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RAPPORTEUR FOR FREEDOM OF EXPRESSION



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2015**

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TABLE OF ACRONYMS AND REFERENCES

ACHPR:	African Commission on Human and Peoples' Rights
American Convention:	American Convention on Human Rights
American Declaration:	American Declaration of the Rights and Duties of Man
Declaration of Principles:	Declaration of Principles on Freedom of Expression
European Convention:	European Convention on Human Rights and Fundamental Freedoms
European Court:	European Court of Human Rights
IACHR:	Inter-American Commission on Human Rights
ICCPR:	International Covenant on Civil and Political Rights
ILO:	International Labor Organization
Inter-American Court:	Inter-American Court of Human Rights
OAS:	Organization of American States
OSCE:	Organization for Security and Cooperation in Europe
Office of the Special Rapporteur:	Office of the Special Rapporteur for Freedom of Expression
UN:	United Nations
UNESCO:	United Nations Educational, Scientific and Cultural Organization

ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION 2015

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 2015 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 2015.

4. Chapter II presents the now-customary evaluation of the situation of freedom of expression in the hemisphere. In 2015, 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, 27 journalists or media workers were killed during 2015 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. Also, other 12 journalists were killed where the motive was not clear or where no additional information was known to determine a possible link to their work until

the date of closure of this report. 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 includes the report “Access to Information, Violence against Women, and the Administration of Justice in the Americas.” The report, prepared by the Office of the Rapporteur on the Rights of Women, with technical assistance from the IACHR Office of the Special Rapporteur for Freedom of Expression, aims to provide an introduction to the challenges faced by women in the Americas in gaining adequate access to State-controlled information on violence and discrimination. It also seeks to systematize the international standards that have been developed in the inter-American system on this subject, particularly with regard to the state obligation to capture and produce information regarding violence against women. The report also identifies good practices in the region with regard to the application of and compliance with those standards.

9. Chapter IV includes an examination of hate speech and incitement to violence against LGBTI persons, a result of the joint work between the Office of the Special Rapporteur and the IACHR Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons. The document offers Member States and civil society an overview of the Inter-American legal framework relating to hate speech and incitement to violence and seeks to establish the basis to understand the phenomenon and enable the development and implementation of effective responses. It also identifies and analyzes the different non-legal measures that may contribute to its prevention. While the analysis focuses on state obligations, it also examines the important role played by the media in the implementation of different strategies to prevent and combat hate speech.

10. These reports are part of the efforts undertaken by the Office of the Special Rapporteur to mainstream the right to freedom of expression and access to information with the exercise of other human rights, particularly by persons that belong to historically discriminated groups. This office is committed to support the work of other IACHR rapporteurships to promote the adoption by Member States of positive obligations to reverse or change existing discriminatory situations and that these groups may participate fully in the public debate. Freedom of expression and access to public information contribute like few other things do to guaranteeing the rights of all discriminated groups, reaffirming the equality of all people and enforcing respect for human dignity.

11. 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[.]”

12. The Office of the Special Rapporteur thanks the various Member States that have collaborated with it during 2015, 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.

13. Also, the Office of the Special Rapporteur expresses its appreciation for financial contributions made by the Republic of Chile, Costa Rica, the United States of America, Peru, Uruguay, Finland, France, the Swedish Agency for International Development Cooperation, the Swiss Confederation, and Open Society Foundations, which allowed for the implementation of the Office's 2015 program. The Office of the Special Rapporteur invites other States to add to this necessary support.

14. 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.

CHAPTER I GENERAL INFORMATION

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

1. The Inter-American Commission on Human Rights, by the unanimous decision of its members, created the Office of the Special Rapporteur for Freedom of Expression during its 97th period of sessions, held in October 1997. This 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

¹ Declaration of Santiago. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. "Official Documents of the Summit Process from Miami to Santiago." Volume I. Office of Summit Follow-up. Organization of American States.

² Plan of Action. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. "Official Documents of the Summit Process from Miami to Santiago." Volume I. Office of Summit Follow-up. Organization of American States.

³ Plan of Action. [Third Summit of the Americas](#). April 20-22, 2001. Québec, Canada.

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-O/05), in which it reaffirms 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.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.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 (XLI-O/11) reiterating the importance of freedom of expression for the exercise of democracy and reaffirming that free and independent

⁴ IACHR. Annual Report 2004. [Annual Report 2004. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.222. Doc. 5 rev. 23 February 2005. Chapters II, V and VII.

⁵ IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OAS/Ser.L/V/II.124 Doc. 7. 27 February 2006. Chapter V and VI.

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 deepen its research on the subjects contained in the pertinent volumes of its annual reports for the years 2006, 2007, 2008, 2009, and 2010 on freedom of expression.

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*.⁶ 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 Law⁷ and reaffirmed the importance of the annual reports of the Office of the Special Rapporteur.

⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Estudio Especial sobre el Derecho de Acceso a la Información](#). August, 2007.

⁷ OAS. [The Model Law and its Implementation Guide](#) Resolution AG/RES 2607 (XL-O/10).

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 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. 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.

B. Mandate of the Office of the Special Rapporteur

17. 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.⁸

18. 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.

19. 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

⁸ 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.

C. Principal Activities of the Office of the Special Rapporteur

20. During its fifteen 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.

21. This section of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2015.

1. Individual Case System

22. 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.

23. 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.

24. 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.

⁹ IACHR. July 21, 2008. [Press Release No 29/08. IACHR Elects Catalina Botero Marino as Special Rapporteur for Freedom of Expression](#)

- *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-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 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 Republic 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.
- *Case of Norin Catriman and Others (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’état. 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 discretionary 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.

25. 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

26. 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);¹⁰ (ii) Herrera Ulloa v. Costa Rica;¹¹ (iii) López Ulacio v. Venezuela;¹² (iv) Peña v. Chile;¹³ (v) Globovisión v. Venezuela;¹⁴ (vi) Tristán Donoso v. Panama;¹⁵ (vii) Yáñez Morel v. Chile;¹⁶ (viii)

¹⁰ IACHR decision issued June 18, 1999, and expanded on July 19, 1999, requesting that the Chilean government adopt precautionary measures for the benefit 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.

¹¹ 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.

¹² 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*.

¹³ 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.

¹⁴ 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.

Pelicó Pérez v. Guatemala;¹⁷ and (ix) Rodríguez Castañeda v. Mexico;¹⁸ (x) Leo Valladares Lanza and Daysi Pineda Madrid v. Honduras;¹⁹ (xi) Journalists of La Voz de Zacate Grande (Honduras),²⁰ y (xii) Lucia Carolina Escobar Mejía, Cledy Lorena Caal Cumes, Gustavo Girón v. Guatemala,²¹ (xiii) Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga v. Ecuador²²; (xiv) 15 workers of Progreso Radio v. Honduras²³; and (xv) Yoani María Sánchez Cordero v. Cuba²⁴.

27. During 2015, the Office of the Special Rapporteur collaborated in the study of 29 requests of precautionary measures. The following requests were granted: José Moisés Sánchez Cerezo (Mexico);²⁵ Miguel Henríque Otero and others (Venezuela);²⁶ X and others (Mexico).²⁷ For additional details regarding these precautionary measures, please consult the Annual Report 2015 of the IACHR.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ IACHR decision adopted on July 3, 2008, for the purpose of preventing the destruction of electoral ballots from the 2006 presidential elections in Mexico.

¹⁹ IACHR decision of April 26, 2011, requesting that the State of Honduras adopt any necessary measures to guarantee the life and physical integrity of Leo Valladares Lanza and his wife, Daysi 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.

²⁰ IACHR decision of April 18, 2011, asking the State of Honduras to adopt any necessary measures to guarantee the life and physical integrity of the journalists from La Voz de Zacata Grande, and to reach agreement with the beneficiaries and their representatives on the measures to be adopted.

²¹ IACHR decision of November 14, 2011, requesting that the State adopt any necessary measures to guarantee the life and integrity of Lucía 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.

²² 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.

²³ 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 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.

²⁴ 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 concierte 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.

²⁵ 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.

²⁶ 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 Henríque 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.

²⁷ 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; to inform about the ongoing actions to investigate the alleged events that prompted the adoption of the precautionary measure, and, thus, avoid their repetition.

28. 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

29. 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.

30. Within the framework of the 154th period of sessions that took place March 13-27, 2015, several hearings took place where freedom of expression was addressed. On Monday, March 16 a hearing was held on “Freedom of Expression, Diversity, Pluralism, and Media Concentration in the Americas”. Inter-American Press Association (IAPA) president Claudio Paolillo and the director of the Latin American Observatory on Regulation, Media and Convergence (OBSERVACOM) Gustavo Gómez, requested the hearing. In attendance at the hearing were also representatives from organizations such as Artículo-19 Brazil; Mexican Association for the right to information (AMEDI); Archives and Access to Public Information Center [Centro de Archivos y Acceso a la Información Pública] (CAINFO); Chile School of Journalism [Colegio de Periodistas de Chile]; Central American Institute for the Study of Social Democracy (DEMOS); Freedom of the Press Foundation (FLIP); Intervozes – Coletivo Brasil de Comunicação Social; Press and Society Institute (IPYS). Likewise on March 16 a hearing was held on “Social Protest and Human Rights in the Americas” requested by the American Civil Liberties Union; Article 19, Asociación Pro Derechos Humanos; Canadian Civil Liberties Association; Cauce Ciudadano A. C.; Centro de Derechos Humanos Fray Francisco de Vitoria; Centro de Derechos Humanos Miguel Agustín Pro Juárez; Centro de Estudios Legales y Sociales; Centro de Justicia para la Paz y el Desarrollo; Centro Nacional de Comunicación Social et al. A hearing was held on March 20 on “Children’s Rights and the Media in the Americas” requested by a group of organizations made up of Red Andi América Latina; Dos Generaciones; Civitas; DNI Costa Rica; Agencia Pandi; Cecodap; Fundación Yupana; Equipo Uno; Corporación Raíces; El Abrojo; Global Infancia; Andi Brasil; Eco Jóvenes; Demos; Robert F. Kennedy Human Rights (RFKHR); Instituto Alana e Intervozes - Coletivo Brasil de Comunicação Social.²⁸

31. Within the Framework of the 156th period of sessions, held October 19-28, 2015 several hearings on freedom of expression were held. On October 19 the hearing on the “Situation of Freedom of Expression in Venezuela” took place. This hearing was requested by Espacio Público, Centro de Derechos Humanos de la UCAB, Colegio Nacional de Periodistas, Sindicato Nacional de Trabajadores de la Prensa, Instituto de Prensa y Sociedad de Venezuela y Transparencia Venezuela and included the participation of the State of Venezuela. On Tuesday, October 20, the regional hearing on “Access to Information and National Security in America” was held. This hearing was requested by a group of organizations including the Center for Studies on Freedom of Expression and Access to Information (CELE) of the University of Palermo, Asociación Pro Derechos Humanos (APRODEH), Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C., Centro de Archivo y Acceso a la Información Pública – (CAInfo); Fundación para la Libertad de Prensa – (FLIP); Fundación Myrna Mack y Open Society Justice Initiative (OSJI). A hearing on the “Situation of Violence against Journalists in the Southern Cone” was held on October 23. Artigo19 and International Freedom of Expression Exchange (IFEX-ALC) requested the hearing. Likewise on Friday the 23 a hearing was held on the “Situation of the Right to Freedom of Expression in Central America”, requested by civil society organizations Instituto Centroamericano de Estudios para la Democracia Social (DEMOS), Asociación Sobrevivencia Cultural, Asociación de Radios Comunitarias de Guatemala (ARCG), Mujb’ab’l yol (Encuentro de Expresiones), Comité por la Libre Expresión (C Libre), Asociación de Medios Comunitarios de Honduras (AMCH), Cultural Survival, Fundación de la Comunicación para el Desarrollo (Comunicándonos), Asociación Mundial de Radios Comunitarias (AMARC-Subregión Centroamérica) y Junta Ciudadana por el Derecho Humano a la Comunicación.²⁹

²⁸ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

²⁹ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

4. Seminars and Workshops with Strategic Actors in the Region

32. 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 fifteen 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.

33. 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.

34. 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.

35. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2015.

36. On February 2 to 3, The Special Rapporteur and Senior Attorney Ona Flores travelled to Costa Rica to participate in a public hearing convened by the Inter-American Court on Human Rights to discuss the case of Lopez Lone and Others v Honduras. Additionally, the Rapporteur participated as a panelist in an activity associated to the issue of judicial independence with regards to the public hearing. This took place in the Supreme Court of Costa Rica.

37. On February 11 to 12, the Special Rapporteur was a panelist at the High-Level Meeting on Equitable Access to Public Information, held in Buenos Aires, where he discussed the conclusions of the thematic report on The Right to Access to Public Information in the Americas: Specialized Supervisory and Enforcement Bodies, adopted by the Inter-American Commission on Human Rights. The workshop was organized by the Department of International Law (DIL) of the OAS and the Constitutional Affairs Committee of the Chamber of Deputies of Argentina to promote reflection and dialogue among the different societal actors who had participated in the workshop series. During his stay, the Rapporteur took the opportunity to hold meetings with organizations of Argentine civil society, such as the Association for Civil Rights (ADC), the Association of Argentine Journalism Entities (ADEPA), Argentine Journalism Forum (FOPEA), and Citizen Power.

38. On March 17, the Special Rapporteur participated as a speaker in the closing session of the international meeting "The Impact of Media Concentration on Freedom of Expression and Democracy." organized in Washington, D.C., by OBSERVACOM, in coordination with UNESCO and the Open Society Foundation. The activity brought together prominent international experts, such as United Nations Rapporteur on Freedom of Expression David Kaye, and social movements and media and journalists' associations of Latin America, such as FLIP, Article 19 Brazil, and CAINFO. The aim of the international meeting was to warn of the danger of the impact of media concentration on freedom of expression and to underscore the urgency of the matter.

39. On March 19, the Office of the Special Rapporteur for Freedom of Expression and the Office of the Rapporteur on the Rights of the Child organized a working meeting with representatives of the States and civil society. Participating in the working meeting were Advisor on Communication and Information for Mercosur and Chile Guilherme Canela; former United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank la Rue; Director of the Campaign for a Commercial Free Childhood Susan Linn; Karina Quintanilha Ferreira of Article 19 Brazil, and National Council on the Rights of Children and Adolescents of Brazil (CONANDA) representative Pedro Hartung, among others.

The Special Rapporteur, together with the ANDI Latin America Network and the School of Media and Public Affairs of George Washington University, organized the event “Freedom of Expression, the Media, and the Rights of Children and Adolescents: A Strategic Agenda for Citizenship and Democracy,” in which participated as speakers the Special Rapporteur and the Rapporteur on the Rights of the Child Rosa María Ortiz.

40. From March 22 to 24, the Special Rapporteur participated in the seminar “Security Forces and Governance in the Internet Age—A Global Perspective of Freedom of Expression,” held in Mexico City and hosted by Article 19. Rapporteur Edison Lanza also participated in an important meeting with journalist Carmen Aristegui on her situation resulting from her untimely dismissal from the media outlet for which she and her team worked. He also participated in meetings with civil society organizations, such as FUNDAR and the network of Mexican organizations focusing on the right to protest. During his visit, the Rapporteur also took the opportunity to offer interviews with different media outlets of national scope.

41. On March 26 to 27, Office of the Special Rapporteur attorney Sofia Jaramillo visited Asuncion, Paraguay, where she participated in the “Conference for the jurisprudential dialogue and specialized training on transparency, freedom of expression and access to public information,” organized by UNESCO, in the framework of the XVIII Ibero-American Judicial Summit.

42. On April 6, Attorney Sofia Jaramillo traveled from Paraguay to Bogotá, Colombia, where she held meetings with members of the Colombian Prosecutor’s Office tasked with the replicate training in Cali and members of the Rodrigo Lara Bonilla Judicial Training School to analyze options for joint projects. Attending the meeting was a group of judicial officials of Colombia selected to participate in phase II of the project: Mauricio Noguera Rojas, Prosecutor Advisor, Subdivision of Public Policy, Office of the Prosecutor General of the Nation; and Carol Gonzalez, Acting Prosecutor, National Directorate of Sections (Local Offices), and Citizen Security. At that meeting, Cali, the capital of Valle del Cauca Department, was elected to host the first activity, owing to its high incidence of violence against journalists, with the aim of building capacities among local prosecutors to investigate cases involving this type of violence.

43. From April 9 to 11, Special Rapporteur Edison Lanza attended the VII Summit of the Americas, held in Panama City, whose central theme was “Prosperity with Equity: The Challenge of Cooperation in the Americas.” The Rapporteur also held meetings with civil society organizations and government agencies, such as the Panamanian foreign ministry and participated in a conference organized by Freedom House on freedom of expression in the Americas: progress and challenges, in which took part the Robert F. Kennedy Partners for Human Rights (RKF), Eco360, the Regional Partnership for Freedom of Expression, and the Inter-American Press Association of Panama.

44. From April 12 to 15, the Special Rapporteur made an academic visit to Guatemala City, where he held different seminars and meetings with civil society organizations and state officials, in coordination with the Office of the High Commissioner for Human Rights (UNHCR). The Rapporteur was invited to participate on April 14 in the Open Forum and III Gathering of Community Radios: Freedom of Expression, Indigenous Peoples and Governance, organized by the DEMOS Institute in conjunction with the Cultural Survival Association, the Mujb’ab’l Yol Association, the Office of the UN High Commissioner for Human Rights (UNHCR), and UNESCO, where he discussed in depth the topic of freedom of expression in Latin America and the right of indigenous communities to found and manage their own media outlets.

45. During his visit to Guatemala, the Rapporteur held meetings with representatives of the international organizations and senior Guatemalan government officials associated with the Secretariat of Communications of the Office of the President and the Presidential Human Rights Commission (COPREDH), as well as Guatemalan parliamentarians. The Rapporteur held two working meetings with the Prosecutor’s Office of the Office of the Attorney General, and the Office of the Special Prosecutor specialized in crimes against journalists, which resulted in an agreement to provide training for prosecutors on matters related to freedom of expression and combating impunity in crimes against media members. This meeting was based on a training seminar held in September 2014, in Colombia, where the prosecutors of the Attorney General’s Office of Guatemala in attendance undertook to replicate this experience in their country.

46. On April 19, he participated in the “Sixteenth International Symposium on Online Journalism,” organized by the Knight Center for Journalism in the Americas with support from Google Latin America and held at the University of Texas at Austin. The event counted with the participation of prominent editors of the Latin American press who commented on the situation of online journalism in their countries and the tension between the online and offline worlds.

47. On April 20, the Special Rapporteur participated via videoconference in the seminar on the approval of the Law on Audiovisual Media Services (L-SCA), held in Montevideo, Uruguay, and moderated by the Director of the Communications Institute of Uruguay of the University of the Republic, Gabriel Kaplún.

48. From April 20 to 23, Special Rapporteur Edison Lanza attended the Ninth International Conference of Information Commissioners (ICIC), organized by the Council for Transparency of that country, where he presented the thematic report of the Office of the Special Rapporteur on “The Right to Access to Public Information in the Americas: Specialized Supervisory and Enforcement Bodies” that took place in Santiago de Chile. The Rapporteur held meetings with civil society organizations such as Fundación Pro Bono Chile and FUCATEL. He also had a working lunch with the full National Television Council (CNTV), headed by CNTV President Oscar Reyes. On April 22, the Rapporteur had a working lunch with the Center for Human Rights of Universidad Diego Portales (DDHH UDP), which was attended by a group of 15 academics (professors and students of the Master’s in Constitutional Law program), where the situation of freedom of expression in Latin America was discussed.

49. On April 29, the Special Rapporteur participated in a panel with Congressman Sam Farr at the U.S. House of Representatives on challenges and opportunities for freedom of expression in the Americas. The panel was part of an information session organized by that Congressman to examine emerging issues in the Hemisphere.

50. On April 29, attorney Ona Flores, attended the conference held in Santiago, Chile on “Promotion and Protection of Human Rights in the Context of Peaceful Protests,” organized by the United Nations and led by Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai and Special Rapporteur on extrajudicial, summary or arbitrary executions Cristof Heyns. That consultation is an important component of the implementation of the project on the mandate entrusted by the United Nations Human Rights Council to different rapporteurs. The conference brought together civil society actors from throughout the Americas to share experiences and perspectives.

51. From May 3 to 5, the Rapporteur attended the event “World Press Freedom Day,” held in Riga, Latvia and organized by UNESCO. On May 3, the Rapporteur participated in the panel “Riga Challenges for Freedom of Expression in the Digital Age,” and on May 4, at a joint meeting of special rapporteurs of the different human rights protection systems, they signed and published the Joint Declaration on Freedom of Expression and Responses to Conflict Situations.” Participating in the meeting were Special Rapporteur for Freedom of Expression Edison Lanza; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression David Kaye; OSCE Representative on Freedom of the Media Dunja Mijatović; and Special Rapporteur of the African Commission on Human and Peoples’ Rights Pansy Tlakula.

52. From May 6 to 8, Rapporteur Edison Lanza visited Bogotá, Colombia, where he participated in two conferences on freedom of expression and the press, one organized by the Foundation for Press Freedom (FLIP) and the other by the National Television Authority (ANTV). The Rapporteur attended the forum “The peace accords and their impact on press freedom,” organized by FLIP, at which were debated the issues related to freedom of expression and the media included in the preliminary agreements reached by the Revolutionary Armed Forces of Colombia (FARC) and the National Government at the peace talks being held in Havana, Cuba. On May 8, also in Colombia, at the event titled “Should There Be Limits on Freedom of Expression?,” organized by ANTV at the Universidad Externado de Colombia, the Special Rapporteur gave a lecture on the importance of guaranteeing media pluralism and diversity in access to information. He also participated in the panel “Realities of Freedom of Expression in Latin America,” together with former Rapporteur Catalina Botero, journalist Daniel Coronel and FLIP Director Pedro Vaca.

53. From May 10 to 13, the Special Rapporteur and Office of the Rapporteur attorney Sofía Jaramillo participated in a training workshop for prosecutors held at the School of the Prosecutor General-Cali. This workshop was organized as part of a training program for prosecutors given by the Office of the Special Rapporteur, and its first training session was on “Inter-American standards of the right to freedom of expression and the role of the judiciary,” held in September 2014. Attending the workshop were 27 Colombian prosecutors, who discussed the topics of “violent crimes against personal integrity and freedom of expression” and “crimes against honor and privacy and freedom of expression.”

54. On May 29, Special Rapporteur Edison Lanza and attorney Ona Flores participated in a videoconference on disseminating regional standards of freedom of expression, with the National Human Rights Commission of Mexico (CNDH), in which also participated CNDH President Luís Raúl González Pérez, Fifth Chief Investigator Dr. Edgar Corzo Sosa, and Director General of the Program on Abuse of Journalists and Human Rights Defenders Dr. Rodrigo Santiago Juárez. The videoconference was part of an initiative of the Office of the Rapporteur to develop a platform with participation by the public defender’s offices of different Latin American countries to enable them to share concerns and progress of their offices and countries in connection with freedom of expression-related matters.

55. On May 29, the Rapporteur gave an online lecture on the scope of freedom of expression on the Internet, for the Spanish version of the Open Internet Course organized by Public Knowledge in collaboration with P2PU. One of the objectives of the course was to train a new generation of thinkers to have impact on the Free and Open Internet Agenda, applying the skills developed by global organizations for the promotion and protection of human rights.

56. From June 2 to 4, the Special Rapporteur gave lectures at the Program of Advanced Studies on Human Rights and Humanitarian Law, at American University, in Washington, D.C. The Rapporteur gave a lecture on access to public information in the inter-American human rights system and on the topic of diversity and pluralism as components of democratic society.

57. From June 7 to 9, the Rapporteur Edison Lanza offered an academic visit to Guatemala City where he participated in the seminar “National Protection Mechanism in Guatemala,” organized by the Office of the Special Rapporteur for Freedom of Expression in coordination with the Central American Institute for Social Democracy Studies (DEMOS) and the CIVITAS Center. At the seminar were presented the state, civil society, and the media to further the process of creating the national mechanism of Guatemala.

58. On June 10, the Special Rapporteur gave a report at an information session at the U.S. House of Representatives on the status of press freedom and journalist safety in Latin America and the Caribbean for the U.S. House Committee on Foreign Affairs, which was especially interested in the recent events related to Ecuador, Venezuela, Honduras, and Mexico.

59. From June 15 to 16, Special Rapporteur Edison Lanza attended the XLV regular session of the OAS General Assembly, held at the headquarters of the Organization, in Washington D.C., where he participated in different open meetings with member states and permanent observers. The Rapporteur joined the Executive Secretary in different initiatives with observer countries and visiting organizations and also maintained contact with civil society organizations and member state delegations.

60. On June 19, the Special Rapporteur for Freedom of Expression participated through a videoconference in “RED ANDI’s General Assembly”, organized by the organization Red de Agencias de Noticias por los Derechos de la Infancia en América Latina (RED ANDI), which celebrated the 21 years of the organization in Brasilia, Brazil. The Special Rapporteur participated in the conference “Freedom of Expression and Protection of Children’s rights and Young girls.”

61. From June 23 till the 26, the Special Rapporteur was invited by the Minister of Communications of the Costa Rican government to participate as a keynote speaker at the conference entitled “Freedom of Expression: Inter-American Standards” organized jointly by the Costa Rican government and Canartel. The seminar was attended by civil society organizations, business chambers, news organizations

and members of the academic sector. During his stay in San Jose, the Special Rapporteur held several meetings with members of the Costa Rican government such as the President of the Republic Luis Guillermo Solís; the Minister of Communication, Mauricio Herrera, the head of factions of political parties in the legislative assembly, as well as various university presidents like: Universidad de Costa Rica, Dr. Yamileth González García; Instituto Tecnológico de Costa Rica, Julio Calvo Alvarado; de la Universidad Nacional, Alberto Salom; Universidad Estatal a Distancia (UNED), Guillermo Carpio; and the Universidad Técnica Nacional, Lic. Marcelo Prieto Jiménez. Additionally, the Rapporteur held a press conference and met with civil society organizations and news agencies where he stressed the country's importance in establishing a clear line regarding the right to freedom of expression. The meeting was attended by the Colegio de Periodistas de Costa Rica (COLPER); the Instituto de Prensa y Libertad de Expresión (IPLEX) and the Programa de Libertad de Expresión, Derecho a la Información y Opinión Pública (PROLEDI) of the University of Costa Rica, Junta Directiva, CEJIL, Voces Nuestras, and RedMICA.

62. On June 25, the Rapporteur attended the Public Hearing held during the 109 Period of Sessions at the Inter-American Court of Human Rights to discuss the Advisory Opinion OC-22 presented by the State of Panama.

63. On July 1st, the Special Rapporteur Edison Lanza, and senior attorney Ona Flores, participated from Washington, DC in a videoconference titled "Dissemination of regional standards on Freedom of Expression" with the National Commissioner of Human Rights in Honduras (CONADEH) which counted with the participation of the Commissioner, Dr. H. Roberto Herrera Caceres, Attorney Ricardo Lopez, Regional Delegate of the Centre East, Lic. Eugenio Gonzalez, Manager of Public Information and Social Oversight and Lic. Julio Velasquez, Communications Manager.

64. From July 16th till 17th, the Special Rapporteur travelled to Montevideo, Uruguay where he participated in the closing of the event "Jornada Académica sobre ley de servicios de comunicación audiovisual", jointly organized by the Speaker of the House of Representatives of Uruguay and the Fundación de Cultura Universitaria. The forum was attended by doctors Martin Risso, Daniel Ochs, José Korzeniak, Ruben Correa Freitas and Roberto Gargarella, professor of constitutional law at the University of Buenos Aires and the Torcuato Di Tella University. The event was sponsored by UENSCO, and was planned under the House of Representatives presidency titled "30 years, more Democracy." Additionally, he intervened in the gathering "Progress, setbacks and threats to the progressive and democratic projects," where the state of democratic and progressive dispute regarding the media in the region was discussed. During his stance in Montevideo, the Rapporteur also met with personalities and members of the Uruguayan government such as the Minister of the Supreme Court of Justice Ricardo Pérez Manrique and the Human Rights Director of Humanitarian Law of the Ministry of Foreign Affairs, Alejandra Costa.

65. During the 155^o of Period of Hearings of the IACHR, the Office of the Special Rapporteur held meetings and a luncheon with participants of the Inter-American Human Rights System course for state agents. On July 27th, the Special Rapporteur offered a conference on "The Development of the right to publicly protest in the Inter-American Human Rights System" with the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association of the United Nations Maina Kiai.

66. From July 30th to July 31st, the attorneys' Ona Flores and Sofia Jaramillo participated in the capacity building seminar "Inter-American Standards of freedom of Expression and the Role of Judicial Power" in Guatemala City alongside 30 Guatemalan prosecutors. The workshop was jointly organized by the Office of the Special Rapporteur for Freedom of Expression, UNESCO, the Public Ministry in Guatemala, Centro Civitas, and the Office of the High Commissioner for Human Rights (OACNUDH). Only July 30th, the capacity building seminar addressed the issue of "journalistic security and fight against impunity" and on the 31st it focused on "the use of criminal law and the right to freedom of expression." During their stay in Guatemala, the attorneys' Sofia and Ona held meetings with Evelyn Blanck from CIVITAS and Leonel Armas from UNESCO to discuss the continuity of capacity building programs for judicial officers.

67. From July 30th to July 31st, the Special Rapporteur Edison Lanza travelled to El Salvador to participate in the forum "The Digitalization of Television and the Radio: Opportunities and Challenges"

organized by the Ministry of Communications of the Presidency and the Superintendence of Competition. The Rapporteur delved on the standards of freedom of expression for the transition to an open, plural, inclusive and diverse digital television in a forum moderated by the Superintendence of Competition, Francisco Díaz Rodríguez. The forum was attended by the former national Director of Telecommunications and advisor of the president of Uruguay, Gustavo Gomez as well as Mauricio Aguilar, the former Commissioner of the National Telecommunications Commission of Honduras (CONATEL). During his stay in San Salvador, the rapporteur held meetings with civil society organizations as REDCO, ARPAS, and ASDER, the Institute of Access to information and the Secretary of Communications, Eugenio Chicas.

68. From August 6th to August 9th, the Rapporteur travelled to Brazil where he participated in the XLII Course on international Law,” organized by the Secretariat of legal Affairs of the OAS in Rio de Janeiro in order to promote the exchange of ideas and generate an open dialogue on issues of contemporary relevance in the field of international law and in particular the Inter-American Human Rights System. The Rapporteur exposed two classes entitled “The Scope of Freedom of Expression on the Internet,” and the “Scope of Freedom of Expression and the Monitoring of Digital Communications.” On the 6th, the Rapporteur participated as a key note speaker in the seminar “The role of media regulation in freedom of expression” organized by the center of Information of the United Nations (CINU Rio) in collaboration with Grupo Intervozes and the Institute of Social and Political Studies (IESP), which took place at the headquarters of the Union of Journalists of Rio de Janeiro. The seminar was moderated by the director of Information of the UN in Brazil, Mr. Giancarlo Summa, and counted with the participation of the Federal Deputy Jandira Feghali and the Professor Suzy dos Santos, from the School of Communications of the federal University of Rio de Janeiro (UFRJ).

69. On August 10th, the Special Rapporteur Edison Lanza was invited by the Minister of Communications of Brazil, Ricardo Berzoni, to participate in a series of high level meetings in the capital of Brasilia. In Brasilia he also held meetings with members of the state such as the Minister of Culture, Juca Ferreira and the Minister of the Department of Communication of the Presidency, Edinho Silva. The Rapporteur also spoke at a public event organized by the Grupo Intervozes at the University of Brasilia entitled “The Situation of the Processes of Democratization of the Media in America.”

70. On August 21st, the Special Rapporteur held a videoconference in the “Latin American Communication Congress: 30 years of intellectual itineraries,” organized by the Faculty of Social Sciences of the university of Buenos Aires (UBA) to commemorate three decades of the degree of communication sciences. The rapporteur offered a presentation on the standards of the Office of the Special Rapporteur for Freedom of Expression and the challenges it currently faces to regulate the internet in the mentioned subject. The conference was also attended by Damian Loreti, UBA Professor and advisor of the Argentina Federation of press Workers.

71. From September 1st to September 4th, the Special Rapporteur for Freedom of Expression and the Project Coordinator of the office of the Special Rapporteur for Freedom of Expression Melissa Cabrera, travelled to Port au Prince to participate in the seminar on “The Inter-American System for the Protection of Human Rights and Freedom of Expression.” The seminar was jointly organized by the Special Rapporteur and the OAS Office in Haiti. The seminar had over 50 representatives of civil society organizations such as Red Nacional de Defensores de DDHH (RNDDH), Red de Mujeres de Radios Comunitarias, Solidaridad Haitiana, Abogados del Mundo, Transparencia Internacionales that expressed in the discussion of the priorities for an agenda of freedom of expression in the country. The event was inaugurated by the Special Rapporteur, the Minister of Communications of Haiti, Senator Jocelerme Privert; Ambassador of Haiti to the OAS and the alternate representative of the OAS Office in Haiti. The event passed with a roundtable methodology in which representatives of various public institutions presented what were the main challenges in the consolidation and implementation of a law on access to information, and the sustainability of community radios and the use of the spectrum.

72. From September 6th to September 11th the Special Rapporteur for Freedom of Expression Edison Lanza travelled to Mexico City to participate as a professor in the “Diplomado de Formación en el Sistema Interamericano de Derechos Humanos, ‘Héctor Fix-Zamudio” organized by the Institute of Legal

Investigation of Mexico's Universidad Nacional Autónoma. On September 11th, the Rapporteur taught a class on "Freedom of thought and expression and the right of assembly in the Americas," with the aim of providing specialized training for students, members of civil society organizations and interested civil servants in the Inter-American System of Human Rights. The rapporteur also held several meetings with the members of the IACHR, participants of the certificate and a working lunch with the president of the University Dr. José Navarro Robles.

73. On September 7th the Rapporteur attended a Magisterial Conference on the "Organization of American States and the inter-American System of Human Rights" by the secretary general of the OAS and a presentation on the "Challenges of the Inter-American System: Dialogue between Presidents and Former Presidents of the Court and Commission." Whilst in Mexico, the Rapporteur participated in the conference "Challenges towards creating criminal offenses for freedom of Expression" held at the National Institute of Criminal Sciences (INACIPE) on September 8th. The event counted with the attendance of INACIPE's general Director Rafael Estrada Michel, the Solicitor Betanzos Torres, the General Director of Public Policy on Human Rights of the Secretariat of Interior Antonio Luigi Mazzitelli, and the Rapporteur for Freedom of Expression of the Human Rights Commission of the Federal District. The Special Rapporteur also met with members of civil society such as Article 19, Freedom House, FUNDAR, and with the holder of FEADLE, Attorney Ricardo Celso Najera Herrera, to discuss the situation of violence against journalists and media workers in the country.

74. Additionally, in preparation for the On-Sight visit to Mexico at the end of the month by the IACHR, the Special Rapporteur held various meetings with civil society organizations such as: Asociación Mundial de Radios Comunitarias (AMARC-MX); Casa de los Derechos de los Periodistas Centro de Investigación y Capacitación Propuesta Cívica (Propuesta Cívica); Centro Mexicano de Derecho Ambiental (CEMDA); Centro Nacional de Comunicación Social (CENCOS); Colectivo de Análisis para la Seguridad con democracia (CASEDE); Comunicación e Información de la Mujer (CIMAC); Reporters without Borders (RSF-MX); PEN-MX (Poetas Ensayistas Novelistas) and Periodistas de a Pie, among others.

75. On September 15, senior lawyer Ona Flores, attended as a panelist the event "Safety for Journalists: Closing the Implementation Gap", organized by Article 19 in Geneva, Switzerland. The event was also attended by the Ambassador of Austria to the United Nations, Thomas Hojnoczi; the Executive Director of Article 19, Thomas Hughes; OSCE Representative on Freedom of the Media, Dunja Mijatovic, Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights, Pansy Tlakula; Journalist and Vice-President of Article 19 for Mexico and Central America, Javier Garza; and the CEO of Unwanted Witness Uganda, Geoffrey Wokulira Ssebagala. The event was sponsored by the governments of Austria, Brasil. France, Morocco, Qatar and Tunisia with the objective of debating Resolution 27/5 adopted on September 27, 2014 by the UN Council of Human Rights. During her stay in Geneva, Ona Flores also met Marcelo Daher, Specialist from the Office of the High Commissioner for Human Rights, to coordinate efforts with the office of UN Special Rapporteur, David Kaye.

76. The Rapporteur participated by videoconference on September 15 in the "Quito Forum on Freedom of Expression", jointly organized with the Inter-American Press Association (IAPA), and Universidad Andina Simón Bolívar y Fundación Andina para la Observación y Estudio de Medios (Fundamedios) to discuss the state of freedom of expression and the press in Ecuador. Special Rapporteur Lanza was joined by other relevant experts from the region such as Luis Pardo (AIR-ARCHI, Chile); Ricardo Corredor (FNPI, Colombia); Pedro Vaca (FLIP -IFEXALC, Colombia); and Ricardo Uceda (IPYSCP).

77. From September 23 to the 26, Special Rapporteur Edison Lanza went to Florence where he participated in the "Transitional Due Process and Freedom of Expression", co-organized by Internet & Jurisdiction Project and former Special Rapporteur Frank La Rue. The event brought the current and former rapporteurs on freedom of expression in different international organizations together along with UNESCO for the development of innovative mechanisms for cooperation among multiple stakeholders. The participants included Dunja Mijatovic (OSCE), Edison Lanza (IACHR), Eduardo Bertoni (IACHR), Frank la Rue (UN), Rafendi Djamin (AICHR), Santiago A. Canton (RFK) y Sylvie Coudray (UNESCO).

78. From September 28 to October 3, the Special Rapporteur Edison Lanza and attorney Viviana Ordoñez formed part of the IACHR delegation that carried out an On-Sight visit to consult and report on the impact of violence on human rights in Mexico. The delegation consisted of IACHR President, Rose Marie Belle Antoine; first vice-president, James Cavallaro; Commissioner Felipe González and Commissioners Tracy Robinson and Rosa María Ortiz. Also in the delegation were Executive Secretary, Emilio Alvarez Icaza Longoria; Assistant Executive Secretary, Elizabeth Abi-Mershed; and other IACHR executive secretariat members. The IACHR met with government officials at different levels from the three branches of government as well as with representatives from civil society, autonomous organizations, international organizations, academia and journalists. The delegation visited Mexico City, Coahuila, Guerrero, Nuevo León, Tabasco and Veracruz. The Office of the Special Rapporteur was in charge of drafting the section for the report on the situation of violence in Mexico with regards to violence against journalists and the media, the impunity of these crimes and prevention mechanisms of existing communities.

79. October 5th in Charleston, the Rapporteur was one of the key speakers on the panel on media concentration and freedom of expression at the 71 Inter-American Press Association (IAPA) General Assembly. The event included over 300 journalists, experts and directors of the main media outlets in the region to debate on the situation of freedom of expression and the press in Latin America. The assembly closed with a call for the protection of freedom of expression in Latin America.

80. From October 6-7 the Special Rapporteur visited Port au Spain in Trinidad and Tobago in order to participate in the strategic conference and assembly organized by the International Freedom of Expression Exchange (IFEX) in collaboration with the Association of Caribbean Media Workers and the Trinidad & Tobago Publishers and Broadcaster Association. The conference had over 170 participants from 70 different countries.

81. From October 8-10 the Special Rapporteur and senior attorney Ona Flores participated in the conference commemorating International Day to End Impunity for Crimes against Journalists in San Jose, Costa Rica. The event was organized by UNESCO, the Inter-American Court on Human Rights and the Office for the Special Rapporteur and was attended by civil society organizations such as: Artículo 19; Inter-American Press Association (IAPA/SIP); International Association of Broadcasting (IAB/AIR); World Association of Newspapers and News Publishers (WAN-IFRA); Freedom House; International Center for the Promotion of Human Rights (CIPDH); Center for Justice and International Law (CEJIL); Center for Freedom of the Media (CFOM), University of Sheffield; Committee to protect Journalists (CPJ); Inter-American Court of Human Rights (IACtHR); International Federation of Journalists (IFJ/FIP); International Freedom of Expression Exchange (IFEX); Media Legal Defence Initiative (MLDI); Global Freedom of Expression and Information Project, Columbia University; Office of the High Commissioner for Human Rights (OHCHR Panamá); European Lawyers' Union (UEA).

82. The Special Rapporteur participated by videoconference on October 15 in the "Latin American Fundamental Rights Conference" organized by the Pontifical Catholic University of Peru [Pontificia Universidad Católica del Perú] Constitutional Law Department. The Rapporteur was on the thematic roundtable on "Freedom of Expression, Pluralism in Information and Access to Public Information" and he also lectured with Professor Stephan Kirste at the University of Salzburg (Austria).

83. On October 9 the Office of the Special Rapporteur organized a session to analyze the "Inter-American Juridical Committee Report on Privacy and Data Protection (CJI/doc. 474/15)". Dante Negro Alvarado, Director of the OAS Department of International Law; Professor David Stuart, George Washington University Professor; and Eduardo Bertoni, former IACHR Special Rapporteur for Freedom of Expression participated in the session. They were also joined by civil society organizations: IFF, Public Knowledge, Article 19, Derechos Digitales de Chile, Regional Alliance for Freedom of Expression and Information, Espacio Público and the Salvadoran Foundation for Economic and Social Development (FUSADES).

84. The Special Rapporteur organized a webinar on October 20, 2015 on "Freedom of Expression and Regulation to ensure diversity and pluralism", sponsored by the Brazilian National Telecommunications Agency [Agencia Nacional de Telecomunicações de Brasil], United States Federal

Communications Commission, Latin American Observatory on Regulation, Media and Convergence [Medios y Convergencia], and the Colombia Foundation for Freedom of Press. The webinar developed along two panels, one on the application of the principle of neutrality on the Brazil and States' Network and the other on diversity and pluralism in audiovisual media in the Inter-American jurisprudence: the judgment of Marcel Grainer (RCTV) et al v. Venezuela. Olga Madruga Forti, Chief of International Bureau Strategic Analysis and Negotiations Division of the United States FCC participated in the webinar as did Jeferson Fued Nacif, Chief of the Foreign Affairs Office for the Brazilian National Telecommunications Agency. Hundreds of people, academic representatives and members of civil society in the Americas participated over the internet.

85. On October 22 the Special Rapporteur participated in a side event held by ARTICLE 19 together with the Permanent Mission of Austria to the UN held during the 70th session of the UN General Assembly in 2015 that took place at UN headquarters in New York. The event "Protecting whistle blowers and journalists' sources" included experts from the region and David Kaye, the UN Special Rapporteur on the promotion and protection of the right to freedom of expression to discuss his last report on the protecting whistle blower's and journalists'.

86. The Special Rapporteur participated in the November 2 conference "The Right to Gender Transformative Communication" in the framework of the 2030 Sustainable Development Agenda organized by the Inter-American Commission of Women at OAS headquarters. The Rapporteur was one of the speakers alongside Sandra Chaher, President of the Civil Association Communication for Equality; Marcela Gabioud, Vice-President of the World Association for Christian Communication for Latin America (WACC-AL); and Enriqueta Cabrera, former Director Channel 11 Mexico, in the panel "The Right to Gender Transformative Communication and the 2030 Sustainable Development Agenda."

87. Journalist from the Office of the Special Rapporteur Felipe Llambías, participated in the first Hispanic American Conference on Communication [primer Congreso Hispanoamericano de Comunicación] in Guatemala on November 6 and 7. The Special Rapporteurship was invited to discuss freedom of expression in the XXI century; and therefore presented Freedom of Expression and the Internet, diversity standards and pluralism within the framework of new technology and violence against journalists and media workers. The Guatemalan Chamber of Journalism [Cámara Guatemalteca de Periodismo] and Guatemalan Chamber of Professional Announcers [Cámara de Locutores Profesionales de Guatemala] organized the events.

88. The Attorney from the Office of the Special Rapporteur Viviana Ordoñez Salazar attended the regional information for action event on November 9 and 10. Access to public information demanded by DESCAs, organized by civil society CAINFO (Uruguay) and ACIJ (Argentina) and took place in Buenos Aires. The following civil society organizations participated in the event: ADC (Argentina), ANDHES (Argentina), CLADH (Argentina), Fundación Construir (Bolivia), IDEA (Paraguay), Regional OHCHR office, Regional Alliance for Freedom of Expression and Information, DEJusticia (Colombia), FUNDAR (México), Fundación Equidad (Perú), Artículo 19 (Brazil), ESCR Net, Fundeps (Argentina), ACIJ (Argentina), CAInfo (Uruguay) and Open Society Foundations. During the academic event the organizations discussed the importance of working together and articulated the right to access to information and DESCAs, and how to approach the matter from the regional perspective in order to obtain the required information on DESCAs advances made by the States.

89. From November 9 to 12 the Special Rapporteur visited Joao Pessoa, Brazil for the "Internet Governance Forum" (IGF) conference. The Rapporteur participated in the "Social Role of Communications and Strengthening Freedom of Expression" seminar organized by the government of Brazil. Additional participants were: Special Rapporteurs David Kaye, Joseph Cannataci, Farida Shaheed and UNESCO regional advisor, Guilherme Canela. During his stay he participated in the "Right to be Forgotten" session organized by Colombian civil society: Colombia Foundation for Press Freedom [Fundación para la Libertad de Prensa] and the Karisma Foundation [Fundación Karisma]. The Rapporteur had a working dinner with representatives from Latin American civil society: Derechos Digitales, ADC, Via Libre, Access Now, Karisma, Hiperderecho, Artículo/19, Public Knowledge, a representative of the Ford Foundation and former UN Rapporteur Frank La Rue and technology companies such as Google, Facebook and Twitter.

90. The Special Rapporteur for Freedom of Expression and the United Nations Educational, Scientific and Cultural Organization (UNESCO) called for the international conference “Building a Favorable Environment for the Development of Free and Pluralist Media in Latin America and the Caribbean” [Construyendo un entorno favorable para el desarrollo de medios de comunicación plurales e independientes en América Latina y el Caribe] held in Bogota, Colombia on November 17-20. The Conference was sponsored by CIMA, Deutsche Welle Foundation, Observacom, OSF, France, PRAI-ANTV, FNPI. There were also several media and civil society organizations in attendance that work on freedom of expression and the media, as well as independent experts and university professors, regulating bodies with jurisdiction in communication services, and journalists and political leaders. On the occasion, the Special Rapporteur presented a draft on the basis of the future thematic report on diversity, pluralism and limits on media concentration that is in charge of the office and which started through a public consultation with various actors at the event.

91. From November 30 to October 4 the Special Rapporteur and attorney Tatiana Teubner visited Asuncion, Paraguay to participate in the regional seminar “Public Policy on Access to Information and Transparency” [La Política Pública de Acceso a la Información y Transparencia] organized by the Office of the Special Rapporteur. The seminar provided theory and practice for access to information and transparency with capacity building for professionals and public officials of different backgrounds, as it relates to good governance and the development of modern democracy. The office held meetings with civil society organizations and State government representatives regarding freedom of expression.

92. Special Rapporteur Edison Lanza participated in the seminar organized by the Cuesta Duarte Institute [Instituto Cuesta Duarte] in Montevideo, Uruguay “Pending democracy: freedom of expression, media and workers’ rights” [La democratización pendiente: libertad de expresión, medios y derechos de los trabajadores] on December 7. The participants included Roberto F. Caldas, Inter-American Court on Human Rights Vice-president; Dr. Santiago Marino, of Quilmes University; Rosane Bertotti, Communications Secretary for Brazilian Workers Central Union [Secretaria de Comunicación de la Central Única de los Trabajadores de Brasil]; Guilherme Canela, Adviser in Communication and Information for UNESCO and journalist Renata Mielli. In addition the Rapporteur was joined by Commissioner Tracy Robinson, Rapporteur on the rights of LGBTI persons in the launching of the “Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas” report approved by the IACHR this last November 12. The Office of the Special Rapporteur and the IACHR prepared the event with the support of civil society organizations.

93. The Rapporteur went to Madrid, Spain from December 16 to 18 to participate in the International Seminar on Transparency and Good Governance “International Impulse in the Transparency and Good Governance Arena” [Seminario Internacional Transparencia y Buen Gobierno “Impulsos internacionales en el Ambito de la Transparencia y buen Gobierno] organized by the Carlos III Madrid University. The Rapporteur delivered the inaugural address “International Law and access to Public Information: Challenges and Advances”. International Law professors from several Universities in Spain attended.

5. Annual report and development of expert knowledge

94. 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.

95. 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).

96. 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 2015, the Office of the Special Rapporteur worked alongside with the Rapporteurship 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.

97. During 2015, the Office of the Special Rapporteur drafted two thematic reports which are included as thematic chapters on this report. Chapter III includes a report on “Access to Information, Violence Against Women, and the Administration of Justice in the Americas”, prepared by the Rapporteurship of the Rights of Women with the technical assistance of the Office of the Special Rapporteur. In addition, Chapter IV of this report, includes an examination of hate speech and incitement to violence against LGBTI persons, a result of the joint work between the Office of the Special Rapporteur and the IACHR Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons.

6. Special statements and declarations

98. 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.

99. The Office of the Special Rapporteur receives an average of 1,000 e-mails per month. Of these, 75% refer to alerts, press releases, or requests for information and consultations on freedom of expression in the region, and receive a timely response; 10% refer to formal petitions to the IACHR’s individual case system; and the remaining 15% 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.

100. 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.

101. 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 (2014).³⁰

³⁰ The abovementioned joint declarations are available for consultation at:
<http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&IID=1>

102. On May 4, 2015 the Special Rapporteurship issued a joint press release with the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression David Kaye, the Organization for Security and Co-operation in Europe (OSCE) Dunja Mijatović, Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR), Faith Pansy Tlakula on Freedom of Expression and Responses to Conflict Situations.³¹

103. On July 22, 2015 the Special Rapporteur issued a joint press release with Michel Forst, Special Rapporteur on the situation of human rights Defenders; David Kaye Special Rapporteur on Freedom of Opinion and Expression, Maina Kiai Special Rapporteur on the rights to freedom of peaceful assembly and association and experts of the Inter-American System of human rights regarding the need to pull the plug of televised reprisals against human rights defenders in Venezuela.³²

104. During 2015, the Office of the Special Rapporteur issued thirty-one (31) press communiqués³³ 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 2014 may be consulted at the website of the Office of the Special Rapporteur, available at: <http://www.cidh.org/expresion>.

D. Funding

105. 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.³⁴

106. 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

³¹ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Special Rapporteur on Freedom of Expression Organization of American States (OAS), the Organization for Security and Co-operation in Europe (OSCE), Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Joint Declaration May 4, 2015. Freedom of Expression and Responses to Conflict Situations.

³² Edison Lanza, Special Rapporteur issued a joint press release with Michel Forst, Special Rapporteur on the situation of human rights Defenders; David Kaye Special Rapporteur on Freedom of Opinion and Expression, Maina Kiai Special Rapporteur on the rights to freedom of peaceful assembly and association and experts of the Inter-American System of human rights. High Time to Pull the Plug of Televised Reprisals against Rights Defenders in Venezuela.

³³ During 2015 (until December 3) the following press releases were issued: IACHR. Special Rapporteurship for Freedom of Expression. [Press Release R 138/15](#) November 30, 2015; [Press Release R 133/15](#) November 18, 2015; [Press Release R 124/15](#) November 2, 2015; [Press Release R 110/15](#) September 28, 2015; [Press Release 103/15](#) September 17, 2015; [Press Release R 102/15](#) September 14, 2015; [Press Release 93/15](#) August 24, 2015; [Press Release R 88/15](#) August 10, 2015; [Press Release R 84/15](#) August 4, 2015; [Press Release R 80/15](#) July 21, 2015; [Press Release R 77/15](#) July 15; [Press Release R 76/15](#) July 6, 2015; [Press Release R 58/15](#) June 2, 2015; [Press Release R 56/15](#) May 28, 2015; [Press Release R 54/15](#) May 21, 2015; [Press Release R 55/15](#) May 21, 2015; [Press Release R 50/15](#) May 14, 2015; [Press Release R 47/15](#) May 11, 2015; [Press Release R 48/15](#) May 11, 2015; [Press Release R 44/15](#) May 3, 2015; [Press Release R 34/15](#) March 23, 2015; [Press Release R 35/15](#) March 23, 2015; [Press Release R 28/15](#) March 12, 2015; [Press Release R 25/15](#) March 6, 2015; [Press Release R 17/15](#) February 25, 2015; [Press Release R 13/15](#) February 17, 2015; [Press Release R 12/15](#) February 12, 2015; [Press Release R 10/15](#) February 11, 2015; [Press Release R 2/15](#) January 7, 2015; [Press Release R 1/15](#) January 6, 2015.

³⁴ Santiago Declaration. Plan of Action. Second Summit of the Americas. April 18-19, 1998. Santiago, Chile. In: Official Documents of the Summit Process, from Miami to Santiago. Volume I. Office of Summit Follow-Up. OAS.

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.

107. 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% in recent years. On this same subject, it is pertinent to add that 12% of the funds obtained by the Office of the Special Rapporteur (13.6% of all funds executed by the office) must be designated for central administration of the OAS as indirect cost recovery or ICR.³⁵

108. 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 2014, the Office of the Rapporteur calls attention to the projects that have been carried out satisfactorily thanks to the contributions of the Republic of Costa Rica, Chile, The United States of America, Uruguay, the Swedish Agency for Cooperation in International Development, the Swiss Confederation, open Society Foundation Finland and France. 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.³⁶

E. Staff

109. 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

³⁵ OAS. General Standards to Govern the Operations of the General Secretariat of the Organization of American States. Chapter IV (General Provisions of a Financial and Budgetary Nature). OEA/Ser.D/I.1.2 Rev.16. June 4, 2012. Article 80. Available for consultation at: <http://www.oas.org/legal/english/Standards/GenStIndex.htm>; OAS. General Secretary. Executive Order 07-01 Rev 1. Policy on Indirect Cost Recovery. May 29, 2007. Available for consultation at: <http://www.oas.org/legal/english/gensec/EXOR0701REV1.pdf>

³⁶ All the information is available for consultation at: OAS. Board of External Auditors. Report to the Permanent Council 2013. Annual Audit of Accounts and Financial Statements for the years ended December 31 2012 and 2013. Section II. Specific Funds. Pp 57-59; OAS. Board of External Auditors. Report to the Permanent Council Annual Audit of Accounts and Financial Statements for the years ended December 31, 2012 and 2011. Section II. Specific Funds. Statement by programs. Pp. 70-72; Report to the Permanent Council Annual Audit of Accounts and Financial Statements for the years ended December 31, 2011 and 2010. Section II. Specific Funds. Statement by programs. Pp. 78-79; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2011 and 2010. Specific Funds. Statement by programs. Pp. 77-79; Report to the Permanent Council Annual Audit of Accounts and Financial Statements for the years ended December 31, 2009 and 2008. Pp. 71-73; Report to the Permanent Council. Annual Audit of Accounts and financial statements for the years ended December 31, 2008, and 2007. Section II. Specific Funds. Pp. 69-70; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2007 and 2006. Section II. Specific Funds. Pp. 79-80; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2006 and 2005. Section II. Specific Funds. P. 69; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2005 and 2004. Section II. Specific Funds. P. 61; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2004 and 2003. Section II. Specific Funds. P. 42; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2003 and 2002. Section II. Specific Funds. P. 41; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2002 and 2001. Section II. Specific Funds. Statement of changes in Fund Balance. P. 54; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2001 and 2000. Specific Funds Statement of changes in Fund Balance January 1, 2001 to December 31, 2001. Section II. P. 52; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2001 and 2000. Specific Funds Related to regular Activities. Statement of changes in Fund Balance January 1, 2000 to December 31, 2000.

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 2015, Anahi Martínez (Mexico), Valkiria Rey (Brazil), Luis Rosas (Mexico) and Citlalli Ochoa (United States) contributed their work and enthusiasm very constructively to the Office of the Special Rapporteur. The Rapporteurship has also counted with the work of fellow, Marisol Marin (Fellowship Orlando Sierra, 2015).

CHAPTER II EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

A. 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.

5. In preparing this chapter of its 2015 Annual Report, the Office of the Special Rapporteur generally took into account information received until December 10, 2015. Information regarding incidents that occurred after the date the 2015 Annual Report went to press is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.oas.org/en/iachr/expression/index.asp>) and the IACHR (<http://www.oas.org/en/iachr/default.asp>).

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.

