
**THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION OF THE IACHR
PRESENTS PRELIMINARY OBSERVATIONS FOLLOWING TRIP TO CHILE**

Washington D.C., July 18 2016 – The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Edison Lanza, conducted an official visit to Chile to evaluate the situation of the right to freedom of expression in that country, from May 31 to June 4, 2016. The Special Rapporteur’s visit took place just prior to the opening of the IACHR’s 158th Extraordinary Session, held from June 7-9, 2016.

During his mission, 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, the Council for Transparency, and the National Television Council. 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 158th Extraordinary Session, the Special Rapporteur participated with the IACHR delegation in meetings with senior government officials, including President Michelle Bachelet.

The Office of the Special Rapporteur is grateful for the cooperation of the State and the administration of President Bachelet in the organization of this visit, particularly the support provided by the Ministry of Foreign Affairs, the Permanent Mission of Chile to the OAS, and the National Human Rights Institute for arranging and holding an extensive number of meetings during the mission. 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.

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 158th 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.

More than 13 years after the first official visit of the Office of the Special Rapporteur to Chile, progress toward ensuring the right to freedom of expression is notable. Chile is part of a group of countries in the region that enjoy a robust and uninhibited debate. After its return to democracy, the country has gradually taken measures to build a legal framework and institutional culture respectful of the international principles and standards on the right to freedom of expression and access to public information.

Nevertheless, it follows from the information received before and during the visit 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. They 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 that must be addressed in accordance with international human rights law in order to protect the practice of journalism and the existence of truly robust, diverse, and inclusive deliberation in society, which are essential requirements for any democracy.

The Office of the Special Rapporteur presents below its preliminary observations on the visit, which will be developed in greater detail in a country report that will be published at the end of this year.

Right to Freedom of Expression and the Practice of Journalism

During the visit, the Office of the Special Rapporteur was able to verify 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 practice of journalism at the forefront of this discussion.

A number of journalistic exposés have given rise to judicial investigations into alleged acts of corruption, embezzlement, bribery, and illegal election campaign contributions implicating businesspersons, members of the military, and politicians, and have demonstrated the fundamental role of investigative journalism in the citizen oversight of government.

The Office of the Special Rapporteur recognizes that, following these revelations, the government has undertaken significant legal and institutional reforms to address conflicts of interest, influence peddling, and corruption. However, this office observes with concern that legal measures and judicial actions have been pursued in this context that could have resulted in the criminalization of the practice of journalism and the public deliberation of these matters.

For instance, in 2016 the National Congress 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 making leaks of the Public Ministry’s 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. Although these provisions were eventually removed from the bill, the legislative debate exposed a negative opinion about journalists that fails to acknowledge the central role of the media in a democratic system and the principle according to which the actions of the State are subject to unrestricted public oversight.

Earlier, in November 2015, three journalists and the owner of the Chilean weekly paper *The Clinic* were summonsed to give statements to the Office of the Military Prosecutor, and were required to reveal the sources for a report known as “Milicogate,” which 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.

In this regard, we recall that all journalists are entitled to the confidentiality of sources of information, notes, and personal and professional records, which are essential to their work and to their role of informing society of matters of public interest. In addition, journalists or media outlets that have access to and disseminate confidential information on the grounds that it is in the public interest should not be subject to penalties for violating the duty to maintain confidentiality. Even though journalistic responsibility is especially necessary when reporting based on documents subject to secrecy, it is up to the mechanisms of ethical self-regulation among journalists to determine how to approach and communicate these issues.

The Special Rapporteur also expresses his concern over the fact that provisions criminalizing defamation [*calumnia* and *injuria*] remain on the books in Chile. The Office of the Special Rapporteur has acknowledged that Chile was one of the first countries in the region to repeal *desacato* [criminal insult] offenses through an amendment to the Codes of Criminal and Military Justice, passed on August 31, 2005. In spite of this important step forward, the criminal defamation laws on the offenses of *injuria* and *calumnia* have not been reformed, and these provisions continue to be used to criminally prosecute journalists for

speech alleged to affect the honor and reputation of elected officials, with the resulting effect of inhibiting and restricting the investigation and dissemination of information in the public interest.

The 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 against the directors of *El Ciudadano* for the offense of criminal defamation [*injuria graves*] against former Congressman Miodrag Marinovic, following the publication of an interview in which a former collaborator accused the candidate of committing unlawful acts during a parliamentary election campaign.

