bloomberg’s objections, the judge allegedly admitted that the order was too broad and ordered the media outlet and the parties to work together to agree on a more targeted measure.974

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

E. Freedom of Expression in Electoral Context

617. The Office of the Special Rapporteur received information on incidents that took place during the presidential campaign. President-elect Donald Trump—the presidential candidate of the Republican Party—and his campaign staff maintained a tense and sometimes aggressive relationship with the press, according to a number of journalists and social organizations.975 For example, on January 23, Trump said he would not attend the Republican debate in Des Moines, Iowa, organized by Fox News and set to take place on January 25. Supposedly, this was because he disagreed with the selection of journalist Megyn Kelly to moderate the event. Kelly was one of the moderators during the first debate between Republican candidates in August 2015. According to Trump, her treatment of him was “unfair and biased.”976 Following Trump’s decision, the network issued a press release backing the journalist’s work and confirming that she would be one of the moderators. He also accused Trump of “viciously” attacking the reporter for months and demanding she be removed from the debate.977

618. On February 29, a US Secret Service agent allegedly had assaulted Time photographer Christopher Morris during a Trump campaign event in Radford, Virginia. The reporter was trying to photograph a protest and had just left the designated media area when the agent grabbed him by the throat and struck him. The Secret Service stated in a press release that its local office was investigating the incident along with the local police to determine the exact circumstances of what took place.978
619. Following the incident, *Time* magazine said that in contrast to other presidential campaigns, which generally allow reporters to move freely about during events, candidate Trump’s event had a very strict policy requiring journalists and photographers to remain in a closed-off area. The entrance to this area is monitored by Secret Service agents. *Time* also said that candidate Trump often pointed to the area where the reporters were located to ridicule them during his speeches.  

620. On March 8, during coverage of a Trump campaign event in Jupiter, Florida, campaign manager Corey Lewandowski had allegedly physically assaulted journalist Michelle Fields. According to the reporter, when she approached candidate Trump to ask him a question, Lewandowski aggressively grabbed her arm and forced her away. On her Twitter account, the reporter published a photograph of her arm with the bruises caused by the assault. Lewandowski later denied having touched the journalist and accused her of being “totally delirious.” Candidate Trump said he thought the journalist had “invented” the story. On March 29, the Jupiter Police released a video showing the moment when Lewandowski grabbed the reporter by the arm. That same day, Lewandowski was arrested. Days later, the Palm Beach County state prosecutor said he would not bring charges against him.  

621. On March 11, CBS News reporter Sopan Deb was temporarily detained while covering protests during a Trump campaign event in Chicago that had been suspended. Deb allegedly was recording images of an individual on the ground, injured, near the police, during confrontations between protesters supporting and opposing candidate Trump, when he was taken from behind and wrestled to the ground. The Illinois State Police charged Deb with resisting arrest, even though CBS News reported that there were no indications in any of the images recorded by Deb or his colleagues that he had resisted. Deb supposedly had identified himself as a journalist and shown his credentials to the police. On March 17, the Chicago Police Department and Illinois State Police published a statement saying they have dropped all charges against the journalist.  

622. In October, the *Washington Post* published an article stating that hostility toward journalists during Trump’s campaign events had been increasing over the months and become more intense during the final weeks of the campaign as scrutiny of the candidate increased. The article said that the attitude of Trump supporters toward members of the press had become more tense and aggressive in recent weeks, incited by a candidate who had “demonized” journalists. The situation led reporters to hide their press credentials when leaving the candidates events to avoid confrontations with his supporters. Many journalists attributed this growing hostility to Trump’s constant criticism of the press. According to the *Washington Post*, which

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981 “I guess these just magically appeared on me @CLewandowski, @realDonaldTrump. So weird.” Official Twitter account of Michelle Fields @MichelleFields. *March 10, 2016 – 10:02 AM*.

982 “You are totally delusional. I never touched you. As a matter of fact, I have never even met you.” Official Twitter account of Corey Lewandowski @CLewandowski. *March 10, 2016 – 9:28 PM*.


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consulted a number of journalists covering the his campaign, he has had one of the most combative relationships with the press of any presidential candidate.\textsuperscript{989}

623. Over the course of the campaign, the Republican candidate Donald Trump allegedly had banned journalists from a total of 12 media outlets at different times. Trump also threatened that, if elected, he would push for defamation laws to make it easier for public figures to sue the media.\textsuperscript{990}

624. On October 6, the Committee to Protect Journalists (CPJ) passed a resolution declaring Trump “an unprecedented threat to the rights of journalists and to CPJ’s ability to advocate for press freedom around the world.” According to the organization, “since the beginning of his candidacy, Trump has insulted and vilified the press and has made his opposition to the media a centerpiece of his campaign. Trump has routinely labeled the press as ‘dishonest’ and ‘scum’ and singled out individual news organizations and journalists.” It also noted that “Trump has refused to condemn attacks on journalists by his supporters. His campaign has also systematically denied press credentials to outlets that have covered him critically, including The Washington Post, BuzzFeed, Politico, The Huffington Post, The Daily Beast, Unvision, and The Des Moines Register."\textsuperscript{991}

625. On October 12, one of Trump’s attorneys supposedly sent a letter to The New York Times asking it to remove an article from its front page published that day and issue a retraction and an apology for disseminating defamatory information. The article included the testimony of two women who accused candidate Trump of having sexually assaulted them. On October 13, David McCraw, the newspaper’s vice president and general counsel, sent a letter responding to candidate Trump. He stated that the women quoted in the article had spoken about a nationally important issue, one that candidate Trump himself had discussed in front of the entire country. He also said that the reporters worked hard to confirm the women’s story and that the article included a response from Trump denying the allegations. “It would have been a disservice not just to our readers but to democracy itself to silence their voices,” he said. “We did what the law allows: We published newsworthy information about a subject of public concern. If Mr. Trump disagrees, if he believes that American citizens had no right to hear what these women had to say and that the law of this country forces us and those who dare to criticize him to stand silent or be punished, we welcome the opportunity to have a court set him straight.”\textsuperscript{992}

626. Since he was elected president on November 8, Trump has maintained his hostile attitude towards the press, questioning or discrediting the work of the media and journalists.\textsuperscript{993} On November 10, president elected Trump traveled to Washington D.C. supposedly without notifying the group of journalists assigned to cover his movements and without permitting them to travel with him. The press team, which consists of a reduced number of journalists responsible for following the president in his daily agenda, known as the press pool, is generally notified by the presidential team about the planned activities. Certain journalists and media outlets criticized the president elected Trump’s attitude, which breaks with historically established standards that govern the relationship of the president with the press. The White House Correspondents Association issued a communiqué stating that it was “deeply concerned” by the decision of the president elect in rejecting the practice of traveling with a group of journalists during his first trip to Washington since the election. “In addition to breaking with decades of historic precedents and First

\textsuperscript{989} The Washington Post. October 14, 2016. The press always got booed at Trump rallies. But now the aggression is menacing.

\textsuperscript{990} Politico. February 26, 2016. Donald Trump: We’re going to ‘open up’ libel laws; The Washington Post. October 14, 2016. The press always got booed at Trump rallies. But now the aggression is menacing; Committee to Protect Journalists (CPJ). October 13, 2016. CPI chairman says Trump is threat to press freedom.

\textsuperscript{991} Committee to Protect Journalists (CPJ). October 13, 2016. CPI chairman says Trump is threat to press freedom.


Amendment principles, this decision could leave Americans in the dark about his location and well-being in case of a national crisis”, said the Association.994

627. On November 21, during a meeting with senior executives and journalists from the principal television channels of the United States (ABC, NBC, CBS, Fox News, MSNBC, CNN), elected president Trump criticized journalistic coverage by those media during the electoral campaign and of his subsequent election as president.995

628. On November 13, Trump stated on his Twitter account that the daily newspaper *The New York Times* was losing “thousands of subscribers due to its very poor and very imprecise coverage of the “Trump phenomenon”*.996 The media outlet responded through that same social network that its subscriptions, in both printed and digital versions, had increased more than usual.997

629. In electoral contexts, freedom of expression is directly connected to political rights and their exercise, and both types of rights mutually strengthen one another.998 Reasoned democratic debate requires the greatest possible circulation of ideas, opinions and information about the candidates, their parties, and their platforms during the period preceding an election, principally through the media, the candidates, and others who wish to express themselves. Everyone must be able to question and investigate the capacity and suitability of the candidates, disagree with and confront their ideas and opinions, so that voters can form their opinions.999 As the IACHR has underscored, free speech and political debate are essential for the consolidation of the democratic life of societies, and therefore are of compelling social interest.1000

630. The UN, OSCE, OAS, and African Commission’s Rapporteurs for Freedom of Expression made similar assertions in their 2009 Joint Statement. Indeed, on May 15, 2009, the four rapporteurs issued the “Joint Statement on the Media and Elections.” In the Joint Statement, the rapporteurs underscored the importance of open and vigorous debate, access to information, and electoral processes, as well as the fundamental role of the media to raise election issues and inform the public. But they stated that only diverse and independent media, including the public service broadcasters that are independent of the government, can fulfill this role. Among other points, the Joint Statement urges the States to: (i) implement measures to create an environment in which a pluralistic media sector can flourish; (ii) repeal laws that unduly restrict freedom of expression and provisions that hold the media liable for disseminating unlawful statements made directly by parties or candidates that the media could not prevent; (iii) establish effective systems for preventing threats and attacks against the media; (iv) enact laws that prohibit the discriminatory allocation of paid political advertisements based on political opinion; (v) create independent bodies for the oversight of rules relating to the media and elections; and (vi) establish clear obligations for the public media, including: ensuring that ...
F. Access to Public Information

631. On January 28, 25 news organizations signed an open letter to legislators in the state of Florida "strongly" urging them to reject two bills in both chambers of the State Congress proposing eliminating a state law known as the "Sunshine Law" that requires the legal expenses be covered for people who successfully request public records in cases in which the information was illegally withheld.\textsuperscript{1002} The letter, which is signed by organizations including the American Society of News Editors, The Associated Press, The Center for Investigative Reporting, and The National Press Club, states that the law "ensures that the press and the public will not shy away from enforcing the public's right to government records and information," saying that eliminating it would "substantially" weaken the Florida’s Public Records Law.\textsuperscript{1003} In the end, the legislative proposals to amend the law were not passed by Congress.\textsuperscript{1004}

632. On February 8, journalist Jessica Huseman filed suit in the Supreme Court for the County of New York against the Department of Education after it allegedly denied a number of her requests for information under the Freedom of Information Act for an investigation called “The Teacher Project” as part of her studies at the Columbia University School of journalism. In June 2015, she requested information on complaints received about a special education center, on equipment purchases, and on employee salaries, among other issues. According to the lawsuit she filed with the Court with the support of Reporters Committee for Freedom of the Press and Levine Sullivan Koch & Schulz, this was considered a “dispute about improperly withheld records that shed light on important public issues at the very heart of FOIL’s guarantees: the manner in which New York City educates its children, spends taxpayer money, and responds to complaints about the provision of services to particularly vulnerable students.”\textsuperscript{1005}

633. On May 19, journalist David Yanofsky, with the publication Quartz, filed a FOIA suit in DC Federal Court seeking free access to a Commerce Department database containing information on the travel of foreigners to and from the United States. The Department said that the information was not available under FOIA. It therefore denied the journalist’s request to provide the information free of charge and told him he would have to purchase it, which would cost more than US$ 173 thousand. Yanofsky, who is represented in the case by the attorneys of the Reporters Committee for Freedom of the Press, allegedly seeks access to the data to report on public policies related to trade and immigration.\textsuperscript{1006}

634. Principle 4 of the IACHR’s Declaration of Principles states 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.”


\textsuperscript{1005} Reporter’s Committee for Freedom of the Press. February 10, 2016. Reporters Committee attorneys help education reporter take action against info denials from NYC officials.

\textsuperscript{1006} Quartz. May 20, 2016. I’m suing the US government for its data on who’s entering the country; Reporter’s Committee for Freedom of the Press. May 20, 2016. Reporters Committee attorneys represent reporter in FOIA lawsuit for access to travel databases.
G. Revelation of Confidential Information

635. On February 17, a group of freedom of expression defenders marched to the White House with a petition requesting that the president pardon former Central Intelligence Agency (CIA) official Jeff Sterling, who has been in prison since June 2015 for revealing classified information. His wife, Holly Sterling, led the petition, which collected some 150,000 signatures, according to the group of organizations that participated in the demonstration. Sterling was convicted on May 11, 2015, and sentenced to three and a half years in prison for spying. He was arrested for the first time in 2011 and the government determined that he had made an "unauthorized disclosure of national defense information" when he allegedly gave information on a secret CIA operation called "Operation Merlin" to *New York Times* reporter James Risen. The information was then published in Risen's book *State of War*. Risen refused to identify his sources, but the government subpoenaed him three times and obtained his credit card, travel, bank, and phone records, all of which allegedly pointed to Sterling as the source. Media organizations stated that Sterling's conviction not only highlights the government's attempts to force journalists to identify their sources, but the danger that whistleblowers face by talking to journalists and the difficulties involved in obtaining information from them.

636. On May 18, former soldier Chelsea Manning appealed her sentence of 35 years in prison for leaking classified documents to Wikileaks. In the appeal, Manning's defense argues that the sentence was "grossly unfair and unprecedented" and describes it as "perhaps the most unjust sentence in the history of the military justice system." It states that, "No whistleblower in American history has been sentenced this harshly." On June 30, 2013, Manning was convicted by the U.S. Army Military District of Washington on 20 counts, including "wanton publication," "stealing USG property," and seven violations of the 1917 Espionage Act for having sent Wikileaks information on incidents that took place during the Iraq and Afghanistan wars. On August 21, she was sentenced to 35 years in prison, the longest prison term ever handed down in a case of leaking classified information to the public in the history of the United States. After the closing of this report, it became known that president Barack Obama commuted her sentence.

637. Tech company Yahoo granted requests by United States intelligence agencies to access millions of its clients' emails, according to an October 4 report by Reuters. According to the report, which was based on the statements of the company's former employees, in 2015, Yahoo designed software to scan incoming email for specific information requested by the National Security Agency and the FBI. According to Reuters' sources, the decision by Yahoo CEO Marissa Mayer to acquiesce to the directive of the security agencies bothered a number of executives and led to the resignation of Chief Information Security Officer Alex Stamos in June 2015. Yahoo thereafter began to work on minimizing the impact of the directive on its customers.

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2015. Yahoo said in a press release that it is a “law abiding company” that “complies with the laws of the United States.” The United Nations Special Rapporteur on the right to freedom of opinion and expression, David Kaye, stated in a press release that “Government monitoring of digital communications, when conducted as described in recent reports, could undermine the privacy that individuals depend on in order to seek, receive and impart information online.” Kaye said that based on the allegations reported, he would have had “serious concerns that the alleged surveillance fails to meet the standards of necessity and proportionality for the protection of legitimate government interests.” He added that “Yahoo’s apparent accession to government surveillance requests, without evident legal challenge, also raises concern about the involvement of technology companies in questionable government programs that impact freedom of expression.”

H. Media Concentration

638. On March 17, the Justice Department filed an antitrust lawsuit to keep Freedom Communications Inc., publisher of the Register, in Orange County, California, and the Press-Enterprise, in Riverside County, California, from being acquired by the Tribune Publishing Company, which publishes the Los Angeles Times. In a statement, the Justice Department said that the Tribune was selected to purchase Freedom Communications’ newspapers following a bankruptcy auction and would seek bankruptcy court approval for the acquisition. The Justice Department filed the lawsuit in federal district court in Los Angeles, seeking a temporary restraining order to prevent the sale from going forward. According to the lawsuit, Los Angeles Times and Register together account for 98 per cent of newspaper sales in Orange County, while the Los Angeles Times and the Freedom newspapers together accounted for 81 per cent of sales in Riverside County. The Tribune’s acquisition of its main competitor would give it a monopoly on the sale of newspapers and enable it to increase the prices of subscriptions and advertising while reducing investments in maintaining the quality of its products, the Justice Department argued.

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

I. Other Relevant Situations

640. On June 24, journalist Mark Thomason was arrested. Thomason publishes local weekly Fannin Focus in Blue Ridge, Georgia. He was charged with attempted identity fraud, identity fraud, and making a false statement in connection with a request for public records—under the Open Records Act—on the bank accounts of the Pickens County Superior Court. Thomason and his attorney, Russell Stookey, were arrested and released after posting bail of US$ 10 thousand. The reporter’s request supposedly originated in a legal dispute over a prior request for access to information submitted by Thomason while he was investigating allegations that a judge had used racial slurs in court. The journalist requested access to the stenographic and audio records, and after inspecting them, reported that the transcription of the court reporter Rhonda Stubblefield was incomplete because it did not specify precisely who had used the offensive expressions. Stubblefield sued Thomason for defamation, but eventually dropped the suit and the case was shelved. Later,

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Stubblefield filed a lawsuit against the journalist to recover the costs of litigation. Following that, Thomason requested access to information on the bank accounts of the Court to show that it had covered the court reporter’s legal expenses.\textsuperscript{1018}

16. GUATEMALA

A. Killings

641. The Office of the Special Rapporteur was deeply concerned at the information received on the murder of eight communicators in Guatemala during 2016. On March 17, journalist Mario Roberto Salazar Barahona, director of radio station Estéreo Azúcar, in the municipality of Asunción Mita, Jutiapa department, was murdered. On April 8, Winston Leonardo Túñez Cano, a host with the radio station La Jefa in the department of Esquipulillas, was shot to death. On April 30, in the municipality of Ixcan, Quiche department, three armed individuals murdered journalist Diego Salomón Esteban Gaspar, host of the radio station Radio Sembrador. On June 7, communicator and physician Víctor Hugo Valdés Cardona, was murdered in the city of Chiquimula, Chiquimula department. Valdés Cardona had been walking with his grandson when two unknown assailants traveling on a motorcycle intercepted them and shot him several times. For nearly 30 years, he had hosted cultural program ‘Chiquimula de Visión’ on a local television station. On June 25, journalist Álvaro Alfredo Aceituno López was murdered. He was the director of Radio Ilusión and hosted a news program entitled ‘Acotecer Coatepecano’ in the municipality of Coatepeque, Quetzaltenango department. Aceituno was the victim of an armed attack. He died from his wounds hours later in a hospital.

642. On September 4, Felipe David Munguía Jiménez was murdered, he was a cameraman for Canal 21 and a social activist in the municipality of Santa María Xalapa, Jalapa department. Munguía Jiménez was murdered by an individual with a firearm as he left a community assembly. Hours later, the National Police [Polícia Nacional] announced that they had arrested the individual allegedly responsible for the murder.

643. On September 9, communicator Ana Leonor Guerra Olmedo was murdered as she left the San Juan de Dios Hospital, where she worked as a spokesperson. Guerra Olmedo was shot to death, allegedly by a minor with links to criminal organizations (pandillas). The murder had allegedly been in retaliation for measures...
implemented by the San Juan de Dios and Roosevelt hospitals to not accept transfers of prisoners for medical care due to the danger these transfers involved for their staff.1026

644. On November 6, the journalist Hamilton Hernández and his wife Ermelina González were killed on the highway between the municipalities of Coatepeque and Flores Costa Cuca in the department of Quetzaltenango. Hernández was the host of the TV program Punto Rojo on Canal 5, a local cable channel. Their bodies were found dead and showed gunshot wounds. The murders reportedly took place when Hernández and his wife were on their way home after Hernández covered and event on the night of November 5. The Attorney General, Thelma Aldana, had allegedly announced that the Unit for Crimes Against Journalists would be restructured and strengthened.1027

645. The authorities have opened investigations in these cases, but it is still not known whether these crimes are connected to the work these individuals performed as journalists and social communicators. For the Office of the Special Rapporteur, it is crucial for the Guatemalan State to investigate these crimes fully, effectively, and impartially to discover the motives, as they affect all of Guatemalan society. The Guatemalan State must also legally establish any connection there may be to journalism activity and freedom of expression. Is therefore crucial for authorities to investigate these facts without dismissing their possible connection to journalism and freedom of expression.1028

B. Attacks, Threats and Harassment Against Journalists and Media Outlets

646. On January 15, journalists Miguel Salay and Marvin Pérez, with news show Guatevisión, were attacked while covering the arrest of Antonio Coro, the former mayor of Santa Catarin Pinula, who faced allegations of criminal acts. Municipality officials and the former mayor’s sympathizers insulted and attacked the journalists and tried to prevent them from covering the incident. One person stole one of the reporters’ cell phones as he tried to film the attacks.1029

647. Columnist Miguel Ángel Albizures reported acts of intimidation and slander against him and other two people from individuals assumed to be retired soldiers and their family members. In his column in El Periódico dated January 21, Albizures accused family members of soldiers who were imprisoned due to the Creompaz case and members of the Military Veterans Association of Guatemala [Asociación de Veteranos Militares de Guatemala] and Fundación contra el Terrorismo of distributing flyers throughout the city accusing him of being a “terrorist.” The flyers also mentioned Frank la Rue, former president of the Presidential Human Right Commission and former Special Rapporteur for Freedom of the United Nations, and activist Iduvina Hernández.1030


On April 16, during a concert organized by the Kojk’astaj Xenacoj collective in the Santo Domingo Xenaco Park, Sacatepéquez, several artists and activists were threatened and harassed by armed individuals. The Sacatepéquez Department [Departamento de Sacatepéquez] supposedly was in the route of a road that a cement company would try to build in the region. According to what was informed, the state ignored a community consultation against the construction performed in 2007 and since then a conflict allegedly exists. The artists and activists assaulted were Sara Curruchich, Lucía Ixchú Hernández, Yxmucané Choy, Marcos Hernández and Laura Penados.  

On April 29, unknown individuals entered the house of journalist Ángel Martín Tax, a correspondent with the Prensa Libre in the city of Cobán, Alta Verapaz, and stole his camera and personal computer containing journalistic material and files.  

On May 9, journalist José Rubén Zamora, president of the newspaper El Periódico, reported in his newspaper's pages that he was again the target of threats and intimidations.  

On June 30, two unknown individuals went to the home of journalist Irma Tzi, who works for Nuestro Diario in the department of Alta Verapaz, and threatened to burn it down if she did not come out and talk to them. They also threw rocks at the house. Tzi thought the attack could be connected to her journalism work and filed a complaint with the Public Prosecutor. Also, the Department Auxiliary Office of the Human Right Ombudsman [Auxiliatura Departamental de la institución del Procurador de los Derechos Humanos] asked the Justice of the Peace for security measures for the journalists.  

On July 7, a group of residents of the village of El Tablón, in Sololá, blocked journalist Mario Guzmán, a correspondent with the news channel Telecentro 13, from covering a police operation in a local business and threatened to attack him if he did not erase the images he had captured. The journalist agreed to erase the material so they would let him go.  

On July 13, journalists Fredy Chalí and William Cuxil, from Canal 48 of San Juan Comalapa, Chimaltenango, were verbally intimidated by the municipality's mayor, Justo Rufino Similox, when he tried to stop them from taking pictures for an investigation they were performing. The mayor asked them who would defend the journalists when they were murdered and who would take care of their children, insinuating possible attacks on them.  

On August 6, journalist Santiago Palomo, a commentator with the news program 'A las 10pm' on Canal Antigua, was physically attacked by Steven Mejía, a former candidate for deputy with Movimiento  


1035 Centro de Reportes Informativos sobre Guatemala (Cerigua). July 9, 2016. Observatorio de los Periodistas reporta agresiones contra el gremio.  

655. The IACHR and the Office of the Special Rapporteur recall that public servants must unequivocally repudiate attacks perpetrated in retaliation for the exercise of freedom of expression, and must abstain from making statements that may increase the vulnerability of those who are persecuted for exercising their right to freedom of expression. Similarly, it is essential that the authorities who hold elective positions or who hold responsibilities within the State structure encourage the competent authorities to act with due diligence and speed to investigate the facts and punish those responsible.

656. Based on the foregoing, the IACHR reiterates its recommendation that the State protect the lives and physical integrity of journalists and refrain from making statements that stigmatize or discredit journalists and media workers, and that it strengthen measures to fight impunity for crimes committed against journalists.

C. Protection of Journalists Program

657. Despite the repeated recommendations of the IACHR, its office of the special Rapporteur, UNESCO, and the UN High Commissioner for Human Rights that Guatemala should move forward in creating a program for protecting journalists and media workers, the implementation of such a protection system is still only the subject of talks. In 2014, a high-level roundtable and a technical roundtable were established—including the participation of the Presidential Committee for Coordinating Executive Policy on Human Rights [Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos] (Copredeh), the Governance ministry [ministerio de Gobernación], the Public Prosecutor [Ministerio Público], and the Department of Social Communication of the Presidency of the Republic [Secretaría de Comunicación Social de la Presidencia de la República] (SCSPR)—to design and implement a program to protect journalists. In 2015, the government took positive steps toward designing a mechanism, with consultations with civil society and human rights organizations. The high-level roundtable [Mesa de Alto Nivel] and the technical roundtable [Mesa Técnica] worked to design and implement the mechanism for protecting journalists. The work continued with support from Unesco and the Office of the UN High Commissioner for Human Rights (UNHCR). The process to build a mechanism resulted in a document entitled “Preliminary Proposal for a Program to Protect Journalists.” The document identifies the institutions that would form the program, their protective functions, and how coordination would operate. The document was discussed by journalists and defenders of the right to freedom of expression. Based on their comments, recommendations, and observations, the technical roundtable presented the conceptual design of the System for the Protection of Journalism Activities [Sistema de Protección al Ejercicio Periodístico] (SPEP). However, a number of journalism associations said they had had little or no involvement in drafting the proposal. In 2016, following the inauguration of a new government, the administration of President Jimmy Morales moved to suspend the process and begin a new process for setting up the mechanism.


On February 1, 16 of the country’s journalism institutions issued a joint press release claiming they had been “excluded from the process through which” the document on the journalism protection program was drafted. They stated that they had not seen the “final version” of the proposal that would be a basis for institutionalizing the protection mechanism, and said they were not part of the technical roundtable that the previous government had set up to work on the issue, “nor involved in the consultations and discussions inherent to a process of this nature.” They asked that “the discriminatory methodology employed by the previous government be rectified and a roundtable be set up with representatives of the journalism profession to discuss the serious safety problems journalists face in Guatemala.” For this reason, they requested a “hearing as soon as possible” with the Secretary of Social Communication of the Presidency to submit their “demands and points of view” on the mechanism.

After issuing this statement, on February 4, the Association of Journalists of Guatemala (APG), the Guatemalan Journalism Chamber (CGP), Cámara de Locutores Profesionales de Guatemala (ALPG), and other departmental associations met with the secretary of Social Communication of the Presidency, Alfredo Brito, to submit their demands regarding the process for setting up the mechanism for protecting journalists. According to the organizations, Brito committed to reviewing and correcting the procedure used for setting up the program due to the fact that it excluded communicators during the drafting of the proposal presented by the technical roundtable. According to the information published by the local organization Cerigua, representatives of the media highlighted the need to open an effective channel of communication with government authorities for the safety of journalists and asked the officials of the Office of the Secretary to set up a roundtable of journalists and professional associations. The secretary committed to addressing their demands, analyzing the proposal submitted by the technical roundtable, and suspending the process until the participation of journalists is included.

On June 8, media organizations delivered a proposal to Brito for the creation of a mechanism to protect journalists.

On July 19, representatives of the alliance of media organizations met with the President of Guatemala, Jimmy Morales, and presented him with the content of the proposal for creating a program or mechanism for protecting journalists. The president pledged to support the proposal and assured them they would have the “full support” of the presidency for “making the project a reality.”

The organizations’ proposal includes the creation of a surveillance and coordination unit made up of a highly qualified technical team, as well as a training unit with experts on freedom of expression and freedom of the press to work in coordination with the structure of the State. The fundamentals highlighted by the proposal include the following: the program must be apolitical; it must have space for agreement on and coordination of the defense of journalists; the State must commit to its responsibility on the issue, and journalists and communicators, professional associations, the media, and specialized institutions must all cooperate; and finally, the minimal necessary structure for supporting the mechanism adopted and designation of the necessary human and material resources for effectively implementing the program must be provided. Also, having up-to-date, trustworthy, and accurate information on the situation of journalists, along with an instrument with data specific to the program, were seen as indispensable for building the safety and protection mechanism. The proposal recommends that preventative measures be taken.

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1043 Centro de Reportes Informativos sobre Guatemala (Cerigua). June 8, 2016. Alianza de entidades de prensa entrega propuesta de Programa de Protección a Periodistas.


actions, training for police, prosecutors and judges on the issue, and providing the public prosecutor’s crimes against journalists unit \[Unidad Fiscal de Delitos contra Periodistas\] with the necessary resources be seen as priorities. Upon its delivery to the president, the proposal had the support of Unesco, as ratified by its representative in Guatemala, Julio Carranza.\[1045\]

662. The IACHR and its Office of the Special Rapporteur believe there is an urgent need to complete the process for creating the mechanism to protect journalists and implement it as soon as possible. In particular, it is essential that the mechanism be implemented through a high-level official and inter-institutional committee; be led by a State authority with the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation, and evaluation.

663. The Office of the Special Rapporteur would like to point out a number of guidelines for the design and function of programs to protect journalists that should be taken into account when establishing them. The system must have sufficient and sufficiently-trained human resources to gain the trust of the beneficiaries of the protection. In addition, “The best course of action is for the States to have a State security force exclusively for the protection program, separate from those elements in the police that engage in intelligence and counterintelligence work. The members of this special security force for protection of human rights defenders should be selected, recruited, and trained with complete transparency and with the participation of representatives of the programs' target population, so as to create confidence and trust between the persons being protected and those who are protecting them.”\[1046\] The system should therefore guarantee the budgetary resources necessary to cover the costs of expenditures for the staff working on the program, as well as expenditures related to the measures of protection.\[1047\]

664. The Commission and its Office of the Special Rapporteur have stated that not only does violence against journalists violate the freedom of thought and expression of the affected person in an especially drastic way, but also affects the collective dimension of this right. Acts of violence against journalists or people who work in the media and that are connected to their professional activities violate the rights of victims to express and disseminate their ideas, opinions, and information and violate the right of citizens and society in general to seek and receive information and ideas of any kind.\[1048\] As noted by the Inter-American Court of Human Rights, "journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment."\[1049\]

665. In this same sense, States have the obligation to protect at-risk journalists and media workers. Pursuant to the human rights laws of the inter-American system, States have an obligation to protect those who face special risk to their fundamental rights. The obligation to protect an at-risk journalist can be satisfied through the individual application of the measures necessary to ensure, among other things, the beneficiaries’ right to life, to personal integrity, and to freedom of expression. However, when a particular


country faces a systematic and grave structural situation of violence against journalists and media workers, States must establish special protection programs in order to serve these groups.  

D. Subsequent Liabilities

666. On February 22, the 12th Criminal Sentencing Court [Juzgado Duodécimo de Primera Instancia de Delitos Penales] accepted a criminal defamation and slander complaint filed in February 2013 by Ricardo Méndez Ruiz, president of Fundación contra el Terrorismo, against Daniel Pascual, a leader and coordinator of Comité de Unidad Campesina de Guatemala (CUC). According to the information received, Méndez Ruiz had allegedly brought a criminal complaint against Pascual for statements he made during a press conference on January 25, 2013, when he stated that he had been attacked and threatened by individuals supporting a mining project near Las Trojes, San Juan Sacatepéquez municipality that residents have resisted.

667. Pascual’s defense has argued that according to the law, accusations of crimes committed in the framework of freedom of expression must be processed through the Constitutional Law on Dissemination of Thought [Ley Constitucional de Emisión del Pensamiento], not through the ordinary Penal Code. However, the judge of the Twelfth Court of First Instance of Criminal Sentencing against Environment and Narco-Activity [Juzgado Duodécimo de Primera Instancia de Delitos Penales, contra el Ambiente y Narcoactividad] ruled that this only applied to journalists, and since Pascual was not a journalist, the case would proceed under ordinary criminal law. The judge allegedly had rejected several objections raised by the defense.

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

E. Confidentiality of Sources

669. On May 30, the newspaper Prensa Libre reported that in recent months, it had received requests from prosecutors and assistant prosecutors of the Office of the Public Prosecutor for its journalists to answer questions on their sources for a variety of news articles it had published. “The requests seeking cooperation with the authorities this morning arrived to our offices in a series of official letters. They asked, for example, for information on how or in what way a source communicated with the journalists, what kind of information was provided for certain of the published news items, and whether information distributed through social networks or published by other journalism enterprises was used,” the paper reported. Moreover, the paper indicated that the requests from the prosecutors “have no legal basis because according to Guatemalan case law, the confidentiality of journalists’ sources of information is protected.” Prensa Libre said it sent text messages to the Attorney General and head of the Office of the Public Prosecutor, Thelma Aldana, asking the
reasons for the requests from the prosecutors. She responded that she had not given any orders in this regard.\textsuperscript{1053}

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

F. Direct and Indirect Censorship

671. On January 21, armed individuals stole the copies of \textit{Prensa Libre} circulating in the municipality of Barberena, Santa Rosa. On that day, the newspaper was reporting a news item involving former mayor Rubelio Recinos, who, according to the Supreme Electoral Tribunal [\textit{Tribunal Supremo Electoral}], had not been registered as a candidate during the last elections and could therefore not continue in the office.\textsuperscript{1054}

G. Community Broadcasting

672. The association \textit{Mujb’ab’yl-Encuentro de Expresiones} reported that on April 20, agents of the Public Prosecutor and National Police [\textit{Policía Nacional Civil}] conducted a search and confiscated the equipment of community broadcaster \textit{Radio Esperanza}, located in the municipality of La Esperanza, Quetzaltenango department.\textsuperscript{1055}

673. During February, the IACHR and its Office of the Special Rapporteur learned that the Congress of the Republic of Guatemala [\textit{Congreso de la República de Guatemala}] was in the third phase of considering draft law 4087, the “Community Media Act” [“Ley de Medios de Comunicación Comunitaria”]. The bill, supported by civil society and the country’s indigenous peoples, sought to guarantee “access to media for indigenous communities and marginalized minority sectors.” At the time, the Office of the Special Rapporteur stated that the legislative debate on the bill represented an extraordinary opportunity for the State to effectively comply with its international obligations in this area.\textsuperscript{1056}

674. To date, the bill has still not been approved. According to available information, the president of the Congress assigned analysis of the initiative to a technical committee comprised of members of Congress.\textsuperscript{1057} On April 12, the technical committee submitted an opinion to Congress, recommending that it “not approve Decree 4087, the Community Media Act, because its content is lacking in the technical and legal grounds to make its application to the radio spectrum viable.” It also recommended that the Telecommunications Superintendence [\textit{Superintendencia de Telecomunicaciones}] be asked, via the ministry of Communications, Infrastructure, and Housing [\textit{ministerio de Comunicaciones, Infraestructura y Vivienda}], to conduct an audit of the radio spectrum (i) in a national level, how much of the frequency modulation (FM) band is being used to find out how much space is available and determine which users are operating legally and which illegally; (ii) on the power of the typical radio broadcasters operating currently; and (iii) which frequencies are not being used. The technical committee proposed to Congress that once the diagnostic is carried out, “the appropriateness of presenting an initiative for amending the General Telecommunications Act [\textit{Ley General de


\textsuperscript{1055}Asociación Mujb’ab’yl-Encuentro de Expresiones. \textit{Comunicado}, April 20, 2016.


\textsuperscript{1057}Congreso de la República de Guatemala. February 29, 2016. \textit{Mesa Técnica Legislativa analiza contenido de Ley de Medios de Comunicación Comunitaria}.
Telecomunicaciones] decree 94-96 as far as the assignment of frequencies to community media be evaluated. The goal is to avoid legal distractions and conflicts, strengthening technical parameters and standardizing them to improve use and allocation of the spectrum, including frequencies for community radio stations that include all the country’s ethnic groups. Civil society organizations representing the community radio sector rejected the technical committee’s report.

Since 2000, and in its 2015 country report, both the IACHR and the Office of the Special Rapporteur of the IACHR have recommended that Guatemala adopt a more just and inclusive legal framework for radio broadcasting that recognizes the community radio sector and guarantees nonprofit social actors equal conditions for accessing and using licenses, especially the country’s indigenous peoples who have historically been excluded from accessing and managing media outlets. During these years, Guatemalan indigenous organizations have submitted more than four draft bills aimed at guaranteeing community media outlets access to frequencies. The bills have gone nowhere.

Likewise, on a number of occasions, the IACHR and its Office of the Special Rapporteur have indicated that using criminal law to punish violations of radio broadcasting regulations may be problematic under the American Convention. Along these lines, the IACHR recalls that criminal punishments for conduct involving the unauthorized exercise of commercial or community radio broadcasting would be disproportionate.

Based on this, the IACHR reiterates that the State needs urgently to adopt adequate legislation on this subject so as to recognize community radio and television broadcasting and set aside an equitable portion of the spectrum and the digital dividend for this important sector.

H. Government Advertising

In the framework of the "Cooptación del Estado" investigation conducted by the Office of the Public Prosecutor of Guatemala and the International Commission against Impunity in Guatemala [Comisión Internacional contra la Impunidad en Guatemala] (ICIG), a corruption scheme was revealed that financed the campaign of Partido Patriota, leading to the election of its leader, Otto Pérez Molina, as President of the Republic, along with Vice President Roxana Baldetti. According to the findings of the investigation, revealed on June 2, the illegal activities to raise funding for the Partido Patriota were conducted between 2008 and 2011 and continued during the term of the government of that party (2012-2015). As the ICIG explained in a press release, the “illegal electoral financing” was obtained through a web of companies controlled by Baldetti. These companies had no real business activity but rather were “instruments for channeling the money secretly delivered by the representatives” of Radiotelevisión Guatemala S.A. (Canal 3) and Televisiete S.A. (Canal 7), owned by Mexican businessman Ángel González. The documents seized during the investigation demonstrated that González’s two companies contributed a total of GTQ$ 17 million 679 thousand 200 (about US$ 2 million 300 thousand) to the Patriot Party between 2008 and 2011. “This money was not reported to the Supreme Electoral Tribunal [Tribunal Supremo Electoral] as campaign contributions and “was used to purchase late-model vehicles,” the ICIG concluded. Since Pérez Molina and Baldetti took power, these television companies have been awarded contracts worth millions in State advertising. According to the findings of the investigation, the contracts signed between 2012 and 2015 were worth more than GTQ$ 200 million (about US$26 million), meaning that they receive 69 per cent of all government advertising.

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1059 Sala de Redacción. May 2, 2016. Comunicado. Exigimos que el pleno del Congreso de la República conozca en tercera lectura la iniciativa de Ley de Medios de Comunicación Comunitarios (4087); Observacom. May 19, 2016. Rechazan bloqueo a la aprobación de Ley de Medios Comunitarios en Guatemala.

television advertising placed during the period.\textsuperscript{1061} González’s wife, Alba Elvira Lorenzana, has an international warrant out for her arrest due to her alleged involvement in illegally financing the \textit{Partido Patriota} in exchange for the millions in State advertising.\textsuperscript{1062}

\textbf{679.} Former president Pérez Molina and former Vice President Baldetti resigned in 2015 after a series of accusations of corruption. Both of them are in pretrial detention and facing trial.

\textbf{680.} Likewise, in December 2012, Decree 34-2012 entered into force. The decree amended the General Telecommunications Act [\textit{Ley General de Telecomunicaciones}] by extending the licenses for the use of the radio spectrum by 20 years.\textsuperscript{1063} One of the main beneficiaries of the amendment was González, who owns the four private VHF channels broadcast in Guatemala. As detailed in the report on financing politics in Guatemala, published by the ICIG in July 2015, “probably in no other place in the world does a single individual own all four existing private VHF channels. But in Guatemala, this has been possible, and Mr. Ángel González has no VHF competition. The \textit{Congress Channel}, Channel 9, and Channel 5, of Academia de Lenguas Mayas, only exist on paper: the frequency is assigned, but they do not broadcast.”\textsuperscript{1064}

\textbf{681.} On June 9, dozens of students demonstrated in Guatemala City to demand that the over-the-air contracts granted to the Mexican magnate be declared injurious due to the alleged corruption surrounding them.\textsuperscript{1065}

\textbf{682.} According to \textit{El Periódico}, following news of the investigations demonstrating the legal mechanism by which González’ channels benefited from government advertising, the businessman organized a campaign through the media that he controls to discredit the ICIG and the trial known as “\textit{Cooptación del Estado}.”\textsuperscript{1066}

\textbf{683.} Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights indicates that “[t]he use of the power of the State and public finances; the granting of tariff perks; the arbitrary and discriminatory allocation of official advertising and official credits; the granting of radio and television frequencies, among others, for the purpose of pressuring and punishing or rewarding and favoring journalists and the media in accordance with their informative lines, infringes upon freedom of expression and must be expressly prohibited by law.”

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\textsuperscript{1066} El Periódico. July 25, 2016. \textit{Ángel González: el encantador de presidente está molesto}.
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17. GUYANA

A. Attacks, Threats and Harassment Against Journalists and Media Outlets

On June 4, 2016, a live fragmentation grenade was thrown under the vehicle of Kaieteur News publisher, Glenn Lall. Luckily, the device did not explode. Shortly after the event, the Government of Guyana issued a statement condemning the incident stating, “[t]he coalition Government stands resolutely in defense of press freedom in Guyana and condemns, in the strongest possible manner, this heinous and dastardly act of cowardice against Kaieteur News. The coalition Government is thankful, as are all right-thinking Guyanese that no lives or limbs were lost and there was no damage to property.”

The incident was also condemned by the Guyana Press Association who called upon the police forces to execute an in-depth investigation into the events. A few days later, six persons were arrested after detectives from the Guyana Police Force reviewed surveillance footage.

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

B. Subsequent Liabilities

Guyana’s Attorney General Basil Williams accused journalist Vanessa Narine of misleading the public by inaccurately reporting on the proceedings of the House during the consideration of the 2016 Budget estimates. In an article published by the online news agency Citizen’s Report, Narine alleged that Williams had misled the National Assembly regarding the US$16 million budgeted for a luxury vehicle. Williams claimed that the article was libelous, inaccurate and an abuse of the privilege of the House. He asked the Speaker of the National Assembly to sanction Narine for her actions and requested that an apology be issued and the published report be corrected.

The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism because “they have voluntarily exposed themselves to a stricter scrutiny and because they have an enormous capacity to call into question through its convening power.” In this regard, principle 11 of the IACHR’s

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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, generally known as "desacato laws," restrict freedom of expression and the right to information."

C. Diversity and Pluralism

688. Under the Bharrat Jagdeo administration, broadcasting licenses were allegedly granted only to friends and supporter of the ruling party, while all other requests were rejected. In January 2016, the Guyana National Broadcasting Authority (GNBA) stated that the licenses issued by the former government are considered flawed and a revocation process is contemplated. In April 2016, GNBA announced that it would be re-evaluating all radio, television and cable licenses, meaning all current license holders and the 44 new applicants, in keeping with a new national plan for frequency allocation and coverage. The GNBA also indicated that it was preparing a set of guidelines for all broadcasters to follow and expressed its opposition to political parties holding broadcast licenses.1074

689. The IACHR notes that article 13.3 of the American Convention on Human Rights states 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.

690. The IACHR and the Inter-American Court have recognized the legal authority and the need for States to regulate broadcasting, which includes the establishment of procedure for granting, renewing and revoking licenses through objective and impartial criteria prescribed by law with clear and precise language.1075 The Office of the Special Rapporteur further notes that the State’s authority to regulate broadcasting is based on the “the duty to guarantee, protect and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and the right of society to access all types of information and ideas.” Broadcasting regulations should therefore function in such a way that it guarantees diversity and plurality while simultaneously ensuring that the State’s authority will not be used for censorship.1076

691. Furthermore, principle 13 of the Declaration of Principles on Freedom of Expression stipulates: “[t]he 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. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

18. HAÏTI

1074 Guyana Times. April 30, 2016. All radio/TV/cable licences to be re-evaluated; Kaieteur News. May 3, 2016. GNBA against political parties holding Broadcast Licence; Demerara Waves. April 29, 2016. All radio, TV licences to be re-evaluated – Broadcasting authority.


A. Social Protest

692. On Tuesday, November 29th, one day after publication of the preliminary results of the presidential elections, public demonstrations were reported in different localities of Port-au-Prince, such as Delmas, Bourdon, Canapé-Vert and Pont-Morin. Specifically, in the locality of Delmas, demonstrations allegedly organized by members and sympathizers of the Fanmi Lavalas political party took place, stemming from discontent with the preliminary results that gave the victory to Tét Kale party (PHTK) candidate Jovenel Moïse. According to the information received by the Office of the Special Rapporteur, the National Police of Haiti used tear gas to disperse the demonstrators in the wake of violent incidents that occurred around the demonstrations, including use of firearms, throwing of stones and burning of tires.

693. The response by the National Police would be justified by the prohibition against public demonstrations until the definitive results are obtained, which would be planned for December 29, 2016, once the period for verification of the votes has ended. That prohibition stems from article 123 of the Electoral Decree of 2015, which orders that “all public demonstrations, on behalf of one or more candidates, of one or more parties, political groups, is prohibited from election day until the proclamation of the definitive results.”

694. In response to the demonstrations and the appeal by the Fanmi Lavalas party to the citizenry to remain mobilized to demand respect for the results of the balloting, the minister of Justice and Public Safety, Cammile Edouard Junior, reiterated that challenges to the preliminary results must be made through legal channels, which is why it is necessary to maintain public order.

695. The IACHR has reiterated that social protest is a fundamental tool for human rights defense work and is essential for critical political and social speech regarding the activities of the authorities. The Commission has maintained that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the right to freedom of expression and to freedom of assembly,” and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protest difficult to carry out.”

B. Stigmatizing Statements

696. On January 21st, 2016, then President Michel Martelly supposedly launched a new carnival song which lyrics criticize the opposition and lash out at two journalists, Jean Monard Metellus and Liliane Pierre Paul. The song, which also allegedly contained sexist metaphors, was presented during an interview on Radio-

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tele Metropol where former President Martelly supposedly declared that the press was transmitting lies against his government.\textsuperscript{1086} On January 27\textsuperscript{th} journalists in Haiti and the Dominican Republic replied by issuing a statement urging President Martelly to stop attacks on freedom of expression and to respect all the guarantees necessary to ensure proper coverage of the electoral process.\textsuperscript{1087} On February 3, the local organization Réseau National de Défense des Droits Humains (RNDDH) had also published a press release stating that former President Martelly did not live up to his responsibilities as then president of Haiti for having verbally insulted and offended those who had allegedly criticized his administration. The same communiqué encouraged journalists Liliane Pierre-Paul and Jean Monard Méteillus to take legal action against him, for “insults” and “demeaning treatment”.\textsuperscript{1088}

697. The Office of the Special Rapporteur reiterates the importance of creating a climate of respect and tolerance for all ideas and opinions and recalls that diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building 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 doing so.

698. The Office of the Special Rapporteur additionally recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations. They must bear in mind the context in which they express themselves, in order to ensure that their expressions are not, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts.”\textsuperscript{1089}

C. Subsequent Liabilities

699. The journalist and ex-candidate for president of Haiti, Luckner Désir, was called to testify by the Attorney General’s Office over a complaint about defamation filed by the Director General of the National Telecommunications Council [Conseil National des Télécommunications], (Conatel) Jean Marie Altema.\textsuperscript{1090} In his radio program ‘Bon Signal’ of November 23, Désir affirmed that Mr. Altema was receiving monthly payments from a mobile telephone company seeking renewal of a contract between the Haitian State and that company.\textsuperscript{1091} The date set by the Attorney General’s Office was for December 5, 2016.

700. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, “privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil law means.” It must be noted that the protection of a person’s reputation should only be guaranteed through civil law means. 


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."

701. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of 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.”
19. HONDURAS

A. Killings

On June 16, photographer and TV producer Dorian Hernández was murdered in the town of Lepaera, Lempira department. Hernández had worked as a producer for channels GRT and Copán TV. His body was found alongside a road, with several gunshot wounds. The motive of the murder is unknown. On June 19, the body of journalist Elmer Cruz was found in the municipality of Morazán, Yoro. Cruz was a host on channels Tele Morazán 10 and Max TV 22. He was found with a bullet wound to the head. The motives of this crime are also unknown, although police have ruled out robbery. On July 5, Henry Roberto Reyes Salazar was murdered in the municipality of Jesus de Otoro, Intibucá department. Reyes Salazar was a radio announcer on Estéreo Control 100.7 FM. According to police investigations, the announcer was shot by unknown individuals who attacked him to steal his motorcycle.

For the Inter-American Commission, it is crucial for the Honduran State to investigate these crimes fully, effectively, and impartially to discover the motives, as they affect all of Honduran society. The Honduran State must also legally establish any connection there may be to journalism activity and freedom of expression. The authorities must not dismiss journalism as a motive for the murders and/or attacks until the investigation is complete. 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.

The IACHR and its Office of the Special Rapporteur recall that State officials must unequivocally repudiate attacks carried out in retaliation for the exercise of freedom of expression and must abstain from making statements that could increase the vulnerability of those who are under attack for exercising this right. States should clearly demonstrate through their legal systems and actions that crimes against freedom of expression are especially serious because they represent a direct attack on all fundamental rights.

B. Attacks, Threats, and Harassment Against Journalists and Media Outlets

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1092 This section corresponds to the section on freedom of expression in Honduras in Chapter V, Volume I, of the IACHR 2016 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.


705. On December 2, journalist Ernesto Alonso Rojas, a correspondent with television channel HCH in San Pedro Sula, had his journalism equipment stolen. On December 6, unknown individuals looted a car belonging to journalist Elsa Oseguera, also with television channel HCH, and left her a note containing a death threat. The channel's director, Eduardo Maldonado, said Oseguera had received threats before and had recently been transferred from San Pedro Sula to Tegucigalpa for security reasons.

706. Canal 36 journalist Ely Vallejo reported that on January 28, agents with the Office for Police Investigations (DPI) blocked his work and prevented him from filming a police operation.

707. Journalists Rolando Gutiérrez and Selvin Milla, with community radio stations Voz Lenca and Radio Guarajambala, were attacked, temporarily detained, and had their work equipment taken from them by soldiers belonging to the Presidential Honor Guard [Guardia de Honor Presidencial] on February 4 while they were covering an event involving the first lady, Ana García, at the Valero Meza school in La Esperanza, Intibucá department. The journalists were detained for violating article 100 of the Police and Social Coexistence Act [Ley de Policía y de Convivencia Social], which establishes that people who are 'suspiciously loitering for no reason will be taken to the police station to be identified and subject to surveillance for the defense of society,' reported the organization C-Libre.

708. The Civic Council of Popular and Indigenous Organizations of Honduras [Consejo Cívico de Organizaciones Populares e Indígenas de Honduras] (Copinh) reported in March that workers with community radio stations La Voz Lenca, Guarajambala, La Voz Lenca en FM, La Voz del Gualcarque, and La Voz de Puca Opalaca were harassed by the police, who systematically blocked their journalism work.

709. On March 12, journalist Cesar Obando Flores, with Radio Popular del Aguán, Canal 37, and Radio Progreso, was harassed and prevented from doing his work by officers of the Municipal Police of Tocoa [Policía Municipal de Tocoa] and Military Police [Policía Militar] while covering the presentation of the results of an audit of the municipality of Tocoa, Colón, performed by the Supreme Tribunal for Accounts [Tribunal Superior de Cuentas]. Two days later, he was threatened and had to take refuge in the headquarters of the Coordinadora de Organizaciones Populares del Aguán. Flores has reported on allegations of irregularities in the municipality of Tocoa and on issues related to mining.

710. On April 11, journalist Gerardo Torres, a correspondent with international Venezuelan network Telesur, was intercepted and intimidated by two unknown individuals riding a motorcycle.

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1099 Comité por la Libre Expresión (C-Libre). December 9, 2015. Robo de equipo y amenazas a muerte sufren periodistas de canal HCH en sólo cuatro días.


1101 Comité por la Libre Expresión (C-Libre). January 31, 2016. Periodista agredido por policías de investigación.


1103 Comité por la Libre Expresión (C-Libre). March 16, 2016. Comunicadores de cinco radios comunitarias sufren hostigamiento policial; Comité por la Libre Expresión (C-Libre). March 16, 2016. Comunicador de radio comunitaria del COPINH amenazado por militares.


1106 Comité por la Libre Expresión (C-Libre). April 13, 2016. Corresponsal de Telesur atacado por dos motociclistas.
711. Journalist Marco Escobar, a member of Red de Alertas a Protección de Periodistas y Comunicadores Sociales (RAPCOS), fled the country May 8 due to fears of retaliation after being threatened by National Party deputy Alfredo Moradel. Several days earlier, on his program on Canal 33 in Catacamas, Olancho, the reporter had questioned some of the deputy’s actions.\[1107\

712. On May 2, journalist Félix Molina, director of the Asociación Alternativas en Comunicación (Alter-Eco) and host of the radio program ‘Resistencia,’ broadcast by Radio Globo and Radio Progreso, was the victim of a shooting. Molina was shot several times in both legs when he was attacked by two unknown individuals while traveling in a taxi. Hours earlier, two men had tried to assault him when he was in another taxi. That day, the journalist had publicly reported allegations that politicians, businessmen, and soldiers were connected to the Agua Zarca hydroelectric project on the Gualcarque River and the murder of indigenous activist Berta Cáceres on March 3.\[1108\

713. In May, unknown individuals pointed guns at journalist Óscar Ortíz and cameraman Luis Jorge Torres, with TV Azteca Honduras, and took the vehicle in which they were traveling, along with their video camera and cellular telephones.\[1109\

714. On June 1, journalist Digna Aguilar, with the newspaper El Heraldo, fled the country over alleged death threats against her and her family. According to information disclosed by the news media, the journalist left the country with the cooperation of the State, through the Ministries of Defense and Human Rights, under precautionary measures put in place after she learned that her life and the lives of her children were at risk. The threats against Aguilar are supposedly connected to information on law enforcement issues published in her newspaper.\[1110\

715. On June 9, cameraman Juan Carlos Álvarez, with television channel Mundo TV, was robbed and attacked while on his way to work in a taxi. The motive for the attack was robbery, although the possibility that the attack was in retaliation for his work has not been ruled out.\[1111\

716. Also on June 9, journalist Benjamín Zepeda Carranza, with Globo TV, was attacked by a National Department of Transportation [Dirección Nacional de Tránsito] police officer while he was traveling by bus in Tegucigalpa. The journalist recorded how the police officer was abusing the bus driver, and in retaliation, the officer grabbed him by the throat and physically assaulted him, warning him not to film it. The journalist reported the incident to the Director for Transportation [Director de Tránsito], Leonel Sauceda, who assured him that he would take administrative actions to punish the official’s behavior.\[1112\

717. On June 11, officers with the Military Police and the National Police [Policía Nacional] beat journalists Igmer Gerardo Chevez, with Radio Progreso, and Linda Donaire and Víctor Ordóñez, with the newspaper

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\[1109\] Comité por la Libre Expresión (C-Libre). September 12, 2016. Roban carro a periodista de Casa Presidencial.

\[1110\] Criterio. June 1, 2016. Periodista abandona el país por amenazas a muerte; Tiempo. June 1, 2016. Periodista abandona Honduras por supuestas amenazas; Comité por la Libre Expresión (C-Libre). June 6, 2016. Otra comunicadora abandona Honduras por presuntas amenazas a muerte.


\[1112\] Comité por la Libre Expresión (C-Libre). June 13, 2016. Policía de tránsito ataca a periodista.
Libertad Digital, while they were covering a demonstration by locals against the installation of a tollbooth in the municipality of San Manuel, Cortés department.\footnote{Comité por la Libre Expresión (C-Libre). June 13, 2016. 
\textit{Policía hondureña golpea brutalmente a periodistas de Radio Progreso y Libertad Digital.}}

On July 13, sports journalist Rudy Urbina, who works with Radio América and the newspaper La Tribuna, was attacked by two unknown individuals who shot at them from a vehicle and wounded him in his right arm.\footnote{La Tribuna. July 13, 2016. 
\textit{Atacan a balazos al periodista hondureño Rudy Urbina en Tegucigalpa}; Comité por la Libre Expresión (C-Libre). July 14, 2016. 
\textit{Hieren con arma de fuego a periodista deportivo.}}

On July 27, the newspaper El Libertador was robbed of materials and reporting equipment. According to the newspaper, in the early hours of the morning, unknown individuals entered its offices and stole equipment on which information was being stored. The perpetrators of the assault did not take anything else of value that was in the offices, indicating that the purpose of the attack was to collect information on the newspaper and its reporting. The stolen items included three professional cameras, two portable computers, one desktop computer, three cell phones, two external hard drives, four USB storage devices, and two camera lenses. The newspaper reported that over its 13 years of existence, its journalists have been attacked and threatened several times.\footnote{El Libertador. July 28, 2016. 
\textit{Asalto sospechoso a periódico hondureño 'El Libertador'; Comité por la Libre Expresión (C-Libre).} August 3, 2016. 
\textit{Periódico sufre robo de equipo e impunidad en investigación, juzgamiento y sanción de agresores.}}

Journalist and human rights defender Milthon Robles, a correspondent with the website Criterio.hn, reported that an attempt was made on his life on August 21 when an unknown individual tried to run him over. The incident took place in San Pedro Sula, Cortés department.\footnote{Criterio. August 1, 2016. 
\textit{Periodista cierra programa de TV ante acoso de alcalde de Siguatepeque}; El Libertador. August 26, 2016. 
\textit{Periodista sufre desplazamiento forzoso por amenazas a muerte de alcalde de Siguatepeque.}} On September 3, a person traveling in the same vehicle that had tried to run him over threatened him with a gun. According to the organization Reporters Without Borders (RSF), the attacks took place after the journalist began investigating the “war taxes” [“impuestos de guerra”] collected by local criminal groups and reported that local officials were involved.\footnote{Reporters Without Borders (RSF). September 16, 2016. 
\textit{Attempts by Honduran authorities to silence outspoken journalists.}}

In September, journalist Leonel Juárez, host of the program ‘Juárez informa’ on channel TV Centro, was forced to end his television program and flee the city of Siguatepeque, Comayagua department, allegedly due to pressure from Mayor Juan Carlos Morales. According to the journalist, following his criticism of the mayor, he was threatened and subject to a smear campaign allegedly orchestrated by the mayor.\footnote{El Libertador. July 28, 2016. 
\textit{Asalto sospechoso a periodista hondureño 'El Libertador'; Comité por la Libre Expresión (C-Libre).} August 22, 2016. 
\textit{Periódico sufre desplazamiento forzoso por amenazas a muerte de alcalde de Siguatepeque.}} Also, journalists Anselmo Rubio, host of Libre Opinión TV, and Walter Ulloa Bueso, a radio announcer with local radio station Estéreo Cielo, have been similarly harassed, apparently in retaliation for disseminating negative information about the mayor.\footnote{Reporters Without Borders (RSF). September 16, 2016. 
\textit{Attempts by Honduran authorities to silence outspoken journalists.}}

On September 19, in the Miramontes neighborhood of Tegucigalpa, unknown individuals threatened journalist Belinda Rodríguez with a firearm and stole her vehicle.\footnote{Proceso Digital. September 29, 2016. 
\textit{Roban vehículo de maestra de la Corte Suprema de Justicia.}}
Manueles, a journalist with *Canal 11*, was mugged in the Las Colinas neighborhood of Tegucigalpa. The attackers struck the journalist and stole his vehicle.\(^{1121}\)

723. On October 19, journalist Ricardo Matute was shot while covering a traffic accident on a highway near San Pedro Sula. Matute and two other members of the news team with news program ‘TN5 Matutino,’ of *Televiscentro*, were shot at by people who had been traveling in one of the cars involved in the crash. The assailants fled in the journalists’ car, which was later found a short distance from the scene of the accident.\(^{1122}\)

724. The IACHR reiterates its recommendation to the State that its public statements contribute to preventing violence against journalists, including by recognizing the work of journalists and publicly condemning the murderers and all physical violence against journalists. The State should refrain from making statements that could increase the risk faced by journalists and put training programs in place and draft and implement guidelines for public officials—especially police and security forces—on respecting the media, including guidelines that specifically address issues of gender.

725. Additionally, it stresses that the that the State must ensure that effective and specific protective measures are urgently adopted to guarantee the safety of people who are particularly at risk when they exercise their right to freedom of expression, whether the threats come from State agents or private parties. The measures must guarantee that communicators are able to continue to perform their professional activities and guarantee their right to freedom of expression. Similarly, the State must adopt the measures necessary to ensure that those working in the media who have had to flee or exile themselves in response to a risk are able to return home safely. When it is not possible for these people to return, States must adopt measures enabling them to live in the place they chose in dignified conditions and with the necessary security measures and financial support to continue their work and family lives.

C. Social Protest

726. Jairo Ramírez, a student with the *Universidad Nacional de Agricultura*, was kidnapped by a group of unknown individuals on March 3 and later found dead in Catacamas, Olancho department. Although the motives of the crime are unknown, the organization *C-Libre* reported that the kidnapping occurred shortly after the student participated in a protest over the death of environmentalist Berta Cáceres.\(^{1123}\)

727. Miguel Briceño, leader of the “Indignados” movement, was detained during a protest near the *Universidad Nacional Autónoma de Honduras* (UNAH) on November 4, 2015, for allegedly attacking a person and damaging that person’s cell phone. On November 5, a court ordered measures in lieu of prison requiring him to appear once a week before it. At a hearing held on December 2, the 12th Criminal Law Court of Tegucigalpa [Juzgado N° 12 de Letras de lo Penal de Tegucigalpa] confirmed the charges and ruled to keep the measures in place.\(^{1124}\)

728. Also in December, members of the National Association of Auxiliary Nurses of Honduras [*Asociación Nacional de Enfermeras y Enfermeros Auxiliares de Honduras*] (Aneah) reported that Minister of Health [*Ministra de Salud*] Yolany Batres threatened to withdraw their contracts and tried to intimidate them to prevent them from protesting the dismissal of the association’s president, Janeth Almendares, after she made allegations of public health irregularities.\(^{1125}\)


\(^{1123}\) La Tribuna. March 7, 2016, *Misterio rodea la muerte de estudiante de Universidad de Agricultura*; Comité por la Libre Expresión (C-Libre). March 16, 2016, *Universitario asesinado tras participar en protesta por muerte de Berta Cáceres*.


\(^{1125}\) Comité por la Libre Expresión (C-Libre). No date, *Con amenazas impiden manifestación de enfermeras, denuncia ANEAH*.  

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729. On January 12, National Water and Sewer Service [Servicio Nacional de Acueductos y Alcantarillados] (Sanaa) authorities reported that a disciplinary process had been launched over Alba López’s participation in a protest by the Workers Union [Sindicato de Trabajadores] (Sstrasanaays) demanding payment of salaries. The process could result in her dismissal. Eighteen other employees had been suspended after participating in the protests.\footnote{Comité por la Libre Expresión (C-Libre). January 14, 2016. Empleados del SANAA hostigados por protestar; Pasos de Animal Grande. January 12, 2016. “A esta ñángara hay que reventarlo”: La sentencia de despido contra Alba López, Federación de Sindicatos de Trabajadores de la Agroindustria. January 18, 2016. Denuncia por acoso laboral hacia la compañera Alba López, afiliada al SITRASAAYS y Coordinadora Departamental del FNPR.}

730. On January 24, members of the Military Police and the National Police attacked two members of the movement known as “Los Indignados” while they demonstrated outside the National Congress to demand the election of a new Supreme Court of Justice.\footnote{Comité por la Libre Expresión (C-Libre). January 25, 2016. Indignados reprimidos en el Congreso Nacional.} On January 25, one of the movement’s leaders, Miguel Briceño, received a death threat from an unknown individual as he left a demonstration demanding the election of a new Supreme Court. Briceño said this was not the first time he had been attacked or threatened, often by members of the National Police and the Military Police.\footnote{Comité por la Libre Expresión (C-Libre). January 27, 2016. “La policía ya le puso precio a tu cabeza”: le dicen a líder de Indignados.}

731. On February 20, during a peaceful march against the execution of the Agua Zarca hydroelectric project, more than 100 people were allegedly detained and harassed by security forces.\footnote{IACHR. March 4, 2016. IACHR Condemns the Killing of Berta Cáceres in Honduras. The New York Times. March 3, 2016. Berta Cáceres, líder indígena y ambientalista, asesinada en Honduras.}


733. On May 9, members of the National Police and Military Police used teargas against members of the Civic Counsel of Popular and Indigenous Organizations of Honduras [Consejo Cívico de Organizaciones Populares e Indígenas de Honduras] (Copinh) who were protesting in front of the Presidential House to demand justice for the murder of Berta Cáceres. Four demonstrators were arrested.\footnote{El Heraldo. May 9, 2016. Enfrentamiento entre copines y policías frente a casa presidencial; El Diario/ EFE. May 9, 2016. Manifestación en apoyo a Berta Cáceres acaba con enfrentamientos y detenidos; Comité por la Libre Expresión (C-Libre). May 9, 2016. Indígenas hondureños sufrieron violencia militar y policial cuando protestaban.}

734. On June 8, a group of demonstrators protesting the installation of a tollbooth in the San Manuel zone, in the department of Cortés, were removed by police officers. Police used tear gas to disperse the protesters, who threw stones at toll booths under construction. Three people were arrested.\footnote{La Prensa. June 8, 2016. Desalojan con gases lacrimógenos a manifestantes en el peaje de San Manuel.}

735. On October 3, during a demonstration held by the Libertad y Refundación (LIBRE) opposition party to protest the new tolls and power outages, and to demand electoral reforms, members of the National Police repressed the demonstrators using tear gas. The protest took place at three tollbooths on the highway between Tegucigalpa and San Pedro Sula and at the La Lima and Puerto Cortés exits in San Pedro Sula. One minor was injured and 14 people were arrested.\footnote{La Tribuna. June 8, 2016. Desalojan a manifestantes en casetas de peaje en Cortés; Tiempo. June 8, 2016. VIDEO: Heridos y detenidos en protesta en peaje de San Manuel.}
736. According to the information received by the IACHR, in 2016, at least 75 students with the Universidad Nacional Autónoma de Honduras (UNAH) were charged criminally with sedition, usurpation, and damaging public property for their participation in student protests. During the criminal proceedings, some of those students were subjected to arrest warrants, deprivation of liberty, or alternative restrictive measures. According to the defense attorneys of some of the students, they had been subject to illegal surveillance by the Technical Criminal Investigation Agency [Agencia Técnica de Investigación Criminal] (ATIC).1134

737. According to the information available, new academic laws for the University took effect in May, resulting in student demonstrations rejecting them. During the protests, a group of students occupied a number of buildings on university campuses in Tegucigalpa and San Pedro Sula.1135 On July 1, after the students had been occupying the buildings for 26 days, specialized National Police forces entered the University to remove them. Following the operation, 24 UNAH students were arrested, and arrest warrants were issued for another 19. The detainees were taken to the headquarters of the Police Investigations Department in Tegucigalpa. The IACHR received information indicating that the State agents used excessive force during the operations to remove the students and to control the demonstrations, resulting in injuries for a number of students.1136

738. On July 20, the University and the student movement Movimiento Estudiantil Universitario (MEU) signed an agreement in which the authorities committed to asking judicial authorities to end the criminal proceedings brought against the students, while the movement committed to releasing the University’s spaces and buildings.1137

739. On August 15, the Inter-American Commission on Human Rights and its Office of the Special Rapporteur for Freedom of Expression sent a letter to State under the auspices of the provisions of article 41 of the American Convention on Human Rights to request information on the situation of the UNAH students being criminally prosecuted for participating in student protests and movements.1138

740. In a letter dated September 13, the State told the IACHR that criminal charges had been filed against six UNAH students for crimes of usurpation of public State property. The State noted that none of the students are being deprived of liberty. A settlement hearing was held on July 26 with four of the students. As a result of it, the file was closed on the proceedings and the criminal charges were dropped at the request of the representatives of the University, in exchange for vacating the occupied university buildings. Two other

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1135 Jóvenes y Educación. Campaña Latinoamericana por el Derecho a la Educación. June 8, 2016. Estudiantes de la Universidad Nacional Autónoma de Honduras movilizados/as contra nuevas normas académicas son objeto de represión y criminalización.


students did not appear for the hearing, but their defense attorneys stated they would do so voluntarily, for which reason the warrant for their arrest was suspended, the State reported.\textsuperscript{1139}

741. The State also indicated that 19 students were charged with crimes of sedition and usurpation of public State property. Arrest warrants were issued for two of them, while statements were taken from the other 17 in a hearing held on July 22. Following the reconciliation with the University authorities, and based on an out-of-court agreement reached by the parties, the criminal action was declared vacated. One of the students being processed did not want to join the reconciliation. Following a hearing on August 8, he was dismissed because his participation in the incidents was not proven. Another defendant did not appear before the court, and the warrant for his arrest therefore remains in force.\textsuperscript{1140}

742. The State also reported that it recognizes social protest as a fundamental human right under the rule of law, a right that is regulated by the Constitution, criminal law, and international conventions. Pursuant to these laws, demonstrations must be peaceful, without disturbances or violence, as well as temporary. According to the Special Public Prosecutor for Human Rights [\textit{Fiscalía Especial de Derechos Humanos}], because the UNAH student demonstrators occupied University property ‘and blocked entry to the UNAH,’ criminal charges were brought against them for the crime of usurpation of public spaces, and they were removed from the buildings.\textsuperscript{1141}

743. It was also reported that two complaints were filed with the Public Prosecutor for Human Rights alleging that UNAH authorities have retaliated against the students who participated in the demonstrations. The complaints were filed against these authorities for abuse of authority to the detriment of students. They remain under investigation. In one of the complaints, a group of students alleged they were suspended for two academic terms for committing a serious infraction, that being the demonstrations. A complaint was also filed accusing security forces of excessive use of force in their response to the protests. The complaint is being investigated by the Public Prosecutor [\textit{Fiscalía}]. The student who filed the complaint, Rommel Dario Morán Espinal, was charged with crimes of assault and illegal demonstration because during the protests, he threw a rock at a police officer’s face. However, “this would not justify security forces’ excessive use of force,” the Public Prosecutor stated. For this reason, it continues to investigate the complaint to determine responsibility for the perpetrator of the act.\textsuperscript{1142}

744. The Commission indicated that “strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests may naturally cause annoyances or even damages that are necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression. The Commission has expressed its concern about the existence of provisions that make criminal offenses out of the mere participation in a protest, road blockages (at any time and any kind), or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected rights such as those to life, security, or the liberty of individuals.”\textsuperscript{1143}

\textsuperscript{1139} Carta del Estado de Honduras en respuesta a la solicitud de información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos transmitida el 15 de agosto de 2016. September 13, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

\textsuperscript{1140} Carta del Estado de Honduras en respuesta a la solicitud de información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos transmitida el 15 de agosto de 2016. September 13, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

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\textsuperscript{1142} Carta del Estado de Honduras en respuesta a la solicitud de información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos transmitida el 15 de agosto de 2016. September 13, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

Accordingly, the IACHR reiterates that approaches focused on dialogue and negotiation are the most effective ways to handle protests and to prevent any act of violence. The Commission considers it essential in the case of student protests for the State to make available adequate mechanisms to channel the demands toward actors with decision-making power in the area that is the subject of the protest, instead of resorting to the institutional apparatus of bringing criminal proceedings.

D. Protection Mechanism

In its 2015 Report, the IACHR highlighted the efforts made by the State to protect human rights defenders, operators of justice and journalists, among others, in the context of the situation of widespread violence that has affected the country over the past years and that has had a particular bearing on the performance of the duties of these groups. Particularly, the Commission took note of steps aimed at modernizing the protection program, enactment of a specific law regulating the procedures and powers of the protection mechanism,\(^\text{1144}\) initiatives to create regulations to the protection law, several human rights trainings for public officials, among other actions that show the willingness of the State to protect persons devoted to the defense or promotion of human rights and the exercise of freedom of expression and journalism.\(^\text{1145}\)

One year after issuing the Country Report and after the murder of respected rights defenders, including Berta Cáceres\(^\text{1146}\) and Kevin Ferrera,\(^\text{1147}\) the Inter-American Commission on Human Rights finds that there is still a high degree of distrust in the legitimacy, effectiveness and operability of the protection mechanism,\(^\text{1148}\) reflecting the fact that serious acts of violence have continued to be perpetrated against beneficiaries of the protection mechanism over the course of 2016 and have been cause for concern internationally. Even though both the United Nations System and the Inter-American Commission have recognized progress,\(^\text{1149}\) which ranges from putting a specific legal framework into place to implementing certain physical protection measures, the steps that have been taken are still inadequate for human rights defenders and journalists, among others, to be able to perform their jobs in safe conditions in Honduras, regarded as “one of the most dangerous countries for human rights defenders.”\(^\text{1150}\)

The State announced on June 6, 2016, that the Regulation of the “Law Protecting Human Rights Defenders, Journalists, Social Communicators and Operators of Justice” (“Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia”) was approved, in order to effectively implement the protection law in Honduras. According to the information received, in the process of drafting the regulations, several recommendations made by international organizations, including the IACHR, were taken into account and members of civil society took part.\(^\text{1151}\) With regard to the budgetary side of the mechanism, the State has highlighted the decision of the National Congress [Congreso Nacional] to allocate a budget of “10 million lempiras (US$ 425 thousand) to ensure sustainability of


\(^\text{1146}\) IACHR. March 4, 2016. IACHR Condemns the Killing of Berta Cáceres in Honduras.

\(^\text{1147}\) IACHR/United Nations. August 19, 2016. Honduras, one of the most dangerous countries for human rights defenders – Experts warn.


\(^\text{1150}\) IACHR/ United Nations. August 19, 2016. Honduras, one of the most dangerous countries for human rights defenders – Experts warn.

implementation of the law” and the authorization of “10 million lempiras (US$ 425 thousand) for a Special Protection Fund, which will help to make provide for effective protection.” 1152

749. These initiatives represent another step toward operationalizing the mechanism and building ties of trust with the members of civil society. On this subject, it is the understanding of the IACHR that the particular protocols for implementation of some of the procedures of the mechanism have yet to be drafted. Consequently, it calls on the State to make sure that civil society and human rights defender organizations have a chance to be heard at each stage of the pending process, in order for all concerns to be taken into consideration and thus lend legitimacy to the decisions it makes. Also, because of the importance that the mechanism holds for the protection of at-risk persons, which includes beneficiaries of IACHR-granted precautionary measures and Inter-American Court-granted provisional measures, the Commission urges authorities to earmark the necessary funding, as well as provide the political support for the protection mechanism to function properly.

750. With respect to current functionality of the mechanism, the State claims that the processes, procedures, forms and protocols for the auxiliary units to function, as well as the protection mechanism manuals, are still in the stage of joint development with the authorities of the General Office of the Protection System [Dirección General del Sistema de Protección], members of the Technical Committee [Comité Técnico] and representatives of the National Protection Council [Consejo Nacional de Protección]. As for the statistical data breakdown, from July 2015 to June 2016, a total of 38 protection requests were processed and another 25 requests are pending, of which 13 are human rights defenders, 8 are journalists, one operator of justice, and 3 human rights defender groups. 1153 In this regard, several civil society organizations have asserted that because of the distrust in the mechanism, no protection requests are being filed by organizations, that defend land, indigenous peoples, the rights of women, among other things. 1154 According to information made available to the Commission, it is necessary to bring protection measures in line with the specific risk of the defender requesting them. Additionally, there are reports that the Technical Committee of the mechanism has coordination problems, because the officials taking part in the meetings are low-ranking and, consequently, lack the legal authority to make decisions, in addition to high turnover of those taking part. This situation makes it difficult to monitor the cases before us on an ongoing basis. 1155

751. With relation to implementation of physical protection measures, through the precautionary measure mechanism, the Commission has received information about the willingness of the State to implement several protection measures, which include safe rooms, police patrols, police patrol accompaniment, home visits, telephone monitoring, among other physical measures. Despite these actions, the IACHR has been repeatedly receiving reports of serious failures in the implementation of physical protection measures, including: i) poor quality safe rooms, often subsidized by the beneficiaries themselves; 1156 ii) inconsistent patrolling; 1157 iii) failure to train the persons in charge of providing

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1155 CEJIL. Observaciones al informe sobre la situación de derechos humanos en Honduras. October 14, 2016.

1156 Report submitted by Cejil on April 21, 2016, in the context of precautionary measures (MC 18-10) in favor of Indyra Mendoza Aguilar and others; report submitted by Cejil on 21 January 2016, in the context of precautionary measures (MC 399-09) in favor of the employees of Radio el Progreso.

1157 Report submitted by COFADEH on June 20, 2016, in the context of precautionary measures (MC 180-10) in favor of Juan Ramón Flores Bueno et al; report submitted by CEJIL on January 21, 2016, in the context of precautionary measures (MC 399-09) in favor of the employees of Radio el Progreso; report submitted by MADJ on July 6, 2016 in the context of precautionary measures (MC 416-13) in favor of 18 members of MADJ; report submitted by CODEH on June 7, 2016, in the context of precautionary measures (MC 95-10) in favor of Jorge Fernando Jiménez Reyes and family.
Several civil society organizations have expressed frustration because, despite having held a number of consensus building meetings, both in the domestic arena and at IACHR headquarters, and despite the host of commitments made by the competent authorities, the State has been breaking most of the agreements that had been reached, leaving the beneficiaries of precautionary measures, who are also covered under the national protection mechanism, totally defenseless. The resulting lack of trust has been reflected in the decision of some beneficiaries of precautionary measures to not attend the working meetings in the national framework, because the State authorities lack the political will to implement the protection measures.

752. In the Commission’s view, it is essential that in applying any legal framework, protection programs must have “sufficient human resources, [who are] trained and instructed to receive protection requests, assess risk level, adopt and implement suitable and effective protection measures, as well as monitor measures already in place,” In order for measures to be adequate, they must be suitable to protect the person from the situation of risk he or she faces and, in order to be effective, they must produce the desired results.

753. The Commission believes that it is of particular importance for the State to redouble its efforts to ensure effective protection of persons who are beneficiaries through the protection mechanism and to continue to assess the effectiveness thereof in order to be able to make the necessary adjustments to reduce situations of risk faced by beneficiaries in the current program.

754. As for the issue of investigation, in the report submitted by the State, it is noted that the Office of the Special Prosecutor for Human Rights of the ministry of Public Prosecution [Fiscalía Especial de Derechos Humanos del Ministerio Publico] (FEDH) has appointed “an agent of the courts (assistant prosecutor)” to investigate any complaints that were brought by persons who were engaged in the defense of human rights. Despite the commitments made by the State in the area of investigations, the Inter-American Commission notes with the utmost concern that serious challenges in this field continue to exist and these challenges have been underscored by different beneficiaries of precautionary measures throughout 2016. Consequently, the Commission wishes to reiterate the dire need for the State to establish, as policy in the

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1158 Report submitted by MADJ on July 6, 2016, in the context of precautionary measures (MC 416-13) in favor of 18 members of MADJ; report submitted by CEJIL on January 21, 2016, in the context of precautionary measures (MC 399-09) in favor of the employees of Radio el Progreso; report submitted by COFADEH on June 20, 2016, in the context of precautionary measures (MC 180-10) in favor of Juan Ramón Flores Bueno et al.

1159 Report submitted by CODEH on June 7, 2016, in the context of precautionary measures (MC 95-10) in favor of Jorge Fernando Jiménez Reyes and family.

1160 Report submitted by COFADEH on June 20, 2016, in the context of precautionary measures (MC 180-10) in favor of Juan Ramón Flores Bueno et al.

1161 Report submitted by CODEH on June 7, 2016, in the context of precautionary measures (MC 95-10) in favor of Jorge Fernando Jiménez Reyes and family; report submitted by CEJIL on April 21, 2016, in the context of precautionary measures (MC 18-10) in favor of Indyra Mendoza Aguilar et al.

1162 Report submitted by CEJIL on April 21, 2016, in the context of precautionary measures (MC 18-10) in favor of Indyra Mendoza Aguilar et al.


1166 Report submitted by MADJ on July 6, 2016, in the context of precautionary measures (MC 416-13) in favor of 18 members of MADJ; report submitted by CEJIL January 21, 2016, in the context of precautionary measures (MC 399-09) in favor of the employees of Radio el Progreso; report submitted by COFADEH, on June 20, 2016, in the context of precautionary measures (MC 180-10) in favor of Juan Ramón Flores Bueno et al.
short, medium and long term, investigations as a prevention measure. The IACHR recalls that failure to investigate incidents, which prompt a situation of risk, brings about a context of impunity that fuels, over the course of time, consistent repetition of acts of violence affecting the performance of the job of human rights defenders and journalists.

Based on all of the foregoing considerations, the IACHR reiterates its recommendations and encourages the State of Honduras to continue its efforts to reduce violence. In particular, the IACHR urges the State to gradually withdraw the armed forces from law enforcement duties and strengthen the police in tasks of citizen security. In this context, it hopes that training of law enforcement officials on the topics of respect for and protection of human rights is expanded and that the mechanisms of evaluation of these programs are institutionalized. Additionally, the Commission calls on the State to make every effort to achieve the full and effective functioning of the protection mechanism, by providing the necessary resources for this purpose and with the full participation of civil society organizations. Likewise, the IACHR urges the State to allocate more human and technical resources to investigate with due diligence the murders of human rights defenders and apply criminal punishments, as appropriate, in order to prevent impunity and repetition thereof.

E. Stigmatizing Statements

755. On December 1, the general coordinator of Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (Copinh), Berta Cáceres, alleged that Cardinal Óscar Andrés Rodríguez had urged the San Francisco de Lempira business community not to organize or join Copinh and ordered them not to listen to or watch Radio Globo or Canal 36, media outlets that had been critical of the government.1167

756. The president of the Constitutional Chamber of the Supreme Court of Justice, Víctor Manuel Lozano, called Radio Globo and TV Globo a "media toilet" and accused them of carrying out an "insidious campaign" to "incite hate" against him. He made the statements during a radio interview on January 16 after the aforementioned media outlets revealed transcripts of calls that Lozano had made that were recorded by the State.1168

757. On March 6, the office of the mayor of Roatán published a statement on its official webpage on certain information revealed regarding administrative expenditures. The statement attacks journalist José Ramón Romero, president of Red de Alertas y Protección a Periodistas y Comunicadores Sociales de Roatán (Rapcos-Roatán). After the reporter published allegations that the head of the mayoral council was negligent regarding the execution of certain projects, the office of the Mayor published on its website, in reference to Romero, that "some individuals with certain media outlets who call themselves journalists report to the public, but they don't inform themselves well enough before doing so and therefore lack objectivity."1169

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

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1167 IACHR. March 4, 2016. IACHR Condemns the Killing of Berta Cáceres in Honduras.


harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”

F. Subsequent Liabilities

759. Over the course of 2016, the IACHR and its Office of the Special Rapporteur continued to observe with concern the use of legal actions linked to the exercise of freedom of expression, particularly private criminal actions for defamation of character and slander in Honduras. Based on the information received, these private criminal charges are used to criminalize and punish statements criticizing public officials and regarding matters of public interest, which disproportionately undermines the work of journalists and human rights defenders.

760. A criminal suit was filed against journalist Selvin Euceda by the president of the National Farmers’ Association of Honduras [Asociación Nacional de Acuicultores de Honduras], Javier Amador, after he reported in September 2015 on his program ‘Sin Censura,’ on Canal 45, that the Police Directorate of Investigations [Dirección Policical de Investigaciones] (DPI) had in its possession a suit against Mr. Amador for embezzlement. Amador wants a public apology and compensation of HNL$ 50 thousand (approximately US$2 thousand 200) and is demanding that the journalist reveal the documents and the sources on which he based his reporting. On April 5, a mediation hearing was held, but the parties did not reach an agreement.

761. On March 14, the Fourth Chamber of the Sentencing Tribunal [Cuarta Sala del Tribunal de Sentencia] convicted journalist David Romero Ellner, director of Radio Globo and Globo TV, of defamation, sentencing him to 10 years in prison. The litigation was initiated by former Honduran prosecutor Sonja Inez in August 2014. On November 13, 2015, the Tribunal found Romero Ellner guilty of six of the 15 charges brought against him. Gálvez pressed charges against Romero after the journalist stated that she and her husband, an assistant attorney general with the Office of the Attorney General [Ministerio Público], were involved in cases of corruption and influence. According to Gálvez, Romero Ellner defamed her because 10 years ago, she was the public prosecutor in a case in which the journalist was convicted and sent to prison for raping his daughter. On April 15, the journalist’s defense attorney filed a writ of cassation against the ruling.

762. On April 12, Venezuelan Robert Carmona Borjas, Vice President of the Arcadia Foundation, headquartered in the United States, filed a defamation suit against journalist David Romero Ellner after he accused him of being a “criminal” and committing crimes against the Honduran State. On May 5, a mediation hearing was held, but the parties did not reach an agreement.

763. On June 26, journalist Ariel Armando D’Vicente, director and host of news program ‘Prensa Libre,’ broadcast in the city of Choluteca by Libertado TV, was convicted of defamation and sentenced by a Sentencing Tribunal [Tribunal de Sentencia] to three years in prison. The sentence also bans him from practicing journalism during that period. The charges were brought by the former chief of police of the

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1172 Comité por la Libre Expresión (C-Libre). January 19, 2016. Periodista querellado por presidente de Asociación Nacional de Acuicultores de Honduras; Pasos de Animal Grande. February 24, 2016. Delitos contra el honor creados para enmudecer a periodistas que denuncian ilegalidades y corrupción.

1173 Comité por la Libre Expresión (C-Libre). April 7, 2016. Ante jueza exigen a periodista revelar sus fuentes informativas.


department of Choluteca, Oqueli Mejía Tinoco, after the journalist linked him to illegal livestock trafficking between Central America and Mexico. The Tribunal also ordered the journalist to pay Mejía's legal costs. In 2014, the reporter, who regularly reports on government corruption in Choluteca, published stories indicating that Mejía and the police officers under his command received bribes from criminal groups trafficking livestock. The police chief denied the accusations and pressed charges against the reporter, who announced he would appeal the conviction.\textsuperscript{1178}

764. On July 26, Partido Nacional Deputy Oswaldo Ramos Soto filed a criminal complaint against journalist Armando Villanueva after statements he made on a discussion program he hosts on Canal 10 alleging that there were management irregularities when the deputy was the rector of the Universidad Nacional Autónoma de Honduras (UNAH).\textsuperscript{1179} On August 12, the Supreme Court of Justice [Corte Suprema de Justicia] admitted the criminal complaint, and on August 24, the deputy and the journalist met for a mediation hearing. They were not able to reach an agreement, so the matter was ordered to go to trial.\textsuperscript{1180}

765. The Commission appreciates the decision made by the Sentence Execution Court of Tegucigalpa [juzgado de Ejecución de Tegucigalpa] on December 11, 2015, suspending the ban from practicing the profession imposed on journalist from Globo TV and member of PEN Honduras Julio Ernesto Alvarado, in compliance with the precautionary measure issued by the Inter-American Commission on Human Rights (IACHR) in November 2014. On December 13, Alvarado went back to hosting his program, ‘Mi Nación’ on Globo TV.\textsuperscript{1181} In December, 2013, the journalist had been convicted by the Supreme Court of Justice [Corte Suprema de Justicia] of the crime of defamation and sentenced to 16 months in prison, as well as been banned from doing journalism. On November 5, 2014, the IACHR issued precautionary measures and asked the State to suspend execution of the sentence and refrain from taking any action to ban the journalist from exercising his profession until the IACHR could rule on the application submitted by him. The Commission extended the precautionary measures on October 15, 2015.\textsuperscript{1182}

766. During the IACHR’s in loco visit, the State provided information on the bill drafted by the Department of Justice and Human Rights of Honduras [Secretaría de Justicia y Derechos Humanos de Honduras] that seeks to amend the Penal Code [Código Penal] to decriminalize defamation and slander. As of the drafting of this report, the IACHR has no information on whether the legislative initiative was passed. The Inter-American Commission recommends that the government move forward with that reform process, which could contribute to ensuring that these types of actions are processed through civil courts. This would guarantee that criminal law is not used as a means of intimidation that affects freedom of expression, especially when used by public officials to silence critics.

G. Direct and Indirect Censorship

767. Journalist Edgar Andino, host of a program on Televida, Canal 63, was taken off the air after he criticized the Church during a broadcast and stated that he should be the one teaching the word of God. The


\textsuperscript{1181} PEN Internacional. December 17, 2015. Honduras: Después de 13 meses, el estado hondureño finalmente cumple con la orden de la CIDH de suspender la inhabilitación del ejercicio periodístico de Julio Ernesto Alvarado; Pasos de Animal Grande. December 12, 2015. Juzgado de Ejecución por fin cumple medida cautelar de la CIDH a favor de periodista Julio Ernesto Alvarado.

manager of *Televida* told the organization *C-Libre* that the communicator offended the church with his statements, and when management asked him to retract them, he left the air.1183

768. The National Telecommunications Commission [Comisión Nacional de Telecomunicaciones] (Conatel) reported in a statement dated May 20 that 21 audiovisual communication service providers were operating without a license because “they did not renew their permits to operate legally,” leading to the ‘launching of the corresponding process to penalize them for the infraction.’ Conatel ordered the broadcasts suspended and said that the legal counsel of the media outlet in violation must raise a legal defense and make use of the remedies provided for by law within a period of 10 days. Once this deadline had expired, they must reapply for broadcasting licenses. Although the generic measure of suspending the broadcasts would affect a number of television channels with a variety of different content, one of the channels affected by the measure, *Globo TV*, has been critical of the current Honduran government and reported on alleged acts of corruption in the Honduran Social Security Institute [Instituto de Seguridad Social de Honduras] (IASS).1184

769. Under the authorities established in article 41 of the American Convention on Human Rights, on June 1, the Office of the Special Rapporteur sent the Illustrious State a letter requesting information on the administrative measure handed down by Conatel. The Office of the Special Rapporteur also asked the regulatory body to guarantee due process and, where necessary, apply proportional penalties that affect the right to freedom of expression of those who express themselves through the media as little as possible.1185

770. In its response, dated July 1, the State said that the measure applied to the National Audiovisual Service [Servicio Nacional Audiovisual], whose signals are broadcast through a channel that is included in the cable television programming bundle of channels. It noted that the Telecommunications Sector Framework Law [Ley Marco del Sector de las Telecomunicaciones] establishes that the license authorizing the National Audiovisual Service to provide service stipulates the conditions for doing so, including a provision indicating that the license can be canceled in the event of expiration or revocation. The law also establishes the rights and obligations of the operator to request renewal of the license a minimum of two months before its expiration. Otherwise, the rights to provide the service will expire.1186

771. In this framework, the regulatory body conducted audits of the validity of the permits granted starting in 2009 and found that 21 operators of the Audiovisual Service, including *Globo TV*, were operating with expired licenses and had not submitted the necessary request for renewal. This constituted an administrative violation as established in the law. Conatel issued resolution OD098/2016, which gave operators 10 days to raise a legal defense and explain why they were operating illegally. It also ordered cable television service operators to drop the channels that were in violation from their bundles and ordered the owners of the 21 channels to cease providing the service.

772. The State reported that as of July 1, 10 of the 21 channels had exercised their right to defense, including Alejandro Villatoro Aguilar, the owner of *Globo TV*. At the same time, *Globo TV* and five other channels had submitted requests for new licenses. The State added that the requests were being processed administratively. It also stated that Conatel’s actions were within the bounds of the law and that at no time were the rights or guarantees recognized in the Constitution violated.

773. The State reported that no penalty involving suspension of broadcasts was handed down. Rather, the rights granted to operate the service expired along with the licenses. By continuing to provide the service

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1183 Comité por la Libre Expresión (C-Libre). April 15, 2016. Periodista censurado en canal de TV por miembros de iglesia Cristiana.


without authorization from the regulatory body, the owners of the channels were violating the Telecommunications Sector Framework Law. The State clarified with regard to the process to issue penalties for infraction that the guarantees established in the Constitution of the Republic were respected, and at no time was the right to defense or due process violated.

774. One month after the closure of television channel *Globo TV*, it had to fire 16 of its employees because it was not able to pay their salaries. On July 18, the director of *Globo TV*, David Romero Ellner, said during a press conference that the channel had requested a two-month provisional license to start broadcasting again, but that Conatel had so far not responded to this request.

775. On August 22, journalist Héctor Amador reported that Conatel had notified television channel *Planeta TV* that it had to stop broadcasting because it was doing so illegally. According to the journalist's reporting, the channel was shut down hours after it announced it would begin broadcasting the program 'Interpretando la Noticia,' hosted by Amador and journalist David Romero Ellner, the editorial stance of which was to be critical of the government. On July 25, Conatel issued a press release containing a list of public telecommunications service operators and distributors who had not complied with ‘the delivery of the regular regulatory reports (monthly, quarterly, and/or six month) required pursuant to the regulatory framework in force for the second quarter of 2016.’ The list of media outlets included *Planeta TV*.

776. In this regard, the IACHR recalls that rules regulating radio broadcast must be designed in such a way as to grant sufficient guarantees against possible arbitrary acts of the State. In order for this goal to be met, the following requirements, *inter alia*, must be met: (1) the rules establishing rights and obligations must be clear and precise; (2) the rules must provide for transparent procedures and due process—which enable, among other things, judicial review of decisions made in the administrative realm—; (3) the permit must be granted for use of the frequency for a sufficient length of time to be able to carry out the communications project or to recover the investment and make it profitable; (4) there must be assurances that while the frequency is being used, further requirements will not be demanded than what is established in the law; and (5) decisions shall not be made that impair the exercise of freedom of expression based on the editorial or news line. These and other protections, which will be discussed hereunder, are essential for the existence of truly free and vigorous radio broadcast.

H. Access to Public Information

777. On January 4, agents with the National Police [*Policía Nacional*] prevented journalists Fernando Maldonado, Lidieth Díaz, and Oswaldo Estrada, with *Radio and TV Globo*, from covering an event of President Juan Orlando Hernández at the Police Directorate of Investigations [*Dirección Policial de Investigaciones*] (DPI) offices. Fernando Maldonado alleged he was repeatedly harassed by soldiers when he tried to enter the State offices.

778. On January 25, a number of journalists were prevented from entering a parliamentary session to cover the swearing-in of a new legislature and the selection of new magistrates for the Supreme Court of Justice [*Corte Suprema de Justicia*] because there was allegedly only space for a limited number of reporters.

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1188 Comité por la Libre expresión (C-Libre). July 21, 2016. *Gobierno muestra intransigencia al cumplirse dos meses del cierre de Globo TV.*


1192 Comité por la Libre expresión (C-Libre). December 17, 2015. *Militares requisan a periodista para permitirle entrar a sus fuentes.*
The media outlets that were denied access included Hoy Mismo, TN5, Cadena Hondureña de Noticias, Teleceiba, Canal 11 and Mi Nación, and Radio Progreso.¹¹⁹³

779. Civic Counsel of Popular and Indigenous Organizations of Honduras [Consejo Cívico de Organizaciones Populares e Indígenas de Honduras] (Copinh) reported that the head of the Energy, Natural Resources, and Environment Department of Honduras [Secretaría de Energía, Recursos Naturales y Ambiente de Honduras] (MiAmbiente) denied it access to some 50 case files on concessions for hydroelectric, wind, and mining projects.¹¹⁹⁴

780. The president of the Association of Municipalities of Honduras [Asociación de Municipios de Honduras], Nery Cerrato, announced on March 21 that he would file for a writ of amparo before the Constitutional Chamber of the Supreme Court of Justice [Sala de lo Constitucional de la Corte Suprema de Justicia] to ban publication of the audit reports of the Superior Accounting Tribunal [Tribunal Superior de Cuentas].¹¹⁹⁵

781. On July 4, the Institute on Access to Public Information [Instituto de Acceso a la Información Pública] (IAIP) announced that it had resolved to recommend that the Executive Branch temporarily suspended nine mayors, the minister of education, and the rector of the Universidad Nacional de Agricultura (UNA), Marlon Escoto, for failure to comply with the Transparency and Access to Public Information Act [Ley de Transparencia y Acceso a la Información Pública].¹¹⁹⁶

782. In its 2015 country report, the Commission expressed concern at the approval and entry into force on March 7, 2014, of the Classification of Public Documents Related to Security and National Defense Act [Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional].¹¹⁹⁷ The law places limits and restrictions on the right to information in this area that are not in line with the principles of the access to public information law itself or with international standards on the topic.

783. Civil society organizations filed for a constitutional remedy before the Supreme Court, asking it to strike down this law. Spokespeople with The Support Mission Against Corruption and Impunity in Honduras [Misión de Apoyo contra la Corrupción y la Impunidad en Honduras] (Macchi) have said that the Secrecy Act, as it is known, needs to be amended by Congress.¹¹⁹⁸ During the international forum entitled “the status of freedom of expression and Honduras” [El estado de la libertad de expresión en Honduras], which was held in August and included the participation of the Special Rapporteur, experts on the subject expressed concern regarding this law and its application.¹¹⁹⁹

784. In this regard, the IACHR reiterates its appeal to the State to review the Law for the Classification of Public Documents Relating to Security and National Defense and the regulations thereof approved subsequently, in order to ensure that it is compatible with the principles fleshed out in international human


¹¹⁹⁶ La Tribuna. July 5, 2016. IAIP pide sancionar a Marlon Escoto; La Prensa. July 5, 2016. IAIP pide suspender a Marlon Escoto y a nueve alcaldes; Comité por la Libre Expresión (C-Libre). July 4, 2016. Por negar información: IAIP resuelve suspensión de nueve alcaldes y de ministro de educación hondureño.

¹¹⁹⁷ Decreto No. 418-2013 (Published by Gaceta of January 24, 2014).

¹¹⁹⁸ Hondudiario.com. October 20, 2016. MACCIH pedirá varias reformas legislativas al congreso entre ellas la ley de secretos; El informativo.hn. April 28, 2016. Macchi define líneas de trabajo en el combate a la corrupción en Honduras; La Tribuna. February 16, 2016. Ley de ‘Secretos’ primera ‘traba’ para la MACCIH.

rights law. Accordingly, for example, in the Joint Declaration on Access to Information and on Secrecy Legislation, the Special Rapporteurs for Freedom of Expression recalled: “certain information may legitimately be secret on grounds of national security or protection of other overriding interests. However, secrecy laws 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. Secrecy laws should 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.”1200 In this regard, the Office of the Special Rapporteur has emphasized that a restriction on access to public information, which is claimed to find its justification in defense of national security, must not be based on an idea of national security incompatible with a democratic society.1201

I. Internet and Freedom of Expression

785. On January 17, the National Office of Investigation and Intelligence [Dirección Nacional de Investigación e Inteligencia] (DNII) said in a press release that it had launched an investigation to identify the individuals who published supposedly false information on social networks indicating that banks would close. 'A number of individuals have already been identified who made those publications, misdirecting the public and raising fears among the account holders of a number of banking entities, as well as giving rise to speculation and doing considerable damage to the financial security and emotional stability of savers,' the press release stated. It stated that 'in the coming hours, in coordination with the Office of the Public Prosecutor, legal actions will be brought against those individuals to bring them before the competent courts to establish responsibilities in this case.'1202 In that context, on January 21, Elvin Francisco Molina was arrested and charged with distributing supposedly false information on the situation of banks.1203 Molina was released on March 14.1204

786. In January, the website of the organization Vía Campesina and the Facebook page of the Movimiento de Mujeres por la Paz Visitación Padilla came under cyberattack. In April, Vía Campesina’s Facebook page was hacked. Both groups say that the attacks are in retaliation for the organizing they do.1205

J. Other Relevant Situations

787. On February 22, a Sentencing Court of Ceiba [Tribunal de Sentencia de la Ceiba], Atlántida, acquitted the main suspect in the murder of journalist Nery Francisco Soto, which took place on August 14, 2014, and the municipality of Olanchito, Yoro department.1206 Soto, who was a host and reporter for Canal 23, was

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1205 Comité por la Libre Expresión (C-Libre). April 20, 2016. Hackean Facebook de Vía Campesina y de organización de mujeres.

murdered by unknown individuals who shot him several times as he arrived home. Authorities have ruled out robbery as a motive.1207

788. On May 9, the minister of the General Government Coordination Department [Secretaría General de Coordinación de Gobierno], Jorge Ramón Hernández Alcerro, said during a press conference that he had ordered the National Office of Intelligence [Dirección Nacional de Inteligencia] (DNII) and the National Migration Institute [Instituto Nacional de Migración] to identify the members of foreign human rights organizations participating in violent demonstrations or inciting the violence after a number of international observers joined protests held by Civic Counsel of Popular and Indigenous Organizations of Honduras [Consejo Cívico de Organizaciones Populares e Indígenas de Honduras] (Copinh).1208


1208 Comité por la Libre Expresión (C-Libre). May 10, 2016. Gobierno amenaza a prensa internacional y a defensores internacionales de DD. HH.
20. JAMAICA

A. Attacks, Threats and Harassment Against Journalists and Media Outlets

789. During the weeks leading up to the General Elections, Nationwide News Network reporter and co-host of the evening news, Abka Fitz-Henley, received numerous threatening phone calls alluding to his murder. The death threats were made anonymously, but appeared to come from supporters of the People’s National Party. The journalist had to be assigned armed security to guarantee his safety.1209

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

21. MEXICO

A. Progress

791. In January, the First Chamber of the Supreme Court of Justice of the Nation [Primera Sala de la Suprema Corte de Justicia de la Nación] resolved application for amparo in review 622/2015 and declared the partial unconstitutionality of article 230 of the Federal Telecommunications and Broadcasting Law [Ley Federal de Telecomunicaciones y Radiodifusión] (LFTR), regarding the restriction placed on the language that must be used by broadcasters. Article 230 of the LFTR establishes that broadcasters must use the national language (Spanish), notwithstanding the fact that the concessions for indigenous social use make use of the corresponding language of the indigenous people. The Court determined that the provision violates the rights to equality and freedom of expression of indigenous persons, insofar as the use of indigenous languages is limited to the social concessions. The Court recognized that the above-mentioned provision violated their right to express themselves in their indigenous language, which is intrinsic to the right to freedom of expression because it implies the freedom to express oneself in one's language of choice in order to participate in a culturally diverse democratic society. The Court concluded that it is the duty of the State to adopt measures to ensure the availability and massive access by indigenous peoples to the media without discrimination. Therefore, on June 2, the decree to reform article 230 of the LFTR went into effect, as published by the Secretariat of Communications and Transport in the Official Gazette of the Federation [Diario Oficial de la Federación], permitting broadcasters to use any native language that coexists with the Spanish language in Mexico.1210

792. The IACHR applauds the joint initiative of the INAI and civil society organizations to carry out the “Memory and Truth” project. According to the information furnished by the State, the project involves an online platform to present information on cases of alleged human rights violations and the probable commission of crimes against humanity. The purpose of the initiative is to “promote guarantees of nonrepetition and the right to the truth, and to provide access to information for victims, investigating agencies, jurisdictional and human rights bodies, courts, and all other interested parties.” The information available for consultation deals with the cases of Acteal, Aguas Blancas, Apatzingán, Atenco, Ayotzinapa 2011, Ayotzinapa 2014, Cadereyta, Cotton Field, El Halconazo, San Fernando 2010, San Fernando 2011, the Dirty War, Tlatelolco, and Tlatlaya. In order to create a useful store of public knowledge, after locating the information it was classified, systematized, and analyzed according to the type and theme of the alleged violation.1211

B. Killings

793. On January 31, the journalist Marcos Hernández Bautista was killed in San Andrés Huaxpaltepec, state of Oaxaca. Hernández was a correspondent for the daily newspaper Noticias Voz e Imagen de Oaxaca and collaborated with some other communications media. He also served as a public official in his local government and was active in the National Regeneration Movement party. According to the editorial director of the paper, the journalist had expressed fear regarding possible reprisals in response to the publication of articles dealing with "political interests and the interests of bosses in the region." However, the State informed the Special Rapporteurship that the Mechanism for the Protection of Human Rights Defenders and Journalists [Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas] had not recorded threats, assaults, or harassment against him or a request to guarantee his safety.”1212


On February 25, Jorge Armando Santiago Martínez, First Commander of the Second Shift of the Municipal Police of Santiago Jamiltepec was taken into custody as being responsible for the murder of the journalist Marcos Hernández Bautista. The Prosecutor’s Office of the state of Oaxaca stated that there is probably another person responsible for whom there is an arrest warrant.1213

On February 9, the journalist Anabel Flores Salazar was found lifeless on the highway of the state of Puebla. She had been taken from her home on February 8 in the community of Orizaba, Veracruz by armed men who came looking for her in three trucks and, when they found her in one of the rooms, forced her into one of the vehicles and fled.1214 Flores Salazar worked as a political reporter for the local paper El Sol de Orizaba.1215

After learning of her disappearance, the State of Veracruz Commission for the Attention of Journalists [Comisión Estatal para la Atención de los Periodistas de Veracruz] publicly announced that it had initiated a protective measures procedure to find the journalist and provided protection to her family, after it learned of the kidnapping.1216 After learning of the journalist’s death, the Prosecutor’s Office of Veracruz [Fiscalía de Veracruz] insinuated that the events had occurred as the result of a romantic relationship the journalist had with a member of a criminal organization.1217 That version was rejected by journalists, civil society organizations and members of the Veracruz parliament, who also demanded an exhaustive investigation and an adequate response from state authorities, particularly the investigative agency, in order to shed light on the facts and exhaust the hypothesis of the relationship with her work as a journalist.1218

A few days after her murder, the governor of the state of Veracruz, Javier Duarte, announced via twitter that a member of the criminal gang Los Zetas was the mastermind of the journalist’s murder. He also stated that Flores had made complaints against organized crime on social networks, using a pseudonym.1219 On May 4, the Prosecutor indicated at a press conference that another person implicated in the crime had been captured and also indicated that the death of Flores was related to her work because one of her reports


1217 E-Consulta Veracruz. February 8, 2016. Fiscalía vincula a reportera de Orizaba con la delincuencia; Vanguardia. February 8, 2016. Fiscalía de Veracruz criminaliza a Anabel Flores Salazar, reportera desaparecida.


had bothered the Los Zetas criminal organization to which the accused belonged.\textsuperscript{1220} The State informed the Office of the Special Rapporteur on September 9 that the First Prosecutors Unit of the Integrated Unit for Obtaining Justice of the City of Orizaba, Veracruz \textit{[Fiscalía Primera de la Unidad Integral de Procuración de Justicia de la Ciudad de Orizaba, Veracruz]}, had opened an investigative file that is being processed, and that the Directorate of Preliminary Investigations \textit{[Dirección de Averiguaciones Previas]} of the Special Prosecutor's Unit for Attention to Crimes against Freedom of Expression \textit{[Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión]} (Feadle) had begun the Minutes of Verification \textit{[Acta Circunstanciada]} which are also in process.\textsuperscript{1221}

798. The journalist Moisés Dagdug Lutzow was murdered on February 20 in the state of Tabasco. Persons unknown entered his house, stabbed him, and then left in his vehicle, which was found hours later on the highway in the city of Villahermosa. According to the available information, Dagdug Lutzow was recognized as the owner of the communication company \textit{Grupo VX} and for presenting a radio program on channel \textit{XEVX}, \textit{La grande de Tabasco}. The journalist commented on various occasions that he had been the victim of anonymous verbal threats, allegedly because of his critical position against the Tabasco state government, headed by Arturo Núñez Jiménez.\textsuperscript{1222} On May 2, the Prosecutor of Tabasco \textit{[Fiscal General de Tabasco]} revealed progress made in the investigation and indicated that a joint operation with the Federal Police had arrested the alleged murderer of Dagdug Lutzow.\textsuperscript{1223} The State informed the Office of the Special Rapporteur on September 9 that the Attorney General’s Office \textit{[Procuraduría General de Justicia]} had begun an investigation of the case that is currently underway.\textsuperscript{1224}

799. The journalist Francisco Pacheco Beltrán was murdered on April 25 in Taxco, state of Guerrero. According to the available information, Pacheco worked for \textit{El Sol de Acapulco}, \textit{El Faro de Taxco} and the radio station \textit{Capital Máxima de Chilpancingo}. He also had his own news portal, \textit{Pacheco Digital}, where he covered events occurring in his state, one of the most violent in the country.\textsuperscript{1225} Journalists from Guerrero marched to demand justice in his case.\textsuperscript{1226}


\textsuperscript{1226} Televisa Hermosillo. April 27, 2016. \textit{Marchan periodistas de Guerrero por asesinato de reportero}.
800. On May 4, the director of the Special Prosecutor’s Unit for Attention to Crimes against Freedom of Expression [Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión] (Feadle) reported that it would assert its jurisdiction to take on the case and also announced the opening of a preliminary investigation into the killing of Pacheco. Moreover, Feadle and the Executive Commission for Attention to Victims [Comisión Ejecutiva de Atención a Víctimas] (CEAV) provides support for the family members of the journalists along with the means for protection, attention and assistance recognized by law. The State informed the Office of the Special Rapporteur on September 9 that the Feadle had begun a preliminary inquiry into the events and that this is currently underway. It also indicated that the victim’s family members were incorporated into the Mechanism for the Protection of Human Rights Defenders and Journalists [Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas].

801. The journalist Manuel Torres González was murdered on May 14 in Poza Rica, state of Veracruz. Torres had been a correspondent for TV Azteca and a reporter for Diario Noreste. He had recently launched his own website called Noticias MT and according to the available information he collaborated with the town council of Poza Rica. Through a press release, the General Prosecutor’s Office of the state of Veracruz [Fiscalía General del Estado de Veracruz] indicated that the facts would be investigated, without making any mention of the journalistic work of Torres. The Veracruz State Commission for the Attention and Protection of Journalists [Comisión Estatal para la Atención y Protección de los Periodistas de Veracruz] condemned the murder and urged the authorities to conduct a diligent investigation to shed light on the murder.

802. On June 19, the journalist Elidio Ramos Zárate was murdered in Juchitán de Zaragoza, Oaxaca. According to the available information, Ramos had covered the disturbances between teachers and police agents in Oaxaca; he was murdered on the street when he was approached by persons unknown who shot him. Ramos Zárate worked for El Sur, Diario Independiente and covered the police source.

803. On June 20, journalist Zamira Esther Bautista was killed in the city of Victoria in Tamaulipas state. Bautista worked as an independent reporter and had worked as a social reporter for the newspapers El Mercurio and La Verdad. According to available information, those responsible for the homicide left a card linking them to an illegal group that operates in Victoria. Civil society organizations rejected this act of violence against journalists.

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On June 26, Tuun Ñuu Savi community radio announcer Salvador Olmos García was killed in the municipality of Huajapan de León in the state of Oaxaca. According to the available information, Municipal Police [Policía Municipal] officers had arrested, tortured and beaten him, supposedly for having taken a critical position about the mayor of Huajapan de León on his program 'Pitaya Negra'.

Journalist Pedro Tamayo Rosas was killed on July 20 in Tierra Blanca, state of Veracruz. The homicide occurred in front of the journalist’s home, when unknown individuals arrived in a truck and opened fire. According to the available information, Tamayo worked with the local daily newspapers El Piñero de la Cuenca and Al Calor Político in the state of Veracruz covering police matters and had reported on kidnappings, the finding of cadavers in clandestine graves and executions. In January, he was reported by the media outlets as missing but days later the police had located him in the locality of Acatlán de Pérez Figueroa, state of Oaxaca. As a result of that event, the State Commission for Attention and Protection for Journalists [Comisión Estatal para la Atención y Protección de los Periodistas] a public entity if the state of Veracruz, had provided for extraordinary protection measures.

The state reported that after the murder an investigation had been initiated by the Comprehensive Subunit for the Pursuit of Justice [Subunidad Integral de Procuración de Justicia] of Tierra Blanca, Veracruz, as well as the Prosecutor in Charge of the Office of the Agency Specializing in Electoral Crimes and Attention to Complaints against Journalists and/or Communicators [Fiscal Encargado del Despacho de la Agencia Especializada en Delitos Electorales y en la Atención de Denuncias contra Periodistas y/o Comunicadores] in the City of Tierra Blanca. Feedle opened an investigative file. The Veracruz State Commission for the Attention and Protection of Journalists condemned the murder and reported that it was in constant communication with the journalist's family to provide them with assistance and support. In addition, exercising its investigative powers, the CNDFH initiated an investigation ex officio and called on the authorities to investigate the crime and provide the necessary protection to the journalist’s family.