B. Evaluation of the state of freedom of expression in the Member States

1. ARGENTINA

A. Progress

7. On February 5, the Supreme Court of the Province of Buenos Aires ordered the provincial Department of Culture and Education to release information on the number of days of classes missed in 36 schools in different districts due to teacher absence. As part of a lawsuit brought by the Civil Rights Association [*Asociación por los Derechos Civiles*] (ADC), the Court found that the administrative authority's failure to reply was "unlawful and a violation of the right to access to information," and ordered the department to make the requested information available to the association within 15 days.³⁷

8. On June 4, the Fifth Chamber of the Federal Court for the Judicial Review of Administrative Action admitted a petition for a constitutional remedy [*amparo*] filed by Congressman Manuel Garrido, and ordered the National Personal Data Protection Office [*Dirección Nacional de Protección de Datos Personales*] of the National Ministry of Justice and Human Rights to provide the information he requested about the agency's activity and the appointment of its director.³⁸

9. In July, the Federal Court for the Judicial Review of Administrative Action ruled in favor of the Civil Rights Association (ADC), the Civil Association for Equality and Justice [*Asociación Civil por la Igualdad y la Justicia*] (ACIJ), *Fundación Directorio Legislativo*, and *Poder Ciudadano*, in a petition for a constitutional remedy [*amparo*] filed in February in view of the lack of a response to several requests for public information made to the House of Representatives and the national Senate. The judgment affirmed that the information requested by the organizations is "public information, which belongs not to the State but rather to the people of the Argentine nation, and therefore, the mere fact of being a member of the community is enough to justify the request," and ordered the Senate to turn over the requested information within 15 days.³⁹

10. On September 1, the Supreme Court unanimously denied an appeal filed by the National Government against the trial court and appeals court judgments that admitted a request by opposition Congresswoman Margarita Stolbizer, and ordered the Ministry of Justice to provide information about a program it implemented. The Court cited precedents ("*Asociación Derechos Civiles v. EN – PAMI*", "*CIPPEC*," and "*Oehler*") establishing that the National Government is required to allow any person to access public information, as well as to promote a culture of transparency in society and in the public sector, and to act with due diligence in the promotion of access to that information.⁴⁰

11. On November 10, the Supreme Court admitted an action filed by Senator Héctor Rubén Giustiniani and ordered the company YPF SA to make public the clauses of its Investment Project Agreement with the Chevron Corporation for the exploitation of non-conventional hydrocarbons in the Province of Neuquén. The action was filed after YPF SA refused to provide the legislator with information about this investment project. The judgment recalls that the right to seek and receive information is enshrined in the American Declaration of the Rights and Duties of Man and in the American Convention on Human Rights, and that the Inter-American Court has also found that the right to freedom of thought and expression enshrined in Article 13 of the Convention includes the right of access to information. The Court held that, given that the

³⁷ Asociación por los Derechos Civiles (ADC). February 6, 2015. [La Corte bonaerense obliga a informar los días sin clases de alumnos secundarios.](#)

³⁸ Asociación por los Derechos Civiles (ADC). June 4, 2015. [La justicia obliga a la dirección de datos personales a dar información sobre su funcionamiento.](#)

³⁹ Asociación por los Derechos Civiles (ADC). July 24, 2015. [La Justicia obligó al Senado a dar información pública solicitada por varias ONG.](#)

⁴⁰ Centro de Información Judicial. September 1, 2015. [La Corte Suprema reitera que el Estado Nacional se encuentra obligado a garantizar el acceso a la información pública.](#)

National Executive Branch holds 51% of the shares in YPF, and has the authority to make decisions on its behalf, the company falls within the realm of the State, and therefore must allow access to information related to its activities. The judgment stated that, “The company is engaged in important and far-reaching activities of public interest, and therefore it cannot, within the framework of the principles of a democratic society and in accordance with the above-cited case law, refuse to disclose information that is undoubtedly of public interest, and in the interest of public and transparent management.”⁴¹

12. Additionally in June, the 10th Civil and Commercial Court of the Province of Salta ordered the provincial government of Salta to reinstate government advertising in the weekly newspaper *Semanario Nueva Propuesta* and on the television program “*Viaje de Pesca*.” The decision was the result of a petition for a constitutional remedy [*acción de amparo*] filed by the newspaper’s director, Juan Guillermo Gonza, after the provincial government “unreasonably and arbitrarily” withdrew its advertising, allegedly to “penalize” the newspaper for not taking “a pro-government stance.” The judgment states that the government “failed to state the reasons” for its withdrawal of the advertising from those media outlets, and “failed to state the assessment criteria it used.” Accordingly, the government’s conduct “evidences the unreasonable exercise of discretionary powers.” The Court recalled that the State “cannot manipulate advertising, granting it to or withdrawing it from certain media outlets based on discriminatory criteria,” and it “cannot use advertising as an indirect way to adversely affect freedom of expression.” The Court ordered the government to submit a plan, within fifteen days, for the distribution of advertising according to the terms and principles established by the Supreme Court in the “*Editorial Río Negro*” and “*Editorial Perfil*” judgments. In addition, the Court urged the government to consider “enacting a general provision to regulate the placement of government advertising” that “protects freedom of the press from acts that may affect it directly or indirectly.”⁴²

B. Implementation of the Audiovisual Communications Services Law

13. During 2015, the Federal Audiovisual Communications Services Authority (AFSCA), the body responsible for implementing Law 26.522 on Audiovisual Communications Services,⁴³ continued to issue for the award of licenses to provide digital terrestrial television (DTT).

14. In February, for instance, the AFSCA approved the awarding of five cable cooperatives for different towns, as well as a community closed-circuit television service and community TV antenna. It also authorized the installation, operation, and use of FM broadcasters in schools and municipalities.⁴⁴

15. In the open television digitalization process carried out in March, the AFSCA approved 13 technical plans for different cities around the country, in addition to eight plans approved in February. It approved the assignment of digital channels for national territories and universities and the issuance of final digital licenses for preexisting licensees. It also approved the announcement of more than 300 calls for bids for FM broadcasters, permits for school, university, and municipal radio stations, authorizations for closed-circuit TV stations, and community cable services.⁴⁵

16. A call for bids was issued for non-profit FM licenses in 16 provinces. The installation, operation, and use of two FM stations for native peoples in Jujuy was authorized, and the FM stations of several municipalities of Buenos Aires and the National University of Tierra del Fuego, among others, were

⁴¹ Centro de Información Judicial. November 10, 2015. [La Corte ordenó que se hagan públicas las cláusulas del acuerdo firmado por YPF y Chevron para la explotación de hidrocarburos en “Vaca Muerta”.](#)

⁴² Centro de Información Judicial. June 24, 2015. [Ordenan a la Provincia de Salta restaurar la publicidad oficial a dos medios periodísticos.](#)

⁴³ Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). No date. [Televisión Digital Terrestre Abierta.](#)

⁴⁴ Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). February 9, 2015. [AFSCA suma \\$9 millones para el fomento de redes de comunicación comunitaria.](#)

⁴⁵ Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). March 25, 2015. [AFSCA lanza nuevo financiamiento para medios comunitarios.](#)

also authorized. In addition, licenses for six cable operators and FM services were awarded in several provinces.⁴⁶

17. The AFSCA has also financed community audiovisual communication projects through the Competitive Development Fund for Audiovisual Media (FOMECA). In March, the body announced the opening of seven new lines of funding for a total of \$ 35.2 million, earmarked to finance the purchase of radio broadcasting equipment and infrastructure, the development of native peoples' communications media, the production of radio content for broadcasters and producers, the production of TV content, and a line of funding for radio and TV broadcasters in emergency situations. The agency anticipated extending the financing to \$129 million over the course of 2015.⁴⁷

18. The first six licenses for digital terrestrial television (DTT) services were approved in September, awarded in a competitive bidding process for non-profit and for-profit operators; eight new technical DTT frequency plans were approved for various towns; the call for new public bids for DTT service licenses for different cities was approved; and a new line of funding totaling 5 million pesos was announced for the audiovisual projects of social organizations or native peoples.⁴⁸

19. In November, the AFSCA approved the announcement of the competitive bidding process to award 21 digital terrestrial television licenses to provide non-profit and for-profit services in the Buenos Aires metropolitan area and in the cities of Córdoba, Maipú, in the Province of Mendoza, and Comodoro Rivadavia, in the Province of Chubut. In addition, the licensing of cable and FM radio operators was approved in several provinces. The National University of Quilmes, the Archdiocese of Añatuya, the Yahavere indigenous community, the Guaraní people, and schools in the Provinces of Chaco and La Rioja were also given approval for the installation of FM broadcast stations.⁴⁹

20. The Special Rapporteur recognizes the measures taken by the AFSCA for enabling a diverse media system and include new sectors in the communications such as community sector, other nonprofit and for indigenous people, which constitutes a progress in the accomplishment of the recommendations that this office has repeatedly done in the sense of promote a public space that can represent, overall, the diversity and plurality of ideas, opinions and cultures in a society. On the other hand, diversity and pluralism in broadcasting is a necessary requirement to contemplate the public's right to receive the maximum amount of information and ideas.⁵⁰

21. However, the Office of the Special Rapporteur has been made aware of some concerns regarding the allocation of digital frequencies in the private commercial sector. For instance, according to the group *Perfil*, in the process for the awarding of five digital TV licenses in the city of Buenos Aires (granted in September), the agency reportedly gave priority to pro-government media outlets. At the same time, it was critical of the fact that *Editorial Perfil's* application for a license was rejected based on procedural grounds.⁵¹ The Argentine Association of Journalism Entities (Adepa) also called into question the reasons for which the

⁴⁶ Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). March 25, 2015. [AFSCA lanza nuevo financiamiento para medios comunitarios](#).

⁴⁷ Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). March 25, 2015. [AFSCA lanza nuevo financiamiento para medios comunitarios](#).

⁴⁸ Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). September 25, 2015. [AFSCA da nuevos pasos en el proceso de digitalización de la TV argentina](#).

⁴⁹ Autoridad Federal de Servicios de Comunicación Audiovisual (AFSCA). October 23, 2015. [AFSCA concursará 21 licencias de Televisión Digital Terrestre Abierta](#).

⁵⁰ IACHR. Office of the Special Rapporteur on Freedom of Expression. [Freedom of expression standards for free and inclusive broadcasting](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 3/09. 30 December 2009. Para. 68.

⁵¹ Perfil.com. September 24, 2015. [AFSCA premió a mayoría de medios K con licencias de TV Digital](#). Cuestión Entrerriana. September 24, 2015. [AFSCA otorgó licencias de TV Digital y dejó afuera al SATSAID](#).

AFSCA rejected *Perfil's* proposal, and called for “full transparency in the application of the rules for the sector and an end to all arbitrariness and favoritism by the agencies involved.”⁵²

22. In that sense on November 10, the 7th Federal Court for the Judicial Review of Administrative Action issued an injunction ordering the Federal Audiovisual Communications Services Authority (AFSCA) to suspend the competitive bidding process for licenses to provide open digital television services in Buenos Aires, announced for November 13.⁵³ The Court’s decision was made pursuant to a request for an injunction filed by *Editorial Perfil S.A.*, which alleged irregularities in the competitive bidding processes, discrimination, and a lack of independence on the part of the body responsible for applying the law, after the AFSCA rejected *Perfil's* proposals in September in two competitive bidding processes for the use of digital television frequencies, arguing defects in the submission of its documentation.⁵⁴ The company *Perfil Tv S.A.* participated in the process together with two other bidders, but the AFSCA was of the opinion that none of them met all of the requirements for the bid, and rejected them as inadmissible.⁵⁵

23. The Special Rapporteurship note that One aim of the process of implementing digital television should be to bring about a more diverse and plural system of television media than the one that exists with analogue technologies. For this, the States should evaluate the broadcasting possibilities that result from the bandwidth savings made possible by digitalization and the use of the various digital dividends that become available when the transition is complete, considering this technological change as an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media.⁵⁶ Likewise, the OAS, UN, OSCE, and ACHPR Rapporteurs have established that States should ensure that the digital terrestrial transition process ensures respect for freedom of expression, “including diversity in the airwaves.”⁵⁷ Along these lines, the Rapporteurs have established that “State policies and licensing processes relating to the digital terrestrial transition should promote media diversity.”⁵⁸

24. On December 10 the government created the Communications Ministry with decree 13/2015. After the closing of this report, the Special Rapporteurship learned the Executive Branch intervened the Federal Authority for Audiovisual Communication Services (AFSCA) and the Federal Authority of Information Technology (AFTIC) for 180 days by decree 236/2015 and appointed two inspectors for each agency, displacing the directorate. In addition the merger of AFSCA and AFTIC into one regulating body was announced. Said body would regulate communications and the reform of the Law on Audiovisual Communications by a Necessity and Urgency Decree.

⁵² Adepa. September 25, 2015. [Doble estándar para los medios de comunicación](#); Perfil.com. October 8, 2015. [Cristina selló el rechazo a Perfil y Sabbatella hará un concurso exprés.](#)

⁵³ Fundación LED. November 11, 2015. [Preocupación por posibles irregularidades en los procesos de adjudicación de la AFSCA.](#)

⁵⁴ Perfil.com. November 10, 2015. [Por la denuncia de Perfil, la Justicia suspende un concurso de licencias de TV Digital](#); La Nación. November 11, 2015. [La Justicia suspendió un concurso de TV digital.](#)

⁵⁵ Fundación LED. September 25, 2015. [Preocupación por irregularidades en la adjudicación de licencias por parte de la AFSCA](#)

⁵⁶ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80. The Declaration of Principles of the World Summit on the Information Society (WSIS, approved in Geneva in 2003), which was convened by the UN General Assembly via Resolution 56/183 of December 21, 2001, states, “We are...fully aware that the benefits of the information technology revolution are today unevenly distributed between the developed and developing countries and within societies. We are fully committed to turning this digital divide into a digital opportunity for all, particularly for those who risk being left behind and being further marginalized” (Principle 10). The resolution adds, “In building the Information Society, we shall pay particular attention to the special needs of marginalized and vulnerable groups of society, including migrants, internally displaced persons and refugees, unemployed and underprivileged people, minorities and nomadic people. We shall also recognize the special needs of older persons and persons with disabilities” (Principle 13).

⁵⁷ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 1.a.

⁵⁸ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS/IACHR Special Rapporteur on Freedom of Expression, and ACHPR Special Rapporteur on Freedom of Expression and Access to Information. May 3, 2013. [Joint Declaration on the Protection of Freedom of Expression and Diversity in the Digital Terrestrial Transition](#). Principle 3.a.

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

25. On January 24, after having been the first to report on the death of prosecutor Alberto Nisman,⁵⁹ journalist Damián Pachter, of the *Buenos Aires Herald*, left Argentina on the assertion that he had been subject to acts of intimidation and did not feel safe.⁶⁰ Later, information was posted on the official Twitter account of the Casa Rosada, the Argentine presidential palace, about the airline tickets purchased by the journalist. This information was reportedly provided by the State airline Aerolíneas Argentinas to the official news agency Télam.⁶¹ The government maintained that it disclosed the information for the safety of the journalist, whose whereabouts was unknown at the time.⁶²

26. The Inter-American Commission issued a press release on January 29 expressing concern over this matter, and it urged the State to “to take effective protective measures to guarantee the life and integrity of journalist Damián Pachter, to investigate the allegations, and to guarantee the work of the press in the context of the coverage of this case of great public interest.”⁶³

27. According to information reported in the Argentine press, the Belgian Embassy conveyed its “concern” to the Argentine Foreign Ministry over the safety of the Belgian-Spanish journalist Teresita Dussart, after she requested protection from the Belgian government. Dussart was reportedly harassed by pro-government media outlets as a consequence of her coverage of the death of prosecutor Nisman.⁶⁴ In addition, on February 9, journalist Andrés Fidanza, who was investigating the prosecutor’s death for the online magazine *Anfibia*, had work material stolen from her house.⁶⁵ On February 12, journalist Juan Cruz Sanz of *Infobae* was warned by an informant that he could be the victim of an attack as a result of his journalistic work in connection with Nisman’s death.⁶⁶

28. In February, journalist Bibiana Toledo, director of the newspaper *Información Ciudadana*, of San Rafael, Mendoza, reported that she had received several threats allegedly related to the disclosure of information and opinions critical of the government of the city of San Rafael.⁶⁷

⁵⁹ Alberto Nisman, who was the prosecutor in the investigation of the 1994 attack against the Asociación Mutual Israelita Argentina (AMIA), was found dead and with a gunshot to the head on January 18, 2015, in his Buenos Aires home. Nisman had been summoned to appear the following day before the National Congress regarding his charge against senior government officials on the alleged cover-up of those suspected of being responsible for the AMIA attack. IACHR. January 29, 2015. [Press Release 6/15. IACHR Laments Death of Prosecutor Alberto Nisman in Argentina.](#)

⁶⁰ Infobae. January 24, 2015. [El periodista que informó por Twitter la muerte de Nisman abandonó el país por miedo](#); Los Andes. January 24, 2015. [El periodista que dio la primicia sobre la muerte de Nisman abandona el país](#); Tucumán Noticias. January 25, 2015. [Primera Columna de Damian Pachter desde Israel.](#)

⁶¹ Télam. January 24, 2014. [El periodista Damián Pachter viajó a Uruguay con pasaje de regreso para el 2 de febrero](#); “El periodista Damián Pachter viajó a Uruguay con pasaje de regreso para el 2 de febrero <http://www.telam.com.ar/notas/201501/92961-periodista-damian-pachter-uruguay-pasaje-regreso-nisman.html>”. Former official Twitter account of Casa Rosada (@CasaRosadaAR) [January 24, 2015 – 4:32 PM.](#)

⁶² La Nación. January 26, 2015. [El Gobierno justificó la publicación del pasaje de Damián Pachter a Uruguay: "Es un periodista que se sentía amenazado y fue importante publicar su paradero"](#); Télam. January 26, 2015. ["Si un periodista dice que se siente amenazado es importante publicar su paradero"](#).

⁶³ IACHR. January 29, 2015. [Press Release 6/15. IACHR Laments Death of Prosecutor Alberto Nisman in Argentina.](#)

⁶⁴ Clarín. February 17, 2015. [La embajada belga pidió por la seguridad de una periodista](#); La Razón. February 18, 2015. [La Embajada de Bélgica pide por una periodista.](#)

⁶⁵ Infojus Noticias. February 13, 2015. [Sospechoso robo a un periodista de Anfibia que investigó el caso Nisman](#); Clases de periodismo. February 15, 2015. [Argentina: Roban en casa de periodista que investigó caso Nisman.](#)

⁶⁶ Fundación LED. February 21, 2015. [Amenaza de muerte al periodista Juan Cruz Sanz](#); Bien al Sur. February 23, 2015. [Fue amenazado Juan Cruz Sanz](#); Tribuna. February 17, 2015. [Amenazan de muerte al periodista Juan Cruz Sanz.](#)

⁶⁷ Mendoza Post. February 10, 2015. [Denuncian en Fiscalía de Estado al intendente de San Rafael](#); MDZ Online. February 2, 2015. [Preocupan amenazas a una periodista en San Rafael](#); Fundación LED. March 25, 2015. [Amenazan a una periodista en la localidad de San Rafael, provincia de Mendoza.](#)

29. The cable television channel *Madryn TV*, of the city of Puerto Madryn, in the Province of Chubut, received “repeated threats” as a result of its journalistic coverage of the bankruptcy of the local fishing company ALPESCA, according to reports from the Argentine Journalism Forum (FOPEA). According to the organization, on February 23, news anchor Carlos Pérez Lindo was insulted and threatened by an individual who stopped him in the street and identified himself as someone connected to the fishing company. Also on that same day, threatening and insulting phone calls were received during the news broadcast. The director of *Madryn TV*, Javier Bezunarte, filed a complaint with the local prosecutor’s office.⁶⁸

30. On March 2, journalists Ángel Flores from the Province of La Rioja and Christian Sanz of Mendoza received telephone threats allegedly related to their journalistic activity.⁶⁹

31. Journalist Marcos Tenaglia reported that on March 3, unknown individuals set fire to her car when she was participating in a meeting with residents of the La Paloma neighborhood in Tigre. The meeting was reportedly held to complain about the actions of the authorities with respect to a number of murders allegedly tied to human trafficking networks.⁷⁰ In December 2014, the journalist had received threats from a group of organized fans of the Tigre Soccer Club, allegedly sent by councilman Rodrigo Molinos, president of the club.⁷¹

32. On March 27, journalist Federico Bet reported on his Twitter account that he received a death threat from a leader of the All Boys sports club. The journalist stated that the leader tried to run him over and threatened him with a firearm.⁷²

33. On March 30, journalist Rodrigo Mansilla, of the radio station and newspaper *El Chubut*, was beaten and threatened by an employee of the mayor’s office of Trelew, in the Province of Chubut, in retaliation for his journalistic work. The employee was reportedly fired from his job after the assault.⁷³

34. In April, unknown persons entered the home of journalist Juan Pablo Suárez, of the *Última Hora* website, and destroyed his belongings. The Fundación LED, where Suárez works, deduce that the incident was “an attempt at intimidation.”⁷⁴ In December 2013, Suarez had been arrested in the city of Santiago del Estero after being accused of “instigating the commission of the offense of sedition,” after covering the alleged repression of a police officer for demanding a salary increase. The journalist was in custody for ten days, and was later prosecuted on charges of incitement of violence. The charges were ultimately dismissed by the Federal Appeals Chamber of Tucumán.⁷⁵

⁶⁸ Foro de Periodismo Argentino (FOPEA). March 2, 2015. [Conductor de noticiero de Puerto Madryn fue amenazado de muerte.](#)

⁶⁹ Fundación LED. March 5, 2015. [Amenazan a periodistas de La Rioja y Mendoza.](#)

⁷⁰ Télam. March 4, 2015. [Periodista denunció que le quemaron el auto cuando estaba en un reunión para exigir el “fin de la impunidad en Tigre”](#); Fundación LED. March 5, 2015. [Atacan el vehículo de un periodista en Tigre.](#)

⁷¹ Página 12. February 22, 2015. [Denuncian al presidente de Tigre por aprietes](#); Télam. February 22, 2015. [Un periodista denunció amenazas de un concejal massista.](#)

⁷² “En la practica de All Boys un integrante de la CD German Corradini quiso atropellarme con su auto y luego me amenazo con un arma de fuego.” Twitter account of Federico Bet @FedeBet. [March 27, 2015- 4:12 PM](#); “y posteriormente delante de todo el plantel me amenazo[sic] con dispararme en la puerta del predio”. Twitter account of Federico Bet @FedeBet. [March 27, 2015- 4:13 PM](#); TN. March 27, 2015. [Escándalo en All Boys: un periodista partidario denunció una amenaza de muerte del vicepresidente.](#)

⁷³ El Chubut. March 31, 2015. [Salvaje agresión al periodista Rodrigo Mansilla](#); Fundación LED. April 2, 2015. [Funcionario municipal agrade a un periodista en Trelew.](#)

⁷⁴ Infobae. April 6, 2015. [Atacaron la casa del periodista santiagueño que estuvo preso por filmar una protesta policial](#); Minuto Uno. April 6, 2015. [Atacan la casa de un periodista en Santiago del Estero](#); Clarín. April 6, 2015. [Atacan otra vez a un periodista en Santiago del Estero.](#)

⁷⁵ IACHR. [Annual Report 2014. 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. 13. March 9, 2015. Para. 51.

35. On April 8, the web portal *BuenosAires2punto0* sustained a cyber-attack after journalist Silvana Varela testified in a case involving the mayor of the town of Hurlingham, in the Province of Buenos Aires. On April 12, the journalist received a telephone threat warning her to stop investigating that case.⁷⁶

36. On April 15, journalist Víctor Hugo Morales, from *Radio Continental* and host of the TV program “Bajada de línea” on *Canal 9*, was assaulted by residents of Barracas while recording a story in the area. As seen in the images recorded by the program’s cameraman, one individual attempted to run him over with a car, and the others accosted him to make him leave the area.⁷⁷

37. On May 19, journalist Nicolás Wiñazki of the newspaper *Clarín*, *Radio Mitre* and *Canal 13* reported that his vehicle, which was parked on the street, was wrapped in electrical and television cables. The incident occurred in the city of Buenos Aires. The reporter understood the act as possible retaliation for his work as a journalist.⁷⁸

38. On May 26, several individuals accompanied by Luis Banegas, head of the Túpac Amaru group, stormed into the radio station FM 105.5 *Radio del Pueblo*, in the city of Villa Ángela, Chaco Province, interrupted the broadcast, damaged the facilities, and assaulted journalist Diego Radlovski and other station employees. The leader was arrested by the police.⁷⁹

39. On May 28, journalist Mario Casalongue, director of the *NOVA* agency, was punched by national Congressman Francisco De Narváez, then a hopeful gubernatorial candidate for Buenos Aires. The assault occurred after the agency published an article that made reference to the private life of the congressman and his wife. According to the media report, the legislator burst into the agency’s offices and struck Casalongue, and then asked the other journalists present to remove the article from the website.⁸⁰ The congressman later admitted to the act and apologized.⁸¹

40. On June 25, journalist Alejandro Bercovich of the program “*Minuto Uno*” on *C5N*, stated on his Twitter account and to the press that he was threatened by associates of the president of the Radical Civic Union of Buenos Aires [*Unión Cívica Radical de Buenos Aires*], Emiliano Yacobitti. The incident occurred after the airing of a report on alleged irregularities in the School of Economic Sciences and the Clinical Hospital of the University of Buenos Aires.⁸²

41. On July 3, journalist Gabriel Marclé of the program “*Así son las cosas*” on the *FM Gospel* radio station, was barred from covering a press conference given by two public servants being investigated by the Office of the Prosecutor. One of the defendants in the case, Mariano Cessano, a member of the human rights group HIJOS and an employee of the municipal government of Río Cuarto, denied Marclé the opportunity to

⁷⁶ BuenosAires2punto0. April 13, 2015. [En nombre de Acuña vuelven a amenazar de muerte a una periodista](#); Fundación LED. April 15, 2015. [Repudio por las amenazas de muerte a la periodista Silvana Varela](#).

⁷⁷ Tv Pública Argentina/YouTube. April 16, 2015. [Visión 7 - Imágenes de la agresión a Víctor Hugo en el "Muro de Clarín"](#)[06:48]; Infobae. April 16, 2015. [Repudian la agresión que sufrió el periodista Víctor Hugo Morales](#); Télam. April 15, 2015. [Víctor Hugo Morales sufrió una agresión mientras filmaba junto a su producción el muro de Clarín](#).

⁷⁸ La Voz. May 20, 2015. [El auto del periodista Nicolás Wiñazki apareció atado con cables](#); Perfil. May 20, 2015. [Extraño ataque al auto del periodista Nicolás Wiñazki](#).

⁷⁹ Fundación LED. May 29, 2015. [Repudio a las agresiones al periodista Diego Radlovski](#); Click Chaco/Diario Norte. May 27, 2015. [El dirigente de Túpac Amaru atacó una radio y quedó detenido](#); Diario Chaco. May 26, 2015. [Repudian accionar de dirigente de Túpac Amaru que atacó a una radio de Villa Ángela](#).

⁸⁰ Agencia NOVA. May 28, 2015. [Salvaje agresión de Francisco de Narváez al director de Agencia NOVA](#); La Nación. May 29, 2015. [Francisco De Narváez golpeó a un periodista que publicó una nota agravante](#).

⁸¹ La Gaceta. May 29, 2015. [De Narváez agredió a un periodista de La Plata](#); Los Andes. May 29, 2015. [De Narváez confirmó que le pegó a un periodista por la nota que habla de su intimidad sexual](#).

⁸² “Hoy la mafia de Yacobitti amenazó con ‘reventarme como una rata’ por mis denuncias de corrupción en la UBA. A los gritos en plena facultad.” Twitter account of Alejandro Bercovich @aleberco. [June 25, 2015 – 4:42 PM](#); Diario Registrado. June 26, 2015. [Tras exponer el origen del financiamiento de Lousteau, Bercovich fue amenazado](#); Télam. June 26, 2015. [Allegados a Yacobitti amenazaron al periodista Alejandro Bercovich](#).

cover the conference for his radio program. The Deputy Secretary of Communications of that municipality, Luciano Albanesi, publicly apologized for the incident and stated that an administrative investigation had been opened.⁸³

42. On July 24, threatening graffiti and leaflets appeared at the newspaper *El Ciudadano* in Rosario against one of the paper's press photographers. The incident occurred in the days prior to a soccer match between Rosario Central and Newell's Old Boys, and was reportedly linked to the coverage of that event. This is the second time that the journalist was the victim of soccer-related threats, according to the Press Union of Rosario.⁸⁴

43. On July 30, journalist Samuel Huerga of *Radio Cadena NOA* of the city of Orán, in the Province of Salta, was attacked by unknown persons who set fire to his car at the entrance to his house.⁸⁵

44. On August 3, unknown persons carried out acts of intimidation against journalist Jorge Lanata, host of the program "*Periodismo Para Todos*" on *Canal 13*. First, they threw rocks at the building complex where he lives, then they attacked the Federal Police security booth located outside the building, and the next day eight bullet shell casings appeared at the main door of the complex. These incidents occurred after a news report was aired on the program that linked the then-Minister of the Interior, and later Cabinet Chief, Aníbal Fernández, to a triple murder tied to a drug trafficking network.⁸⁶ After that report was broadcast, Fernández announced that he would file criminal and civil complaints against Lanata and *Canal 13*.⁸⁷

45. On August 5, journalists, camera operators, and photographers from several media outlets in Mendoza were assaulted during the coverage of a clash between provincial police and a group of retired police officers from the Police Mutual Association.⁸⁸

46. On August 6, photojournalist Cristian González of the newspaper *Tiempo Sur*, of Santa Cruz, was assaulted while covering a meeting of the Union of Municipal Workers and Employees of Río Gallegos.⁸⁹

47. On August 23, journalist Cecilia Casabone and cameraman Horacio Mansilla of *Canal 5*, and Pedro Levy of *Canal 3*, of the city of Rosario, were the victims of attacks and threats while covering the murder of a young man.⁹⁰

⁸³ La Voz. July 3, 2015. [Río Cuarto: la Justicia Federal investiga a un funcionario del Anses](#); Círculo Sindical de la Prensa y la Comunicación de Córdoba (Cispren). July 3, 2015. [Río Cuarto: Solidaridad con Gabriel Marclé](#); Telediario/YouTube. July 3, 2015. [En conferencia de HJIOS censuran a periodista](#) [01:52].

⁸⁴ MDZ. July 25, 2015. [Rosario: Repudian amenaza contra un periodista](#); Rosario3. July 24, 2015 July 24, 2015. [Una fiscal investiga las pintadas y piden seguridad para periodistas en el clásico](#); El Ciudadano. July 24, 2015. [EL SPR repudia amenazas contra periodista de El Ciudadano](#).

⁸⁵ Fundación LED. July 30, 2015. [Repudio por el ataque al periodista Samuel Huerga en la provincia de Salta](#); Partido Obrero. August 1, 2015. [Salta: Gravísimo atentado contra el periodista Samuel Huerga](#).

⁸⁶ Fundación LED. August 4, 2015. [Preocupación por el ataque al periodista Jorge Lanata](#); ABC. August 4, 2015. [Apedrean la casa del periodista opositor Jorge Lanata y encuentran ocho casquillos de bala](#); La Nación. August 4, 2015. [Jorge Lanata denunció que apedrearon la garita de su edificio y le dejaron casquillos de bala](#).

⁸⁷ Télam. August 3, 2015. [Aníbal Fernández denunció a quienes lo vincularon al triple crimen y recibió la solidaridad del oficialismo](#); Clarín. August 2, 2015. [Involucran a Aníbal Fernández con el triple crimen de la efedrina](#).

⁸⁸ Fundación LED. August 6, 2015. [Preocupación por agresión a periodistas en la provincia de Mendoza](#); Cadena 3. August 5, 2015. [Caos en Casa de Gobierno por violenta protesta policial](#); MDZ. August 8, 2015. [FOPEA repudia lo sucedido en la Casa de Gobierno](#).

⁸⁹ Tiempo Sur. August 7, 2015. [Bloque del FPV repudia nueva agresión del SOEM a la prensa](#); Fundación LED. August 10, 2015. [Repudio a la agresión de un reportero gráfico en la provincia de Santa Cruz](#).

⁹⁰ La Capital. August 24, 2015. [Periodistas sufrieron graves intimidaciones mientras cubrían un homicidio](#); Fundación LED. August 28, 2015. [Repudio por el ataque a trabajadores de prensa en la ciudad de Rosario](#).

48. On August 23, cameraman Jorge Ahualli of the cable channel CCC was assaulted by two unknown persons while covering the provincial elections in Tucumán. The reporter had to be taken to the hospital as a result of his injuries, and the assailants were arrested.⁹¹

49. On August 26, press photographer Miguel Gamera of the newspaper *Río Negro* was assaulted by alleged members of the Río Negro provincial police force while covering a strike at the National Social Security Administration.⁹²

50. On September 11, journalist Maximiliano Pascual, director of *La Posta Hoy* and *Radio Extremo* 106.9 of Arroyo Seco in the Province of Santa Fe was violently attacked by two unknown individuals in the vicinity of the radio station. The assailants threatened him and warned him to “stop talking.” Pascual sustained cuts to his face and ear in the attack. The assault could be related to his journalistic work, given that he has investigated a drug trafficking case known as “*Carbón Blanco*” [“White Coal”] that involved two people from Arroyo Seco.⁹³

51. The events manager of the Rural Society of Villa María received a telephone threat warning her to cancel a lecture by *Radio Mitre* and *TN* journalists Alfredo and Diego Leuco, scheduled to be held on September 19 on the Society’s premises. Merchants who displayed posters in their stores promoting the event were also threatened.⁹⁴

52. On the night of September 25, unknown persons loosened the bolts on the rear wheel of the motorcycle belonging to journalist Marcelo Pastore, host of the news program *RTV Noticias*, which was parked outside his home. The incident occurred in San Pedro de Jujuy. Pastore and his wife, Juana Leiva, a producer at the channel *RTV*, have been subject to attacks and threats before, possibly in connection with both of their professions.⁹⁵

53. On October 29, journalist Liliana Franco of *Ámbito Financiero* and the program *Intratables* was insulted and booed by pro-government party activists during the coverage of an official ceremony of President Cristina Kirchner at the Casa Rosada. Franco reported that her colleagues from *Radio Mitre*, *Canal 13*, and *Clarín* had also experienced similar situations.⁹⁶

54. The Office of the Special Rapporteur recalls 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. The legal systems and practices of the States must clearly reflect that crimes against

⁹¹ Fundación LED. August 23, 2015. [Repudio a la agresión sufrida por un trabajador de prensa en la provincia de Tucumán](#); La Nación. August 24, 2015. [Elección violenta en Tucumán: urnas quemadas, balazos y un camarógrafo agredido](#); La Gaceta. August 23, 2015. [Detienen a los presuntos agresores del camarógrafo Ahualli](#).

⁹² Río Negro. August 27, 2015. [Brutal agresión a fotógrafo de "Río Negro"](#); Clarín. August 26, 2015. [La policía de Río Negro dio una golpiza a un fotógrafo](#); Fundación LED. August 27, 2015. [Preocupación por las agresiones a reportero gráfico en la provincia de Río Negro](#).

⁹³ Foro de Periodismo Argentino (FOPEA). September 11, 2015. [Fopea reclama seguridad y garantía para periodista atacado en Arroyo Seco](#); Rosario 3. September 12, 2015. [Repudian el ataque a un periodista de Arroyo Seco](#); Asociación de Entidades Periodísticas Argentinas (ADEPA). September 11, 2015. [ADEPA condena grave ataque a periodista de Arroyo Seco](#).

⁹⁴ Fundación LED. September 3, 2015. [Intentan censurar a periodistas en la provincia de Cordoba](#); Clarín. September 3, 2015. [Graves amenazas por una charla de Leuco](#).

⁹⁵ La Nación. October 2, 2015. [Fopea pidió protección para un periodista jujeño amenazado](#); Jujuy Dialoga/SoundCloud. October 2, 2015. [Entrevista al periodista Marcelo Pastore \[09:43\]](#); Fundación LED. October 2, 2015. [Repudio al ataque al periodista Marcelo Pastore en la provincia de Jujuy](#).

⁹⁶ La Nación. October 30, 2015. [El mal momento de la periodista Liliana Franco en Casa Rosada](#); Infobae. October 29, 2015. [La periodista Liliana Franco fue agredida en la Casa Rosada](#).

freedom of expression are especially serious, given that they represent a direct attack on all fundamental rights.⁹⁷

55. In addition, the Office of the Special Rapporteur has reiterated that the States have the obligation to take measures to prevent violence against journalists and media workers.⁹⁸ This obligation is particularly important in countries where there is a risk of these acts occurring and in specific situations where the authorities know or should have known that there is a real and immediate risk that such crimes will be committed.⁹⁹ In those countries or regions where journalists are especially vulnerable due to the context of violence directed against them, the State has a heightened responsibility in its obligations of prevention and protection. In those situations, the absence of a general public policy of prevention can result in the State's failure to meet its duty of prevention.¹⁰⁰

56. The obligation to prevent violence against journalists includes: a) adopting a public discourse that contributes to the prevention of violence against journalists. The Inter-American Court has emphasized that the duty to guarantee the rights to freedom of expression and humane treatment requires public officials to refrain from making statements that place journalists and media workers at greater risk of violence;¹⁰¹ b) instructing its security forces to respect the media. Appropriate instruction of State security forces on the role of the press in a democratic society is an important step in preventing violence against journalists and media workers. For this reason, the Office of the Special Rapporteur has recommended that the States adopt adequate mechanisms to prevent violence against media workers, including the training of public servants, especially the police and security forces and, if necessary, the adoption of conduct manuals or guidelines on freedom of expression;¹⁰² c) the obligation to respect the right of journalists to maintain the confidentiality of their sources of information, notes, and personal and professional records. The protection of confidential sources not only contributes to the press's fundamental role as watchdog but also helps to prevent journalists from becoming victims of violence;¹⁰³ d) the obligation to punish violence against journalists. In order to prevent violence against journalists and media workers, it is indispensable for the legal system to punish this conduct in a manner that is proportional to the harm committed;¹⁰⁴ e) the obligation to maintain accurate statistics on violence against journalists. Understanding the magnitude and

⁹⁷ 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. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

⁹⁸ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 33.

⁹⁹ I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 194; 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. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

¹⁰⁰ I/A Court H. R. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 282.

¹⁰¹ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 34.

¹⁰² IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 47.

¹⁰³ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 54.

¹⁰⁴ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 55.

methods of acts of violence against journalists and media workers is a fundamental condition for the implementation of effective prevention policies such as, for instance, the design of reliable risk maps. In the context of violence against journalists, the Office of the Special Rapporteur has stressed the importance of compiling detailed, disaggregated statistics as an essential prerequisite for designing, implementing and evaluating effective public policies of prevention, protection and criminal prosecution of violence against members of the media.¹⁰⁵

57. The States also have the obligation to protect at-risk journalists and media workers. According to the human rights standards of the Inter-American System, the States have an obligation to protect those who are exposed to special risk with respect to their fundamental rights. The obligation to protect an at-risk journalist can be met through the individual application of the measures necessary to ensure, among other things, the beneficiaries' rights to life, humane treatment, and freedom of expression. However, when a particular country is experiencing a systematic and serious structural situation of violence against journalists and media workers, the States must establish special protection programs for those groups. In any case, the measures taken must be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue conducting the same professional activities, and his or her social and economic circumstances.¹⁰⁶

58. The third and final element of a comprehensive State policy to address violence against journalists is the investigation, prosecution, and punishment of the perpetrators of such acts of violence. The Office of the Special Rapporteur has repeatedly urged the States to conduct serious, impartial, and effective investigations into the murders, assaults, threats, and acts of intimidation committed against journalists and media workers.¹⁰⁷ The Inter-American Court has held that impunity—understood as the complete absence of investigation, pursuit, arrest, trial, and conviction—favors the chronic repetition of human rights violations and the total defenselessness of the victims and their relatives. The UN Special Rapporteur on on extrajudicial, summary or arbitrary executions has stated that, “Impunity [...] is widely recognized as one of the main causes of the continued killing of journalists.”¹⁰⁸ In the same respect, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has found that impunity 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.”¹⁰⁹ Both the Commission and the Court have referred to the chilling effect that crimes against journalists have on other media professionals as well as on citizens who attempt to speak out against abuses of power or unlawful acts

¹⁰⁵ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 59 and 60

¹⁰⁶ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 62

¹⁰⁷ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 160

¹⁰⁸ I/A Court H. R. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70; United Nations. General Assembly. [Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns](#). A/HRC/20/22. April 10, 2012. Para. 43.

¹⁰⁹ United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012. Para. 65. Available for consultation at: http://ap.ohchr.org/documents/dpage_s.aspx?m=85

of any kind.¹¹⁰ This chilling effect can only be prevented, according to the Commission, “by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law.”¹¹¹

59. 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

60. On August 24, the day after the gubernatorial election in the Province of Tucumán, thousands of demonstrators assembled in Plaza Independencia, outside the provincial Executive Mansion, to protest alleged irregularities and fraud during the process (days later, the Court for the Judicial Review of Administrative Action of Tucumán declared the election null and void and announced new elections).¹¹² The police used rubber bullets, pepper spray, and tear gas to disperse the protesters. Some twenty people were injured, mostly from being hit by rubber bullets. The injured included reporters from *Canal 8* who were covering the protests.¹¹³

61. On September 30, members of the Nam Qom indigenous community held a protest in the Province of Formosa to assert their right to decent housing, which was repressed by the Formosa police using both rubber bullets and regular bullets. Several people were injured, including children.¹¹⁴

62. On October 19, Ángel Verón, an activist in the social movement “*No al Desalojo*” [“No to Eviction”] died after sustaining serious injuries allegedly caused by the police during a protest to demand employment and housing in Chaco Province.¹¹⁵

63. 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.¹¹⁶ 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.¹¹⁷

¹¹⁰ I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of September 3, 2012. Serie C No. 248. Para. 148; IACHR. Report No. 136/10, Case 12.658, Luis Gonzalo “Richard” Vélez Restrepo and family (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. See also, IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (2010 Special Report on Freedom of Expression in Mexico). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716

¹¹¹ IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and family (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. See also, IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (2010 Special Report on Freedom of Expression in Mexico). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716. See also, I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of September 3, 2012. Serie C No. 248. Para. 211.

¹¹² La Nación. September 16, 2015. [La Justicia de Tucumán declaró la nulidad de las elecciones y convocó a nuevos comicios](#).

¹¹³ La Nación. August 25, 2015. [Ardió Tucumán: tras las elecciones, violenta represión a manifestantes](#); El Litoral. August 25, 2015. [Tucumán: manifestación terminó con represión y unos 20 heridos](#); El País. October 20, 2015. [La represión policial en Tucumán revoluciona la campaña argentina](#); Telefé Noticias. August 25, 2015. [Heridos y detenidos en Tucumán en protesta por las irregularidades en las elecciones](#).

¹¹⁴ Centro de Estudios Legales y Sociales (CELS). October 8, 2015. [Represión policial a la comunidad Nam Qom en Formosa: presentación a la CIDH](#).

¹¹⁵ Centro de Estudios Legales y Sociales (CELS). October 20, 2015. [Chaco: comunicado por la muerte de Ángel Verón](#); Clarín. October 19, 2015. [Murió un dirigente al que reprimieron por reclamar viviendas en Chaco](#).

¹¹⁶ [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

64. 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”¹¹⁸ 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.”¹¹⁹

65. 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.”¹²⁰

66. 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.¹²¹

E. Stigmatizing Statements

67. In the wake of the January 18 murder of federal prosecutor Alberto Nisman,¹²² various government authorities were critical of the news coverage of the events and accused the media of seeking to “destabilize” government institutions.¹²³

68. At a press conference held on January 20, the president of the House of Representatives, Julián Domínguez, called into question the newspaper *Clarín* and its CEO, Héctor Magnetto, for supposedly

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.”

¹¹⁷ IACHR. [Annual Report 2005. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Para 90-102.

¹¹⁸ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹¹⁹ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹²⁰ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

¹²¹ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

¹²² Prosecutor Alberto Nisman was found dead in his Buenos Aires apartment on January 18, 2015, in circumstances still under investigation. The prosecutor was in charge of investigating the 1994 attack on the Asociación Mutual Israelita Argentina (AMIA), and had charged the national government with the alleged cover-up of those responsible for the attack. *Clarín*. January 19, 2014. [Hallaron muerto al fiscal Alberto Nisman en su departamento de Puerto Madero](#); La Nación. January 19, 2015. [Hallan muerto al fiscal Alberto Nisman en su departamento de Puerto Madero](#).

¹²³ Fundación LED. January 24, 2015. [Profunda preocupación por la libertad de expresión en la Argentina](#).

seeking to create a “climate of uncertainty” on its front pages in the days leading up to Nisman’s death.¹²⁴ President Cristina Kirchner also questioned the paper’s front pages in the days prior to the murder.¹²⁵

69. On January 22, the National Committee of the *Justicialista* Party—President Cristina Kirchner’s party—read a statement accusing “the opposition media, mainly *Clarín* and *La Nación*,” of seeking to “besmirch the political image” of the president “with the clear objective of destabilizing government institutions.”¹²⁶

70. On February 2, during a press conference, Cabinet Chief Jorge Capitanich ripped up two pages from the newspaper *Clarín*, alleging that the articles published by the paper were “lies” and “trash.” The articles referred to the alleged content of the complaint brought by prosecutor Nisman against President Fernández de Kirchner and to statements made by Capitanich in relation to the media coverage of the prosecutor’s death. “This is all trash, it is always lies and trash, and that is why it is important for the Argentine people to know who is lying to them,” said the Cabinet Chief.¹²⁷ The next day, the chief was asked about the matter at a press conference and he repeated that the information published by the paper “is part of its crude and systematic operations,” and that “it is constant trash.”¹²⁸

71. On August 5, the president gave a nationally broadcast speech to address reforms to the pension system. During the speech, she defended the actions of Cabinet Chief Aníbal Fernández, who had been linked to the murder of persons involved in drug trafficking networks in an article authored by journalist Jorge Lanata. The president stated that these types of reports are “triggered at precise election times,” as “anti-democratic devices” consisting of a “tripod” made up of “media reports,” members of the “center-right” opposition, and “certain sectors of the Judiciary.”¹²⁹

72. On August 21, the governor of Chaco Province, Jorge Capitanich, sought to discredit journalist Luis Gasulla and the media outlet *Perfil.com* in relation to the investigation of facts surrounding drug trafficking in the province.¹³⁰ The reporter also alleged that he had been verbally assaulted by relatives of the governor.¹³¹

73. 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

¹²⁴ Clarín. January 20, 2015. [Los diputados K le apuntaron al fiscal y a las tapas de Clarín](#); Diario Sobre Diarios. Sin fecha. [Conviven las voces presidenciales, opositoras, oficiales y judías](#).

¹²⁵ Presidenta de Argentina Cristina Fernández. January 19, 2013. [AMIA. Otra vez: tragedia, confusión, mentira e interrogantes](#).

¹²⁶ Télam. January 22, 2015. [Fuerte respaldo del Consejo Nacional del PJ a Cristina](#); La Voz. January 22, 2015. [El PJ oficialista defendió a Cristina y denunció un complot en su contra](#); Clarín. January 23, 2015. [Para defender a Cristina, el PJ atacó a jueces, fiscales y medios](#).

¹²⁷ TN. February 3, 2015. [Polémica desmentida oficial: Capitanich rompió dos páginas de un diario](#) (VIDEO); La Prensa. February 2, 2015. [Jefe de Gabinete argentino rompe páginas de 'Clarín' ante medios de prensa](#).

¹²⁸ La Nación. February 3, 2015. [Tras romper las notas, hoy Jorge Capitanich discutió con un periodista de Clarín](#) (VIDEO).

¹²⁹ Casa Rosada/YouTube. Published by Government House of the Argentine Republic. August 5, 2015 [Aumento de jubilaciones y pensiones. Cadena Nacional. Cristina Fernández](#) [1:03:04]; La Nación. August 5, 2015. [Por cadena nacional, Cristina Kirchner comparó la denuncia contra Aníbal Fernández con los "grupos de tareas de la dictadura"](#).

¹³⁰ Perfil.com. August 26, 2015. [Causa Carbón Blanco | Capitanich: "El narcotráfico compró periodistas"](#); Fundación LED. August 28, 2015. [Preocupación por descalificaciones al periodista Luis Gasulla](#).

¹³¹ Fundación LED. June 26, 2015. [Preocupación por el hostigamiento al periodista Luis Gasulla](#).

create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.¹³²

74. 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.”¹³³

75. 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.¹³⁴

76. 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.¹³⁵

F. Subsequent Liabilities

77. On May 20, the newspaper *Diario Hoy*, of the city of La Plata, reported that employees of the Federal Administration of Public Revenue (AFIP) involved in a matter investigated by the paper filed a criminal complaint penal against its director, Myriam Renée Chávez de Balcedo, alleging “extortion.”¹³⁶

78. On May 29, several journalists from Formosa Province were convicted by Judge Giselle Verónica Drovandi in Civil and Commercial Court No. 1 of Formosa, and ordered to pay 2,000,000 Argentine pesos in “damages” to Provincial Governor Gildo Insfrán. The conviction stemmed from an incident that occurred on January 21, 2013, when an anonymous listener called the radio program “*Mano a Mano*” on *Radio Fantasía*, hosted by journalist Gabriel Hernández, and implicated the governor of Formosa in his own son’s death, 10 years earlier. The governor brought a legal action against Hernández, Andrea Cospito, and radio announcers César and Alicia Orué, of *Radio Fantasía*, and María de los Ángeles López, the owner of the radio station; as well as Julián González, director of the newspaper *La Opinión Ciudadana*, and Carlos Varela, director of the digital news outlet *La Corneta Noticias*, both for repeating the listener’s statements. In her decision, the judge asserted that she was convicting them for failing to comply “with the duty to objectively

¹³² IACHR. [Annual Report of the Inter-American Commission on Human Rights 2014](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2014. Para. 65.

¹³³ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 139.

¹³⁴ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 200.

¹³⁵ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 194. Para. 145; I/A Court H. R. *Case Perozo et al vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Serie C No. 195, para. 157.

¹³⁶ *Diario Hoy*. May 20, 2015. [La AFIP profundiza los aprietes contra el diario Hoy](#); *Diario Hoy*. May 26, 2015. [Apretado de la AFIP al diario Hoy: Denuncian falsedades y hasta piden que declare un muerto](#); Fundación LED. May 26, 2015. [Preocupación por el hostigamiento al “Diario Hoy” de La Plata](#).

convey accurate information” and for allowing “information to be conveyed that ended up defaming” the governor.¹³⁷

79. In August, Civil Chamber No. 1 of Río Cuarto, Córdoba, ordered journalist Hernán Vaca Narvaja, director of the magazine *El Sur*, to pay 75,000 Argentine pesos in “pain and suffering” to the family of Nora Dalmasso, who was murdered in 2006, because of their journalistic coverage of the crime investigation. The Appeals Chamber upheld the civil trial court’s decision, although it lowered the amount of the damages. The journalist announced that he would appeal the decision to the Superior Court of Justice.¹³⁸

80. The Inter-American case law and doctrine has specified that laws establishing limitations on freedom of expression must be drafted in the clearest and most precise terms possible, as the legal framework must provide legal certainty to citizens.¹³⁹ This requirement is even more important in the case of limitations to freedom of expression imposed under the criminal law. On this matter, the Inter-American Court has stated that these types of limitations must additionally satisfy the requirements of strict legality, in keeping with Article 9 of the American Convention: “If the restriction or limitation is under criminal law, it is important to observe the strict requirements characteristic of the criminal codification to satisfy the principle of legality.”¹⁴⁰ Specifically, this means it is necessary to “use strict and unequivocal terms, clearly defining the criminal conduct,”¹⁴¹ which entails “a clear definition of the illegal conduct, which sets forth its elements and makes it possible to distinguish it from non-punishable behavior or illegal activities punishable with non-criminal measures.”¹⁴²

81. 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.”

82. 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.”

¹³⁷ Juzgado Civil y Comercial N° 1 de la provincia de Formosa. May 29, 2015. *Insfran, Gildo c/Hernandez, Gabriel y/u otros s/ ordinario (Daños y perjuicios)*. Available at: [http://www.elcomercial.com.ar/images/files/Fallo_Insfran-Hernandez\(2\).pdf](http://www.elcomercial.com.ar/images/files/Fallo_Insfran-Hernandez(2).pdf); Formosa Noticias. June 10, 2015. *El fallo completo de los 2 millones de pesos a favor de Insfran*; Perfil.com. June 9, 2015. *Dos periodistas deberán pagar 2 millones de pesos por criticar a Gildo Insfran*; La Nación. June 9, 2015. *Periodistas formoseños deberán indemnizar con 2 millones de pesos al gobernador Gildo Insfran*; La Nación. June 10, 2015. *Formosa: la jueza justificó el fallo que obliga a los periodistas a pagarle dos millones de pesos al gobernador*.

¹³⁸ Perfil. August 12, 2015. *Polémico fallo contra un periodista por el caso Nora Dalmasso*; La Mañana de Córdoba. August 12, 2015. *Un periodista, el único condenado en relación al crimen de Nora Dalmasso*; Cispren. August 12, 2015. *Caso Dalmasso / El Cispren y la CTA repudian fallo que confirma condena contra el periodista Hernán Vaca Narvaja*.

¹³⁹ IACHR. *Annual Report 2009. Annual Report of the Special Rapporteur for Freedom of Expression*. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para 70.

¹⁴⁰ I/A Court H. R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55

¹⁴¹ I/A Court H. R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55

¹⁴² I/A Court H. R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55

G. Direct and Indirect Censorship

83. On March 13, a notice was received at the offices of the magazine *Noticias* from the Legal Affairs Director of the Secretariat of Intelligence stating that a criminal complaint would be brought against the magazine if it published a list naming the 138 new intelligence agents that had been recruited in pro-government organizations by the Secretary of Intelligence, Oscar Parrilli. The Secretariat of Intelligence warned that if the magazine disclosed this information it would be violating the Intelligence Act (Law No. 25.520), which establishes that persons who access intelligence information must “maintain the strictest secrecy and confidentiality.”¹⁴³ On March 19, after the magazine published the report, Parrilli filed a criminal complaint against the president of *Editorial Perfil*, Jorge Fontevicchia; the director of the magazine *Noticias*, Edi Zunino, and journalist Rodis Recalt.¹⁴⁴

84. On June 12, employees of Public Television news channel *Canal 7* released a statement condemning censorship and the partisan use of State media on behalf of then-candidate for the Head of the Government of Buenos Aires Mariano Recalde from the *Frente para la Victoria* party. They asserted an “unacceptable partisan use of the Public Television news,” and compared the differences in screen time allotted to each candidate. The employees complained that the channel’s management prevented an interview with *Frente Renovador* candidate Sergio Massa. They asserted that similar decisions were made with respect to other opposition candidates.¹⁴⁵

85. Journalist Ricardo Astete, of radio station *FM 99.5* of Comodoro Rivadavia, in the Province of Chubut, was ordered by a court to abstain from disseminating information related to cases pending before the Federal Court of Comodoro Rivadavia. Astete was sued after publishing the content of several wiretaps that implicated politicians from that city in drug trafficking and money laundering, and the trial court judge ordered him not to disclose information about this or any other judicial investigations.¹⁴⁶

86. In July, journalist Roberto Navarro, host of the program “Economía Política” on *C5N*, complained of being pressured by the government of the city of Buenos Aires, then headed by PRO political Mauricio Macri, after broadcasting a video in which economists closely associated with that party expressed some ideas about the Argentine economy. According to the journalist, when the program went to a commercial break, the station’s owner called him to say that the city government’s press officer, Miguel de Godoy, had told him to “taken down” the report, or they would “sever ties.”¹⁴⁷ In September, users of the *Cablevisión* cable service, owned by *Grupo Clarín*, complained on social media of signal problems during broadcasts of “*Economía Política*,” which had aired criticism of then-Presidential candidate Mauricio Macri by the opposition group *Cambiamos*.¹⁴⁸

87. On September 26, the radio station *FM News 104.3* of the city of Río Gallegos, in the Province of Santa Cruz, was shut down. That day, two AFTIC officials appeared at the station and informed its owner, Hugo Omar Moyano, that the station was interfering with the frequency band assigned to the Argentine Air Force, and therefore had to be deactivated. The owner interpreted the shutdown as a measure to “silence” the

¹⁴³ Perfil.com. March 13, 2015. [La amenaza de la SIDE a NOTICIAS | La guerra de espías por Edi Zunino](#); Fundación LED. March 15, 2015. [La Secretaría de Inteligencia intenta censurar la publicación de la revista “Noticias”](#).

¹⁴⁴ La Nación. March 23, 2015. [ADEPA condenó el pedido de Parrilli](#); Perfil.com. March 19, 2015. [Edi Zunino sobre la cautelar de la exSIDE contra NOTICIAS: “Esto es un intento de censura previa”](#).

¹⁴⁵ Trabajadores de prensa Canal 7. June 12, 2015. [Censura y uso partidarios de los medios públicos](#); Tribuna. June 13, 2015. [En la TV Pública hay censura y uso partidario](#); La Nación. June 13, 2015. [Trabajadores de la TV Pública denuncian censura y el uso político partidario de la pantalla](#).

¹⁴⁶ Fundación LED. July 23, 2015. [Censuran a periodista en la provincia de Chubu](#); Perfil.com. July 21, 2015. [Chubut | La Justicia obliga a periodista a levantar las escuchas del escándalo](#).

¹⁴⁷ Perfil.com. July 27, 2015. [El periodista Navarro denunció “un apriete” del PRO: “Pidieron mi cabeza”](#); Télam. June 27, 2015. [Roberto Navarro sufrió “un apriete” tras difundir el verdadero plan económico del PRO](#).

¹⁴⁸ Minuto Uno. September 14, 2015. [Denuncian que Cablevisión cortó el programa de Roberto Navarro en C5N](#); El Destape Web. September 14, 2015. [Denuncian que Cablevisión corta la señal de C5N durante el programa de Roberto Navarro](#).

radio station, in retaliation for its independent political position, and he submitted a filing to the AFTIC, challenging the proceeding.¹⁴⁹

88. On November 11, the Argentine Journalism Forum (FOPEA) released a report entitled “The State of Television Journalism in the City of Buenos Aires,” based on qualitative surveys of television station employees conducted between August and September 2015. According to this research, “At nearly every channel, both regular and cable, journalists complained of serious censorship and self-censorship problems.” At some stations, “acts of corruption are ignored,” according to their affinity with the government. In addition, “At some channels, journalists cite a major absence of freedom, the manipulation of news, the imposition of content (especially partisan politics), and the excessive prioritization of certain voices to the detriment of all others.” According with the report certain media outlets are “enormously dependent on advertising,” whether State or private, and that “journalists are penalized or punished for reporting that affects the interests of the advertisers.”¹⁵⁰

89. Principle 5 of the IACHR’s Declaration of Principles on Freedom of Expression states that: “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression”.

90. In addition, principle 13 of the IACHR’s Declaration of Principles on Freedom of Expression 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. 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.”

H. Access to Public Information

91. The Office of the Special Rapporteur observes that Argentina continues without adopt a federal law which will guarantee the access to public information held by the State, this situation deprives people of having an accessible, effective and appropriate remedy to ensure the right of access to public information in that important statewide. In March, a high-level workshop was held in Buenos Aires on equal access to public information, organized by the Department of International Law of the Organization of American States and the Honorable House of Representatives of the Argentine Nation. The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), took part in the workshop as part of the Office of the Special Rapporteur’s work to promote the enactment of a law that guarantees access to public information in light of the standards of the Inter-American Human Rights System.¹⁵¹

92. 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

¹⁴⁹ Fundación LED. September 30, 2015. [Preocupación por el cierre de la emisora FM NEWS de la provincia de Santa Cruz](#); OPI Santa Cruz. September 28, 2015. [En plena campaña política, sospechosamente, la AFTIC baja a Radio News por “interferencia aeroportuaria”.](#)

¹⁵⁰ Foro de Periodismo Argentino (FOPEA). November 11, 2015. [Estado de situación del periodismo televisivo en la ciudad de Buenos Aires.](#)

¹⁵¹ Organization of American States (OAS). March 10, 11 and 12, 2015. [Taller de Alto Nivel sobre Acceso Equitativo a la Información Pública.](#)

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.”