In addition, during the visit of the Office of the Special Rapporteur to Chile, President Michelle Bachelet filed a criminal complaint alleging defamation offenses [*calumnia* and *injuria*] against four journalists from the weekly magazine *Qué Pasa*, seeking to have them sentenced to three-year prison terms. The magazine had printed the transcript of a telephone wiretap, leaked to the press, of one of the suspects in the Chilean Public Ministry's investigation into the alleged illegal businesses of a company belonging to one of President Bachelet's relatives—a criminal investigation that was opened following revelations published in the same magazine, *Qué Pasa*, in February 2015.

According to the information available, this was the first time a Head of State had used this type of criminal complaint since the restoration of democracy that began in 1990. President Bachelet stated that she had filed the action “in her capacity as a citizen” and for purposes of demanding “the ethics and responsibility that the media must demonstrate when providing information, by validating their sources.”

The Office of the Special Rapporteur reiterates that although the right to freedom of expression is not absolute, in a democratic and 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, “The 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.”

The inter-American case law has acknowledged that 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, and that the threat of using the criminal law—usually vague and ambiguous on the subject—against those who speak out against the government has a discouraging and chilling effect. Therefore, it has been recommended that provisions be made for the use of mechanisms least 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.

In that regard, Principle 10 of the IACHR's Declaration of Principles on Freedom of Expression establishes 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. 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.”

Accordingly, it is imperative to call upon all of the branches of the State to include in their decisions and proposals the parameters established in the Inter-American Human Rights System with regard to freedom of expression, so as to not affect the individual right of journalists to seek, receive, and impart information, as well as society's right to receive and learn about points of view, information, opinions, reports, and news freely and without undue interference.

Access to Public Information

On September 19, 2016 it will have been 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. 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.

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.

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 way in which the agencies and ministries of the State have gradually met their obligation of active transparency and the role of the Council for Transparency—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.

Notwithstanding the progress that has been made, the Office of the Special Rapporteur received information at different meetings about the need to revise certain aspects of the Access Law in order to bring it into line with the country’s current needs. In particular, the question arose of why essential bodies such as the judiciary and the legislature, State enterprises, public universities, and political parties still do not have the same transparency obligations under the Law. According to the information available, these entities are only required to meet active transparency obligations and other special provisions specified in the Law, and they are not obligated to respond to requests for access to information under the Law (passive transparency); nor are the subject to the oversight of the Council for Transparency.

The Office of the Special Rapporteur has observed on other occasions that the Chilean Council for Transparency is one of the most important institutions for the defense of the right to access to information and that it has notably promoted the standards access to public information in the country and in the region. For instance, the Office of the Special Rapporteur learned of the March 29, 2016 *amparo* [petition for a constitutional remedy] decision of the Council for Transparency, ordering the Office of the Under Secretary of the Armed Forces to publish the Restricted Law on Copper (Law No. 13.196), passed in 1958 under restricted circulation and amended during the dictatorship. This provision in force in Chile 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 for reasons of national security.

The Office of the Special Rapporteur recognizes the progress reflected in the fact that the Ministry of Defense has not appealed the Council’s decision to the courts and has agreed to comply with the decision. One of the central powers of the bodies charged with guaranteeing access to information lies in their ability to resolve disputes about the provision of information through binding decisions. It is also good practice for the legal system to establish that these decisions are final and unappealable for the obligated parties, without prejudice to the fact that private individuals must retain the right to challenge the adverse determinations or resolutions of the guarantor bodies before the competent tribunals, in order to guarantee the right to access to justice.

The Office of the Special Rapporteur observes with concern that according to the Council for Transparency there are some 203 legal texts in Chile that remain under secrecy for national security reasons, and are not accessible to the general public. Although most of these texts are apparently not in force, the fact that such laws exist in Chile—whether or not they are in force—is a legacy of the authoritarian doctrines of the past, has no justification in the current democratic system, and is incompatible with the American Convention.

In order to invoke secrecy for national security reasons, “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.” In this regard, the Office of the Special Rapporteur has emphasized that a restriction of access to public information on grounds of national security defense should not be based on an idea of national security that is incompatible with a democratic society.

The Office of the Special Rapporteur views with concern the fact that the government has not accepted the decision of the Council for Transparency ordering Chile’s National Defense General Staff to release some of the minutes of National Security Council (COSENA) sessions held between 1989 and 2012. In its decision, the Council for Transparency found that publishing this information would not affect national security and defense and that, on the contrary, its disclosure was in the public interest “as a way to preserve the historical memory of events related to the grave human rights violations that took place in Chile.” According to the information available, some of these records pertain to a debate regarding the political and social consequences of the Rettig Report of the National Truth and Reconciliation Commission (1991), the impeachment of the Supreme Court Justices (1992) and the perspectives of the members of the COSENA with regard to unity and reconciliation in Chile (2001).