The journalist Aurelio Cabrera Campos was murdered while driving his vehicle on the night of September 14 near the town of Huauchinango, in the state of Puebla. The authorities were alerted through a telephone call and although medical services found him still alive when they reached him, the journalist died hours later at the hospital to which he was taken. According to the available information, Cabrera had worked for the newspaper Voz de la Sierra and had recently created his own outlet, a weekly called El Grafico de la Sierra, where he was the director. The journalist was known for covering the police source and public safety in the north of the state of Puebla, an area bordering on the state of Veracruz. The Office of the General Prosecutor of the state of Puebla [Fiscalía General del Estado de Puebla] and Feedle worked together to

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promote investigations to exhaust the lines of investigation, including the issue of the exercise of freedom of expression.\footnote{1239}

808. On September 13, the journalist Agustín Pavía Pavía was murdered in front of his home in the town of Huajuapan de León, in the state of Oaxaca. He was hosting a community radio program called \textit{Tu Un Nuu Savi}. According to the available information, Pavía used the radio to criticize the state government and had also covered issues related to environmental protection and movements against mining. Pavía had been the founder of the Morena party in the municipality of Huajuapan.\footnote{1240}

809. On December 13, Adrián Rodríguez was murdered in Chihuahua, Chihuahua. The journalist was in his automobile in front of his home when unknown individuals approached and shot him. According to the available information, the journalist worked at \textit{Antena Radio} and covered matters associated with the state government; in the past, he had carried out investigations into topics associated with public safety for written media such as \textit{El Heraldo} de Chihuahua. Family members indicated that the journalist had received death threats. He was recently carrying out an investigation into people who are arbitrarily imprisoned.\footnote{1241} The governor of Chihuahua through a press release expressed regret over the killing of the journalist and stated that it will not remain impunity.\footnote{1242}

810. The Office of the Special Rapporteur also received information about the killing of other journalists and/or media outlet employees in which there is as yet no clear connection with the practice of their profession. In this regard, the IACHR views as fundamentally important that the authorities investigate these events without discarding the hypothesis concerning links with journalistical activity and freedom of expression. On January 22, \textit{El Manantial} community radio announcer Reinel Martínez Cerqueda was killed while traveling in an automobile in the outskirts of the city of Santiago Loallaga in the state of Oaxaca.\footnote{1243} On April 26, Apolónio Hernández González, an announcer for an online radio station, was killed in the municipality of Ejutla de Crespo in the state of Oaxaca.\footnote{1244}

811. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and


\footnotetext[1242]{1242}{\textit{Gobierno de Chihuahua. December 12, 2016. Asesinato de periodista Adrián Rodríguez no quedará impune; Gobierno del Estado.}}


freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.\textsuperscript{1245}

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

C. Attacks, Threats and Harassment Against Journalists and Media Outlets.

813. On January 6, the journalist and director of Rotativo Digital in Tacámbaro, Michoacán, Martínez Castañeda, was hospitalized due to injuries allegedly inflicted by the son of a local entrepreneur. According to the available information, the son of a gas station owner attacked the journalist as he walked by with his grandson in the public square of Tacámbaro. The attack was related to articles published by the journalist on irregular practices committed by the gas station owner’s family to avoid competition in the gas station business. Martínez Castañeda had already received threats from another member of that family in late 2015.\textsuperscript{1246}

814. According to the information available in the media, the attacker was apprehended and brought before the judge who decided to bring criminal action for aggravated injuries. Both the communicator and his family have been offered protection measures.\textsuperscript{1247}

815. In January, various media outlets reported threats as well as proceedings filed against the journalist Víctor Badillo, CNN correspondent in Monterrey. Badillo was conducting an investigation on corruption in the Nuevo León Health Secretariat (SSNL) involving the businessman Cano Sánchez in his capacity as an SSNL provider. On December 30, 2015, the journalist’s family received threats on their mobile phones; the available information indicates that the journalist is currently the beneficiary of the federal protection mechanism.\textsuperscript{1248}

816. On February 3, the journalist Paula Carrizosa, in charge of the cultural section of the Jornada de Oriente, was threatened by Francisco Trejo, director of the Communications Unit of Puebla Communications [Unidad de Comunicación de Puebla Comunicaciones] (public television, radio, and digital technology organization of the state of Puebla). She had been invited by Trejo on behalf of the state Governor to an event at the Museo Internacional Barroco (MIB), in the city of Puebla. The journalist was taking notes at the event when the official told her in a challenging and threatening way to remember that she couldn’t publish anything because it was an informal event. Various organizations complained and demanded the imposition


of sanctions. According to the information available, the Jornada del Oriente had an editorial position critical of the government of Rafael Moreno Valle, governor of Puebla.1249

817. The journalist Ezequiel Flores Contreras, a correspondent for Proceso in the state of Guerrero, was threatened by former representative Roger Arellano Sotelo on February 10. According to the available information, the journalist was participating in a demonstration in the Congress of Guerrero in Chilpancingo, demanding justice for the murder of the journalist Anabel Flores, when the former representative approached in his vehicle and made a death threat against the journalist.1250 The organization Artículo 19 denounced the threats made through Twitter against the journalists Álvaro Delgado, from Proceso, and Aranzazu Ayala, from Lado B, who were also demanding justice in the case of the journalist Anabel Flores through that social network.1251

818. On May 5, the daily Vanguardia of Saltillo, capital of the state of Coahuila, made public a record of attacks occurring since January 2016, alerting the journalist community and the authorities. The attacks mentioned included the creation of social network pages to insult and defame the media and journalists and a cyber-attack on the newspaper’s server. On May 3, a vehicle remained parked in front of the Vanguardia facilities and on May 4 the same vehicle followed the journalist Roxana Romero all the way to her home where it approached and repeatedly passed by the home, causing her to be absent from work temporarily. Roxana Romero, along with Vanguardia, had previously been sued by Humberto Moreira Valdés, former governor of Coahuila and former national leader of the PRI, who alleged moral damage due to an article published after his release from prison this past January 23 in Madrid, Spain.1252

819. On May 6, forces from the elite security group “Fuerza Coahuila,” which reports to the state Government Secretariat [Secretaría de Gobierno estatal], broke into the home of the director of Vanguardia in Saltillo, state of Coahuila, enforcing an eviction order decreed by the Judicial Branch of Mexico City for alleged debts. The media and civil society organizations characterized the display and use of force as out of proportion to the objectives sought. The government of Coahuila maintained in a statement that the police had acted fully in compliance with the law.1253 The National Human Rights Commission [Comisión Nacional de los Derechos Humanos] (CNDH) submitted a request for precautionary measures to the Coahila state General Government Secretary [Secretario General de Gobierno] “in order to avoid to put at risk the personal integrity and the physical safety of staff Vanguardia, as well as its facilities and equipment. Also, it requested evidence attesting compliance with such measures to be forwarded.”1254

820. On June 8, journalist Estrella Pedroza, a reporter for the daily newspaper Regional del Sur and correspondent for the La Silla Rota, was attacked by Single Control [Mando Único] of Cuernavaca. According to the available information, she was using her cellular phone to record an act of alleged abuse of power by the police when one of them approached her to question her and told her not to film anything that was happening, after which the police officer threw the reporter’s cellular phone onto the street. When she tried

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to pick it up, the officer hit her in the face. The journalist filed a complaint with the Secretariat of Civic Safety [Secretaría de Seguridad Ciudadana] and the Human Rights Commission of Morelos opened an investigation into the case. Subsequently, the Secretariat of Safety [Secretaría de Seguridad] denied the events that had been denounced by the journalist. The Congress of the Union [Congreso de la Unión] urged the Office of the Attorney General of Morelos [Fiscalía de Morelos] to investigate the agents involved.1255

821. The Special Rapporteur also learned of cases in which journalists were the victims of theft of journalistic material; according to the available information, unknown persons entered the homes of the photojournalists Germán Canseco (Revista Proceso)1256 and Jonathan Rosas Ramírez (Imagen del Golfo and Unión de Medellín, state of Veracruz) 1257 and took only their work equipment and devices on which they stored journalistic information. Threats were also received by the columnist for the El Universal newspaper, Héctor De Mauleón,1258 in Mexico City, as well a journalist for the Diario Noroeste in the state of Sinaloa.1259 The journalist Ana Espinosa Rosete (Crónica Hoy) was attacked by police agents while she was covering demonstrations in Mexico City. 1260

822. In August, the journalist Noé Zavaleta, director of the newspaper Crónica de Xalapa and correspondent for Proceso in state of Veracruz, had to leave the state after receiving threats on social networks. The threats occurred because of the publication of the book “El infierno de Javier Duarte,” in which the journalist denounced acts of corruption by the governor of the state of Veracruz, Javier Duarte, and contracts for high sums of money signed between Governor Duarte and the newspaper El Buen tono. In addition to the threats, there was a campaign against the journalist on the social networks, pointing to him as a part of the Los Zetas cartel. According to the information available, the journalist reported the threats and returned to Veracruz after a few months. Since that episode, the journalist has had protection measures from the Federal Protection Mechanism. The state reported to the Special Rapporteurship that the Office of the General Prosecutor [Fiscalía General] of Veracruz is responsible for the investigation.1261


823. In August, the organizations Freedom House and Article 19 denounced acts of harassment and threats against the journalist Jaime Nava in the capital of the state of San Luis de Potosí. Nava is a journalist for La Jornada de San Luis and according to the available information he published an investigation against alleged acts of corruption through a pharmaceutical supplier in the city of San Luis de Potosí. According to the reporting organizations, Nava was not the only journalist harassed; another journalist, José Guadalupe González, was also the victim of harassment, threats, and institutional violence. These events occurred since April when the investigation was published.1262

824. On November 13, five people entered the offices of the digital medium Aristegui Noticias without authorization and stole a portable computer, which contained confidential information about judicial proceedings involving journalist Carmen Aristegui. In addition to the computer, they stole other material goods that were in the office. According to the available information, the Saio Servicios company that administered the property had filed a criminal complaint with the Prosecutor’s Office of the Attorney General’s Office [Fiscalía de la Procuraduría General de Justicia] of Mexico City.1263

825. On November 27, the Secretariat of Public Safety [Secretaría de Seguridad Pública] of the state of Baja California notified the directors of the weekly periodical Zeta that they had uncovered a plan by the Jalisco drug cartel in the state of Tijuana to attack their offices in the early morning hours, but that the attack had been postponed. The attack was planned following publication of a report on illegal actions by the Jalisco Nueva Generación Cartel. The Committee for the Protection of Journalists urged the Mexican authorities to guarantee the safety of journalists who work at the weekly periodical Zeta.1264

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

D. Prevention, Protection and Impunity for Crimes Against Journalists

827. On February 11, the Federal National Human Rights Commission [Comisión Nacional de Derechos Humanos Federal] (CNDH), issued General Recommendation No. 24 on the practice of freedom of expression in Mexico.1265 The CNDH affirmed in its recommendation that the right to freedom of expression is undergoing one of its most critical moments and faces serious and complex obstacles such as the high rates of violence against those who disseminate information and the alarming impunity that exists in those crimes. The recommendation is directed at the Office of the Attorney General of the Republic [Procuraduría General de la República], the Secretary of the Navy [Secretario de Marina], the Head of Government of Mexico City, National Safety Commissioner [Comisionado Nacional de Seguridad], President of the Governing Board of the Mechanism for the Protection of Human Rights Defenders and Journalists [Presidente de la Junta de Gobierno del Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas], Prosecutors

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Notes:

828. The CNDH through this recommendation strongly urges the Federal Government and the federative entities to implement "Policies aimed at generating a safe and respectful environment for journalists, communications and media outlets. In this way, not only will it be guaranteeing full exercise of the right to freedom of expression for journalists but it will also be contributing towards the consolidation of a more democratic, participative and tolerant society".1266

829. The recommendation warns of the increase in the number of homicides against journalists, as well as the fact that the authorities responsible for guaranteeing public safety have not been able to stop the attacks against the media. Also, the ineffective actions by the authorities in obtaining justice, who have been unable to clarify the attacks against the press. The CNDH concluded that whether by omission or action, both the authorities charged with preventing crime along with those responsible for carrying out investigations have failed in their duties.1267

830. According to the recommendation, the federative entities with the highest percentage of aggressions against journalists are Veracruz, Tamaulipas, Guerrero, Chihuahua and Oaxaca. It also warns that women journalists have increasingly become the target of aggressions since 2010.1268

831. The recommendation emphasizes that 90 per cent of the aggressions remain in impunity, and the CNDH stresses that while the investigating authorities carry out their work, they are not always able to clarify the facts and identify those allegedly responsible. It reiterates the lack of an adequate pursuit of justice, which has led to a climate of growing impunity that has facilitated the increase in aggressions against the press, silencing freedom of expression.1269

832. The CNDH in its recommendation values the efforts made to provide guarantees for the practice of journalism and stresses the Mechanism for the Protection of Human Rights Defenders and Journalists, despite the difficulties of implementation and functioning that it faced in the beginning and the challenges that it currently faces. However, it warns that, despite efforts to guarantee freedom of expression, censorship has found new ways to limit this right by means of direct measures such as judicial harassment through the use of criminal classifications in those federative entities in which they still exist.1270

833. The Office of the Special Rapporteur values the effort by the CNDH to capture and gather information about aggressions against the press during the past 10 years in Mexico, along with the analysis by the institution of the deficiencies that exist in the different government bodies to prevent, protect and obtain justice with respect to aggressions against the media and journalists. In particular, the Special Rapporteurship values the follow-up by the CNDH on the situation of impunity in crimes against the press, which in general continues to be the rule, and leaves those who exercise their right to freely express themselves unprotected while making it impossible to reduce this extreme form of censorship. General Recommendation 24 gathers together the different standards that have been developed by the IACHR and its Office of the Special Rapporteur for Freedom of Expression, as well as by other bodies of the Universal Human

1270 Comisión Nacional de Derechos Humanos (CNDH). Recomendación General No. 24, Sobre el ejercicio de la libertad de expresión en México, February 8, 2016. Para. 169 and following.
Rights System and hopes that the state authorities to whom the above-mentioned recommendation is directed will adopt its content and work to fulfill the recommendations contained therein, in order to generate a better climate for the exercise of freedom of expression in Mexico.

**E. Social Protest**

834. On April 6, journalists Salvador Adame and Frida Pardo, director and the owner of the media outlet 6 TV Tu Canal, were arrested while covering a demonstration in the municipality of Múgica, Michoacán. Along with the journalists, 17 women who were participating in the protest were also arrested. The journalists were documenting a protest at the Múgica town hall against the change of headquarters of the Ciudad Mujer social project, which had been awarded to that municipality in 2014 and recently relocated to the municipality of Huétamo. The journalists filmed the arrival at the site of the demonstration of a convoy consisting of the municipal president [presidente municipal], Salvador Ruiz Ruiz; the Deputy Secretary of Public Safety of the state [Subsecretario de Seguridad Pública del estado], Carlos Gómez Arrieta, and special forces from the Single Police Command [fuerzas especiales del Mando Único Policial]. After carrying out the eviction and arresting the women who took part in the protest, the police arrested Frida Pardo even though she identified herself as a journalist, and then arrested Salvador Adame, and all of the detainees were taken to Morelos in police cars. The journalists were freed hours later and the demonstrators on the following day.¹²⁷¹

835. On April 11, authorities and police officers evicted residents of the community of San Francisco Xochicuautla, in the state of Mexico, to begin construction of the Toluca-Naucalpan Highway, a project that the community has opposed for nearly 5 years. Various individuals were injured during the eviction.¹²⁷²

836. In April, the civil society organizations that make up the Frente por la Libertad de Expresión y la Protesta Social (Fleps) expressed concern over statements by environmental consultants and the Environmental Commission of the Megalopolis [Comisión Ambiental de la Megalópolis] (CAME) through several media outlets, regarding restrictions on social mobilizations or demonstrations, arguing that they contribute to pollution, in the context of the environmental contingency declared in March by the Government of Mexico City. In a public declaration, the Secretary of the Environment of the Government [Secretaría del Medio Ambiente] of Mexico City, Tanya Müller García, reported that studies would be carried out to measure the impact of demonstrations on the increase of environmental pollution. The organizations of the Fleps expressed their rejection of those statements and called upon the authorities not to use a legitimate discourse such as defense of the environment to restrict the right to demonstrate, which also bears no relation to the real causes of the pollution that afflicts Mexico City.¹²⁷³

837. On June 19, 2016 a joint police operation was carried out between State and Federal Forces in the roadblock of the Oaxaca-Mexico Highway, in the municipality of Nochixtlán, state of Oaxaca, with the objective of removing the roadblock being carried out by members of the National Coordinator of Education Workers [Coordinadora Nacional de Trabajadores de la Educación] (CNTE), in protest against the educational reform proposed by the Federal Government. The teachers, who belonged to section 22 of the Union of workers in education [Sindicato de Trabajadores de la Educación], with support from parents, had staged an occupation in the city of Oaxaca as well as placing roadblocks on the highways since May 15. The operation

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led to a confrontation between the security forces and demonstrators. That same day there were acts of vandalism and looting in the state.1274

838. As a result of the confrontations, and according to official figures, 8 people died, 7 of whom were shot, along with 1 person from handling an incendiary device, 41 federal police were injured, 14 state police were hurt and 53 civilians were injured. Additionally, according to the CNDH, 24 people were arrested. The CNDH issued cautionary measures on behalf of the people who were injured to enable them to obtain adequate medical attention.1275 According to information provided by civil society organizations, 137 people were treated at diverse healthcare establishments in Nochixtlán, of whom 33 were minors. Most of the wounded had injuries stemming from firearms, burns, blows and intoxications.1276 In Huitzo and Telixtlaahuaca, 81 people were reported as having been hurt by rubber bullets, blows, fractures, intoxications and burns, among others.1277 The organizations also denounced that the people who were arrested had been the victims of torture and many had not been brought before a judge; they also denounced abuse in the use of force by the police agents.1278

839. On June 21, the Office of the Human Rights Ombudsman of Oaxaca [Defensoría de Derechos Humanos de Oaxaca] issued precautionary measures on behalf of 7 people who were reported as disappeared after the confrontations of June 19. The precautionary measures were issued on behalf of Ángel Santiago Hernández, Juan Velasco Méndez, Daniel Medina, María Carrillo, Gustavo Moreno Bravo, Inocente Pinacho, and Alejandro “NN.”1279

840. On June 20, a team of journalists from TV Azteca travelled to Nochixtlán to document what had taken place the day before and the roadblocks that persisted in the zone. According to the available information, members of the community retained cameraman Fernando Albarrán and editor Pedro Cortés, demanding to be given 15 minutes of airtime on the newscast to explain what had happened the day before. After retaining them for several hours, they were freed.1280 The Office of the Special Rapporteur later received information


indicating that the inhabitants were angry about information that TV Azteca and other media outlets had disseminated in which they were portrayed as responsible for what happened to the teachers and other demonstrators. Moreover, the information indicates that the journalists were not retained but where instead accompanied so that they would provide an objective coverage portraying the excesses committed by members of the security forces.\textsuperscript{1281}

841. On June 29, a Permanent Commission of the Congress of the Union [\textit{Comisión Permanente del Congreso de la Unión}] unanimously approved the agreement creating the Follow-up Commission on the events that took place in Nochixtlán, Oaxaca on June 19, 2016, with the aim of following up on the investigations into the events. On August 31, the final report of activities was published, in which the Commission concluded among other things that, when planning the operation, the authorities failed to take into account that it was to be carried out on a Sunday, when there is greater movement by people in the zone where the events took place, and near the site of the roadblock in a zone with numerous homes and that the risk of affecting children was therefore quite high. The report also points out that there were deficiencies in coordination of the responsibilities of the authorities and the police from the two territorial orders that took part in the operation. The Commission stated that it is important for the competent authorities to determine whether or not there was abusive use of force by the police agents and in that sense affirmed that they were able to verify that firearms were used by agents of the security forces as well as by the demonstrators.\textsuperscript{1282}

842. On July 5, journalist Ana Espinosa Rosete, a reporter for Crónica Hoy, was beaten by police agents while covering demonstrations by the National Coordinator for Education Workers [\textit{Coordinadora Nacional de Trabajadores de la Educación}] (CNTE), in Mexico City. According to the available information, the police agents obstructed the journalistic work of the reporters present, which was why Espinosa Rosete began to film them, at which time a policewoman struck her in the face and pushed her until she fell on the street. The events were denounced to the office of the Attorney General of Mexico City.\textsuperscript{1283}

843. The IACHR has reiterated that social protest is a fundamental tool for human rights defense work and is essential for critical political and social speech regarding the activities of the authorities. The Commission has maintained that "in principle, criminalization \textit{per se} of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the right to freedom of expression and to freedom of assembly,"\textsuperscript{1284} and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."\textsuperscript{1285}

844. In addition, the Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, states that the rights of assembly and freedom of expression "son fundamentales y su garantía es una condición necesaria para la existencia y el funcionamiento de una sociedad democrática. Un Estado puede imponer limitaciones razonables a las manifestaciones con el fin de asegurar el desarrollo pacífico de las mismas o dispersar aquellas que se tornan violentas, siempre que tales limites se encuentren regidos por los principios de legalidad, necesidad y proporcionalidad. Además, la desconcentración de una manifestación debe justificarse en el deber de protección de las personas, y deben utilizarse las medidas más

\textsuperscript{1281} Comité de Defensa Integral de Derechos Humanos Gobixha. Informe Final sobre los hechos del 19 de junio en Oaxaca. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.


seguras y menos lesivas para los manifestantes. El uso de la fuerza en manifestaciones públicas debe ser excepcional y en circunstancias estrictamente necesarias conforme a los principios internacionalmente reconocidos.**Finally, the Inter-American Commission has found that any type of arbitrary or abusive interference that might affect the privacy of human rights defenders and their organizations is prohibited under the Declaration and the American Convention.**

845. With respect to the use of force in contexts of social protest, the IACHR and its Office of the Special Rapporteur for Freedom of Expression developed relevant standards in their 2015 report on the Use of Force.**In that report, the IACHR stated that “The social interest imperative associated with the right to participate in public demonstrations is such that there is a general presumption in favor of its exercise.” The IACHR maintained that “The presumption in favor of the exercise of social protest implies that states must act based on the legality of the protests or public demonstrations and under the assumption that they do not constitute a threat to public order, even in those cases in which they are held without prior notice.” In the same report, the IACHR underscored that, “Whatever the format adopted by those who exercise this right, the action of the police should have as its main objective facilitating demonstrations and not containing or confronting the demonstrators. Hence, as a general rule police operations organized in the context of protests should be geared to guaranteeing the exercise of this right and to protecting the demonstrators and third persons who are present.” In this regard, the Commission has considered that breaking up a demonstration does not, in itself, constitute a legitimate aim that justifies the use of force by security forces. “When a demonstration or protest leads to situations of violence it should be understood that the State was not capable of guaranteeing the exercise of this right. […] The State’s obligation is to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims.”

F. Protection Mechanism

846. In its country report, in the chapter on the Protection Mechanism, the IACHR emphasized the efforts made by the State to protect persons at risk, in the context of serious violent acts occurring as a consequence of the defense or promotion of human rights, and in exercising freedom of expression and practicing journalism in Mexico in recent years. In particular, the Commission saw as especially important the creation of the “Mechanism for the Protection of Human Rights Defenders and Journalists” (hereinafter the “Mechanism” or the “Protection Mechanism”) in 2012, the issuance of specific regulatory frameworks, the disbursement of funds for operating the protection program, implementation of procedures for those who come to the Mechanism to request protection measures and a considerable number of protected persons, among other actions implemented with the objective of creating bonds of confidence regarding the effectiveness of the Mechanism. In this respect and in view of the information received through the various monitoring mechanisms of the IACHR, including precautionary measures, the Commission formulated a series of recommendations for the State in this specific area.

847. In following up those recommendations, the Inter-American Commission appreciates the efforts made by the State and its commitment to protecting an increasing number of beneficiaries of the Protection Mechanism, including beneficiaries of precautionary measures requested by the IACHR and provisional measures of the Inter-American Court. According to official State data, as of September 2016, 90 requests for protection were received and 79 persons have been incorporated. Since its creation in 2012, the Mechanism has provided protection measures for a total of 612 beneficiaries. There are currently 501 beneficiaries with

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protection measures in effect; of these 321 are human rights defenders and 180 are journalists. Organizations that work with human rights defenders and journalists have indicated that measures are being implemented to reduce the delay in dealing with pending cases. The authorities have shown more openness to participating with civil society in evaluating the performance of the Mechanism and discussing how to address its limitations.

848. The IACHR considers as an important step the decision made by the Governing Board of the Protection Mechanism to issue an early warning on August 1, 2016 intended to prevent assaults against human rights defenders and journalists in the state of Chihuahua. This same mechanism was used in 2015 for the state of Veracruz. According to various organizations, this decision "constitutes a significant advance, in that it expressly recognizes the gravity of the at-risk situation faced by those engaged in the work of defending human rights or the practice of journalism in Chihuahua, one of the states with the largest number of attacks on human rights defenders and the largest numbers of murdered journalists." The decision was adopted after a request was made by a group of 25 human rights defense organizations in Chihuahua. In this respect, the IACHR appreciates the effort made by the Protection Mechanism to develop the diagnosis of the situation of human rights defenders and journalists in Chihuahua published in July 2016, which exposes some of the causes for the attacks on human rights defenders and journalists as well as the principal types of attacks to which they are exposed, and also reiterates the recommendations that the CNDH and the State Human Rights Commission of Chihuahua had made to different government agencies involved in preventing and protecting against attacks on target populations. The Commission hopes that all the authorities involved, both federal and state, fully perform the commitments assumed and also hopes that journalists, human rights defenders, and civil society are able to effectively participate, with full guarantees, in the development and monitoring of the Early Alert System.

849. The State informed the Special Rapporteurship for Freedom of Expression regarding the implementation of the "Inter-Institutional Collaboration Agreement to Implement the Program of Public Policies in Favor of Journalists who Practice Freedom of Expression in the state of Veracruz" signed in November 2015 between the Governing Board of the Federal Mechanism for the Protection of Human Rights Defenders and Journalists and the Government of the state of Veracruz, which was adopted as an early alert mechanism in response to a request made by a group of journalists due to the serious security situation journalists face in that state. According to the information provided by the State, the agreement has made possible training for institutional personnel in human rights and freedom of expression and ongoing cooperation between the federal mechanism and the state authorities in Veracruz. Maps and statistics have also been developed to identify at-risk areas and populations, and there has been follow-up on investigations opened based on attacks committed against journalists.

850. During the on-site visit of the IACHR, the Protection Mechanism announced an evaluation of the effectiveness of the panic button as a protection measure. In this regard, the State reported that between December 2015 and March 2016 a process to evaluate that measure was conducted by the Prevention, Monitoring, and Analysis Unit (UPSA). The study found that 55 per cent of the calls made were for an emergency. As a result of that evaluation a series of recommendation were made, notably including training

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1291 WOLA/PBI, The Mechanism for Protecion of Human Rights Defenders and Journalists in Mexico, May 2016, pp. 2 et seq.
1292 FIDH, Observatory (OMCT-FIDH) and the Center for Women’s Human Rights (CEDEHM). September 15, 2016. MÉXICO: Por primera vez se emite una alerta temprana para prevenir agresiones a defensoras/as de derechos humanos y periodistas.
for the beneficiaries of this measure by the Mechanism as well as by the private company that handles the devices.\textsuperscript{1295}

\textbf{851.} Without prejudice to the foregoing, the Inter-American Commission has continued to receive information on significant delays in risk assessment procedures and implementation of material protection measures due to a lack of human and financial resources,\textsuperscript{1296} circumstances that are exacerbated in some states in the country's interior.\textsuperscript{1297} In this regard, as the IACHR has reiterated through the two reports on the Situation of Human Rights Defenders in the Americas, the States have the duty to provide the budgetary and logistical resources necessary to guarantee the effectiveness of protection programs. In this regard, in its comments on the draft version of this report, the State said that "coordinated work has taken place with the PGR on reviewing the Mechanism's guidelines, criteria, methods, and procedures as approved by the Board of Governors. This has led to an increase in the number of cases reviewed and adopted, from four cases per session in 2012 to an average of 38 cases per session in 2016; as a result, the backlog has been brought down. In 98 per cent of the cases the protection plans were adopted unanimously."\textsuperscript{1298}

\textbf{852.} One of the main issues with a cross-cutting effect on all institutional policy regarding protection is the persistent lack of coordination among the various institutions at the state and federal level.\textsuperscript{1299} Under this scenario, members of civil society have indicated that the number of persons who seek protection from the Mechanism is not equal to the magnitude and intensity of the at-risk situation faced daily by a large number of human rights defenders and journalists in Mexico.\textsuperscript{1300} These circumstances are likely related to the level of mistrust that currently persists regarding the effectiveness of the Mechanism, which was identified by the IACHR in its 2015 country report.\textsuperscript{1301} In this regard, in its comments on this report, the State informed the IACHR that the Protection Mechanism's National Executive Coordinating Office entered into cooperation agreements with 31 of the nation's 32 states. In those agreements, the federal and state authorities agreed to: (i) investigate and punish attacks suffered by human rights defenders and journalists on account of their activities, (ii) develop and implement preventive measures in order to avoid potential attacks, and (iii) pursue the legal amendments and additions needed to improve the situation of human rights defenders and journalists.\textsuperscript{1302}

\textbf{853.} The State indicated that the Fund for the Protection of Human Rights Defenders and Journalists, which has been operating through a trust since 2012, had spent a total of MXN$ 68 million 928 thousand 868 (approximately US$ 4 million 162 thousand) on the implementation and operation of protective measures. The total available in the Fund as of May 31, 2016, was MXN$ 290 million 166 thousand 747 (approximately US$ 14 thousand 120).\textsuperscript{1303}

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\textsuperscript{1296} According to the report "The Protection Mechanism for Human Rights Defenders and Journalists in Mexico," issued in May 2016 by WOLA/PBI, "only 37 employees work in this Mechanism."


\textsuperscript{1299} Artículo 19. Seguimiento a las recomendaciones realizadas por la Comisión Interamericana de Derechos Humanos en su informe sobre la situación de Derechos Humanos en México. September 15, 2016. Page . 5.


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Within the IACHR’s precautionary measures mechanism, while the Commission has noted the willingness of the competent authorities to deal with decisions granting precautionary measures and to hold consensus-building meetings on protective measures, information has been received on serious difficulties with the protective measures implemented by the competent authorities, including those that are a part of the Protection Mechanism. In particular, throughout 2016, information has continued to be received on: i) the failure to implement protection measures from a collective perspective, with a differentiated and culturally appropriate approach; ii) unjustified delays in the implementation of material protective measures; iii) challenges in the implementation of protective measures intended to address specific risks, including with respect to the situation of journalists; iv) precarious allocation of funds to implement material protective measures, including the lack of fuel so that security agents can make their rounds, limitations on the number of security personnel assigned to beneficiaries, defective panic buttons and satellite phones; among other situations that affect the security situation of various beneficiaries of precautionary measures and the National Protection Mechanism. On the persistence of such failures, the Inter-American Commission considers it important for every protection measure that is implemented to be adequate, and thus suitable for protecting the beneficiary against the situation of risk, and effective, in that it must produce the expected results. Therefore, the States must design policies that allow them to monitor the effectiveness of the measures and constantly follow up their implementation, as it relates to the risks the beneficiaries may face.

In the case of human rights defenders and journalists who have been displaced because of their work and who have requested protection from where they have relocated, members of civil society have indicated that risks have been assessed and protection measures implemented in the new location rather than in the area from which they were displaced. “This makes it difficult for them to return and continue with human rights work and does not reduce the real risk level they face.” On this subject, the Commission urges the State to redouble its efforts to strengthen the Protection Mechanism, taking into account the specific risks faced by the beneficiaries of the program, so that they can continue their work as human rights defenders and journalists.

Moreover, members of civil society have continued to express their concern regarding the lack of a strategy on prevention and on the punishment of those responsible for the attacks that continue to be faced by human rights defenders and journalists, which perpetuate cycles of violence and limit the performance of their work. In the words of a Mexican civil society organization, “one of the main weaknesses of the

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1304 IACHR. In the matter of the members of the Otomí-Mexica indigenous community of San Francisco Xochicuautla with respect to Mexico. May 11, 2016; and In the matter of Lauro Baumea et al. with respect to Mexico (Pueblo Yaqui). Resolution extending the scope of the precautionary measures of March 22, 2016.


1306 Report presented by CEJIL on September 8, 2016, within the framework of the precautionary measures (MC 185-16) granted in favor of Sofia Lorena Mendoza and others with respect to Mexico. Report submitted by the CEDEM on July 28, 2016, within the framework of the precautionary measures (MC 208-10) in favor of Estela Angela Mondragón and others with respect to Mexico; Report presented by CEJIL on September 9, 2016, within the framework of precautionary measures (MC 77-15) in favor of the human rights defenders E and K with respect to Mexico; among other reports received during 2016.


Along these lines, with respect to the investigation of the factors that cause the entry and permanence of persons supported by the Protection Mechanism, as well as persons benefiting from precautionary measures, the IACHR notes with concern that it has not received information on short-, medium- and long-term measures that the competent authorities are implementing to establish investigation as a prevention measure as the policy of the State. In its comments on this report, the State acknowledged the importance of strengthening its capacity to create long-term public policies so that the justice authorities are responsible for preventing and effectively investigating crimes committed against persons covered by the Mechanism’s protection.\(^{1314}\) The Commission feels that the failure to investigate the facts that lead to at-risk situations generates a context of impunity that constantly reproduces the repetition of violent acts that affect the work of human rights defenders and journalists. Thus, as indicated emphatically in the 2015 country report,\(^{1315}\) the Inter-American Commission recalls that “the most efficient medium to protect [...] is to efficiently investigate acts of violence and punish those responsible.” Therefore, it again repeats its call on the State to conduct exhaustive independent investigations on attacks suffered by all persons linked to protection programs, including those who are beneficiaries of IACHR precautionary measures.

### G. Subsequent Liabilities

857. The IACHR encourages the efforts of the mechanism intended to develop statistics regarding attacks on journalists and human rights defenders, broken down by gender, state, and perpetrator. In this regard, the IACHR and its Special Rapporteurship for freedom of expression learned that as of September 2016,\(^{1316}\) the prevention, monitoring, and analysis unit of the Federal Mechanism had statistics regarding requests for protection under the mechanism, beneficiary individuals or groups, types of attacks, precautionary measures, protective measures, legal actions, files completed, meetings of the governing board, and requests for public information. This information has been developed thanks to the construction of a database and a georeferencing map that make it possible to systematize the information collected by the Prevention Unit through national monitoring of attacks against journalists and the communications media.

858. The 69\(^{th}\) Civil Judge [69° Juez de lo Civil ] of Mexico City on April 19 sentenced journalist Sanjuana Martínez to provide nonmaterial damages to Jesús Ortega Martínez, ex leader of the Partido de la Revolución Democrática (PRD). According to the available information, the journalist published two articles in 2013 titled “Consumidores de sexo comercial” (Commercial Sex Consumers) and “Infierno en el Cadillac: sexo, poder y lágrimas” (Hell in a Cadillac: Sex, Power and Tears), in which she linked the political leader to prostitution and human trafficking. Ortega Martínez filed a civil suit for nonmaterial damages and asked the judge to set compensation; when the sentence was issued, the amount that the journalist would have to pay as compensation was unknown.\(^{1317}\)

859. According to the journalist and her legal representatives, the sentence had serious procedural irregularities, including her not having been duly notified by the court of the proceedings against her, as well as not having specified the manner in which the specific effects on the image of the plaintiff had occurred and failing to duly prove the relationship between the alleged crime and the alleged damage caused. The complaint was filed in Monterrey and then at the request of the journalist was transferred to Mexico City. During that period, the journalist and her attorneys did not know where the complaint was nor did they have access to it and it was only when the sentence was announced in the media that they had knowledge of the

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860. Journalist Carmen Aristegui was the target of a civil lawsuit filed by Joaquín Vargas, owner of the concession MVS –the company where the journalist had previously worked–, stemming from publication of the book *La Casa Blanca de Peña Nieto, la historia que cimbró un gobierno*, in the prologue to which the journalist had made statements that the entrepreneur viewed as having caused him nonmaterial damage. On October 28, the Superior Court of Justice of Mexico City [Tribunal Superior de Justicia de la Ciudad de México] convicted the journalist in the first instance for having caused nonmaterial damages to the president of the MVS communications group. The ruling ordered Aristegui to publish the sentence at her own cost and to include a fragment of the sentence in the prologue to all publications of the book. The Court considered that Vargas Guajardo is a public figure, which is why society has a legitimate interest in receiving information about him and he must tolerate a higher level of interference in his private life. Nonetheless, the Court stated that Vargas Guajardo’s right to privacy prevails over the right to freedom of expression when, among other circumstances, the information has been disseminated although known to be false. When analyzing the evidentiary material submitted, it found that Vargas Guajardo demonstrated the falsehood of the information contained in the prologue to the book *La Casa Blanca de Peña Nieto, la historia que cimbró un gobierno*. Therefore, the Court concluded that Aristegui exceeded in exercising her right to report, causing damage to the rights of honor and prestige of Vargas Guajardo, in not having provided evidence that would prove the content of the above-mentioned prologue. The journalist announced that she would file an appeal against the sentence. These events took place in the framework of the termination of the contract of Aristegui and her team by Vargas Guajardo, as reported in the 2015 Annual Report. The journalist had announced that her firing stemmed from the publication of an investigation into a case of alleged corruption in the purchase of a luxurious home used by the President of the Republic.

861. On June 28, the academic and columnist Sergio Aguayo Quesada was the target of a civil suit filed with the 15th Civil Court of the Superior Court of Justice of Mexico City [Juzgado 15 de lo Civil del Tribunal Superior de Justicia de la Ciudad de México] by Humberto Moreira Valdés, Ex-Governor of Coahuila and ex national leader of the Partido Revolucionario Institucional (PRI), following publication of an article in January of 2016, which referred to the politician’s arrest in Spain. In the text, Aguayo maintained that the public career of Moreira “smelled of corruption and... was an example of impunity”. The plaintiff has demanded payment of approximately US$ 530 thousand as a settlement.

862. On June 8, journalist Pedro Ferriz de Con was the target of a civil suit filed with the Superior Court of Justice [Tribunal Superior de Justicia] of Mexico City by the Ex-Governor of Coahuila and ex national leader of the Partido Revolucionario Institucional (PRI), Humberto Moreira Valdés. In his suit, the politician demanded...
a settlement of US$ 1 million 590 thousand 288 for nonmaterial and property damages. In 2012, the former state governor had filed a civil suit against the same journalist but had later dropped the suit.\footnote{1324}

863. On June 12, the First Civil Judge \[Juez Primero de lo Civil\] of Campeche sentenced the newspaper \textit{La Opinión}, edited in the state of Campeche, to pay a settlement of US$ 32 thousand 636 to the ex-local leader of the \textit{Confederación Nacional Campesina}, Sonia Cuevas Kantún, who had sued the newspaper for nonmaterial damages following the publication of interviews with the family members of a young woman killed in 2012, in which the peasant leader, who is also an alternate senator, was accused of attempting to use her political influence to cover up for her nephew, who was found guilty of homicide. According to the available information, the sentence will be appealed. The Inter-American Press Association (IAPA) expressed concern over the impact this decision would have on the practice of journalism in Mexico.\footnote{1325} Subsequently, on June 22, Cuevas Kantún filed an action for direct \textit{amparo} with the Second District Judge in Campeche, so that the Attorney General’s Office would process his complaint filed in December of 2015 to investigate the origin of the funds of \textit{La Opinión}, which he alleged were illegal.\footnote{1326}

864. The Supreme Court of Justice of the Nation \[Suprema Corte de Justicia de la Nación\] granted the action for \textit{amparo} filed by the actress and singer Lucía Méndez against article 41 of the Law of Civil Responsibility for Protection of the Right to Private Life, Honor and the Image of the Federal District Itself \[\textit{Ley de Responsabilidad Civil para la Protección del Derecho de la Vida Privada, el Honor y la Propia Imagen del Distrito Federal}\],\footnote{1327} to be economically compensated by the announcer Javier Parra Cortés, known as Alex Kaffie. The Court declared the partial unconstitutionality of the abovementioned article 41, which permitted people who have been found guilty of nonmaterial damages to not pay any compensation whatsoever if the judge considered that the damage could be compensated through publication and dissemination of the guilty verdict at the cost of the defendant in the same medium as using the same format in which the facts and opinions that generated the affectation have been published; and in any case that the compensation could not exceed “three hundred sixty-five days of the general minimum wage currently-in-effect in the Federal District”. The Court considered that the model established in the above-mentioned article 41 was contrary to the reparation regimen of common source established in article 63.1 of the American Convention on Human Rights, which provides for the payment of a fair settlement for damages caused. That being the case, the Court declared the constitutionality of the phrase “in cases in which the damage cannot be compensated in terms of article 39” and the maximum ceiling for the amount of the economic compensation. Therefore, the Court established that reparation for nonmaterial damage must include both publication of the guilty verdict as well as the payment of an economic settlement in accordance with what has been proven in the proceedings.\footnote{1328} The Court ordered revocation of the sentence issued by the Tenth Civil Chamber of the Federal District \[Décima Sala Civil del Distrito Federal\], so that the competent judge may issue a new sentence pursuant to the
new constitutional interpretation of the abovementioned article 41. This decision was handed down in the framework of litigation between Méndez and Parra Cortés, in which Parra Cortés had been found guilty of nonmaterial damage to Méndez in 2014 but absolved from the payment of economic compensation.

865. In November of 2015, the Third Civil Court of the State (juzgado Tercero de lo Civil) of Baja California issued precautionary measures on behalf of the spouse of the Municipal President of Mexicali, who had sued journalist Jaime Delgado Gaxiola, director of the Periodismo Negro news portal, for nonmaterial damages. The precautionary measure on behalf of the plaintiff involved ordering the journalist to abstain from publishing news associated with the mayor’s wife, which has been called an act of prior censorship.1329

866. In March, the attorney, social activist and columnist Teresa Guerra Ochoa reported that she had been sued for non-material damages by the ex-candidate for governor of the state of Sinaloa, Héctor Melesio Cuén Ojeda, whom the journalist had criticized in her spaces for opinion on different media outlets. According to the available information, the plaintiff has not specified the amount demanded as compensation.1330 In August, Guerra Ochoa publicly announced that unknown individuals entered her office and extracted information about the litigation with Cuén Ojeda. 1331

867. In May, the legal representative of the newspaper Vanguardia announced that the ex-governor of Coahuila, Humberto Moreira Valdés, had filed a civil lawsuit against the newspaper, edited in the City of Saltillo, Coahuila, and also against journalist Roxana Romero, whom he accuses of having caused him nonmaterial damage stemming from journalistic coverage by the daily newspaper of a story in which the ex-governor had benefited from the payment of a pension, as a teacher in the public education system, despite only having served as a teacher for a fraction of the time that is ordinarily required for teachers to gain access to retirement benefits.1332

868. In August, columnist Rosa Esther Beltrán was sued by the attorney and political leader Ariel Maldonado Leza, after publication of an article on April 8 in which the plaintiff was criticized along with his sister, who works for a medical services clinic for state magistrates. Maldonado Leza requested payment of a settlement the amount of which was left up to the judge to determine.1333

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

870. The Inter-American Court has also established, as regards possible civil liability, that civil judgments in freedom of expression cases must be strictly proportionate so as not to have an inhibitory effect on that freedom, as “the fear of a civil penalty, considering the claim […] for a very steep civil reparation, may be, in


any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”

**H. Access to Public Information**

871. On June 22, the INAI ordered the Secretariat of National Security [Secretaría de Seguridad Nacional] (Sedena) to deliver the written and audiovisual documents that were collected by military personnel on the night of September 26, 2014 in the city of Iguala, when 43 students from the Escuela Normal Rural Raúl Isidro Burgos in Ayotzinapa disappeared. The request had been made by a private individual and after receiving a partial response from the security force, filed an appeal for review with the National Institute for Transparency, Access to Information and Personal Data Protection [Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales] (INAI). In effect, the Sedena replied to the request for information that the requested information did not exist, but that in fulfillment of the principle of maximum publicity, they made available a compact disc with 4 photographs taken by the military personnel that night. In response to that reply, the petitioner filed an appeal for review with the INAI, arguing that the version of a member of the military confirming the existence of photos and videos taken that night was a matter of public knowledge.

872. The INAI regarded the response by the Sedena as imprecise, because it indicated that the information did not exist while at the same time making documents available like those that had been requested. It also considered that the response failed to provide certainty about how exhaustive the effort to find the required information was. In that sense, it compiled documents showing the existence of videos and photographs made by military personnel. The INAI recalls in its resolution that the case of the disappearance of the 43 students was declared to be of public interest because it involves a case of grave human rights violations and that same authority had therefore already ordered the PGR to create a public version of the case file of the investigation. The Institute instructed the Sedena to carry out an exhaustive search according to the provisions of the law to locate the written and audiovisual documents obtained on the night of September 26, 2014, and stated that “the authorities have explained the legal arguments that justify this decision; however, they can strengthen them through transparency. The best way to show that the Mexican Army is not associated with the grave human rights violations in the case of Ayotzinapa, is to punctually respond to the demands for information and to guarantee that they at all times act pursuant to the relevant legislation. We Mexicans have the right to know and evaluate whether the Army fulfilled its duties.”

873. On July 13, the INAI resolved the appeal for review filed against the response made by the Federal Police that denied access to the investigation file on fulfillment of the obligations by the members filed with the Internal Affairs Unit, regarding the deaths of civilians in Ayotzingán, Michoacán on January 6, 2015. In their response, the Federal Police [Policía Federal] had indicated that the requested information had been classified for a period of 10 years, due to the existence of a deliberative process pending resolution.

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The INAI determined that none of the grounds for classification of information provided for under the law had been demonstrated, the information did not compromise national security, it is not part of an adversarial process but rather that the elements obtained in that investigation would determine the beginning of a punitive procedure before the Federal Police Development Council [Consejo Federal de Desarrollo Policial]. In that sense, the rapporteur counselor clarified that the requested information refers to possible administrative offenses committed by agents of the Federal Police [Policía Federal] and not human rights violations, although that may have been the origin of the investigation by internal affairs. The INAI urged the police authority to provide the public version of the case file omitting the names of the agents that had served as witnesses in the investigation in order not to affect its development.1337

On June 27, the Fifth Collegiate Tribunal for Administrative Matters [Quinto Tribunal Colegiado en Materia Administrativa] of the Federal District resolved that the information from the inquiry begun by the Military Attorney General’s Office into military crimes allegedly committed in the municipality of Tlatlaya, state of Mexico, was classified. The Petition for Information had been filed with the Sedena in 2015 by Aristegui Noticias and Artículo 19 and was subsequently forwarded to the INAI. In June of 2015, the INAI had determined that the information was classified for a period of two years or until a sentence is issued in the case. The petitioners filed an action for amparo against the decision by the INAI and in November of 2015, the First Judge for Administrative Matters granted the amparo so that the information in question would be revealed, among other reasons because the Judge decided that because the information was associated with grave human rights violations, it could not be treated as classified. The INAI filed an appeal for review against the decision and the SElena and the PGR, who were constituted as interested third parties within the process, did the same. Subsequently, the INAI in a press release declared that the Institute would desist from the appeal for review filed against the sentence, despite the continued processing of the appeal deriving from the PGR and the SElena having also filed it.1338

In the 157th period of sessions, during the public hearing on Access to Information and Indirect Restrictions on Freedom of Expression in Mexico, civil society organizations expressed concern over the lack of obligation to publish asset declarations and declarations of conflicts of interest of public officials because, pursuant to current laws and regulations, their publication is discretionary. The organizations stated that making the publishing of asset declarations obligatory would make the fight against corruption much more effective. The State expressed its commitment in the fight against corruption and had therefore carried out a constitutional reform to create the National anti-corruption system [Sistema Nacional Anticorrupción] (SNA), which includes mechanisms for prevention, arrest and trial in relation to corruption. That System is under construction.1339

Principle 4 of the IACHR’s Declaration of Principles states 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.”


On May 4, the Supreme Court of Justice of the Nation [Suprema Corte de Justicia de la Nación] declared as constitutional articles 189 and 190 of the Federal Telecommunications and Broadcasting Law [Ley Federal de Telecomunicaciones y Radiodifusión] (LFTR), which forces telecommunications concessionaires to preserve a record for two years of communications made along with metadata that enable identification of the user, the type of communication, the information associated with the communication services utilized and information about real-time geolocation of mobile telephones. The above-mentioned articles also force the telecommunications concessionaires to provide the competent authorities with the information collected, when it is requested in a written and well-founded manner. The Court established that the above-mentioned articles are not contrary to the principles of legality and legal security to the extent that they identify the authorities that would be competent to have access to the information and that this must be done pursuant to the applicable laws and the guidelines established by the Federal Telecommunications Institute. Additionally, the Court established that the disputed articles do not violate the right to privacy with respect to access and use of personal data, to the extent that the established exceptions are within the law and comply with legitimate ends, such as national security and public order. Regarding the human right to inviolability of communications, the Court specified that it involves not only the content of the communications but also the data associated with the traffic of the communications, so that judicial authorization is required to gain access.\footnote{Diversity and Pluralism}

The Court established that the abovementioned articles only establish the obligation of the telecommunications concessionaires to respond to subpoenas from the competent authorities, pursuant to the legal procedure established for that purpose in constitutional article 16, without this implying authorization to intercept the content of the communications. The Court concluded that real-time geolocation of mobile telephones does not constitute an interception of the communications, so that it can thus be undertaken without a court order. The ruling came about as the result of an appeal for amparo submitted by the Red en Defensa de los Derechos Digitales (R3D), arguing that the retention of communications metadata is a disproportionate measure and contrary to the right to privacy. In this respect, the R3D expressed concern over the decision by the Court to validate the obligation imposed by the LFTR on the telecommunications concessionaires to preserve the record of communications metadata for two years, as well as to permit real-time geolocation of mobile telephones without a court order.\footnote{Diversity and Pluralism}

The Office of the Special Rapporteur has observed that decisions to undertake surveillance tasks that invade people’s privacy must be authorized by independent judicial authorities, who must state the reasons why the measure is suitable for achieving the goals sought in the specific case; that it is sufficiently limited so as not to affect the particular right more than necessary and is proportional to the interest that it aims to promote. Investigative processes that are carried out and imply an invasion of privacy authorized by law and are ordered by a competent judge must also respect other guarantees associated with due process. The States must guarantee that the judicial authority is specialized and competent to make judicial decisions about the legality of the communications surveillance, the technologies utilized and their impact in the realm of the rights that could be compromised and that they have sufficient guarantees to adequately carry out their duties. Finally, the Office of the Special Rapporteur observes that the decision-making criteria adopted by the courts should at the very least be public.\footnote{Diversity and Pluralism}

\section*{J. Diversity and Pluralism}


881. On January 27, by means of a press release, the Federal Telecommunications Institute [Instituto Federal de Telecomunicaciones] (IFT) announced that it was making a digital tool available to the public for making "denunciations of broadcasters without concessions, in which the public may anonymously or personally report on the illegal operation of frequencies", and that the tool is available on the IFT webpage. It stated that “within its powers, by means of the Unit for Compliance, the Institute carries out activities for monitoring and visits for verification and inspection with the purpose of safeguarding the legal, effective and efficacious use of the radio spectrum, and therefore the functioning of telecommunications and broadcasting services."1343 Civil society organizations and representatives of community radio stations expressed their rejection of the campaign.1344

882. In the framework of the 157th period of sessions of the IACHR, civil society organizations that participated in the public hearing on Access to Information and Restrictions on Freedom of Expression in Mexico expressed concern about the abovementioned campaign led by the IFT. The organizations denounced that the messages and images used by the campaign stigmatize community radio stations and their journalists, and explained that many of these radio stations are forced to operate without a license because they lack the necessary resources for gaining access to one.1345

883. In June, a full session of the IFT resolved to grant four concessions to provide FM audio broadcasting services for community social use. According to the press release issued by the IFT, three of those concessions correspond to authorization by the full IFT to provide an equal number of broadcasting permits under the concession regime provided for in the Federal Telecommunications and Broadcasting Law [Ley Federal de Telecomunicaciones y Radiodifusión] (LFTR). Each one was granted a concession to use and exploit frequency bands of the radio spectrum to provide the public service of FM audio broadcasting under the category of community social use. The fourth concession was granted to the Calentana Luvimex radio station, in Luvianos, state of Mexico, which is directed by Indalecio Benítez. In its 2015 report, the Office of the Special Rapporteur had warned of the confiscation of the equipment of Radio Calentana.1346 The Office of the Special Rapporteur welcomes the decision by the IFT to grant these concessions and particularly that of Radio Calentana, which had been forced to operate illegally, and hopes that the IFT will continue with the process of legalization of various community radio stations that are currently in the same situation.

884. On June 14, the IFT announced the Convocation and the Bases of the public tender for the concession for use, development and commercial exploitation of 191 radio frequencies on the FM band and 66 on AM (IFT-4) for a period of 20 years, in diverse localities of 27 of the country’s entities. The tender for the licenses will be divided between one corresponding to the 191 frequencies of the FM band and the other for the 66 AM frequencies. According to the press release of the IFT, "the Procedure for Submitting Bids is based on an ascending simultaneous mechanism, in which points are awarded for a bid in relation to the economic component and the noneconomic components of the evaluation formula corresponding to each tender (AM and FM). The process provides for a stimulus in points for new participants in the market and, for FM, an additional stimulus for transmission in analogic/digital hybrid format using the standard IBOC."1347

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1343 Instituto Federal de Telecomunicaciones IFT. January 27, 2016. comunicado de prensa no.5/16. el ift publica herramienta para denunciar estaciones de radio sin concesión.


885. The Second Chamber and the First Chamber of the Supreme Court of Justice of the Nation [Sala Segunda y la Sala Primera de la Suprema Corte de Justicia de la Nación] resolved in August and October, respectively, the actions for amparo in review 80/2016 and 1308/2015, declaring the constitutionality of article 89 of the Federal Telecommunications and Broadcasting Law [Ley Federal de Telecomunicaciones y Radiodifusión] (LFTR), which enshrines the sources from which concessionaires of social use may obtain revenues. Under this provision, community radio stations may not sell advertising to public entities, while at the same time stipulating that federal and municipal public entities may allocate as much as 1 per cent of their advertising budget for community radio stations. It also excludes the broadcasting of commercial messages and the sale of private advertising as revenue sources. The Court in both cases declared the constitutionality of article 89 in considering that it permits the sale of advertising on behalf of public entities and that the limit of 1 per cent constitutes a positive action aimed at permitting the viability of social use concessions, without this violating the absence of profitability that characterizes them. Additionally, the Court considered that there is no discrimination between radio stations of social use and those of commercial use, because the former are nonprofit while the latter are profit-seeking, which generates a different legal situation and permits them to have differential treatment. The main basis for the actions for amparo was precisely that article 89 of the LFTR limits sources of financing in a discriminatory manner, violating the rights of freedom of expression and nondiscrimination.\footnote{Aristegui Noticias. August 10, 2016. SCIN declara constitucional que radiodifusoras sociales no tengan patrocinios: Observacom. September 26, 2016. Corte de México rechaza inconstitucionalidad de límites a la publicidad en radios comunitarias e indígenas: Amedi. September 22, 2016. Sufren revés radios comunitarias: Suprema Corte de Justicia de la Nación. May 5, 2016. Comunicado No. 173/2016. Artículo 89 de la Ley Federal de Telecomunicaciones y Radiodifusión, acorde con la Ausencia de Lucro que Rige Concesiones de Uso Social: Primera Sala: Radio Formula. October 5, 2016. Artículo 89 de Ley de Telecomunicaciones y Radiodifusión, acorde con ausencia de lucro: SCIN.} At the close of this report, the Supreme Court of Justice of the Nation had not published the final versions of the abovementioned rulings.\footnote{Aristegui Noticias. August 10, 2016. SCIN declara constitucional que radiodifusoras sociales no tengan patrocinios: Observacom. September 26, 2016. Corte de México rechaza inconstitucionalidad de límites a la publicidad en radios comunitarias e indígenas: Amedi. September 22, 2016. Sufren revés radios comunitarias: Suprema Corte de Justicia de la Nación. May 5, 2016. Comunicado No. 173/2016. Artículo 89 de la Ley Federal de Telecomunicaciones y Radiodifusión, acorde con la Ausencia de Lucro que Rige Concesiones de Uso Social: Primera Sala: Radio Formula. October 5, 2016. Artículo 89 de Ley de Telecomunicaciones y Radiodifusión, acorde con ausencia de lucro: SCIN.}


887. The Office of the Special Rapporteur recalls that the right to freedom of expression requires the States to adopt measures to guarantee its exercise under conditions of equality and nondiscrimination. It is indispensable that all disproportionate or discriminatory restrictions that prevent radio or television operators in all modalities to be able to fully comply with the commercial, social or public mission assigned to them be removed. In this sense, legislation should appropriately define the concept of community media outlets, including their social and noncommercial purpose, and their operative and financial independence of the State and of economic interests. At the same time, the legislation should: (1) provide for simple procedures for obtaining licenses; (2) not demand severe technological requirements that prevent them from

gaining access to licenses; and (3) include the possibility that diverse sources of funding may be used, such as advertising as a means for financing. In any case, the legislation should include sufficient guarantees so that they do not become dependent upon the State through official funding.  

22. NICARAGUA

A. Attacks, Threats and Harassment Against Journalists and Media outlets

888. On October 7, the director of the newspaper Confidencial, Carlos Fernando Chamorro, filed a complaint, accompanied by directors of the Centro Nicaragüense de Derechos Humanos (Cenidh), regarding alleged acts of espionage and intimidation committed against the news outlet that he directs and which consisted of an attempt by members of the governing Frente Sandinista de Liberación Nacional party, and members of the Army, to obtain information on the internal functioning of the company, along with its mechanisms for computer security. According to the information available, a company employee, assigned to the administrative area, had been contacted on September 20 by two individuals who originally had made him a job offer through a person known to him. However, upon meeting with them, the supposed job offer became a request for information about the functioning of the news outlet. A second employee, assigned to the computer area, was contacted two days later at his home by an individual who identified himself by showing an ID from the Army of Nicaragua and required information about the passwords for access to the website of the newspaper and about its computer security measures. Both employees refused to provide the requested information and informed the directors of the company of the situation.

889. Principle 9 of the Declaration of Principles on Freedom of Expression establishes that “the murder, kidnapping, intimidation, threats against journalists as well as the material destruction of media outlets violates the fundamental rights of people and severely restricts freedom of expression. The States have the duty to prevent and investigate these events, punish their perpetrators and ensure adequate reparation for the victims.”

B. Social Protest

890. By means of different measures, the State has prevented the free circulation of ideas and exercise of the right to demonstrate. From April 2015 to July 2016, convoked by the Partido Liberal Independiente, which is an opposition party, numerous demonstrations were held, some of them in front of the Supreme Electoral Council [Consejo Supremo Electoral], as well as in different parts of the city of Managua, to demand the holding of free elections. At the end of 2015, during some of these marches, known as “Wednesdays of protest”, groups of hooded civilians allegedly assaulted representatives of the media and other civilians, actions that, according to the available information, reportedly occurred in the presence of the police without their having intervened to prevent them.

891. On July 21, the Supreme Electoral Council [Consejo Supremo Electoral] (CSE) of Nicaragua published an “Electoral Ethics Regulation” [“Reglamento de Ética Electoral”] in the Official Daily La Gaceta. That regulation aimed to make it obligatory to obtain prior permission to hold demonstrations during the period prior to Election Day on November 6. Article 6 of that regulation established that “[d]uring the period of the Electoral Campaign, contemplated in the Electoral Calendar, public demonstrations, concentrations and meetings of political parties or coalitions of political parties held in the outdoors will require authorization from the respective Electoral Council”. Additionally, the Regulation formulated the need to “post a solidarity bond with the National Police Headquarters, pursuant to the relevant Law, to respond for damages to third...
892. On November 29 and 30, while peasants protesting against the construction of the interoceanic canal were traveling from different parts of southern Nicaragua to demonstrate in Managua on November 30, military checkpoints reportedly prevented their arrival to the Nicaraguan capital. According to the available information, riot police forces militarized the roads which the peasants were to use and engaged in an abusive use of force to prevent them from passing through the checkpoints and arriving in Managua. At least 80 people were reportedly injured, one of them shot with a firearm while others were intoxicated by tear gas.1358

893. The IACHR has stated that protection of the exercise of the rights of assembly and freedom of expression involve not only the obligation of the State to not interfere in their exercise but also the duty, in and in response to certain circumstances, to adopt positive measures to ensure it.1359 These measures include the duty during a protest to protect the rights of demonstrators in relation to acts committed by private or non-state actors. They also include the obligation to investigate and punish those who commit acts of violence against the lives or personal integrity of demonstrators.

894. It has also stated that “in a democracy, the States must act based on the legality of public protests or demonstrations and under the supposition that they do not constitute a threat to public order. This implies an approach focused on building greater levels of civic participation, with the streets and plazas as privileged places for public expression.”1360 In that sense, it has reiterated that imposition of the requirement for prior authorization or permission to hold demonstrations and protests in public spaces is incompatible with international human rights law and best practices and has urged States that still require prior authorization or permission to eliminate this requirement and expressly establish the general assumption in favor of the exercise of the right of assembly and freedom of expression.

C. Indirect Censorship

895. On August 14, the newspapers La Prensa and Hoy denounced attempts to prevent them from covering the patriotic parade in Nicaragua in honor of the independence of Central America and the Battle of San Jacinto. According to available information, elements of the National Police and members of the Federation of Secondary Education Students [Federación de Estudiantes de Secundaria], who provided security for the event, tried to prevent the journalists from gaining access to the space of the public thoroughfare where the parade was being held, arguing that only government media had the right to do so.1361


On October 9, journalist Yolidia Navas Salomon, director of the newscast ‘Hoy’ on Radio Zinica, a station that broadcasts from the city of Bluefields, received word that her radio program, which had existed for 15 years, would be canceled. According to the known information, Navas was informed of the decision by the director of the media outlet, Arturo Valdez Robleto, who is also a member of the delegation of the Partido Frente Sandinista de Liberación Nacional in the National Assembly. In the telephone conversation, the legislator told the journalist that it was a “decision by the Frente Sandinista party”, supposedly because the criticisms made on her program caused “much damage… to the National Police, the office of the Mayor and government institutions.”

Diverse media outlets and opposition political leaders denounced the refusal by the CSE to accredit representatives of independent Nicaraguan media outlets, along with foreign ones, to cover incidents of the November 6 election day. According to the available information, the accreditations issued by the electoral authority are indispensable for entry into places where the tables that receive the votes operate along with the computer centers, as well as to cover the election results. Some media outlets even had refrained from trying to gain accreditation by the CSE because throughout the electoral process they had not been permitted to enter press conferences convoked by that entity.

The Nicaraguan State has also carried out actions to unduly obstruct the right of journalists and scholars to research, receive and diffuse information of public interest. These include the implementation of policies to prevent entry into the country of journalists, academics and activists who try to obtain or provide information about the situation of human rights or freedom of expression in Nicaragua.

On February 3, the Director for Latin America of the civil organization Freedom House, Carlos Ponce, denounced having been expelled from the country when he tried to enter to take part in a series of meetings with civil society organizations, diplomats and governmental agents. According to the known information, Ponce arrived at Managua International Airport on the night of February 2 and was then informed that his stay in the country would not be authorized due to “an administrative decision”. However, with the argument that the airport was to be fumigated at that moment, he was taken to a hotel in the capital city where he remained under police custody to be deported hours later.

On June 14, United States researcher Evan Ellis, a member of the Strategic Studies Institute of the U.S. Army War College, was expelled from Nicaragua the day after his arrival in the country, supposedly to carry out research on the Interocceanic Canal project. According to the known information, around midnight on June 13, when he had been in Nicaragua for just a few hours, Ellis received a visit by three supposed migration agents in the hotel where he was staying, who, without identifying themselves, told him that he had not been authorized to enter the country to obtain information about the canal, also urging him to leave the country by 5 AM the following day at the latest. The communication occurred a few hours before the researcher, according to his agenda, was to meet with the editor-in-chief of the newspaper La Prensa, Eduardo Enríquez.

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901. On June 25, Mexican political scientist Viridiana Ríos, who is a researcher at the Wilson Center in the city of Washington D.C., revealed that, for fear of being arrested, she was forced to leave Nicaragua on June 22, just one day after having arrived in the country to carry out research on inequality and economic growth. According to the available information, the academic, who is also a collaborator for the Mexican newspaper Excelsior, decided to leave Nicaragua because at the hotel where she was staying as well as at the headquarters of the Inter-American Development Bank, she was warned that two police officers had come to ask about her. After being informed of this situation, Ríos went to the Mexican consulate in Managua, where diplomatic personnel recommended that she leave the country.1366

902. On June 27, six environmentalists of Mexican, Argentine, Costa Rican and Spanish nationalities and members of the “Caravana mesoamericana para el buen vivir,” a civil organization made up of collectives from Mexico, the United States and Germany, were expelled from Nicaragua, two days after being arrested by elements of the National Police of Nicaragua, in the community of La Fonseca, in the municipality of Nueva Guinea, in the region of Atlántico Sur. According to the known information, the environmentalists were arrested along with Francisca Ramírez, leader of the movimiento anticanal de Nicaragua (Anti-Canal Movement of Nicaragua), along with three other individuals of Nicaraguan nationality, while holding a workshop on technology for the creation of efficient ovens that use less firewood. The attorney for the movement, Mónica López, has reported, that the authorities justified the arrest based on charges of handling explosives, even though the Attorney General’s Office did not file charges against any of those arrested, proceeding to free the Nicaraguan citizens and deport the foreigners through the country’s borders with Honduras and Costa Rica.1367

903. Between August 3 and 4, four Venezuelan politicians, including Luis Florido, a member of the National Assembly of Venezuela [Asamblea Nacional de Venezuela] and chairman of the Foreign Policy Commission [Comisión de Política Exterior], were expelled from Nicaragua following their arrival in the country with the intention of meeting with a group of opposition Nicaraguan deputies whom a ruling by the Electoral Court [Tribunal Electoral] had deprived of their seats. According to the known information, the lawmakers were detained upon arrival at Managua International Airport and expelled from Nicaragua after officials from the Department of Migration and Foreigners [departamento de Migración y extranjería] alleged “reasons of State” to prevent them from remaining in the country. The politicians denounced that the real reason for their expulsion was that they were militants of Venezuelan opposition parties.1368

D. Freedom of Expression in Electoral Contexts

904. The “Electoral Ethics Regulation” [Reglamento de Ética Electoral], published on July 21 by the CSE, in addition to the restrictions mentioned above, aimed “to regulate the exercise of all activities by Political Organizations that participate during the Electoral Process of November, 2016”, but considered “journalists, owners, directors, hosts of social communication programs, websites and social networks” to be bound by its obligations. According to the text of the Regulation, journalists were obliged to observe “the ethical and moral norms” that imply, among other things, respect for “[t]he dignity of public officials and employees, officials, leaders, militants, sympathizers and activists of the Political Organizations, candidates, electors and the society in general.”1369

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In electoral contexts, freedom of expression is directly connected to political rights and their exercise, and both types of rights mutually strengthen one another. Reasoned democratic debate requires the greatest possible circulation of ideas, opinions and information about the candidates, their parties, and their platforms during the period preceding an election, principally through the media, the candidates, and others who wish to express themselves. Everyone must be able to question and investigate the capacity and suitability of the candidates, disagree with and confront their ideas and opinions, so that voters can form their opinions. As the IACHR has underscored, free speech and political debate are essential for the consolidation of the democratic life of societies, and therefore are of compelling social interest.

E. Access to Public Information

Despite the existence, since May of 2007, of a law on access to public information in Nicaragua, citizens have found it impossible to exercise that right because of repeated refusals by different State bodies to respond to requests for information, as well as refusals to fulfill obligations for active transparency.

Principle 4 of the Declaration of Principles on Freedom of Expression states that “[t]he access to information in the power of the State is a fundamental right of individuals. The States have an obligation to guarantee this right. This principle only permits exceptional limitations that must be previously established by law in cases where there is a real and imminent danger that threatens national security in democratic societies”.

F. Media Concentration

In Nicaragua, a media system has been set up with high degrees of concentration and scarce pluralism. There is a television duopoly controlled by the family of President Daniel Ortega and Mexican entrepreneur Ángel González. At the same time, according to the known information, the telecommunications regulatory agency ordered the closing of five community radio stations and two regional cable channels. The apparent motive for the decisions was the maintenance of an editorial line contrary to the interests of the Government.

Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “[t]he monopolies or oligopolies in the ownership and control of media outlets must be subject to antimonopoly laws because they conspire against democracy and restrict the plurality and diversity that ensure the full exercise of the right to information for the citizens. In no case must these laws be exclusive for the media. Radio and television allocations must consider democratic criteria that would guarantee equality of opportunities for all individuals for access to them”.

G. Government Advertising

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

A. Attacks, Threats and Harassments Against Journalists and Media Outlets

912. On January 18, journalist Álvaro Alvarado denounced an alleged plan to silence him, which would be, according to his denounce, carried out through the National Security Council [Consejo Nacional de Seguridad]. The journalist also indicated he had received e-mails warning him to stop his denunciations otherwise data from his bank accounts would be sent to the General Board of Income [Dirección General de Ingresos] for an audit of his finances, which he would have to justify.\footnote{La Estrella de Panamá. January 18, 2016. Periodista Alvarado denuncia ataques en su contra; Panamá América. January 18, 2016. Álvaro acusa a Varela de perseguir a los periodistas.} Subsequently, on March 9, Alvarado filed a criminal complaint with the Public Prosecutor [Ministerio Público] for the possible commission of a crime against his honor [calumnia e injuria], because on WhatsApp there began to circulate “affirmations that he would be fired from Medcom”, the company where he worked as the director of the morning edition of ‘Telemetro Reporta.’\footnote{La Prensa. March 9, 2016. Periodista Álvaro Alvarado presenta querella por supuesta calumnia e injuria; Día a día. March 9, 2016. Álvaro Alvarado presentó una querella criminal; Panamá América. March 9, 2016. Álvaro Alvarado presenta querella por calumnia e injuria.} In this context, on August 31, using his Twitter account, Alvarado criticized the appointment of Jaime Alemán as Executive Assistant to the ministry of the Presidency [Asistente Ejecutivo del ministerio de la Presidencia], because he is the nephew of Álvaro Alemán, Minister of the Presidency. In response, first lady Lorena Castillo said that Alvarado was irresponsible and living in the stratosphere.\footnote{La Estrella. August 31, 2016. Primera Dama Lorena Castillo y periodista Álvaro Alvarado activan el twitter; Panamá América. September 1, 2014. Primera Dama arremete en contra de periodista.} According to the available information, during a meeting with the National Security Council [Consejo Nacional de Seguridad] (CNS) in October, Alvarado had to announce that certain CNS officials were reviewing his bank accounts.\footnote{Panamá América. October 20, 2016. Tomen por la seguridad del periodista Álvaro Alvarado.} Additionally, on October 20, Alvarado publicly announced that the National Government was carrying out a campaign to discredit him, questioning his independence by means of messages in the gourmet section of the newspaper La Estrella de Panamá, which suggested that Alvarado had applied to be the communications advisor for President Juan Carlos Varela.\footnote{Panamá América. October 20, 2016. Álvaro Alvarado presenta querella por supuesta calumnia e injuria; Panamá América. October 22, 2016. Álvaro Alvarado denuncia campaña de difamación para silenciar su voz crítica; Lo Que se Oculta. October 21, 2016. Denuncian ataques a reputación de periodistas críticos.}

913. On July 26, journalists Mauricio Valenzuela and Hugo Vera were attacked while covering an event at the Universidad de Panamá. Ex-United Nations consultant Amparo Medina gave a presentation on sexual education. At the end, Valenzuela and Vera tried to approach Medina to interview her but were physically attacked by members of the security team for the event, who also threatened the journalists with taking away their cameras. On July 27, Valenzuela and Vera filed a criminal complaint against the organizers of the event and against Medina.\footnote{La Estrella. August 31, 2016. Primera Dama Loren Castillo y periodista Álvaro Alvarado activan el twitter; Panamá América. September 1, 2014. Primera Dama arremete en contra de periodista.}

914. On October 22, attorney Ramón Fonseca Mora, one of the founding members of the Mossack-Fonseca Law firm implicated in the case known as the Panama Papers, made statements about the journalistic work of Chilean journalist Jenny Pérez and Panamanian journalist Álvaro Alvarado through her Twitter account. On October 21, President Juan Carlos Varela gave an interview to Pérez for the Deutsche Welle channel, in which he referred to the Panama Papers. Fonseca Mora referred to Pérez as a “left-handed activist” who resembled the “hysterical professional morning alarmist” Alvaro Alvarado. Subsequently, Fonseca Mora advised the public to avoid alarmist programs and newspapers and not to be bitter or engage in witch hunts like journalists Pérez and Alvarado. Finally, Fonseca Mora labeled the media as yellow and morbid.\footnote{TVN Noticias. July 27, 2016. Periodistas presentan denuncia tras agresiones en evento con Amparo Medina; El Siglo. July 28, 2016. Denuncian a iglesia por agresión de periodistas; Crítica. July 28, 2016. Empujones por proyecto sexual; N7D. July 27, 2016. “Yo solo fui a hacer mi trabajo, dijo Mauricio Valenzuela después de ser agredido.}
915. On November 10, journalist Guadalupe Chanis of the Nextv channel was allegedly scolded by an official of the Presidency of the Republic while covering the processions in the Villa de los Santos, where a group of pensioners had gathered to perform some exigencies to President Varela. Chanis was interviewing a member of a group of retirees in the province of Herrera, when the official, Ibón Ramos, asked Chanis about the reasons for the interview and affirmed that Nextv only published negative and false news. Chanis then left the site to avoid problems. The journalists’ union condemned the attack against Chanis and asked the Government to punish Ramos. 1383

916. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR, approved in 2000, establishes that “[t]he murder, kidnapping, harassment, threats against journalists, as well as the destruction of material of the media, violate the fundamental rights of persons and severely undermine freedom of expression. It is the duty of the States to prevent and investigate these events, punish their perpetrators and ensure adequate reparation for the victims.”

B. Social Protest

917. Since May, a group of indigenous people from the Ngäbe Buglé comarca along with members of the Movimiento 10 de Abril (M-10) and the Movimiento 22 de septiembre had allegedly opposed the Barro Blanco Hydroelectric project, on the grounds that it occupies their territory without their having been taken into account to carry out the construction, which has led to grave confrontations with the security forces. On May 23, at least 35 indigenous representatives of the comarcas of Ngäbe Buglé were arrested and evicted from areas near the Barro Blanco Hydroelectric project, where they had been camping in protest. Additionally, on August 26, during a demonstration in Bocas del Toro and the subsequent eviction by the Police led to at least four Ngäbe Buglé indigenous people being injured along with five members of the security forces. According to the available information, on September 6, four police officers and one demonstrator were injured, and 18 people were arrested as a result of demonstrations by the Ngäbe Buglé indigenous people in the Plaza Cinco de Mayo in Panama City. 1384

918. The IACHR has reiterated that social protest is a fundamental tool for the work of the defense of human rights and is essential for critical political and social expression regarding activities by the authorities. The Commission has affirmed that “the criminalization per se of demonstrations on public thoroughfares is inadmissible in principle when they are carried out in the framework of the right to freedom of expression and the right of assembly” 1385 and that “the exercise of the right of assembly through social protest must not be subject to authorization by the authorities nor excessive requirements that make their implementation difficult.” 1386
Similarly, the Joint Declaration on violence against journalists in the framework of social demonstrations, adopted in 2013, indicates that the rights of assembly and freedom of expression "are fundamental and their guarantee is a necessary condition for the existence and functioning of a democratic society. A State may impose reasonable limitations on demonstrations to ensure their peaceful development or to disperse those that become violent, as long as those limitations are governed by the principles of legality, necessity and proportionality. Additionally, the breaking up of a demonstration must be justified by the duty to protect people, and the safest and least harmful measures for the demonstrators must be utilized. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances pursuant to internationally recognized principles."1387

C. Subsequent Liabilities

At the beginning of the year, the Electoral Tribunal [Tribunal Electoral] (TE) imposed a fine of US$ 1 thousand on the media outlet KW Continente, a radio station critical of the government and the TE, for an alleged infraction of article 194 of the Electoral Code. Diverse local press associations characterized the situation as "worrisome" and asked the TE to act through its punitive processes against the social media, explaining in detail the reasons that led the TE to apply this type of sanctions.1388

The Supreme Court of Panama [Corte Suprema de Panamá] on January 11 confirmed the sentencing of the daily newspaper Panamá América to pay a fine of US$ 25 thousand for alleged damages to the honor of the Ex-Minister of Government and Justice, Winston Spadafora, who sued the newspaper and two of its journalists, Jean Marcel Chéry and Gustavo Aparicio, for an article published in 2001 that announced the construction with public funds of a road that personally benefited him by providing access to one of his properties.1389

On November 15, Dutch journalist Okke Ornstein, director of the web portal Bananama Republic, was arrested for the crimes of slander, insult and calumny in a conviction from December 14, 2012 which was confirmed in second instance on December 5, 2013. The original lawsuit was performed by a Canadian businessman after Ornstein published various articles about the illegal commercial practices of performed by this person in Panama. According to the available information, the Canadian businessman had been further convicted in the United States for fraud and faced similar criminal persecutions in Panama. Civil society organizations have expressed their concern over the situation and demanded that Ornstein be freed.1390 On 23 December the journalist was released following the decision by the Panamanian President to reduce the totality of the sentence that had been imposed.1391

Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that "[t]he privacy laws must not inhibit or restrict the investigation and dissemination of information of public


1388 Código Electoral. April 22, 2013. Article 194. - In order to avoid the massification of propaganda or state advertising during the electoral process, public institutions will not be able to announce on any day or any month, in the mass media, more slots, advertisements or any type of publicity or propaganda, resulting from the average that each institution has had during the six months prior to said electoral process; La Estrella. January 7, 2016. CNP solicita más información al TE de multa a KW Continente; Crítica. January 8, 2016. APR, preocupada por presiones del Gobierno a KW Continente.


interest. The protection of reputation must be guaranteed only through civil sanctions, in cases in which the offended person is a public official or a public or private person that has been voluntarily involved in matters of public interest. Also, in these cases, it must be proven that in disseminating the news, the journalist had the intention to inflict harm or had full knowledge that they were disseminating false news or acted with clear negligence in seeking the truth or falsehood of the news”.

924. Additionally, principle 11 establishes that “[t]he public officials are subject to greater scrutiny by society. Laws that punish offensive expression aimed at public officials generally known as ‘insult laws’ infringe upon freedom of expression and the right to information.”

D. Access to Public Information

925. The Office of the Special Rapporteur received information about restrictions on access to public information in the framework of an administrative investigation into the work of Abigail Benzadon as the Director General of the National Authority for Transparence and Access to Information [Autoridad Nacional de Transparencia y Acceso a la Información] (ANTAI). On June 16, Benzadon had allegedly found out from different media outlets that an administrative process against her for material damage [lesión patrimonial] to the administration had been opened by the Office of the Comptroller General of the Republic [Contraloría General de la República], based on an internal auditing report by the ANTAI. As a result, starting on June 17, 2015, Benzadon filed various petitions for information with the ANTAI, which have been denied by that entity because it considers that the information is of restricted access because it is part of a material damage proceeding.

926. By virtue of various Habeas Data actions filed by Benzadon, the Supreme Court of Justice [Corte Suprema de Justicia] has recognized that Benzadon has the right to access to the personal information contained in the internal auditing report and the information about assets allegedly damaged during her work. However, the Antai has not provided the requested information to Benzadon. As a result, on September 27, Benzadon filed a Habeas Data action with the Supreme Court of Justice. As of the date of closing of this report, the Habeas Data was under study.

927. Principle 4 of the Declaration of Principles on Freedom of Expression establishes that “[t]he access to information in the power of the State is a fundamental right of individuals. The States have an obligation to guarantee exercise of this right. This principle only permits exceptional limitations that must be previously established by the law for cases in which there is a real and imminent danger that threatens national security in democratic societies”.

E. Other Relevant Situations

928. The economic stability of the daily newspapers El Siglo and La Estrella de Panamá has been compromised because in May, the entrepreneurial group Wisa S.A., principal owner of the Grupo Editorial La Estrella y El Siglo (GESE), was included on the “Clinton List” of activities linked to money laundering and drug trafficking of the United States Department of the Treasury. Beginning in June, GESE had to adopt measures to deal with the economic complications, such as reducing the frequency and number of pages of its publications, eliminating certain products from its portfolio, suspending certain projects and reducing its personnel. In an open letter, the journalists of GESE requested the government of the United States to exclude the daily newspapers El Siglo and La Estrella de Panamá from the “Clinton List”.

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929. According to the available information, on November 8, the National Government issued a draft regulation of Law 82 of 2013, aimed at creating the Directorate for the Promotion of Freedom of Expression [Dirección para la Promoción de la Libertad de Expresión] charged with maintaining a record of the communications media and monitoring editorial content in order to trace sexist or discriminatory affirmations or those that promote violence against women. According to the draft regulation, the media would have the obligation to register and provide information under oath to the above-mentioned Directorate. Civil society organizations have expressed concern over the regulation, arguing that it would impose restrictions on freedom of expression. Additionally, on November 7, attorney Ernesto Cadeño filed a suit of unconstitutionality with the Supreme Court of Justice against article 70 of Law 82 of 2013, which would empower the ministry of Government [ministerio de Gobierno] to impose fines on media outlets that incur in discrimination or violence against women.1394

930. On July 18, Deputy Melitón Arrocha submitted proposed legislation to the National Assembly [Asamblea Nacional] by virtue of which Internet portals would have the obligation to eliminate information about any person who considers that their rights to honor or privacy are violated by the content, better known as the draft legislation for the right to be forgotten. Civil society organizations have warned of the restriction on freedom of expression that this would generate, stressing the ambiguity of its wording and its possible scope outside of the jurisdiction of Panama. Due to rejection by the civil society, on July 28, Deputy Arrocha withdrew the above-mentioned proposed legislation.1395

931. The First Anticorruption Prosecutor [Fiscalía Primera Anticorrupción] ordered an inquiry into Riccardo Francolini Arosemana, president of the Compañía Digital de Televisión, which broadcasts the signal for Canal NexTv. As a result, on October 12, official agents escorted him from his residence to the office of the prosecutor. After questioning him, the Attorney General’s Office ordered the provisional detention of Francolini for the alleged commission of a crime against the public administration, in the modality of graft.1396 On October 17, the anchor and producer of the television channel NexTv, Fernando Correa Jolly, was apprehended for questioning by official agents of the First Anticorruption Prosecutor when he was broadcasting the afternoon newscast. Civil society organizations expressed concern over the way in which Correa Jolly had been apprehended. The Inter-American Press Association (IAPA) expressed concern about the consequences that the on-the-air arrest of Correa Jolly could have on journalists critical of the government.1397 Also on October 17, official agents arrived at the residence of the president of the Grupo


1397 La Prensa. October 17, 2016. Terminan indagatorias de dos exintegrantes de la junta directiva y el exgerente de la Caja de Ahorros por el préstamo de Amador; Consejo Nacional de Periodismo y Fórum de Periodistas. No date. Comunicado a la Ciudadanía; N7D. October
Epasa, Ricardo Chanis, to take him to the First Anticorruption Prosecutor. However, Chanis was not in Panama.1398

932. According to the available information, Misters Francolini Arosemana, Correa Jolly and Ricardo Chanis were members of the Board of Directors of the Savings Bank [Caja de Ahorros], a state financial entity, during the presidential period of Ricardo Martinelli. The First Anticorruption Prosecutor of the Office of the Public Prosecutor of the Nation [Fiscalía Primera Anticorrupción de la Procuraduría General de la Nación] was investigating an alleged crime against the public administration associated with a loan granted by the Caja de Ahorros and approved by the board of directors chaired by Francolini Arosemana. Luis Eduardo Camacho, leader of the opposition party Cambio Democrático, the Inter-American Press Association (IAPA) and certain media outlets affirmed that the actions described are an attack on freedom of expression aimed at silencing media outlets critical of the National Government.1399 In this regard, the Public Prosecutor issued a communique stating that the investigations carried out by the Attorney General’s Office [Ministerio Público] are not aimed against a particular media outlet nor are they associated with exercise of the journalistic profession.1400 The Government of Panama issued a press release rejecting the declaration by the IAPA and affirming its commitment to respect for the right to freedom of expression.1401

933. The Epasa editorial group, owner of the daily newspapers Panamá América, Crítica and Día a Día, has denounced having received harassments by officials of the National Government and the President of the Republic. In this context, journalist Santiago Fascetto had been detained at the Panama City airport by officials of the State Security Council [Consejo de Seguridad del Estado].1402
24. PARAGUAY

A. Progress

934. On March 18, the mandate went into effect for all obligated parties subject to the Law on Government Transparency and Free Citizen Access to Public Information [Ley de Libre Acceso Ciudadano a la Información Pública y Transparencia Gubernamental], to use the Unified Public Information Portal [Portal Unificado de Información Pública], the technological platform designed to facilitate online access to public information in the possession of government institutions. The Office of the Special Rapporteur has also received information on the launch of the “Third Open Government Plan of Action” [“Tercer Plan de Acción de Gobierno Abierto”], which entails greater interaction between government institutions and schools, civil society organizations, and private initiatives.\(^{1403}\)

935. On March 21, Arnaldo Javier Cabrera López was sentenced to five years in prison for the offense of failing to report an unlawful act. This was the first conviction handed down in connection with the murders of journalist Pablo Medina and his assistant, Antonia Almada, on October 16, 2014. Cabrera López was the driver of Vilmar Acosta Marques, the former mayor of Ypejú, in the Department of Canindeyú, and the alleged mastermind behind the murders. He was indicted for these crimes on May 16, 2016, after being extradited from Brazil, where he was arrested in March, 2015. Cabrera López’s conviction was handed down in a summary proceeding, as he cooperated with the authorities in establishing the facts and pled guilty to the charges. He was acquitted of the charge of accomplice to murder.\(^{1404}\)

B. Attacks, Threats, and Harassment Against Journalists and Media Outlets

936. Gerardo Escobar, owner of the radio station La Favorita, which broadcasts from the city of Yby Yaú, department of Concepción was shot on December 27, 2015. According to reports, the incident occurred in the town of Pedro Juan Caballero, in the Department of Amambay. When the businessman went out to attend a religious service, he was attacked by an unknown assailant riding a motorcycle. After receiving medical attention, Escobar was out of danger.\(^{1405}\)

937. On September 8, a group of individuals reportedly carried out an attack against the newspaper La Jornada, which is printed in Ciudad del Este department of Alto Paraná, opening fire on two of the newspaper’s facilities while circling in a pickup truck. According to the information available, the attack took place near midnight when the attackers fired 15 to 18 shots at the exterior of the building that houses the newspaper, then fled. The paper’s director, José Espínola, attributed the incident to the recent publication of reports that implicated three police officers in the kidnapping and robbery of two employees of a private company. The next day, a National Police [Policía Nacional] officer was arrested as the alleged perpetrator of the attack.\(^{1406}\) Following the attack it was revealed that two days earlier an unknown subject had set fire to a


\(^{1404}\) ABC Color. March 28, 2016. Primera condena por el crimen de Pablo y Antonia; EFE. March 22, 2016. Condenan a cárcel al chófer del acusado por el asesinato de un periodista en Paraguay; Última hora. May 17, 2016. Fiscalía acusa a Vilmar Acosta y pide juicio oral por muerte de Pablo Medina.


vehicle that was parked outside the newspaper's building, most likely in the belief that it belonged to the newspaper or one of its employees—although it in fact belonged to a person visiting an adjacent building. The incident was not thought to be important at first, but after the attack the newspaper considered the possibility that it may have been a “warning” of what would happen later.1407

938. On September 9, unknown persons reportedly threw explosive devices at the building occupied by the Radio Amambay radio station in the town of Pedro Juan Caballero, on the Brazilian border, injuring two people who were inside. The incident took place around 9:00 p.m., during the broadcast of a program hosted by Patricia Ayala. At least three individuals arrived in a vehicle, tossed three hand grenades at the front of the radio station’s building, and fled the scene. Police authorities later located two unexploded grenades.1408

939. The radio station is owned by Senator Robert Acevedo, President of the Congress of Paraguay [Congreso de Paraguay]. He reportedly stated that the incident was a warning to his family because of his instrumental role in the “fight against narcotrafficking,” and that this was the third attack carried out against the media outlet owned by his family.1409 Prior to the incident, the senator had received threats on his phone, sent through the instant messaging service WhatsApp, warning him that there would be an attack on his brother José Carlos Acevedo, who is the mayor of Pedro Juan Caballero, and that things would continue like this “until you all shut your mouths.” Three individuals allegedly behind the telephone threats were detained by police.1410

940. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.1411

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

C. Social Protest

1407 La Jornada. September 9, 2016. ¿Atentado o amenaza?


On June 28, Nelson Zapata, the director of the newspaper Vanguardia, and the paper’s photographer, Éver Portillo, were physically assaulted while covering a confrontation between partisans of the mayor of Ciudad de Este, Sandra McLeod, and detractors of her administration. According to reports, Zapata was attacked first by municipal employee Aida Molinas, and then by the crowd she was leading. The photographer, Portillo, was reportedly beaten by a police officer while trying to document the incident. The newspaper’s Director filed a complaint, and the employee was charged with disturbing the peace [perturbación de la paz pública].

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

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

D. Protection Mechanisms

On April 12, the Report of the Working Group on the Universal Periodic Review was presented during the 32nd Session of the United Nations Human Rights Council. The report contained several recommendations accepted by the Paraguayan State and some of them related to the exercise of the right to freedom of expression, all of which were accepted by the State. The commitments assumed by the State include, most notably, the establishment of a Special Commission in the Office of the Attorney General to investigate the murders of 17 journalists since 1991 and the strengthening of the laws that promote freedom of expression. The State also agreed to take measures to recognize the legitimate role of human rights defenders and journalists, as well as to guarantee that they are able to conduct their activities and that all of their rights are effectively protected, particularly those related to life and physical integrity.

On April 27, the legislative bill on “Freedom of Expression and the Protection of Journalists and Press Workers” [Sobre la libertad de expresión y protección a periodistas y trabajadores de prensa] was presented at

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a press conference. The bill, sponsored by the Human Rights Committee of the House of Representatives of the National Congress [Comisión de Derechos Humanos de la Cámara de Diputados del Congreso Nacional], aims to “guarantee the life, integrity, freedom, and safety or all persons who are at risk as a consequence of the practice of journalism or press work,” according to Committee Chair Olga Ferreira de López. She additionally reported that debates, analytical discussions, and public hearings would be held to enrich the initiative following the introduction of the bill. On June 1, the Human Rights Committee held a public hearing that involved the participation of representatives of the Paraguayan journalists’ union, Asociación de Reporteros Gráficos and press workers from different media outlets.\textsuperscript{1417}

947. Representative Olga Ferreira, the Chair of the legislative committee sponsoring the initiative, presented the final bill, under the title “Freedom of Expression and the Protection of Journalists, Press Workers, and Human Rights Defenders” at a press conference on November 16. The initiative proposes, among other things, the creation of a national mechanism for the protection of journalists and human rights defenders, composed of representatives of the Executive, Legislative, and Judicial Branches, as well as journalists’ professional associations and civil society organizations engaged in human rights defense work.\textsuperscript{1418}

948. The State of Paraguay informed the Office of the Special Rapporteur that “a bill is before the National Congress on the protection of journalists and human rights defenders. The bill was submitted on November 17, 2016, as the Freedom of Expression and Protection of Journalists, Media Workers, and Human Rights Defenders Act [De libertad de expresión protección a periodistas, trabajadores de prensa y defensores de derechos humanos].”\textsuperscript{1419}

949. On November 28, the State of Paraguay signed a letter of intent with UNESCO to establish a protection mechanism for journalists. The letter was signed by Foreign Minister Eladio Loizaga, the Chairman of the National Congress [Presidente del Congreso Nacional], Roberto Acevedo, the Representative of the Supreme Court of Justice [Representante de la Suprema Corte de Justicia], Minister Raúl Torres Kinser, and Assistant Director-General for Communication and Information at UNESCO [Subdirector General de la UNESCO de Comunicación e Información], Frank La Rue. According to the available information, the State seeks to develop policies to prevent violence against journalists, “including training and preparation for them, for security forces and for justice operators, in addition to establishing a rapid protection response procedure when a press worker is under imminent threat.”\textsuperscript{1420}

950. The IACHR and its Office of the Special Rapporteur have defined some of the requirements for protective mechanisms to be effective. For example, the Office of the Special Rapporteur has recommended placing emphasis on: 1) the importance of guaranteeing the necessary personnel and financial resources for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and procurement of justice; 3) the need to adequately define protective measures called for in the mechanism and the procedure for their adoption; 4) the need to guarantee the full participation of journalists, civil society and beneficiaries in the


\textsuperscript{1418} Última Hora. November 17, 2016. Presentan proyecto de protección a periodistas y DDHH; ADN Paraguayo. November 17, 2016. Presentan propuesta sobre libertad de expresión; Agenda Paraguay. No date. Presentan proyecto de Ley sobre libertad de expresión y protección a periodistas.


E. Subsequent Liabilities

951. On July 18, Judge Elio Rubén Ovelar Frutos reportedly acquitted Nelson Zapata and Aldo Zuccolillo, directors of the newspapers Vanguardia and ABC Color, respectively, who were sued by Héctor Guerín—also a journalist—for criminal defamation [calumnia, difamación and injuria]. The complaint arose from the November 6, 2013 publication in both newspapers of the article entitled “Parientes de periodistas estelios con jugosos salarios en entes públicos,” which asserted that at least six of the journalist’s relatives, including a daughter of his, had obtained positions in the government institutions Itaipu Binacional and PetroPar as a result of influence peddling. According to reports, the judge in the case stated in his judgment that the indications made in the news piece were based on official sources, and therefore did not constitute the offenses of which the defendants were accused.1422

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

F. Indirect Prior Censorship

953. On December 3, 2015, journalist Jorge Chávez was reportedly fired from the Radio Ñandutí radio station following the publication of a tweet from his personal Twitter account criticizing Congressman Hugo Rubín for speaking out during a congressional debate against the initiative to create a Friendship Commission with Iran. According to reports, Congressman Rubín, who is the son of the radio station’s owner, acknowledged having asked for the journalist to be fired after learning of his criticism.1423

954. On April 26, members of the editorial staffs of the newspapers Última Hora, ABC Color, and La Nación demonstrated outside their employers’ buildings to protest an alleged act of censorship committed against a group of journalists from the newspaper La Nación. According to the information available, starting on April 22, La Nación allegedly published a series of articles under the headline “iglesia oscura,” allegedly condemning the presence in Paraguay of Argentine catholic priests accused of sexually abusing children in Argentina. The second part of the report, which was slated for publication on April 26 did not appear in La Nación on that date. The newspaper belongs to the Grupo Cartes consortium, which has ties to the family of the President of the Republic.1424


1423 Última Hora. December 4, 2015. Radio Ñandutí despidió a periodista por criticar al diputado Rubín en un tuit; Paraguay.com. December 4, 2015. Diputado ordena despido de periodista por criticarlo; ABC Color. December 9, 2015. Diputado Rubín admite que solicitó el despido de un periodista de Ñandutí; @OviedoFidel @DiputadosPsly que vergüenza me da. En lugar de sumar vínculos comerciales/culturales con otros países los rompe. Impresentable; Twitter account of Jorge Chávez @GoriChavez. December 3, 2015; Ñandutí 1020AM. December 2, 2015, El diputado Hugo Rubin “le pone freno” a una comisión de amistad con Irán; Hoy. December 4, 2015. Rubín hizo rajar a periodista: “Que dija lo que sea donde yo no le pague”.

G. Access to Public Information

955. On March 17, the Sixth Division of the Civil and Commercial Court of Appeals [Sexta Sala del Tribunal de Apelación en lo Civil y Comercial] overturned the December 10, 2015 judgment of the Civil and Commercial Trial Court [Juzgado de Primera Instancia en lo Civil y Comercial] that had upheld a decision of the National Customs Bureau [Dirección Nacional de Aduanas] (DNA) denying attorney Julio César Martinessi Real access to public information. According to the information available, attorney Martinessi had requested, on behalf of a business group representing insurance companies, for information on automobiles stolen in Spain and brought into Paraguayan territory. The DNA reportedly denied the request for information on the grounds that the attorney had not properly proven the representation of the insurance companies, an argument that was upheld by the Trial Court judge [Juzgado de Primera Instancia].

956. In adjudicating the appeal, the Court of Appeals [Tribunal de Apelación] held that the Constitution and the laws of Paraguay recognize the right of citizens to access to public information, and that that right may be exercised, “without any need to justify the reasons for their request.” In addition, the Court conducted an analysis of the “conventionality” of the judgment, referencing the judgment of the Inter-American Court of Human Rights in the case of Claude Reyes v. Chile. In that case, the Court determined that “Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.”

957. Principle 4 of the IACHR’s Declaration of Principles states 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.”

H. Media Concentration

958. In celebration of the Day of the Journalist, on April 26, the union of Paraguayan journalists, Foro de Periodistas Paraguayos and the organization Voces Paraguay demanded, through a number of acts, the reversal of the process of concentration of media ownership in the hands of a few business groups. They noted that those groups include Grupo Cartes, which has ties to the family of President Horacio Cartes, and has been acquiring print and electronic media outlets in recent years. The organizations that took part in the hearing Freedom of Expression in Paraguay, during the 159th session, expressed their concern about the concentration of media and the exclusion of community radio stations. They pointed out that two business groups control seven out of the nine open television channels existing in the country. Six concentrated groups handle ninety percent of the information agenda. They stated that the business group belonging to President Horacio Cartes has acquired thirteen media in the last eighteen months. Also, they alleged that the media concentration has deteriorated the working conditions of mass media workers. Regarding community radio


1426 Observacom. April 28, 2016. Periodistas de Paraguay denuncian precarización laboral, censura, agresiones y concentración de medios del presidente; EFE. April 26, 2016. Los asesinatos y la concentración mediática preocupan a los periodistas en Paraguay; EA. August 9, 2016. ¿Cuáles son los grupos que controlan la agenda informativa del país?
stations they stated that at least 20 community radio stations are waiting for an operating license, and that the State is constantly pursuing community radios and workers.  

959. The chairman of the National Telecommunications Board [Dirección Nacional de Telecomunicaciones] pointed out that the broadcasting service’s licensing procedure differs in the way in which commercial and community radio licenses are awarded. In the case of commercial radios, these must bid under special administrative and technical regulations, whereas the process for community radios requires that they are backed by an organization, given that they are not-for-profit and because of the social role they play. Además es a pedido de parte. She informed that currently there are 251 community radios operating with legal authorization.

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

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25. PERU

A. Progress

961. On August 9, the Fourth Criminal Division of the Superior Court of Justice of Lima [Cuarta Sala Penal, de la Corte Superior de Justicia de Lima] overturned the conviction of journalist Fernando Valencia Osorio, the former Director of Diario 16, who had been convicted by the 7th Criminal Court of Lima [7º Juzgado Penal de Lima] of the aggravated criminal defamation of former President Alan García Pérez. The Superior Court’s judgment vacated the sentence imposed against the journalist, which consisted of one year and eight months in prison, a fine of PEN$ 1 thousand 900 (approximately US$ 565) and the payment of PEN$ 100 thousand (approximately US$ 29 thousand 775) to the former President as civil restitution. Reportedly, the prison sentence had originally been suspended by the judge on the condition that the defendant not leave his place of residence without prior judicial authorization, appear before the court every 30 days to report his activities, sign the biometric control registry, refrain from committing any further offenses like the one for which he was convicted, and redress the caused harm by the means of paying Civil Repairs.

962. The trial court judge, in stating the reasoning for his decision, maintained that, although politicians and former presidents “are exposed to challenges and the criticism of their administrations must be broader because citizens have a legitimate interest in knowing the truth [...] they also enjoy the right to their honor, and therefore such criticism must be made with accurate, unadulterated information or information about things that in fact took place, rather than subjective interpretations that describe the victim in negative terms.”

963. On August 29, the Sixth Criminal Division of the Superior Court of Lima for Defendants Not in Custody [Sexta Sala Penal para Reos Libres, de la Corte Superior de Justicia de Lima], overturned the conviction of journalist Rafael Enrique León Rodriguez, a columnist for the magazine Caretas, by the Forty-second Specialized Criminal Court of Lima [Cuadragésimo Segundo Juzgado Especializado en lo Penal de Lima]. The lower court had found him guilty of the offense of aggravated defamation against fellow journalist Martha Meier Miró Quesada, editor of the newspaper El Comercio.

964. The Court held that there was no “criminal content” in the journalist’s conduct because the publication that gave rise to the complaint was an opinion column that concerned matters of public interest. Moreover, the article criticized the opinion of a journalist who must be considered a “public figure” given her activities as a columnist who addresses matters of public interest in her own publications. The Court based its reasoning on Peruvian case law and on the judgments of the Inter-American Court of Human Rights in the case of Herrera Ulloa v. Costa Rica, in which it held that, “Those individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate,” as well as in the case of Ricardo Canese v. Paraguay, in which the Inter-American Court held that “the protection of the reputation of individuals who are involved...

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in activities of public interest should be carried out according to the principles of democratic pluralism,” and that “the margin of acceptance and tolerance of criticism by the State itself, and by public officials, politicians and even individuals who carry out activities subject to public scrutiny, must be much greater than that of individuals.”

965. Consequently, the Court overturned the one-year probation sentence ordering the defendant to notify the court of any change of address; report to the Biometric Control Office every 30 days to provide his signature, and pay 6,000 soles (approximately US$ 1 mil 786) as civil restitution.

B. Killings

966. The Office of the Special Rapporteur learned of the murder of Yrineo Martínez Purihuamán, who was reportedly working as a journalist in the Province of Chiclayo, Department of Lambayeque. According to the information available, the journalist died after being shot while covering an alleged confrontation between community members and land invaders of San Francisco de Asís in the district of Salas, Province of Lambayeque, where he had resorted to, presumably at the request of one of the groups involved in the dispute. As of the closing date of this report, there was no information available about the investigation that the authorities had reportedly opened with regard to events, in which two other people died, and a fourth person was seriously injured.

967. On November 20, journalist Hernán Choquepata Ordóñez was murdered by unknown persons who entered the booth from which he was broadcasting a radio program. They reportedly shot him after beating him, and he died after being transported to a hospital in Arequipa. Choquepata Ordóñez— who was known to his radio listeners as “Randy Ordóñez”—had been working for the radio station La Ribereña, which broadcast from the city of Camaná, in the Department of Arequipa, where he hosted the program “Hablan los pueblos,” known for allowing citizens to express complaints and criticism of the government authorities. According to media accounts, the journalist’s assailants also destroyed the station’s equipment.

968. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the


Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.\textsuperscript{1437}

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

C. Attacks, Threats and Harassment Against Journalists and Media Outlets

970. On November 30, 2015, journalists Miller Cueva Pérez, director of the news program “Noticias, Farándula y Más,” which is broadcast on Radio Concierto from the city of Tocache, in the Department of San Martín, was reportedly subjected to insults and an attempted physical assault by provincial Mayor David Bazán Arévalo during a public event held to celebrate the 31\textsuperscript{st} anniversary of the province’s founding. According to the information received, the journalist’s video camera was also destroyed by that same public official, who presumably acted in reaction to a criticism that the journalist had disseminated through social media.\textsuperscript{1438}

971. On November 6, 2015 the Regional Government Council [Consejo del Gobierno Regional de Lima] unanimously passed a resolution to instruct the Regional General Manager, Luis Custodio Calderón, from hiring “journalists, media workers, or media outlets that constantly defame, insult, and offend the Regional Council of Lima as an institution and its regional council members.” The resolution, voted on at the proposal of the regional councilman of the Province of Huaura, Miguel Ángel Murafech Nemy, was condemned by the civil organization National Association of Peruvian Journalists [Asociación Nacional de Periodistas del Perú].\textsuperscript{1439}

972. On December 1, 2015, journalist Óscar Esteban de la Cruz, who works for the news programs “El Silencio de la Verdad” on Radio Miel, and “Cable Noticias,” on Canal 21, was reportedly assaulted by a group of individuals while he was covering a police eviction operation in el Cerro de San Bernardo, in the Province of Chanchamayo, in the Department of Junín. According to the information available, when the attack was imminent, the journalist attempted to take refuge in the La Merced Hospital, located in the vicinity, but was prevented from doing so by the hospital’s own security guards, who allowed the assailants to surround and assault him, injuring him and destroying his work equipment. The journalist was reportedly hospitalized as a consequence of the assault.\textsuperscript{1440}

973. On January 7, journalists Paul Pilco Dorregaray, a correspondent for the newspaper Correo in Apurímac, and Carlos Peña Costillo, a correspondent for ATV Abancay, were reportedly assaulted by a group of individuals, allegedly relatives of Herbert Juárez Vera, mayor of the district of Pacobamba, in the Province


of Andahuaylas, Department of Apurímac, while covering the mayor’s arrival to the emergency room at the Guillermo Díaz de la Vega Hospital, in the Province of Abancay, where he was taken following a traffic accident. According to the information available, individuals who were allegedly the mayor’s family members tried to prevent them from capturing images of the incident, attempting to take the journalists’ work equipment, as well as insulting and physically attacking them, injuring one of them in the left arm.  

974. On January 28, reporter Jorge Chávez, who works for the RPP Noticias group, was threatened by a man who put a knife to his neck while he was covering a police operation to carry out an eviction in Villa El Salvador, in the Province and Department of Lima.  

975. On March 13, journalist Nino Bravo Damián, host of the news program ‘Los Bravos,’ broadcast by the Antena Norte channel in the city of Chimbote, Province of Santa, in the Department of Ancash, was reportedly arrested by police officers while covering a protest against presidential candidate Keiko Fujimori Higuchi. According to the information available, the journalist was reportedly initially berated by a plainclothes police officer and subsequently arrested by officer Miguel Acuña Gallo, Chief of the Chimbote Police Division [División Policial Chimbote]. Bravo Damián reportedly remained in custody for over seven hours.  

976. On March 15, journalist Guillermo Ibarra Méndez, a reporter for Canal 13, Global TV and Radio Armonía Digital in the Province of Huaraz, Department of Ancash, was reportedly assaulted by a group of individuals while covering a confrontation between government employees and private citizens in the building that houses the regional government of Ancash. According to the information available, the assailant was provincial alderman Hugo Edgar Cáceres, who had also reportedly incited a group of individuals who were with him, one of whom grabbed the reporter’s video camera from him.  

977. On March 29, journalist Julio Blanco Rocca, host of the program ‘La Voz del Pueblo’ which airs on Radio Selva 105.1, in the city of Puerto Maldonado, Province of Tambopata, in the Department of Madre de Dios, was reportedly assaulted by relatives of congressional candidate Sharon Ore Rengifo. According to the information available, the journalist was assaulted at the conclusion of a session of the Regional Council of Madre de Dios [Consejo Regional de Madre de Dios] that he was covering. The attack was reportedly motivated by Blanco Rocca’s criticism, on his social media, of Ore Rengifo’s participation in the competitive bidding procurement processes of the Regional Government of the Department.  

978. On May 3, a group of armed criminals reportedly robbed a team of journalists from RPP and Latina in the district of San Martín de Porres, while they were covering a robbery that had taken place hours earlier.  

979. On August 11, journalist Doris Aguirre, who works for the newspaper La República, reportedly received a telephone call in which an individual warned her: “[…] Don’t be investigating things that are none of your business, you are getting closer to death. You’re going to be the next victim.” That statement, according to the report the journalist filed at the police station for the Municipality of Lince [Comisaría de la  

1441 Asociación Nacional de Periodistas del Perú (ANP). No date. Abancay: familiares de alcalde agreden a periodistas.  


Municipalidad de Lince] on the same day as the incident, was reportedly connected to a journalistic investigation published under her byline about the alleged existence of a “death squad” composed of Peruvian National Police officers, currently under investigation as suspects in a number of extrajudicial executions that were carried out between 2011 and 2015.1447

980. Based on these events, on September 13, the Office of the Special Rapporteur sent the Peruvian State a request for information in order to find out what actions it had taken to guarantee the journalist’s safety and physical integrity, as well as to investigate the facts.1448 On October 26, the Peruvian State submitted a report prepared by the Office of the Provincial Prosecutor of Lima [Fiscalía Provincial de Lima], indicating that a criminal investigation had been opened. It initial objective was reportedly to conduct inquiries to determine the identification of the direct perpetrator of the threats received by the journalist, through the geolocation of the telephone from which the call was made.1449 Additionally, on December 6 the State sent additional information pointing out, among other things, that protective measures regarding the journalist had allegedly been put in place and the journalist was aware of them.

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

D. Subsequent Liabilities

982. On May 13, a criminal complaint was filed against journalists Kariana Novoa Lescano, Rosana Cueva Mejía, and Jorge Ipanaque Neira, members of the team that produces and directs the television program ‘Panorama’, which airs on Panamericana Televisión. The complaint alleged the criminal offense of Disclosure of National Secrets [Revelación de Secretos Nacionales], defined in article 330 of the Peruvian Criminal Code. It was filed by the ministry of Defense, through its Office of the Inspector General, and was based on the April 17 broadcast of a report1450 exposing the alleged existence of a network of corruption in the management of the military intelligence budget in the region comprised by the Apurimac, Ene and Mantaro Rivers, commonly known as “the VRAEM.”1451 According to the information available, the Inspector General’s Office found that the images of documents stamped “secret” shown in the televised report gave rise to the offense in question.

983. On August 29, Defense Minister Mariano González Fernández, who had assumed his position on August 1, announced the replacement of Inspector General Sara Farfán, the person responsible for filing the


1450 Panorama/You Tube. April 17, 2016. Inteligencia fantasma: irregularidades en el manejo de fondos Vraem (1/2).

criminal complaint against the journalists from *Panorama*. Upon making this announcement, the minister indicated that “The current position of the sector is that there has been no prejudice to the State with this journalistic report,” further inviting the Office of the Attorney General to “have a reflective attitude based on this new position of the ministry and will consider the definitive shelving” of the complaint. At the time of writing this report, the Office of the Special Rapporteur has not received any information to indicate that the complaint has been withdrawn.

984. On March 18, Judge Ross Mary Quiroz Cornejo, of the First Single-Judge Court of Justice of Paucarpata [Primer Juzgado Unipersonal del Módulo Básico de Justicia de Paucarpata], in the Province and Department of Arequipa, reportedly ruled to shelve the complaint filed by the former head of the logistical department of the Regional Government of Arequipa, Ángel Flores Hala, against journalist Zenaida Condori Contreras, who works for the newspaper *La República*. According to the information available, the complaint was based on the August 12, 2015 publication of an article that revealed the alleged excess valuation of purchases made by the department under Flores Hala’s responsibility. In his complaint, the official reportedly asked the court to punish the journalist with three years in prison and the payment of PEN$ 180 thousand (approximately US$ 54 thousand) as civil restitution. The judge reportedly ruled the complaint unfounded. That same day, before the judgment was handed down, representatives of different media outlets held protests to demand impartial action from the courts in cases brought against journalists. Ángel Flores Hala had appealed this decision, but the Fourth Criminal Chamber of Appeals [Cuarta Sala Penal de Apelaciones] declared the appeal unfounded.

985. On June 2, the *Asociación Nacional de Periodistas* condemned the conviction of journalist Carol Villavicencio Lizárraga, editor of the weekly publication *El Huacón*, in the Province of Huancauy, Department of Junín. The conviction was handed down by Judge Efraín Solís Aliaga, the regular judge of the First Single-Judge Court of Junín, after hearing the evidence in the case filed against the journalist by Congressman Casio Huare Huirchaico. The congressman’s name appeared in a report entitled “Top 50: Los morosos de Huancayo,” published by *El Huacón* on June 1, 2015, naming him as one of the main tax debtors of the Tax Administration System [Sistema de Administración Tributaria] (SAT) of the Province of Huancayo.

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

987. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of 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.”