93. The Office of the Rapporteur reiterates that the State has an obligation to adjust its domestic legal code to international standards on access to information, including by: a) implementing an adequate legal framework; b) removing legal or administrative obstacles that impede access to information; c) promoting the right of access within all of the State’s entities and authorities, through the adoption and enforcement of rules and procedures and through the training of public officials on the custody, administration, filing and provision of information; and (d) in general terms, adopting public policy that is favorable to the full exercise of this right.¹⁵²

I. National Broadcasts and Use of Public Television

94. On May 8, opposition Congressman Mario Negri, president of the *Unión Cívica Radical* (UCR) bloc, filed a complaint against President Cristina Kirchner with the Office of the Ombudsman for Audiovisual Communications Services for the “systematic abuse” of national radio and television broadcasts.¹⁵³ The congressman complained that the president fails to respect the Audiovisual Communications Services Law (No. 26.522), which restricts the use of national government broadcasts to “serious, exceptional, or institutionally significant situations.”¹⁵⁴ The complaint alleges that, from the beginning of 2015 until early May, the president broadcast 15 speeches with a total airtime of 806 minutes. From the time the law entered into force on October 19, 2009, the president has made “at least” 117 nationally broadcast speeches, according to a report detailed in the complaint.¹⁵⁵

95. On October 2, the Inter American Press Association (IAPA) released its quarterly report on the situation of freedom of the press in the hemisphere. The IAPA found that Cristina Kirchner’s administration used the national broadcasts “with a proselytizing purpose.” According to the report on Argentina, from the beginning of the year to October, Kirchner spoke on a national network on nearly 40 occasions “to highlight her administration,” and on “repeated occasions” the broadcasts “have been a vehicle [for] defamatory statements directed against the press.”¹⁵⁶

96. The Office of the Special Rapporteur has acknowledged the authority of the President of the Republic and senior State officials to use the media for purposes of informing the public about prevailing issues in the public interest; however, the exercise of this power is not absolute. The information that governments convey to their citizens through nationally broadcast presidential speeches must be strictly necessary to address the urgent need for information about issues of clear and genuine public interest, and for the length of time strictly necessary to transmit that information. In this respect, both the IACHR and its Office of the Special Rapporteur,¹⁵⁷ like some national bodies of States party to the American Convention, applying international standards, have indicated that, “not just any information justifies the interruption by the President of the Republic of regularly scheduled programming. Rather, it must be information that could

¹⁵² IACHR. Office of the Special Rapporteur for Freedom of Expression. [The inter-American legal framework regarding the right to access to information](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 1/09. December 30, 2009.

¹⁵³ El Observador/EFE. May 14, 2015. [Denuncian a Cristina kirchner por "abuso" de cadena nacional](#); Clarín. May 14, 2015. [Denuncian a Cristina por el abuso de la cadena nacional](#).

¹⁵⁴ [Ley 26.522. Servicios de Comunicación Audiovisual y reglamentación](#). “Article 75 – Nationwide or provincial television and radio broadcast. The national Executive Branch and provincial Executive Branches may, in serious, exceptional situations or of institutional significance, provide for the integration of a national or provincial radio and television broadcast, as appropriate, which will be mandatory for all licensees.”

¹⁵⁵ Mario Negri’s official website. May 10, 2015. [Negri denunció a CFK por abuso de cadena nacional](#); La Nación. May 10, 2015. [Cristina ya lleva 76 horas de cadena nacional desde que está la ley de medios](#).

¹⁵⁶ Inter American Press Association (IAPA). October 2, 2015. General Meeting, Charleston, South Carolina. [Informe sobre Argentina](#).

¹⁵⁷ IACHR. [Report on the Situation of Human Rights in Venezuela](#). Chapter VI (Right to Freedom of Expression and Thought). OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Para. 487.

be of interest to the masses by informing them of facts that could be of public significance and that are truly necessary for real citizen participation in public life.”¹⁵⁸

97. Additionally, Principle 5 of the IACHR’s Declaration of Principles states that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

J. Internet and Freedom of Expression

98. On May 5, the 1st Division of the National Appeals Chamber for Criminal and Correctional Matters upheld the dismissal of the case against the owners of the web platforms *Taringa!* and *Planeta Sedna*, which originated with a complaint by María Kodama, the widow of author Jorge Luis Borges, for the alleged infringement of intellectual property rights. In April 2014, Kodama brought suit against the websites, which duplicated or facilitated the duplication of texts authored by Borges. The Appeals Chamber upheld the lower court’s decision and held that intermediary Internet companies cannot be held responsible for content shared by users through their platforms. According to the judgment—which cites an October 28, 2014 decision of the Supreme Court in a case against Google—the companies are “intermediaries” whose “sole function is to serve as a link.” According to the high court, “the ‘search engines’ do not have a general obligation to supervise or monitor the content posted on the web by those responsible for each web page; therefore, in principle, they are not responsible for content they have not created. The only obligation they do have is when they have effectively become aware of the unlawfulness of content that is not theirs and they fail to take a diligent stance on the matter by blocking it.” Nevertheless, in the case at hand, the Court held that “it is undisputed that the content called into question in the complaint was found through links redirecting users from the complained-of pages; in other words, it was not part of their content, but rather someone else’s material. As such, no positive act of unlawful duplication of another person’s work has been proven, nor a violation of the objective duty of care, because, as previously stated, there is no obligation to conduct advance verification of the material that is subject to exchange; rather, [the obligation arises] later, once it is reported,” concluded the Court.¹⁵⁹

99. The 2nd Division of the Federal Court for the Judicial Review of Administrative Action issued a judgment ordering the creation of a special Value Added Tax (VAT) regime for print and audiovisual media. The Court admitted a complaint filed in 2004 by several journalistic organizations after the administration of Eduardo Duhalde repealed a provision establishing a special regime for the payment of VAT by the media. In its judgment, the Court stated that maintaining the current tax burden poses the “risk that the sector’s companies could disappear.” The government reportedly appealed the judgment.¹⁶⁰

100. An anti-discrimination bill was introduced in the House of Representatives in July by a group of pro-government legislators. The bill was studied and approved by the Human Rights and Guarantees Committee but, as of the writing of this report, had not yet gone to the House for its consideration. The bill contains provisions that are cause for concern to some legislators, journalism organizations, and defenders of

¹⁵⁸ IACHR. [Annual Report 2014. 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. 13. March 9, 2015. Para. 457; IACHR. [Annual Report 2014. 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.149. Doc. 50. December 31, 2013. Para 285; IACHR. [Declaration of Principles on Freedom of Expression](#). Principle 5.

¹⁵⁹ Taringa!. May 6, 2015. [Taringa! fue sobreesida en el caso Kodama](#); La Nación. May 6, 2015. [La Justicia sobreeseyó a Taringa! de la denuncia presentada por María Kodama: apelarán el fallo](#).

¹⁶⁰ El Día. November 3, 2015. [La Justicia ordenó crear un IVA especial para medios de prensa](#); La Prensa. November 2, 2015. [La Justicia ordenó crear un IVA especial para los medios](#).

freedom of expression.¹⁶¹ For instance, there is concern over Article 21, which seeks to control user comments published on the Internet. The article establishes that website administrators that allow users to post content or comments are required to “provide information on the discriminatory nature of the content and the respective laws in force” and “to provide for and make public a method of communication whereby users can denounce and/or request the removal of material that is in violation.” In addition, it establishes that the press, news agencies, online newspapers, and digital magazines with platforms that allow for user-generated content must provide this information “through the automatic activation of a window whose terms must be accepted by the user,” and “take the measures necessary to prevent the dissemination of discriminatory content.” The bill considers discriminatory any act or omission that “through stereotypes, insults, ridicule, humiliation, denigration, messages, values, icons, or signs, transmits and/or duplicates dominance and/or inequality in social relationships, normalizing or fostering exclusion or segregation based on discriminatory pretenses.” In addition, it proposes to increase the penalties for crimes committed as a result of persecution or hatred motivated by reasons including gender, sexual orientation, ethnicity, race, or skin color. It also proposes the imposition of prison sentences from one month to three years against any person who “by any means encourages or incites persecution, hatred, violence, or discrimination against a person or group,” or forms part of, or finances, an organization or promotes propaganda “based on ideas or theories of the superiority or inferiority of a group of persons, with the aim of justifying or promoting discrimination.”¹⁶²

101. The Office of the Special Rapporteur considers that, without prejudice to the legitimate aim of the drafters of the proposal, in relation to the promotion of a digital space free from discrimination and intolerance, it is clear that the law transcribed above, if passed as has been presented, will have a complex impact on the free flow of Internet content in this jurisdiction. The wording does not seem to acknowledge the role and responsibility of at least two key players in the circulation and provision of information on the Internet: the so-called “middlemen” and the media operating in digital space.¹⁶³

102. In its report on Freedom of Expression and the Internet, the IACHR Office of the Special Rapporteur emphasized the significance and transformative nature of the Internet on the exercise of the right to freedom of expression and the promotion of real-time exchange of information and opinions on broad and diverse sectors of the population. It also stressed the potential of the Internet to promote the full enjoyment and exercise of other human rights, and to facilitate access to goods and services.¹⁶⁴

103. As the Special Rapporteur pointed out on the promotion and protection of the right to freedom of opinion and expression of the UN, it cannot be ignored that the entire regulatory framework applicable to the protection of the right to freedom of expression must be applied in the same way to the Internet, and therefore, any restrictions to be implemented should have the same rigor as when the expression is done using any other means of expression.

104. Consequently, when there is content or speech that is openly illegal or not protected by the right to freedom of expression (such as war propaganda and hate speech that constitutes incitement to violence, direct and public incitement to genocide, and child pornography), it is permissible to adopt

¹⁶¹ Info News. July 23, 2015. [La Ley Antidiscriminatoria, en medio de la polémica: ¿promueve la censura?](#); Los Andes. July 21, 2015. [Un polémico proyecto de ley busca controlar los comentarios en internet](#); La Nación. July 19, 2015. [Avanza un proyecto de ley contra los comentarios en Internet](#); Infobae. July 21, 2015. [Preocupación por la ley para censurar comentarios en la web](#); Fundación LED. July 21, 2015. [Avance de legislación restrictiva de la libertad de expresión](#); Centro de Estudios Legales y Sociales (CELS). July 22, 2015. [Sobre el proyecto de Ley Nacional contra la Discriminación](#).

¹⁶² Cámara de Diputados de la Nación. Comisión de Derechos Humanos y Garantías. [Dictamen de las Comisiones y proyecto de Ley Nacional contra la Discriminación](#).

¹⁶³ IACHR. Office of the Special Rapporteur of Freedom of Expression. Technical note on the National Bill against discrimination and its adaptation to international standards regarding freedom of expression and the Internet. Note sent to the Permanent Mission of Argentina at the OAS. November 30, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹⁶⁴ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

mandatory measures to block and filter specific content. In these cases, the measure must undergo a strict test of proportionality and shall be carefully designed and clearly limited in scope so as not to affect legitimate speech deserving of protection. In other words, filtering or blocking measures should be designed and implemented in a manner that they impact, exclusively, the content known to be illegitimate without affecting other content.

105. In all cases, the restrictive measures should include guarantees to prevent abuse, such as transparency regarding the contents whose removal has been ordered, as well as detailed information on its need and justification. Also, any such measure must be adopted only when it is the only measure available to achieve an overriding purpose and is strictly proportionate to achieving that aim. The above restrictions cannot be used to limit the distribution of information regarding specially protected speech.

106. Moreover, it can not impose an ex-ante measure to prevent the circulation of content that has the presumption of protection, from a filter ordered either by governments or suppliers that can not be controlled by the end user, since it constitutes a form of prior censorship and is not a justifiable restriction on freedom of expression.

107. Finally, returning to the second part of the article under analysis, it also sets obligations for media published in digital formats. To the obligations discussed above, the project imposes the need to “have the information (mentioned on the anti-discrimination law) in a window whose terms must be accepted by the user before accessing to make the comment or upload any content, and adopt the necessary measures to prevent the dissemination of discriminatory content.”

108. It may be concluded that this burden imposed on the media amounts to an excess in regulation, which will also impose an obligation to censor the comments of participants in a public forum and which will surely have an inhibitory effect on platforms that allow the circulation of opinions on the Internet. It is not about moderating the discussion, which under certain conditions is reasonable, but about putting the medium in the place of a censor. It should be noted that all comments must be monitored before publication. As a result, intermediaries, digital media and blog operators shall have considerable incentives to stop offering operational functions for comments and public fora, with the ensuing fear of being held accountable possibly leading them to self-censorship.

K. Communications Surveillance

109. On August 16, journalist Jorge Lanata filed a complaint alleging that his computer was infiltrated with a spyware program that would enable remote access to his email and text messages. In his complaint, Lanata maintained that he was the target of “illegal intelligence work” carried out by members of the National Intelligence System.¹⁶⁵

110. On October 20, Congresswomen Laura Alonso and Patricia Bullrich, of the *Propuesta Republicana* (PRO) party, filed two complaints alleging unlawful spying by State intelligence bodies on politicians, prosecutors, judges, journalists, and former members of the Secretariat of State Intelligence (SIDE). The lawmakers received a list in Congress of the names of some 100 individuals supposedly under surveillance, including the members of the Supreme Court, prosecutors, political figures such as Mauricio Macri, Sergio Massa, and Elisa Carrió, entertainment celebrities, and dozens of journalists, including Alfredo Leuco and Diego Leuco, Luis Majul, Jorge Lanata, Marcelo Longobardi, Hugo Alconada Mon, Carlos Pagni, and Magdalena Ruiz Guiñazú. According to the congresswomen’s complaint, the surveillance involved *Whatsapp* messages, emails, personal computers, and telephones, and was allegedly conducted from the headquarters of the Secretariat of Intelligence.¹⁶⁶

¹⁶⁵ Inter American Press Association. August 20, 2015. [La SIP solicitó una investigación por ataque cibernético contra periodista argentino](#); Clarín. August 16, 2015. [Lanata denunció que le infiltraron el mismo virus que a Nisman en su PC](#).

¹⁶⁶ La Nación. October 20, 2015. [Denuncian espionaje de la Secretaría de Inteligencia a jueces, políticos y periodistas](#); Clarín. October 20, 2015. [Denuncian que el Gobierno hizo espionaje ilegal sobre políticos, jueces y periodistas](#); Radio Mitre October 21, 2015.

111. 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.¹⁶⁷

112. In the joint declaration by the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights on surveillance programs and their impact on freedom of expression, noted 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.”

L. Community Broadcasting

113. On September 4, Federal Police officers and employees of the Federal Information Technology and Communications Authority (AFTIC) conducted a raid and seized the broadcasting equipment of the community television station *Antena Negra*, in Buenos Aires, pursuant to a judicial warrant issued in a case brought by a security company that accused the station of interfering in communications.¹⁶⁸

114. The World Association of Community Radio Broadcasters (AMARC) Argentina released a statement expressing its “total condemnation and indignation” over the warrant. “This incident is indefensible in view of the current Law 26.522 on Audiovisual Communications Services, which reserves 33% of the spectrum for the non-profit sector. The State’s delay in effectively complying with this right and with the legal system governing the radio spectrum gives rise to these situations where the non-profit sector is at the biggest disadvantage, historically postponed,” they complained.¹⁶⁹

115. Article 50 of the Audiovisual Communications Services Law establishes that in the event the license is terminated, “the implementing authority may provide transition measures to ensure the continuity of service until it is normalized, for purposes of safeguarding the public and social interest.”¹⁷⁰

116. On September 10, AFSCA Communications Director Fernando Torrillate stated in a press release that the agency is aware of and values “the work of organizations like *Antena Negra*” and “their willingness to communicate without affecting the rights of other stations and of the audiences.” “Therefore,

[Denuncian espionaje a políticos, periodistas y artistas](#); Perfil.com. October 20, 2015. [Bullrich y Alonso denuncian espionaje a políticos, periodistas y jueces](#).

¹⁶⁷ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para 416.

¹⁶⁸ Antena Negra TV. September 4, 2015. [Comunicado de prensa Antena Negra TV](#); La Nación. September 5, 2015. [Decomisaron el transmisor y sacaron del aire un canal de TV comunitaria](#); Infobae. September 4, 2015. [Critican a la AFSCA tras el decomiso de los equipos de un canal comunitario](#); Centro de Estudios Legales y Sociales (CELS). September 11, 2015. [Sobre la causa penal contra el canal de televisión Antena Negra](#).

¹⁶⁹ AMARC Argentina. September 4, 2015. [Repudiamos la intervención y secuestro de equipos de Antena Negra TV](#).

¹⁷⁰ [Ley 26.522. Servicios de Comunicación Audiovisual y reglamentación](#). “Article 50. If the termination of the license for any of the reasons specified occurs, the enforcement authority may provide for transitional measures to ensure continuity of service until normalization in order to protect the public and social interest.”

we want them to recover the equipment that was seized from them by the Judiciary and to normalize their situation as appropriate, participating in the digital television bidding processes we have initiated,” he affirmed. He also reported that the members of the media outlet were in contact with the agency “in the mutual pursuit of the regularization of their legal situation.”¹⁷¹ Later, the agency submitted a filing to the Criminal and Correctional Court requesting the resolution of the dispute through existing administrative proceedings. The AFSCA stated in its brief that it is “with this agency that the complaints of interference should have been filed by those who may have been affected,” and added that “in cases like these, the criminal law should be considered as a last resort.” It maintained that “it is evident that the Audiovisual Communications Services Law, consistent with the international human rights treaties and other soft law instruments, discourages the use of the criminal justice system as the primary mechanism.”¹⁷²

117. On September 16, the Office of the Ombudsman for Audiovisual Communications Services filed an *Amicus Curiae* brief requesting the decriminalization of the *Antena Negra* case and the return of its equipment. The brief stressed the importance of not using the criminal law and recommended the regularization of the dispute through the administrative proceedings provided for in the Audiovisual Communications Services Law. The Office of the Ombudsman emphasized that “Community, alternative, and popular communication is not a criminal act.” The Judge in charge admitted the brief, stating that it was a “valuable contribution” to the court.¹⁷³ In late October, the judge dismissed the charges against the community broadcaster and ordered the return of its equipment, which was recovered on November 2.¹⁷⁴

118. On October 19 the Office of the Ombudsman for Audiovisual Communications Services sent to AFSCA a resolution raising the need to regularize the situation of the community radio station in Córdoba *La Ranchada*. According to the agency report, after receiving complaints from the audience by the unstable situation in the radio license, the Ombudsman recommended to the AFSCA the need to “regulate the specific legal status of community radio stations.” “It would be desirable to implement a legal and administrative tool that allows to enforce the guarantee of reserve of spectrum to the non-profit sector, specifically the community sector,” said the Ombudsman resolution.¹⁷⁵

119. 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.

M. Government Advertising

120. According to a study conducted by the newspaper *La Nación* on the allocation of government advertising between July 2009 and June 2015, based on data released by the Office of the Cabinet Chief and other information obtained through requests for access to information by the organizations *Poder Ciudadano*

¹⁷¹ AFSCA. September 10, 2015. [AFSCA trabaja para que Antena Negra recupere sus equipos y se regularice.](#)

¹⁷² AFSCA. September 28, 2015. [AFSCA solicitó a la Justicia una resolución “no estigmatizante” para el caso Antena Negra TV.](#)

¹⁷³ Defensoría del Público. No date. [La Defensoría del Público pidió la descriminalización del Caso Antena Negra y la devolución de equipos.](#)

¹⁷⁴ Antena Negra TV. November 5, 2015. [Antena Negra, más cerca de volver al aire;](#) QUIPU. October 27, 2015. [Sobreseen a Antena Negra TV tras el allanamiento del 4/9/15.](#)

¹⁷⁵ Office of the Ombudsman for Audiovisual Communications Services. October 19, 2015. [Resolución N° 123/2015.](#) Also see: [La Defensoría del Público recomienda proteger a las radios comunitarias.](#)

and the Fundación LED, the total amount earmarked for this item during that period was 6.578 billion Argentine pesos. Approximately 50% of these funds were concentrated on fifteen media groups, twelve of which are in the hands of business owners affiliated with the party in government. These data represent the funds provided for in the national budget for the “dissemination of acts of government,” and do not include government advertising by agencies such as the National Social Security Administration, the AFIP, or state enterprises. According to the calculations of *La Nación*, based on official figures, the total amount of funds earmarked by the National Government for government advertising grew from \$ 46.2 million in 2003 to \$ 1.66 billion 2014.¹⁷⁶

121. According to a report from the Fundación LED, the national government budgeted 1,203,204,414 Argentine pesos for 2015, which was later increased by 611,000,000 pesos.

122. On September 10, Mayor Mario Meoni of Junín, in the Province of Buenos Aires, informed the local newspaper *Democracia* that he was going to discontinue municipal advertising with the paper because he was “displeased” with its editorial line.¹⁷⁷

123. On September 18, the Freedom of the Press and Information Committee of the Argentine Association of Journalism Entities (Adepa) released its quarterly report, which noted that the Argentine State spends 12 million pesos per day on official advertising. “The list of beneficiaries of government advertising continues to be topped by groups established with or fostered by State funds, which have scant audiences but are pumped up by enormous budget allocations that defy reason,” the organization criticized.¹⁷⁸

124. In its quarterly report on the situation of freedom of the press in the hemisphere, released on October 2, the Inter American Press Association (IAPA) reported that expenditures on official government advertising during the first quarter of 2015 exceeded US \$145 million. The organization maintained that the placement of government advertising was “arbitrary” and reflected, in large measure, “electoral interests.”¹⁷⁹

125. 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.”

N. Office of the Ombudsman for Audiovisual Communications Services

126. The Office of the Special Rapporteur underscores the work done by the Office of the Ombudsman for Audiovisual Communications Services, created by Law 26.522, which allows listeners and television audiences to submit their questions, complaints, and reports. It especially notes its non-punitive focus and its work to promote the right to freedom of expression in connection with the need for the media to respect human rights, the dignity of persons, and to take special account of the situation of disadvantaged groups. The Office of the Ombudsman “seeks to ensure that radio and television do not promote or incite

¹⁷⁶ La Nación. November 1, 2015. [Pauta oficial 2009-2015: todos los nombres y los montos cobrados](#).

¹⁷⁷ *Democracia*. September 13, 2015. [Meoni cortó la publicidad en *Democracia* y pretende ceder un predio a *La Verdad*](#); InfoGEI. September 14, 2015. [Rechazan el retiro de pauta municipal al diario *Democracia de Junín*](#).

¹⁷⁸ Asociación de Entidades Periodísticas Argentinas (Adepa). September 18, 2015. [Adepa pidió restaurar la plena vigencia de la libertad de prensa](#).

¹⁷⁹ Inter American Press Association. October 2, 2015. General Assembly, Charleston, South Carolina. [Informe sobre Argentina](#).

discriminatory treatment, the undermining of human dignity, symbolic violence against women, or acts harmful to the environment or to human health and the safety of children and adolescents.”¹⁸⁰

127. Thus, for instance, on February 20, after receiving a request for the matches played by the team from the San Lorenzo de Almagro Athletic Club in the FIFA World Cup to be broadcast free of charge on open television, the Office of the Ombudsman issued a resolution recommending that the Federal Audiovisual Communications Services Authority (AFSCA) undertake to “disseminate the rules applicable to the proceeding for the registration of events of relevant interest.”¹⁸¹

128. After receiving requests from audiences because they were unable to access the open digital television service in Tandil, the Office of the Ombudsman channeled the complaints and, in dialogue with the company *Empresa Argentina de Soluciones Satelitales Sociedad Anónima* (ARSAT), recommended the prompt solution of the issues. ARSAT responded by taking the steps necessary to ensure that the installation was done effectively and that service could be established. It later reported to the Office of the Ombudsman that the open digital terrestrial television services were working in Tandil.¹⁸²

129. The Office of the Ombudsman held two meetings with executive producers and editors of the news channel *C5N*, after receiving and examining questions and complaints submitted by its audiences. One of the first acts taken by the Office of the Ombudsman with respect to the matter followed a complaint from teachers about the broadcasting of erroneous images in a case of violence against children at a daycare center. At the time, *C5N* provided for the reading of a statement that corrected the inaccurate information. The Office later handled another complaint concerning the improper use of the image of two young men in connection with the murder of a police officer. Discussions at the meeting addressed complaints received by the Office of the Ombudsman about the coverage of police news, gender-based violence, and disasters, about representations and speech referring to young people—especially those involved in the criminal justice system—as well as about women and sexual diversity.¹⁸³

130. The Office of the Ombudsman held a training workshop on the rights of the radio and television public on the radio station *La Voz de Paraná*, as part of the reparation of rights to which the station’s directors had agreed following the complaints received about the events of March 17 during the program “*La Saranda*,” “which violated the rights of the young woman interviewed, her dignity, her privacy, and her right to live free from violence.” During the workshop, “particular emphasis was placed on the rights of children and adolescents, and on the different forms of violence toward women, in particular symbolic and media violence.”¹⁸⁴

131. The Office of the Ombudsman held a working roundtable, which included journalists, representatives of public agencies, and civil society organizations, to reflect on the treatment of issues concerning older adults in the audiovisual media.¹⁸⁵

132. On October 19, the Office of the Ombudsman for Audiovisual Communications Services sent a resolution to the AFSCA setting forth the need to rectify the situation of the community radio station *La Ranchada* in Córdoba. According to reports, after receiving complaints from audiences about the instability of the radio station’s licensing status, the Office of the Ombudsman recommended to the AFSCA that it needed to “normalize of the specific legal situation of community radio broadcasters.” “It would advisable to implement

¹⁸⁰ Defensoría del Público. Sin fecha. [¿Quiénes somos?](#)

¹⁸¹ Defensoría del Público. February 20, 2015. [Resolución N° 19/2015. Transmisión de partidos de fútbol - San Lorenzo.](#)

¹⁸² Defensoría del Público. No Date. [Luego de los reclamos del público ya está en funcionamiento la Televisión Digital Abierta en Tandil.](#)

¹⁸³ Defensoría del Público. No Date. [Reuniones de trabajo en la señal C5N.](#)

¹⁸⁴ Defensoría del Público. No Date. [Jornada de capacitación en radio La Voz de Paraná.](#)

¹⁸⁵ Defensoría del Público. No Date. [Mesa de trabajo para reflexionar sobre el tratamiento mediático de personas adultas mayores.](#)

a legal and administrative tool that would make it possible to enforce the guarantee of reserving spectrum for the non-profit sector, specifically the community sector,” the Office of the Ombudsman stated in its resolution.¹⁸⁶

133. In November, prior to the debate between presidential candidates Daniel Scioli and Mauricio Macri, the Office of the Ombudsman informed them “of the numerous complaints received from audiences in relation to the portrayal of women, the lack of federalism, and the right of accessibility in the debate,” so that “they will take these complaints into account when participating in the debate, in order to adequately protect the rights of the audiences and ensure that the debate reaches as many people as possible, with respect for equality between men and women, and for the federalism specific to our country.”¹⁸⁷

O. Other Relevant Situations

134. On June 23, the Superior Court of Justice of the Province of Córdoba dismissed two constitutional challenges brought by the media companies *Contenidos Mediterráneos SA* and *La Voz del Interior SA* against election laws No. 9.571 and No. 9.839, which require the print media in Córdoba to make one page per day available in their newspapers for the publication of political advertising by the parties during the 10 days leading up to each provincial election. The Argentine Association of Journalism Entities (ADEPA) and the Inter American Press Association (IAPA) expressed “concern” over these judgments, which upheld these laws. ADEPA stated in a press release that, “requiring a print media outlet to publish something that it does not wish to express is an act of censorship that is just as serious as an attempt to prevent the publication of specific editorial content.” According to the organization, the challenged laws equate the print media to audiovisual media, “in spite of the fact that the print media do not use the radio spectrum or other assets owned by the State.” “Therefore, this law infringes upon private property, since the existence of the print media does not depend on the granting of any concession. On the contrary, they are subject to the vicissitudes of the market and their only sources of funding are the sale of advertising space and the cover price of their issues,” said the organization in a statement.¹⁸⁸

¹⁸⁶ Defensoría del Público. October 19, 2015. [Resolución N° 123/2015](#). See also: [La Defensoría del Público recomienda proteger a las radios comunitarias](#).

¹⁸⁷ Defensoría del público. No date. [Argentina Debate: La Defensoría del Público informó a los candidatos los reclamos por igualdad de género y accesibilidad](#).

¹⁸⁸ Adepa. June 25, 2015. [Adepa deplora y advierte sobre normas restrictivas a la prensa en Córdoba](#); Inter American Press Association. June 29, 2015. [La SIP reprueba decisión de tribunal provincial en Argentina sobre leyes electorales](#); La Nación. June 25, 2015. [Un fallo obliga a los diarios de Córdoba a ceder gratis una página a los políticos para que hagan campaña: condena de ADEPA](#).

2. BAHAMAS

135. The Office of the Special Rapporteur knew of a case of possible indirect censorship, according to the available information which states that the radio show *Kreyol Connection* hosted by the journalist Loubby Georges at *Guardian Radio* was taken off the air in March, days after the Utilities Regulation and Competition Authority received a letter from the Ministry of Foreign Affairs and Immigration asking it to initiate an investigation to the program and a lawyer who did comments on air in February. The Minister said that the statements made by the lawyer in *Kreyol Connection* show encouraged people with Haiti origins to rebel against the current Government.¹⁸⁹

136. Principle 5 of the Declaration of Principles on Freedom of Expression of IACHR establishes: "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression".

3. BELIZE

137. The Minister of Works and Transport of Belize, Edmond Castro, filed a civil defamation lawsuit against *Great Belize Television* (Channel 5) and Alvarene Burgess for alleged damage to his reputation. Burgess had stated in interviews broadcast by the channel in 2013 that Castro wrote letters of recommendations for Asian nationals to obtain visas to enter Belize for a fee for personal gain. Appearing before the Supreme Court on May 15, Castro admitted having signed letters of invitation to individuals he did not know, but claimed that it was not in exchange for money. *Great Belize Television* stated it published the report after considering it a matter of public interest, and Burgess, who worked with Castro at the time of the events, argued that the allegations were true.¹⁹⁰ The charges were withdrawn by the claimant on July 3.¹⁹¹

138. 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".

139. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of IACHR establish: "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".

¹⁸⁹ Open letter by Haitian-Bahamian activist Loubby Georges. Persecuted by my own country. September 6, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Tribune 242. March 3, 2015. [Host Vows To Go On As Kreyol Connection Radio Show Axed](#); Tribune 242. February 27, de 2015. [Mitchell Files Complaint Over Radio Show](#).

¹⁹⁰ Plus tv. May 15, 2015. [Minister of State testifies in defamation case](#); Breaking Belize News. May 15, 2015. [Minister of State testifies in defamation case](#).

¹⁹¹ Belize News. July 4, 2015. [Edmon Castro discontinues defamation case against Alvarene Burgess](#); Channel 5. July 3, 2015. [Minister Castro Drops Bombshell & Lawsuit](#).

4. BOLIVIA

140. In a context of respect towards journalists in their exercise of freedom of expression in Bolivia, in which the support to the development of the community and indigenous broadcasting sector is highlighted, debates on the allocation of Government advertising were held due to the announcement made by a high public official who said that this resource would be used in a discretionary way according to the role each media outlets plays. The Commission highlights the will of the State to answer an information request sent in regards to this issue, and takes note of the information offered and the announcement made by the State that it would not have a discriminatory policy between media outlets on this important resource.

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

141. Erick Dávila, journalist for *Radio Fides* on January 15 was detained and beaten by the police after being mistaken for a jewelry store robber, even though he showed his credentials. The police officers seized a mobile phone and a recorder. He was detained for four hours.¹⁹²

142. On January 20, police lieutenant Jorge Casazola ordered the temporary arrest of Carlos Muñiz, journalist for *El Día* and *El Sol* newspapers. His arrest was ordered for photographing the Departmental Transportation Directorate [*Dirección Departamental de Tránsito*] façade. The lieutenant believed the journalists were photographing him and this gave rise to the incident.¹⁹³ The Editorial Edadsa S.A. Labor Union [*Sindicato de Trabajadores de Editorial Edadsa S.A.*] denounced a case of police abuse against journalist Carlos Muñiz and requested the government protect journalism. Mauricio Ovando Rojas, the director of the Santa Cruz de la Sierra Transportation Operating Agency [*Organismo Operativo de Tránsito de la ciudad de Santa Cruz de la Sierra*] apologized and promised it was an isolated incident that will not happen again.¹⁹⁴

143. On January 20, two police officers seized the mobile phone of *Radio Suprema* journalist Paolo Alcoba. They erased images of a seizure of five kilos of marijuana and the apprehension of two people in the Manteagudo city, even though the journalist identified himself as a reporter for the media outlet.¹⁹⁵

144. Carlos Ángel Quisberth Fernández, journalist for the *El Diario* morning show, was detained on March 8 in the city of Viacha while he was conducting an interview at the rehab center Qalauma for adolescents in conflict with the law with a youth interned who is charged for the death of a child. The prosecutor of the case justified the journalist's arrest for alleged obstruction of justice during the investigation stage when he showed up at the jail to interview one of the defendants. According to available information he had no communication for 24 hours and no opportunity to choose his own attorney¹⁹⁶.

¹⁹² Radio Fides Santa Cruz/Facebook. January 15, 2015. [Arresto y abuso policial a periodista!!](#); Tierra Plus. January 16, 2015. [Bolivia: Periodista de Santa Cruz fue detenido y golpeado por policías, periodistas piden garantías al Gobierno de Evo Morales](#); Los Tiempos. January 21, 2015. [Asociación boliviana de Prensa pide sanciones para agresores de periodistas](#); Eju!. January 16, 2015. [Confunden a periodista con ladrón y lo golpean tras atraco a relojería](#); El Deber. January 16, 2015. [Policía confunde a periodista con ladrón tras atraco a relojería](#).

¹⁹³ El Deber. January, 2015. [Asociación Nacional de la Prensa pide sanciones por agresión a periodistas](#); El Mundo. January 21, 2015. [Periodista es arrestado por sacar una foto en Tránsito](#); El Día. January 21, 2015. [Periodista es arrestado en tránsito por sacar fotos](#); El Diario. January 25, 2015. [Periodistas piden garantías](#); Asociación Nacional de la Prensa de Bolivia (ANP). January 23, 2015. [Alerta No. 005/15 – ANP pide sanciones para agresores de periodistas](#).

¹⁹⁴ El Diario. January 25, 2015. [Periodistas piden garantías](#); La Patria. January 28, 2015. [Jefe policial ofrece disculpas a periodista agredido](#). Asociación Nacional de Prensa de Bolivia (ANP). January 27, 2015. [Alerta No. 006/15 – Jefe policial ofrece disculpas a periodista agredido](#).

¹⁹⁵ El Diario. January 25, 2015. [Policías borran imágenes de operativo antidroga](#); Correo del Sur. January 21, 2015. [Decomisan dos kilos de marihuana](#).

¹⁹⁶ El Diario. March 10, 2015. [Periodista detenido ilegalmente](#); Eju!. March 10, 2015. [Vulneran libertad de prensa en Bolivia y apresan a periodista por investigar](#); Semanario Aquí. March 14, 2015. [Exigimos proceso debido y libertad para el periodista Carlos Ángel Quisberth Fernández](#); Erbol. March 9, 2015. [Detienen a periodista que fue a una cárcel a entrevistar](#); El Deber. March 11, 2015. [Hoy liberan a periodista arrestado por entrevistar](#); Terra. March 10, 2015. [Periodista boliviano va preso por entrevistar a reclusa](#); La Estrella. March 10, 2015. [En Bolivia un periodista va a prisión por entrevistar a una reclusa](#); Opinión. March 10, 2015. [Detienen a periodista que indagaba caso Alexander](#).

145. Tv Channel *Red Televisiva Católica Tv* cameraman Daniel Bedoya incurred head wounds on March 11 because of a rock thrown by drivers during a protest in La Paz. He was taken to the hospital and released two days later.¹⁹⁷

146. On March 14 *Red ATB Cochabamba* reporter José Miguel Manzaneda found the front of his house in Cochabamba stained with blood and with a paper that read: “watch yourself J.M.” According to reports the threats came about after the reporter alleged there were ties between the police and drug trafficking¹⁹⁸. *Red ATB* filed a formal complaint before the Special Forces to Fight Crime [*Fuerza Especial de Lucha Contra el Crimen*] (FELCC) over the threats to Manzaneda.¹⁹⁹ Journalist Escarley Pacheco from the same media outlet in Cochabamba, was threatened on March 23 via a letter left at her door with a bullet and alleged blood stains, according to *Red ATB Cochabamba* reports.²⁰⁰ The Minister of the Interior, Hugo Moldiz, offered “all guarantees” to journalists for them to carry out their activities and instructed the police to duplicate efforts to find the perpetrators who threatened and intimidated Manzaneda and Pacheco²⁰¹. After the alleged complaints the Federation of the City of Santa Cruz de la Sierra Press Workers [*Federación de Trabajadores de la Prensa de la ciudad de Santa Cruz de la Sierra*], demanded an “urgent reorganization of the National Police” in response to the threats.²⁰²

147. Cameramen Luis Miguel Oporto for *Red Uno*, and Erick Mayta for Channel 34, were beat with shovels on March 19 by Movement Towards Socialism (MAS) operatives while attempting an interview with the ruling party candidate for mayor, Édgar Patana. The cameras suffered considerable damage and were rendered useless, the photo reporters suffered minor injuries.²⁰³

148. Richard Mercado, forward for the *Club Deportivo Universitario de Sucre*, attacked journalist Jochen Rojas to the face on March 30 when the journalist was attempting to interview him. The soccer player denied the event. The journalist disseminated a video on social networks to refute the soccer player’s statements. In April Mercado was fined by the *club boliviano* for the aforementioned attack.²⁰⁴

149. Journalist Irene Torrez claimed she feared for her safety after she was allegedly struck on March 30 by a person identified as Alberto Lazo, the companion of the brother of the president Evo Morales. Alberto Lazo is allegedly an advisor for the Oruro Parliamentary Brigade.²⁰⁵ Torrez and Edwin Choque, her

¹⁹⁷ El Diario. March 17, 2015. [Camarógrafo de Tv fue agredido](#); Los Tiempos. March 19, 2015. [Defensor pide sancionar acciones violentas e intimidatorias contra periodistas](#); Televisión en Bolivia. March 17, 2015. [El camarógrafo de la Red Televisiva Católica Tv, Daniel Bedoya, sufrió heridas](#).

¹⁹⁸ Knight Center for Journalism in the Americas. April 8, 2015. [Two Bolivian journalists threatened after reporting on police scandals](#); NTN24. March 17, 2015. [Prensa boliviana reclama “garantías” tras ‘sangrienta’ amenaza a periodista en La Paz](#); Committee to Protect Journalists (CPJ). March 27, 2015. [Two Bolivian journalists threatened after reporting on police scandals](#).

¹⁹⁹ El Correo. March 16, 2015. [Periodistas de Cochabamba en emergencia por amenazas a reportero](#); El Día. March 17, 2015. [Prensa en emergencia por amenazas a un reportero](#).

²⁰⁰ Página Siete. March 23, 2015. [Exigen investigar amenaza de muerte contra periodista de ATB](#); La Razón. March 23, 2015. [Periodista de ATB recibe nota con amenazas de muerte](#).

²⁰¹ El País. March 25, 2015. [Gobierno: Ministro ofrece garantías para la prensa](#); Correo del Sur. March 24, 2015. [Ministro de Gobierno ofrece garantías para el trabajo de la prensa](#); Opinión. March 24, 2015. [Ministro de Gobierno ofrece garantías para periodistas amenazados](#).

²⁰² Periódico La Voz Del Trabajador De La Prensa/Facebook. March 25, 2015. [Pronunciamento. Conminatoria a la Policía Boliviana](#); El Diario. March 27, 2015. [Periodistas piden cambios en la Policía](#); La Patria. March 27, 2015. [Periodistas piden cambios en la Policía](#).

²⁰³ Inter American Press Association (IAPA). No date. [2015 – General Assembly - Charleston – South Carolina. Country reports: Bolivia](#); El Diario. March 24, 2015. [Golpean a camarógrafos de Tv](#); Televisión en Bolivia. March 24, 2015. [Los camarógrafos de la Red Uno, Luis Miguel Oporto, y de Canal 34, Erick Mayta, fueron agredidos a palos](#).

²⁰⁴ Correo del Sur/YouTube. March 31, 2015. [Richard Mercado golpea a periodista Jochen Rojas](#); El Universo/AFP. April 3, 2015. [Club boliviano multó al ecuatoriano Richard Mercado por golpear a periodista](#); Sport. April 1, 2015. [Detenido un futbolista por su brutal agresión a un periodista](#); Correo del Sur. March 31, 2015. [Te mostramos el video de la agresión de Richard Mercado contra periodista deportivo](#). El Comercio. April 3, 2015. [Universitario de Sucre multa a Richard Mercado por agredir a periodista](#).

²⁰⁵ Ejú. April 1, 2015. [Condenan agresión a periodistas y conminan a Hugo Morales, hermano del Presidente, a disculparse](#); Página Siete. April 1, 2015. [Periodista denuncia agresión del hermano del Presidente](#); Erbol. April 7, 2015. [Caso Hugo Morales: Periodista de PAT](#)

colleague for *Red Uno de televisión*, attempted to cover a discussion between transit police and the occupants of a vehicle driven by Lazo. Lazo attempted to snatch her video camera to avoid the video recording of the situation. According to a forensic doctor who placed Torrez under medical supervision for 4 days she sustained a blow to a rib and bruises on her arms.²⁰⁶

150. On May 14 while the journalist Tatian Castro from the *Opinión* newspaper was covering a public hearing in which the liberty of an imprisoned University Director was going to be decided, an official from the Departmental Court of Justice for Cochabamba [*Tribunal Departamental de Justicia de Cochabamba*] snatched the recorder and another officer deleted all sound recordings obtained during the hearing.²⁰⁷

151. Independent reporter Roger Romero Cossío of the city of El Alto, was struck by a group of people on June 3. According to available information this was revenge for the corruption he denounces on his television program.²⁰⁸

152. On July 4, the *Cambio* state newspaper web page was attacked. Said attack was attributed to the Chilean Hackers group that disseminated fake news about President Evo Morales being in an automobile accident.²⁰⁹

153. “*Masistas*” – referring to the Movement Towards Socialism [*Movimiento al Socialismo*] (MAS) operators- allegedly used Whatsapp messages to threaten journalist Yacuiba Nataly Herrera Vedia with burning her house and raping her for asking uncomfortable questions to Rudy Pantaleón, the Civic Committee for Yacuiba [*Comité Cívico de Yacuiba*] ex president and former ISA deputy governor. The journalist reported the event to the Special Force to Combat and Control Crime [*Fuerza Especial de Lucha Contra Crimen*] and they offered her protection.²¹⁰

154. Chilean reporters in Bolivia reported that during the early morning hours of September 24 they were subject to a “surprise” identification control in the hotel where they were staying even though they had the appropriate work visas. According to reports the journalists were in the country to document the reactions to the judgment for preliminary exceptions lodged before the International Court of Justice. This affected journalists from *Canal 13* and *Mega*. The authorities claimed it was a routine procedure.²¹¹

[denuncia amedrentamiento](#); El Diario. April 2, 2015. [Asociaciones de prensa contra agresión a periodistas](#); Los Tiempos. March 31, 2015. [Denuncian a hermano de Evo por presunta agresión y amenazas a dos periodistas](#); Asociación Nacional de la Prensa de Bolivia (ANP). April 6, 2015. [Alerta No. 027/15 – Periodista denuncia amedrentamiento](#).

²⁰⁶ Erbol. March 31, 2015. [Periodistas denuncian a Hugo Morales por agresión verbal](#); Erbol. April 7, 2015. [Caso Hugo Morales: Periodista de PAT denuncia amedrentamiento](#); El Diario. April 8, 2015. [Periodista denuncia amedrentamiento](#); Los Tiempos. March 31, 2015. [Denuncian a hermano de Evo por presunta agresión y amenazas a dos periodistas](#); Asociación Nacional de la Prensa. April 6, 2015. [Alerta No. 027/15 – Periodista denuncia amedrentamiento](#).

²⁰⁷ Opinión. May 15, 2015. [OPINIÓN denuncia agresión a periodista en la audiencia judicial de Jarlin Coca](#); La Razón. May 16, 2015. [Agreden a reportera y borran sus grabaciones](#); Asociación Nacional de Prensa de Bolivia (ANP). May 14, 2015. [Alerta No. 030/15 – Funcionarios judiciales agreden a periodista](#).

²⁰⁸ Roger Romero Cossío/Facebook. June 4, 2015. [Me amenazaron. Pretendieron intimidarme y me golpearon](#); Opinión. June 14, 2015. [ANP denuncia golpiza a periodista de El Alto](#); El Correo. June 12, 2015. [Periodista de El Alto sufre dura golpiza por investigaciones](#).

²⁰⁹ Erbol. July 4, 2015. [Hackers difunden noticia falsa en el portal de Cambio](#); Uno TV. July 4, 2015. [Hackean web boliviana y difunden noticia falsa sobre Evo Morales](#); La Nación. July 5, 2015. [Hackers chilenos atacan web de diario estatal boliviano](#); La Verdad. July 4, 2015. [Hackers difunden falso accidente de Evo en web oficial](#).

²¹⁰ Esteban E. Farfán Romero/Facebook. July 16, 2015. [Operadores masistas amenazan con quemar y violar a periodista por preguntas incómodas aliado del MAS](#); El País. July 17, 2015. [Develan amenazas de violación a una periodista en Yacuiba](#); Página Siete/AFN. July 17, 2015. [Conductora de TV denuncia que cívicos de Yacuiba la amenazaron con quemar su casa o violarla](#); El Diario/ANF. July 18, 2015. [Conductora de TV denuncia amenazas de cívicos de Yacuiba](#); Correo del Sur. July 18, 2015. [Amenazan a una periodista de Yacuiba con violarla](#); El Periódico. No date. [Nataly Herrera: Quecaña protege a funcionarios que planifican violarme](#); La Razón. July 18, 2015. [Una periodista recibe amenaza de violación](#); El Periódico. July 20, 2015. [De esto no habla el MAS: amenazas a una periodista en la ciudad de Yacuiba](#).

²¹¹ Biobio Chile. September 24, 2015. [Sorprenden a periodistas chilenos en Bolivia con inédito control de identidad a las 3am](#); La Segunda. September 24, 2015. [Periodistas chilenos en Bolivia sufrieron insólito control de inmigración a las 3 de la madrugada](#); Erbol. September 28, 2015. [Romero: Control a periodistas chilenos fue de rutina](#).

155. On October 10, the director for *Fides* radio Eduardo Pérez, was described as a traitor by the Decolonization director Idón Chivi after the journalist interviewed the Minister of Foreign Affairs of Chile, Hernando Muñoz. The incident raised an intense polemic among journalists and other citizens on social networks where the aforementioned government official tweeted: “Violating the principle of reciprocity, what you did was an act of betrayal to your homeland! #vendepatria”.²¹²

156. On October 12, morning reporter for *El Diario de la Paz*, Ivana Toro, reported an attempted kidnapping that took place as she returned to her residence. She filed the complaint with the police and stated she is afraid of being followed. Journalist Toro cover topic related with La Paz and recently she was investigating about corruption in the Departmental Assembly and the Autonomic Statute of La Paz.²¹³ According to reports the police offered security afterwards.²¹⁴

157. The Bolivian Radio Broadcasting Association [*Asociación Boliviana de Radiodifusoras*] (Asbora) representative Raúl Novillo explained on October that at least 450 legal radio stations could disappear due to the frequency reduction in the radio spectrum for stations.²¹⁵

158. Principle 9 of the 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”.

B. Social Protest

159. The Bolivian police suppressed a protest of indigenous peoples on August 18, after 1000 people from the Gaurani community blocked the road to demand the Evo Morales administration have prior consent before oil exploration on their lands.²¹⁶

160. Juan Carlos Paco Veramendi, reporter for *FM 107.1 Radio Líder* was detained on July 22 while covering a Potosí Civic Committee [Comité Cívico Potosinista](Comcipo) protest in the capital, La Paz, and he was held in preliminary detention.²¹⁷ On July 24 the criminal court in La Paz confirmed that the reporter--and two detained Comcipo leaders--will be tried on “disrupting public order” and “possessing explosives” and that he will remain in detention for as long as required by the investigation, which could last several months. This

²¹² “Rompiendo el principio de reciprocidad, lo que hicieron es un acto de traición a la Patria! #vendepatria”. Twitter account of Idón Moisés Chivi V. @IdonMoisesChivi. [October 10, 2015- 3:24 PM](#); El Mundo. October 13, 2015. [Entrevista de Pérez al canciller chileno desata polémica](#); Página Siete/ANF. October 13, 2015. [Polémica tras la entrevista del padre Pérez al canciller Muñoz](#); Asociación de Periodistas de La Paz. November 20, 2015. [COMUNICADO](#); Correo del Sur. October 19, 2015. [El cura Pérez Iribarne y su ¿traición a la Patria...?](#)

²¹³ El Diario. October 14, 2015. [Intento de secuestro a periodista de EL DIARIO denunció ANP](#); Los Tiempos. October 14, 2015. [Periodista denuncia un intento de secuestro](#); El Potosí/AFN. October 14, 2015. [Solicitan investigar el fallido secuestro de un periodista](#); Los Tiempos. October 14, 2015. [Periodista denuncia un intento de secuestro](#); Opinión/ANF. October 14, 2015. [Periodista de El Diario denuncia intento de secuestro](#).

²¹⁴ El Diario. October 14, 2015. [Policía brinda garantías a reportera de EL DIARIO](#); Correo del Sur. October 14, 2015. [Policía ofrece seguridad a periodista de El Diario](#).

²¹⁵ Nuevo Sur. October 14, 2015. [Asbora EN EMERGENCIA, teme desaparición de 450 emisoras](#); Erbol. October 16, 2015. [Asbora advierte que 450 radios podrían desaparecer](#); Página Siete. October 17, 2015. [Asbora advierte que al menos 450 radios pueden desaparecer](#).

²¹⁶ Panam Post. August 20, 2015. [Policía boliviana reprimió manifestación de indígenas](#); El Deber. August 18, 2015. [Guaraníes cortan la ruta a Yacuiba en Yateirenda](#); Erbol. August 18, 2015. [Reportan que policías entraron hasta las casas para capturar a guaraníes](#); El Día. August 19, 2015. [Policía reprime a guaraníes para desbloquear carretera](#).

²¹⁷ Reporters Without Borders. July 27, 2015. [BOLIVIA | Detenido sin justificación el periodista Juan Carlos Paco Veramendi](#); Asociación Nacional de la Prensa de Bolivia. July 25, 2015. [Alerta No. 044/15 – Certifican que el periodista encarcelado realizaba cobertura informativa en La Paz](#).

caused a protest by Bolivian journalists.²¹⁸ On July 27, Judge Lía Cardozo ordered alternative measures for the release of the journalist and three miners detained under the same charges.²¹⁹

161. During the month of July the Civic Potosinista Committee leaders discovered and detained two men allegedly pretending to be journalists but working for State intelligence. The Committee president, Jhonny Llally, affirmed that the alleged agents were interested in information on the pressure the La Paz miners were exerting as of July 7, after the confrontations between the miners and police. Both men admitted they were following the direction of Bolivian Police and in fact showed a cellular phone with all the messages sent²²⁰. Through its Twitter account the Ministry of the Interior assured both citizens were not undercover police agents²²¹.

162. 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”²²² 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.”²²³

163. 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.”²²⁴

164. 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.²²⁵

²¹⁸ Eju. July 24, 2015. [Periodistas de Bolivia protestan por detención en la cárcel de reportero potosino Juan Carlos Paco](#); Reporters Without Borders. July 27, 2015. [Radio Reporter Juan Carlos Paco Held Arbitrarily After Covering Protest](#); Correo del Sur. July 24, 2015. [Jueza envía al penal de San Pedro a tres de los cuatro imputados potosinos](#); El Deber. July 27, 2015. [Exigen libertad del periodista arrestado](#); Erbol. July 24, 2015. [Envían a cárcel a potosino que aún está hospitalizado](#); El Deber. July 24, 2015. [Juez envía a la cárcel a tres potosinos imputados](#).

²¹⁹ La Patria/ANF. July 30, 2015. [Liberan a potosinos detenidos en la cárcel de San Pedro](#); Erbol. July 27, 2015. [Juez libera a los cuatro potosinos imputados y reinstalan el diálogo](#); Sin Embargo. July 27, 2015. [Jueza libera a periodista y tres mineros por protestas en Bolivia](#); Erbol. No date. [AUDIO: Testimonio de periodista detenido, Juan Carlos Paco Mermamendi](#).

²²⁰ El Diario. July 19, 2015. [Comcipo descubre infiltrados en su concentración](#); Erbol. July 18, 2015. [Comcipo asegura que descubrieron a dos “infiltrados” en su movilización](#).

²²¹ El Diario. July 19, 2015. [Comcipo descubre infiltrados en su concentración](#); Erbol. July 18, 2015. [Comcipo asegura que descubrieron a dos “infiltrados” en su movilización](#).

²²² IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

²²³ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

²²⁴ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

²²⁵ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

C. Subsequent Liabilities

165. The Departmental Electoral Tribunal [*Tribunal Electoral Departamental*] of Santa Cruz fined *Radio Televisión Universal* for broadcasting unauthorized electoral advertisement and the media outlet director Ciro García Becerra, refuted the sanction. According to the National Press Association of Bolivia (ANP) García warned the cash payment for the fine of 55 thousand dollars could force the channel to shut down.²²⁶

166. On September 4 Esteban Farfán Romero, a journalist who investigated corruption was detained for 24 hours in a police cell in the city of Yacuiba by court order for the crimes of defamation, slander and libel.²²⁷

167. Any restriction on freedom of expression must meet the three-part test under Article 13.2 of the American Convention of Human Rights, namely that it is provided for by law, it serves to protect a legitimate interest recognized under international law and it is necessary to protect that interest. When imposed to media outlets, civil penalties must be proportional so that they do not have a chilling effect on freedom of expression, since “the fear of a civil penalty, considering the claim [...] for a 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.”²²⁸

D. Indirect Censorship

168. At a press conference offered in August, the Confederation of Bolivian Press Workers [*Confederación de Trabajadores de la Prensa de Bolivia*] leader, Héctor Aguilar, requested his members report any unjustified removal of labor sources. According to what the representative stated, many members have been victims of an alleged “white massacre” at the hands of media outlet owners, unjustified termination completely outside the legal framework.²²⁹

169. Principle 5 of the IACHR Declaration of Principles states that: “[P]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

E. Government Advertising

170. In August the national press chief and director of informational programs for the private television chain “*Cadena A*” for the city of La Paz, John Arandia, ceased work after his contract was recinded by the Company and stated “a struggle defined by power and financial suffocation” after a reduction in

²²⁶ Hoy Bolivia. April 17, 2015. [En Bolivia la libertad de expresión se paga con la asfixia económica: ANP](#); La Patria. July 7, 2015. [ANP pide al Papa Francisco interceda por el periodismo que busca la verdad](#); Los Tiempos. April 16, 2015. [Medio en riesgo por multa electoral](#); Asociación Nacional de la Prensa de Bolivia. April 15, 2015. [Alerta No. 028/15 – Medio cruceño al borde de cierre por multa electoral](#).

²²⁷ Nacional de la Prensa de Bolivia. September 9, 2015. [Alerta No. 061/15 – Periodista fue detenido por 24 horas](#); El País. September 4, 2015. [Dejan una noche en la carcelita al periodista Esteban Farfán](#); El Chaco Informa. September 10, 2015. [Abogados que demandaron a Esteban Farfán, aseguran no tener motivaciones políticas](#); “Periodista Esteban Farfán denuncia que su detención fue motivada por sus críticas a Carlos Brú”. Twitter account of Esteban Farfán Romer @EstebanFarfanR. [September 8, 2015- 4:12 PM](#); El Deber. September 4, 2015. [Aprehenden a periodista tarijeño por una denuncia](#).

²²⁸ I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 129.

²²⁹ La Patria/ANF. August 22, 2015. [Periodistas deben denunciar despidos injustificados](#); Correo del Sur. August 21, 2015. [Gremio de periodistas pide a sus afiliados denunciar despidos injustificados](#); El Mundo. August 22, 2015. [Piden a sus afiliados denunciar despidos injustificados](#).

of government publicity. Arandia maintained a critical position against the government during the social conflict in the Potosí region.²³⁰

171. On August 10 the government of Bolivia announced through vice-president Álvaro García Linares that media outlets that “lie” or “are partisan” will be deprived of financial resources tied to government advertising. The senior official noted: “You’re going to say: ‘listen president why aren’t you advertising with this media outlet?’ We will respond in all candor that there are media outlets that lie, there are outlets that do not report but rather participate in partisan politics so as the government we will not provide resources for political parties and on top of that they lie and we have always confronted that.”²³¹

172. Said announcement was allegedly directed to *Radio Erbol*, according to an interview on *Radio Media Naranja* of the journalist and presenter Amalia Pando along with the director of *Erbol*, Augusto Peña. These journalists asserted that government advertising that helped financially support the media outlet was withdrawn from *Erbol*.²³²

173. After the removal of government advertising Amalia Pando resigned from *Radio Erbol* on August 10 and according to a press release on the communication company web portal she claimed there is “financial suffocation imposed on the media outlet” is to try to force it to shut down permanently. The journalist also stated: “when the government approves an advertising plan it believes it is buying conscience. Not that it believes, it is in fact purchasing consciences and *Erbol* was not for sale.”²³³

174. When *Radio Erbol* was faced with the threat of the withdrawal of government advertising a citizen’s movement—born on social media—held a meeting in the city of La Paz on August 19 in order to support the media outlet. There they announced marches and economic assistance for the media outlet by citizen donations and opening a bank account.²³⁴

175. On August 21, the Minister of Labor related the collection in solidarity made by the citizens in order to save *Radio Erbol* with money laundering and destabilization of the Evo Morales administration. The director of *Erbol*, Augusto Peña, assured: “they were defending freedom of expression and that he was willing to go to jail for it”.²³⁵ The Labor Ministry issued a press release titled “Media facilitates possible money laundering mechanisms” that “there are media outlets that open bank accounts allegedly to receive support from the population” and added “nevertheless these may be money laundering channels.” He added: “established regulations in the country have the goal of identifying any activity tied to money laundering, so

²³⁰ El Diario. August 9, 2015. [Trabajadores de la prensa respaldan a Pando y Arandia](#); Eju!. October 8, 2015. [Arandia dice que salió de la TV por temas económicos](#); “Buenas noches a todos, gracias por las llamadas y mensajes. Es cierto, no voy más en CADENA A pero mi trabajo periodístico seguirá siempre”. Twitter account of John Arandia @JohnArandia. August 4, 2015-7:12 PM; Página Siete. August 7, 2015. [John Arandia deja Cadena A: “Rescindieron mi contrato”](#); Datos Bolivia. August, 2015. [John Arandia se retira de Cadena A](#); El Deber. August 5, 2015. [John Arandia anuncia su salida de ‘Cadena A’](#); *Erbol*. October 8, 2015. [Arandia dice que salió de la TV por temas económicos](#); Reporters Without Borders. August 20, 2015. [No State Advertising for “Politicized” Media in Bolivia](#).

