

EXECUTIVE SUMMARY OF THE 2015 ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION OF THE IACHR

In its assessment over the situation of freedom of expression in 2016, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) draws attention to the increase in the violence against journalists. In fact, in 2015, the Office registered 27 killings of journalists and media workers in circumstances that could be related to their job, as well as 12 other cases in which it was not possible to determine a link to their labor without a thorough investigation. In 2014, 25 cases had been registered by this Office. Furthermore, intimidation and threat episodes continued, as well as an increase in the use of criminal law against media workers. Although limited to some countries, the application of laws that contain burdensome regulations regarding content published by the media resulted in disproportionate economic sanctions.

The Office of the Special Rapporteur also expresses its concern on the excessive response given by several States on the right to protest, which has manifested itself in violent disruption of protests by States' security enforcement bodies, the arrest of journalists and activists, and broken equipment. The discriminatory usage of Government advertising, the persecution of community media and the concentration of the property and control of media are still pending challenges in the Americas and, in some cases, these situations have worsened.

Among the monitored progress, the Office points out that former congressman Ferney Tapasco was condemned to 36 years in jail as the mastermind of journalist Orlando Sierra's murder in February 2002, wherein the Court showed evidence of the connection between the homicide and the articles written by Sierra in the newspaper *La Patria* about corruption committed by the politician. Also, this Office highlights that Mexico passed a General Transparency and Access to Public Information Law, which created the National System of Transparency and increased guarantees for the effective fulfillment of the right to access to public information. Moreover, the Office appreciates the regulatory decisions adopted by Canada and the United States to guarantee the principle of net neutrality, which ensures free flow of information over the Internet. Likewise, the Office highlights the role of several high courts in adopting decisions to guarantee the right to access to public information and the protection of news sources.

On March 17, 2016, the IACHR presented before the Committee on Juridical and Political Affairs of the Organization of American States (OAS) its Annual Report, whose second volume incorporates the Report of the Office of the Special Rapporteur for Freedom of Expression. This is the seventeenth report prepared by the Office of the Special Rapporteur since its creation within the IACHR in 1997, and covers the activities and situations that took place between January and December 15, 2015, period in which the Office was under the responsibility of rapporteur Edison Lanza.

Besides the evaluation of the situation of freedom of expression in the hemisphere (Chapter II), the report of the Office of the Rapporteur includes two thematic reports: one of Access to Information, Violence Against Women, and the Administration of Justice in the Americas (Chapter III) –prepared by the Office of the Rapporteur on the Rights of Women with the technical assistance of the Office of the Special Rapporteur for Freedom of Expression– and another one on Hate Speech and Incitement to Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas (Chapter IV) –jointly prepared by this office and the Office of the Rapporteur on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex persons.

As usual, the report includes a series of recommendations for the States to overcome the obstacles that persist in the region for the full exercise of the right to freedom of expression and access to public information. The following is a summary of the main situations and challenges included in the report:

Violence against journalists:

The year 2015 was painful for journalism in the Americas, as the number of media workers killed increased for the third year in a row. At least 27 journalists and media workers were murdered for motives that could be linked to the exercise of their job, while in 12 other cases, given the available information, it is not possible to determine the motive of the crime. The hemisphere has turned into one of the most dangerous regions in the world to work in journalism, and the most serious aggressions, such as murder or kidnapping, have turned into one of the worse forms of censorship due to the effects they cause not only to the victim but to all journalistic activity, and effects the impact of the right of society to receive information. It is alarming that this horrendous method of silencing voices has worsened for the third consecutive year in the hemisphere: in 2014, 25 homicides were committed against journalists, and in 2013 there were 18.

In 2015, countries that had journalists killed were Brazil, Honduras, Mexico, Colombia, Guatemala, Dominican Republic, United States and Paraguay. Most of the journalists killed or attacked covered news on actions of organized crime, political corruption or represented a strong voice in their local communities. Linked to the situation of violence, the high rates of impunity remain in several countries, with no identification and sanction of the perpetrators and masterminds of these crimes, which creates a generalized chilling effect that limits the right to freedom of expression in whole areas of the Americas.

The Office of the Special Rapporteur recommends that the States adopt appropriate prevention mechanisms to prevent violence against journalists, including public condemnation of any act of aggression; the adoption of effective measures of protection to ensure the safety of those who are subject to special risk by exercising their right to freedom of expression; to carry out serious, impartial and effective investigations into the acts of violence committed against journalists and social media workers; the trial and conviction of all those responsible for these acts, and adequate reparation to victims and their families.

Social Protest:

During 2015 protests and demonstrations were a key factor for the exercise of freedom of expression and channeling of social demands as well as the fight against corruption, non-discrimination and respect for the Rule of Law in the Americas. During many of these protests a disproportionate use of force was recorded for dispersing or hushing those who took to the streets.