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E. Prior Censorship and Indirect Censorship

On February 16, **Instituto Prensa y Sociedad** (IPYS) and the **Centro de Información Abierta** (Liber) reported an alleged case of prior censorship orchestrated from the Chambers of the Chief Justice of the Superior Court of Justice of the Department of Cusco, against the Regular Superior Judge of that Court, Fernando Murillo Flores, who has been a regular contributor since 2009, of **El Diario del Cusco**, in which he published opinion pieces. According to the information available, on January 25 Judge Murillo Flores received an email, sent by the newspaper’s executives, stating that, “by express order of the Chief Judge of the Superior Court [Presidenta de la Corte Superior] Elizabeth (Grossman Casas),” he should send his articles henceforth to the Court's Institutional Image Department, “for the respective coordination for their.” The case of prior censorship was reportedly orchestrated after Judge Murillo published an article entitled “**Preguntas de un obrero que lee**” [“Questions from a Worker Who Reads”], in which he indirectly criticized a decision made by the Chief Judge of the Superior Court of Justice to lay off personnel assigned to the courts. As a result, the newspaper reportedly refused to publish the pieces that the judge submitted on January 28, and February 5 and 12. After the final submission, the newspaper’s managers reportedly sent Judge Murillo an email saying there were “strict orders not to publish any type of article not sent from the institutional image office,” and he was therefore directed to “request the approval of his writing from that office.”

According to the information received, the prior censorship mechanism later extended to another of the Court’s judges, Judge Begonia del Rocío Velásquez Cuentas, and to Judge Murillo’s son, attorney Javier Murillo Chávez, for the same reasons.

On May 2, directors of the weekly publication **Hildebrandt en sus trece** were reportedly told by executives of the company Imprenta Andina S.A.C.—which prints the publication—that printing had to be suspended for “two, three or more” weeks for equipment maintenance. The notice, which jeopardized the publication of the next edition of the weekly paper, was given three days after it had published an investigative piece reporting that Congressman Joaquín Ramírez—who is also the Secretary General of the **Fuerza Popular** party—had allegedly omitted to include two properties worth $US 2 million 600 thousand that he had purchased in the United States in his financial disclosure affidavit to Congress. The company Imprenta Andina S.A.C. is reportedly owned by Fidel Ramírez, an uncle of the congressman referred to in the article.

F. Communications Surveillance

On December 9, 2015 the Congress of the Republic approved the amendment of the final report of the Intelligence Committee [**Informe Final de la Comisión de Inteligencia**] relating to the “Investigation of complaints of unlawful actions carried out by the National Intelligence Directorate [Dirección Nacional de Inteligencia] (DINI),” which concluded that there had been systemic actions, ordered by the Executive Branch,
to monitor and gather personal information on public servants and their relatives, as well as on political leaders, journalists, and citizens, with the intention of using it for political purposes.\textsuperscript{1460}

\textsuperscript{991} The Intelligence Committee’s report was drafted at the conclusion of the investigations that followed the March 19, 2015 publication of a report in the magazine \textit{Correo Semanal} revealing the existence of operations to spy on and gather information about public servants, politicians, and citizens. The Office of the Special Rapporteur mentioned these events in its 2015 Annual Report.\textsuperscript{1461} The information contained in the document reportedly proved that public servants had engaged in activities to systematize the personal data of individuals found in publicly accessible databases like the one administered by the National Superintendency of Public Records (Sunarp), or in the possession of private institutions such as Equifax Peru S.A., a company that compiles individual credit histories. In this regard, it bears noting that the Intelligence Committee’s report contains the statements of journalists Iván Slocovich Pardo, Director of the magazine \textit{Correo Semanal}, and Américo Zambrano, one of the magazine’s editors, who stated that they had received the documents on which the March 19, 2015 article was based directly from public servants from the Department of the Interior, with explicit indications to disseminate the information as a way to criticize the conduct of specific public figures.\textsuperscript{1462}

\textsuperscript{992} The Committee’s report contains the statement of Congressman Víctor Andrés García Belaunde, presenting a report from the company Infocorp that contains the credit history of a private individual, thus evidencing the shortcomings of the oversight mechanisms designed to ensure the protection of personal data in the possession of private parties.\textsuperscript{1463}

\textsuperscript{993} The Office of the Special Rapporteur observes that decisions to undertake surveillance activities that invade the privacy of individuals must be allowed by independent judicial authorities, who must state why the measure is appropriate for the accomplishment of the objectives pursued in the specific case; whether it is sufficiently restricted so as not to infringe upon the right in question more than necessary; and whether it is proportionate in relation to the interests pursued. Investigative proceedings involving an invasion of privacy authorized by law and by a competent judge must also respect other due process safeguards. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that at the least, the decision-making criteria adopted by the courts should be public.\textsuperscript{1464}

26. DOMINICAN REPUBLIC

A. Attacks, Threats and Harassment Against Journalists and Media Outlets


On February 4, a reporter for the newspaper *El Caribe*, Danny Polanco, was hit on his right eye by buckshots that had been fired by the police while covering a confrontation between the police officers and students at the *Universidad Autónoma de Santo Domingo* (UASD), where the students were protesting to demand the resumption of classes, which had been suspended by the professors, who demanded a salary increase.\(^{1465}\)

On September 23, a cameraman of *RNN*, Jorge Disla, was attacked by an individual while taking part in the coverage of demonstrations held outside of the Constitutional Court of the Dominican Republic [Tribunal Constitucional de República Dominicana] to commemorate the third anniversary of the handing down of Sentence 168-13, through which thousands of Dominicans, who are the descendants of Haitian immigrants, lost their right to citizenship. According to the known information, the cameraman was wounded in one of his legs and the aggressor, who allegedly was a “nationalist” group, was arrested by the police.\(^{1466}\)

Cameramen José Miguel Méndez and José Miguel Flores, of the channel *Boca Chica TV 3*, allegedly had been hand-cuffed by members of the National Police [Policía Nacional] while filming a transit accident in the municipality of Boca Chica on June 14. The cameramen had been hand-cuffed despite allegedly identifying themselves as press members.\(^{1467}\)

Journalist Diana Rodríguez, of the newspaper *El Caribe*, and cameraman Cándido Méndez, of CDN canal 37, were physically attacked by members of the personal security team of President Danilo Medina. The journalist was struck in the stomach and the cameraman in an eye. The equipment of Cándido Méndez was also damaged. According to known information, the events took place during coverage of a visit by the President on May 5 to construction work on line 2B of the Santo Domingo Metro.\(^{1468}\)

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

### B. Social Protest

The results of the municipal elections held on May 15 in San Domingo Este, capital of the province of Santo Domingo, allegedly had sparked tension among opposition party members, who allegedly were in disagreement with the results. In May and June, demonstrations were held at the headquarters of the Central Electoral Board [Junta Central Electoral] (JCE) demanding first of all a recount of the votes and subsequently the annulment of the elections. Due to post-electoral tensions, the authorities decided to “militarize” the

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On February 4, a confrontation took place between presumed university students and elements of the police during a protest by the former demanding resumption of classes at the Universidad Autónoma de Santo Domingo (UASD). According to available information, in addition to teargas canisters and rubber bullets, the police used lethal weaponry against protestors. A photojournalist was wounded in the eye by buckshot allegedly fired by the uniformed personnel.

During protests and situations of heightened social unrest, States must adhere to the strictest international standards on freedom of expression in order to fully guarantee this right, without improper interventions against individuals, in keeping with Principle 2 of the IACHR’s Declaration of Principles. The Inter-American Commission has recognized the right to engage in public demonstrations or social protest, including in articles 13 and 15 of the American Convention.

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

C. Subsequent Liabilities


The right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.


Caribe—and the Fundación Prensa y Derecho [Press and Law Foundation], alleged that the challenged articles made “speech crimes” and “liability for the acts of another” criminal offenses punishable by imprisonment, which was inadmissible under the inter-American standards and the constitutional protection of the right to freedom of expression in the country.1475

1004. The ruling, which partially admitted the action, established that the penalization of expression associated with public servants in the exercise of their duties or those who carry out public duties, is inadmissible and “affects the essential nucleus of freedom of expression and opinion”, because “in providing for sanctions of a criminal nature against any defamatory or slanderous act against any public servant in the exercise of their duties, or persons who exercise public duties, it constitutes a legal limitation that affects the essential nucleus of freedom of expression and opinion through the press when it involves public servants who are naturally subject to social control through public opinion, which is why it leads to unconstitutional acts.”1476

1005. Although the Constitutional Court ruling eliminated the articles cited in the Dominican norm, slander and defamation continue to be part of the catalog of criminal classifications in the legislation in effect in the country, along with the Law on Expression and Dissemination of Thought [Ley sobre Expresión y Difusión del Pensamiento], and therefore the possibility that journalists and media outlets may be subject to criminal proceedings and receive prison sentences even for merely administrative actions, such as failing to publish the name and address of the printer of any advertising information, or omitting the publication of information associated with those who are members of the management board (if the company is owned by the media outlet), or its annual balance sheet,1477 among others. On April 18, Colegio Dominicano de Periodistas organized a session to analyze the ruling. At the session, journalists and attorneys called the Constitutional Court ruling discriminatory, ambiguous and incomplete, among other reasons because it should have declared the unconstitutionality of all of the articles of the Law on Expression and Dissemination of Thought that criminalize journalistic activity, and also because the declaration of unconstitutionality frees the media owners from responsibility and places the entire burden on their employees.1478

1006. Principle 10 of the Declaration of Principles on Freedom of Expression, according to which “[t]he protection of reputation must be guaranteed only through civil sanctions, in cases in which a public servant or a public or private person has voluntarily been involved in matters of public interest. Also, in these cases, it must be proven that in disseminating the news, the journalist had the intention to inflict damage or had full knowledge that they were disseminating false news or that they behaved with manifest negligence in seeking to establish the truth or falsehood of that news.”1479

D. Other Relevant Situations

1007. On December 7, 2015, journalists Marino Zapete and Edith Febles, who for nearly 7 years directed the program ‘El Despertador’, which is broadcast by Color Visión canal 9, announced that the company for which they worked, Servicio Internacional de Noticias (known as Grupo SIN), had decided to do without their services. The program was known as a venue for critical and independent journalism, and although there was no explicit complaint of censorship, through his Twitter account Marino Zapete said: “Our journalism does not fit into the business. We were removed by power”. The same day that they announced that they were leaving Grupo SIN, through their program “El Jarabe de Zapete”, which is broadcast over the Internet, the journalist said: “...as long as a media outlet has space for someone who is not for sale, I am there.


1008. On January 19, personnel from the United States diplomatic representation prevented representatives from the newspaper \textit{Diario Libre} from gaining access to the residence of Ambassador James W. Brewster, who arrived to cover the event of presentation of the project \textit{"El Béisbol está Contigo"}, an initiative developed by the United States Agency for International Development (USAID), Major League Baseball (MLB) and the Association of Major League Baseball Players (MLBPA), which aims to promote actions on behalf of Dominican children. According to the known information, other media outlets were invited to attend the event but not \textit{Diario Libre}, whose reporters had found out about it from colleagues from other media but who, when they arrived at the diplomatic residence, were told that the ambassador had issued instructions for them not to be invited, which was why they were denied access. The situation was condemned by diverse civil organizations and other Dominican media outlets.\footnote{Embassy of the United States in Dominican Republic. January 19, 2016. \textit{Nota de prensa. El Embajador de EE.UU Presenta proyecto "El Béisbol está Contigo"}; Diario Libre. January 20, 2016. \textit{La embajada de los Estados Unidos "castiga" a Diario Libre por fotografía}; El Nuevo Diario. January 22, 2016. \textit{Llenan reacciones por actitud discriminatoria embajada de EEUU a peridióco}; la SIP censura; Entorno Inteligente. January 22, 2016. \textit{Censura Actitud de Embajada EU Contra Diario Libre}; Diario Libre. January 22, 2016. \textit{La SIP critica discriminación de Embajada de EEUU contra Diario Libre}; Listín Diario. January 22, 2016. \textit{Un absurdo discrimen contra Diario Libre}.


1484} in March and April denounced what in their judgment would be a case of negligence by the authorities responsible for investigating the crime, because after a year, no progress had been made that would make it possible to identify, prosecute and try the perpetrators and masterminds.\footnote{IACHR. \textit{Annual Report 2015}. Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OE/A/Ser.L/V/11. Doc. 48/15 December 31, 2015. Para. 1082.} On April 12, the National Police [Policía Nacional] announced they had identified two individuals, members of a gang, as the alleged perpetrators of the homicide. Subsequently, on April 27 the capture of a fifth responsible for the murdering was reported. On August 22, five individuals implicated in the assassination of Blas Oliva had allegedly been sent to trial. Subsequently reports have been disseminated to the effect that another individual implicated in the events had been arrested.\footnote{IACHR. \textit{Annual Report 2015}. Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OE/A/Ser.L/V/11. Doc. 48/15 December 31, 2015. Para. 1082.}

1010. According to \textit{Colegio Dominicano de Periodistas}, the main problems facing the practice of journalism in the Dominican Republic include low salaries, precarious working conditions, lack of guarantees for safety in carrying out their work and the existence of a policy of judicial harassment and recurrent
aggressions against journalists by agents of the State. To analyze that problem, the Colegio, with sponsorship from the United Nations Organization for Science and Culture (Unesco), from January 22 to 24 carried out a workshop on the safety of journalists in the Dominican Republic, titled “Seguridad del Periodista en República Dominicana”, which was attended by international specialists who facilitated the drafting of a document of conclusions listing necessary actions to improve the conditions for the practice of journalism in the country.\textsuperscript{1485} The existence of a climate of hostility towards the press, which involves physical aggressions against representatives of the media, has also been denounced by the Inter-American Press Association (IAPA).\textsuperscript{1486}
27. SAINT VINCENT & THE GRENADINES

A. Social Protest

1011. On January 20, the journalist Hamlet Mark was arrested in Kingston by the police while covering a protest of the supporters by the main opposition party, New Democratic Party (NDP). Mark was recording the police breaking the protest when an official ordered his arrest and was insulted while in custody. The police also took nine protesters into custody and charged four of them with illegal assembly. Mark was released on January 21 free of charges and the police returned his camera and microphone along with the files. Later that month, Prime Minister Ralph Gonsalves labeled Mark as a paid political operative of the NDP.\[1487\]

1012. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”\[1488\] and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”\[1489\]

1013. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”\[1490\]

B. Internet and Freedom of Expression

1014. The Cybercrime Act 2016 was passed on August and the Governor General’s Deputy assented to it on August 22, 2016.\[1491\] Several civil society organizations have criticized the Act and have requested its repeal.\[1492\] The Cybercrime Act 2016 creates a series of offenses related to cybercrimes, provides for rules and procedures for investigating the offenses and establishes the contours of the liability of Internet service providers. While the Office of the Special Rapporteur applauds measures taken to prevent identity and data theft or fraud online or child pornography, several provisions of the Cybercrime Act 2016

may have a negative impact on freedom of expression. The Act creates a series of new criminal offences, among which Cyberbullying, is reportedly defined in section 16(5) in very broad terms: “to use a computer system repeatedly or continuously to convey information which causes (a) fear, intimidation, humiliation, distress or other harm to another person; or (b) detriment to another person’s health, emotional well-being, self-esteem or reputation.” Moreover, that section 16(2) incorporates into the cybercrime legislation criminal libel, although criminal libel under Section 274 of the Criminal Code has reportedly fallen into disuse.\textsuperscript{1493} The Office of the Special Rapporteur also noted that all of the offences created by section 16 are subject to up to 5 years imprisonment and a fine as high as XCD$ 200 thousand (approximately US$ 75 thousand). Furthermore, Sections 19 to 26 reportedly widen the power of police investigating the newly created offences, including Cyberbullying and online criminal libel, by stipulating that police officers may apply \textit{ex parte} for difference types of judicial orders.

1015. On August 11, 2016, the Office of the Special Rapporteur sent an information request to the Permanent Mission of Saint Vincent and the Grenadines regarding enactment of the Cybercrime Act 2016. However, the Office f the Special Rapporteur did not receive a response.

1016. As stated in the report on Freedom of Expression and the Internet, the Office of the Special Rapporteur noted that as the Internet has facilitated unprecedented opportunities for the free expression, communication, search, possession, and exchange of information, it has also facilitated the rise of new kinds of crimes.\textsuperscript{1494} The Office of the Special Rapporteur recognizes the importance of protecting the privacy of digital communications; the confidentiality, integrity and availability of data and computer systems in order to promote and protect the right to freedom of expression.\textsuperscript{1495} Nonetheless, cybersecurity laws and policies that imposed restrictions on the right to freedom of expression and information online must comply with established international standards and infringe upon this right to the least extent possible. Notably, the restrictions have to be provided for by law and ought to be necessary to protect an interest recognized under international law.\textsuperscript{1496}

1017. The Office of the Special Rapporteur highlights that all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, the Office of the Special Rapporteur indicated that any legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect the free flow of information and legitimate websites and services.\textsuperscript{1497} To prevent the criminalization of the use of the Internet, “Cybersecurity” legislations should avoid creating new offences or increasing the penalties of criminal conducts that are not aimed at attacking the integrity, the infrastructure or the confidentiality of the Internet. For example, defamation or fraud should not be considered “computer crimes” and the punishment of those offenses should not be aggravated in exclusive consideration of the technological medium used to carry them out.


Furthermore, the Declaration of Principles on Freedom of Expression, adopted by the IACHR in October 2000, sets forth that "privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest". Indeed, the Office of the Special Rapporteur has expressed on several opportunities that the application of criminal law is disproportionate when dealing with speech that is especially protected, that is to say, information or expression regarding matters of public interest and public officials or individuals voluntarily involved in matters of public interest.\textsuperscript{1498}

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28. SAINT LUCIA

A. Subsequent Liabilities

1019. On September 23, the legal counsel of Saint Lucia Prime Minister Allen Chastanet threatened the HTS television journalist Rehani Isidore with a defamation lawsuit due to a report regarding an alleged conflict of interest. On September 16, while hosting the TV show ‘E-Poll’, Isidore reported that Britain’s Prince Harry would stay at the Coco Palm Resort, which is owned by the Chastanet family and run by the Prime Minister’s sister. Isidor’s report was based on an online press release posted on the Resort’s webpage and latter taken down.1499

1020. Principle 10 of the Declaration of Principles on Freedom of Expression of IACHR establishes: “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

1021. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of 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.”

29. TRINIDAD & TOBAGO

A. Harassment Against Journalists and Media Outlets

1022. The Inter-American Press Association (IAPA) and the Media Association of Trinidad and Tobago expressed concerns about the numerous cyberbullying attacks against Trinidad and Tobago journalists in reprisal for their news coverage. Notably, investigative reporter at the Trinidad Express Newspaper, Asha Javeed, was harassed and insulted on Facebook after reporting on the distribution of subsidized state housing. Similarly, the editor-in-chief and a number of other journalists of Trinidad Express have been vilified on social media for their work. In its public statement, the Inter American Press Association stated that “[w]hen social media are used as a tool to punish, denigrate and defame, alleging invented situations such as in this case, we are referring to cyber-attack as another form of attack on the press”. The Media Association of Trinidad and Tobago has been denouncing instances of cyberbullying since 2013 and demanding police investigation on the attacks and threats to media and journalists made on the internet.\textsuperscript{1500}

1023. Principle 9 of the Declaration of Principles on Freedom of Expression establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”


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30. URUGUAY

A. Progress

1024. On July 21, the Fourth Circuit Court of Criminal Appeals [Tribunal de Apelaciones Penal de 4º Turno] acquitted the mayor of the department of Salto, Andrés Lima, who was being tried for defamation after stating in a press conference that three councilmembers of his political party were alleged to have falsified official expense reports. One of the legislators that he accused filed a defamation complaint against Lima, and on May 25, First Instance Trial Judge of the Fourth Circuit Hugo Rundie [Primera Instancia de Salto de 4º turno] found him guilty of the crime of defamation committed through the media. The Court unanimously overturned the ruling. The ruling stated that the Inter-American Court of Human Rights has indicated that "freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information favorably received or considered inoffensive or indifferent, but also with regard to those that offend and shock." The Court found that it was "undeniably in the public interest to know about allegations of corruption" and stated that in this case, there was no "deliberate, calculated, methodical intent to damage the honor of the Councilmember with false or reckless accusations." It also highlighted that "all expression related to issues in the public interest or individuals holding public office deserves special protection." The judgment concluded that Lima revealed "true information for the purposes of public transparency, with no indication of the existence of actual malice in doing so to harm the plaintiff. Rather, for the good of the public, transparency was put first."

B. Attacks, Threats, and Harassment Against Journalists and Media Outlets

1025. On January 20, journalist Enrique Lecaille was verbally assaulted while covering a basketball game between Bella Vista, in the city of Dolores, and Anastasia, in Fray Bentos. Anastasia fans and a manager with that club insulted and intimidatated the reporter when he took photographs of them.

1026. On March 8, a camera person with Televisión Nacional de Uruguay (TNU) was assaulted while covering a March during International Women's Day. A group of people who were painting graffiti on stores and buildings during the march down Avenida 18 de julio verbally and physically attacked the reporter and broke some of his equipment after seeing that he was recording them.

1027. On June 21, journalist María Paz Sartori, with weekly publication Búsqueda, was verbally attacked by the director of the Uruguayan Meteorological Institute [Instituto Uruguayo de Meteorología], Gabriel Pisciottano, who shouted at her in the agency's headquarters. The journalist had gone to the State offices to gather information for an article. However Pisciottano, who had refused to make statements or provide information on how the Institute functions, shouted at her to leave while making threatening gestures with his hand and tried to grab her arm to remove her from the building.

1028. In June, journalist Daniel García Poggi reported that he had been threatened and insulted by the acting mayor of Ciudad del Plata, Laura Colombo. After publishing an article in local magazine Identidades on the management of the municipality, the reporter received an aggressive message from Colombo on her mobile phone that included threats.

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1503 Asociación de la Prensa Uruguaya (APU). March 9, 2016. Comunicado ante agresión a trabajador de TNU; Subrayado. March 9, 2016. Camarógrafo de Canal 5 agredido hasta con una bicicleta durante una marcha.


1505 Asociación de la Prensa Uruguaya (APU). June 14, 2016. Comunicados ante hechos que afectan la libertad de expresión; El espejo radio. June 15, 2016. Alcaldesa suplente: "sos un hijo de puta...inútil...traidor".
Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression states that: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Social Protest

On January 14, the municipality of the city of Punta del Este asked the Judiciary to clear the Plaza de las Américas, where members of the Unified Food Workers Union of Uruguay [Sindicato Único Gastronómico del Uruguay] (SUGHU) had camped out to protest for salary increases. The mayor of Punta del Este, Andrés Jaifí, said the complaint was lodged after the workers were asked twice to vacate the premises.\textsuperscript{1506}

The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”\textsuperscript{1507} and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”\textsuperscript{1508}

D. Stigmatizing Statements

On March 5, the Plenary of Frente Amplio, the political party of the current president, issued a statement accusing the media of launching a campaign “to smear the image and credibility” of members of the administration and “weaken the country’s democratic institutions.” This statement came days after the media published information calling into question whether the Vice President of the Republic, Raúl Sendic, held a degree in human genetics, as had been claimed in official events and currícula. In the statement, Frente Amplio expressed "solidary" with Sendic "in the unjust and injurious scrutiny to which both he and his family have been subjected."\textsuperscript{1509}

The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”\textsuperscript{1510}

E. Application of the Audiovisual Communication Services Act


The Office of the Special Rapporteur observes that regulations for Law No. 19,307 on Audiovisual Communication Services [Ley N° 19.307 de Servicios de Comunicación Audiovisual (SCA)] passed by Congress and promulgated by the executive on December 29, 2014, have still not been established. According to public statements from President Tabaré Vázquez, the Executive Branch was waiting for the Supreme Court of Justice [Suprema Corte de Justicia] to finish ruling on a series of constitutional challenges that a number of audiovisual communication service companies and others have brought against the law. Although as of the closing date of this report, the Supreme Court had handed down 13 judgments, establishment of the regulations for the law by the executive remained pending.

On May 16, 36 social organizations stated in a press release that they had sent a list of demands to the President of the Republic and the president of the Senate asking for regulations for the SCA Act to be established and for the members of the Audiovisual Communication Council [Consejo de Comunicación Audiovisual] to be selected soon. Secretary of the Presidency Miguel Angel Toma repeated President Vazquez’s statement to the effect that they would await resolution of the remaining decisions of the Supreme Court before establishing the regulations.

On August 12, Carolina Cosse, the minister of Industry, Energy, and Mining [Industria, Energía y Minería], reiterated that the administration would wait to establish regulations for the law until the Court rules on all the suits filed against it. Following these statements, the organizations forming the Coalition for democratic communication (including the Uruguayan Press Association [Asociación de la Prensa Uruguaya] and the School of Information and Communication of the Universidad de la República [Facultad de Información y Comunicación de la Universidad de la República]) —issued a press release expressing their disagreement with the decision. As they understand it, "it is not necessary to wait until the Supreme Court issues its final judgment to begin implementing a law that is fundamental for democratizing communication." They added that "should this approach of freezing the implementation of policies that ensure greater diversity and pluralism in our concentrated media system to at least 2017 be maintained, with the pre-election year drawing nearer it will be ever more difficult to move forward on changes for the sector." The coalition also stated that the rulings issued thus far by the Court show "case law that is clearly in support of the law.”

F. Judgments of the Supreme Court of Justice on the Constitutionality of the Audiovisual Communication Services Act

As of the closing date of this report, the Supreme Court of Justice has issued 13 judgments on constitutional challenges to the Audiovisual Communication Services Act, Law No. 19,307 [Ley de Servicios de Comunicación Audiovisual Nº 19.307]. The court declared that most of the law’s articles are in constitutional challenge.

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1514 Coalición por una comunicación democrática. May 16, 2016. Representantes de 36 organizaciones sociales firman petitorio para que gobierno regule Ley SCA.


In its first statement on the issue, on April 5, the Court issued a number of preliminary considerations on the law. It stated that at their core, the challenges of the law argued that there was "a conflict between the right to freedom of expression in its collective dimension and other fundamental rights: freedom of expression in its individual dimension, the right to free enterprise, and the right to property." The Court stated that freedom of expression "is a fundamental human right" that must be interpreted, as established by the Inter-American Court of Human Rights in its Advisory Opinion 5/85, according to its two basic pillars: the first being the "democratic standard" and the second being the "standard of two dimensions." With the "democratic standard," the Inter-American Court establishes that should the right to freedom of expression be lost, it would put at risk the validity of principles that are essential for the existence of a democratic society. On the other hand, the standard of two dimensions proposes that the content of freedom of expression must not be solely be associated with the individual aspect of the right: it is also related to its collective or social dimension. In this sense, the freedom to seek, receive, and disseminate information and ideas of all kinds guaranteed in article 13 of the American Convention on Human Rights means that "when an individual's freedom of expression is illegally restricted, it violates not only that individual’s right, but also the freedom of everyone to 'receive' information and ideas. Consequently, the right protected in article 13 has special scope and character." Moreover, the judgment found that Law 19,307 was a "legislative tool through which legislators, in the exercise of their authority to make laws, have sought to promote freedom of expression and communication in its collective dimension," and expressed that "in contrast to what happens with freedom of expression in its individual dimension, where the State’s statutory intervention must be minimal, the collective dimension requires the State to provide active protection." The Court stated that "that is without question the protection that Law 19,307 seeks to establish, as can be ascertained from its content and the history of its drafting and passage."

**Executive Branch Authority to Establish Regulations**

The Court rejected the arguments that the establishment of certain programming content and sanctions in the event of noncompliance could constitute a form of prior censorship. "The law is in line with the State’s regulatory authorities." The plaintiff’s arguments result from an interpretation of an incorrect application of the law that cannot be derived from its text (…). When the operator voluntarily assumes a commitment, it must necessarily maintain the general programming lineup and the content promised when it was granted the authorization or license. The Court found that "it is clear that the constitutional model adopted by the Republican grants legislators the authority to regulate the activities of private parties and public entities within the bounds established in the Constitution."

**Protection of Children**

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The Court also rejected challenges to requirements of a child-friendly timeslot to protect minors, which establishes that during that slot, the programs, advertising, and self-promotion “must pursue educational objectives.” The Court stated that the law does not limit freedom of expression because “it does not prohibit inclusion of the content it limits but rather postpones it, to be broadcast outside of a particular timeslot.” In addition, “the limit is clearly in the general interest (...) It is clear that the rights of children and adolescents take priority over the media outlets’ right to broadcast” certain content, “something that is perfectly reasonable and aims at protecting the moral integrity of the most sensitive audience: children. This harmonizes perfectly with the constitutional values and principles aimed at protecting minors.” The Court said that “Article 13 of the Convention itself sets the standards for regulating freedom of expression and pays special attention to the moral protection of children and adolescents.” The law being challenged “not only does not infringe upon the highest human rights standard on freedom of expression but applies it, weakening the attempted challenge.” Another reason to dismiss challenges to the constitutionality of articles on the protection of minors is that they are “one of the exceptions for restricting freedom of expression that are explicitly authorized by the human rights legal system,” pursuant to section 4, article 13 of the American Convention on Human Rights, the Court found.

Discrimination

The Court upheld the constitutionality of article 28 of the law, which establishes that audiovisual communication services "shall not disseminate content that incites or argues for discrimination and hate based on nationality, race, or religion, or that represent incitements to violence or any other similar illegal action against any individual or group of individuals, whether motivated by race, ethnicity, sex, gender, sexual orientation, gender identity, age, disability, cultural identity, place of birth, creed, or socioeconomic status." The Court unanimously found that “it cannot be concluded that this provision represents a generic and unspecific burden. Just the opposite. Nor can it be found to impose content in violation of freedom of expression.” The Court noted that article 13(5) of the American Convention establishes that "Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.” “As will be noted, not only does the law not infringe upon the highest human rights standard on freedom of expression but applies it, making it difficult to argue (...) that article 28 of the law violates freedom of expression.”

Diversity, Pluralism, and Concentration

The Court rejected the constitutional challenge to article 59 of the law, which requires the owner of a radio or television station to obtain authorization from the Audiovisual Communication Council [Consejo de Comunicación Audiovisual] to rebroadcast programs originating from a different radio or television signal. It also states that broadcasting services cannot spend more than 70 per cent of their daily broadcast time rebroadcasting another signal. The Court did not accept the argument that by placing a limit on the amount of material that can be rebroadcast, the broadcaster’s freedom was being restricted. "The law in question does not limit freedom of expression and communication (...) What it does limit is the right to offer a service as a mere vehicle for rebroadcasting third-party signals.” The limits established in article 59 "do not involve banning broadcast of particular thought or communication. Rather, they limit a certain way in which cable and television channels conduct their commercial activities (selling the rebroadcast of their programming to third parties or purchasing it). This limitation falls within the framework of the reasons of general interest established by the legislature in the body of the law. From the context of the law, there is no question that the legislature seeks to ensure the greatest possible diversity and pluralism in the ownership of audiovisual communication services. Indeed, the provision is in line with one of the aims sought by the legislature, which is to prevent indirect violation of the ban on concentration of ownership and the establishment of agreements or oligopolies that are not permitted under the Law.”

Also, challenges to article 51 were rejected. This article gives the State the duty to prevent or limit the existence and formation of monopolies and oligopolies in audiovisual communication services. “In itself, this provision does nothing to affect communication services because it is simply a law that gives the
State a mandate to pursue a goal (...).” The Court also dismissed the claim that article 53 was unconstitutional. The article limits ownership of over-the-air radio and television services. It found that “the limits established in the aforementioned article are constitutional and in compliance with inter-American standards on freedom of expression. One of the most crucial measures for full protection of the right to freedom of expression in both its dimensions is the prevention of the formation of media monopolies or oligopolies of any kind (public or private).” The Court indicated that the Office of the Special Rapporteur for Freedom of Expression has found that "media monopolies or oligopolies violate the right to freedom of expression enshrined in article 13 of the American Convention by impeding the diversity and plurality of voices necessary in a democratic society." It also indicated that "both the IACHR and the Inter-American Court have found that it is important for the State to intervene to guarantee competition and promote pluralism and diversity. Among the effective measures that States must adopt are antitrust laws that limit ownership concentration and centralized control of broadcast media."

1043. Despite all this, the Court found that the law contains "specific solutions" that "are unconstitutional because they involve a restriction of the enjoyment of fundamental rights without complying with the constitutional requirements for doing so." The Court thus found that eight of the law's articles violate the Constitution: article 39, section 3; article 55; article 56, section 1; article 60, part C, sections 1, 2, and 3; article 98, section 2; article 117, section 5; article 143; and article 149, section 2.1520

1044. With regard to article 39, section 3, which authorizes the executive branch to decide which events of general interest must be broadcast live by over-the-air television channels, the Court found that, although the legislature's authority to establish which events are in the public interest and therefore must be broadcast on over-the-air television complies with the requirements established in the Constitution, the provision is unconstitutional because "it improperly limits the actions of enterprises that decide whether to invest in the exclusive broadcast of a particular event." Article 55, which limits the number of subscribers that enterprises providing television services may have, is unconstitutional because, among other things, "it distorts the free market," the Court said. Regarding section 1 of article 56, which prohibits cable operators from providing telephony and Internet services, the Court found that it "violates the principle of liberty" established in the Constitution because "there are no general interest reasons for limiting these rights." With regard to article 60, section C, which regulates part of the content that must be included in television programming, the Court found that it imposes "a specific type of content on certain audiovisual service providers, violating freedom of expression." Article 98, section 2, authorizes the suspension of broadcasts if the owners of the service prevent the regulatory body from performing inspection; the Court found that this provision was unconstitutional because "it infringes on the right to due process" by establishing administrative authority to punish a subject without a prior hearing. Regarding section 5 of article 117, which establishes that subscription television services must include a number of channels in their basic package without the right to “any remuneration,” the Court found that it "violates the right to property by not allowing for just and prior compensation" for depriving the channels of their exclusive right "to their broadcasts." Article 143 of the law, which establishes guidelines for the distribution of campaign advertising free of charge, affects the "principle of equality" between political parties because it results in "unjustified

differences." Article 149, section 2, which establishes that public audiovisual communication services "will take preference" over private services in the assignation of over-the-air broadcast channels, station location, and other infrastructure, violates the principle of equality, the Court found.

G. Access to Public Information

On December 22, 2015, second circuit civil judge Alejandro Martínez issued a ruling ordering the ministry of Transportation and Public Works [ministerio de Transporte y Obras Públicas] (MTOP) and the National Development Corporation [Corporación Nacional para el Desarrollo] (CND) to turn over information on expenditures made by the Interministerial Commission on Deep Water Ports [Comisión Interministerial del Puerto de Aguas Profundas] (CIPAP) within 15 days. The information have been requested in March 2015 by the Uruguay Libre de Megaminería movement. The Office of the Presidency turned over the information that it had available, but the MTOP and the CND refused to do so, arguing that according to an agreement signed between these agencies, the information was confidential. With the support of the Center for Archives and Access to Public Information [Centro de Archivos y Acceso a la Información Pública] (Cainfo), the organization filed a lawsuit under the Access to Public Information Act demanding the information be turned over. The agencies did not appeal the ruling and on February 15, they delivered the information requested.\(^\text{1521}\)

On August 18, second circuit civil judge Alejandro Martínez de las Heras granted a request for access to information filed by environmental organization Movimiento Uruguay Libre de Megaminería and ordered State company ANCAP to disclose the hydrocarbon exploration and exploitation contract it had signed with French multinational company Total. The request for access to information had been denied by the State company, which argued that the contract signed with Total included a confidentiality clause. In his ruling, the judge highlighted that the right to access to public information is a fundamental human right that is "closely tied to the 'republican form of government'" established in the National Constitution. He also found that the right is consistent with the rights of citizens to "seek, receive, and impart information and ideas of all kinds" and to "take part in the conduct of public affairs," as established in articles 13 and 23 of the American Convention on Human Rights. The judge also held that exceptions to access to public information must be interpreted "strictly" in accordance with Law 18,381 regulating access to public information in Uruguay. "Generic or baseless classification of information as classified, secret, or confidential is inadmissible." He also indicated that the confidentiality on which the two companies agreed is an obligation "attributable to the 'contractor' and not the Ancap," for which reason "the argument that the ANCAP can take refuge or shelter in a contractual confidentiality clause to reject a request for access to public information when the clause does not establish such obligations is inadmissible. In addition,"considering that Ancap is a State enterprise" that "handles public resources," "it goes without saying that the obligations it takes on through the contracts whose disclosure is sought (...) entail a net public interest in the method and form of the Administration's actions and their consequences for society, including, among other issues, on environmental aspects."\(^\text{1522}\)

On October 23, the Center for Archives and Access to Public Information [Centro de Archivos y Acceso a la Información Pública] (Cainfo), the Uruguayan Press Association [Asociación de la Prensa Uruguaya] (APU), and the Coalition for Democratic Communication [Coalición por una Comunicación Democrática] released a statement saying that obstacles persists to the application of Law 18,381, which regulates citizens' right to access public information. The obstacles include inadequate categorization of information, as well as the incorrect application of the special procedures established in the law, resulting in delayed and/or incomplete disclosure of information. The organizations also noted that "it should not be overlooked that in a number of cases invoking this right, applicants had to turn to the courts and/or the oversight agency, the Access to Public Information Unit." They also indicated that it was necessary to consider and move forward on improving the law, with amendments aimed at strengthening the oversight body the


law establishes, expanding the list of agencies to which it applies, and fine tuning the regimen of exceptions, among other things.\textsuperscript{1523}

1048. In a report on journalism and freedom of expression prepared by Cainfo and APU, a number of cases were detailed in which Executive Branch authorities did not take questions from journalists after holding press conferences. For example, on January 7, the press was invited to a meeting between President Tabaré Vázquez and Argentine President Mauricio Macri on the presidential estate in Anchorena. However, although the journalists had been told they would have a chance to ask questions, when the time came for the press conference, they were told no questions would be taken. On February 24, after a press conference giving his version of information released by the media raising questions as to whether he had his degree in human genetics, Vice President Raúl Sendic refused to take questions from reporters. On March 14, the new board of directors of State petroleum company Ancap was instated in a ceremony to which the media was not invited. The speeches given by the authorities were published on the website of the Presidency of the Republic.\textsuperscript{1524}

1049. Principle 4 of the IACHR’s Declaration of Principles states 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.”

H. Surveillance of Communication

1050. According to a study released on September to biweekly publication Brecha, the Armed Forces intelligence services [servicios de Inteligencia de las Fuerzas Armadas] maintained a surveillance system that operated during the military dictatorship (1973-1985), then continued to operate it after the country returned to democracy in 1985. The illegal surveillance supposedly continued through at least 2009, according to documentation that deceased retired soldier Elmar Castiglioni, former head of the National Intelligence Office during the military dictatorship, had in his possession. The surveillance included monitoring of politicians, political parties, unions, journalists, judges, prosecutors, and social organizations. The documents were found in Castiglioni’s home after he died. A complaint was filed with the courts and the information was ordered seized.\textsuperscript{1525} Legislators with Frente Amplio—the party of the current president—submitted a proposal to Parliament to create a committee to investigate the issue. The Investigating Committee would have the backing of lawmakers from all parties. As of the closing date of this report, this proposal still had not been discussed in the Parliament’s plenary.\textsuperscript{1526}

1051. The Office of the Special Rapporteur observes that decisions to undertake surveillance activities that invade the privacy of individuals must be allowed by independent judicial authorities, who must state why the measure is appropriate for the accomplishment of the objectives pursued in the specific case; whether it is sufficiently restricted so as not to infringe upon the right in question more than necessary; and whether it is proportionate in relation to the interests pursued. Investigative proceedings involving an invasion of privacy authorized by law and by a competent judge must also respect other due process safeguards. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner.

\textsuperscript{1523} Centro de Archivos y Acceso a la Información Pública (Cainfo). October 23, 2016. Día del Periodista.
\textsuperscript{1524} Centro de Archivos y Acceso a la Información Pública (Cainfo). Periodismo y libertad de expresión en Uruguay. Segundo Informe de Monitoreo de Amenazas, May 3, 2016.
Finally, the Office of the Special Rapporteur observes that at the least, the decision-making criteria adopted by the courts should be public.\textsuperscript{1527}

I. Diversity and Pluralism

The implementation of digital television in Uruguay saw little progress in 2016. After the Adversarial Administrative Court [Tribunal de lo Contencioso Administrativo] declared in June 2015 that the decree regulating the implementation of over-the-air television was invalid for technical reasons, the administration modified the decree and extended the deadline to April 1, 2016, for new channels VTV and Giro—which had been assigned digital commercial over-the-air television signals in Montevideo—to begin broadcasting.\textsuperscript{1528} However, on April 1, VTV and Giro did not begin broadcasting and therefore lost their licenses. Both companies argued that the delay of the analog switch-off (the moment at which all over-the-air analog television signals cease broadcasting and only digital signals remain), originally set for November 2015 but at the moment unscheduled, placed them at a disadvantage to private channels already broadcasting over-the-air that, by broadcasting using both technologies, reached the whole population. Digital signals can only reach a smaller portion of the public.\textsuperscript{1529} The companies also argued that the government did not conduct a campaign to inform people about the new digital technology and the adapters they must connect to their television sets to receive the signal, as had been announced.\textsuperscript{1530}

In addition, according to press reports, companies Raildor SA, in the Florida department, and Lejano Norte SRL, in Tacuarembó, also lost their digital broadcasting licenses because they failed to begin broadcasting on the date required. None of the public stations belonging to departmental governments began broadcasting, with the exception of that of the Montevideo city government, whose channel TV Ciudad was already on the air.\textsuperscript{1531}

J. Government Advertising

The Office of the Special Rapporteur notes that the Constitution and Codes Committee of the Chamber of Representatives [Comisión de Constitución y Códigos de la Cámara de Representantes] has before it a draft bill to regulate the production, planning, placement, and distribution of government advertising. The bill was submitted by CÃ­nfo in August 2015 and enjoys broad political backing.\textsuperscript{1532} According to the information received, on August 29, 2016, the public debate was held on "Government Advertising, Freedom of Expression, and Transparency." The event was organized by the Center for Archives and Access to Public Information [Centro de Archivos y Acceso a la Información Pública] (CÃ­nfo) to contribute to the debate on regulation of government advertising in the context of the bill before Congress. Legislators, journalists, media owners, activists, academics, attorneys, and government officials participated in the activity.\textsuperscript{1533} Also, in September, CÃ­nfo submitted a collection of proposals to the Constitution and Codes Committee for improving

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\textsuperscript{1531} Búsqueda. April 7, 2016. Giro y VTV perdieron la adjudicación de nuevos canales de televisión.


the bill. The proposals cover the main comments and contributions from the hearings the Committee held with the different stakeholders involved.\footnote{Centro de Archivos y Acceso a la Información Pública (CaInfo). September 23, 2016. \textit{CaInfo presentó propuestas para mejorar proyecto de ley de Publicidad Oficial, que comenzaría a votarse en octubre.}}

1055. Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

K. Other Relevant Situations

1056. On March 28, television company Tenfield did not allow a news team from \textit{Canal 4} to cover the inauguration of the \textit{Club Atlético Peñarol} soccer stadium. Tenfield had the exclusive right to broadcast the event and blocked reporters from entering the stadium to cover the inaugural match. \textit{Canal 4} journalist Mario Bardanca denounced this publicly and alleged that the measure was in retaliation for his journalism work in which he had criticized the actions of Tenfield and its owners, and for the commercial agreement the channel had reached with the Fox Sports network, Tenfield’s competitor.\footnote{Telenoche online. March 28, 2016. \textit{La opinión de Bardanca sobre la prohibición de Tenfield para Telenoche}; Asociación de la Prensa Uruguaya (APU). March 29, 2016. \textit{Comunicado sobre cobertura de la inauguración del estadio de Peñarol}; El Observador. March 30, 2016.} On April 1, Tenfield issued a statement saying that it “permitted free access to a number of print, radio, and digital media outlets that submitted their accreditation paperwork to Club Atlético Peñarol on time.” It added that for television companies, it granted access to those with which it had commercial agreements. According to the company, “whether to allow a media outlet access to an event is exclusively the purview of whoever has paid for the rights” and ”blocking access to a media outlet is not censorship, but rather the free exercise of the right purchased from the entity selling it.”\footnote{Montevideo COMM. April 1, 2016. \textit{Decile a Mario que no venga}; Caras y Caretas. April 2, 2016. \textit{Comunicado de prensa de Tenfield por la polémica con Canal 4}.}

1057. The Montevideo government launched an administrative investigation into the general manager of Montevideo’s philharmonic orchestra, Álvaro Méndez, after he dyed his hair blue to protest a cut to the orchestra’s budget that the administration had ordered.\footnote{El País. March 2, 2016. \textit{Álvaro Méndez sancionado por inusual modo de protesta}; El Observador. March 2, 2016. \textit{Coordinador de Orquesta Filarmónica investigado por teñirse el pelo}; Teledoce. March 3, 2016. \textit{La polémica investigación a Álvaro Méndez por teñirse el pelo como forma de protesta}; El Observador. December 11, 2015. \textit{Coordinador de la Filarmónica se tiñó el pelo de celeste en protesta por más presupuesto.}} Once the investigation was concluded, the Administrative Unit of the City Government concluded that “the verified conduct could be considered an administrative offense” and advise that a preliminary investigation be conducted, without a preventative suspension, “in order for his responsibility for the incidents in question to be determined with all due process guarantees.” Based on these conclusions, on June 13, the administration launched a preliminary administrative investigation against the official.\footnote{Intendencia de Montevideo. Resolución N° 616/16/5000. June 13, 2016. Available at: \url{http://www.montevideo.gub.uy/aplicacion/resoluciones}.}

1058. On May 30, the Uruguayan Press Association [\textit{Asociación de la Prensa Uruguaya} (APU)] stated in a press release its annoyance with the Communications Services Regulatory Unit [\textit{Unidad Reguladora de Servicios de Comunicaciones} (Ursec) over what it said were "illegal and abusive practices" of broadcaster \textit{CX44, 1410 AM Libre} that have not been addressed by the regulatory body. According to the group, an Argentine businessman took ownership of the broadcaster without Ursec’s authorization, violating
a number of current legal provisions. It also alleged failure to comply with the workers’ labor rights, such as for example delays in paying salaries.1539

1059. On October 18, two police officers went to a Montevideo art gallery and asked to speak with the person responsible for a painting in which former president and current Senator José Mujica and his wife, Senator Lucía Topolansky, appear naked. In the painting, which belongs to artist Julio de Sosa, both politicians appear naked, with their genitals covered by large leaves, representing the biblical figures of Adam and Eve. At the request of the police, the owner of Galería La Marquería, Diana Saravia, put them in touch with the artist, who they interrogated. Minutes later, the police gave them a summons requiring them to appear the next day at the police station. They also asked Saravia to remove the painting for reasons of “taste.” When Saravia and de Sosa appeared to testify, the chief of police told them that no one had filed a complaint. Rather, the order had come “from above,” and that they had to prepare report for the ninth criminal circuit court [Juzgado Penal de 9º Turno].1540

1060. On that day, the Security Minister told the media that the police had gone to the gallery after receiving “a number of calls” from neighbors complaining about the painting, and that no one had filed any official complaints. However, the next day, Senator Topolansky told the media that she and Mujica had filed a defamation complaint over the display of the painting, arguing that it involved “exhibitionism without permission” of her image. Mujica also issued statements on the issue, saying that the artist had the right to "make a few pesos," but that “there’s a limit.” Following Topolansky’s statements, ministry spokespersons told the media that although the senators had considered filing the complaint, they later decided not to after the painting was voluntarily removed.1541

1061. Elsewhere, ninth circuit Judge [jueza de 9º Turno] Blanca Rieiro stated that the court learned of the incident from communication from the police that stated that a citizen had filed a complaint alleging that the painting was offensive. The judge stated that the senators were asked whether they filed a complaint over the incident, but they did not, meaning that in principle, the case would be closed. A judiciary spokesperson explained to the media that the police cannot order a painting removed and that this was the responsibility of the judiciary. However, he indicated that although there was no court order in the case, the owner of the gallery had voluntarily removed the painting and could put it back if she wish to.1542


1542 Semanario Búsqueda. October 27, 2016. Esa molesta pintura naïf; La Diaria. October 20, 2016. Galerista aclaró que nunca fue obligada a sacar el cuadro de Mujica y Topolansky de su galería.
31. VENEZUELA

A. Progress

On December 14, the Public Prosecutor announced guilty verdict against two officers of the Bolivarian National Guard (Guardia Nacional Bolivariana) (GNB) who were found guilty of the death of student Geraldine Moreno Orozco, which took place on February 19, 2014 during a demonstration in Carabobo State. According to the information that was disseminated, the prosecutors in charge of the case were able to show, before the First Trial Court of Carabobo, the responsibility of GNB sergeants Albin Bonilla Rojas and Francisco Caridad Barroso, who were sentenced to 30 and 16 and a half years of imprisonment, respectively.

B. Killings

On January 19, journalist and newscaster for Venezolana de Televisión (VTV), Ricardo Durán, was murdered. At the time of his death, he worked as the Press Officer for the Capital District Government [Prensa del Gobierno del Distrito Capital]. President Nicolas Maduro condemned the fact and urged the authorities to find those responsible. According to the available information, the authorities initially believed that attempted robbery was the motive of the crime and they announced the arrest of Darwin Antonio Barriente Díaz as the alleged perpetrator. However, on June 20 they announced the arrest of 14 police officers from the Chacao municipality [Policía del Municipio de Chacao], which is located in the Caracas metropolitan area, as those allegedly responsible for the death of the journalist. On August 8, a preliminary proceedings court [Tribunal de Control] allegedly ordered their release, as nothing was found linking them to Duran’s murder. Attorneys for the officers reported that officers from the Bolivarian National Intelligence Service [Servicio Bolivariano de Inteligencia Nacional] (SEBIN) refused to carry out the order, which led the attorneys to file a complaint with the Office of the Attorney General [Ministerio Público] on August 11.

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

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1543 This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2016 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.


C. Attacks, Threats, and Harassment Against Journalists and the Media Outlets

Throughout the year, the Office of the Special Rapporteur has received information about multiple events in which journalists were allegedly the object of physical assault and acts of intimidation, and also about various types of interference with their work. Various State security agencies, including the Bolivarian National Guard [Guardia Nacional Bolivariana] (GNB) and Bolivarian National Intelligence Service [Servicio Bolivariano de Inteligencia Nacional] (SEBIN), as well as police forces, are the alleged cause of the assault against the journalists, whether by action or omission. These incidents take place in a climate of extreme political polarization and social crisis due to the intensified confrontation between the government of President Nicolás Maduro and the opposition.

During 2016, there were reports of assaults against journalists or interference in their work by State agents, either during the performance of their work or as a consequence thereof. The acts allegedly committed by police officers include beatings, threats, arrests, raids, the confiscation of work equipment and the destruction of journalistic evidence, among other incidents. According to the available information, the following cases may be included in this group. On January 15, reporter Fabiana Barboza and photographer Yorvis Weffer, from the Diario La Costa newspaper, from the city of Puerto Cabello, state of Carabobo, were allegedly assaulted by members of the Bolivarian National Guard [Guardia Nacional Bolivariana] (GNB) while covering a protest. The officers temporarily confiscated Weffer’s camera and deleted photographs that were on the equipment. Subsequently the Commander of the Detachment 412 T/C [Comandante del Destacamento 412 T/C] expressed his excuses to the director of the media and the affected. On January 4, officers from the People’s Guard [Guardia del Pueblo] (an operational unit of the GNB, according to the organizational chart of the institution, which is tasked with preventive duties) arrested journalist Diana Moreno from the El Impulso newspaper for allegedly taking photographs in a shopping center located in the Las Trinitarias shopping center in Barquisimeto, in the state of Lara. A broadcaster and blogger by the name of Luis Guevara, who was making a video for a website, was allegedly detained with her. The journalist was held for several hours and then released. On March 23, journalist José Ángel Romero and graphic reporter Elías Miranda, from the La Voz de Falcón website, were allegedly assaulted by police officers from the state of Falcón while covering a protest over a lack of water. On March 28, journalists Fabiana Delgado and Humberto Matheus from La Versión, José Antonio González and María Fuenmayor from La Verdad, and Ángel Romero and José López from Noticia al Día were allegedly detained, beaten, intimidated and threatened by officers of the police in Maracaibo, state of Zulia, and were also forced to delete the photography taken during the operative that was realized by antiriot of the Bolivariana Police force [Cuerpo de Policía Bolivariana] of the State Zulia for the riot that had been provoked to the interior of El Marite pre-trial detention center. On April 21, journalists covering a protest staged by National Assembly deputies at the headquarters of the National Electoral Council [Consejo Nacional Electoral] (CNE) in Caracas were allegedly violently forced to...
leave the building by members of the GNB. They were then reportedly physically assaulted by a group of civilians, presumably sympathizers of the government, the vehicle in which they were moving was attacked with sticks and stones. Several of the journalists identified were Osmar Hernández and Jessica Flores, reporter and producer for Cable News Networks en Español (CNN en Español); Oliver Fernández and Adriana Núñez Moros, from NTN24; Amanda Sánchez, from digital portal Vivo Play; Mildred Manrique and Wandor Dumont, from digital portal 800 Noticias; Antonieta La Rocca, from Teledicario; Alejandro Castilho, from digital portal Su Noticiero; Armando Altuve, from El Pitazo TV; Harley Monseguileman, from Televen; Sonsiré Luna, from Unión Radio; and Alejandro Hernández, journalist and radio producer.1553 On April 22, GNB officers allegedly took the camera of journalist Keren Torres Bravo, a correspondent for El Pitazo in Barquisimeto, in the state of Lara, while she was reporting on people standing in line to buy food. Her equipment was held for a few minutes and later returned.1554 On April 26, a journalist from Efecto Cocuyo, Reynaldo Mozo, was detained while covering a protest over food shortages. Officers from the Vargas state Police took his cellular phone, handcuffed him and transported him to Macuto Command. He was held for an hour and then released.1555 On August 18, journalist Julio Mendoza, a correspondent for El Pitazo in the state of Apure, was reportedly beaten and arrested by the Regional Police while covering a citizens’ protest in the City of San Fernando. The journalist was allegedly detained along with 12 other citizens, who were released that night.1556 On October 24, journalist Melissa Turibbi, a newscaster for the Globovisión television channel, reported that her home had been raided by SEBIN agents who, apparently without a judge’s order, went to her home when only her son and his caretaker were there, causing damage in the building. According to the journalist, the officers were searching for her home computer. This was the second time the journalist was allegedly assaulted by State agents.1557

1067. On March 9, on the Atena de Tumeremo property in the state of Bolivar, journalists were traveling to the El Miamo mine, where 28 miners disappeared and were allegedly massacred on March 4. The journalists were intercepted by officials from the Office of Scientific, Criminal and Forensic Investigations [Cuerpo de Investigaciones Científicas Penales y Criminalísticas] (CICPC), who did not allow them access to the scene until their work equipment and cellular telephones had been searched. The officers allegedly argued that they meant to prevent the reporting of information in real time from the area.1558 Pedro Luis Montilla, a journalist for Fe y Alegría, was detained by officers of the SEBIN on March 18 in Barquisimeto, allegedly for publishing information about the case of the 28 miners who disappeared in Tumeremo on his personal blog. He was released hours later.1559


1554 La Patilla. April 22, 2016. VIDEO | Por grabar en una cola quitan cámara a periodista de El Pitazo; Espacio Público. April 23, 2016. Comunidad defiende a periodistas de la GNB.


1558 Efecto Cocuyo. March 9, 2016. Cuando estaban a punto de llegar a la mina en Tumeremo, el Cicpc devolvió a los periodistas; Espacio Público. March 10, 2016. Cicpc impide que reporteros “informen al momento” desde Tumeremo.

The Office of the Special Rapporteur also documented cases of journalists who have allegedly been assaulted by civilians while conducting their professional activities and who have not received protection in order to continue doing so, even though there was a police presence in the area. This collection of incidents also includes the cases of journalists who have allegedly been assaulted and whose complaints have not been diligently investigated by the authorities. These acts against journalists include injuries, illegal arrest, beatings, threats, intimidation and stolen work equipment. According to known information, the following cases may be included in this category. On February 16, journalist Eleida Briceño, from the newspaper El Tiempo in the city of Puerto La Cruz, state of Anzoátegui, was shot in the leg while covering a confrontation between residents of the El Paraíso area and members of the Office of Scientific, Criminal and Forensic Investigations [Cuerpo de Investigaciones Científicas Penales y Criminalísticas] (Cicpc). On February 28, journalist José Rafael Ramírez, had his work gear, a laptop, and a cell phone stolen. The robbery was allegedly committed by unknown individuals who entered his apartment in the city of Maracay, in the state of Aragua, and took only the aforementioned items. Days earlier, the journalist had published information about the arrest of a commander after cocaine was supposedly found in his vehicle. On March 9, journalists Rafael Urdaneta and Fabiola Niño, from El Venezolano TV, René Méndez from NTN 24, and Manuel Cardozo from the Ecos del Torbes channel were allegedly detained, threatened, intimidated and subject to an attempted robbery by a group of hooded individuals while covering a protest at the Industrial Technical School in the San Cristóbal municipality in the state of Táchira. On February 29, while covering the chair of the National Assembly’s Health Committee’s visit to Maracaibo University Hospital, a group of approximately 20 journalists, including María Fernanda Muñoz, from Primero Justicia, Dorkys Tapia, from Bien Dateao and Aisley Moscote from Versión Final, had allegedly been assaulted by members of Círculos Bolivarianos [“Bolivarian Circles”] - grassroots organizations created by the PSUV in order to broadcast the ideas of the Bolivarian Revolution - who went to the hospital to prevent the representative’s visit. On April 7, journalists Alejandro Hernández, from Círcuito Éxitos, Antonieta La Rocca, from Telecaribe, Alejandro Molina, from Notiminuto and Luis Pérez Rojas, from Carota Digital, had allegedly been assaulted while they covered the visit of Primero Justicia party leaders to the National Electoral Council [Consejo Nacional Electoral] (CNE) to request signature collection forms for the recall referendum of President Nicolás Maduro. The journalists were assaulted supposedly by a group of ruling party sympathizers who went to CNE headquarters. On April, freelance graphic reporter Miguel González was allegedly assaulted and robbed by ruling party sympathizers near the CNE while he covered the Democratic Unity Roundtable’s [Mesa de la Unidad Democrática] (MUD) delivery of signatures to initiate the recall process. On October 23, at least half a dozen journalists were reportedly assaulted while covering a special session of the National Assembly when a group of civilians, presumably supporters of the government, burst into the Assembly building. Among those assaulted were reporter Gregory Jaimes and producer Yamel Rincón, from Telecaribe, who were threatened with a firearm so that part of their equipment could be taken.

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On August 4, the Office of the Special Rapporteur issued a joint statement with the United Nations Special Rapporteur for Freedom of Opinion and Expression, in which they expressed concern for the continuous deterioration of the freedom of the press in Venezuela, stating that this deterioration is reflected in events such as the attacks against journalists and independent media groups, escalating the pressure over the Venezuelan media, which is especially alarming given the country’s food and medicines shortages, economic crisis and heightened social and political tensions. Reference is also made to the arrests for inquiry and retention of equipment that journalists and media workers have experienced, as well as the inexistence of adequate guarantees so that communicators may do their jobs, and there is emphasis on the fact that the harassment of the media by law enforcement agents obviously hampers journalists’ ability to carry their vital work and propagate a powerful chilling effect affecting the entire society.\footnote{IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2016. \textit{Joint Press Release R110/16 Venezuela / Crisis: UN and Inter-American experts raise alarm at deterioration of media freedom.}}

Journalist Kalinina Ortega was reported missing by her brother, who informed the media that the 76-year-old communicator - who had reportedly retired from her work as a journalist and is currently a book editor - allegedly left her home on October 4, presumably to run errands at the bank and collect her pension. He lost touch/contact with her at that time. As of the closing date of this report, the former \textit{El Nacional} newspaper journalist was still missing.\footnote{El Nacional. October 15, 2016. \textit{Desaparecida la periodista Kalinina Ortega desde principios de este mes}; El Universal. October 15, 2016. \textit{Desapareció periodista a principios de octubre}; La Patilla. October 28, 2016. \textit{¿Dónde está Kalinina?}}

On December 2, in the framework of the 159th Period of Sessions of the IACHR, a hearing was held on the “Situation of the Right to Freedom of Expression and Information in Venezuela”. The participating organizations affirmed that there is a “consensus on the part of international human rights protection bodies in relation to the situation of freedom of expression in Venezuela”. That consensus can be seen, according to what was stated at the hearing, in the following events: i) the issuance by the Inter-American Court of Human Rights of four sentences against the Venezuelan State because of cases of restriction of the exercise of freedom of expression, effects on the personal integrity of journalists, criminalization of public declarations about the armed forces, threats, harassment and indirect restrictions on freedom of the press, events for which the Venezuelan State had been ordered to make reparations involving the removal of undue restrictions on the freedom to seek, receive and disseminate information; modification of the Organic Code of Military Justice to prevent civilians from being tried by military courts, and restitution of the RCTV television concession, among others; ii) the consistent inclusion of Venezuela, since 2002, in chapter IV of the annual reports of the IACHR, with 13 specific references to violations of the right to freedom of expression; iii) the issuance of 39 recommendations in the annual and country reports of the IACHR, as well as in those of the Office of the Special Rapporteur, urging the State to adopt measures to guarantee exercise of the right to freedom of expression; iv) repeated refusals by the State to respond to requests for a visit made by the United Nations Special Rapporteur for the Right to Freedom of Opinion and Expression in 2003 and 2009; v) the statement by the United Nations Human Rights Committee, in the framework of the periodic review of 2015, in terms of implementation and compliance with the International Covenant on Civil and Political Rights, regarding the existence of practices to restrict critical opinions, criminalize opinion, restrict access to information of public interest and; vi) the formulation of 41 recommendations in the framework of the Universal Periodic Review of 2011 and 2016, in which the Venezuelan State is urged, among other things, to align its regulatory framework on freedom of expression with its international obligations; guarantee free access to public information; ensure the cessation of threats and attacks against journalists and investigators and punish acts of harassment, threats and attacks against them and permit genuine expression of dissent.\footnote{IACHR. 159 Period of Sessions. Hearing “Situción del derecho a la libertad de expresión e información en Venezuela”. December 2, 2016. Available at: \url{http://www.oas.org/es/cidh-multimedia/sesiones/159/default.asp}}

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

### D. Social Protests

In 2016, numerous protests, took place, and included the participation of members of different sectors of Venezuelan society. The protests were triggered by a common cause: food shortages, the poor quality or suspension of public services, the various demands of different trade groups, and the request for a recall referendum of President Nicolás Maduro that was put before the National Electoral Council [Consejo Nacional Electoral]. Violent events were recorded during a good number of these protests, and law enforcement reportedly reacted with excessive use of force.\footnote{IACHR. June 9, 2016. Press Release 73/16. IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela: Manifestar.org. June 14, 2016. A cinco meses de la Declaratoria de Estado de Emergencia y a un mes del Estado de Excepción, Balance de la situación del derecho a la protesta pacífica en Venezuela, La Gaceta. June 16, 2016. Heridos y detenidos en saqueos en Venezuela, La Verdad. June 16, 2016. Venezuelanos sobreviven entre el hambre y la violencia.}

At least four people died during events linked to protests over food shortages and looting attempts that took place in different regions of the country.\footnote{IACHR. June 5, 2016. Petenianes. June 5, 2016. La guerra del hambre: 3 muertos y 47 saqueos por comida en 10 días; EFE. June 15, 2016. Las protestas en Venezuela ya dejan 4 muertos mientras el Gobierno intenta diálogo.} On June 5, Jenny Ortiz was shot in the face with pellets, allegedly by a police officer who fired at close range while she tried to flee a looting attempt in the municipality of San Cristóbal.\footnote{IACHR. June 5, 2016. Petenianes. June 5, 2016. La guerra del hambre: 3 muertos y 47 saqueos por comida en 10 días; EFE. June 15, 2016. Las protestas en Venezuela ya dejan 4 muertos mientras el Gobierno intenta diálogo.} On June 9, José Antonio Tovar was shot several times, presumably by officers of the Bolivarian National Guard [Guardia Nacional Bolivariana](GNB) and the Bolivarian National Police [Policia Nacional Bolivariana](PNB), during an operation to subdue a looting attempt in the municipality of Sucre. Tovar was allegedly trapped in the uprising while opening a fast-food stand that he owned.\footnote{IACHR. June 5, 2016. Petenianes. June 5, 2016. La guerra del hambre: 3 muertos y 47 saqueos por comida en 10 días; EFE. June 15, 2016. Las protestas en Venezuela ya dejan 4 muertos mientras el Gobierno intenta diálogo.} Luis Josmer Fuentes Bermúdez was shot on June 10 during a confrontation with inhabitants of the Cerezal community, in the municipality of Cariaco, and members of the GNB, during a protest over food shortages. Although he was taken to the hospital, he died the following day. According to the available information, a GNB sergeant had allegedly been detained as presumed responsible.\footnote{IACHR. June 5, 2016. Petenianes. June 5, 2016. La guerra del hambre: 3 muertos y 47 saqueos por comida en 10 días; EFE. June 15, 2016. Las protestas en Venezuela ya dejan 4 muertos mientras el Gobierno intenta diálogo.} Finally, on June 15,
During looting in the town of Lagunillas, a minor was allegedly hit by a bullet and pellets that were presumably shot by the police. He died as a result of his injuries.

On June 9, the Inter-American Commission and the Office of the Special Rapporteur issued a statement expressing concern over the violent events against protesters and journalists during the protests that occurred in Venezuela over the shortage of basic commodities, subsequently the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur of IACHR also expressed its concern over the attacks against journalists and media outlets that cover the effects of the economic crisis in Venezuela. In these statements, the Venezuelan State was urged to investigate the possible abusive use of force and, where applicable, to prosecute and punish those responsible. It was also called to guarantee and protect the physical integrity and security of demonstrators and journalists during public protests and to adopt all necessary measures to guarantee the rights to life, physical integrity, and security of everyone under its jurisdiction.

By way of an additional example, deputies and members of the opposition were assaulted during protests that were organized regarding the activation of the recall referendum mechanism. On June 9, a group of parliamentarians from the opposition, who were protesting outside the headquarters of the National Electoral Council [Consejo Nacional Electoral] (CNE) in Caracas, were assaulted by a group of alleged supporters of the ruling party. These assaults were reportedly committed in spite of the presence of the police and the National Guard [Guardia Nacional] on-site.

Among other actions aimed at discouraging protests, the National Government adopted several measures against opposition leaders, who were accused of participating directly and indirectly, in the planning and/or implementation of destabilizing actions, or were charged with various types of crimes. These actions included: the imprisonment of Daniel Ceballos, former mayor of the municipality of San Cristóbal, on August 26; Ceballos was under house arrest and his imprisonment was justified on the basis of the existence of an alleged escape plan. The imprisonment of Yon Goicoechea, leader of the Voluntad Popular party, who was arrested on August 29; “detonating cords for explosive devices” were allegedly found in his possession. The arrest of Carlos Melo, leader of the Avanzada Progresista party, on August 30; he was also found to allegedly be in possession of explosive materials. The arrest of Delson Guarate, mayor of the municipality of Mario Briceño Iragorry, on September 2; he was charged for the alleged crimes of violating

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land use plans and the improper disposal of waste and hazardous solid waste.\textsuperscript{1582} He was also charged for the September 5 revelation that he requested the support of the Colombian government for the arrest and extradition from that country of Lester Toledo, a leader of the Voluntad Popular party who was allegedly involved in plans to carry out a coup d’état.\textsuperscript{1583} as well as that of Yorman Barillas, former president of the Federation of University Centers, who is charged with the death of a student in 2015.\textsuperscript{1584}

1079. A strategy to prevent citizens from participating freely in the signature collection process to activate the recall referendum mechanism was also reportedly implemented, and was specifically directed at civil servants who hold positions of trust as well as those who benefit from social programs, who were openly threatened with loss of employment or the benefits they received if they supported the request.\textsuperscript{1585}

1080. Organizations such as Human Rights Watch and Provea documented cases of dismissals of several public officers supporting the revocation of President Maduro. The organizations denounced that the papers via which workers were notified of their termination of employment are identical and do not specify the reasons behind the decision. The Confederation of Venezuelan Workers [Confederación de Trabajadores de Venezuela] (CTV), the National Workers’ Union [Unión Nacional de Trabajadores] (UNT), the Autonomous Trade Union Confederation [Confederación de Sindicatos Autónomos] (CODESA) and the General Confederation of Labor [Central General de Trabajadores], trade unions grouped together in the Union of Trade Union Action (UASG) reportedly filed a complaint with the International Labor Organization against the government of Nicolás Maduro for workplace harassment and violation of Conventions 87, 98 and 111. The groups attached a report documenting hundreds of dismissal cases to the complaint.\textsuperscript{1586}

1081. On May 4, Diosdado Cabello, a legislator and the first deputy chair of the political party Partido Socialista Unido (PSUV), stated on his television show ‘Con el Mazo Dando’ that the recall requests would be reviewed one by one, and that if the signatures of persons who held leadership positions in the public sector were found, they would have to leave [their positions] immediately. The legislator later repeated the warning several times and also called on citizens to report “weaklings,” a term used generically in reference to the opposition, in order to conduct a national operation to identify them and remove them from the public sector.\textsuperscript{1587} On the same day, the PSUV deputy in the National Assembly, Ricardo Molina, stated


\textsuperscript{1583} El Estímulo. September 5, 2016. \textit{SEBIN pide a Colombia captura y extradición de más activistas opositores}; RVN. No date. \textit{Venezuela solicitará a Colombia extradición de opositores vinculados a actos terroristas}.


in an interview that anyone who "does not support the revolutionary government and works in an institution of the revolutionary government is a disgrace."

On May 11, during a march for the governing party, he stated that "anyone who wishes to continue receiving support for any mission must close ranks and unite with President Maduro," and required that civil servants who provided a signature in favor of the recall leave the government. On May 13, the governor of the state of Nueva Esparta, Carlos Mata Figueroa, warned those who support the referendum that once the lists containing the signatures were made public, they should accept the consequences. On August 22, the mayor of the Libertador Municipality in the Capital District, Jorge Rodríguez, acting as the spokesperson for the PSUV, reported that the list of public officials in positions of trust who had signed the recall referendum request had been given to the heads of five ministries of the Executive and that the officials had been given 48 hours to find "another place of employment," because, he said, cannot be people with charges directors or of confidence "in ministries, public institutions, governorships and mayor's offices, [there cannot be] people who are against the revolution."

1082. On October 25, the IACHR and the Office of the Special Rapporteur issued a statement condemning the closing of forums for political participation in Venezuela, which is evidenced by, among other actions, the dismissal of and threats against public employees who speak out in favor of the recall initiative.

1083. On September 19, in response to a letter of request of information sent to the State, reported that there are various constitutional and legal instruments that protect public employees from arbitrary termination. As for media reports on the alleged dismissal of employees of the National Customs and Tax Administration Service [Servicio Nacional Integrado Aduanero y Tributario] (Seniat), the Agency reported that there is a special institutional regulation governing labor relations that establishes a category of employees that may be freely appointed and removed, and it would therefore be necessary to "review the status and the complaint for each alleged victim, either via an administrative or a judicial process, to determine the categorization of the relationship between Seniat and the employee; therefore if persons are included in the category of employees that may be freely appointed and removed, supervisors would be acting in accordance with the Law governing the Institution."

1084. At least nine journalists who work for media outlets based in Qatar, Colombia, France and the United States were not allowed to enter Venezuela to cover the protest organized by the opposition on September 1. According to known information, a team from the Qatari television station Al Jazeera, made up of John Holman, Ricardo López, Teresa Bo, Mariano Rosendi and Lagmi Chávez, as well as César Moreno, who was sent from the Colombian media outlet Caracol Radio; a correspondent for French newspaper Le Monde, Marie Delcas, as well as reporters John Otis y Jim Wyss, who work for U.S. media outlets National Public Radio

1588 Diario Panorama/You Tube. May 4, 2016.  Ricardo Molina: Es indigno no apoyar al gobierno y trabajar en una institución gubernamental [0:28-0:34].


and El Nuevo Herald, were detained by Venezuelan authorities upon their arrival at the Caracas international airport and were then informed that their visit would not be allowed as they did not meet entry requirements for the country, in accordance with the Immigration and Foreign Nationals Law. The journalists reportedly complained that meeting these requirements is based on rules that are difficult to understand and that prevent in the practice to obtain an entry visa.  

1085. On September 7, several members of the regional leadership of the Primero Justicia party were allegedly assaulted after a march held in Ciudad Trujillo as part of the actions organized by the Venezuelan opposition to demand a recall against President Nicolás Maduro. According to the available information, protesters were allegedly assaulted by supporters of the governing party, who intercepted them and beat them with bats and stones. At least four party leaders sustained injuries that required medical attention.  

1086. The authorities also placed several obstacles and/or restrictions on the right of assembly and the right to protest by issuing administrative rules or through the use of jurisdictional measures, which, when implemented, eventually make it impossible to hold a public demonstration. The administrative and jurisdictional measures implemented throughout the year included restricting access to specific urban areas, police operations that materially blocked demonstrations, or requiring previous authorization from the authorities to hold a civic event.  

1087. The organization Human Rights Watch reported that it documented the cases of 21 arrestees between May and June in the Caracas area and in the states of Bolívar, Cojedes and Zulia. According to the organization, most of the arrests occurred after the arrestees had been involved in protests and political activities.  

1088. These events occurred in the context of the declaration of a state of emergency and a state of economic emergency in Venezuela, over which the IACHR has expressed its concern. In that regard, all necessary measures should be taken to guarantee the right to life, physical integrity and security, and the right to assembly and the freedom of expression of everyone under its jurisdiction. This includes the obligation of the authorities, particularly those in charge of law and order and interior security, to take active measures to protect people whose lives and integrity may be at risk due to acts of violence at the hands of other individuals, and to prevent the recurrence of situations that may lead to acts of violence.
The Office of the Special Rapporteur calls to mind that the State has a duty to ensure that journalists and media workers who are covering the news during public demonstrations are not detained, threatened, attacked, or have their rights restricted in any way as a result of exercising their profession. Their materials and equipment must not be destroyed or confiscated by government authorities. The protection of freedom of expression requires authorities to ensure the necessary conditions for journalists to be able to cover noteworthy events of interest to the public, such as those involving public protests.\textsuperscript{1599}

E. Stigmatizing Statements

Throughout the year, the Office of the Special Rapporteur learned of multiple episodes that evince the existence of State practice that stigmatizes the media and journalists with editorial lines that do not match with government interests. This policy is implemented mainly through systematic statements that suggest the alleged existence of an attempted coup d’état, of which some media outlets are allegedly a part. Such statements have been denounced by several civil organizations as well as national and international associations of journalists as a strategy to restrict the right of freedom of expression in the country.\textsuperscript{1600}

According to known information, on January 6, during a national broadcast, President Nicolás Maduro accused the owners of media outlets Televen and Globovision of once again acting as they had in 2002, in reference to the que coup d’état that temporarily unseated Hugo Chávez. During a national broadcast on January 6, Maduro said, in reference to both networks: "...now they're out of control... You see what Televen is like, right? what Globovisión is like... You see Globovisión and Televen and it's April 9, 2002. To the owners of Globovisión and Televen, you will be mistaken and there will be no regretting it later"\textsuperscript{1601} On January 30, he stated that the "private media" wages "a war" against him, although he only mentioned the main television networks by name.\textsuperscript{1602} On April 11, the President again referred to Globovisión, calling them "those crooks."\textsuperscript{1603} The President’s statements were made after he reported the existence of an alleged plan to conduct a “military intervention” on May 17 and 28, which he alleged was being plotted in Madrid with the goal of overthrowing him.\textsuperscript{1604} On October 8, during a national broadcast, Nicolás Maduro ordered that the Minister of Oil (ministro de Petróleo), Eulogio del Pino, file a complaint against a newspaper “being run in Miami” for allegedly publishing false information about the state-owned company Petróleos de Venezuela S.A. (PDVSA). Although President Maduro did not mention the newspaper by name, the editor of El Nuevo País, Rafael Poleo, posted on Twitter that the President’s message was intended for his newspaper and that his reaction was caused by a story, produced by the Bloomberg Corporation, entitled “Venezuela IsPawnimg Pieces of Citgo Brand to Survive.” The article explained how Maduro’s Government is using the U.S. subsidiary as “a lifeline” to avoid the default of outstanding payments against other foreign companies.\textsuperscript{1605}

\textsuperscript{1599} IACHR. June 9, 2016. Press Release 73/16, IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela.


\textsuperscript{1602} Globovisión. January 30, 2016. Maduro a Globovisión, Venezvisión y Televen: Sigan la guerra contra mi pero vamos a producir [Video].

\textsuperscript{1603} Globovisión. February 11, 2016. Maduro arremete contra Globovisión [Video].

\textsuperscript{1604} 20 minutos/AP. May 17, 2016. Maduro denuncia campaña para justificar intervención militar; ABC/EFE. May 28, 2016. Maduro insiste en que desde Madrid se hace campaña para invadir Venezuela.

On March 16, during the broadcast of his television show ‘Con el mazo dando’ ['Hammering Away'], PSUV legislator and first deputy chair Diosdado Cabello stated that “the owners of media outlets Televen, Globovisión, Venezolán, are involved in a coup d'etat again... I say this responsibly... in 2002, we defeated you; now, we shall defeat you again. The only difference will be the treatment you will get. That will be the only difference.” According with the public information on August 30, during a public demonstration in Caracas, the parliamentarian repeated these sentiments, saying, “...I’m telling you, weaklings, and among those weaklings I include media owners, we are going to win... but do not even think you will be treated the way you were treated in 2002. Do not deign to think that Anyone who is actively involved in the coup d'état, whatever your name may be; whether or not you have money; whether or not you are a man of the cloth, you will go to jail and pay for the crimes you are committing. The people are no fools. The government is no fool.”

The public accusations regarding the alleged plan to execute a “coup d'état” in Venezuela have also been leveled against the opposition leaders who are spearheading a recall referendum. Before and after the protest on September 1, which the opposition called the “taking of Caracas,” various public figures insisted that “the right” seek, with the support of foreign governments, to overthrow the Government. During an event in state of Monagas on August 18, President Nicolás Maduro said to the public: “Did you see what happened in Turkey? Erdogan (Tayyip Erdogan, president of Turkey) shall be but a babe in arms compared to what the Bolivarian Revolution shall do if the right crosses the line towards a coup d'état again. And I’m not just saying that, I’m prepared to do it! And I couldn’t care less what the OAS says, or what American imperialism says... Do it if you dare! Do it if you dare, for the working class and a united people are here!”

On August 31, PSUV leader Freddy Bernal was interviewed on the ‘Vladimir a la 1’ television show and said that he found similarities between the preparations for the “taking of Caracas” march and the events of April 11, 2002, when former president Hugo Chávez was temporarily unseated by a coup d'état. Bernal said that although he could not prove his statements in court, they had “intelligence information (regarding) individuals who went to Colombia from Panama and then crossed the border into Venezuela. Some of them posed as journalists from the New York Times or the BBC and had allegedly been in Venezuela for approximately two weeks... in order to execute what they call selective removals.” He also stated that the opposition was allegedly combining three strategies with the goal of, on September 1, “even the murder of President Nicolás himself, like what happened with President Salvador Allende.”

On April 5, Vice Admiral Edgls Herrera Balza, commander of the Overall Defense Operational Area [Zona Operativa de Defensa Integral] (ZODI) in the state of Falcón, publicly singled out journalist Gerardo Morón during a press conference at the Punto Fijo Naval Base. He accused him of manipulating the numbers for homicides in the state of Falcón and stated that publishing these figures was done with the political intention of spreading anxiety and unease among the people of Falcón.

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1096. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State’s job to help create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.1612

1097. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."1613

1098. Public servants, like all people, are entitled to the right to freedom of expression in its many forms. Nevertheless, in their case, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized in the Inter-American case law, particularly with respect to: (a) the special duties they acquire by virtue of their status as state officials; (b) the duty of confidentiality that may apply to certain types of information held by the State; (c) the right and duty of public officials to denounce human rights violations; and (d) the particular situation of members of the Armed Forces.1614

1099. With regard to the impact of the statements of public servants on the rights of others, the Inter-American Court has held that, under certain circumstances—even if the official speech does not expressly authorize, instigate, order, instruct, or promote acts of violence against specific citizens—its reiteration and content can increase the “relative vulnerability” of those groups and the risks they face.1615

F. Subsequent Responsibility

1100. On March 11, the Sixth Criminal Trial Court of the state of Bolívar [Tribunal Penal Sexto de Juicio del estado Bolívar] issued a guilty verdict against the director of Correo del Caroní, David Natera Febres by a complaint filed in 2013 by the offences of defamation and insult. The director was sentenced to four years in prison and a fine of 1,037 tax units (approximately US$20 thousand) was imposed. The court also barred him from leaving the country and ordered him to appear in court every 30 days until the sentence is finalized and can be served. The judge also ordered that the transfer and encumbrance of the newspaper’s rights would be prohibited, and barred Correo del Caroní from continuing to report information about the plaintiff’s corruption case related with the complainant1616 businessman Yamal Mustafa.1617

On March 14, the Office of the Special Rapporteur issued a statement expressing its concern over this decision and recalled that Inter-American case law has repeatedly recognized that freedom of expression grants—to both the directors of media outlets and the journalists that work for them—the right to investigate and disseminate information in the public interest. The statement highlighted that in a democratic society, the press has the right to report freely on the government’s activities and matters of public interest, and the public has the correlative right to be informed of such matters and that based on the American Convention on Human Rights, the IACHR established more than a decade ago that using criminal law to penalize expressions about matters of public interest and public servants is disproportionate in a democratic society and therefore violates the right to freedom of expression.1618

On August 12, the Court of Appeals of the Venezuelan Supreme Court of justice [Corte de Apelaciones del Tribunal Supremo de Justicia] (TSJ) upheld the nearly 14-year prison sentence imposed on opposition leader Leopoldo López, who was charged with the crimes of public incitement, criminal association, property damage and arson, in connection with the incidents that occurred in Caracas on February 12, 2014, after an anti-government protest that left over 40 people dead. A court issued the sentence in September, 2015, and three young men were sentenced along with López. The sentences of two of them, Ángel González and Christian Holdack, were also upheld, while the sentence of the third, Demián Martín, was reduced by a year. The latter three are serving their imposed sentences on probation. Only Leopoldo López remains in prison.1619 On October 5, during the broadcast of his program ‘Con el Mazo Dando’ deputy Diosdado Cabello stated that “Leopoldo López must remain in prison. Now he must pay for the 43 dead,” as the prosecutor on the case reportedly decided against including homicide among the charges filed, but now “the victims’ families have filed, or are about to file, a complaint before the court so that murderer is charged with homicide for the 43 deaths he caused.”1620

On September 3, journalist and director of the digital outlet Reporte Confidencial Braulio Jatar was arrested and later charged with money laundering. Jatar was arrested the day after President Nicolás Maduro’s visit to the municipality of Villa Rosa, on Margarita Island, during which a protest (cacerolazo) that reportedly had the President directly confronting several of the protesters was held. According to known information, as a result of the protest, approximately 30 people were arrested and later released. Videos documenting the protest were posted on Jatar’s website, and according to his family and friends, this was the real reason legal proceedings were initiated against him. They also reported several procedural irregularities, such as his being held incommunicado and transferred from prison twice with no notice given to his family and attorneys. As of the writing of this report the journalist, who is also a Chilean national, was still under arrest.1621 On December 22 the IACHR granted precautionary measures for the journalist.1622


On September 19, the Primero Justicia (Justice First) Party reported the arrests of Marco Trejo, César Cuellar and James Mathison, who were allegedly arrested for creating a promotional video in which the party called on law enforcement not to suppress the demonstrations being held to request the calling of a recall referendum. According to known information, the video was first broadcast on Thursday, September 15. A fourth person involved in the production, Andrés Eloy Moreno Febres-Cordero, was reportedly arrested on the 22nd, when he voluntarily appeared to testify after agents from the Bolivarian National Intelligence Service [Servicio Bolivariano de Inteligencia] (SEBIN) went to his home with an alleged arrest warrant. According to information provided by Febres-Cordero's family, the charges filed against the makers of the video are: offense against the National Armed Forces [fuerza armada nacional], against military duties and honor, impersonating a public officer, improper use of military medals, emblems and ranks, and offenses against military administration. Another story, broadcast by the Control Ciudadano civil association, states that the alleged crime charged is inciting a rebellion, for which the Office of the Prosecutor is demanding a 15-year prison sentence. The criminal case against the arrestees would reportedly be heard in a military court, which has been condemned by various organizations as a violation of the arrestees' rights and of the principles of procedural law.\textsuperscript{1623}

The Office of the Special Rapporteur has highlighted, in recent years and in various ways, the systematic use of criminal law to punish, repress and hinder any expression that is critical of the actions of state authorities or regarding issues of public interest. The Office of the Special Rapporteur, expresses its serious concern because, as of the writing of this report, the editor-in-chief of El Nacional, Miguel Henrique Otero, as well as the Director of the La Patilla website, Alberto Federico Ravell, are out of the country due to the fact that they run the risk of being arrested and imprisoned should they come back to Venezuela, as there open judicial proceedings against them.\textsuperscript{1624}

Principle 10 of the IACHR Declaration of Principles on Freedom of Expression establishes that "[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, 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."  

G. Legal Reforms

On September 29, the National Assembly sanctioned the partial reform of the Telecommunications Law, which was put forth the previous February by the Primero Justicia party caucus.


The first draft of the bill was approved in April, and the second draft on September 20. The reform includes rules geared towards eliminating the uncertainty currently faced by numerous radio and television stations with expired concessions that, despite having taken the required actions, have not received a decision from the National Telecommunications Commission [Comisión Nacional de Telecomunicaciones] (Conatel). The approved plan, by contrast, proposes a restructuring of the organization and the functioning of the Conatel, turning it into an organization operated by a governing body made up of five members, who would be appointed by the President but would require the confirmation of the National Assembly. The law also sets forth new rules for broadcasting speeches and official messages from the authorities and specifically bans the use of these forums “for the purposes of partisan politics, proselytizing and propaganda,” and exempts the government from free publicity.1625

1108. In spite of the positive changes this reform brings to telecommunications laws, a source of concern for the Office of the Special Rapporteur is that in the area of concessions for operating community radio and television stations that provide a public service, no rules are included to guarantee communities the right to equal access to the radio spectrum. Furthermore, as regards power and geographic coverage, the reform appears to suggest that these types of concessions would have a limited range. If this were the case, it would violate the right of communities and towns to have media outlets that serve their specific interests effectively. Even when, according to available information, there is a large number of stations that operate irregularly, the formula set forth by the legislative reform to standardize the use of the radio spectrum would not seem to take into consideration the need for a transition period during which, in addition to identifying signals that operate irregularly, feasibility would be assessed regarding the standardization of signals that, based on current laws, play an important social role for communities. In this regard, the reform has been rejected by various social organizations and called “privatization.”1626

1109. On November 4, the Constitutional Chamber of the Venezuelan Supreme Court of Justice [Sala Constitucional del Tribunal Supremo de Justicia de Venezuela] unofficially declared “null and void the legislative measure that sanctioned the Law of Partial Reform of the Telecommunications Law [Ley de Reforma Parcial de la Ley de Telecomunicaciones] and its contents, as it was issued in clear contempt of legal decisions issued by this, the Highest Court of the Republic [Máximo Tribunal de la República].”1627 The decision of the Supreme Court of Justice is based, inter alia, on a decision issued by the Court on September 2, in which it declared that “all acts emanating from the National Assembly, including laws that are approved, are completely null and void of any validity and legal effect.” This decision, in turn, was issued on the basis that on December 30, 2015, the Electoral Court of the Supreme Court of Justice [Sala Electoral del Tribunal Supremo de Justicia] declared the suspension of office of three opposition legislators from the state of Amazonas, in spite of which the parliamentary majority decided to accept their oaths and allow them to take office.1628

1110. On October 20, the National Assembly approved the first draft of the bill for Partial Reform of the Law on Social Responsibility in Radio, Television and Electronic Media [Reforma Parcial de la Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos] (known as the “Resorte Law”), put forward by the parties that make up the Democratic Unity Roundtable [Mesa de la Unidad Democrática] (MUD). The


bill, which involves broad reform, especially in the structure of the law, provides for, among other things, the creation of a single administrative regulatory authority for audiovisual services called the Superior Council for the Social Responsibility of Audiovisual Communications [Consejo Superior de Responsabilidad Social de los Servicios de Comunicaciones Audiovisuales], modifications to penalties and the procedures for imposing them while including constitutional rights, and also promotes the self-regulation of service providers through the creation of a user protection office [“Defensor del Usuario”].

1111. Along with the important advances set forth in the proposal for legislative reform, the Office of the Special Rapporteur is concerned that in the case of public service community radio and television service providers, restrictive rules may be implemented, such as the requirement that 100 per cent of the advertisements broadcast by these providers be produced domestically, or prohibiting that advertisements from the original broadcast be used during a simultaneous rebroadcast. The express prohibition against broadcasting messages "meant to persuade users to become adherents or followers of... philosophical, moral, or social ideas" is also a reason for concern, as is prohibiting those who provide this service from performing co-productions for a single municipality, and that these exclusively refer to the “the broadcasting of sports or cultural events,” or that their objective is to create programs “for children, ethnic or disabled audiences.”

H. Prior Censorship, Direct and Indirect Censorship

1112. During the parliamentary elections held on December 6, 2015, the Venezuelan government established special entry requirements for journalists from foreign media outlets. These requirements allegedly aimed to restrict election coverage, as reported by national and international civil organizations. The measures allegedly included the required signing of a "commitment letter" drafted by the ministry of the People's Power for Communication and Information (MINCI). Upon signing, journalists committed to abide by current Venezuelan laws and "not to manipulate images, audio or text in order to change the meaning, source or ideas," as well as to “broadcast accurate, timely information to users [...] and to always respect the democratic and peace process.” Special requirements were reportedly also imposed on the equipment brought in by television media outlets. Television representatives were required to present a temporary declaration and an entry permit that those in charge of paperwork at Venezuelan diplomatic posts in their countries of origin were not made aware of before their trip.

1113. On March 10, National Assembly deputy Winston Flores reported the alleged existence of an internal memo, issued by the Head of Production for the Unión Radio radio group. According to the memo, "as per instructions from the Office of the Vice President of the Republic, conducting and broadcasting interviews of family members of the miners who disappeared in the Tumeremo massacre in the state of Bolívar was prohibited "until further notice."

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1632 Efecto cocuyo. December 3, 2015. SNTP denuncia acciones de censura en contra de medios internacionales; Knight Center for Journalism in the Americas. December 4, 2015. Venezuelan Elections: journalists face challenges such as censorship and lack of access to information.

1633 "Queda demostrado que este régimen le hace culto a la mentira y a toda costa evita la libertad de expresión GRAVE". Twitter account of Winston Flores @wfloresVente. March 10, 2016; Mundo24. March 11, 2016. ¿A qué le temen? Aristóbulo prohíbe entrevistar a familiares de las víctimas de Tumeremo.
1114. On April 12, the National Press Workers’ Union reported the dismissal of journalist Ahiana Figueroa, who had worked for the Grupo Últimas Noticias (GUN) (Breaking News Group) for the previous six years. According to the memo released by the organization, her dismissal was a result of her participation in the investigation known as the “Panama Papers”, a leak of more than 11.5 million internal documents from the Panamanian law firm Mossack Fonseca. More than 370 journalists from 76 different countries have worked on and supported the investigation, about which Figueroa published an article entitled “Gonzalo Tirado: a Plan to Hide the Money He Earned as a Banker,” in which she sets forth in detail the former banker’s alleged involvement in irregular financial activities.

1115. On May 12, the Board of Directors of the International Broadcasting Association [Consejo Directivo de la Asociación Internacional de Radiodifusión] issued a resolution in which it expressed concern over the climate of “constant threats and verbal, physical and moral assault, and countless proceedings of all types (administrative, civil, criminal and judicial) against journalists, editors and media outlets” which, in its view, are evidence of a “systematic pattern of direct and indirect violations of freedom of expression.” Specifically, it demanded that the Venezuelan government “stop the closing of independent media outlets,” allow all print media to access newsprint, and abide by the ruling of Inter-American Court of Human Rights, dated June 22, in which the State was ordered to renew the concession for the radio spectrum used by Radio Caracas Televisión, as well as to pay compensation to the victims.

1116. On June 8, the Constitutional Chamber of the Supreme Court of Justice [Tribunal Supremo de Justicia] banned Venezuelan media outlets, specifically the websites La Patilla and Caraota Digital, [...] the broadcasting of videos that contained images of private individuals lynching alleged criminals, stating that “the repeated broadcast of lynching videos could aggrandize these events, which go against the very essence of social coexistence through State institutions, promoting anomie, a disregard for the law and human rights, as it conceives of citizens’ taking justice into their own hands, with no regard for the victim’s innocence or guilt or for the right to due process, life, and physical integrity, as lawful.” This was the Court’s justification for issuing a preventive measure with a view to promoting a democratic balance, peace, the pre-eminence of human rights and the rule of law. One of the videos that the Supreme Court ordered be removed from the websites contains images that show the lynching of an individual who was previously arrested by officers of the Bolivarian National Guard [Guardia Nacional Bolivariana], who tolerate the assault. This is the reason the video was published.

1117. The United Nations Special Rapporteur on the right to freedom of opinion and expression, David Kaye, and the Office of the Special Rapporteur issued a joint press release on August 4, in which they expressed concern regarding court decisions that limit the ability of the media to work independently. They stated that the decision issued by the Venezuelan Supreme Court in this case “establishes a disproportional and unreasonable restriction, contradicting Inter-American and global standards for the right to freedom of expression,” as “the exercise of the right to freedom of expression cannot be subject to prior censorship.”


1637 CNN. June 9, 2016. TSI condena linchamientos por contrariar la convivencia social, la condición humana y el Estado de Derecho; La Patilla. June 8, 2016. TSI prohíbe a LaPatilla, a Caraota Digital y a todos los medios de comunicación publicar videos de linchamientos.


On June 28, the Third Civil, Commercial, and Banking Court of First Instance [Juzgado Tercero de Primera Instancia en lo Civil, Mercantil y Bancario] in the jurisdiction of the state of Carabobo reportedly ordered preventive measures for the former Minister of Food, Major General of the Venezuelan Army Carlos Osorio Zambrano, which consisted of ordering that legislators Ismael García and Carlos Berriozábal, as well as political leader Carlos Tablante, refrain from publishing, making statements or spread articles in the press that are defamatory or injuring specifically via the website Cuentas Claras Digital, a site that specializes in information on organized crime and is run by the latter individual charged by military command.1640

On August 23, the National Association of Journalists [Colegio Nacional de Periodistas] reported the decision of the Second Court of First Instance of the Civil, Commercial and Transit Circuit in the state of Barinas [Tribunal Segundo de Primera Instancia del Circuito Judicial Civil, Mercantil y Tránsito del estado Barinas] to prohibit newspapers Diario de Los Llanos, La Prensa and La Noticia from publishing “information about or statements from politicians, leaders, and ordinary citizens that claim that Governor (Adán) Chávez has committed offenses, if these have not been brought before a judicial entity.” According to known information, the judicial proceedings initiated against the state leader stemmed from articles published in these three media outlets, regarding an investigation initiated by the National Assembly Oversight Committee [Comisión de Contraloría de la Asamblea Nacional] for alleged irregularities in the execution of works in the area under his governance.1641

I. Newsprint Shortage

Due to the existence of a State monopoly for the acquisition of currency and importing newsprint, represented by the Alfredo Maneiro Publishing Complex [Complejo Editorial Alfredo Maneiro], print media outlets, particularly those with an editorial line that is not aligned with the interests of the Government of the Republic, have experienced increasing difficulty in keeping up circulation, and several have been forced to suspend circulation completely. According to information received, even the National Assembly Standing Committee on the People’s Power and the Media [Comisión Permanente del Poder Popular y Medios de Comunicación de la Asamblea Nacional] has attempted to influence the reshaping of policies under which the Publishing Complex [Complejo Editorial] operates, but the General Director of the complex has refused to comply with the request issued by the Committee for his appearance.1642

On January 27, the 86 journalists that make up the Chamber of Regional Newspapers [Cámara de Periódicos Regionales] declared a state of emergency after the Alfredo Maneiro Corporation informed directors that there were no longer any printing plates or newsprint needed for printing. The president of the Chamber, Joselin Ramírez, reported that the state-owned agency’s inputs reduced the amount of newsprint allocated by 40 per cent, meaning that all daily newspapers had to make adjustments to format and pagination to guarantee circulation.1643

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Early in the year, the newspaper La Nación de San Cristóbal, in the state of Táchira, reduced its circulation to a single edition due to the paper shortage media outlets have experienced since 2013. Initially, the newspaper had reduced publication from four editions to two, and after this directive it stated that it would apply this measure “as many times as necessary” to maintain circulation and keep its readers informed.1644

The La Mañana daily newspaper in the state of Falcón announced on February 29 that it would have to close temporarily due to a lack of paper.1645

On March 9, the newspaper Panorama, in the state of Zulia, stated that “due to the difficult current economic situation in the country, as of this date, the publishing company is forced to close its offices in Ciudad Ojeda and Cabimas, in Costa Oriental del Lago.” It said in a statement that “sharp inflation, a shortage of supplies and difficulty in accessing currency to guarantee a supply of newsprint, ink, replacement parts and other materials that are vital to media operations have forced this closing after more than five decades of uninterrupted activity.”1646

The Carabobeño newspaper ceased printed circulation on March 17, after a search for newsprint needed for circulation. 82 years after its founding, the newspaper bade its readers farewell on a completely black front page, condemning what it called a “huge blow to freedom.” The publisher stated that the newspaper “will no longer be found in households in printed form, unless there is a change in leadership in Venezuela.”1647

On March 31, Expresión Libre, the National Association of Journalists (CNP-DF), the National Press Workers’ Union [Sindicato Nacional de Trabajadores de la Prensa] (SNTP), civil society representatives from the state of Carabobo and Espacio Público filed a complaint before the Constitutional Chamber of the Supreme Court of Justice [Sala Constitucional del Tribunal Supremo de Justicia] against Hugo Cabezas, in his capacity as president of the Alfredo Maneiro Publishing Complex, for the discriminatory allocation of newsprint, which led El Carabobeño to shut down its printed edition.1648

On March 30 in Caracas, journalists, photographers, and camera operators, along with labor leaders from the National Association of Journalists (CNP-DF), the National Press Workers’ Union (SNTP), the Venezuelan Circle of Graphic Reporters de Venezuela [Círculo de Reporteros Gráficos de Venezuela] (CRGV), and the organizations Expresión Libre and Espacio Público protested “the critical situation the printed media in Venezuela face due to a lack of newsprint.”1649

On March 30, the president of the newspaper El Impulso, Carlos Carmona, stated that the newspaper had three weeks’ worth of newsprint left and that it was currently “in the midst of the uncertainty sustained thus far by the Maneiro Corporation regarding the supply of newsprint and raw materials for the
printed media,” a situation that put the jobs of 270 newspaper workers at risk. On September 9, he confirmed that circulation would cease on the 12th due to a lack of newsprint.

1129. Article 13.3 of the American Convention on Human Rights establishes that “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.”

J. Access to Public Information

1130. On April 5, the National Assembly approved the first draft of the bill on Transparency, Disclosure and Access to Public Information [Proyecto de Ley Orgánica de Transparencia, Divulgación y Acceso a la Información Pública], which aims to guarantee the exercise of the right to access public information that is enshrined in the Constitution of the Bolivarian Republic of Venezuela [Constitución de la República Bolivariana de Venezuela]. The bill, introduced by the parties that make up the Democratic Unity Roundtable [Mesa de la Unidad Democrática] was drafted fundamentally in accordance with the State of Venezuela’s international obligations and Inter-American standards in that regard. It includes, among its guiding principles, the principle of maximum disclosure and establishes a limited number of exceptions to that right. It considers all public entities, political parties and state-owned enterprises to be bound by the law, provides for the creation of a Transparency Council [Consejo de la Transparencia] to guarantee this right, and suggests the repeal of current laws that contradict the State’s international obligations. On June 20, the Office of the Special Rapporteur sent the National Assembly a technical note comprised of eight recommendations that, should they be included in the language, would improve its adherence to Inter-American standards on the subject.

1131. The Political and Administrative Chamber [Sala Político-Administrativa] of the Supreme Court of Justice (TSJ) ruled that a complaint filed by the organization Espacio Público against the minister of the People’s Power for Penitentiary Services [ministra del Poder Popular para los Servicios Penitenciarios], Iris Varela, was inadmissible. With the complaint, the organization aimed to assert its right to access public information, a right that Varela was allegedly blocking by refusing to respond to a request sent to her office on January 26, 2015 and confirmed on March 25 of that year. In the request, Espacio Público required statistics on the number of deaths and the health of inmates in the correctional facilities managed by the Ministry. In a decision issued on February 10, the Court reaffirmed the approach taken by the Constitutional Chamber [Sala Constitucional] of the Venezuelan Supreme Court in June of 2010, according to which, “even when the language of the Constitution recognizes a citizen’s right to information, it places external limits on the exercise of that right, with the understanding that no rights are absolute.” In article 143, the Constitution itself establishes that the specific rules for the exercise of that right must be set forth in the law that regulates the subject. In the opinion of the Supreme Court, “in the absence of a specific law, and in order to safeguard the limits on the exercise of the fundamental right to information, the following is necessary: i) the person requesting information must specifically state the reasons or purposes for which the information is required;
and ii) the magnitude of the information requested must be proportional to how the requested information will be used.”

By virtue of the precedent established in the preceding paragraph, the Political and Administrative Chamber found the complaint inadmissible, as in its opinion, although the requesting organization established that it was requesting the information for the purpose of “social oversight” and that the information would be used for the writing of reports “regarding the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,” the request did not comply with the latter requirement, that “the magnitude of the information requested must be proportional to how the requested information will be used.”

Principle 4 of the IACHR’s Declaration of Principles states 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.”

The Model Inter-American Law on Access to Information, adopted by the OAS General Assembly, establishes that the right to access to information includes the right “to make an anonymous request for information” and to “make a request without providing justifications for why the information is requested.” The Law also establishes that everyone tasked with interpreting this Law, or any other legislation or regulatory instrument that may affect the right to information, must adopt any reasonable interpretation of the provision that best gives effect to the right to information.

K. Internet and Freedom of Expression

In May, the organization Instituto Prensa y Sociedad (IPYS Venezuela) reported the results of a study entitled, “Surfing Freely: an Outlook for the Internet in Venezuela.” According to this study, which was conducted between November 25, 2015 and February 14, 2016, 43 websites were found to be systematically blocked by one or more of the country’s main internet service providers. Nearly 19 per cent of the blocked websites were media sites, most notably the Colombia-based news site NTN24, which was reportedly blocked by all internet service providers. According to IPYS Venezuela’s analysis, “the criteria for blocking websites appear to match politics of a specific nature in Venezuela,” as 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]), such as websites that post information about the parallel dollar market, the next two largest categories blocked are media websites and blogs critical of chavismo. The study also found there was a decrease in bandwidth during times when opposition groups held public protests.

The State has informed that the number of Internet users in Venezuela has increased from 300 thousand in 1998 to 17 million users by 2016, covering 65 per cent of Venezuelans. A significant number of these people access through low cost or free-access landlines. It stated that Venezuela has created 5 thousand points of wireless (WIFI) free access internet and more than a thousand landline centers.

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Meanwhile, at the public hearing on freedom of expression in Venezuela held during the 159 Period of Sessions, civil society representatives acknowledged that Venezuela has a very high Internet penetration. However, they expressed concern about download speed (1.5 Megabytes per second), difficulty to access the service, increase in rates, as well as Conatel's [Comisión Nacional de Telecomunicaciones] constant announcements on Internet regulation.  

L. Diversity and Pluralism

The National Communications Commission [Comisión Nacional de Telecomunicaciones] (Conatel) inspected the offices of the channel Globovisión on February 1. On his television show Vladimir a la 1, journalist Vladimir Villegas stated the following about the event: “We all know that Globovisión’s concession expired in March of last year (...). What is the goal? To shut down the channel? To keep the channel mired in uncertainty? To hang the sword of Damocles over the channel? We know our concession has expired, and in spite of that, we have continued to do our jobs. It did not expire due to the channel’s lack of responsibility, but rather because all necessary procedures were followed a year ago and we have not yet received a response.”

Conatel responded to Villegas’s statement that very day with a statement of its own in which it rejected “the opinions and judgments expressed by Vladimir Villegas on ‘Vladimir a la 1’, in which he accuses the Venezuelan State of using a routine inspection as a form of intimidation against the channel and an attack on the freedom of expression, as these opinions are false and uninformed.”

On February 8, by virtue of article 18 of the Statute of the Inter-American Commission on Human Rights, the Office of the Special Rapporteur sent a letter to the State of Venezuela requesting information regarding actions of the Venezuelan Executive Branch, the goal or result of which was allegedly to unlawfully restrict or prevent the operations of television news channel Globovisión. According to available information, these actions were allegedly taken after the President of the Republic, Nicolás Maduro, spoke out publicly against the channel against a backdrop of extreme precariousness in the country as related to radio concessions.

On April 21, the National Association of Journalists, together with the National Press Workers’ Union [Sindicato Nacional de Trabajadores de la Prensa], organizations Espacio Público and Expresión Libre, and groups of university students delivered a letter to Conatel in which they demanded that the agency streamline the procedures for the granting and renewal of radio and television concessions in the country. The signatories expressed concern over the fact that there is no plurality or diversity in the granting of radio concessions, as these procedures are not governed by clear criteria but rather political ones, and it remains the case that the concessions of nearly 200 media outlets have expired. Many of these outlets have provided the required documentation and are in a state of limbo nonetheless, which drives them to self-censorship to avoid the loss of their license.

The assignation of radio and television licenses must be guided by democratic criteria and procedures that are pre-established, public and transparent. The criteria and procedures must serve as a

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1661 Comisión Nacional de Telecomunicaciones (Conatel). February 1, 2016. Conatel sobre el caso de inspección a Globovisión.


1663 Espacio Público. April 21, 2016. Exigen a Conatel respuesta inmediata sobre concesiones de frecuencias radioeléctricas; Notiminito. April 21, 2016. CNP exige a Conatel rapidez en concesiones para radio y televisión; Colegio Nacional de Periodistas (CNP). April 21, 2016. Exigen a Conatel respuesta inmediata sobre concesiones de frecuencias radioeléctricas.
check on possible State arbitrariness and guarantee equal opportunities for all individuals and sectors who wish to take part. In this regard, the Inter-American Commission’s Declaration of Principles on Freedom of Expression emphasizes that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

1142. To promote equal opportunity access to the media, affirmative measures should be provided for so that the three sectors of broadcasting can access licenses under equitable conditions; they must include democratic standards and transparent procedures for assigning licenses, and must establish conditions for use of the concessions that are reasonable and non-discriminatory.

M. Other Relevant Situations

1143. On December 8, 2015, during the broadcast of the ‘Contacto con Maduro’ show, the former President of the National Assembly, Diosdado Cabello, announced that the radio and television concessions through which National Assembly information is broadcast, AN Radio and AN Televisión (ANTV), would be turned over to the workers of these outlets to avoid so as to prevent their dismissal, as opposition leaders had allegedly suggested after the elections held the previous 6th of December. On December 10, the proposal was reportedly approved by the National Assembly, which also authorized that the facilities and equipment of both outlets be turned over to their employees. According to the available information, the handover of the concessions had not been formalized, however, most workers were fired and the facilities were dismantled several hours before the opening ceremonies for the new composition of the Assembly, on January 5, 2016. Former ANTV employees have previously demanded on several occasions that their legal status be defined, while the current National Assembly Board has initiated legal action to recover the concession.1664

I. INTRODUCTION

1138. The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) conducted an official visit to Chile to evaluate the situation of the right to freedom of expression in the country, from May 31 to June 4, 2016. The Special Rapporteur’s visit took place just prior to the opening of the IACHR’s 158 Extraordinary Session, held from June 7-9, 2016.

1139. During the visit, the Special Rapporteur visited the cities of Santiago and Temuco, where he met with senior officials of the executive, legislative, and judicial branches of government, as well as with the National Human Rights Institute [Instituto Nacional de Derechos Humanos], the Council for Transparency [Consejo para la Transparencia], and the National Television Council [Consejo Nacional de Televisión].

1140. The Special Rapporteur also held meetings with journalists, representatives of media outlets and civil society organizations, academics, students, and leaders of indigenous peoples. He met with the Regional Office for South America of the United Nations Office of the High Commissioner for Human Rights and the country office of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in Chile. In addition, during the IACHR’s 158 Extraordinary Session, the Special Rapporteur participated with the IACHR delegation in meetings with senior government officials, including President Michelle Bachelet.

1141. Upon the conclusion of the official visit, the Office of the Special Rapporteur presented preliminary observations regarding the country’s progress vis-à-vis its international obligations in the area of freedom of expression and the challenges the country faces in this regard. On October 17, 2016, upon the request of this office, the State submitted additional information regarding issues that were revealed during the visit and in the preliminary observations.

1142. The Office of the Special Rapporteur is grateful to the State for its invitation and the openness shown prior to and during the entirety of the visit. Thanks to the efforts of the Chilean State, the Office of the Special Rapporteur was able to receive valuable information from public servants at the highest level regarding the situation of the right to freedom of expression and the measures taken to respect and guarantee this right, as well as the existing problems and challenges faced in this area. These measures from the State demonstrate its commitment and willingness to cooperate with the Inter-American Human Rights System and with this Office of the Special Rapporteur to strengthen its actions in order to protect and guarantee the right to freedom of expression in the country.

1143. The Office of the Special Rapporteur is also grateful to the journalists, representatives of the media and civil society, academics, and Mapuche activists and leaders, who made extraordinary efforts and mobilized to share important information and testimony with this office. The Office of the Special Rapporteur appreciates the information provided by the civil society organizations that work on issues involving freedom of expression and access to information at the meetings that the IACHR held during its 158 Extraordinary Session. At those meetings, the Office of the Special Rapporteur was able to appreciate the active leadership role of Chilean civil society in the defense and promotion of the right to freedom of expression.

II. THE SITUATION OF THE RIGHT TO FREEDOM OF EXPRESSION IN CHILE

1144. The right to freedom of thought and expression, in accordance with the protection enshrined in article 13 of the American Convention on Human Rights ("American Convention"), includes the right of people to express their own thoughts, as well as the right to seek, receive, and impart information and ideas.

of all kinds. This right is of crucial importance for the personal autonomy of individuals, for the exercise of autonomy and other fundamental rights.\textsuperscript{1666}

1145. The right to freedom of expression is also a key component upon which the existence of democratic society is based, due to its indispensable structural link to democracy.\textsuperscript{1667} The very purpose of article 13 of the American Convention is to strengthen the operation of deliberative and pluralistic democratic systems through the protection and promotion of the free circulation of information, ideas and expressions of all kinds.\textsuperscript{1668} In this regard, the Inter-American Court of Human Rights (“Inter-American Court”) has affirmed that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, 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.\textsuperscript{1669}

1146. Indeed, inter-American case law has been consistent in reaffirming that, as the cornerstone of a democratic society, freedom of expression is an essential condition for society to be sufficiently informed; that the greatest amount possible of information is required for the general welfare and that the full exercise of freedom of information is precisely what guarantees this maximum circulation; and that the free circulation of ideas and news is inconceivable without a plurality of sources of information and respect for the communications media.\textsuperscript{1670}

1147. Thirteen years after the first official visit of the Office of the Special Rapporteur to Chile, notable progress has been made in the area of guaranteeing the right to freedom of expression. Chile is a part of a group of countries in the region that pride themselves on having a robust, uninhibited public debate. After the restoration of democracy, the country has gradually adopted measures to build a legal framework and public institutions that are respectful of international principles and standards in the area of freedom of expression and access to public information.

1148. In the context of Inter-American Court of Human Rights judgments, Chile has adopted a series of legislative and constitutional reforms to provide greater guarantees for freedom of expression, including the repeal of cinematographic censorship in the Constitution and of most types of criminal insuk\textsuperscript{t} [desacato] in the Criminal Code [Código Penal] and the Military Criminal Code [Código Penal Militar], in addition to passing and implementing the Access to Public Information Law [Ley de Acceso a la Información Pública].

1149. Nevertheless, it follows from the information received by the Office of the Special Rapporteur that Chile still has some laws and practices that continue to negatively affect the effective enjoyment of the right to freedom of expression and the right to access to information in the country. Many of


them can be understood as the legacy of past authoritarian doctrines and the transition process, which no longer hold meaning in the current environment of democratic development. Chile also faces new challenges in terms of the exercise of freedom of expression in the digital environment that must be addressed by the government, legislative and administrative bodies, and the court system in accordance with international human rights laws and best practices, to guarantee that the Internet and advances in communications technology continue to facilitate the exercise of fundamental rights in the country.