²³¹ Reporters Without Borders. August 20, 2015. [No State Advertising For “Politicized” Media In Bolivia](#); Diario Las Américas. August 10, 2015. [El Gobierno boliviano niega publicidad estatal a medios que considera políticos](#); Página Siete. August 11, 2015. [Vice: Los medios que “mienten” no reciben la publicidad estatal](#); Correo del Sur. August 11, 2015. [Ministra de Comunicación evita hablar sobre tema de publicidad estatal](#).

²³² Eju!. August 11, 2015. [Amalia afirma que Evo no quiere medios discrepantes; pide a Erbol hacer una colecta para enfrentar la crisis](#); Radio Media Naranja. September 3, 2015. [El gobierno boliviano en contra de ERBOL](#).

²³³ Página Siete/ANF. August 10, 2015. [La carta de renuncia a Erbol de la periodista Amalia Pando](#); *Erbol*. August 10, 2015. [Amalia Pando oficializa su renuncia a ERBOL por escrito](#); El Deber. August 10, 2015. [Amalia Pando afirma que quieren clausurar Erbol](#).

²³⁴ El Diario. August 25, 2015. [Según opositores, Gobierno busca “cercenar” derechos de las personas](#); Eju!. August 23, 2015. [ERBOL anuncia que publicará la lista de todos sus aportantes](#); *Erbol*. August 19, 2015. [Colectivo ciudadano respalda a Erbol y anuncia marchas](#); Página Siete. August 22, 2015. [Apoyo a Erbol](#).

²³⁵ Página Siete. August 24, 2015. [Alteños alistan para hoy la vigilia en defensa de ERBOL y Amalia](#); La Razón. August 27, 2015. [Augusto Peña: ‘La opinión de Pando es de ella, no de Erbol’](#); La Razón. August 25, 2015. [Defensor: Erbol está en su derecho de pedir aportes](#); La Información. August 22, 2015. [Gobierno boliviano advierte de peligro de lavado de dinero en campaña en favor de radio](#); Ministerio de Trabajo de Bolivia. August 21, 2015. [Medios habilitan mecanismos de posible lavado de dinero](#); El Diario. August 25, 2015. [Según opositores, Gobierno busca “cercenar” derechos de las personas](#).

every person has the obligation to declare the origin and destination of the funds that enter the financial system. These obligations cannot be relaxed when there is fund raising for political purposes".²³⁶

176. On August 23 the president of the National Association of Bolivian Press [*Asociación Nacional de Prensa de Bolivia*], Ronald Grebe affirmed that government was trying to scare the citizens whom in a voluntary manner decided to open a bank account and deposit into it for radio *Erbol*, after government advertising was denied.²³⁷

177. On September 8, the Special Rapporteurship sent a press communiqué to the State of Bolivia with in order to request information about the alleged exclusion of *Radio Erbol* from government advertising; as well as on the Ministry of Labor press release relating fund raising for media outlet assistance to money laundering. In an October 14 communication the State manifested to the Special Rapporteur Office that the government utilizes the following technical and legal criteria for information spots in different media outlets: i) message theme, according to the type of audience, age range, geographic region, gender and others, ii) coverage of the territory and geography of the media outlet, iii) programming, considering high rating advertisement and lower rating; iv) perception polls by the Ministry of Communication regarding audience preference in media outlets with sampling from different groups such as departments, municipalities, sex, age and programming; v) national production level; vi) information balance, which implies an evaluation of access to journalism sources, right to reply, information that is consistent and allows for proper information handling and vii) pricing, in order to broaden the publicity range it ensures equilibrium between higher priced media outlets (according to the range, quality and other factors): the department or local (alternative) media and independent producers.²³⁸

178. The State of Bolivia added: "no determination has been made or will be made on the exclusion of a media outlet in government advertising, therefore it is appropriate to refute that the Ministry of Communication excluded *Radio Erbol*, part of the *Red Erbol* (Radio Education of Bolivia), from official government advertising". It affirmed: "as indicated in the official communication broadcasting management for the government is based on meeting the technical criteria established". It maintained that for said task it resorts to local radio and many are affiliated with the aforementioned network, which holds about 170 local radio stations in the nine departments of the State. In an attachment it added the station list of the *Red Erbol*, wherein state information is contained. According to the document, in 2014 radio—Red Yungas, Aclo Potosí, Pio XII, Irfa Santa Cruz and Erbol--all affiliated with *Red Erbol*, received official advertising. According to the report during the 2015 assigning period, only *Radio Erbol* was excluded from the assignment.²³⁹

179. Regarding the existence of an open investigation on the fundraising for *Radio Erbol*, the State responded: "it must be concluded that the action undertaken by the ministerial portfolio is for the protection of the right to work, promoting the common good for both employers and employees in a comprehensive manner in order to comply with the obligation to abide by the current regulations for the State of Bolivia and avoid acts that put labor relations at risk". Likewise, the State clarified that the press release issued about that open account to help *Radio Erbol* does not represent a criminal action and to date there is no open investigation on the aforementioned radio station. For that purpose, report 410/15-D dated September 14,

²³⁶ Ministerio de Trabajo de Bolivia. August 21, 2015. [Medios habilitan mecanismos de posible lavado de dinero](#); Unitel/ANF. August 22, 2015. [Gobierno busca impedir recaudación de fondos para Erbol, asegura que la CIA y el terrorismo pueden aprovecharse de ese mecanismo](#); Agencia de Noticias Findes. August 21, 2015. [Gobierno busca impedir recaudación de fondos para Erbol, asegura que la CIA y el terrorismo pueden aprovecharse de ese mecanismo](#); HispanTV. August 22, 2015. [Bolivia advierte de lavado de dinero en campaña opositora Erbol](#).

²³⁷ Correo del Sur. August 23, 2015. [ANBP: Gobierno atemoriza a aportantes a radio Erbol](#); Erbol. August 22, 2015. [ANBP: Gobierno intenta atemorizar a donantes](#).

²³⁸ Estado Plurinominal de Bolivia. Ministry of Foreign Affairs. Permanent Mission at the OAS. MPB-OEA-243-15. Response to Communication of September 8, 2015, on the potential exclusion of Radio Erbol from State Advertising. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

²³⁹ Estado Plurinominal de Bolivia. Ministry of Foreign Affairs. Permanent Mission at the OAS. MPB-OEA-243-15 Response to Communication of September 8, 2015, on the potential exclusion of Radio Erbol from State Advertising. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

2015 and generated by the Case Assignment and Resignation Single Window [*Ventanilla Única de Asignación y Resignación de Casos*], for the Departmental Prosecutor for La Paz [*Fiscalía Departamental de La Paz*] was attached thereto.

180. The IACHR notes that Article 13.3 of the American Convention on Human Rights states 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.” And principle 13 of the Declaration of Principles 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.”

5. BRAZIL

A. Progress

181. On January 9, the Federal Supreme Court [*Supremo Tribunal Federal*] (STF) ordered precautionary measures in view of a judgment of the 4th Federal Court of São José de Rio Preto [*4ª Vara Federal de São José do Rio Preto*], in the State of São Paulo, which authorized lifting the confidentiality of the telephone communications of journalist Allan de Abreu Aio and of the newspaper *Diário da Região*, where he worked. The journalist and the newspaper were accused by the Office of the Public Prosecutor of disclosing confidential information about a Federal Police operation called “Tamburutaca.” During the investigations the Office of the Public Prosecutor requested that his communications and those of the newspaper be turned over. The 4th Federal Court of São José de Rio Preto granted the request and the decision was later affirmed by the Regional Federal Court for the 3rd Region.²⁴⁰ The National Association of Newspapers [*Associação Nacional dos Jornais*] filed legal action to stay the judgment, alleging the failure to observe the conclusions of the STF in a prior constitutional challenge to the Press Law.²⁴¹ In its decision the STF stated that it was protecting “one of the most important constitutional guarantees, freedom of the press, and therefore, democracy itself.”

182. In a decision published on February 2, 2015, the STF stayed the decision of the Court of Justice for the State of Ceará [*Tribunal de Justiça do Ceará*], which had ordered *Rede União de Rádio e Televisão* to pay non-pecuniary damages in the amount of 250,000 Brazilian reais (some US \$75,000) to *Novo Tempo Propaganda e Publicidade* agency and its owner. Justice Rosa Weber, the reporting judge in the case, said that freedom of expression encompasses the right to criticize and to give one’s opinion. The agency and its owner had sued *Rede União de Rádio e Televisão* over three reports on the “Ceará Doa Troco” campaign, which raised funds for charity organizations. The applicants asserted that they had been accused of embezzling 400,000 Brazilian reais (some US \$120,000) from the campaign. The television station affirmed that the reports demonstrated that the campaign had been a “failure,” and that they had requested an accounting but it was not given. The 19th Civil Court of Fortaleza [*19ª Vara Cível de Fortaleza*] had ordered *Rede União de Rádio e Televisão* to pay compensation of 600,000 Brazilian reais (about US \$180,000) based on Article 49 of the Press Law (Law 5.250/1967). On appeal, the Court of Justice for the State of Ceará upheld the judgment but reduced the amount of the damages to 250,000 Brazilian reais (some US \$75,000).²⁴²

183. On March 17, Judge Alexandre Morais da Rosa of the 4th Criminal Court for the Capital District of Santa Catarina [*4ª Vara Criminal da Comarca da Capital de Santa Catarina*] dismissed the complaint brought by the Public Ministry against Alex Sandro dos Santos Ferraz for the offense of criminal contempt [*desacato*]. According to the judgment, Mr. Ferraz told the police officers who intervened in a fight in which he was involved: “I don’t like the cops, they’re all a bunch of useless, arrogant animals.” The judge acknowledged that the crime of criminal insult does not exist in a democratic environment and noted that in 2000, the IACHR adopted the Declaration of Principles on Freedom of Expression, Principle 11 of which states that “Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.” He also found that, in view of “the supremacy of Article 13 of the American Convention on Human Rights over the provisions of the Criminal Code, [Bruno Haddad] Galvão’s conclusion that ‘the conviction of an individual in the Brazilian courts for the offense of

²⁴⁰ Portal Imprensa. January 12, 2015. [STF suspende decisão que determinava quebra de sigilo telefônico de jornalista de São Paulo](#); Folha de São Paulo. January 9, 2015. [Presidente do STF suspende quebra de sigilo telefônico de jornal e jornalista](#); O Expresso. January 12, 2015. [Supremo garante direito do jornalista de não revelar suas fontes](#); G1. January 9, 2015. [STF suspende quebra de sigilo de repórter e jornal de Rio Preto](#); Associação Brasileira de Imprensa (ABI). January 12, 2015. [STF suspende quebra de sigilo de repórter e jornal](#); Estadão. January 9, 2015. [STF suspende quebra de sigilo de jornalista do interior de São Paulo](#); Supremo Tribunal Federal. Reclamação 19.464. [Judgment of January 8, 2015, published on February 4, 2015.](#)

²⁴¹ Supremo Tribunal Federal. Arguição de descumprimento de preceito fundamental 130 Distrito Federal. [Judgment of April 30, 2009.](#)

²⁴² Portal Imprensa. January 6, 2015. [STF suspende condenação de emissora por fazer críticas a agência em reportagem](#); Supremo Tribunal Federal. Reclamação 16.329. [Judgment of December 17, 2014, published on February 2, 2015](#); Consultor Jurídico (Conjur). January 5, 2015. [Emissora de TV não pode ser condenada por fazer críticas em reportagem.](#)

criminal contempt violates Article 13 of the American Convention on Human Rights, according to the interpretation of the Inter-American Commission on Human Rights' is the inevitable one." The Public Ministry filed an appeal, which remained pending as of the closing date of this report.²⁴³

184. The Office of the Special Rapporteur notes the progress of the criminal case for the murder of sports journalist Valério Luiz de Oliveira. On April 30, the Court of Justice for the State of Goiás [*Tribunal de Justiça do Estado de Goiás*] upheld the August 2014 decision of the 2nd Criminal Court [*2ª Vara dos Crimes Dolosos*] of Goiânia to put five individuals on trial in the Jury Court [*Tribunal do Júri*]. The defendants include the president of the Atlético-GO soccer team, accused by the Office of the Attorney General to have masterminded the crime. De Oliveira worked at *Rádio Jornal 820 AM* and at the *PUC-TV* channel in the city of Goiânia, and was murdered there on July 5, 2012. Because of his critical remarks about a soccer team from the State of Goiás, the journalist reportedly received death threats and was barred from entering the club's facilities.²⁴⁴

185. On May 18, Judge Siro Darlan of the 7th Criminal Division of the Court of Justice of Rio de Janeiro [*7ª Câmara Criminal do Tribunal de Justiça do Rio de Janeiro*] granted a precautionary measure that suspended the proceedings against the 23 activists who took part in the protests of 2013 and 2014 and accused of "criminal conspiracy" [*associação criminosa*] and acts of violence. Among those involved was the activist leader Elisa de Quadros, known by the nickname "Sininho." The decision will reportedly remain in effect until the 7th Criminal Division adjudicates the additional charge of "corruption of minors" alleged in the closing arguments of the Public Ministry of the State of Rio de Janeiro.²⁴⁵

186. On August 24 the STF approved the extradition to Paraguay of the former Paraguayan mayor Vilmar Acosta Marques, who was a fugitive in Brazil thanks to his double nationality.²⁴⁶ In October of 2014 he was charged as the mastermind in the homicide of journalist Pablo Medina requested by the Paraguayan authorities. According to available information, Judge Dias Toffoli of the STF "noted in his opinion that there are countless elements of proof to strongly support the certainty that defendant Vilmar Acosta Marques was born on Paraguayan soil, therefore he is not covered by the National Constitution of Brazil protecting

²⁴³ Empório do Direito. No date. [Desacato não é crime, diz Juiz em controle de convencionalidade](#); Poder Judiciário de Santa Catarina. 4ª Vara Criminal da Comarca da Capital de Santa Catarina. Processo No. 0067370-64.2012.8.24.0023. Available for consultation at: <http://www.tjsc.jus.br/>

²⁴⁴ Portal Imprensa. May 4, 2015. [Presidente do Atlético-GO irá a júri popular sob acusação de ordenar assassinato de jornalista](#); Globo Esporte. January 5, 2015. [Maurício Sampaio é aclamado como presidente e retorna ao Atlético-GO](#); G1. April 30, 2015. [Justiça mantém júri de empresário acusado de mandar matar radialista](#); IACHR. [Annual Report 2012. 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.147. Doc. 1. March 5, 2013. Para. 74; IACHR. Office of the Special Rapporteur for Freedom of Expression. July 11, 2012. [Press Release R 86/12. Office of the Special Rapporteur Condemns Killing of Sports Commentator in Brazil](#); IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 89; and IACHR. [Annual Report 2014. 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. 13. March 9, 2015 Para. 129; Tribunal de Justiça do Estado de Goiás. April 30, 2015. [Mantida decisão que mandou os envolvidos no caso Valério Luiz a júri popular](#); Tribunal de Justiça do Estado de Goiás. 2ª Vara dos Crimes Dolosos. Processo Nº 273311-41.2012.8.09.0051. Sentencia de Pronúncia, August 12, 2014. Available for consultation at: <http://www.tigo.jus.br/index.php/consulta-processual>.

²⁴⁵ G1. May 18, 2015. [Desembargador suspende processo contra 23 ativistas no Rio](#); Exame.com. May 19, 2015. [Processo contra 23 ativistas é suspenso no Rio de Janeiro](#).

²⁴⁶ Última Hora. August 25, 2015. [Brasil decide conceder extradición de Vilmar "Neneco" Acosta](#); La Nación. August 25, 2015. [Brasil aprueba extraditar a Vilmar Acosta](#); Reuters. August 25, 2015. [Ex alcalde paraguayo será extraditado desde Brasil por crimen de periodista: canciller](#); Ministerio de Relaciones Exteriores de Paraguay. August 25, 2015. [Supremo Tribunal Federal del Brasil concede por unanimidad la extradición de Vilmar Acosta Márques](#); El Confidencial/EFE. November 4, 2014. [Miembro de la Corte Suprema paraguaya carga contra periodista asesinado](#); Paraguay. November 4, 2014. [Núñez: "Negocian sobre el cadáver de Pablo Medina para perjudicarme"](#); ABC TV/YouTube. November 4, 2014. [Núñez cuestiona labor de Medina y se aferra al cargo](#).

Brazilian citizens from extradition”.²⁴⁷ On March 30, the Ministry of Foreign Affairs of Paraguay executed the international arrest warrant for the preliminary detention and subsequent extradition of Acosta Marques.²⁴⁸

187. In relation to community broadcasting, the Office of the Special Rapporteur notes the progress in reducing the bureaucracy involved in granting licenses for new educational broadcasters and community radio stations in Brazil. According to information from the Brazilian Ministry of Communications, the number of documents required for a community radio broadcasting license was decreased from 33 to 7. Educational broadcasters went from having to provide 18 documents to 4. This improvement began with the creation of the Working Group on the Streamlining of Radio Broadcasting Processes (GTDS) in March of this year.²⁴⁹

B. Killings

188. Radio announcer Ivanildo Viana da Silva, 51 years of age, was murdered on February 27 in the municipality of Santa Rita, in the metropolitan region of João Pessoa, Paraíba. According to publicly available information, Viana da Silva was driving his motorbike when he was hit by four gunshots. According to witnesses, at least two men on a motorbike were allegedly responsible. Mr. Da Silva worked at *Radio 100.5 Líder FM*, and also worked as a press advisor to federal congressman Damião Feliciano.²⁵⁰

189. On March 5, Gerardo Servián, a Paraguayan journalist from the community radio station *Ciudad Nueva FM* in Zanja Pytã, was murdered in Ponta Porã, a small border town in the State of Mato Grosso do Sul. According to the available information, Servián was shot 200 meters from the border by two men on a motorcycle, while he was also riding a motorcycle. The journalist, who was 45 years old, was hit by numerous gunshots. Servián was the host of a Guaraní language news program. This was the second murder in less than a year in the vicinity of the city of Pedro Juan Caballero, Department of Amambay, Paraguay, which borders on Ponta Porã. In May, 2014, journalist Fausto Gabriel Alcaraz was murdered in that same Paraguayan town.²⁵¹

190. Radio broadcaster and police reporter José Patrício Oliveira was murdered on March 30 in the city of Brejo Santo, in the State of Ceará. According to media reports, Oliveira stated on air during his program that he had received telephone death threats, because of denunciations he had made on his program. The alleged direct perpetrator was later arrested by military police.²⁵²

191. On May 18, the body of journalist and blogger Evany José Metzker was found with his hands tied and with signs of physical violence in the rural area of Pioneira, some 800 km. north of Rio de Janeiro,

²⁴⁷ Ministerio de Relaciones Exteriores de Paraguay. August 25, 2015. [Supremo Tribunal Federal del Brasil concede por unanimidad la extradición de Vilmar Acosta Márques.](#)

²⁴⁸ Ministerio de Relaciones Exteriores de Paraguay. March 30, 2015. [Exhorto que solicita la extradición de Acosta Márquez fue entregado hoy en Brasilia.](#)

²⁴⁹ Ministério das Comunicações de Brasil. September 18, 2015. [MC reduz burocracia para comunitárias e educativas.](#)

²⁵⁰ Paraiba.com.br. February 27, 2015. [Execução de radialista teve participação de 3 assassinos em moto com apoio de carro branco](#); G1. February 27, 2015. [Radialista é assassinado em trecho da BR-101 na Paraíba, diz polícia](#); PB Agora. February 27, 2015. [Radialista é assassinado com vários tiros na BR 230, em JP](#); MaisPB. February 27, 2015. [Damião se emociona ao saber da morte do radialista Ivanildo Viana](#); Senhor Cariri. February 28, 2015. [PRIMEIRAS PISTAS: Execução de radialista teve participação de 3 assassinos em moto com apoio de carro branco.](#)

²⁵¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 23, 2015. [Press Release R 34/15. Office of the Special Rapporteur Condemns Killing of Paraguayan Journalist in Brazil](#); Correio do Estado. March 5, 2015. [Jornalista é executado a tiros por pistoleiros em Ponta Porã](#); Observatório da Imprensa. March 10, 2015. [Morte de radialista expõe riscos na fronteira entre Brasil e Paraguai](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. May 19, 2014. [Press Release R 59/14. Office of the Special Rapporteur Condemns Murder of Journalist in Paraguay.](#)

²⁵² Article 19. August 9, 2015. [Assassinado o terceiro radialista cearense em 2015](#); Na rota das Noticias. May 2015. [Brejo Santo-CE: Polícia elucida assassinato do radialista Patrício Oliveira e acusado de pistolagem está preso. Veja o vídeo](#); Diário do Nordeste. March 31, 2015. [Radialista é executado a tiros em Brejo Santo](#); G1. March 30, 2015. [Radialista é assassinado a tiros em Brejo Santo, no interior do Ceará](#); Associação Brasileira de Rádio e Televisão (ABRATTEL). August 13, 2015. [Conselho de Comunicação do Congresso repudia aumento de assassinatos de jornalistas.](#)

after police apparently received an anonymous tip. Metzker, 67, published a blog called "*Coruja do Vale*" where he denounced crimes committed in his region. In addition, reports indicate that he was investigating a child sexual exploitation ring. The Civil Police reported after the killing that they pursued two lines of investigation into this crime, one of which is its connection to his work as a journalist.²⁵³

192. On May 23, journalist Djalma Santos da Conceição was found dead, with 15 gunshot wounds and signs of torture, in a rural area of Conceição da Feira, 110 km. from the city of Salvador, in the State of Bahia. According to the information available, Santos da Conceição hosted the "Acorda Cidade" program on the community radio station *RCA FM*, where he made controversial remarks and reported on local crime and corruption. He was a popular journalist and had received death threats on several occasions. Reports further indicate that Santos da Conceição had received a threat on May 22, the same day on which he was—hours later—kidnapped in a bar by three masked men.²⁵⁴

193. Radio broadcaster Francisco Rodrigues de Lima of station *FM Monte Mor* was murdered on June 9 in the city of Pacajus, State of Ceará. He hosted the daily program "Mude sua mente, mude sua vida." According to the information provided by media and civil society organizations, he had publicly announced that he was receiving threats.²⁵⁵

194. On August 6, journalist Gleydson Carvalho was murdered in the town of Camocim, in the State of Ceará. Carvalho was the general director of *Rádio Liberdade FM 90.3*. He had a program on which he exposed local corruption, and had reportedly received death threats on previous occasions. The day of the crime, two individuals entered the studio while Carvalho was on the air, shot him in the head, and fled. According to press reports, the Military Police arrested two alleged accomplices to the murder.²⁵⁶

195. On November 10, journalist Israel Gonçalves Silva was murdered in the town of Lagoa de Itaenga, in the state of Pernambuco. Mr. Silva was shot to death inside a store in the center of the city. The journalist had a daily program called "Microfone Aberto" on community radio station *Itaenga FM*, and was also a municipal guard. Reports indicate that during his program on November 9, Silva had denounced the threats he received. Two suspects reportedly committed the crime. The Department of Social Protection ordered the Civil Police Chief to appoint a special delegate to investigate the journalist's murder and "entrusted Scientific Police management to commit to the full and speedy execution of the necessary expert examinations."²⁵⁷

²⁵³ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 21, 2015. [Press Release R 55/15. Office of the Special Rapporteur Expresses its Concern for Killing of Journalist in Brazil](#); Época. May 19, 2015. [Jornalista investigativo é encontrado decapitado em Minas Gerais](#); La Nación. May 20, 2015. [Investigan el crimen de un periodista que fue decapitado en Brasil](#); Jornalistas de Minas. May 2015. [Sindicato pede apuração rigorosa do assassinato do jornalista Evany José Metzker](#); Committee to Protect Journalists (CPJ). May 20, 2015. [Brazilian blogger found decapitated in Minas Gerais state](#); Extra. May 19, 2015. [Jornalista investigativo é encontrado decapitado em Minas Gerais](#); Vicente Alvez/Youtube. May 18, 2015. [Jornalista investigativo é decapitado no Vale do Jequitinhonha](#); G1. May 19, 2015. [Jornalista decapitado é enterrado em Medina, no Vale do Jequitinhonha](#); Reporters Without Borders. May 20, 2015. [Investigative Journalist Found Beheaded in Minas Gerais](#); PEN International. June 3, 2015. [PEN Brazil statement on the murder of journalist Evany José Metzker](#).

²⁵⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 28, 2015. [Press Release R 56/15. Office of the Special Rapporteur Condemns Killing of Journalist in Brazil, the Third One this Year in that Country](#); Época. May 26, 2015. [Jornalista é morto na Bahia](#); Committee to Protect Journalists (CPJ). May 26, 2015. [Second journalist killed in Brazil in less than a week](#); A Tarde. May 23, 2015. [Radialista é sequestrado e executado em Conceição da Feira](#); O Globo. May 23, 2015. [Radialista é sequestrado e morto no interior da Bahia](#); Inter American Press Association (IAPA). May 27, 2015. [La SIP condena otro asesinato en Brasil](#); Article 19. May 27, 2015. [ARTIGO 19 condena assassinato de radialista baiano](#).

²⁵⁵ O Povo. June 10, 2015. [Radialista é assassinado no estacionamento da rádio em que trabalhava](#); Ceará Agora. June 9, 2015. [Radialista é assassinado em Pacajus](#); Associação Brasileira de Rádio e Televisão (ABRATEL). August 13, 2015. [Conselho de Comunicação do Congresso repudia aumento de assassinatos de jornalistas](#); Federação Nacional dos Jornalistas (Fenaj). August 13, 2015. [Entidades pedem medidas para conter violência contra profissionais de comunicação](#); Article 19. August 9, 2015. [Assassinado o terceiro radialista cearense em 2015](#).

²⁵⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 10, 2015. [Press Release R 88/15. Office of the Special Rapporteur Condemns New Killing of Journalist in Brazil](#); Folha do Sertão. August 6, 2015. [Radialista é executado a bala durante programa na Liberdade FM por dois elementos armados em uma Bros](#); Diário do Nordeste. August 7, 2015. [Radialista denunciou ameaça de morte em programa: escute o áudio](#).

²⁵⁷ CPJ. November 11, 2015. [In Brazil, radio reporter shot dead in Pernambuco state](#); Knight Center for Journalism in the Americas. November 13, 2015. [Fourth radio journalist killed in Brazil this year: a total of 5 journalists have been killed in the country in](#)

196. On November 13, journalist Ítalo Eduardo Diniz Barros was murdered in the town of Governador Nunes Freire, in the state of Maranhão. Mr. Diniz Barros was a blogger who reported on local events. He was killed with four shots in front of a shopping center in his city by two men on a motorcycle. According to the Military Police of Maranhão, the communicator had been threatened because of some articles he had published.²⁵⁸

197. On November 21, blogger Orislândio Timóteo Araújo, aka Roberto Lano, was killed in the town of Buriticupu, Maranhão. He was reportedly on his motorcycle with his wife when a man on another motorcycle shot him. The blogger covered topics related to political issues of the town in which he lived and denounced alleged irregularities committed by the local government. The latest publication on his website was a complaint against the Mayor of Buriticupu. The Ministry of Public Security of Maranhão reported later that the investigation of his murder was already underway and would work with several scenarios in regards to the motive of the crime.²⁵⁹

198. The eleventh crime of the year in Brazil took place on December 7 in the Ubá zone in the State of Minas Gerais, when journalist Luiz Manoel De Souza was shot to death by a group of men who fired on him from a truck while he was driving his automobile. De Souza worked at *Rádio Cultura* in Visconde do Rio Branco and at *Rádio Educadora* in Ubá. The Civil Police said that the death could be linked to the exercise of his right to freedom of expression because he had denounced crime and corruption. As of the closing date of this report, there was no additional information on the case.²⁶⁰

199. At the hearing on the situation of violence against journalists in Brazil and Paraguay, held on October 23 during its 156th Session, the Commission received with concern the information that 87 members of the media were the victims of serious violations in Brazil between 2012 and 2014. Participant organizations reported that: i) 14 journalists were murdered in the past three years; ii) 18 journalists were the victims of attempts on their lives; iii) 51 received death threats; iv) four were the victims of kidnapping; and v) in the first quarter of 2015, three journalists were murdered as a result of their activities. They asserted that these types of violations occur throughout the country, and that they are not exclusive to specific contexts. According to the organizations, the victims include journalists, reporters, photographers, television hosts, and bloggers. They stated that most of the cases in Brazil involve those who report or expose information of public interest such as corruption and irregularities in public administration. This would account for 83% of the cases between 2012 and 2014. They indicated that 74% of the cases during that period involved violations committed by State agents, such as elected officials, police officers, and other public servants.²⁶¹

2015; A Voz da Vitória. November 12, 2015. [ISRAEL SILVA: Multidão grita por justiça em Lagoa de Itaenga](#); Rede Brasil Atual. November 22, 2015. [Escritório das Nações Unidas pede proteção para profissionais brasileiros da comunicação](#); Inter American Press Association. November 12, 2015. [IAPA protests murder of journalist in Brazil, calls for prompt investigation](#); Article 19. November 16, 2015. [#ALERTA – Mais um radialista é assassinado no Brasil](#).

²⁵⁸ Rede Brasil Atual. November 22, 2015. [Escritório das Nações Unidas pede proteção para profissionais brasileiros da comunicação](#); Article 19. November 26, 2015. [#ALERTA – No interior do Maranhão, dois bloqueiros assassinados](#); G1. November 14, 2015. [Bloqueiro é assassinado a tiros em Governador Nunes Freire, MA](#); Knight Center for Journalism in the Americas. November 19, 2015. [Bloqueiro do Maranhão se torna o segundo comunicador assassinado no país em menos de uma semana](#); Associação Brasileira de Jornalismo Investigativo (Abraji). November 26, 2015. [Abraji manifesta preocupação com assassinatos de comunicadores no MA](#).

²⁵⁹ Article 19. November 26, 2015. [#ALERTA – No interior do Maranhão, dois bloqueiros assassinados](#); G1. November 22, 2015. [Bloqueiro é morto com um tiro na cabeça em Buriticupu, MA](#); Revista 30. November 24, 2015. [MAIS UM BLOGUEIRO É ASSASSINADO NO MARANHÃO. DESSA VEZ EM BURITICUPU](#); O Progresso Net. November 24, 2015. [Mais um bloqueiro é assassinado no interior do Maranhão](#); Associação Brasileira de Jornalismo Investigativo (Abraji). November 26, 2015. [Abraji manifesta preocupação com assassinatos de comunicadores no MA](#); Estadão. November 22, 2015. [Mais um bloqueiro é assassinado no Maranhão](#); Blog do Roberto Lano. November 18, 2015. [Zé Gomes faz ponte que liga nada a coisa nem uma](#).

²⁶⁰ EM. December 8, 2015. [Polícia apura morte de radialista na Zona da Mata](#); Guia Muriae. December 8, 2015. [Radialista é morto a tiros na cidade de Ubá](#); O Tempo. December 9, 2015. [Morte de radialista em Ubá pode estar ligada à profissão, diz PC](#); G1. December 9, 2015. [Polícia Civil de Ubá investiga assassinato de radialista](#).

²⁶¹ IACHR. 154 Period of Sessions. Hearing "Social Protest and Human Rights in the Americas". March 16, 2015. Available for consultation at: <http://www.oas.org/es/IACHR/multimedia/sesiones/154/default.asp>

200. The participant organizations also reported that between May 2013 and May 2014 there were 171 reported cases of human rights violations against journalists who were covering demonstrations, including attacks, harassment and arrest. They reported that 80% of court cases on crimes of slander, injury, defamation and criminal contempt, were brought by individuals holding legal and political positions.²⁶²

201. The participant organizations stated that there are no specific protection measures for journalists, and that journalists are not aware that there is a mechanism to serve them—that is, the National Program for the Protection of Human Rights Defenders. They stated that journalists are not seen as human rights defenders, and therefore very few of them request assistance from protection programs. Furthermore, they indicated that the absence of an adequate structure and resources to serve and protect human rights defenders means that the mere inclusion of journalists might also be an ineffective solution for their protection. According to the organizations, a working group engaged specifically in the protection of journalists and media workers in Brazil was created between 2013 and 2014, and was composed, among others, by members of civil society and different government representatives. They stated that the group presented in the end a Report with a series of a recommendation. They asserted that, to date, said recommendations have not been implemented.²⁶³ Finally, they maintained that another aggravating factor is the impunity of serious crimes against journalists. Brazil ranks eleventh in the world and second in Latin America in terms of the number of unresolved cases involving crimes against journalists. Between 2012 and 2014, 70% of the journalists who were the victims of murder or had suffered murder attempt had received prior threats. An investigation into the cases arising during this period shows that more than half of them have already been shelved, with investigations that have been halted or never even opened. This asserted that financial and political power influence these investigations.²⁶⁴

202. On May 20, the Committee on Public Safety and Organized Crime [*Comissão de Segurança Pública e Combate ao Crime Organizado*] of the House of Representatives approved by a majority vote a legal opinion against Bill 191/2015, which would make crimes against journalists federal crimes. The bill is reportedly now pending before the Constitutional Affairs, Justice, and Citizenship Committee, where it is awaiting the appointment of a representative in charge of delivering a report on the bill. The bill would amend Law 10.446/02, which already provides for the joint action of the Federal Police and other investigating bodies for crimes such as the formation of drug cartels, human rights violations, kidnapping, unlawful detention, political extortion, and others.²⁶⁵ Bill 191/2015 would allow the Federal Police to take part in the investigation of crimes against journalists when there is “omission or insufficiency” on the part of the competent state and municipal authorities, after 90 days of investigation.²⁶⁶

203. 2015 has been identified as one of the worst in the last decade for journalism in Brazil. In some regions, violence and killing of journalists have become frequent. In this regard, the Office of the Special Rapporteur recalls 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. The legal

²⁶² IACHR. 154 Period of Sessions. Hearing “Social Protest and Human Rights in the Americas”. March 16, 2015. Available for consultation at: <http://www.oas.org/es/IACHR/multimedia/sesiones/154/default.asp>

²⁶³ IACHR. 154 Period of Sessions. Hearing “Social Protest and Human Rights in the Americas”. March 16, 2015. Available for consultation at: <http://www.oas.org/es/IACHR/multimedia/sesiones/154/default.asp>

²⁶⁴ IACHR. 154 Period of Sessions. Hearing “Social Protest and Human Rights in the Americas”. March 16, 2015. Available for consultation at: <http://www.oas.org/es/IACHR/multimedia/sesiones/154/default.asp>

²⁶⁵ Brasil. Presidência da República. [Law 10.446](#) of May 8, 2002.

²⁶⁶ Federação Nacional dos Jornalistas (Fenaj). May 27, 2015. [Comissão rejeita federalização de crimes contra jornalistas. FENAJ pedirá aprovação da matéria na CC](#); Sindicato dos Jornalistas Profissionais no Estado de São Paulo. May 21, 2015. [SISP repudia rejeição do projeto que federaliza crimes contra jornalistas](#); Coletiva.net. May 22, 2015. [Comissão da Câmara rejeita federalização de crimes contra jornalistas](#); Câmara dos Deputados. [Projeto de Lei 191](#) dated February 3, 2015 (introduced on February 4, 2015); See also <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=945893>

systems and practices of the States must clearly reflect that crimes against freedom of expression are especially serious, given that they represent a direct attack on all fundamental rights.²⁶⁷

204. The Office of the Special Rapporteur has reiterated that the States have the obligation to take measures to prevent violence against journalists and media workers.²⁶⁸ This obligation is particularly important in countries where there is a risk of these acts occurring and in specific situations where the authorities know or should have known that there is a real and immediate risk that such crimes will be committed.²⁶⁹ In those countries or regions where journalists are especially vulnerable due to the context of violence directed against them, the State has a heightened responsibility in its obligations of prevention and protection. In those situations, the absence of a general public policy of prevention can result in the State's failure to meet its duty of prevention.²⁷⁰

205. The obligation to prevent violence against journalists includes: a) adopting a public discourse that contributes to the prevention of violence against journalists. The Inter-American Court has emphasized that the duty to guarantee the rights to freedom of expression and humane treatment requires public officials to refrain from making statements that place journalists and media workers at greater risk of violence²⁷¹; b) instructing its security forces to respect the media. Appropriate instruction of State security forces on the role of the press in a democratic society is an important step in preventing violence against journalists and media workers. For this reason, the Office of the Special Rapporteur has recommended that the States adopt adequate mechanisms to prevent violence against media workers, including the training of public servants, especially the police and security forces and, if necessary, the adoption of conduct manuals or guidelines on freedom of expression²⁷²; c) the obligation to respect the right of journalists to maintain the confidentiality of their sources of information, notes, and personal and professional records. The protection of confidential sources not only contributes to the press's fundamental role as watchdog but also helps to prevent journalists from becoming victims of violence²⁷³; d) the obligation to punish violence against journalists. In order to prevent violence against journalists and media workers, it is indispensable for the legal system to punish this conduct in a manner that is proportional to the harm committed²⁷⁴; e) the obligation to maintain accurate statistics on violence against journalists. Understanding the magnitude and methods of acts of violence against journalists and media workers is a fundamental condition for the

²⁶⁷ UN Special Rapporteur for 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. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

²⁶⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 33.

²⁶⁹ I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 194; UN Special Rapporteur for 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. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

²⁷⁰ I/A Court H.R. *Case of González et al. ("Cotton Field") v. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 282.

²⁷¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 34.

²⁷² IACHR. Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 47.

²⁷³ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 54.

²⁷⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 55.

implementation of effective prevention policies such as, for instance, the design of reliable risk maps. In the context of violence against journalists, the Office of the Special Rapporteur has stressed the importance of compiling detailed, disaggregated statistics as an essential prerequisite for designing, implementing and evaluating effective public policies of prevention, protection and criminal prosecution of violence against members of the media.²⁷⁵

206. The States also have the obligation to protect at-risk journalists and media workers. According to the human rights standards of the Inter-American System, the States have an obligation to protect those who are exposed to special risk with respect to their fundamental rights. The obligation to protect an at-risk journalist can be met through the individual application of the measures necessary to ensure, among other things, the beneficiaries' rights to life, humane treatment, and freedom of expression. However, when a particular country is experiencing a systematic and serious structural situation of violence against journalists and media workers, the States must establish special protection programs for those groups. In any case, the measures taken must be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue conducting the same professional activities, and his or her social and economic circumstances.²⁷⁶

207. The third and final element of a comprehensive State policy to address violence against journalists is the investigation, prosecution, and punishment of the perpetrators of such acts of violence. The Office of the Special Rapporteur has repeatedly urged the States to conduct serious, impartial, and effective investigations into the murders, assaults, threats, and acts of intimidation committed against journalists and media workers.²⁷⁷ The Inter-American Court has held that impunity—understood as the complete absence of investigation, pursuit, arrest, trial, and conviction—favors the chronic repetition of human rights violations and the total defenselessness of the victims and their relatives. The Office of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that “[i]mpunity [...] is widely recognized as one of the main causes of the continued killing of journalists.”²⁷⁸ In the same respect, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has found that impunity 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.”²⁷⁹ Both the Commission and the Court have referred to the chilling effect that crimes against journalists have on other media professionals as well as on citizens who attempt to speak out against abuses of power or unlawful acts of any kind.²⁸⁰ This chilling effect can only be prevented, according to the Commission, “by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law.”²⁸¹

²⁷⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 59 y 60.

²⁷⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 62.

²⁷⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 160.

²⁷⁸ I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211; United Nations. General Assembly. [Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns](#). A/HRC/20/22. April 10, 2012. Para. 43.

²⁷⁹ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue](#). A/HRC/20/17. June 4, 2012. Para. 65.

²⁸⁰ I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 148; IACRH. Report No. 136/10. Case 12,858. Merits. Luis Gonzalo “Richard” Vélez Restrepo and Family. Colombia. October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. See also, IACHR. [Annual Report 2010. 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. 5. March 7, 2011. Para. 716.

²⁸¹ IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99.

208. 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

209. On January 6, journalist Pedro Borges of *Rede Meio Norte* was assaulted while reporting on a shootout for the program "Agora." He was allegedly kicked in the back by a resident of the Parque Alvorada neighborhood, in the city of Teresina, State of Piauí. He reportedly filed a complaint for assault with the 7th District Police Station (DP) of Teresina.²⁸²

210. On January 9, journalist Renato Vargas reported to the police that four shots were fired at his house in Ribeirão Preto, in the State of São Paulo. Vargas hosted a program on political and police issues on various local radio and TV station until 2013. He presented two witnesses, and maintained that he had already received a death threat. According to Vargas, the attack may have been in connection with a summons he received from the Public Ministry to testify in a criminal case under judicial secrecy.²⁸³

211. On January 11, cameraman Kassem Said Naaman was assaulted and struck twice while covering a traffic accident for *Inter TV dos Vales*, a *Globo* affiliate, in the city of Governador Valadares, State of Minas Gerais. Mr. Naaman was recording images with reporter Ana Carolina Magalhães when one of the persons involved in the accident realized and assaulted him. Police arrested the assailant, who was later released on bond.²⁸⁴

212. On January 20, reporter Iverson Vaz was arrested while taping a live broadcast for "Programa 190" for *CNT*, on the theft of ATMs in Curitiba, in the State of Paraná. Mr. Vaz was detained for disobeying and trespassing a security cordon set up by the Military Police. The press had initially been permitted to enter the area to document the case. However, when Vaz and cameraman Júnior Guimarães began broadcasting, they were reportedly interrupted by police officers on the grounds that they were in a restricted area. After remaining behind the isolation cordons under police orders, the journalist was arrested and taken to the Police Station for 6th District of Curitiba. Mr. Vaz stated that he had been assaulted while under arrest. According to the police report [*Boletim de Ocorrência*], the officers involved in the case asserted that the journalist had committed the offense of criminal contempt.²⁸⁵

213. On January 27, cameraman Gregori Flauzino of *RBS TV* was threatened by civil police officers during the reconstruction of the death of surfer Ricardo dos Santos, in Palhoça, in the State of Santa Catarina.

Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. See also, IACHR. [Annual Report 2010. 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. 5. March 7, 2011. Para. 716. See also, I/A Court H.R. *Case Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 211.

²⁸² Meio Norte. January 6, 2015. [Pedro Borges, repórter da Rede Meio Norte, é agredido com 'voadora' em local de tiroteio](#); CanalWeb/YouTube. January 7, 2015. [Repórter de TV nordestina é agredido com voadora](#); UOL. January 6, 2015. [Jornalista leva voadora ao vivo no Piauí: "Ele deu um chute na imprensa"](#); ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); Comunique-se. January 6, 2015. [Jornalista é agredido durante gravação de reportagem no Piauí](#).

²⁸³ Portal Imprensa. January 12, 2015. [Jornalista do interior de São Paulo tem casa alvejada por quatro tiros](#); Folha da Região. January 11, 2015. [Casa de jornalista do interior de São Paulo é alvo de 4 tiros](#); Folha de São Paulo. January 11, 2015. [Casa de jornalista do interior de São Paulo é alvo de 4 tiros](#); Inter American Press Association (IAPA). No date. [Brazil](#).

²⁸⁴ ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); Comunique-se. January 13, 2015. [Cinegrafista de afiliada da Globo é agredido durante reportagem](#); G1. January 12, 2015. [Equipe de reportagem da Inter TV dos Vales é agredida em Valadares](#).

²⁸⁵ Portal Imprensa. January 23, 2015. [Abraji critica prisão de repórter no Paraná e postura de secretário de Segurança Pública](#); Gazeta do Povo. January 20, 2015. [Repórter é preso durante transmissão ao vivo em Curitiba](#); Corrupção em cheque/YouTube. 4 de marzo de 2015. [Repórter é preso pela Polícia Militar durante link ao vivo no Paraná](#); Bonde. January 21, 2015. [Sindicato dos Jornalistas repudia prisão de repórter por "desacato" no Paraná](#); Sindicato dos Jornalistas Profissionais do Paraná (Sindijor-PR). January 21, 2015. [Sindijor-PR repudia prisão de Iverson Vaz](#).

Mr. Flauzino was filming a site near the scene of the crime that was outside the isolation area established by the police, when he was approached by three members of Police Operations Headquarters. The officers reportedly threatened to arrest him and confiscate his recording equipment if he refused to delete the images. The cameraman agreed and was made to leave the site.²⁸⁶

214. On February 17, photojournalist José Wiles Carvalho Torres was arrested the last night of Carnival in Cruzeiro do Sul, in the State of Acre, after photoshooting a police officer during a procedure. The officer reportedly asked him to erase the photos, saying that he did not authorize the use of his image, and that if the reporter refused, he would be taken to the police station. When the reporter got into the police vehicle, the officer reportedly took his camera and erased the photos. In addition, according to Mr. Torres, after he asked whether the officers had been drinking alcohol, he was taken to jail for contempt, and remained in detention for seven hours. According to the Acre Journalists' Union, José Wiles had done nothing "but his job" by documenting a public servant on duty. Journalists from Cruzeiro do Sul held a protest outside the Municipal Police Headquarters to repudiate the journalist's arrest and to demand the right to freedom of expression. The Comptroller General of the Civil Police [*Corregedoria Geral da Polícia Civil*] started an investigation after the incident.²⁸⁷

215. On March 2, several shots were fired at the home of blogger Mário Luiz on Carapibus Beach, on the southern coast of the State de Paraíba. According to Mr. Luiz, the attack was politically motivated, and could be related to the fact that he had agreed to work as a press advisor to the Municipal Chamber of Conde.²⁸⁸

216. On March 11, a team from *TV Candidés*, of the State de Minas Gerais, was reportedly detained while working on a report at a public school in the city of Divinópolis. The journalists were detained by advisors to the State Secretary of Education, who ordered them to erase the interview given at the time by the Secretary of Education, Macaé Maria Evaristo dos Santos. According to the information received, the trouble stemmed from the question, "What are the plans for the future of education in Brazil?" The advisors allegedly told the team that they could only leave the school after they erased the interview. As a result, the team reportedly was unable to leave for more than an hour, until the station's journalism director went personally to the school. The report was not erased. In an official note, the State Secretary of Education said that reiterated its "acknowledgement and respect for the work of the press, with complete freedom."²⁸⁹ On June 30, the incident was discussed at a public hearing in the Public Safety Committee of the Legislative Assembly of Minas Gerais.²⁹⁰

217. Journalist and producer James Alberti of *RPC*, an affiliate of *Rede Globo* in Paraná, reportedly received a death threat on April 9 and had to move out of the state for his safety. Alberti was investigating reports of corruption and pedophilia allegedly committed by employees of the State Tax Office of Paraná, which resulted in the arrest of at least 20 individuals. According to the Journalists' Union of Paraná, Alberti

²⁸⁶ ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); G1. January 27, 2015. ['Não houve legítima defesa alguma' diz advogado da família de Ricardinho](#); Sindicato dos Jornalistas de Santa Catarina. January 28, 2015. [Ação da polícia contra cinegrafista da RBS TV agride a liberdade de imprensa](#); Portal Imprensa. January 28, 2015. [Policiais ameaçam cinegrafista da RBS na reconstituição da morte do surfista Ricardinho](#).

²⁸⁷ A Gazeta do Acre. February 19, 2015. [Jornalista é preso em Cruzeiro do Sul e tem fotos apagadas de sua câmera por policial](#); G1. February 20, 2015. [Jornalistas protestam após prisão de cinegrafista em Cruzeiro do Sul, AC](#).

²⁸⁸ PB Agora. March 2, 2015. [Bloqueio tem casa alvejada e diz que há conotação política](#); Diário do Sertão. March 3, 2015. [Após assassinato de radialista, imprensa da PB publica manifesto pela paz e liberdade de expressão](#); Portal Correio. March 2, 2015. [Bloqueio tem casa alvejada no Litoral Sul da Paraíba e atribui tiros à conotação política](#).

²⁸⁹ ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); Associação Mineira de Rádio e Televisão. March 12, 2015. [AMIRT repudia censura contra a TV Candidés](#); G37. March 13, 2015. [Repórter e cinegrafista da TV Candidés são intimidados por assessores da Secretária Estadual de Educação](#); Sistema MPA. March 12, 2015. [Atitude de assessores da Sec. de Educação de MG repercute na Câmara](#); Jornal Belvedere. July 10, 2015. [João Leite denuncia que jornalista foi cerceada por secretária de Educação](#).

²⁹⁰ O Tempo. June 30, 2015. [Audiência na ALMG discute ameaça de assessores à jornalistas de TV](#); Sistema MPA. June 30, 2015. [Audiência pública debate caso de violação de liberdade de imprensa com jornalistas da TV Candidés](#); G37. June 29, 2015. [Denúncia de repressão a equipe de TV em escola será debatida nesta terça \(30\)](#).

was working in Londrina, in the northern part of the state, when he received a telephone death threat. The incident was reported to the Federal Police, the Special Action Group against Organized Crime, and the Government of the State of Paraná.²⁹¹

218. On April 24, a team from *TV Mirante*, a *TV Globo* affiliate in the State of Maranhão, was intimidated by prison officers while reporting on the escape of a detainee. According to the available information, the officers were “heavily armed,” surrounded the journalists, and collected their identification cards. One of the security guards even attempted to prevent one of the reporters from filming. For her part, the Secretary of Justice and Penitentiary Administration stated that the incident had been a routine “security procedure.”²⁹²

219. On that same day, journalist Adolfo Pegoraro of *Radio Onda Sul FM* was threatened and verbally assaulted inside the station’s studio by the president of the Francisco Beltrão Soccer Club after he reported on the problems the team faced in the dispute over the second division of the Paranaense Championship. Pegoraro filed a police report.²⁹³

220. On April 27, journalist Renato Silva’s home in the city of Nova Odessa, State of São Paulo, that also served as the headquarters of the newspaper *Varal de Notícias*, was attacked with a “homemade bomb”. The journalist reported that he had received threats after publishing an exposé connecting the Mayor and advisors of Nova Odessa to alleged irregularities related to the health sector.²⁹⁴

221. On April 28, a cameraman from *TV Globo* was reportedly assaulted in the city of Cabo Frio, in the State of Rio de Janeiro. He was filming an operation conducted by prosecutors from the Brazilian Institute of Environment and Renewable Natural Resources [*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*] against the illegal fish trade when he was assaulted by one of the suspects allegedly involved in that trade.²⁹⁵

222. On July 4, Marivaldo Filho, a journalist from *Bocão News* and press advisor to the City Council Chamber, was assaulted by a military police officer after refusing to delete photos he had taken of a police vehicle. According to the available information, the journalist was leaving a social gathering when he saw police officers beating a friend of his. When he took pictures of the police vehicle, one of the officers approached him and ordered him to erase the photo. When he refused, Mr. Filho was arrested for criminal contempt and hit on the head with a heavy blow. The State Governor indicated that he had instructed the Secretary of Public Safety and the commander of the Military Police to conduct a “rigorous” investigation of the matter.²⁹⁶

²⁹¹ Terra. April 17, 2015. [PR: jornalista é ameaçado de morte e tem que deixar o estado](#); O Globo. April 14, 2015. [Jornalistas que investigam denúncias de corrupção e pedofilia são ameaçados no Paraná](#); Brasil 247/Paraná 247. April 18, 2015. [Jornalista é ameaçado por apurar corrupção no Paraná](#); Sindicato dos Jornalistas Profissionais do Paraná (Sindijor-PR). April 17, 2015. [Ameaça de assassinato de jornalista no Paraná](#); ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); Inter American Press Association (IAPA). April 23, 2015. [La SIP condena demandas contra medios venezolanos](#).

²⁹² ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); G1. April 24, 2015. [Sejap diz que abordagem à equipe de TV foi 'procedimento de segurança'](#); Blog do Gilberto Léda. April 24, 2015. [Sejap constrange equipe da TV Mirante em Pedrinhas](#); Portal Imprensa. April 24, 2015. [Equipe de afiliada da Globo no MA sofre intimidação de agentes penitenciários](#).

²⁹³ ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); RBJ. April 25, 2015. [Jornalista é ameaçado nos estúdios da Rádio Onda Sul](#).

²⁹⁴ Correio Popular. April 28, 2015. [Jornalista sofre atentado a bomba após denúncias](#); Região Hoje. April 26, 2015. [Casa de jornalista é atacada por bomba em Nova Odessa](#); Ataque aos Cofres Públicos. April 28, 2015. [Jornalista que denuncia esquemas de corrupção entre OS e Prefeitura sofre atentado a bomba](#).

²⁹⁵ ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); G1. March 29, 2015. [Ibama apreende mais de mil animais marinhos em cinco estados e no DF](#).

²⁹⁶ Federação Nacional dos Jornalistas (Fenaj). July 6, 2015. [Jornalista é agredido por PMs em Salvador](#); Bocão News. July 6, 2015. [Repórter do Bocão News é espancado ao fotografar ação truculenta da PM](#); G1. July 6, 2015. ['Tive que vencer o medo', diz jornalista](#); Blog Marcos Frahm. July 6, 2015. [Governador determina investigação rigorosa de agressão de PM a repórter do Bocão News](#).

223. On July 17, reporter Alexandre Aprá of the blog *Isso É Notícia*, was reportedly the victim of a beating in Cuiabá, in the State of Mato Grosso. According to the journalist, the attack was related to an investigation into local politics and corruption that he was working on. Reports published on his blog apparently triggered an investigation by the Office of the Comptroller of the Regional Labor Court against a judge. Police initiated an investigation on the case.²⁹⁷

224. On May 7, two individuals on a motorcycle fired shots at the home of journalist Luiz Aranha, in the city of Potirendaba, State of São Paulo. The *Gazeta do Interior* newspaper reporter and *SBT* producer stated that the attack was meant to intimidate him following denunciations made in his reporting.²⁹⁸

225. All types of threats, assaults, and harassment toward journalists, media workers, or media outlets must be investigated by the courts, and the authorities must not dismiss the practice of journalism as a motive for the crime before the investigation is completed. The States have the obligation to take effective measures to prevent attacks on journalists and others who exercise their right to freedom of expression and to combat impunity—specifically, to vigorously condemn such attacks when they happen, conduct prompt and effective investigations to duly punish the perpetrators, and compensate the victims when appropriate. The States also have the obligation to provide protection to journalists and other individuals who exercise their right to freedom of expression who are at a heightened risk of attack.²⁹⁹

226. 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. Social Protest

227. The Office of the Special Rapporteur received information about assaults and arrests of demonstrators and journalists while working to cover the social protests that took place during 2015 in various cities across the country.

228. On January 9, the protest organized by the *Pase Livre* Movement (MPL) against public transportation fare hikes was dispersed by Military Police with tear gas and rubber bullets. According to the MPL, the actions of the MP to disperse the demonstrators was violent, with at least 50 people arrested. According to press reports, a group of infiltrators called “black blocs” smashed windows and destroyed three bank branch locations in downtown São Paulo. Freelance photographer Matheus José Maria was hit by a police baton, after obeying an order from the Military Police to stop photographing during the events. The organizers further asserted that 30,000 individuals had taken part in the protest. The Military Police estimated that there were 2,000 people and said that 800 police officers provided security reinforcement in the area.³⁰⁰

²⁹⁷ Portal Imprensa. August 8, 2015. [Abraji cobra apuração de ataque a repórter no MT; jornalista foi agredido com socos](#); Mídia News. August 7, 2015. [Abraji cobra apuração de ataque a repórter](#); ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#).

²⁹⁸ Federação Nacional dos Jornalistas (Fenaj). May 15, 2015. [Casa de jornalista no interior de São Paulo é alvejada](#); Portal Imprensa. May 9, 2015. [Casa de dono do jornal “Gazeta do Interior” é alvo de atentado a tiros](#); Região Noroeste. May 8, 2015. [Casa de jornalista da região é alvo de atentado a tiros](#); ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#).

²⁹⁹ 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. May 4, 2015. [Joint Declaration on Freedom of Expression and Responses to Conflict Situations](#).