The Office of the Special Rapporteur recalls that the right to access to public information includes information related to national security, save for specific legally established exceptions, provided that they are necessary in a democratic society. The Office of the Special Rapporteur reminds the State that, according to international human rights law and the best regional practices, there are some categories of information that, given their preponderant or essential public interest, cannot be withheld by invoking national security reasons under any circumstance. Such is the case of information concerning serious violations of human rights or international humanitarian law.

Finally, the Office of the Special Rapporteur is concerned about allegations regarding the lack of proportionality of restrictions on access to documents, testimony, and background information provided by victims to the National Commission on Political Imprisonment and Torture (Valech Commission I) and its impact on the right to memory, truth, and justice. It was also recalled during the visit that these archives are classified as confidential by law for a term of 50 years; however, according to State authorities, the potential declassification of the Valech Commission I archives is reportedly under study and consideration.

Pluralism, Diversity, and Freedom of Expression

The Office of the Special Rapporteur acknowledges that, following the return to democracy, Chile has taken legislative and administrative measures to take gradual steps toward pluralism and diversity in public debate and to prevent the concentration of ownership and control of the media.

The laws and public policies that sought to develop independent public television upon the return to democracy and ensured the participation of the government and the opposition in the management of public signals have served as models for the region. 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 access to persons with disabilities to governmental and public interest information, and the reforms undertaken to provide equal and nondiscriminatory access to digital television signals and guarantee that government advertising reaches local and regional media.

Without diminishing the progress made, the Special Rapporteur notes that the promotion of a broad plurality of sources of information continues to be a challenge for Chilean democracy.

Thus, for instance, this office heard criticism of the effectiveness of Law No. 20.433 of 2010 on Community Broadcasting and the effects of the limitations it imposes on community radio stations in terms of their power, funding, and opportunities for network broadcasting. The slow implementation of this Law,

particularly the delays in opening competitive processes for the allocation of new radio frequencies, and the absence of public policies that effectively strengthen the sector were other recurring themes during the visit.

In Temuco, the Office of the Special Rapporteur received concerning complaints about the legal, technical, and economic limitations faced by indigenous peoples in implementing community broadcasting projects and the ineffectiveness of available measures to promote and guarantee indigenous peoples' access to the media. It also heard testimony on the use of the criminal law and the police force to punish the operation of unlicensed community radio stations pursuant to Article 36 (B)(a) of the Telecommunications Act (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.

According to the information provided by the authorities, the allocation of experimental frequencies to indigenous peoples' radio stations has accelerated in recent months at the initiative of the current Director of the Under Secretariat of Telecommunications (Subtel). Nevertheless, the need for a sustained public policy to accomplish the objective of promoting this sector was noted.

The Office of the Special Rapporteur reiterates to the State that the legal recognition of community broadcasting is insufficient if there are regulations that establish discriminatory conditions for its operation. Discriminatory conditions include limitations that may be provided for by law, 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. Thus, for instance, there would seem to be no reason to prevent the existence of community radio stations with local or national coverage that are financed through advertising. The law must also guarantee indigenous peoples' access to community media according to ILO Convention 169, which obligates the States to take special measures to protect indigenous people, institutions, assets, and culture.

In addition, as stated on numerous previous occasions, the use of the criminal law to penalize violations of the broadcasting system can be problematic in light of the American Convention on Human Rights. The establishment of 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. In that regard, the Office of the Special Rapporteur remains concerned that the Chilean legal system still contains criminal penalties for the unauthorized use of frequencies, and hopes that the debate on the legislative bill to amend the sanctions established in Article 36 B(a) of the Telecommunications Act (Law No. 18.168) will move forward in Congress.

The Office of the Special Rapporteur also heard complaints 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, the concentration is particularly high in the local and national radio and print media sector, 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* network—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. There were also reports of an alleged lack of transparency with respect to media ownership and control in general.

At the same time, the Office of the Special Rapporteur received information—which will be examined thoroughly in the final report—about the laws governing broadcasting, telecommunications, and the defense of competition and their effectiveness in preventing media monopolies and oligopolies in Chile. The Office of the Special Rapporteur also received information about the measures taken by Subtel, the National Television Commission (CNTV) and the Office of the National Economic Prosecutor (FNE) to prevent the concentration of media in the application of these laws. In this regard, the office heard from the representatives of the Chilean Media Federation, who 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 unlawfully affect the right to freedom of expression.

The IACHR's Declaration of Principles on Freedom of Expression states 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."