1150. The Office of the Special Rapporteur presents below its analysis of the current situation of the freedom of expression and information in Chile and offers recommendations with a view to helping the State strengthen its efforts to guarantee this right.

A. National Legal Framework

1151. The right to freedom of expression is recognized in the Political Constitution of Chile in the following terms:

Article 19. The Constitution guarantees to all persons: [...] 12- Freedom to express opinions and to disseminate information without prior censorship in any form and by any means, without prejudice to assuming the responsibility for any crimes or abuses committed in the exercise of such freedoms, in conformity with the law which is to be passed by a qualified quorum. In no case may the law establish a state monopoly over the mass media. Any individual or body corporate offended or unjustly alluded to in a mass medium, has the right to have his declaration or rectification gratuitously disseminated, under the conditions determined by law, by the mass medium having issued such information. All individuals or bodies corporate shall have the right to establish, edit or maintain newspapers, magazines and periodicals, under the conditions prescribed for by law. The State, such universities and other persons or entities as prescribed by the law, may establish, operate and maintain television stations. There shall be a National Council for Radio and Television [Consejo Nacional de Televisión], having autonomy and legal status, which shall be in charge of supervising the proper functioning of these mass media. A law of qualified quorum shall determine the organization and other functions and authorities of said Council. The law will regulate a ratings system for the exhibition of cinema productions.]

1152. The constitutional reform of August 26, 2005, added the principle of publicity and transparency of the acts and resolutions of the State:

Article 8. [...] The acts and resolutions of organs of the State, as well as their foundations and procedures used, shall be public. However, only a law of qualified quorum can establish the confidentiality of the former or the secrecy of the latter, when publicity would affect the proper fulfillment of the functions of these organs, the rights of persons, the security of the Nation or the national interest.

1153. The exercise of these rights is set forth in several legal provisions. For example, Law No. 19.733 on freedom of opinion and information and the practice of journalism (Press Law) regulates the practice of journalism, the functioning of social communication media and the mechanisms that promote pluralism in the national information system. The law also establishes the right to reply and correction and criminalizes defamation [injurias and calumnias] committed through social communication media.

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1154. General Telecommunications [General de Telecomunicaciones] Law No. 18.168 regulates the process for granting, renewing or modifying broadcasting concessions. Law No. 18.838 creates the National Television Council [Consejo Nacional de Televisión] (CNTV) and regulates, in particular, concessions for television broadcasting services as well as the functioning of this sector. Law No. 20.750 allows for the introduction of digital terrestrial television. Law No. 20.433 creates free-to-air community radio broadcasting services, and regulates both equal access to radio spectrum frequencies for this sector as well as its operation.

1155. Law 20.285 regarding Access to Public Information regulates the principle of transparency within public office, the right to access to state-held information, procedures for the exercise of that right, and exceptions to the publicity of information.

1156. Law 20.453, which establishes the principle of net neutrality for Internet consumers and users, forbids blocking, interference, discrimination, disruption and restriction of the right of any user to "use, send, receive or offer any content, application or legal service via Internet, as well as any other type of activity performed on or any legal use of the network."

1157. Chile has been a State Party to the American Convention on Human Rights since August 21, 1990, as well as of the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights since February 10, 1972. In 2008, Chile ratified ILO Convention No. 169 on Indigenous and Tribal Peoples in independent countries. In article 5, the Political Constitution [Constitución Política] of Chile establishes that "[t]he exercise of sovereignty recognizes as a limitation the respect for the essential rights which emanate from human nature. It is the duty of the organs of the State to respect and promote those rights, which are guaranteed by this Constitution, as well as by the international treaties ratified by Chile which are in effect."

B. The Right to Freedom of Expression and the Practice of Free and Independent Journalism

1158. One of the main issues studied by the Office of the Special Rapporteur during its visit to Chile was the state of the right to freedom of the press and the practice of independent journalism.

1159. The Office of the Special Rapporteur has affirmed that “journalism, in the context of a democratic society, is one of the most important manifestations of freedom of expression and information. The work of journalists and the activities of the press are fundamental elements for the functioning of democracies, as journalists and the communications media keep society informed of events and their varied interpretations—a necessary condition for public debate to be robust, informed and vigorous. It is also clear that an independent and critical press is a fundamental element for the effectiveness of other freedoms in a democratic system.”


1677 Ley No. 20.433 crea los servicios de radiodifusión comunitaria ciudadana. Available for consultation at: http://www.bcn.cl/


1160. The IACHR spoke in this regard in its Declaration of Principles on Freedom of Expression, which establishes that “the means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”\(^{1682}\) In a joint Declaration on the restrictions on journalists, and on investigating corruption (2003),\(^{1683}\) the Special Rapporteurs of the UN, the OAS and the OSCE stated they were “aware of the important watchdog role of the media and of the importance to democracy and society as a whole of vibrant, active investigative journalism,” and thus affirmed that “media workers who investigate corruption or wrongdoing should not be targeted for legal or other harassment in retaliation for their work.”

1161. During the visit, the Office of the Special Rapporteur noted that Chile is having an extremely important debate about the influence of private interests in the political system, which has placed the right to freedom of expression and the crucial role investigative journalism plays in the social oversight of public power at the forefront of this discussion. Indeed, in 2015 and 2016, a series of investigative journalism pieces, many of which were based on leaked documents, revealed alleged incidents of corruption, embezzlement, bribery and illegal election campaign contributions implicating businesspersons, members of the military, and politicians.

1162. In this context, the Office of the Special Rapporteur is concerned that the Chilean legal framework still includes some laws that allow for the criminal prosecution and conviction of journalists for stories about public officials or issues of public interest, and that new measures are being pursued to criminalize the practice of journalism and the reporting of acts of corruption.

- **Desacato crimes in the Criminal Code [Código Penal] and the Military Criminal Code [Código de Justicia Militar]**

1163. Chile was one of the first countries in the region to repeal desacato crimes, through an amendment of the Codes of Criminal and Military Justice [Códigos de la Justicia Penal y Militar] (Law No. 20.048) which was passed on August 31, 2005.\(^{1684}\) Law No. 20.048 kept, however, the crime of “threats to authority” in article 264 of the Criminal Code.\(^{1685}\) Although the reform replaced article 276 of the Code of Military Justice, which defined the crime of “unlawful sedition” in terms that were vague and incompatible with the principle of legality,\(^{1686}\) it kept in effect article 284 of the Code of Military Justice, which also criminalizes desacato.\(^{1687}\)

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\(^{1684}\) Biblioteca del Congreso Nacional de Chile. Ley No. 20.048 modifica el Código penal y el Código de justicia militar en materia de desacato. Available at: [https://www.leychile.cl/Navegar?idNorma=241428](https://www.leychile.cl/Navegar?idNorma=241428). This reform repealed article 263 that contemplated the crime of “injuria” (slander) against authorities; it eliminated article 265 which provided for the crime of “desacato” or serious slander against authority; it deleted from article 266 the words “desacato” and eliminated article 268 that typified the crime of riot or exaltation to disorder in an authority’s office.

\(^{1685}\) Biblioteca del Congreso Nacional de Chile. Ley No. 20.048 modifica el Código penal y el Código de justicia militar en materia de desacato. Article 264. Available at: [https://www.leychile.cl/Navegar?idNorma=241428](https://www.leychile.cl/Navegar?idNorma=241428). The law provides that: Any person who threatens during a meeting of the co-legislating bodies or hearings of the courts of justice any deputy or senator or a member of said tribunals, or a senator or deputy for the opinions expressed in Congress, or a member of a court of law for any decisions that he has made or the ministers of State or other authority in the practise of their positions, shall be punished with minor detention in any of its degrees. Anyone who seriously disrupts the order of meeting of the co-legislating bodies or the hearings of the courts of law, or causes disorder or exalts to disorder in the office of a public authority or corporation to the extent of preventing their acts, shall be punished with the penalty of lesser imprisonment in its minimum degree and a fine of five to ten monthly tax units [unidades tributarias], or only the latter.

\(^{1686}\) The new provision states: Article 276.- Any person who, with the exception of the case referred to in the preceding article, in any way induces or incites military personnel to disorder, indiscipline or breach of military duties, shall be punished with the penalty of major military detention in its minimum degree in the case of an Officer, with that of minor military detention in its maximum degree in
1164. In the judgment in the case of Palamara Iribarne vs Chile (2006), the Inter-American Court ordered that the State adopt all domestic measures to repeal and modify these provisions. In this regard, it stated:

The Court notes with concern that, despite the valuable contribution of the legislative reform, section 264 of the Criminal Code, as amended, still includes the offense of “threat” to the same authorities that constituted, before the amendment to said Code, the passive subject of the offense of contempt. This way, the Criminal Code includes an ambiguous description and does not clearly specify the scope of the criminal conduct, thus leaving room for broad interpretation and, as a result, the conduct previously regarded as contempt may be unduly punished through the use of the criminal offense of threats. Therefore, if the State decides to maintain said provision, it should specify the kind of threats concerned in order to prevent suppression of freedom of thought and expression of valid and legitimate opinions or whatever disagreement and protests against government bodies and their members.

In addition, the Court notes that the legislative reform implemented by means of Law No. 20,048 did not encompass all provisions dealing with contempt insofar as it is still an offense under the Code of Military Justice. Therefore, disproportionate sanctions are still being imposed for criticism leveled at government institutions and their members, and military institutions and their members are afforded greater protection than that afforded to civilian institutions in a democratic society, which is incompatible with article 13 of the American Convention.

1165. During the stage of monitoring compliance with the judgment, Chile indicated that it has undertaken an effort to repeal the crime of desacato from the Code of Military Justice, as “this crime is not purely military in nature and severely restricts public discourse and the role that an informed public opinion plays in a democratic society.” Regarding the crime of threats, Chile emphasized that “it is a legal concept that has certain technical problems” and that “which legal interest is protected is not very clear,” although it is “practically never” enforced. However, in a resolution dated September, 2016, the Court stated:

It is serious that, more than ten years after the judgment was issued, the crimes of threats and desacato are still in effect in domestic law. None of the legislative proposals suggested by Chile over these years have been approved. Nor has the State specified to what types of threats the crimes set forth in article 264 of the Criminal Code make reference, although it is encouraging that, at least, as indicated by the State, it is rarely enforced.

1166. In light of the foregoing, the Court urged the Chilean State to adopt the measures necessary to repeal or modify article 264 of the Criminal Code and article 284 of the Code of Military Justice, which classify the crimes of threats and desacato, as soon as possible as in the area of subsequent criminal liability that is incompatible with the right of freedom of expression, so that its domestic laws are aligned with

the case of a non-commissioned officer, and with that of minor military detention in any of its degrees in the case of a corporal, soldier or non-military individual.”

1687 Art. 284. Any person who threatens in the terms of article 296 of the Criminal Code, offends or insults in word or in writing or by any other means the Armed Forces, its units, departments, weapons, classes or specific bodies, or one of its members in the knowledge of his membership in those institutions, shall be punished with the penalty of minor imprisonment in its minimum to medium degree. Biblioteca Nacional de Congreso. Código de Justicia Militar. Decreto No. 2226. Available at: https://www.leychile.cl/Navegar?idNorma=18914


international freedom of expression standards. The Court requested that in its next report, the State “explain the steps taken to that end in a clear, detailed, and up-to-date fashion.”

1167. The Office of the Special Rapporteur has not received information on individuals or journalists who have been prosecuted for threats against authority and desacato since the Court's judgment in the Palamara Iribarne case. However, the Office of the Special Rapporteur highlights that these kinds of laws are per se incompatible with article 13 of the American Convention and openly conflict with the belief that freedom of expression and opinion is the “cornerstone of modern democracy” and “directly inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers.”

1168. In this regard, Principle 11 of the Declaration of Principles on Freedom of Expression, approved by the IACHR in the year 2000, establishes that “public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information.”

1169. The Office of the Special Rapporteur emphasizes that article 264 of the Criminal Code and article 284 of the Code of Military Justice must be repealed in the terms ordered by the Inter-American Court in the Palamara Iribarne (2006) judgment, as these articles constitute an unlawful restriction on the right to freedom of expression.

- Criminal Defamation

1170. Chilean legislation continues to criminalize calumnia and injuria. According to information gathered by this Office, these criminal definitions are still used to prosecute journalists for statements that would affect the honor and reputation of public officials and elected officials, with the ensuing effect of inhibiting and restricting the investigation and dissemination of information that is of interest to the public.

1171. By way of example, la Office of the Special Rapporteur learned of the criminal conviction handed down on April 22, 2015 by the Third Criminal Investigations Supervisory Court of Santiago [Tercer Juzgado de Garantía de Santiago] against journalists and directors of the weekly newspaper El Ciudadano, Bruno Sommer Catalán and Sebastián Larraín Saa, for the offense of criminal defamation [injuria grave] against a member of Congress, following the publication of an interview in which the member was accused of committing unlawful acts during his parliamentary election campaign. The journalists were sentenced

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1694 Biblioteca del Congreso Nacional de Chile. Código Penal. Article 412 of the Criminal Code. Art. 412. It is slanderous to attribute a particular but false offense and that can currently be prosecuted ex officio. Art. 413. The slander propagated in writing and with publicity will be punished. 1. With the penalties of minor imprisonment in its medium degree and a fine of eleven to twenty monthly tax units [unidades tributarias], when a crime is attributed. 2. With those of minor incarceration in its minimum degree and a fine of six to ten monthly tax units, if a simple crime is attributed. Available at: http://www.leychile.cl/Navegar?idNorma=1984
1695 Biblioteca del Congreso Nacional de Chile. Código Penal. Art. 416. Injuria is any expression uttered or action performed in dishonor, discredit or contempt of another person. Art. 417. Serious injurias are: 1. The attribution of a crime or simple offense of those that do not allow for an ex officio procedure; 2. Attribution of a crime or simple offense that is punishable or prescribed; 3. That of a vice or lack of morality whose consequences could considerably harm the fame, credit or interests of the individual aggrieved; 4. Injurias that by their nature, occasion or circumstances are held in the public concept as derogatory; 5. Those that rationally deserve the qualification of serious considering the status, dignity and circumstances of the offended and the offender. Art. 418. Serious injurias made in writing and with publicity, will be punished with penalties of minor imprisonment in their minimum to medium degrees and a fine of eleven to twenty monthly tax units [unidades tributarias]. Art. 419. Slight injurias shall be punished with penalties of minor imprisonment in their minimum degree and a fine of six to ten monthly tax units when they are made in writing and with publicity. If these circumstances do not take place they will be punished as misdemeanors. Available at: http://www.leychile.cl/Navegar?idNorma=1984
to "(540) days of ordinary imprisonment of a minimum term, a fine of five monthly tax units, and the
additional penalty of suspension of public duty or office during the time of the sentence," for committing
the crime of injuria graves against former deputy Miodrag Marinovic, in accordance with articles 416, 417 and
418 of the Criminal Code. Execution of the prison sentence was suspended and the journalists served the
remainer of the sentence on probation.1697

1172. During its finding of guilt, the Court stated that "the defendants did not provide specific,
clear, concrete and verifiable information that would allow the Court to establish that they took appropriate
care, as directors of a media outlet, to verify the truthfulness of the information they publish."1698 The
judgment was upheld by the Supreme Court of Justice.1699

1173. As another example of criminal proceedings initiated by public officials to sanction critical
expression against them, on May 31, 2016, President Michelle Bachelet filed a complaint for the crime of
injurias graves, set forth in articles 416 and 418 of the Criminal Code, against four journalists from the weekly
magazine Qué Pasa, in which she reportedly asked for a three-year prison sentence for the defendants.1700
According to available information, this would be the first complaint of this kind to be used by a Head of State
since the process to restore democracy began in 1990.

1174. The magazine printed a wiretap, that was leaked to the press, of one of the individuals
charged in the investigation of the Chilean Office of the Attorney General into the alleged illegal businesses
of a company belonging to a relative of President Bachelet (the "Caval case"). The criminal investigation was
opened following revelations published in the same magazine, Qué Pasa, in February 2015.1701 The published
article included excerpts of telephone conversations, obtained by the authorities through wiretaps, in which
one of the individuals charged in the case attributes financial profits to President Bachelet that came from the
business run by her relatives.1702

1175. President Bachelet denied the information published by the magazine and stated she filed
the action "in her capacity as a citizen" and for the purpose of demanding "the ethics and responsibility that
the media must demonstrate when providing information, by validating their sources."

1176. Qué Pasa removed part of the article in question from the online version, published an
explanatory note explaining the changes, and apologized to its readers and the persons alluded to in the
article.1703 However, it rejected the filing of the criminal action as an attempt to "restrict freedom of
expression" and stated that "the fact that the complaint was filed by the President in her capacity as a citizen
does not diminish this pressure, as both capacities are inseparable. Otherwise, it would not follow for the
filing of the complaint to be announced by the Minister Secretary General of the Government."1704

1700 Lawsuit for misdemeanor of private criminal action of serious injurias with publicity filed before 2º Juzgado de Garantías, by Juan
Pablo Hermosilla, counsel for the president of Chile, Michelle Bachelet. May 31, 2016. Available at: Archive of the Office of the Special
Rapporteur for Freedom of Expression.
1701 Lawsuit for misdemeanor of private criminal action of serious injurias with publicity filed before 2º Juzgado de Garantías, by Juan
Pablo Hermosilla, counsel for the president of Chile, Michelle Bachelet. May 31, 2016. Available for consultation at Archive of the Office of the Special
grabaciones alusivas a la Presidenta y Bachelet habla de "canallada".
1177. The President’s legal action was called into question by the Chilean National Human Rights Institute [Instituto Nacional de Derechos Humanos de Chile] (INDH). The INDH director, Lorena Fries, recalled that “as for holding the media responsible for the violation of a human right such as honor, the standards that have been established are not criminal but rather civil proceedings.” She emphasized that “public authorities are subjected to a higher level of exposure and scrutiny than anyone else, and in that regard, confront stronger criticism than anyone else.” During his visit, the Special Rapporteur, Edison Lanza, expressed concern over the intimidating effect these actions have on the practice of journalism and noted that senior public officials have other mechanisms available to them to protect their right to reputation and privacy that are less damaging to the right to freedom of expression.

1178. On September 14, the Chilean Media Ethics Council of the country’s Media Federation [Consejo de Ética de los Medios de Comunicación Social de Chile de la Federación de Medios de Comunicación] sanctioned Qué Pasa for “the lack of ethics” in the publication in question. In its ruling, the Council found that it was “the magazine’s duty to evaluate statements obtained through the work of journalists, both from the perspective of the credibility of sources as well as by obtaining the necessary contrasting views and opinions from third parties.”

1179. On September 30, President Bachelet announced her decision to withdraw the complaint against Qué Pasa, after learning of the decision of the Media Council, which she called “resounding.” The President withdrew the complaint before the scheduled conciliation hearing was held before the Second Criminal Investigations Supervisory Court of Santiago and afterwards was reportedly ordered to pay court costs.

1180. The Office of the Special Rapporteur reiterates that in a democratic, pluralistic society, the acts or omissions of the State and its public servants—or those who aspire to be public servants—are subject to a higher level of scrutiny by the press and the public. This means that the State must abstain more rigorously from limiting these types of expression and that public servants must have a higher threshold of tolerance for criticism. In the words of the Commission, “[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.”

1181. The right to freedom of expression grants, both to the directors of media outlets and to the journalists who work for them, the right to investigate and disseminate matters of interest to the public. The threat of using criminal law—usually vague and ambiguous on the subject—against those who speak out against the government has a discouraging and chilling effect. Therefore, this office has recommended the use of mechanisms less harmful to the rights of individuals, such as the mechanisms of reply and correction and civil actions, which can provide effective protection to the right of public servants to honor and reputation.


1176 The Consejo de Ética de los Medios de Comunicación is defined as “a self-regulatory body in matters of information ethics” of the work carried out by those media belonging to one of the companies affiliated with the associations that make up the Federación de Medios de Comunicación Social de Chile. Available at: http://www.consejodeetica.cl/index.php?option=com_ce_consejo_etica&view=quienes


1182. Principle 10 of the IACHR Declaration of Principles on Freedom of Expression establishes that “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Similarly, the Human Rights Committee states in General Comment No. 34 that “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”

1183. The Office of the Special Rapporteur recommends that the State of Chile decriminalize calumnia and injuria and change them to civil actions, in accordance with international standards and best practices. This is especially significant for protecting expression that is critical of public officials, public figures or, in general, matters of public interest. The Office also recommends that the State strengthen legal safeguards so that journalists are not subjected to legal or other types of harassment in the judicial system in retaliation for their work, by establishing separate standards to evaluate subsequent civil liability, including the standard of actual malice and the strict proportionality and the reasonableness of subsequent penalties.

- The Confidentiality of Sources of Information and the Dissemination of Confidential Information

1184. During the visit, the Office of the Special Rapporteur received information about restrictions on the confidentiality of journalists’ sources and the free dissemination of information about matters of public interest.

1185. According to information received by this Office, in November of 2015, Patricio Fernández, Andrea Moletto and Mauricio Weibel, journalists for the Chilean weekly The Clinic and Pablo Dittborn, the owner of the publication, were summoned to give statements to the IV Office of the Military Prosecutor [IV Fiscalía Militar] in order to reveal the sources for a report known as “Milicogate.” The report unearthed a case of corruption and the misappropriation of funds in connection with the Restricted Law on Copper, which involved a number of Chilean Army officers. The IV Office of the Military Prosecutor had brought a case (file 1920-2015) to investigate the origin of the leaks to The Clinic, particularly the leaking of secret decrees for arms purchases in the country. The IV Office of the Military Prosecutor also summoned a colonel, the former treasurer for the General Staff, who was questioned about his links to The Clinic weekly and to journalist Mauricio Weibel, who wrote the reports.

1186. In 2016, the National Congress [Congreso Nacional] debated legislative bills on the investigation of crimes that proposed establishing burdensome restrictions on the right of journalists and media outlets to investigate and disseminate information about matters of public interest. Thus, the proposed amendment to the bill that “facilitates the effective application of the penalties established for the offenses of robbery, theft, and receipt of stolen goods, and improves the criminal prosecution of such offenses” (Gazette No. 9.885-09) proposed amending article 182 of the Code of Criminal Procedure [Código Procesal Penal], which regulates confidentiality during an investigation, to make leaks of the Office of the Attorney General

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1712 The Clinic. October 17, 2015. La serie completa del Milicogate, el multimillonario robo del Fondo Reservado del Cobre.


investigations into such matters punishable by a term of imprisonment. The bill that "strengthens the investigation of terrorist crimes and crimes affecting the security of the State" (Gazette No. 10460-25) proposed the assessment of monetary fines against any media outlet director who disseminates confidential information from a criminal investigation, in the following terms:

**Article 3°**- Investigations shall be confidential and only those parties involved may have access to investigations once they are formalized, and the identities of the investigators shall be omitted. Violation of the confidentiality requirement in this or any provision of this law shall be punishable by a medium to maximum-grade term of imprisonment, depending on who provides the information. If the information is disseminated by a media outlet, a fine of ten to thirty monthly tax units shall also be assessed against its director. [Bold print ours]

Although these provisions were eventually rejected by a joint Congressional committee and were removed from both proposals, the Office of the Special Rapporteur notes that lawmakers announced the need for legislation regarding leaks and for “a law that makes the rules of the game clear for all” involved, including the media.

The Office of the Special Rapporteur cautions that Law 19.733 (Press Law) expressly recognizes the right to confidentiality of sources. In article 7, the law states that “media directors and editors, to whom reference is made in articles 5 and 6, and foreign correspondents working in the country, shall have the right to keep their sources of information confidential, a right that shall extend to identifying information that may be in their possession and that they cannot be forced to reveal, even via legal proceedings.”

However, articles 5 and 6 of this law restrict the exercise of this right and recognize as journalists “those who possess a corresponding university degree” and “students in schools of journalism.” The law also establishes, in vague and excessively broad terms, that “[h]e who exercises the right [to confidentiality of sources] shall be held professionally liable for crimes that may be committed because of the disseminated information.”

States must guarantee that their legal frameworks and practices are compatible with the international obligations they have entered into in the area of the right to freedom of expression.

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1715 According to Art. 182 of the current Criminal Procedure Code, “[T]he investigative actions carried out by the Public Prosecutor’s Office and by the police shall be secret for third parties not involved in the proceedings. […] officials who participated in the investigation and other persons who, for any reason whatsoever, are aware of the proceedings of the investigation shall be bound to keep secrecy about them.” Biblioteca del Congreso Nacional. Criminal Procedure Code. Available for consultation: http://www.leychile.cl/Navegar?idNorma=176595. The Senate had proposed adding the following sentence: “Any person who breaks the rules of secrecy established in this article shall be punished with a minor prison sentence in its minimum to medium degree”. Senado de la República de Chile. Boletín N°10460-25. Available for consultation at: http://senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=10460-25


1717 CNN Chile. May 9, 2016. Comisión mixta rechazó “Ley Mordaza” (VIDEO); La Tercera. May 9, de 2016. Comisión rechaza “ley mordaza” y propone no aplicar control de identidad a menores.

1718 CNN Chile (VIDEO). May 9, 2016. Comisión mixta rechazó “Ley Mordaza”.


1720 Article 5 states that “journalists are those holding a respective university degree, validly recognized in Chile, and those whom the law recognizes as such”. Article 6 adds that “[t]he students of journalism schools, as long as they perform the professional practices demanded by said schools, and those graduating from them, until twenty-four months after the date of their graduation, shall have the rights and shall be bound to the responsibilities that this law provides for journalists.” Ley No. 19.733 Ley sobre libertades de opinión e información y ejercicio del periodismo. May 18, 2001. Last modification on December 23, 2013. Available for consultation at: http://www.bcn.cl/
The IACHR has recognized that communicators have the right to confidentiality of sources, as established in the “Declaration of Principles on Freedom of Expression” adopted in October, 2000, which states that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

This Office has stated previously that the confidentiality of sources “is an essential element in the undertaking of journalistic work and in the role conferred upon journalism by society to report on matters of public interest.” In this regard, David Kaye, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression, stated in a recent report that “[i]n the light of the importance attached to source confidentiality, any restrictions must be genuinely exceptional and subject to the highest standards, implemented by judicial authorities only. Such situations should be limited to investigations of the most serious crimes or the protection of the life of other individuals.”

The right to source confidentiality or any other protection linked to the work of journalists cannot be limited to those who have a university degree and must be based on the function of gathering and broadcasting information. In this regard, it is worth recalling that “[j]ournalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with international obligations regarding the subject.”

In Advisory Opinion OC5/85, the Inter-American Court recognized that the practice of journalism involves exercising the right to “seek, receive and import information orally, in writing or in print” and, in this regard, the Inter-American Commission has recognized that the term “journalists” must be understood “from a functional perspective: journalists are those individuals who observe and describe events, document and analyze events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering facts and analyses to inform sectors of society or society as a whole. Such a definition of journalists includes all media workers and support staff, as well as community media workers and so-called “citizen journalists” and other persons who might be using new communications media as a tool to reach the public, as well as opinion makers who are targeted for the exercise of their right to freedom of expression.

The Office of the Special Rapporteur also expresses its concern over the passing of laws that establish the obligation to maintain absolute confidentiality of information that is classified as secret under penalty of criminal sanctions, with no exceptions made for the disclosure of matters of public interest, or guarantees for the role of journalism in this regard. Laws of this kind would allow for the argument that if a person had knowledge of human rights violations, acts of corruption or breaking the law, the person with the information would have to abstain from reporting it or make it public and be held criminally liable.

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1722 IACHR. Office of the Special Rapporteur for Freedom of Expression. Annual Report 2003. OEA/Ser.L/V/II.118 Doc. 70 rev. 2. December 29, 2003. Para. 220. In a similar vein, the European Court of Human Rights has ruled in its Goodwin v. the United Kingdom decision that “[p]rotection of journalistic sources is one of the basic conditions for press freedom”. It added that “without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected.” European Court of Human Rights. Case of Goodwin v. the United Kingdom. Application No. 17488/90. Judgment March 27, 1996. Para. 39.


In this regard, the Office of the Special Rapporteur recalls that "under no circumstances may journalists, members of the media, or members of civil society who have access to and distribute classified information on these types of surveillance program because they consider it to be in the public interest be subjected to subsequent punishment. Likewise, confidential sources and material related to the disclosure of classified information must be protected by law. Journalistic self-regulatory mechanisms have contributed significantly to developing best practices as far as how to address and communicate complex and sensitive subjects."\(^{1727}\)

This protection does not only cover journalists and the media. Freedom of expression includes the right of public officials to report human rights violations, acts of corruption or public mismanagement of which they become aware, which is also a part of their constitutional and legal duty. The exercise of this manifestation of freedom of expression, which is vital to the preservation of the rule of law in democracies on this continent, may not be obstructed by the authorities nor be the cause of later retaliatory actions against public officials who report these incidents. In this case, not only is it a violation of the individual right of a person to broadcast or disseminate information, it is a violation of the right of the entire community to receive information as well.\(^{1728}\)

In this regard, Special Rapporteurs, of the UN, the OAS, the OSCE and the African Commission on Human and People’s Rights stated in their 2015 Joint Declaration 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 sanctions, 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.\(^{1729}\)

The Office of the Special Rapporteur recommends that the Chilean State strengthen its legal framework in order to effectively guarantee the right of journalists (in the functional sense of the word) and the media to protect their sources and ensure that any restriction of this right meet the strictest standards, in accordance with international standards on the subject. Chile must also ensure that public officials (including from the Armed Forces [Fuerzas Armadas]) or individuals who expose wrongdoing, acts of corruption or human rights violations are not retaliated against for reporting these acts, and that they receive legal protection against legal, administrative or employment-related sanctions, in accordance with international standards and best practices.

C. Access to Public Information

September 19, 2016 marked 10 years since the landmark judgment of the Inter-American Court of Human Rights in the case of Claude Reyes et al. v. Chile, which held that the Chilean State had violated the right to access to information "enshrined in article 13 of the American Convention," and failed to comply with "the general obligation to adopt domestic legal provisions" on the subject.\(^{1730}\) This was the first judgment handed down by an international high court that recognized the right to access to information as an


autonomous right that forms part of the right to seek, receive, and impart information established in article 13 of the American Convention.1731

1201. As part of the process of compliance with the judgment, Chile enacted Law No. 20.285 on Transparency in Government and Access to information in the Administration of the State [Transparencia de la Función Pública y Acceso a la Información de la Administración del Estado].1732

1202. The civil society organizations, journalists, and academics, as well as the State authorities with whom the Office of the Special Rapporteur met during its visit acknowledged the importance that Law 20.285 has had in deepening democracy in Chile. In particular, they viewed positively the role of the Council for Transparency [Consejo para la Transparencia]—the supervisory body of the transparency and access to information law—in the promotion and oversight of transparency in government and in resolving disputes between the government and private citizens regarding access to information, and the way in which State agencies and Ministries have progressively complied with the active transparency obligations established by law.

1203. The Office of the Special Rapporteur also noted the recent enactment of laws that aim to strengthen the transparency of the political system and government and that have raised standards in this regard. On March 8, 2014, Law No. 20.730 was published, “which governs lobbying and dealings that represent special interests before the authorities and public officials.” It establishes that the authorities and public officials must register and publish meetings and audiences requested by lobbyists and special interest groups that aim to influence public decisions, trips made in the course of their duties, and donations received as authorities or public officials, among other things.1733 On April 11, 2016, Law 20.900, which regulates electoral campaign financing,1734 was enacted for “the Strengthening and Transparency of Democracy [Fortalecimiento y Transparencia de la Democracia],” as was Law 20.915, with the goal of “strengthening the public and democratic nature of parties and facilitating the modernization thereof.” The latter law also includes the obligation of active transparency for political parties and establishes that the Council for Transparency shall oversee compliance with these obligations.1735


1733 Ley Núm. 20.730 Regula el lobby y las gestiones que representen intereses particulares ante las autoridades y funcionarios. March 3, 2014. Available at: http://www.leychile.cl/Navegar?idNorma=1060115&idParte=1

1734 Ley N° 20.900 para el fortalecimiento y transparencia de la democracia. Available for consultation at: https://www.leychile.cl/Navegar?idNorma=1089342

1735 Ley Núm. 20.915. Fortalece el Carácter Público y Democrático de los Partidos Políticos y Facilita su Modernización. Available at: https://www.leychile.cl/Navegar?idNorma=1089164. Article 36 bis- provides that political parties shall maintain permanently available for the public, through their electronic websites, up-to-date, complete, and in a way that enables easy identification and expedited access, the following updated background information, in a quarterly fashion, at least: a) Applicable regulatory framework, including the legal and regulatory rules that govern them, their declaration of principles, bylaws and internal regulations; b) Full name, acronym, symbol and motto of the political party; c) Electoral coalitions they are part of; d) Regions in which they are constituted; e) Domicile of party headquarters; f) Organic structure; g) Powers, functions and attributions of each of its internal units or bodies; h) Names and surnames of the members of the Executive Body and the Controlling Body; i) The declarations of interests and assets of the candidates of the political party for the elections referred to in Law No. 18.700, constitutional organic declarations of Popular Votes and Ballots, and of the members of the Executive Body, under the terms of law No. 20.880, on Prohibits in the Public Function and Prevention of Conflicts of Interest; (j) Agreements of the Regional Collegiate Intermediate Organs and the Intermediate Organ; k) Annual report approved by the Electoral Service; l) The total amount of the ordinary and extraordinary contributions of its affiliates, received during the respective calendar year; m) The total contributions, donations, bequests and, in general, all types of public or private transfers, which they receive from their registration, in accordance with legal provisions; n) The transfers of funds that they make, charged to the public funds they receive, including any economic contribution delivered to natural or legal persons, in accordance with legal provisions; o) All entities in which they have participation, representation and intervention, whatever their nature and the normative basis justifying it; p) Penalties applied to the political party; q) List of contracts above twenty monthly tax units, whatever their purpose, with indication of the contractors and identification of the partners and main shareholders of the providing companies, if any; r) Requirements and procedures for new affiliations and number of affiliates; s) Statistical information on political participation within the party, disaggregated by sex, indicating, at least, the number of activists, age distribution, the positions they hold within the party, elected offices, government authorities, among others; t) The registration of expenses incurred in the electoral campaigns referred to in article 33 (e) of Law No. 19.884, on Transparency, Limits and Control of Electoral Expenditure; u) The registration of contributions to electoral campaigns referred to in article 40 of Law No. 19.884, on Transparency, Limits and Control of Electoral Expenditure; v) A link to the Electoral Service’s electronic website, which shows the electoral income and expenses accounts presented to the Electoral Service Director, in
1204. Notwithstanding the important progress that has been made, the Office of the Special Rapporteur received information at different meetings about the need to revise the legal and institutional framework of the right to access to information in order to bring it in line with the country’s current needs and to continue to strengthen the effective guarantee of this right. It also received troubling information about the excessive use of national security arguments to restrict access to public information and disproportionate limitations to access to information about serious human rights violations.

- **Challenges for the Consolidation of an Effective Legal and Institutional Framework**

1205. The Office of the Special Rapporteur received information, both from public officials and civil society organizations, about a series of challenges faced by the legal and institutional framework that guarantees the right to access to public information in Chile, which must be examined and addressed in a comprehensive, holistic fashion in order to promote the improved and full exercise of this right.

1206. In the area of legislative gaps, the Office of the Special Rapporteur notes with concern that fundamental entities such as the Judiciary and the Legislature, state-owned businesses, public universities and political parties are not bound by the same obligations of transparency and access to information under Law No. 20.285 and that the regulation of these obligations is fragmented in different laws. According to the information available, these entities are only required to meet active transparency obligations and other special provisions, but they are not obligated to respond to requests for access to information under the Law (passive transparency).

1207. It must be noted that in this regard that in accordance with Inter-American case law and doctrine, the right to access to information creates obligations for all public authorities in all branches of government and in autonomous institutions, at all levels of government. This right is also binding on those who work in government, provide public services or spend public resources on behalf of the State. Each of

accordance with article 48 of Law No. 19.884, on Transparency, Limits and Control of Electoral Expenditure; w) Any other information that the Executive Body of each political party determines and whose publicity is not contrary to the Constitution and the laws.

Article 36 ter.- Any person may submit a complaint to the Transparency Council against a political party that does not comply with the provisions of the previous article, in accordance with the procedure set forth in articles 24 and following of the Public Service Transparency and Access to Information of the State Administration Act, contained in article one of Law No. 20.285”.


1739 Consejo para la Transparencia de Chile. Pedro Antonio Vergara Montecinos con Universidad de Los Lagos. Rol C351-09. May 29, 2009. In this decision, the Council determined that “with regard to the state universities, knowing the complaint Rol C351-09 against Universidad de Los Lagos, the Council determined that the provisions contained in the Transparency Law, particularly the regulations contained in Articles 6 and 7 on active transparency, are applicable to the Universidad de Los Lagos as well as to the rest of the state universities because they are part of the State Administration”. See: Recuento de jurisprudencia del CPLT 2012. Available for consultation at: [http://www.consejotransparencia.cl/recuento-de-jurisprudencia-del-cplt/consejo/2012-12-20/154745.html](http://www.consejotransparencia.cl/recuento-de-jurisprudencia-del-cplt/consejo/2012-12-20/154745.html)

1740 Ley Núm. 20.915. Fortalece el Carácter Público y Democrático de los Partidos Políticos y Facilita su Modernización. Available at: [https://www.leychile.cl/Navegar?idNorma=1089164](https://www.leychile.cl/Navegar?idNorma=1089164) Article 36 bis and ter.


1742 For example, the Model Inter-American Law provides that: “This Act applies to all public authorities belonging to all branches of Government (Executive, Legislative and Judicial Branches) and at all levels of the internal governmental structure (Central or federal, regional, provincial or municipal); it applies also to independent or autonomous organs, agencies or entities owned or controlled by the Government, or acting by powers granted by the Constitution or by other laws, and also applies to private organizations receiving substantial funds or public benefits (directly or indirectly) or performing public functions and services, but only with respect to the public funds or benefits received or the public functions and services performed. All these bodies must have their information available in accordance with the provisions of this law.”

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these institutions and entities must be subjected to public scrutiny and oversight, and the law must guarantee the effective exercise of this right to the broadest possible extent.

1208. As for institutional issues, the Office of the Special Rapporteur observes that the Council for Transparency [Consejo para la Transparencia] is in need of strengthening, both in the area of its composition as in its jurisdiction. The Chilean Council for Transparency is one of the most important institutions for the defense of the right to access to information, and it has notably promoted access to public information standards in the country and the region. However, according to current legislation, the four members of the Council board do not occupy these positions exclusively, and although the chairman of the board is paid a salary, the remaining members receive only “per diem for each session attended.” The Council for Transparency also does not have jurisdiction over all State institutions, and in some cases its supervisory role is limited to enforcing laws on transparency and the disclosure of information but does not extend to resolving disputes over requests for access. Experts agree that this “fragmented institutional government makes leadership in taking on a political role in public deliberations and deliberations on promotion difficult.”

According to several experts who were consulted, this institutional weakness is linked to the need to introduce constitutional reforms to explicitly enshrine the right to access to information in the National Constitution and establish the institutional nature of the Council for Transparency to extend its jurisdiction to all branches and institutions of the State.

1209. Although the Office of the Special Rapporteur recognizes that there are different models for oversight and enforcement in the region, best practices indicate that in order to ensure the full and effective exercise of the right to access to information, there is a need for institutions that guarantee this right. These must have broad powers for oversight and dispute settlement as well as safeguards to guarantee the independence of the Council, a group made up of selected persons involved in government as well as civil society, who work full-time and are paid a salary that is in line with the important role they play. The Chilean Council for Transparency has also served as a regional model in this area, and reviewing these institutional shortcomings or weaknesses would not only benefit the country’s democracy and political system, it would also support the development of improved systems for access to information in the region.

1210. It was also observed that the impact of the law continues to be limited by the fact that the population lacks knowledge about the law and its mechanisms for facilitating access to information. According to data from the 2015 National Transparency Study, 74 per cent of those surveyed have not heard of Law No. 20.285, and only 26 per cent state that they have. Only 21 per cent of people surveyed state that they have heard of the government’s transparency portal, and only 7 per cent refer to the Council for Transparency as an organization where a complaint can be filed. Those who state they have heard of the Law and its mechanisms are mostly men of high economic status with advanced degrees.

1211. Citizen engagement as an active subject of the right to access to public information is a key component of the effectiveness of the law as a whole. Therefore, it is necessary to promote this right by providing training about the law, its importance, and its mechanisms for the entire population, and especially for organized groups and social movements that represent the interests of the most excluded sectors or those discriminated against historically.

1212. Maintain the progress made in the area of access to information, strengthen current laws and the autonomy and institutional capacity of the appropriate institutions in regard to all public authorities.

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The Office of the Special Rapporteur also urges the State to double its efforts to expand real access to the right of access to public information and society’s knowledge of this information.

- **Limitations to Access to Information on Grounds of National Security**

1213. Another problem that was identified during the on-site visit is the excessive and illegitimate use of national security arguments to restrict access to public information.

1214. The Office of the Special Rapporteur observes with concern that in Chile, there is still a series of laws—whether or not they are in force—that establish the secrecy of various subjects and collections of documents for alleged reasons of national security, and that there is even a series of legal texts that remain under secrecy. According to information gathered by the Council for Transparency [Consejo para la Transparencia], there are some 203 legal texts in Chile that remain under secrecy for national security reasons, and are not accessible to the general public.\(^{1746}\) Although most of these texts (which include laws, decrees having the force of law, and decree-laws) were enacted during the military dictatorship from 1973 to 1990 and are not in force, during the time of democracy, two secret laws and one decree having the force of law were allegedly enacted. It is reported that “there exist approximately 29 per cent of secret legal texts, regarding which there is no information that would allow for a preliminary determination about the subject matter contained therein.”\(^{1747}\) 71 per cent of the remaining laws “are clearly related to National Defense, and, more specifically, to the Armed Forces and law enforcement and safety forces, their stations, financing, purchase of equipment and military supplies, as well as the transfer of resources.”\(^{1748}\)

1215. In this regard, the Office of the Special Rapporteur highlights the decision of the Council for Transparency [Consejo para la Transparencia] on March 29, 2016, in which it ordered the Office of the Under Secretary of the Armed Forces [Subsecretaría de las Fuerzas Armadas] to publish the Restricted Law on Copper [Ley Reservada del Cobre] (Law No. 13.196), concerning the financing of the Armed Forces. This law was passed in 1958 under restricted circulation and amended during the dictatorship, had never been published for public knowledge and was only circulated in confidential bulletins of the armed forces. In this notable decision, the Council expressed concern because there are still laws in the current legal system that are kept confidential on grounds of national security. This office hails the fact that, as follow-up to this decision, on November 23, 2016, the Chamber of Deputies approved the final legislative procedure of a bill that requires that the Restricted Law on Copper be published in the official newspaper.\(^{1749}\) The law shall thus no longer be secret and its content may be known, in accordance with democratic principles.

1216. Access to information held by the State is one of the fundamental pillars of democracies that emanates from the acknowledgment that the individual is the owner of that information and has delegated the management of public affairs to his or her representatives; the individual also places checks on the government, such as public scrutiny of the people, to prevent or monitor the abuse of coercive power and to participate in the shaping of state policies.\(^{1750}\) The existence of “secret laws” on grounds of national security directly inverts these fundamental principles and should be understood as the legacy of the authoritarian doctrines of the past, which has no justification in the current democratic system and is incompatible with the American Convention.

1217. It’s worth recalling that “in a democratic society, the principle of legality is inseparably linked to that of legitimacy by virtue of the international system that is the basis of the Convention as it


\(^{1750}\) IACHR. *Background and Interpretation of the Declaration of Principles*, Principle 4. Para. 17 and 18.
relates to the "effective exercise of representative democracy," which results in the popular election of legally created organs, the respect of minority participation and the furtherance of the general welfare.1751 Secret laws do not satisfy these requirements.

1218. The Office of the Special Rapporteur also notes that on March 29, 2016, the Council for Transparency [Consejo para la Transparencia] ordered Chile’s National Defense General Staff [Estado Mayor Conjunto] to release some of the minutes of National Security Council [Consejo de Seguridad Nacional] (Cosena), “upon receiving the request of a person who asked to see the minutes of all Council meetings held between 1989 and 2012, as well as documents containing the agreements or resolutions adopted at those meetings.”1752 The General Staff denied access to the requested information, on the grounds that the information requested might affect national security. In its decision, the Council for Transparency found that disclosing the information would not affect national security and defense, and that its disclosure would instead be of interest to the public “as a way of preserving the historical memory of the events regarding serious human rights violations that occurred in Chile”. According to information available, some of these minutes refer to a debate about the political and social consequences of the Rettig Report of the National Commission on Truth and Reconciliation [Informe Rettig de la Comisión Nacional de Verdad y Reconciliación] (1991), the constitutional accusation against Supreme Court Judges [Ministros de la Corte Suprema] (1992) and the perspectives of the members of Cosena on the unity and reconciliation of the country (2001).

1219. The Office of the Special Rapporteur recognizes that finding the appropriate balance between public interest in the disclosure of information and the protection of legitimate national security interests is not an easy task. One of the main challenges is the absence of a democratic definition of “national security” and its misuse for illegitimate purposes that may limit access to public information. In this regard, the Office of the Special Rapporteur has indicated that in order to invoke secrecy on grounds of national security, “laws that regulate secrecy must precisely define the concept of national security and clearly specify the criteria to be used to determine if certain information may be declared secret or not, in order to prevent overuse of the ‘secret’ classification to avoid the disclosure of information that is of public interest.” In this regard, the Office of the Special Rapporteur emphasizes that restricting access to public information on grounds of national security must not be based on an idea of national security that is incompatible with a democratic society.1753

1220. According to The Global Principles on National Security and the Right to Information (Tshwane Principles) “a national security interest is not legitimate if its real purpose or primary impact is to protect an interest unrelated to national security, such as protection of government or officials from embarrassment or exposure of wrongdoing; concealment of information about human rights violations, any other violation of law, or the functioning of public institutions; strengthening or perpetuating a particular political interest, party, or ideology; or suppression of lawful protests.”1754

1221. Restricting access to information on grounds of national security must also be established by law and be truly necessary in a democratic society. The mere assertion by the government of a national security risk is not enough. This risk must be proven. In the words of the Special Rapporteur for Freedom of Expression, an exception must pass a three-part test: a) it must be related to one of the legitimate objectives that justify it; b) it must be proven that disclosing the information actually threatens to substantially harm that legitimate objective; and c) it must be proven that the harm to the objective is greater than the public


1222. In its report, Access to Information on Human Rights Violations, the Office of the Special Rapporteur affirmed that “it is surprising that the secrecy of serious human rights violations committed by agents of the State during the authoritarian regime from which the State is transitioning should be considered an indispensable condition for maintaining the “national security” of the new order based on the rule of law.” What damage to the national security of a democratic State can be done by the dissemination of information on crimes of a past authoritarian regime whose legacy a nation seeks to overcome? On the contrary, a society that is well-informed about the activities of the State and the events of the past is fundamental in in dissolving authoritarian enclaves and fosters the legitimate interests of national security. For these reasons, in accordance with international human rights law and regional best practices, the Office of the Special Rapporteur has held that there are no democratic arguments that justify classifying or denying information regarding serious human rights violations on grounds of national security.

1223. In this context, enacting laws that complement the Law on Access to Public Information is essential to promote an opening in defense and national security institutions and to guarantee the effectiveness of a transparent regime that will protect human rights in that sector. Laws that protect whistleblowers encourage public officials in the Armed Forces and the Ministry of Defense and Security [\textit{ministerio de Defensa y Seguridad}] to report wrongdoing, breaches of law and human rights violations committed by other officials and ensure that they may remain in their positions without facing retaliation.


1225. The Office of the Special Rapporteur reiterates that an assessment of the ability of the entity to guarantee access to information must take into account whether or not the entity has specific, unambiguous duties and clear jurisdiction when compared to the powers of other entities. In the case of agencies that guarantee access to information, a key attribute is the ability to resolve disputes about the disclosure of information through decisions that are binding and effective. In this regard, the Inter-American Court has highlighted that the State “should include a guarantee of the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for making a decision and providing information, and which is administered by duly trained officials.”

1226. It is also a good practice for the legal system to establish that these decisions are final and unassailable for the parties involved, without prejudice to individuals, who must maintain the right to appeal adverse rulings or resolutions of guarantor entities before courts having jurisdiction, as part of the guarantee of the right of access to justice. Indeed, the Office of the Special Rapporteur believes that the ability of the parties involved to challenge the resolutions of the institutes that deal with access to information by means of

ordinary appeals leads to a denial of the right to obtain the information requested by way of a simple, expeditious and specialized process.¹⁷⁵⁹

- Historical Records and Memory

1227. Finally, the Office of the Special Rapporteur notes with concern reports about the lack of proportionality and uniformity of restrictions on access to records, documents, testimony, and background information provided by victims to the National Commission on Political Imprisonment and Torture [Comisión Nacional sobre Prisión Política y Tortura] (Valech Commission I [Comisión Valech I]) and its impact on the right to memory, truth, and justice.

1228. The Valech Commission I [Comisión Valech I] was created in 2003 in order to determine who was imprisoned and tortured for political reasons during the military dictatorship. According to available information, the background information the victims provided to the Commission is classified as confidential by law for a term of 50 years,¹⁷⁶⁰ or until 2054. In accordance with Law No. 19.992, confidentiality binds every “person, group of persons, authority or magistrature,” which has been interpreted to include courts of justice. This differs from the background information of the Rettig Commission on Forced Disappearance and Political Execution [Comisión Rettig sobre Desaparición Forzada y Ejecución Política] (1990) which is under “absolute confidentiality,” but by law may be accessed by courts of justice in the cases before them.¹⁷⁶¹ The grounds for secrecy was the right to privacy of those who offered testimony.

1229. According to information gathered, former political prisoners and victims identified by the Valech Commission I have demanded access to this information through legal actions, with several positive results. On December 22, 2015, the Santiago Court of Appeals sustained a remedy for protection and required that the INDH, the custodian of records, turn over the information obtained in the Valech Commission I to one of the victims.¹⁷⁶² Later, on August 2, 2016, the Court of Appeals [Corte de Apelaciones] ordered the declassification of records concerning a group of 14 former political prisoners who supported Movimiento de Izquierda Revolucionaria (MIR).¹⁷⁶³ However, courts are still being denied access to these records for the purposes of investigating these crimes.

1230. During the visit, this Office was informed that Congress was considering a reform of the legal confidentiality of the Valech I Commission [Comisión Valech I] records in order to lift the 50-year-long secrecy and make public the records gathered by the Commission. The Office of the Special Rapporteur regrets that on August 31, 2016 the Chamber of Deputies [Cámara de Diputados] rejected the draft bill.¹⁷⁶⁴

1231. The IACHR has recognized that state efforts to guarantee access to information must include an opening of historical records so that the courts of justice that investigate serious human rights violations may perform their duties. The progress of a judicial process concerning serious human rights violations may never be obstructed by lack of access to state-held records and documents. In this regard, as the United


¹⁷⁶⁰ Decreto Supremo No. 1.040 of 2003. Art. 5 “All the actions carried out by the Commission, as well as all the background information it receives, will be classified in nature, for all legal effects”. Article 15 of Ley No. 19.992 provides that the access ban to documents extends to any “person, group of persons, authority or court”.


¹⁷⁶⁴ La Tercera. No date. Cámara rechaza proyecto que establecía el carácter público de los antecedentes de la Comisión Valech; Clarín. September 2, 2017. Cámara rechazó proyecto para hacer públicos los antecedentes de la Comisión Valech sobre violadores de DD.HH; Cooperativa.cl. August 31, 2016. Por falta de quórum, Cámara rechazó levantar secreto de Comisión Valech.
Nations Committee Against Torture did in 2009,\textsuperscript{1765} the Office of the Special Rapporteur urges the State to adopt the necessary measures to guarantee courts access to state-held information that is necessary to fulfill their obligations of justice and to reconsider repealing the article in Law 19.992 that provides for 50-year secrecy of the Valech Commission I records.

D. Pluralism, Diversity and Freedom of Expression

1232. The Office of the Special Rapporteur noted that, following the return to democracy, Chile has taken legislative and administrative measures to take gradual steps toward greater pluralism and diversity in public debate and to prevent the concentration of ownership and control of the media. However, these laws and the implementation thereof have not had the expected results, and Chile's media has one of the highest levels of concentration.

1233. It is worth noting that following the return to democracy, Chile passed laws and public policies geared towards developing independent public television, based on the principle that both the government and the opposition would be involved in the management of public signals. In the first decade, this ensured that the public media would not be coopted by the government in power. The Office of the Special Rapporteur has also taken note of the provisions enacted in recent years that provide State funding for regional media projects and require transparency in the ownership of private media outlets, the standards and policies that legally recognized community broadcasting, the legal provisions that allow persons with disabilities to access governmental and public interest information, and the reforms undertaken to provide more equal and nondiscriminatory access in the transition to digital television signals. Standards were also adopted to guarantee that government advertising reaches local and regional media.

1234. Without diminishing the progress made, and as described hereinafter, the Office of the Special Rapporteur notes that the promotion of a broad plurality of sources of information continues to be a challenge for Chilean democracy, and the reasons that prevent it from creating the structural conditions to promote a spectrum of media outlets that are diverse both in ownership and in their editorial lines should be studied in depth.

- The Regulation of the Media and Measures to Prevent Media Concentration

1235. The media play a key role in the very existence of a pluralist, deliberative and participatory democratic system. The Inter-American Court has stated that in a democratic society, the media play an essential role as vehicles and instruments for the exercise of freedom of expression and information, in its individual and collective dimensions.\textsuperscript{1766} The Office of the Special Rapporteur has highlighted that "[t]he link between freedom of expression and democracy is so important that, according to the Inter-American Commission, the very purpose of article 13 of the American Convention is to strengthen the operation of deliberative and pluralistic democratic systems through the protection and promotion of the free circulation of information, ideas and expressions of all kinds.\textsuperscript{1767}

1236. In the words of the Inter-American Court, "[g]iven the importance of freedom of expression in a democratic society and the great responsibility it entails for professionals in the field of social communications, the State must not only minimize restrictions on the dissemination of information, but also extend equity rules, to the greatest possible extent, to the participation in the public debate of different types of information, fostering informative pluralism. Consequently, equity must regulate the flow of information.


In these terms is to be explained the protection of the human rights of those who face the power of the media and the attempt to ensure the structural conditions which allow the equitable expression of ideas.”

1237. Respect for the principles of pluralism and diversity includes, on one hand, the obligation to establish structural conditions allowing for competition under equal conditions that involve a higher number of more diverse groups in the communicative process; and, on the other hand, ensuring the freedom to distribute information that could be “unpleasant for the State or a sector of the population,” in accordance with the “tolerance and spirit of openness” that are characteristic of pluralism. The freedom of individuals to debate openly and criticize policies and institutions, and diversity and pluralism in public debate not only advances civil and political liberties, it often contributes to economic, social, and cultural rights.

1238. In that regard, in their 2007 Joint Declaration on Diversity in Broadcasting, the Rapporteurs for Freedom of Expression explained that, “in recognition of the particular importance of media diversity to democracy, special measures, including anti-monopoly rules, should be put in place to prevent undue concentration of media or cross-media ownership, both horizontal and vertical. Such measures should involve stringent requirements of transparency of media ownership at all levels. They should also involve active monitoring, taking concentration of ownership into account in the licensing process, prior reporting of major proposed combinations, where applicable, and powers to prevent such combinations from taking place.”

1239. During the visit, the Office of the Special Rapporteur heard complaints from civil society organizations about the excessive concentration of media ownership and control in the hands of a small number of economic groups, and the impact of this phenomenon on media pluralism. According to the reports received, concentration is particularly high in local and national radio and print media, and reportedly began during the military dictatorship with the shutdown of a dozen publications and the government takeover of 40 radio stations. Complaints were also received about a recent boom in cross-ownership and the influence of foreign capital in the radio sector. The acquisition by the Spanish group Prisa of the Iberoamericana Radio Chile, with more than half of the country’s radio stations, was cited as an example of this problem. The vertical integration (printing and distribution) of two groups that own national, regional, and local newspapers, in the opinion of many, has prevented new actors from entering the print media market. Another issue raised was that both groups espouse similar editorial ideas. There were also reports of an alleged lack of transparency with respect to media ownership and control in general. In this regard, representatives of the Chilean Media Federation [Federación de Medios de Comunicación Social de Chile] acknowledged the need to promote competition in the ownership and control of the media, although they expressed their concern that the potential enactment of legislative reforms seeking to promote public policies on the issue could disproportionately affect the right to freedom of expression, as has been the case in other countries in the region.

1240. The general legal framework on broadcasting is found in the Telecommunications Act [Ley General de Telecomunicaciones] (Law No. 18.168) and Supreme Decree No. 127 (2006) of the ministry of Transportation and Telecommunications [ministerio de Transportes y Telecomunicaciones], which approved the General Plan for Radio Spectrum Use and its amendments [Plan General de Uso del Espectro...
The television sector is also regulated by Law No. 18.838, which creates the National Television Council [Consejo Nacional de Televisión], an autonomous entity whose mission is to ensure the proper functioning of all television services that operate in the country, and by its recent amendment via Law No. 20.750 on Digital Terrestrial Television. Televisión Nacional de Chile, a state-owned channel, is also regulated by Chilean National Television Law No. 19.132. Law No. 19.733, “On Freedom of Opinion and Information and the Practice of Journalism” (Press Law), applies to all media outlets.

In terms of laws that ensure media diversity and prevent media concentration, the Office of the Special Rapporteur cautions that article 38 of the Press Law, via a 2009 amendment, stipulates that “any pertinent action or event concerning a change in ownership of a media outlet must be reported to the Office of the National Economic Prosecutor [Fiscalía Nacional Económica] within a thirty-day period. In the case of media outlets with concessions granted by the State, before the change takes place, the Office of the National Economic Prosecutor must issue a report on the effect of the change on competition within a thirty-day period after receiving background information on the case. If the report is unfavorable, the National Economic Prosecutor shall notify the Court in accordance with article 31 of Decree with Force of Law No. 1 (2005) of the ministry of Economy, Development and Reconstruction [Economía, Fomento y Reconstrucción]. If the report is not issued within the specified timeframe, it shall be understood that the Office of the Prosecutor has no objection.” The Office of the National Economic Prosecutor is governed by Decree-Law No. 211 on the Defense of Free Economic Competition and its amendments [Decreto Ley No. 211 de Defensa de la Libre Competencia Económica y sus modificaciones].

As for transparency in the ownership and control of the media, although media outlets are required to maintain current and freely accessible ownership records, there are no active transparency requirements for the entities that regulate radio frequencies. Article 9 of the Press Law [Ley de Prensa] requires that media outlets "provide accurate information regarding owners, direct or indirect controllers, lessees, bailees or concessionaires, as appropriate. In the case of one or more persons, this information shall allow for the individualization of natural and legal persons involved in ownership or use, regardless of the type. Furthermore, copies of documents of incorporation and the bylaws of legal persons, be they partners or shareholders, shall be kept, except in the case publicly traded corporations, as well as any changes made to these documents, if applicable. This information shall be freely accessible to the public and must be continuously updated and available at the offices of the media outlet and of the authorities who require it to carry out their responsibilities.”

The Office of the Special Rapporteur highlights that article 13 of the Telecommunications [Ley General de Telecomunicaciones] Act sets limits on the accumulation of frequencies by a single company or economic group in the same location. This law establishes that “a single company and its subsidiaries, affiliate or related companies may not submit more than one application for the same location in the same bidding procedure. If it does so, no application will be considered during the procedure.” Article 15 of Law No. 18.838 of the National Television Council [Consejo Nacional de Televisión] also establishes that “new

concessions with internal funding may not be granted to legal persons that already hold a concession of the same type, or who control or manage other free-to-air television broadcasting service concessionaires, granted through a public bidding procedure, in the same service area [...]. The limits established in the preceding paragraphs also apply to the respective business group, in accordance with article 96 of Law No. 18.045.”

1244. Although Law 18.838 was the first step in the sense that it limited frequency hoarding, the effect of the Law has been relative. First of all, it only applies to new bidding procedures in the future, and would therefore only apply to open digital television, a developing market that is seriously at risk due to the development of converging platforms.

1245. During the visit and in subsequent correspondence, the Office of the Special Rapporteur asked the State if reports were available or if research had been conducted on the subject of concentration, diversity or competition in the media. The State did not submit information on the subject, although article 4 of the Press Law [Ley de Prensa] provides for the funding of studies on pluralism in the media through the Pluralism Fund of the National Information System of the National Scientific and Technological Research Commission [Fondo de Pluralismo en el Sistema Informativo Nacional de la Comisión Nacional de Investigación Científica y Tecnológica] (Conicyt).1780

1246. The Office of the Special Rapporteur received, however, a report drafted by the National Television Council Research Department [Departamento de Estudios de la Comisión Nacional de Televisión] on media concentration in the Chilean television industry (2016). According to the study, in Chile there are 7 national television channels (terrestrial and free-to-air), 18 regional channels, and 32 free-to-air local television channels. There are also 13 license holders for paid, cable or satellite television. According to the report, “there are currently 53 Digital TV projects at the national and regional level.”1781 On this basis, the study analyzed the “different degrees of media concentration, both in terms of audience and investment in advertising” in these markets. The report states that concentration ratio indicators do not point to the existence of a monopoly in television. However, the report affirms that this indicator appears to show domination of 91 per cent of the audience and 87 per cent of investment in advertising in the hands of four business groups. Other indicators appear to show concentration in free-to-air television, “though lower than in paid [television].” According to the study, “after analyzing the total number of signals at the regional and local levels, the Chilean State has the highest concentration of ownership (28 per cent).”

1247. Regarding this issue, the Inter-American Court of Human Rights has highlighted that media pluralism “is an effective guarantee of freedom of expression” and is “the duty of the State [...] to protect and guarantee [...] through minimizing restrictions to information and seeking balanced participation, by allowing the media to be open to all without discrimination, as the goal sought is ‘to preclude certain individuals [or] groups [...] from being excluded, a priori,'” pursuant to article 1.1 of the Convention, through minimizing restrictions to information and seeking balanced participation.1782

1248. The Office of the Special Rapporteur recognizes that against this backdrop, the State has adopted important legislative measures. For example, the 2014 Digital Television Act [Ley de Televisión Digital] provides that once the necessary frequencies are assigned so that television channels can transition to digital broadcasting, 40 per cent of the total remaining licenses will be assigned to regional, local and local

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community digital television broadcasting signals, or to cultural or educational signals. However, different sources expressed concern over the fact that the available space for commercial media outlets is being captured by actors who currently hold dominant positions in the television industry or in other broadcasting companies. They added that the State should strengthen promotional measures to ensure that new stakeholders have access to the spectrum, such as the production and broadcasting of content through competitive funding programs such as the National Television Council Fund [Fondo Consejo Nacional de Televisión]. The Office of the Special Rapporteur was also informed that the community sector was defined in the Digital Television Act [Ley de Televisión Digital] as "community site," restricting its coverage to specific geographic areas.

1249. The Office of the Special Rapporteur has stated previously that the digital transition can have negative impacts if it is not guided by the requirements necessary to guarantee freedom of expression, potentially diminishing pluralism and creating new barriers to cultural and linguistic diversity and to the free circulation of information. Therefore, during the digital television implementation process, the States should evaluate the broadcasting opportunities provided by the spectrum savings gained from transitioning to digital broadcasting, and the use of the digital dividends that are freed up by this process. They should consider this technological change an opportunity to increase the diversity of voices and facilitate media access for new sectors of the population.

1250. Similarly, and taking into account the status quo, Chile should strengthen its policies to promote competition in all relevant communication markets and prevent existing groups from continuing to expand vertically and hoard media outlets. In this regard, laws and public policies (as long as they pass the test that every restriction on freedom of expression must pass) that set reasonable limits on frequency hoarding and cross-ownership in the same location, when this might mean that one or two groups might have all types of media outlets and rules to promote the transport of free-to-air, public, and community signals, are compatible with the protection of the right to freedom of expression.

1251. Along the same lines as promoting more diverse content and voices in Chilean television, the Office of the Special Rapporteur gathered relevant information about the introduction to Congress of a bill by President Michelle Bachelet's administration to amend Chile's National Television Law [Ley sobre Televisión Nacional de Chile] to strengthen public service television and its governance and funding. The bill also proposed the creation of a new signal with cultural content and strong support for national production. The Office of the Special Rapporteur commends these measures, and reiterates that during their implementation, the principles of independence, autonomy and the participation of civil society in public media must be respected, which will help enhance diversity and pluralism in the country’s media. The Office of the Special Rapporteur also highlights the need to offer significant opportunities for the representatives of different sectors of Chilean civil society to participate in legislative debate and to guarantee independence for the governance of the public service media outlet. Recently, the Office learned of a bill that was passed to amend the National Television Council Law 18.838 [Ley 18.838 del Consejo Nacional de Televisión] so that municipalities, corporations and municipal foundations may obtain licenses for television channels at the local level.1783

1252. In this regard, in their 2007 Joint Declaration, the Special Rapporteurs on Freedom of Expression from the UN, the OAS, the OSCE and the African Commission stated that, “[s]pecial measures are needed to protect and preserve public service broadcasting in the new broadcasting environment. The mandate of public service broadcasters should be clearly set out in law and include, among other things, contributing to diversity, which should go beyond offering different types of programming and include giving voice to, and serving the information needs and interests of, all sectors of society. Innovative funding mechanisms for public service broadcasting should be explored which are sufficient to enable it to deliver its

1783 Observacom. September 27, 2016. Aprueban proyecto de ley que permitirá que municipios chilenos tengan canal de TV local.
public service mandate, which are guaranteed in advance on a multi-year basis, and which are indexed against inflation."

1253. As for reforms on government advertising, the Special Rapporteur notes with satisfaction that, in order to promote official information through local and regional media, the 2016 Law on Public Sector Budget [Ley de Presupuesto del Sector Público] established the obligation to assign 25 per cent of government advertising to media "with clear local identity" and "equitable territorial distribution," subject to accountability mechanisms. Upon becoming effective, this type of policy can contribute to promoting diversity and pluralism in the media in the country. This Office reiterates to the State that advertising resources should be allocated according to pre-established, clear, transparent and objective criteria. Government advertising should never be assigned by States as a reward or punishment for a media outlet's editorial and informational content.

1254. Regarding this issue, Office of the Special Rapporteur recommends that the Chilean State fully implement the laws that have been enacted on the transition to digital television, advertising on public media, recognizing community media and the allocation of government advertising, in accordance with international standards on freedom of expression and promoting greater diversity and pluralism in every public policy decision made in these areas.

1255. In terms of public service media, the Office of the Special Rapporteur recommends a law that provides them with the appropriate funding and a specific mandate on the broadcasting of content and information that is of public interest. In particular, these outlets should offer different types of programs, give a voice to and satisfy the needs of all sectors of society regarding information and interests. It should establish the participation of different stakeholders in civil society in the governance of public media and guarantee that these media are independent from the administration that is in office.

1256. In terms of concentration in different communication markets, the office recommends enforce the law that establishes the funding of studies on pluralism in the media system; provide training and promote policies at the level of the appropriate Office of the Prosecutor in the area of preventing oligopolistic practices in media markets and use criteria for the oversight of media acquisitions and mergers that not only include economic criteria but also promote diversity and pluralism in the media.

1257. Enact laws that complement those that aim to defend competition, in particular, those that establish clear and transparent procedures by law for the equitable assignment and renewal of frequencies for public, commercial and community media; set reasonable limits on the hoarding of audiovisual media that require a license or a spectrum assignment gradually adapt those that exceed the established limits; and establish transportation rules to ensure television broadcasting for subscribers of public, commercial and community media. The Chilean State must also guarantee that any restrictions placed on freedom of expression to manage frequencies and guarantee diversity and pluralism are enforced by an institution that is sufficiently independent and autonomous to shield it from both political and economic influence.

1258. In terms of the print media, foster an opening of the written and/or digital print media market through laws and public policies that also guarantee pluralism in print media outlets. These policies may include conducting studies and adopting measures on the mechanisms for access to newsprint, the distribution and sale of newspapers in the country, and doing away with possible barriers to access in this market.

- The Situation of Community Broadcasting Media Outlets

1259. On several occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media outlets play a crucial role in our region so that several sectors of society may exercise freedom of expression and of access to information. Specifically, community media outlets are essential in
guaranteeing indigenous people in our region effective respect for freedom of expression and access to information.\textsuperscript{1784}

1260. This Office has emphasized that a comprehensive policy in this area includes three types of measures: legal recognition, access to the spectrum and support for the development and sustainability of the media.\textsuperscript{1785}

1261. Community radio outlets were legally recognized as a separate sector of Chilean broadcasting upon the enactment of Law No. 20.433 on Chilean Community Broadcasting [\textit{Ley No. 20.433 sobre Radiodifusión Comunitaria Ciudadana}] in 2010.\textsuperscript{1786} However, during the visit, this Office heard criticism of the law’s effectiveness in guaranteeing access to the spectrum and the sustainability of community media. Specifically highlighted were the effects of the limits this law imposes on radio outlets regarding power, funding, and the ability to air nationwide simultaneous broadcasts.

1262. Law No. 20.433 superseded Law 19.277 (1994) on “minimum coverage radio” [\textit{"radios de mínima cobertura"}], which limited radiated power to 1 watt and from a 6-meter tall antenna, required frequency renewal every three years and prohibited any kind of commercial advertising.\textsuperscript{1787} The new Law provides the following:

- Free-to-air community radio services “shall have a maximum service area of one municipality (\textit{comuna}) or group of municipalities, in accordance with the concessionaire’s scope of community action.” (Art. 1)

- These services “shall be made up of one broadcasting station with a minimum radiated power of 1 watt and a maximum of 25 watts”. “In exceptional cases, […] and in the case of areas that are on the border or far removed, with a spread-out population or in extremely rural areas, radiated power may be up to 40 watts”. “If the goal sought is to promote the cultural identities of indigenous peoples and languages, the maximum limit for radiated power shall be no greater than 30 watts”. (Art. 4)

- “The concession period shall be ten years, and the concessionaire shall have the preferential right to renew it, providing it has fulfilled the community goals that led to the original concession.” (Art. 11)

- “Service concession organizations may broadcast mentions of business or services located in their service area in order to finance their own broadcasting needs, and may also enter into agreements for cultural, community, sports or general public interest broadcasting. ‘Commercial mentions’ shall mean commending or thanking an entity, business, establishment or commercial venue, and only the name and address thereof may be indicated. In no case may electoral or political propaganda be broadcast.” (Art. 13)

1263. The Office of the Special Rapporteur reiterates to the State that the legal recognition of community broadcasting is insufficient if laws establish discriminatory conditions for its development and sustainability. Discriminatory conditions include, for instance, limitations that may be provided for in legislation, or imposed in practice, that establish restrictions on content, geographical coverage, or access to sources of funding for certain types of media without a sufficient, objective and reasonable argument that they pursue a legitimate aim consistent with the American Convention.


\textsuperscript{1786} Biblioteca del Congreso Nacional de Chile. Ley núm. 20.433, Crea los servicios de radiodifusión comunitaria ciudadana. May 4, 2010. Available for consultation at: \url{http://www.leychile.cl/Navegar?idNorma=1013004}

There appears to be no reason to prevent a community radio station from having local or national coverage, depending on its social project. Community broadcasting is not necessarily limited to geographically defined service areas. With the exception of reasonable restrictions to avoid concentration of media ownership, the law should not preset arbitrary limits on coverage, power or the number of community stations in specific geographical areas. Pre-established limits on funds obtained through advertising are also arbitrary. Community radio stations should have access to resources to ensure their equal financial sustainability and with no more limitations than necessary to guarantee their social purpose and independence. Specifically, it must be ensured that State funding does not compromise the independence of community radio, as this would mean losing the genuine value of community in this area of broadcasting.

Other recurring themes during the visit were the slow implementation of the Law and the absence of public policies that effectively strengthen the sector. To many, implementation has shown that the law “has not fulfilled the expectations of having a more democratic media system.”

The Office of the Special Rapporteur was informed that since the Law became effective, at least 226 radio stations reportedly had completed procedures to migrate from minimum-coverage radio to community radio, and 70 more were still completing the migration process required by law. One hundred and forty-eight public bidding procedures were completed in the sector. Most of these procedures were not granted, and only 47 new concessions were granted since the law became effective. Moreover, of the total number of concessions granted, 33.8 per cent are operated by religious organizations, and in more remote areas this percentage may be up to 50 per cent of radio stations. According to information received, political parties are also reportedly operating minimum-coverage concessions, at the expense of access to these frequencies in other social sectors. Civil society organizations attribute the low number and lack of diversity in the new concessions granted to a lack of information and orientation on access to frequencies, the slow process (that can last from 1 to 2 years) and weaknesses in the legal system in terms of the development and sustainability of media outlets that represent a diversity of social actors, and specifically the indigenous peoples in the country.

Indeed, during the visit, the absence of a sustained public policy geared towards providing opportunities regarding the access and sustainable development of community radio for indigenous peoples was noted. In Temuco, the Office of the Special Rapporteur received worrisome complaints about the legal, technical, and economic limitations faced by indigenous peoples in implementing community broadcasting projects and the ineffectiveness of measures to promote and guarantee indigenous peoples’ access to the media. The Office of the Special Rapporteur has told the State that there is an urgent need to adopt positive measures to guarantee access for indigenous peoples to community media outlets, in the law and in practice, in accordance with ILO Convention 169, which imposes the requirement that States adopt special measures to safeguard the people, institutions, property and cultures of these peoples.

In this regard, it is important to remember the UNESCO “Convention on the Protection and Promotion of the Diversity of Cultural Expressions” (2005), which promotes respect for cultural identities, linguistic diversity, religions and the customs and traditions of different sectors of society and minority groups in particular. In this regard, the Convention establishes that cultural diversity is expressed “also through...diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.” The preamble states that “cultural activities, goods and services have both

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1790 According to Article 9 of Ley 20.433 “Likewise, churches and religious organizations ruled by law Nº 19.638 may hold a concession.”

1791 This would be the case of Radio Nuevo Mundo, of the Communist Party of Chile (www.radionuevomundo.cl), present in Santiago on 930 AM and repeating signals on FM in 11 more cities.
an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value." The goal of diversity in broadcasting must be established in legislation that ensures, among other things, enough space for the broadcasting of different communication platforms.\textsuperscript{1792}

1269. In this context, the Office of the Special Rapporteur is seriously concerned about complaints it received about incidents of intimidation against journalists who work at and operate indigenous community radio stations. The situation of radio Kimche Mapu and of journalist Mireya Manquepillan are examples of this situation. According to information received during the visit, Manquepillan has been the constant victim of pressure and acts of harassment committed by Chilean Carabineros as a consequence of her work as a journalist. The Kimche Mapu radio station has reported incidents of excessive use of force, raids and the arrest of members of the Lof Kulche Mapu community, who are claiming ancestral lands and denounce their occupation by forestry companies in the municipality of Lanco, Valdivia.

1270. As indicated by the Inter-American Court, "journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment."\textsuperscript{1793} Similarly, the IACHR has affirmed, in Principle 9 of the Declaration of Principles on Freedom of Expression, that violence against journalists "violate the fundamental rights of individuals and strongly restrict freedom of expression." It is incumbent on States to investigate, identify, prosecute and penalize those who commit acts of violence against journalists.

1271. Providing appropriate instruction for State security forces on the role of the press in a democratic society is an important step in order to prevent violence against journalists and media workers. The Office of the Special Rapporteur has thus recommended that States adopt adequate prevention mechanisms in order to avert violence against media workers, including the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression.\textsuperscript{1794}

1272. Lastly, the Office of the Special Rapporteur heard testimony on the use of criminal law and police force to punish the operation of unlicensed community radio stations pursuant to article 36 (B)(a) of the Telecommunications Act [Ley General de Telecomunicaciones] (Law No. 18.168), which stipulates that the operation or use of free-to-air telecommunications or broadcasting services or facilities without the authorization of the respective authority is punishable by a term of imprisonment.\textsuperscript{1795} The World Association of Community Radio Broadcasters (AMARC) believes that between 2015-2016, six radio stations were reportedly raided, their equipment was seized and their communicators were arrested. Most of the criminal proceedings that are brought reportedly "end with the conditional suspension of the trial, with a commitment not to broadcast for a year, among other alternative measures, which has a silencing effect on further communication."\textsuperscript{1796}

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In this regard, the Office of the Special Rapporteur is still concerned about current Chilean laws that establish criminal penalties for the unauthorized use of frequencies. It is also worrisome that the debate in Congress on the legislative bill to amend the sanctions established in article 36 B(a) of the Telecommunications Act [Ley General de Telecomunicaciones] (Law No. 18.168) is not moving forward as urgently as it should. As stated on numerous previous occasions, the use of criminal law to penalize violations of the broadcasting system can be problematic in light of the American Convention on Human Rights. Establishing criminal penalties for commercial or community broadcasters who may find themselves in violation of the law due to the lack or misuse of a license is a disproportionate reaction to the interests sought to be protected.

It is worth recalling that the Chilean State signed an agreement indicating it would comply with the recommendations issued by the IACHR in report No. 2/14 in case 12.799, Miguel Ángel Millar Silva et al (Radio Estrella del Mar de Melinka). In this agreement, approved by the IACHR, the State committed to, among other actions:

a. Establish a Program to promote citizen broadcasting in Regions X and XI (with emphasis on Chiloé and the Guaitecas) with the participation of the petitioners. The Program shall include positive action measures to guarantee the effective operation of radio stations promoted by civil society. The Program would be created jointly, and to this end, a specific working plan would be drafted beforehand.

b. Establish a working group to ensure that discriminatory practices are not followed in implementing the Law. Parties shall make an effort to ensure that the group includes the Ministry General Secretariat of Government, SUBTEL, the World Association of Community Radio Broadcasters (AMARC), the Asociación Nacional de Radios Comunitarias y Ciudadanas de Chile (Anarcich), Universities, the Colegio de Periodistas de Chile and Instituto Nacional de Derechos Humanos. In this regard, the working group shall conduct a study on the subject of amending article 36 B of the Telecommunications Act (Law No. 18.168).

Based on the preceding, the Office of the Special Rapporteur recommends that the Chilean State review Law No. 20.433 on Community Broadcasting [Ley No. 20.433 sobre Radiodifusión Comunitaria Ciudadana] and amend provisions that have discriminatory effects and impede the sustainable development of community radio. It also reiterates its call to amend article 36 B of the Telecommunications Act, which is not currently in compliance with international standards in this area. Finally, this Office urges the State to develop a comprehensive policy to promote this sector that specifically includes the indigenous peoples in the country.

E. Free and Open Internet

The Office of the Special Rapporteur wishes to highlight that Chile has made a significant effort to guarantee that the social and economic benefits of communications technologies and the Internet reach the general population, through various legislative initiatives and public policies. To this end, for example, the Office of the Special Rapporteur was informed of the adoption of the 2020 Digital Agenda [Agenda Digital] in late 2015, which lays out “a roadmap for progressing towards the digital development of the country in an inclusive and sustainable manner.”

Progress made to date notwithstanding, the Office of the Special Rapporteur believes that the main challenge for Chile lies in including a true, human rights-based focus in the design, development and implementation of these policies, one that places human beings and their rights at the center. For the benefits of the Internet and communications technologies to be distributed among the population in an inclusive, sustainable manner, they must be grounded in respecting and guaranteeing human rights, especially the right...

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to freedom of expression, which enables and makes possible the exercise of other rights on the Internet.\textsuperscript{1799} In the words of the United Nations General Assembly, “progress towards the vision of the World Summit on the Information Society should be considered not only as a function of economic development and the spreading of information and communications technologies but also as a function of progress with respect to the realization of human rights and fundamental freedoms.”\textsuperscript{1800}

1278. As explained hereunder, democratic states such as Chile have the obligation to develop Internet policies and practices that are necessary to guarantee the protection of human rights in this area and to review obsolete standards that may unduly interfere with the capability of the Internet as a medium for the realization of human rights.

- Legal Framework

1279. On several occasions, this Office has highlighted the important laws and policies adopted in Chile to protect freedom of expression on the Internet in recent years. These laws and policies explicitly included internationally recommended principles and positioned the country as a model to be followed in the region. The Office of the Special Rapporteur has underlined, for example, the Law on Intellectual Property [\textit{Ley de Propiedad Intelectual}] that limits intermediary liability for the content produced by third parties, establishes a legal standard for eliminating content that violates the Law, and creates new exceptions to the need for obtaining the consent of rights holders.\textsuperscript{1801} It also held up as regional examples Law 20.453 and Supreme Decree [\textit{Decreto Supremo}] 368 of 2010, which enshrine the principle of net neutrality for Internet consumers and users by prohibiting the blocking, interference, discrimination, hindrance, or restriction of the right of any user to “use, send, receive or offer any lawful content, application or service through the Internet, as well as any other type of lawful activity on or use of the web.”\textsuperscript{1802}

1280. In the 2020 Digital Agenda [\textit{Agenda Digital 2020}] the State recognized, however, that “the development of the national digital legal framework has made uneven progress when compared to the development of new technologies, which has significantly impacted the fundamental rights of persons.”\textsuperscript{1803} The government affirmed that “a new regulatory focus is needed so that regulations that have become obsolete due to advances in technology, or those that halt market innovation, entrepreneurship and growth, may be amended; this will create regulatory conditions that promote sustainable economic growth and full social inclusion in a knowledge-based society.”\textsuperscript{1804}

1281. The objectives of the new digital agenda include: 1) developing a digital framework, and 2) working towards the full respect of fundamental rights in digital development. The agenda “in some cases provides for working groups to create consensus on courses of action and to put forth draft bills that are considered key to ensuring digital development in Chile while fully respecting the human rights of persons.

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\textsuperscript{1802} Biblioteca del Congreso Nacional de Chile. Ley núm. 20.453. Consagra el principio de neutralidad en la red para los consumidores y usuarios de Internet. August 26, 2010. Art. 24 H a).


This is a multi-sectoral effort that involves coordinating, articulating and identifying regulatory gaps so that the necessary legal and/or regulatory amendments may be proposed.\textsuperscript{1805}

1282. The Office of the Special Rapporteur celebrates that this initiative includes the respect and guarantee of online human rights as “a cross-cutting objective that will allow for the other objectives included [in the agenda] to be met.” However, it cautions that the proposal for regulatory review is limited to: “personal data protection regulations, electronic payment methods regulations, the promotion of electronic signatures, digital tax and tariff regulations, digital public purchase regulations, and mechanisms that facilitate the development of IT professionals.” It leaves significant gaps in areas that are considered essential for respecting rights on the Internet, such as net neutrality,\textsuperscript{1806} the limits and checks on State and private surveillance on the Internet, and safeguards for the exercise of freedom of expression and privacy in cybersecurity policies.

1283. These gaps are troubling and highlight a substantial omission on the path to including a human rights focus in Internet policy. It is also troubling that at the same time as a regulatory review was announced in the framework of the 2020 Digital Agenda [\textit{Agenda Digital 2020}], several legislative bills were promoted that propose imposing restrictions on the right to freedom of expression in vague, ambiguous terms and that could interfere arbitrarily in the exercise of this right on the Internet. This is the case in the proposal to amend Law No. 19.733 on Freedoms of Opinion and Information and the Practice of Journalism, on digital media [\textit{Libertad de Opinión e Información y el Ejercicio del Periodismo, sobre medios digitales}],\textsuperscript{1807} and the draft bill that seeks to amend article 13 of Law No. 19.628 on the Protection of Private Life [\textit{Protección de la Vida Privada}], to establish the so-called “right to be forgotten” of personal information that is specifically stored on search engines and websites.\textsuperscript{1808} The indiscriminate de-indexing of search engine links, as well as the suppression of information from its original source on the Internet may have disproportionate effects that are even similar to censorship.

1284. In order for the public policy outlined in the 2020 Digital Agenda [\textit{Agenda Digital 2020}] to fulfill its objectives, these troubling legislative developments must be reviewed and brought in line with Chile’s commitments in the area of human rights, under which it has the obligation to respect and guarantee the rights that people have online and offline.\textsuperscript{1809} Specifically, the Office of the Special Rapporteur has indicated that the right to freedom of expression is fully effective in communications, ideas and information that are disseminated and accessed via the Internet, and that States must respect and guarantee the exercise of this right in that area in accordance with article 13 of the American Convention.\textsuperscript{1810} In this regard, States must ensure that restrictions to freedom of expression on the Internet are only acceptable when they meet the international standards that stipulate, inter alia, that they must be provided for by law, pursue a legitimate aim recognized by international law, and be necessary to accomplish that aim (the “three-part” test). In evaluating a restriction to freedom of expression on the Internet, States must weigh the potential

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\textsuperscript{1806} During the visit, the Office of the Special Rapporteur welcomed information about Subtel’s actions, in accordance with the principles of net neutrality, to prevent Internet service providers from developing commercial offers with limited or discriminatory access to Internet content, applications or services and ensure a minimum access speed to the web, so as to uphold an open and non-discriminatory Internet. Gobierno de Chile. Subsecretaría de Telecomunicaciones. Circular No. 40/DAP 13221/F51. April 14, 2014. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.


\textsuperscript{1808} Chamber of Deputies. April 2016. \textit{Buscan garantizar el derecho al olvido}. Emol. October 26, 2016. \textit{Diputados retoman discusión de proyecto que busca asegurar “derecho al olvido” en buscadores de Internet}.


impact of that restriction on the capacity of the Internet to guarantee and promote freedom of expression against the benefits that the restriction would yield for the protection of other interests.

1285. Another issue in urgent need of regulatory review is the surveillance of electronic communications by the police and investigation agencies, and the compatibility of these powers with the right to privacy and freedom of expression.

1286. In July of 2015, Wikileaks stated publicly that several countries in the region, including Chile, had acquired spy software called Remote Control System (RCS), created by the Italian company Hacking Team, which sells software for governments or government agencies, also known as DaVinci or Galileo. The spy software sold by the company is allegedly designed to evade encryption on computers and mobile phones, which would allow for the extraction of data, messages, calls and mail, VOIP (voice over IP) voice calls, and instant messages. The software could also be used to remotely activate cameras and microphones. According to the Hacking Team portal, “collecting evidence on monitored devices is silent and the transmission of data collected from the device to the RCS server is encrypted and untraceable.”

1287. After these revelations, the Investigations Police of Chile [Polícia de Investigaciones de Chile] (PDI) publicly acknowledged that “this tool was acquired within the framework of a project to modernize PDI technology, the goal being to build operational capacity for investigating organized crime, international terrorism and large-scale drug trafficking.” It also stated that the software “was acquired in compliance with public procurement regulations and is used with proper judicial authorization exclusively for the prosecution of crimes.”

1288. During its visit and in subsequent communications, the Office of the Special Rapporteur requested information from the State about the Chilean government’s purchase of spy and hacking software from the Hacking Team company and about the regulatory framework that covers these types of surveillance tools. In its response, the State did not explicitly acknowledge purchasing this software and limited itself to affirming that “no public institution has the technological tools to violate the human rights of any inhabitant of the country.” It also stated that law enforcement and public safety forces conduct their investigative duties in strict adherence with the law and are subject to previous judicial control, in accordance with articles 23 and forward in Law No. 19.974, enacted in 2004, which establishes the State intelligence system [Sistema de Inteligencia del Estado] and creates the National Intelligence Agency [Agencia Nacional de Inteligencia].

1289. The manipulation of software, data, computer systems, networks or other electronic devices by State agencies without the permission of the responsible person or organization, or without the user’s knowledge (government hacking), is a highly intrusive practice that presents serious risks for the exercise of human rights online. If authorized by law, this practice should be limited to surveillance in the context of investigating serious crimes. Its use for any other purpose must be specifically prohibited.

1290. In the investigation of serious crimes, this kind of surveillance must be exceptional and selective, and its use must be surrounded by legal guarantees and judicial controls specifically designed to

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1813 “En relación a las informaciones acerca del software Phantom, la Policía de investigaciones de Chile informa: Comunicado de prensa (…)” Official account of PDI Chile. July 6, 2015; CIPER. July 10, 2015. Los correos que alertaron sobre la compra del poderoso programa espía de la PDI; Emol. 6 de julio de 2015. PDI confirma compra de software creado por empresa italiana que fue hackeada.


safeguard the rights involved. A law enacted by Congress in 2004 provides an outdated and inadequate legal framework to safeguard the rights affected by surveillance methods that are highly intrusive and highly technically complex. The existence of prior judicial controls without an adequate legal framework does not sufficiently guarantee [the] minimum mechanisms of transparency and specialized technical knowledge of the appropriate judges.

1291. In this regard, in the Joint Declaration on Surveillance Programs and Their Impact on Freedom of Expression this Office expressed its concern that “legislation on intelligence and security has remained inadequate as new technologies have been developed in the digital era.” It established that “it is especially concerning that indiscriminate access to information on communication between persons can have a chilling effect on the free expression of thought and the search for and distribution of information in the region.”1816

1292. Therefore, the Office of the Special Rapporteur has recommended that States guarantee that the interception, collection and use of personal information, including all limitations on the right of the affected person to access this information, be clearly authorized by law in order to protect them from arbitrary or abusive interference with their private interests. The law must establish limits with regard to the nature, scope and duration of these types of measures; the reasons for ordering them; the authorities with power to authorize, execute and monitor them; and the legal mechanisms by which they may be challenged.1817 Similarly, in its report on the Right to Privacy in the Digital Age, the Office of the United Nations High Commissioner for Human Rights stated that:

The State must ensure that any interference with the right to privacy, family, home or correspondence is authorized by laws that (a) are publicly accessible; (b) contain provisions that ensure that collection of, access to and use of communications data are tailored to specific legitimate aims; (c) are sufficiently precise, specifying in detail the precise circumstances in which any such interference may be permitted, the procedures for authorizing, the categories of persons who may be placed under surveillance, the limits on the duration of surveillance, and procedures for the use and storage of the data collected; and (d) provide for effective safeguards against abuse.1818

1293. This Office of the Special Rapporteur has also held that “the law must ensure that the public can access information on private communications surveillance programs, their scope and any regulation that may be in place to guarantee that they cannot be used arbitrarily. Thus, States must at least disseminate information about the regulatory framework for surveillance programs, the agencies tasked with the implementation and oversight of these programs, procedures for authorization, selecting objectives and data management, as well as information about the use of these techniques, including aggregate data about their scope. In any case, States must establish independent supervisory mechanisms that ensure the transparency and accountability of these programs.”1819 In this regard, in the Joint Declaration on Freedom of Expression and Responses to Conflict Situations, the Special Rapporteurs affirmed that “States should always be fully transparent regarding their systems of surveillance, including the legal and policy framework for this. There should be adequate independent oversight of systems of surveillance, including of the authorities tasked with actually conducting surveillance.”1820

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1820 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
In conclusion, this Office of the Special Rapporteur urges the Chilean State to review the current legal framework, practices and policies in order to ensure that they are in line with international human rights principles in the digital arena. The Office of the Special Rapporteur reminds the State of its technical assistance in this area.

- **Universal Internet Access**

According to official data, 72 per cent of Chileans use the Internet.\(^{1821}\) This translates to 12.7 million people, which places Chile in first place when it comes to connectivity in Latin America. However, the State has acknowledged the “serious socioeconomic, geographical and age differences in Internet access,” the high cost of the service, and the need to “ensure the stability and speed of the service” given growing demand in the country. The State has identified a “second digital divide,” “not in regard to access, because extremely high penetration percentages have been reached, but rather between people whose Internet connections had a higher or lower capacity.”\(^{1822}\) The 2020 Digital Agenda [Agenda Digital 2020] reportedly plans to tackle these challenges and includes among its areas of action “expanding digital access for all” and “improving the conditions that enable higher-quality connectivity.”\(^{1823}\)

During the visit, the Office of the Special Rapporteur learned of the government’s efforts to close the digital divide, which include installing public WiFi hotspots, broadening access to 700 MHz band spectrum, and launching fiberoptic connection programs in the southern part of the country between Puerto Montt and Punta Arenas. The Office of the Special Rapporteur also learned of a potential draft bill on minimum Internet connection speed.\(^{1824}\)

This Office of the Special Rapporteur reminds the State that positive measures to enable quality universal Internet access must promote digital inclusion, be grounded in the respect for human rights, and must have a main emphasis on excluded communities and groups who are either excluded or discriminated against. The Office of the Special Rapporteur urges the State to make strides in that direction and guarantee the equal participation of all relevant stakeholders in Internet governance, while fostering greater cooperation between the authorities, academia, civil society, the technical community and the private sector. Specifically, it recommends that the 2020 Digital Agenda [Agenda Digital 2020] include standards for transparency, public reporting and monitoring systems that make it possible to assess whether the goals established to improve connectivity were achieved effectively, as well as indicators regarding the impact of these standards on human rights.

F. **Freedom of Expression and Social Protest**

The exercise of social protest, as an essential aspect of the right to freedom of expression, was also the subject of observation during the official visit. The Office of the Special Rapporteur cautions that in the Chilean legal system, there are still laws that allow for restricting the right to assemble and to freedom of expression that are incompatible with the American Convention, and that in the management of protests,

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\(^{1824}\) Senado de Chile. May 20, 2016. Proyecto que busca garantiza una velocidad mínima de acceso a Internet quedó listo para ser votado por la Sala; BioBio. April 12, 2016. Avanza en el Congreso proyecto de ley que garantiza velocidad mínima de acceso a Internet.
there is a persistence of excessive use of force and other practices that have particularly affected women and indigenous peoples in the country.

- **Legal Restrictions**

1299. The National Constitution [*Constitución Nacional*] of Chile recognizes that “all people [have] [...] the right to assemble peacefully without prior permission and without weapons.” It affirms, however, that “meetings in squares, streets and other public places shall be ruled by general police regulations.”

Supreme Decree [*Decreto Supremo*] No. 1086, which was adopted during the military dictatorship in 1983, regulates the exercise of this right in streets and squares. The law requires that the organizers of any public meeting or demonstration “give prior notice of at least two business days to the corresponding regional or provincial Governor” and authorizes public safety forces to “prevent or dissolve any demonstration for which proper notice has not been given and that does not meet the requirements established by law.”

The law also gives the regional or provincial Governor the authority “to deny permission for public meetings or demonstrations on heavily trafficked streets or on streets where public transportation may be disrupted, [and] for meetings held in squares and leisure roads during recreational and rest hours, as well as those held in parks, squares, gardens and green avenues.”

1300. The IACHR and this Office of the Special Rapporteur have expressed concern over Supreme Decree [*Decreto Supremo*] No. 1086, which, in a manner that is incompatible Inter-American standards for the protection of human rights and best practices, appears to, in practice, confuse the prior notice requirement with a system of authorizations for public demonstrations in streets, squares, and main thoroughfares. Although the aim of the decree is to regulate the procedure for prior permission for marches and demonstrations in streets and squares, in practice, it allows the authorities to deny permission for legal public demonstrations and authorizes security forces to break up marches deemed “unauthorized.”

In this regard, the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, stated in his report on his Mission to Chile that this legal framework is a “*de facto* authorization regime” and that “even when couched as notification, turns the exercise of the right to freedom of peaceful assembly into a privilege.”

1301. This Office of the Special Rapporteur has affirmed that in a democracy, States must act based on the legality of the public protests or demonstrations and under the assumption that these are not a threat to public order. This means that the focus must be on promoting higher levels of citizen involvement, and that streets and squares must be privileged locations for public expression. To this end, it is important to keep in mind that those who participate in public demonstrations have as much a right to use these spaces during a

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1302. The right to social protest, as an exercise of the freedom of peaceful assembly, of the right to freedom of expression, freedom of association and the right of participation and to petition, is not absolute. However, as this is of crucial social interest, this leaves States with especially narrow margins to justify limiting this right. Indeed, the freedom to participate in marches and demonstrations must be considered the rule, and limitations on this right must be the exception. The protection of the rights and freedoms of others must not be used as a simple excuse to restrict a protest. In this regard, the right of assembly and demonstration cannot be considered as synonymous with public disorder for the purpose of restricting it per se. Neither can the right to assembly be regulated with the goal of establishing grounds for prohibiting meetings or demonstrations.

1303. In this regard, the Commission has reiterated that the exercise of the right to assembly through social protest should neither be subject to authorization by the authorities nor to excessive requirements that prevent it from taking place. Any legal requirements that create the basis for prohibiting or restricting a meeting or demonstration—for example, through the requirement of obtaining a permit first—are not compatible with this right. The IACHR has indicated that the requirement of prior notification must not be confused with the requirement of prior authorization granted in a discretionary manner.

1304. So that the Chilean legal framework in this area may be compatible with the American Convention and Chile’s other international obligations, the Office of the Special Rapporteur recommends that the State repeal Supreme Decree [Decreto Supremo] No.1086.

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• The Use of Force

1305. General principles regarding the use of force, when applied to the context of protests and demonstrations, require that security operations be planned carefully and thoroughly by people with experience and training that is specific to this type of situation, and clear operating procedures must be followed. In the context of the positive obligation to guarantee this right and to protect those exercising the right as well as third parties, States must establish specific rules and standard operating procedures for security forces involved in social protests and public demonstrations. These directives must be such that police officers act “with the certainty that their obligation is to protect the participants in a public meeting or demonstration or mass gathering so long as they are exercising their right.”

1306. The Office of the Special Rapporteur notes with satisfaction that in 2012, the General Management of the Chilean Police [Carabineros de Chile] ordered the review of Special Forces procedures for the management and control of demonstrations and protests. To this end, it brought together civil society organizations, human rights organizations, and the International Committee of the Red Cross (ICRC). Work concluded in 2013, with “the drafting of a series of protocols that defined a framework for the duties of the Carabineros in maintaining public order during public demonstrations. These include a defined sequence of steps expected in the planning and execution of police operations, a differentiated and proportionate use of force, as well as the principles of necessity, legality and proportionality.” In June, 2014, the Procedures for the Maintenance of Public Order [Protocolos para el Mantenimiento del Orden Público] were published.

1307. However, the Office cautions that the Procedures for the Maintenance of Public Order draw a worrisome distinction when it comes to police intervention in demonstrations depending on the appearance of legitimacy, as follows: a) authorized peaceful protests; b) unauthorized peaceful protests; c) violent demonstrations; and d) aggressive demonstrations. “Violent demonstrations” are understood to be those that “violate the instructions of police authority” and in this case, procedures do not order that a process of dialogue be followed, but rather the clearing and dispersal of demonstrators and the arrest of lawbreakers.

1308. During its stay in Santiago de Chile, the Office of the Special Rapporteur team observed marches in which thousands of students protested to demand government reform in education. During some of these protests, violent acts were committed by specific, easily identifiable groups, acts that must be investigated by the State. However, it is unfortunate that these acts of violence are seized upon by different parties to discredit demonstrations in the streets.

1309. In this regard, it is worth reminding the State that a demonstration cannot be deemed illegal or considered non-peaceful due to the violent acts of a few people. If the actions of isolated persons or groups of persons, including agents provocateurs and counter-demonstrators, occur with the goal of disrupting or dispersing meetings, States have a positive obligation to actively protect these meetings. This responsibility must be explicitly stated in domestic legislation. When a demonstration or a protest leads to situations of
violence, it should be understood that the State was unable to guarantee the exercise of this right. Its obligation is to effectively manage the underlying demands and the social and political unrest in order to properly channel complaints and protect the participants and third parties from attacks by individuals.  

1310. After his visit to Chile in September, 2015, the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, stated that “the police have the duty to distinguish between peaceful demonstrators and agents provocateurs. The presence of a few people engaging in violence in and around a protest does not authorize police to brand the entire protest violent. It does not give the State carte blanche to use force against or arrest everyone indiscriminately. Rather, the violent elements should be extracted from the protest and dealt with in accordance with the rule of law.”

1311. The Office of the Special Rapporteur warns that in the procedures of the Carabineros, the use of lethal force is governed by the principle of protection of life, in accordance with international standards in this area. As stated in the procedures, “[t]he use of firearms must be considered an extreme measure. They may be used only under exceptional circumstances in which there is imminent danger of death or serious bodily harm to the Carabinero or any other person (legitimate defense). Once the dangerous situation has ended, firearms are not to be used.”

1312. However, according to information received on July 24, 2015, Nelson Quichillao, a subcontractor for the “El Salvador” mine belonging to the National Copper Corporation [Corporación Nacional del Cobre] (Codelco), died from a gunshot discharged by the Special Forces of the Carabineros of Chile [Fuerzas Especiales de Carabineros de Chile] during a protest over the mine workers’ working and economic conditions. The Commission has made clear that firearms should be excluded from the devices used to manage social protests. Operations may provide for the presence of firearms and lead ammunition outside the radius of action of the protest for exceptional cases in which a situation of real, serious and imminent risk may arise, in which their use may be warranted. In such an extreme circumstance, there should be explicit rules concerning who has the power to authorize their use and the ways in which such authorization is to be duly documented.

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1846 Carabineros de Chile. Protocolos para el Mantenimiento del Orden Público. Uso de Armas de Fuego. Protocolo 2.17.


1849 The UN Human Rights Council has called “…upon States, as a matter of priority, to ensure that their domestic legislation and procedures are consistent with their international obligations and commitments in relation to the use of force and are effectively implemented by officials exercising law enforcement duties, in particular applicable principles of law enforcement, such as the principles of necessity and proportionality, bearing in mind that lethal force may only be used to protect against an imminent threat to life and that it may not be used merely to disperse a gathering”. Human Rights Council. Resolution A/HRC/25/L.20. March 24, 2014. Para. 10. Available for consultation at: http://www.un.org/ga/search/viewm_doc.asp?symbol=A/HRC/25/L.20

In the case of less-lethal weapons used in the context of social protests, the Office of the Special Rapporteur heard reports about their frequent indiscriminate use, even though the Carabineros procedures include the principles of necessity and proportionality and require training in the use of these kinds of weapons. In May, 2015, Rodrigo Avilés, who was participating in a student protest in Valparaíso, was seriously wounded as a result of the improper use of a water-cannon vehicle. Initially, the Carabineros stated that the injury occurred when the student accidentally slipped. Videos that were published later showed that the stream of the water cannon had been pointed directly at the young man's body. According to information available, Carabineros de Chile decided to dismiss the police officer who was responsible.

In another incident, two teenage high-school students were reportedly wounded by rubber pellets shot by Carabineros.

The Office of the Special Rapporteur reminds the State that “almost all use of force against a person may, in some circumstances, lead to loss of life or serious injury.” This is the case of rubber pellets shot at close range towards the upper part of the body, tear gas shot at people, irritant gasses used against children or the elderly, or tasers used against people with heart conditions. Therefore, not only must the design and characteristics of the weapon be taken into account, other factors regarding its use and control must be as well, such as the context in which it is used and the specific conditions of the person against whom it is used.

In Chile, some groups are at greater risk of suffering human rights violations during social protests and the use of force of the Carabineros affects them disproportionately.

The Office of the Special Rapporteur was made aware of cases of gender-based violence against women in the context of protests. In one case, a pregnant woman was reported to have had a miscarriage as the result of a police beating and in another case, female students were transported to police stations where they were beaten and forced to undress. After a massive march on March 11, 2016, at least 9 women stated they were the victims of physical abuse, including sexual violence, and that they had been detained arbitrarily by Carabineros. It was reported that the victims filed complaints with the appropriate authorities, but the State did not inform this Office of the Special Rapporteur of the result of these complaints. The State only reported the opening of an administrative investigation into the alleged assault of a woman who subsequently suffered a miscarriage.

In addition, information was received from diverse sources alleging the disproportionate use of force by State agents against members of indigenous communities—especially the Mapuche people, and including children—during protests.

According to the information received, in the last fifteen years the

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1851 Carabineros de Chile. Protocolos para el Mantenimiento del Orden Público. Empleo de Escopeta Antidisturbios. Protocolo 2.16.
1856 RadioUchile. June 4, 2016. Estudiante de Liceo de Niñas de Concepción es torturada por Carabineros: "Nos trataron de putas y lesbianas".
1859 IACHR. 156 Period of Sessions. Hearing "Denuncias sobre violencia contra niños y niñas indígenas mapuche e impunidad en Chile". October 22, 2015.
demands of the indigenous peoples to claim both lands of ancestral occupation and those of which they reportedly were dispossessed during the dictatorship have intensified, with actions of land occupation and burning of building and machinery on reclaimed land. The allegations received reveal that the state’s reaction to the protest actions has been characterized by the violent eruption of security forces in the communities and the criminalization of their leaders. The Office of the Special Rapporteur listened with concern to reports of excessive use of force, raids, destruction of houses and cultural sites in the context of territorial conflicts and social protest.

1318. For example, according to information available, “from 17 August to 7 September 2015, a group of Mapuche, including several women and children, belonging to 11 communities from the Malleco region, peacefully occupied the premises of the National Corporation for Indigenous Peoples’ Development [Corporación Nacional para el Desarrollo de los Pueblos Indígenas] (CONADI) in Temuco. They demanded that their ancestral land be respected and that security forces present in the communities of Bajo Malleco be withdrawn. The police special forces eventually intervened to clear the occupation, in a reportedly excessive manner and in complete disregard of the fact that there were children in the premises. Several Mapuche were injured in the course of the operation. The police operation also breached a court order that required the presence of an INDH representative during any action to evacuate the premises.”

1319. This Office reminds the State that the procedures for police intervention and the execution and oversight of operations must contain precautions and provide for special measures in order to avoid discrimination and unequal treatment of these groups. These procedures must take into account the way patriarchal attitudes, stereotypes, assumptions and social constructs keep those groups at the margins of society and exclude them from public spaces.

1320. In another incident, female staff members of the regional office of the INDH in Antofagasta were allegedly unlawfully arrested and assaulted while while they were exercising oversight—pursuant to their legal mandate—over police detention centers during protests. Information was also received about the assault and harassment of journalists by demonstrators and security forces while they covered protests.

1321. The IACHR has reiterated that “the national institutions to protect and defend human rights, which in many countries is the Office of the Ombudsperson or defenders of the people, play an important role in the observance and enforcement of human rights. The establishment of such institutions in member States represents a step forward in the consolidation of the institutions of democratic government.” The monitoring of protests and detention centers by national human rights institutions is an indispensable component of accountability under the rule of law and one of the most effective mechanisms for controlling the use of force.

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1863 24 Horas.CL. September 11, 2016. TVN repudia agresión a equipo de prensa; La Nación. September 12, 2016. Intendencia metropolitana se querellará por ataque a equipo de prensa de TVN.


In the Joint Statement on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, the UN and OAS Special Rapporteurs indicated that in the context of demonstrations and situations of social unrest, the work of journalists and media workers and the free flow of information “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State […] preventing the disproportionate use of force and the abuse of authority.” 1866 For this reason, the authorities must afford journalists the highest degree of protection in order for them to perform their duties. In this regard, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public protest. 1867

In light of the preceding, the Office of the Special Rapporteur recommends that the Chilean State review the regulations and standard operating procedures of security forces in such a way that they better include human rights principles in procedures regarding the use of force, and that they adjust their practices based on these procedures. Specifically, it should ensure that these procedures contain provisions and special measures to avoid discrimination and the unequal treatment of groups that have historically been discriminated against and that recognize the important role human rights defenders and journalists play in promoting and protecting human rights in the context of social protests.

- Identity Checks

During the visit, civil society organizations expressed concern over the potential effects on the right to participate in public marches and demonstrations of a legislative initiative approved as part of the “Short Anti-Crime Agenda” [Agenda Corta Antidelincuencia]. The initiative proposes changes to the identity control system currently in force in the country and would allow such checks to be conducted without any reasonable suspicion of the commission of a crime, granting the police broad and general powers to check identification and detain individuals.

The legislative initiative was published on July 5, 2016. The authorities with whom the Special Rapporteur met reported that control and accountability mechanisms were incorporated into the draft bill during the debate in Congress, in particular to exclude minors and prevent the transfer of detainees to police stations. According to information provided by the State, preventive identity checks authorize police officers to “verify the identity of any person 18 years of age or older on the street, in other public places and in private places that are accessible to the public, via any means of identification […] and the necessary powers for proper enforcement must be granted in all cases.” Among the controls established, the law provides that “if there is any question as to the person is older or younger than 18 years of age, the person shall always be assumed to be a minor.” It also establishes that the procedure “[…] shall in no case last over one hour” and that in cases in which identity cannot be determined on site, “the police officer must immediately halt the procedure.” The law also instructs the police “to develop a standard complaint procedure for those persons who believe that they have been subjected to an abusive or degrading exercise of this power” and to “update the ministry of the Interior and Public Security [ministerio del Interior y Seguridad Pública] regarding the use of this power on a quarterly basis.”

The Office of the Special Rapporteur believes that the use of identity checks without any suspicion of the commission of a crime is a practice that presents serious human rights problems and may potentially have a greatly chilling effect on the exercise of the right to freedom of expression and the right to participate in public demonstrations. In this regard, the Office of the Special Rapporteur aligns itself with the analysis and the recommendations issued concerning this legal reform by Maina Kiai, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. In his report, the Special


Rapporteur stated that even with these reforms “[h]e is [...] not convinced that the law will be effective in combating crime. In fact, it may do the opposite: allowing police to randomly detain anyone they choose without any evidence or identifiable suspicion is a shortcut that fosters counterproductive policing. Effective police forces can do their jobs without interfering with fundamental rights.”

- **The Administration of Justice and Military Jurisdiction**

1327. The Chilean State must properly investigate these events, prosecute those responsible and provide adequate reparations to the victims. It must also adopt measures to guarantee that these kinds of incidents are not repeated.

1328. The State informed the Office of the Special Rapporteur that when there are complaints about police violence, the appropriate institutions launch criminal or administrative investigations in order to establish the facts and determine what the appropriate measures may be, in accordance with national laws. However, the State did not provide information.

1329. However, this Office of the Special Rapporteur is concerned that the investigation and prosecution of the unlawful and excessive use of force by police against demonstrators remains under the jurisdiction of the military criminal justice system. According to the consistent doctrine and case law of the of the Inter-American Human Rights System, and because this forum presents serious challenges to the impartial and independent administration of justice, the military criminal justice system is not the proper forum to investigate and, if appropriate, prosecute and punish the alleged perpetrators of human rights violations. Indeed, the IACHR has stressed that military justice should be applied only in cases where military criminal legal interests are affected, and never to investigate human rights violations.

1330. The Chilean State should reform its laws in order to guarantee that human rights violations committed by law enforcement officers are investigated and prosecuted by courts and institutions with civil jurisdiction. Accordingly, the Office of the Special Rapporteur views positively the recent case law of the Constitutional Court [Tribunal Constitucional] finding that the military criminal justice system lacks jurisdiction to hear and decide criminal cases affecting civil legal interests, as well as the decision of the authorities of the ordinary justice system to pursue the investigation and prosecution of a former police sergeant [ex sargento de carabineros] for his alleged responsibility for the serious injuries sustained by the student Rodrigo Avilés during a march on May 21, 2015. The Office of the Special Rapporteur also welcomes the government’s announcement that it will be introducing a bill to Congress seeking to amend the Code of Military Justice [Código de Justicia Militar] to exclude cases of human rights violations from military jurisdiction.

**III. RECOMMENDATIONS**

1331. Based on information gathered during the on-site visit to Chile, and in view of the situation of freedom of expression in the country, which has been previously analyzed, the Office of the Special Rapporteur recommends that the Chilean State adopt a series of measures aimed at consolidating the legal and institutional framework in order to effectively guarantee full exercise of the right to freedom of expression in the country, and eradicating in law and practice the legacy of past authoritarian doctrines and the transition process, which no longer hold meaning in the current environment of democratic development.

1332. The Office of the Special Rapporteur has noted the significant progress Chile has made after its return to democracy in order to guarantee full exercise of the right to freedom of expression of people under its jurisdiction, and is convinced that the country can continue to serve as a model in the region in that regard. To this end, the Office makes itself available to the Chilean State and offers its assistance so that these recommendations may be addressed as soon as possible.

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In view of the foregoing, the Office of the Special Rapporteur specifically recommends the following:

- **Regarding the Practice of Free and Independent Journalism**

1334. Repeal article 264 of the Criminal Code [*Código Penal*] and article 284 of the Code of Military Justice [*Código de Justicia Militar*], in the terms ordered by the Inter-American Court in the *Palamara Iribarne* Decision (2006).