³⁰⁰ G1. January 10, 2015. [Maioria dos detidos em ato contra aumento da tarifa é liberada em SP](#); Carta Capital. January 9, 2015. [Protesto contra aumento de tarifa vira tumulto em São Paulo](#); BBC. January 9, 2015. [Bombas de gás e destruição voltam a marcar protesto em SP](#); Jornal do Brasil. January 16, 2015. [Rio e São Paulo: mais um dia de protestos contra aumento das passagens](#); El País. January 9, 2015. [Manifestantes voltam às ruas de São Paulo e enfrentam repressão da polícia](#); Exame. January 9, 2015. [51 pessoas são presas em protesto contra tarifa em SP](#); Estadão. January 9, 2015. [Protesto em SP termina em depredação e mais de 50 detidos](#); UOL. January 9, 2015. [Protesto contra aumento da tarifa tem confusão e 51 pessoas detidas](#); Associação Brasileira de Jornalismo Investigativo (Abraji). January

229. A few days later, on January 16 the second march of the year organized by the *Pase Libre* Movement (MPL) against increased public transportation fares was reportedly dispersed by the Military Police with non-lethal bombs, rubber bullets, pepper spray, and tear gas. Photojournalist Felipe Larozza of the magazine *Vice* was reportedly assaulted by a military police officer while covering the protest. Together with some 20 protesters, he was allegedly forced to move down a narrow passageway between a wall and a newspaper kiosk, at which time he was struck by a baton. Similarly, Thomas Dreux Miranda, of the blog *Xadrez Verbal*, was reportedly hit in the ankle by bomb shrapnel. The MPL estimates that 20,000 people took part in the demonstration. The MP claims there were around 3,000; the Military Police also reported that it provided some 800 police officers to support the event.³⁰¹

230. On January 23, the fourth protest of the year was also dispersed by the Military Police with rubber bullets and tear gas. Journalist Edgar Maciel, from *O Estado de São Paulo*, was injured in the leg by a rubber bullet while covering the incident. Two protesters were also injured, and seven people were arrested. According to the Military Police, 1,200 people took part in the protest and 1,100 officers were on the scene. The *Pase Libre* Movement (MPL) estimates that the number was around 5,000.³⁰²

231. On January 27, a fifth demonstration was held to protest the public transportation fare increase in São Paulo. According to the information received, Police reportedly fired tear gas and non-lethal bombs to disperse the demonstrations. Journalist Fernando Otto, of *TV Estadão*, was reportedly struck by a rubber bullet while covering the events. The Military Police stated that the images were being used in an internal proceeding to identify and investigate the conduct of the police officer responsible for firing the shot. At least two people were reportedly arrested, three were injured, and others became ill from the tear gas. The *Pase Libre* Movement (MPL) maintained that 10,000 people attended the protest. The MP said that the number was around 1,000.³⁰³

232. On January 29, the *Pase Libre* Movement (MPL) held a sixth demonstration in São Paulo. According to the available information, media professionals including photojournalist Gustavo Gerchmann were assaulted by a group of “black blocs” who had infiltrated the protest.³⁰⁴

233. On January 30, two people were reportedly injured during the protest against the bus fare hike in downtown Rio de Janeiro. One of them was arrested for criminal contempt [*desacato*]. The other wounded person lost consciousness and was taken to the hospital by Fire Department personnel.³⁰⁵

28, 2015. [Repórter do Estadão é alvo de bala de borracha em protesto: é a quinta ocorrência em 2015](#); Portal dos Jornalistas. January 28, 2015. [Repórter do Estadão é alvo de bala de borracha em protesto](#).

³⁰¹ Estadão. January 16, 2015. [Segundo ato contra tarifa em SP tem presos, tumulto e bombas](#); Inter American Press Association (IAPA). January 21, 2015. [Abraji repudia nova agressão da PM a repórter durante protesto](#); VICE. January 21, 2015. [Um PM Bateu no Fotógrafo da VICE, Assista ao Vídeo](#); Sindicato dos Jornalistas de São Paulo. January 28, 2015. [Jornalista do Estadão é agredido por disparo de bala de borracha da PM](#); Inter American Press Association (IAPA). No date. [Brazil](#); G1. January 16, 2015. [Bombas, depredação e detidos marcam 2º ato contra tarifa em SP](#); Brasil Post. January 16, 2015. [Protesto contra aumento de passagem tem confusão e bombas de gás em São Paulo](#); Gama Livre. January 19, 2015. [PM ataca manifestantes e mente nas redes sociais](#); Associação Brasileira de Jornalismo Investigativo (Abraji). January 28, 2015. [Repórter do Estadão é alvo de bala de borracha em protesto: é a quinta ocorrência em 2015](#); Portal dos Jornalistas. January 28, 2015. [Repórter do Estadão é alvo de bala de borracha em protesto](#); Folha de São Paulo. No date. [Protesto contra as tarifas tem correria e bombas de gás no centro de SP](#).

³⁰² G1. January 23, 2015. [Quarto ato contra aumento da tarifa tem detidos e vandalismo no Centro](#); UOL. January 23, 2015. [Ato contra tarifas em SP tem rojões, bombas de gás e balas de borracha](#); ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#).

³⁰³ Tribuna Hoje. January 30, 2015. [Celular “salva” repórter de ser ferido por bala de borracha da PM](#); Estadão. January 29, 2015. [Bala de borracha volta a ser discutida após jornalistas serem atingidos em protestos](#); Associação Brasileira de Imprensa (ABI). January 28, 2015. [Repórter do Estado de S. Paulo é atingido por bala de borracha em manifestação](#); Associação Brasileira de Jornalismo Investigativo (Abraji). January 28, 2015. [Repórter do Estadão é alvo de bala de borracha em protesto: é a quinta ocorrência em 2015](#); Article 19. January 28, 2015. [Bombas de gás no metrô](#); ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); Jornal dia a dia. February 6, 2015. [Polícia precisa de “controle emocional”, diz ouvidor da PM](#); Rádio Voz da Rússia. January 28, 2015. [Quinto ato contra tarifa em São Paulo terminou com tumulto no metrô](#); Brasil Post. January 28, 2015. [Ato do MPL termina com confronto entre PM e manifestantes em estação da Linha 4 na zona oeste de SP](#); Folha de São Paulo. January 27, 2015. [Grupo entra em confronto com PM no metrô ao final de ato contra tarifa](#).

³⁰⁴ Último Segundo. January 29, 2015. [Protesto do MPL é marcado por agressões, prisões e pichação de monumento](#); Veja. January 29, 2015. [Black bloc ataca fotógrafo em protesto contra tarifa](#).

234. On February 23, a protest against the actions of the army at the “Complexo da Maré”—the largest complex of shantytowns in Rio de Janeiro— was reportedly violently repressed by the Military Police, who began firing on the crowd with non-lethal bombs and tear gas, rubber bullets, and regular bullets. Similarly, Army personnel reportedly fired lethal ammunition at the demonstrators. The initiative, called the “Protest for Life in Complexo da Maré” was reportedly motivated by recent acts of alleged police violence in the complex.³⁰⁶

235. At the hearing on “Social Protest and Human Rights in Latin America” held on March 16 at its 154th Period of Sessions, the Commission received with concern the information that some 21 legislative initiatives were introduced in Brazil in 2013 at the federal, state, and municipal levels, to regulate protests and criminalize acts in that context. The requesting organizations indicated that one of the bills described the offense of “vandalism,” increasing the penalties significantly when the acts are committed in the context of public protests. In addition, they reported that the Association of Mass Protests in Brazil had been harshly repressed in São Paulo in 2013. They asserted that law enforcement actions in Brazil are characterized by the indiscriminate use of less lethal weapons, and that these weapons, in some cases, have been shown to cause serious and irreversible injuries, and even death. They added that unenforced laws on the books, such as the National Security Law, were being revived. They also maintained that, during the 2013 protests in Brazil, over 2,000 people were unlawfully arrested, many of whom were taken to the police station and immediately released without any criminal charges. Finally, they asserted that the repression in the shantytowns was becoming more violent, and was also being directed at cultural events such as funk and rap parties, and not just social and political demonstrations.³⁰⁷

236. On April 3, there was a demonstration in the city of Rio de Janeiro, in the “Complexo do Alemão,” protesting the death of a boy who had been shot the previous day. According to the available information, the police reportedly used gas bombs and pepper spray to disperse the demonstrators.³⁰⁸ On the next day, a team of reporters from *GloboNews* was reportedly surrounded and harassed during a protest held by residents of the complex. The journalists were surrounded and booed by a group of individuals who did not live there and then forced to leave the place.³⁰⁹

237. On April 24, a reporter from *SBT* and three from *TV Globo* were physically and verbally assaulted during the public school teachers’ protest in São Paulo. According to protesters and the Military Police, the assailants were “black blocs.” The *SBT* cameraman was thrown to the ground, kicked, and beaten,

³⁰⁵ Folha de São Paulo. January 30, 2015. [Protesto contra tarifas termina com confronto e ao menos um ferido no Rio](#); G1. January 30, 2015. [Protesto contra aumento da tarifa no Rio tem tumulto, feridos e preso](#); O Dia. January 30, 2015. [Tumulto em protesto deixa duas pessoas feridas no Centro do Rio](#); Rio Alerta Notícias. January 31, 2015. [Tumulto em protesto deixa duas pessoas feridas no Centro do Rio](#).

³⁰⁶ O Dia. February 23, 2015. [Protesto contra ocupação do Exército na Maré interdita a Linha Amarela](#); Jornal A Nova Democracia/YouTube. February 24, 2015. [Moradores do Complexo da Maré se insurgem contra a PM e o Exército](#); Coletivo DAR (Desentorpecendo a Razão). February 26, 2015. [Complexo da Maré: moradores se revoltam contra abusos da PM e exército, que reprime protesto pacífico com munição letal](#); Frente Independente Popular. February 24, 2015. [Informes sobre a Manifestação ocorrida ontem no Complexo da Maré](#); Central 3. February 27, 2015. [Central Autônoma #50](#); Portal Aprendiz. March 11, 2015. [Após um ano, ocupação militar da Maré não garante direitos à comunidade](#); A Nova Democracia. March, 2015. [Rio: Maré se insurge contra a PM e o exército](#); Fiocruz. February 27, 2015. [Politécnica divulga nota de repúdio à violência policial no Complexo da Maré](#); CRP – RJ. February 23, 2015. [Nota da Comissão Regional de Direitos Humanos em relação às ações da Polícia Militar e da Força de Pacificação na Maré](#); Article 19. February 25, 2015. [Nota sobre a repressão policial a manifestação no Complexo da Maré](#); SBT Rio/YouTube. February 24, 2015. [Moradores do Complexo da Maré fecharam a Linha Amarela](#).

³⁰⁷ IACHR. 154 Periodo de Sesiones. Audiencia Protesta Social y Derechos Humanos en América. March 16, 2015. Available for consultation at: <http://www.oas.org/es/IACHR/multimedia/sesiones/154/default.asp>

³⁰⁸ G1. April 3, 2015. [Protesto contra morte de menino no Alemão tem confronto com a PM](#); Jornal do Brasil. April 3, 2015. [Moradores do Complexo do Alemão fazem protesto contra morte de menino](#); Brasil 247. April 3, 2015. [Bomba no protesto contra morte do menino Jesus](#).

³⁰⁹ ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); UOL. April 5, 2015. [Equipe da Globo News é hostilizada e expulsa em manifestação no Alemão](#); Comunique-se. April 6, 2015. [Equipe da Globonews é expulsa do Complexo do Alemão](#); Terra. April 5, 2015. [Equipe da GloboNews é hostilizada durante protesto no Rio](#); Na telinha. April 6, 2015. [Equipe da Globo News é hostilizada em protesto no Complexo do Alemão](#).

and his camera was destroyed. The team of *TV Globo* was chased and had to hide in a bar. In addition, two camera operators reportedly had their equipment destroyed.³¹⁰

238. On April 29, police repression of the teachers' protest outside the Legislative Assembly in Curitiba, in the State of Paraná, reportedly left 213 protesters wounded. Another 14 were arrested, accused of carrying sticks, rocks, and explosives. Demonstrators were protesting against a bill to amend Social Security laws. A group of demonstrators tried to break through the court-ordered security perimeter that the Military Police had established around the building. In response, the 1,600 police officers surrounding the Legislative Assembly—in order to keep out the teachers and public servants who opposed the vote—reportedly used tear gas, rubber bullets, and water cannons to disperse at least 20,000 demonstrators.³¹¹ *Bandeirantes* reporter Luiz Carlos de Jesús was bitten by an Military Police pit bull.³¹² The tear gas, which was reportedly fired indiscriminately, found its way into a nearby daycare center, making some children ill.³¹³

239. According to the Office of the Public Defender of Paraná and the Brazilian Bar Association [*Ordem dos Advogados do Brasil*], none of the 14 detainees (12 adults and two adolescents) was found to be in possession of any objects to indicate that they had committed offenses involving the destruction of government property; nor were “black blocs”. They had been charged with the offenses of resistance, criminal contempt, and disturbing the work or peace of others.³¹⁴ In a public statement, the state governor asserted that the Military Police had taken “defensive action” against “demonstrators from outside the state workers’ movement,” and that an investigation was underway.³¹⁵ On May 13, the Federal Public Ministry reported that it had opened an investigation into possible human rights violations by the government during the April 29 protests.³¹⁶ In addition, the Human Rights Secretariat of the Presidency of the Republic publicly announced that 12 complaints had been received by the National Observatory for Human Rights [*Ouvidoria Nacional de Direitos Humanos*] (ONDH) and forwarded to “the police oversight bodies and citizens’ defense and human rights bodies of Paraná, such as the Police Ombudsman’s Office [*Ouvidoria da Polícia*], the Public Ministry, the Office of the Public Defender, and the Police Comptroller’s Office.”³¹⁷

240. On June 30, the State of Brazil sent a letter to the Inter-American Commission on Human Rights reporting on the protests in Paraná, and the measures taken in the aftermath of those events. The State reported that the ONDH registered 22 complaints regarding incidents that took place during the protest.

³¹⁰ Estadão. April 24, 2015. [Black blocs se infiltram em ato dos professores e agredem profissionais da imprensa](#); Associação Brasileira de Jornalismo Investigativo (Abraji). April 24, 2015. [Repórteres e cinegrafistas são agredidos em protesto em SP](#); Mundo Positivo. April 25, 2015. [Black Blocs agredem jornalistas em protesto de professores](#); R7. April 24, 2015. [Jornalistas são agredidos em manifestação dos professores](#); ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#).

³¹¹ Época. April 30, 2015. [A ação desastrosa da PM no protesto dos professores em Curitiba](#); G1. April 30, 2015. [Após confronto, professores passam por exame de corpo de delito no IML](#); UOL. May 4, 2015. [Protestos no PR: Entenda por que os professores estão em greve](#); Estadão. April 29, 2015. [Confronto entre PM e professores no PR deixa cerca de 200 feridos](#); Amnesty International. Updated on May 12, 2015. [ACÃO URGENTE: Polícia Militar ataca professores em protesto](#); Gazeta do Povo. May 6, 2015. [Coronéis da PM mandam carta a Richa repudiando declarações de Francischini](#); O Globo. May 6, 2015. [Em carta, PM do Paraná diz que secretário de Segurança foi alertado sobre ação durante protesto](#); EBC. April 29, 2015. [Sindicato de Professores do Paraná diz que ação da PM em protesto foi “truculenta”](#); Pragmatismo Político. April 30, 2015. [Jornalista de Curitiba revela detalhes do massacre de 29 de abril](#).

³¹² BAND.com. April 29, 2015. [Cinegrafista da Band é atacado por pit bull da PM](#); Pragmatismo Político. April 29, 2015. [Vídeo: Pitbull da PM do Paraná ataca cinegrafista da Band](#); G1. April 29, 2015. [Repórter cinematográfico é atacado por cão da PM durante protesto](#); ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#).

³¹³ G1. April 30, 2015. [Creche prejudicada por cheiro de gás lacrimogêneo suspende aulas no PR](#); Época. April 30, 2015. [A ação desastrosa da PM no protesto dos professores em Curitiba](#).

³¹⁴ G1. May 1, 2015. [Defensoria Pública nega prisões de 'black blocs' em protesto no Paraná](#); Gazeta do Povo. May 1, 2015. [Defensoria e OAB negam prisão de black blocs em confronto](#); UOL. May 2, 2015. [Defensoria Pública do PR contraria Richa e nega black blocs em confronto](#).

³¹⁵ Carta Capital. April 29, 2015. [Após 200 feridos, governo do Paraná culpa manifestantes](#); Época. April 30, 2015. [Beto Richa culpa "black blocs" pela violência na manifestação de professores](#).

³¹⁶ Exame.com. May 13, 2015. [MPF investigará se PR violou direitos humanos em protesto](#); EBC Agência Brasil. May 13, 2015. [MPF investigará se governo do Paraná violou direito de professores em protestos](#).

³¹⁷ Brasil. Secretaria de Direitos Humanos da Presidência da República. May 6, 2015. [Nota Pública sobre a violência contra professores no Paraná](#).

Statements were subsequently sent by social movements and civil society organizations through the “April 29 Human Rights Committee,” created to report the alleged abuses committed by the Military Police of Paraná, and through the State Employee Unions’ Forum [*Fórum das Entidades Sindicais dos Servidores Público Estaduais*]. According to the State, those complaints were forwarded to the competent state government entities for the investigation of the alleged violations. It also reported that a representative of the ONDH had participated in a public hearing in the Federal Senate on May 6. That hearing was convened by the Senate Committee on Human Rights, and was attended by, among others, representatives of the Secretary of Penitentiary Administration and Security of the government of Paraná. In addition, the National Human Rights Council held a public hearing on June 12 in the city of Curitiba in coordination with the state and municipal human rights councils.³¹⁸

241. The State additionally reported that, on April 29, the Public Ministry of the State of Paraná issued Recommendation No. 1/2015 with guidelines for use during the protests. That recommendation was provided to the Governor of Paraná, the Secretary of Public Safety, and the Commander General of the Military Police of the State of Paraná. That same day, due to the events reported, the Public Ministry issued Resolution PGJ No. 1715/2015, delegating authority to the State Prosecutors [*Procuradores de Justiça*] to investigate “responsibilities involving the actions of police and protesters in the vicinity of the Legislative Assembly of Paraná, as well as their respective developments.” On April 30, the Public Ministry of the State of Paraná initiated preliminary proceedings for a civil inquiry [*inquérito civil*], as well as criminal investigation proceedings. Also, it announced that it would conduct “a swift and independent investigation of the facts,” in addition to having created an email account to receive complaints, documents, and images of the events that took place during the April 29 protest. On May 4, the state Military Oversight Court [*Vara de Auditoria Militar do Estado*] was urged to support the investigations related to Military Police Investigation No. 250/15 – COGER. With respect to the measures taken for the police actions, in addition to Recommendation No. 1/2015, the State cited Inter-Ministerial Order No. 4.226, which established national guidelines on the use of force by state law enforcement officers. It also pointed to Resolution No. 6 of December 18, 2014, of the National Human Rights Council (CNDH), regulating the application of the principle of nonviolence in the context of protests and public events. According to the State, after the protests, the state government of Paraná published Decree No. 1238 on May 5, in order to “improve standardization regarding the use of non-lethal materials and reduce the use of direct physical force in police interventions.”³¹⁹ Finally, with respect to the arrests made during the protest, the State reported that twelve people had been detained and released on the same day. Similarly, the Public Ministry reported that all of those people had been assisted by counsel. According to the State, those detainees that had injuries were transported to the *Instituto Médico-Legal* for a forensic medical examination.³²⁰

242. On May 18, the Teachers’ Union of the State of São Paulo [*Sindicato dos Professores do Ensino Oficial do Estado de São Paulo*] (Apeoesp) was fined by the courts in the amount of 300,000 Brazilian reais (some US \$100,000) for failing to comply with the precautionary measure barring the total or partial obstruction of state highways during their protests. The judge of the 2nd Public Treasury Court [*2ª Vara da Fazenda Pública*] held that the Apeoesp was on notice of the precautionary measure of April 22, which prohibited the partial or total blocking of roads under penalty of a fine of 100,000 Brazilian reais. In late April the Office of the Public Prosecutor for the State of São Paulo filed a petition seeking the imposition of a fine against Apeoesp in the amount of 100,000 Brazilian reais for every violation of the precautionary measure. Accordingly, due to three different incidents involving road obstructions on May 7, 13, and 14, the judge found that the measure had been violated.³²¹

³¹⁸ Communication from the State of Brazil to the Executive Secretariat of the Inter-American Commission on Human Rights. No. 180. June 30, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

³¹⁹ Communication from the State of Brazil to the Executive Secretariat of the Inter-American Commission on Human Rights. No. 180. June 30, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

³²⁰ Communication from the State of Brazil to the Executive Secretariat of the Inter-American Commission on Human Rights. No. 180. June 30, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

³²¹ G1. May 19, 2015. [Justiça multa Apeoesp em R\\$ 300 mil por bloqueio de rodovias em protestos](#); Agência Brasil. May 19, 2015. [Justiça multa sindicato dos professores de SP por bloqueio de rodovias](#); Folha de São Paulo. May 19, 2015. [Justiça multa em R\\$ 300 mil sindicato de docentes de SP por fechar rodovias](#); Portal do Governo de São Paulo. May 19, 2015. [Justiça multa Apeoesp em R\\$ 300 mil por](#)

243. On May 29, protests were held in various Brazilian cities against the Outsourcing Law. During the protest in São Paulo, photojournalist Danilo Verpa of *Folha de São Paulo* was reportedly struck by a police baton while covering the demonstration of students and employees of the University of São Paulo. In addition, a video of the same protest that circulated on the Internet shows a protester falling to the ground after being hit in the face by a police officer, and another officer firing rubber bullets at protesters from inside a police vehicle. That police officer was reportedly fired from his job by order of the Secretary of Public Safety.³²²

244. On August 12, a protest against public transportation fare hikes was held in Belo Horizonte, in the State of Minas Gerais. According to the available information, the Military Police attacked the protesters with rubber bullets and tear gas bombs, and arrested some 60 people. The state government said that the case would be investigated.³²³

245. The Office of the Special Rapporteur also received information about legislative bills pending in Brazil that could negatively affect the right to freedom of expression during demonstrations. On October 28, the Senate passed Bill 101/2015, which defines the offense of terrorism in Brazil, and provides for sentences of up to 24 years in prison. The version that was passed in the House of Representatives in August underwent changes in the Senate, where a paragraph that excluded demonstrations and social movements from the purview of the law was deleted, and therefore went back to the House of Representatives for an emergency vote. According to PL 101/2015, “political extremism” will be one of the grounds to classify a crime as “terrorism.” It additionally provides for the crimes of terrorism against things (transportation, ships, buildings, etc.) and “expressing support for terrorism.”³²⁴

246. The Office of the Special Rapporteur received with concern information about Bill 6268/09, passed on August 18 by the Constitutional Affairs, Justice, and Citizenship (CCJ) Committee of the House of Representatives. This bill defines the offense of improper obstruction of a public thoroughfare. According to the approved text, the penalty for blocking a road “improperly” will be one to two years in prison and a fine. This law would amend the Brazilian Traffic Code (Law 9.503/97), which only provides for the imposition of administrative penalties for the obstruction of public thoroughfares. According to Representative Pedro Uczai, who opposes the bill, its intent is to prevent the people from occupying the streets. At the closure of this report, the bill was awaiting a vote by the full House of Representatives.³²⁵

247. On October 26, the “*Diretório Central dos Estudantes Livre ‘Alexandre Vannucchi Leme’*” (DCE) of the Universidad de São Paulo was found liable in the civil suit brought by the Public Ministry of São Paulo, and ordered to pay more than 170,000 Brazilian reals (some US \$50,000) for failing to inform the competent authorities in advance of the protest they organized on November 24, 2011. The civil action sought

[fechamento de rodovias](#); Tribunal de Justiça do Estado de São Paulo. 2ª Vara da Fazenda Pública. [Decision of May 18, 2015](#); Estadão. April 30, 2015. [Governo vai a Justiça contra professores por obstrução de rodovias](#).

³²² Folha de São Paulo. May 29, 2015. [Fotógrafo da Folha é agredido por PM e impedido de registrar B.O.](#); TV Folha/YouTube. May 29, 2015. [PM que atirou bala de borracha de dentro de viatura em ato é afastado](#); Folha de São Paulo. May 29, 2015. [Protestos contra a lei da terceirização pelo Brasil](#); El País. May 29, 2015. [Protestos contra terceirização e ajuste fiscal tomam as ruas do país](#); G1. May 29, 2015. [Secretário da Segurança afasta PM que atirou em manifestantes na USP](#).

³²³ Revista Forum. August 13, 2015. [PM mineira agride manifestantes em ato contra aumento da tarifa de ônibus em BH](#); G1. August 12, 2015. [Ato contra aumento da tarifa de ônibus termina em confusão em BH](#); EM. August 12, 2015. [Conflito em manifestação contra tarifa de ônibus em BH termina com cerca de 60 presos](#); Sindicato dos Jornalistas Profissionais de Minas Gerais. No date. [Sindicato age contra violência a jornalistas](#); Portal Vermelho. August 14, 2015. [Estudantes cobram mudança de comando da PM após reação violenta em BH](#); Medium. August 13, 2015. [Ato contra tarifa sobre repressão brutal em BH](#); UOL. August 13, 2015. [Governo de MG diz que investigará violência em protesto: detidos são soltos](#).

³²⁴ Portal Vermelho. November 1, 2015. [Projeto “antiterrorismo” aprovado no Senado sofre críticas](#); Folha de São Paulo. October 28, 2015. [Senado aprova lei antiterrorismo: proposta voltará à Câmara](#); Senado Federal. Bill No. 101/2015. Available for consultation at: <http://www25.senado.leg.br/web/atividade/materias/-/materia/122772>; UOL. October 27, 2015. [Lei antiterrorismo ameaça violar convenção, diz relator da OEA](#).

³²⁵ Câmara dos Deputados. August 18, 2015. [CCJ aprova detenção para quem bloquear de forma indevida vias públicas](#); Folha de Vilhena. August 20, 2015. [Projeto de lei que proíbe manifestações em vias públicas é aprovado pelo CCJ](#); Consultor Jurídico. August 19, 2015. [Comissão da Câmara aprova pena de prisão para quem fechar rua em protesto](#).

compensation for pecuniary and non-pecuniary damages resulting from the march, which took place along Avenida Paulista and was organized by the DCE. According to the judgment of the 37th Civil Court [*37ª Vara Cível – Foro Central Cível*], “The right of assembly provided for in the Federal Constitution cannot be interpreted as an absolute right. Prior notice must be given not only to the Military Police but also to the *Companhia de Engenharia de Trafego* (CTE) to accommodate local traffic and surrounding areas because it is a high-traffic area throughout nearly the entire day.” The judge found that “Although it is asserted that the disturbance of the march would not be eliminated through prior notice to the competent authorities, the inconvenience to the local population and the traffic in the region could, undoubtedly, be mitigated.”³²⁶

248. The IACHR has stated repeatedly that social protest is a fundamental tool for human rights defense work, and is essential for critical social and political expressions regarding the activities of government 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 rights to freedom of expression and to freedom of assembly,”³²⁷ 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.”³²⁸

249. The Commission has also stated that the alleged use of the punitive power of the State to criminalize human rights defenders and peaceful social protest, as well to criminally prosecute political critics or dissidents, is extremely troublesome.³²⁹ The Office of the Special Rapporteur recalls that under Article 7.5 of the American Convention pretrial detention is appropriate only when the defendant poses a flight risk or will potentially attempt to obstruct the judicial investigation. According to the IACHR, the justification of pretrial detention for preventive reasons, such as the dangerousness of the defendant or the possibility that he or she will commit crimes in the future, is contrary to this provision and to the right to the presumption of innocence.³³⁰

250. 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 “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.”³³¹

251. The Inter-American Commission has found that any type of arbitrary or abusive interference that violates the privacy of human rights defenders and their organizations is prohibited by the American Declaration and the American Convention.³³²

³²⁶ Tribunal de Justiça do Estado de São Paulo. 37ª Vara Cível - Foro Central Cível. [Processo No. 0113198-89.2012.8.26.0100](#). Judgment of October 26, 2015.

³²⁷ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

³²⁸ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

³²⁹ IACHR. February 21, 2014. [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](#).

³³⁰ IACHR. [Report on the Use of Pretrial Detention in the Americas](#). OEA/Ser.L/V/II. Doc. 46/13. December 30, 2013. Para. 144.

³³¹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

³³² IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

252. Finally, the Joint Declaration on Freedom of Expression and Responses to Conflict Situations, adopted on May 2015, affirms that “[a]ll criminal restrictions on content – including those relating to hate speech, national security, public order and terrorism/extremism – should conform strictly to international standards, including by not providing special protection to officials and by not employing vague or unduly broad terms.[...] In particular, States should refrain from applying restrictions relating to ‘terrorism’ in an unduly broad manner. Criminal responsibility for expression relating to terrorism should be limited to those who incite others to terrorism; vague concepts such as ‘glorifying’, ‘justifying’ or ‘encouraging’ terrorism should not be used.”

E. Subsequent Liabilities

253. On August 13, the clown and street performer Tico Bonito was arrested allegedly for the offense of criminal contempt. According to the available information, he was arrested after criticizing the Military Police of the State of Paraná during his artistic performance in a park in the city of Cascavel after saying, “the police only defend the bourgeoisie and Beto Richa.” A police report [*boletim de ocorrência*] was apparently filed, and a date was set for a hearing before a judge.³³³

254. 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

255. According to the complaint filed by the Journalists’ Union of Paraná, in early April four journalists from the newspaper *Gazeta do Povo* were being pressured by the Civil and Military Police to reveal their sources for several reports that exposed alleged irregularities in both police institutions. The material, published in 2012, showed that the police were using government vehicles for private purposes. The newspaper also had published videos on the Internet of 12 police officers who allegedly used the vehicles at supermarkets, at a brothel, and to pick up their children from school. After several reports were published, the police opened investigations into the case. Journalists Felipe Anibal, Diego Ribeiro, Albari Rosa, and Mauri König have been called more than 20 times since 2013 to testify as witnesses. In the opinion of the Journalists’ Union, the purpose of this insistence is to discover the journalists’ sources rather than to punish the police officers suspected of committing these excesses. Numerous organizations representing journalists in Brazil criticized the restriction imposed on the aforementioned professionals. According to the Brazilian Association of Investigative Journalism [*Associação Brasileira de Periodismo Investigativo*] (Abraji) “The action is a direct attack on the Brazilian press.” For her part, the Secretary of Public Safety of Paraná, affirmed that she “rejects any attempt to cause intimidation and anxiety among journalists and citizens who report unlawful acts.”³³⁴

256. According to publicly available information, the Civil Police of Paraná attempted to discover the sources of journalist Lina Hamdar after she reported in 2013 on an investigation against a physician accused of killing patients in the intensive care unit of a hospital in the capital of the State of Paraná. Hamdar, who at the time of the article’s publication was working for the newspaper *Metro de Curitiba*, was summoned to give a statement at the headquarters of the Special Integrated Tactical Group [*Tático Integrado de Grupos*

³³³ G1. August 14, 2015. [Palhaço é preso pela PM durante apresentação no Centro de Cascavel](#); *Gazeta do Povo*. August 15, 2015. [Palhaço satiriza policiais e é preso em Cascavel; veja o vídeo](#).

³³⁴ Portal Imprensa. April 6, 2015. [Sindicato denuncia ameaça a direito de sigilo de fonte de jornalistas da "Gazeta do Povo"](#); G1. April 9, 2015. [Sindicato dos jornalistas denuncia perseguição a profissionais no Paraná](#); Sindicato dos Jornalistas Profissionais do Paraná (Sindijor-PR). April 6, 2015. [Direito de sigilo de fonte ameaçado no Paraná](#); *Gazeta do Povo*. April 7, 2015. [Um minuto de sua atenção: "Polícia para quem precisa"](#); Rádio Guarituba Mais. April 14, 2015. [No Facebook, Richa diz que repudia pressão de polícias a jornalistas](#); Folha de São Paulo. April 9, 2015. [Polícia pressiona jornalistas a abrir fontes](#); Knight Center for Journalism in the Americas. April 14, 2015. [Jornalistas do Paraná são pressionados pela polícia a revelar fontes de reportagens](#); ABERT. No date. [Relatório de Liberdade de Imprensa 2014/2015](#); Inter American Press Association (IAPA). April 23, 2015. [It repudiates harassment of journalists in Brazil](#).

de Repressão Especial"], an elite unit of the Civil Police of Paraná, and had been pressured to reveal her sources. The investigators were looking for the person responsible for leaking wiretaps of the doctor's telephone calls. The Abraji stated that it "repudiates the attempt by the police to break one of the pillars of freedom of the press and democracy: the confidentiality of sources."³³⁵

257. Principle 10 of the IACHR's Declaration of Principles 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." Additionally, principle 11 establishes that, "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

G. Access to Public Information

258. According to information received by the Office of the Special Rapporteur, Governor Geraldo Alckmin of the State of São Paulo declared the confidentiality of technical data from the Water and Waste Management Company of that State and the Metro. He also classified 26 Military Police matters as confidential for 15 years. This restriction includes administrative and financial information about the Military Police. According to a statement released by the Military Police, "the classification of the degrees of confidentiality of the documents was made after a thorough analysis by a committee created for that purpose, bearing in mind the complete content of each file. The classification criteria take account of various factors, such as public safety and operational strategies."³³⁶

259. Additionally, through Decree No. 61.559 of October 15, the Governor of São Paulo revoked the confidentiality of the state information and determined that only the Governor, Lieutenant Governor, Secretaries of State, state attorneys could decide on new restrictions in the future. Pursuant to that decree, information considered confidential would have to be reclassified.³³⁷

260. 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.

³³⁵ Associação Brasileira de Jornalismo Investigativo (Abraji). April 7, 2015. [Polícia do Paraná constrange jornalistas a revelarem suas fontes](#); Folha de São Paulo. April 9, 2015. [Polícia pressiona jornalistas a abrir fontes](#); O Globo. April 9, 2015. [Entidades criticam pressão da polícia contra jornalistas no Paraná](#); Inter American Press Association (IAPA). April 23, 2015. [La SIP condena demandas contra medios venezolanos](#).

³³⁶ Estadão. October 15, 2015. [Estado impoe sigilo dado da PM e barra comparacao entre crimes e policiamento](#); G1. October 15, 2015. [PM decreta sigilo de informacoes da corporacao por ate 15 anos](#); G1. October 13, 2015. [Sabesp determina sigilo de 15 anos sobre dados da rede de agua e esgoto](#); Article 19. October 13, 2015. [Sigilo de documentos na Sabesp](#); Folha de São Paulo. October 6, 2015. [Alckmin impõe sigilo e só vai expor falhas no metrô de SP após 25 anos](#); Article 19. October 6, 2015. [Em São Paulo, transporte sem transparência](#).

³³⁷ Estadão. October 16, 2015. ['Sigilo só para o que for realmente sigiloso', diz secretário da SSP](#); Assembleia Legislativa do Estado de São Paulo. [Decreto No. 61.559](#) of October 15, 2015; G1. October 15, 2015. [Governo de SP revoga sigilos e limita decisões a Alckmin, vice e secretários](#); A Tribuna. October 16, 2015. [Secretários e Comissão Estadual de acesso à Informação irão rever todas as tabelas de classificação de sigilo](#).

H. Internet and Freedom of Expression

261. The case of Internet censorship against activist Ricardo Fraga has been pending for two years without a resolution.³³⁸ As this office has reported, On September 19, 2014, the 34th Civil Court of the São Paulo District [*34ª Vara Cível da Comarca de São Paulo*] upheld the imposition of a measure prohibiting Fraga Oliveira from protesting against the real estate development or participating in any other activity near the property construction site. Oliveira maintained a Facebook initiative called “The Other Side of the Wall—A collective intervention” [*O Outro Lado do Muro – Intervenção Coletiva*], which he used to protest against the construction of the property development.³³⁹ The decision also ordered him to remove any content about it from the web, on penalty of a fine of 10,000 Brazilian reais for each infraction. According to the 34th Civil Court, the measure was justified because of the impact of the activist’s demonstrations on the company’s regular exercise of its right to property. According to the information received, Oliveira appealed the decision.³⁴⁰

262. On January 28, Brazil’s Ministry of Justice held a public consultation on the Civil Rights Framework for the Internet, in order to receive input for its regulation. That consultation was held until April 30, and the most heavily discussed matters included the rules on net neutrality. In addition, the debate on the draft bill on the protection of information was published at the same time, and was open for public consultation until July 5.³⁴¹ On October 20, through the National Consumer Secretariat, the Ministry of Justice presented its version of the bill during the international seminar “Anteprojeto Brasileiro de Proteção de Dados Pessoais em Perspectiva Comparada.”³⁴²

263. For its part, the National Telecommunications Agency held a public consultation from March 31 to May 19, in order to receive opinions on the issue of net neutrality. The objective was to gather inputs for the drafting of a formal position to be submitted to the Office of the President of the Republic during the process of issuing regulations to the Civil Rights Framework for the Internet.³⁴³

264. On February 11, Judge Luiz de Moura Correia of the Investigations Center of the Teresina District Court [*Central de Inquéritos da Comarca de Teresina*], State of Piauí, ordered the telephone companies in Brazil to temporarily suspend the instant messaging app WhatsApp. The court order was issued after the company refused to comply with prior decisions relating to investigations conducted by the state’s Civil Police. The decision states in part that, until the company complied with the court order, “access through the company’s services to the domains whatsapp.net and whatsapp.com and all of their subdomains, and all other domains containing whatsapp.net and whatsapp.com in their names, as well as all IP (Internet Protocol) numbers linked to the previously mentioned domains, is temporarily suspended throughout the country, on an emergency basis within 24 hours of receipt.”³⁴⁴ According to the Secretary of Public Safety of Piauí, the

³³⁸ Observatório da Imprensa. February 24, 2015. [Dois anos de censura digital](#); Article 19. February 12, 2015. [Caso Ricardo Fraga x Mofarrej Empreendimentos Imobiliários: Ricardo foi proibido de protestar presencialmente e pela internet](#).

³³⁹ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 132; Tribunal de Justiça do Estado de São Paulo. 34ª Vara Cível da Comarca de São Paulo. [Processo No. 1008543-15.2013.8.26.0100](#). Judgment of March 6, 2013; Tribunal de Justiça de São Paulo. 5ª Câmara de Direito Privado. [Processo No. 0051583-73.2013.8.26.0000](#). Judgment of May 15, 2013.

³⁴⁰ Tribunal de Justiça do Estado de São Paulo. 34ª Vara Cível da Comarca de São Paulo. [Processo No. 1008543-15.2013.8.26.0100](#). Judgment of September 19, 2014; Article 19. October 13, 2014. [A censura continua](#); Adital. October 10, 2014. [Activista apelará decisão judicial que le prohíbe protestar en internet contra emprendimiento inmobiliario](#).

³⁴¹ Pensando o Direito/Ministério da Justiça. April 30, 2015. [Debate público sobre o Marco Civil termina nesta quinta-feira \(30\)](#); O Globo. January 28, 2015. [Governo inicia consulta pública para regulamentar o Marco Civil da Internet](#).

³⁴² Ministério da Justiça do Brasil. October 20, 2015. [MJ apresenta nova versão do Anteprojeto de Lei de Proteção de Dados Pessoais](#); Ministério da Justiça do Brasil. [Anteprojeto de lei sobre o tratamento de dados pessoais](#).

³⁴³ Canaltech. April 3, 2015. [Marco Civil: Anatel abre consulta pública para discutir neutralidade de rede](#); Ministério das Comunicações. April 29, 2015. [Anatel prorroga consulta pública sobre marco civil](#).

³⁴⁴ Link. February 25, 2015. [Juiz exige a suspensão do WhatsApp no Brasil](#); Extra. February 25, 2015. [Juiz determina suspensão do WhatsApp no Brasil](#); O Globo. February 25, 2015. [Juiz determina suspensão do WhatsApp no Brasil](#); Folha de São Paulo. February 25,

court proceedings that resulted in the decisions began in 2013, but as of February 2015 the company responsible for WhatsApp had reportedly not complied with the court orders. The company alleged that it did not have an office in Brazil but that it could act in the matter if the request were made through an existing international legal cooperation agreement between Brazil and the United States. Judge Correia ruled that the decision to penalize WhatsApp was based on the Civil Rights Framework for the Internet, Article 11 of which states that foreign companies are governed by Brazilian law. On February 26, Judge Raimundo Nonato da Costa Alencar of the Court of Justice of Piauí [*Tribunal de Justiça de Piauí*], reversed the decision of Judge Correia. He held that the decision was unreasonable because the suspension of service would affect thousands of people for purposes of a local investigation. Nevertheless, he upheld the requirement for the company to provide the information requested by the Civil Police.³⁴⁵

265. According to information received by the Office of the Special Rapporteur, during the Summit of the Americas in April, the CEO of Facebook announced an agreement with Brazil to offer free Internet access for the country's low-income population.³⁴⁶ According to information available on the website of the "internet.org," now called "Free Basics," its purpose would be "bringing together technology leaders, nonprofits and local communities to connect the two thirds of the world that doesn't have internet access."³⁴⁷ The initiative created in July 2014, has worked "closely with more than a dozen mobile operators across 17 countries to give people access to relevant basic internet services without data charges"³⁴⁸. Additionally, the web page indicated that "Free Basics" is no exclusive to any operator, and Facebook is willing to work with any operator that wants to provide free basic services. Therefore, to form part of the "Free Basics" platform it's necessary that the developer and the application meet two criteria: have low data consumption and meet the technical specifications outlined in the guidelines.³⁴⁹

266. Throughout the region, civil society organizations have criticized the initiative "internet.org", in relation to (1) its impact on net neutrality; (2) the access by Facebook of all usage data of sites that are part of "Free Basics"; and (3) the alleged creation of an unfair internet access model. In Brazil, 33 civil society organizations sent on April 23 a letter to the President of the Republic in which they said that the above project implemented by the social network in Latin America, Africa, and Asia, "violates the rights guaranteed by the Civil Rights Framework for the Internet, such as privacy, freedom of expression, and net neutrality." It also states that "this practice that allows only certain applications and services to have privileges on the network is internationally known as zero-rating, and even if allows the use of the most popular services, in the long term ends up generating the concentration of infrastructure and monopoly over data traffic on the network." According to said letter, this would reduce "the availability of content, applications and services on the internet, as much as freedom of choice for users."³⁵⁰ Lastly, according to the organizations, the platform

2015. [Juiz do Piauí determina suspensão do WhatsApp no Brasil](#); G1. February 25, 2015. [Decisão de juiz do Piauí manda tirar WhatsApp do ar em todo o Brasil](#).

³⁴⁵ Link. February 25, 2015. [Juiz exige a suspensão do WhatsApp no Brasil](#); O Globo. February 26, 2015. [Desembargador anula decisão de juiz do Piauí que suspendia WhatsApp no país](#); Extra. February 25, 2015. [Juiz determina suspensão do WhatsApp no Brasil](#); O Globo. February 25, 2015. [Juiz determina suspensão do WhatsApp no Brasil](#); Folha de São Paulo. February 25, 2015. [Juiz do Piauí determina suspensão do WhatsApp no Brasil](#); G1. February 26, 2015. [Desembargador do PI derruba decisão que mandava tirar WhatsApp do ar](#); Estadão. February 26, 2015. [Desembargador derruba decisão de juiz sobre WhatsApp no Brasil](#); UOL. February 26, 2015. [Desembargador derruba decisão de juiz que queria suspender WhatsApp no país](#); G1. February 25, 2015. [Decisão de juiz do Piauí manda tirar WhatsApp do ar em todo o Brasil](#); Blog of the IACL, AIDC. No date. [Cláudio de Oliveira Santos Colnaço: The Brazilian Civil Framework for the Internet and the issue of app removal](#).

³⁴⁶ El País. May 16, 2015. [Internet brasileira reage ao plano do Facebook de oferecer acesso à web](#); Mobile time. August 24, 2015. [Proteste cobra do CGL.br posicionamento sobre Internet.org](#).

³⁴⁷ Internet.org. Available for consultation at: <https://internet.org/about>

³⁴⁸ Internet.org. July 27, 2015. [One Year In: Internet.org Free Basic Services](#).

³⁴⁹ Internet.org. Free Basics. November 19, 2015. [Free Basics: Myths and Facts](#).

³⁵⁰ El País. May 16, 2015. [Internet brasileira reage ao plano do Facebook de oferecer acesso à web](#); Mobile time. August 24, 2015. [Proteste cobra do CGL.br posicionamento sobre Internet.org](#).

does not guarantee universal access to the internet, since the user would only have access to Facebook and websites partners of this company.³⁵¹

267. The initiative indicates that “Facebook supports net neutrality and has worked throughout the world to ensure that services can’t be blocked or throttled and to ensure that fast lanes are prohibited”. Additionally, it indicates that Facebook would not store any personal navigation information from within the service beyond 90 days. Furthermore, Facebook would not share “any personally identifiable information with [its] content partners and there is no requirement for those partners to send Facebook such information about their users.” Lastly, Facebook informs that the initiative would seek to “introduce people to the value of the internet through hundreds of free basic services, beyond Facebook”³⁵², in addition to have “an impact on people’s lives by providing free health, education, and economic information.”³⁵³

268. The Office of the Special Rapporteur also received information on a bill pending in Brazil’s House of Representatives that could have a negative impact on the exercise of the right to information in the country. On October 6 the Constitutional Affairs, Justice, and Citizenship Committee of the House of Representatives passed Bill No. 215/15, which guarantees the “right to be forgotten” in Brazil. This bill would amend Article 19 of the Civil Rights Framework for the Internet, including one paragraph—3(A)—that makes it possible to file a request with the courts, at any time, for the removal of content that associates a person’s name or image with a crime of which he or she was acquitted in a final and unappealable judgment, or with content that is libelous or defamatory. According to the information received, the Communications Committee of the National Congress and the Brazilian Internet Management Committee opposed the bill. At the closure of this report, the bill was pending a vote by the full House of Representatives.³⁵⁴

269. With the aforementioned bill, Bills No. 1547/2015 and No. 1589/2015 were presented. According to the information received, Bill No. 1547/2015 would establish new grounds for enhanced penalties for crimes against honor on electronic messaging sites or media disseminated through the Internet.³⁵⁵ Bill No. 1589/2015 would stiffen the penalties for crimes against honor committed through the availability of Internet content or that trigger acts causing the death of the victim.³⁵⁶

270. According to information received by the Office of the Special Rapporteur, in the month of October, the courts of the State of Acre ordered 133 bloggers to register with the Public Records Division of the Capital District [*Vara de Registros Públicos da comarca da capital*]. Those individuals were reportedly required to register at a cost of up to 610 Brazilian reals (about US \$150).³⁵⁷

271. 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

³⁵¹ Article 19. August 27, 2015. [Carta ao CGL.br sobre o Internet.org](#); Brasil de Fato. August 14, 2015. [Internet.org fere neutralidade da rede e quer aumentar público do Facebook, afirmam especialistas](#); Intervezes. April 24, 2015. [Entidades divulgam carta à Dilma Rousseff contra anúncio de acordo com Facebook](#); El País. May 16, 2015. [Internet brasileira reage ao plano do Facebook de oferecer acesso à web](#); Mobile time. August 24, 2015. [Proteste cobra do CGL.br posicionamento sobre Internet.org](#).

³⁵² Internet.org. Free Basics. November 19, 2015. [Free Basics: Myths and Facts](#).

³⁵³ Internet.org. July 27, 2015. [One Year In: Internet.org Free Basic Services](#).

³⁵⁴ IDGNOW!. October 6, 2015. [Projeto de Lei que altera o Marco Civil é aprovado na CCI](#); Olhar Digital. October 7, 2015. [Câmara aprova lei que institui 'direito ao esquecimento' na web brasileira](#); Câmara de Deputados do Brasil. [Bill No. 215/2015](#) of February 5, 2015.

³⁵⁵ Câmara de Deputados do Brasil. [Bill No 1547/2015](#) of May 14, 2015; Instituto Beta para Internet e a Democracia. 16 de septiembre de 2015; Instituto Beta para Internet e a Democracia. September 16, 2015. [Honra, esquecimento, vigilância e punição da Internet: histórico de tramitação dos projetos de lei 215, 1.547 e 1.589 de 2015](#).

³⁵⁶ Câmara de Deputados do Brasil. [Bill No 1589/2015](#) of May 19, 2015; Instituto Beta para Internet e a Democracia. September 16, 2015. [Honra, esquecimento, vigilância e punição da Internet: histórico de tramitação dos projetos de lei 215, 1.547 e 1.589 de 2015](#).

³⁵⁷ Article 19. October 31, 2015. [Ninguém precisa de registro para ter um blog](#); A Tribuna. October 19, 2015. [133 bloqueiros são notificados a comparecer ao Fórum Barão do Rio Branco](#).

of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.”³⁵⁸ 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.

272. 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. Media Concentration

273. At the hearing on “Freedom of expression, diversity, pluralism, and the concentration of media ownership in the Americas” held on March 16 during its 154th session, the Commission received with concern the information that the *Rede Globo* network in Brazil has 70% of the market share of commercial advertising, and 40% of the national audience. In addition, the requesting organizations assert that in Brazil there is a system of so-called “electronic patronage,” consisting of legislators who hold radio and television licenses. Although the Constitution of Brazil prohibits it, they have found an interpretation that allows them to own numerous radio and television licenses; accordingly, they legislate in favor of their own business interests.³⁵⁹

274. According to information received by the Office of the Special Rapporteur, there are few television broadcasting stations in Brazil that have national reach, which results in the oligopolistic control of the sector. According to research conducted by the *Grupo de Mídia São Paulo*, the *Rede Globo* network reaches 98.6% of Brazil’s municipalities; *SBT* reaches 85.7%; *Record* reaches 79.3%; *Bandeirantes* reaches 64.1%; and *Red TV* reaches 56.7%. According to the information received, no other broadcaster has numbers in “the double digits.”³⁶⁰

275. 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.”

³⁵⁸ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to 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. June 1, 2011. [Joint declaration on Freedom of Expression and the Internet](#).

³⁵⁹ IACHR. 154 Period of Sessions. Hearing “Freedom of Expression, Diversity, Pluralism, and Media Concentration in the Americas”. March 16, 2015. Available for consultation at: <http://www.oas.org/es/IACHR/multimedia/sesiones/154/default.asp>

³⁶⁰ Grupo de Mídia São Paulo. Mídia Dados Brasil 2015. Available for consultation at: <http://gm.org.br/midia-dados/2015>

J. Community Broadcasting

276. On the night of February 25, community radio station *Alhambra FM* was set on fire, resulting in the destruction of its transmitter, microphones, audio mixer, and a sound truck. The station, which has operated for 15 years, is located in the city of la Alhambra, on the southern coast of Paraíba. It was started by a residents' association, and all of its equipment and the building out of which it operated had been donated by Congressman Branco Mendes (Partido Ecológico Nacional). According to the congressman, the incident might have been an "act of terrorism against freedom of expression," and he stated that he was going to request an investigation into the case.³⁶¹

277. Zacarias de Almeida Silva, known as Piter Júnior, is one of the people responsible for the community radio station *Coité Livre FM (Rádio Coité)*. On March 8, he was convicted in the Federal Court of Bahia for keeping the station on the air without a permit from the Ministry of Communications. He was sentenced to two years in prison (replaced by community service) and ordered to pay a "10-day fine" of "1/30 the value of the highest minimum wage in effect at the time of the events."³⁶² The case was brought by the Federal Public Ministry based on an investigation conducted by the National Telecommunications Agency (Anatel) in 2010. In that investigation, Anatel maintained that *Radio Coité's* activities should be suspended because it did not have an operating permit. However, the agency itself acknowledged that the station was not causing any harm to society.³⁶³ According to the information received, the station had been trying to obtain legal authorization for more than 15 years, and the Ministry of Communications reportedly failed to adjudicate the operating permit applications that the station had submitted since 1999, supposedly putting up "various" obstacles to its attainment of the license. In view of the alleged omission, *Radio Coité* began broadcasting its programs without the Ministry's authorization.³⁶⁴ The station submitted the initial application for an operating permit to the Ministry of Communications in 1999, and the Ministry shelved the case in 2009. Once again, that same year, the station submitted a new permit application, which was shelved in 2013 on the grounds that the station was on the air while the authorization was pending. Hence, despite its attempts to obtain a license, the radio station has already been shut down on many occasions and has had its equipment seized by Anatel and the Federal Police.³⁶⁵

278. On the night of May 6, community radio station *Nova Era* was set on fire and some of its equipment was stolen, including a television. The station operated for three years since 2012 in the city of Bom Jesus da Penha, in the southern part of the State de Minas Gerais. It is the only radio station in the city, and is maintained by the Broadcasters' Association of Bom Jesus ["*Associação Bonjuense de Radiodifusão*"]. According to the available information, four individuals were arrested, gave statements and then were released because they had not been caught *in flagrante delicto*. Police are reportedly investigating the motive for the crime, and are not excluding any motives, including political reasons.³⁶⁶

³⁶¹ Paraíba.com.br. February 26, 2015. [Incêndio destrói rádio comunitária em Alhambra e deputado exige apuração para ato criminoso](#); Portal Imprensa. February 26, 2015. [Rádio comunitária da Paraíba tem carro destruído e sede prejudicada após incêndio](#); Polemica Paraíba. February 26, 2015. [VANDALISMO: Incêndio destrói rádio e carro de som do deputado Branco Mendes em Alhambra](#); Portal do Litoral PB. February 26, 2015. [Incêndio destrói equipamentos e veículo da rádio Alhambra FM](#).

³⁶² 1ª Vara da Subseção Judiciária de Feira de Santana. Processo No. 358-25.2013.4.01.3304. Judgment of March 6, 2015. Available for consultation at: <https://processual.trf1.jus.br>

³⁶³ Article 19. June 11, 2015. [Ação criminal contra Zacarias da Rádio Comunitária Coité Livre FM por ausência de autorização para funcionamento](#); Bahia Notícias. April 10, 2015. [Coité: Comunicador é condenado à prisão por manter rádio comunitária](#); Consultor Jurídico. June 21, 2015. [Os desafios para a regularização das rádios comunitárias e a aplicação jurídica](#); Calila Notícias. April 10, 2015. [Juíza federal condena radialista coiteense a 2 anos de prisão e multa de R\\$ 10 mil por manter rádio ilegalmente no ar](#); Observatório da Imprensa. April 21, 2015. [Mais uma injustiça contra a Rádio Coité](#); Amarc Brasil. April 13, 2015. [Não à perseguição à rádio comunitária Coité Livre FM e a Piter Junior](#).

³⁶⁴ Planeta Osasco. April 11, 2015. [Plano vai diminuir burocracia para concessão de rádios comunitárias, promete ministério](#); Bahia Notícias. April 10, 2015. [Coité: Comunicador é condenado a prisão por manter rádio comunitária](#).

³⁶⁵ Planeta Osasco. April 11, 2015. [Plano vai diminuir burocracia para concessão de rádios comunitárias, promete ministério](#); Bahia Notícias. April 10, 2015. [Coité: Comunicador é condenado à prisão por manter rádio comunitária](#).

³⁶⁶ GI. May 5, 2015. [Suspeitos são vistos saindo de rádio incendiada no Sul de Minas, diz polícia](#); Clic Folha. May 6, 2015. [Empresário seria o mandante de incêndio em rádio de Bom Jesus](#); O Tempo. May 6, 2015. [Empresário seria o mandante de incêndio em rádio de Bom Jesus da Penha](#); Só notícias FM. No date. [Rádio Comunitária é incendiada em Bom Jesus da Penha](#).

279. On July 1, Jerry de Oliveira, a member of the National Community Radio Movement of the São Paulo region, made a payment of 3,100 Brazilian reais following his conviction for criminal contempt and the defamation of two Anatel agents. Mr. Oliveira was convicted by the First Federal Criminal Court of Campinas [*1ª Vara Criminal da Justiça Federal de Campinas*] on October 22, 2013, for interfering in the closure of a community radio station in the region. The sentence of four months and 21 days in a “semi-open” detention facility was reduced to the payment 3,100 Brazilian reais in restitution to the two public servants. If he had failed to pay restitution, the sentence of imprisonment would have been imposed against him.³⁶⁷

280. As indicated on prior occasions, the use of criminal law to punish violations of broadcasting regulations may be problematic in light of the American Convention on Human Rights. In this respect, the Office of the Special Rapporteur reiterates that the establishment of criminal penalties applicable to commercial or community broadcasters—which may face an infraction for the lack or misuse of a license—is a disproportionate reaction.³⁶⁸

K. Other relevant situations

281. On November 12, Law 13,888 on the right of reply in Brazil was published in the Official Journal. The law was sanctioned by the President of the Republic with a veto. The sanctioned text determines the right of reply to the (natural or legal) person offended by “any article, note or news broadcast by means of social communication, regardless of the way or platform of distribution, publication or broadcast that use, which the content violates, even if for information mistake, against the honor, privacy, reputation, concept, name, brand or image of a natural or legal identified or capable of identification person.”³⁶⁹ The law excludes from this definition the comments made by Internet users on the websites of social media vehicles.³⁷⁰ Likewise, Law 13.888 states that the answer may be released, published or broadcast in the same space, day and time of occurrence of the injury and shall be exercised within 60 days “from the date of each disclosure, publication or broadcast of offensive material.”³⁷¹ Regarding the veto by the President of the Republic, this is referred to the paragraph stating that the victim may request the right of personal reply or correction in radio and television. This part was a source of disagreement between the Chamber of Deputies and the Senate. The vetoed by the President allowed the offended party, in the case of television or radio, the right to require the answer or make the amendment personally. The President claimed that the device could undermine the exercise of the right of reply, as it does not establish criteria for the personal involvement of the victim in an audiovisual media, while noting that “[t]he project already provides mechanisms for those rights to be properly secured.”³⁷²

³⁶⁷ Amarc Brasil. July 1, 2015. [Toda solidariedade a Jerry de Oliveira e a comunicadorxs criminalizadxs!](#); Federação dos Radialistas (Fitert). June 11, 2015. [Contra a condenação de Jerry e contra a criminalização das rádios comunitárias!](#); G1. July 1, 2015. [Radialista paga multa de R\\$ 3 mil com moedas para protestar em Campinas](#); Seção Judiciária de São Paulo. 1ª Vara Criminal da Justiça Federal de Campinas. Processo No. 0004127-57.2012.403.6105. Judgment of October 22, 2013. Available for consultation at: <http://www.jfsp.ius.br/foruns-federais/>; Article 19. November 8, 2013. [Dois casos, um pesado legado para a liberdade de expressão no Brasil](#).

³⁶⁸ IACHR. [Annual Report 2011. 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. 69. December 30, 2011. Para. 467.

³⁶⁹ Brasil. Presidência da República. Law [No. 13.188](#) of November 11, 2015.

³⁷⁰ ZH Notícias. November 12, 2015. [Dilma sanciona direito de resposta na imprensa com veto à retratação pessoal](#); Brasil. Presidência da República. Law [No. 13.188](#) of November 11, 2015; Agência Brasil. November 12, 2015. [Dilma sanciona com veto lei do direito de resposta na mídia](#).

³⁷¹ Agência Brasil. November 12, 2015. [Dilma sanciona com veto lei do direito de resposta na mídia](#); ZH Notícias. November 12, 2015. [Dilma sanciona direito de resposta na imprensa com veto à retratação pessoal](#); Brasil. Presidência da República. Law [No. 13.188](#) of November 11, 2015.

³⁷² Agência Brasil. November 12, 2015. [Dilma sanciona com veto lei do direito de resposta na mídia](#); ZH Notícias. November 12, 2015. [Dilma sanciona direito de resposta na imprensa com veto à retratação pessoal](#); Brasil. Presidência da República. Law [No. 13.188](#) of November 11, 2015; Brasil. Presidência da República. [Mensagem No. 478](#) of November 11, 2015.