In that regard, in the "Joint Declaration on Diversity in Broadcasting" (2007), 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 ownership concentration into account in the licensing process, where applicable, prior reporting of major proposed combinations, and powers to prevent such combinations from taking place."

With regard to the actions undertaken in the context of the transition to digital television, the Office of the Special Rapporteur notes that the new law provides that, once the authorities assigned the spectrum needed so that television channels can transition to digital broadcasting, 40% of the total remaining licenses agreements will be assigned to regional, local and local 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. The Office of the Special Rapporteur was also informed that the community sector was defined in the Digital Television Act as "local community," restricting its coverage to specific geographic areas.

The Office of the Special Rapporteur has stated previously that 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.

As for the reforms on government advertising, the Special Rapporteur notes with satisfaction that, in order to promote official information through local and regional media, the Law on Public Sector Budget 2016 established the obligation to assign 25% of the government advertising to media "with clear local identity" and "territorially distributed equitably", subject to accountability mechanisms. When effective, such a policy can contribute to the promotion of diversity and pluralism in the media in the country. However, this office reiterates 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 to reward or punish the publishers and news media content.

Finally, 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 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, which will help enhance diversity and pluralism in the country's

media. The Office of the Special Rapporteur also reminds the need to offer significant opportunities for the representatives of different sectors of Chilean civil society to participate in the legislative debate and to guarantee the independence for the governance of the public service media outlet.

In their 2007 Joint Declaration, the special rapporteurs for freedom of expression of the UN, the OAS, the OSCE, and the African Commission stated that, “Special 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 public service mandate, which are guaranteed in advance on a multi-year basis, and which are indexed against inflation.”

Free and Open Internet

This Office of the Special Rapporteur has stated on numerous occasions that the right to freedom of expression is fully applicable to the communications, ideas, and information that is disseminated and accessed through the Internet. Accordingly, this office has recommended that the States ensure that their public policies and regulations promote the open, free, and interconnected nature of the Internet.

The Internet has become a crucial forum for people to be able to share ideas and receive information. In its 2013 report on Freedom of Expression and the Internet, the Office of the Special Rapporteur highlighted the important laws enacted in Chile to protect freedom of expression on the Internet, including amendments to the Law on Intellectual Property that limit intermediary liability for the content produced by third parties, and establish a legal standard for eliminating content that violates the Law. It also creates new exceptions to the need for obtaining the consent of rights holders. It also held up the examples of Law 20.453 and Supreme Decree 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.”

During the visit, the Office of the Special Rapporteur was pleased to receive information about the measures taken by Subtel, in application of 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 to guarantee a minimum access speed in order to keep the Internet open and nondiscriminatory. The office also heard about the challenges and problems Chile faces in striving to reach universal, high-quality Internet access, as well as the efforts undertaken by the government to close the digital divide and broaden access to 700 MHz band spectrum.

The Office of the Special Rapporteur urges the State to move forward with these actions, and to ensure the equitable participation of all relevant stakeholders in Internet governance, fostering enhanced cooperation among government authorities, academics, civil society, the tech community, and the private sector, both nationally and internationally.

In this regard, in the Joint Declaration on Freedom of Expression and the Internet, the Rapporteurs for Freedom of Expression of the UN, OAS, OSCE, and the African Commission maintained that, “States are under a positive obligation to facilitate universal access to the Internet. At a minimum, States should: i) put in place regulatory mechanisms [...] that foster greater access to the Internet, including for the poor and in ‘last mile’ rural areas; ii) provide direct support to facilitate access, including by establishing community-based ICT centers and other public access points; iii) promote adequate awareness about both how to use the Internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations; and iv) put in place special measures to ensure equitable access to the Internet for the disabled and for disadvantaged persons.” They further stated that, “To implement the above, States should adopt detailed multi-year action plans for increasing access to the Internet which include clear and specific targets, as well as standards of transparency, public reporting and monitoring systems.”

During the visit the Office of the Special Rapporteur heard reports from specialized civil society organizations about the alleged lack of transparency in the programs and policies for the surveillance of electronic communications by investigative police agencies. The Office of the Special Rapporteur gathered information from State authorities on the practices and the legal framework applicable to police investigations. The Office took note of the State's commitment to the obligations that arise under both domestic and international law on this subject.

Finally, the Office of the Special Rapporteur received worrisome information about the development of a number of court judgments invoking the so-called "right to be forgotten" to force individuals and media outlets to delete content from the Internet in order to protect the image and reputations of others. Some judgments ordered the deletion of records from the digital platforms of media outlets and/or prohibit future publications on matters that are the object of litigation. In addition, according to the information received, there are bills pending before Congress that aim to regulate the so-called "right to be forgotten" while failing to recognize the rights involved and the architecture of the Internet.