1335. Decriminalize defamation [*calumnia* and *injuria*] and make them civil actions, in accordance with international standards and best practices. This is especially important to protect critical expressions about public officials, public figures, or issues of public interest in general. The Office also recommends that the State strengthen legal safeguards so that journalists are not subjected to legal or other types of harassment in the judicial system in retaliation for their work, by establishing separate standards to evaluate subsequent civil liability, including the standard of actual malice and the strict proportionality and the reasonableness of subsequent penalties.

1336. Strengthen its legal framework in order to effectively safeguard the right of journalists (in the functional sense of the word) and the media to protect their sources and ensure that any restriction on this right meet the strictest standards, in accordance with international standards on the subject. Chile must also ensure that public officials (including those from the Armed Forces [*Fuerzas Armadas*]) or individuals who expose wrongdoing, acts of corruption or human rights violations are not retaliated against for reporting these acts, and that they receive legal protection from legal, administrative or employment-related sanctions, in accordance with international standards and best practices.

- **Regarding the Right to Access to Public Information**

1337. Maintain the progress made in the area of access to information, strengthen current laws and the autonomy and institutional capacity of the appropriate institutions in regard to all public authorities. The Office also urges the State to double its efforts to expand real access to the right of access to public information and society’s knowledge of this information.

1338. Prohibit declaring that laws are secret on grounds of national security and immediately make public the language of any law that is currently secret under these terms.

1339. Enact laws that protect whistleblowers, which encourages public officials in the Armed Forces and the ministry of Defense and Security [*ministerio de Defensa y Seguridad*] to report wrongdoing, breaches of law and human rights violations committed by other officials, and ensure that they may remain in their positions without facing retaliation.

1340. Adopt the necessary measures to guarantee courts access to state-held information that is necessary to fulfill their obligation to administer justice, specifically via the repeal of the article in Law 19.992 that provides for 50-year secrecy of the Valech Commission I [*Comisión Valech I*] records.

- **Regarding Pluralism and Diversity in the Media**

1341. Fully implement the laws that have been enacted on the transition to digital television, advertising on public media, recognizing community media and the allocation of government advertising, in accordance with international standards on freedom of expression and promoting greater diversity and pluralism in every public policy decision made in these areas.

1342. Provide public service media with the appropriate funding and a specific mandate on the broadcasting of content and information that is of public interest. In particular, these outlets should offer different types of programs, give a voice to and satisfy the needs of all sectors of society regarding
information and interests. Establish the participation of different stakeholders in civil society in the governance of public media and guarantee that these media are independent from the administration that is in office.

1343. Improve enforcement of the law that establishes the funding of studies on pluralism in the media system. Provide training and promote policies at the level of the appropriate Office of the Prosecutor in order to prevent oligopolistic practices in media markets, and use criteria for the oversight of media acquisitions and mergers that not only include economic criteria, but also promote diversity and pluralism in the media.

1344. Enact laws that complement those that aim to defend competition, in order to guarantee pluralism in a democratic society. In particular, establish clear and transparent procedures by law for the equitable assignment and renewal of frequencies for public, commercial and community media; set reasonable limits on the hoarding of audiovisual media that require a license or a spectrum assignment and gradually adapt those that exceed the established limits; and establish transportation rules to ensure television broadcasting for subscribers of public, commercial and community media. The Chilean State must also guarantee that any restrictions placed on freedom of expression to manage frequencies and guarantee diversity and pluralism are enforced by an institution that is sufficiently independent and autonomous to shield it from both political and economic influence.

1345. Foster an opening of the written and/or digital print media market through laws and public policies that also guarantee pluralism in print media outlets. These policies may include conducting studies and adopting measures on the mechanisms for access to newsprint, the distribution and sale of newspapers in the country, and doing away with possible barriers to access in this market.

1346. Review Law No. 20.433 on Community Broadcasting [Radiodifusión Comunitaria Ciudadana] and amend provisions that have discriminatory effects and impede the sustainable development of community radio. It also reiterates its call to amend article 36 B of the Telecommunications Act [Ley General de Telecomunicaciones], which is not currently in compliance with international standards in this area. Finally, this Office urges the State to develop a comprehensive policy to promote this sector that specifically includes the indigenous peoples in the country.

- Regarding the Internet and Freedom of Expression

1347. Review the current legal framework, practices and policies in order to ensure that they are in line with international human rights principles in the digital arena.

1348. Adopt positive measures that are grounded in the respect for human rights in order to facilitate universal, quality Internet access, with a greater emphasis on excluded communities and groups who are either excluded or discriminated against.

1349. Guarantee the equal participation of all relevant stakeholders in Internet governance, while fostering greater cooperation between the authorities, academia, civil society, the technical community and the private sector. Specifically, it recommends that the 2020 Digital Agenda [Agenda Digital 2020] include standards for transparency, public reporting and monitoring systems that make it possible to assess whether the goals established to improve connectivity were achieved effectively, as well as indicators regarding the impact of these standards on human rights.

- Regarding Social Protest

1350. Repeal Supreme Decree [Decreto Supremo] No.1086 adopt new laws that are in line with international principles and standards on the subject.

1351. Review the regulations and standard operating procedures of security forces in such a way that they better include human rights principles in procedures regarding the use of force, and that they adjust
their practices based on these procedures. Specifically, the State should ensure that these procedures contain provisions and special measures to avoid discrimination and the unequal treatment of groups that have historically been discriminated against and that recognize the important role human rights defenders and journalists play in promoting and protecting human rights in the context of social protests.

1352. Establish regular, effective training programs for security forces regarding the management of demonstrations and protests and the appropriate use of force, in accordance with international human rights law. Also, continue to provide training for police officers on the rights and culture of the indigenous peoples of Chile in this regard.

1353. Reform laws as soon as possible in order to ensure that human rights violations committed by law enforcement officers are investigated and prosecuted by institutions and courts with civil jurisdiction.
CHAPTER III
STANDARDS FOR A FREE, OPEN, AND INCLUSIVE INTERNET

A. INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has acknowledged that the Internet is a unique instrument with which to extend the enormous potential of human rights and, in particular, the right to freedom of expression, to broad sectors of the public.\(^1\)

2. The growing expansion of the web throughout the world, and especially in the Americas, makes it an indispensable instrument for the full exercise of human rights and contributes to the achievement of increasing levels of social benefits and inclusion.\(^2\) In order for the benefits of the Internet and other communications technology to be distributed inclusively and sustainably among the population, the relevant policies and practices must be based on respecting and guaranteeing human rights—especially the right to freedom of expression, which facilitates and enables the exercise of other rights on the Internet. In the words of the United Nations General Assembly, “progress towards the vision of the World Summit on the Information Society should be considered not only as a function of economic development and the spreading of information and communications technologies but also as a function of progress with respect to the realization of human rights and fundamental freedoms.”\(^3\)

3. In its report on Freedom of Expression and the Internet (2013), the Office of the Special Rapporteur noted that the Internet’s unprecedented potential for the right to freedom of expression is mainly due to its “multidirectional and interactive nature, its speed, and its global scope at a relatively low cost, as well as its decentralized and open design.”\(^4\) The Office of the Special Rapporteur also affirmed that “the Internet also serves as a platform for fulfilling other human rights, such as the right to participate in cultural life and enjoy the benefits of scientific and technological progress (article 14 of the Protocol of San Salvador), the right to education (article 13 of the Protocol of San Salvador), the right to assembly and association (articles 15 and 16 of the American Convention), political rights (article 23 of the American Convention), and the right to health (article 10 of the Protocol of San Salvador), among other rights.”\(^5\)

4. The Office of the Special Rapporteur has underscored that the right to freedom of expression, in particular, is fully applicable to communications, ideas, and information that is disseminated and accessed through the Internet.\(^6\) Along the same lines, the UN Human Rights Council reaffirmed that “the same rights that people have offline must also be protected online.”\(^7\)


5. This report draws from the standards developed on the 2013 *Report on Freedom of Expression and the Internet*, broadening its analysis to the new challenges faced in the exercise of human rights online, particularly freedom of expression. The document reviews current principles and summarizes the Inter-American case law and the advances made throughout the world, with the understanding that the right to freedom of expression is instrumental to the exercise of human rights on the Internet. Because of this, the standards on this subject shed light on the analysis of other, interrelated rights. The aim of this report is to assist the member States in their efforts to incorporate a human rights-based focus in the design, development, and implementation of policies affecting the Internet.

B. GUIDING PRINCIPLES

6. The relevance of the Internet as a platform for the enjoyment and exercise of human rights is directly tied to the architecture of the web and its governing principles, including the principles of openness, decentralization, and neutrality. On the thematic report on *Freedom of Expression and the Internet*, the Office of the Special Rapporteur recognized that the original and special characteristics of the Internet should be taken into account before making any regulation that would affect its architecture or interaction with society. Accordingly, the Office of the Special Rapporteur emphasized that the digital environment should develop according to certain guiding principles that inform the State’s work, the development of public policies, and the actions of private parties, which include equal conditions of access, pluralism, nondiscrimination and privacy. Net neutrality and multi-stakeholder governance were also recognized as transversal components of these guiding principles.

7. The principle of universal access “refers to the need to guarantee connectivity and access to the Internet infrastructure and other ICT services that is universal, ubiquitous, equitable, truly affordable, and of adequate quality, all throughout the State’s territory”. In other words, the Internet must maintain its intrinsically accessible character. This principle should be interpreted so as to derive the following consequences: steps should be taken to progressively promote universal access not only to infrastructure but also the technology necessary for its use and to the greatest possible amount of information available on the Internet; to eliminate arbitrary barriers to access to infrastructure, technology and information online, and to adopt measures of positive differentiation to allow for the effective enjoyment of this right for individuals or communities who face marginalization and discrimination. Likewise, the Office of the Special Rapporteur has recognized that, according to this principle, closing the “digital divide” goes hand-in-hand with the need for States to ensure that private parties do not erect disproportionate or arbitrary barriers to Internet access or use of its principal services.

8. Pluralism and diversity, as essential conditions for public debate and the exercise of freedom of expression, must be preserved in the digital era. The Office of the Special Rapporteur has emphasized that this means ensuring that changes are not made to the Internet that result in a reduction in the number of voices and amount of content available. Public policies on these subjects should protect the multidirectional

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nature of the Internet and promote platforms that allow for the search for and circulation of information and ideas of all kinds, without regard to borders, pursuant to the terms of article 13 of the American Convention.13

9. Likewise, the Office of the Special Rapporteur recognized that in the digital era, the principle of nondiscrimination requires States to guarantee that all persons – especially those belonging to vulnerable groups or who express criticism with regard to matters of public interest – are able to disseminate content and information under equal conditions.14

10. The Office of the Special Rapporteur stressed that privacy should also be a guiding principle in the digital era. The right to privacy, according to which “no one may be object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence”, is a condition for the exercise of freedom of expression on line that must be protected by law and rigorously promoted in public policy.15 This is closely linked to the State’s obligation to create a safe environment for the exercise of freedom of expression, as violation of communication privacy has a chilling effect and hampers the full exercise of the right to communication.16

11. In addition to the principles of universal access, pluralism, nondiscrimination and privacy, the principle of net neutrality was recognized by the Office of the Special Rapporteur as “a necessary condition for exercising freedom of expression on the Internet pursuant to the terms of article 13 of the American Convention”.17 The purpose of this principle is to ensure that free access and user choice to use, send, receive or offer any lawful content, application or service through the Internet is not subject to conditions, or directed or restricted, such as blocking, filtering or interference.

12. Internet’s multi-stakeholder governance was also recognized as an important principle. The Office of the Special Rapporteur considered the importance of the multi-stakeholder and democratic processes in Internet governance, in which the principle of strengthened cooperation ensures that all relevant points of view can be taken into account and no actor can assume its regulation exclusively.18

13. Similarly, the United Nations Organization for Education, Science and Culture (UNESCO) endorsed the concept of “Internet universality” as an integrative model for the development of the Internet in the service of the public interest and proposes four guiding principles for promoting the regulation and development of the Internet in order to continue building the knowledge society: (i) human rights-based (and therefore, free); (ii) openness; (iii) accessibility; and (iv) multi-stakeholder participatory. The four principles can be summarized by the mnemonic R – O – A – M (Rights-based, Open, Accessible, Multi-stakeholder driven).19

14. According to this characterization of the Internet, the first dimension of “Internet universality” is to respect international norms on the protection and promotion of human rights and guarantee the three-part test of legality, necessity, and proportionality in the implementation of permissible limitations on human

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rights online. UNESCO emphasized that “an Internet that failed to uphold human rights would be far from being a case of ‘Internet Universality,’ and would also be incompatible with the Post-2015 Sustainable Development Agenda.”

15. The general principle of openness highlights the technical standards, such as inter-operability and open application interfaces, “and the absence of closure that might otherwise be imposed through exclusionary licensing regimes or protectionist limitation on the provision of services that artificially favor monopolies or archaic technological platforms.” Political and social support for open systems, not only in technical knowledge, are part of this principle—and it is through this principle that innovation is encouraged and decentralization is maintained online. UNESCO affirmed that “openness also points to the importance of open source software, open data, and open educational resources, as part of the positive make-up of the Internet.”

16. Accessibility means that Internet access is ubiquitous, attainable, nondiscriminatory, high-quality, and low-cost. UNESCO underscored the dual dimension of Internet users as recipients or beneficiaries of information and content but also as producers of content, services and applications. Emphasis is therefore placed not only on the available infrastructure but also on the promotion of capacity, multilingualism, and digital literacy. Finally, UNESCO recognized two other dimensions of access: one linked to the development of “sustainable and reliable business models are able to finance universal access and further ensure accessibility through the sustenance of a diverse range of content and services,” and the other linked to confidence in the Internet with respect to such issues as the security and authenticity of data.

17. UNESCO also recognized that the multi-stakeholder governance of the Internet ensures the active participation of the representatives of the different interests converging around the development and regulation of the Internet, including States, the private sector, the tech sector, civil society, and the academic sector, as well as—essentially—Internet users. The multi-stakeholder driven aspect helps to build shared norms that ensure the global nature of the Internet and mitigate violations or abuses of this important resource.

18. There is an international consensus and a commitment to the need to promote universal access to the Internet as an essential means for the effective exercise of human rights online, particularly freedom of expression; and the multi-stakeholder governance of the Internet as a guarantee for the development of technologies respectful of human rights. The right to equality and nondiscrimination intersects with the abovementioned principles, as well as the analysis of all of the rights that are exercised on or through the Internet. The Office of the Special Rapporteur will develop some of the essential aspects of these guiding principles.

1. Free and Open Internet

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26 UNESCO. Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda. 2 September 2013. Page 9. Also see, NETmundial’s Multistakeholder Statement. The Statement highlights the importance of a permissionless innovation environment for the future of the Internet. According to the text: “The ability to innovate and create has been at the heart of the remarkable growth of the Internet and it has brought great value to the global society. For the preservation of its dynamism, Internet governance must continue to allow permissionless innovation through an enabling Internet environment, consistent with other principles in this document.” April 24th, 2014.
19. The concept of openness and internet freedom is based on the development of technical standards such as inter-operability, open application interfaces, open documents, text and data, as well as on the absence of limitations or obstacles that artificially favor monopolies or archaic platforms. One of the pillars that guarantees internet freedom and openness is the principle of net neutrality.

20. The 2011 Joint Declaration on Freedom of Expression and the Internet holds that “There should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.”

21. The principle of neutrality is an Internet design principle, whereby the use of networks is maximized and all “data packets” are treated equally, without distinction of any kind. It follows that we can refer to a “dumb network” online that is specialized at both ends—the content or the application is created on one end, is transferred through the network in different packets, without discrimination, and the content or application is reassembled at the destination point.

22. As the Office of the Special Rapporteur for Freedom of Expression has maintained, net neutrality is a necessary condition for the exercise of freedom of expression, and intersects with the guiding principles. The purpose of this principle is to ensure that free access and user choice to use, send, receive or offer any lawful content, application or service through the Internet is not subject to conditions, or directed or restricted, such as blocking, filtering or interference.

23. The States must guarantee the operation of this principle through appropriate laws. Several countries in the region have already enacted laws establishing the principle of net neutrality: Argentina, Brazil, Chile and Mexico. The Federal Communications Commission (FCC) of the United States also recently endorsed the principle of net neutrality, and the National Telecommunications Commission of Paraguay has done the same.

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33 República de Chile. Ley 20.453 que consagra el principio de neutralidad en la red para los consumidores y usuarios de internet. August 20, 2010. Articles 1 and 24H. Available at: https://www.leychile.cl/Navegar?idNorma=1016570


24. The FCC’s policy on net neutrality bans three specific practices that “invariably harm the open internet.” The order prevents internet service providers (ISPs) from blocking or restricting what people can do or see online; it prevents throttling, specifically prohibiting the degrading of traffic based on source, destination, or content; finally, it precludes paid prioritization.37 The decision to protect net-neutrality, or the equal treatment of all internet traffic, also classifies broadband internet as a public utility. This allows the FCC to regulate broadband internet similarly to telephone services and other utilities and in turn, allows the FCC greater authority to enforce net neutrality. The United Nations Special Rapporteur on freedom of opinion and expression said that “this decision marks a real victory for freedom of expression and access to information in the United States”.38

25. The principle of net neutrality, however, may be subject to exceptions. The Office of the Special Rapporteur for Freedom of Expression maintained in 2013 that there should be no discrimination, restriction, blocking, or interference in the transmission of Internet traffic, “unless strictly necessary and proportional in order to preserve the integrity and security of the network; to prevent the transmission of online content at the express request - free and not incentivized - of the user; and to temporarily and exceptionally manage network congestion.”39 The European Commission’s proposal for the regulation of the European single market for electronic communications recognizes that “Reasonable traffic management encompasses prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and distribution of child pornography.”40

26. The Committee of Ministers of the Council of Europe, for its part, has stated that the rules on neutrality “should apply irrespective of the infrastructure or the network used for Internet connectivity.”41 The Charter of Human Rights and Principles for the Internet establishes that “Access includes freedom of choice of system, application and software use. To facilitate this and to maintain interconnectivity and innovation, communication infrastructures and protocols should be interoperable, and standards should be open.”42 This gives all the people the ability to innovate on the Internet, creating content, applications, and services in a decentralized manner, without the need for authorizations, bureaucracies, or permits.43 It adds that, “Open standards and open formats must be made available. Free and Open Source Software (FOSS) must be used, promoted and implemented in public and educational institutions and services. When a free solution or open standards do not exist, the development of the needed software shall be promoted."44

27. The Office of the Special Rapporteur has echoed the above, stating that “Users have the right to connect to or use the Internet, according to their choice, with any type of compatible device, as long as the devices do not adversely affect the network or the quality of service.”45


28. Transparency in the terms of network management is fundamental to ensuring the principle of net neutrality.46 The 2011 Joint Declaration on Freedom of Expression and the Internet establishes that “Internet intermediaries should be required to be transparent about any traffic or information management practices they employ, and relevant information on such practices should be made available in a form that is accessible to all stakeholders.”47

29. As part of the discussion on net neutrality, a new and controversial debate arose in 2015 regarding zero-rating plans. Zero-rating plans allow Internet service providers to provide access to specific applications without that access being charged as an expenditure in the end-user's data plan. Zero-rating plans exist in different countries of the region, including Chile, Colombia, Brazil, Ecuador, Panama, and Paraguay.48 Scholarly opinion is divided with respect to the impact of zero-rating plans on net neutrality. Without prejudice to the policy that each State adopts with regard to this issue, it bears noting that in no case will States be able to replace their policies of universal access to the Internet with zero-rating plans or policies.

30. The stated objective of some zero-rating plans is to bridge the digital divide and promote Internet access among persons not currently connected, temporarily providing them with restricted access to the Internet without any additional charges to their telephone service plan. Although zero-rating plans or policies may be considered acceptable in some States as part of a wider strategy to increase access, simply replacing access policies with zero-rating policies is incompatible with the development goals of the United Nations, and with the obligation of States to promote and protect individual human rights on the Internet.

31. In all cases, zero-rating policies must be evaluated in light of the legal regulations of each State, assessing the compatibility of those policies with the terms of the rules that govern and regulate net neutrality, and are incompatible in those jurisdictions where net neutrality establishes the express prohibition against discriminating among applications or content based on price. The compatibility of such measures or plans with human rights will have to be measured in light of the legality, necessity, and proportionality test. States that allow for zero-rating plans to be offered should monitor their functionality and periodically evaluate their compatibility with human rights. In addition, those States should pay special attention to the data and privacy protection systems of those plans, addressing the risks that those plans create as a result of the centralization of user data and information.

2. Access

32. Access to the Internet is a condition *sine qua non* for the effective exercise of human rights today, especially including the rights to freedom of expression and opinion, association and assembly, education, health, and culture discussed in this report.49 Given its nature as a crucial means for the full exercise of specific rights, Internet access must be universally guaranteed by taking measures to bridge the digital divide, promoting infrastructure development policies, and protecting the quality and integrity of service at all times, establishing explicit prohibitions against arbitrary blocks (partial or total), and slow-downs.

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48 See, for example, Derechos Digitales, Coding Rights y APC. *Latin America in a Glimpse*, 2015, Page 3.

33. Currently, and in spite of the commitment and efforts undertaken by the States of the region to bridge the digital divide, one-third of the population of the Americas is still not connected to the Internet. The lack of Internet access increases vulnerability and exacerbates inequality, perpetuating exclusion, one danger is that States switch all of the broadcast services to digital without ensuring that all citizens have access to digital services. This is most likely to impact upon poor, isolated and remote communities who can therefore be doubly disadvantaged by losing access to all communication services, not just digital ones.

34. In the words of the United Nations Rapporteur on Freedom of Opinion and Expression, the digital divide "refers to the gap between people with effective access to digital and information technologies, in particular the Internet, and those with very limited or no access at all."  

35. The States should take actions to progressively promote universal access to the Internet – understood as access not only to the infrastructure but also to the technology needed for its use – and to the largest possible amount of information available on the web; eliminate arbitrary barriers to access to infrastructure, technology, and information online; and take positive differentiation measures to allow for the effective enjoyment of this right for individuals or communities who face marginalization and discrimination. The Office of the Special Rapporteur for Freedom of Expression has stated that the States should guarantee connectivity and access to the Internet infrastructure and other ICT services that is universal, ubiquitous, equitable, truly affordable, and of adequate quality, all throughout the State’s territory. The 2011 Joint Declaration on Freedom of Expression and the Internet stressed that the regulations to be adopted should seek to ensure that pricing structures are inclusive, so as not to hinder access; that connectivity be extended throughout the country to effectively promote access for rural users and excluded communities; that communities have access to community-based information technology centers and other publicly accessible options; and that training and education be reinforced, especially for the poor, rural populations, and the elderly.

36. The Tunis Declaration of Principles from the World Summit on the Information Society, developed within the framework of the United Nations in 2003 and subsequently reaffirmed in various international instruments, concluded that it is desirable to have “a well-developed information and communication network infrastructure and applications, adapted to regional, national and local conditions, easily-accessible and affordable, and making greater use of broadband and other innovative technologies where possible.”

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37. The Office of the Special Rapporteur for Freedom of Expression has underscored that States should devise long-term plans and policies to develop the necessary physical infrastructure to prevent the arbitrary exclusion of certain sectors and create broadband plans and measures that enable the development of mobile Internet.58 This should include the development of more internet exchange points. These allow internet service providers and content delivery networks to exchange traffic locally rather than through upstream (and often remotely located points). This reduces costs, provides greater flexibility and quicker speeds (reducing latency considerably).

38. Finally, universal access to the Internet requires States to guarantee the quality and integrity of Internet service, protecting it in all cases from arbitrary blocking, interference, or slowdowns. Interrupting the Internet access of entire populations or segments of the population is never justified, even for national security reasons.59 Temporary or partial blocks affect the exercise of human rights online, constituting restrictions to those rights. In examining each right included in this report, we discuss the effect of Internet blocks on the exercise of that right, and the permissible limitations thereto.

39. The application of penalties denying access to the Internet can only be justified when there are no less restrictive means, and provided that such penalties meet the requirements of legality, proportionality, and necessity in a democratic society, and have been ordered by a competent judicial authority.60 Along the same lines, the State has the obligation to take measures to ensure that private companies and entities involved in the management and administration of the Internet do not erect disproportionate or arbitrary barriers to that access and that they are governed by transparent rules that allow for the exercise of citizen oversight over their access policies.61

40. Speed, stability, affordability, language, local content, and accessibility for persons with disabilities are core elements of access, recognized as such by the United Nations General Assembly in its resolution on the review of the implementation of the outcomes of the World Summit on the Information Society.62

a. Digital Literacy

41. The benefits of technological media in the exercise of human rights may materialize to the extent that individuals have access to the Internet. And this Internet access is not satisfied by mere connection to the web; rather, people must have the quality, information, and knowledge needed to be able to make use of this tool and benefit from it.63

42. “Digital literacy” is defined as the “the set of skills, knowledge, and attitudes required by an individual to functionally develop within the information society,”64 and its objective is for people to acquire


the knowledge and the skills “to use technology efficiently, developing new social and financial opportunities within their social framework.”

43. Differences in individuals’ capabilities to both use and create information and communications technologies represent a knowledge divide that perpetuates inequality. Digital literacy is an essential process in the guarantee of human rights, and a particularly necessary measure to protect and guarantee the rights to equality and nondiscrimination.

44. The States should make “educational efforts to promote the ability of everyone to engage in autonomous, self-driven and responsible use of the Internet.” Such measures have a direct impact on the ability of individuals to fully exercise specific rights and to critically evaluate information obtained online. A 2013 UNESCO report indicates that 63 per cent of the region’s countries state that they have public policies designed to offer training courses on computing and information technology.

45. The States must promote and ensure the participation of all sectors of society, including all of the subjects of such measures, in the design and implementation of specific and effective policies on the issue. In addition, digital literacy must be aimed at all persons without discrimination. The States should take account of the particular characteristics of the persons at whom such policies are directed, adopting a dual focus: 1) it should respond to the characteristics and needs of those who seek and receive information, goods, and services—for instance, a student in a rural area who receives educational material electronically, or a patient who requests an appointment for a medical exam or is notified of the results of an exam by electronic means; 2) it should take account of who offers, produces, administers, or makes use of the information, goods, and/or services—i.e., the teachers, doctors, or laboratories that create new ways of interacting with their students, patients, or the general public through the Internet. This dual focus on digital literacy encourages the circulation of content, openness, and the decentralization that characterize the Internet and are fundamental to the full exercise of human rights in this sphere.

b. Linguistic Plurality

46. Linguistic plurality is a condition *sine qua non* for the achievement of full access to the Internet under conditions of equality and nondiscrimination. Moreover, plurilingualism is intrinsically linked to the creation of the local content that is so necessary for Internet universality.


47. On this point, the United Nations Special Rapporteur in the field of cultural rights has underscored that “the vastly unequal distribution of published literary works across languages poses a significant barrier to the right to take part in cultural life for linguistic communities not offering a major publishing market.”

Although there are online translation services that have been improved in recent years, they do not provide effective solutions to the problem in question.

48. The Office of the Special Rapporteur for Freedom of Expression has emphasized that “in order for Internet access to constitute an authentic instrument to increase informational pluralism and cultural diversity, it is necessary to guarantee the participation of linguistic minorities, as well as the availability of local content on the Internet. As the Inter-American Court has indicated, the right to freedom of expression necessarily includes the right of individuals to use the language of their choosing to express themselves.”

States should take measures designed to reduce linguistic obstacles in order to make literacy viable and ensure access for all people under equal conditions. They should also “promote original local and indigenous content on the Internet.”

49. In the development of the knowledge society, the creation, dissemination and preservation of content in diverse languages and formats must be accorded high priority, including all types of content—educational, scientific, cultural or recreational—and they should be accessible. Accordingly, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has advocated for “the translation of websites into multiple languages, including languages spoken by minorities and indigenous peoples, and their accessibility to persons with disabilities. Allowing people speaking different languages or with disabilities to participate in the same communication platform facilitates a truly global society.”

This is the only way in which the States can ensure that information will be effectively accessible to all persons.

3. Multi-stakeholder Governance

50. The Internet has evolved into a global resource available to the public, and its management must respect that nature. Indeed, the internet has been and is developed and operated by a series of private companies performing different functions. However its’ character as a communication medium is that of a public space and hence its governance should be guided according to the principles of a public resource rather than simply be a matter for private contracts.

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51. The Tunis Agenda defined Internet governance as “the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet,” and affirmed that such governance should be multilateral, transparent and democratic. The United Nations General Assembly has stressed the importance of multi-stakeholder governance at the international level, placing particular emphasis on the balanced participation of developing States and the cooperation of the multiple stakeholders—governments, civil society, international organizations, tech community, academic community—that have characterized the proceedings of the World Summit on the Information Society from its inception.

52. The Office of the Special Rapporteur has stated that “in order to make sure that all relevant points of view can be properly considered, the States must ensure the equal participation of all actors relevant to the governance of the Internet, fostering strengthened cooperation among authorities, academia, civil society, the tech community, the private sector, and others, both nationally and internationally.”

53. The open debate and democratic participation that must characterize the enactment of laws in democratic States take on fundamental importance on the Internet where very diverse interests, opportunities, and capacities converge. Private actors and the tech community play a critical role as developers, administrators, and owners of the infrastructure, platforms, and applications through which people use and develop the Internet.

54. Technical bodies such as Internet Corporation for Assigned Names and Numbers – ICANN- or the Internet Engineering Task Force –IETF- have long practiced a multi-stakeholder form of governance with stakeholder groups able to develop policy and submit it to the wider community for agreement. These bodies are essentially concerned with technical problems where achieving rough consensus is possible as it involves identifying the best technical solution to the problem. Global policy issues, which require a balancing of competing interests are more difficult to achieve in a multi-stakeholder setting. Notwithstanding, the development of these public policies should be strengthened to enable the full and balanced participation of all stakeholders, and made by consensus, to the extent possible.

55. Also, the strengthening of local governance forums is essential to the promotion of a reliable and trustworthy Internet. It is particularly important for there to be rich, robust, and plural debates within States on the regulation of human rights, ensuring the participation of particularly affected or vulnerable sectors.

56. Finally, in order to measure the impact of the multi-stakeholder governance of the Internet, and to guarantee that its processes are being observed and its goals are being fulfilled, it is recommended to assess critical success factors such as inclusiveness, transparency, accountability, legitimacy and effectiveness.

4. Equality and Nondiscrimination

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57. Articles 1.1 and 24 of the American Convention establish the rights to equality and nondiscrimination. Article 1.1 of the Convention requires the States to respect and guarantee the free and full exercise of the human rights contained in the Convention “without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” Article 24 establishes that “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” Interpreting these provisions, the Inter-American Court has held that article 1.1 establishes the obligation of nondiscrimination with respect to the application and guarantee of the Convention rights and article 24 extends that guarantee of equality and nondiscrimination to the local laws that the States may enact.  

58. In accordance with these rights, the States are required to abstain from discriminating in the exercise and guarantee of rights and to take positive measures that enable all persons under their jurisdiction to effectively enjoy and exercise their rights under equal conditions. This entails the obligation to take administrative, legislative, or any other measures that may be necessary to reverse existing situations of discrimination that keep people from exercising their rights effectively.

59. Access to the Internet—both to the infrastructure and the content circulating on the web—is a key element in combating inequality and guaranteeing the full enjoyment and exercise of the rights to equality and nondiscrimination online.

60. The guarantee of nondiscrimination includes the State’s obligation to address the specific Internet access needs that some particularly vulnerable groups may have. The Office of the Special Rapporteur for Freedom of Expression has stated that “regulatory mechanisms need to be established – including pricing regimens, universal service requirements and licensing agreements – to foment broad access to the Internet, including for vulnerable sectors of society and the most isolated rural areas. For these purposes, all necessary efforts should be made to provide direct support to facilitate access, for example, as mentioned before, through programs to distribute affordable computers and the creation of community information technology centers and other points of public access.”

61. The States must promote and guarantee, for instance, the full participation of women in the knowledge society in order to be able to ensure integration and respect for human rights on the Internet. The States should ensure the participation of women in decision-making processes, and encourage their input in shaping all of the spheres of the information society at the international, regional, and local levels. Statistics from Internet Governance Forum show that in 2015 only 38 per cent of the participants in the forum were women and in 2016 that percentage rose to 39.6 per cent. The States should take proactive measures to close the gender gap on the Internet and in all aspects of its governance.

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62. Similarly, and as established in the Convention on the Rights of Persons with Disabilities (CRPD),
States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal
basis with others, to the physical environment, to transportation, to information and communications,
including information and communications technologies and systems, including through the Internet.
[And] promote the design, development, production and distribution of accessible information and
communications technologies and systems at an early stage, so that these technologies and systems become
accessible at minimum cost.

63. The States therefore must consider the promotion of auxiliary technologies for persons with
disabilities, with a view to ensuring a more uniform distribution of the benefits of ICT services, and to narrow
the digital divide and provide digital opportunities for all. They should also enact policies to encourage
those who provide services on the Internet to adopt formats accessible to persons with disabilities.

64. Internet access is particularly important for persons in vulnerable situations, including the poorest
sectors of the population. Without Internet access, persons living in extreme poverty run the risk of
remaining excluded, thus perpetuating their marginalization and vulnerability. The dissemination of
information about the needs and issues of the poorest populations “improves understanding and actions
aimed at addressing poverty, injustice and inequality and can inform and influence public agendas locally,
nationally and internationally.” Internet access is essential to guarantee the full exercise of these rights, and
the States should adopt measures designed to guarantee that access under equal conditions. The Geneva
Declaration states with regard to this point that “In disadvantaged areas, the establishment of ICT public
access points in places such as post offices, schools, libraries and archives, can provide effective means for
ensuring universal access to the infrastructure and services of the Information Society.” The exercise of
these persons’ rights has been facilitated with the emergence of the Internet as a means for disseminating
their opinions and problems, thus preventing their exclusion from public debate and enabling them to fully
enjoy their human rights.

65. The obligation of equality and nondiscrimination also entails the State’s obligation to guarantee the
exercise of individual human rights on the Internet under equal conditions. Articles 1 and 24 govern both
“online” and “offline,” and individuals have the right to exercise their rights to assembly, association, freedom
of expression, access to information, freedom of religion, and so on, without discrimination. The Internet is an
essential tool for vulnerable communities and communities historically subjected to discrimination to obtain
information, assert grievances, make their voices heard, participate actively in public debate, and help shape
public policies designed to redress their situation.

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96 United Nations Convention on the Rights of Persons with Disabilities. Article 21, subparagraphs c) and d).
66. Nevertheless, instances of online discrimination against particularly vulnerable groups, including women, children, the LGBTI community, migrants, disabled persons, and others have also been documented. The States must take measures to foster equality and nondiscrimination both “online” and “offline,” prohibiting hate speech that incites violence, documenting instances of discrimination, and promoting tolerance through social programs, training, and education.

67. The rights to equality and nondiscrimination inform the guiding principles that must shape public policy on matters concerning the Internet, as well as each one of the human rights discussed in this report. The obligation to guarantee those rights will require, where appropriate, the adoption of specific positive measures in light of the demands of each right.

C. THE RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION

1. The Right to Freedom of Thought and Expression in the Inter-American System

68. Article 13 of the American Convention on Human Rights defines the right to freedom of thought and expression as the right to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice. Clauses 2 to 5 of article 13 provide the applicable limitations and exceptions. Freedom of expression must not be subject to prior censorship or the subsequent imposition of liability.

69. The Inter-American System is the international system that gives the widest scope and breadth to freedom of thought and expression, and is designed to lessen restrictions to the free circulation of information, opinions, and ideas, based on a broad concept of individual autonomy and dignity.

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104 American Convention on Human Rights (Pact of San José). Article 13 provides that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
   a. respect for the rights or reputations of others; or
   b. the protection of national security, public order, or public health or morals.

3. 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.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.


to the Inter-American case law this right is the “cornerstone” of a democratic society, a core element for advancing development goals,\textsuperscript{107} and an indispensable tool for the exercise of other fundamental human rights.\textsuperscript{108}

70. The Inter-American Commission has underscored the triple function of the right to freedom of expression in a democratic system: a) as an individual right that reflects the human capacity to think about the world from our own perspective and communicate with one another; b) as a means of open and uninhibited deliberation about matters of public interest; c) as an essential instrument for the guarantee of other human rights, including political participation, religious freedom, education, culture, equality, and others.\textsuperscript{109}

71. The Inter-American Commission and the Court recognize two dimensions of freedom of opinion and expression—individual and societal—\textsuperscript{110} which are interrelated and must be fully and simultaneously guaranteed.\textsuperscript{111} The States cannot rely on one aspect of the right in order to diminish the other; they must guarantee their exercise comprehensively. Prohibiting or hindering the dissemination of expression is a violation of the right to freedom of expression in both its individual and collective dimensions.\textsuperscript{112}

72. Article 13 of the American Convention protects not only inoffensive or innocuous expressions but also those that “offend, shock or disturb the State or any other sector of the population,” in the understanding that they are necessary in a democratic, open, plural, and tolerant society.\textsuperscript{113} According to the inter-American legal framework, the right to freedom of expression also encompasses and protects erroneous, mistaken, and false speech, without prejudice to the subsequent liability that may arise as a result.\textsuperscript{114} The States have the primary obligation to remain neutral with respect to the content of speech, ensuring that there are no people, groups, ideas, or means of expression that are excluded a priori from public discourse.\textsuperscript{115}

73. The Inter-American case law underscores three types of speech that are specially protected due to their importance in the exercise of all other human rights or for the consolidation, operation, and


preservation of democracy: (a) political speech and speech involving matters of public interest; (b) speech regarding public officials in the performance of their duties and candidates for public office; and (c) speech that is an element of the identity or personal dignity of the person expressing him or herself.\(^{116}\)

74. Article 13 of the American Convention provides the general framework of the permissible limitations on freedom of expression.\(^ {117}\) Based on this provision, the case law of the Inter-American System has developed a "three-part test"\(^ {118}\) which requires that the limitation must be: 1) clearly and precisely defined in a law, both substantively and procedurally, and must serve compelling objectives authorized by the Convention; 2) necessary and appropriate in a democratic society to accomplish the compelling objectives pursued; and 3) strictly proportionate to the objective pursued.\(^ {119}\) In addition, the subsequent liability arising from the abuse of freedom of expression must always be ordered by an independent and impartial judge or court authority, respecting due process guarantees. These measures must in all cases be proportionate;\(^ {120}\) they must not be discriminatory or have discriminatory effects, and they cannot constitute censorship by indirect means, which is specifically prohibited by article 13.3 of the American Convention.\(^ {121}\)

75. The IACHR discourage the use of the criminal law to criminalize speech, and promotes the implementation of alternative measures such as the right of reply, and the imposition of subsequent liability in the form of proportionate civil penalties, especially cases involving public servants and specially protected speech. In those cases, "actual malice," understood as the publication of erroneous or defamatory content with knowledge that it was false or inaccurate, must also be proven.\(^ {122}\)

76. Principle 10 of the Declaration of Principles of Freedom of Expression, adopted by the Inter-American Commission on 2000, states that "[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news".

77. In all cases, the imposition of subsequent civil liability must be proportionate in order to prevent a chilling effect on freedom of expression, and must be designed to redress the harm actually caused, rather than as a punitive mechanism.\(^ {123}\) Disproportionate civil penalties have the potential to affect the speaker’s


personal and family life as much as or even more than criminal penalties, creating an intimidating and chilling effect that has repercussions not only on the speaker but also on the entire community.  

78. There are certain types of speech that are excluded from the scope of protection of the right to freedom of expression: 1) war propaganda and the advocacy of hatred that constitutes the incitement of violence; 2) the direct and public incitement of genocide; and 3) child pornography.  

79. In its report on Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, the Office of the Special Rapporteur underscored that article 13(5) requires the States to enact laws punishing the advocacy of hatred that constitutes the incitement of violence or any other similar action. It clearly distinguishes this type of speech from other expressions that do not strictly amount to the “incitement of violence” and therefore would fall not within the scope of that clause but rather under 13(2), which protects the reputation and rights of others. According to the consistent case law of the Inter-American Court and the Commission, the States may impose pecuniary and non-pecuniary reparations or other alternative measures in cases involving expressions that do not constitute the incitement of violence, but the criminalization of this type of speech is not considered advisable.  

2. Internet and Freedom of Expression  

80. Internet exponentially facilitates the exercise of freedom of expression in all of its dimensions, diversifying and multiplying the media and the audience (potentially global), decreasing costs and time, and offering unparalleled conditions for the innovation and exercise of other fundamental rights.  

81. The main impact of the internet on freedom of expression is the way in which it increases the ability to receive, seek and impart information. It enables the collaborative creation and sharing of content – it is a world where anyone can be an author and anyone can publish and it helps them communicate, collaborate and exchange views and information. This represents, the ‘democratization’ of freedom of expression as public speech is no longer moderated by professional journalists or gatekeepers. In this way the internet has become a powerful democratizing force, transforming freedom of expression by creating: new capacities to create and edit content (across physical boundaries), often bypassing censorship controls, which creates new possibilities for realizing human potential; new abilities to organize and mobilize (strongly underpinning other rights such as the right to freedom of association); and new possibilities to innovate and generate economic development (underpinning social and economic rights).
82. The Inter-American Commission has maintained for more than a decade that “the right to freedom of expression in the terms established by article 13 of the American Convention equally protects both traditional media and the widespread expression via Internet.”

83. The Joint Declaration on Freedom of Expression and the Internet contains the general principle that “Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognized under international law (the ‘three-part’ test).”

84. Given the particular characteristics of the Internet in terms of its multidirectional and interactive nature, its speed and global reach at a relatively low cost, and its decentralized and open design principles, Internet access has acquired an unprecedented potential for the effective realization of the right to seek, receive, and disseminate information. In order to be able to ensure the effective and universal enjoyment of the right to freedom of expression, the States should take measures to progressively ensure that all persons have access to the Internet, in addition to taking measures to prevent the total or partial blocking or limitation of Internet access. The Internet has a significant impact on the social dimension of freedom of expression.

85. Any restrictions on the operation of websites, blogs, applications or any other Internet-based electronic or other such information dissemination system, including support systems, such as ISPs or search engines, are permissible only to the extent that they are compatible with the conditions provided for the curtailment of freedom of expression.

86. The Office of the Special Rapporteur has observed with concern how some countries in the region have been resorting to the blocking of specific websites or applications for different reasons – and even with a judicial order –, with little or no regard to the implications of such measures on the right to freedom of expression online.

87. The Joint Declaration on Freedom of Expression and the Internet, states that forcing the blocking or suspension of entire websites, platforms, channels, IP addresses, domain name extensions, ports, network protocols, or any other kind of application, as well as measures intended to eliminate links, information and websites from the servers on which they are stored, all constitute restrictions that are prohibited and

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137 Brazilian courts, for example, have ordered the blocking of Whatsapp due to claims that the company has failed to comply with judicial orders requesting access to communication between users and user’s data. See, IACHR. Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2015. Chapter II (Evaluation of the Situation of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 48/15. 31 December 2015. Para. 264.
exceptionally admissible only strictly pursuant to the terms of article 13 of the American Convention. The Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda indicates that these measures "can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, including in the sense that it is proportionate, there are no less intrusive alternative measures which would protect the interest and it respects minimum due process guarantees."139

88. The Office of the Special Rapporteur has indicated that "[i]n exceptional cases of clearly illegal content or speech that is not covered by the right to freedom of expression (such as war propaganda and hate speech inciting violence, direct and public incitement to genocide, and child pornography) the adoption of mandatory measures to block and filter specific content is admissible. In these cases, the measure must be subjected to a strict balance of proportionality and be carefully designed and clearly limited so as to not affect legitimate speech that deserves protection. In other words, filtration or blocking should be designed and applied so as to exclusively impact the illegal content without affecting other content. The measures must be authorized or put in place pursuant to the appropriate procedural guarantees, in the terms of articles 8 and 25 of the American Convention. In this regard, the measures should only be adopted after the illegal content to be blocked has been fully and clearly identified, and when necessary to achieve a pressing aim. In any case, these measures must not be applied to legal content."140

89. Restrictive measures should at all times include safeguards to prevent abuse, such as transparency with regard to the content whose removal has been ordered, as well as detailed information regarding the measures' necessity and justification. At the same time, a measure of this kind should be adopted only when it is the only measure available for achieving an imperative end and is strictly tailored to achieve it.141

90. In the case of Cengiz et al. v. Turkey, the European Court of Human Rights held that the blocking of a You Tube page for a lengthy period of time was a violation of the rights of users, in this case university professors and academics, to receive and impart information and ideas. The Court took account of the violation of the social dimension of freedom of expression, highlighting that the blocked platform allowed for the transmission of information of specific interest, particularly on political and social issues. It further held that there was no law that would allow local Turkish courts to impose general blocks on access to the Internet (in this case, to You Tube).

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91. The Office of the Special Rapporteur has emphasized that at no time can an *ex ante* measure be put in place to block the circulation of any content that can be assumed to be protected. Content filtering systems put in place by governments or commercial service providers that are not controlled by the end-user constitute a form of prior censorship and do not represent a justifiable restriction on freedom of expression.\(^{143}\)

92. Measures to block content cannot be used to control or limit the circulation of speech that is specially protected or is assumed to be protected when that assumption has not been contradicted by a competent authority that provides sufficient guarantees of independence, autonomy and impartiality, pursuant to the above-mentioned terms.\(^{144}\) In this regard, it should be noted that systems for blocking and filtering Internet content frequently block legitimate websites and content. Some governments have used them to prevent their populations from accessing information that is fundamentally in the public’s interest but that governments are interested in hiding.\(^{145}\)

93. With regard to subsequent liability for speech disseminated on the Internet, the Office of the Special Rapporteur for Freedom of Expression has maintained that the criminalization or aggravation of penalties merely because the speech in question was disseminated through the Internet would be unacceptable.\(^{146}\) The Joint Declaration on Freedom of Expression and the Internet additionally states that, with respect to civil liability, “Standards of liability, including defenses in civil cases, should take into account the overall public interest in protecting both the expression and the forum in which it is made (i.e. the need to preserve the ‘public square’ aspect of the Internet).”\(^{147}\) Following the decisions of the Inter-American System in these cases, the Office of the Special Rapporteur has stated that damages must not be proven rather than assumed, and that the States must not make presumptions that cannot be technically supported and that are based exclusively on the nature of the medium of dissemination or its comparison to others.\(^{148}\)

94. Now that the framework for the protection of the right to freedom of expression has been established, there are certain issues that represent important challenges and warrant particular attention: the

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role of the private sector, the liability of intermediaries, hate speech on the Internet, and the removal and de-indexing of content.

a. The Role of the Private Sector

95. The Internet depends in large measure on private entities that enable connection; design and maintain the hardware and operating systems that facilitate information processing; allocate web domains; host information; facilitate aggregating, sharing and searching for information; produce and regulate access to one's own content; connect users and communities; sell goods and services and facilitate transactions; and collect and sell data, among other things. In view of their extremely broad spectrum of influence, private entities have come to play an unprecedented role as facilitators of the right to freedom of expression and access to information. In effect, it is a public sphere that sits on a series of private platforms. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that “While States are the duty-bearers for human rights, private actors and business enterprises also have a responsibility to respect human rights.”

96. While States are the primary duty-bearers when it comes to respect for human rights, different international bodies have addressed the issue of the responsibility of corporations—particularly transnational corporations— to respect human rights. In 2011, the United Nations Human Rights Council adopted the Guiding Principles on Business and Human Rights, which establishes that business enterprises should abstain from violating the human rights of third parties and redress violations in which they have participated directly or indirectly. In complying with these principles, corporations should seek to prevent violations linked directly or indirectly to their operations, products, or services and mitigate the impacts, even if they have not contributed to those impacts.

97. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlighted that the Guiding Principles are part of the international framework applicable to intermediaries and other necessary actors for the functioning of the Internet. The Rapporteur noted, as a preliminary assumption, that corporations should undertake to respect and promote freedom of expression in their internal policies, product engineering, business development, staff training, and other relevant internal processes. He further recommended that private actors develop and implement transparent human rights assessment procedures, taking account of the potential impact of their policies.

98. As highlighted in the Guiding Principles, private actors have a responsibility to respect human rights online, and this includes both a responsibility not to restrict rights and a positive responsibility to create an

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environment in which rights are respected. As part of the above, private actors should make a formal and high-level commitment to respect human rights, including freedom of expression and privacy, and back this commitment up with concrete internal measures and systems designed to prevent activities which lead to negative human rights impacts. In particular, they must seek to ensure that any restriction derived from the application of the terms of service does not unlawfully or disproportionately restrict the right to freedom of expression. Intermediaries, in particular, should put in place effective systems of monitoring, impact assessments, and accessible, effective complaints systems in order to identify actual or potential human rights harms caused by their services or activities.

99. Where negative human rights impacts or potential impacts are identified, private actors should have in place effective systems for providing appropriate remedies for those affected; and adjust their activities and systems as necessary to prevent future abuse. In keeping with the Guiding Principles, private actors should adopt robust approaches towards transparency in relation to their terms of service, policies and any operating procedures or practices which directly affect the public.

100. On the other hand, the States are called upon to foster the development of the private sector and of technical measures, products, and services that protect freedom of expression, and to enact the respective laws. The public policies and laws governing this matter should be enacted and implemented in a transparent manner, allowing for citizen oversight of both the government administration and private management of matters concerning the guarantee of human rights.

101. States bear a primary responsibility to protect and respect the right to exercise freedom of opinion and expression. This means that States must not require or otherwise pressure the private sector to violate human rights or unnecessarily or disproportionately interfere with the right to freedom of expression. Any requests that the States make of the private sector, to intercept, block, remove, or monitor content, must meet the requirements established in international human rights treaties, particularly on freedom of expression.

b. Intermediary Liability

102. The transmission of content on the Internet depends upon intermediaries. Intermediaries are generally defined as “any entity that enables the communication of information from one party to another.” However, the legal definition of “intermediary” may differ among jurisdictions or countries. As the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has underscored, intermediaries range from Internet service providers (ISPs) to search...
engines, and from blogging services to online community platforms,\textsuperscript{166} e-commerce platforms, web servers, social networks, and others.\textsuperscript{167}

103. There is a large number of intermediaries, and there are different ways to classify them.\textsuperscript{168} As noted in the previous section, depending on what kind they are and what service they offer, intermediaries exercise control over how and with whom their users communicate. They have become key actors in the protection of the rights to freedom of expression and privacy.\textsuperscript{169}

104. One of the measures that most directly affects the actions of Internet intermediaries is the intermediary liability regime legally imposed upon them for third-party content.\textsuperscript{170} The liability regime is fundamental for creating the appropriate incentives for the protection and guarantee of human rights.\textsuperscript{171} In all cases, the liability regime must follow the three-part test of legality, necessity, and proportionality.

105. The 2011 Joint Declaration on Freedom of Expression and the Internet establishes that “No 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’).”\textsuperscript{172} In the same regard, the Office of the Special Rapporteur for Freedom of Expression maintains that subsequent liability should be imposed upon the authors of the speech in question rather than on the intermediaries.\textsuperscript{173}

106. Different laws and initiatives at the regional level reflect the different frameworks regulating intermediary liability, including personal data and privacy protection laws, copyrights, and the right to reputation and one’s good name. In other cases there are general intermediary liability laws and specific regimes for particular instances such as copyright protection. Intermediaries may be exempt from liability for third-party content; subject to strict liability; subject to some conditional liability regime, or subject to the general regime of liability based on a breach of duty.

107. Strict liability, which holds the intermediary liable for any content on its platform that is considered unlawful,\textsuperscript{174} is incompatible with the American Convention because it is disproportionate and unnecessary in


\textsuperscript{171} UNESCO. \textit{Fostering Freedom Online: The role of Internet Intermediaries}. Unesco Series on Internet Freedom. Internet Society (2014). Page. 3.


a democratic society. These types of regimes encourage intermediaries to monitor and censor their own users.176

108. In the context of conditional liability, the intermediary is offered "safe harbor" from any legal liability to the extent that it complies with certain specific duties.177 These regimes include the "notice and takedown" procedure, whereby the intermediary must remove the content once notified of its existence; the system of "notice and notice," where the intermediary must notify the author of any complaint received with respect to content; and the system of "notice and disconnection," where the intermediary will disconnect the user when he or she fails to remove the offending content after having been notified.

109. This model of intermediary liability does not impose a duty to monitor or filter content proactively.178 However, these systems do not always respect the right to due process and minimum guarantees, insofar as they shift the responsibility to examine and decide on the lawfulness or unlawfulness of the content subject to removal from the State to the intermediary.179 The Joint Declaration on Freedom of Expression and the Internet establishes that "At a minimum, intermediaries should not be required to monitor user-generated content and should not be 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)."180 Along these lines, the Office of the Special Rapporteur cautions that this model will be compatible with the American Convention "to the extent that they establish sufficient safeguards for the protection of the users' freedom of expression and due process, and do not impose vague or disproportionate obligations on intermediaries."181

110. Notice regimes must include a detailed notification procedure that states the location of the allegedly unlawful material, the legal basis for the unlawfulness, and an adequate option for counter-notice to the user who produced the content, with judicial oversight guarantees.182

111. For example, Brazil’s Law no. 12.965/2014, (the so-called "Brazilian Internet Bill of Rights") provides that Internet application providers should only be held liable if they fail to comply with a judicial order. Article 19 of said law provides that "[i]n order to ensure freedom of expression and to prevent censorship, Internet application providers may only be held civilly liable for damage resulting from content generated by third parties if after specific judicial order the provider fails to take action to make the content identified as

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176 IACHR. Annual Report 2013. Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013 Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II149. Doc. 50. 31 December 2013. Para. 98. Also, see for example, the decision by the Argentinian Supreme Court in the María Belén Rodríguez v. Google Inc. case. In its decision the Court held that: "establishing a strict liability regime in this activity would ultimately discourage the existence of 'search engines', which fulfill an essential role in the right to seek, receive and impart information and opinions freely on the Internet". Corte Suprema de Justicia de la Nación. Rodríguez, María Belen c/ Google Inc. s/ daños y perjuicios, October 28, 2014.


offensive unavailable on its service by the stipulated deadline, subject to the technical limitations of its service and any legal provisions to the contrary.”

112. Intermediaries are still private entities with financial, social, and individual interests that differ from those of the State. Requiring them to function as a court that balances the rights of its users goes beyond the scope of their competence and may lead to and provide incentives for abuses, to the detriment of freedom of expression and access to information.

113. The Manila Principles on Intermediary Liability, put forward by civil society organizations from around the world, propose a reference framework of baseline safeguards and best practices for States with regard to intermediary liability based on international human rights instruments. The Principles recommend that the States limit the liability of intermediaries for third-party content (Principle 1), not require the restriction or removal of content without a court order issued in accordance with due process rights and guarantees (Principles 2 and 3), ensure that the laws meet the three-part test on freedom of expression and include the principles of transparency and accountability (Principles 5 and 6).

114. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recommended that intermediaries only implement restrictions to these rights after judicial intervention; be transparent to the user involved about measures taken, and where applicable to the wider public; provide, if possible, forewarning to users before the implementation of restrictive measures; and minimize the impact of restrictions strictly to the content involved. He further recommended that there be effective remedies for affected users, including the possibility of appeal through the procedures provided by the intermediary and by a competent judicial authority.

115. The Office of the Special Rapporteur underscores that the States should encourage the adoption of systems that allow intermediaries to function as true promoters of freedom of expression and to operate with transparency toward their users. Online content can be restricted both by the laws of a State and by the private policies of a company acting as an intermediary, and the liability regimes can have a significant impact on the latter, functioning as incentives for censorship or for the protection of human rights (for instance, providing incentives for intermediaries to remove lawful and legitimate content for fear of incurring liability for third-party content).

116. The Joint Declaration on Freedom of Expression and the Internet points to self-regulation as a potentially effective tool in redressing harmful speech. “Self-regulation” refers to policies unilaterally set by

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103 Presidência da República. Lei No. 12.965, April 23, 2014. Article 19 also establishes that "1. The judicial order mentioned in the heading must contain, under the penalty of nullification, clear and specific identification of the content claimed to be a violation, which allows for the unequivocal identification of the content. § 2 - In cases where there is an infringement on copyright laws and other related rights, this Article shall be applicable when specific legal precaution has been utilized, with full respect for freedom of expression and other guarantees provided for in Art. 5 of the Federal Constitution." Article 21 of the law also establishes that intermediaries have subsidiary responsibility when divulging content created by a third party; said content may be images, videos or other material containing nudity or sexual acts that are private in nature as long as, upon notification by the participant or legal representative, sponsorship diligently ceases; within the context and technical limitations of the service, the withdrawal of said content.


110 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
intermediaries for the optimal functioning of their platforms or services. These policies range from measures taken by the company to block or remove spam and viruses, to the setting and enforcement of "terms of service" or "community rules"\(^{191}\) whereby companies limit the type of desirable and undesirable content according to criteria that are financial, social, cultural, and so on.\(^{192}\) Co-regulation is a regulatory regime involving private regulation that is actively encouraged or even supported by the state through legislation, funding, or other means of state support or institutional participation.\(^ {193}\) In order for self-regulation to function effectively, intermediaries must be committed to respecting and promoting freedom of expression and conducting with transparency.

117. Transparency in the intermediaries’ content removal policies is fundamentally important. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that "Lack of transparency in the intermediaries’ decision-making process also often obscures discriminatory practices or political pressure affecting the companies’ decisions."\(^ {194}\)

118. In this regard, the Office of the Special Rapporteur considers it is of utmost importance that intermediaries provide clear information about the type of content that might be removed from the platform on its terms of service or community guidelines, as well as how the removal could take place and if there is any form of appeal by the user who feel that his or her content have been incorrectly removed.

119. Bearing in mind that many States are currently promoting legislation on the liability of intermediaries, the global and transnational reach of the Internet means that States must aspire to consistency in the standards that govern such liability in order to maintain a free, open, and global Internet.\(^ {195}\) Jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection, normally because the author is established there, the content is uploaded there and/or the content is specifically directed at that State.\(^ {196}\) Judges are responsible for preventing what is known as "libel tourism" or "forum-shopping," recusing themselves when no substantial harm can be demonstrated in their jurisdiction.\(^ {197}\)

120. This issue has been consistently raised in judicial decisions regarding the so-called “right to be forgotten” (see below), in which a judge from one country might order the delisting of a specific search result not only from the platform that is linked to the competent jurisdiction, but also from other countries (or even globally). This could result in an extra-territorial application of a national court order and rises complex questions regarding the future of jurisdiction on the Internet and its interplay with national sovereignty.

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c. Hate Speech on the Internet

121. The Office of the Special Rapporteur is of the opinion that only through a sustained and comprehensive policy that goes beyond legal measures and includes preventive and educational measures will it be possible to effectively combat hate speech and ensure the right of individuals to equality and nondiscrimination both on the Internet and offline. Measures like these “strike at the cultural root of systematic discrimination. As such, they can be valuable instruments in identifying and refuting hate speech and encouraging the development of a society based on the principles of diversity, pluralism, and tolerance.”

122. The Office of the Special Rapporteur has underscored on numerous occasions that the States should not take measures that are especially restrictive of freedom of expression on the Internet. The 2001 Joint Declaration on Countering Terror, Broadcasting and The Internet had already asserted that freedom of expression governs the Internet just like any other communication medium, and that “States should not adopt separate rules limiting Internet content.” On the contrary, the UNESCO Report on hate speech, for instance, highlights digital literacy, universal access, and the promotion of techniques such as “counter-speech,” teaching people to detect hate speech and counteract it with tolerant and anti-discriminatory speech, as viable and sustainable mechanisms to combat hate speech.

123. The blocking or filtering of content to combat hate speech are measures of last resort, and should only be used when necessary and proportionate to the compelling aim they pursue. The States that take such measures should also design them in such a way that they do not affect legitimate speech that warrants protection.

124. The transparency of the measures adopted—with respect to both the content removed and the detailed information about the necessity and proportionality of the blocking, removal, or filtering of content—is essential in order to properly control the legality of these measures. In addition, and bearing in mind the issues examined in the section on intermediary liability, the States should not exert unlawful pressure on intermediaries to restrict the circulation of content through private blocking or filtering, or indirectly use the terms of service or community rules to expand the legally established grounds for restriction.

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123 See UNESCO, Combatiendo el Discurso de Odio en Línea (Countering Online Hate Speech), 2015, p. 48. Disponible únicamente en inglés.


125. Combating hate speech requires empowering users to identify and condemn it in public discourse without blocking legitimate speech, thus creating more inclusive forums of expression.

d. De-indexation and the “Right to Be Forgotten”

126. Internet’s platforms, applications and search engines are central components of the one’s ability to seek, receive and impart information in the digital era, particularly to access information and opinions generated or disseminated by media outlets. The Office of the Special Rapporteur has highlighted the impact on the exercise of the right to freedom of expression in its dual dimension (individual and collective) of measures to remove and de-index Internet content adopted by the private companies that administer and manage specific web pages, platforms, or apps, as well as those requested by States.

127. As has been indicated in previous sections of this report, government limitations on internet content must be ordered by a competent, independent, and impartial judge or court with due process guarantees as established in Article 8 of the American Convention. It further emphasized the need to create appropriate incentives for companies to commit to freedom of expression, limiting their grounds, wherever possible, for the removal or de-indexing of content to those legally required.

128. In 2014, following the decision of the Court of Justice of the European Union (CJEU) in the case of “Google Spain S.L., Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González,” a new debate arose with regard to the legitimacy of different means of online content removal and deindexing and the appropriate weighing of the right to privacy against the right to freedom of expression and information on the Internet. The CJEU interpreted that the activity of search engines—intermediaries that index content hosted by other platforms (Google, Yahoo, Bing, etc.) should be classified as data controllers “processing personal data”. Under that classification and according to European Directive No. 95/46/CE, individuals may exercise the right to object to that data processing on compelling legitimate grounds relating to their particular situation. In its judgment, the CJEU interpreted that, under Directive No. 95/46/CE, individuals can request to have their personal data de-indexed from Internet browsers or search engines, based on the protection of personal data on the Internet.

129. The decision, known for having established a so-called right to be forgotten, recognizes a de-indexing authority limited to information that has been indexed under an individual’s name, maintaining that said

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206 CJUE. Google Spain, S.L., Google Inc / Agencia Española de Protección de Datos, Mario Costeja González, Judgment of May 13, 2014. The Office of the Special Rapporteur for Freedom of Expression observes that on April 27, 2016 the European Parliament and the Council of the European Union issued new regulations on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealed Directive 95/46/EC. See, the European Parliament and the Council of the European Union Regulation (EU) 2016/67 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) 27 April 2016. Paras 65 and 66. The regulation provides that: “A data subject should have the right to have personal data concerning him or her rectified and a ‘right to be forgotten’ where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject. In particular, a data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. That right is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims. To strengthen the right to be forgotten in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the controllers which are processing such personal data to erase any links to, or copies or replications of those personal data. In doing so, that controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, to inform the controllers which are processing the personal data of the data subject’s request”. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016R0679&from=ES

indexing provides “a structured overview of the information relating to that individual that can be found on the internet — information which potentially concerns a vast number of aspects of his private life and which, without the search engine, could not have been interconnected or could have been only with great difficulty — and thereby to establish a more or less detailed profile of him.”208 According to this reasoning, the decision would not affect the de-indexing of the same content under other search formats, such as thematic or contextual searches, or through other people’s names—for instance, the author of a news article or the name of a newspaper. The CJEU made clear that the data processing of a search engine is different from that done by the publishers of websites (such as newspapers), and recognizes that the content may be legally protected and therefore not subject to a removal order with respect to the site that hosts or created it.209 The CJEU held that de-indexing may only be authorized if the personal information included on the website in question is “inadequate, irrelevant or excessive,” and only if the information does not pertain to the public interest. However, the Court did not develop in detail these concepts, which are key for weighing the interests at issue, generating a series of vague and ambiguous interpretations of these concepts in different jurisdictions210 Also, the CJEU decision delegated to the private sector the duty of receiving, analyzing and deciding over de-indexation requests, which has generated other concerns regarding its implementation.

130. Based on the doctrine arising both from the Costeja case and the data protection laws in Latin America, search engine companies in the region began to receive content removal and de-listing requests. Also, requests have been filed using the concept of the “right to be forgotten” to demand that newspapers, blogs and newspapers to remove or delete content rather than de-indexing it from web search results. Civil society organizations have also reported that public servants from different countries are using the right to be forgotten in order to delete information that is in the public interest, in many cases establishing the practice of filing challenges before the personal data protection authority rather than bringing criminal defamation lawsuits.211

131. Without a doubt, the advent of the Internet has brought new challenges to protecting the right to privacy, both for the State in its role of guarantor and for private parties in their roles as users. The Office of the Special Rapporteurship has recognized that the right to privacy on internet requires the protection of treatment of personal data online. States have an obligation to respect and protect the right to privacy in the digital era and adopt legislation and practices—or adapt existing ones—to do so, protecting everyone under their jurisdictions, including against arbitrary or abusive interference by private parties.

132. However, international human rights law does not protect or recognize the so-called “right to be forgotten” in the terms outlined by the CJEU in the Costeja case. On the contrary, the Office of the Special Rapporteur is of the opinion that the application to the Americas of a private system for the removal and de-indexing of online content with such vague and ambiguous limits is particularly problematic in light of the wide regulatory margin of the protection of freedom of expression provided by article 13 of the American Convention on Human Rights.

133. The removal of content from the Internet constitute a clear interference with the right to freedom of expression, in both its individual and social dimensions, as well as the right of access to information by the


people. Information that has been removed does not circulate, which affects the right of individuals to express themselves and disseminate their opinions and ideas and the right of the community to receive information and ideas of all kinds. A similar effect—albeit not identical because of its dimension—is the de-indexing of content, insofar as it makes the information more difficult to find and renders it invisible. Both have a limiting effect on the right to freedom of expression because they restrict the possibility to seek, receive and impart information and ideas regardless of national frontiers.

134. In the Americas, after many years of conflict and authoritarian regimes, individuals and human rights groups have maintained a legitimate claim to access to information regarding governmental and military activity of the past and gross human rights violations. People want to remember and not to forget. In this sense, it is important to recognize the particular context of the region and how a legal mechanism such as the so-called “right to be forgotten” and its incentive for de-indexation might impact the right to truth and memory.

135. According to the regional standards, prior censorship is prohibited except for the protection of minors at public events, and any restriction must be established by law, clearly and in detail. It must also be suitable, proportionate, and necessary for the accomplishment of a legitimate aim in a democratic society. It is not enough for the measure to be useful; it must be the least restrictive one. The protection of personal data is a legitimate aim for the establishment of restrictions to the right to freedom of expression. Nevertheless, any limitation on the right to freedom of expression—whether to protect privacy, as in the case of personal data, or honor and reputation—must respect the three-part test as developed by the inter-American case law and doctrine: it must be legally established in a law, both substantively and procedurally; it must be necessary and suitable, and it must be proportionate. Limitations on freedom of expression must also be ordered by a competent, independent, and impartial judge or court, with all due process guarantees.

136. Although the protection of personal data is a legitimate objective, at no time may it be invoked to limit or restrict the circulation of information about public persons, public servants or candidates to public office in the performance of their duties, information in the public interest, or information involving human rights violations.

137. If a State decides to adopt personal data protection systems that acknowledge the deindexing that is referred to as the “right to be forgotten” should do so on an absolutely exceptional basis. If enacted, laws on deindexing or the opposition of indexing should be designed in a clear, specific, and limited manner in order to protect privacy rights and the dignity of persons, respecting the rights to freedom of expression and access to information. They should distinguish between information and personal data, establishing those cases in which the action is inadmissible, particularly when it violates freedom of expression on matters of public interest, and protecting lawful and legitimate speech. The IACHR and the Inter-American Court has reiterated that public officials are subject to greater scrutiny by society, and for that reason, a strong presumption should be put in place against content removal and de-indexing requests lodged by a public official, public person or a candidate to public office.

138. This is particularly relevant in relation to the information produced and disseminated by media outlets that use the Internet as a platform. The protection of personal data to which the right to be forgotten refers cannot lead to the imposition of restrictions on information disseminated by media outlets that could affect the privacy rights or reputation of an individual. As a general rule and according to several laws regarding personal data protection adopted in the region, the content created by a media outlet is not subject

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213 Removal and de-indexation are neither synonymous nor should they be used interchangeably. The removal of content affects the platform or intermediary that hosts it - newspaper, blog, social network, etc. De-indexing affects search engines, intermediaries that index content hosted on other platforms - Google, Yahoo, Bing, etc. -.
to protections derived from the right of *habeas data*. Media digital platforms cannot be understood as personal data controllers. They are public sources of information and platforms for the dissemination of opinions and ideas on matters of public interest, and therefore cannot be subject to a de-indexing order nor to the suppression of online content regarding matters of public interest.

139. Furthermore, the Office of the Special Rapporteur considers that procedures for de-indexing or removing content cannot be used as a preventive mechanism to protect the right to honor or reputation. Individuals have other remedies available to them to seek redress for the harm caused in the case of alleged dissemination of false, offensive or inaccurate information by digital media, such as the right of correction and reply, and civil actions for damages. These remedies are less harmful to the right to freedom of expression and require the plaintiff to bear the burden of proving the falsity or inaccuracy of the information being disseminated.

140. De-indexing laws should be restricted to those cases in which the petitioner demonstrates a substantive harm to his or her privacy and dignity. The de-indexing measures should always be enforced through a court order issued within the framework of a proceeding respectful of due process and where affected parties can be heard, including the speaker, the publisher or media outlet and the intermediaries. This prevents that intermediary companies from being the ones responsible for examining and determining the appropriateness of restricting access to online content in those scenarios.

141. In sum, it bears repeating that intermediaries do not cease to be private entities with financial, social, and individual interests different from those of the State. Requiring them to conduct a quasi-adjudicatory exercise that weighs the rights of their users exceeds the scope of their competence and could create and encourage abuses against freedom of expression and access to information. In this regard, the Joint Declaration on Freedom of Expression and the Internet establishes that, “At a minimum, intermediaries should not be required to monitor user-generated content and should not be 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).”

142. Transparency with respect to content de-indexing policies applied by private and public entities (including oversight bodies and the judicial branch) is fundamentally important. The law should subject intermediaries, government authorities, and courts to active transparency obligations, whereby information on the nature, volume, and outcomes of deindexing requests received is regularly published.

e. Internet, Intellectual Property and Access to Knowledge

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214 See, for example, Uruguay. Ley Nº 18.331. Protección de datos personales y acción de *habeas data*. Article 9; Colombia. Ley Estatutaria 1581 de 2012, por la cual se dictan disposiciones generales para la protección de datos personales. Article 2 d), y Argentina. Ley 25.326. Protección de los datos personales. Article 1.

215 For example, the IACHR has considered that the removal of content on the Internet may constitute prior censorship, explicitly prohibited in the American Convention. In its decision in the case of newspaper *La Nación* (Mauricio Herrera Ulloa) vs. Costa Rica, the IACHR determined that by ordering the removal of a series of critical articles regarding a public official from a newspaper’s website, the State (through its judicial bodies) violated Article 13 of the American Convention. The IACHR understood that the decision of the Costa Rican court had “directly resulted in prior censorship, explicitly prohibited by the American Convention.” The Commission argued that such measures are prohibited “even if it is supposed to prevent by that means a possible abuse of freedom of expression.” In the case, the Commission considered that the judicial order constituted a violation of both the journalist’s right to freedom of expression as well as “the right of everyone to be well informed.” IACHR, Complaint before the Inter-American Court of Human Rights against Costa Rica. Case No. 12.367, “La Nación” Mauricio Herrera Ulloa and Fernan Vargas Rohrmoser, 28 January 2002. Para. 97.


143. Intellectual property, freedom of expression, and the right to culture are complementary rights, the purpose of intellectual property being “the promotion of literary, musical and artistic creativity, the enrichment of cultural heritage and the dissemination of knowledge and information goods to the general public.”219 The UN Special Rapporteur on Cultural Rights has said that “Both intellectual property systems and the right to science and culture obligate governments ‘to recognize and reward human creativity and innovation and, at the same time, to ensure public access to the fruits of those endeavors. Striking the appropriate balance between these two goals is the central challenge that both regimes share.’”220

144. Copyright protection has a legitimate aim that could lead to imposing limits on the human rights to education, culture, and freedom of expression.221 However, this protection cannot be implemented in a way that chills creativity or the free exchange of information and ideas on the Internet.222 The advent of the Internet had a significant impact on the social dimension of freedom of expression by democratizing access to information, ideas, and opinions of all kinds and decentralizing the creative process. On the Internet, users not only receive content but also produce and distribute their own content, opening the closed circle that once included only record companies, businesses, and artist organizations, enabling the unauthorized use of copyright-protected material. It is important at this time to reconsider the role that the Internet plays in protecting copyright and the effectiveness of those regimes in achieving their legitimate objectives.223

145. In this regard, the United Nations Special Rapporteur on Cultural Rights has held that “The right to protection of moral and material interests cannot be used to defend patent laws that inadequately respect the right to participate in cultural life, to enjoy the benefits of scientific progress and its applications, to scientific freedoms and he right to food and health and the rights of indigenous peoples and local communities.”224 Copyright must be understood as a measure to stimulate creation and invention by contributing to the expansion and preservation of cultural heritage and the development of the distinct cultural identities that converge and coexist on the Internet.225

146. In recent years, a number of measures have been promoted to strike the proper balance between protecting copyright and protecting the rights to education, culture, and freedom of expression. These include, for example, initiatives to promote open licensing and exceptions to existing copyright regimes. The United Nations Special Rapporteur on the Right to Culture recommended that exceptions and uncompensated uses of copyrighted material be adopted to promote a better balance between cultural rights and intellectual property rights. The uncompensated uses highlighted included the uncompensated use of copyrighted material in libraries, free school theater productions, noncommercial artistic activities, and initiatives to

224 United Nations Committee on Economic, Social and Cultural Rights. General Comment N° 17. The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant). UN Doc. E/C.12/GC/17. January 12, 2006. Para. 4.
make works accessible to people with limited financial resources.\textsuperscript{225} The exceptions highlighted included adoption of fair use doctrine, in place in countries such as the United States for example, where use for the purposes of education, criticism, parody, indexing, or personal use are theoretically exempt from penalty in the intellectual property regime.\textsuperscript{226}

147. Particularly of note are international treaties that have in recent years included international obligations on intellectual property and regulations on Internet policy, which exert significant influence on the drafting of local regulations. States must take particular care to adjust the measures required under these treaties to fit local needs and to protect the rights of Internet users. It should also be noted that the special nature of these agreements and their negotiation process, which generally takes place in secret, in many cases lack the oversight, transparency, and social participation necessary to legitimately legislate exceptions to freedom of expression and the right to culture.\textsuperscript{227}

i. Open Access Initiatives

148. Open access is a method of distributing knowledge with the goal of obtaining the maximum benefit for science and society. It entails publishing the full text of academic and scientific literature on the Internet publicly and free of charge, with no technical, economic, or legal barriers, where anyone can use it, copy it, and share it.\textsuperscript{228} Open access contributions include the results of original scientific research, raw data and metadata, materials, sources, digital reproductions of graphic and pictorial material, and scholarly multimedia material.\textsuperscript{229}

149. The United Nations Rapporteur on Cultural Rights has highlighted the importance and potential of open licenses, especially for building and circulating scientific and academic knowledge. It has noted that “[s]cience is a process of discovery, collecting and synthesizing evidence and evolving models of the world” that requires access to as well as consultation, evaluation, and criticism of the raw evidence. These sources are often protected by copyright, and in order to get more subscribers, it is not unusual for specialized magazines to prohibit authors from disseminating their work on the Internet.\textsuperscript{230} It is important for States to circulate and promote training and use of open access licenses, particularly in academic and scientific communities, as well as for those who work for the State maintaining cultural heritage.\textsuperscript{231}

150. Existing open access initiatives include the Budapest Open Access Initiative, which since 2012 has recommended the use of creative commons licenses (or the equivalent) as the best way of licensing scientific and academic works for publication, distribution, use and reuse.\textsuperscript{232} “Contracts replace an “all rights reserved” by a “some rights reserved” approach, employing standardized licenses where no compensation is sought by


\textsuperscript{228} Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, promoted by the Max Planck Society on October 22, 2003 and signed by around 400 academic and scientific institutions. Available at: https://openaccess.mpg.de/67605/berlin_declaration_engl.pdf

\textsuperscript{229} Budapest Open Access Initiative, Declaration on the Budapest Open Access Initiative. February 14, 2002. Available at: http://www.budapestopenaccessinitiative.org/read


\textsuperscript{231} Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, promoted by the Max Planck Society on October 22, 2003 and signed by around 400 academic and scientific institutions. Available at: https://openaccess.mpg.de/67605/berlin_declaration_engl.pdf

\textsuperscript{232} Budapest Open Access Initiative. Ten years on from de Budapest Open Access Initiative: setting the default to open (2012). Available at: http://www.budapestopenaccessinitiative.org/boai-10-recommendations

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the copyright owner. The result is an agile, low-overhead copyright-management regime, benefiting both copyright owners and licensees.”

ii. Protecting the Public Domain

151. The public domain is “the net sum of all information and cultural goods not subject to copyright that can be used and exchanged by the public at large without restrictions. It is part of the cultural heritage of all humankind that must be preserved.”

152. The Declaration of Principles of the World Summit on the Information Society states that a “rich” public domain is essential for the growth of the information society, as it both bolsters and promotes diversification of the educated public, thereby generating new jobs, innovation, business opportunities, and the advancement of science. The information in the public domain should be easily accessible and must be protected from misappropriation. States should strengthen, protect, and promote “Public institutions such as libraries and archives, museums, cultural collections and other community-based access points should be strengthened so as to promote the preservation of documentary records and free and equitable access to information.”

153. Protection of the public domain is essential for protecting and promoting universal access to scientific knowledge and the creation and circulation of scientific and technical information with the same opportunities for all. Because the role played by existing materials is so important for developing new works, the term for protecting intellectual property rights should not be longer than the time necessary to achieve its goal without harming freedom of expression. In this regard it is noteworthy that, as mentioned in another section of this chapter, the right to receive and impart information and ideas also includes the right of individuals to enjoyment of cultural goods, which in itself implies that there is an individual right to read, listen to, look at, and explore cultural goods without being subject to the restrictions of intellectual property. This includes being able to perform these activities online. Access to information in the public domain is also essential for the Internet, for which reason the protection of intellectual property rights must be regulated in the same way in this space.

154. Digital heritage is also part of cultural heritage and must be protected and preserved for future generations. In developing the right to culture, the 2003 UNESCO Charter on the Preservation of Digital Heritage establishes that digital heritage is at risk due to rapid technological progress, the result of which is that the programs and devices that create content become obsolete very quickly. States must develop mechanisms and policies for preserving that digital heritage and making it available to anyone in any region.

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239 From 2007 to 2011, the European Commission funded a Thematic Network on the digital public domain called COMMUNIA. The network delivered a set of policy recommendations for the strengthening and enrichment of the public domain in the digital environment. Some of the recommendations deal with the enforcement of copyright’s limitations and exceptions, other with copyright’s term or the challenges posed by digitalization. The policy recommendations for the digital public domain can be found here: http://www.communia-association.org/recommendations/

nation, and community in order to provide over time a representation of all peoples, nations, cultures, and languages.  

iii. Restrictions and Limitations on the Rights to Freedom of Expression and Access to Knowledge to Protect Copyright

155. Restrictions on the rights to freedom of expression and access to knowledge on the Internet in connection to copyright protection must comply with the requirements established in the American Convention. These limitations must pass the inter-American system’s three-prong test: a) formal and material legality and legitimate objective; b) necessity in a democratic society and; c) proportionality. Moreover, there must be sufficient judicial control over the restriction in all cases with respect to due process guarantees, including user notifications.  

156. Punishing users for violating copyright by disconnecting them is a disproportionate and radical measure that is not compatible with international human rights law, even when a gradual mechanism is employed (three strikes, for example, in which the Internet is disconnected after three violations).

157. A requirement to block whole sites is also a measure that is disproportionate and not compatible with the protection of human rights online. The 2011 Joint Declaration on Freedom of Expression and Internet held that “mandatory 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, for example where necessary to protect children against sexual abuse.”

158. In addition to the proportionality tests and the impact such blockings might have on freedom of expression, it is important to stress the inefficacy of these measures. They can be easily circumvented by anyone with a basic knowledge about the Internet and using some widely available software. The 2011 Joint Declaration on Freedom of Expression and the Internet states that “Greater attention should be given to developing alternative, tailored approaches, which are adapted to the unique characteristics of the Internet, for responding to illegal content, while recognizing that no special content restrictions should be established for material disseminated over the Internet.”

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159. Along the same lines, State or ISP content filtering that users do not control constitutes prior restraint.  

The 2011 Joint Declaration on Freedom of Expression and the Internet indicates that “The State must at all times require products intended to facilitate filtration by end users to be accompanied by clear information intended to inform those users on how the filters work and the possible disadvantages should filtering turn out to be excessive.”

160. In addition, and with regard to subsequent liability, criminal liability for non-commercial violations of intellectual property law are a disproportional interference with freedom of expression. They have a chilling effect on the free circulation of information and ideas. Crimes perpetrated online should never involve punishments that are more severe than for those perpetrated in real life, as this would be a disproportionate restriction on Internet expression that could restrict and limit the internet as a space for the free exchange of ideas, information, and opinions.

161. At no time shall intermediaries be held criminally liable for omission or failure to comply with an order to restrict content. Measures should be limited to civil or administrative sanctions. Similarly, intermediaries should never regulate the content produced by third parties. States must avoid adopting systems of objective or strict liability, as such systems foster private censorship of legitimate expressions, thereby illegitimately affecting the rights to freedom of expression, access to information, culture, and knowledge, among other human rights exercised and protected on the Internet.  

Although pursuing piracy is a legitimate public policy objective, doing so should take into account the nature of the Internet as a tool for expression and protect intermediaries, avoiding requiring them to conduct monitoring and oversight of the content created by users and third parties.

162. Liability regimes requiring “notification and removal” procedures and that involve intermediaries removing content at the request of individuals transfer the jurisdictional authority of the State to the private sector and do not adequately guarantee due process.

D. RIGHT TO ACCESS TO INFORMATION

1. International Standards on the Right to Access to Information

163. The right to access to information is a fundamental individual right protected by article 13 of the American Convention that enables the exercise of other rights and constitutes a means of controlling and reporting abuses perpetrated or tolerated by public authorities.

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164. Like the right to freedom of expression, the right to access to information therefore has a dual nature, as it protects both those who actively exercise it and those who receive information through the media and/or official sources.\textsuperscript{258} It also entails a positive obligation for the State to provide its citizens with access to the information it has in its power, with the correlating right for people to access that information.\textsuperscript{259} At the regional level, there is broad consensus across the States Party to the Organization of American States as to the importance of access to public information and the need to protect it.\textsuperscript{260} Thus for example, the Model Inter-American Law on Access to Information establishes a series of principles and guidelines for designing and implementing access laws in the region.\textsuperscript{261} First, it establishes a guarantee of the right to access to all information that is in the possession, custody or control, of any government authority, based on the principle of maximum disclosure. It then establishes that information from public institutions must be complete, timely and accessible, and subject to a clear and narrow regime of exceptions.\textsuperscript{262}

165. People have a right to ask for documentation and information kept in public archives that was generated or processed by the State, both to exercise their political rights and to exercise oversight over the State and its administration, thereby promoting transparency and accountability.\textsuperscript{263} Only through access to information can citizens participate in governance without discrimination and on equal footing.\textsuperscript{264}

166. Access to information is also a means by which other rights can be effectively exercised, including the economic, social, and cultural rights of vulnerable or historically excluded groups\textsuperscript{265} and civil and political rights.\textsuperscript{266} Lack of access to information can contribute to or even constitute a violation of other rights enshrined in the Convention. For example, when vulnerable groups lack access to information, it may affect their right to live a life free from violence and discrimination. In the case of women, for example, the Commission has held that the exercise of the right of access to information is closely linked to the prevention of discrimination and violence suffered by this group, as well as access to justice for victims.\textsuperscript{267}


167. Based on its nature, in principle, State information is considered to be public, and government documentation, official.\textsuperscript{268} As the legitimate owners of that information, citizens do not need to demonstrate that they have a direct interest or that they are personally affected by it,\textsuperscript{269} and may disclose it so that it circulates and all of society can access it and review it.\textsuperscript{270}

168. States must respect the principles of maximum disclosure, making disclosure of information the default and classification of information the exception.\textsuperscript{271} The subjects compelled by the right to access to information must also act in good faith and “interpret the law in such a way that it meets the aims of the right of access and 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.”\textsuperscript{272}

169. States should put laws in place that permit effective access to information, with complementary regulations that ensure proper implementation pursuant to the international standards on the subject.\textsuperscript{273} In the event of a legal conflict, the law on access to information should take precedence over other legislation, as the right to access to information is recognized as an indispensable prerequisite for other human rights to function and for the functioning of democracy itself.\textsuperscript{274}

170. The Inter-American Court has established that the State has an obligation to respond to all requests for access and to provide its reasoning in cases in which, for a reason permitted under the Convention, it limits access in a specific case.\textsuperscript{275} The Commission, meanwhile, has said that the right to access to information is not fully satisfied by a State response declaring that the information requested does not exist. When it comes to information that the State has an obligation to keep, it must describe the actions it took in attempting to recover or reconstruct information that may have been lost or illegally removed. Should it fail to justify the situation, the right to access to information is understood to have been violated.\textsuperscript{276}

171. For its part, the Declaration of Principles establishes that States have an obligation to guarantee access to information and stipulates that in order to be legitimate, exceptions must be clearly established by law and have a legitimate objective—i.e., real and imminent danger affecting national security in democratic societies.\textsuperscript{277} Secrecy laws should define precisely the concept of national security, specify clearly the criteria to be used to declare certain information secret, detail which officials are entitled to classify documents as secret, and set overall limits on the length of time documents may remain secret.\textsuperscript{278} When information must


\textsuperscript{278} UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. \textit{Joint Declaration on Access to Information and on Secrecy Legislation}. December 6, 2004.
remain secret pursuant to a legitimate objective under the Convention, public authorities and their staff bear sole responsibility for protecting the its confidentiality.

172. States thus have an obligation to a) respond promptly, fully, and accessibly to requests; b) provide a remedy that satisfies the right to access to information; c) provide a suitable and effective judicial remedy for reviewing refusals to turn over information; d) provide the most possible proactive transparency; e) produce or collect information; f) generate a culture of transparency; f) adequately implement regulations on access to public information; and g) adjust the legal system to the requirements of the right to access to information.279 The procedures for accessing public information should be simple, prompt and free or low-cost.280

173. The right to access to information also entails a duty of active transparency that falls to the State: the obligation to make information in the public interest available. The Inter-American Commission has held that “the obligation to provide information proactively lays the groundwork for the States’ obligation to provide public information that is essential for people to be able to exercise their fundamental rights or satisfy their basic needs in this area.”281

174. States must proactively include government information that is in the public interest to the public domain in order to guarantee easy, prompt, effective, and practical access (for example, through freedom of information laws).282

2. The Internet and the Right to Access to Information

175. The Internet has become “one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies.”283 The formation of an inclusive information society requires universal ability to access and contribute information, ideas, and knowledge so citizens can participate in discussions on public affairs and be part of the decision-making process.284 The Internet offers a new opportunity for developing policies on proactive transparency and dissemination of information and ideas of all kinds. Its speed, decentralization, and low cost allow both the State and private parties to disseminate information without barriers of borders, opportunity, or bureaucracy that once hampered such circulation.285

176. Access to public information over the Internet empowers citizens to actively participate in democratic State’s decision-making processes.286 The nature of the Internet enables an increase in the amount of information that is publicly available, allowing it to be mass distributed at low-cost and published

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dynamically in such a way that it can be worked on and with. Governments should also examine the possibility of publishing data in a way that is machine-readable, and is made available under an open license such as Creative Commons. Machine-readable data is that which can be interpreted by computer code without the need for special equipment or operating systems. This allows the data to be accessed by the citizen to extract the information relevant to them, rather than use information that is constructed around the needs of a bureaucracy.

177. Access to information must also be guaranteed without discrimination. States must therefore ensure multilingualism and that the information is accessible over the Internet for persons with disabilities, as developed previously.

178. Principle 3 of the Declaration of Principles on Freedom of Expression states that, “Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.” This right is known as habeas data and is particularly relevant in the digital age, as many new actors now have the ability to collect, store, and process personal data, with the reasons for doing so having radically expanded.

179. Habeas data enables people to change, delete, or correct information considered sensitive, incorrect, biased, or discriminatory in order to preserve their rights to privacy, honor, personal identity, property, and accountability in the collection of information. Should an individual’s data be stored somewhere, that individual has the right to obtain intelligible information on what it includes and why it is being stored, as well as to rectify it or delete it should its collection or use be in violation of applicable legal provisions.

180. The Office of the Special Rapporteur for Freedom of Expression has emphasized that habeas data “is the common heritage of inter-American constitutional law, insofar as most of the constitutions of the States in the region recognize it, whether in its substantive or its procedural form.” For cases in which there are no specific habeas data laws, people can use access laws to access their data and States would be required to turn it over, but only to its owners.

181. In the context of a habeas data remedy, entities are required to use the information for objectives that are specific and explicitly stipulated. They are also required to ensure data security from accidents, access, or unauthorized processing. Through a habeas data remedy, individuals can verify if personal information collected by State entities or the private sector has been obtained legally. If obtained illegally, the remedy enables determination as to whether the responsible parties should be punished.

182. In order to effectively facilitate access to information, the mechanism for bringing a habeas data remedy must be simple and not involving excessively complex administrative procedures; easy to access; and low-cost. Likewise, the citizen should not be required to explain the reason for requesting the information,
as the fact alone that personal data exists in public or private records is enough to exercise the right. In the event of a restriction that blocks the exercise of the right to habeas data, it must meet standards of necessity and proportionality.

E. RIGHT TO PRIVACY AND PROTECTION OF PERSONAL DATA

183. Respect for online freedom of expression assumes that there is privacy for people’s communications. Indeed, without a private sphere, free from the arbitrary interference of the State or private individuals, the right to freedom of thought and expression cannot be exercised fully. The regulatory framework of the right to privacy in the inter-American system is established in article 11 of the American Convention and articles V and X of the American Declaration.

184. This right as it pertains to the field of human rights has been developed and interpreted in different ways in the regional and universal systems, but takes on new meaning with the advent of new technologies. The development of the Internet empowers and simplifies communications and the storage and standardization of information. But it also empowers States and private parties to more easily conduct monitoring, collection, and surveillance of data, representing a serious risk to privacy. Moreover, the Internet has also become a huge repository of information and personal data, including images. Their availability facilitates the exercise of other rights—such as family life, the right to health, freedom of expression and access to information—but it threatens the full exercise of the right to privacy online.

185. The Office of the Special Rapporteur has stated that in view of this close relationship between freedom of expression and privacy, States should avoid the implementation of any measure that restricts, in an arbitrary or abusive manner, the privacy of individuals (article 11 of the American Convention). This privacy is understood in a broad sense as every personal and anonymous space that is free from intimidation or retaliation, and necessary for an individual to be able to freely form an opinion and express his or her ideas as well as to seek and receive information, without being forced to identify him or herself or reveal his or her beliefs and convictions or the sources he or she consults. Nevertheless, the defense of individual privacy must be based on reasonable and proportionate criteria that do not end up arbitrarily restricting the right to freedom of expression. It is thus important to recall, as stated in principle 10 of the Declaration of Principles, that privacy laws should not inhibit or restrict investigation and dissemination of information of public interest.

1. International Standards on Privacy and Data Protection

186. The legal protection spelled out in article 11 of the American Convention explicitly includes the protection of private life, the home, communications and family life.

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296 American Convention on Human Rights (Pact of San José). Article 11 establishes that “1. [a]ll persons have the right to respect for their honor and recognition of their dignity. 2. No one must be the target of arbitrary or abusive interferences in their private life, that of their family, in their home or in their correspondence, nor of illegal attacks on their honor or reputation. 3. All persons have the right to the protection of the law against those interferences or those attacks.”
297 American Declaration of the Rights and Duties of Man. Article V establishes that “[a]ll persons have the right to protection of the Law against abusive attacks on their honor, their reputation and their private and family life” and Article X establishes that “all persons have the right to the inviolability and circulation of their correspondence”.
187. According to the standards developed within the inter-American system, privacy "is characterized by being exempt from and immune to abusive and arbitrary invasion or attack by third parties or the public authorities."[302] In the case of Artavia Murillo, the Court found that private life includes aspects of an individual's physical, emotional, and social identity, including personal autonomy and the right to establish and develop social relationships with other persons.[303] The Court has held that privacy is strictly linked to the right to personal liberty enshrined in article 7 of the American Convention, adopting a broad concept of liberty as "the ability to do and not do all that is lawfully permitted."[304]

188. As the Inter-American Court has concluded, the home is the proper or "natural" place for an individual's personal or familial development.[305] The space is characterized as one free of abusive or arbitrary invasions by the State or third parties.[306] Effectively, the main factor for finding that the inviolability of the home has been transgressed is lack of consent or of a valid court order justifying the intrusion, not whether a particular domicile is personal or work-related.[307]

189. Correspondence is also specifically protected in article 11 and protection has been extended through case law to cover "communications," including communications using telephones and new technologies like the Internet.[308] In the cases of Tristán Donoso v. Panama and Escher et al. v. Brazil, the Inter-American Court found that although these forms of communication are not specifically indicated in article 11, they are still protected.[309] The protection extends to all personal and professional communications with the understanding that the protection of privacy includes the development of relationships between people, and in particular, a person's professional life is often where he or she has the most opportunity to interact with the world.[310] The protection of privacy as it relates to communication also extends to information about the communication, such as phone numbers called, the frequency of calls, their duration, etc.[311] This information is an integral part of the communications process itself, for example, the destination of the calls that go out or the origin of those that enter; the identity of the interlocutors, the frequency, time or duration of the calls, aspects which may be verified without the need to record the content of the call or record the conversations. Ultimately, the protection of private life takes concrete form in the right that subjects other than the interlocutors may not illegally gain knowledge of the content of telephone conversations or other aspects, such as those mentioned above, inherent to the communications process".

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311 I/A Court H.R. Case of Escher v. Brazil. Judgment of July 6, 2009. Merits, Reparations and Costs. Series C No. 200. Para. 114. In its ruling, the Inter-American Human Rights Court established that "article 11 applies to telephone conversations regardless of their content and may even include technical operations aimed at recording that content, through recording and listening to it, along with any other element of the communications process itself, for example, the destination of the calls that go out or the origin of those that enter; the identity of the interlocutors, the frequency, time or duration of the calls, aspects which may be verified without the need to record the content of the call or record the conversations. Ultimately, the protection of private life takes concrete form in the right that subjects other than the interlocutors may not illegally gain knowledge of the content of telephone conversations or other aspects, such as those mentioned above, inherent to the communications process".
part of communication, the same as its actual content, and storing it also constitutes an invasion of a person's privacy and communications.312 In defining the scope of this type of information, the European Court included information about internet communications, known as metadata. Metadata is information about Internet connections and the different activities conducted online: the location of the equipment where the connection is made, the time, the communication recipients, time spent on forums, pages opened, details on e-mails sent, frequency, etc. Like the information on telephone communications protected by the case law of the inter-American system, this information is separate from the content yet still highly revelatory of personal relationships, habits and customs, preferences, lifestyles, etc.313

190. Finally, family life is also explicitly protected under article 11 of the Convention. The inter-American system developed it mainly in the case of Atala Riffo and daughters v. Chile314 and then in the case of Artavia Murillo (In Vitro Fertilization) v. Costa Rica.315 Both cases connect article 11(2) to article 17 of the American Convention, regarding protection of the family. Although it is addressing the issue of in vitro fertilization, the Court recognizes in Artavia Murillo that the right to privacy and family includes the right to form a family and connects it to the right to access to the benefits of science and technology in order to do so.316

191. The Inter-American Commission has indicated that the right to privacy protects at least four legal rights: a) the right to have an individual sphere impervious to arbitrary interference from the State or third parties; b) the right to govern oneself by one's own rules defined autonomously according to one's individual life plan; c) the right to the confidentiality of all the data produced in that private space, with a corresponding prohibition on disclosure or circulation of information captured without the consent of its owner, in that space of private protection reserved for the individual; and d) the right to one's own image.317

192. Respect for and guarantee of the full scope of the right to privacy as set forth in article 11 of the American Convention requires States to refrain from abusive or arbitrary meddling or interference. It also requires them to adopt specific measures for protecting people from abusive meddling at the hands of third parties. In the case of Fontevecchia and D'Amico v. Argentina, the Inter-American Court established clearly that "the State has an obligation to guarantee the right to privacy through positive actions, which may involve, in some cases, the adoption of measures to ensure that private life is protected against interference by public authorities as well as by individuals or private institutions, including the media."318


316 I/A Court H.R. Case of Artavia-Murillo et al. ("In Vitro Fertilization) v. Costa Rica. Judgment of November 28, 2012. Merits, Reparations and Costs. Series C No. 257. Para. 150. In its ruling, the Court established that "the right to private life and reproductive freedom correlates with the right of access to the necessary medical technology to exercise that right. The right to enjoy the benefits of scientific progress has been internationally recognized and, in the Inter-American sphere, is contemplated in article XII of the American Declaration and in article 14.1 b) of the Protocol of San Salvador. It should be pointed out that the United Nations General Assembly, in its Declaration about that right, pointed to the relationship between this and satisfaction of the material and spiritual needs of all population sectors. Therefore, pursuant to article 29 b) of the American Convention, the scope of the rights to private life, reproductive autonomy and starting a family, derived from articles 11.2 and 17.2 of the American Convention, extends to the right of all persons to benefit from scientific progress and its applications. From the right of access to the highest and most effective scientific progress for the exercise of reproductive autonomy and the possibility of starting a family, the right of access to the best health services in reproductive assistance techniques derives, and, therefore, the prohibition against disproportionate and unnecessary de jure or de facto restrictions for exercising the reproductive decisions that correspond to each person".


193. All restrictions to the right to privacy, including the right to be free from arbitrary or abusive interference with communications, must pass the test of legality, proportionality, and necessity established in the Convention itself and reaffirmed by the Inter-American Court.  

2. The Internet and Protection of Privacy

194. States have an obligation to respect and protect the right to privacy in the digital era and adopt legislation and practices—or adapt existing ones—to do so, protecting everyone under their jurisdictions—including, pursuant to international law, those in their custody—without discrimination based on national origin, nationality, sex, race, religion, or for any other grounds.

195. With the advent of the Internet, new challenges emerged to protecting the right to privacy, both for the State in its role of guarantor and for private parties in their roles as users.

196. By nature, the Internet is currently without a doubt a natural space for personal development. Although in certain cases it can be construed as a domicile-like space for a person—their personal, professional, banking, or commercial web page—or as a means of communication—e-mail, messaging services, etc.—it cannot necessarily or by force be limited to these two characterizations.

197. The Internet also provides new “public spaces” in which to interact, opine, associate, participate, educate or receive education, inform or be informed, etc. The distinction between the personal and public realms is not always as clear to third parties, and neither is it clear, often, to the actors themselves—individuals—who participate.

198. The Internet by necessity presupposes the existence of and coexistence with intermediaries—service providers, servers, platforms, etc.—meaning that use of the Internet and interaction with it will necessarily generate data and leave a “digital footprint,” even in its most private areas. States must protect the right to privacy from potentially arbitrary or abusive meddling from third parties as well.

199. Indeed, the impact of technology upon privacy became apparent with the introduction of mass circulation newspapers and photographs. People who saw their pictures in a newspaper were concerned that what they had assumed to be private was now public. With the internet, the technical capacity to gather, store and exchange personal information about people provided by digital technologies has led a new challenge in protecting privacy. Most social media companies have a business model that involves providing “free” services in exchange for ownership of the data generated by the user. This immensely complicates the right of people to determine when, how and to what extent information about them is communicated to others. The growing processing power of computers exacerbates the challenge as information can be harvested from multiple sources, processed and re-processed and then sold on. In fact the entire business model of the most successful companies directly impinges upon the right to privacy.

200. New technologies also create the possibility to locate and track personal data that was not possible before. Each computer, mobile phone or other device attached to the Internet has a unique Internet Protocol

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(IP) address, which provides a specific identifier for the device and which means in turn that they can be traced. The advent of GPS systems has meant that devices with unique IP addresses can be physically located, enabling anyone with access to that information to track the movements of the person with the device.

201. The internet has seen a batch of new tools designed to extract personal information from the user. Of the many tools that have been created to track Internet users, two familiar examples are cookies and web bugs. Cookies are small pieces of text which web browsers store on a user's computer. The cookie 'registers' with the web browser each time the user accesses that browser and can be used for monitoring the user's session history, storing any preferences, etc. Web bugs (or web beacons as they are sometimes known) are usually invisible to the user (they are typically only 1x1 pixel in size) and are embedded in web pages and emails. When the page/email containing the web bug is viewed, it sends information back to the server (including the IP address of the user, the time and date that the page/email was viewed and the browser it was viewed on).

202. While not intended to be exhaustive, this report outlines five of the challenges that arise or are magnified by the phenomenon of the Internet: a) protection of personal data; b) surveillance, monitoring, and collection; c) encryption and anonymity; d) “big data”; and e) the Internet of Things.

a. Protection of Personal Data

203. In order to function, the Internet requires the creation, storage, and management of data: personal data as well as other kinds. This means that an enormous amount of information about people can be collected, stored, and analyzed by States and third parties.324

204. To protect privacy on the Internet, the confidentiality of personal online data must be guaranteed. Latin America has general defined personal data broadly to include any information on identified or identifiable physical or juridical persons.325 The Commission highlighted that it is crucial to develop rules for data protection that regulate the storage, processing, and use of personal data, as well as its transfer, whether among State entities or third parties.326 Due to the cross-border nature of the Internet, the need to regulate data handling is not limited to national frameworks: An international framework for data regulation must be developed as well.327

205. States must adopt policies to prohibit data processing—including storage, analysis, and disclosure of personal data—except when authorized or when the person affected has given informed consent.328 Positive measures should also be taken to educate people on their rights and the legal requirements for processing personal data and to inform them when their data has been collected, stored, processed, or disclosed. Use of personal data that violates human rights must be prohibited, and effective and independent monitoring mechanisms must be established.329
206. An individual’s consent authorizes States and private parties to process his or her personal data. However, in order for consent to be valid, it must be informed and freely given. States must ensure the general conditions are in place to guarantee that consent can effectively be informed and freely given. When the State is the one processing the data, it must establish the guidelines and controls necessary to verify 1) that the data is not used for purposes other than the ones declared, 2) that the data is maintained and stored pursuant to those purposes and only during the period of time reported and consented to; and 3) that the data is shared only under the conditions and for the purposes reported and consented to.

207. The United Nations Office of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression warned that in many States, data protection laws are insufficient or inadequate and highlighted the need to adopt clear laws governing both the State and the private sector. The report highlights the urgency of the matter, particularly considering that Internet intermediaries collect and store a large volume of data, with some suits filed over the practice in some States of forcing intermediaries to collect and share such data.

208. States must ensure a policy of transparency regarding legislation that applies to State and private data handling practices, data processing, procedures for challenging that processing, and the authority competent to resolve complaints. It is crucial for individuals to be able to access the information that is kept about them, update it, correct it, and where necessary, delete it.

209. The right to access and the State’s obligation to be transparent with the personal data it keeps also cover biometric data. Biometric data enable “systematic recognition of individuals based on biological and behavioral characteristics.” The mechanism for using biometric data requires its collection in the form of fingerprints, iris scans, DNA, voice, etc., and the standardization of all that data into a single database that, combined with other sources of behavioral information, makes it possible to use statistical methods to


identify individuals. States must observe strict standards of necessity and proportionality when determining which data to collect and the methods to be used for collecting biological and behavioral data; establish collection protocols that respect human rights; and guarantee the right to access to information regarding the policies and practices in force, the type of information collected, and the uses made of that information, also indicating the authority competent to collect and process that data. This process must be subject to both administrative and judicial oversight, and the State must investigate any human rights violation brought to its attention that is perpetrated in the context of these practices.339

b. Surveillance, Monitoring, and Collection

210. Internet surveillance can come in different forms and nuances, including documentation, monitoring of activities and communications, or mass or targeted collection of online communications or activity.340 Targeted surveillance is generally protected in criminal proceedings or other kinds of investigations, and involves collecting and/or monitoring the communications of an identified or identifiable individual, and IP address, a specific device, a specific account, etc.341 Mass data and communications surveillance involves tapping and monitoring entire cables, networks, or equipment, or buying server or intermediary data from a third party, then accessing all the data collected that has not been encrypted.342

211. Technologies developed in recent decades have dramatically reduced both the human and the financial costs of surveillance, thus the use of surveillance has increased radically as well.343 Considering these dangers and others involved in technological developments, the inter-American system has held that "the State must increase its commitment to adapt the traditional forms of protecting the right to privacy to current times."344

212. Internet surveillance in any of its forms or nuances constitutes interference in the private lives of people and, when conducted illegally, can also affect the rights to due process and a fair trial, freedom of expression, and access to information.345 It is recognized both regionally and universally that illegal or arbitrary surveillance and interception and collection of personal data affect not only the right to privacy and freedom of expression but can also run contrary to the precepts of a democratic society.346 The United Nations Human Rights Committee has warned of the negative effects that surveillance, interception of communications and collection and analysis of personal data can have—particularly when performed indiscriminately—on the enjoyment and exercise of human rights.347

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213. According to the international principles developed to date, this surveillance includes interception of communications regardless of whether the resulting information is analyzed or systemized. It includes both cases in which the State itself collects the communications and cases where States outsource that work—for example, by requiring servers and service providers to collect data and then demanding access to it, regardless of where it is stored, as a condition for the servers or providers to operate, or when they reserve the right to access data flows for local purposes such as pursuing criminals, oversight, etc. The standards developed in both the Inter-American and the European system aim at protecting not only the content of communications but also the data about the communications, or the metadata in the case of the Internet, as established above. Surveillance in all its forms constitutes interference in private life.

214. In the same vein, the systematic collection of public data—voluntarily submitted by the owner of such data, including as blog posts, social network activity, or any other public domain content—also constitutes interference in the private lives of people. The fact that a person leaves public traces of his or her activities—unavoidable on the Internet—does not authorize the State to collect it systematically except in specific circumstances where such interference would be justified.

215. All network surveillance constitutes interference with individuals’ privacy. However, not all interference is per se illegitimate, and in exceptional cases, different degrees of interference are justifiable depending on the circumstances. Terrorism and the fight against organized crime are examples of instances where the State has an obligation to prevent and protect that constitutes a legitimate objective that justifies the exceptional and supervised use of surveillance technologies and mechanisms. However, “it is crucial to understand that given the dynamic character of the Internet and of communications technology in general, this type of surveillance may constitute a particularly invasive act that seriously affects the right to privacy and freedom of thought and expression.” The United Nations General Assembly has highlighted that although public safety can justify the collection and systemization of certain information, states must guarantee that these measures respect human rights.

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216. In line with the European and universal systems, the Inter-American system established a three-prong test to verify the legitimacy of State or non-State interference with privacy, including electronic surveillance. Pursuant to this test, surveillance must be legal—both formally and materially—necessary, and proportional.\textsuperscript{356}

217. The permissible instances of and conditions for surveillance must be established beforehand in a law and established explicitly, strictly, precisely and clearly, both substantively and procedurally.\textsuperscript{357} In view of the inherent risk of abuse of any surveillance system, these measures should be based on legislation that is particularly precise, clear and detailed, and States have to ensure a plural, democratic, and open consultation prior to the adoption of the applicable regulations. The objectives for which surveillance or the interception of communications would be permissible must be explicitly established in the law, and in all cases the laws must establish the need for a prior court order.\textsuperscript{358} The nature of the measures, as well as their scope and duration, must be regulated, establishing the facts that could lead to them and the bodies responsible for authorizing, implementing and monitoring them.\textsuperscript{359}

218. The laws and policies governing the nature, scope, and implementation of interception and surveillance mechanisms and when they are in force must be public, and the State is required to apply the principle of maximum disclosure developed in the framework of right to access information.\textsuperscript{360} The maximum disclosure requirement covers both policies and practices on electronic surveillance, including the acquisition, development, or updating of systems available for it; the protocols for its use; the conditions and guidelines for its authorization; and which authorities are in charge of its implementation, authorization, and supervision.\textsuperscript{361} The Inter-American Commission notes with concern that some States in the region have acquired new surveillance technologies, yet the processes for its acquisition, use, availability, and monitoring lack sufficient regulation or dissemination.\textsuperscript{362} In its Report on Terrorism and Human Rights, the Inter-American Commission highlighted that in complex contexts such as the fight against terrorism, the need for public information is even greater in order prevent abuses. It emphasized that States must demonstrate need for any measure that keeps certain information secret to protect national security and public order.\textsuperscript{363} Citing the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the Commission noted that measures to keep such information secret must be justified by a legitimate and


demonstrable aim\textsuperscript{364} and the information should be public unless the damage to some legitimate interest is substantial.\textsuperscript{365}

219. Similarly, States must promote and disseminate knowledge and awareness regarding the policies imposed on Internet service providers and other intermediaries, whether established by law or by administrative regulation.

220. Limitations on rights that are established by law must pursue a pressing need that is compatible with the American Convention.\textsuperscript{366} Like other international treaties, the American Convention provides for specific instances where rights may be limited, including for reasons of national security, public morals, and the rights of others. The UN Special Rapporteur for Freedom of Expression has argued that given the breadth and ambiguity of these terms, laws limiting human rights for reasons of national security, for example, should clearly and specifically describe the criteria to be applied for determining the cases in which such limitations are legitimate and be careful to accurately define the concept.\textsuperscript{367} The concept of national security cannot be interpreted in any way and must be defined from a democratic perspective.\textsuperscript{368}

221. Measures to limit the right to privacy online, surveillance in particular, must be necessary in a democratic society in order to be legitimate.\textsuperscript{369} In this regard, the inter-American system has held that it is not sufficient for the measures to be useful, reasonable, or convenient. Rather, they must meet a clear and pressing need in order to achieve the legitimate objectives being pursued.\textsuperscript{370}

222. Finally, the proportionality of the measure will depend on balancing the pressing and necessary aim being pursued against the impact of the proposed limitations to the individual right. For the Internet, this element takes on new dimensions. A proportionality analysis must take into account the characteristics of its architecture to assess the impact that a surveillance measure may have on the exercise of human rights on the web.\textsuperscript{371} Mass surveillance of communications is under no circumstances proportional.

223. The Joint Declaration on freedom of expression and responses to conflict situations emphasizes that “conflict situations should not be used to justify an increase in surveillance by State actors given that surveillance represents an invasion of privacy and a restriction on freedom of expression. In accordance with the three-part test for restrictions on freedom of expression and, in particular, the necessity part of that test, surveillance should be conducted only on a limited and targeted basis and in a manner which represents an appropriate balance between law enforcement and security needs, on the one hand, and the rights to freedom of expression and privacy, on the other. Untargeted or "mass" surveillance is inherently disproportionate and


is a violation of the rights to privacy and freedom of expression.”372 Similarly, “requirements to retain or practices of retaining personal data on an indiscriminate basis for law enforcement or security purposes are not legitimate. Instead, personal data should be retained for law enforcement or security purposes only on a limited and targeted basis and in a manner which represents an appropriate balance between law enforcement and security needs and the rights to freedom of expression and privacy.”373

224. Likewise, the surveillance measures must be ordered by a competent, independent, and impartial judge or court, and the order itself must be properly reasoned in order to be legitimate.374 The Inter-American Court has held that the procedures requiring decisions be made without a hearing that includes the participation of the affected party, the motivation and justification must reflect the weighing of all legal requirements justifying the intervention.375 The law must clearly establish which authority is empowered to demand, implement, and oversee strict compliance with the judicial order authorizing the interference.376

225. Transparency is also essential in a democratic society, and States must publish statistics on the number of requests made, the number approved, the number rejected, the type of investigations for which the requests are made, the duration of the measures, a breakdown of requests by provider, etc.377

226. Transparency of Internet intermediaries also plays a particularly important role. States often depend on the consent and/or cooperation of intermediaries, and there are numerous initiatives aimed at forcing intermediaries to perform a certain amount of record-keeping, control, or monitoring of activity and of their users as a condition to operate. The Joint Declaration on surveillance programs and their impact on freedom of expression holds that in order to monitor the legality of the various instances of surveillance, States should allow and even encourage intermediaries to disseminate information on the processes they implement, indicating at least in aggregate the number and scope of requests from State agencies received and granted.378

c. Encryption and Anonymity

227. Anonymity is a means of protecting privacy, and its connection to freedom of expression has been particularly noteworthy because it facilitates participation in the public discourse without the need to identify oneself, thereby preventing potential retaliation for an opinion.379 Based on this, the Office of the


Special Rapporteur has held that anonymous spaces that are free of observation and where identities and activities are not documented must be guaranteed.\textsuperscript{380}

228. States have an obligation to respect anonymous discourse as an exercise of privacy and freedom of expression and may only exceptionally require authentication or proof of identity from the person expressing it, applying a standard of proportionality.\textsuperscript{381} To commit to the protection of human rights online, the private sector should also protect anonymous speech by not adding requirements to their platforms that the law does not establish.