6. CANADA

A. Progress

282. The Canadian Radio-television and Telecommunications Commission (CRTC) issued a decision on January 29 with vast implications for net-neutrality. The CRTC held that Bell Mobile and Videotron violated the Telecommunications Act by granting wireless television services for additional charge without affecting the users' data cap. The CRTC noted its concern over the implications that such practices would have on net neutrality and stated that these services "may end up inhibiting the introduction and growth of other mobile TV services accessed over the Internet, which reduces innovation and consumer choice".³⁷³ The case involved a complaint alleging that Bell Mobile's 5 dollar charge for TV service, which allowed users to watch Bell-owned or licensed television channels for ten hours without affecting the monthly cap provided the carrier, was an "undue preference" in violation of the Telecommunications Act. Bell Mobility Inc. filed an appeal against the CRTC's decision. On February 20 alleging that the CRTC erred in applying the Telecommunications Act given that the service is a broadcasting service and therefore exempt from the Act.³⁷⁴

B. Social Protest

283. The Canadian Association of Journalists (CAJ) along with Canadian Journalists for Free Expression (CAJ) sent a letter to the Mayor of Montréal on June 24 expressing their concern over the treatment of journalists during demonstrations by the Service de police de la Ville de Montréal (SPVM). The letter notes several instances of police brutality against journalists, including two that occurred this year. The first incident regards police officers attacking journalists covering student-led protests against austerity measures in Montréal in March. The second incident involves a video from *OMPP Media* documenting the SPVM blocking journalists from filming demonstrators being arrested. According to the organizations, these actions prevent journalists from doing their jobs and highlight an "ongoing pattern of SPVM officers targeting journalists during their coverage of protests".³⁷⁵

284. Police gassed and arrested protesters in Montréal during "May Day" demonstrations. According to news reports, eighty-four arrests were made and tear gas was used to break up the crowd. Children, families, and members of the press that were in the area with the protesters were reportedly affected by these actions.³⁷⁶

285. In August of 2015, the Security Intelligence Review Committee held a hearing into a complaint by the British Columbia Civil Liberties Association (BCCLA) that the Canadian Security Intelligence Service (CSIS) illegally spied on peaceful anti-pipeline protesters in British Columbia.³⁷⁷ The BCCLA alleges that new documents released reveal that the CSIS was involved in "watching people and groups opposed to pipeline expansion and that informants reported on [peaceful] gathering[s]".³⁷⁸ Further, BCCLA notes that the new documents confirm that none of the groups that were surveilled posed a threat to public safety or to the

³⁷³ Canadian Radio-television and Telecommunications Commission. January 29, 2015; [Broadcasting and Telecom Decision CRTC 2015-26](#); GIGAOM. February 23, 2015. [Canadian carrier sues to block net neutrality rules for wireless TV](#).

³⁷⁴ Benjamin Klass. November 20, 2013. Part 1 Application requesting fair treatment of Internet services by Bell Mobility, Inc., pursuant to CRTC 2010-445 and CRTC 2009-657, and *The Telecommunications Act*, s.24 & subsection 27(2); The Globe and Mail. February 22, 2015. [Bell seeks to appeal ruling on mobile TV app](#).

³⁷⁵ Canadian Journalists for Free Expression. June 24, 2015. [Concern regarding the brutality of Montréal police against journalists](#); Fédération Professionnelle des Journalistes du Québec. March 26, 2015. [Manifestations étudiantes : des agressions inadmissibles contre des journalistes](#).

³⁷⁶ CBCnews. May 1, 2015. [Dozens arrested in anti-capitalism may Day protest in Montreal](#); VICE. May 2, 2015. A [Dispatch From Montreal's Raucous, Tear Gas-Filled May Day Protest](#).

³⁷⁷ CBC News. August 12, 2015. [CSIS surveillance of pipeline protesters faces federal review](#); National Post. August 12, 2015. [Senior spy to testify as federal watchdog considers whether CSIS went too far in eyeing environmental activists](#).

³⁷⁸ CBC News. August 12, 2015. [CSIS surveillance of pipeline protesters faces federal review](#).

National Energy Board hearings. The complaint claims that the CSIS's gathering of information on peaceful demonstrations violated the law given that these practices resulted in illegal searches of private information.³⁷⁹

286. 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"³⁸⁰ 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."³⁸¹

287. 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."³⁸²

288. 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.³⁸³

C. Subsequent Liabilities

289. Ontario's Superior Court found on February 23 that comments made on a politically conservative blog by a politically liberal blogger did not constitute defamation. The Court held that the comments were an expression of opinion and therefore protected by the "fair comment" defense, which applies to recognizable comments not made as statements of fact. However, in its decision the court also answered the question of whether a court dealing with a case of alleged defamation online will apply the same legal considerations that it would if the publication was in a traditional media outlet when determining if a moderator of an online message board may be held liable for defamatory posts. The Court held that moderators may be liable of defamation for third party posts.³⁸⁴

³⁷⁹ Champ & Associates. March 25, 2015. [British Columbia Civil Liberties Association \('BCCLA'\) Complaint re CSIS Surveillance and Information Sharing with the NEB SIRC File No.: 1500-481](#); British of Columbia Civil Liberties Association. March 26, 2015. [RELEASE-Spying on protesters: new allegations added to BCCLA's complaint against CSIS](#). British Columbia Civil Liberties Association. February 6, 2014. [BCCLA Files Complaint Against RCMP and CSIS For Spying on Enbridge Pipeline Opponents](#).

³⁸⁰ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

³⁸¹ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

³⁸² United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

³⁸³ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

³⁸⁴ Ontario Superior Court of Justice. February 23, 2015. [Baglow v. Smith](#).

D. Confidentiality of Sources

290. Journalist Jason Warick was taken into custody in March after refusing to turn over his notebooks to defense lawyers in a murder trial. Warick argued that there was no evidence in his notebooks that was relevant to the murder trial. He was released from custody but the judge ordered his notebooks to remain sealed with the court.³⁸⁵

291. 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. Internet and Freedom of Expression

292. On March 9 Bill C-13, commonly referred to as Protecting Canadians from Online Crime Act, went into effect. This bill makes it possible for Internet service providers (ISPs), telecommunications service providers (TSPs), and operators of websites and social networks to share information about users with the government. The law further allows the police to request a warrant to collect users’ data as long as there are “reasonable grounds” to suspect that a crime has been committed.³⁸⁶ In addition to Bill C-13, Bill S-4 went into effect on June 18. Bill S-4 is commonly known as the Digital Privacy Act and allows ISPs to share users’ personal information without their consent or knowledge in certain situations. For example, to detect, prevent, or suppress fraud, or protect victims from financial crimes; to inform relatives of an injured or sick person of their condition; to establish, manage, or terminate employment relationships in specific cases that would require the use or disclosure of information.³⁸⁷

293. Article 11 of the American Convention on Human Rights states that, “[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation,” and that, “[e]veryone has the right to the protection of the law against such interference or attacks.” Thus, the State must respect the privacy of individuals and ensure that third parties do not act in a way that could arbitrarily affect it.³⁸⁸ As the United Nations General Assembly has observed in the resolution “The Right to Privacy in the Digital Age,” adopted without a vote, States have the duty to respect and protect the right to privacy according to international human rights law, including in the context of digital communication.³⁸⁹

³⁸⁵ CBCnews. March 6, 2015. [StarPhoenix reporter Jason Warick placed in custody for refusing to hand over notebooks](#); Yahoo News. March 6, 2015. [StarPhoenix reporter Jason Warick placed in custody for refusing to hand over notebooks](#).

³⁸⁶ CTVNews. March 9, 2015. [Anti-cyberbullying law, Bill C-13, now in effect](#); Blakes. January 23, 2015. [Bill C-13: Cyberbullying Bill Introduces New Lawful Access Measures](#).

³⁸⁷ CTV News. September 14, 2015. [Quebec’s hate-speech bill violates freedom of expression, ex-liberal says](#); Inside Privacy. June 24, 2015. [Highlights of the Canada Digital Privacy Act 2015](#); Ottawa metro. March 9, 2015. [Privacy bill actually undermines privacy: U of O professor](#).

³⁸⁸ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 22.

³⁸⁹ According to the resolution, the General Assembly calls upon States to, among others, “respect and protect the right to privacy, including in the context of digital communication; to take measures to put an end to violations of those rights and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their obligations under international human rights law; to review their procedures, practices and legislation regarding the surveillance of communications, their interception and collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law; to establish or maintain existing independent, effective domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and collection of personal data”. United Nations. General Assembly. Resolution adopted by the General Assembly on 18 December 2013. 68/167. The right to privacy in the digital age. A/RES/68/167. January 21, 2014. Para. 4. Available for consultation at: http://www.un.org/Depts/dhl/resguide/r68_es.shtml; General Assembly. Department of Public Information. [General Assembly Adopts 68 Resolutions, 7 Decisions as It Takes Action on Reports of Its Third Committee](#).

294. The right to privacy encompasses at least four legally protected interests that are closely related to the exercise of other fundamental rights such as freedom of thought and expression. First, the right to have an individual sphere impervious to the arbitrary interference of the State or third parties. Second, the right to govern oneself, in that solitary space, by one's own rules defined autonomously according to one's individual life plan. Third, the right to private life protects the confidentiality of all the data produced in that private space—in other words, it prohibits the disclosure or circulation of information captured, without the consent of their owner, in that space of private protection reserved to the individual. And finally, the protection of private life protects the right to one's own image, meaning the right to not have one's image used without consent.³⁹⁰

295. This Office has highlighted 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).³⁹¹ 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.³⁹²

296. Finally, the defense of individual privacy should be carried out pursuant to reasonable and proportional standards that do not end up arbitrarily restricting the right to freedom of expression. In this sense, it is important to recall that as Principle 10 of the Declaration of Principles on Freedom of Expression states, “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest.”³⁹³

F. National Security and Communications Surveillance

297. On January 27 *CBC News* and *The Intercept* reported that Canada had been monitoring internet users' files using dragnet surveillance, specifically a spying initiative referred to as Levitation. Based on information obtained from Edward Snowden, *CBC News* reported that the Levitation program, led by Canada's Communication Security Establishment, can monitor what internet users download in several countries, including Europe, the Middle East, North Africa, and North America.³⁹⁴

298. On June 18 Canada passed Bill C-51 aimed at deterring terrorist acts. Bill C-51, commonly referred to as the Anti-terrorism Act, will allow the Canadian Security Intelligence Service (CSIS) and Communications Security Establishment (CSE) unprecedented power to access information about Canadians held by government agencies and departments without a warrant. The anti-terror legislation increases government agencies' power to share information about Canadian citizens without any oversight and has the potential to criminalize lawful behavior. Further, Bill C-51 contains vague language that could infringe on Canadians' freedom of expression. Specifically, the bill states that “[e]very person who, by communicating statements, knowingly advocates or promotes the commission of terrorism offences in general [...] is guilty of

³⁹⁰ IACHR. Report No. 82/10. Case No. 12524. Fontevecchia and D'Amico v. Argentina. July 13, 2010. Para. 91 *et seq.*

³⁹¹ Article 11 of the American Convention on Human Rights states that “[n]o one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”

³⁹² IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. In that sense, United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013. Para. 47; United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/17/27. May 16, 2011. Para. 53, 82 and 84.

³⁹³ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 24.

³⁹⁴ *CBC News*. January 27, 2015. [CSE tracks millions of downloads daily: Snowden documents](#); *The Intercept*. January 28, 2015. [Canada Casts Global Surveillance Dragnet Over File Downloads](#).

an indictable offence,” without defining terms such as “terrorism offences” and “in general.” According to civil society organizations, this language can chill speech and endanger, for example, social media users whose posts may be misunderstood.³⁹⁵

299. The Canadian Civil Liberties Association (CCLA) and Canadian Journalists for Free Expression (CJFE) initiated a challenge against key provisions of Bill C-51 on July 21.³⁹⁶ The organizations challenged five components of Bill C-51 which include amendments to the following: CSIS Act, the Immigration and Refugee Protection Act, the Criminal Code, Secure Air Travel Act, and the Security of Canada Information Sharing Act. The challenge alleges that “legitimate speech and association may be captured by the advocating and promoting terrorism offences of the *Criminal Code*.” Further, it notes that even if no prosecution is ever brought, the Bill’s provisions chill freedom of speech because people who do not have terrorist purpose will choose to remain silent rather than risk prosecution, especially given that the act does not provide a statutory defense.³⁹⁷

300. The Joint Declaration on Freedom of Expression and Responses to Conflict Situations, adopted on May 2015 affirms that “[a]ll criminal restrictions on content – including those relating to hate speech, national security, public order and terrorism/extremism – should conform strictly to international standards, including by not providing special protection to officials and by not employing vague or unduly broad terms.[...] In particular, States should refrain from applying restrictions relating to ‘terrorism’ in an unduly broad manner. Criminal responsibility for expression relating to terrorism should be limited to those who incite others to terrorism; vague concepts such as ‘glorifying’, ‘justifying’ or ‘encouraging’ terrorism should not be used.

301. 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. The Office of the Special Rapporteur recalls that surveillance programs must be designed and implemented according to international standards on human rights. Particularly, States must 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 pursue a legitimate aim, and 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. Furthermore, the law must authorize access to communications and personal information only under the most exceptional circumstances defined by legislation. When national security is invoked as a reason for the surveillance of correspondence and personal information, the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate. Its application shall be authorized only in the event of a clear risk to protected interests and when the damage that may result would be greater than society’s general interest in maintaining the right to privacy and the free circulation of ideas and information.³⁹⁸

302. 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

³⁹⁵ Amnesty International. March 9, 2015. [INSECURITY AND HUMAN RIGHTS: CONCERNS AND RECOMMENDATIONS WITH RESPECT TO BILL C-51, THE ANTI-TERRORISM ACT, 2015](#); IFEX. April 14, 2015. [Letter to Canada’s Prime Minister: Anti-terrorism bill cannot be salvaged](#).

³⁹⁶ Cyber Privacy Matters. July 14, 2015. [Corporation of the Canadian Civil Liberties Association & Christopher Parsons v. Her Majesty the Queen in Right of Canada as Represented by the Attorney General of Canada](#).

³⁹⁷ IFEX. July 21, 2015. [Canada’s anti-terrorism Bill C-51 faces charter challenge from civil society](#).

³⁹⁸ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 415.

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.³⁹⁹

G. Access to Public Information

303. An independent review of the Access to Information and Protection of Privacy Act published on March 3 highlighted various restrictions that the current Act imposes on access to information and recommended legislative action to fix.⁴⁰⁰ On March 31 the Information Commissioner of Canada, Suzanne Legault, introduced a report to Parliament titled “Striking the Right Balance for Transparency: Recommendations to modernize the Access to Information Act.”⁴⁰¹ The report outlines recommendations that attempt to deal with the overwhelming amount of requests, which is currently estimated to be around 60,000, arriving each year. However, civil society groups have expressed concern over Legault's proposals, including the recommendation that the commissioner be granted discretion to disregard some complaints. Following the report, Canadian Journalists for Free Expression along with other organizations sent a letter on September 14 to major Canadian political parties calling for a reform to the access to information system in Canada.⁴⁰²

304. According to *The Star*, *Global News*, and *CBCnews*, the government introduced an amendment that retroactively rewrites Canada’s access to information law, to prevent possible criminal charges against the Royal Canadian Mounted Police (RCMP) for destroying registry records that were part of an active investigation. The new bill would exclude all gun registry records and information about investigations, complaints, or judicial proceedings related to those records from the Access to Information Act. Prime Minister Stephen Harper acknowledged that the records were subject to an active “access to information request” and an investigation by the information commissioner, but noted that “the Mounties were just respecting the will of Parliament.”⁴⁰³

305. 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.”

³⁹⁹ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 415.

⁴⁰⁰ Canadian Journalists for Free Expression. June 2, 2015. [Cross-Canada FREE EXPRESSION REPORTS: Provincial Government Commits to Improving ATI Legislation](#); Report of the 2014 Statutory Review. March 2015. [Access to Information and Protection of Privacy Act](#).

⁴⁰¹ Information Commissioner of Canada. March 2015. [STRIKING THE RIGHT BALANCE FOR TRANSPARENCY. Recommendations to modernize the Access to Information Act](#); Office of the Information Commissioner of Canada. March 31, 2015. [Speaking Notes for Suzanne Legault, Information Commissioner of Canada Press Conference for the release of the report, Striking the Right Balance for Transparency](#); The Globe and Mail. April 1, 2015. [A modern Access to Information Act is long overdue](#).

⁴⁰² Canadian Journalists for Free Expression. September 14, 2015. [Joint Statement: Fix Canada's Broken Access to Information System](#).

⁴⁰³ The Star. May 19, 2015. [OPP to investigate allegations of RCMP wrongdoing on gun registry data destruction](#); CBC news. May 19, 2015. [RCMP gun registry data destruction allegations handed to police](#); Global News. May 12, 2015. [Bill casts veil of secrecy over long gun registry's destruction](#); The Star. May 13, 2015. [Tories rewrote budget bill to shield RCMP from possible charges, sources say](#).

7. CHILE

A. Social Protest

306. On May 21, during student protests in Valparaíso, Paulina Estay, an 19 year old student, was hit with a police baton and charged by an officer [*carabiniro*], and as a result the student fell on the ground hitting her head.⁴⁰⁴ Also, according to information available, Language Arts student at the Catholic University [*Universidad Católica*] Rodrigo Áviles Bravo was seriously injured due to the inappropriate use of the water launcher.⁴⁰⁵ At first officers reported the injury was due to the youth slipping by accident.⁴⁰⁶ Subsequent videos show the stream from the water launching vehicle aimed directly at his body.⁴⁰⁷ According to available information the Police of Chile [*Carabineros de Chile*] decided to dismiss the officers responsible for these attacks.⁴⁰⁸

307. Nelson Quichillao, a subcontractor for the National Copper Corporation [*Corporación Nacional del Cobre*] (Codelco), died on July 24 seemingly by a shot fired by police agents in the miner town of El Salvador, Atacama region. Nelson Quichillao was participating in protests over the negotiation of the 2015 framework agreement for better working conditions.⁴⁰⁹

308. Ricardo Lüer, the president for the *Universidad de La Frontera* Student Federation (Feufro), suffered injuries after his detention by police on August 6. Lüer was participating in a student march in the city of Temuco, that was heading to a meeting was held with the participation of Sergio Bravo, president of the *Universidad de la Frontera*, UFRO.⁴¹⁰

309. On September 7 Special Forces Officers [*Fuerzas Especiales de Carabineros*] reportedly evicted with excessive use of force a group of leaders of the Mapuche Indigenous Peoples from the National Corporation for Indigenous Development [*Dirección Nacional de la Corporación Nacional de Desarrollo Indígena*] (Conadi). According to available information 17 men, 12 women and nine children were initially detained, several of them were injured. The leaders remained there for 21 days demanding “[t]he prolonged and unjustified delay by Conadi in processing land acquisition.”⁴¹¹

⁴⁰⁴ Biobio Chile. May 21, 2015. [Captan momento exacto en que carabiniro agrede a manifestante dejándola inconsciente](#); La Nación. May 22, 2015. [SIGUE EN ESTADO GRAVE ESTUDIANTE HERIDO EN MANIFESTACIÓN DE VALPARAÍSO](#); The Clinic. May 22, 2015. [Video: El brutal golpe en la cabeza que sufrió una joven tras la embestida de un paco](#); 24 horas. May 22, 2015. [Joven agredida por Carabineros en Valparaíso: "No pensé que me iban a pegar"](#).

⁴⁰⁵ Publimetro Tv. May 22, 2015. [Impactante registro: Joven queda tendido en el suelo tras chorro del Guanaco](#); BioBio Chile. May 28, 2015. [Video confirma que chorro del carro lanzaaguas de Carabineros provocó caída de Rodrigo Avilés](#); La Nación. May 22, 2015. [SIGUE EN ESTADO GRAVE ESTUDIANTE HERIDO EN MANIFESTACIÓN DE VALPARAÍSO](#); Emol. May 21, 2015. [Estudiante que sufrió lesión en la cabeza durante protesta en Valparaíso sigue grave](#).

⁴⁰⁶ Emol. May 27, 2015. [Informe de Carabineros dice que Rodrigo Avilés no habría recibido un chorro directo de agua](#); Cooperativa. May 26, 2015. [Subsecretario por caso de Rodrigo Avilés: En la investigación preliminar parece ser un hecho fortuito](#).

⁴⁰⁷ Publimetro Tv. May 22, 2015. [Impactante registro: Joven queda tendido en el suelo tras chorro del Guanaco](#); BioBio Chile. May 28, 2015. [Video confirma que chorro del carro lanzaaguas de Carabineros provocó caída de Rodrigo Avilés](#); 24 horas. May 28, 2015. [Video confirma responsabilidad de carabineros en caso Rodrigo Avilés](#).

⁴⁰⁸ BoiBio Chile. May 28, 2015. [Carabineros da de baja a funcionario policial responsable de caída de Rodrigo Avilés](#); Red Diario Digital. May 29, 2015. [Dramático Vuelco en Caso Avilés: Carabineros Asume Responsabilidad y Dió de Baja al Operador del Guanaco](#).

⁴⁰⁹ Colegio de periodistas de Chile. July 24, 2015. [DECLARACIÓN PÚBLICA: Ante asesinato de trabajador Nelson Quichillao](#); The Clinic. July 25, 2015. [El crudo relato del Alcalde de Diego de Almagro tras muerte de Nelson Quichillao: "Aquí hay mucha rabia. Era un amigo nuestro, querido por todos"](#); Emol. July 24, 2015. [Contratista de Codelco muere baleado en protesta: trabajadores acusan a Carabineros](#); Confederación de Trabajadores del Cobre. July 24, 2015. [4to comunicado público ctc: represión policial asesina a trabajador](#); El Mostrador. July 31, 2015. [Nelson Quichillao: el fatal destino de un eterno minero subcontratado](#); 20 minutos. July 24, 2015. [Chile: Muere trabajador subcontratado en huelga minera](#).

⁴¹⁰ La Nación. August 6, 2015. [Denuncian golpiza de Carabineros al presidente de Federación de Estudiantes de la UFRO](#); Voz de Chile. August 7, 2015. [Denuncian represión empresarial en Temuco](#).

⁴¹¹ La Tercera. September 7, 2015. [Carabineros desaloja a comuneros mapuche que mantenían toma en la Conadi en Temuco](#); Cooperativa. September 7, 2015. [Carabineros desalojó toma de la Conadi: Más de 30 personas detenidas](#); Adital. September 9, 2015. [Chile. Rechazo ante el violento desalojo de la Dirección Nacional de CONADI](#).

310. After a visit to Chile in September of 2015, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kai, urged the State to revoke Supreme Decree 1086.⁴¹² He indicated this legislation “unduly restricts” the right to peaceful assembly by “allowing local officials to prevent or dissolve assemblies that have not been previously authorized by authorities and to deny permission for assemblies deemed to disrupt public transit, among other things”⁴¹³.

311. 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”⁴¹⁴ 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.”⁴¹⁵

312. 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.”⁴¹⁶

313. 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.⁴¹⁷

B. Subsequent Liabilities

314. On April 22⁴¹⁸, the Third Court for Santiago [*Tercer Juzgado de Garantía de Santiago*] convicted Bruno Sommer Catalán and Sebastián Larraín Saa, directors of *El Ciudadano*, to 540 days incarceration, as perpetrators responsible for the crime of aggravated defamation against former legislator Miodrag Marinovic, pursuant to Articles 416 and 417, and 418 of the Criminal Code. The directors were sentenced to probationary execution of sentence, committing them to turn themselves in to a halfway house within five days of the finalized judgment.⁴¹⁹

⁴¹² United Nations. September 30, 2015. [Statement By The United Nations Special Rapporteur On The Rights To Freedom Of Peaceful Assembly And Of Association At The Conclusion Of His Visit To The Republic Of Chile.](#)

⁴¹³ United Nations. September 30, 2015. [Statement By The United Nations Special Rapporteur On The Rights To Freedom Of Peaceful Assembly And Of Association At The Conclusion Of His Visit To The Republic Of Chile.](#)

⁴¹⁴ IACHR. [Report on Citizen Security and Human Rights.](#) OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

⁴¹⁵ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas.](#) OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

⁴¹⁶ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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.](#)

⁴¹⁷ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas.](#) OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

⁴¹⁸ Tercer Juzgado de Garantía de Santiago. Causa RUC N° 1310027365-3. [Judgement of April 22, 2015.](#)

⁴¹⁹ Tercer Juzgado de Garantía de Santiago. Causa RUC N° 1310027365-3. [Judgement of April 22, 2015.](#)

315. The case arose on August 2013 when *El Ciudadano* published an interview with a former Marinovic advisor titled “Miodrag Marinovic: Chief of Evil” [*Miodrag Marinovic: El Patrón del Mal*], wherein the former collaborator accused the candidate of wrongdoing, all during parliamentary electoral campaign. On August 27, 2013 the print version of *El Ciudadano* published a news investigation by the digital media outlet *Panorama News*, questioning the legislator Miodrag Marinovic, in office at the time. Said article was also posted on social networks and the web version of *El Ciudadano*. Marinovic filed a complaint against *El Ciudadano* on November of 2013 requesting three years of incarceration for its directors.⁴²⁰

316. On November 20, *El Ciudadano* explained on its portal that the news investigation reached the portal team for *Panorama News* and the team “after several weeks of investigation not only located a person willing to reveal his experience during the years working for Marinovic and his family, but also verified his ties with the legislator and was able to video record the interview with Rodrigo Javier Calixto, the former employee of the legislator”.⁴²¹

317. In the conviction order the Judge noted “the defendants did not provide specific, clear, concrete and verifiable information allowing the Court to establish their due care as media outlet directors to corroborate the truthfulness of the information to be published.”⁴²²

318. The appeal from the Third Court of Santiago judgment was filed by the defense for the directors and denied by the Supreme Court.⁴²³ The High Court determined the lower court judge had not erred in her judgment of negligence by the newspaper directors and was therefore in line with the provisions of the law, which does not require intent but rather provides for media outlet directors to be rigorous enough to avoid publishing pieces attacking the honor and good name of the claimant, such as in this case. It was the opinion of the Court that the probative value found by the first instance judge was correct and there is no argument for the reversal of the judgment⁴²⁴.

319. Principle 10 of the Declaration of Principles of the IACHR 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”.

320. In addition, principle 11 establishes that “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information”. Equally, the Inter-American Court has reiterated that “their jurisdiction should be restricted to military personnel in active service only”, and ordered that States to respect the “restrictive and exceptional scope of military courts, and exclude the trial of civilians from the jurisdiction thereof”, including cases filed for contempt.⁴²⁵

⁴²⁰ El Pinguino. April 18, 2015. [Directores de "El Ciudadano" fueron condenados por graves injurias en contra de ex diputado](#); El Ciudadano. August 27, 2013. [Miodrag Marinovic: El Patrón del Mal \(Adelanto\)](#); El Magalla News. November 21, 2013. [Diputado Marinovic se querelló contra diario El Ciudadano por reportaje "El Patrón del Mal"](#); El periodista online. June 12, 2015. [Suprema confirma condena por injurias a directores del periódico El Ciudadano](#); El Ciudadano. November 20, 2013. [Miodrag Marinovic, el "Patrón del Mal": Vino por lana ...](#); Tercer Juzgado de Garantía de Santiago. Causa RUC N° 1310027365-3. [Judgement of April 22, 2015](#).

⁴²¹ El Ciudadano. November 20, 2013. [Miodrag Marinovic, el "Patrón del Mal": Vino por lana ...](#)

⁴²² Tercer Juzgado de Garantía de Santiago. Causa RUC N° 1310027365-3. [Judgement of April 22, 2015](#).

⁴²³ Corte Suprema de Justicia. Segunda Sala. Causa RUC N° 1310027365-3. [Judgment of June 11, 2015](#).

⁴²⁴ Corte Suprema de Justicia. Segunda Sala. Causa RUC N° 1310027365-3. [Judgment of June 11, 2015](#).

⁴²⁵ I/A Court H. R. *Case Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Serie C No. 135. Paras. 124-144.

C. Confidentiality of Sources

321. In November, Judge Rodrigo Acevedo of the Fourth Military Public Prosecutor Office summoned reporters in the Chilean weekly *The Clinic* to testify and demanded the disclosure of their sources on a story about a case of corruption and embezzlement of the Protected Law on Copper [*Ley Reservada del Cobre*], known as the “Milicogate”, where several army officers, were involved. According to available information, the judge summoned the journalist and author of the report, Mauricio Weibel Barahona; the owner and legal representative of *The Clinic*, Paul Dittborn; the publisher, Patricio Fernández, and editor Andrea Moletto.⁴²⁶

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

D. Access to Public Information

323. On September 9 the National Press Association [*Asociación Nacional de Prensa*] (ANP) and the Press Foundation [*Fundación de la Prensa*] revealed the results of the study, entitled “the access to information barometer.” The study reflects the perception of journalists regarding access to information in different public entities. For 2015 512 journalists from digital print media and television were surveyed. The study evaluates three dimensions of access to information on a scale of 1-7: arrangement, reliability and timely delivery. Grades 6 and 7 were 35.1% of the answers, while a year earlier was 42.5%. This highlighted a perceived reduction in terms of access to information. Out of the three dimensions studied trustworthiness and precision rated the highest with an approval of 40.4%, followed by willingness to provide information at 33.3% and timeliness of information provided at an approval of 31.7%.⁴²⁷

324. Principle 4 of the IACHR Declaration of Principles states: “[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.”

E. Internet and Freedom of Expression

325. On January 5 legislators submitted a digital media communications bill to the House of Representatives. Several civil society organizations and academia criticized the bill. For example the NGO Digital Rights [*Derechos Digitales*] stated “[t]he bill on digital media in the House would make everyone who has a website or social network with four weekly posts be considered responsible for a social media outlet.”⁴²⁸ The organization noted the bill imposes “extremely onerous charges that are disproportionate and unjustified leading to the risk of overregulation of online content.” In Addition it maintained that the charges would impede internet anonymity.⁴²⁹ On the other hand the Institute of Communications and Image of the University of Chile considered this bill – which had the goal of reforming press laws- such as a bill with a deficient and vague text when defining what a “newspaper” is (in print or online). The text would basically provide for all websites on the Internet (not necessarily with journalistic information content) be labeled as a

⁴²⁶ The Clinic. November 30, 2015. [El Colegio de Periodistas defiende a periodista de The Clinic: Ningún tribunal puede exigir la revelación de las fuentes](#); Reporters Without Borders. November 27, 2015. [Military justice threatens confidentiality of sources in corruption case](#); MQLTV.com. No date. [Justicia Militar cita a declarar a The Clinic por destapar el caso #MilicoGate](#); Colegio de Periodistas de Chile. November 30, 2015. [Colegio de Periodistas señala: “Justicia militar debiera saber que no tiene atribución alguna para exigir que un periodista revele sus fuentes”](#).

⁴²⁷ Asociación Nacional de la Prensa Chile y GFK. August 2015. [Informe Barómetro de Acceso a la Información 2015](#).

⁴²⁸ Derechos digitales. January 5, 2015. [Ley de medios digitales es un atentado a libertad de expresión](#).

⁴²⁹ Derechos digitales. January 5, 2015. [Ley de medios digitales es un atentado a libertad de expresión](#); T13. January 5, 2015. [Denuncian que nueva ley de medios digitales atenta contra libertad de expresión](#); Fayer Wayer. January 6, 2015. [Algunas aclaraciones sobre la polémica Ley de Medios Digitales en Chile](#); Agencia Pulsar. January 12, 2015. [Chile: afirman que polémica ley de medios digitales haría peligrar libertad de expresión](#).

media outlet but also personal ones (blogs and social networks) that also store and distribute content, and these would be compelled to register and comply with the same registration requirements as a traditional media outlet.⁴³⁰

326. The Commission and the Special Rapporteur office have said that the Internet has special characteristics that make it a "unique transformational tool,"⁴³¹ given its unprecedented potential for the effective fulfillment of the right to seek, receive and disseminate information, and its enormous capacity to serve as an effective platform for the fulfillment of other human rights.⁴³² Consequently, when it comes to the Internet, it is crucial to evaluate all legitimacy conditions of the limitations of the right to freedom of expression based on these unique and special characteristics. Thus for example, when establishing the proportionality of a particular restriction, it is crucial to assess the impact (or cost) not only from the point of view of the private parties directly affected by the measure, but also from the perspective of the impact on the functioning of the Internet. In effect, a particular restrictive measure may seem minor if it is examined only from the perspective of the individual affected. However, the same measure may have a seriously devastating impact on the general operation of the Internet and, as a consequence, on the right to freedom of expression of all users. In this sense, it is crucial to evaluate each measure in a specialized way, from what one could call a systemic digital perspective.

F. Media Concentration

327. During the public hearing "Pluralism and concentration in the media in the Americas" held during the 154th Session of the IACHR, the Office of the Rapporteur received information concerning the high levels of concentration of ownership and control of media communication, both public and private, in the region, which leads to a worrying lack of diversity and pluralism. In the case of Chile, the Association of Journalists of that country later contributed additional information stating said that antitrust legislation fosters economic concentration in several areas, including media ownership. This is due to a complete lack of regulation on cross ownership which allows conglomerates of print media and television to move forward in the acquisition of new radio broadcasting signals. They affirmed that print media is the most concentrated of the media in what is basically a duopoly. On the one hand the Edwards group improperly owns *El Mercurio* and *Las Últimas Noticias*, in national circulation; plus the *La Segunda* evening newspaper. In addition, it holds a chain of 21 regional newspapers. Copesa on the other hand owns *La Tercera* and *La Cuarta*, both in national circulation and regional media outlet and magazines specializing in political and economic content.⁴³³

328. The concentration of the media in a few hands has a negative impact on democracy and freedom of expression, as laid out in Principle 12 of the IACHR Declaration of Principles on Freedom of Expression: "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." Along these lines, since its first ruling on the subject the Inter-American Court has held that any monopoly on media ownership or administration is prohibited,

⁴³⁰ Document submitted by Patricia Peña of the Instituto de Comunicación e Imagen on April 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁴³¹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

⁴³² United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

⁴³³ IACHR. 154th Period of sessions. Hearing on Diversity, Pluralism, and Media Concentration in the Americas. March 16, 2015. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/topicslist.aspx?lang=en&topic=21>; Colegio de Periodistas de Chile. No date. Concentración de la propiedad de los medios de comunicación: El caso chileno. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

regardless of the form it takes, and has recognized that States must actively intervene to prevent ownership concentration in the media sector.⁴³⁴

329. In this regard, the IACHR has indicated that “if [the] media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy. Democracy requires the confrontation of ideas, debate and discussion. When this debate does not exist, or is weakened by the lack of sources of information, the main pillar for the functioning of democracy is harmed.”⁴³⁵

330. The Office of the Special Rapporteur has also said that States should take measures to ensure that all groups in society have access to opportunities to make their voices heard, both within their communities and in wider social debates, including through measures to promote media diversity, public service broadcasting and community media. The promotion of media and digital literacy and citizen journalism, including the capacity to make effective use of online communication tools, are also important.⁴³⁶

G. Community Broadcasting

331. In January, a police operation searched a neighborhood council where community radio *La Victoria* was broadcasting since 2013 in the community bearing the same name. The police seized all the broadcasting equipment for “alleged illegal activity by the operators of the broadcast”.⁴³⁷

332. On February 24, officers for the Criminal Investigation Unit [*Brigada de Investigación Criminal*] of the PDI searched the mapuche radio “*La Voz de Nueva Braunau*” facilities and detained four individuals. The order to cease the radio’s broadcasting operation originated in a complaint filed for violation of telecommunications law.⁴³⁸

333. On October 15 the Investigations Police of Chile (PDI) searched community radio station Manque in the city of Rancagua. The police officers entered the premises a search warrant and detained 4 station members.⁴³⁹ The officers dismantled the community station and confiscated two sound tables, five microphones, three computers, recording equipment and the FM transmitter.⁴⁴⁰

⁴³⁴ I/A Court H. R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Paras. 33-34. IACHR. [2009 Annual Report. Report of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 117.

⁴³⁵ IACHR. [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc. 5 rev. 1. December 29, 2003. Para. 419.

⁴³⁶ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and People’s Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. May 4, 2015. [Joint Declaration on Freedom of Expression and responses to conflict situations](#).

⁴³⁷ Acción. January 27, 2015. [Declaración pública por allanamiento a la libertad de Expresión en caso Radio La Victoria de Santiago](#); La Haine. January 24, 2015. [Carabineros allana violentamente la radio comunitaria “La Victoria”](#); Observacom. January 28, 2015. [Denuncian el allanamiento de la Radio comunitaria La Victoria](#); PiensoChile.com. January 22, 2015. [Violento Allanamiento de Radio Comunitaria La Victoria por fuerzas de Carabineros](#).

⁴³⁸ Werken Williche/YouTube. February 24, 2015. Published by Radio Villa Francia. [Denuncia allanamiento a Radio Mapuche “La voz de Nueva Braunau”](#); El Ciudadano. February 25, 2015. [PDI allanó radio comunitaria en Puerto Varas](#).

⁴³⁹ Red Eco. October 20, 2015. [Chile: Allanamiento y decomiso de equipos de Radio Manque de Rancagua](#); Red Nacional de Medios Alternativos. October 21, 2015. [Allanan y secuestran equipos a radio comunitaria Manque de Chile](#).

⁴⁴⁰ Foco Social. October 15, 2015. [PDI Allana Radio Manque de Rancagua](#); Manuexpress. October 16, 2015. [Declaración Pública de Red de Medios de Los Pueblos, frente a la Persecución a las Radios Comunitarias en Chile](#).

334. World Association of Community Broadcasters [*Asociación Mundial de Radios Comunitarias*] (AMARC) and other civil society organizations reported an increase in criminal actions and searches of stations without licenses including *Radio 1* in Concón; *Radio La Victoria*, in Pedro Aguirre Cerda; *Radio La Voz de Nueva Braunau* in Puerto Varas and *Radio Manque* in Rancagua.⁴⁴¹ This association called upon the State of Chile to comply with international standards and decriminalize the use of frequencies for unlicensed broadcasting.⁴⁴²

335. As indicated on prior occasions, the use of criminal law to punish violations of broadcasting regulations may be problematic in light of the American Convention on Human Rights. In this respect, the Office of the Special Rapporteur reiterates that the establishment of penalties applicable to commercial or community broadcasters—which may face an infraction for the lack or misuse of a license—is a disproportionate reaction.⁴⁴³

H. Other Relevant Situations

336. The Chile School of Journalism issued an information bulletin condemning the July 3 terminations of almost 60 *Televisión Nacional* (TVN) laborers. The School questioned the economic difficulties alleged by the channel in order to utilize fewer employees and noted “the erroneous decision that a public media outlet is obligated to follow commercial financing rules, a cost paid by the workers and their audience.”⁴⁴⁴

337. On August 1, the Santiago Court of Appeals acting as first instance convicted five members of the National Intelligence Directorate (DINA) for the aggravated murder of six members of the Gallardo Moreno family, perpetrated in November 1975. At the time, the killings were falsely attributed to a “confrontation” occurred in the hills of Rinconada Maipú. According to available information, the covering up of the murders included the production of false news of the alleged confrontation by media and journalists of the time, particularly the *Televisión Nacional* (TVN) channel and Channel 13 of the Catholic University, with the appearance on camera journalists Julio Lopez Blanco, Carlos Araya and Claudio Sanchez, among other reporters and cameramen questioned in the case.⁴⁴⁵

⁴⁴¹ Werken. October 17, 2015. [Declaración de Red de Medios de Los Pueblos, frente a hostigamiento a las Radios Comunitarias de Chile](#); El Ciudadano. October 15, 2015. [PDI allana Radio Manque, requisita equipos y detiene a cuatro integrantes de la emisora](#); Mapuexpress. October 16, 2015. [Declaración Pública de Red de Medios de Los Pueblos, frente a la Persecución a las Radios Comunitarias en Chile](#); Document submitted by Mesa AmarcChile (2014-2016). Amarc calls the Chilean State to derogate the criminalization of community radio. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁴² Document submitted by Mesa AmarcChile (2014-2016). Amarc calls the Chilean State to derogate the criminalization of community radio. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁴³ IACHR. [Annual Report 2011. 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. 69. December 30, 2011. Para. 467.

⁴⁴⁴ Newsjs. September 14, 2015. [Crisis de TVN abre debate sobre la viabilidad de canal de TV cultural Colegio de Periodistas de Chile](#); Colegio de Periodistas de Chile. July 6, 2015. [Colegio de Periodistas cuestiona “modelo mercantil de TVN” ante despidos masivos](#); El mostrador. July 3, 2015. [Crisis mundial de televisión abierta golpea a TVN: la estación despide a 60 trabajadores y vendrían nuevas desvinculaciones](#).

⁴⁴⁵ Contra la propaganda Mediática. August 1, 2015. [Exterminio de la Familia Gallardo: Juez chileno sentencia por asesinato político múltiple](#); Rebelión. August 1, 2015. [Exterminio de la Familia Gallardo: Juez chileno sentencia por asesinato político múltiple](#); Colegio de Periodistas. July 31, 2015. [Juez sentencia a militares por asesinato político múltiple aludiendo a montajes de medios en dictadura](#); Vila Grimaldi. No date. [Condenan a 20 años a autores de asesinatos de familia Gallardo](#); Diario U Chile. July 31, 2015. [Familia Gallardo destaca condena de cárcel para los torturadores de Rinconada de Maipú](#).

8. COLOMBIA

A. Progress

338. The Office of the Special Rapporteur acknowledges the State's initiative in formulating its public policy on freedom of expression, which seeks to provide more guarantees to individuals who exercise their right to expression. During 2015 the public policy formulation process led by the Interior Ministry have been focused in identifying the causes of the violation of the right to freedom of expression of persons practicing journalism in Colombia and the development of a work plan. Twenty State entities, 23 civil society organizations, and 8 universities.⁴⁴⁶ Among others, the public policy would address the following topics rights to life, personal integrity and security, impunity, subsequent liability, access to information, pluralism, Government Advertising and working conditions. The Office of the Special Rapporteur encourages the efforts of the State in this regard and hopes that guidelines will include effective guarantees for the exercise of the right to freedom of expression.

339. The State reported that, in the first quarter of 2015, the Attorney General's Office [*Fiscalía General de la Nación*] created "a special task force dedicated exclusively to investigating threats sent via technological means to specific sectors of the population based on or as a result of their work, such as journalists and media workers".⁴⁴⁷ The Office of the Special Rapporteur for Freedom of Expression encourages the State to continue with the efforts led by the Attorney General's Office to train its staff on standards of freedom of expression, and with its cooperation with civil society organizations and the Office of the Special Rapporteur, in order to ensure access to justice for journalists and media workers who are the victims of attacks and eliminate the impunity in those crimes⁴⁴⁸.

340. The IACHR views positively the convictions handed down against the masterminds of a two journalist's murder. On December 31, 2014, the Seventh Specialized Criminal Court of Bogotá convicted Jorge Luis Alfonso, the former mayor of Magangué, in the Department of Bolívar, of ordering the murder of journalist Rafael Prince in February 2005. In his newspaper, the journalist had called the local government into question and exposed irregularities committed by the mayor.⁴⁴⁹

341. In an appeals judgment handed down on June 24, 2015, the Superior Court of Manizales sentenced the mastermind of the February 2002 murder of journalist Orlando Sierra to 36 years in prison⁴⁵⁰. The Superior Court found that, a "criminal enterprise" was formed to murder Sierra, led by former congressman Ferney Tapasco. The judgment underscores the connection between the journalist's murder and the columns he had written exposing the former congressman's corrupt acts⁴⁵¹. In December 2013, there

⁴⁴⁶ Presidencia de la República. [Presidente Santos durante el I Encuentro Internacional de Prensa Independiente](#) - May 13, 2015; Republic of Colombia. Progress in the field of promotion, protection and defense of human rights in Colombia. First half of 2015. follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation. Para. 43.

⁴⁴⁷ Republic of Colombia. Progress in the field of promotion, protection and defense of human rights in Colombia. First half of 2015. follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation. Para. 45.

⁴⁴⁸ Republic of Colombia. Progress in the field of promotion, protection and defense of human rights in Colombia. First half of 2015. follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation. Para. 45. Para. 46 - 47.

⁴⁴⁹ El Heraldo. December 31, 2014. [Condenado a 39 años hijo de la Gata por matar a periodista](#); El Colombiano. December 31, 2014. [Condenan a hijo de "la gata" por asesinato de periodista](#); El Tiempo. January 1, 2015. [39 años de cárcel a hijo de la 'Gata' por asesinato de periodista](#).

⁴⁵⁰ La Patria. June 25, 2015. [2002: asesinato Orlando Sierra 2015: condenado Tapasco](#); Revista Semana. June 24, 2015. [El político que pagará 36 años de cárcel por el crimen de Orlando Sierra](#); El Tiempo. June 26, 2015. [Las claves de la condena de 36 años contra Ferney Tapasco](#).

⁴⁵¹ Tribunal Superior de Manizales. Sala Penal de Decisión. Magistrado Ponente Antonio Toro Ruiz. Manizales, June 24, 2015. Radicado: 2012-00012-02 Procesados: Francisco Ferney Tapasco González Fabio López Escobar Jorge Hernando López Escobar Henry Calle Obando Delitos: Homicidio agravado Concierto para delinquir Asunto: Sentencia de segunda instancia.

was a setback in the case and the trial court judge acquitted and released Tapasco, who was a fugitive from justice until his capture November 1.⁴⁵²

342. Another positive step in the pursuit of justice was the conviction of María del Pilar Hurtado and Bernardo Moreno in the illegal telephone wiretapping case. The case was widely known as the “Chuzadas” case, and involved the unlawful wiretapping of journalists, judges, and opposition political leaders by the now-defunct Administrative Security Department (DAS) between 2007 and 2008. María del Pilar Hurtado, the director of the DAS at that time, was sentenced to 14 years in prison for the offenses of abuse of government authority, making false statements in a public document, aggravated criminal conspiracy, embezzlement by appropriation, and unlawful violation of communications. Bernardo Moreno, the former Secretary of the Office of the President of the Republic who had first-hand knowledge of the information unlawfully obtained by DAS agents, was sentenced to eight years in prison.⁴⁵³

343. The IACHR takes note of progress that has been made in 2015 in the case of journalist Claudia Julieta Duque. On March 24, Jorge Armando Rubiano Jiménez was convicted of aggravated torture committed against the journalist.⁴⁵⁴ In addition, trial proceedings began in the case against former DAS Director Rafael Noguera, also implicated in the “chuzadas” case, although he has hindered the proceedings by failing to appear in court.⁴⁵⁵ In the same case, former DAS intelligence directors Giancarlo Auqué de Silvestri and Enrique Alberto Ariza Rivas (both fugitives from justice) were also summoned to stand trial.⁴⁵⁶ Both have outstanding arrests warrants that authorities have not been able to execute to date.⁴⁵⁷

344. Notwithstanding these advances, the Office of the Special Rapporteur views with concern the information received about the surveillance to which journalist Claudia Julieta Duque, her family, and her attorney have reportedly been subjected, precisely when there has been progress in the investigation of her case,⁴⁵⁸ given that this would not be the first time it has occurred since the beginning of the criminal investigation against her attackers.

345. On May 27, the *Fiscalía 49* for human rights, which is in charge of the case, concluded the investigation and freed Alejandro Cárdenas Orozco,⁴⁵⁹ one of the persons linked to the case of Jineth Bedoya as a perpetrator. Three days after the Attorney General’s decision was made public, the Attorney General’s

⁴⁵² El Tiempo. July 7, 2015. [Ferne Tapasco se suma a los políticos prófugos de la Justicia](#); Vanguardia.com. July 30, 2015. [Familiares de Tapasco dicen que salió de Colombia](#); Radio Nacional. August 31, 2015. [Ferne Tapasco no se entregará a la justicia](#); Knight Center for Journalism in the Americas. November 3, 2015. [End to impunity: in landmark case, Colombia captured the mastermind of the murder of journalist Orlando Sierra](#).

⁴⁵³ El Tiempo. April 30, 2015. [Condena de 14 años para Hurtado y 8 para Bernardo Moreno por chuzadas](#); BBC Mundo. April 30, 2015. [Colombia: condenan a María del Pilar Hurtado, exdirectora de inteligencia](#); Revista Semana. February 27, 2015. [Corte condena al exsecretario de la Presidencia y a la exdirectora del DAS](#); El Espectador. April 30, 2015. [Corte Suprema condenó a 14 años de prisión a María del Pilar Hurtado por 'chuzadas'](#).

⁴⁵⁴ Juzgado Segundo penal del Circuito Especializado de Bogotá. Bogotá D.C. March 24, 2015. [Sentencia Radicado:110013107002201400051](#). Procesado: Jorge Armando Rubiano Jiménez. Delito: Tortura Agravada.

⁴⁵⁵ Periódico El Turbión. July 1, 2015. [Dilatan juicio del caso de Claudia Julieta Duque](#); Caracol Radio. April 27, 2015. [Se dilata juicio a José Miguel Narváez por posible tortura a Claudia Duque](#).

⁴⁵⁶ Fundación para la Libertad de Prensa (FLIP). June 23, 2015. [Inicia juicio contra autores de amenazas y tortura psicológica agravada contra la periodista Claudia Julieta Duque](#); El Mundo.com. June 24, 2015. [Inicia juicio por tortura psicológica contra periodista](#).

⁴⁵⁷ Caracol Radio. June 24, 2015. [Ordenan captura internacional exjefe de inteligencia del DAS por tortura](#); Diario del Huila. June 25, 2015. [Por tortura, ordenan captura internacional exjefe de inteligencia del DAS](#).

⁴⁵⁸ United Nations. Human Rights. Office of the High Commissioner Colombia. No date. [Oficina de la ONU para los Derechos Humanos preocupada por caso de periodista y defensora Claudia Julieta Duque](#); AWID women’s rights. June 29, 2015. [Colombia: Harassment of Claudia Julieta Duque and her lawyer as DAS trial approaches](#); Caracol Radio. August 12, 2015. [Claudia Julieta Duque denuncia nuevos hostigamientos en su contra](#); Equipo Nizkor. August 10, 2015. [Con nuevos ataques y hostigamientos intentan frenar batalla de Claudia Julieta Duque por obtener justicia en su causa contra el DAS](#).

⁴⁵⁹ Committee to Protect Journalists (CPJ). June 4, 2015. [Colombia releases suspect in attack on journalist Jineth Bedoya](#); Oxfam International. June 4, 2015. [Repudio por la liberación de Alejandro Cárdenas Orozco, alias JJ, investigado en el caso de los múltiples crímenes contra Jineth Bedoya](#); El Espectador. June 2, 2015. [Fiscalía precluyó investigación a implicado en abuso sexual a la periodista Jineth Bedoya](#); El Mundo.com. June 4, 2015. [Santos dice que libertad de alias "JJ" va en contrasentido a la reparación de víctimas](#).

Office informed that said decision was going to be revoked since substantive and objective errors were found in it.⁴⁶⁰ On the other hand, on June 3 a preparatory hearing was held in the case against Mario Jaimes Mejía, another of the paramilitaries linked to the case of the journalist. However, on July 13, the date for which the trial hearing was convened, the trial had to be postponed because the accused did not have a defense attorney to assist him.⁴⁶¹ According to the information provided by the State on September 25, 2015, charges were made against another two suspects, and an appeal has been filed against that decision.⁴⁶²

346. On June 9, the decision of the Office of the Attorney General was made public, in which the FGN denied the request made by the family of the journalist Jaime Garzón for the crime to be ruled a crime against humanity.⁴⁶³ The FGN has four years in which to identify and punish the persons who planned the crime before statutory limitations are triggered in the case. Jaime Garzón was a comedian and journalist who had denounced corruption, drug trafficking, and the paramilitaries. He was murdered on August 13, 1999, and his death had a major impact on Colombian society.

B. Killings

347. On February 14, journalist Luis Peralta was murdered in the municipality of Dolcello, Caquetá.⁴⁶⁴ Peralta had received threats in prior years, and days before his murder he alerted authorities that he had received recent death threats. His wife Sofía Quintero was also seriously wounded and, after spending five months in intensive care, died on July 31. Peralta was the owner and director of the *Linda Stereo* radio station, and had been known for exposing corruption within the government institutions of the municipality and the department.⁴⁶⁵

348. The man who shot them was arrested days after the murder. When the lawfulness of the arrest was being reviewed by the supervisory judge, defects were found in the issuance of the arrest warrant and the suspect was therefore released; however, the police rearrested him and he was again brought before the judicial authorities.⁴⁶⁶ According to information provided by the State, the alleged perpetrator was under custody⁴⁶⁷ and was charged with the crime of homicide with the aggravating factor of having been committed with respect to a journalist, as provided for in law⁴⁶⁸.

⁴⁶⁰ Revista Semana. June 4, 2015. [El 'reversazo' de la Fiscalía en caso Jineth Bedoya](#); Radio Santa Fe. June 4, 2015. [Fiscalía revocó decisión de dejar en libertad a implicado en caso de Jineth Bedoya](#); Colmundo Radio. June 4, 2015. [Fiscalía revocó libertad de alias JJ y anuncia investigación a Fiscal por caso Jineth Bedoya](#); El País. June 4, 2015. [Fiscalía ordena recaptura de alias JJ en caso Jineth Bedoya](#).

⁴⁶¹ Fundación para la Libertad de Prensa (FLIP). July 13, 2015. [Primera audiencia en el caso de Jineth Bedoya se aplazó por dilaciones de la defensa](#); El Tiempo. July 13, 2015. [Aplazan primera audiencia del juicio contra 'El Panadero'](#).

⁴⁶² Republic of Colombia. Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation. Note S-GAIIID-15-120799, received December 9, 2015, Para. 34.

⁴⁶³ FGN. June 9, 2015. [El homicidio del humorista Jaime Garzón no fue un crimen de lesa humanidad](#); El Tiempo. June 9, 2015. ['Crimen de Jaime Garzón no es de lesa humanidad': Fiscalía](#); El País. June 9, 2015. [Crimen de Jaime Garzón no es de lesa humanidad: Fiscalía](#).

⁴⁶⁴ IAHRC. February 17, 2015. [Press release R 13/15. Office of the Special Rapporteur Condemns Murder of Journalist in Colombia](#); UNESCO. March 3, 2015. [Unesco urge a investigar asesinato del periodista Luis Carlos Peralta](#); Committee to Protect Journalists (CPJ). February 14, 2015. [Journalists killed. Luis Carlos Peralta Cuéllar Linda Stereo February 14, 2015 in Doncello, Colombia](#).

⁴⁶⁵ El Espectador. February 15, 2015. [Sicarios asesinan al periodista Luis Peralta en Caquetá](#); El Universal. February 14, 2015. [Asesinan a periodista Luis Peralta Cuellar en Caquetá](#); El Espectador. February 17, 2015. [Periodista asesinado en Caquetá había sido amenazado](#); La Nación. July 31, 2015. [Falleció en Neiva esposa del periodista asesinado Luis Peralta](#); Diario del Huila. July 31, 2015. [Falleció esposa de periodista huilense asesinado en Caquetá](#).

⁴⁶⁶ El Espectador. March 3, 2015. [Capturan a presunto homicida de periodista, Luis Antonio Peralta Cuellar](#); Noticias UNO. March 5, 2015. [A la cárcel presunto homicida de periodista en Caquetá](#); El Espectador. March 4, 2015. [Recapturan al presunto homicida del periodista Luis Antonio Peralta](#); El Nacional. March 3, 2015. [Detienen a presunto asesino del periodista colombiano Luis Peralta Cuéllar](#).

⁴⁶⁷ Republic of Colombia. Progress in the field of promotion, protection and defense of human rights in Colombia. First half of 2015. follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation, Note S-GAIIID-15-088842, September, 2015, pág. 45; RCN Radio. August 16, 2015. [El martes se realizará la audiencia preparatoria de juicio contra el presunto autor material del homicidio del periodista Luis Peralta](#).

⁴⁶⁸ Republic of Colombia. Comments of the Colombian State on the draft of Chapter V on follow-up of the recommendations of the IACHR's Fourth Country Report: Truth, Justice and Reparation. Note S-GAIIID-15-120799, received December 9, 2015. Para. 33 and 34.

349. On March 2, journalist Edgar Quintero was murdered in Palmira, Valle del Cauca. He was the program director of “*Noticias y algo más*” on Radio Luna, where he had worked for more than 20 years.⁴⁶⁹ According to information available in the media, the direct perpetrator of the crime was arrested and reportedly confessed that the journalist’s murder was for personal reasons unrelated to his profession. According to the information provided by the State, the direct perpetrator is currently in custody.⁴⁷⁰ Authorities are reportedly continuing to investigate the case in order to identify the masterminds.⁴⁷¹ The IACHR reiterates, as it has on other occasions, that in cases involving the murder of journalists, the relationship of the crime to the practice of journalism must be exhausted as a line of investigation.⁴⁷²

350. On September 10, journalist Flor Alba Nuñez was murdered in Pitalito, Huila. Flor Alba hosted the news program on the radio station *La Preferida* FM, and was a correspondent for the regional newspaper *La Nación* and for *Nación TV*. According to local media, she had told colleagues that she had received threats. One potential motive of the crime was that she had recently reported on drug trafficking gangs. Another possible motive was reportedly her news coverage of the upcoming local election of October 25.⁴⁷³

351. Following her death, the authorities offered a reward of one hundred million Colombian pesos (approximately US \$32,500) for information leading to the perpetrators. On September 26, the local press reported that the man who had allegedly shot her was arrested and brought before the judicial authorities.⁴⁷⁴

352. On November 23, in Caucasia, department of Antioquia, in Northwestern Colombia, journalist Dorancé Herrera and his study partner, Marlon Quiroz, were killed while they were at the home of one of Herrera’s relatives. According to information disclosed by the Ombudsman [*Defensoría del Pueblo*],

⁴⁶⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 6, 2015. [Press release R 25/15. Office of the Special Rapporteur Condemns Killing of Journalist in Colombia](#); Reporters Without Borders. March 5, 2015. [Edgar Quintero, segundo periodista asesinado en Colombia en 2015](#); Knight Center for Journalism in the Americas. March 10, 2015. [Two murders in a month raise concerns about safety of journalists in Colombia](#); El Tiempo. March 3, 2015. [Asesinan al periodista radial Édgar 'Quintín' Quintero en Palmira](#).