In the provinces of Tucuman, Formosa and Chaco in Argentina people were injured by the use of non-lethal weapons or by police assaults; in Bolivia tear gas was used on indigenous communities; in Sao Paulo, Brazil tear gas and rubber bullets were used to break up protests, also in Brazil dozens of people were detained during a teacher's protest and journalists were attacked in Parana. In addition, police mistreatment of journalists covering a protest was reported in Montreal Canada; in Chile, police [*Carabineros*] assaulted dozens of protesters and injured others, they also detained several students; in Cuba some members of the *Damas de Blanco* movement and other activists were detained, while in Ecuador people protesting several constitutional reforms were injured and some were even sentenced to prison. Similarly, hundreds were detained in the cities of Baltimore and New York in the United States for protesting the death of African American Freddie Gray; in Venezuela, people were detained or their freedom was restricted due to protesting because of economic difficulties and the lack of food. In Guatemala the protests positively channeled claims against democratic reform and corruption while in Mexico there were dozens of protests to reclaim the respect for human rights, notwithstanding some cases reporting the disproportionate response by security agencies. Moreover, there were suppressed protests in Nicaragua and Paraguay.

The Office of the Special Rapporteur recommends the Member States of the OAS to adopt special measures to protect the journalists that cover situations of armed conflict and intensified social conflict and guarantee that they will not be detained, threatened, assaulted nor their rights limited in any form because they are exercising their profession; and that their material or equipment are not destroyed or confiscated by public authorities among other suggestions for the protection of journalists. Similarly, it recommends the States to ensure the protection of people and refrain from stigmatizing or stereotyping social protestors and their demands, and avoid making generalizations based on the behavior of particular groups or isolated events. If security forces have to act in a demonstration, they must use the safest and least harmful measures of the rights of the people.

Use of criminal law and subsequent liabilities:

In some member States, state officials or candidates to elected office filed criminal complaints for the publishing of opinions or information related to public interest matters. In several of the cases studied, the dispositions were prison sentences to journalists and political or social activists under legal concepts for the protection of honor such as defamation, slander or libel. In some cases the convictions were reduced to less restrictive sentences or the cases were dismissed.

Some of the cases found in this report include the conviction of two directors of the *El Ciudadano* newspaper in Chile for alleged libel against a former legislator; and an adolescent was detained and convicted to community work in Ecuador for having "made an obscene and insulting gesture" to President Rafael Correa "several times." It also contains information on the suit filed by former National Assembly president Diosdado Cabello, against the media outlets *El Nacional*, *La Patilla* and *Tal Cual* and their directors for defamation [*difamación e injurias*] after the media outlets replicated information about the official that was published in the Spanish newspaper *ABC*.

The Office of the Special Rapporteur continued its follow up on the application of the Communications Act in Ecuador and noted that several sanctions that run counter to international standards on freedom of expression were imposed on media outlets during this period. As described in this section, the use of the right of rectification and the right to reply as a mechanism to limit content that is unfavorable to the administration and to guard the image of public officials as well as to impose official discourse and an official vision for the media outlets, journalists and cartoonists in the country along with the disproportionate sanctions applied by an agency that fully depends on the Executive Branch are especially concerning.

In a fully democratic system public debate should be promoted. States should ensure greater openness to expressions and assessments made by citizens as an accountability tool for democracy. Therefore, the Office of the Special Rapporteur recommends the States to abolish the *desacato* laws and the laws on criminal defamation regarding information about issues of public interest, modify laws that are ambiguous or vague that restrict freedom of information, and 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.

Stigmatizing statements:

The attack on journalists and media outlets through stigmatizing statements towards those who publish information that is not pleasing to the authorities continued in several countries in the region. During 2015 this mainly took place in Argentina, Ecuador and Venezuela, where the highest authorities singled out media outlet workers for their news or opinions. Similarly, in Argentina, Ecuador, Venezuela and Guatemala discriminatory practices were seen in the assigning of Government advertising based on the editorial line of the media outlet.

This Office exhorts the authorities to refrain from making public statements that could stigmatize journalists, media outlets, and human rights defenders, in particular those that could put the life and safety of individuals at risk.

Freedom of Expression and Internet:

The Office of the Special Rapporteur observes that several States in the region have attempted to move forward on regulating the use and access to the Internet or have adopted decisions on the matter as a response to the need to prevent crime and protect the fundamental rights of third parties. As a word of warning, many of these initiatives do not take the special characteristics of this technology into account and, as a result, unduly restrict freedom of expression on the Internet.

Furthermore, in Brazil a case was filed against organized crime wherein the judge ordered the instant messaging service of Whatsapp suspended throughout the entire country –a ruling that was reversed by a higher court–, and was unprecedented in the continent. In Ecuador the president harassed and publicly singled out a social network user –acting as Crudo Ecuador– for the satires and criticism published against the leader.

In the United States, reporter Barret Brown was sentenced to 63 months in prison for accessory to a crime and obstruction of justice after being accused of working with the hacker group “Anonymous” and sharing a link to information obtained by a hacker in 2011.

Moreover, civil society questioned the Facebook “Free Basics” Project to provide free but restricted Internet access in lesser-developed countries in the region; due to the implications it may have on freedom of expression for vulnerable groups to only have access to certain web pages.

The Office of the Special Rapporteur recommends that States refrain from applying to the Internet regulatory approaches developed for other media and design an alternative and specific regulatory framework to this media, in accordance with existing international standards on freedom of expression. In particular, ensure that the processing of data and Internet traffic is not subject to any discrimination, in accordance with the principle of net neutrality. It also reiterates its recommendation to States to review their legislation to ensure that any program of surveillance of private communications, attend principles of necessity and proportionality, in accordance with international human rights law.

The 2015 Annual Report of the Office of the Special Rapporteur is available by clicking [here](#).

The Office of the Special Rapporteur for Freedom of Expression was created by the Inter-American Commission on Human Rights (IACHR) 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.