229. Without prejudice to this, States can take measures to fully identify a person during a judicial investigation, as long as doing so is within the framework of proportionality.\textsuperscript{382} For example, anonymity can be lifted when the speech is not protected by the right to freedom of expression—such as propaganda calling for war, hate speech that incites violence, incitements to genocide, child pornography—\textsuperscript{383} or subject to subsequent liability in a way that is in keeping with the American Convention.

230. For its part, encryption is another remedy for protecting informational privacy in the digital age, as well as the inviolability of communications.\textsuperscript{384} Encryption is mathematical process of converting messages, information, or data into a form unreadable by anyone except the intended recipient",\textsuperscript{385} with encryption of data in transit (i.e. - e-mails, text messages, etc.) being distinct from encryption of stored data (remote storage systems, the cloud, etc.).\textsuperscript{386}

231. Measures to restrict encryption reduce people’s ability to protect themselves from illegal invasions of their privacy.\textsuperscript{387} The measures include limitations or even legal bans on private encryption, automatic encryption provided by certain intermediaries, or “default” privacy, as well as the imposition of centralized key registries or the creation of back doors to enable collection of communication even from encrypted devices. These measures should only be adopted by States exceptionally and when legal, necessary, and proportional.

d. “Big Data”

232. Ease of collection and data availability on the Internet create development opportunities for both States and private parties. "Big data" is a term that refers to the immense quantity of data generated on the web that can be captured, stored, processed, analyzed, and systemized to find trends, profiles, etc.\textsuperscript{388} Big data presents both opportunities and challenges when it comes to protecting human rights. Analysis of the data

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generated and currently available on the Internet could enable evaluation of social needs and trends that could potentially allow for the adoption of more and better public policies for guaranteeing the human rights of persons. For example, the United Nations has initiatives for researching and promoting the use of big data to produce and analyze social data. Likewise, large private companies are currently committed to developing technologies that will enable them to analyze the data made available by the existence of the Internet to evaluate market trends, preferences, profiles, etc. that may make it possible for them to provide society with more and better products and services.

233. However, the general collection, analysis, and use of the information generated and made available by the Internet also presents important challenges for the protection of personal data. Currently there are regulatory issues surrounding ownership and transfer of data, but issues also exist when it comes to the technologies available for analysis. Many of the technologies that are being used enable not only objective data and trend analysis but also inevitably enable identification of the users that make up the critical mass analyzed. States must ensure that the technology for making use of big data that is employed by both the public and private spheres guarantees due protection of human rights on the Internet.

e. The Internet of Things

234. It is also important to mention the implications of the development of the so-called Internet of Things and the new threats to privacy that could pose. Currently services available on the Internet are characterized by human communication using the web as a platform. But as chips become embedded in all goods – even everyday items – and where each object has a unique individual identifier, we are reaching a point when, in the near future, objects will be able to communicate with each other, without human intervention. The Internet will then become a physical experience of objects - an Internet of Things (IoT). Humans will be surrounded by ubiquitous objects, gathering information and communicating with service providers and would be at the center of a continuous information network connecting the objects in their lives.

235. The Office of the Special Rapporteur recognizes the fast moving technological changes that characterize this era, in which the implications of a technology is rarely understood before it becomes widespread and adopted. It is the responsibility of states, on behalf of their citizens to understand the public policy implications of new technologies and ensure that they operate in the public interest with adequate consumer and privacy protections.

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CHAPTER IV
SILENCED ZONES:
Highly Dangerous Areas for the Exercise of Freedom of Expression

A. INTRODUCTION

1. The murder of journalists and media workers for reasons related to their work is the most serious violation of the right to freedom of expression. Acts of violence committed against journalists and media workers not only seriously violate their right to life but also aims to radically suppress their right to express themselves freely and create a self-censorship effect among other members of the media. Acts of violence committed because of the work that journalists do also seriously affects the social and collective dimension of the right to freedom of expression, given that they violate the right of societies and their citizens to seek and receive information and ideas of all kinds.1

2. Although the murder of journalists constitutes the most extreme and condemnable form of censorship and violence against the press, every year the Annual Report of the Office of the Special Rapporteur documents hundreds episodes representing other forms of violence against journalists, such as disappearances, threats, and attacks on journalists and media outlets from different places in the region.

3. As the Inter-American Court of Human Rights (Court or Inter-American Court) has established, “journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment. Those acts constitute serious obstacles to the full exercise of freedom of expression.”2

4. Throughout its history, the Office of the Special Rapporteur has also paid special attention to the lack of timely and complete investigation in most of the cases involving different forms of violence against journalists, including murders. In the American hemisphere, this impunity has been the rule rather than the exception and the region has an alarming history of impunity with regard to crimes against journalists and Medias.3 Indeed, in the most recent reports on the situation of human rights in different countries of the region, the IACHR and the Office of the Special Rapporteur have documented rates of impunity for crimes against journalists near or over 90 per cent in countries like Mexico,4 Guatemala,5 and Honduras.6

5. When such crimes go unpunished, it encourages the repetition of similar violent acts and can result in the silencing and self-censorship of journalists.7 Impunity creates a strong chilling effect on the exercise of freedom of expression and the negative consequences on democracy are particularly serious, given that they affect the free, open, and dynamic exchange of ideas and information. Specifically, the Inter-American Court has reiterated that impunity, understood as the “total lack of investigation, prosecution, capture, trial and conviction,”8 favors the chronic repetition of human rights violations.9

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6. Pursuant to its mandate, the Office of the Special Rapporteur continually monitors that security situation of journalists. In that sense, this report takes up the standards established in the last report of this office on violence against journalists and media workers, adopted by the IACHR in 2013. Previously, in the year 2008 the office published the report study special about the murder of journalists\textsuperscript{10} in which already had registered a trend that has not changed since then: While journalism has become essential in the fight against corruption and abuse of authority, the evidence gathered indicates that the problem of violence against journalists in the Americas has intensified in recent years, in many cases in connection with the presence of organized crime in vast areas of the hemisphere and the cooptation or weakness of the State apparatus in those areas.\textsuperscript{11}

7. To this we can add the violence unleashed by some state actors in retaliation for the disclosure of information concerning government corruption. The information revealed by the press in the hemisphere in most cases is later backed up by judicial investigations, which seems to indicate that corruption and abuse of authority has increased in the region. Censorship has simultaneously increased through extreme violence aimed at journalists and harassment through civil or criminal litigation.

8. According to the figures reported by the Office of the Special Rapporteur, between January 1, 2010 and November 1, 2016, at least 162 journalists and media workers were murdered for reasons that may be related to the practice of their profession. In the past three years, the murder rate for journalists has remained high. In 2014 there were 25 reported murders allegedly linked to the exercise of freedom of expression; in 2015 there were 27, and in 2016 another 33 murders were documented. During that period dozens of journalists were reportedly displaced from their workplaces and hundreds received threats or were harassed or attacked for condemning corruption or reporting on criminal organizations, other powerful forces, and government corruption. Female journalists have reported being the victims of sexual violence, harassment, and intimidation in response to their professional activities.

9. The Office of the Special Rapporteur has also observed the concentration of violence against journalists in areas far from the capitals, particularly transit and/or border areas. In fact, during the past decade, most of the murders that have taken place in the region—as well as other types of attacks on journalists like disappearances, kidnappings, threats, intimidation—have occurred in places far away from the large urban centers. Between 2011 and 2015, the Office of the Special Rapporteur documented the murder of 131 journalists, 124 of which occurred in areas far from large urban centers, in countries like Colombia, Guatemala, Mexico, Honduras, Paraguay, and Brazil. It has also verified that those most affected were those journalists and media workers who covered local news about corruption, drug trafficking, organized crime, public safety, and related matters. In those regions where criminal organizations have a strong presence, journalists are caught in the crossfire and often—in order to safeguard their lives or physical safety, or even to keep working in their chosen profession—must align themselves with the interests of a given power, which means abstaining from reporting and remaining silent.\textsuperscript{12}

10. The UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression stated that, "Local journalists continue to face daily challenges in situations that have not reached the threshold of an armed conflict, but may be characterized by violence, lawlessness and/or repression. These range from restrictions to movement, including deportations and denial of access into a country or a


particular area; arbitrary arrests and detention, particularly during public crises or demonstrations; torture and other cruel, inhuman or degrading treatment or punishment, including sexual violence against female journalists; confiscation of and damages to equipment, information theft, illegal surveillance and office break-ins; intimidation, including summons to police stations for questioning, harassment of family members, death threats, stigmatization and smear campaigns to discredit journalists; abductions or enforced disappearance to killings.”

11. This scenario presents a number of challenges for the protection of journalists and media workers in the hemisphere, in particular worrisome scenario of violence against journalists and media workers laboring in areas or regions where there is significant organized crime, weak public institutions, collusion between criminals and local governments, and unstable employment conditions for journalists.

B. THE PHENOMENON OF SILENCED ZONES

12. In this report, the Office of the Special Rapporteur would like to call special attention to the phenomenon seen in different regions of the Americas where communities are being misinformed and silenced as a result of the violence unleashed by organized crime groups in furtherance of their unlawful aims, in some cases in complicity with local or regional authorities infiltrated by these groups. This type of violence particularly affects journalists and media workers, who in the past decade have been the direct victims of murder, kidnappings, and assaults in these complex scenarios of violence. The methods of the so-called “war on drug trafficking” and of armed conflicts—the latter of which are becoming less common in the region—are part of the main threats to the lives and safety of journalists.

13. In its Report on Violence against Journalists and Media Workers, the Office of the Special Rapporteur addressed the factors involved in violence against journalists and media workers and the State’s response, indicating that:

Violence against journalists in the region is the result of a complex series of causes. (...)Nevertheless, in recent years, the number and size of organized criminal groups has increased, including drug trafficking cartels and other organized criminal groups. These currently represent the main threat to the lives and personal integrity of journalists. This situation presents a series of challenges for the protection of journalists and media workers in the hemisphere. In some regions, State institutions are too weak to respond effectively to threats from organized crime. The weakness of State institutions leaves journalists without effective protection from attacks perpetrated by organized crime, resulting in self-censorship as an immediate consequence.  

14. The objective of those who attack the press is to prevent journalists or press workers from doing their work and keeping information contrary to their interests from reaching society. A recent report of Colombia’s National Center for Historical Memory, entitled “Words and Silence,” concluded that in the context of the Colombian armed conflict, murdering journalists was a clearly defined war strategy that involved the differentiated participation of multiple actors, and had objectives that affected the victims, their relatives, media outlets, and the community. The murders were meant to stifle, silence, intimidate, pressure, and teach a lesson to journalists—all in the name of securing a future in which society would be deprived of information contradictory to their war objectives.


15. Journalism, in the context of a democratic society, is one of the most important manifestations of freedom of expression and information. Journalistic work and the activities of the press are essential to functioning democracies, because journalists and the media keep society informed about current events and their various interpretations, a necessary condition for the public discourse to be robust, informed, and vigorous. It is also clear that a free, independent, and critical press is a core element for the enjoyment of all the other freedoms that make up the democratic system.

16. The inter-American case law has been consistent in reaffirming that, as a cornerstone of democratic society, freedom of expression is an essential condition for society to be sufficiently informed; that the maximum possible flow of information is a requirement of the common good, and that the full enjoyment of freedom of information is what guarantees that maximum flow; in addition, the free circulation of ideas and news is inconceivable without a plurality of sources of information and respect for the media.

17. Consequently, journalists and media workers can be vulnerable because of the role they play in society, as they are the ones who keep society informed about matters of public interest. “Obstacles created in order to hinder access to information of public interest may not only discourage journalists and other media actors from fulfilling their public watchdog role, but may also have negative effects on their safety and security. Attacks against journalists and other media actors constitute particularly serious violations of human rights because they target not only individuals, but deprive others of their right to receive information, thus restricting public debate, which is at the very heart of pluralist democracy,” underscored the Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted in 2014.

18. As mentioned in the introduction to this report, the Office of the Special Rapporteur continues to document high numbers of attacks on the press, year after year, in spite of the efforts made by many states in the hemisphere to curb the situation of violence affecting journalists and media workers. These attacks range from murders—the most brutal—to threats, assaults, accusations, and other forms of harassment. The Office of the Special Rapporteur has observed with concern the increase in localized violence in certain areas of the countries plagued by the presence and through traffic of criminal activities, often in rural or border areas. This violence has resulted in a heightened chilling effect on journalism, increased self-censorship, and the silencing of journalists.

19. This special report documents a number of representative cases that illustrate how organized crime, as well as state agents involved in corrupt acts, have developed strategies to silence the press in different regions of the hemisphere in order to impose information that is favorable to their interests and to silence information that reveals their methods of territorial and institutional control. This report also intends to deepen the dialogue with state institutions, civil society, and the media that face this situation through recommendations that enable the States to address this challenge through effective and focused policies of prevention, protection, and the criminal prosecution of perpetrators.

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20. Indeed, in areas subject to territorial dispute by unlawful armed groups, those groups see the press as an obstacle or as a tool for accomplishing their objectives.22 As the IACHR stated in its report on citizen security and human rights, “corruption and impunity have enabled criminal organizations to develop and establish parallel power structures.”23

21. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur discussed in depth the factors that give rise to conditions conducive to violence against journalists, and concluded that, “the majority of murders, disappearances and kidnappings of journalists are concentrated in states that suffer from a strong presence of organized crime [...] in these regions organized crime represents the greatest threat to the life and physical integrity of journalists, especially those who report on local issues of corruption, drug trafficking, organized crime, public security and related matters.”24 At the same time, the report noted that in some regions of Mexico the violence and intimidation against journalists is reportedly being perpetrated by armed groups that apparently maintain ties with political factions. The Office of the Special Rapporteur also reported on numerous complaints of persecution and acts of violence by police officers and members of the armed forces against journalists who try to cover issues related to public safety.25

22. There are areas of Mexico where journalists are now subject to intense intimidation by criminal groups interested in suppressing certain information in the media and disseminating that which serves their criminal interests. In this particularly risky scenario, it is extremely difficult for journalists to investigate and publish articles on topics like organized crime, corruption, and public safety.26 In the same regard, during the IACHR’s on-site visit to Mexico in September 2015, the Office of the Special Rapporteur was able to confirm that in those regions where organized crime has a strong presence, journalists are caught in the crossfire and often—in order to safeguard their interests—must align themselves with the interests of a given power, which means abstaining from reporting and remaining silent.

23. The report published by the National Center for Historical Memory of Colombia recognizes that the proximity of journalists to communities plagued with violence is a constant variable in crimes against freedom of expression. They are the ones who are close to the community’s problems, building a pertinent memory of what happens, and they shine a light on the problems that some would like to hide.27 The same report notes how drug traffickers in Colombia treated the press brutally because of the threat it posed to their interests, as well as its potential for disseminating favorable information. The crime organizations behind the drug trafficking viewed the press as an enemy to be annihilated, but at the same time saw it as a powerful force able to publicize their criminal exploits.28

24. In this same regard, the IACHR and its Office of the Special Rapporteur cautioned in the Report on the Situation of Human Rights in Guatemala that, “Given the difficulties surrounding their work, some journalists


The Commission cited the collusion between government institutions and organized crime, especially in the country’s rural areas. In this scenario, the lack of an appropriate State response, the impunity, and the corruption have allowed the violence perpetrated by those groups to continue. The victims of human rights violations, as well as their relatives, human rights defenders, legal practitioners, and journalists are exposed to the violence that these criminal groups represent. The IACHR also observed that, “Violence transects Guatemala, affecting the whole of society and all groups. Aside from the context of violence and insecurity, there is the situation of those whose role in society or particular vulnerability due to historic discrimination and exclusion leads them to be disproportionately affected. They particularly include individuals who defend human rights in Guatemala, among them, indigenous authorities and leaders, environmental activists, trade union leaders, [judges and lawyers], (...) and journalists (...)”.

25. In its report on the Situation of Human Rights in Honduras, the IACHR observed that, “Organized crime - with which public officials and agents of the State security forces have been found to be involved - is perceived as the greatest threat to the life and physical integrity of those journalists in Honduras covering local news about corruption, land claims, drug trafficking, organized crime and public safety. Similarly, the information gathered during the on-site visit helped to confirm that there is a high risk to life and integrity of journalists exercising critical journalism and who are critical of governments following the 2009 coup d’état. This violence particularly affects journalists working in departments within the country and in rural areas, including, among others, the departments of La Ceiba, Yoro and Olancho.”

26. Commissioner Iván Velázquez of the UN International Commission against Impunity in Guatemala (CICIG) described the impact of the criminal organizations that operate in different territories of the region’s countries and explained how in some cases they manage to co-opt state institutions. “In general (these criminal organizations that operate in the region), are very similar. In Colombia they probably reached a higher level of development—that is, they were able to co-opt the State more extensively, especially in many outlying areas. Criminal organizations involved in drug trafficking and paramilitary activities, or in other sectors with the guerrillas, gained a firm hold on local governments and, with the cooperation of those local governments, rose through the ranks of the State structure. In Guatemala, I think that (...) the co-optation of the State is underway. There are regions, particularly in the border departments of Guatemala, where municipal control is being exercised in this way by criminal organizations linked mainly to drug trafficking. With their economic influence and power of intimidation, they render any State authority ineffective, and they impose the law in those territories.”

27. The Office of the Special Rapporteur has observed that there are certain common characteristics or factors present in these so-called silenced areas that, in spite of the particularities of each situation, make them very similar when there is a context of attacks on journalists and media outlets. The Office of the Special Rapporteur has been able to identify the presence of the following factors: a) the existence of criminal organizations that operate outside the law and seek to control an entire region; b) the cooperation, collusion, or omission of broad sectors of government at different levels; c) the lack of an effective response from other state institutions (Executive, Judicial, and Prosecutors’ Offices) called upon to meet the primary obligations of preventing, protecting, investigating, and punishing threats to life and safety and to guarantee the exercise of freedom of expression; d) the lack of support and training for local journalists, which makes them more vulnerable to these types of attacks, whether because of the way in which they approach the news phenomenon or because they are involved with authorities or even with criminal organizations; e) this

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33 Prensa Libre. August 2, 2015. “Es el miedo a la verdad lo que se opone a organizaciones como CICIG.”
complex set of factors inhibits journalists in the affected areas from conducting their work, limits freedom of expression, and produces a chilling effect on the free flow of information; it gives rise to self-censorship and reinforces the tendency to practice a type of journalism that avoids reporting on matters of security, corruption, or influence peddling, and to develop a kind of journalism that is aligned with power; f) the success obtained by the criminal organizations in silencing the media and opinion shapers over long periods of time, added to the impunity obtained by the masterminds and direct perpetrators of this type of violence, creates incentives to perpetuate violence against journalists.

28. In this report, the concept of "silenced zones" is used to describe the violence carried out against the physical or psychological integrity of journalists or media workers by criminal organizations, with or without the acquiescence of the state; however, we cannot ignore the fact that other means of institutional order meant to censor or hinder the work of the press persist in the region. In this regard, violence against journalists can occur through the use of the criminal law – the State’s main coercive power – to punish, repress, and inhibit speech critical of the actions of state authorities or about matters of public interest. In particular, the threat or imposition of a prison sentence based on criminal defamation [desacato] laws can have a chilling effect not only on journalists but on all of society. In fact, fostering a democratic and activist citizenry entails designing institutions that enable rather than hinder deliberation on all matters and phenomena of public relevance.34

29. The Office of the Special Rapporteur has also observed through its monitoring activities that other problematic issues or indirect means contributing to self-censorship persist in many regions, such as the lack of objective criteria for the allocation of government advertising, the concentration of media ownership, the refusal of government authorities to disclose information in the public interest, among others. With respect to journalism that deals with local information, government advertising tends to heavily influence the sustainability of media outlets and independent journalists. The lack of effective access to public information also leaves journalists in a more vulnerable position, because they have to seek information from sources involved in violent activities, and the different versions of events that the press offers with regard to a single incident can trigger the retaliation of criminal groups in contexts of violence. In recent investigations, civil society organizations have exposed the way in which these other types of violence affect the information received in isolated communities.35

30. In its report on Violence against Journalists and Media Workers, the Office of the Special Rapporteur indicated that a comprehensive State policy to address violence against journalists has three elements: prevention, protection, and the investigation, prosecution, and punishment of the perpetrators of crimes against the press. The prevention of this type of violence assumes the state’s positive obligation to promote an environment of free, independent, and diverse communications, which is a clear means of addressing the issue of misinformation.

31. With respect to the prosecution and punishment of crimes against journalists, the issue of impunity is a growing concern for the human rights protection bodies. It is crucial for the States to meet their obligation to investigate in order to identify the masterminds and direct perpetrators of those crimes, to serve justice in the specific case, prevent its repetition, and avoid the chilling effect that violence has on journalists. For its part, the IACHR has stated that,

[...] The [abdication] by a State of its duty to fully investigate the killing of a journalist is especially serious because of its impact on society. Likewise, this sort of crime has a chilling effect on other journalists, but also on every citizen, as it generates a fear of denouncing abuses, harassment and all kinds of illegal actions.36


32. These positive obligations established for the states under international human rights law with respect to prevention, protection, and the attainment of justice as it pertains to the safety of journalists will be addressed in depth later in this report, in relation to the phenomenon of zones that have been silenced by organized criminal violence.

33. For purposes of illustrating how the aforementioned patterns are presented in each context, three representative cases that have taken place in different regions of the hemisphere are examined below: The case of Tamaulipas, Mexico, is one of the paradigmatic places with respect to the chilling effect and self-censorship resulting from attacks on the press by organized crime. The case of Mazatenango, a town in the Department of Suchitepéquez, Guatemala, is where two journalists were murdered in 2015 in a single act of violence, reportedly in relation to cases of municipal corruption. The case created a strong chilling effect on the profession of journalism. Finally, the chapter discusses the case of some cities in the borders of Paraguay—Brazil border that illustrates the vulnerability of journalists who investigate acts of corruption and drug trafficking in areas where the presence of criminal organizations is combined with the collusion of local authorities.

34. The Office of the Special Rapporteur has recognized that some states of the region have enhanced guarantees for the practice of journalism in recent decades, including the incorporation of legal measures, the decriminalization of certain types of speech in the public interest and the creation of specialized protection programs for journalists; the strengthening of the independence and technical capacity of the judiciary; and the creation of specialized investigative bodies and judges.

35. In this sense the Office of the Special Rapporteur is especially grateful for the information and responses offered by the States mentioned in this report to the different requests made by this Office. The information presented in this report is the result of the ongoing monitoring work that the Office of the Special Rapporteur conducts through different mechanisms established in the inter-American instruments, including its annual report on the Situation of Freedom of expression in the Hemisphere; requests for information sent to the states mentioned in this report pursuant to article 41 of the American Convention; thematic hearings announced by the IACHR on situations of violence against journalists in the countries where it is prevalent; and the reports published by the IACHR after its on-site visits to Mexico and Honduras, and the Report on the Situation of Human Rights in Guatemala. The Office of the Special Rapporteur is also grateful to the civil society organizations that specialize in the protection and safety of journalists in the hemisphere for the information they submit to this office on an ongoing basis, and for their extraordinary work to protect journalists at the local level.

1. Silenced Zones: Three Emblematic Cases

a. Tamaulipas, Mexico

36. Over the course of the past decade, the Office of the Special Rapporteur for Freedom of Expression has paid special attention to the violence carried out against journalists, media workers, and media outlets in Mexico. The situation of journalists amidst the violence that the country is experiencing was the subject of particular follow-up in the Special Report on Freedom of Expression in Mexico (2010) and in the Report of the Inter-American Commission on Human Rights on the Situation of Human Rights in Mexico (2015). The most alarming acts of violence against journalists and the media, as well as the replies of the State, are also included in the Annual Reports of the Office of the Special Rapporteur.37

37. While Mexico is experiencing a severe crisis of violence and insecurity that affects different sectors of the population, the violence against journalists has reached alarming levels, intensifying in recent years. The Office of the Special Rapporteur recognizes the progress made at the federal level to implement a special

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mechanism for the protection of journalists and the role that the National Human Rights Commission (hereinafter the CNDH) plays in monitoring the violence against journalists, as well as the indispensable work of the civil society organizations that work on the safety of journalists and the fight against impunity for these crimes. Nevertheless, Mexico continues to be the most dangerous country in the region in which to practice journalism, and in various states journalists and media outlets face serious risks because of the work they do.\textsuperscript{38}

38. The CNDH reported 107 murders of journalists between 2000 and September 2015; for its part, the Office of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE) published figures on its website reporting that 103 journalists were killed between 2000 and August 31, 2015. The federal government’s Mechanism for the Protection of Journalists and Human Rights Defenders has begun to develop a Monitoring and Analysis Unit that seeks to compile detailed and disaggregated statistics on attacks and crimes against freedom of expression in Mexico. The organizations specializing in the defense of freedom of expression report figures that are even higher.\textsuperscript{39}

39. In its two most recent on-site visits, the Office of the Special Rapporteur verified that threats and harassment are a mainstay of daily life for journalists in various Mexican states, principally for those who cover stories involving cases of corruption, organized crime, drug trafficking, and citizen security. The Office of the Special Rapporteur has stated since at least 2010 that the information it has received and verified indicates that Mexico is the most dangerous country in the Americas in which to practice journalism.\textsuperscript{40} Indeed, in 2015, nearly one in five murders of journalists in Latin America (22 per cent) occurred in Mexico: six of the 27 cases documented in this year’s annual report that were related to journalistic work.\textsuperscript{41}

40. Every year the Office of the Special Rapporteur has been able to verify with concern that most of the murders, disappearances, and kidnappings of journalists are concentrated in outlying zones or regions; in the case of Mexico, the states plagued by the heaviest presence of organized crime include Veracruz, Guerrero, Chihuahua, Tamaulipas, and Oaxaca—all of which were visited by the IACHR and the Office of the Special Rapporteur during the past five years. According to the CNDH, if we disaggregate the statistics by state, it is possible to identify those that have the highest incidence of attacks on journalists. The CHDH maintains that Veracruz, Tamaulipas, Guerrero, Chihuahua, and Oaxaca have the highest number of murders. Indeed, between 2000 and January 31, 2016, nearly six out of every ten murders of journalists in Mexico have taken place in these five states.\textsuperscript{42}

41. During the IACHR’s on-site visit in 2015, the Office of the Special Rapporteur went to Veracruz—the state that has had the highest number of journalists killed in recent years—and was able to verify the crisis of confidence in state institutions that journalists in that region are experiencing, and the constant risks to which they are exposed. According to figures maintained by the CNDH, there were 16 murders and 4 cases of disappeared journalists between 2010 and 2015 in that state. According to information provided by FEADLE, eight of the 40 cases in which it has exercised its authority to take over an investigation were from Veracruz.


Veracruz shares the Gulf of Mexico with Tamaulipas, as well as the activity of organized crime groups. In Veracruz, attacks on journalists have intensified in the past five years, with an extremely high number of murders, disappearances, and threats—in spite of which a small sector of the press held firm in its decision to report on these incidents. In Tamaulipas, in a similar context, many journalists have opted to remain silent, in good measure because they had previously endured threats, murder, and harassment. This has meant that in recent years, the spotlight has focused more on Veracruz with respect to the problem of violence in that sub-region, even though violence against journalists in Tamaulipas persists.

**Tamaulipas: the origin of violence against journalists in Mexico**

Although recently Veracruz has garnered national and international attention for the severity and magnitude of the violence perpetrated against journalists, it has not been the only region in which journalists have been affected by violence in Mexico. As the CNDH stated in its General Recommendation No. 24, the States of Oaxaca, Guerrero, Chihuahua, and Tamaulipas are also facing a critical situation with respect to the protection and safety of journalists.

The State of Tamaulipas, located on Mexico's northeastern border with the U.S., was one of the first states to be gripped by the violence of organized crime groups, even before the State decided to wage a "war on drug trafficking." From the early 2000s, the drug trafficking cartels began to use violence against media outlets and journalists in the state to silence the coverage of their criminal activities. As a result, Tamaulipas was cited in different civil society reports as "the root of fear" for the Mexican press.

Over the past 15 years, three administrations in the State of Tamaulipas have faced the problem of violence in the context of the so-called "war on drug trafficking" prosecuted by federal and state security forces, and during this entire time journalists and media outlets have remained in the crosshairs of the crime groups. According to the CNDH, "Three out of every ten kidnappings in Mexico are reported in Tamaulipas, making it the state with the greatest number of such crimes". During the period between January 1, 2014, and August 31, 2015, there were 779 cases of kidnapping and according to official reports, one of the highest rates of murders, kidnappings, and extortions.

This context is one of structural violence, impunity, and self-censorship in the state's press. According to the FEADLE of the Office of the Attorney General of the Republic (PGR), a total of 13 journalists were murdered in Tamaulipas between 2000 and 2015, which makes the state one of the most violent regions for the practice of journalism, after Chihuahua and Veracruz. The CNDH agrees that Tamaulipas is one of the states with the highest number of slain journalists. It has noted that, despite this situation of structural violence, the state still "does not have specialized agencies dedicated to crimes against freedom of expression," and therefore recommended that such agencies be created.

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47. The civil society organization Article 19 recalled in a recent report that Tamaulipas “was where the
first murders of journalists who reported on acts of violence in in Mexico were documented.” The origin
of this violence can be traced back to 2000, with the murder of Pablo Pineda, a reporter from the daily
newspaper La Opinión of the city of Matamoros. Although it is not clear where the crime was committed,
Pineda’s body was found in the city of Harlingen, Texas, on the U.S. side of the border. Pineda covered
stories related to drug trafficking, and prior to his murder had been the victim of an attempt on his life. In
situations where there is a strong presence of organized crime, the actions of the State security forces when
they are called to act in defense of national security cannot be ignored as a risk factor. In its Report on the
Situation of Human Rights in Mexico, the Inter-American Commission stated that during the period examined
here, the administration of former President Felipe Calderón initiated the so-called “war on drug trafficking,”
and from that time forward, the struggle among drug trafficking cartels in Mexico—and between the cartels
and the federal government—intensified. “As a response to the increased violence, the authorities have
decided to increase the role of the armed forces in public safety tasks, including a policy of confrontation with
organized crime and the execution of joint operations between the armed forces and state and municipal
security institutions.”

48. Luis Roberto Cruz, a reporter for the magazine Multicosas of the city of Reynosa, was also killed that
same year. The investigation into both homicides failed to establish motives or identify the masterminds. In
2009, in its General Recommendation No. 17 “on assaults on journalists and the prevailing impunity,” the
CNDH included both cases as the first murders of journalists that took place in Mexico during the first decade
of the 2000s. In that document, the CNDH maintained that “The inattention to assaults on journalists has
casted them to increase,” and condemned the murders of 52 journalists between 2000 and 2009, eight of
which occurred in Tamaulipas.

Threats and attacks to control the message

49. According to information received by the Office of the Special Rapporteur, warnings issued by the
criminal groups that started to operate in Tamaulipas more than a decade ago were a major source of
intimidation meant to keep the media from reporting on violent acts related to drug trafficking and other
activities of members or associates of the cartels. That practice was applied in the state to suppress
information, as well as to disseminate information that would serve their criminal interests at various times.

50. The facts speak for themselves. In 2004, the annual report of the Office of the Special Rapporteur
documented the murder of Roberto Mora, director of the newspaper El Mañana of the city of Nuevo Laredo,
who was known for his investigations into drug trafficking. The logical theory would have been that this
crime was related to his work as a journalist, but for months after the murder the authorities followed a line
of investigation related to his personal life. The director of El Mañana and her colleagues repeatedly
condemned the murder as the work of organized crime, given the fact that Mora’s investigations interfered
with the interests of the cartels. Media companies have also been exposed to different types of harassment
on Mexico’s west coast. In February 2006, the facilities of the newspaper El Mañana, which belongs to the

Additional notes:


principal newspaper chain in Tamaulipas, was attacked with gunfire and explosives.\textsuperscript{55} One of the paper’s reporters was shot, seriously wounded, and left with permanent injuries.\textsuperscript{56}

51. This was the first attack using weapons and explosives against the facilities of a media outlet during the “war on drug trafficking,”\textsuperscript{57} and it is viewed as one of the first intimidating messages sent to the press by the criminal groups that were establishing themselves in different parts of the country. Marking the presence of organized crime in a very symbolic way, the attack took place days after the newspaper had organized a seminar at its facilities about reporting on drug trafficking, sponsored by the Inter American Press Association (IAPA).\textsuperscript{58} The newspaper’s directors had been warning for months about the deteriorating conditions for the practice of journalism in Tamaulipas.\textsuperscript{59}

52. In the following years, the newspaper \textit{El Mañana} continued to be the target of attacks. In 2010, three reporters from the newspaper, Pedro Argüello, Miguel Ángel Domínguez, and David Silva, were kidnapped. Only Silva was released, but he did not report it to the authorities. Argüello and Domínguez remain disappeared.\textsuperscript{60}

53. The building that houses \textit{El Mañana} in Nuevo Laredo was once again attacked in May, 2012. This new attack led the newspaper’s directors to make the extreme decision to stop reporting and publishing information about acts of violence associated with organized crime.\textsuperscript{61} In an editorial published on May 13, the newspaper announced, “We ask the public to understand that, for the length of time is necessary, we will abstain from publishing any information stemming from the violent conflict plaguing our city and other regions of the country.” It stated that, “The Editorial Board of this company has arrived at this regrettable decision, obliged by circumstances of which we are all aware, and due to the absence of conditions for the free practice of journalism,” while it also condemned all acts of unlawful violence.\textsuperscript{62}

54. Notwithstanding its decision to resort to forced self-censorship, two months after announcing that it was ceasing to report on organized crime, the newspaper sustained another attack. In July 11, 2012 unknown persons threw explosives at the newspaper’s facilities. The same day, an office of the newspaper \textit{El Norte} of the city of Monterrey was also attacked with explosives. In 2012, the area encompassing Tamaulipas and Nuevo León was part of a criminal dispute between drug trafficking cartels, and the attacks in Monterrey were seen as an extension of the conflict in the neighboring state.\textsuperscript{63}

55. \textit{El Mañana} inadvertently became a symbol of the chilling effect of the violence on journalism and on the local society, but it has not been the only media outlet subject to harassment in the region. In March 2012,  


\textsuperscript{58} Inter American Press Association (IAPA). January 29, 2006. \textit{Mexico: Nuevo Laredo Seminar Conclusions}.


the facilities of the newspaper *Expreso* of Ciudad Victoria were also attacked, which seemed to indicate that organized crime violence against journalists was not limited just to the border region, but extended to other areas of the state and to the capital city.\(^{64}\) The Office of the Special Rapporteur documented this case in its 2012 annual report and noted that the newspaper *Expreso* published an article about the attack on its website, but shortly thereafter had to take it down and disable its website for a day.\(^{65}\)

56. Barely a week after the attack on *Expreso*, the *Televisa* television station in Matamoros was also attacked.\(^{66}\) According to the annual report of the Office of the Special Rapporteur of 2012, there was a string of attacks using explosive devices against the facilities of media outlets during that year. Given the number and intensity of the attacks, this onslaught of organized crime against the press managed to suppress the news coverage of criminal acts throughout the state.\(^{67}\)

57. Over the past decade, Tamaulipas has been defined as a “zone of silence” due to the self-censorship effect of these practices, as well as the cartels’ practice of imposing information. Indeed, the criminal bosses even managed to encroach on the editorial departments to impose their criteria that the media should follow when reporting on these issues. A report by Mike O’Connor, a correspondent in Mexico for the Committee to Protect Journalists (CPJ), had warned that in Tamaulipas “their objective is to keep the public ignorant of their actions.”\(^{68}\) “In many parts of Mexico, organized crime and drug cartels have been able to terrorize journalists in local or regional news organizations into not running stories the criminals don’t want the public to know about. Reporters who try are threatened or murdered. In much of the country, newspapers, TV and radio stations have just stopped covering stories that even hint about how organized crime is taking over.”\(^{69}\)

58. According to information received by the Office of the Special Rapporteur, there are a number of matters of public interest whose coverage can lead to serious reprisals in Tamaulipas, including drug trafficking, human smuggling, prostitution, extortion, contraband, corruption in the customs service, and State contracts with companies associated with criminal groups. In these areas heavily influenced by groups engaged in unlawful activities, journalists are exposed to the risk of being contacted directly by the crime bosses of those organizations, who seek to impose information. Going against the interests of those groups can have very serious repercussions on the lives and safety of journalists.\(^{70}\) The coverage of the border region in U.S. newspapers has been a crucial factor in disseminating information that cannot be published in places like Tamaulipas. The press in the State of Texas has reported on issues that are prohibited on the other side of the border, and have also covered the trials of crime bosses or businessmen and politicians involved in drug trafficking in the Texas courts. Due to the strong self-censorship, many episodes of extreme violence that occur in certain towns and cities have to be reported by the national and international press.

59. During 2010, the Office of the Special Rapporteur reported that foreign newspapers such as the *Dallas Morning News*, *The Angeles Times*, *The New York Times*, and the *Washington Post* reported on violent acts in the cities of Nuevo Laredo and Reynosa, both in the border State of Tamaulipas, which could not be

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published there due to fear of organized crime. Alfredo Corchado, a longtime correspondent for the *Dallas Morning News*, explained that this is because the criminal groups do not want to provoke a reaction from the United States government. Nevertheless, there is an underlying fear: in 2007, Corchado had to leave the country when he received a death threat, supposedly from the criminal group Los Zetas; other newspapers, such as the *San Antonio Express-News*, took measures ordering their correspondent on the border to leave the city of Laredo, Texas and relocate in San Antonio as a precaution. In August 2014, Adrián Gaona, the host of Multimedios in Reynosa, was kidnapped and was missing for two weeks before his body was found. The CNDH documented this incident and attributed the kidnapping and murder to organized crime groups, according to a list of attacks on freedom of expression mentioned in its General Recommendation No. 24 on the exercise of freedom of expression in Mexico. The so-called Gulf Cartel denied responsibility for the murder by hanging a sign, known in Mexico as a “narcomanta” on a street in Reynosa, but the crime has not been solved to this day.

60. For more than a decade, the phenomenon of silencing has varied from city to city within the State of Tamaulipas. In Nuevo Laredo, for instance, the newspaper *El Mañana* has recently resumed coverage of violent incidents related to organized crime, while in cities like Tampico or Ciudad Victoria, such coverage has been suppressed. Beginning in May 2014, when the federal government announced a new security plan for the state, local media outlets local had more leeway to publish stories about violent acts. The “Tamaulipas Security Strategy” was launched in response to the wave of violence and consisted of reorganizing the coordination between federal security forces (Army, Navy, and Federal Police) and the State Police to dismantle criminal gangs and combat the trafficking of drugs, persons, weapons, and money. In the early months of this security plan, the federal government reported the arrests of crime bosses and a decrease in crime, and this offensive by the authorities against criminal groups was publicized in the regional media.

61. In states like Tamaulipas, the influence of organized crime is a key risk factor, but we must also note the concern over institutional violence against journalists, which has also been a risk factor. On July 28, 2014, a journalist was taking photographs of police vehicles that were leaving the headquarters of the State Secretariat of Public Safety in the city of Reynosa. Although he had identified himself at the request of two police officers, the reporter was assaulted by those officers, who destroyed his camera equipment and arrested him, keeping him in custody for several days. The CNDH demanded that the government of Tamaulipas redress the harm and punish the perpetrators, as well as provide training to police officers and judicial employees on the protection of journalists, freedom of expression, and human rights.

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62. Although there have been changes in the context of violence, this succession of violent events has dragged on for over a decade against journalists and media outlets of various cities of Tamaulipas, and illustrates how organized crime has imposed silence on the press in Mexico. As the IACHR stated in its Report on the Situation of Human Rights in Mexico, “Violence and the high levels of impunity make self-censorship the alternative journalists take in order to safeguard their rights to humane treatment and to life.”

Violence and harassment against journalism online

63. The Internet allows everyone with access to the web to seek, receive, and disseminate information and ideas of all kinds. Its extraordinary decentralized design enhances the exercise of freedom of expression because it is a ubiquitous and low-cost medium. Indeed, all persons interested in issues pertinent to their communities have the effective ability to share information, opinions, and ideas through blogs, Internet platforms, and social networks. In Mexico and in Tamaulipas in particular, organized crime has also emphasized violence and intimidation against persons who take advantage of the Internet to produce and publish information about the situation of everyday insecurity and to demand justice. The violence and pressure on journalists described in this report has also extended to the citizen journalists who prepare and share opinions and information through the social networks, protected by anonymity. In Tamaulipas, in view of the silencing of the traditional media, the anonymous use of social networks became a form of communication that for many seemed to be free of threats; however, in due time and in brutal fashion, organized crime also turned the Internet into a forum for harassment.

64. Anonymity is a challenge for criminal groups, which started to attack these types of journalists in 2011. That year there were at least three murders of Twitter users who reported on events related to organized crime. In September 2011, a man and a woman identified as anonymous bloggers were murdered and their bodies were hung from a bridge in the city of Nuevo Laredo. Another woman who reported on criminal violence through her Twitter account, identified as María Elizabeth Macías, was murdered days later.

65. In a press release following her murder, the Office of the Special Rapporteur stated that organized crime “has obligated people to use anonymity and social networks in order to be able to refer to controversial subjects such as violence associated with drug trafficking.” The Office of the Special Rapporteur also advised the State that there should be no distinction between citizen journalists and those who work for established media outlets: “The investigation of threats or crimes committed against people who use social networks as a means of mass communication of ideas, opinions and information, especially regarding matters of public interest, should be assumed with the same diligence and specialized attention as investigations regarding crimes committed against professional journalists.”

66. In 2014, the IACHR was informed of the murder of Twitter user @Miut3, allegedly by an organized crime group. The journalist disseminated information related to public safety issues in Reynosa, Tamaulipas, through her Twitter account, and contributed to the page Valor por Tamaulipas. According to the information documented by the Office of the Special Rapporteur, the photograph of a murdered woman was published on her Twitter account on October 16, along with messages inviting her followers to close their accounts rather than risk their lives. The Twitter account was suspended. Those messages also reportedly stated that the alleged identity of the Twitter user was María del Rosario Fuentes Rubio. Fuentes Rubio, a doctor by profession, had been reported missing by a relative who said that on October 15 unidentified armed individuals had intercepted her outside a corporate office in the municipality of Reynosa. The photos that...
were published on the Twitter account (@Miut3) were accompanied by the following message: “All I can say is, don’t make the same mistake that I did. Nothing is gained. On the contrary, I now realize that I met my death in exchange for nothing (…) They are closer to us than you think.” The State informed the Office of the Special Rapporteur that the case is being investigated by the State Anti-kidnapping Unit of the PGR of Tamaulipas, and the FEADLE initiated the fact-finding report, which is reportedly in process.

67. The criminals reportedly took notice of the surge in popularity of this account prior to committing this abominable crime, and in 2013 they tried to find out the identity of the person behind it. Pamphlets were distributed in various cities of the state offering up to MX$ 600 thousand (approximately US$ 29 thousand) as a reward for information identifying the account’s authors. The account was closed temporarily, but was later reactivated in order to keep reporting on issues of major public interest.

68. The chilling effect of this case is clear. Fuentes’s murder in Tamaulipas resulted in fewer citizens reporting security alerts on social networks, and those who continued to do so changed their profiles and connections among themselves. Anonymous bloggers reportedly detected attempts to compile personal information from anonymous profiles by persons attempting to gain the trust of users who know other users on social networks. This type of electronic surveillance was reportedly how the criminals were able to identify murder victim.

A problem that remains urgent

69. The Office of the Special Rapporteur would also like this report to reflect the fact that, while the situation of freedom of expression in Tamaulipas may be subject to ups and downs, it continues to face serious obstacles, and acts of violence and intimidation against journalists in particular continue to occur.

70. The methods change but the chilling effect is the same. Kidnapping, followed by a short time in captivity, can also be used to send messages to specific targets, as in the case of the director of the newspaper El Mañana of Matamoros, Enrique Juárez. On February 4, 2015, a group of armed men broke into the offices of the newspaper and kidnapped him. For an hour, they drove him around the city in circles while beating him and warning him to stop publishing news related to violence in the region. Juárez was freed and had to leave the country for his safety, and dozens of employees resigned from the newspaper. The Office of the Special Rapporteur


Rapporteur learned that journalist Enrique Juárez was included in the Mechanism for the Protection of Journalists of the ministry of the Interior, which supported him by providing a panic button, security guards, and an emergency contact.

71. On February 6, unknown persons detonated an explosive device at the Televisa facilities in Matamoros. These types of incidents reinforce fear among journalists, provide an incentive for self-censorship, and are a clear sign of how organized crime uses violence to impose content in line with its interests.

72. The intimidation of the press to prevent coverage of security-related events also comes from the authorities, as was clear in the case of Jesús González de Leija, a reporter for the newspaper La Tarde of Reynosa. On July 28, 2014, González was outside the headquarters of the Secretariat of Public Safety of Reynosa when he noticed heavy activity by State Police vehicles, and decided to take photographs of the convoy. State Police officers confronted the journalist when they noticed him, even though he was on a public thoroughfare. González identified himself as a journalist, but was detained. According to his account, the officers handcuffed him, beat him, and took his camera. He was kept incommunicado for several hours and later informed that he was being accused of assault and crimes against public servants. On July 31, 2014, González filed a complaint with the CNDH, which opened an investigation. It issued a recommendation to the government of Tamaulipas in May 2016, citing violations of the right to freedom of expression and access to justice.

73. González’s case is not the only reported case of a journalist being assaulted by law enforcement officers while covering a story. On April 4, 2014 three journalists were threatened by members of the Mexican Army while covering a traffic accident involving a military vehicle. Abisaí Rubio, director of the Rubios News Agency, and the agency’s reporters Mario Mosqueda and Neftalí Antonio Gómez were covering the incident when, according to their complaint, they were confronted by soldiers who threatened to “disappear them,” physically assaulted them, and damaged their equipment. The journalists filed a complaint with the Office of the Attorney General of the Republic and provided statements on May 9, more than a month after the events, but no progress on the investigation has been reported.

**Arbitrary allocation of government advertising in contexts of violence**

74. Another factor that strongly influences the silenced areas is the infringement of freedom of expression through the arbitrary and discriminatory allocation of government advertising. Journalists in the State of Tamaulipas cite the use of government advertising to pressure directors and editors not to publish articles about insecurity and violence. As the Office of the Special Rapporteur has reiterated on numerous occasions...

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93 Comisión Nacional de Derechos Humanos (CNDH). *Recomendación No. 019/2016. Sobre el caso de violación al derecho de acceso a la justicia en su modalidad de procuración de justicia, y a la libertad de expresión, en agravio de V, en el estado de Tamaulipas*; May 2, 2016.


75. In a study on the allocation of government advertising conducted by Fundar and Artículo19, several requests for information were sent to the government Tamaulipas, but went unanswered. When the 2014 Index to Access Spending on Government Advertising sought to determine spending on government advertising between 2011 and 2013, Tamaulipas was, along with Coahuila, Guerrero, and Puebla, one of the states that did not provide information for any of those three years.\footnote{Fundar and Article 19. Índice de acceso al gasto en publicidad oficial en las entidades federativas 2013. April 1, 2014. Available at: \url{http://fundar.org.mx/index-de-acceso-al-gasto-en-publicidad-oficial-en-las-entidades-federativas-2013/}}

b. Mazatenango, Guatemala

76. In its Report on the Situation of Human Rights in Guatemala, the IACHR observed that, “Since 1996, the ensuing administrations have faced significant challenges in the wake of the armed conflict, including, dire socioeconomic conditions with high incidences of inequality and exclusion and widespread child undernourishment, all in the context of discrimination, corruption, increasing violence, the creation or continuation of de facto criminal powers, and the gradually increasing occupation of territory and power by drug trafficking organizations and gangs (pandilleros). Added to this, the institutional framework is weak, and with a system of justice with high levels of impunity. Compounding the above are ever-louder calls from civil society for justice and reparation for the gross human rights violations that were committed during the internal armed conflict and the rights ignored for decades as a result.”\footnote{IACHR. \textit{Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion}, OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 49.}

77. The severity of the security and human rights crisis in Guatemala spurred the 2006 creation of the International Commission against Impunity in Guatemala [Comisión Internacional Contra la Impunidad en Guatemala] (CICIG) by the United Nations with the consent of the Guatemalan State. Its mandate is to investigate, dismantle, and eradicate clandestine apparatuses and illegal security forces that “seriously violate” human rights.\footnote{International Commission Against Impunity in Guatemala (CICIG). \textit{Acuerdo entre la Organización de Naciones Unidas y el Gobierno de Guatemala relativo al establecimiento de una Comisión Internacional contra la Impunidad en Guatemala (CICIG)}, December 12, 2006.}

78. In its report on the financing of politics in Guatemala, the CICIG indicated that, since 1984, the political system had taken on a number of characteristics that distinguished it from others in the region. These peculiarities include the fluidity of the party system; electoral volatility; the concentration of political options in the center and on the right of the political spectrum; the influence of the powers-that-be; and the continuity of the economic and social status quo. With regard to the political culture, it stated that Guatemalan society is deeply divided and splintered along multiple lines including ethnicity, rural-urban differences, and regional tensions between the metropolitan area and the rest of the country. It is also plagued by the persistent acts of racism and exclusion on the part of elites.\footnote{International Commission Against Impunity in Guatemala (CICIG). \textit{El Financiamiento de la Política en Guatemala}, July 2015. Page 93-94 and 101. Available at: \url{http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=616&cntnt01returnid=67}}
Journalists as guardians of the public interest

80. The IACHR and its Office of the Special Rapporteur has continually received information indicating that the full enjoyment of the right to freedom of expression has been hindered by intimidating actions directed at media outlets and independent journalists. During the last years, the Commission has expressed its special concern over the attacks directed at social journalists who cover investigations into government administration, acts of corruption, and human rights violations. In the Report on the Situation of Freedom of Expression in Guatemala, written following a 2003 on-site visit of the IAHR and the Office of the Special Rapporteur, they were already expressing concern over the spike in murders, threats, and intimidation of investigative journalists and human rights defenders who exercise their right to freedom of expression.

81. Between 2010 and 2015, the Office of the Special Rapporteur documented 10 murders of journalists in different regions of Guatemala, including three cases in Suchitepéquez. These 10 homicides reflect in just five years half of the 23 journalists who have lost their lives in Guatemala since 1994, according to a report by the Committee to Protect Journalists.

82. Through its annual reports, the Office of the Special Rapporteur has underscored its ongoing concern over the rise in assaults and acts of intimidation against journalists. In 2010, there were initial signs of the risks faced by journalists who cover information related to organized crime. On August 3, 2010, three reporters were assaulted by officers from the Counternarcotics Information and Analysis Division while the officers were conducting a search. That year the Office of the Special Rapporteur warned of threats against media outlets by alleged drug trafficking gangs. Notable among other reported assaults that year was the threat against three radio stations in Cobán by criminals identified as members of the group or cartel known as Los Zetas. The criminals forced them to convey a message to President Álvaro Colom, threatening to burn down the radio stations and kill the relatives of station employees if they did not comply. That year police detained individuals who were posting banners signed by drug trafficking groups in the city of Quetzaltenango, with threatening messages telling media outlets to stop reporting on crime-related events. In 2012, during its Universal Periodic Review, the Guatemalan government announced to the United Nations Human Rights Council that it was taking actions to strengthen the units for the investigation of crimes against journalists, as well as making progress on the creation of a national mechanism for the protection of journalists with the support of UNESCO and the Office of the United Nations High Commissioner for Human Rights in Guatemala.

83. Nevertheless, and despite all of the recommendations made by the universal system as well as the Interamerican human rights protection system, the situation of violence and the impunity of crimes against journalists did not substantially improve. In 2014, the Office of the United Nations High Commissioner for Human Rights in Guatemala


106 Committee to Protect Journalists (CPJ). No date. 6 Journalists Killed in Guatemala since 1992/Motive Confirmed.


Human Rights (OHCHR), reported an increase in attacks on journalists in Guatemala. The report states that 71 attacks were recorded in November 2014, compared to 57 the previous year—despite the fact that there were four reported murders in 2013 and none in 2014.\textsuperscript{111} Civil society has a similar assessment: the Observatorio para los Periodistas del Centro de Reportes Informativos de Guatemala (Cerigua) has warned that, “Censorship and self-censorship continue to be one of the principal problem issues for members of the press in Guatemala. (…) in view of the danger posed by the power of local politicians or organized crime structures.”\textsuperscript{112}

84. At the October 28, 2014 hearing on the situation of human rights defenders in Guatemala, the Commission received information on the increase in alleged detentions and acts of violence against journalists and media workers in Guatemala, and the prevailing impunity with which those crimes were met. It also received information about alleged acts of surveillance and cyber-attacks on media outlets, as well as lawsuits brought in retaliation against critical journalists in the country. Problems were also alleged in the design and implementation of a mechanism for the protection of journalists and with respect to the activities of the Unit for the Prosecution of Crimes against Journalists. The organizations that took part in the hearing reported that, according to official figures, as of August 2014, the Prosecution Unit had reportedly opened 44 case files on assaults against 89 journalists, 19 of whom were women. Sixty of the assailants were reportedly public servants, while 37 were private citizens. At the same time, the State maintained that it was respectful of journalists and dismissed as false the alleged rise in violence aimed at human rights defenders. It additionally reported on the creation of mechanisms and institutions for the protection of human rights defenders and journalists, and said that it had provided protection to various at-risk persons.\textsuperscript{113}

85. In a context like Guatemala’s, the full enjoyment of the right to freedom of expression is extremely important, as it is fundamental to the strengthening of “democracy, anti-corruption measures, good governance and in general the ability of society to take informed decisions.”\textsuperscript{114} In this regard, “Journalists deserve special concern not primarily because they perform heroic acts in the face of danger—although that is often the case—but because the social role they play is so important. (…) Violence against a journalist is not only an attack on one particular victim, but on all members of the society.”\textsuperscript{115}

\textit{Mazatenango, an example of violence in the regions and its effects}

86. The deterioration of the climate for a free press in Guatemala during the first years of the decade was also evident in towns far from the capital. An emblematic case is the 2015 double murder of two journalists on a public thoroughfare, in front of their colleagues, in the municipality of Mazatenango—a crime that summoned the attention of the international community associated with freedom of expression because of the use of extreme and brutal violence by different actors to silence local journalists, and as a way of sending a sinister message.

87. According to the annual reports of the Office of the Special Rapporteur, three reporters covering a police raid were assaulted in 2010 by the Counternarcotics Information and Analysis Division who were

\begin{footnotes}
\item[112] Centro de Reportes Informativos de Guatemala (Cerigua). June 10, 2016. \textit{Agrresiones contra periodistas en Guatemala: urge programa de protección.}
\end{footnotes}
carrying out the operation. One year later, in July 2011, correspondent Danilo López of Prensa Libre in Mazatenango complained of being verbally harassed by the mayor after having published evidence of local government corruption. Days later, López and Ángel Ruiz, a correspondent of the regional newspaper Nuestro Diario, reported that they had been intimidated by sympathizers of the mayor’s and threatened by his bodyguards. López specifically reported having been the victim of threats several times over the following years. In 2013, Danilo López received a new threat. On June 8, 2011 he denounced the mayor of San Lorenzo, Suchitepéquez in a publication alleging irregularities in the management of public funds. Following an investigation, the Guatemalan government reported that a probable cause hearing was requested against the mayor, but that he enjoys immunity.

88. In April 2012, journalistic organizations condemned the suspension of six local DX cable broadcast channels in Mazatenango and attributed the shutdown to pressures from the mayor’s office. Although the company stated at the time that the reasons for the shutdown were administrative, the complaint indicated that one channel had been suspended since the beginning of 2012 and was reestablished on the condition that it not criticize the mayor’s office.

89. Four journalists were murdered in Guatemala in 2013, and one of those killings took place in the Department of Suchitepéquez. The body of Carlos Alberto Orellana Chávez, the former director of Radio Victoria and a news anchor on the Óptimo 23 television station, was found on August 12. The Guatemalan government ruled out the possibility that the murder was linked to Orellana’s work as a journalist, and although the Office of the Special Rapporteur acknowledged that “there is no clear connection” to his work, it did ask for in-depth investigations to be conducted “without ruling out the theory of a connection to (…) freedom of expression.” On his program, Orellana covered topics of public interest to the community, and denounced corruption. This murder coincided with an armed attack against photojournalist and radio reporter Fredy Rodas in Mazatenango. On the night of August 12, 2013, armed individuals fired at least three shots at Rodas, a correspondent for Radio Sonora and reporter for the newspaper Al Día. In December 2013, authorities informed the Office of the Special Rapporteur that there had been progress in the investigation and that two suspects had been arrested and accused of carrying out the attack.

90. In February 2014, the host of television news program ‘Noticias y Más’, Nery Morales, was the target of an armed attack from which she escaped unharmed. The night of February 12, she was on her way home in the municipality of Mazatenango, when two individuals on board a motorcycle shot at her and chased her until she found safety at a fire station.

91. On March 10, 2015, Danilo López, a correspondent for Prensa Libre—one of the country’s main newspapers—Federico Salazar, a correspondent for Radio Nuevo Mundo, and local journalist Marvin Túñchez

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were in the Central Park of the municipality of Mazatenango, a place where journalists regularly meet after preparing their articles. It was broad daylight, and they were some 20 meters from a police station, when two individuals on board a motorcycle drove up and shot them. López and Salazar died in the attack, and Túnchez was wounded. The attack took place after López had reported being threatened at least twice by municipal authorities of Suchitepéquez, apparently as a consequence of articles denouncing misfeasance by government employees. There were no known threats against Federico Salazar, but both were members of the recently created Suchitepéquez Press Association, of which they were the Vice President and Secretary, respectively.

92. A year earlier, López had given an interview in which he described the poor conditions for the practice of journalism in Mazatenango. "Journalists here are very vulnerable, mainly to the daily crime that is visible in the department day in and day out. We have no security, just like the journalists who work in the city," he said, describing the climate of violence in the region.

93. Three days after López and Salazar were killed, Giovanni Villatoro, a cameraman for the television channel Servicable, was murdered in the municipality of Chichaco, 25 kilometers from Mazatenango. The attack took place outside the television station’s offices. The National Civil Police announced the arrest of three members of a criminal extortion gang for the murder. The ministry of the Interior cited the extortion of employees of Servicable as a possible motive for the crime.

94. On March 17, 2015, one week after the attack, the Office of the Attorney General reported that the investigating prosecutors received threats warning them to stop their inquiries in the case. The Suchitepéquez Press Association also reported threats against local journalists covering the investigation into the murder of their colleagues.

95. Authorities detained a suspect the same day López and Salazar were murdered. Information from his cell phone led to the arrest of three other individuals. In early July 2015, three men were prosecuted for the murders of López and Salazar, two of whom were police officers from the Protection Unit for Interior Ministry Officials. Two alleged suspects had been previously detained in the case and prosecuted for the offenses of

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conspiracy, murder, and attempted murder. Five people in total were prosecuted for the murders of López and Salazar.

96. Given the relevance of the case and the impact of the journalists’ murder on the fight against corruption, the International Commission against Impunity in Guatemala (CICIG) began to monitor the investigation and later took it over when the evidence began to point toward the responsibility of local authorities.

97. Given the upheaval created by the case, various Guatemalan media outlets decided to conduct a joint investigation to keep these crimes from going unpunished. The digital media outlets Nómada, Soy 502, Plaza Pública, and Contrapoder carried out a joint investigation with the support of the organization Cerigua, with the objective of establishing the facts of the case, contributing evidence to the investigation, and verifying that the investigation was not diverted in order to have the crimes go unpunished. The publication of the joint investigation of these three national media outlets, under the name #LaVerdadpuedemás, enabled the case to gain national and international prominence. In an article published in July 2015—four months after the crime—the journalists described the possible involvement of local authorities and organized crime groups operating in the area where the murders took place, and their objective of silencing journalists who were reporting on corrupt acts that involved at least four area mayors. It also mentioned the relationship between journalist López and one of the mayors in question; with whom would he had spoken hours before the crime.

98. The investigation additionally made another extremely serious institutional revelation—the gang of assassins who killed the journalists was controlled by members of the National Civil Police [Policía Nacional Civil] (PNC); however, they stated that the investigations had not determined the identity of the masterminds who had hired the killers.

99. A 2015 report of the International Commission against Impunity in Guatemala [Comisión Internacional Contra la Impunidad en Guatemala] (CICIG) included the case of slain journalists Danilo Flores and Federico Salazar as part of a pattern of “high-powered homicidal organizations.” The Commission indicated that this definition refers to “organizations that intimidate and provoke anxiety in broad segments of the population. The high degree of impunity with which they act allows them to attack anyone. These organizations are engaged in countless criminal activities and in some cases influence the local political power structure.”

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On January 26, 2017, the Office of the Attorney General [Ministerio Público] (MP) and the CICIG announced their request for preliminary impeachment proceedings against Representative Julio Juárez Ramírez on the grounds that he was the mastermind behind the murder of journalists Danilo López and Federico Salazar. At a press conference, the authorities set forth the possible motives for the journalists’ murder and the connection to their professional activity. According to the authorities, the investigation was conducted in two phases. The first was conducted by the National Civil Police (PNC) and resulted in the identification of the direct perpetrators as well as the arrest and prosecution of four of them. The second phase of the investigation, carried out by the MP and the CICIG identified the potential motive for the murders as well as the persons responsible for contacting the assassins and ordering and paying for the journalists’ murder. The MP and the CICIG determined that López’s murder had been planned and ordered after he published an article in his digital media outlet El Sur about the existence of an investigation in the MP against Juárez Ramírez for tax evasion, since “the alleged mastermind, Juárez Ramírez, viewed [Danilo] López as a threat to the consolidation of his candidacy as district representative and as a challenge to his power in the area.” They also stated that the death of journalist Federico López was collateral to the attack on López, and that the certainty of impunity led to the act being committed right in the town’s central park.

The MP and the CICIG stated that the crime may have been motivated by differences that had arisen between Danilo López and then-congressional candidate of the Leader Party [Partido Líder], Julio Juárez Ramírez. According to the investigation, those differences stemmed from Juárez’s refusal to support Erik Rolando López’s candidacy for mayor of the municipality of Cuyotenango, Suchitpéquez, who was supported by the journalist López. The investigations indicate that, following Juárez’s refusal, on March 4, 2015, journalist Danilo López contacted a prosecutor from the MP’s Office of the Human Rights Prosecutor to request information about the existence of investigations against Juárez. On March 6, 2015, López published an article in his digital media outlet El Sur about the existence of an investigation in the MP against Juárez Ramírez for tax evasion.

The actions taken by the body in charge of the investigations, in this case the Office of the Attorney General, supported by the CICIG’s action of taking on the investigation into the murder of the two journalists from Suchitpéquez in a timely and dedicated manner, demonstrates that the investigations conducted by a body that is protected from the influence of local interests and threats allows the State to provide an effective response in order to identify, capture, prosecute, and punish the perpetrators and prevent such crimes from going unpunished.

Job insecurity and lack of protection

The #LaVerdadpuedemás of Nómada, Soy 502, Plaza Pública, and Contrapoder initiative also highlighted the context of job insecurity for journalists in different regions of the country. In Mazatenango specifically, most journalists do not earn a fixed salary and their incomes are derived from the individual payments they receive for every article they publish.

The Nómada article stated that “Journalistic practices outside the capital have a variable that distinguishes them from reporters from larger media outlets from Guatemala City: correspondents get paid per article; they do not have a fixed salary. In order for their profession to be profitable, they sell their information to State entities and local media.” For its part, Plaza Pública noted that, during his nine years as a correspondent for Prensa Libre in Mazatenango, Danilo López earned his living “from payments for
articles published in the newspaper (as he did not have a fixed salary or benefits), and from those that he sold to other local media.”

105. The job insecurity of practicing journalism, plus the interest of different criminal actors in imposing or concealing information according to their interests, can also lead to bad practices on the part of journalists and media workers, which only increases their level of risk and vulnerability. Hence, one of the theories of Danilo López’s murder floated by the media was that he had published information calling into question the administration of one of the mayors suspected of the crime, following a disagreement stemming from the awarding of an infrastructure contract. Allegedly, the journalist was advocating for the contract to be awarded to a specific contractor, and in the end the mayor awarded it to someone else.143

**Political instability: scenario for intimidation**

106. The political upheaval that Guatemala has undergone in recent years has been conducive to acts of governmental or judicial intimidation against journalists. An example of this is the case of Mayan journalist Francisca Gómez Grijalva, whose case was documented by the Office of the Special Rapporteur in its annual report. In May 2013, columnist Francisca Gómez Grijalva of the newspaper *Prensa Libre* was sued by the company Cementos Progreso over a column entitled “¿Agua o Cemento?” [“Water or Cement?”], which mentioned the needs and complaints asserted by the 12 communities of San Juan Sacatepéquez against the company. The company filed a complaint against the journalist and demanded that she be deposed with respect to the content of her column.144

107. One of the journalists who has been subjected to the most harassment in Guatemala is José Rubén Zamora, director of the newspaper *elPeriódico*, as well as some of the paper’s editors. According to information received by the Office of the Special Rapporteur, Zamora faced lawsuits from the Guatemalan Social Security Institute alleging defamation and the incitement of violence, as well as from the Superintendency of Tax Administration, which notified *elPeriódico* that it was being audited to verify compliance with its tax obligations. Zamora called the act “tax persecution.” This occurred at the same time *elPeriódico* condemned the barring of one of its reporters from covering a meeting between President Pérez Molina and the president of El Salvador, as well as acts of espionage.145

108. In November 2013, then-President Otto Pérez Molina filed a criminal complaint against *El Periódico*’s director, José Rubén Zamora, alleging coercion, extortion, blackmail, and violations of the Constitution, based on publications made by the newspaper. Zamora was ordered by the court not to leave the country, but in January 2014 the president withdrew his complaint. This journalist was also the subject of a criminal complaint brought by the Vice President of Guatemala, Roxana Baldetti Elías, who accused him of the offense of psychological violence against women because of publications made in *El Periódico* linking Baldetti to corrupt acts.146

109. This case was relevant a year later, when Pérez Molina and Baldetti resigned based on the investigation of acts of corruption documented by the International Commission against Impunity in Guatemala.147 The investigations and resignations led to mass protests, most of which were peaceful.

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Following these events, in its 2015 report, the Office of the Special Rapporteur underscored the “exercise of the right to freedom of expression [...] as a form of participation by societies in strengthening democracy.”

110. The press coverage of the episodes of political unrest in Guatemala during 2014 and 2015 following the proceedings against Pérez Molina and Baldetti, as well as the presidential elections, was not exempt from violence. The Office of the Special Rapporteur documented that “Numerous journalists and cameramen were attacked on various occasions when they covered news relating to the judicial proceedings faced by former Vice President Roxana Baldetti, when she entered jail, and during her hearing before the judge. Journalists complained that they were beaten on those occasions and that the PNC used pepper spray against them. Following those incidents, the Attorney General of Guatemala ordered an investigation ex officio.” Various assaults were also documented during the 2014 electoral process. The Office of the Special Rapporteur noted that “The exercise of freedom of expression is especially important during political campaigns and elections. It is a fundamental element of the process because [...] it provides instruments for the analysis of each candidate’s platform, thus enabling a greater degree of transparency and oversight of future authorities.”

111. The harassment of the press was not only physical. There was also a clear deterioration of the environment for the exercise of freedom of expression. The Office of the Special Rapporteur stated that the signals of CNN en Español, Guatevisión, and Canal Antigua were interrupted by some cable television companies at different times, including during an interview with CICIG Commissioner Iván Velásquez in which he criticized the Partido Líder [the Leader Party]. Several members of that party are cable company owners. In addition, in Suchitepéquez, cable channels Óptimo 23 and ATV24 were reportedly taken off the air by the company Servicable, owned by Congressman Enrique Maldonado of the Partido Patriot [the Patriots Party].

112. According to information presented by the Inter American Press Association (IAPA) at the hearing on “Diversity, Pluralism, and the Concentration of Media Ownership in the Americas,” held during the IACHR’s 154th Period of Sessions, the case of González “affects the quality and quantity of information received by Guatemalan citizens on matters of public interest.” In addition to the four open-signal television channels that it controls, Albavisión owns 66 of the 300 radio stations affiliated with the Guatemalan Broadcasting Chamber. Another 31 stations belong to the group Emisoras Unidas, 70 to Radio Nuevo Mundo, 20 to Radio Corporación Nacional, and 35 to Radio Grupo Alius. One of the stations belonging to González, Radio Sonora, is the country’s leading radio news broadcaster, and “is used constantly to send messages to the public that the government in power wants to make known.” “These messages include attacks on journalists, opposition politicians, academics, and people and institutions in general who oppose or express unfavorable opinions about the government in power,” said the IAPA. According to the IAPA, the station’s dominant position in the market gives it “virtually the power to elect presidents of the Republic and ensure that the public receives less critical information about the governments in power.” The IAPA additionally reported that Albavisión “blocks the creation of new cable channels, and seeks to strangle the existing ones with conditions and threats against important advertisers, so they cannot place advertising in other media against [González’s] shareholder interests.”

c. The Paraguayan Border


152 IACHR. 154 Period of Sessions. Hearing Diversity, pluralism and media concentration in the Americas. March 16, 2015. Available at: https://www.youtube.com/watch?v=CdPshinTmM&list=PL5QlpwOGbXtTsBmVBlpvZsJSy02mAA0m&index=18; Inter-American Press Association (IAPA). Pluralismo y Concentración de Medios en las Américas, March 16, 2015.
113. This third emblematic case documents the practice of journalism in different areas of Paraguay’s borders with Brazil or Argentina where criminal groups operate, especially during the past 10 years. Media workers in Paraguay also cite the persistence in these areas of a climate of violence that has gotten worse since the May 2014 murder of journalist Pablo Medina, a correspondent for the country’s main newspaper (*ABC Color*).

114. The Departments of Ñeembucú and Misiones, bordering on Argentina in the south, and the Departments of Canindeyú, Concepción, and especially the department of Amambay, on the eastern border with Brazil, have become extremely dangerous for journalists working in those areas, where illegal business activities including drug, weapons, and fuel trafficking, among others, have been reported.

115. In recent years, Paraguay has witnessed the development of a phenomenon that the press and other actors, including State actors, call “narcopolitics.” This phenomenon is characterized by drug traffickers supporting specific political figures in exchange for the favorable treatment of their interests, or drug traffickers that have become involved in political activity, even ascending to elected office.

116. With the advancement of so-called “narcopolitics,” freedom of expression has been affected insofar as journalists face serious difficulties when they try to report on specific unlawful activities being conducted in their communities, and the institutions—according to the journalists themselves—do not function as they should to protect them. Organized crime has exerted pressure on the press with the objective of suppressing media coverage of their activities, even the most evident ones. Threats, harassment, and even the recent death of some journalists has left an indelible mark on media workers, despite which they have maintained their commitment to informing society of what goes on in the highest risk areas.

117. During the IACHR’s 159th Session, a hearing was held on the “Situation of the Right to Freedom of Expression in Paraguay,” with the participation of civil society organizations, representatives of journalists’ professional associations, and the State of Paraguay. At the hearing, the organizations stated that 17 journalists have been murdered in Paraguay since 1991, nearly all “in border regions and areas where the influence of organizations engaged in unlawful activities in Paraguay has made inroads (...).” In those areas, the politicians who hold elected office tend to be the owners of media outlets, and they use those outlets to attack their political adversaries. Those attacks result in attacks against the journalists who are caught in the middle of those political attacks (...).” The organizations additionally cited the existence of a widespread context of impunity for crimes against journalists, which has created an environment conducive to threats and assaults against journalists, especially those who report on drug trafficking and its ties to local politicians and police.

118. For its part, the State acknowledged that the border zones have seen an increase in the presence of transnational criminal organizations and unlawful activities related to drug trafficking. It underscored that borders in the Americas are areas that face challenges, and asserted that authorities should therefore take a special approach to the issues that arise in those areas. With respect to the impunity of crimes committed against journalists in border areas, the State noted that the fact that events occur on the border can make it difficult to investigate and establish the facts in criminal cases, and to criminally prosecute the perpetrators, who in some cases are nationals of the neighboring country.

*Killings*


119. Murder is one of the most brutal forms of censorship that exists, not only because it silences the voice of the victim but also because of the chilling effect it has on the victim’s peers. Pablo Medina was a correspondent for the newspaper *ABC Color* in the Department of Canindeyú, and was murdered on October 16, 2014. He had a police guard when he was murdered, but two months prior to his death this protection had been withdrawn by the ministry of the Interior. Changes in the government led to the elimination of private guards, although in Medina’s case it was a special measure because of the threats he had received. Thirteen years earlier, on January 5, 2001, his brother and fellow journalist Salvador Medina had also been murdered in Capiibary, in the Department of San Pedro. Salvador Medina reported on acts of corruption and trafficking on the community radio station *Nemity*. When he was killed, Pablo had spearheaded the investigation, which led to Pablo receiving death threats of his own.

120. According to the information received by the Office of the Special Rapporteur, two individuals ambushed him and riddled him with bullets in an area near the town of Villa Ygatimí as he was returning from covering a story in the Ko’ë Porã neighborhood. The journalist was with his assistant, Antonia Maribel Almada, who was wounded in the attack and died later at the hospital. Medina had been working as a journalist from the town of Curuguaty and published information and news on drug trafficking and irregularities allegedly committed by local authorities. According to Interior Minister Francisco de Vargas, the journalist was the victim of constant threats, because of which he had been receiving sporadic police protection for certain reporting assignments.

121. The case and its national and international impact gave rise to a rapid response from the State. Paraguayan President Horacio Cartes condemned the murder and declared that he would use “the full weight of the law and the lawful force of the State” to investigate and punish the perpetrators. The President also reiterated his appreciation for the work of journalists in Paraguay. Foreign Minister Eladio Loizaga also expressed his “strongest” condemnation of the crime.

122. Within a short period of time, authorities determined that the main suspected mastermind of the murder was the then-mayor of the city of Ypehú, Vilmar Acosta, who fled to Brazil. The Court of Conduct of the ruling Colorado Party decided to expel him from the group on November 7, 2014, based on the accusations.

123. The support, however, was not unanimous. Shortly after the murder, Paraguayan Supreme Court Justice Víctor Núñez stated at a press conference that Medina “was writing about things he had no knowledge of” and “referred to case files he knew nothing about.” Medina had accused Justice Núñez of interceding on protection for certain reporting assignments.

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Vilmar Acosta’s behalf to get him released from jail in 2011, when he was in custody for his alleged involvement in a triple homicide after human hair and skeletal remains were found at his father’s house.163

124. Vilmar Acosta was finally arrested in March 2015, five months later, accused of being the mastermind behind the murder of journalists Pablo Medina and Antonia Almada. Acosta’s brother Wilson and his nephew Flavio Acosta were also charged as direct perpetrators of the murder.164 Flavio Acosta was detained in January 2016 in southern Brazil, where he remained in custody as of late September 2016 and was fighting extradition on the argument that he had Brazilian citizenship. Wilson Acosta reportedly remained a fugitive from justice.165

125. In March 2016, Vilmar Acosta Marques’s driver, Arnaldo Cabrera, was convicted in this case. Although he was not charged with murder, he was sentenced to five years in prison for the offense of “failure to report a crime.”166 “After working with Vilmar as his driver, I found out that he had a problem with a local journalist named Pablo Medina, who was harming him politically. I heard this at a family gathering that he held,” said Cabrera to the Office of the Prosecutor, according to an article published in ABC Color. “On that occasion, I heard that Vilmar Acosta was going to bring his brother Wilson Acosta from Brazil so he could eliminate the people who were damaging his political career,” stated Cabrera.167

126. “Once I also heard him tell his sisters that he was going to have the journalist killed because he had caused him harm on several occasions. He said the journalist was putting too much pressure on him through his publications, especially since, because of those publications, Vilmar Acosta had been detained and sent to Coronel Oviedo Prison,” stated his former driver to the Court, according to an ABC Color report that shed light on the murder and its connection to Medina’s work as a journalist. “After he got out of prison, they met up with Wilson to see how they could kill the journalist, and that day, he arrived on the date on which Pablo Medina was murdered,” he added.168

127. According to the Office of the Attorney General of Paraguay, the Acosta Marques family controlled the trafficking of marijuana and other drugs in the Canindeyú area.169 For this, they relied on the power they had in Ypehû, a city on the Brazilian border. The investigation, establishment of the facts, and timely punishment of the perpetrators, in addition to satisfying the demand for justice in this specific case, allows all of society to know about the impact of organized crime and its effects on democracy and freedom of expression in Paraguay.

128. This case drew the attention of Paraguayan institutions, and the National Congress spearheaded the investigation into the murder of journalist Pablo Medina, appointing a Bicameral Committee to investigate the crime and the infiltration of organized crime into State institutions.170


167 ABC Color. March 22, 2016. Exchofer de Neneco es condenado a cinco años de cárcel por asesinato.

168 ABC Color. March 22, 2016. Exchofer de Neneco es condenado a cinco años de cárcel por asesinato.


129. The department of San Pedro borders on the departments of Concepción and Amambay to the north, and is also a dangerous department in which to practice journalism. According to the information received by the Office of the Special Rapporteur, Medina had been threatened previously, after having reported the existence of a local mafia with alleged ties to the Partido Colorado [Colorado Party]. Nine months later, on October 16, the Court convicted Milciades Maylin as the direct perpetrator of the crime and sentenced him to 25 years in prison. The conviction was upheld and rendered final on March 27, 2002, by the VI Criminal Court of the Judicial District of Alto Paraná and Canindeyú.\textsuperscript{171}

130. Some freedom of expression and human rights organizations pointed to Justo Franco, a Colorado Party leader allegedly involved in the trafficking of timber from the forest reserve of the Paraguayan ministry of Agriculture and Livestock in Capílibary, as the alleged mastermind of the crime.\textsuperscript{172}

131. The first murder of a journalist for work-related reasons that occurred on the border was that of journalist Santiago Leguizamón, a resident of Pedro Juan Caballero and correspondent for the Asunción-based newspaper Noticias. He was also the host of the afternoon radio program “Puertas Abiertas” on Radio Mburucuyá. Leguizamón was murdered in 1991. Prior to his death, the newspaper for which he worked published a series entitled “El Hampa en Pedro Juan” [“The Criminal Underworld in Pedro Juan”], which was an exposé on businesses tied to contraband smuggling, drug trafficking, and corruption. The IACHR declared the case of Santiago Leguizamón admissible in April 2016.\textsuperscript{173}

132. Over the past 15 years, another five journalists were murdered in Paraguay, in addition to two Paraguayan journalists who were murdered in Brazil very near the border. Samuel Román was slain in 2004. He was a journalist for the radio stations Nu Verá and Conquista FM of Capitán Badó, a town on the Brazilian border. Three years later, a Brazil court sentenced the mastermind of the murder, Eurico Mariano, to 17 years and nine months in prison. Mariano had been the mayor of the city of Coronel Sapucaia, just across from Capitán Badó in the State of Mato Grosso do Sul.\textsuperscript{174}

133. Between 2007 and 2012, the Office of the Special Rapporteur documented the murder of 3 journalists for reasons connected to their profession in Paraguay. Although they did not all occur in the Department of Amambay, they highlight the difficult security situation faced by journalists in remote regions and border areas of Paraguay. Journalist Alberto Palma Godoy, a correspondent for the FM Mayor Otaño and Chaco Boreal radio stations, was murdered in 2007 after having received threats.\textsuperscript{175} In 2009, Martín Ocampos Páez, the director of community radio station Hugua Ñandú FM in the Department of Concepción, was murdered in his house. The station had regularly denounced the existence of drug trafficking operations in the area, which reportedly led to death threats.\textsuperscript{176} In 2012, journalist Paulo Roberto Cardoso Rodrigues was murdered in Ponta Porã, a city in the State of Mato Grosso do Sul that borders on Pedro Juan Caballero.


Rodrigues, known as Paulo Rocaro, was the editor-in-chief of Jornal da Praça and the founder of the news website Mercosul News. He was critical of the authorities in his work, and the preliminary police investigations reportedly determined that his death was likely connected to his practice of the profession.²⁷⁷

134. In 2014, journalists Fausto Gabriel Alcaraz and Edgar Fernández were murdered in Paraguay. Alcaraz, of Radio Amambay 570 AM in Pedro Juan Caballero, was killed on May 16, 2014, after having denounced on air alleged drug trafficking crimes on the border.²⁷⁸ The murder of Fernández, of Radio Belén Comunicaciones in the Department of Concepción, took place on June 19, 2014, in his own home. The journalist had been critical of judicial authorities in his area. An alleged mastermind behind this crime was promptly arrested.²⁷⁹

135. In 2015, journalist Gerardo Servián was murdered in Ponta Porã, the small Brazilian town that shares a border with Pedro Juan Caballero. This was the third murder of a journalist in that area in three years. Servián worked for the community radio station Ciudad Nueva FM of Zanja Pytã.²⁸⁰

136. In Concepción, former Colorado Party Congressman Magdaleno Silva was been linked to drug trafficking. Silva was murdered in 2015. In Amambay, brothers José Carlos and Robert Acevedo—who of the Authentic Radical Liberal Party [Partido Liberal Radical Auténtico]—and the governor, Pedro González, are alleged to have ties to organized crime.²⁸¹

137. The threats to journalists in Paraguay’s border region have not stopped. The Office of the Special Rapporteur therefore welcomes the State’s announcement that it is committed to creating a comprehensive system for the protection of journalists in the country. Indeed, the new ABC Color correspondent in Canindeyú has received messages saying that, “You are going to be the next one if you continue to write like this.” The newspaper decided to stop covering police operations that take place in that area at night.

**Threats and attacks on media outlets**

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138. According to the Paraguayan State, 14 journalists currently have special protection measures in place due to the risks they face and the threats they have reported. One of them is Cándido Figueredo, a correspondent for the newspaper ABC in the city of Pedro Juan Caballero.

139. Cándido Figueredo a correspondent for the newspaper ABC in the border region, and has had a security detail provided for by the State for nearly 20 years. Figueredo is nationally and internationally known for his reports denouncing drug trafficking and the ties between drug traffickers and local politicians. In 2015 he received the International Press Freedom Award from the Committee to Protect Journalists (CPJ) in acknowledge of his work reporting on the problems on the border between Paraguay and Brazil. Figueredo has received threats on several occasions, and his house has twice been the target of armed attacks.

140. In its 2012 Annual Report, the Office of the Special Rapporteur indicated that Brazilian police alert Cándido Figueredo to a plan to assassinate him that had been hatched by alleged drug traffickers. According to reports, Intelligence Service agents of the Brazilian Civil Police met with Figueredo and allowed him to listen to the recording of an intercepted phone call in which an alleged drug trafficker told an inmate in a Brazilian jail that he intended to murder Figueredo. The plan to kill the journalists reportedly stemmed from several articles published in ABC Color, in September 2011, reporting the existence of several clandestine landing strips used for drug trafficking, which were later located and destroyed by authorities.

141. According to the information provided by the State to this Office of the Special Rapporteur, Figueredo has personal security 24 hours a day, and there have also been random police patrols. The threats against him are reportedly being investigated by the Crime Unit of Pedro Juan Caballero. The security detail assigned to the journalist means that he is under 24-hour guard by armed men, and works without leaving his house in order to avoid security incidents. He has stated that reporting from the border has meant having to live locked up inside his house in order to be safe. The journalist maintained in an interview that, in Pedro Juan Caballero, "you have to take care, you have to know to look and listen, you have to know how to speak and how to move."

142. During 2016, the Office of the Special Rapporteur also documented an attack on the newspaper La Jornada, which is published in Ciudad del Este. Unknown persons opened fire on the newspaper's facilities on September 8. Its director, José Espínola, attributed the incident to the recent publication of journalistic reports in which three police officers were linked to the kidnapping and robbery of two employees of a private company. The following day, a National Police officer was detained as a suspect in the incident. The

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186 Committee to Protect Journalists (CPJ). April 27, 2015. Reporting with bodyguards on the Paraguayan border; ABC Cardinal. September 1, 2016. "Hay políticos que darían todo porque yo cierre mis ojos y nunca más los abra"; Knight Center for Journalism in the Americas. October 5, 2016. "My guards are almost family"; threatened journalist who has been living under 24-hour protection for 20 years.

187 ABC Cardinal. September 1, 2016. "Hay políticos que darían todo porque yo cierre mis ojos y nunca más los abra."

day after that, explosives were thrown at the facilities of the Radio Amambay radio station. Two people who were inside the property, located in the town of Pedro Juan Caballero, were injured. These events reportedly occurred around 9:00 p.m., during the broadcast of a program hosted by journalist Patricia Ayala.189 The radio station is owned by Senator Robert Acevedo, President of the Paraguayan Congress, who reportedly stated that the incident was a warning to his family because of the “fight against drug trafficking” that he spearheaded, and that this was the third occasion on which the station owned by his family was attacked.190

143. The attack on Radio Amambay reflects one of the difficulties faced by journalists in the Paraguay-Brazil border area. The scant employment opportunities force local journalists to work as freelancers. In addition, as the organizations stated before the IACHR and to the United Nations for the Universal Periodic Review, one of the situations that creates a major risk for journalists is that many of the media outlets on the border are owned by politicians who use them as a forum for attacking their opponents, putting journalists in the middle of that confrontation. Added to this, the fact that journalists are in remote areas and working for small media outlets means that many times the violence committed against them does not attract national attention, which then becomes a factor that contributes to impunity.191

144. Despite being exposed to considerable levels of risk, journalists in the region may be resistant to accepting State protection. According to civil society organizations, a report prepared by a bicameral committee of the Paraguayan legislature concluded that 70 per cent of the National Police is reportedly infiltrated by organized crime and that the criminal networks financed by drug trafficking have permeated Paraguayan government.192 This explains the high level of mistrust that journalists have toward the National Police and judicial authorities.

C. STATE OBLIGATIONS REGARDING VIOLENCE AGAINST JOURNALISTS

145. The media and investigative journalism have become fundamental in the struggle against corruption, abuse of authority, grave human rights violations, and inefficiency in the performance of the Government. In the Americas, journalism plays a fundamental role in ensuring 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.193

146. In its report “Violence against journalists and media workers,” the Office of the Special Rapporteur rigorously and at length described States’ obligations in response to violence against journalists based on the Inter-American legal framework and on other international human rights law instruments. For the purposes of this report, the Office of the Special Rapporteur considers it essential to reiterate these obligations, as ensuring compliance with them is tantamount to combating the violence against the press and its chilling effect and the resulting damage to democratic societies. This report focuses on the obligations that are


190 ABC Color. September 12, 2016. Hermética reunión con presidente del Congreso; ABC Color. September 13, 2016. Para Acevedo atentado contra la radio de su familia sería una “distracción”.


193 Inter-American Democratic Charter: “Article 4. 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”.
particularly relevant to preventing violence toward and protecting communicators who work in so-called “silenced zones,” or areas where reporting is difficult due to the presence of organized crime. In this section, the Office of the Special Rapporteur will also look at instruments of international law developed recently by international bodies to raise awareness on the need to combat violence against journalists and impunity for these crimes, as well as a series of good practices that some States in the region have been applying in this regard.

147. Violence against journalists compromises the rights to personal integrity, life, and freedom of thought and expression. Likewise, the lack of due diligence in the investigation, pursuit and punishment of all those responsible can result in an additional violation to the rights to access to justice and judicial guarantees of those affected and their family members. The American Convention on Human Rights (“American Convention” or “Convention”) guarantees these rights in articles 4, 5, 13, 8 and 25.194 Likewise, the American Declaration of the Rights and Duties of Man, on its turn, states that “[e]very human being has the right to life, liberty and the security of his person” and that “[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.” Similarly, the American Declaration guarantees the rights to petition and to justice.195 The effective exercise of these rights includes both positive and negative obligations.

148. With regard to negative obligations, pursuant to the principles of international law, the State is responsible for all the acts and omissions in which its agents take part in the exercise of their duties, including when they surpass the limits of their area of competence.196 OAS Member States are required to ensure that their agents do not interfere with the rights to life and personal integrity and to refrain from carrying out actions that could violate these rights directly, such as acts of violence against their own citizens. Cases are continually reported in the region of State agents committing acts of violence against journalists, especially in the context of police or military action intended to combat crime or control demonstrations, as well as in cases of allegations of corruption or illegalities committed by local authorities.

149. As regards positive obligations, many of the most serious acts of violence against journalists in the Americas—homicides, disappearances, kidnappings and armed attacks on media outlets, among other acts—are committed by non-State actors, especially powerful criminal groups.

150. Based on Inter-American scholarship and case law, the State has three positive obligations that emanate from the rights to life, personal integrity, and freedom of expression. They are: the obligation to prevent, the obligation to protect and the obligation to investigate, try and criminally punish those responsible for these crimes.197 As the Office of the Special Rapporteur has indicated, these obligations are

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194 American Convention on Human Rights: “Article 4. Right to Life 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. […] Article 5. Right to Humane Treatment 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners. […]Article 13. Freedom of Thought and Expression 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice. […]”.

195 American Declaration of the Rights and Duties of Man: “Article XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights. […]Article XXIV. Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.”


197 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
complementary to each other: in order for free, robust, and unrestricted democratic debate to exist, violence against journalists must be combated through a comprehensive policy of prevention, protection, and procurement of justice.198

151. Regarding this, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity establishes that:

Promoting the safety of journalists and fighting impunity must not be constrained to after-the-fact action. Instead, it requires prevention mechanisms and actions to address some of the root causes of violence against journalists and of impunity. This implies the need to deal with issues such as corruption, organized crime and an effective framework for the rule of law in order to respond to negative elements (...).199

152. To comply with these obligations, States must guarantee that journalism in particular and the right to freedom of expression generally can be exercised freely, thereby enabling the existence of informed societies. In particular, allowing an entire region to be silenced without adopting measures to stop threats against those exercising freedom of expression opens the door to other human rights violations and damages democracy. In order to prevent the creation of silenced zones and deal with those that already exist, States must commit to fostering an environment that is favorable to the exercise of freedom of expression, which can only be accomplished with a comprehensive policy that includes protection, prevention, and administration of justice.

153. In this regard, it is important to highlight that these obligations must be complied with not only with regard to journalists who work regularly in the traditional media but also with regard to journalists or citizens who create content and/or disseminate information in the public interest on the Internet. This is in line with the definition of the United Nations Human Rights Committee, which in 2011 defined journalists as “a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.”200

154. It should also be noted that all actions taken by states to comply with their obligations to prevent, protect, and investigate, try, and criminally punish those responsible for crimes against journalists must take into account the differentiating effect of crimes against journalists who are women.

1. The Obligation to Prevent

155. States have an obligation to adopt measures to prevent violence against journalists and media workers. This obligation is particularly important in countries in which there is a risk of these incidents taking place and in specific situations in which authorities know or should know that there is a real and

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immediate risk of such crimes being committed.\textsuperscript{201} In these situations, the absence of a general public policy of prevention can mean the State has failed to comply with its duty to prevent.\textsuperscript{202}

156. The Office of the Special Rapporteur has indicated that the obligation to prevent includes a series of specific obligations: the obligation to ensure its public statements contribute to preventing violence against journalists; the obligation to instruct its security forces to respect the media; the obligation to respect the right of journalists to the confidentiality of their sources, notes and personal and professional files; the obligation to punish violence against journalists; and the obligation to maintain precise statistics on violence against journalists.\textsuperscript{203}

157. Compliance with this obligation is of vital importance in countries with areas in which journalists have turned to self-censorship in order to prevent this from being replicated in other places in the country where similar violence is taking place.

a. The Obligation to Ensure Public Statements Contribute to Preventing Violence Against Journalists

158. The Inter-American Court has found that the obligation to guarantee the rights of freedom of expression and personal integrity requires public officials to refrain from making statements that expose journalists and media workers to a great risk of acts of violence.\textsuperscript{204} The Office of the Special Rapporteur has similarly indicated that government officials are responsible for ensuring their public speech does not expose journalists to greater risk of violence. In this regard, the Office of the Special Rapporteur has recalled, among other things, that a simple but very effective measure of protection is for the most senior State officials to 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. It is likewise crucial for authorities to energetically condemn attacks on journalists and push the competent authorities to act with due diligence and swiftness in clearing up the facts and punishing those responsible.\textsuperscript{205}

159. In States with a federal structure or in States where government authority is decentralized into a number of different levels, the speech of federal or national authorities might promote the legitimacy of journalism activities while locally, government statements remain hostile toward the media, exposing local communicators to a higher risk of violence. The Special Rapporteur recalls that a State answers as a whole to international law, the obligations of which extend to all its powers and levels of governance.


b. The Obligation to Train Security Forces on Respect for the Media

160. Appropriate instruction of State security forces on the role of the press in a democratic society constitutes an important step in preventing violence against journalists and media workers. For this reason, the Office of the Special Rapporteur has recommended that States adopt adequate preventive mechanisms in order to avert violence against media workers, including the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right of freedom of expression. This is particularly important in relation to forces that carry out public security tasks which regularly bring them into direct contact with the members of the press who cover their activities, especially if the force in question was not originally trained for such public security tasks.

161. The Office of the Special Rapporteur views this obligation as extremely important, considering that in many countries in the region, the struggle against organized crime and drug trafficking is conducted by a variety of different bodies of the armed forces and the police. Likewise, in many cases in which journalists are murdered or threatened in “silenced zones,” they were on the police beat, meaning that for their work, they are in contact with members of the armed forces, either because they are used by the journalists as sources of information or because they are the subject of the journalists’ reporting.

162. The call to provide training to security forces on freedom of expression and the role of journalists and media workers has been echoed by a number of international organizations. In their 2012 Joint Declaration on Crimes against Freedom of Expression, the special rapporteurs on freedom of opinion and expression highlighted that “appropriate training on crimes against freedom of expression, including gender specific crimes, should be provided to relevant law enforcement officials, including the police and prosecutors, as well, where necessary, to military personnel.” Along the same lines, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that “Law enforcement officials and the armed forces should receive training, as part of standard procedure, on the legitimacy of the presence of journalists during nonarmed and armed conflict and the legal protection for their safety.”


207 The Committee has repeatedly pointed out that, since the armed forces lack the appropriate training to control citizen security, it is up to a civilian police force, efficient and respectful of human rights, to combat insecurity, crime and violence in the domestic field. IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 100.


of violence due to a source’s fear of being identified. For this reason, it should be ensured that, for example, no public official violates this confidentiality.210

164. In areas or regions with high rates of violence against the media, this obligation is especially important considering that revelation of journalists’ sources could put them at greater risk of retaliation by both the sources and the sources’ “enemies.”

d. The Obligation to Punish Violence Against Journalists

165. In order to prevent violence against journalists and media workers, it is indispensable for legal systems to punish this conduct in a manner that is proportional to the damage committed.211 In a more general sense, article 2 of the American Convention requires States to adopt legislative or whatever other measures that may be necessary to make the rights and freedoms recognized in the treaty effective.212

166. In cases of violence against journalists in areas with high rates of violence, such as the ones described in this report, journalists who suffer violence have often been previously attacked or threatened or seen their colleagues murdered, with neither the law nor the agencies in charge of administering justice being adequate for rigorously investigating and punishing these crimes. In general, the fact that these types of crimes remain in almost absolute impunity in some parts of the region has encouraged their repetition.

e. Obligation to Keep Accurate Statistics on Violence Against Journalists

167. Understanding the magnitude and shape of violence against journalists and media workers is fundamental to implement effective policies of prevention, such as, for example, the design of trustworthy risk maps. In general, the IACHR has emphasized that State authorities must produce high-quality data that can be used to adequately plan the different operations of the police forces, so as to favor preventative actions as opposed to repressive ones. The design and up-to-date maintenance of trustworthy statistics and indicators on the different factors that contribute to violent or criminal acts constitute an irreplaceable tool for the implementation of an adequate process of strategic planning, which is a key piece of any public policy.213

168. In the 2016 reports on the situation of human rights in Honduras and Mexico, as well as in the 2013 report on truth, justice, and reparation in Colombia, the IACHR recommended that these three States produce detailed and disaggregated crime statistics on violence against journalists and the criminal prosecution thereof. The Office of the Special Rapporteur has recommended that the statistics include the type of crime committed (homicide, kidnapping, etc.); the victim’s name, gender, and employer; the location and date of the attack, the person and/or group allegedly responsible (when known); the authority in charge of the investigation; and the case file number of the investigation, along with the current status of the investigation and/or legal process.

169. The Office of the Special Rapporteur thus appreciates the creation of the Prevention Unit [Unidad de Prevención] of the Federal Protection Mechanism [Mecanismo Federal de Protección de México] of Mexico (the creation and operating of which will be described in more detail in this chapter), whose work includes


collecting statistics and creating a database that is constantly updated in order to perform risk mapping and identify the patterns to the attacks in different areas in Mexico. Initiatives like this are very important for identifying patterns to the attacks by region and preventing the formation of new areas where the media may be silenced, as they make it possible for the State to take proactive measures to protect the media.

2. **Obligation to Protect**

   a. **The Obligation to Protect At-risk Journalists and Media Workers**

   170. Pursuant to the human rights laws of the inter-American system, States have a special obligation to protect those who face special risk to their fundamental rights. The obligation to adopt specific measures of protection is dependent on the knowledge that there is a situation of real or imminent risk to a particular individual or group of individuals and a reasonable possibility of preventing or avoiding harm.214

   171. The obligation to protect an at-risk journalist can be satisfied through the individual application of the measures necessary to ensure, among other things, the beneficiaries’ right to life, to personal integrity, and to freedom of expression. When a particular country faces a systematic and grave structural situation of violence against journalists and media workers, States must establish special protection programs in order to serve these groups. At all times, the measures adopted must be adapted to the individual circumstances of the person at risk, including the person’s gender, the need or desire to continue carrying out the same professional activities, and the person’s social and economic circumstances.215

   172. When measures are taken to protect journalists from the credible threat of damage to their physical integrity, the measures must take into account the needs specific to the profession of the beneficiaries, their genders, and other individual circumstances. In their 2012 Joint Declaration, the Special Rapporteurs stated that the measures of protection “must be adequate to the individual circumstances of the person at risk, including the person’s gender, the need or desire to continue carrying out the same professional activities, and the person’s social and economic circumstances.”216

   173. Likewise, the measures of protection for journalists and media workers must include a gender perspective that takes into account both the specific forms of violence suffered by women and the specific ways in which the protective measures are implemented that may be necessary or adequate for women journalists.

   174. Finally, States also have a duty to adopt the measures necessary to ensure that those working in the media who have had to flee or exile themselves in response to a risk are able to return home safely. When it is not possible for these people to return, States must adopt measures enabling them to live in the place they chose in dignified conditions and with the necessary security measures and financial support to continue their work and family lives.217

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b. Programs for Protecting Journalists and Media Workers

175. In situations in which violence against journalists and media workers is particularly widespread, States’ obligation to protect them could require the creation of permanent and specialized protection programs.

176. Over the last decade, a number of countries in the region have followed the recommendations of international bodies like the IACHR and its Office of the Special Rapporteur by establishing special programs to protect journalists. The Office of the Special Rapporteur supports and highlights the efforts made by a number of States—including, Brazil, Mexico, and Honduras—to establish this type of program and progressively provide it with the resources to fulfill its objectives, notwithstanding the deficiencies and implementation problems that this office has noted in its monitoring and ongoing dialogue with States on the situation of violence against journalists. Also, Argentina recently established a limited protocol to protect journalists, while Guatemala is looking at setting up a special program to protect journalists and human rights defenders, and Paraguay informed the IACHR of passage of a law to establish such a program in response to violence against journalists in a number of areas in the country.

177. In the case of Colombia, the program for the protection of journalists has been operating since 2000, making it the oldest and best established in the region. For its part, the protection program in Mexico was legally established in 2012. In the case of Honduras, the mechanism was established through a law passed in 2015. Although it has not begun to operate, the State has announced regulations for it to make it fully operational. Likewise, other countries have taken measures to include journalists and media workers as beneficiaries of pre-existing programs for protection. Such was the case in Brazil. On September 27, 2016, through Resolution 479-E/2016, Argentina’s ministry of Security [ministerio de Seguridad de Argentina] approved a General Conduct Protocol for Protection of Journalism Activities. Both Paraguay and Guatemala are moving forward with processes to approve mechanisms to protect journalists. In the case of Paraguay, the State informed the Office of the Special Rapporteur that “a bill is before the National Congress on the protection of journalists and human rights defenders. The bill was submitted on November 17, 2016, as the Freedom of Expression and Protection of Journalists, Media Workers, and Human Rights Defenders Act” [proyecto de ley “de libertad de expresión protección a periodistas, trabajadores de prensa y defensores de derechos humanos”].

178. This section provides a detailed examination of existing protection programs in the region, describing the best practices identified for their creation and implementation, as well as the main challenges they currently face. When States decide to establish specialized protection programs, it is crucial that they be implemented adequately and in good faith.

179. Indeed, the IACHR has found in a number of reports that these programs "can enable a State to comply with its obligation of protection." However, some of the programs in the region "tend to have efficacy and design problems." The IACHR and its Office of the Special Rapporteur have defined some of the requirements that States must follow for protective mechanisms to be effective. For example, the Office of the

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Special Rapporteur has recommended placing emphasis on: 1) the importance of guaranteeing the necessary personnel and financial resources for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and procurement of justice; 3) the need to adequately define protective measures called for in the mechanism and the procedure for their adoption; 4) the need to guarantee the full participation of journalists, civil society, and beneficiaries in the implementation and operation of the mechanism; and 5) the benefits of seeking support from the international community for the mechanism’s operation.  

180. In addition, the IACHR has indicated that States must take into account that journalists and human rights defenders form two populations with certain distinct characteristics whose particular needs for protection must be taken into account when the protective program is designed and implemented, especially when the programs benefit both groups. The Office of the Special Rapporteur notes that it is important for the protection programs to guarantee that communicators are able to continue to perform their journalistic activities, as well as the specific needs of the profession (such as the privacy necessary to meet with sources) when designing the protective measures available, taking into consideration the circumstances of each specific case and in consultation with the potential beneficiary.

181. It is crucial for risk assessments and decisions on the adoption of protective measures to take into account the content of the journalistic work and the investigations that the potential beneficiary or the media outlet to which he or she belongs is carrying out and those investigations’ possible connection with the alleged situation of risk under examination.

- Colombia

182. Law 418 in 1997 created a protection program under the ministry of the Interior aimed at people facing situations of risk “due to causes having to do with political or ideological violence, or with the armed internal conflict” and belonging to particular groups, such as leaders or activists with political groups, social organizations and human rights organizations. In 2000, through Decree 1592, journalists and social communicators were for the first time recognized as a special at-risk population with the creation of the “Program for the Protection of Journalists and Social Communicators,” run by the General Directorate of Human Rights of the Ministry of the Interior. Decree 1592 also established the Committee for Regulation and the Evaluation of Risks (Comité de Reglamentación y Evaluación de Riesgos) (CRER), an interinstitutional body made up of representatives of the State and civil society whose purpose was to evaluate specific cases and recommend the adoption of protective measures.

183. Likewise, in June of 2012, Decree 1225 was issued to “restructure and define some of the concepts and procedures described in Decree 4912 of 2011.” Under this new legal framework, the “program for the prevention and protection of the rights to life, liberty, integrity and safety of persons, groups and communities” for “persons, groups and communities facing situations of extraordinary or extreme risk as a direct result of the exercise of their political, public, social or humanitarian activities or functions, or as a result of the exercise of their duties.” Was created, unifying all the existing specific programs for the protection of individuals in situations of extraordinary or extreme risk. Among the 16 groups subject to

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protection due to risk included in the Program for Prevention and Protection are journalists and social communicators.226

184. Under this new structure, Colombia created the National Protection Unit [Unidad Nacional de Protección](UNP), a legal body with administrative and financial autonomy and its own budget, adscribed under the ministry of the Interior, with the purpose of “articulating, coordinating and executing the provision of protective services” to those persons facing situations of extraordinary or extreme risk in Colombia.227 The UNP is responsible for receiving and processing requests for protection; carrying out risk evaluations; implementing approved measures of protection; following up on the measures of protection granted; and communicating reported threats to the Office of the Attorney General of the Nation [Fiscalía General de la Nación].228 The Program for Protection also has a Technical Body for the Collection and Analysis of Information [Programa de Protección cuenta también con un Cuerpo Técnico de Recopilación y Análisis de Información](CTRAI), an inter-institutional body made up of UNP and National Police officials. Among other things, it is responsible for collecting and analyzing in situ information following a request for protection. It is also required to report new threats to the Protection Program.229 For its part, the Preliminary Evaluation Group [Grupo de Valoración Preliminar](GVP) is the body responsible for carrying out risk evaluations based on the information provided by the CTRAI and indicating the protective measures that would be suitable in a specific case within a period of 30 days upon receiving consent from the applicant.230

185. The most senior deliberative body of the Colombian Protection Program is the Risk Assessment and Measure Recommendation Committee [Comité de Evaluación de Riesgo y Recomendación de Medidas] (CERREM), which replaces the defunct CRER in the analysis of requests and ordering of protective measures that should be granted in each case, as well as their duration. In its analysis, the CERREM must take into account the recommendations of the Preliminary Evaluation Group and the information provided by the entities participating in the Committee in order to validate the risk level determination made by the GVP. Additionally, the CERREM has the authority to recommend the adjustment, suspension or cancellation of preventative and protective measures based on the results of risk re-assessments.

186. The CERREM is a permanent body comprising five senior public officials with voice and vote.231 It is presided over by the Director of the Human Right Directorate of the ministry of the Interior [Director de la Dirección de Derechos Humanos del ministerio del Interior]. Four delegates of each of the populations subjected to the program (including journalists) also participate in the CERREM meetings as permanent guests, among other persons. The delegates participate exclusively in the analysis of the cases of the groups they represent and can provide any information they may have on the requests under consideration as material for the adoption of protective measures.232

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227 Presidencia de la República. Decreto No. 4065 October 31, 2011, Articles 1 and 3.


229 Presidencia de la República. Decreto No. 4912 December 26, 2011, Article 33.

230 Presidencia de la República. Decreto No. 4912 December 26, 2011, Articles 34 and 35. According to the decree the Grupo de Valoración Preliminar (GVP) is coordinated by a delegate of the Unidad Nacional de Protección (UNP), and formed with a delegate of the Ministry of National Defense, a delegate of the National Police, a delegate of the Programa Presidencial para la protección y vigilancia de los Derechos Humanos y el Derecho Internacional Humanitario, and a delegate from the Unidad Administrativa Especial de Atención y Reparación Integral a las Víctimas. Also, the GVP has as its permanent special guests a representative of the Fiscalía General de la Nación, a representative of the Procurador General de la Nación, a representative of the Defensor del Pueblo, and the delegate of the Secretaría Técnica de la Comisión Intersectorial de Alertas Tempranas.

231 They are: the Director of the Programa Presidencial de Derechos Humanos y DIH, the Director of Protección y Servicios Especiales of the National Police, the Director of the Unidad Administrativa Especial de Atención y Reparación Integral a las Víctimas, and the Coordinator of the Oficina de Derechos Humanos de la Inspección General de la Policía. Presidencia de la República. Decreto No. 4912 December 26, 2011, Article 36.

187. The protective measures that the Colombian protection program provides are determined using two types of processes: an ordinary one and an urgent one that grants the director of the National Protection Unit the authority to put interim measures in place.

188. Depending on the risk situation of the potential beneficiary, the CERREM can take the following measures: planes de contingencia; Contingency plan; self-defense courses; police patrols and monitoring; arrangements for individual protection (including armored vehicles, driver and bodyguard); journeys via land, river, ocean or air to another place; temporary relocation, including economic assistance and the transportation of personal items; communication devices that allow for rapid contact with State agencies; and fortification and installation of security systems in the beneficiary's workplace and/or residence. The law also allows for adopting other measures of protection different from the ones it sets forth, "taking into account a differential approach, the risk level, and factors of place." Protection measures can be suspended should they be used improperly or at the request of the protected individual following consultation with and authorization by the CERREM. The measures can be ended on the recommendation of this agency when the risk evaluation concludes that they are no longer necessary; on request of the beneficiaries; or upon expiration of the measure's term. Current law also identifies the responsibilities of local and National Governmental entities with regard to the implementation of protective measures.

189. According to the information provided by the Colombian State to the IACHR in 2015, provided to follow up on the recommendations made in the country report, 137 journalists enjoy some type of protective arrangement. According to the information available, the budget approved for the agency for 2016 was COP$ 477 million 189 thousand (about US$161 million). According to information from the Fundación para la Libertad de Prensa (FLIP), a civil society organization that participates in the CERREM as a permanent observer, "in 2015, the National Protection Unit had a budget of COP$ 449 million 664 thousand (approximately US$152 million) and held nine committees to assess risk and recommend measures (CERREM). During these meetings, more than 150 requests for protection submitted by journalists were discussed, and protective measures were granted to approximately 70 per cent of applicants.

190. The Office of the Special Rapporteur has recognized the efforts made by the State of Colombia to protect journalists whose lives are at risk through the protection mechanism. Evidence of these efforts includes the political support the program has received for more than a decade, as well as the significant financial resources that have been allocated for its operation, the clarity of the legal framework and administrative proceedings surrounding its implementation, and the variety of protective measures available to the CERREM.

191. Despite this progress, in their report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, the Office of the Special Rapporteur and the IACHR also noted persistent challenges in the implementation of the program for the protection of journalists and media workers. The Office of the Special Rapporteur observes the importance of establishing effective communication between the State agencies in charge of protecting the at-risk journalists and social communicators and the authorities.

responsible for investigating, trying and punishing those responsible for the alleged violations of their rights—including threats, attacks, harassment, and murders—perpetrated based on their professional activities. In this sense, the Commission notes the importance of the effective participation of the Office of the Attorney General of Nation in the different CERREM divisions in its capacity as a special guest such that it is able to provide and receive key information on situations under analysis and the alleged human rights violations suffered by journalists and social communicators.\textsuperscript{241} The IACHR has reiterated to the Colombian State "the urgent need that the State establishes, as State policy in the short-, mid- and long-term, investigation as a measure of prevention. The IACHR recalls that the lack of investigation of the facts that motivate the risk situation could generate a cumulative effect with regard to the constant increase of beneficiaries in the protection program and the powers of revision of the decisions adopted on protection."\textsuperscript{242}

- **Mexico**

192. In 2012, Mexico became the second country in the region to adopt a specialized mechanism for the protection of at-risk journalists. As mentioned previously, the creation of such a program was one of the main recommendations of the IACHR and UN special rapporteurs following their August 2010 on-site visit to the country. The Mexican Congress discussed and eventually approved a “Law for the Protection of Human Rights Defenders and Journalists.” The law entered into force on June, 2012. The law creates the “Mechanism for the Protection of Human Rights Defenders and Journalists” in order to attend the State’s "fundamental responsibility to protect, promote and guarantee human rights."\textsuperscript{243} Its stated objective is to establish coordination between federal and state governments in the implementation of preventive and protective measures to guarantee the “life, integrity, liberty and security of persons who are in a situation of risk as a consequence of the defense or promotion of human rights or the exercise of freedom of expression and journalism.”\textsuperscript{244} The mechanism is made up of a Government Council [Junta de Gobierno], an Advisory Board [Consejo Consultivo], and a National Executive Coordinator [Coordinación Ejecutiva Nacional], and it is run by the ministry of Interior.

193. The law for the protection of human rights defenders and journalists represents an important step taken by the Mexican government toward complying with the obligation to protect at risk journalists, notwithstanding the implementation problems that have been noted throughout its existence.