⁴⁷⁰ Republic of Colombia. Progress in the field of promotion, protection and defense of human rights in Colombia. First half of 2015. follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation. Para. 46.

⁴⁷¹ Republic of Colombia. Progress in the field of promotion, protection and defense of human rights in Colombia. First half of 2015. follow-up of the recommendations of the IACHR’s Fourth Country Report: Truth, Justice and Reparation. Para. 45; El Espectador. March 3, 2015. [Las hipótesis de la Fiscalía por el homicidio del periodista, Edgar 'Quintín' Quintero](#); El País. May 3, 2015. [Capturan a alias Chocolate, señalado de asesinar al periodista Édgar Quintero](#).

⁴⁷² IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice).OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

⁴⁷³ IACHR. Office of the Special Rapporteur. September 14, 2015. [Press release R 102/15. Office of the Special Rapporteur Condemns Killing of Journalist Flor Alba Nuñez in Colombia](#); Opa Noticias. September 10, 2015. [\\$70 millones de recompensa para capturar a asesinos de Flor Alba Nuñez](#); Minuto 30. September 10, 2015. [Autoridades ofrecen \\$70 millones de recompensa por información de asesinos de periodista en Huila](#); Revista Semana. September 10, 2015. [Periodista asesinada en Huila había recibido amenazas](#); Caracol. September 10, 2015. [Asesinan a la periodista Flor Alba Nuñez](#); La Nación. September 10, 2015. [Flor Alba Nuñez, la flor que nunca se marchitará](#); Fundación para la Libertad de Prensa (FLIP). September 10, 2015. [FLIP rechaza el asesinato de la periodista Flor Alba Nuñez Vargas en Pitalito - Huila](#); Knight Center for Journalism in the Americas. September 10, 2015. [Young journalist killed when entering radio station in Colombia](#); Reporters Without Borders. September 11, 2015. [Young programme host gunned down outside radio station](#); "Asesinan a periodista @flornuneznoti. Fecolper repudia este crimen @Canal6pitalito @JuanManSantos <http://www.fecolper.com.co/index.php/historial/item/731-asesinan-a-periodista-flor-alba-nunez-fecolper-repudia-este-crimen-y-pide-a-las-autoridades-esclarecer-este-hecho...>", Twitter account of Fecolper @Fecolper. [September 10, 2015 2015 - 8:40 PM](#); El Mundo. September 11, 2015. [Asesinan a la periodista colombiana Flor Alba Nuñez cuando entraba en la emisora en la que trabajaba](#); El Tiempo. September 10, 2015. [Periodista fue asesinada frente a una emisora en Huila](#); El colombiano. September 11, 2015. [El asesinato de Flor alba nuñez nos hace sangrar a todos](#).

⁴⁷⁴ El Espectador. September 26, 2015. [Capturan "posible autor material" del asesinato de periodista Flor Alba Nuñez](#); Revista Semana.com. September 25, 2015. [Estos serían los responsables del homicidio de la periodista Flor Alba Nuñez](#); Radio Nacional. September 27, 2015. [Capturan a asesino de periodista](#); El Tiempo. September 26, 2015. [Cavó sicario que disparó contra la periodista Flor Alba Nuñez](#).

Herrera was a media worker at the University of Antioquia and published occasionally in the regional *Día del Bajo Cauca* newspaper of Antioquia.⁴⁷⁵

353. The authorities have offered 30 million Colombian pesos (almost 10,000 US dollars) to any person that contributes valuable information on the murder.⁴⁷⁶

354. The Office of the Special Rapporteur recalls 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. The legal systems and practices of the States must clearly reflect that crimes against freedom of expression are especially serious, given that they represent a direct attack on all fundamental rights.⁴⁷⁷

355. In addition, the Office of the Special Rapporteur has reiterated that the States have the obligation to take measures to prevent violence against journalists and media workers.⁴⁷⁸ This obligation is particularly important in countries where there is a risk of these acts occurring and in specific situations where the authorities know or should have known that there is a real and immediate risk that such crimes will be committed.⁴⁷⁹ In those countries or regions where journalists are especially vulnerable due to the context of violence directed against them, the State has a heightened responsibility in its obligations of prevention and protection. In those situations, the absence of a general public policy of prevention can result in the State's failure to meet its duty of prevention.⁴⁸⁰

356. The obligation to prevent violence against journalists includes: a) adopting a public discourse that contributes to the prevention of violence against journalists. The Inter-American Court has emphasized that the duty to guarantee the rights to freedom of expression and humane treatment requires public officials to refrain from making statements that place journalists and media workers at greater risk of violence;⁴⁸¹ b) instructing its security forces to respect the media. Appropriate instruction of State security forces on the role of the press in a democratic society is an important step in preventing violence against journalists and media workers. For this reason, the Office of the Special Rapporteur has recommended that the States adopt adequate mechanisms to prevent violence against media workers, including the training of public servants, especially the police and security forces and, if necessary, the adoption of conduct manuals or

⁴⁷⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. November 30, 2015. [Press release R 138/15. Office of the Special Rapporteur Condemns Killing of Journalist in Colombia](#); El Colombiano. November 23, 2015. [El periodista Dorance Herrera fue asesinado en Cauca](#); RCN Noticias. November 23, 2015. [Periodista Dorancé Herrera fue asesinado en Cauca, Antioquia](#); Defensoría del Pueblo-Colombia. November 24, 2015. [Defensoría pidió medidas urgentes de protección para periodista amenazado en Cauca y que se investigue homicidio de comunicador en Antioquia](#).

⁴⁷⁶ Noticias Caracol. November 25, 2015. [Ofrecieron recompensa de \\$30 millones por muerte de periodista en Cauca](#); Blue Radio. November 24, 2015. [Autoridades buscan a los asesinos del periodista Dorancé Herrera en Cauca](#).

⁴⁷⁷ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation 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. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

⁴⁷⁸ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 33.

⁴⁷⁹ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation 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. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

⁴⁸⁰ I/A Court H. R. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 280.

⁴⁸¹ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 34.

guidelines on freedom of expression;⁴⁸² c) the obligation to respect the right of journalists to maintain the confidentiality of their sources of information, notes, and personal and professional records. The protection of confidential sources not only contributes to the press's fundamental role as watchdog but also helps to prevent journalists from becoming victims of violence;⁴⁸³ d) the obligation to punish violence against journalists. In order to prevent violence against journalists and media workers, it is indispensable for the legal system to punish this conduct in a manner that is proportional to the harm committed;⁴⁸⁴ e) the obligation to maintain accurate statistics on violence against journalists. Understanding the magnitude and methods of acts of violence against journalists and media workers is a fundamental condition for the implementation of effective prevention policies such as, for instance, the design of reliable risk maps. In the context of violence against journalists, the Office of the Special Rapporteur has stressed the importance of compiling detailed, disaggregated statistics as an essential prerequisite for designing, implementing and evaluating effective public policies of prevention, protection and criminal prosecution of violence against members of the media.⁴⁸⁵

357. The States also have the obligation to protect at-risk journalists and media workers. According to the human rights standards of the Inter-American System, the States have an obligation to protect those who are exposed to special risk with respect to their fundamental rights. The obligation to protect an at-risk journalist can be met through the individual application of the measures necessary to ensure, among other things, the beneficiaries' rights to life, humane treatment, and freedom of expression. However, when a particular country is experiencing a systematic and serious structural situation of violence against journalists and media workers, the States must establish special protection programs for those groups. In any case, the measures taken must be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue conducting the same professional activities, and his or her social and economic circumstances.⁴⁸⁶

358. The third and final element of a comprehensive State policy to address violence against journalists is the investigation, prosecution, and punishment of the perpetrators of such acts of violence. The Office of the Special Rapporteur has repeatedly urged the States to conduct serious, impartial, and effective investigations into the murders, assaults, threats, and acts of intimidation committed against journalists and media workers.⁴⁸⁷ The Inter-American Court has held that impunity—understood as the complete absence of investigation, pursuit, arrest, trial, and conviction—favors the chronic repetition of human rights violations and the total defenselessness of the victims and their relatives. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that, "Impunity [...] is widely recognized as one of the main causes of the continued killing of journalists."⁴⁸⁸ In the same respect, the UN Special Rapporteur on the

⁴⁸² IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 47.

⁴⁸³ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 54.

⁴⁸⁴ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 55.

⁴⁸⁵ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 59 and 60.

⁴⁸⁶ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 62.

⁴⁸⁷ IACHR. Special Rapporteurship for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#). OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013. Para. 160.

⁴⁸⁸ United Nations. General Assembly. [Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns](#). A/HRC/20/22. April 10, 2012. Para. 43.

promotion and protection of the right to freedom of opinion and expression has found that impunity 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.”⁴⁸⁹ Both the Commission and the Court have referred to the chilling effect that crimes against journalists have on other media professionals as well as on citizens who attempt to speak out against abuses of power or unlawful acts of any kind.⁴⁹⁰ This chilling effect can only be prevented, according to the Commission, “by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law.”⁴⁹¹

359. 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.”

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

360. In December 2014, a leaflet surfaced that was signed by the Black Eagles [*Águilas Negras*] criminal organization, threatening the *Telesur* and *Canal Capital* television channels, as well as the organization Reporters Without Borders;⁴⁹² In January, in a leaflet signed by the *Gaitanista* Self-Defense Forces threatened leaders and journalists in the departments of Magdalena and Atlántico on the northern coast of Colombia.⁴⁹³

361. Ana Cristina Restrepo, journalist and columnist for the newspapers *El Espectador* and *El Colombiano*, received a telephone death threat in which the caller provided details about her husband and children. In recent months, she had been working on an investigative piece on tenement houses in the Lovaina neighborhood of Medellín, an area plagued by gangs engaged in drug micro-trafficking.⁴⁹⁴

362. On May 16, while working in Hacarí, North Santander, journalist Juan Diego Restrepo was approached by several men in the old city and was taken to a rural area where he was turned over to an EPL

⁴⁸⁹ UN. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue](#). A/HRC/20/17. June 4, 2012. Para. 65.

⁴⁹⁰ I/A Court H. R. *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of September 3, 2012. Series C No. 248; IACHR. Report No. 136/10. Case 12,858. Merits. Luis Gonzalo “Richard” Vélez Restrepo and Family. Colombia. October 23, 2010. Párr. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para.58. See Also, IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716.

⁴⁹¹ IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family. (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. *See also*, IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716. *See also*, I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 212.

⁴⁹² El Pais.com.co. December 1, 2014. [‘Águilas Negras’ amenazan al Canal Capital, Telesur y Reporteros Sin Fronteras](#); Reporters Without Borders. December 12 de 2014. [Journalists Meet to Protest Threats from Criminal Gangs](#); El Espectador. December 1, 2014. [Águilas Negras amenazan a RSF, Telesur y Canal Capital](#).

⁴⁹³ El Espectador. January 22, 2015. [Aparece panfleto amenazante de Autodefensas Gaitanistas](#); El Mundo.com. January 22, 2015. [Panfleto amenazante contra 38 periodistas y defensores de DD.HH. en la Costa Atlántica](#); El Herald. January 22, 2015. [Autodefensas Gaitanistas amenazan con panfletos a periodistas y líderes de víctimas](#).

⁴⁹⁴ BBC Mundo. March 14, 2015. [Amenaza a conocida columnista colombiana](#); Committee to Protect Journalists (CPJ). March 16, 2015. [Journalist threatened after reporting on gangs in Colombia](#). Semana. March 14, 2015. [Flip rechaza amenazas contra columnista de ‘El Colombiano’](#); Noticias Caracol. March 16, 2015. [Habrà plantón para rechazar amenazas en contra Ana Cristina Restrepo](#); El Colombiano. March 14, 2015. [Denuncian amenaza contra la columnista Ana Cristina Restrepo](#); El Espectador. March 16, 2015. [Ana Cristina Restrepo, la última periodista que los violentos intentan amedrentar](#).

commando unit. The journalist was kidnapped for several hours and interrogated about his presence in the area and his journalistic work, then later released.⁴⁹⁵

363. Journalist Pascual Gaviria published in his opinion column in the newspaper *El Espectador* that he had received a death threat in the context of the local elections that took place on October 25. Gaviria had been reporting on the exertion of political pressures being exerted on students and employees of the *University of Medellín* for election purposes.⁴⁹⁶

364. Journalist José David Martínez reportedly received a death threat in the Lagos del Palmara neighborhood when he was preparing to take photographs of a public works project of the Mayor's Office of a Barrancabermeja, Santander. The journalist was reportedly beaten and the assailants confiscated his journalistic material. According to information from civil society organizations, the journalist had also received telephone threats previously.⁴⁹⁷

365. The Office of the Special Rapporteur also takes note of attacks documented by civil society organizations during 2015 that were reportedly committed by law enforcement officers and demonstrators against journalists covering social protests.⁴⁹⁸ The reported assaults include the March attack on journalist Isnardo Quiroz, who was reportedly assaulted by ESMAD (anti-riot) police officers together with other media workers while covering a transportation strike in a town near Pasto, Nariño.⁴⁹⁹

366. The Office of the Special Rapporteur also learned of the death threat against journalist Edinson Bolaños, who had conducted and published an investigation on gold mining in the department of Cauca, which revealed how big business was allegedly taking advantage of artisanal miners. Bolaños is a correspondent for *El Espectador* daily, and the publication was included in that national daily and *Nuevo Liberal* daily.⁵⁰⁰

367. 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."

⁴⁹⁵ Verdadabierta.com. May 17, 2015. [EPL retuvo durante seis horas al editor de Verdad Abierta, Juan Diego Restrepo](#); Caracol Radio, May 17, 2015. [Guerrilla del EPL retiene periodista en el Catatumbo](#); Federación Internacional de Periodistas - Oficina Regional América Latina/Facebook. May 18, 2015. [FECOLPER - EPL retuvo durante seis horas al editor de Verdad Abierta, Juan Diego Restrepo](#); Fundación para la Libertad de Prensa (FLIP). May 19, 2015. [Fundación para la Libertad de Prensa. Secuestro simple contra editor de Verdad Abierta.](#)

⁴⁹⁶ *El Espectador*. October 6, 2015. [Una amenaza, opinión de Pascual Gaviria](#); *El Tiempo*. October 7, 2015; [Pascual Gaviria, periodista de 'La Luciérnaga', denuncia amenazas](#); *Revista Semana*. October 7, 2015. [¿Quién amenazó a Pascual Gaviria?](#); *El Heraldo*. October 7, 2015. [Periodista Pascual Gaviria denuncia haber recibido amenazas de muerte.](#)

⁴⁹⁷ Fundación para la Libertad de Prensa (FLIP). July 10, 2015. [Periodista amenazado de muerte en Barrancabermeja durante cubrimiento local.](#)

⁴⁹⁸ Fundación para la Libertad de Prensa(FLIP). March 18, 2015. [Primer balance de 2015: Un asesinato y 15 amenazas contra periodistas.](#)

⁴⁹⁹ Federación Internacional de Periodistas - Oficina Regional América Latina/Facebook. March 13, 2015. [La ANP filial de la FECOLPER expresa su enérgico rechazo a la acción del Escuadrón Móvil...;](#) Fundación para la Libertad de Prensa (FLIP). March 12, 2015. [Policía disparó fusil lanza gas contra periodista que cubría paro camionero en Pasto.](#)

⁵⁰⁰ *El Espectador*. November 22, 2015. [Amenazado corresponsal de El Espectador en el Cauca](#); *El Tiempo*. November 23, 2015. [Periodista recibe amenazas tras publicar reportaje sobre minería](#); *El País*. November 23, 2015. [Amenazan a corresponsal de El Espectador en el Cauca](#); Defensoría del Pueblo-Colombia. November 24, 2015. [Defensoría pidió medidas urgentes de protección para periodista amenazado en Cauca y que se investigue homicidio de comunicador en Antioquia.](#)

D. Protection Mechanisms

368. In 2015 the Program for the Protection of Journalists marked its 15th year. The Office of the Special Rapporteur appreciates the efforts of the Colombian State in the implementation of the program, which was the first of its kind in the hemisphere and has undoubtedly reduced the number of murders against journalists. According to the information provided by the Colombian State, 137 journalists reportedly have some type of security detail.⁵⁰¹

369. 2014 and 2015 have seen a budget deficit and corruption scandals in the National Protection Unit (UNP), the entity responsible for the administration and management of the protection mechanism, which resulted in the removal of the unit's director by President Juan Manuel Santos in 2014.⁵⁰² The financial and administrative troubles plaguing the entity have undermined the operation of the protection measures. One of the main issues affecting journalists has to do with the restrictions on the per diem allowances for protected journalists to travel with their security details, forcing them to choose between traveling alone to cover the story and not covering the story at all. This situation led journalist Rodrigo Callejas, who is the beneficiary of UNP protection measures as well as IACHR precautionary measures, to file a writ for the protection of constitutional rights [*recurso de tutela*] against the UNP to obtain authorization for the per diem expenses and for him to be able to travel where he needs to for his work as a journalist.⁵⁰³

370. Civil society organizations have pointed to several other problems, including delays in the implementation of the measures and the lack of institutional coordination, especially with the Attorney General's Office, which they assert is reflected in the lack of progress in the investigation of cases involving assaults or threats against current beneficiaries of protection measures.⁵⁰⁴ According to the Colombian Federation of Journalists (FECOLPER), 75% of the journalists who have some type of protection measure have stated that those measures do not work properly.⁵⁰⁵ According to the organizations, "In these 15 years, the State has decided to focus protection on guarding and escorting journalists, but setting aside justice and the prevention and elimination of risk. Attacks on the press have not decreased, and of the 338 threats against journalists that the Attorney General's Office documented in August 2014, only one resulted in the conviction of the perpetrators."⁵⁰⁶

371. 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

⁵⁰¹ Gobierno de Colombia. Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia. First half of 2015. Seguimiento a las recomendaciones contenidas en el IV Informe País 'Verdad, Justicia y Reparación'. Para. 49.

⁵⁰² Revista Semana. December 23, 2014. [Andrés Villamizar renuncia a la Unidad de Protección](#); Vanguardia.com. December 24, 2014. [Andrés Villamizar renunció a la dirección de la Unidad Nacional de Protección](#); Radio Nacional de Colombia. January 19, 2015. [Diego Fernando Mora asume como nuevo director de la Unidad Nacional de Protección](#); El Colombiano. January 19, 2015. [Diego Fernando Mora asumió como director de la UNP](#).

⁵⁰³ Consejo de Estado. Sala de lo Contencioso Administrativo Sección Segunda – Subsección B Consejero ponente: Dr. Gerardo Arenas Monsalve. Bogotá D.C., January 15, 2015. Expediente N°: 11001-03-15-000-2014-03081-00; El Tiempo. February 10, 2015. [Rodrigo Callejas Bedoya logró que el Estado cubra los viáticos de sus escoltas en desplazamientos](#); El Nuevo Día. February 10, 2015. [Consejo de Estado falla a favor de periodista tolimense](#).

⁵⁰⁴ Fundación para la Libertad de prensa (FLIP). [Informe anual 2014. 60 años de espionaje a periodistas en Colombia](#). Para. 45-50.

⁵⁰⁵ Reporters without Borders (RSF) and Federación Colombiana de Periodistas (Fecolper). August 27, 2015. [Colombia: Actividad periodística en riesgo](#).

⁵⁰⁶ Fundación para la Libertad de Prensa (FLIP), Federación Colombiana de Periodistas (Fecolper) and Reporters Without Borders. August 27, 2015. [Colombia: Programme for protecting journalists needs overhaul](#).

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.⁵⁰⁷

E. Subsequent Liabilities

372. In June 2015, the trial court in the department of Quindío dismissed the charges against journalist Jorge Eliécer Orozco for the offense of aggravated criminal defamation [*calumnia agravada*], after more than six years of proceedings. The complaint had been filed by a former representative of congress, who claimed to have lost an election because of a column written by the journalist and sought significant reparation.⁵⁰⁸

373. In April 2015, reporter Juan Esteban Mejía was notified by the Attorney General's Office about a criminal case filed against him in which he was indicted on June 16 for the crime of libel. The facts giving rise to the charges stem from an article published on October 24, 2011 in the *Semana* Magazine wherein the aptitude of a plastic surgeon is questioned. The article was published after an investigation triggered by the deaths of some patients. The doctor filed a complaint against the magazine for the crime of libel, for each time it stated that he lacked a university degree, as this is false. The attorneys for the magazine appeared for a mediation set by the Attorney General's Office handling the case; and although the agreement was made to rectify the error, the magazine did not do so. In addition, the magazine itself revealed to the investigating agency that journalist Juan Esteban Mejía researched and wrote the piece. According to the information provide by the journalist, the original piece did not make such statements, but rather those were added during the editing process.⁵⁰⁹

374. Gonzalo López, who was convicted of criminal defamation after making a comment against a public server in the comments space in the news web *el pais.com*,⁵¹⁰ filed a petition for cassation. However, the court did not examine the merits of the case. The Constitutional Court denied a filed a writ for the protection of constitutional rights challenging the order dismissing the petition for cassation as consequence the conviction was confirm.⁵¹¹

F. Confidentiality of Sources

375. The Office of the Special Rapporteur reiterates its concern over the case of journalist María Isabel Rueda, who was summoned by the Attorney General's Office in 2014 to give a statement in the investigation into the murder of politician Álvaro Gómez as a consequence of an opinion column she had written. In May, 2015, the Attorney General's Office again summoned Rueda to provide a statement in a defamation case against politician Francisco Santos, whom she had interviewed in September 2014.⁵¹²

⁵⁰⁷ IACHR. Annual Report 2013. [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence Against Journalists and Media Workers). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 81; IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 712.

⁵⁰⁸ Crónica del Quindío. August 1, 2015. [Fallo en favor del periodista Jorge Eliécer Orozco Dávila](#); Transmisora Quindío. No date. [Juez de Calarcá ordenó archivar proceso contra Jorge Eliécer Orozco](#).

⁵⁰⁹ El Espectador. June 15, 2015. [Esteban Mejía: de denunciante a imputado](#); El Espectador. September 30, 2015. [Fiscalía va a llamar a juicio a experiodista de la Revista Semana](#); La FM. June 17, 2015. [Imputan cargos a periodista que denunció a falso especialista en cirugía plástica](#); Fundación para la Libertad de Prensa (FLIP). June 16, 2015. [FLIP rechaza la imputación por el delito de injuria contra el periodista Juan Esteban Mejía](#).

⁵¹⁰ IACHR. [Annual Report 2014. Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13 March 9, 2015. Chapter II: Evaluation of the state of freedom of expression in the hemisphere. Para. 287.

⁵¹¹ Corte Constitucional de Colombia. Secretaría. Consulta de procesos, [radicado T4815344](#). Fecha de radicación March 5, 2015.

⁵¹² ASOMEDIOS. May 23, 2015. [ASOMEDIOS rechaza citación de la Fiscalía a María Isabel Rueda](#); El Tiempo. May 22, 2015 [Fiscalía cita a María Isabel Rueda por entrevista a Francisco Santos](#); El Universal. May 25, 2015 [María Isabel Rueda no cumplirá la cita en la Fiscalía](#); La FM. May 22, 2015. [Fiscalía dejó en firme citación a la periodista María Isabel Rueda](#).

376. Principle 8 of the IACHR's 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."

G. Access to Public Information

377. On January 20, 2015, the Decree 103 of 2015 was issued "Partially regulating the Law on Transparency and Access to Public Information (Law 1712 of 2014) and issuing other provisions."⁵¹³ The decree regulates the management of public information in terms of: its publication and disclosure, the processing of requests for access to public information, its appropriate classification and confidentiality, the drafting of information management instruments, and the monitoring of public information. In addition, the Office of the Special Rapporteur received information on the Decree that would regulate the same law and create an Inter-Institutional Commission for the formulation of public policy on access to public information, which would be tasked with designing, promoting, and implementing said policy. The decree would also regulate matters concerning the implementation, control, and oversight of the law by the private parties to which it applies,⁵¹⁴ which according to the draft decree would be accountable to the Office of the Inspector General of Colombia for their transparency policies.⁵¹⁵

378. As the supervisory body overseeing the Law on Transparency and Access to Public Information, and in compliance with its mandate to take preventive action and produce statistics and reports on compliance with the law, the Office of the Inspector General of Colombia published the First Report on the Monitoring and Oversight of the Law on Transparency and Access to Public Information in December 2014.⁵¹⁶ The report reveals that 74% of the 180 public executive branch entities evaluated meet their obligations, while 32% do so insufficiently.⁵¹⁷ The report indicates that 48% (218,656) of the 454,500 writs for the protection of constitutional rights⁵¹⁸ filed in Colombia during 2013 had to do with requests for access to information. The report was prepared based on the information available in the government information systems designed for transparency and accountability that already existed prior to the enactment of Law 1712 of 2014.

379. For its part, in its 2014 management report, the Secretariat of Transparency of the Presidency of the Republic stated that its work in view of the establishment of Law 1712/14 is based on three

⁵¹³ Presidencia de la Republica de Colombia. January 20, 2015. [Decreto 103 de 2015. "Por el cual se reglamenta parcialmente la Ley 1712 de 2014 y se dictan otras disposiciones"](#).

⁵¹⁴ According to Article 5 paragraphs b, c, d, e, and f of Law 1712 of 2014, the private legal entities covered by the law are: The independent or autonomous state agencies and entities of control; natural and legal persons, whether public or private, that provide a civil service, that provide public services regarding information directly related to the provision of a public service; any natural or legal person or department of a legal person that performs a civil service or holding public authority regarding the information directly related to the performance of their duties; political parties or movements and significant groups of citizens; entities that administer quasi-government agencies, funds or resources of a public nature or origin.

⁵¹⁵ Gobierno de Colombia. Gobierno Visible. September 23, 2015. [Formula tus aportes al decreto que regula el derecho de acceso a la información](#).

⁵¹⁶ Procuraduría General de la Nación. Grupo de transparencia y del derecho de acceso a la información pública. December, 2014. [1º informe de vigilancia y seguimiento de la ley de transparencia y del derecho de acceso a la información pública](#).

⁵¹⁷ Procuraduría General de la Nación. Grupo de transparencia y del derecho de acceso a la información pública. December, 2014. [1º informe de vigilancia y seguimiento de la ley de transparencia y del derecho de acceso a la información pública](#).

⁵¹⁸ The writ of protection is enshrined in Article 86 of the Constitution as follows: "Article 86. Every person has the right to file a writ of protection before a judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whomever acts in his/her name for the immediate protection of his/her fundamental constitutional rights when that person fears the latter may be violated by the action or omission of any public authority. The protection will consist of all order issued by a judge enjoining others to act or refrain from acting. The order, which must be complied with immediately, may be challenged before a superior court judge, and in any case the latter may send it to the Constitutional Court for possible revision. This action will be available only when the affected party does not dispose of another means of judicial defense, except when it is used as a temporary device to avoid irreversible harm. In no case can more than 10 days elapse between filing the writ of protection and its resolution. The law will establish the cases in which the writ of protection may be filed against private individuals entrusted with providing a public service or whose conduct may affect seriously and directly the collective interest or in respect of whom the applicant may find himself/herself in a state of subordination or vulnerability."

pillars: (i) the definition and adjustment of guidelines; (ii) promotion and support; and (iii) monitoring and evaluation. The challenges raised by the entity in the application of the law included identifying who it would apply to and drafting manuals and guidelines for the publication of information by those obligated parties.⁵¹⁹

380. In relation to the need for an effective remedy for the enforcement of the right of access to public information, on January 29 the Constitutional Court published Judgment C-951 of 2014, which upheld the constitutionality of the draft bill “*Regulating the fundamental right of petition and replacing a title of the Code of Administrative and Administrative Litigation Procedure*”.⁵²⁰

381. That bill became law on June 30, 2015 (Law 1755 of 2015). The text of the law provides for the reiteration of an appeal [*recurso de insistencia*] as a mechanism to contest administrative denials of requests for access to public information. Under this procedure, the citizen must reiterate his or her request before the authority that denied the information, and if the authority upholds the denial it must send the case to the administrative disputes court for a one-step decision to be made within a maximum of ten days.

382. Previously, Law 1712 of 2014 “Creating the Law on Transparency and the Right of Access to National Public Information and enacting other provisions” had established a similar remedy for denials of access to information due to confidentiality for reasons of national security and defense or international affairs. The main difference lies in the imposition of a deadline for the entity to send the documentation to the administrative disputes court; also, in the event this order is not followed, the citizen can go before the court directly. In addition, for all other cases, Law 1712 of 2014 allows citizens to file a writ for the protection of constitutional rights after exhausting the motion for consideration.

383. On this point, the Office of the Special Rapporteur recalls that the Inter-American Court of Human Rights has held that “The State must guarantee that there is a simple, prompt and effective [judicial remedy] that [makes it possible to determine] whether there has been a violation of the right of the person requesting information and, if applicable, that the corresponding body is ordered to disclose the information”.⁵²¹

H. Internet and Freedom of Expression

384. In July, the Constitutional Court handed down Judgment T-277 of 2015, adjudicating a writ for the protection of constitutional rights filed against the newspaper *El Tiempo* (its online edition).⁵²² The case originated with a request made by a citizen for the removal of a news article from the newspaper’s website and Internet search engines regarding the alleged participation of the plaintiff in criminal acts for which he was never convicted. In that judgment the Constitutional Court examined the possibility of de-indexing the content from web browsers. The Court decided to bring Google Company into the case because the request made reference to the Company search engine.

385. The Constitutional Court found that the content of the article violated the plaintiff’s rights. Nevertheless, it held that Google was not liable and that the corrective measures had to be taken by the newspaper *El Tiempo*. In this respect, by mentioning the possibility that the browser could be responsible for de-indexing the information, the Court stated that, “This measure has the potential to turn the search engine into a censor or controller of the content published by users who access the Internet. This, in the Court’s opinion—and as argued by several of the parties—can adversely affect the architecture of the Internet by disregarding its governing principles of access under conditions of equality, nondiscrimination, and pluralism. In turn, an intervention of this kind not only has a mere technical influence on the workings of a

⁵¹⁹ Presidencia de la República. December, 2014. [Secretaría de Transparencia. Informe de Gestión.](#)

⁵²⁰ Proyecto de Ley radicado con el número 65 de 2012 Senado y número 227 de 2013 Cámara de Representantes.

⁵²¹ I/A Court H. R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Para. 137.

⁵²² Corte Constitucional de Colombia. May 12, 2015. [Sentencia T-277 de 2015.](#) Expediente T-4296509. Magistrada Ponente Maria Victoria Calle Correa. Bogotá, D.C.

communications medium but additionally jeopardizes the right of information of individuals who access the service—that is, all citizens.”

386. Based on this theory, the Constitutional Court declined to rule similarly to the Court of Justice of the European Union in the case of *Costeja v. AEPD*,⁵²³ “on the grounds that it was a disproportionate sacrifice of net neutrality and therefore of freedom of expression and information”.⁵²⁴

387. In the opinion of the Constitutional Court, imposing liability on intermediaries would amount to an infringement of net neutrality, which is fundamental to freedom of expression. The Court therefore decided not to order the removal of the article; however, in order to protect the rights of the plaintiff, it ordered the newspaper to publish an update to the article. It held that the media have a duty to update, especially when they cover legal matters such as the one in the case in question.

388. The Constitutional Court found that, in order to protect the plaintiff’s rights to his honor and good reputation, the measure least harmful to freedom of expression is to use technological tools to keep the article from appearing in Google search results. According to the judgment, the onus is on the media outlet to use technical tools such as “robots.txt” and “metatags” to prevent Internet browsers from accessing the article that recounts the plaintiff’s arrest and prosecution, this being the alternative that best strikes a balance between the competing constitutional principles.⁵²⁵

389. The Court was of the opinion that the effective protection of the plaintiff’s rights required the newspaper to use those tools “to neutralize the potential for free access based on the plaintiff’s name, in spite of the fact that the updated information remains intact. Although this measure limits the right to freedom of expression of the publishers of *El Tiempo*, it is less harmful than a measure ordering the removal of the information from the web, insofar as it at least allows for the publication of the event that gave rise to the article, without the historical truth being altered with regard to the events that occurred.”⁵²⁶

390. Nevertheless, the Court makes one exception with respect to information in the public interest that cannot be subject to restrictions on search engines. When “it concerns a well-known public figure or a public servant, or the facts reported in the article concern the commission of crimes against humanity or serious human rights violations, access to the information generated by the search engine must not be restricted, as those events are part of the process of building a national historical memory, and its dissemination therefore outweighs the personal interest of the individual.”⁵²⁷

391. According to information received by the Office of the Special Rapporteur, in January 2015, the CEO of Facebook reportedly announced together with the President of the Republic of Colombia that the mobile operator Tigo would provide in the country free basic services through the implementation of

⁵²³ Europe Union Court. May 13, 2014 [Case C-131/12. Google Spain SL, Google Inc. v Agencia Española de Protección de Datos \(AEPD\), Mario Costeja González](#).

⁵²⁴ Corte Constitucional de Colombia. May 12, 2015. [Sentencia T-277 de 2015](#). Expediente T-4296509. Magistrada Ponente María Victoria Calle Correa. Bogotá, D.C.

⁵²⁵ Corte Constitucional de Colombia. May 12, 2015. [Sentencia T-277 de 2015](#). Expediente T-4296509. Magistrada Ponente María Victoria Calle Correa. Bogotá, D.C.

⁵²⁶ Corte Constitucional. May 12, 2015. [Sentencia T-277 de 2015](#). Referencia: Expediente T-4296509. Magistrada Ponente: María Victoria Calle Correa. Bogotá, D.C.

⁵²⁷ Corte Constitucional. May 12, 2015. [Sentencia T-277 de 2015](#). Referencia: Expediente T-4296509. Magistrada Ponente: María Victoria Calle Correa. Bogotá, D.C.

"internet.org".⁵²⁸ As reported, Colombia was the first country on the continent and fourth in the world to adopt this initiative.⁵²⁹

392. According to information available on the website of the "internet.org", now called "Free Basics", its purpose would be "bringing together technology leaders, nonprofits and local communities to connect the two thirds of the world that doesn't have internet access."⁵³⁰ The initiative created in July 2014, has worked "closely with more than a dozen mobile operators across 17 countries to give people access to relevant basic internet services without data charges".⁵³¹ Additionally, the web page indicated that "Free Basics" it is no exclusive to any operator, and Facebook is willing to work with any operator that wants to provide free basic services. Therefore, to form part of the "Free Basics" platform it's necessary that the developer and the application meet two criteria: have low data consumption and meet the technical specifications outlined in the technical guidelines.⁵³²

393. Some concerns of civil society on the initiative "internet.org" are related, among others, to (i) net neutrality; (ii) Facebook gets access to all usage data of sites that are "Free Basics"; and (iii) the alleged creation of an unfair internet access model.⁵³³ The initiative indicates that "Facebook supports net neutrality and has worked throughout the world to ensure that services can't be blocked or throttled and to ensure that fast lanes are prohibited".

394. In Colombia, as in other countries in the region such as Brazil, Ecuador and Panama, organizations working for digital rights signed a joint letter addressed to the CEO of Facebook in order to "criticize many of the practices of Internet.org for reasons of justice, privacy and security."⁵³⁴ The letter signed by 60 organizations in 28 countries worldwide, further states that "[F]acebook is defining improperly net neutrality in public statements and is building a walled garden where the poorest people of the world can only access a limited group of websites and unsafe services".⁵³⁵

395. Additionally, the letter indicates that Facebook would not store any personal navigation information from within the service beyond 90 days. Furthermore, would not share "any personally identifiable information with [its] content partners and there is no requirement for those partners to send Facebook such information about their users." Lastly, inform that the initiative would seek to "introduce

⁵²⁸ MIT Technology Review. May 19, 2015. [Internet.org, el proyecto gratuito de Facebook, recibe críticas en todo el mundo](#); El Espectador. January 15, 2015. [Internet.org no es Internet](#); ST News. January 15, 2015. [Facebook lanzó Internet.org en Colombia, con la presencia de Zuckerberg y el presidente Santos](#).

⁵²⁹ MIT Technology Review. May 19, 2015. [Internet.org, el proyecto gratuito de Facebook, recibe críticas en todo el mundo](#); El Espectador. January 15, 2015. [Internet.org no es Internet](#); ST News. January 15, 2015. [Facebook lanzó Internet.org en Colombia, con la presencia de Zuckerberg y el presidente Santos](#).

⁵³⁰ Internet.org. No date. Available for consultation at: <https://internet.org/about>

⁵³¹ Internet.org. July 27, 2015. [One Year In: Internet.org Free Basic Services](#).

⁵³² Internet.org. Free Basics. November 19, 2015. [Free Basics: Myths and Facts](#).

⁵³³ MIT Technology Review. May 19, 2015. [Internet.org, el proyecto gratuito de Facebook, recibe críticas en todo el mundo](#); El Espectador. January 15, 2015. [Internet.org no es Internet](#); ST News. January 15, 2015. [Facebook lanzó Internet.org en Colombia, con la presencia de Zuckerberg y el presidente Santos](#); Fundación Karisma. May 20, 2015. [Carta abierta a Mark Zuckerberg sobre Internet.org, Neutralidad de la Red, Privacidad, y Seguridad](#).

⁵³⁴ MIT Technology Review. May 19, 2015. [Internet.org, el proyecto gratuito de Facebook, recibe críticas en todo el mundo](#); El Espectador. January 15, 2015. [Internet.org no es Internet](#); ST News. January 15, 2015. [Facebook lanzó Internet.org en Colombia, con la presencia de Zuckerberg y el presidente Santos](#); Fundación Karisma. May 20, 2015. [Carta abierta a Mark Zuckerberg sobre Internet.org, Neutralidad de la Red, Privacidad, y Seguridad](#).

⁵³⁵ MIT Technology Review. May 19, 2015. [Internet.org, el proyecto gratuito de Facebook, recibe críticas en todo el mundo](#); El Espectador. January 15, 2015. [Internet.org no es Internet](#); ST News. January 15, 2015. [Facebook lanzó Internet.org en Colombia, con la presencia de Zuckerberg y el presidente Santos](#); Fundación Karisma. May 20, 2015. [Carta abierta a Mark Zuckerberg sobre Internet.org, Neutralidad de la Red, Privacidad, y Seguridad](#).

people to the value of the internet through hundreds of free basic services, beyond Facebook”,⁵³⁶ in addition to have “an impact on people’s lives by providing free health, education, and economic information.”⁵³⁷

I. Communication Surveillance

396. In July it came to light that some Latin American authorities, including the National Police of Colombia, had procured the services of the company Hacker Team, which is based in Italy and sells Remote Control System (RCS) spyware directed at governments or government agencies, also known as DaVinci or Galileo.⁵³⁸

397. According to information made public by the media and civil society organizations, in the case of Colombia the National Intelligence Office of the National Police reportedly acquired the spyware sold by this company, which is designed to evade encryption on computers and mobile phones, thus allowing it to extract data, messages, calls, emails, VOIP [voice over IP] conversations and instant messages. It is also reportedly possible with this software to remotely activate cameras and microphones. According to Hacking Team’s website, “Evidence collection on monitored devices is stealth and transmission of collected data from the device to the RCS server is encrypted and untraceable.”

398. Civil society organizations in Colombia expressed their concern over the weakness of laws on intelligence activities in Colombia, which reportedly facilitates the use of technological tools that are invasive, disproportionate, and not effectively controlled. They stated that the possibility of this type of remote control system being in the hands of Colombian intelligence is cause for suspicion about the State’s ability to control its improper use, and they raised the alarm with regard to the potential commission of crimes through the use of tools purchased by the Colombian State.⁵³⁹

399. For its part, the National Police reportedly stated that it has had not had any business relationship with Hacking Team, but acknowledged that the institution purchased a technological tool from the company in 2013 to “enhance the ability to detect threats from terrorists and organized crime in Colombian cyberspace.”⁵⁴⁰

400. The Office of the Special Rapporteur recalls that, under international standards, the use of surveillance systems or programs on private communications must be clearly and precisely established by law, truly exceptional and selective, and limited in function to what is strictly necessary to accomplish compelling aims such as the investigation of serious crimes defined in the law. Such restrictions must be strictly proportionate and must meet the international standards on the right to freedom of expression. This office has stated that communications surveillance and invasions of privacy that exceed the legal limits, are geared toward objectives other than the ones authorized by the law, or are done clandestinely, must be severely penalized. This unlawful interference includes politically motivated interference against human rights defenders, journalists, and independent media outlets.

⁵³⁶ Internet.org. Free Basics. November 19, 2015. [Free Basics: Myths and Facts](#).

⁵³⁷ Internet.org. July 27, 2015. [One Year In: Internet.org Free Basic Services](#).

⁵³⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 21, 2015. [Press release R80/15. The Office of the Special Rapporteur Expresses Concern Over the Acquisition and Implementation of Surveillance Programs by States of the Hemisphere](#); El Tiempo. July 7, 2015. [En Colombia se habría invertido en programa espía de Hacking Team](#); El Espectador. July 11, 2015. [El software espía de la Policía](#); Contagio Radio. July 13, 2015. [En 2015 Colombia compró 850 mil Euros en software de Hacking Team](#).

⁵³⁹ Fundación para la Libertad de Prensa (FLIP), Comisión Colombiana de Juristas (CCJ), Dejusticia, Fundación Karisma y Colnodo. Pronunciamiento conjunto. July 30, 2015. [Policía colombiana debe aclarar su relación con “Hacking Team”](#).

⁵⁴⁰ El Tiempo. July 8, 2015. [Policía indicó no tener vínculos comerciales con firma Hacking Team](#); W Radio. July 8, 2015. [Policía Nacional niega vínculo con la firma Hacking Team](#); Fundación para la Libertad de Prensa (FLIP), Comisión Colombiana de Juristas (CCJ), Dejusticia, Fundación Karisma and Colnodo. Joint statement. July 30, 2015. [Policía colombiana debe aclarar su relación con “Hacking Team”](#).

401. Although the possible ties to Hacking Team involved several States in the hemisphere, it is important to note in the case of Colombia that the IACHR has previously received information on cases of surveillance, including those related to the now-defunct DAS. More recently, in its 2014 annual report, the Office of the Special Rapporteur reported on the involvement of the Military Intelligence Headquarters in the alleged surveillance of peace negotiators and the journalists covering them.⁵⁴¹ Organizations indicate that these acts have become an integral part of the conflict in Colombia, causing the uncontrolled coexistence of surveillance systems that can be used improperly.⁵⁴² In addition, they have complained that the laws on communications surveillance are scattered and incomplete and that laws have even been passed after the surveillance techniques and strategies have been applied.⁵⁴³

402. At the beginning of December, the Office of the Special Rapporteur learned about complaints regarding possible illegal surveillance by members of the National Police to the journalists Vicky Davila, Juan Pablo Barrientos and Claudia Morales as a result of the complaints they had made about a possible prostitution ring and corruption acts in the interior of National Police. Both Morales and Dávila received anonymous emails informing them about surveillances.⁵⁴⁴ For his part, Barrientos denounced that someone took the remote control of his computer and altered information he was working with.⁵⁴⁵ Additionally, the Attorney General's Office, Eduardo Montealegre, told the media that the surveillance to Davila would come from the National Police and would be related to these complaints.⁵⁴⁶

403. In its Joint Declaration on surveillance programs and their impact on freedom of expression, the Office of the Special Rapporteur indicated that the law must pursue a legitimate aim and establish limits regarding 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. Access to personal data and communications must be authorized only under the most exceptional circumstances defined by law. When national security is invoked as a reason for the surveillance of correspondence and personal information, the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate. Its application shall be authorized only in the event of a clear risk to protected interests and when the damage that may result would be greater than society's general interest in maintaining the right to privacy and the free circulation of ideas and information.

404. As this Office stated in its Report on Freedom of Expression and Internet, decisions to undertake surveillance activities that invade the privacy of individuals must be authorized 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 procedures that involve the invasion of privacy authorized by law and ordered by a competent judge must additionally respect other rights related to due process. 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.

⁵⁴¹ IACHR. [Annual Report 2014. 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. 13, March 9, 2015. Para. 292

⁵⁴² Privacy International. August, 2015. [Un estado en la sombra: vigilancia y orden público en Colombia](#). Para. 7.

⁵⁴³ Electronic Frontier Foundation, Fundación Karisma, Comisión Colombiana de Juristas. May, 2015. [Vigilancia de las comunicaciones por la autoridad y protección de los derechos fundamentales en Colombia](#). Para. 6.

⁵⁴⁴ El Espectador. December 5, 2015. [A Vicky Dávila la querían involucrar en caso de enriquecimiento ilícito](#); Fundación para la Libertad de Prensa (FLIP). December 3, 2015. [Se agudiza situación de espionaje e intimidación policial a periodistas en Colombia](#).

⁵⁴⁵ Fundación para la Libertad de Prensa (FLIP). December 3, 2015. [Se agudiza situación de espionaje e intimidación policial a periodistas en Colombia](#).

⁵⁴⁶ El Tiempo. December 11, 2015. [Hay indicios de que seguimientos a Vicky Dávila vienen de la Policía](#).

J. Other Relevant Situations

405. Similarly, the Office of the Special Rapporteur views with concern the statements made by the Attorney General of Colombia after explosive devices were detonated in Bogotá in July. In a public speech, the Attorney General stated that any media outlet or journalist that published images from the security cameras adjacent to the scene of the attack would be immediately subject to a criminal investigation. The Office of the Special Rapporteur recalls the obligation of high-ranking public officials to avoid making accusations against the press and to guarantee the free flow of information.⁵⁴⁷

406. In April it was learned that journalist Yesid Toro, who had received work-related threats in 2013, was the author of a leaflet that came out on September 29, 2014. The leaflet was signed by “Los Urabeños” and declared eight journalists from the cities of Cali and Buenaventura in Valle del Cauca, including Toro, “military targets.” The local and national authorities dismissed those threats. Later, Toro himself announced in a letter and a recording that he was the author of that leaflet. He apologized in the letter and explained that he did it because the Program for the Protection of Journalists had failed to make a payment that was five months past due and to extend his security detail.⁵⁴⁸

407. The National Protection Unit, the entity in charge of the Program for the Protection of Journalists, announced that it would file a criminal complaint against the journalist alleging damages of more than 114 million pesos for the false threats that had reportedly led the entity to provide him with a security detail.⁵⁴⁹

408. Additionally, during 2015 two studies that analyzed the ownership and control of the media they were published in Colombia. Both studies concluded that the medias with greater coverage in Colombia belong to only three families, which in turn are owners of large business conglomerates investing in medias. The economic groups belonging to Luis Carlos Sarmiento, family Santo Domingo and Carlos Ardila Lulle, the three would own most of the media using the radio spectrum and concentrate 57% of the audience.⁵⁵⁰

⁵⁴⁷ El Espectador. July 6, 2015. [Procurador rechazó restricción para publicación de videos sobre atentados en Bogotá](#); El Nuevo Siglo. [Fiscal y Procurador chocan por videos de atentados](#); Noticias RCN. July 3, 2015. [Atentados en Bogotá: fiscal advierte sanciones para quienes entreguen videos a terceros](#).

⁵⁴⁸ El Tiempo. April 25, 2015. [Periodista se autoamenazó e intimidó colegas para presionar un pago](#); El Colombiano. April 25, 2015. [“La amenazas fueron hechas por mí mismo”: Yesid Toro](#); Revista Semana. April 24, 2015. [La confesión del periodista que se autoamenazó](#); Fundación para la Libertad de Prensa (FLIP). April 25, 2015. [La FLIP rechaza las falsas amenazas del periodista Yesid Toro contra él y colegas del Valle del Cauca](#); Committee to Protect Journalists (CPJ). May 20, 2015. [Fabricated attacks by Colombian journalists mask real dangers](#).

⁵⁴⁹ El Tiempo. April 29, 2015. [Periodista tendrá que responder por falsa amenaza](#); La República. April 29, 2015. [UNP demandará al periodista Yesid Toro por falsa denuncia](#); Semana. April 27, de 2015 [Los delitos que enfrentaría el periodista que se autoamenazó](#).

⁵⁵⁰ Reporters Without Borders and Fecolper. No date. [Monitoreo de la Propiedad de Medios](#); Poderopedia. September 10, 2015. [Intereses económicos y políticos tras los medios nacionales en Colombia](#).

9. COSTA RICA

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

409. On July 20, *Telenoticias* reporter, Álvaro Sánchez, was attacked by a group of people while covering the case of an armed man who was threatening to commit suicide on the street. In a video released on the same day by *Telenoticias*, it is shown how the individual's family and friends attacked and injured the journalist.⁵⁵¹ October 2, judicial authorities arrested four suspects of the crime.⁵⁵²

410. On November 15, *La Nación* journalist, Fernando Chaves Espinach, who covers human rights issues related to LGBTI people, was attacked by an unknown individual who was waiting outside his home. Ombudswoman [*Defensora de los Habitantes*], Montserrat Solano Carboni, expressed concern over the incident and asked the authorities to investigate the assault.⁵⁵³

411. 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. Legal Reforms

412. On March 27, the State of Costa Rica formally requested of the IACHR Office of the Special Rapporteur for Freedom of Expression to provide technical assistance during the drafting of new legislation concerning freedom of expression and access to public information.⁵⁵⁴ On April 21, President Luis Guillermo Solís appointed journalist Mauricio Herrera, as his Minister of Communication, to lead this initiative.⁵⁵⁵ On July 23, President Luis Guillermo Solís met with the Special Rapporteur for Freedom of Expression, Edison Lanza, and announced he had sent to Congress three bills that seek to strengthen the guarantees of freedom of speech and the right of access to information.⁵⁵⁶

413. The Government sent to the Office of the Special Rapporteur the draft legislation and requested its technical opinion. According to the draft Bill of Access to Public Information [*Propuesta de Ley de Acceso a la Información Pública*], new legislation aims at “guaranteeing the proper observance of the right of access to public information (...) [which] aims to promote, jointly, the transparency in the exercise of public

⁵⁵¹ Colegio de Periodistas de Costa Rica. July 21, 2015. [Repudio ante agresión a periodista](#); La Nación. July 21, 2015. [Turba ataca a periodista de Telenoticias mientras cubría caso de individuo armado](#); Teletica. July 27, 2015. [Periodista Álvaro Sanchez se recupera de operación tras ser víctima de una agresión](#).

⁵⁵² AM Prensa. October 2, 2015. [Tres hombres y una mujer detenidos por ataque a periodista de Telenoticias](#); Teletica. October 2, 2015. [Detienen a sospechosos de agredir al periodista de Telenoticias, Álvaro Sánchez](#); Fox News Latino/EFE. October 2, 2015. [Detienen a cuatro sospechosos de agredir a un periodista en Costa Rica](#).

⁵⁵³ Mi Prensa. No date. [Preocupa a Defensoría actos que podrían atacar contra la libertad de expresión: Agresión a periodista que publica temas de derechos humanos debe ser investigada](#); La Nación. November 16, 2015. [Defensoría de los Habitantes pide investigar agresión contra periodista](#); elmundo.cr. November 16, 2015. [Defensoría solicita que agresión a periodista que publica temas de derechos humanos sea investigada](#); Fernando Chaves Espinach/Facebook. November 15, 2015. [Amigos. Un mae estaba esperando frente a mi casa. Llegué. Me golpeó en la cara. Estoy sangrando. Nunca en 25 años me había pasado. Jamás. Estoy muy triste. ¿Qué significa esto?](#)

⁵⁵⁴ Republic of Costa Rica. Permanent Mission of Costa Rica at the OAS. Note CROEA-036-15 to the Office of the Special Rapporteur for Freedom of Expression. March 27, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁵⁵ La Nación. April 21, 2015. [Luis Guillermo Solís nombra a periodista Mauricio Herrera como ministro de Comunicación](#); Semanario Universidad. April 21, 2015. [Presidente nombra a Mauricio Herrera como Ministro de Comunicación](#); La Prensa Libre. June 23, 2015. [Gobierno prepara tres proyectos de ley relacionados con libertad de expresión](#).

⁵⁵⁶ La Prensa Libre. June 23, 2015. [Gobierno prepara tres proyectos de ley relacionados con libertad de expresión](#); Crhoy.com. June 23, 2015. [Solís se reunió con representante de la CIDH y OEA en materia de libertad de expresión](#); Diario Extra. June 24, 2015. [Solís anunció ley para publicidad oficial](#).

functions and strengthen accountability by public authorities and private actors engaged in an activity or power of a public nature.”⁵⁵⁷

414. The draft Bill on Government Advertising [*Ley de Publicidad Oficial*], with 15 articles, states that the allocation of government advertising shall be ruled by the following principles: i) general interest - government advertising should provide general interest information and not pursue any other goal than informing the public; ii) guarantee freedom of expression - the allocation of government advertising must not affect the independence of the media and the exercise of freedom of expression; iii) equity in distribution and plurality of media - government advertising must be distributed to the media respecting their plurality through equitable criteria; iv) efficiency - government advertising shall achieve the proposed objects at the lowest possible cost; v) message clarity - the contents and messages of government advertising should be clear, objective, necessary, useful and relevant to the public. Its official purpose can not be used for any political-party or electoral purposes; vi) non-discrimination - advertising allocation must be carried out avoiding benefits or ideological, political and/or partisan-based discrimination, or of any other type contrary to human dignity.⁵⁵⁸

415. The draft Bill on Freedom of Expression and the Press [*Ley de libertad de expresión y prensa*], that would reform Article 151 of the Criminal Code, states that the publication or reproduction of information or value judgments on matters of public interest shall not be punishable. It also proposes an amendment to article 380 of the Criminal Procedure Code [*Código Procesal Penal*], regarding the time of defense of the defendant and his or her transfer. Finally, it is proposed that all labor contracts of those who practice journalism shall include a so-called conscience clause, by which journalists shall not be required to carry out work contrary to their conscience or generally accepted ethical standards, and shall not be punished by their directors or bosses due to their opinions or information as part of their professional performance.⁵⁵⁹

416. The Office of the Special Rapporteur made a number of recommendations for these projects so that they comply with the international legal framework on freedom of expression and access to information. These recommendations were received with openness by Government.

417. The Office of the Special Rapporteur received information that the government also prepared a draft Bill on Radio and Television, whose content was leaked on April. According to the information available, the draft project would withdraw operating licenses from media outlets if they incurred in extremely serious offenses or two serious offenses within a year. This ranking of offenses included the publishing of false articles or messages and/or vulgar words, which drew criticism from various private sectors.⁵⁶⁰ According to the information available, the government called off the project.⁵⁶¹

C. Other Relevant Situations

418. On June 24 it was held a preliminary hearing in a criminal trial against six people that participated on November 8, 2012 in a demonstration organized in defense of Social Security in Costa Rica. They were accused of committing crimes of battery, obstruction of roads and traffic; incitement, and failure to

⁵⁵⁷ Draft Bill of Law of Access to Public Information. No date. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁵⁸ Draft Bill of Law of Official Advertising. No date. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁵⁹ Draft Bill of Law of Freedom of expression and the press. No date. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁶⁰ Crhoy.com. April 10, 2015. [Ley Mordaza es el “ejemplo corona” de descoordinación y falta de estrategia del gobierno, dicen analistas](#); La Nación. April 7, 2015. [Gobierno impulsa ley mordaza a radio y TV](#); El País. April 7, 2015. [¿Qué propone el borrador al proyecto de ley de Radio y Televisión?](#); Inter American Press Association (IAPA). No date. [2015 – General Assembly - Charleston – South Carolina. Country Report: Costa Rica](#); elmundo.cr. October 5, 2015. [Sociedad Interamericana de Prensa vigilará denuncias de acoso a periodistas ticos](#).

⁵⁶¹ Inter American Press Association (IAPA). No date. [2015 – General Assembly - Charleston – South Carolina. Country Report: Costa Rica](#).

obey police order. In this preliminary hearing, the judge ruled that five of the six defendants will go on trial. Activists and politicians criticized the measures adopted by the Judicial Branch and asserted they constitute a form of criminalization of protests.⁵⁶²

419. In September 2015, media outlets denounced an attempt of intimidation or harassment by the Minister of Communication, Mauricio Herrera, calls to reporters.⁵⁶³ On September 29, the editor of the digital newspaper *El Mundo*, Yamileth Angulo Rosales filed a writ of amparo against Herrera, in which she asserted that the practice of the Minister to call the newspaper journalists to require “modification of the contents of those articles that are not in line with his interests or those of the Government” violated the right to freedom of press.⁵⁶⁴ In response to the writ of amparo, the Minister of Communications said he prefers to call journalists and media editors when he disagrees with the news, rather than use the legal remedies available to apply the right of rectification and reply.⁵⁶⁵ The Constitutional Court [*Sala Constitucional*], dismissed the *recurso de amparo* submitted.⁵⁶⁶

420. Subsequently, on November 10 at a press conference the Minister of Communication offered to give journalism classes to the reporters covering the presidential beat, after a journalist from the newspaper *Extra* consulted him on a controversial government initiative. The minister told a journalist that she should ask the questions properly. His conduct was censured by journalists and also by members of the National Assembly.⁵⁶⁷

⁵⁶² Telesur. June 5, 2015. [A juicio seis costarricenses por defender seguridad social](#); Informa-tico.com. June 1, 2015. [Van a juicio seis defensores de la Caja detenidos durante la represión policial de 2012](#); Semanario Universidad. July 1, 2015. [Juez ordena juicio contra un profesor y dos estudiantes de UCR arrestados en 2012](#); Era Verde/Facebook. June 24, 2015. [Era Verde se une al llamado: ¡No a la criminalización de la protesta!](#); Equipo Crítica. May 29, 2015. [Colectivo de Apoyo a las Víctimas de la Criminalización de la Protesta Social](#); elmundo.cr. June 24, 2015. [Tribunales de Justicia llaman a juicio a cinco personas por protesta del 2012](#).

⁵⁶³ Diario Extra. November 11, 2015. [Piden cabeza de Mauricio Herrera](#); La Nación. September 29, 2015. [Mauricio Herrera dice que prefiere llamar a medios que enviar derechos de respuesta](#); Crhoy.com. November 12, 2015. [Mal carácter pone en jaque a ministro de Comunicación](#); Crhoy.com. September 23, 2015. [Piden destitución del Ministro de Comunicación y asesores](#); La Prensa Libre. November 10, 2015. [Ministro de Comunicación irrespeto a periodista](#).