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 the proportionality of a restriction to freedom of expression on the Internet, the potential impact of that restriction on the capacity of the Internet to guarantee and promote freedom of expression must be weighed against the benefits that the restriction would yield for the protection of other interests.

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 to Chile.

The Office of the Special Rapporteur remains concerned over the validity of Supreme Decree 1086, adopted in 1983 during the military dictatorship, which enables authorities—in a manner incompatible with inter-American human rights protection standards—to deny permission for public meetings and demonstrations to be held on "heavily trafficked streets or on streets where public transit is disrupted." According to the information received, this law is used mainly to negotiate conditions such as the time and place of a protest. Nevertheless, it would make it possible to deny permission for public demonstrations to be held on certain main roads and allow security forces to break up marches deemed to be "unauthorized." The Office of the Special Rapporteur reiterates that the compelling social interest of the right to participate in public demonstrations creates a general presumption in favor of its exercise. It should, to the extent possible, be allowed without regulation, and those who wish to demonstrate should not be required to obtain permission to do so.

During the official visit, and later during the 158th Extraordinary Session, the Office of the Special Rapporteur also received troublesome information about the persistence of situations involving the unlawful and excessive use of force and indiscriminate arrest by the Chilean police [*Carabineros*] during public demonstrations. The Office of the Special Rapporteur received complaints of unlawful arrest, assault, and the disproportionate use of non-lethal weapons against protesters in 2016. In one case, a pregnant woman was reported to have had a miscarriage as the result of a police beating; in another, two adolescent high school students were allegedly injured by buckshot fired by police. Some protesters reported that once transported to police stations they had been beaten and forced to undress. 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.

During the visit, the Office of the Special Rapporteur was informed that the Government ordered the opening of an administrative investigation into the alleged assault of a woman who subsequently suffered a miscarriage. Nevertheless, the police authorities informed that, according to the information they had, the incident had been "provoked" when the woman in question assaulted a police officer. This office considers it

important to reiterate that the officers who take part in operations during protests must exercise the highest level of professionalism when faced with assaults or affronts.

During its stay in Santiago, Chile, the team from the Office of the Special Rapporteur witnessed marches attended by thousands of students demanding education reform. Violent acts were committed at some of those demonstrations by specific and easily identifiable groups, which should be subject to an investigation by the State. However, the office deplores that many people viewed this as a reason to discredit the street protests.

We remind the State that a demonstration cannot be declared illegal or deemed not to be peaceful because of the violent acts of some individuals. The State, in any case, has the duty to prevent and protect the protesters and third parties, and to separate the individuals who have committed those acts. 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. As with the criminalization of protesters, when State violence or violence by private citizens recurs in the context of public protest and demonstrations, it can give rise to an intimidating and chilling effect on the exercise of this right.

In another incident, the Special Rapporteur received with serious concern a report about the unlawful arrest and assault of staff members of the regional office of the National Institute for Human Rights (INDH) in Antofagasta while they were exercising oversight—pursuant to their legal mandate—over the police detention centers during protests. 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 the 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 aspect of accountability under the rule of law and one of the most effective mechanisms for controlling the use of force. The State must properly investigate these events, prosecute the perpetrators, and provide suitable redress to the victims. It must also take measures to ensure that these types of acts are not repeated and that the important role played by the INDH in the promotion and protection of human rights during demonstrations is respected and guaranteed.

The Office of the Special Rapporteur additionally heard criticism of the use of police powers to conduct identity checks before, during, and after public demonstrations. According to the information received, these checks were done indiscriminately, affecting particularly young males and socially excluded populations.

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 so-called “Short Anti-crime Agenda.” The initiative proposes changes to the identity control system currently in force in the country, to allow for such checks to be conducted without any reasonable suspicion of the commission of a crime, granting the police broad and general powers to check identifications and detain individuals. 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.

Finally, the State informed the Special Rapporteur that in cases of complaints of police violence, the competent bodies undertake criminal or administrative investigations to establish the facts and determine appropriate action, in accordance with national law. However, this Office of the Special Rapporteur is concerned over the fact 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 human rights protection bodies of the Inter-American 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.

Accordingly, the Office of the Special Rapporteur views positively the recent case law of the Constitutional Court 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 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 to exclude cases of human rights violations from military jurisdiction.

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The Office of the Special Rapporteur for Freedom of Expression was created by the 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.