194. Under Mexican law, the Government Council is the most senior level of the Mechanism and the main body for taking decisions on the granting of preventative and protective measures. The Government Council is made up of four representatives of the executive branch (ministry of Interior, Office of the Attorney General of the Republic, Secretariat of Public Security, and Secretariat for Foreign Relations), a representative of the National Human Rights Commission, and four representatives of the Advisory Board, two of them independent experts on the defense of human rights and two of them experts on the exercise of freedom of expression and journalism.\textsuperscript{245} Representatives from Congress, the judicial branch, the states, and the Mexico Office of the United Nations High Commissioner for Human Rights may participate in the Government Council sessions with speaking rights, but not voting rights.\textsuperscript{246} The petitioners whose case is under consideration will


also be called to participate in the sessions. The main role of the Government Council is to evaluate, deliberate and rule on the granting and suspension of preventative and protective measures based on the information provided by the auxiliary units of the National Executive Coordinator. In its decisions, the body should respect “the pro persona, gender perspective, and best interest of the child principles, and other human rights standards.”

195. The National Executive Coordinator is the body responsible for coordinating the operations of the Mechanism with federal entities, the sub-offices of the federal government, and autonomous agencies, and must be headed up by an official of the ministry of Interior ranking just below under-secretary or equivalent. The body is also made up of three auxiliary technical coordination units: i) Case Receipt and Rapid Reaction Unit, which is responsible for receiving requests to be included in the Mechanism, analyzing and defining which cases will be addressed through an extraordinary proceeding, and implementing urgent protective measures; ii) Risk Assessment Unit, which is responsible for drawing up the risk assessment studies, recommending the preventative or protective measures to be adopted in each case, periodically following up on the implementation of the measures, and making recommendations with regard to their continuation, adequateness or conclusion. Under the law, both units must be made up of at least five risk assessment and protection experts, one of them an expert in the defense of human rights and another in journalism and the exercise of freedom of expression: iii) the Prevention, Follow-up and Analysis Unit, which is responsible for proposing preventative measures, monitoring attacks nationwide in order to collect the raw information and place it in a database; identifying patterns of attacks and preparing risk maps; and evaluating the effectiveness of the preventative, protective and urgent measures implemented.

196. Under the law, both the Case Receipt Unit and the Risk Evaluation Unit must be made up of at least five risk evaluation and protection experts, one of them an expert in the defense of human rights and another in journalism and the exercise of freedom of expression. The National Executive Coordinator is responsible for coordinating the different units, managing communications between them and the Government Council, and communicating the Council’s decisions to the agencies in charge of implementing them.

197. The mechanism also includes an Advisory Board, a consultation body of the Government Council made up of members of civil society. The Board is composed of nine advisors, including experts in the defense of human rights and the exercise of freedom of expression and journalism, four of whom are elected to participate in the Government Council. The Advisory Board is responsible for addressing consultations and formulating opinions requested by the Government Council on the programs and activities carried out by the National Executive Coordinator; submitting complaints before the Government Council that have been brought by petitioners or beneficiaries with regard to the implementation of the measures; and commissioning the independent Risk Evaluation Studies requested by the Government Council to resolve disputes.

198. The law allows for both “ordinary” and “extraordinary” procedures for assigning the measures of protection requested. During the process and in the implementation of the measures, gender perspective

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must always be taken into account. The beneficiary must not be under the protection of an arrangement or program set up by another State mechanism, except should they agree with the transfer of the protection responsibilities to the federal mechanism.  

199. The requests for protective or preventative measures are processed by the Case Receipt and Rapid Response Unit, which verifies that the request meets the requirements established by law and determines the type of proceeding to be adopted. In cases in which the petitioner declares that their life or physical integrity is in imminent danger, an extraordinary proceeding will be launched through which urgent protective measures are provided within no more than three hours of receipt of the request. They must be implemented over the following nine hours. Simultaneously, the Receipt Unit must carry out an Immediate Action Evaluation Study and submit the case to the Risk Assessment Unit to begin the ordinary proceeding. Urgent measures can include evacuation, temporary relocation, specialized bodyguards, and the protection of the property where the beneficiary is located. Urgent protective measures remain in force while the ordinary proceeding moves forward.

200. In cases in which there is no imminent risk of physical danger or death, an ordinary proceeding is launched under which the Risk Assessment Unit must do a risk analysis, determine the level of risk and the beneficiaries of the measures, and define the protective measures within 10 days of the submission of the request. The evaluation is brought for the analysis of the Government Council, which decrees the applicable preventative and protective measures that must be implemented by the National Executive Coordinator within a time period of no more than 30 days. According to the law, protective measures include instructions, manuals, self-defense courses and the accompaniment of observers, while the protective measures include the provision of communications devices, security cameras, locks, etc. in the home or workplace of the individual, bulletproof vests, metal detectors and armored cars. The Risk Assessment Unit is responsible for the periodic evaluation of the measures adopted, which can be increased or decreased by the Government Council based on these reviews.

201. An important element for any system to protect journalists is that its measures not be intrusive or impede the journalist’s work. Mexico’s law explicitly establishes that at no time shall the measures granted “restrict the activities of the beneficiaries, or imply in surveillance or undesired intrusions in their professional or personal lives,” and that these measures must be agreed with the petitioners. In this

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sense, they can present a note of dissatisfaction to the Executive Secretariat of the Government Board against the resolutions of the Government Board and of the National Executive Coordination regarding the imposition or denial of measures; the insufficient or unsatisfactory fulfillment of measures; or the rejection of the Government Board’s decisions by the authorities in charge of implementing the measures. In the case of an extraordinary procedure, the beneficiaries may present notes of dissatisfaction to the National Executive Coordination against the resolutions of the Unit for Case Reception and Fast Reaction, on the access to the extraordinary procedure or the adoption of urgent measures; against the deficient or unsatisfactory fulfillment of these measures; and against the rejection of the decisions of this Unit.

202. In order to obtain financial resources additional to those provided in the federal budget for the mechanism, the law establishes the creation of the “Fund for the Protection of Human Rights Defenders and Journalists,” whose resources shall be dedicated exclusively to the implementation and operation of preventative, protective and urgent measures, as well as any other measures established in the law for the implementation of the mechanism. The fund shall be operated through a public trust. Its resources will be made up of, among other sources, contributions from the federal government, funds from the annual federal budget, and donations from individuals and corporations. Likewise, the fund must have a Technical Committee chaired by the ministry of Interior, along with its own oversight body.

203. Another extremely important design element is making the resolutions issued by the protection program authorities binding for other State bodies. In this case, the Mexican law establishes that the resolutions of the Government Council are binding for the federal authorities whose actions are necessary for compliance with the measures adopted. Nevertheless, the law is not similarly binding for the authorities of the individual states or the Federal District. For this, the law establishes the possibility of agreements signed by the federative entities and the federal government for implementing measures. Regarding this, the Mexico Office of the United Nations High Commissioner of Human Rights (UNHCR) found that “coordination between federal and state authorities is one of the great challenges for the nascent protection mechanism given the federal structure of the Mexican State. (...) The agreements that have been signed are a vehicle for promoting adequate coordination between the different levels of governance and guarantee a coherent response from the Mexican State.”

204. In its report following the IACHR’s in loco visit to Mexico in 2015, the Commission received information that the non-governmental agency Freedom House in Mexico accompanied the National Executive Coordination Group [Coordinación Ejecutiva Nacional] (CEN) of the protective mechanism during 2014. A work plan was generated on the basis of this cooperation, which included, among other things, technical strengthening in three areas where methodologies needed to be adjusted: risk evaluation, processes and procedures of the National Executive Coordination

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Group, and lastly measures related to the Risk Evaluation and Risk Level Assessment Protocol. In its observations to the draft of this report, the State specified that the strengthening process carried out with Freedom House has taken place in three phases. The first was dedicated to improve the methodology and internal procedure of the mechanism, which was able to overcome the backlog in the analysis of cases and took place through 2014; the second phase had as its objective of make protection measures more effective and include a gender perspective in their adoption, as well as training the mechanism’s personnel throughout 2015; and, the third phase, tends to establish a program for the prevention of violence against journalists and media workers.

205. In this regard, the Office of the Special Rapporteur recognizes and appreciates the efforts of the Mexican State to address the difficulties that arose when the protection mechanism was first implemented and encourage expansion of the work to legitimize and strengthen the system with the goal of providing better protection to beneficiaries.

206. The Office of the Special Rapporteur also highlights the importance of the development of a policy for preventing violence against journalists as a part of the work performed by the protection mechanism and recognizes this as a good practice. As mentioned previously, a Unit for Prevention, Follow-up, and Analysis was established within the structure of the mechanism. That Unit became operational in 2016, and according to information received by the Office of the Special Rapporteur in September 2016, it has up-to-date statistics available to it covering requests for protection from the mechanism, beneficiary individuals or groups, types of attacks, precautionary measures, protective measures, legal actions, closed case files, sessions of the Government Council, and requests for public information.

207. According to the information provided by the mechanism, the Unit has a database to which trained officials add each attack reported by journalists, their professional organizations, or the media. The mechanism also includes in this database the repercussions of these attacks and the results made public of investigations of them.

208. The information contained in the database is collected through an alert system built by the unit itself that collects information by monitoring 300 local sources. This information is arranged into a dynamic, geo-referenced map that identifies areas of risk and prevalence. Information is entered into the database under different categories, including facts, rights affected, types of violence, risk factors, sources covering victim journalists, State response, and location in which the incidents take place. The Office of the Special Rapporteur sees this initiative as a useful tool to help State authorities design an effective response to the issue of violence against journalists concentrated in certain parts of the country and adopt measures of prevention, protection, and investigation to stop self-censorship and silence from taking over in these areas.

The early warning systems of the protection mechanism

209. One of the measures of prevention established in the Federal Law to Protect Human Rights Defenders and Journalists is the design of early warning systems and contingency plans "to prevent potential attacks on human rights defenders and journalists." As far as measures taken to comply with this mandate, the Office of the Special Rapporteur highlights the adoption of an early alert system for Veracruz and Chihuahua, two states with high rates of violence against the media. The alerts were established after an assessment of the risks faced by both human rights defenders and journalists in those states. They entail a series of actions that state and federal authorities must take in coordination with the Federal Protection Mechanism and that include actions for prevention, protection, and administration of justice.

210. One of the cases mentioned in this report is that of the State of Veracruz, Mexico, which in recent years has been the state with the highest number of journalists murdered in Mexico. In a recent visit to

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Veracruz during the IACHR’s in loco visit to Mexico (2015), the Office of the Special Rapporteur found that the journalists in the region are facing a crisis of confidence in state institutions due to the constant risks that they face. According to the information provided by the CNDH, from 2010 to 2015, 16 journalists were murdered in Veracruz and four were disappeared. In 2015, the Office of the Special Rapporteur documented the murder of six journalists in that state. Some of these terrible events have caught the attention of Mexican society and the international community because of the cruelty used to murder reporters covering news in Mexico that was significantly in the public interest.

211. In that context, on November 3, 2015, the Department of Governance (SEGOB) established an Early Warning and Contingency Plan System to protect Veracruz journalists. The objective of this public policy program is to prevent possible attacks on journalists. It was adopted at the request of a group of journalists and of the Federal Journalist Protection Mechanism. In establishing this mechanism, in line with the assessment of a number of civil society organizations, the Office of the Special Rapporteur, the UN Hi Commissioner for Human Rights, and others, the State recognized that Veracruz and Chihuahua are the Mexican states with the greatest number of journalists murdered and have the second highest number of people protected under the federal protection mechanism.

212. The special program entails 13 actions to be executed within 12 months, each with outcome indicators. The measures are categorized as follows: i) respect for the right to freedom of expression; ii) development of risk maps; iii) journalist safety; iv) strengthening and following up on investigations conducted by the ministry; v) training of public servants; vi) self-defense training for journalists; vii) improvement of working conditions for journalists; viii) quick response measures; and ix) program evaluation. According to the information provided by the State, the agreement has made it possible to provide human rights and freedom of expression training to public officials and established regular cooperation between the federal mechanism and Veracruz state authorities. Also, statistics have been collected and maps have been made to help identify at risk areas and populations. Likewise, investigations opened into attacks on journalists are being monitored.

213. The Office of the Special Rapporteur also notes that the Government Council of the Federal Protection Mechanism took an important step by deciding to issue an early warning on August 11, 2016, aimed at preventing attacks against human rights defenders and journalists in the state of Chihuahua. According to a number of organizations, the decision “represents a significant step forward because it explicitly recognizes the grave risk faced by people who work in journalism or defense of human rights in that state, which is one of the federal entities with the highest number of attacks on human rights defenders and the greatest number of journalists murdered.” The decision was made in response to a request filed by a group of 25 human rights defender organizations in Chihuahua.

214. The Protection Mechanism performed an analysis of the situation of human rights defenders and journalists in Chihuahua and published it in July 2016. The analysis identifies situations that put the fundamental rights of human rights defenders and journalists at risk using an interpretive risk model with four elements: (i) territorial dynamics; (ii) violence; (iii) the conditions of at-risk social sectors, human rights defenders, and journalists; and (iv) the operation of the guarantees system. To collect the information needed for the interpretive risk model through the Prevention, Monitoring, and Analysis Unit, three methodologies were used: a timeline on violence was prepared; a risk map was drawn up to identify, locate, and analyze risk.

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275 Federación Internacional de Derechos Humanos (FIDH), Observatorio (OMCT-FIDH) and Centro de Derechos Humanos de las Mujeres (CEDEHM). September 15, 2016. México: Por primera vez se emite una alerta temprana para prevenir agresiones a defensores/as de derechos humanos y periodistas."
variables; and relevant institutional and social actors and relations were mapped out. The combination of these three methodologies enables projection of future risk scenarios.276

215. The analysis concludes that given "the territorial characteristics, the violence dynamics described in this document, and the weaknesses of the system of guarantees, it is likely that the attacks on human rights defenders and journalists will continue, as will violations of their human rights."277 It indicates that "the federation and federal entities must work together efficiently and strategically to enable developments of preventative initiatives that are structural and have a broad scope and that include the involvement of the affected populations in an exercise of democratic coresponsibility."278

216. By adopting this special measure, the Mechanism committed to implementing the recommendations that the CNDH and the State Human Rights Commission of Chihuahua issued to the various governmental authorities involved in prevention of and protection from attacks on the populations in question.279 The Commission hopes that all the government authorities involved—both federal and state—fulfill their commitments. It also hopes that journalists, human rights defenders, and civil society are able to participate effectively, actively, and with full guarantees in the development and monitoring of the early warning system.

217. The Office of the Special Rapporteur sees the use of early warnings as important as a way to facilitate interinstitutional coordination between the authorities in charge of prevention, protection, and administration of justice for crimes against journalists. At the same time, is important for institutions to recognize the difficult security situation facing journalists and human rights defenders in particular areas and the risks they face due to the work they do reporting on or revealing human rights violations committed by criminal groups. These mechanisms can be very useful in certain silenced zones to prevent increases in violence. But they can also be useful in places showing patterns of violence for State authorities to take early action with the participation of civil society to protect vulnerable populations and prevent violence and lack of visibility thereof from taking over.

Special State-level Mechanisms

218. In recent years, certain states in the Federation have also established autonomous state mechanisms for prevention and the protection of at-risk journalists. For example, the Federal District, the state of Morelos,280 the state of Veracruz, in November of 2012, facing a context of intense violence committed against journalists,281 amended its Constitution to create a “State Commission for Attending to and Protecting...
Journalists.” The operation of the state mechanism was later outlined in the law passed in December 2012 and its corresponding regulations. Among other things, these norms establish the structure of the Commission and its administrative bodies, and the procedure for accessing protective measures. Finally, according to the information received, other states in the Federation, including Chihuahua, San Luis Potosí and Hidalgo also established mechanisms for protecting at-risk journalists.

219. Despite the progress made through both the Federal Protection Mechanism and the protection arrangements made by Mexico’s States, the Office of the Special Rapporteur notes that these entities still face the challenge of gaining credibility and trust in the eyes of beneficiaries and proposed beneficiaries. As the mechanism gains the trust of journalists and civil society organizations, more at-risk journalists will approach it to seek protection which, as demonstrated in the case of Colombia and already in some areas of Mexico, helps prevent crimes against journalists.

- Honduras

220. Both the IACHR and its Office of the Special Rapporteur have paid special attention to the violence perpetrated against journalists and media workers in Honduras and its effect on the respect for and guarantee of the right to freedom of expression. While acknowledging that the problem of violence and the high murder rate affect all sectors of Honduran society, the IACHR found during its 2014 in loco visit that journalists and communicators faced a grave situation of insecurity when exercising their freedom of expression that makes them a particularly vulnerable group. Given the seriousness of the situation facing people who do journalism in the country, the final report for the 2010 in loco visit by the IACHR indicates a need to establish a permanent protection mechanism to protect the lives and safety of journalists and communicators. For its part, in a report on the 2012 visit to Honduras, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlighted the government’s initiative to submit the draft bill on the protection mechanism. In that same report, the Rapporteur recommended that the mechanism have a committee made up of senior government representatives and its own budget, and that the protection measures must be compatible with the work that journalists do. The Office of the Special Rapporteur recognizes the commitment of the Honduran State to guaranteeing protection for human rights defenders and journalists in that it is taking up the recommendations of the inter-American system and the universal system for the protection of human rights.

221. The Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials of Honduras was passed on April 15, 2015, by unanimous vote of the National Congress in the third and final round of approval.

222. The law recognizes the importance of the work that human rights defenders, journalists, communicators, and justice officials do. Consequently, its objective is the protection and promotion of the

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287 Congreso Nacional de Honduras. Decreto No. 34-2015. Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia.

288 Congreso Nacional de Honduras. Congreso Nacional aprueba en segundo debate Ley de Protección a Periodistas y Ley Anti
constitutionally recognized rights and guarantees of natural and legal persons dedicated to defending human rights and freedom of expression and performing legal work that puts them at risk. The principles established in this law include coordination between the State agencies in charge of protecting and promoting the rights of the target populations, from decree to implementation and execution of protection measures. The law’s principles also include a gender and differential focus for implementing protection measures that are tailored to each beneficiary.

223. The law’s general provisions broadly define those its considers as journalists, social communicators, photographers, camera operators, and photojournalists in the media as “natural people who perform the work of collecting, creating, processing, editing, commenting on, opining on, disseminating, publishing, or providing information through any media, whether print, broadcast, digital, graphic, or any other.”

224. Five types of measures were established for preventing and deterring risk to the rights of the target population: (i) preventative measures to reduce risk factors; (ii) reactive measures, including security and measures to address risk and protect the life and safety of the beneficiary; (iii) urgent measures of protection to immediately protect the life, integrity, and freedom of the affected individual; (iv) psychosocial measures focused on addressing psychological and social damage caused by violence; and (v) measures to deal with impunity, aimed at guaranteeing that those responsible for the attacks on beneficiaries are investigated, tried, and punished. As far as tools of prevention, the law would strengthen accountability mechanisms, ratify international human rights instruments, and encourage a culture of respect for human rights. It further establishes that the State must put mechanisms in place to facilitate results monitoring and the struggle against impunity that would allow it to determine areas of risk and whether there has effectively been a reduction in human rights violations.

225. The text approved would create a "National Council for the Protection of Human Rights Defenders," a consultative, deliberative, and advisory body of the National System for the Protection of Human Rights Defenders. This council would be made up of representatives from each of the following agencies: the Human Rights, Justice, Governance, and Decentralization Office of the Department of State; the Foreign Affairs and International Cooperation Office of the Department of State; the Office of the Public Prosecutor; the Judicial Branch; the Office of the Attorney General of the Republic; the Security Office of the Department of State; the Office on Defense of the Department of State; the Bar Association of Honduras; the Journalism Association of Honduras; the Press Association of Honduras; the Association of Judges and Magistrates; the Prosecutors Association; and two civil society representatives recognized by the National

Bullying  August 6, 2014; Teleprensa  August 7, 2014. CN aprueba en segundo debate Ley de Protección a Periodistas y Ley Anti Bullying.


293 Congreso Nacional de Honduras. Decreto No. 34-2015. Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia. Article 15.


Human Rights Commissioner. In addition to the ones already described, the Council’s functions include “promoting or directing the design and implementation of manuals, public policies, and programs to guarantee and make effective the rights enshrined in the (...) law,” as well as present annual reports on the status of the target populations and make recommendations to the relevant authorities.

226. The law also establishes that the General Directorate of the Protection System, the system’s executive body, will form part of the structure of the Department of State in its human rights, justice, governance, and decentralization offices. Its authorities include receiving all requests for protection and processing them; drafting operational protocols necessary for effective application of the law; and ex officio application of security measures when an individual under protection faces a risk requiring urgent measures. It also must request and constantly monitor provisional measures of the Inter-American Court of Human Rights, precautionary measures from the Inter-American Commission on Human Rights, and the corresponding security measures ordered by the State’s judiciary bodies. The General Directorate will be the Executive Secretariat of the National Protection Council.

227. The law orders the creation of a Technical Committee for the Protection Mechanism that will be in charge of drafting the opinions resulting from risk analysis, deliberation, and decisions on requests for protection filed with the General Directorate. The Technical Committee will be comprised of the General Director of the Protection System and a representative of the Office of the Attorney General of the Republic, the Office of the Human Right Prosecutor, and the human rights department of the Department of State in the Security Office.

228. Pursuant to best practices and to the recommendations made by the IACHR and its Office of the Special Rapporteur, the measures issued must at no time restrict the work of the target population. The law establishes that the measures must be implemented within 48 hours of receipt of the order granting them. It should also be noted that the decisions of the Technical Committee must follow the protocols established by the Directorate of the National Protection System. These protocols must take into consideration the differences between target populations as far as gender, ethnic origin, gender identity, sexual orientation, or any other condition requiring differentiated treatment.

229. The mechanism gives authority to establish cooperation agreements with domestic and international bodies thereby enabling access to other sources of financing. All the information on the protection law and protection mechanisms will be subject to the rules established in the Transparency and Access to Public Information Act.

230. In its report on human rights and Honduras, the IACHR expressed appreciation at the adoption of the protection mechanism, but at the same time expressed a number of concerns received at various times from civil society organizations regarding the following requirements that are not provided for in the law’s final provisions: (i) the National System of Protection of Human Rights Defenders would not have the necessary characteristics of functional autonomy; (ii) the incorporation of the Secretariat of Defense in the National Council for the Protection of Human Rights Defenders would not be appropriate for securing the safety of

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beneficiary groups and could jeopardize the trust of users in the mechanism; and (iii) reducing the number of representatives of the civil society in the National Council for the Protection of Human Rights Defenders would affect the participation of beneficiary groups in the mechanism.  

231. The IACHR has noted that properly equipping these mechanisms would help the State meet its obligation to protect by bringing it into closer contact with human rights defenders and informing it specifically on particular situations they face, consequently enabling it to intervene quickly, in a specialized way, and proportional to the risk that they may be facing.  

232. In the framework of the follow-up to the compliance of the recommendations made by the IACHR in its report on the situation of human rights in Honduras, the State reported that during the short amount of time that the mechanism was in place, it handled 38 requests for protection, eight of them submitted by journalists. Further, according to the information received, during the process to draft its regulations, the recommendations made by international bodies—including the IACHR—were taken into account. The process also includes the participation of members of civil society. With regard to the mechanism’s budget, the National Congress budgeted “10 million lempiras to ensure the sustainability of the implementation of the law” and authorized “10 million lempiras (approximately US$426,092.20) for the Special Protection Fund, which will enable it to make the protective measures effective.”  

233. During the 159th Period of Sessions of the IACHR, a public hearing was called on the progress of the protection mechanism in Honduras in which both members of civil society and State representatives participated. At the hearing, civil society reported a number of challenges to the IACHR that have arisen in implementing the mechanism. They included minimal participation of civil society in the mechanism’s various levels, as the protection mechanism’s technical committee, which is in charge of conducting risk analysis and deciding what protection measures to adopt, is comprised only of State institutions. They also complained that the law establishes that the decisions of the technical committee can be challenged through a remedy that is ruled on by the General Directorate, which is part of the technical committee, meaning that the administrative appeal provides no guarantee of independence. While the regulations establish that a bill to amend the law will be submitted to correct the situation, civil society noted that so far, none has been submitted to the National Congress. On measures of protection, the civil society representative stated that in the best cases, they have been limited to protecting the lives of people. However they have not taken into consideration that the measures must not block those they protect from working. They lamented that so far, no system had been put in place for handling information on the situation of prevention and protection for human rights defenders. Finally, they expressed concern at the mechanism’s lack of transparency and reticence at disclosing the information requested by civil society.  

234. The Office of the Special Rapporteur recalls that for a protection program to be effective, it must be supported by a strong political commitment from the State and have sufficient and well-trained human resources for receiving the requests for protection, assessing the risk, and adopting and executing the protection measures, as well as monitoring the measures in place. The State represented by the
institutions that form the National Protection System must ensure that the law is followed, with special focus
on the issues that have raised concerns, such as the participation of the Department of Defense and the
implementation of transparent measures to guarantee civil society participation, such that sectors that are
part of the target population but not part of professional organizations are represented in the National
Protection Council. The State likewise must comply with the provisions of the law intended to guarantee the
mechanism’s financial sustainability.

235. Finally, evaluation of these State mechanisms must examine their effectiveness at reducing violence
against human rights defenders, journalists, and justice officials in the country. Although the law provides for
the creation of mechanisms to measure this, it is not clear who will be in charge of this important work.

236. The Office of the Special Rapporteur notes that the law was passed in April 2015, meaning that the
mechanism is in the early stages of implementation. Resolution of a number of pending issues is therefore
fundamental for ensuring its effectiveness and proper application. Among these challenges, the Office of the
Special Rapporteur would particularly like to point to the importance of taking all measures necessary to
assign and train the staff necessary for the three technical aid units to operate effectively; guaranteeing that
studies and implementation of urgent, preventative and protective measures are conducted in line with
professional technical standards and with a differential approach according to the conditions of each
beneficiary, following proper guidelines and meeting the deadlines set by law; and that the urgent measures
and protective measures granted are not replaced or withdrawn prior to the resolution of potential disputes.
The Office of the Special Rapporteur also observes that the mechanism faces a lack of trust on the part of
beneficiaries and proposed beneficiaries. It is thus essential for the mechanism to adopt procedures to enable
it to evaluate the effectiveness of the measures granted and implement processes that facilitate transparency.

• Guatemala

237. The State of Guatemala has expressed its intention to implement a protection mechanism since 2012,
when, in the context of its participation in the Universal Periodic Review (UPR) before the UN Human Right
Council in October of 2012, the government of Guatemala announced that it was preparing a national plan for
the protection of journalists from threats to their physical integrity.311

238. The IACHR, its office of the special Rapporteur, UNESCO, and the UN High Commissioner for Human
Rights have repeatedly recommended that the State of Guatemala move forward in creating a program for
protecting journalists and media workers. However, the implementation of such a protection system is still
only the subject of talks. In 2014, a high-level roundtable and a technical roundtable were established—
including the participation of the Presidential Committee for Coordinating Executive Policy on Human Rights
(Copredeh), the Governance Ministry, the Public Prosecutor, and the Department of Social Communication of
the Presidency of the Republic (SCSPR)—to design and implement a program to protect journalists.312

239. In 2015, the government took positive steps toward designing a mechanism, with consultations with
civil society and human rights organizations. The high-level roundtable and the technical roundtable worked
to design and implement the mechanism for protecting journalists. The work continued with support from
Unesco and the Office of the UN High Commissioner for Human Rights (UNHCR). The process to build a
mechanism resulted in a document entitled "Preliminary Proposal for a Program to Protect Journalists." The
document identifies the institutions that would form the program, their protective functions, and how
coordination would operate. The document was discussed by journalists and defenders of the right to
freedom of expression. Based on their comments, recommendations, and observations, the technical
roundtable presented the conceptual design of the System for the Protection of Journalism Activities

hora/Agencia CERIGUA. July 25, 2012. Elabora plan para periodistas; Centro de Reportes Informativos sobre Guatemala (Cerigua).

However, a number of journalism associations said they had had little or no involvement in drafting the proposal. In 2016, following the inauguration of a new government, the administration of President Jimmy Morales moved to suspend the process and begin a new process for setting up the mechanism.

On July 19, representatives of the alliance of media organizations met with the president of Guatemala, Jimmy Morales, and presented him with the content of the proposal for creating a program or mechanism for protecting journalists. The president pledged to support the proposal and assured them they would have the "full support" of the presidency for "making the project a reality."

According to information published by civil society organization Cerigua, the organizations’ proposal includes the creation of a surveillance and coordination unit made up of a highly qualified technical team, as well as a training unit with experts on freedom of expression and freedom of the press to work in coordination with the structure of the State. The fundamentals highlighted by the proposal include the following: the program must be apolitical; it must have space for agreement on and coordination of the defense of journalists; the State must commit to its responsibility on the issue, and journalists and communicators, professional associations, the media, and specialized institutions must all cooperate; and finally, the minimal necessary structure for supporting the mechanism adopted and designation of the necessary human and material resources for effectively implementing the program must be provided. Also, having up-to-date, trustworthy, and accurate information on the situation of journalists, along with an instrument with data specific to the program, were seen as indispensable for building the safety and protection mechanism. The proposal recommends that preventative actions, training for police, prosecutors and judges on the issue, and providing the public prosecutor’s crimes against journalists unit with the necessary resources be seen as priorities.

The Office of the Special Rapporteur believes the Guatemalan State should make it a priority to comply with the recommendations of the international organizations and move forward in the process to create a mechanism to protect journalists and implement it as soon as possible. In particular, it is essential that the mechanism be implemented through a high-level official and inter-institutional committee; be led by a State authority with the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of civil society, journalists, and media workers, whose participation must also be guaranteed in the implementation and operation of that program. The Office of the Special Rapporteur reiterates that it is important for the programs for the protection of journalists to take into account the need to guarantee that journalists are able to continue to perform their professional activities and to guarantee their right to freedom of expression when designing the measures of protection available, taking into account the circumstances in each specific case and in consultation with the potential beneficiaries.

Despite the lack of a specialized mechanism, the country has other mechanisms in place for protecting victims, witnesses, and justice officials, to which journalists have access. The Service to Protect People Involved in Legal Proceedings and Individuals Connected to the Administration of Criminal Justice, which operates under Decree 96 of the Congress of the Republic, provides coverage to, a professional activities and to guarantee their right to freedom of expression when designing the measures of protection available, taking into account the circumstances in each specific case and in consultation with the potential beneficiaries.

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The Protection Service is set up within the organizational structure of the Office of the Public Prosecutor and its main role is to provide protection to individuals exposed to risks as a result of their participation in criminal proceedings.\textsuperscript{317} The protection system is composed of a Board of Directors comprised of the Attorney General of the Republic, a representative of the ministry of Interior and the director of the Office of Protection. Its responsibilities include designing general protection policies; approving programs and plans presented by the director of the Office of Protection; issuing general instructions for protection; and approving the necessary expenditures for the protection plans. The protection service has an Office for Protection that acts as the executor of the policies of the Board of Directors and decisions of the director. The Office of Protection is also responsible for examining requests for protection.\textsuperscript{318}

244. As established in Decree 70-96, in order to access protection services, a request must be sent to a program official and information provided on the case. The information is analyzed through a review carried out by the Office of Protection that must take into account in its analysis whether the risk to which the petitioner is exposed is “reasonably certain” and the gravity of the punishable act and its "social transcendence." The measures granted by the protection service include the protection of beneficiaries using security personnel; change of residence that could include housing, transportation and living expenses; protection of security personnel at the place of residence and/or the workplace of the beneficiaries; change of identity; and other benefits. The measures can be lifted at the conclusion of the term granted if the circumstances of risk on which the protection was based have disappeared, or should the beneficiary fail to comply with the conditions or obligations established in the agreement signed with the director of the Board of Directors.\textsuperscript{319}

245. Likewise, the Guatemalan State reported on the existence of the Coordinating Unit for the Protection of Human Rights Defenders, Administrators and Operators of Justice, Journalists and Social Communicators. The unit was created in 2004, became a Department in 2008, and currently has the status of Directorate. The agency is responsible for "coordinating the executive branch institutions in charge of granting and implementing protective measures for individuals who request precautionary, provisional and security measures before the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Rapporteurs of the Universal System […], or national mechanisms. Its purpose is to guarantee effective compliance."\textsuperscript{320}

- Brazil

246. Brazil has also taken steps to include journalists under a protective mechanism for at-risk individuals. Although the mechanism in question is a "Program for the Protection of Human Rights Defenders" (PPDDH), the Brazilian State has indicated that the program may provide protection to journalists under a broad definition of human rights defenders.\textsuperscript{321}

247. The program for the protection of human rights defenders was established in 2004 by the federal Executive Branch, under the Human Right Secretariat\textsuperscript{322}[Secretaria de Derechos Humanos] (SDH). The program's current legal framework is based on Decree No. 6,044 of 2007\textsuperscript{323}, which establishes the National Human Rights Defender Protection Policy in order to establish “principles and directives for the protection


\textsuperscript{322} Secretaria Especial de Direitos Humanos do Ministério da Justiça e da Cidadania. \textit{Proteção dos Defensores de Direitos Humanos}.

\textsuperscript{323} Estado de Brasil. \textit{Decreto 6044}, February 12, 2007.
and aid of physical or legal persons, groups, institutions, organizations, or social movements that promote, protect, or defend Human Rights and as a result of their actions or activities face a situation of risk or vulnerability.’’

248. Likewise, Decree No. 6,044 provides the SDH 90 days to prepare a National Plan for the Protection of Human Rights Defenders. However, as of the publication date of this report, the Plan has not been adopted. Given the absence of a National Plan, the Decree grants the federal government and the states the option of adopting urgent protective measures - *ex officio* or upon request - that are “immediate, provisional, precautionary and investigative,” in order to guarantee the “physical, psychological and financial integrity” of the at-risk or vulnerable human rights defender. Likewise, the Decree authorizes the federal government’s human rights and public safety bodies to sign agreements with the states and the Federal District for the implementation of the protective measures.

249. On the federal level, the PPDDH is in the hands of a General Coordination Committee, associated with the Human Rights Secretariat and composed of members of civil society and representatives of the executive, legislative and federal judicial branches. Likewise, states that have signed agreements to participate in the program have State Coordination Committees. The national coordination committee and the state committees are deliberative bodies and have the authority to respond to requests for protection and determine which measures should be adopted and implemented. The National Committee is in charge of the requests for protection that come from those states that do not have their own coordination committees. The federal program and participating states can also have a Federal Technical Team and state technical teams for evaluating requests for protection and the level of risk faced by applicants and their families, as well as periodically monitoring the cases.

250. In order to access the program, at-risk human rights defenders or any other agency that is aware of the situation of risk must send the request for protection to the State Coordinator or the General Coordinator (when the state in question is not part of the program). The request is evaluated by the corresponding state or federal protective program. The request for protection must demonstrate the willingness of the potential beneficiary to access the program, the individual’s actions for the defense of human rights, and the causal nexus between the risk and the person’s activity as a human rights defender. Following the risk assessment carried out by the technical teams, the state or general deliberative coordination bodies determine which measures must be adopted in a specific case, with the general objective of “guaranteeing protection in order that [human rights defenders] may continue working where they are located.”

251. The protective measures provided for under the program include periodic visits to the beneficiaries’ workplaces, temporary relocation, and police protection. The program takes a holistic focus that seeks to deactivate the underlying causes of the insecurity and places emphasis on the coordination of protective actions with the measures that must be adopted in other areas of the State, such as the criminal justice system and land registry authorities. The measures are periodically evaluated by the technical teams and can be lifted should the beneficiaries fail to comply with the program’s rules, at the request of the beneficiaries, or upon the elimination of the threat or risk.

252. In general, the program has been implemented in states through agreements with civil society organizations. For example, in the state of Ceará, the PPDDH operates through an agreement between that

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state’s Secretariat for Justice and Citizenry and nongovernmental organization Center for the Defense and Promotion of Human Rights of the Archdiocese of Fortaleza (CDPDH). As of the publication of this report, six states have formally established the program, although it is being implemented in a total of nine Brazilian states. The Office of the Special Rapporteur has received information on the difficulties the mechanism has faced adjusting to the needs of journalists and the lack of awareness among the media workers about it, both of which have detracted from its effectiveness at providing guarantees to those who are threatened due to their journalism activity.

Observatory on Violence against Communicators

253. Brazil is the largest country in South America, and violence against journalists there has a distinct local context. While it cannot be said that journalists face a general situation of violence, in recent years, they have been threatened, harassed, and even murdered in certain areas of the country, such as for example the Northeast, Southeast, and Central East. For this reason, the Office of the Special Rapporteur highlighted the recommendation made in March 2014 by the Working Group on the Human Rights of Communication Professionals in Brazil in its final report.

254. This document, which has been approved by the Council for the defense of the rights of the human person, recommended that the three branches of government—executive, legislative, and judicial—and its various agencies undertake a series of actions. Its first recommendation was the creation of an “Observatory on Violence against Communicators.” Under the proposal, the Observatory should be structured with the following elements: 1) a unit for receiving and monitoring reports of violations; 2) a system of indicators; and 3) a mechanism for protecting communication professionals based on the experiences of the Special Human Rights Secretariat of the ministry of Justice and Citizenry. In addition, the Special Secretariat of Human Rights recommended expanding the "national protection system to cover communicators facing threats, taking into account the specificities of the activities of these professionals, and, beyond the measures of protection provided to communicators, establishing measures to protect them in their workplaces," including "civil society organizations that work on issues related to the exercise of freedom of expression and communicators in the National Office of the Protection Program to meet the particular needs of communicators," and conduct "a campaign to inform journalists of the protection program."

255. Decree No. 8.724 of April 27, 2016 created the Program for the Protection of Human Rights Defenders "for purposes of coordinating measures for the protection of persons who are threatened because of their human rights defense work," and established its Deliberative Council, composed of two representatives of the Special Human Rights Secretariat of the ministry of Women, Racial Equality, Youth, and Human Rights, one of whom serves as the coordinator and the other as the representative of the


338 The Ministry of Women, Racial Equality, Youth, and Human Rights was eliminated on May 12, 2016, through Provisionary Measure [Medida Provisória] No. 726.
National Public Security Secretariat of the ministry of Justice. The decree similarly provides that one member of the Office of the General Attorney [Ministerio Público Federal] and one representative of the Judiciary [Poder Judiciário] may be invited to join the Council. According to the decree, both are within the purview of the Special Human Rights Secretariat of the ministry of Women, Racial Equality, Youth, and Human Rights. Civil society considers some aspects of that decree problematic—for example, it does not provide for the participation of public agencies or civil society in the program’s coordination or deliberative council, nor does it cover institutions or groups that defend human rights, as it only provides protection to individuals. Also, the decree is limited to covering “threatened persons,” not people “facing risk or vulnerability.”

256. More recently, according to information received by the Office of the Special Rapporteur, the country’s alleged political and financial crisis have affected the execution of the Protection Program with measures such as Portaria 161, published on June 13, 2016, that would suspend a number of activities conducted by the Justice and Citizenry Ministry, thereby impacting a number of human rights policies and programs. On September 5, this Portaria was extended to December 31, 2016.

257. The criticisms of the Program to Protect Human Rights Defenders in Brazil focus particularly on the lack of the legal framework in the country despite the fact that since 2009, a bill has been before the National Congress; the lack of clarity on the methodology used by the PPDDH to assess risk; the alleged lack of protection strategies aimed at minority groups; and the difficulties that states have had communicating with human rights defenders and understanding their specific needs for protection.

3. Obligation to Criminally Investigate, Try, and Criminally Punish

258. As mentioned previously in this report, impunity encourages the repetition of acts of violence against journalists. When crimes committed against journalists or media workers remain in impunity, it not only fosters an environment that is hostile toward the media but also has serious implications for democracy because it breaks the trust of victims and their relatives in State institutions and encourages journalists to self-censor. Impunity has a strong chilling effect on the exercise of freedom of expression, and its consequences for democracy—which depends on the free, open and dynamic exchange of ideas and information—are particularly serious.

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Along these lines, the United Nations special Rapporteur for freedom of expression and opinion has stated that "impunity for those who attack and/or kill journalists is a central obstacle to guaranteeing the protection of journalists and press freedom, as it emboldens perpetrators as well as would-be perpetrators to attack journalists with no legal consequences. Indeed, impunity is one, if not the main cause of the unacceptably high number of journalists who are attacked or killed every year. States must recognize that in cases of violence against journalists, impunity generates more violence in a vicious cycle."\(^{346}\)

The Office of the Special Rapporteur has been able to document that in areas where journalists have chosen to self-censor, one of the problems they face is impunity for the attacks. While the perpetrators are identified in some cases, seldom are the masterminds identified or the criminal organization behind the crime dismantled.

The Office of the Special Rapporteur recalls that when it comes to violence against journalists and media workers, both the court and the Inter-American Commission have found that a lack of compliance with the obligation to investigate incidents of violence against journalists may also represent a failure to fulfill the obligations to respect and guarantee the right to freedom of thought and expression.\(^{347}\)

Explanations for the generalized impunity seen in cases of violence against journalists vary. In some cases, it is possible to point to deficiencies in the law, such as amnesty laws or the disproportionate granting of leniency. There may also be institutional failings, such as a lack of technical capacity, adequate resources and specialized personnel in investigative bodies. The majority of the countries in the region have not put special protocols in place requiring authorities to exhaust the line of investigation into the exercise of the profession as a factor in cases of crimes committed against journalists. This presents an obstacle to the criminal prosecution of these crimes and is a special factor in the impunity of masterminds. Delays, omissions and failures in the timely and adequate carrying out of evidence procedures, especially with regard to initial investigative steps - such as crime scene analysis, the examination of the corpus delicti and the collection of statements from witnesses - are elements that can contribute considerably to impunity in individual cases.

Likewise, another fundamental factor in many cases is the lack of independence and impartiality of the authorities responsible for pursuing the investigations and corresponding legal proceedings. This phenomenon is especially concerning in cases in which the security forces or State authorities are suspected to have participated in the crimes committed.

However, the complexity of this phenomenon suggests that other factors may also come into play, including a lack of political will to launch effective investigations or even the existence of a culture of intolerance toward criticism, or the tacit acceptance of the crimes committed, especially in cases in which the violence is committed against journalists who allege corruption among state authorities.

Finally, there are other considerably relevant social factors that cannot be ignored and that have to do with the existence of powerful criminal groups that, in some places, may seriously weaken the State's capacity to defend, guarantee and promote human rights. No doubt, in areas with a strong organized crime presence, another important factor is the improper influence exercised over the judicial system through intimidation, and in some cases the complicity of police officers, prosecutors and judges, as well as witnesses and civilian parties. In that sense, the lack of protective measures and adequate investigation into attacks on or even murders of witnesses, individuals linked to the investigation or the alleged perpetrators presents a significant obstacle to establishing the facts and the possibility of criminally prosecuting those responsible.

a. **Obligation to Adopt an Adequate Institutional Framework that Allows for the Effective Investigation, Trial, and Punishment of Violence Against Journalists.**


266. The existence of an adequate institutional framework is crucial for States to be able to investigate, try and criminally punish crimes against journalists. In this sense, States have the obligation to guarantee that institutional frameworks are not designed so as to lead to or even encourage impunity when these crimes take place.

267. The first determining factor for complying with this obligation is assigning the responsibility to investigate and try these crimes to the authorities that will best be able to resolve them and that are autonomous and independent. States must ensure not only the hierarchical and institutional independence of the authorities responsible for moving the investigations and judicial proceedings forward, but also that their independence can be verified in practice in the case in question. In particular, the bodies of the inter-American system have repeatedly indicated that when State security services are alleged to have committed human rights violations, including acts of violence against journalists, under no circumstance can these cases be investigated and brought to trial under the military justice system. When local authorities have a limited investigative capacity and/or are more exposed to pressure from the criminal organizations that attack journalists, the potential for exercising federal jurisdiction is especially important. In States with centralized governments, pertinent law must allow the assignation of competency to investigate and punish these cases to authorities outside the sphere of influence of the officials being accused or the reach of the criminal organization concerned.

268. The second element of that obligation is the duty to clearly define the formal jurisdiction of the authorities in charge of investigating and processing these crimes. This obligation is especially fundamental for defining the authority to assert jurisdiction for those cases in which the domestic legal context allows for the possibility of federal authorities or authorities from a different jurisdiction taking over an investigation.

269. There are currently a number of examples in the region of public prosecutor offices or units dedicated exclusively to investigating crimes against journalists. In its report following its in loco visit to Mexico in 2010, the Office of the Special Rapporteur hailed the establishment of the Office of the Special Prosecutor on Crimes against Freedom of Expression [Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión] (FEADLE), and it has highlighted the importance of keeping it within the structure of the Office of the Attorney General of the Republic (PGR). The Mexican government, through an agreement with the Prosecutor General of the Republic, dated February 15, 2006, created the Special Prosecutor's Office for Crimes against Journalists (FEADP), as an administrative body of Office of the Prosecutor General of the Republic's specialized in dealing with matters relating to criminal acts committed against journalists. The FEADP was subsequently modified in a new agreement of July 5, 2010, becoming the Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE), with the objective of responding “to the persistent and deeply-felt demand on the part of society as a whole with regard to the improvement and reinforcement of government actions which guarantee the physical and moral integrity of those engaging in journalistic or informative activities in Mexico.”

270. In 2010 the rapporteurs for freedom of expression for the OAS and the UN recognized the importance of the creation of the Office of the Special Prosecutor for Crimes against Freedom of Expression [Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión] (FEADLE) in the PGR, however they noted the need for political will in order to strengthen it and give more autonomy to the local PGRs, as well as strengthening the capability of action public agencies for human rights have. Due to the ambiguous and deficient jurisdiction of FEADLE, recommendations were also made to make the necessary reforms in order to “allow the exercise of federal jurisdiction on crimes against freedom of expression.”

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271. Complying with said recommendations, in May of 2013 the National Congress passed legal reform wherein it changed several federal laws to regulate Federal Public Prosecutor jurisdiction and that of the federal justice system to prosecute and adjudicate crimes against journalists, persons or facilities that: “affect, limit or undermine the right to information or freedom of expression or of the press.” Said reform had as its objective to overcome the legal barrier that FEADLE had to assume jurisdiction and be more effective in solving cases that may be related to the exercise of journalism.

272. Following the IACHR’s in loco visit to Mexico in 2015, it expressed concern regarding the obstacles that FEADLE continues to face in practice to taking over investigations in cases of violence against journalists. The IACHR thus recommended “Remove all obstacles so that, in practice, the Specialized Prosecutor’s Office for Attention to Crimes against Freedom of Expression [Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión] (FEADLE) may absorb investigation of crimes against journalists and against freedom of expression. This way, make more effective the exercise of federal jurisdiction over crimes within its competence and guarantee that the most serious violations of freedom of expression are always investigated by that Office.”

273. In the case of Guatemala, in 2001 it created the “Prosecution Unit for Crimes against Journalists” of the Human Rights Prosecution Section of the Office of the Public Prosecutor and “it became the specialized Prosecution Unit with national jurisdiction in 2011.” The purpose of the Prosecution Unit is to “give special treatment to crimes committed against journalists and to draw national attention to the existence of the Prosecution Unit for crimes against journalists, for purposes of implementing a direct procedure for the filing of complaints.” The Unit reportedly has jurisdiction to handle all crimes committed against journalists “in the practice of their journalistic work” anywhere in the country. It is comprised by a Prosecutor, Assistant Prosecutors, and a Prosecution Officer. In its report on the human rights situation of Guatemala, the IACHR observed “that the Unit for Crimes against Journalists in the Public Prosecution Service has been a welcome improved in terms of investigation and the arrest of aggressors, only has five attorneys to investigate, crimes, attacks, and threats against media personnel, with more than 100 cases still awaiting clarification.”

274. In November 2016, Attorney General Thelma Aldana announced the restructuring of the Crimes against Journalists Unit with the goal of strengthening it and improving the quality of its investigations.

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350 Estados Unidos Mexicanos. Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal, May 3, 2013.

351 Estados Unidos Mexicanos. Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal, May 3, 2013. In that regard, the reform provides, among other provisions, that the federal authorities may exercise their authority to assert jurisdiction in cases where the author's willful intent is presumed and at least one of the following circumstances occur: (i) when there are indications of the participation of a state or municipal public official in the offense; (ii) when the victim has indicated in his complaint that a public state or municipal official is responsible; (iii) when the victim has indicated in his complaint that a public state or municipal official is responsible; (iv) when the life or physical integrity of the victim or offender person is at real risk; (v) when it is requested by the competent authority of the federative entity; (vi) when the facts constituting a crime have a significant impact on the exercise of the right to freedom of expression; (vii) when there are objective and generalized circumstances of risk for the exercise of the right to freedom of expression in the federal territory where the crime was committed or its results were manifested; (viii) when the act constituting an offense transcends the domain of one or more federal entities; or (ix) when, by judgment or resolution of a body provided for in any international treaty of which the Mexican State is a party, the international responsibility of the Mexican State has been determined by default or omission in the investigation, prosecution or prosecution of these offenses.


275. Though not focused specifically on crimes against journalists, the International Commission against Impunity in Guatemala [Comisión Internacional Contra la Impunidad en Guatemala] (CICIG)\textsuperscript{357} has also attracted attention as an innovative investigative body that employs international specialists to support domestic prosecutions of complex crimes.\textsuperscript{358} The result of an agreement between the United Nations and the Government of Guatemala, CICIG was established in 2007 as an independent, international body designed to support the Office of the Public Prosecutor, the National Civil Police and other State institutions in the investigation of crimes committed by members of illegal security forces and clandestine security structures and, in a more general sense, help to disband such groups. To do so, CICIG assists with investigations and criminal prosecutions in select complex cases, as well as implementing steps—in accordance with its mandate—aimed at strengthening the institutions of the justice system so that they can continue to tackle these illegal groups in the future.\textsuperscript{359} The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has observed that while “CICIG is not specifically directed towards journalists, it draws attention to issues at the heart of the problem of impunity.”\textsuperscript{360} In this way, it has the potential to address structural factors, including the role of organized crime and the weakness of the justice system, that contribute to violence and impunity in the case of journalists. More generally, CICIG’s approach to strengthening domestic investigative capacity by employing international experts to work side-by-side with national prosecutors may serve as a model for countries that have the political will to tackle violence against journalists but lack the technical expertise and resources to do so effectively.

276. In the case of the homicide of journalists Danilo López and Federico Salazar, which took place in Mazatenango and was covered in this report (Chapter II), the Office of the Public Prosecutor has worked together with the ICIG. In July 2015, the Freedom of the Press Committee of the Association of Guatemala and Journalists lauded “the efforts of the Crimes against Journalists Unit” to investigate the murders of journalists and praised “the intent and willingness” of the ICIG commissioner, Iván Velásquez, to “assist in the investigations.”\textsuperscript{361}

277. The Office of the Special Rapporteur also took note that the Office of the Attorney General of the Nation in Colomba created a series of special criminal investigation taskforces to look into threats against union members, human rights defenders, journalists, and justice officials issued due to their positions using technically advanced means. The group is made up of three prosecutors, two assistant prosecutors, a secretary, three computer crimes investigators, two forensic investigators, and five investigators from the National Office of the Technical Investigations Group, which is under the Cyber Police Center.\textsuperscript{362} Although as of the publication of this report, no cases have been solved by this task force, its creation is a recognition of the challenge of investigating crimes such as threats against journalists and recognizes the challenges presented by a digital environment to preventing crimes against journalists and protecting them.

\textsuperscript{357} International Commission Against Impunity in Guatemala (CICIG). No date. Agreement to establish CICIG.


\textsuperscript{359} International Commission Against Impunity in Guatemala (CICIG). No date. Agreement to establish CICIG.


\textsuperscript{361} Asociación de Periodistas de Guatemala. July 31, 2015. Comunicado de la Comisión de Libertad de Prensa de la APG.

278. Third, necessary measures must be adopted to protect judges, prosecutors, witnesses, and other individuals who take part in criminal investigations in order to protect them from external pressures, including threats, attacks, and other forms of intimidation.

279. On this point, in the merits report in the case of Nelson Carvajal v. Colombia, the IACHR stated that "in cases involving a violent death in which State agents and/or powerful criminal groups are under investigation for their participation, States must ensure that the responsibility to investigate and prosecute human rights violations is assigned to the authorities that are in the best position to adjudicate them effectively, autonomously, and independently. In this respect, States must establish safeguards so that the competent authorities can operate without being subject to the influence of the government official or criminal organization allegedly involved in the crime. At the same time, they must guarantee that the witnesses and relatives of the victim are able to participate in the proceedings without fear of retaliation. These safeguards may entail, for example, removing the investigation from the jurisdiction of the local authorities, or changing the venues of criminal proceedings."\footnote{IACHR. Report No. 21/15. Case 12.462. Report on merits. Nelson Carvajal Carvajal and Family. Colombia. OEA/Ser.L/V/II.154. Doc. 15. March 26, 2015. Para. 156. Available at: http://www.oas.org/es/cidh/decisiones/demandas.asp}

280. This measure is particularly important in the areas labeled by this report as "silenced zones" because the violence exercised against the media has not only a chilling effect that impacts other journalists but also can impact society, resulting in people refusing to make complaints or in victims, their relatives, or their colleagues declining to participate actively in investigations or the eventual criminal trials of those responsible due to fear of retaliation.

281. In its Third Report on the Human Rights situation in Colombia following its \textit{in loco} visit in December 1997, the Commission stated that "The legitimate fear of public authorities involved in the administration of justice, as well as witnesses, also contributes to the ineffectiveness of criminal proceedings in human rights cases processed in the civilian justice system. Those responsible for human rights abuses sometimes ensure their impunity by threatening or attacking those who might contribute to a sanction against them." Effectively, it reiterated that the issue of fear of becoming the victim of retaliation had affected judges, attorneys, judicial police, and "witnesses who are key in determining the authorship of the facts under investigation and whose testimony can shed light on the facts and convict the guilty parties."\footnote{IACHR. \textit{Third Report on the Human Rights Situation in Colombia}. Chapter V (Administration of Justice and Rule of Law). OEA/Ser.L/V/II102. Doc. 9 rev. 1. February 26, 1999.}

282. Fourth, opportunities must be provided for sufficient training of investigative police officers, prosecutors and judges to ensure that investigations into crimes against freedom of expression are exhaustive, rigorous and effective, and that all aspects of these crimes are minutely examined.

283. Likewise, for the success of investigations into crimes against freedom of expression, investigators should receive sufficient human, financial, logistical and scientific resources to collect, secure and evaluate evidence and carry out other tasks necessary for determining responsibility.

284. Finally, in contexts in which there is a continual risk of acts of violence against journalists and impunity prevails, States should create specialized investigative units in charge of investigating crimes against freedom of expression.

\textbf{b. Obligation to Act With Due Diligence and Exhaust Lines of Investigation Connected to The Victim's Exercise of Journalism}

285. The Inter-American Court has highlighted that the obligation of due diligence means that criminal investigations must exhaust all logical lines of investigation. In particular, "due diligence" requires that investigations pursued by the State take into account the complexity of the facts, the context in which they took place, and the patterns that explain them, ensuring that nothing was left out as the evidence was...
collected and logical lines of investigation are followed. This aspect is crucial for States to fulfill their duty, indicated previously, to investigate, criminally prosecute, and punish the perpetrators and masterminds.

286. The obligation to investigate with due diligence and exhaust all logical lines of inquiry is especially relevant in cases of violence against journalists, given that an investigation that does not look into issues related to context - such as the professional activity of the journalist - is less likely to get results and will probably raise questions as to the authorities’ willingness to solve the crime.

287. In the 2015 report on the human rights situation in Mexico, both the Commission and its Special Rapporteur expressed concern after observing "the practice to not exhaust the investigation line related to the profession, as this sends a message of justice by proxy. This omission creates a barrier to reaching the masterminds, only accomplishing perpetrator convictions, allowing for a reduction in impunity statistics and sending a mixed message to society since there is no explanation to what actually took place."

288. For its part, the IACHR also indicated in the section on impunity for crimes against journalists of its report on the human rights situation in Honduras that "it is essential for all institutions to have special protocols in place that require the authorities to exhaust all lines of inquiry related to the practice of journalism in cases involving crimes against journalists. The institutions must also have adequate resources and personnel specialized in investigating such matters."

289. As the IACHR stated in its report on the merits in the case of Nelson Carvajal v. Colombia, the “State is also required to investigate, and if appropriate, punish all perpetrators of crimes, including direct perpetrators, masterminds, accomplices, collaborators, and accessories to human rights violations. Moreover, it must investigate the structures through which the crimes are committed and the criminal organizations to which the perpetrators belong. As previously explained, ‘due diligence’ demands that the investigations conducted by the State take account of ‘the complexity of the facts, the context in which they occurred, and the systematic patterns that explain why the events occurred,’ ensuring that there are no ‘omissions in gathering evidence or in the development of logical lines of investigation.’ This obligation is especially relevant in cases of violence against journalists, which oftentimes are committed by criminal networks that act with the tolerance or acquiescence of State agents, and in which the direct perpetrator of the crime is merely carrying out orders.”

290. In this regard, the Office of the Special Rapporteur appreciates the creation of the Analysis and Context Unit (UNAC) of the Office of the Attorney General of the Nation of Colombia. While this unit is not focused exclusively on investigating crimes committed against journalists, the concept under which it was created can help solve certain cases of violence against journalists, especially because it enables understanding of patterns of violence committed by organized crime. The unit was created in 2012 "as a crime policy tool focused mainly on addressing organized crime by using forensic and context analysis tools to draw connections between the individual pieces of information currently held by the various offices of the public prosecutor. Likewise, it will take over the processes involved in the situations and cases classified as priority by the Situations and Cases Prioritization Committee of the Office of the Attorney General of the Nation.” Among its considerations, the Resolution creating that unit states that "the current judicial management system requiring all crimes be investigated at the same time, in the same way, and as isolated

incidents impedes the creation of real crime policy through designing and implementing strategies to effectively combat the various criminal phenomena attributable to organized crime.” It also states that investigation of the cases as isolated incidents has led to high rates of impunity.

291. The unit is made up of a lead prosecutor and two offices: (i) forensic analysis, made up of an interdisciplinary team of specialists in politics, defense and security, drug trafficking, finance, social issues, economics, etc.; and (ii) coordination of priority situations and cases, made up of delegated prosecutors, an administrative secretary, and a judicial police unit. The Office of the Special Rapporteur has learned that the case of journalist Claudia Julieta Duque, who was subjected to psychological torture, is assigned to this unit. The Office of the Special Rapporteur thus notes that although the inexhaustible struggle of the journalist for justice in her case should be recognized, it is also noteworthy that since her case was taken over by the Analysis and Context Unit, some noteworthy progress has been achieved, including linking the crimes to their masterminds.

c. Obligation to Investigate Within a Reasonable Period of Time

292. In a number of its rulings, the Inter-American Court has established that excessive delay in the investigation of acts of violence can constitute a per se violation of judicial guarantees. The authorities responsible for the investigation must act quickly, avoiding unjustified delays that would lead to impunity and violate due judicial protection of the right.

d. Obligation to Remove Legal Obstacles to the Investigation and Effective and Proportional Punishment of the Most Serious Crimes Against Journalists

293. The IACHR has called special attention to the use of general amnesty laws to block the investigation of grave human rights violations committed against journalists. Likewise, a number of international organizations have also expressed concern at the effect that prescription provisions have had on the criminal investigation and punishment of the most serious crimes committed against journalists for exercising their profession. States also have a duty to guarantee that punishments applied to individuals convicted of acts of violence committed against journalists and media workers over the exercise of their profession be proportionate and effective. In this sense, the Inter-American Court has determined that in order for the State to satisfy its obligation to investigate, try and, where applicable, punish and provide redress for grave human rights violations committed under its jurisdiction, it must observe the principle, (among others) of the proportionality of the punishment and serving of the sentence. Although the existence of leniency for sentences is legitimate in a democratic society, its application in this case, especially to serious acts of violence such as murder, torture and forced disappearance, must take place pursuant to the parameters established by international human rights law.

e. Obligation to Facilitate Victim Participation

294. Inter-American human rights law requires States to ensure that victims of human rights violations or their relatives have full access and agency at all stages and levels of the investigation and in the corresponding trial, pursuant to domestic law and the provisions of the American Convention. This must include ample opportunity to participate and be heard, both in the clearing up of the facts and the punishment of those responsible, as well as in the search for just compensation.

D. VIOLENCE AGAINST WOMEN JOURNALISTS

295. It is important for all actions taken by States to comply with their obligations to prevent, protect, and investigate, try, and criminally punish those responsible for crimes against journalists to address specific gender-based needs and risks. Along these lines, the General Assembly of the United Nations—in a resolution

on the safety of journalists and the issue of impunity\textsuperscript{371}—and the Security Council of the United Nation—in Resolution 2222 on protecting journalists and armed conflicts\textsuperscript{372}—have pointed out that security measures for journalists must take into account the risks faced specifically by journalists as they do their work. Frank La Rue, the former UN Special Rapporteur on freedom of expression and opinion, indicated in his report to the General Assembly of the United Nation’s that women journalists face additional risks, such as sexual assaults that can take place while they cover the news when they become victims of deprivation of liberty. In many cases, such incidents are not reported for fear that due to cultural beliefs or professional reasons, blame could fall on them.\textsuperscript{373} UN Special Rapporteur on freedom of expression and opinion David Kaye stated in his most recent report on restrictions on freedom of expression that women are exposed to certain limitations to their right to freedom of expression due to their gender. He thus expressed concern at the acts of violence and systematic threats of sexual and physical assault that have been reported against women exercising their right to freedom of expression.\textsuperscript{374}

296. In its annual reports, the Office of the Special Rapporteur has recorded the different forms that violence and harassment against women journalists takes in the region. According to these reports, the situation faced by women has not improved despite the recommendations made by this office to the States to specifically prevent this harassment. In its report on Violence against journalists and media workers, it indicated that, “the information compiled by the Office of the Special Rapporteur, violence committed against female journalists as a result of their work has particular characteristics stemming from the social constructs of gender and discrimination to which women have traditionally been subjected. This violence is manifested in different ways, from murder and sexual violence—including sexual harassment—to intimidation, abuse of power, and threats based on gender. According to the information available, violence against women is perpetrated by different actors, including State agents, sources of information, and colleagues, and it takes place in diverse contexts and settings, including the street, the workplace, and State offices or institutions.”\textsuperscript{375}

297. States have an obligation to prevent and protect and to investigate, try and punish those responsible for these crimes. According to inter-American case law, in cases of violence against women, in addition to the general obligations above indicated, States also have a particularly strong obligation to act with due diligence pursuant to existing provisions on the subject of the rights of women, such as the Convention of Belem do Para. Likewise, States have an obligation to adopt protective measures in specific cases in which individual journalists are at special risk of becoming victims of violence. In this task, States must take into consideration the specific risk of violations to their human rights that different groups of women face as a result of the intersection of other different reasons for discrimination, including race, ethnicity, age, sexual orientation, and others.\textsuperscript{376}

298. As far as the obligation to investigate, it is relevant to highlight that it has additional scope in cases of crimes committed against women journalists. In all cases, it is crucial for the authorities in charge to be duly trained on issues of gender. Regarding this, the United Nations Plan of Action on the Safety of Journalists and


the Issue of Impunity states, "Female journalists also face increasing dangers, highlighting the need for a gender-sensitive approach. In carrying out their professional duties, they often risk sexual assault, whether in the form of a targeted sexual violation, often in reprisal for their work; mob-related sexual violence aimed against journalists covering public events; or the sexual abuse of journalists in detention or captivity. Furthermore, many of these crimes are not reported as a result of powerful cultural and professional stigmas."\(^{377}\)

299. One of the challenges involved in the attacks women journalists suffer is the failure to report these incidents. As a result, the statistics that may be available on the issue do not necessarily reflect reality. Regarding this, the Office of the Special Rapporteur highlights work done by organizations throughout the region to document the existence of this issue. For example, Mexican organization Cimac has been a pioneer in conducting surveys of women journalists and standardizing statistics on the attacks of which they are victims. Recently, with the support of UNESCO in Guatemala, the organization Civitas conducted a study on violence against women journalists that warned of the “normalization” of sexual harassment of women reporters and journalists in that country. In its report, the organization highlights that women journalists may be victimized not only by those actors who traditionally commit acts of violence against the media but also by their sources, colleagues, and others.\(^{378}\) The nature of the phenomenon is such that complaints are few, and therefore the problem remains unseen.

300. Based on its 2015 in loco visit to Mexico, the IACHR and its Office of the Special Rapporteur received information indicating that in recent years, while violence against journalists has increased, "violence against women journalists has increased by percentage at a higher rate than the violence against male journalists [...] and] in many cases the violence was psychological in nature."\(^{379}\) According to the information received, women journalists who have been the victims of some type of attack tended to cover issues related to politics, citizen security, organized crime, and the police beat. The Office of the Special Rapporteur calls on States to conduct surveys on the risks specifically facing women journalists with the understanding that women journalists, who are generally younger, are taking a leading role in the coverage of violence and corruption, either because they receive lower salaries or because coverage of these issues has been abandoned by journalists with more experience due to the violence.

301. In recent statements adopted on the safety of journalists, both the United Nations General Assembly and the Security Council have alluded to the differentiated fact that violence has on women journalists due to "the specific risks faced by women journalists in the exercise of their work, and underlining, in this context, the importance of taking a gender-sensitive approach when considering measures to address the safety of journalists."\(^{380}\) Along these lines, the Office of the Special Rapporteur has welcomed the fact that laws establishing mechanisms of protection—such as in Mexico and Honduras—have enshrined the gender perspective as one of the elements to take into account when assessing risk and implementing measures. In addition, the Office of the Special Rapporteur stressed the importance of the decisions of the Constitutional Court of Colombia ordering that the protection mechanism adjust its protection measures to the specific needs of women beneficiaries.\(^{381}\)

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The special risks to which women journalists are exposed must be taken into account in order to prevent the intimidation or fear that may arise from an attack or the risk of one from leading to women journalists self-censoring. The Office of the Special Rapporteur reminds States of the need to improve mechanisms of prevention, protection and judicial response in order to fully comply with the obligations described in this report and guarantee women the full exercise of their freedom of expression.

E. PROTECTION OF JOURNALISTS ONLINE

The obligations to prevent, protect, and investigate violence against journalists must be met not only regarding journalists who work for traditional media outlets but also for journalists who work for online media or on the various platforms that the Internet provides. The implementation strategy for the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity states that "[...] the safety of journalists, and the combating of impunity for crimes against their use of freedom of expression, can only be effectively addressed through a holistic approach. This is because the Plan perceives safety as a broad category that extends from preventive, protective and pre-emptive measures, through to combating impunity and promoting a social culture which cherishes freedom of expression and press freedom. Notably, the Plan also acknowledges that safety spans both online and offline worlds and those solutions require informed action at global, regional, national and local levels whilst at the same time responding to contextual specificities in each case."302

The dawn of the Internet marked the beginning of a series of profound changes in human communication. While it has had a democratizing impact on the exercise of freedom of expression and the collection and dissemination of information and news, at the same time, significant challenges have arisen to the safety of communicators as a result of the greater opportunities that the new technologies offer as far as surveillance, intimidation, and State censorship, as well as private control of communication.

The Internet enables people in general to seek, receive, and impart information and ideas of all kinds. Its unique design enhances the exercise of freedom of expression, extending it beyond the use journalists make of it. Indeed, anyone interested in issues related to their community are able to share information, opinions, and ideas over the Internet and social networking platforms. In this regard, the Special Rapporteur for the promotion and protection of the right to opinion and expression stated in his 2012 report that most media outlets have developed web versions of their publications, making the Internet essential for disseminating news to a more global audience. Newspaper journalists have thus been published online along with "citizen journalists," the latter of which play a very important role in documenting and disseminating on-the-ground news, thus “increasing access to sources of information, stimulating informed analysis and promoting the expression of diverse opinions, particularly in moments of crises.”303

The Office of the Special Rapporteur has observed in recent years that journalists are increasingly migrating from traditional media outlets to online media, publishing their work on web portals, blogs, and social networks. This trend has been joined by citizen journalists who, through a number of different technologies, share information on issues that are in the public interest for the communities in which they live. In areas with a generalized context of violence against traditional media, the Internet is a safer alternative from which to continue informing society, as by using it anonymously and through social networks, people can address controversial issues such as the violence associated with drug trafficking.304


However, in order for this to be possible, the digital environment must also provide safe conditions for people who wish to take part.\textsuperscript{385}

307. Unfortunately, the Office of the Special Rapporteur observes that people who use the Internet to inform are exposed to risks that threaten the free exercise of their right to freedom of expression. On one hand, they are exposed to the kind of cyberattacks that come with the digital environment, while on the other, they are exposed to violence and become victims of threats, harassment, and stigmatization, and are even killed.

308. A report from the United Nations Special Rapporteur on extrajudicial executions on attacks on journalists online points out that one of “[o]ne of the main changes in the way in which the news is disseminated around the world in recent years has been the emergence of online journalists, both professionals as well as people who are untrained, who use social media. With the spread and increased availability of technology, the pool of who we now consider journalists has expanded rapidly, and so has the number of people who are potential targets of those who want to control the flow of information. In parts of Mexico, for example, the conventional media have for all practical purposes been replaced by new media—and assassins have likewise moved their sights.”\textsuperscript{386}

309. In this section, the Office of the Special Rapporteur seeks to highlight need for States to prevent, protect, and investigate attacks committed against people who report over the Internet. By doing so, the Office of the Special Rapporteur joins the efforts of the Special Rapporteur for freedom of opinion and expression of the UN and international organizations such as UNESCO and civil society organizations in describing the phenomenon and proposing possible solutions.\textsuperscript{387}

310. In his 2015 annual report, UN Special Rapporteur on the right to freedom of opinion and expression David Kaye stated that “Internet has profound value for freedom of opinion and expression, as it magnifies the voice and multiplies the information within reach of everyone who has access to it. Within a brief period, it has become the central global public forum. As such, an open and secure Internet should be counted among the leading prerequisites for the enjoyment of the freedom of expression today. But it is constantly under threat, a space — not unlike the physical world — in which criminal enterprise, targeted repression and mass data collection also exists. It is thus critical that individuals find ways to secure themselves online, that Governments provide such safety in law and policy and that corporate actors design, develop and market secure-by-default products and services.”\textsuperscript{388}

311. The Office of the Special Rapporteur has recognized on various occasions that the right to freedom of expression is favored when States protect the privacy of digital communications, as well as the confidentiality, integrity, and availability of data and computer systems.\textsuperscript{389} Its report on freedom of expression and the Internet addressed the concept of cybersecurity as an element linked to “the protection of


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a set of legally protected interests, such as infrastructure and information that is stored or in any way administered through the Internet, but not of the technological medium used to commit any kind of crime”. As consequence “by virtue of the open and decentralized configuration of the Internet, governments should seek a security model in which there are shared responsibilities among the different actors as well as a diversity of media, from the training of users and the implementation of technical security devices to the sanctioning of acts that in fact threaten or attack the legal interests protected by “cybersecurity.””

312. The 2012 joint declaration of the rapporteurs on freedom of expression of the UN and the IACHR established that “all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect legitimate websites and services.”

313. As this Office has reiterated on a number of occasions, the exercise freedom of expression requires a private space free from threats. In view of this close relationship between freedom of expression and privacy, States should avoid the implementation of any measure that restricts, in an arbitrary or abusive manner, the privacy of individuals. This privacy is understood in a broad sense as every personal and anonymous space that is free from intimidation or retaliation, and necessary for an individual to be able to freely form an opinion and express his or her ideas as well as to seek and receive information, without being forced to identify him or herself or reveal his or her beliefs and convictions or the sources he or she consults. The 2013 joint declaration of the rapporteurs on freedom of expression of the UN and the IACHR stated that “Any surveillance of communications and interference with privacy that exceeds what is stipulated by law, has ends that differ from those which the law permits, or is carried out clandestinely must be harshly punished. Such illegitimate interference includes actions taken for political reasons against journalists and independent media.”

314. In this regard, it is important to highlight the protection of sources that must be in place not only for journalists who work in traditional media but also for those who receive and disseminate information in the public interest over the Internet. UN special Rapporteur on the promotion and protection of the right to freedom of expression David Kaye said in his report on protecting sources of information and whistleblowers that “Protection must also counter a variety of contemporary threats. A leading one is surveillance. The ubiquitous use of digital electronics, alongside government capacity to access the data and footprints that all such devices leave behind, has presented serious challenges to confidentiality and anonymity of sources and whistle-blowers.” Along those same lines, the Rapporteur recommended to States that “National legal frameworks must protect the confidentiality of sources of journalists and of others who may engage in the dissemination of information of public interest. Laws guaranteeing confidentiality must reach beyond professional journalists, including those who may be performing a vital role in providing wide access to information of public interest such as bloggers, “citizen journalists.”

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315. The Office of the Special Rapporteur has observed that decisions to conduct surveillance that invades individual privacy must be authorized by independent judicial authorities, who must state why the measure is suitable to accomplish the aims pursued in the specific case; whether it is sufficiently restricted so as not to infringe upon the right in question more than necessary; and whether it is proportionate in relation to the interests pursued. Investigative proceedings involving an invasion of privacy authorized by law and by a competent judge must also respect other due process safeguards. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to carry out their duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that, at the very least, the decision-making criteria adopted by the courts should be public.\textsuperscript{395}

316. Today, there are a growing number of tools that contribute to fostering freedom of expression. With a cellular telephone, we can upload content directly to the web or exchange information from a single server using Bluetooth technology; encryption software, such as Tor, ensures high levels of privacy for telecommunications; and digital media enables us to collect evidence in cases of mistreatment or abuse.\textsuperscript{396} UNESCO’s most recent report on this issue, entitled "Building Digital Safety for Journalism," explains that a number of applications developed recently enable people whose access to offline communications is blocked to exchange information safely and using encryption.\textsuperscript{397} The same report notes that when evaluating the different ways of protecting freedom of expression on the Internet, the safeguards must protect not only the content but also the means used to transmit it. In fact, they must protect the whole communication environment: from the applications used to find the information to the codes and protocols connecting devices to the digital world, to the hardware itself, cables, and wireless towers that transmit the data.\textsuperscript{398}

317. The Office of the Special Rapporteur also considers civil society initiatives to train journalists to use the tools necessary to protect themselves digitally to be very important, along with development of applications to make this easier.

F. THE ROLE OF OTHER ACTORS: MEDIA OUTLETS AND CIVIL SOCIETY

318. Although the obligations to prevent, protect, and investigate are the international responsibility of States, there is no doubt that other actors are key for the protection of at-risk journalists, especially in areas in which the risk is higher due to the characteristics of the context, such as in the case of silenced zones.

319. Based on this, the media play a decisive role in guaranteeing the protection of journalists and other workers, both those with which it has a labor relationship and freelance journalists. Thus, the Special Rapporteurs stated in their 2012 joint statement that "media organizations should be encouraged to provide adequate safety, risk awareness and self-protection training and guidance to both permanent and freelance employees, along with security equipment where necessary."\textsuperscript{399} The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has similarly stated that "While recognizing the often


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competitive nature of the relationships among media workers worldwide, it is important to set competition aside where issues of safety are involved.”

320. As this report has explained, one of the factors that increase the vulnerability of journalists and media workers in areas with significant organized crime and corruption is labor instability. In this regard, it is important for the media to adopt protocols for protecting journalists and providing them with opportunities to receive training on tools for protecting themselves, both physically and online.

321. As noted by the Special Rapporteur on the right to freedom of expression and opinion of the UN "journalists and media organizations also have a responsibility to take precautionary safety measures to ensure their own protection. Additionally, by voluntarily adhering to global standards of professionalism, journalists can also enhance their credibility in the eyes of society and their legitimate protection concerns. Such standards of journalistic professionalism include those that have been developed and adopted by journalists and media workers themselves.” Along the same lines, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that “Media agencies should provide appropriate basic and advanced security training for journalists and media personnel. [...] They should also provide safety and self-protection guidance for their employees, giving them security equipment as necessary and offering training to both their permanent and freelance employees.” Also, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity warns that it is important to urge “all stakeholders, and in particular the media industry and its professional associations, to establish general safety provisions for journalists, including but not limited to safety training courses, health care and life insurance, access to social protection and adequate remuneration for free-lance and full-time employees.” In its report entitled “Violence against journalists and media workers,” the Office of the Special Rapporteur gave examples of good practices as far as measures taken by the media and civil society organizations that focus on providing advisory services and training on issues like self-defense, drafting protocols, and digital security.

322. Solidarity between domestic and international media is a key element for ending the silence that organized crime and corruption wish to impose in different areas in the hemisphere. The Office of the Special Rapporteur has highlighted that in addition to the security measures taken by media organizations, experience in the region demonstrates that solidarity and cooperation among media outlets can make a notable contribution to the safety of journalists. One example of this from the cases described in this report, which demonstrates how collaboration with media from other regions makes it possible to report what happens in the so-called silenced zones and reduces the risk to local journalists, is the case of Tamaulipas, Mexico. Because this state shares a border with the United States, media outlets in US border cities have been able to cover the incidents of violence that take place there. As a result, the reporting can continue without the people doing it facing such a high risk. Another recent example of agreements between media outlets to provide coverage and visibility to local issues is the one struck between El Faro in El Salvador and the New York Times, in the United States. These two papers jointly conducted an investigation into the maras (gangs) operating in El Salvador that are blamed for the majority of the acts of violence that take place in that country.

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The agreement made it possible to conduct the investigation over the course of one year. It was published in both El Salvador and the United States.

323. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that “Local journalists and foreign correspondents play complementary roles. While journalists based in their home countries have local legitimacy and offer an insider’s view, foreign correspondents are often well placed to attract international attention. Whereas local journalists are often more vulnerable, foreign correspondents may prove to be more difficult to silence, and can in some cases continue to spread the message.”

324. It is also important to highlight the importance of cooperation between media outlets to follow up on investigations of cases of violence against journalists. One good example is the #LaVerdadPuedeMás initiative of four Guatemalan media outlets—Revista ContraPoder, Nómad, Plaza Pública, and Soy502—that covered the murder of journalists Danilo Lópe and Federico Salazar in the Mazatenango department of Suchitepéquez. The coverage ensured the case not only domestic but international attention. The publications also reported on the initial progress in the case that led to the arrest of the perpetrators, which included local police officers.

325. In Colombia, the organizations Andiarios, Colprensa, and the Fundación para la Libertad de Prensa led the ¡Pitalito sin Censura! initiative in response to the murder of journalist Flor Alba Nuñez, which took place in the Pitalito department of Huila in 2015. A number of domestic and regional media outlets published articles written by eight journalists from different media outlets who were in charge of looking into the journalism work Flor Alba was doing to determine who might be behind her murder. This was an extension of Proyecto Manizales, carried out by a number of print media outlets following the murder of journalist Orlando Sierra in 2002. That project was able to draw the authorities’ attention to the case, and thanks to the research done by journalists, progress was made in the police investigation.

326. One example of a media outlet that has taken important steps in this regard is Brazil’s TV Globo. Following the murder of investigative reporter Tim Lopes in June 2002, Lopes, an investigative reporter with TV Globo in Rio de Janeiro, was seized, tortured and killed when he was discovered using a hidden camera to document the sexual exploitation of minors by drug trafficking organizations who organized “funk” dance parties in the community of Vila Cruzeiro, in Rio’s Complexo do Alemão. Over the following three years, a total of seven people were captured, convicted and sentenced for Lopes’ murder, including all those accused as the direct perpetrators and as the crime’s mastermind. The success of the prosecution effort in this case can be attributed to various factors, among them, the role of the media itself. Though Lopes tended to operate behind the camera and was therefore little known by the public prior to his death, the Globo network used its television, radio and newspaper outlets throughout the country to launch an “Enemies of Rio” campaign drawing attention to the murder and calling for justice. The media publicized the government’s anonymous tip hotline and the reward offered for information on the whereabouts of the presumed mastermind, drug lord Elias Pereira da Silva. The journalists’ Union of Rio de Janeiro and the Associação Brasileira de Imprensa organized public events to press the authorities to resolve the crime, while Lopes’ colleagues at TV Globo closed an edition of the network’s leading news program, Jornal Nacional, dressed in black and applauding in recognition of Lopes. These actions combined to assert strong and sustained pressure on the authorities to bring Lopes’ killers to justice.


Civil society organizations also play a valuable role in the prevention of attacks, the protection of journalists, and the struggle against impunity. The Office of the Special Rapporteur highlights the extraordinary role played by civil society organizations and media and journalist associations in preventing, providing protection from, and reporting on violence against journalists. Their activity is crucial for the continent and has often raised the alarm on these issues, which affect freedom of expression.

As concerns the so-called silenced zones, in the view of the Office of the Special Rapporteur, the visits that regional organizations make to these areas to raise awareness internationally on the issues facing journalists and media workers are important. Examples of this include the visits some made by IFEX ALC to Paraguay to assist local organizations408; the visits to monitor cases, such as those regularly made by the Committee to Protect Journalists (CPJ); and the mission led by a number of regional organizations, one of them being the Inter-American Press Association (IAPA), and local organizations to follow up on the murder of journalist Gregorio Jiménez de la Cruz in Veracruz, Mexico. As a result of that mission, a report was published containing a series of recommendations for the Mexican State.409 Meanwhile, the IAPA has also historically made country visits to evaluate the freedom of expression situation or specific cases of murdered journalists.

Generally speaking, local and international organizations play a fundamental role by monitoring the measures taken by States with regard to their duties to prevent crimes against journalists, protect journalists, investigate crimes, and punish those responsible for them. Some of these organizations also dedicate themselves to monitoring attacks against women journalists, analyzing their situation from a gender perspective. In many countries, the monitoring work of these organizations constitutes the only source of statistics on violence against journalists. Likewise, civil society organizations can play an important role by counseling journalists and media outlets so that they are able to access their States’ preventative and protective mechanisms and the precautionary measures handed down by international bodies. In that sense, it is crucial for expert organizations to play a role in government initiatives to establish protective mechanisms and in the operation of those mechanisms. Legal counsel provided by civil society organizations during the criminal prosecution of attacks against journalists is also crucial, especially in legal systems that allow the victim to act as a civil or auxiliary party in criminal proceedings.410 A variety of organizations have also developed guides and security standards for communicators, both analog and digital.

G. CONCLUSIONS AND RECOMMENDATIONS

Violence against journalists in general and the murder of journalists over their work specifically is the most serious violation of freedom of expression, not only because it endangers the lives and safety of victims but because these crimes are multifaceted offenses. That is, they affect a series of legally protected rights, including: i) the right of victims to express themselves and express their ideas; ii) the chilling effect on journalists working in the same area, region, or country; and iii) effects on the right of freedom of expression in its collective dimension by depriving society as a whole of its right to be informed. Consequently, democratic debate is also affected, as the kind of free and open debate necessary for a healthy and robust democracy is restricted or suppressed.

On the American continent, the situation of violence against the media and media workers is part of a generalized situation of impunity for crimes affecting freedom of expression, leading to an environment that is hostile to the media and facilitates repetition of these acts. Although the Office of the Special Rapporteur has recognized the efforts made by States in the region on the administration of justice to solve these crimes,

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408 Coalition IFEX- Sindicato de Periodistas de Paraguay (SPP) (CIFEXSPP). Informe para el Examen Periódico Universal Paraguay 2016. No date.

409 Committee to Protect Journalists (CPJ), Reporters Without Borders (RSF), Periodistas de a Pie, Casa de los Derechos de Periodistas and Inter American Press Association (IAPA) took part in that observer mission. Committee to Protect Journalists (CPJ). April 2, 2014. Unprecedented response to Mexican journalist’s murder.

it should be noted that the vast majority of criminal convictions and punishments are for the material perpetrators, not, generally speaking, the masterminds or all those suspected in carrying out the attacks.

332. With regard to the phenomenon of silenced zones, the Office of the Special Rapporteur is particularly concerned that in recent years, violence against media workers and journalists and the majority of murders of them over the last five years have taken place in particular areas and regions of different countries, even while declining in the capitals or urban centers throughout the region. In many of these places, organized crime has a strong presence, while in others, organized crime goes hand-in-hand with high rates of corruption, which has enabled these organizations to co-opt government authority. The situation has left journalists in an even greater situation of risk and vulnerability. Because of this, journalists covering local news on government corruption, drug trafficking, organized crime, public safety, and other issues are frequently targets of attacks and greatest risk of being victims of violence.

333. As a result of the violence, impunity, and lack of effective response from State authorities, many journalists have opted for self-censorship in order to protect themselves. The Office of the Special Rapporteur notes with concern that an increasing number of journalists are forced to stop investigating and disseminating information significantly in the public interest to their local communities in order to avoid retaliation against their lives or physical safety or that of their relatives. Over the last decade, a number of areas and communities throughout the Americas have been silenced completely due to the chilling effects of this climate of violence and impunity. In these places, journalists and many media outlets have decided to stop covering a variety of topics and adjust their coverage to cover issues that do not cross the de facto local powers, forming zones of silence. This creates a situation in which information is restricted, meaning that society in these locations is not sufficiently informed. Consequently, and as the IACHR and the Inter-American Court have indicated repeatedly, it can be said that a society that is not well informed is not a society that is truly free.

334. It is precisely the role that journalists play in these zones, as the ones who keep it informed on matters of public interest and their closeness to the communities they cover that places them at greater risk. The objective of violence against journalists is to silence the media. However, it also inhibits democratic debate on matters of public interest.

335. These regions have their own characteristics, although there are some similarities such as: the presence of organized crime; high rates of government corruption that makes it easier to co-opt state institutions; the absence of an effective response by the authorities in charge of prevention, protection, and administration of justice; and a lack of support or assistance for journalists that exposes them to greater risk. All these factors inhibit journalists in the affected areas from doing their work, limits freedom of expression, and has a chilling effect on the free flow of information, leading to self-censorship and strengthening the trend toward journalism that avoids reporting on issues of security, corruption, or influence trafficking, opting instead for journalism that is aligned with power.

336. The situation of violence against the media of that many countries on our continent are facing requires a decisive response from States. They must have policies tailored to the factors leading to this violence according to each individual social context and its consequences for the lives of those affected. These policies must address the obligations to prevent violence against journalists, protect at-risk journalists, and administer justice when journalists' rights have been violated. Without a comprehensive public policy guaranteeing the right to seek, receive, and disseminate information through any means, societies will never be able to make the free and informed decisions necessary to combat criminality and corruption, and citizens will never be able to exercise active and informed oversight of State actions to address organized crime and corruption and protect the community.

337. In consequence, it is crucial for States to take concrete measures to comply with their obligation to protect the lives, physical integrity and freedom of expression of journalists. This means at least three kinds of obligations as explained in this report. In effect, States have the duty to prevent violence, protect at-risk journalists, and seriously investigate the crimes committed. These obligations must be met not only with
regard to those who exercise journalism but for anyone who shares information that is in the public interest, either online or off-line.

338. States must recognize the differentiated effect that violence has on women journalists and, as a result, use this perspective in adopting measures to protect women journalists and investigate attacks on them. States must provide incentives for these types of crimes to be reported.

339. Given the growing number of journalists working online, public policies are needed for preventing violence and protecting journalists that take into account the specific characteristics of the digital environment and provide the necessary guarantees for journalists to do their work safely and without fear of becoming victims of cyber attacks or surveillance of their communications. Protection of sources in the digital realm is essential for the exercise of journalism. Any restriction on source confidentiality must be exceptional and authorized by a judge who weighs the measure’s legality, suitability, and proportionality.

340. Likewise, other actors can play a crucial role in the protection of journalists who have received threats. These actors include the media companies and civil society organizations. Positive experiences such as the ones described in this report are fundamental for fighting impunity for crimes against freedom of expression. These include journalistic investigations that show the trauma underlying the violence against journalists in particular areas and picking up the lines of investigation that were being followed by threatened or murdered journalists. Also, organizations that conduct visits to these silenced zones or issue regular reports on these situations and made a permanent monitoring of the situation of violence in the referred zones play an extraordinary role.

341. Some States in the region have taken important steps toward meeting their obligations. As shown by the experiences detailed in this report, some States have created specialized protection programs for journalists, and established dedicated prosecutorial units and tribunals to investigate and try the perpetrators of violence against journalists. These initiatives represent important expressions of political will and in some cases have achieved significant results. The region’s accumulated experience for us states interested in taking decisive steps toward meeting their international obligations in this area. Nonetheless, it is much more that can and must be done to ensure that journalists in the region can freely and securely carry out their work, and to guarantee the free flow of information so essential for healthy democratic societies

**Recommendations**

1. States must adopt a comprehensive public policy of prevention, protection, and administration of justice for cases of violence against journalists. These policies must take into account the specific needs of each country and the needs of each region, especially for zones where journalists are faced with greater risk and where self-censorship is high.

2. Attacks against journalists must be rejected and condemned at the highest levels of State power while at the same time recognizing the importance of the role the journalists play in democratic societies. In this regard, States must adopt a legal framework that guarantees the free and full exercise of the right to freedom of expression.

3. It is vitally important for States to assume the commitment of maintaining updated and disaggregated statistics on violence against journalists. There can be no effective public policy without clearly identifying the characteristics of the phenomenon, the most vulnerable journalists, the sources of risk, the assailants, and the zones in which this violence is prevalent, among other indicators. This information will be a substantive element in the comprehensive policy for addressing this phenomenon. Keeping detailed, up-to-date statistics may make it possible to take early action to prevent risks from materializing.

4. From the statistics, protection mechanisms that States can rely on tools like geo-referencing of the threats and violence against journalists to warn the media and prevent the risks they face in a particular region, as well as take coordinated actions with the various governments involved to prevent harm to the rights of communicators and ensure that local communities receive relevant information.
5. The members of the armed forces and the military must receive training on freedom of expression, the importance of journalists in democratic societies, and the need to protect them. This is particularly relevant in contexts in which there is a significant military presence, such as the fight against drug trafficking, armed conflict, during protests, etc. This training should be provided at all levels of the military hierarchy and in administrative headquarters as well as in States’ remote and border regions.

6. In countries in which a specialized protection program has been established for protecting journalists, it is crucial that it work to win the trust of current and future beneficiaries. Trust is created insofar as the program produces concrete results, by preventing beneficiaries from becoming the victims of attacks. However, protection programs must also act with transparency and allow both the beneficiaries and other journalists and civil society to monitor what happens inside that program.

7. The measures adopted under the protection program must also be the result of a process to come to an agreement with the beneficiary so that the protection measures adopted are effective for the context in which the beneficiary works and do not inhibit the beneficiary from doing journalism. These measures must take a gender perspective and a differentiated focus into account for women journalists.

8. The authorities responsible for providing protection must coordinate with the authorities in charge of investigating acts of violence against journalists and media workers. The most effective way to provide protection is by ending impunity in crimes committed against journalists.

9. States must make a clear commitment to the struggle against impunity and crimes against journalists and understand the chilling and silencing effect that the violence and impunity have on the existence of a free media and a democratic society.

10. Investigations into crimes committed against journalists must take into account the possibility of a connection to their work, and should the investigation conclude that the crime was not related to journalism activity, the authorities have a duty to demonstrate why that is. In this regard, it is important for States to adopt protocols to facilitate and support the investigation by making it a requirement to exhaust the possibility that the journalist’s work was the motive. This measure would make it possible to find both the perpetrators and the masterminds who commit violence against the media in a particular area. The protocols must also take into account the particular characteristics and complexities of each type of violence, for example in the case of threats.

11. States must also investigate the structures through which the crimes are committed and the criminal organizations to which the perpetrators belong. The investigations conducted by the State must take account of the complexity of the facts, the context in which they occurred, and the systematic patterns that explain why the events occurred.

12. The investigations must be carried out by specialized prosecutor units. Not only must these units exist structurally but they also must have sufficient political support to do their work without obstacles such as lack of budget or staff, or a legal framework that in practice limits the unit from acting effectively.

13. Prosecutors should receive frequent training on freedom of expression. For this, the Office of the Special Rapporteur sees it as important to create academic spaces that include the participation of both prosecutors and journalists to foster dialogue and exchange to encourage mutual understanding.

14. The authorities must ensure the protection of everyone who takes part in criminal proceedings to solve crimes against journalists. This means that they must provide any guarantees that may be necessary for witnesses and relatives as well as the victims themselves to participate and move the process forward without fear of retaliation against their lives or integrity.

15. States must adopt adequate, specific, and effective measures for preventing all forms of violence against women journalists and must try those responsible for such attacks. It also must encourage reporting
of such attacks by victims. Is important for the State to train its agents on the risks to which women journalists are exposed.

16. Investigations into acts of violence committed against citizen journalists or journalists who use social networks as a way to mass communicate their ideas, opinions, and information, especially on matters of public interest, must be conducted with the same diligence and focus as investigations into crimes committed against professional journalists.

17. States should guarantee the safety of the digital environment, as well as network privacy and anonymity. States must also protect the confidentiality of the sources of journalists or people disseminating information in the public interest over the Internet.

18. Media outlets must commit to adopting protection protocols for journalists who freelance for them. Along the same lines, they must help train their staff on both physical and digital security and provide them with the necessary tools.
CHAPTER V
NATIONAL CASE LAW ON FREEDOM OF EXPRESSION

A. INTRODUCTION

1. Pursuant to its mandate, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) monitors and documents in its annual reports the intervention of the region’s justice system in matters of freedom of expression. In this report, the Office of the Special Rapporteur presents a compilation of different judgments handed down over the past four years by national high courts that represent progress at the domestic level or enrich the regional doctrine and jurisprudence, while incorporating the inter-American standards in support of their decisions.

2. As in other annual reports, this type of analysis aims to contribute to a positive dialogue between the bodies of the system and the national courts, with the conviction that sharing different experiences leads to a virtuous circle of mutual learning.

3. Indeed, the Inter-American Court and the Commission have repeatedly acknowledged that all of the national courts—regardless of their ranks and hierarchies—play an important role in the development and implementation of regional human rights standards. According to the Court’s interpretation, the local justice systems not only operate as a guarantee of the rights of individuals in particular cases; through their decisions, they can also broaden and strengthen the content of the constitutional norms and national laws connected to these rights, and therefore broaden and strengthen the content of the international instruments themselves, such as the American Convention. The bodies of the system have similarly emphasized that national judges have a significant role in the process of implementing international human rights law in the domestic legal system.¹

4. This compilation was put together starting with the cases that have been highlighted and documented by the Office of the Special Rapporteur in its annual reports for the 2013 – 2016 period. The criterion used for the selection of the judicial decisions summarized in this chapter was that they represent progress at the domestic level, either because they ensure the protection of the freedom of expression of the persons directly involved in the specific case, and/or because they set forth legal guidelines that incorporate and develop the inter-American standards in the national sphere.

5. The report includes case law from ten countries (Argentina, Brazil, Canada, Colombia, Costa Rica, United States, Mexico, Panama, Dominican Republic, and Uruguay). Of particular note is the work of the high courts of Argentina, Colombia, Mexico, and Uruguay, which are prolific in the incorporation and development of the inter-American doctrine and case law, and the work of different Brazilian courts, which have played a very important role during this period to promote the right to freedom of expression and exercise “conventionality control.”

6. The group of decisions examined reflects a solid body of case law from the region’s national high courts that—consistent with the Inter-American Court and Commission—underscores the importance of freedom of expression as a “cornerstone of the very existence of a democratic society,” reaffirms the individual and collective dimension of this right and the prohibition of prior censorship, and applies the three-part test in analyzing the admissibility of limitations to freedom of expression under the American Convention.

7. With respect to the catalog of issues that have traditionally been addressed by the courts of the region, this compilation identifies advances in the judicial protection of specially protected speech, particularly political speech about public servants. With regard to the themes that have emerged in the

hemisphere in recent years in relation to freedom of expression, the chapter discusses the growing litigation of matters involving freedom of expression on the Internet, privacy, and surveillance, on which the case law is still nascent.

8. Summarized below is a selection of notable court decisions. They have been systematized in accordance with 24 items that reflect different standards and rules of the inter-American legal framework, and grouped according to 13 analytical aspects. The decisions are preceded by a synthesis of the inter-American standard that was used as a reference in each category.

9. Finally, as in other annual reports, this Office recognizes that an exhaustive study of the national court decisions handed down in relation to this right is beyond the scope of this report. Accordingly, the Office of the Special Rapporteur will refer only to those notable court decisions about which it has received information.

B. CASE LAW ON THE IMPORTANCE, FUNCTION, AND SCOPE OF FREEDOM OF EXPRESSION IN DEMOCRATIC SYSTEMS

10. The Inter-American legal framework grants a robust and broad scope to the right to freedom of expression. The doctrine and jurisprudence established by the Inter-American Commission and the Inter-American Court of Human Rights based on the American Convention, the American Declaration, and the Inter-American Democratic Charter, have helped to spur significant regulatory progress in the region in recent decades. They have also strengthened the intervention of the hemisphere’s justice systems when it comes time to act in favor of protecting this right.

11. The fundamental role of freedom of expression that the bodies of the Inter-American Human Rights System have recognized has been addressed extensively by the high courts of the region which, in turn, have enriched and developed the emerging judicial discourse on the inter-American standards.

12. For instance, on June 20, 2013, in admitting unconstitutionality action 29/2011 filed by National Human Rights Commission [Comisión Nacional de Derechos Humanos] (CNDH) to challenge an article of the Criminal Code of Veracruz, the Supreme Court of Mexico held that freedom of expression and the right to information are “central to the constitutional and democratic rule of law” and are “fundamental pillars.” The high court underscored the dual dimension of these rights, and held that “they enjoy a public, collective, or institutional aspect that makes them basic components in the proper workings of a representative democracy.” It emphasized that “freedom of expression is a preferential right, as it serves to guarantee the realization of other rights and freedoms.” The Court also referred to the interrelationship and interdependence of freedom of expression and other human rights. It held that “having full freedom to express, gather, disseminate, and publish information and ideas is indispensable, not only as an essential means of self-expression and self-creation but also as a premise for the ability to fully exercise other human rights — the right of association and peaceful assembly with any lawful aim, the right of petition, and the right to vote and be voted for—and as a functional element that determines a country’s democratic quality of life.”

13. In 2014, these conclusions were reaffirmed by the First Chamber of the Supreme Court of the Nation of [Primera Sala de la Suprema Corte de Justicia de la Nación] Mexico in the judgment handed down on February 7 of that year, in which it ruled direct amparo [petition for a constitutional remedy] 3123/2013 groundless. That petition sought to protect the honor and reputation of a public servant in view of the mass

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email distribution of criticism of his performance as the academic coordinator of a state university. On May 20, 2015, the Supreme Court again ruled similarly by declaring the unconstitutionality of an article of the Criminal Code of Chiapas that established the so-called offense known as halconeo, or acting as a "lookout," and made it punishable by prison to obtain and disclose confidential or reserved information from the public security forces or armed forces for a number of purposes. The Court held that "the rights to freedom of expression and access to information not only protect freedoms necessary for the personal autonomy of individuals but also are meant to protect and guarantee a public forum for political deliberation."

14. The Chamber of Criminal Cassation of the Supreme Court of Colombia [Sala de Casación Penal de la Corte Suprema de Justicia de Colombia] expressed similar considerations in its July 10, 2013 decision to acquit journalist Luis Agustín González, the director of the newspaper Cundinamarca Democrática, of the crime of defamation [injuria]. In this case, upon considering the extraordinary petition for cassation filed by the journalist’s defense attorney, the Court exhaustively examined the function of freedom of expression in its political dimension. Citing the case law of the country’s Constitutional Court, the judgment underscored the importance of freedom of expression as a pre-condition for effective social participation, the improvement of public policies, and the guarantee of robust discussion on matters of general interest. It held that freedom of expression “promotes socio-political stability, by providing a safety valve for social dissent […] protects the political minorities that are active at a given time, preventing them from being silenced by prevailing or majority forces […] helps shape public opinion on political matters and the consolidation of a properly informed electorate.” The Chamber of Criminal Cassation of the Supreme Court of Colombia thus concluded that the "profound" constitutional and international protection of freedom of expression “is justified precisely because of those lofty goals of solidifying participatory democracy.”

15. Along the same line of reasoning, in judgment T-904/13 of December 3, 2013, the First Chamber of the Constitutional Court of Colombia, citing the July 2, 2004 judgment of the Inter-American Court in the case of Herrera Ulloa v. Costa Rica, held that “Without effective freedom of expression, materialized in all of its terms, democracy vanishes, pluralism and tolerance start to break down, the mechanisms of citizen oversight and complaint start to become inoperable, and, in short, fertile ground is created for authoritarian systems to take root in society.” The Court so ruled in overturning an order of the lower courts which, invoking the need to protect the right to image and privacy of a minor child—the son of a high-ranking public servant—had ordered measures to de-link videos connected to the news story and delete a sentence from an opinion column.

16. On September 19, 2013, the Fourth Civil Chamber of Private Law of the Court of Justice of the state of São Paulo [4ª Câmara de Direito Privado do Tribunal de Justiça do Estado de São Paulo] in Brazil, dismissed an appeal filed by an association of religious entities seeking to have a video removed from the Internet, finding that freedom of expression “entails respect for political and ideological pluralism, elements that are inseparable from democracy.” In this case, the Court held that the freedom to express thought “is, without doubt, the greatest achievement of contemporary history.” Brazil’s highest Court, the Federal Supreme Court (STF), underscored in different decisions handed down during the period covered by this report the importance of freedom of expression as a condition of every democratic system and reaffirmed the standards

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6 The judgment quoted sentence T-391 of 2007 of the Corte Constitucional.


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set forth in its landmark decision of 2009, which held that the Press Law of 1967 was incompatible with the Federal Constitution. It did so, for instance, in its judgment of September 17, 2014, by setting aside an injunction issued inaudita altera pars by a court in the District of Fortaleza, State of Ceará, which barred the publication of an edition of the magazine *IstoÉ*. In this case, the Federal Supreme Court was of the opinion that the measure amounted to an act of prior censorship that was inadmissible under the constitutional standards. The Federal Supreme Court held that the freedoms of expression, information, and the press are “the underpinnings for the functioning of democratic regimes,” and therefore “there is a public interest” in guaranteeing their exercise. It also held that “For this reason, they are treated as preferential freedoms [liberdades preferenciais] in different parts of the world […]”

17. The Argentinean Supreme Court’s October 28, 2014 judgment in the case of *Rodríguez María Belén v. Google Inc. re: Damages*, reaffirmed its prior position that among “[t]he freedoms enshrined in the Constitution, freedom of the press is one of the most important, to the point that without it being properly safeguarded democracy would be eroded or purely nominal.” In this case, the high court ruled that an Internet intermediary that had been sued for damages was not liable. Citing the Inter-American Court, the Supreme Court held that “Freedom of expression is a cornerstone of the very existence of a democratic society.” It ruled identically in its October 29, 2013 judgment in the case of *Grupo Clarín SA et al. v. National Executive Branch, et al./ action for a declaratory judgment*, in which it adjudicated an action alleging the unconstitutionality of the Audiovisual Communication Services Law. In this decision—as discussed later in this chapter—in addition to asserting the importance of freedom of expression for the construction of democratic societies, the Supreme Court conducted an exhaustive study on the media concentration and its impact on media quality.

18. Similarly, on March 21, 2014, the Constitutional Chamber of the Supreme Court of Costa Rica upheld the right of journalists to maintain the confidentiality of their sources, noting “the very close relationship between democratic pluralism and freedom of information. To curtail the latter is, essentially, a weakening of the democratic system.” In support of her vote in this case, Judge Hernández López stated that “freedom of the press is special and preferential in nature, because it is a crucial right for the operation of democracy and the full exercise of freedom of expression.”

19. On April 11, 2014, the Supreme Court of Panama, sitting en banc, upheld the constitutionality of a law barring high-ranking public servants from filing criminal complaints for crimes against honor. It underscored the importance of freedom of expression for democracy, and reaffirmed that public servants are subject to a higher degree of scrutiny, which is fundamental for “the operation of democratic society.” The Court referred to the legal nature of the right to freedom of expression as a human right, and stressed that this right “is one of the primary achievements of the liberal constitutionalism enshrined in international treatie[s].”

20. Another aspect developed extensively by the high courts of the region concerns the scope of the right to freedom of expression.

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21. Citing the inter-American doctrine and jurisprudence, the Supreme Court of Mexico held in the previously cited judgment of June 20, 2013 that, “As the Inter-American Court has had the opportunity to underscore on repeated occasions, it is not only a matter of the freedom to express one’s own thoughts but also of the right to seek, receive, and disseminate ideas and information of all kinds. The Court reaffirmed the inter-American standards and maintained that both dimensions “must be guaranteed simultaneously in order to ensure the proper effectiveness of the right to freedom of thought and expression.” It added that, “The expression and dissemination of thought and information are indivisible, such that a restriction on opportunities for dissemination directly represents a limit on the right to express oneself freely. This has repercussions of various kinds, on many levels, but especially within the sphere of what we call the media.”

22. On April 5, 2016, the Supreme Court of Uruguay adjudicated the first of a set of actions challenging the constitutionality of the Audiovisual Communication Services Law, ruling in accordance with the case law of the Inter-American Court that article 13 of the Convention must be interpreted under a two-part standard: the democratic aspect and the dual dimension. Accordingly, it held that “Through the ‘democratic standard,’ the Inter-American Court proposes that freedom of expression is a value that, if lost, jeopardizes the operation of the essential principles for the existence of a democratic society. The protection of the right to express one’s ideas freely thus becomes fundamental for the full enjoyment of all other human rights. In fact, without freedom of expression full democracy does not exist, and without democracy, the sad history of the hemisphere has demonstrated that everything from the right to life to the right to private property is seriously endangered.”

C. CASE LAW ON ENTITLEMENT TO FREEDOM OF EXPRESSION AND ITS DUAL DIMENSION

23. The inter-American doctrine and jurisprudence emphasizes universal entitlement to freedom of expression and its interrelationship with and interdependence on other human rights. Under article 13 of the American Convention, freedom of expression is a right to which everyone is entitled, under conditions of equality and without discrimination of any kind.

24. The Inter-American Court has underscored that entitlement to the right to freedom of expression cannot be restricted to a certain profession or group of people, nor to the sphere of freedom of the press. In this regard, for instance, in its judgment in the case of Tristán Donoso v. Panama, the Court stated that “the American Convention guarantees this right to every individual, irrespective of any other consideration; so, such guarantee should not be limited to a given profession or group of individuals. Freedom of expression is an essential element of the freedom of the press, although they are not synonymous and exercise of the first does not condition exercise of the second.”

25. Similarly, on December 3, 2013, in its previously cited Judgment T-904/13, the First Review Chamber of the Constitutional Court of Colombia held that “What we call freedom of expression is a general category that consists of bundle of different rights and freedoms, most notably including (...) freedom of opinion (also called "freedom of expression in the strict sense"), which includes the freedom to express and disseminate one's own thought, opinions, and ideas,

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without being limited by borders and by any means of expression; and freedom of information, which protects the freedom to seek, transmit, and receive accurate and impartial information about events, ideas, and opinions of all kinds.” The Court explained that, “Both freedom of opinion and freedom of information can be exercised by any person by any means of expression, but when they are exercised through the mass media, the content of freedom of the press is incorporated. This includes, in addition to the freedom to disseminate information and opinions through the media, the right to establish and operate such media.”

26. Another characteristic of freedom of expression that the Court and the Inter-American Commission have emphasized is their dual dimension. On numerous occasions, the inter-American case law has stated that freedom of expression has an individual dimension, consisting of the right of each person to express his or her own thoughts, ideas, and information; and a collective or social dimension, consisting of society's right to seek and receive any information, to learn about the thoughts, ideas, and information held by others, and to be well-informed. The doctrine and jurisprudence of the system has indicated that both dimensions are interdependent and equally important, and therefore one cannot be diminished by invoking the preservation of the other.

27. Consistent with the above, when the Supreme Court of Argentina handed down the aforementioned October 23, 2013 judgment in the case of Grupo Clarín SA et al. v. National Executive Branch, et al./ action for a declaratory judgment, it held that, in its individual aspect “understood in this way—as a faculty of self-determination, self-realization—the exercise of freedom of expression allows for almost minimal state regulatory activity, which would only be justified in those cases in which that freedom adversely affects the rights of third parties (article 19 of the National Constitution).” Therefore, “in its collective dimension—an aspect that is especially promoted by the challenged law—freedom of expression is a necessary instrument to guarantee freedom of information and the formation of public opinion.” As such, “from this point of view, freedom of expression is a cornerstone of the very existence of a democratic society.” The Supreme Court of Uruguay ruled similarly on April 5, 2016, in adjudicating the previously cited unconstitutionality action.

D. CASE LAW ON THE ADMISSIBILITY OF LIMITATIONS TO FREEDOM OF EXPRESSION: GENERAL FRAMEWORK

28. According to the standards developed by the inter-American doctrine and jurisprudence, this Office of the Special Rapporteur has stressed that freedom of expression is not an absolute right. Article 13 of the

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American Convention provides expressly—in clauses 2, 4, and 5—that freedom of expression can be subject to certain limitations, and establishes the general framework of the conditions that such limitations must meet in order to be legitimate. Accordingly, it has stated that the general rule was established in clause 2, according to which “The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.”

29. Article 13(4) of the American Convention provides that public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence, without prejudice to the provisions of clause 2. Finally clause 5 establishes that any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitement to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

30. The Office of the Special Rapporteur has explained that the rules pertaining to the admissibility of restrictions apply to all of the elements of freedom of expression and in their diverse manifestations.

31. In applying “conventionality control,” different courts of the region have developed standards of constitutional scrutiny in their case law that apply when imposing limitations to freedom of expression.

32. For instance, in the aforementioned González v. Serrano judgment of July 10, 2013, the Chamber of Criminal Cassation of the Supreme Court of Colombia [Sala de Casación Penal de la Corte Suprema de Justicia de Colombia] developed a detailed analysis of the conditions under which the right to freedom of expression may be limited under the standards of the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the Constitution of Colombia. Based on the case law of the Constitutional Court, the Chamber held that limitations to the right to freedom of expression may be constitutionally admissible, in the following terms: “(1) they are provided by law, specifically and exhaustively, (2) they pursue certain compelling aims, (3) they are necessary for the accomplishment of such aims, (4) they are subsequent and not prior to the expression, (5) they do not constitute censorship in any of its forms, which includes the requirement to maintain neutrality with respect to the content of the expression that is limited, and (6) they do not interfere excessively with the exercise of this fundamental right; that is, they are proportionate.” The Colombian Constitutional Court [Corte Constitucional] issued a similar ruling on December 3, 2013, in the previously cited Judgment T-904/13. It held that “The constitutional case law has held that any limitation on freedom of expression, especially when it pertains to specially protected speech, is presumed to be suspect, and therefore must be subject to a strict constitutional analysis.”

33. Similarly, the Supreme Court of Mexico [Suprema Corte de Justicia de la Nación de México] addressed the issue in a June 20, 2013 judgment upholding a constitutional challenge to article 373 of the Criminal Code.


of Veracruz. 27 The challenged criminal provision established penalties ranging from one to four years in prison and a fine equivalent to five hundred to one thousand days’ wages for any person who “falsely claims the existence of explosive devices or others; attacks with firearms; or chemical, biological, or toxic substances that can harm human health, thus disturbing public order.” In its decision, the Court cited Advisory Opinion 5/85 of the Inter-American Court, 28 stating that, “according to the Inter-American Court of Human Rights, in order for subsequent liability to be established as a limit to freedom of expression, it must meet several requirements: a) it must correspond to previously established grounds of liability; b) there must be an express and exhaustive definition of those grounds in the law; c) the aims pursued when imposing it must be legitimate, and d) those grounds of liability must be necessary in a democratic society to ensure the aforementioned aims. Any interference that fails to meet any of these requirements constitutes a violation of freedom of expression.”

34. In examining the scope of article 13.2 of the American Convention, the Argentine Supreme Court [Corte Suprema de Justicia de la Nación] held that “any restriction, penalty, or limitation to freedom of expression must be interpreted restrictively.” 29 Along these lines, it further held that “[a]ny prior censorship exercised over freedom of expression is subject to a strong presumption of unconstitutionality,” the imposition of subsequent liability being the principle eventually applicable in the event of the abuse of its exercise. “This is because (...) the case law of the Court has been consistent with the governing principle whereby press law occupies a privileged position in our legal system. And this could not be otherwise, given that contemporary society breathes through informatio[n],” it stated. The Court ruled similarly in its October 28, 2014 decision in the case of Rodríguez v. Google Inc. & Yahoo Argentina, in which it found that the Internet companies were not liable for damages.

35. On December 17, 2014, the Federal Supreme Court of Brazil [Supremo Tribunal Federal] (STF), in suspending a measure that had ordered Rede União de Rádio e Televisão LTDA to pay compensation for non-pecuniary damages, upheld the prohibition against prior censorship and held that, in order to be admissible, limitations to freedom of expression must be properly provided for in valid laws; must pursue constitutionally legitimate aims, and must be “necessary to the preservation of a democratic and plural society.” 30

36. In its April 5, 2016 decision adjudicating an unconstitutionality action challenging various articles of the Audiovisual Communication Services Law, the Uruguayan Supreme Court [Suprema Corte de Justicia] maintained the importance of adopting “the democratic standard” and the “dual dimension” of the right to freedom of expression, in assessing the constitutionality of the challenged provisions, which the petitioners alleged would inadmissibly restrict the right to freedom of expression. 31 The Court rejected including issues related to “the convenience, justice, or timeliness of the provision” as a criterion of analysis. In explaining the reasoning behind its position on the standard of scrutiny that should be adopted, Judge Jorge Chediack stated that, “Although some rights can be limited by the legislature, the Court must examine in each case whether the provision effectively protects the general interest,” a determination that requires the application of “the rules of reasonableness.” He specified that, “In case of doubt, and if it is not clear what the protected general interest is, the situation must be resolved in favor of freedom of expression.” For his part, Judge Ricardo C.
Pérez Manrique, citing the position taken by the Inter-American Court in the case of *Granier et al. (Radio Caracas Televisión) v. Venezuela*, noted that, “Freedom of expression can also be affected without the direct intervention of State action,” for instance, through the existence of monopolies and oligopolies in media ownership.

37. Another relevant decision was issued by the Constitutional Court of the Dominican Republic [*Tribunal Constitucional de República Dominicana*] on April 4, 2016. The Court, partially upholding a direct action of unconstitutionality that challenged a number of articles of the Law on the Expression and Dissemination of Thought and of the Criminal Code, held that limitations on freedom of expression must: a) be provided for by law, b) pursue a legitimate aim, and c) be suitable, necessary, and proportionate.32

**E. CASE LAW ON PROHIBITION OF PRIOR CENSORSHIP**

38. The Inter-American Commission and this Office of the Special Rapporteur have underscored that, under article 13 of the American Convention, the limitations imposed on freedom of expression cannot amount to censorship and must be established through subsequent liability for the exercise of the right in question. These restrictions cannot be discriminatory or produce discriminatory effects, nor can they be established by indirect means.33 Below are some examples of the way in which different courts in the region have incorporated these principles to protect freedom of expression.

39. In the previously cited judgment of June 20, 2013, the Supreme Court of Mexico [*Suprema Corte de Justicia de la Nación de México*] reaffirmed “the prohibition against prior censorship set forth in article 7 of the Constitution of the United Mexican States, article 13 of the American Convention on Human Rights, and article 19 of the International Covenant on Civil and Political Rights.”34 The Court held that this prohibition “is consistent” with the “preferential position” of freedom of expression and the right to information, and has “as a principal consequence the general presumption that all expressive or informative speech is covered by the constitution, and is justified by the primary obligation of the State to remain neutral toward the content of the opinion and information disseminated, as well as by the need to guarantee that, in principle, no persons, groups, ideas, or means of expression are excluded a priori from public discourse.” The judgment held that “The Pact of San José is one of the clearest instruments on this issue, because it expressly opposes the mechanism of prior censorship with the rule that the exercise of free speech and freedom of the press can only be subject to subsequent liability.”

40. The issue was also addressed by the Federal Supreme Court [*Supremo Tribunal Federal*] (STF) in Brazil in a judgment handed down on September 17, 2014. In that decision, the Court set aside an injunction issued by the District Court of Fortaleza, in the State of Ceará, ordering the magazine *IstoÉ* to cease distributing, marketing, and publishing—in print and electronic formats—any news related to the Governor of Ceará and related to an investigation of cases of money laundering and tax evasion.35 The injunction had also assessed a daily fine in the event of noncompliance. In its decision, the Federal Supreme Court reaffirmed “the full freedom of the press as a legal category prohibiting any type of prior censorship.” In this regard, it held that the lower court’s order imposed prior censorship on a journalistic publication under circumstances in which such measures were inadmissible. The Court stated that, “On the contrary, all of the standards [...] indicate that the appropriate solution is to allow for the disclosure of the news, after which the interested party may avail itself of subsequent redress mechanisms.” The Federal Supreme Court added that, in this

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specific case, the censored news was of “clear public interest,” given that it referred to the investigation into alleged criminal acts related to the diversion of public funds.

41. This reasoning was reiterated by the Federal Supreme Court (STF) on October 3 of the same year, in its ruling on claim [Reclamação] 18.746. In this case, the Court set aside an injunction issued by the 12th civil court of the District of João Pessoa [Juízo da 12ª Vara Cível da Comarca de João Pessoa], state of Paraíba, barring Rede Globo from publishing reports on alleged irregularities committed by a judge in the State of Paraíba in adoption proceedings, which were the subject of parliamentary investigations.

F. CASE LAW ON THE CONDITIONS THAT LIMITATIONS ON FREEDOM OF EXPRESSION MUST MEET IN ORDER TO BE ADMISSIBLE (THREE-PART TEST STANDARD)

42. In interpreting article 13.2 of the American Convention, the inter-American case law has developed a three-part test to control the legitimacy of restrictions to freedom of expression. According to that test, in order for a limitation on the right to freedom of expression to be admissible, it must: be clearly and precisely provided for in advance by law, both substantively and procedurally; be designed to achieve one of the compelling objectives recognized in the American Convention; and be necessary in a democratic society to accomplish the compelling aims, strictly proportionate to the aim pursued, and suitable for accomplishing the compelling aim pursued.

43. The Inter-American Commission has specified that these conditions are included in the general rule that the limitations must be compatible with the democratic principle, which entails—at least—the following requirements: “restrictions on freedom of expression must incorporate the just demands of a democratic society;” that “the rules under which these restrictions are interpreted must be compatible with the preservation and development of democratic societies in keeping with articles 29 and 32 of the [American] Convention;” and that “the interpretation of restrictions on freedom of expression (article 13(2)) must ‘be judged making reference to the legitimate needs of societies and democratic institutions,’ given that freedom of expression is essential for every form of democratic government.”

44. The reasoning and legal grounds expressed by different courts of the region upon specifically considering the different elements of the three-part test is systematically organized below.

- The Requirement that Limitations Must Be Established by Law, in a Clear and Precise Manner

45. In its 2013 decision on unconstitutionality action 29/2011, the Supreme Court of Mexico [Suprema Corte de Justicia de la Nación de México] held that article 373 of the Criminal Code of Veracruz amounted to an inadmissible restriction to freedom of expression, in that—among other elements—its ambiguity violated the principle that the law must be exhaustive. The article allowed for the criminal prosecution of anyone who, “(a) by any means, falsely claims the existence of explosive devices or others […]” (emphasis in the original). Referring to Advisory Opinion 5/85 of the Inter-American Court, the decision held that “in matters concerning limitations to freedom of expression imposed by criminal provisions, the Inter-American Court

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39 “Article 373. Whoever, by any means, falsely claims the existence of explosive or other devices; of firearm assaults; or of chemical, biological or toxic substances that may cause health damage; causing disturbance of the public order, shall be imprisoned from one to four years and fined from five hundred to one thousand days of their salary, considering the alarm or disturbance of the order actually produced.”
has held that the requirements of the principle of strict legality must additionally be met. The purpose of this
requirement has a dual function: first, it reduces the jurisdiction of the State with regard to the way in which
it can restrict freedom of expression; in addition, it tells the citizen exactly what is prohibited." This principle
"amounts to an authentic constitutional duty of the legislature, whereby it is obligated to formulate the
factual assumptions of the criminal provisions in precise terms," emphasized the Court. In this specific case, it
established that the governing language describing the challenged concept "is ‘falsely claim,’ and therefore
the conduct that constitutes the crime is the expression, whether verbal, written, or symbolic." It then
determined that:

the expression included in the challenged provision, related to the governing language of the statutory
description of the offense, and which is imprecise, is ‘or others.’ The challenged provision contains this
phrase as a disjunctive with respect to the false claim of the existence of explosives: "anyone who, by any
means, falsely claims the existence of explosive devices or others [...]" This issue allows for at least two possible
interpretations: 1) that the phrase "or other" refers to another type of device analogous to explosives; or 2)
that it refers to a different type of devices, that is, not explosives. This dual possibility is another example of
potential vagueness, since it is not clear to which of the two aspects the legislature is referring, which could
be interpreted in either of the aforementioned ways. The issue is relevant because it concerns the statutory
definition of a criminal offense that in no way allows for or makes possible the imposition of penalties based
on analogy or compelling logic (article 14 of the Constitution). This problem can lead to cases of over-

46. Accordingly, the Mexican Supreme Court concluded that the "arguments expressed by the Chairman of
the National Human Rights Commission are especially well-founded with regard to their two concepts of
invalidity," in which he had indicated, respectively, "that the challenged provision violates the human rights
of freedom of expression and the right to information, and fails to comply with the guarantees of legality, legal
certainty and precise application of the criminal law." The Court also adopted other important conclusions by
applying the three-part test, as mentioned in the sections below.

- Requirement that Limitations Must Be Designed to Achieve the Legitimate Aims Recognized in
  the American Convention

47. As stated earlier, the limitations imposed must pursue one of the compelling aims set forth
exhaustively in the American Convention, to wit: the protection of the rights of others, the protection
of national security, public order, or public health and morals. This Office of the Special Rapporteur and the
bodies of the Inter-American System have emphasized that "these are the only objectives authorized by the
American Convention."40

48. In relation to this point, the June 20, 2013 judgment of the Supreme Court of Mexico cited in the
previous section is of particular interest.41 In this judgment, which cites the inter-American doctrine and
jurisprudence multiple times, the high court held that "the protection of public order is an objective
authorized" by the "legal system to limit the freedom of expression of citizens. Nevertheless, citing OC – 5/85
of the Inter-American Court, it held that, in general terms, "public order' may under no circumstances be
invoked as a means of denying a right guaranteed by the Convention or to impair or deprive it of its true
content." Citing the Office of the Special Rapporteur, the Court stated that, "any limitation on freedom of
expression in the name of one of the aims provided for must be based on real and objectively verifiable causes
that present the certain and credible threat of a potentially serious disturbance of the basic conditions for the
functioning of democratic institutions."

40IACHR. Annual Report 2009, Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal

41Suprema Corte de Justicia de la Nación de México (SCJN). June 20, 2013. Invalida SCJN Artículo 373 del Código Penal del Estado de
Available at: http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774
• Requirement that the Limitation be Necessary in a Democratic Society, Suitable for Accomplishing the Compelling Aim Pursued, and Strictly Proportionate to that aim

49. The inter-American case law has noted that the States that impose limitations on freedom of expression are required to demonstrate that those limitations are necessary in a democratic society for the accomplishment of the compelling objectives they pursue. The link between the necessity of the limitations and democracy is derived, in the opinion of the Inter-American Court, from a harmonic and comprehensive interpretation of the American Convention.

50. The Supreme Court of Mexico [Suprema Corte de Justicia de la Nación de México] further developed these concepts in the previously cited judgment of June 20, 2013. It held that, "It is not enough for the legislature to demonstrate that the aim pursued is legitimate; rather, it must ensure that the measure employed is carefully designed to accomplish that compelling aim." Along these lines, the Court specified that "necessary" is not the same as "useful" or "opportune." Accordingly, "In order for the restriction to be legitimate, the certain and compelling need to impose the limitation must be clearly established. In other words, it must be demonstrated that the objective in question cannot reasonably be accomplished by another measure less restrictive of freedom of expression. This means that it must not be limited beyond what is strictly necessary in order to guarantee the full exercise and scope of this human right," held the Court. In its decision, the Supreme Court found that "A restriction to freedom of expression must be proportionate to the legitimate aim that justifies it, and strictly tailored to the accomplishment of that objective without interfering in the legitimate exercise of said freedom."

51. In applying these standards to this specific case, the Court concluded that “the omission from the challenged provision of malice as an integral part of the statutorily defined conduct creates a very relevant chilling effect, whereby well-intentioned individuals may feel inhibited or frightened to express necessary alerts with respect to the ‘real’ existence of those elements (emphasis in the original).” “In this regard, article 373 caused greater harm that the harm it intended to prevent,” the Court summarized. Therefore, the Court, sitting en banc, found that the article was not “carefully designed to interfere as little as possible with freedom of expression and the right to information," and did not “adequately meet the requirement of necessity demanded for all subsequent liability for the illegitimate exercise of speech.” It concluded that “The fear of serious harm does not by itself justify the chilling effect created by the threat of criminal prosecution or the seriousness of the penalty. The silence imposed by the State ends up blocking the flow of information more than necessary in a democratic society, and therefore violates articles 6 and 7 of the Federal Constitution.”

52. The First Division of the Supreme Court of Mexico [Primera Sala de la Suprema Corte de Justicia de la Nación de México], ruled similarly in its May 20, 2015 judgment on the unconstitutionality of article 398 Bis

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44Article 398 Bis of the Criminal Code of Chiapas: “Any person who obtains and provides confidential or classified information from the public security or armed forces for the purpose of preventing the individual or individuals active of the crime from being detained or for the purpose of enabling them to engage in criminal activity to the detriment of a third party, shall be penalized with two to fifteen years of imprisonment and a fine of two hundred to four hundred days of minimum wage.

When the behavior is carried out using persons who are minors or persons without the capacity to understand the unlawful nature of the act, the penalty shall be increased by one-half of that indicated in the first paragraph.
of the Criminal Code of Chiapas that prohibited "halconeo" [acting as a lookout]. The provision imposed a term of imprisonment between two and fifteen years for persons "who obtain and disclose confidential or reserved information from the public security or armed forces for purposes of preventing the perpetrator or perpetrators of the crime from being arrested or for them to be able to conduct criminal activity against a third party.” In this case, the Court ruled on an amparo petition filed by the non-governmental organization Artículo 19, which called into question the vagueness of the terms of the provision, on the assertion that practically any search for information on matters of public safety was thus absolutely restricted. In its rationale for finding the provision unconstitutional, the First Division [Primera Sala] de la Suprema Corte de Justicia de la Nación de México held that although the provision pursued a legitimate aim—protecting public safety—"the restriction was not oriented toward satisfying the public interests meant to be protected (necessity) and the restriction imposed is not the one that restricts the right of access to information to the least extent possible (suitableness). All of which, in turn (...) is related, in the instant case, to the violation of the principle that criminal provisions must be exhaustive in nature."

53. The judgment of the First Division, delivered by Judge Alfredo Gutiérrez Ortiz Mena, held that “the challenged provision restricts the enjoyment of the essential core of the right of access to information (...) by criminalizing the public discussion of a part of the government's activity that ideally should be front and center for society to evaluate—that is, public safety (core speech), and is not limited to restricting incidental or peripheral aspects of that speech.” The judgment contained important references to the doctrine and jurisprudence of the Inter-American Commission and the Inter-American Court of Human Rights with respect to the right to information. Among other things, it mentioned the standards on the right to information set forth in the Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil and the Case of Claude Reyes et al. v. Chile.

54. In Colombia, the Constitutional Court [Corte Constitucional] applied the three-part test to determine which constitutional remedy would be least restrictive of freedom of expression, for purposes of adopting measures designed to protect the rights to honor and reputation of a citizen who sought the removal of content from the Internet concerning alleged criminal acts of which she was never found guilty. She sought to have measures ordered to prevent search engines from providing links to the news story published by El Tiempo in its web version. In Judgment T-277 of May 12, 2015, the Court upheld the lower court's decision regarding the need to grant the protection requested by the citizen, but ordered measures it considered less restrictive in application of the three-part test. In its examination of the lower court's decision, the Court held that "This decision ordered the El Tiempo Publishing House to delete from the web page all of the negative information about Mrs. Gloria’s arrest and the criminal investigation against her for the offense of human trafficking. Although it is a measure that seeks to protect the rights of the petitioner, we should not lose sight of the fact that it also imposes a restriction on the media outlet’s right to freedom of expression, as it suppresses the published information.” Therefore, “this being a matter that has the potential to jeopardize the freedom of expression of a media outlet, the Court finds that three-part test developed in the case law of the Inter-American Court of Human Rights should be used in the examination of this case, to the extent that it is designed specifically to assess whether a limitation on the restriction of the right to freedom of expression is in turn an unlawful violation of that right.” Weighing the “need” of the measure adopted by the lower court

Likewise, the sentence will be increased up to one half when the behavior is carried out by civil servants who belong or have belonged to a public security institution, the armed forces or who are persons having belonged or belonging to legal entities that provide private security services.

When the behavior is carried out using official equipment or vehicles, or vehicles of a public or commercial transport service, or that by their characteristics are similar to those in appearance, the penalty will be increased up to one half of the one indicated in the first paragraph.

Likewise, confidential or classified information is understood as that which is related to the activities coming from operations, investigations, prosecution of crimes or their perpetrators, the same information that, in terms of the Political Constitution of the United Mexican States and the Law that Guarantees the Transparency and the Right to Public Information for the State of Chiapas, has such a nature.


judge, the Constitutional Court found that it was necessary “to verify whether there are other constitutionally admisible means that are equally suitable for the proposed objective and less harmful to the right to freedom of expression of the El Tiempo Publishing House.”

55. The three-part test was also applied by the Supreme Court of Argentina in 2013 and the Supreme Court of Uruguay in 2016, in examining the legitimacy of measures designed to guarantee the diversity and plurality of the media and combat monopolies and oligopolies. In those cases, which are examined at greater length below, the courts found that the regulation provided by the audiovisual communication services laws of both countries pursued a legitimate aim consistent with the democratic standard.

56. The Supreme Court [Suprema Corte de Justicia] of Uruguay found that, by restricting the enjoyment of fundamental rights, the legislature is limited by “the precaution that the restrictive law (...) is enacted for ‘reasons of general interest’ and by the principle of proportionality that “appears as a logical consequence.” Along these lines, it held that “proportionality in the strict sense leads to an examination of the reasonableness of the legally provided measure considered in its totality, by weighing the limitation or restriction of the right, on one hand, and the aim it seeks to accomplish, on the other. If the curtailment of the potential enjoyment or exercise of the right is excessive in relation to the proposed objective, the measure is disproportionate and therefore unlawful. It follows that the assessment of proportionality in the strict sense focuses on the means/ends relationship, which must be balanced or proportionate (Cf. Casal Hernández [...]).” The Court noted that, additionally, and according to the parameters established by the Inter-American Court of Human Rights in Advisory Opinion 5/85, it is appropriate to examine in each case whether a restriction on freedom of expression is necessary to secure one of the objectives mentioned in article 13.2 of the American Convention, reaffirming that such objectives “must be tied to the legitimate needs of societies and democratic institutions.”

G. CASE LAW ON THE PRESUMPTION OF AB INITIO COVERAGE FOR ALL KINDS OF EXPRESSION, INCLUDING OFFENSIVE, SHOCKING OR DISTURBING SPEECH

57. The Inter-American Commission and the Court have emphasized that freedom of expression must be guaranteed not only in terms of the dissemination of ideas and information received favorably or considered inoffensive or indifferent but also with regard to those that offend, shock, upset, are disagreeable, or disturb the State or any sector of the population. The bodies of the Inter-American System have underscored the importance of this rule to ensure the pluralism, tolerance, and spirit of openness that are indispensable in a democratic society. This Office of the Special Rapporteur has emphasized that this general assumption that all expression is covered is explained by the primary obligation of the State to remain neutral toward the content of the opinion and information disseminated, as well as by the need to guarantee that, in principle, no persons, groups, ideas, or means of expression are excluded a priori from public discourse.


The application of this standard by courts in the region has contributed to the judicial protection of the right to freedom of expression in cases where there have been attempts to restrict the right because of the content of the speech.

For instance, in Brazil, on September 19, 2013, the Fourth Civil Chamber of Private Law of the Court of Justice of the state of São Paulo [Tribunal de Justiça do Estado de São Paulo. 4ª Câmara de Direito Privado], in its decision in the União Nacional de Entidades Islâmicas do Brasil v. Google Brasil Internet Ltda. case, held that the content of a video critical on the religion of Islam was protected [encontra-se socorrido] by the right to the free expression of artistic thought and the free circulation of ideas. The judgment held that religious criticism is an expression of thought, as citizens are entitled to set forth, debate, and practice their beliefs. In making these arguments, the Chamber upheld the judgment of the trial court and dismissed the claim for damages and the removal from YouTube of all of the videos from the film entitled “The innocence of muslims” [Inocência dos Muçulmanos].

In consonance with the previously explained, the issue was also taken up by the First Division of the Mexican Supreme Court [Primera Sala de la Suprema Corte de Justicia de la Nación de México] in a judgment handed down on February 7, 2014. The decision rejected an amparo review petition in which a public servant sought civil damages for harm to his honor based on the dissemination of opinions critical of his work as the academic coordinator of a State university. The First Division held that “The main consequence of the preferential position of freedom of expression and the right to information is the general presumption that all expressive or informative speech is covered by the constitution” (highlighted in the original). Citing the Office of the Special Rapporteur, the Court held that that presumption “is justified by the primary obligation of State neutrality toward the content of the opinions and information disseminated, as well as by the need to ensure that, in principle, no persons, groups, ideas, or means of expression are excluded a priori from public discourse.” The judgment underscored that “protected speech includes not only ideas that are received favorably or viewed as inoffensive or indifferent but also speech that may offend, shock, disturb, bother, upset, or disgust, as that is precisely where freedom of expression is most valuable. These are the demands of a plural, tolerant, and open society, without which a true democracy does not exist.”

H. CASE LAW ON SPECIALLY PROTECTED SPEECH

Albeit all forms of expression are, in principle, protected by the freedom enshrined in article 13 of the American Convention, there are certain types of speech that receive special protection, given its importance to the exercise of all other human rights or to the consolidation, operation, and preservation of democracy. This Office of the Special Rapporteur has determined from the inter-American case law that such specially protected modes of speech are: (a) political speech and speech about matters of public interest; b) speech about public servants and candidates for public office; and (c) speech that comprises an element of the personal identity or dignity of the speaker.

This issue was addressed by the Constitutional Court of the Dominican Republic [Tribunal Constitucional de República Dominicana] in its April 4, 2016 judgment finding seven articles of the Law on the Expression and Dissemination of Thought unconstitutional. The Court was called upon to adjudicate a direct unconstitutionality action challenging eleven provisions of the law, and five articles of the Criminal Code. The plaintiffs, the directors of three newspapers—Rafael Molina Morillo, the director of El Día, Miguel Antonio Franjul, the director of Listín Diario, and Osvaldo Santana, the director of El Caribe—and the Fundación Prensa

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y Derecho [Press and Law Foundation], alleged that the challenged articles made “speech crimes” and "liability for the acts of another” criminal offenses punishable by imprisonment, which was inadmissible under the inter-American standards and the constitutional protection of the right to freedom of expression in the country. The decision, found that the criminalization of speech about public servants in the performance of their duties or persons holding government positions, is inadmissible and “affects the essential core of freedom of expression and opinion.” The Court ruled as follows:

In view of the legal precedent, the Court concludes that the provisions of articles 30, 31, 34, and 37 of Law No. 6132, by establishing criminal penalties for any defamatory act against any public servant in the performance of his or her duties or persons holding government positions, constitute a legal limitation that affects the essential core of freedom of expression and opinion through the press when it concerns public servants subject by their nature to citizen oversight through public opinion, and therefore are unconstitutional.

63. Similarly, on April 21, 2014 the Constitutional Court [Corte Constitucional] of Panama handed down a decision upholding the constitutionality of article 196 (previously 192) of the Criminal Code [Código Penal]. This provision partially decriminalized crimes against honor in those cases where the alleged victims are high-ranking public servants, elected officials, or governors. The Court recalled its doctrine and ruled that public servants are subject to a higher degree of scrutiny, which is fundamental for “the operation of democratic society”. In setting forth the reasoning for the decision adopted by the majority of the Court, the Judge who delivered the opinion, José Eduardo Ayu Prado Canals, stated that although the national constitution and the international instruments protect all people’s right to their honor,

64. Article 30.- Defamation committed by one of the means set forth in articles 23 and 29 to the detriment of the Courts and Tribunals, the Armed Forces, the National Police, Legislative Chambers, Town Halls and other State institutions, will be punished with a one month to one year prison sentence and with a fine of RD $ 50.00 to RD $ 500.00, or with only one of these two penalties. Article 31.- The same punishment established in article 30 applies to defamation committed by the means announced in articles 23 and 29 to the detriment of: a) One or more members of the Cabinet; b) One or more members of the Legislative Chambers; c) One or more public officials; d) One or more depositaries or agents of public authority; e) One or more citizens in charge of any service or official, temporary or permanent mandate; f) A witness because of his deposition. This article only applies to defamation committed by reason of the office or quality of the persons who are considered aggrieved. Article 34.- Defamation (Injuria) committed by the same means to the detriment of the bodies or persons designated by articles 30 and 31 of this law shall be punished with a six days to three months prison penalty and a fine of RD $ 6.00 to RD $ 60.00 or with just one of these two penalties. Article 37.- The truth of the defamatory act, but only when it relates to the functions performed by the allegedly aggrieved body or person, may be established by all means of evidence in the case of accusations against the constituted Powers, Armed Forces, National Police, public institutions and against the persons listed in article 31. The truth of defamatory and libelous accusations may also be established against the directors or administrators of any industrial, commercial or financial enterprise that publicly applies for savings or credits. Likewise, the truth of allegedly defamatory acts can always be proved except: a) When the accusation concerns the private life of one or more persons; b) When the accusation refers to an event that constitutes an amnestied or prescribed violation, or that has resulted in a sentence erased by rehabilitation or review, provided that the person to whom the accusation is made is not charged or convicted with new crimes or offenses. In the cases provided for in the preceding section, the evidence to the contrary is reserved. If the defamatory event is proven, the complaint against the defendant will be rejected. In any other circumstance and in which it concerns any other person not qualified by this law, when the event of which the person is accused is being object of judicial proceedings initiated at the request of the public prosecutor or was subject of a complaint by the defendant himself, it shall be discontinued during the investigation and hearing of the case, prosecution and ruling of the crime of defamation. (Consejo del Estado de República Dominicana. Ley No. 6132 de Expresión y difusión del Pensamiento. December 19, 1962. Available at: https://wwwilo.org/dyn/natlex/docs/ELECTRONIC/83343/91947/F1965099340/DDDB3343.pdf)


66. Subsequently it was registered in the new Criminal Code with article 196. The article that originated the challenge stated: “In crimes against honor, public retraction consented by the offended excludes criminal responsibility. When in the behaviors described in the preceding article, those allegedly offended are one of the public servants dealt with in Article 304 of the Political Constitution, elected officials or governors, the criminal sanction will not be imposed, which does not exclude civil responsibility from the event”. The plaintiff argued that the normative reference “the criminal sanction will not be imposed” violated articles 17, 19, 20 and 163 number 1 of the National Constitution. (Asamblea Nacional de la República de Panamá. April 26, 2010. Article 196. Available at: http://www.asamblea.gob.pa/legispan-2/).

from the perspective of the supranational laws on human rights, when an individual assumes a public position, he or she becomes a person of public relevance; therefore, he or she inevitably and deliberately is exposed to the watchful oversight of his or her acts and gestures, both by journalists and by the multitude of citizens. As such, he or she must exhibit greater tolerance,” he affirmed. “In other words, when a public servant becomes a person of public relevance, he or she must withstand the fact that his or her honor will be affected or influenced to a greater degree. This is necessary for political pluralism and the establishment of a critical, open, and tolerant spirit, without which democratic society and the oversight and control of the authorities who act on behalf of the people would be rendered devoid of content.

64. In Colombia, the Chamber of Criminal Cassation of the Supreme Court addressed the special protection of speech about public servants and the public interest.\textsuperscript{59} In its judgment of July 10, 2013, acquitting a journalist of the defamation charge filed against him after a lengthy court case brought by a high-ranking public servant, the Court referred to the “principle of public relevance” as the applicable standard. Citing the precedent established by the Constitutional Court in Judgment SU-1723 of 2000, it held that this principle “justifies the preferential position prima facie of freedom of expression vis-à-vis other fundamental rights whose purpose is to safeguard the private sphere of the individual. It refers to the need for information to be developed within the framework of the general interest in the matter at hand, in which regard two essential aspects come into play: (i) the status of the person; and (ii) the content of the information.”

65. On February 7, 2014, the First Division of the Supreme Court of Mexico\textsuperscript{60} dismissed as groundless a direct 	extit{amparo} petition seeking the protection of the honor and reputation of a public servant following the mass email distribution of information and opinions critical of his performance as the academic coordinator of a State university.\textsuperscript{61} In rendering its decision,\textsuperscript{62} the Court analyzed what standard it should use to assess the lawfulness of the speech in question, based on the status of the subjects involved in the specific case and the public relevance of the information disseminated. In this analysis, the Court expressly incorporated the inter-American doctrine and jurisprudence as summarized below.

66. The First Division of the Court maintained that there was a “dual system of protection” in which “the limits of criticism are broader if it concerns individuals who, because they are involved in public activities or because of the role they play in a democratic society, are exposed to a more rigorous oversight of their activities and statements than those private citizens who have no public influence.” Commenting on the position of the Inter-American Court in the 	extit{Case of Herrera Ulloa}, the Court held that “the emphasis of this different threshold of protection does not lie in the status of the individual, but rather in the public interest nature of his or her activities or actions.” Accordingly, the Court’s unanimous decision noted that, “in order for the requirement of subsequent liability for speech that infringes upon the honor of public servants or other individuals involved in the performance of public duties to constitute a necessary, suitable, and proportionate legal response, stricter conditions must be met than those that apply in the case of infringements upon a private citizens’ right to honor.” Finally, the high court summarized its position in the following terms:


\textsuperscript{61}The case went to court based on the lawsuit initiated by the public official demanding payment of compensation for moral damages derived from the distribution of various communications through the Internet, which she stated, contained expressions that undermined her reputation and institutional prestige in her workplace. After the rejection of her claim in previous judicial instances, the official appealed before the Supreme Court of Justice. The appellant relied on the following arguments: (a) the information disclosed has no public relevance nor encourages national debate; b) the co-defendants are not journalists nor communication professionals, so that the standard of effective malice [estándar de maldicia efectiva] is not applicable; and c) assuming that her academic duties were of public relevance, her nature as a public official does not automatically require her to tolerate the dissemination of false events or insults. Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo Directo en Revisión 3123/2013. Judgment of February 7, 2014. Available at: http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=156633&Sar=1
this First Division finds that, in a democratic society, there is a slim margin to any restriction of political speech or speech concerning matters of public interest, such as speech calling into question the entities and public servants that make up the State. This does not mean that public servants cannot avail themselves of the judicial protection of their honor when it is subject to unjustified attacks, but it must be done in a manner consistent with the principles of democratic pluralism and through mechanisms that do not have the potential to create inhibition or self-censorship.

67. On September 17, 2014, the Federal Supreme Court of Brazil [Supremo Tribunal Federal] (STF) ruled in claim [Reclamação] 18.638 that "Persons who hold positions in government enjoy a less intense level of protection of their right to privacy. The oversight of government power and the prevention of censorship broadens the lawful degree of interference in the personal sphere of conduct of State agents." The Court ruled similarly in the previously cited case involving the appeal filed by the magazine IstoÉ to suspend an injunction that imposed prior censorship.

I. CASE LAW ON THE INCOMPATIBILITY OF DESACATO (DEFAMATION OF PUBLIC OFFICIALS) LAWS AND THE AMERICAN CONVENTION

68. Principle 11 of the Declaration of Principles on Freedom of Expression establishes that “Public officials are subject to greater scrutiny by society,” and therefore, “Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.” In other words, do not constitute a legitimate restriction on freedom of expression under article 13 of the American Convention.

69. The Inter-American Commission on Human Rights has posited that the “desacato laws” are an illegitimate restriction on freedom of expression, because they do not pursue a legitimate aim under the American Convention and are not necessary in a democratic society. According to the IACHR, ‘the use of ‘desacato laws’ to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the public’s right to criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office.”

70. As this Office of the Special Rapporteur has explained, in the opinion of the IACHR, “the enforcement of criminal desacato laws against those who criticize public officials is per se contrary to the Convention, given that it is an imposition of subsequent liability for the exercise of freedom of expression that is unnecessary in a democratic society, and is disproportionate because of its serious effects on the person expressing the opinion and on the free flow of information in society. Desacato laws are a means of silencing unpopular ideas and opinions, and discourage criticism by generating fear of legal action, criminal punishment and monetary sanctions. Desacato laws are disproportionate in terms of the penalties they establish for criticizing State institutions and their members; they suppress the debate that is essential to the functioning of a democratic system, and unnecessarily restrict freedom of expression.”

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71. Below are examples in which the inter-American standards have been decisive in protecting the right to freedom of expression in Brazil, even within the framework of legal systems that still have so-called crimes of \textit{desacato} against public servants on the books.

72. In a decision of December 15, 2016, the Judges of the Fifth Chamber of the Superior Court of Justice of Brazil \cite{STJ}, unanimously, followed the vote of Judge Rapporteur Ribeiro Dantas, in an appeal filed by the Public Defender’s Office of São Paulo before the STJ, against a decision of the Court of Justice [Tribunal de Justiça] of São Paulo that sentenced a man to five years and five months of imprisonment for stealing a bottle of drink valued at BRL 9 (approximately US$ 3), for the crime of \textit{desacato} to the detriment of the military police who would have detained him, and for resisting detention.\footnote{Superior Tribunal de Justiça do Brasil (STJ). \textit{Recurso Especial No. 1.640.084 - SP (2016/0032106-0)}, Judgment of December 15, 2016.} The Judges annulled the sentence, stating that the criminal provision of \textit{desacato} was not compatible with article 13 of the American Convention on Human Rights. In this important decision, the TSJ exercised control of the conventionality of the criminal provision, taking into account the decisions and reports adopted by the IACHR in this matter. In this regard, the Court held that the adhesion to the Pact of San José implies the obligation to incorporate in the national legislation the criteria of interpretation of the international organizations and their methods of interpretation, including the \textit{pro person} standard. In this regard, it noted that the IACHR "has already expressed that \textit{desacato} laws lend themselves to abuse as a means to silence ideas and opinions considered uncomfortable by the establishment and therefore provide a greater level of protection for State agents than particulars, in contravention of democratic and egalitarian principles". The Court concluded that "the criminalization of contempt is opposed to universal humanist values because it reveals the preponderance of the state - personified in its agents - over the individual. The existence of these norms in the [Brazilian] legal system is anachronistic and represents unequal treatment of employees and individuals unacceptable in the rule of law.\footnote{Superior Tribunal de Justiça do Brasil (STJ). \textit{Recurso Especial No. 1.640.084 - SP (2016/0032106-0)}, Judgment of December 15, 2016.}"

73. On July 4, 2016, the Special Criminal Court of the Second Criminal Division of the District of Belford Roxo in Brazil, \cite{STJ-SP}, applied the inter-American standards and, following a strict exercise in “conventionality control,” ruled inadmissible a \textit{desacato} complaint filed by the Office of the Attorney General.\footnote{Tribunal de Justiça do Estado do Rio de Janeiro Comarca de Belford Roxo. Juizado Especial Criminal Adjunto a 2ª Vara Criminal da Comarca de Belford Roxo. Processo No. 00313156 - 07.2015.8.19.0008. Judgment of July 4, 2016. Available at: \url{http://empreiododireito.com.br/juiz-do-trib-faz-controle-de-convenionalidade-do-criminal-de-desacato/}} The Judge Alfredo José Marinho Neto was of the opinion that the complaint should be dismissed based on the protection of the right to freedom of expression that emerges from articles: 1, II, III, V and its sole paragraph; 5, IV, V, and IX; and article 220, all of the Federal Constitution; article 13 of the American Convention; article 27\textsuperscript{th} of the Vienna Convention on the Law of Treaties; article 395.III of the Code of Criminal Procedure of Brazil \cite{CPP}, and Principles 1 and 11 of the Declaration of Principles on Freedom of Expression adopted by the IACHR. The judgment held that the complaint should be shelved immediately, “due to the unconstitutionality and non-conventionality of the criminal offense of \textit{desacato} contained in article 331 of the Criminal Code \cite{CPP}.”\footnote{Art. 331 - Desacatar funcionário público no exercício da função ou em razão dela: Pena - detenção, de seis meses a dois anos, ou multa (Presidência da República de Brasil. \textit{Código Penal}, December 7, 1940. Article 331).} It further underscored that, “Citizens have the right to criticize and examine the actions and attitudes of public servants in the performance of their duties,” being a core element of democracy. The judge noted that, insofar as Brazil acceded to the American Convention “it is subject to the action” of the IACHR and to the jurisdiction of the Inter-American Court of Human Rights. It further held that, according to article 27\textsuperscript{th} of the Viena Convention —of which Brazil is also a signatory—a State party cannot invoke the provisions of its domestic law to justify the breach of a treaty. It held that, in short, the country would have to “formally expunge” article 331 of the Criminal Code from its legal system; otherwise, it would incur international responsibility.
74. The judgment incorporated the doctrine of the IACHR that *desacato* laws are incompatible with the American Convention and observed that maintaining this offense in the Brazilian legal system “inhibits individuals from expressing their opinions and thoughts to government authorities,” having a chilling effect on freedom of expression, because of the self-censorship in which citizens are liable to engage. The court maintained that “the interpretation and enforcement of the law” by the State judge should entail not only an analysis of its constitutionality but also a “conventionality control” analysis, as it was “imperative” in the Court’s view, “to acknowledge the non-conventionality and inconstitutionality of the criminal type in question,” “to do otherwise violates the fundamental and inalienable right of persons to freedom of expression, which constitutes the axiological and ontological foundation of democracy itself.”

75. Similar reasoning was expressed on March 17, 2015 by Judge Alexandre Morais da Rosa, of the Fourth Criminal Division of the District of the Capital of Santa Catarina [4ª Vara Criminal da Comarca da Capital de Santa Catarina], in ruling inadmissible a complaint filed by the Office of the Attorney General against a citizen for the offense of criminal defamation [*desacato*] for statements allegedly made to police officials during an operation.\(^70\) In this case,\(^71\) the court also performed a “conventionality control.” The court held that the conviction of an individual under Brazilian law for the offense of *desacato* violates article 13 of the American Convention on Human Rights, as interpreted by the Inter-American Commission on Human Rights. The judgment cited the decisions of the Inter-American Commission on Human Rights on the incompatibility of the *desacato* laws with the Convention, whereby it has determined that these types of provisions do not pass the *three-part test*, given that they fail to meet the criterion of necessity and do not pursue a legitimate objective in a democratic society.

### J. CASE LAW ON THE SPECIAL PROTECTION OF OPINIONS AND THE NONEXISTENCE OF CRIMES OF OPINION

76. The right to disseminate ideas and opinions by any means and in the terms provided in article 13 of the American Convention is protected under the robust protection of the right to free expression in the Inter-American System. Principle 2 of the Declaration of Principles on Freedom of Expression emphasizes this protection. Reaffirming the inter-American doctrine and jurisprudence, the Office of the Special Rapporteur for Freedom of Expression has underscored that only facts, and not opinions, are subject to determinations of accuracy or falsity; therefore, no one can be convicted for an opinion about a person when it does not entail the false attribution of verifiable facts.\(^72\)

77. Consistent with this reasoning, the Court of Appeals of Washington, Division 1, held in the 2013 case of U.S. Mission Corp. v. Kiro TV, Inc. that a statement of opinion is not actionable as defamatory.\(^73\) The court issued this ruling after examining one of the allegedly false statements included in a news report that made reference to the United States Mission Corporation, submitted as evidence in a suit for defamation against the *Kiro* TV television station. On this point, the Court found that it was a statement of opinion, and held that a statement of opinion cannot be defamatory. The judgment upheld the lower court’s dismissal of the defamation suit filed by the Seattle transitional housing service against the local television station.

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\(^{71}\) In this case, according to the account of the facts contained in the sentence, the citizen was denounced for “*desacato*”, after allegedly saying to police agents who intervened in a street brawl in which he had reportedly taken part: “I do not like the Police and they are all a bunch of animals, arrogant and good for nothing”, refusing to contribute any clarification about the brawl “much less” to a female police agent.


\(^{73}\) Court of Appeals of the State of Washington, Division 1. United States Mission Corporation v. *Kiro* TV, Inc. No. 66868-4-I. Judgment of January 14, 2013. Available at: [http://www.leagle.com/decision/10%20WAC0%2020130114B77](http://www.leagle.com/decision/10%20WAC0%2020130114B77)
78. On August 29, 2016, the Sixth Specialized Criminal Division of the Superior Court of Lima for Cases with Defendants Not in Custody [Sexta Sala Especializada en lo Penal para Procesos con Reos Libres, de la Corte Superior de Justicia de Lima], overturned the conviction of journalist Rafael Enrique León Rodríguez, a columnist for the magazine Caretas, who was found guilty of the offense of aggravated defamation against a fellow journalist. The Court held that there was no “criminal content” in the journalist’s conduct because the publication that gave rise to the complaint was an opinion column that concerned matters of public interest. The Court based its reasoning on Peruvian case law and on the judgments of the Inter-American Court of Human Rights.

79. The Chamber of Criminal Cassation of the Supreme Court [Corte Suprema de Justicia] of Colombia examined the special protection of political opinion. In its previously cited judgment of July 10, 2013, acquitting journalist Luis Agustín González of the defamation [injuria] charge brought against him as the result of a lawsuit filed by former Governor Leonor Serrano, the Court held that: although “disrespectful,” the “statements concerning the character of the former governor—who was referred to as despotic, arrogant, haughty, demeaning, erratic, flamboyant, and mentally unstable—do not contain objective elements to support the assertion that her honor was undermined or her image tarnished in front of other people. Rather, they pertain to the columnist’s perception of her.” The decision indicated that although the terms used by the journalist could “cause discomfort or humiliation to the complainant because of their highly disrespectful content,” criminal law cannot be “the appropriate forum for resolving these differences or for the aggrieved party to see her legitimate claims of redress satisfied” according to the “principle of strict legality and condition of ultima ratio established for criminal law.”

80. On December 17, 2014, the Federal Supreme Court [Supremo Tribunal Federal] of Brazil (STF) affirmed that freedom of expression includes the right to criticize and opinie. In its decision, the Court held that, “The essential and irreducible core of the fundamental right to freedom of expression encompasses the right to inform, to be informed, to have and share opinions, and to criticize.” It thus underscored the importance of critical speech in the strengthening of democracy, and affirmed that “reducing the social role of the press to sanitized informative one that is supposedly neutral and impartial” does nothing to contribute to the dynamic of a democratic society. It held that the imposition of objectivity and the prohibition of pejorative opinions and unfavorable criticism “annihilate” the protection of freedom of the press, reducing it to the freedom to inform, which—in spite of being one of its dimensions—is by no means the only one. Freedom of the press and the imposition of objectivity “are mutually exclusive concepts,” emphasized the Court. It further stressed that the threshold for the protection of freedom of expression is even higher in cases of public interest.

K. CASE LAW ON THE APPLICATION OF THE PRINCIPLE OF FAIR (OR NEUTRAL) REPORTING

81. The decision of the Inter-American Court in the case of Herrera Ulloa v. Costa Rica introduced into the Inter-American System the principle of “neutral reporting” or “fair reporting.” According to this principle,
persons who disseminate a news item that is limited to copying statements or information from third parties, will not be subjected to tests of veracity, as long as the source is cited.\(^{78}\)

82. Consistent with this standard, in a judgment delivered by its Chief Judge, the Supreme Court of the Dominican Republic held that "[w]hen a person, in his public or private life, offers a statement, and another person merely publishes it, making use of the right of access to information and its dissemination, that person is not the author of the information; only the person who made the statement is its author. Therefore, in the event that such information attacks the honor or reputation of a third party, the person who has limited him or herself to disseminating the information by the means set forth in Law No. 6132 is not personally liable for the harm that may be caused to the third party."\(^{79}\) The Judge subsequently declared the unconstitutionality of article 46\(^{80}\) of that law (Law on the Expression and Dissemination of Thought), which established so-called vicarious liability of the media directors or editors.

L. CASE LAW ON THE APPLICATION OF STANDARDS OF ACTUAL MALICE AND PROPORTIONALITY WHEN ESTABLISHING SUBSEQUENT CIVIL LIABILITY

83. According to the Joint Declaration of 2000 issued by the Special Rapporteurs on Freedom of Expression of the UN, the OAS and the OSCE, civil penalties potentially assessed for the abuse of freedom of expression "should not be so large as to exert a chilling effect on freedom of expression and should be designed to restore the reputation harmed, not to compensate the plaintiff or to punish the defendant; in particular, pecuniary awards should be strictly proportionate to the actual harm caused and the law should prioritize the use of a range of non-pecuniary remedies.\(^{81}\) Along these lines, in the case of Tristán Donoso v. Panama, the Inter-American Court found that, because of the significant amount requested by the Office of the Attorney General as reparation for the acts it considered to be defamatory, the civil penalty assessed against Tristán Donoso was just as intimidating and inhibiting of the exercise of freedom of expression as a criminal sentence.\(^{82}\)

84. The point was addressed by the First Chamber of the Constitutional Court [Sala Primera de la Corte Constitucional] of Colombia in the previously cited Judgment T-904/133 of December 2013.\(^{83}\) In reaffirming the existence of specially protected speech, the First Chamber stated that, "the special importance of and

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\(^{80}\)Article 46: "The persons in the order indicated below shall be liable, as the principal perpetrators of the penalties constituting the repression of crimes and offenses committed by means of the press: 1.- The directors of publications or publishers, whatever their professions or denominations, and in the cases provided for in the second paragraph of article 4, the substitutes of the directors. 2.- In the absence of directors, substitutes or publishers, the authors; 3.- In the absence of authors, the printers; 4.- In the absence of printers, the vendors, distributors, film exhibitors, announcers, posters setters. In the cases provided for in the second paragraph of Article 4, subsidiary liability shall fall on persons referred to in paragraphs 2, 3 and 4 of this article as if there were no director of the publication. When the violation of this law is made through a paid advertisement, notice or publication, appearing in a publication or transmitted by radio or television, the a...

\(^{81}\)Joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OAS Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. 2010. Available at: http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=142&IID=2


potential threat to speech that aims to criticize public servants has led to the consideration that, in principle, any attempt—prior or subsequent—to restrict these types of speech constitutes censorship; and the enactment and enforcement of laws that penalize the criticism of public servants—known as ‘desacato laws’—as well as the assessment of substantial civil damages for the exercise of these types of speech, violate freedom of expression.”

85. The judgment referred to the Report on the Compatibility of Desacato Laws with the American Convention on Human Rights. It also cited the November 29, 2011 judgment of the Inter-American Court in the case of Fontevecchia y D’Amico v. Argentina. Echoing the position of the Inter-American Court, the Colombian Constitutional Court recalled that, “the fear of a disproportionate civil penalty clearly may be as or more intimidating and inhibiting of freedom of expression than a criminal penalty, in that it has the potential to affect the personal and family life of the person who reports—or in this case publishes—information about a public servant, with the clear and damaging result of self-censorship, both for the person affected and other potential critics of the actions of a public servant.”

86. Also, the Mexican Supreme Court established, in a decision issued on February 7, 2014, that the applicable standard to adjudicate the case was “actual malice,” derived from the appellant’s status/activity as a public servant. It held that “the imposition of civil penalties derived from the expression of opinions, ideas, or assessments about a public servant is appropriate only in those cases in which there is false information and the intent to harm, regardless of the status of the person responsible for that expression—that is, regardless of whether that person is a journalist or media professional. This is because the point of distinction is the public activity of the recipient of the expression, who is subject to greater public scrutiny.” The Court held that the information disclosed, which gave rise to the claim for damages from the public servant, was a matter of public interest. It stated that, “The fact that the speech is designed to call into question the performance of the government in itself entails a public interest.”

M. CASE LAW ON THE RIGHT TO PROTECT THE CONFIDENTIALITY OF SOURCES

87. The inter-American standards have acknowledged that journalists and media workers are entitled to the right to keep their sources confidential. Principle 8 of the Declaration of Principles on Freedom of Expression establishes that “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 for Freedom of expression has interpreted that this principle “provides for the right of every social communicator to refuse to disclose sources of information and research findings to private entities, third parties, or government or legal authorities.” This prerogative rests on the premise of ensuring, through the work of journalists and media workers, that society as a whole is able to learn of information that it would not otherwise have any way of knowing. Thus, the Office of the Special Rapporteur has maintained that, “confidentiality is an essential element of the work of the journalist and of the role society has conferred upon journalists to report on matters of public interest.”

88. The importance of this prerogative to guarantee the most extensive flow of information has also been expressed by different courts in the region.


Thus, for instance, in Judgment 2014-004035 of March 21, 2014, the Constitutional Chamber of the Supreme Court [Sala Constitucional de la Corte Suprema de Justicia] of Costa Rica upheld the right of journalists to maintain the confidentiality of their sources. The case came before Court as an amparo petition filed by journalists from the newspaper Diario Extra after one of the paper’s journalists, Manuel Rodríguez Estrada, was subjected to telephone surveillance. The surveillance order was given by the Office of the Assistant Attorney General on Organized Crime [Fiscalía Adjunta contra Crimen Organizado], and was executed and requested by the Judicial Investigations Agency [Organismo de Investigación Judicial], a body within the Judiciary, as part of an investigation to determine the responsibility of a public servant for leaking confidential information related to two kidnappings for ransom. The telephone surveillance reportedly sought to determine who had provided the journalist with information about those events.

The Court concluded that, in this specific case, the journalist’s right to privacy had been violated, and it sought to determine whether that circumstance had additionally entailed a violation of his right to freedom of expression and the right to keep sources confidential. Citing article 13.1 of the American Convention, article 19.2 of the International Covenant on Civil and Political Rights, and Principle 8 of the Declaration of Principles on Freedom of Expression, the Constitutional Court held that, “the confidentiality of sources of information” is “a fundamental right of journalists,” and is “instrumental” to the “full enjoyment of the right to disseminate and receive information.” In those terms, the high court reaffirmed and cited judgment 2008-007548 of April 30, 2008:

The confidentiality of sources is, then, an indispensable or essential condition for the exercise of the right to information. This confidentiality is also an institutional guarantee, in that it guarantees the right to information, which, in turn, has the objective of creating free public opinion and fostering democratic pluralism. The entitlement of journalists—that is, those who habitually or regularly engage in reporting—to this fundamental right is not an unjustified privilege; rather, as stated earlier, it is a condition sine qua non to guarantee freedom of information, and therefore, the development of free public opinion and democratic pluralism.

Referring to the scope of this right, the Constitutional Court held that “its protection and effectiveness apply erga omnes,” including to the company that employs the journalists and to the authorities. It added that, “The reporter’s privilege (...) allows him or her to refuse to reveal his or her sources of information, maintaining their confidentiality.” Finally, the Court held that the confidentiality of sources cannot be equated to traditional professional privilege and affirmed that “the confidentiality of sources of information does not protect the journalist or the informant but rather the social conglomerate that is entitled to the right to receive information, such that it serves to guarantee a free, responsible, and independent press,” reasserted the Court.

Particularly relevant is the separate opinion of Judge Jinesta Lobo, in which he stated that the telephone surveillance of journalists or persons who habitually and regularly inform the public or public opinion, “is totally, absolutely, and radically unconstitutional, as they reveal sources of information (...). It cannot even be ordered by a judge.” He further found the telephone surveillance “of individuals who serve as sources of information for journalists or persons who habitually or regularly inform the public” to be inadmissible “under any circumstance.” He stated that journalists’ fundamental right not to disclose their sources “cannot yield, even to a court. It is a right that constitutes a secondary pillar of freedom of information, of the press, of the expression of thought and, consequently, of a robust and healthy democratic

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80. The ruling ordered that all telephone tracking linked to the journalist be annulled and reportedly warned the Prosecutor’s Office and the Judicial Investigation Agency of refraining from engaging in such conduct again. Although the appeal was filed because of alleged telephone tracking of several journalists in the newspaper, the Court only ruled on journalist Rodríguez Estrada, whose tracking was proven.
system that seeks transparency.” Otherwise, “the right in question is deprived of its essential content,” he concluded.

93. On February 19, 2013, a judge from the United States District Court Southern District of New York quashed a subpoena seeking access to material filmed for the documentary *The Central Park Five*, including footage that had not been included in the final version of the movie. The request for the subpoena was filed in a civil case brought against the city of New York, its police department, the Office of the District Attorney of New York, and employees of those offices, by five individuals who had been wrongly accused of attacking and raping a woman in Central Park in 1989.

94. The Court determined that the producer, Florentine Films, had demonstrated its independence in making the documentary and could claim the reporter’s privilege recognized in the common law. It further concluded that the attorneys for the city of New York had failed to demonstrate the relevance and significance of the material requested at trial, and that the information was not reasonably obtainable from other sources. The Court held that the policy on the reporter’s privilege reflects an essential public interest in maintaining a vigorous and independent press capable of participating in robust debate and without restrictions on controversial matters, “an interest which has always been a principal concern of the First Amendment.” It asserted that this privilege exists in order to guarantee the vital public function of the press to seek and disclose accurate information, and to protect the newsgathering process, as had been established in the case of *Chevron Corp. v. Berlinger* 629 F. 3d 297, 308 (2d Cir. 2011).

95. Also in the United States, a few months later, on December 10, 2013, the New York State Court of Appeals reversed an order of the Appellate Division of the New York Supreme Court and rejected the notion that a journalist from the FoxNews.com network should be required to testify and reveal her confidential sources in a trial held in Colorado against a defendant accused of a movie theater shooting in that state. The case began when the journalist published an article in July 2012 indicating that the suspect in that case had detailed to his psychiatrist how he would commit the attack. The journalist had cited two law enforcement officers as anonymous sources.

96. The New York State Court of Appeals held that protection of the anonymity of confidential sources is a core—if not the central—concern underlying the privilege granted to reporters under the New York Shield Law. The Court noted that the reporter’s privilege seeks to prevent news sources from remaining silent for fear of reprisals, thus inhibiting the future investigative efforts of reporters. The majority of the Court concluded that—although the New York court had found that the order from Colorado did not specify that the purpose of the subpoena was to compel the journalist to reveal her sources—the only purpose of requiring her to appear in Colorado would be to force her to reveal the identities of the individuals who provided her with the information she reported in the news story, which was obtained in exchange for a promise of confidentiality. The Court of Appeals explained that this would almost certainly allow the District Court to identify the officers who revealed the information, and that they could potentially be sanctioned for violation of a nondisclosure order and perhaps even prosecuted for perjury. Nevertheless, the Court found that although this could be a valid objective, this predictable chain of events is precisely the harm sought to be avoided under the Shield Law, to the extent that it could have a chilling effect in the future. The defense

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91The motion to quash a subpoena invoked the New York Shield Law, § 79-h (c) of the New York Civil Rights Law, and the decision by the Second Circuit Court of Appeals in the case of Gonzales v. National Broadcasting Company Inc, 194 F. 3d 29 (2d Cir.1999).


93Judge Robert Smith expressed his dissent. He agreed with the other members of the Court of Appeals that New York’s Shield Law establishes the robust protection of the right of reporters to protect sources. However, he held that it was not applicable to the case, since the communications that the journalist claimed to be privileged took place wholly in Colorado and not in New York.
appealed the Court’s decision to the United States Supreme Court, attempting a final review. On May 27, 2014, the U.S. Supreme Court upheld the decision.94

97. Similarly, on January 8, 2015, Chief Judge Ricardo Lewandowski of the Federal Supreme Court of Brazil (STF), issued a ruling to suspend a judgment of the Fourth Federal Court of São José de Rio Preto [4ª Vara Federal de São José do Rio Preto], in the state of São Paulo, which had authorized lifting the confidentiality of the telephone communications of journalist Allan de Abreu Aio and his employer, the Diário da Região newspaper.95 The journalist and the newspaper were accused by the Office of the Attorney General of disclosing confidential information about a Federal Police operation called “Tamburutaca.” As part of the investigations, the Office of the Attorney General requested that their communications be turned over.

98. In stating the reasons for its adoption of the provisional measure, the Court specified that “one of the most important constitutional guarantees, freedom of the press and, consequently, democracy itself” was at stake. The Court held that for this reason, and to ensure the usefulness of a judicial decision to address the urgency of the case, it was necessary to suspend the challenged decision until the merits of the case could be reexamined.

N. THE PROHIBITION AGAINST PRIOR AND INDIRECT CENSORSHIP ESTABLISHING LIMITATIONS ON FREEDOM OF EXPRESSION BY INDIRECT MEANS, INCLUDING THE DISCRIMINATORY PLACEMENT OF GOVERNMENT ADVERTISING

99. Article 13.3 of the American Convention provides, without limitation, 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.”

100. The IACHR has explained that a single State act can simultaneously constitute a limitation of freedom of expression contrary to the requirements of article 13.2 of the American Convention, and an indirect or subtle restriction on freedom of expression. For instance, the imposition of criminal penalties for specific speech contrary to the interests of the government, which is a direct limitation on this freedom, violates article 13 by virtue of being unnecessary and disproportionate; it also constitutes an indirect limitation of this right because of its chilling effect on future speech, which curtails the circulation of information—that is, it has the same result as direct censorship.96

101. In a decision handed down on June 30, 2016 in claim (Reclamação) 23.899, the Brazilian Federal Supreme Court [Supremo Tribunal Federal] (STF) suspended the effects of a judgment in the plaintiff’s favor and the processing of another set of class action lawsuits filed throughout the State of Paraná by judges seeking damages from the newspaper Gazeta do Povo following the publication of a report, an opinion column about the remuneration of judges and members of the Office of the Attorney General in Paraná.97 Gazeta do Povo maintained that the class action lawsuit against the newspaper amounted to an abuse of the right of action and sought to prevent the publication of new journalistic material that cast the judges in an unfavorable light.

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In this decision, STF’s Judge Rosa Weber found that the Curitiba court’s issuance of an order for the payment of non-pecuniary damages based on the journalistic publication provided “legal plausibility for the theory put forward” by the newspaper, “at least” insofar as the precedent of the Federal Supreme Court (ADPF 130) — in which the STF found that an entire set of mechanisms provided for in the Press Law was unconstitutional—was being ignored. In addition, the Judge took account of the fact that, as of the date of the decision, some 40 actions had been filed throughout the state of Paraná. Third, she considered the evidence submitted by the claimants before the Court to demonstrate the existence of a coordinated operation for the filing of class action lawsuits throughout the state, and to caution of the risk that this could entail for the claimants’ exercise of their right to a defense if they were compelled to travel around the state to appear at hearings.

Based on the analysis of a prior case that dealt with a claim for alleged non-pecuniary damages stemming from a news publication, the Judge underscored that the “essential and irreducible core” of the fundamental right to freedom of thought encompasses the right to inform, to be informed, to have and share opinions, and to criticize. Citing prior case law, the Judge held that the imposition of restrictions to freedom of the press that, in addition to being excessive, are shown to be substantively incompatible with the democratic rule of law, defies the authority of the decision-making parameter issued by the Supreme Court.

Along these same lines, the First Division of the Supreme Court [Primera Sala de la Suprema Corte de Justicia] of Mexico found article 398 Bis of the Criminal Code [Código Penal] of Chiapas unconstitutional in the previously cited judgment of May 20, 2015. In so doing, it accepted the appellant’s argument that the legal provision in question had a chilling effect, and therefore was contrary to the conventional and constitutional protection of freedom of expression and information. The decision, adopted by a three-judge majority, stated that: “[t]he existence of a provision that penalizes ab initio the search for information that, in addition, is considered prima facie, without having been declared classified or reserved in advance, and without passing a ‘harm test,’ can have a chilling effect on that journalist, given that, aside from the fact that his or her liability is unproven, the simple fact of being exposed to criminal prosecution could clearly discourage the journalist from conducting his or her professional work, in view of the very real threat of being subjected to one or more court cases. Accordingly, this First Division finds that harm can arise from the simple fact of subjecting a journalist to a criminal case as a consequence of the legitimate exercise of that right, and that furthermore it can constitute a disproportionate use of the criminal law [...].”

On the occasion of the decision of February 7, 2014, the First Division of the Supreme Court of Mexico indicated that “[i]n interpreting and applying the relevant constitutional and legal provisions, we must not forget that the full guarantee of the freedoms enshrined in articles 6 and 7 of the Constitution requires preventing not only unjustified direct restrictions but also indirect ones. The proscription of indirect restrictions has many possible derivations, but they undoubtedly include the obligation to pay special attention to the rules for assigning liability among the many subjects involved in the chain of dissemination of news and opinion. In other words, it is a matter of taking care not to create dynamics for the assignment of liability among citizens, journalists, publishers, and owners of media outlets that lead some to find interest in the silencing or restriction of the speech of the others.”

According to Principle 13 of the Declaration of Principles on Freedom of Expression, “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. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.” The Office of the Special Rapporteur has indicated that, “In the case of the allocation of government advertising, a case of indirect censorship occurs when such allocation is done with discriminatory aims according to the editorial position of the media outlet included in or excluded from such allocation, and with the purpose of imposing conditions on its editorial position or line of reporting.”

107. Following the important 2007 judgment in the Editorial Río Negro case, and in keeping with the inter-American standards, on February 11, 2014 the Supreme Court of Argentina [Corte Suprema de Justicia de la Nación Argentina] held that in allocating government advertising, the State must meet two constitutional criteria: “1) it cannot manipulate advertising, placing it and withdrawing it from certain media outlets based on discriminatory criteria; 2) it cannot use advertising as an indirect means of affecting freedom of expression.” In considering the case of Arte Radiotelevisivo (ARTEAR SA) v. Estado Nacional, the Argentine Supreme Court ruled admissible an extraordinary appeal filed by the respondent and affirmed the judgment of the IV Division of the Federal Court for the Judicial Review of Administrative Action [Sala IV de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal]. The Court had overturned the trial court’s judgment and admitted the amparo action filed by the media outlet. In its decision, the appeals court had ordered the State to prepare and present to the court within 30 days “a plan for the allocation of government advertising” that “includes analog stations like the plaintiff” and “faithfully adheres to the guidelines of proportionality and fairness established in the precedent.”

108. The Supreme Court underscored its status as the “supreme interpreter of the National Constitution and the laws enacted thereunder” and called into question the State’s failure to respect “the doctrine” of the precedent judgments such as Editorial Río Negro versus the government of that province and Editorial Perfil S.A. against the National State. It noted that, “The State conduct aimed at not applying these criteria is a clear violation of constitutional principles,” and that failure to comply with a court judgment constitutes disregard for the separation of powers, which is unacceptable under the rule of law.” The Supreme Court held that “Consequently, all conduct that deviates from these essential values of the democratic system, whether in the process of applying the law or enforcing judgments, violates the State’s function as guarantor of freedom of expression.”

0. CASE LAW ON THE STATE’S OBLIGATION TO GUARANTEE PLURALISM AND DIVERSITY

109. The Office of the Special Rapporteur has stated that “The State’s authority to regulate broadcasting is based on, inter alia, the ‘duty to guarantee, protect, and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and the right of society to access all types of information and ideas.’ In this way, the broadcasting regulation that the State can and should create would form a framework under which the broadest, freest, and most independent exercise of freedom of expression for the widest variety of groups and individuals is possible. The framework should function in such a way that


103 The case started with an amparo action promoted by Arte Radiotelevisivo Argentino S.A. (Artear - Canal 13), against the National State (in particular against the Chief of Cabinet, then led by Minister Juan Manuel Abal Medina and the Secretary of Public Communication, Alfredo Scoccimarro) in order to “cease the arbitrary and discriminatory allocation of official advertising regarding” that company. The amparo action was reportedly dismissed in the first instance. In June, the Sala IV of the Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal revoked the first decision. The State then filed an extraordinary appeal before the Supreme Court, which gave merit to the ruling mentioned here. The Supreme Court’s decision was dissented by two Judges (Enrique Santiago Petracchi and Carmen M. Argibay) who upheld the inadmissibility of the extraordinary appeal.
it guarantees diversity and plurality while simultaneously ensuring that the State’s authority will not be used for censorship.”\textsuperscript{104} In this regard, emphasis has been placed on affirming that the regulation of broadcast media should take account of the international obligations assumed by the State under article 13 of the Convention and, in particular, the prohibition established in article 13.3 against the restriction of the right to freedom of expression by indirect means, such as the abuse of the power to regulate and administer radio frequencies.

110. This issue was taken up by the Supreme Court of Argentina [Corte Suprema de Justicia de la Nación Argentina] in its October 29, 2013 judgment on the constitutionality of a number of articles of the Audiovisual Communication Services Law (Law 26.522).\textsuperscript{105} The Court ruled on the unconstitutionality action filed by Grupo Clarín, underscoring the importance of freedom of expression as the “cornerstone for the very existence of a democratic society” and held “that, unlike what occurs with freedom of expression in its individual dimension where—as stated earlier—the regulatory activity of the State is minimal, the collective aspect demands active protection on the part of the State, which is why its intervention here is intensified.”\textsuperscript{106}

111. In its decision, the Court held that “In order to meet this objective it is necessary to guarantee equal access to the mass media for all groups and persons,” so that “no individuals or groups are excluded \textit{a priori} from access to those media.” According to the Court, this requires “certain conditions with respect to the media so that, in practice, they are true instruments of that freedom rather than vehicles for its restriction. The media allow for the exercise of freedom of expression to materialize, so the conditions for their operation should be brought into line with the requirement of that freedom,” it affirmed, citing the position established by the Inter-American Court in OC 5/85.

112. Examining the possible ways in which the State can ensure free and robust speech, the Court asserted that, “one way (...) would be to leave the operation of the media up to the market, and step in through the laws that defend competition”; whereas “another way (...) is by enacting rules that \textit{a priori} equitably organize and allocate citizens’ access to the mass media.” The Supreme Court emphasized that this second method is in line with the standards promoted by the Inter-American System. It established that the regulatory policy “can rely on licenses of any type, whether or not they use the radio spectrum. This is because the basis for the regulation lies not in the limited nature of the spectrum as a public good, but rather, fundamentally, in guaranteeing the plurality and diversity of voices that the democratic system demands [...].”

113. \textit{As orbite dictum} the Court established: a) that the purpose of the law to guarantee diversity and pluralism in the mass media “would lose all meaning without the existence of transparent public policies on government advertising”; b) the same would occur, “if the public media, instead of giving voice to and satisfying the information needs of all sectors of society, were to become forums at the service of government interests”; c) that the accomplishment of the law’s objectives is tied to the existence of an independent enforcement body that adheres to the standards established in the Constitution and the international treaties incorporated therein, in order for it to be “protected against undue interference from both the government and other pressure groups.”


\textsuperscript{105} Argentina. Ley de Servicios de Comunicación Audiovisual. Ley No. 26.522. October 10, 2009. Available at: \url{http://servicios.infoleg.gob.ar/infolegInternet/anexos/155000-159999/158649/norma.htm}

\textsuperscript{106} Corte Suprema de Justicia de la Nación Argentina. Grupo Clarín AS y otros c/Poder Ejecutivo Nacional y otros/ acción meramente declarativa. Judgment of October 29, 2013. The decision was adopted by a majority. The voting scheme can be consulted in the following systematization carried out by the Centro de Información Judicial of the court: \url{http://www.cij.gov.ar/nota-12394-La-Corte-Suprema-declar-la-constitucionalidad-de-la-Ley-de-Medios.html}
114. For its part, in an unconstitutionality action challenging several articles of the Audiovisual Communication Services Law (LSCA), Law 19.307,107 the Supreme Court [Suprema Corte de Justicia] of Uruguay, upheld the lawfulness of the regulatory policies designed to guarantee media pluralism and diversity. In its initial decision of April 5, 2016, ruling on a group of actions filed by different media companies, the Court agreed with its Argentine counterpart—which it cited—insofar as the collective dimension of freedom of expression requires “the active protection of the State.”108 It held that “That protection is, undoubtedly, what Law 19.307 seeks, as is evident from its articles and from the reliable history of its enactment.”109 It held that the provision in question “is a legislative tool whereby the legislature, in the exercise of its lawmaking authority, has sought to promote freedom of expression and communication in its collective dimension.”

115. The Court established that, “essentially,” the case presented a “conflict between the right to freedom of expression in its collective dimension and other fundamental rights: the right to freedom of expression in its individual dimension, the right to freedom of enterprise, and the right to property.” It held that the “basic source of regulation” of freedom of expression in Uruguay is article 29 of the Constitution and article 13 of the American Convention. It stated that, “Freedom of expression, in its diverse manifestations and in the terms regulated by article 13 of the Convention (…), is a fundamental human right, incorporated” into the national legal system through article 72 of the Constitution.

116. The Supreme Court established the parameters of scrutiny accordingly. Citing Advisory Opinion [Opinión Consultiva] 5/85 of the Inter-American Court, it stated that, “The interpretation of article 13 of the Convention must rest on two basic pillars: the first, called the “democratic standard”; and the second, called the “dual dimension standard.” It held that both pillars should have a bearing on the resolution of this specific case, and ruled out the notion that the constitutionality action should be at issue in the consideration of the merits, appropriateness, justice, or timeliness of the challenged articles.

117. The judgment found that the State’s establishment of limits on media concentration is a legitimate aim. Referring to article 51 on monopolies and oligopolies,110 the Court held that this provision “seeks to respect the general interest of every society in ensuring the true right of individuals to information, which necessarily involves plurality and diversity in the ownership and control of audiovisual communication services.”111


109 In this ruling, the Court ruled on the unconstitutionality action brought by Directv Uruguay. This is the first decision in a set of 28 lawsuits that were filed before the highest judicial body seeking the Court’s ruling on the constitutionality of several articles. The suit of unconstitutionality in this case challenged Articles 32, 33, 39 inc. 3, 40, 55, 56, 60, 66, 68, 97, 98, 115 a 117, 139, 142 and 176-186 of law No 19.307. The ruling declared unconstitutional and inapplicable to the plaintiff articles 39 Para. 3, 55, 60 letter C Para. 1, 2 and 3, and 98 Para. 2 of law 19.307. By October 2016, the Court had ruled in 10 of the 28 lawsuits filed. Based on these pronouncements, the president of the Supreme Court of Justice said that the structure of the law “in terms of user rights, the structure in terms of creating an independent body with multisectoral integration… has passed the test of constitutionality, as well as the vast majority of the law”. (Cfr: Comunicación Democrática. October 17, 2016. Presidente de Suprema Corte de Uruguay afirma que sentencias sobre Ley de Medios sientan jurisprudencia: “una buena ley que supera el test de constitucionalidad”).

110 Article 51 [Monopolies and oligopolies].- Monopolies or oligopolies in the ownership and control of audiovisual media services conspire against democracy by restricting the pluralism and diversity that ensures the full exercise of the right to information of people. It is the State’s duty to implement adequate measures to prevent or limit the existence and formation of monopolies and oligopolies in audiovisual communication services, as well as to establish mechanisms for their control. (Uruguay. Ley de Servicios de Comunicación Audiovisual. Ley No. 19.307. December 29, 2014. Article 51. Available at: Uruguay. Ley de Servicios de Comunicación Audiovisual. Ley No. 19.307. December 29, 2014. Available at: http://www.impo.com.uy/bases/leyes/19307-2014)

111 However, the Court declared by majority the unconstitutionality of one of the anti-concentration rules provided for in the law. The regulation considered unconstitutional is Article 55, on limitations on the number of subscribers of television services for subscribers, based on the following reasons: a) because “regardless of pursuing the important purpose of avoiding monopolistic or oligopolistic behavior, it ends up violating the right of ownership of the plaintiff” (position held by judges Jorge Larrieu and Jorge Chedielak); (b) because it “harms legal security, affecting the acquired rights of the company” (Judge Elena Martínez’s argument, shared also by the other
118. The Supreme Court determined that the imposition of minimum percentages of national production for the audiovisual media is constitutional, given that these types of provisions "do not impose content, such as the expression or dissemination of specific material; rather, they establish rules on the origin of the production that, given their vagueness, in principle, would have no effect on freedom of expression." Nevertheless, the majority of the Court was of the opinion that "the obligation to put out certain types of content"—citing some of the law's provisions on programming—such as the obligation to show "new releases of fictional television" or "new film releases" are unconstitutional, because "they do not adhere to the content of the right of freedom of expression (which includes freedom of communication)." On this point, a majority of the Court opined that the provision "entails a measure that indirectly violates freedom of expression." 112

119. The uruguayan Court upheld the constitutionality of a number of provisions of article 32 of the law which establish a programming schedule designed to protect the rights of children and adolescents, and a number of guidelines regarding the programming to be aired during those hours. The judgment held that that regulation was compatible with article 29 of the Constitution and article 13 of the American Convention, to the extent that it "pays special attention to the moral protection of children" and therefore, the challenged provision "finds its support in a reason of general interest."

P. CASE LAW ON FREEDOM OF EXPRESSION AND THE INTERNET

- The Need to Adopt a Systemic Perspective on the Digital Environment for Determining the Limits to Freedom of Expression on the Internet and Applying the Proportionality Test

120. Based on the Inter-American doctrine on freedom of expression, the Office of the Special Rapporteur has underscored that, although freedom of expression enjoys the same protection whether it is exercised on the Internet or through other media, the conditions for the lawfulness of limitations on the right to freedom of expression on the Internet require addressing the special characteristics inherent to the web. For instance, when establishing the potential proportionality of a particular restriction, it is essential to assess the impact (or cost) of that restriction, not only from the point of view of the private citizens directly affected by the measure but also from the perspective of its impact on the operation of the Internet. A particular restrictive measure may seem mild if it is studied solely from the perspective of the person affected. However, the same measure can have a truly devastating impact on the overall operation of the Internet and, consequently, on the right to freedom of expression of all of its users as a whole. In this regard, the Office of the Special Rapporteur has stressed that it is crucial to evaluate each measure in a specialized fashion, from what could be called a systemic digital perspective. 113

121. Some courts in the region have referred expressly to the need to adopt this criterion when resolving judicial claims related to freedom of expression on the Internet. In other cases, although the standard has not been cited expressly, it is understood that it has been incorporated into the reasoning of the courts when they evaluate the application of measures to harmonize the right to freedom of expression on the Internet with other rights, as discussed further below.

122. An illustrative example of this is in the opinion (voto- vista) delivered by Judge Nancy Andrighi of the Superior Court of Justice [Superior Tribunal de Justiça] (STJ) of Brazil, in the decision published on June 4, 2014. 114 In that decision, the majority of the Second Section of the high court ruled to set aside a coercive

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112 The sentence referred in this point to the second paragraph of letter C of Art. 60 of the law 19.307.


measure ordered against an Internet search provider. The Judge maintained that guardianship of the virtual environment demands “increased care.” Consequently, “any type of restriction must be carefully considered” so that it does not affect “the perfect functioning” of the Web. She added that “in the case of Internet search service providers, the imposition of implicit or subjective obligations would entail, potentially, the restriction of the search results, which would be to the detriment of all user[s]”. The judge highlighted the importance of search services in a world in which the daily lives of millions of people depend on information that is on the Internet and would be difficult to find without the search tools offered by search sites.

- Application of the Principle of Universal Access and Emerging Obligations of the States

123. The Declaration of Principles on Freedom of Expression states that, “All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.” This principle applied to freedom of expression on the Internet—this Office of the Special Rapporteur has stated—must be interpreted to have the following consequences: steps should be taken to progressively promote universal access not only to infrastructure but also to the technology needed for its use and to the greatest amount possible of information available on the Internet; to eliminate arbitrary barriers to access to infrastructure, technology, and information online; and to take positive differentiation measures to allow for the effective enjoyment of this right for individuals or communities who face exclusion or discrimination.¹¹⁵

124. A similar perspective is reflected in Judgment 531 of January 17, 2014, handed down by the Constitutional Chamber of the Supreme Court [Sala Constitucional de la Corte Suprema] of Costa Rica, in which the Court admitted an amparo petition filed by a resident of the town of Santa Ana de Nicoya who complained that she lacked access to cellular telephone and Internet service.¹¹⁶ In this case, the Constitutional Court ordered the State to take a number of measures designed to guarantee the principle of universal access according to the provisions of the Telecommunications Act.¹¹⁷ Stating the reasons for the decision, Judge Rapporteur Fernando Castillo Viquez, who delivered the opinion, invoked the principle in the following terms:

First, it should be noted that the Superintendence of Telecommunications, through the National Telecommunications Fund—and not this Court—is responsible for promoting access to high-quality telecommunications services in a timely, efficient, affordable, and competitive manner to residents in the areas of the country where the cost of investing in the installation and maintenance of the infrastructure makes it so that the provision of these services is not financially profitable, ensuring the application of the principles of universality and solidarity in telecommunications services”.

125. The Constitutional Chamber of the Supreme Court of Costa Rica thus reaffirmed its jurisprudential position recognizing the right of access to the Internet as a fundamental right, and held that “the omission”¹¹⁸


¹¹⁷The ruling ordered Instituto Costarricense de Electricidad to “carry out actions that are within the scope of its powers, so that within a period of six months from the notification of the judgment, it shall submit a project” under the Fondo Nacional de Telecomunicaciones (Fonatel), in order to assess the possibility of installing the necessary infrastructure to provide Internet and cellular services in the community of Santa Ana de Nicoya. Likewise, it ordered “the Consejo de la Superintendencia de Telecomunicaciones (SUTELEC) to carry out the actions that are within the scope of its competencies so that these applications are valued, so that if deemed feasible, they are included within the projects financed by FONATEL”.

¹¹⁸At this point in line with the support of the Sala Constitucional of the Supreme Court of Justice in judgment No. 2011017704 of December 23, 2011, the agency in charge of telecommunications should have sought to guarantee access to the Internet through the funds available by the legal framework to that effect.
of the State to take measures tending to guarantee Internet access in the area, regardless of financial feasibility or profitability, “violates the affected parties’ constitutional right to telecommunications.”

- **Content Blocking and Filtering: Its Restrictive Nature with Regard to Freedom of Expression and Exceptional Admissibility Under Strict Conditions in Relation to Unprotected Speech or Specific Content that is Openly Illegal**

126. According to the aforementioned Joint Declaration on Freedom of Expression and the Internet and the Inter-American legal framework, the Office of the Special Rapporteur has noted that “forcing the blocking or suspension of entire websites, platforms, channels, IP addresses, domain name extensions, ports, network protocols, or any other kind of application, as well as measures intended to eliminate links, information and websites from the servers on which they are stored, all constitute restrictions that are prohibited and exceptionally admissible only strictly pursuant to the terms of article 13 of the American Convention.”

127. This issue was addressed by the Supreme Court Argentina [Corte Suprema de Justicia de la Nación Argentina] in the adjudication of the extraordinary appeals filed by the plaintiff and the respondent in the previously cited case of Rodriguez v. Google, Inc.120 The judgment of October 28, 2014 introduced the analysis in relation to the admissibility of content blocking and filtering and its compatibility with the standards on freedom of expression in its consideration of one of the plaintiff’s allegations of lower court error, which challenged the decision of the court of appeals to set aside the Trial Court’s judgment. The Trial Court had ordered the permanent deletion of the links between the plaintiff’s name, image, and photographs and sites containing sexual, erotic, and/or pornographic content on Google.

128. In its conclusions of law, the judgment stated that, “This is a matter of determining whether, in cases in which freedom of expression is at stake, preventive protection is warranted for purposes of preventing the repeated dissemination of information harmful to an individual’s personal rights.” Invoking the pertinent application of article 13. 2 of the American Convention to decide this point, the high court reaffirmed that the exercise of the right to freedom of expression cannot be subject to prior censorship, but rather only to subsequent liability. Accordingly, the Supreme Court ruled that it was not possible to force the search engines to establish filters or blocks on links in advance, as that would be tantamount to a form of prior censorship that is unconstitutional and proscribed by article 13 of the American Convention on Human Rights, a principle that can yield only to “absolutely exceptional circumstances.” Accordingly, the plaintiff’s allegation of lower court error was dismissed on that point, as “he had not even argued that the case justified deviating from the principles that arise from the case law” of the Supreme Court on the issue.121

129. In Brazil, in an August 5, 2014 judgment delivered by Judge Ricardo Villas Bôas Cueva regarding claim [Reclamação]18.685,122 the Second Section [Segunda Seção] of the Superior Court of Justice [Superior Tribunal de Justiça] (STJ) held that Internet search service providers cannot be forced to delete specific results from their systems with respect to a specific word, image, or text, even when it shows the exact address of the page sought to be deleted. It also found that search services, “by their nature,” do not include the prior screening of content. The case came before the STJ on a request for the protection of constitutional rights [Reclamação com pedido de liminar] filed by Google Brazil, against the decision of the Fourth Rotation

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121 The President of the Supreme Court, Ricardo Luis Lorenzetti and Judge Juan Carlos Maqueda, expressed their partial dissent on this point. In support of their position, the magistrates stated that what was intended was the judicial protection of a very personal right that is compatible with freedom of expression. They contended that the claim is admissible “provided that, for an adequate balance of interests at stake, the links associated with its person and the damage that the linkage causes are precisely identified. Thus delimited, protection constitutes a type of further reparation and avoids any generalization that may affect the free circulation of ideas, messages or images and with it, the constitutional guarantee of freedom of expression.”

122 Superior Tribunal de Justiça do Brasil (STJ), [Reclamação No. 18.685], Judgment of August 5, 2014.
of the Court of Appeals of the Special Courts for the State of Espíritu Santo [Quarta Turma do Colégio Recursal dos Juizados Especiais do Estado do Espírito Santo]. Google had been ordered to block the URL address—which linked the plaintiff's name to a news article—from search results when the plaintiff's name was used as a search criterion. The measure was requested by a judge, who, after having been acquitted in an administrative disciplinary case, filed the action seeking to have the news article associated with his name excluded from search results. The STJ held that the judgment against Google was “inconsistent” with its established case law.

- **The Responsibility of Internet Intermediaries**

130. Intermediaries have been defined as those actors—generally from the private sector—that “give access to, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties.”

123 This Office of the Special Rapporteur has noted that the circulation of information and ideas on the Internet would not be possible without these entities, which play an essential role in the exercise of the right to search for and receive information online, fostering the social dimension of freedom of expression in the terms of the Inter-American Court. It is precisely this important role of intermediaries in the architecture of the Internet that explains the attention that the Inter-American and universal doctrine, as well as different Courts of the region, have paid to defining the scope of their responsibility in relation to alleged tensions or conflicts among rights arising from online activities.

131. The national chapters of the most recent annual reports prepared by this Office of the Special Rapporteur discuss the incremental presence of this issue on the freedom of expression agenda, which is constantly subject to new challenges arising from the impact of the Internet.

132. The Superior Court of Justice of Brazil [Superior Tribunal de Justiça] (STJ) handed down a decision on June 4, 2014, in which the majority granted a motion filed by Google to set aside the imposition of a fine (astreintes) against the company. It had been assessed to compel compliance with an injunction ordering Google to exclude from Google Search results the hyperlink for a page of an online magazine that linked a judge—the claimant who requested the measure—to investigations into alleged acts of pedophilia, as well as to suspend in its search results the association between the judge's name and reports of his alleged involvement in criminal acts. The STJ found that the injunction was impossible to enforce due to technical infeasibility, and it ruled to set aside the imposition of the fine.

133. The majority opinion analyzed the scope of responsibility of the Internet search providers, holding that they: 
1. are not responsible for the content of the results of searches performed by their users; 
2. cannot be required to exercise prior control over the content of the results of searches performed by each user; 
3. cannot be required to eliminate from their systems the results obtained from the search for a specific term or phrase, or of the results that point to a specific photo or text whether or not they specify the hyperlink of the page that contains it.

134. The Court’s legal reasoning stated that search services cannot be held liable for the content of search results, even when those results may be illegal. In those cases, explained Judge Nancy Andighi, it is incumbent upon the victim to take measures to suppress them, “[w]ith which they will be automatically excluded from the search results on the search sites.” The high court thus held that “It is not possible, under the pretext of hindering the propagation of unlawful or offensive content on the Web, to repress the collective right to information.”


135. For its part, the Supreme Court of Argentina [Corte Suprema de Justicia de la Nación de Argentina], in the previously cited case of Rodríguez v. Google, Inc., concluded that “It is not appropriate to judge the potential responsibilities of ‘search engines’ according to the rules of strict liability;” rather, they must be judged “in the light of subjective liability.” The judgment stated that according to comparative law search engines “do not have a general obligation to ‘monitor’ (supervise, surveil) the content that is uploaded to the Internet and provided by those responsible for each web page.” Thus, the Court explained, “in principle, they are not responsible for content they have not created. If an unlawful activity—that, hypothetically, should be condemned—is conducted at the edge of a path, it is not reason to punish the party responsible for the route that allows access to the place, on the argument that the path made it easier to get there”.

136. Nevertheless, the high court specified that there are situations in which the search engine “can become responsible for the content of another.” This can occur “when it has effectively become aware of the unlawfulness” of content, “if that knowledge is not followed by diligent action.” In cases in which harmful content requires a “clarification that must be debated or addressed in a court or administrative forum for its effective decision, it should be understood that the ‘search engine’ cannot be required to take the place of the competent authority, much less of the judges. Therefore, in those cases, it is appropriate to require that notice be given to the competent judicial or administrative authority. The simple communication of the private party that considers itself harmed, let alone that of any interested party, is insufficient,” held the high court. The Court was of the opinion that the same reasoning applied to search engines should be taken into account with respect to thumbnails, given that their function is merely to provide a link to the original image uploaded to an Internet page. The Court explained that “the original image and the original text—uploaded to the web page—are the exclusive responsibility of their owner, the sole creator of the content.” As such, the judgment concluded that it is not appropriate to apply different rules to the image search engine and the text search engine.

137. The Constitutional Court of Colombia also ruled against the possibility of holding intermediaries liable for the content they make available. In Judgment T-277 of May 12, 2015, the First Review Chamber [Sala Primera de Revisión] held that “Assessing liability against Internet intermediaries for the content transmitted would significantly limit the dissemination of ideas through this medium, as it would give it the power to regulate the flow of information online. As for those who create the information, the Office of the Special Rapporteur for Freedom of Expression has indicated that subsequent liability may only be imposed against the authors of internet content—that is, those directly responsible for the offensive expression.”

- Online Privacy, Surveillance, and Freedom of Expression

138. The Office of the Special Rapporteur for Freedom of expression has maintained that respect for freedom of expression online assumes the privacy of communications. It has also stated that the protection of the right to privacy involves at least two specific policies linked to the exercise of the right to freedom of expression: the protection of anonymous speech and the protection of personal data.

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126 Corte Suprema de Justicia de la Nación Argentina. Rodríguez María Belén v/ Google Inc. s/ Daños y Perjuicios. Judgment of October 28, 2014. This case had its origin in the lawsuit for damages brought by María Belén Rodríguez against Google Inc. and Yahoo of Argentina SRL, in which the commercial and unauthorized use of the plaintiff’s image was claimed. She argued that very personal rights had been violated by having linked her to certain erotic and/or pornographic websites. In the first instance, the defendants were convicted. Instead, Sala A of the Cámara Nacional de Apelaciones en lo Civil partially overturned the ruling: it rejected the lawsuit against Yahoo and admitted it against Google, but it reduced the compensation to one half and annulled the first ruling since it decided for “the definitive elimination of the links of the name, image and photographs of the plaintiff with sites and activities of sexual, erotic and/or pornographic content.”


139. On June 13, 2014, the Supreme Court of Canada handed down a judgment in the case of R. v. Spencer, holding that law enforcement agencies must have a warrant to request information from Internet service providers about their subscribers, given that they have the ability to reveal online activity.

140. The Court emphasized that “Particularly important in the context of Internet usage is the understanding of privacy as anonymity.” It further stated that, “The identity of a person linked to their use of the Internet must be recognized as giving rise to a privacy interest beyond that inherent in the person’s name, address and telephone number.” This is because subscriber information, by tending to link particular kinds of information to identifiable individuals, may implicate privacy interests relating to an individual’s identity “as the source, possessor or user of that information.” In this same regard, it noted that the IP address, once identified with a particular individual, is capable of revealing the individual’s online activity.

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CHAPTER VI
CONCLUSIONS AND RECOMMENDATIONS

1. As on previous occasions, the Office of the Special Rapporteur closes its annual report with a chapter of conclusions and recommendations. The objective of this practice is to begin a fluid dialogue with Member States that will enable the Americas to emerge as an example in the area of respect, protection, and promotion of the right to freedom of expression.

A. Violence Against Journalists and Media Outlets

2. According to the information received by the Office of the Special Rapporteur, 33 journalists or media workers were killed during 2016 in the region, while several others disappeared or were dislocated from the areas in which they worked, for reasons that could have been related with their exercise of freedom of expression. In addition to these tragic events, there were dozens of complaints of violence, attacks, threats, and intimidation against communicators and media outlets, presumably in connection with their exercise of freedom of expression.

3. The Office of the Special Rapporteur observes with concern the manner in which journalists must increasingly stop investigating and disseminating information of great public interest for their local communities in order to avoid reprisals against their lives or physical integrity or that of their families. Over the last decade, diverse zones and communities in the hemisphere have become totally silenced due to the paralyzing effect generated by the climate of violence and impunity. In these places, journalists and many media outlets choose to abandon coverage of diverse topics or adapt their information lines to subjects that do not come into conflict with de facto local powers, which creates zones of silence. This situation gives rise to restrictions on information, with the end result that the societies in those localities are not sufficiently informed.

4. It is important to highlight that during 2016 there was also important progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. This shows that it is possible to investigate as a priority the line linked to the professional work of these victims and punish those responsible. However, despite these efforts, the majority of these crimes remain in a troubling state of impunity.

5. On this point, the Office of the Special Rapporteur recommends that member States:

a. Adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, omitting any statement that may increase the risk for journalists; the respect for journalists’ right to keep their sources of information; the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines on the respect for the right of freedom of expression, determining appropriate sanctions proportionate to the damage done; as well as the development of accurate statistics on violence against journalists.

b. Adopt the measures necessary to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals. Measures or protection programs must be suitable and sufficient for its purpose, in accordance with the views expressed in this report.

c. Carry out serious, impartial, and effective investigations into the murders, attacks, threats, and acts of intimidation committed against journalists and media workers, in accordance with this report. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.

d. Bring to trial, before impartial and independent tribunals, all those responsible for the murders, attacks, threats, and acts of intimidation based on the exercise of freedom of expression, remove legal
obstacles to the investigation and punishment of these crimes, and provide the victims and their family members ample participation during the investigation and prosecution, as well as adequate compensation, and eliminate gender barriers that obstruct access to justice.

e. Adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the States must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

f. Adopt specific, adequate and effective measures to prevent attacks and other forms of violence perpetrated against women journalists, and prosecute and punish those responsible. States must adopt effective measures to encourage reporting of cases of violence against women journalists and combat the impunity that characterizes those crimes.

B. Social Protests

6. The Office of the Special Rapporteur also views with concern the manner in which certain state authorities reacted to social protests in the Americas in 2016. In particular, information was received about dozens of detentions, threats and aggressions committed against journalists, communicators, protesters and users of social networks who reported on demonstrations.

7. In a similar vein, the Office of the Special Rapporteur notes that it is necessary for States to design regulatory frameworks to protect and facilitate the exercise of social protest. States must not fail to take into account that, when faced with institutional frameworks that do not favor participation, or with serious barriers to the access of more traditional mass communication forms, public protest may become the only medium that actually allows disgruntled sectors of the population - but not aligned with political parties - and groups discriminated against or marginalized from public debate to voice their views and influence public debate.

8. On this point, the Office of the Special Rapporteur recommends that member States:

a. Guarantee the legitimate exercise of social protest and prevent the application of disproportionate restrictions that can be used to inhibit or suppress critical or dissident expressions. In order to be consistent with international obligations on human rights, any national regulation affecting the right to social protest must meet requirements of legality, necessity and proportionality.

b. Initiate the necessary legislative reforms to eliminate from the legal system requirements for the previous authorization or permission to carry out demonstrations and protests in public spaces, and expressly establish the general presumption in favor of the exercise of this right.

c. Ensure protection of individuals and refrain from stigmatizing or stereotyping protesters and their demands, avoiding generalizations based on the behavior of particular groups or isolated events. If security forces must act in a demonstration, they shall use the safest and least harmful measures to individual rights. The response of security forces should aim to protect and facilitate rights, not to repress them. The general principles on the use of force, applied to the context of protests and demonstrations, require that security operations be carefully and thoroughly planned by persons with specific experience and training for this type of situation.

d. In the context of positive obligations to guarantee the right and protect the person exercising it as well as third parties, States should establish specific rules and action protocols for security forces acting in situations of social protest and public demonstrations. These guidelines should aim for police agents to act in the knowledge that their obligation is to protect the participants in a public meeting, demonstration or concentration, to the extent that it is the exercise of a human right.

e. Guarantee that firearms are excluded from the devices used to control social protests. The ban on carrying firearms and lead ammunition by officials who may come into contact with protesters has
been proven as the best measure of preventing lethal violence and deaths occurring in a context of social protests. Operations may provide for the availability of firearms and lead ammunition somewhere outside the range of the demonstration for those exceptional cases in which a violent situation warranting such use occurs. In this extreme scenario, there shall be explicit rules regarding who has the power to authorize their use and the ways in which this authorization is to be properly documented.

f. Adopt special measures to protect journalists who are reporting on situations of armed conflict and social unrest, and guarantee that they are not detained, threatened, attacked or have their rights limited in any way for the exercise of their profession; that their work materials and tools are not destroyed nor confiscated by the authorities, according to what was laid out in this report; and create special protocols to protect the press in circumstances of social unrest.

C. **Criminalization of Expression and Proportionality of Subsequent Liability**

9. Some Member States witnessed criminal complaints filed by State officials in response to the publication of opinions or information related to matters in the public interest. It is true that in some of the cases studied, the criminal proceedings were dismissed. In others, however, judges issued criminal convictions against the journalists. The Office of the Special Rapporteur verifies that there are still criminal codes that have yet to be adjusted to inter-American standards on the subject of freedom of expression because they criminalize speech related to public officials and public interest matters, and other criminal provisions that allow for the imposition of disproportionate measures that can have the kind of chilling effect that is incompatible with a democratic society. Similarly, the Office of the Special Rapporteur received information on the need to adjust civil laws to prevent the disproportionate use of pecuniary sanctions.

10. In regard to statutes that criminally or civilly sanction expression, the Office of the Special Rapporteur recommends that Member States:

a. Promote the repeal of contempt (*desacato*) laws, whatever their form, given that these norms are contrary to the American Convention and restrict public debate, an essential element of the practice of democracy.

b. Promote the modification of laws on criminal defamation with the objective of eliminating the use of 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 of High-Level State Authorities**

11. In 2016, the Office of the Special Rapporteur continued to receive information on statements made by high-ranking State officials discrediting and stigmatized the journalistic work of some communicators, media outlets and non-governmental organizations. It is particularly concerning that in some of these cases, the statements were followed by violence or the opening of disciplinary procedures that threatened the permanent withdrawal of operating concessions, permits, or licenses of critical media outlets. The Office of the Special Rapporteur exhorts State authorities to contribute decisively to building an environment of
tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for them.

12. Regarding statements of high-level State officials, the Office of the Special Rapporteur recommends that member States:

   a. Encourage democratic debate through public declarations, practices, and policies that promote tolerance and respect of all individuals, under equal conditions, whatever their thoughts or ideas.

   b. Exhort the authorities to refrain from making public statements or using state media outlets to carry out public campaigns that can encourage violence against individuals because of their opinions. In particular, avoid statements that could stigmatize journalists, media outlets, and human rights defenders.

E. Prior Censorship

13. The Office of the Special Rapporteur received information about judicial decisions and government measures that prohibited the exercise of journalism, the operation of media outlets or the circulation of information of public interest this year. Member States must take into account that article 13.2 of the American Convention explicitly establishes that the exercise of the right to freedom of expression shall not be subject to prior censorship.

14. On this point, the Office of the Special Rapporteur recommends that member States:

   a. Eliminate any norm that enables prior censorship by any state organ, and also any prior condition that may imply censorship of freedom of expression, such as prior requirements of truthfulness, timeliness, or impartiality of information.

F. Indirect Censorship

15. The Office of the Special Rapporteur received complaints pertaining to distribution of government advertising that was intended to punish or reward media outlets according to their editorial positions. It is necessary for member States to have statutory frameworks that establish clear, transparent, objective, and non-discriminatory criteria for determining the distribution of official advertising. The Office of the Special Rapporteur received complaints about the use of other mechanisms of state power, such as tax and administrative control, in order to pressure and punish or reward and provide privileges to journalists and media outlets depending on their editorial position.

16. On this point, the Office of the Special Rapporteur recommends that member States:

   a. Abstain from using public power to punish or reward media and journalists in relation to their editorial stance or coverage of certain information, whether through the discriminatory and arbitrary assignment of government advertising or other indirect means aimed at impeding communication and the circulation of ideas and opinions.

   b. Regulate these matters in accordance with the current inter-American standards on freedom of expression.

   c. Adopt legislation to regulate the State's authority to control and supervise the allocation of public goods or resources related directly or indirectly with the exercise of freedom of expression. On this point, the task is to adjust institutional frameworks with two central objectives: first, to eliminate the possibility that State authority is used to reward or punish media outlets according to their editorial positions, and second, to foster pluralism and diversity in the public debate.
G. Internet

17. The Office of the Special Rapporteur observes that various States in the region have promoted attempts to regulate some aspect of Internet use and access or have adopted decisions in this regard, in response to the need to prevent crime and protect the fundamental rights of third parties. It must be pointed out that many of these initiatives fail to take into account the special characteristics of this technology and, as a result, unduly restrict freedom of expression. In evaluating the proportionality of a restriction on freedom of expression on the Internet, the impact that said restriction could have on the capacity of the Internet to guarantee and promote freedom of expression must be weighed against the benefits that the restriction would provide for the protection of other interests.

18. Furthermore, the Office of the Special Rapporteur highlights the promotion of regulation in certain countries of the hemisphere to ensure there is no discrimination, restriction, interference or blocking in the transmission of Internet traffic, in accordance with the principle of net neutrality.

19. In this sense, the Office of the Special Rapporteur recommends that the Member States:

   a. Abstain from applying regulatory approaches to the Internet that have been developed for other communications media – such as telephony or radio and television – and design an alternative regulatory framework specifically for this medium, addressing its particularities, pursuant to currently-in-effect international standards in the field of freedom of expression.

   b. Encourage self-regulation as an effective tool to deal with defamatory expressions that could be disseminated on the Internet.

   c. Protect the actors who participate as Internet intermediaries and provide technical services from any responsibility for contents generated by third parties and which are disseminated through these services, pursuant to international standards on the matter.

   d. Promote universal Internet access to guarantee universal and effective enjoyment of the right to freedom of expression through this medium.

   e. Ensure that the processing of data and Internet traffic is not subject to any discrimination based on factors such devices, content, author, source and / or destination of the material, service or application, in accordance with the principle of net neutrality.

H. Surveillance Programs and Confidential Sources

20. The Office of the Special Rapporteur has expressed concern over the existence of security programs and practices that can generate serious damage to the universal rights to privacy and freedom of thought and expression. As a result, the Office of the Special Rapporteur has urged the corresponding authorities to review relevant legislation and modify their practices, with the aim of ensuring their adjustment to international principles in the field of human rights.

21. In the terms of the Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression, the Office of the Special Rapporteur recommends that the Member States:

   a. Review their legislation to establish limits on the power to oversee private communications, their necessity and proportionality, pursuant to the public’s universal rights and the principles of international law that have been taken up in this report.

   b. Ensure that the public can have access to information on programs for surveillance of private communications, their scope and the existing controls to guarantee that they cannot be used arbitrarily. In any case, States must establish independent control mechanisms to ensure the transparency and accountability of these programs.
c. Abstain from punishing journalists, members of the media or members of civil society who have access to and disseminate reserved information about this type of surveillance programs, considering it to be of public interest. Confidential sources and materials associated with dissemination of reserved information must be protected by law.

d. Establish regulations to guarantee that individuals who expose wrongdoing, serious maladministration, a breach of human rights, humanitarian law violations or other threats to the overall public interest, for example in terms of safety or the environment, should be protected against legal, administrative or employment related sanction, even if they have otherwise acted in breach of a binding rule or contract, as long as at the time of the disclosure they had reasonable grounds to believe that the information disclosed was substantially true and exposed wrongdoing or the other threats noted above.

I. Access to Public Information

22. During this period, the Office of the Special Rapporteur once more noted the incorporation of the inter-American system’s standards on access to information into the domestic legal regimes of several States, either through the approval of special access to information laws or through decisions by their domestic courts. With the approval of the Law on Access to Public Information in Argentina, 23 countries in the hemisphere have adopted legal norms to guarantee and enforce the exercise of this right. However, it was noted that in several Member States there continue to be difficulties in regulating the exceptions to the exercise of this right and in the implementation of some laws.

23. With regard to access to information, the Office of the Special Rapporteur recommends that Member States:

a. Continue promulgating laws that permit effective access to information and complementary norms that guarantee its adequate implementation, in conformity with the international standards in this area.

b. Guarantee effectively, both de jure and de facto, the right of habeas data of all persons, this being an essential element of freedom of expression and the democratic system.

c. Encourage the effective and efficient implementation of norms on access to information, adequately training public employees and informing the citizenry in order to eradicate the culture of secrecy and provide citizens the tools to effectively monitor state activities, public administration and the prevention of corruption, all essential to the democratic process.

d. Strengthen the institutional structure for supervision of the implementation of laws regarding access to public information, pursuant to the highest standards in this field, such as those adopted by the General Assembly of the OAS, in its Resolution AG/RES. 2607 (XL-0/10), by means of which it adopts the “Model Inter-American Law on Access to Information.”

e. Promote the widespread dissemination of information on the human rights of women and how to uphold them, the mechanisms of protection available to women at potential risk of suffering violence and how to access them, the programs for free legal assistance available to women victims of violence and discrimination, and all other mechanisms for addressing these issues.

f. Step up efforts to move towards the effective implementation of comprehensive systems for compiling information on discrimination and violence against women that incorporate information from all State organs with authority in this area, especially the judicial systems. Based on the information collected, States should produce complete statistics on violence and discrimination against women, as well as other kinds of quantitative and qualitative information in this respect. Those statistics should be updated periodically and should include information that is disaggregated at least by sex, gender identity, age, race, ethnicity, sexual orientation, socioeconomic status, and situation of disability so as to make it possible to
construct an accurate image of the specific forms in which violence and discrimination affect the women in most vulnerable situations. The statistical information produced should be proactively published.

g. Establish systematic policies for the education and training of state officials, in particular judicial officers, on international standards in relation to access to information and violence and discrimination against women. In addition, train the civil society organizations in the use of the mechanisms available to make requests of information to the state.

J. **Diversity and Pluralism in the Allocation of Radio Frequencies**

24. The Special Rapporteur received complaints about the lack of recognition of the community and indigenous broadcasting sector in some countries in the region. It also received information about the absence of regulatory mechanisms to ensure access to frequencies to this type of media as well as the existence of obstacles to their proper functioning. The Office of the Special Rapporteur also noted that concentration of public and private media is still a problem in some countries in the region.

25. During this period, the Office of the Special Rapporteur continued to emphasize the need for Member States to have a competent authority in charge of radio broadcasting that is technical, independent of the government, autonomous in the face of political pressure, and subject to due process guarantees and strict judicial review.

26. In this regard, this year the Office of the Special Rapporteur noted with satisfaction the adoption of broadcasting regulatory frameworks which represented progress in some countries in the region in relation to the pre-existing situation, but also identified provisions that could be incompatible with the exercise the right to freedom of expression. In this regard, this Office noted that in several countries there still obstacles for allocating licenses or frequencies that are open, public, and transparent, subject to clear and pre-established rules, and only those requirements that are strictly necessary, just, and equitable, have not been implemented.

27. Also, as mentioned in Chapter III of this report, the Office of the Special Rapporteur observes that today, the countries in the region are transitioning from analogue to digital television, while others have just begun this process. Thus, it is important—from the standpoint of the rights to freedom of expression and access to information—to define guiding principles to ensure that the digitalization of television signals becomes an opportunity to guarantee freedom of expression, universal access to all types of information and ideas, media diversity, and pluralism of information and opinions.

28. On this point, the Office of the Special Rapporteur recommends that Member States:

a. Ensure the existence of transparent, public, and equitable criteria for the allocation of radio frequencies and the new digital dividend. These criteria must take into account the concentration of ownership or control of communications media, and assign the administration of the radio electric spectrum to an organ independent from political and economic interests, subject to due process and judicial oversight.

b. Promote effective policies and practices that permit access to information and the equal participation of all sectors of society so that their needs, opinions, and interests will be contemplated in the design and adoption of public policy decisions. Additionally, adopt legislative and other measures that are necessary to guarantee pluralism, including laws that prevent the existence of public or private monopolies.

c. Legislate in the area of community radio broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The allocation of these frequencies must take into account democratic criteria that guarantee equal opportunities to all individuals in the access and operation of these media in conditions of equality, without disproportionate or unreasonable restrictions, and in conformity with Principle 12 of the Declaration of Principles and the “Joint Declaration on Diversity in Broadcasting.”
d. Ensure that respect for freedom of expression, including media diversity according to editorial position or type of property, is ensured in the digital terrestrial transition process. To that aim, States should ensure that decision-making processes relating to the digital terrestrial transition take place in a transparent and fully consultative manner, allowing for all stakeholders and interests to be heard.
APPENDIX
Joint Declaration on Freedom of Expression and Countering Violent Extremism

May 4, 2016


Having discussed these issues together with the assistance of Article 19 and the Centre for Law and Democracy (CLD);


Taking note of the global attention paid to programmes and initiatives under the umbrella of "countering and preventing violent extremism" (CVE/PVE), including by the United Nations and National Governments;

Acknowledging the importance of frameworks for countering violence and incitement to violence and encouraging participation in political life based on respect for principles of human rights, purposes shared by many CVE/PVE programmes;

Highlighting that CVE/PVE programmes and initiatives that restrict freedom of expression must be based on evidence of their effectiveness and a legal framework to support their necessity and proportionality to achieve legitimate objectives;

Deploiring the violence and terrorism that CVE/PVE initiatives aim to address and the impact of such acts on the enjoyment of human rights, including the rights to life and freedom of expression, highlighted dramatically by recent attacks on journalists, bloggers and media outlets;

Reaffirming the critical role that freedom of expression can play in promoting equality and in combating intolerance, and the essential role that the media and the Internet and other digital technologies play in keeping society informed, and stressing that limiting the space for freedom of expression and restricting civic space advances the goals of those promoting, threatening and using terrorism and violence;

Stressing in particular the need to promote media diversity and to ensure that members of all groups in society have access to a range of means of communication so as to be able to express themselves and engage in public debate;

Expressing concerns that some CVE/PVE initiatives negatively impact human rights and specifically the right to freedom of expression, even if inadvertently, including by “balancing” freedom of expression and the prevention of violence rather than assessing restrictions on expression based on legality, necessity and legitimacy of objective, and that in some cases CVE/PVE programmes and initiatives have not been adopted in a transparent manner and with the effective participation of impacted communities;

Mindful that in some cases CVE/PVE initiatives which aim to target incitement to violence or ‘hate speech’ online risk undermining the potential of digital technologies to foster freedom of expression and access to information and to provide avenues for counter-speech;

Noting that CVE/PVE programmes and initiatives generally offer insufficiently clear definitions of "extremism" or "radicalisation" and that some governments target journalists, bloggers, political dissidents, activists and/or human rights defenders as "extremists" or "terrorists";
Alarmed at the proliferation in national legal systems of broad and unclear offences that criminalise expression by reference to CVE/PVE, including offences "against social cohesion", "justification of extremism", "agitation of social enmity", "propaganda of religious superiority", "accusations of extremism against public officials", "provision of information services to extremists", "hooliganism", "material support for terrorism", "glorification of terrorism" and "apology for terrorism";

Highlighting that CVE/PVE initiatives are used increasingly to justify profiling, surveillance and other activities that treat certain communities as de facto suspects, promoting a climate of intolerance and alienating members of these communities by scapegoating, thereby deterring robust debate and information-sharing;

Emphasising that CVE/PVE initiatives have in some cases impacted negatively on academic freedom and open debate in schools and universities, undermining the freedom of expression rights of children and young people;

Concerned about pressure on private companies, and especially social media networks, to "cooperate" in reporting on those whom they suspect of radicalization and the fact that CVE/PVE is increasingly being used by companies to justify measures restricting content, sometimes without being transparent or consistent about the rules and the kinds of expression that are being limited;

Aware that in some cases politicians and other leadership figures in society have, under the umbrella of CVE/PVE, made statements which can have the effect of encouraging or promoting discrimination against minorities;

Recalling statements in our previous Joint Declarations which have addressed some of the issues raised here;

Adopt, in Helsinki, on 4 May 2016, the following Joint Declaration on Freedom of Expression and Countering Violent Extremism:

1. General Principles:

   a. Everyone has the right to seek, receive and impart information and ideas of all kinds, especially on matters of public concern, including issues relating to violence and terrorism, as well as to comment on and criticise the manner in which States and politicians respond to these phenomena.

   b. States have an obligation to ensure that the media are able to keep society informed, particularly in times of heightened social or political tensions, including by creating an environment in which a free, independent and diverse media can flourish.

   c. Any restrictions on freedom of expression should comply with the standards for such restrictions recognised under international human rights law. In compliance with those standards, States must set out clearly in validly enacted law any restrictions on expression and demonstrate that such restrictions are necessary and proportionate to protect a legitimate interest.

   d. Restrictions on freedom of expression must also respect the prohibition of discrimination, both on their face and in their application.

   e. Restrictions on freedom of expression must be subject to independent judicial oversight.

   f. A key part of any strategy to combat terrorism and violence should be to support independent media and communications diversity.

2. Specific Recommendations:
a. Public authorities should respect robust standards of transparency and engagement with all interested stakeholders, in particular affected communities, if they are proposing to adopt CVE/PVE initiatives.

b. All CVE/PVE programmes and initiatives should respect human rights and the rule of law, and contain specific safeguards against abuse in this regard. They should be independently reviewed on a regular basis to determine their impact on human rights, including the right to freedom of expression, and these reviews should be made public.

c. The concepts of "violent extremism" and "extremism" should not be used as the basis for restricting freedom of expression unless they are defined clearly and appropriately narrowly. Any restrictions drawing upon a CVE/PVE framework should be demonstrably necessary and proportionate to protect, in particular, the rights of others, national security or public order. The same applies whenever the concept is invoked to limit the activities of civil society, including in relation to their establishment or funding, or to impose restrictions on fundamental rights, including the right to protest.

d. States should not restrict reporting on acts, threats or promotion of terrorism and other violent activities unless the reporting itself is intended to incite imminent violence, it is likely to incite such violence and there is a direct and immediate connection between the reporting and the likelihood or occurrence of such violence. States should also, in this context, respect the right of journalists not to reveal the identity of their confidential sources of information and to operate as independent observers rather than witnesses. Criticism of political, ideological or religious associations, or of ethnic or religious traditions and practices, should not be restricted unless it involves advocacy of hatred that constitutes incitement to hostility, violence and/or discrimination. States should review their laws and policies to ensure that any restrictions on freedom of expression which are claimed to be justified by reference to CVE/PVE robustly meet these standards.

e. 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 the standards outlined above. States should refrain from pressuring, punishing or rewarding intermediaries with the aim of restricting lawful content.

f. States and public officials should encourage open debate and access to information about all topics, including where they touch upon issues such as ethnicity, religion, nationality or migration, in schools and universities, and in academic, scholarly or historical texts. Academic institutions should respect pluralism, promote intercultural understanding, and support the ability of members of all communities, and particularly marginalised groups, to voice their perspectives and concerns.

g. States should never base surveillance on ethnic or religious profiling or target whole communities, as opposed to specific individuals, and they should put in place appropriate legal, procedural and oversight systems to prevent abuse of surveillance powers.

h. Politicians and other leadership figures in society should refrain from making statements which encourage or promote racism or intolerance against individuals on the basis of protected characteristics, including race, nationality or ethnicity.

i. Private enterprise initiatives, including those online, that limit expression in support of CVE/PVE goals should be robustly transparent so that individuals can reasonably foresee whether content they generate or transmit is likely to be edited, removed or otherwise affected, or user data is likely to be collected, retained or passed to law enforcement authorities.

j. States should not adopt, or should revise, laws and policies which involve the following:
i. Blanket prohibitions on encryption and anonymity, which are inherently unnecessary and disproportionate, and hence not legitimate as restrictions on freedom of expression, including as part of States’ responses to terrorism and other forms of violence.

ii. Measures that weaken available digital security tools, such as backdoors and key escrows, since these disproportionately restrict freedom of expression and privacy and render communications networks more vulnerable to attack.