⁵⁶⁴ elmundo.cr. September 29, 2015. [Directora de El Mundo presenta recurso de amparo contra Mauricio Herrera por violación a los Derechos Humanos](#); Diario Extra. October 1, 2015. [Sala IV acoge recurso contra Ministro de Comunicación](#).

⁵⁶⁵ Asamblea Legislativa de la República de Costa Rica. September 29, 2015. [ACTA DE LA SESIÓN PLENARIA ORDINARIA Nº 78](#); La Nación. September 30, 2015. [Ministro de Comunicación llama a medios en vez de pedir rectificaciones por escrito](#).

⁵⁶⁶ Informa-Tico.com. October 19, 2015. [Sala Cuarta rechazó amparo contra ministro de Comunicación](#); El País. October 19, 2015. [“Mis actuaciones defienden un periodismo profesional”, dice ministro sobre rechazo de amparo de Sala IV](#).

⁵⁶⁷ Crhoy.com. November 10, 2015. [Gobierno se enreda en conflicto por liberación de reos](#); La Prensa Libre. November 10, 2015. [Ministro de Comunicación irrespeto a periodista](#); Crhoy.com. November 12, 2015. [Mal carácter pone en jaque a ministro de Comunicación](#); Diario Extra. November 11, 2015. [Piden cabeza de Mauricio Herrera](#).

10. CUBA

421. The constant violations of the right to freedom of expression, freedom of association, and freedom of movement of independent journalists, opposition figures, and demonstrators continued in Cuba in 2015, with arbitrary detentions, attacks, persecution, harassment, and threats by state agents, or encouraged by them, in a legal context that imposes criminal and administrative sanctions when the exercise of the freedom of expression may bother the authorities or question any government policy. State control of the media also persisted, restricting information, forms of cultural expression, and the debate of ideas to which Cubans can accede through print, radio, television, and the Internet.⁵⁶⁸ Nonetheless, the Commission also observes the concession of certain measures that show possible signs of opening in the context of the current process of the normalization of Cuba's relations with the United States and other countries.

A. Progress

422. On January 7, three members of the Patriotic Union of Cuba [*Unión Patriótica de Cuba* (UNPACU)]. Brothers Diango and Bianco Vargas Martín, and Enrique Figuerola Miranda, were released after the December 17, 2014 agreement with the United States to re-establish diplomatic relations. The brothers had been detained in December 2013 and were convicted in June 2014 on charges of contempt, resistance, public disorder, and threat. In addition, Figuerola Álvarez has been detained since July 2012 accused of the crimes of attack on and contempt of the authority, for allegedly having filmed the detention of several persons in the street in the middle of the Carnival celebrations in Santiago.⁵⁶⁹

423. Journalist José Antonio Torres, detained in February 2011 and convicted and sentenced to 14 years in prison for espionage, was also placed under a "minimum severity regime," as of March 9, that enables him to work and visit his home. Torres, who had worked at the official daily newspaper *Granma* and who had held positions of trust in the government, said that having a flexible punishment was not his objective but rather he was seeking his freedom because he never was a spy.⁵⁷⁰ He was arrested after publishing information on the alleged mismanagement of the construction of the water supply system in Santiago and of the installation of an optic fiber cable between Venezuela and Cuba.⁵⁷¹

424. As a civil society initiative, the *Red de Bibliotecas Cívicas Comunitarias* (Network of Community Civic Libraries) approved on June 6, a new structure and code of ethics for the organization that includes upholding the truth and the commitment to the freedom of expression and information. This civil society network includes 33 libraries nationwide.⁵⁷²

425. While the Cuban population continues to contend with major difficulties accessing the Internet, 35 wireless connection points were started up in public spaces on July 1 that can only be used by those who have an account with the state phone company Etecsa. Etecsa, a public company that restricts content one can access in Cuba, has cut the cost of connecting to the Internet in half, from 4.5 to 2 convertible Cuban pesos (same in dollars) per hour.⁵⁷³ Nonetheless, according to information received, there is still a

⁵⁶⁸ IACHR. 2014 Annual Report I. Report of the Office of the Special Rapporteur for Freedom of Expression. [Ch. II \(Evaluation of the state of freedom of expression in the Hemisphere\)](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015, p. 122; Cubanet. June 29, 2015. [Periodismo cubano: la libertad de expresión es todavía un sueño.](#)

⁵⁶⁹ El País. January 8, 2015. [Cuba comienza a liberar a presos políticos tras el acuerdo con EE UU](#); Cubanet. January 8, 2015. [Cuba: 5 liberados de presunta lista de presos políticos.](#)

⁵⁷⁰ Inter-American Press Association (IAPA). March 23, 2015. [SIP: beneplácito por flexibilización de régimen carcelario para periodista cubano](#); 14 y medio. January 27, 2015. [El espía que nunca quiso serlo.](#)

⁵⁷¹ Reporters without Borders. November 16, 2012. [CUBA | 14 años de cárcel para el periodista Jose Antonio Torres.](#)

⁵⁷² Cubanet. June 8, 2015. [La Red de Bibliotecas Cívicas Comunitarias se reorganiza.](#)

⁵⁷³ Infolatam. July 5, 2015. [Los cubanos estrenan entusiasmados sus nuevos espacios wifi en zonas públicas](#); La Capital. July 3, 2015. [Red wi-fi pública, el nuevo servicio que entusiasma en Cuba](#); EFE. July 2, 2015. [Los cubanos cuentan desde hoy con 35 zonas de internet wifi](#); Martí Noticias. July 2, 2015. [ETECSA ofrece a habaneros Wi-Fi por \\$2 la hora](#); Hipertextual. July 3, 2015. [Cuba lanza red inalámbrica en todo el país](#); Reuters. July 2, 2015. [Cuba, an Internet laggard, opens Wi-Fi hotspots across country.](#)

scarcity and illegal sale of cards for connecting to the Internet via the Wi-Fi network. A resolution to avoid these situations was approved on August 18.⁵⁷⁴

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

426. The Commission has expressed concern by the worsening repression, which seeks to prevent protests or peaceful meetings organized to discuss social or political issues. Evidence of this is found in the increase in the number of short-duration arrests, detentions, attacks, harassment, and threats against journalists, activists, human rights defenders, and members of the opposition to the government due to their expressions and positions critical of the official line, and in the context of peaceful demonstrations and protests against the government.

427. In addition, it was learned that artist Tania Bruguera was detained on January 1 and released the next day. On December 30, 2014 she was arrested because she had invited Cuban citizens to speak at an open microphone set up in the Plaza de la Revolución for people to offer their opinions on the re-establishment of relations between Cuba and the United States. Other persons who attempted to participate in the event were detained along with the artist. The authorities confiscated her passport; she had lived abroad in recent years⁵⁷⁵. Almost five months later, on May 24, Bruguera was detained by state agents after a performance called *100 horas de lectura del libro "Los orígenes del totalitarismo" (100 hours of reading the book "The Origins of Totalitarianism")*, during the Havana Biennial. Hours later she was released⁵⁷⁶. Bruguera was detained once again on July 12 along with Claudio Fuentes, publisher of Estado de Sats; opposition figure Jorge Luis García "Antúnez"; and Berta Soler, member of the Ladies in White movement, when they were attending mass at the Santa Rita church. Several dozen human rights activists were there, including Ángel Moya, Egberto Escobedo, blogger Agustín López, reporters for *Hablemos Press*, and communicator Serafin Morán, were also arrested by the National Revolutionary Police [*Policía Nacional Revolucionaria*] (PNR) and agents of the State Security office allegedly in civilian dress.⁵⁷⁷

428. Journalist José Leonel Silva Guerrero, correspondent for *Hablemos Press*, was reportedly detained on March 11 for more than 10 hours and questioned by Security State Department [*Departamento de Seguridad del Estado*] (DSE) agents; according to his version, the objective was to intimidate him because of his journalistic coverage of a case involving deaths in the province of Holguín. It was not the first time he was attacked, for in 2014 the Police had confiscated his tools.⁵⁷⁸

429. In addition, on April 10 and 11 there were dozens of detentions to prevent the persons from attending a meeting in solidarity with members of the Cuban opposition who had attended the forum parallel to the Summit of the Americas held in Panama, and to prevent the transfers of demonstrators to cities where a fast would be held for the same reasons. On April 12, there were 52 arrests in Havana to prevent activists from receiving the participants in the parallel forum, and in subsequent days four persons were subjected to an "act of repudiation" in Villa Clara in retaliation for having participated in Panama.⁵⁷⁹

⁵⁷⁴ Cubanet. August 20, 2015. [Posible restricción al acceso Wifi](#); Cubanet. August 15, 2015. [Revendedores toman el Wifi por asalto \(VÍDEO\)](#).

⁵⁷⁵ Martí Noticias. May 21, 2015. [Continúa en La Habana la performance de la artista cubana Tania Bruguera](#); Hablemos Press. March 18, 2015. [Bruguera denuncia la falta de libertad de expresión en Cuba](#); BBC. January 3, 2015. [Autoridades cubanas liberan a la artista Tania Bruguera](#); Martí Noticias. January 2, 2015. [Liberada Tania Bruguera tras su tercer arresto](#); BBC. December 30, 2014. [La artista que quiso abrir los micrófonos a los cubanos en la Plaza de la Revolución](#).

⁵⁷⁶ Cubanet. May 25, 2015. [Fin de performance y arresto a Tania Bruguera en jornada represiva](#).

⁵⁷⁷ Damas de Blanco. No date. [Informe resumen de actividades de la Asociación Damas de Blanco "Laura Pollán"](#); Cubanet. July 13, 2015. [Damas de Blanco rompen esquema represivo de la Seguridad del Estado](#).

⁵⁷⁸ Reporters without Borders. March 17, 2015. [Detienen a un corresponsal de hablemos press en Holguín](#); Martí Noticias. March 17, 2015. [Reporteros sin Fronteras denuncia arresto de periodista holguinero](#).

⁵⁷⁹ Comisión Cubana de Derechos Humanos y Reconciliación Nacional. April 2015. [Cuba: Algunos actos de represión política en el mes de abril de 2015](#).

430. Lenier Cruz Safran was detained on January 17 for 96 hours, accused of unlawful activity for offering an Internet connection to youths. In addition, on March 19, Carlos Manuel Figueroa Álvarez was detained for three hours for staging a protest after allegedly being harassed for several days by state agents. Moreover, on May 5, purported para-police agents smeared the home of independent journalist Carlos Michael Morales Rodríguez with asphalt for his challenging (“*contestatario*”) activism.⁵⁸⁰

431. On May 5, independent Cuban journalists José Fornaris and Odelín Alfonso were said to have been questioned by immigration and customs agents at the José Martí International Airport, after returning from Latvia after participating in World Press Freedom Day, organized by UNESCO.⁵⁸¹

432. Gorki Águila, a musician in the band “Porno para Ricardo,” was said to have been detained by agents of the State Security offices in front of the Museum of Fine Arts (Museo de Bellas Artes) of Havana on May 23. According to the information reported, after hanging a poster on the outside wall of the Museum with the word “Libertad” and the image of Danilo Maldonado, known as El Sexto, he was approached by the agents, who were alleged to have “forced” him into a car.⁵⁸²

433. Journalist Lázaro Yuri Valle said he was detained on June 7 by officers of the DSE, questioned, and threatened with a pistol to his head when he was leaving his home to cover an activity of the Ladies in White.⁵⁸³ Shortly thereafter, on July 30, Valle and activist Yasser Rivero Boni were allegedly detained and beaten for filming a building collapse. They were released hours later without any charges.⁵⁸⁴

434. The Secretary General of the *Unión Patriótica de Cuba* (UNPACU) in Guantánamo, Yoandris Beltrán Gamboa, was said to have been beaten in public purportedly by workers of the Municipal Assembly of People’s Power on June 12. Beltrán Gamboa said that those acts had occurred when he, along with other members of the UNPACU, left for the Municipal Unit of the National Revolutionary Police to protest the purported illegal usurpation by the government agents of a cell phone the property of Roevis Cuba Sendó and of a bicycle of his. According to the information received, that property was seized from Roevis on June 7 after he was accused of putting up several stickers calling for democratic change and freedom for Cuba’s political prisoners in various places in the city.⁵⁸⁵

435. Yohannes Arce Sarmiento and Georvis Chibás Castillo were beaten allegedly by members of the Assault Brigade of the Ministry of Interior on June 22. According to the information received, the agents took from Chibás Castillo his motorcycle registration for having stickers that called for democratic change in Cuba. In response, he went up on the roof of his building and put up posters with the messages “Down with the Castros” [“*Abajo los Castro*”] and “Respect for human rights” [“*Respeten los derechos humanos*”]; and on a third banner he denounced what had happened. According to the reports received in response, the agents assaulted the roof of the building, beat Chibás Castillo and Arce Sarmiento, and detained them.⁵⁸⁶

⁵⁸⁰ Comisión Cubana de Derechos Humanos y Reconciliación Nacional (CCDHRN). January 2015. [Cuba: Algunos casos de represión política en el mes de enero de 2015](#); CCDHRN. March 2015. [Cuba: Algunos actos de represión política en el mes de marzo de 2015](#); CCDHRN. Mayo de 2015. [Cuba: Algunos actos de represión política en el mes de mayo de 2015](#).

⁵⁸¹ Cubanet. May 7, 2015. [Autoridades del Aeropuerto José Martí detuvieron a periodistas independientes](#).

⁵⁸² Diario de Cuba. May 24, 2015. [Detenido Gorki Águila frente al Museo de Bellas Artes](#).

⁵⁸³ Inter-American Press Association (IAPA). June 22, 2015. [“Me siento como un reportero de guerra”: dijo Lázaro Yuri Valle Roca](#); Diario las Américas. June 21, 2015. [La SIP expresa “preocupación” por el “acoso” que sufren periodistas cubanos](#); Cuba en Vivo. June 23, 2015. [Carta abierta del Periodista Independiente Lázaro Yuri Valle Roca](#); Diario de Cuba. June 19, 2015. [Periodista independiente denuncia a la SIP y RSF ‘secuestros’ y ‘amenazas de muerte’](#).

⁵⁸⁴ Martí Noticias. July 31, 2015. [Arrestan y golpean a periodista independiente por filmar un derrumbe](#); Lazaro Yuri Valle Roca/YouTube. August 3, 2015. [Detenidos Yasser Rivero y yo mientras cubría una noticia en la Habana Vieja](#); Comisión Cubana de Derechos Humanos y Reconciliación Nacional. July 2015. [Cuba: Algunos actos de represión política en el mes de julio de 2015](#).

⁵⁸⁵ Cubanet. June 13, 2015. [Apaleado dirigente de UNPACU en Guantánamo](#); Martínoticias. June 15, 2015. [Agresión frente a unidad de la PNR contra opositor de Guantánamo](#).

⁵⁸⁶ Cubanet. June 25, 2015. [Golpeados y detenidos dos miembros de UNPACU en Caimanera](#).

436. On July 3 a police operation was said to have been carried out at the home of Famada Hernández, a young Wi-Fi network administrator. Famada Hernández was detained and had several pieces of equipment for wireless connection confiscated, including antennas one can build at home, and the personal computer to be used as the server for that network. Hernández said that night he slept in the police cell and they asked him about the audiovisual contents and games they would play on the network. The next day he was released and fined 1,000 pesos (1,000 dollars approximately) purportedly for having purchased the network cable, which in Cuba supposedly is only found in the state enterprises. According to the information received, one week later the Wi-Fi antenna and his computer were returned.⁵⁸⁷

437. In addition, Niover García Founier, correspondent for *Hablemos Press*, was said to have been detained on July 15, in the province of Guantánamo. He was said to have one mobile telephone, two flash drives, his work equipment, and a block of notes seized.⁵⁸⁸

438. On July 20, painter Lázaro Morera, painter and producer Camila Lozano Padilla, and journalist Ernesto Santana Zaldívar, who was accompanying them to take photographs, were detained for three hours at the headquarters of the Writers' and Artists' Union [*Unión de Escritores y Artistas (UNEAC)*] and questioned. According to the information received, the events occurred after Morera's performance through the streets of Cuba with a painting on wheels purportedly to celebrate the rapprochement between the governments of Cuba and the United States.⁵⁸⁹

439. Independent journalist Serafín Morán was along arrested when he was interviewing them, and he was released the next day. On July 27, his colleagues Lázaro Yuri Valle and Agustín López were detained along with Ladies in White and activists Antonio Rodiles, Ailer González, and Claudio Fuentes, of the Estado de Sats debate project, purportedly to keep them from reaching the Santa Rita church.⁵⁹⁰ The members of that group had already been arrested the day before, with dissident Ángel Moya Acosta, coordinator of the Liberty and Democracy for Cuba [*Libertad y Democracia por Cuba*] movement, former political prisoner Egberto Ángel Escobedo Morales, and other members of the *Frente de Resistencia Cívica "Orlando Zapata Tamayo,"* in addition to members of the Ladies in White and opposition organizations, bloggers, and independent journalists, many of whom were transferred to the Vivac center.⁵⁹¹ Rodiles was also beaten violently after a mobilization in early July, and suffered a broken nasal septum, an injury in one eye, and a fractured toe.⁵⁹²

440. The *Hablemos Press* Information Center denounced in August that arbitrary detentions of independent reporters had continued in July. It indicated that in July, 13 arrests were documented, including those of Yuri Valle Roca, Vladimir Turro Páez, Ernesto Travieso Hernández, Agustín López Canino, Niover García Founier, Boris González Arena, and Claudio Fuentes Madan (photographer).⁵⁹³

441. The Cuban Institute for Freedom of Expression [*Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP)*] denounced in August that the seven media outlets that come together in the ICLEP were being subjected to surveillance and that their journalists were being summonsed and arrested by the Police.

⁵⁸⁷ Cubanet. July 28, 2015. [Devuelven equipos Wi-Fi decomisados en sonado operativo policial.](#)

⁵⁸⁸ Centro de Información Hablemos Press. August 4, 2015. [Informe sobre detenciones arbitrarias y otros abusos cometidos en Cuba en Julio de 2015.](#)

⁵⁸⁹ Cubanet. July 22, 2015. [Crónica de un performance que terminó en la cárcel.](#)

⁵⁹⁰ Damas de Blanco. No date. [Informe resumen de actividades de la Asociación Damas de Blanco "Laura Pollán";](#) Martí Noticias. July 27, 2015. [Periodistas independientes denuncian a las autoridades cubanas por acoso.](#)

⁵⁹¹ Cubanet. July 26, 2015. [Damas de Blanco y activistas detenidos en otro domingo de represión.](#)

⁵⁹² Cubanet. July 6, 2015. [Ensangrentado domingo de represión.](#)

⁵⁹³ Centro de Información Hablemos Press. August 4, 2015. [Informe sobre detenciones arbitrarias y otros abusos cometidos en Cuba en Julio de 2015.](#)

That was the case of the director of the bulletin Luz Camagüeyana, Vladimir Osorio, who was detained on August 8 for the crime of espionage.⁵⁹⁴

C. Subsequent Liabilities

442. Carlos Manuel Veranes Heredia, an activist with the Patriotic Union of Cuba [*Unión Patriótica de Cuba*] (UNPACU), was convicted on May 20 to one year of prison for the crime of “contempt” in a summary proceeding. Heredia was detained on May 17 and judged for acts that were said to have occurred in 2014. The crime of which he is accused is taking photographs of a contaminated ditch.⁵⁹⁵

443. As stated above, artist Danilo Maldonado, known as “El Sexto,” was detained for 10 months purportedly without any formal indictment by the prosecutor before the courts. Maldonado was arrested for contempt on December 25, 2014 when he was going to stage a performance in a Havana park that consisted of releasing two pigs painted green with two names written on their bodies in red, Fidel and Raúl. This allusion to the Castro brothers was intended to draw an analogy with the novel *Animal Farm* by George Orwell. No date was given for the start of the trial, and even though he filed a request to find out the reason for the detention, the motion was denied.⁵⁹⁶ Finally in October was released from jail without having had a trial.⁵⁹⁷

444. Attorney Julio Alfredo Ferrer Tamayo, head of the *Dirección Letrada Jurídica Cubana* (AJC), continued to be detained at the Valle Grande prison, awaiting a new trial, and allegedly has been limited from exercising his profession for four years. Tamayo is said to face a new criminal case once the punishment of six months for criminal contempt has been served. That sanction was imposed on him during the defense of his wife Marienys Pavo Oñate, in which Tamayo demanded the annulment of the trial against her. The new criminal charges that he is said to face are related to the alleged counterfeiting of public documents during the purchase of their house. According to his representative, this new accusation may be a way to find a civil violation to punish them for common crimes, making it more difficult to defend them before international bodies.⁵⁹⁸

D. Other Relevant Situations

445. Education authorities organized a survey, purportedly compulsory, of the students at the *Instituto Tecnológico José Ramón Rodríguez*, in the neighborhood of Vedado, on the existence of telephones and computers in the students’ homes. Several students said they were unaware of the purpose of the survey. The student who was the head of the group that conducted the survey said that he was only complying with the orientations of the office of the director of that school. In addition, he was informed that this consultation was also carried out in other schools.⁵⁹⁹

⁵⁹⁴ Cubanet. August 11, 2015. [Intensa represión contra periodistas ciudadanos de ICLEP](#); Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). August 11, 2015. [ALERTA: El régimen desarrolla intensa represión contra periodistas ciudadanos de ICLEP](#).

⁵⁹⁵ Diario de Cuba. May 20, 2015. [Condenan a un año de cárcel a un activista de la UNPACU por tomar fotos de una zanja contaminada](#).

⁵⁹⁶ ABC. June 27, 2015. [Preso en Cuba por intentar hacer una «performance» con dos cerdos llamados «Fidel» y «Raúl»](#); Del Sexto Blogspot. Available at: <http://delsexto.blogspot.com/>; Centro Cubalex. March 25, 2015. [Cuba: Artista encarcelado por pintar los nombres “Fidel” y Raúl” en dos puerquitos](#); Diario de Cuba. June 30, 2015. [El Sexto asume su propia defensa y rechaza disponer de abogado](#); Diario de Cuba. December 26, 2014. [El Sexto acaba en Villa Marista por dos puercos con los nombres de Fidel y Raúl Castro](#); Martí Noticias. June 22, 2015. [Las muestras de solidaridad con el grafitero encarcelado Danilo Maldonado](#); Granma Today. March 31, 2015. [¡SORPRENDENTE! Mira por qué está preso un artista cubano](#).

⁵⁹⁷ El Mundo. October 20, 2015. [El grafitero ‘El Sexto’ es liberado tras 10 meses encarcelado sin juicio en Cuba](#); The Guardian. October 20, 2015. [Cuban artist El Sexto released from jail for planned art piece criticizing Castros](#).

⁵⁹⁸ Cubanet. July 10, 2015. [Opositores enjuiciados por delitos comunes](#).

⁵⁹⁹ Cubanet. June 1, 2015. [Cubanos sin derecho a la privacidad](#).

446. The Inter-American Commission reiterates that Principle 1 of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “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.” And Principle 5 of the Declaration provides: “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” And Principle 13 affirms: “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.” In addition, the state has the duty to adopt legislative and other measures necessary to ensure pluralism and diversity in media, including laws that prevent the existence of public or private monopolies.

447. In addition, as regards the application of prohibited categories of discrimination, contained in Article 1(1) of the American Convention, the Inter-American Court of Human Rights has noted “the need to protect the expression of the political opinions of persons in a democratic society.”⁶⁰⁰ It also reaffirmed “the importance of the prohibition of discrimination based on the political opinions of a person or group of persons, and the consequent duty of the states to respect and ensure the rights contained in the American Convention without any discrimination for this reason.”⁶⁰¹

⁶⁰⁰ I/A Court H. R. *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2015. Series C No. 293. para.226.

⁶⁰¹ I/A Court H. R. *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2015. Series C No. 293, para.226.

11. DOMINICA

448. Dominica riot police reportedly made a disproportionate use of force during a protest in May by Salisbury residents, who were demonstrating against road conditions and an alleged lack of attention by the government to the problem. In that episode the police allegedly made attempts to arrest individuals during and after the end of the demonstration. A month later, on June 12, a new mobilization following the discontent with the previous events took place on the main road connecting the capital, Roseau, with Portsmouth, the island's second largest city. Member of Parliament Hector John, from the opposition United Workers Party, said police attacked the demonstrators with tear gas and other munitions although the mobilization was peaceful.⁶⁰²

449. 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"⁶⁰³ 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."⁶⁰⁴

450. 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."⁶⁰⁵

451. 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.⁶⁰⁶

⁶⁰² Dominica News Online. June 11, 2015. [UWP calls for end of "politically motivated attack" in Salisbury](#); Caribbean News Now! June 12, 2015. [Riot police confront another major protest in Dominica](#).

⁶⁰³ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

⁶⁰⁴ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

⁶⁰⁵ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

⁶⁰⁶ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

12. ECUADOR

452. The IACHR received a communication on June 23⁶⁰⁷ in which the State of Ecuador made several objections, comments, and requests related to the 2014 Annual Report of the Office of the Special Rapporteur for Freedom of Expression. The Office of the Special Rapporteur forwarded to the State the information requested on December 22, 2015⁶⁰⁸.

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

453. Journalist Andrés Mendoza of *Agencia Popular de Comunicación Ser Públicos* stated that he received an email and Facebook messages on May 17, threatening to kill him unless he removed a video from the website of his workplace. Three days later, he received a message in the mail containing a photograph of him, some flowers with a cross in the background, and the words "Looking to the future, may his departure inspire us to live life with as much happiness as he did. Andrés Mendoza Reynoso 06/06/1983-05/24/2015."⁶⁰⁹

454. Reporter Christian Zurita of the newspaper *El Universo* was shoved and insulted in mid-July by alleged government sympathizers while covering a protest in Quito against the mayor of that city.⁶¹⁰

455. The daily papers *El Universo* and *El Telégrafo* were attacked with pamphlet bombs on July 29. According to the police report, they were homemade bombs made with gunpowder and the perpetrators were allegedly members of a group called the National Liberation Front [*Frente de Liberación Nacional*].⁶¹¹

456. Several days later, on August 7, a team from the state-owned channel *Ecuador TV* was assaulted in the town of Zhud, Province of Cañar, some 140 kilometers east of Guayaquil. The incident occurred while the journalists were covering an indigenous people's march on its way to Quito. Journalists Abraham Verduga and Guadalupe Ayoví of *Ecuador TV*, a press photographer from *TC Televisión* (also a state-owned channel), cameraman Alex Méndez of *CNPLUS*, and an employee of the government-owned newspaper *El Telégrafo* were also assaulted at that same march. During the indigenous people's protest in Quito, several journalists and media workers were physically attacked, including Diego Pallero, María Isabel Valarezo, and Erika Guarachi of *El Comercio*, Miguel Molina, Victor Pozo, and Jonathan Bedón of *LaRepublica.ec*, César Tacuri and Alberto Ochoa of *Ecuador TV*, and teams of reporters from *Teleamazonas* and *Gama TV*.⁶¹²

457. During the same protests, French-Brazilian journalist Manuela Picq was arrested on August 13, together with her partner and the president of Ecuarunari, Carlos Pérez Guartambel. The incident reportedly took place "while she was among a group of people who attacked police officers who were maintaining order (...) in historic downtown Quito," according to the government news agency. The Courts denied a request to deport the journalist from Ecuador, but one day later her "cultural exchange" visa was revoked by Ecuadorian authorities on the grounds that it did not allow her to participate in political activities,

⁶⁰⁷ Republic of Ecuador. Permanent Mission of Ecuador at the OAS. Note No. 4-2-188-2015. June 23, 2015. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁰⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. Communication to the State of Ecuador. December 22, 2015. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

⁶⁰⁹ Fundamedios. May 22, 2015. [Periodista es amenazado de muerte a través de varios mensajes.](#)

⁶¹⁰ El Comercio. July 16, 2015. [Manifestantes agredieron a periodista Christian Zurita](#); Ecuavisa. July 17, 2015. [Un grupo de manifestantes agredió al periodista Christian Zurita.](#)

⁶¹¹ La Prensa. July 30, 2015. [Estallan bombas panfletarias en diarios El Telégrafo y El Universo](#); El Comercio. July 30, 2015. [Correa atribuye a 'golpe blando' estallido de bombas panfletarias.](#)

⁶¹² Fundamedios. March 20, 2015. [Agresiones a comunicadores en marchas de protesta ciudadana](#); Fundamedios. June 11, 2015. [Agresiones físicas y ataques a páginas de medios ocurren durante jornada de protestas](#); Fundamedios. July 2, 2015. [Equipo periodístico es agredido en cobertura](#); Fundamedios. July 3, 2015. [Agresiones a la libertad de expresión continúan en nueva jornada de protestas](#); Fundamedios. August 8, 2015. [Equipo periodístico de medio estatal es conminado a retirarse de marcha indígena](#); Fundamedios. December 4, 2015. [Agresiones a comunicadores, detenidos y represión en jornada de protestas.](#)

and she was told that she had to leave the country.⁶¹³ Ecuador's Ministry of Foreign Affairs denied Picq the issuance of a so-called Mercosur visa, which authorizes the temporary or permanent residence of citizens of Argentina, Brazil, Chile, Paraguay, Uruguay, Bolivia, Colombia, and Peru in those States.⁶¹⁴ Ecuador is an Associated State of Mercosur.

458. On August 21, community radio station *La Voz de Arutam*, in the Province of Morona Santiago (southern Ecuador) suffered an attack on its broadcasting system, which knocked the station off the air. The incident occurred in the midst of protest marches against the government.⁶¹⁵

459. Sports journalists Luis Miguel Baldeón and Aurelio Dávila of the program "*Mira quién habla*" on the *Fútbol FM* radio station, were harassed on October 21 at the entrance of the station by a group of 20 to 30 fans of the Deportivo Quito soccer team who prevented them from leaving the building after they had made supposedly humorous remarks about the soccer club's financial problems.⁶¹⁶

460. Journalist Andrés Mendoza of the *Agencia Popular de Comunicación Ser Públicos* was assaulted by police officers on November 12 during an anti-government protest held in the city of Guayaquil.⁶¹⁷

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

462. In the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, indicates that during demonstrations and situations of social unrest, the work of journalists and media workers, as well as 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."⁶¹⁸ Accordingly, the authorities must provide journalists with the maximum guarantees in order for them to perform their functions. In this respect, 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 demonstration. The State must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information.⁶¹⁹ Reporters should not be called as witnesses by judicial institutions and the authorities should respect their right to source confidentiality. In addition, their work tools and material should not be confiscated or destroyed.⁶²⁰ The authorities should adopt public discourse

⁶¹³ Andes. August 17, 2015. [Manuela Picq tenía una visa para intercambio cultural, pero participó activamente en manifestaciones políticas](#); Andes. August 20, 2015. [Francobrasileña Manuela Picq abandona Ecuador tras cancelación de visa](#).

⁶¹⁴ Ecuavisa. November 19, 2015. [Cancillería ratifica negativa de visado a Manuela Picq](#); La República. November 20, 2015. [Cancillería ratifica negativa de visado a Manuela Picq](#); Ministerio de Relaciones Exteriores y Movilidad Humana. No date. [Acuerdo sobre residencia para nacionales de los Estados parte del Mercosur y estados asociados](#).

⁶¹⁵ Fundamedios. August 25, 2015. [Estación de radio comunitaria sufre atentado y permanece fuera del aire](#).

⁶¹⁶ Fundamedios. October 23, 2015. [Grupo de hinchas intimidan a periodistas deportivos tras comentarios en contra de su equipo](#).

⁶¹⁷ Ser Públicos Agencia de Comunicación/Official YouTube Channel. November 12, 2015. [Agreden en la cabeza a Periodista en Guayaquil](#).

⁶¹⁸ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

⁶¹⁹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

⁶²⁰ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

that contributes to the prevention of violence against journalists by emphatically condemning attacks and investigating the facts and penalizing those responsible, as established in Principle 9 of the IACHR Declaration of Principles.⁶²¹ It is also a matter of utmost importance in these contexts that the authorities have special protocols to protect the press in social conflict situations and to instruct security forces on the role the press has in a democratic society.⁶²²

B. Social Protest

463. The decision of the government to promote a series of constitutional and economic reforms, which included the possibility of an undefined reelection in public office for any Ecuadorian citizen and an increase on inheritance tax, triggered protests against the government by political and social organizations who took the streets in several occasions. In numerous cases, they denounced an excessive reaction from the State to dissolve those demonstrations or specific confrontation that occurred. In June, during one of the marches, hundreds or thousands of people went out to demonstrate for and against the increase in inheritance tax proposed by the government. Numerous protesters and police officers were injured during those days.⁶²³

464. In August there were other social protests, in this case by indigenous groups and opposition groups that rejected a proposal to change the Constitution made by the Executive Branch. Those incidents also had numerous injuries and arrests as a result.⁶²⁴

465. Finally, protesters took to the streets again in December, with hundreds of people demonstrating against the vote on the Constitutional amendments. At least 18 protesters and 13 police officers were injured, while 21 protesters were arrested and subsequently sentenced to 15 days in prison for making statements that allegedly “discredited and dishonored” police officers. President Correa blamed sectors of the opposition. “Because they lose at the polls, they want to govern through the use of violence. They want to bring us down, but they are not going to succeed. They are going to continue to oppose everything, all the time, every time—I hope I am wrong—with more violence, but we cannot be intimidated. The worst defeat would be to fear those who are violent,” said the president.⁶²⁵

466. 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”⁶²⁶ and that “the exercise of the right of assembly through social protest must not be subject to

⁶²¹ [Principle 9 of the Declaration of Principles of the IACHR](#): “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”.

⁶²² United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

⁶²³ El Telégrafo. June 17, 2015. [Las manifestaciones dejaron cinco heridos en todo el país](#); Ecuavisa. June 9, 2015. [Así se vivieron las manifestaciones contra la Ley de Impuesto a la Herencia](#); Andes. June 8, 2015. [Roces verbales, incidentes y un herido dejan concentraciones a favor y en contra del gobierno en Quito](#).

⁶²⁴ EFE. August 13, 2015. [Altercados y heridos cierran la jornada de protesta contra el Gobierno de Ecuador](#); El Universal/EFE. August 14, 2015. [47 detenidos en protesta que dejó decenas de heridos en Ecuador](#); El Comercio de Lima. August 16, 2015. [Ecuador: Protesta contra Rafael Correa deja 17 heridos](#); Andes. August 19, 2015. [Más miembros de la fuerza pública heridos que manifestantes detenidos por protestas en Ecuador](#); El Telégrafo. August 18, 2015. [En Saraguro la protesta deja policías mal heridos](#); HispanTV. August 20, 2015. [116 policías y militares heridos en las protestas en Ecuador](#).

⁶²⁵ El Universo. November 26, 2015. [Jornada de protestas por enmiendas en Quito y Guayaquil](#); El Comercio. December 3, 2015. [Manifestantes se suman a la protesta en contra de las enmiendas](#); Ecuavisa. December 4, 2015. [Protestas contra enmiendas dejan al menos 18 manifestantes detenidos y 13 policías heridos](#); HispanTV. December 4, 2015. [Opositores ecuatorianos protagonizan violentas protestas contra enmiendas constitucionales](#); La Hora. December 6, 2015. [Crece polémica en Ecuador por represión en marcha contra enmiendas](#); Ecuavisa. December 7, 2015. [Familiares de detenidos durante protestas por enmiendas insisten en liberación](#).

⁶²⁶ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”⁶²⁷

C. Communications Act

467. On several occasions since the 2013 enactment of the Communications Act, the Office of the Special Rapporteur has expressed its concern over the burdensome restrictions that the law establishes and the wide margin of discretion it grants to the implementing authority to restrict content disseminated by the media.⁶²⁸

468. In a note sent to the State on June 28, 2013,⁶²⁹ the Office of the Special Rapporteur expressly stated that the system of infractions and penalties established in the law creates obligations that could potentially be ambiguous and exorbitant. For instance, the law establishes the obligation of all media outlets to “cover and disseminate events in the public interest,” and states that “the deliberate and repeated failure to disseminate issues of public interest is an act of prior censorship” (Art. 18), subject to the respective penalties. Similarly, the law holds the media responsible for the dissemination of all types of information content, which must be “contextualized,” “accurate,” and “verified,” and must not harm: human rights; the reputation, honor, and good name of individuals; and the public security of the State.⁶³⁰ The law further establishes that “information of public relevance [which must be published]”⁶³¹ includes information about matters of public interest and general interest, or through which “people’s right to honor or other constitutionally established rights are violated” (Art. 7). According to Article 24 of the law,⁶³² if a person felt offended by any editorial article or reference, that alone would require the medium to publish, in the same space, his or her opinion on the matter. The implementing authority in charge of determining whether there was a violation that gives rise to the obligation to publish the reply or correction is the Superintendency of Information and Communication (Supercom), which reports to the Executive Branch.

469. In its 2014 Annual Report, the Office of the Special Rapporteur documented the penalties imposed during that year against journalists, cartoonists, program hosts, and media outlets pursuant to the new law. In its report, the Office of the Special Rapporteur reiterated that the ambiguity of the law’s terms and the exorbitant amount of the penalties imposed could have a chilling effect on the exercise of the right to freedom of expression in Ecuador.⁶³³

470. The application of this law has continued in 2015 in an extensive way. The Office of the Special Rapporteur continued to monitor its use and observed that numerous penalties against private media

⁶²⁷ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

⁶²⁸ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 327 and following; IACHR. Office of the Special Rapporteur for Freedom of Expression. June 28, 2013. [Press Release R47/13 Office of the Special Rapporteur for Freedom of Expression States its Concern over the Enactment of the Communications Act in Ecuador](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

⁶²⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

⁶³⁰ In effect, one section establishes the need to respect the freedom of opinion and expression of all persons and another establishes the administrative, civil and criminal liability of media outlets for the publication of the offensive comments of third parties that violate the rights enshrined in the Constitution and the law, when in the authorities’ view the media have failed to adopt sufficient mechanisms to filter them (Art. 20).

⁶³¹ “Art. 18.- [...] Media outlets have the obligation to cover and disseminate events of interest to the public. The deliberate and repeated omission to disseminate issues of public interest is an act of prior censorship [...]”.

⁶³² “Art. 24.- Right of reply.- Any person or group that has been directly referred to in the media in a way that harms its rights to dignity, honor, or reputation has the right to have the medium disseminate its reply free of charge, in the same space, page, and section of a print medium, or on the same radio or television program, within a period not to exceed 72 hours from the time the request is made [...]”.

⁶³³ IACHR. [Annual Report 2014. 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. 13, March 9, 2015. Para. 375 and following.

outlets were imposed in a manner incompatible with the international standards on the right to freedom of expression. As discussed in this section, this Office of the Special Rapporteur is particularly troubled by the use of the right of correction and reply as a mechanism to limit the dissemination of content considered unfavorable to the government, to protect the image of pro-government public servants, and to impose pro-government views and speech on media outlets, journalists, and cartoonists in Ecuador, according to what media and civil organizations have denounced. According to the information obtained, the Superintendency of Information and Communication has invoked the right of correction and reply to dictate headlines, content, photographs, and even the layout of press releases, and it has filed various administrative cases against media outlets that in some cases have resulted in the imposition of exorbitant and disproportionate fines.

471. During the hearing held by the IACHR on March 17, 2015, at its 154th session, on the *Situation of the right to freedom of expression in Ecuador*, the participating civil society organizations asserted⁶³⁴ that the Supercom “punishes the media for their headlines, for their ‘sensationalist’ editorial positions, for not correcting the opinions of columnists; it forces them to apologize for caricatures; cartoonists are penalized for humor, because their drawings are discriminatory, and comedy programs are punished for using double entendres.” They stated that, “the actions taken at the initiative of the Superintendency, government employees, politicians, former candidates, and pro-government groups are the ones who have made the most intense use of the Communications Act, which in any case has not served to democratize speech and defend the public, but rather has been used as an instrument to control independent information.” They maintained that “television channels, print media, and local radio stations have been penalized with considerable monetary fines [...] that threaten their very existence.” According to the information provided, the enforcement of the law has resulted in the closure of 4 print media outlets, “including the most important newspaper in the city of Quito, *Diario HOY*.” They expressed concern in view of the stated intent of the Superintendent of Communications to propose amendments to the law to make its penalties harsher. The State’s representatives did not attend the aforementioned hearing.

472. In this section, the Office of the Special Rapporteur documents some of the penalties imposed during 2015 that are representative of this situation.

473. The newspaper *Últimas Noticias* had to publish twice a reply to an opinion column it published. The Supercom determined on January 28 that the column contained information about the complainant, journalist Luis Castro Espinosa, rather than mere opinion, and that the information included therein had not been checked and verified. Castro Espinosa sought to have the author of the column give the names of the journalists who had reportedly stated that he had “pressured them on behalf of the Ecuadorian Soccer Federation,” or for his version of events to be published. The Supercom maintained that the reply initially published by the newspaper failed to meet the condition of reprinting the document submitted by the complainant in its entirety, and also found that the reply had not been located in the same spot as the opinion column that gave rise to the dispute.⁶³⁵

474. The newspaper *La Hora* was penalized on January 30 for failing to publish a reply requested by the then-President of the Luis Vargas Torres University in the city of Esmeraldas following the publication of an opinion column by Joffre Daza Quiñónez, which asserted that “members of the Superior University Council have complained that the appointment of President Bernarda Salas” was unlawful because she was simultaneously serving as the director of a hospital. According to the Supercom, the newspaper had to publish the “correction” because it had “disseminated information without the proper verification, corroboration, and accuracy.” In his article, Daza Quiñónez called into question a number of alleged irregularities at that university. The Supercom ordered the publication, within 72 hours, of the reply on the same page, section, and spot as the original, as well as the posting of a public apology for seven days on the newspaper’s website.⁶³⁶

⁶³⁴ IACHR. 154 Period of Sessions. Hearing on the “Situation of Freedom of Expression in Ecuador”. March 17, 2015. Available for consultation at: <https://www.youtube.com/watch?v=dmx6eXwC23M>

⁶³⁵ Supercom. January 28, 2015. [Resolución N° 007-2015-DNIRD-INPS](#).

⁶³⁶ Supercom. January 30, 2015. [Diario “La Hora” sancionado por incumplir derecho a la rectificación](#); La Hora edición Esmeraldas/Issuu. October 27, 2014. [UTE intervenida](#). Page A6.

475. The Supercom determined on February 6 that the State channel *Ecuador TV* should request a reply from the private channel *Ecuavisa* of the same duration as the original piece in which it felt it had been aggrieved, and during the same time slot, in spite of the fact that a shorter reply had already been aired. It further requested the publication of an apology on its website for seven days. The article that incited the response request referred to a charity tv show (Teletón) broadcasted by *Ecuavisa*.⁶³⁷

476. The *Teleamazonas* channel was required to publicly apologize to the president of the Ecuadorian Soccer Federation, Luis Chiriboga Acosta on February 13, after a sports program on the channel aired a humorous segment in which a character played by a puppet said that he was going to “buy votes” in order to gain reelection. After Chiriboga Acosta’s complaint, the Supercom held that there had been a “concerted” action to disparage the leader with a “prior agreement among the program’s hosts” to make that assertion.⁶³⁸

477. Cartoonist Xavier Bonilla, better known as Bonil, and the newspaper *El Universo* were sanctioned by the Supercom on February 12 for disseminating “discriminatory messages based on ethnicity and socioeconomic status.” On August 5, 2014, the newspaper had published a humorous illustration by Bonil, depicting pro-government congressman Agustín Delgado, who is of African descent, after having given a public speech with various errors in diction, and which alluded to his salary as a congressman. Bonil wrote an apology on Twitter several days later in view of the “feeling of disrespect” he may have caused,⁶³⁹ but it was insufficient and the administrative case went forward. The cartoonist’s defense attorney stated that the publication had not made “a single reference to Mr. Agustín Delgado’s race or ethnicity.” The Supercom, however, was of the opinion that there was “indirect discrimination whereby a distinction is made with respect to the political and work activity of Congressman Agustín Delgado, a member of the Afro-Ecuadorian group, by reason of his socioeconomic status.” “Such discrimination is indirect, because at first blush, the published content appears to be neutral or invisible, but it is in fact unreasonable, unfair, and disproportionate,” the agency maintained. The Supercom ordered *El Universo* to publish an apology in the same spot in which the cartoon had appeared and on the main page of its website for seven days.⁶⁴⁰ A judicial investigation was pursued, but in April the Office of the Attorney General of Ecuador found that there was no “evidence of discrimination,” and therefore it requested that the case against Bonil be shelved, which was done a few days later.⁶⁴¹

478. In mid-February, the newspapers *El Comercio*, *La Hora*, and *El Universo*, among other media outlets, received a letter from the National Minister of Communications, Fernando Alvarado, requesting the publication of a reply in view of a confrontation between the government and a social media user called “Crudo Ecuador.” The article was published days later.⁶⁴²

479. The newspaper *La Hora* had to publish a reply twice, given that the first one did not satisfy the mayor of the city of Loja involved in the matter because it was not published in its entirety. On January 21, *La Hora* of Loja reported on the use of electric batons by the municipal police. According to subsequent statements made by the local authorities, these weapons had not yet been delivered to the municipality, and therefore were not yet being used. On January 23, the newspaper *La Hora* published an article under the headline “Reply,” reporting that situation. The paper further stated that the mayor’s reply letter contained

⁶³⁷ Supercom. February 6, 2015. [“RTV Ecuador” sancionado por incumplir derecho a la rectificación.](#)

⁶³⁸ Supercom. February 13, 2015. [Teleamazonas debe presentar disculpa pública por infringir artículo 26 de la ley.](#)

⁶³⁹ “@TinDelgado35 Tin Delgado: He leído en Twitter...” Twitter account of Xavier Bonilla @bonilcaricatura. [August 8, 2014 – 10:00 PM](#); Ecuavisa. August 8, 2014. [Bonil pidió disculpas al ‘Tin’ Delgado por caricatura.](#)

⁶⁴⁰ Supercom. February 12, 2015. [Resolución N° 009-2015-DNIRD-INPS](#); Supercom. February 13, 2015. [SUPERCOM sanciona a caricaturista Xavier Bonilla y diario El Universo.](#)

⁶⁴¹ Fiscalía General del Estado. April 7, 2015. [En el caso Bonil, la Fiscalía solicita su archivo](#); El Universo. April 15, 2015. [Jueza ordena archivo del proceso contra Bonil, como pidió la Fiscalía](#); Cre Satelital. April 16, 2015. [Jueza ordenó que se archive proceso contra ‘Bonil’.](#)

⁶⁴² La Hora/Issuu. February 19, 2015. [Réplica solicitada por la Secom](#); El Comercio. February 16, 2015. [Carta del secretario nacional de Comunicación](#); El Universo. February 16, 2015. [Fernando Alvarado: En redes sociales no deben darse agravios.](#)

“other accusations (...) against different sectors of society in Loja” that could not be published because they violated “The Communications Act and journalistic ethics.” On February 25, the Supercom required the paper to once again publish the mayor’s version with the complete text, under the headline “Correction,” which it did three days later. *La Hora* also had to publish an apology for seven days on its website.⁶⁴³

480. The newspaper *El Comercio* was given a warning on February 27 for publishing a reply from the Minister of Defense to the opinions expressed by a retired member of the military on a different day and different page from the original article. Accordingly, it was required to once again print the minister’s reply in the same place as the article that gave rise to the complaint.⁶⁴⁴ Days later there was a similar incident, where the paper had to republish a request for a reply to an article about a state-owned hydroelectric company.⁶⁴⁵

481. The newspaper *La Hora* was sanctioned by the Supercom on March 18 for having supposedly misclassified the nature of a paid advertisement in which David Rosero Minda, a member of the Council on Citizen Participation and Social Control, wrote to President Rafael Correa under the headline “Open Letter to the Source of the Saturday Insults” [*Para el tira insultos de los sábados*]. The piece, published with a different font and layout from the newspaper’s news or opinion articles, was classified with the letter “A” for advertising. The Supercom was of the opinion that “the commercial purposes of that publication” were not evident, and therefore it should have been labeled as opinion. As a result, the agency imposed a fine of US \$1,770.⁶⁴⁶

482. Shortly thereafter, on April 2, *La Hora* was again sanctioned, this time with an warning, for publishing an article entitled “General Price Hike Foreseen” on page 1, and under the text “New Taxes of up to 45% Starting Today” on the inside pages. The complaint was filed by the National Secretary of Political Communications of the party in power (*Alianza País*), Juan Carlos Aldás. The Supercom issued a warning to the newspaper based on its opinion that the headlines “confuse the reader or recipient of this information by affirming or providing assurances that the price hike or increase will be in general for all products on the market,” which it considered an “erroneous statement.”⁶⁴⁷ On April 6, *La Hora* was once again given a warning following a complaint from the Secom alleging that it failed to verify the information published in an article entitled “Relatives of Disappeared Persons Demand Prompt Action from Correa.” Even though the newspaper presented a reply from the Ministry of Justice published a few days later as evidence, it was not enough to avoid the warning because, in the opinion of the Supercom, it bore “no relation to the facts alleged.”⁶⁴⁸

483. On March 23 the *El Universo* newspaper published an article titled “Provoked by the President, reply the defendants,” the SECOM requested a reply to the article pursuant to Article 24 of the Organic Law on Communication and on April 18 the newspaper published an article “Secom says Correa did not provoke them.” Secom was not satisfied by the reply even though the text was reproduced exactly as sent by that government agency with the titles “The President did not provoke them, replied police authorities,” and “President Correa did not provoke the protestors,” the newspaper utilized the layout and font used by

⁶⁴³ Supercom. February 25, 2015. [Diario La Hora debe publicar rectificación pedida por Alcalde de Loja](#); *La Hora* edición Loja/Issuu. January 21, 2015. [Municipales lojanos usan toletes eléctricos](#). Page B4; *La Hora* edición Loja/Issuu. January 23, 2015. [Municipio de Loja aún no recibe toletes eléctricos](#). Page B4. *La Hora* edición Loja/Issuu. February 28, 2015. [Municipio de Loja aún no cuenta con toletes electrónicos](#). Page B4.

⁶⁴⁴ Supercom. February 27, 2015. [Diario El Comercio debe publicar réplica de acuerdo con parámetros de la LOC](#); *El Comercio*. December 27, 2014. [Alberto Molina: ‘Las Fuerzas Armadas no se deben a ningún Gobierno’](#); *El Comercio*. March 1, 2015. [Réplica](#).

⁶⁴⁵ Supercom. March 6, 2015. [Diario El Comercio debe publicar réplica por infringir artículo 24 de la Ley](#); *El Comercio*. December 20, 2014. [La Contraloría y la fiscalizadora alertaron fallas en el Coca-Codo](#); *El Comercio*. December 27, 2014. [Réplica](#).

⁶⁴⁶ Supercom. March 18, 2015. [Diario La Hora incumplió el artículo 60 de la LOC](#); *La Hora*/Issuu. March 8, 2015. [Solicitada publicada en la página A6](#); Ministerio de Trabajo. December 30, 2014. [El salario básico para el 2015 será de 354 dólares](#).

⁶⁴⁷ Supercom. April 2, 2015. [Resolución N° 017-2015-DNIRD-INPS](#); *Alianza País*. No date. [Secretaría Nacional de Comunicación Política](#).

⁶⁴⁸ Supercom. April 6, 2015. [Resolución N° 018-2015-DNIRD-INPS](#); *La Hora*. March 6, 2015. [Familiares de desaparecidos exigen a Correa agilidad](#). Page B5; *La Hora*. March 14, 2015. [Rectificación y réplica pedidas por el Ministerio de Justicia](#). Page B5.

that media outlet instead of those used by the Secom in its request. The media outlet responded “El Universo finds that editorial interference runs counter to the Constitution of the Republic and current legislation.” The Secom reported this situation before the Supercom, which in turn on June 3 ordered *El Universo* to publish the reply again “in the same space where the March 23, 2015 article was published.” In addition it was compelled to issue a public apology on their website for seven days. El Universo decided not to comply with this requirement and protect itself under the right of resistance “until Supercom guarantees legal protection and due process with their administrative procedures.”⁶⁴⁹

484. The same thing occurred with another article published by *El Universo* on March 22 on the front page and interior. The articles titled “Government debt of \$1.7 billion affects the Ecuadorian Social Security Institute health system” on the front page and “Government debt to the Ecuadorian Social Security Institute impacts health services” in the interior pages, were replied to by Secom on April 19 with the titles “Secom requests reply for Minister Patricio Rivera regarding Ecuadorian Social Security Institute” and “Reply from Minister Patricio Rivera requested by Secom.” The titles sent by the government agency in both cases read, “The Ecuadorian Social Security Institute has advanced and will improve even more in the coming years.” On June 12, the Supercom decided to impose a fine on the newspaper in the amount of 10 percent of the average invoiced amounts for the prior three months due to repeated non compliance and required the reply be published once again exactly as it was sent by Secom. According to *El Universo*, this would amount to 350.000 US dollars. As part of its resistance claim the newspaper refused to pay the fine.⁶⁵⁰

485. On May 13, the newspaper *La Hora* was fined US \$3,540 by the Supercom for failing to cover a public report from the town of Loja, in southern Ecuador. The complaint was filed by the mayor of Loja, José Bolívar Castillo, and city attorney Álvaro Reyes, who maintained that the newspaper “deliberately” failed to publish an accountability report from their government, which resulted in “the public not being able to know ‘what the budget was spent on.’” *La Hora* responded that it had already reported on the issues presented in that accountability report, but the Supercom found that it was “information of public relevance or general interest,” and that therefore it should have been published. The agency also stated that it was not “pertinent to weigh” the previously published articles as evidence because they were “unrelated to the facts alleged,” which “specifically” concerned the publication of the accountability report. The newspaper appealed the administrative decision to the courts, which dismissed the appeal on July 8 on the grounds that the decision was consistent with the provisions of the Communications Act and the Constitution.⁶⁵¹

486. On May 19, *El Comercio* was required to publish a reply ordered by the Supercom because of an article that appeared in the newspaper on April 4, reporting on a discrepancy between the cost of a state hydroelectric project initially cited by the government and a subsequent figure that was different and included other expenses. The complaint was filed by the Minister of Electricity and Renewable Energy, Esteban Albornoz. On May 20, *El Comercio* published a headline on its front page that read: “Coca Codo Project Budget Will Not Be Adjusted by US \$606 Million.” It also had to post an apology on the main page of its website for seven days.⁶⁵²

487. On June 12, the newspaper *Expreso* was required by the Supercom to publish a reply from the Ecuadorian Social Security Institute (IESS) following a May 5 article that ran under the headline “IESS: Neither Credit Nor Health for New Members,” in spite of the fact that it had already published one on May 14 under the headline “Request for Reply.” According to the regulatory body, the newspaper failed to comply

⁶⁴⁹ Supercom. June 3, 2015. [Diario El Universo incumplió el artículo 24 de la LOC](#); El Universo. May 27, 2015. [EL UNIVERSO decidió retirarse de una audiencia de la Supercom](#); El Universo. June 9, 2015. [A nuestros lectores](#).

⁶⁵⁰ Supercom. June 12, 2015. [Diario El Universo nuevamente infringió el artículo 24 de la LOC](#); El Universo. May 27, 2015. [EL UNIVERSO decidió retirarse de una audiencia de la Supercom](#); El Universo. June 20, 2015. [Subdirector de EL UNIVERSO objeta multa de Supercom](#).

⁶⁵¹ Supercom. May 13, 2015. [Diario La Hora infringió el artículo 18 de la LOC](#); Supercom. July 8, 2015. [Sala Penal de Corte de Justicia de Pichincha desestima apelación de Diario La Hora](#).

⁶⁵² Supercom. May 14, 2015. [Diario El Comercio infringió artículo 23 de la LOC](#); El Comercio. April 4, 2015. [El proyecto Coca-Codo tendrá un ajuste de USD 606 millones](#); El Comercio. May 19, 2015. [Rectificación ordenada por la Supercom](#); El Comercio. May 20, 2015. [Portada](#).

with the Communications Act because the reply did not have “the same features, dimensions, and location as the original article.” It also had to publish an apology on the main page of its website for seven days.⁶⁵³ Days later, on June 18, the Supercom again cited the paper’s alleged noncompliance with the law because of the publication of a reply that, in the agency’s opinion, did not have the same features, dimensions, and location as the original article. This time, *Expreso* was fined the equivalent of 10% of its average receivables from the previous three months.⁶⁵⁴

488. On June 22, *El Comercio* had to publish a reply at the request of the Secom under the headline “We Want Debates, Not Shouting; We Want Arguments, Not Manipulation,” in response to a June 16 article that carried the headline “Correa Withdraws Draft Laws without Prejudice.” The article imposed by the Secom said that *El Comercio* had misrepresented Correa’s statements. When it published the reply, the newspaper stated that it was doing so under protest.⁶⁵⁵

489. On June 23, *La Hora* had to publish a reply on its front page by order of the Secom under the headline “Inheritances: Seeking a Fair Redistribution of Wealth,” together with another article inside the newspaper entitled “Tax Would Not Affect Middle Class.” *La Hora* had published an article entitled “Tax Would Affect Middle Class” on May 27.⁶⁵⁶

490. *Diario Expreso* had to publish a reply from the Secom on July 2 in view of a June 25 article entitled “Correa ‘Won’t Back Down.’” According to the newspaper, “of the seven paragraphs supporting the correction, five coincide with the original article,” and in the other two “the forced change in the information stems not so much from the supposed alteration of the content, but rather from the intent to give another political effect to the message.” “It is clear that nothing had to be corrected in any of the information components described; consequently, the correcting agency is also using its authority to interject in the order, overtone, and highlights of a journalistic exercise,” concluded *Expreso*. Twenty days later, the newspaper asked the Supercom to request that the Secom correct the article sent because the information “was verified and corroborated,” in addition to being supported by audio and video records. As of the closing date of this report, the Supercom had not published a decision on its website in the matter.⁶⁵⁷

491. On July 13, *El Mercurio* published a reply from the Secom entitled “Correa Was Not in Papal Caravan,” in view of an article published a week earlier under the headline “Tremendous Welcome for Pope Francis in Quito and Loud Hoots for Correa.” The government maintained that the presidential vehicle was not part of the caravan, while the newspaper stated that the information had been picked up from the EFE Agency’s reports, and that it had “video and audio containing the shouts of the public” in its possession.⁶⁵⁸ A few days later, on July 17, it had to publish for the second time a reply requested by the Secom in reference to Rafael Correa’s statements that he would hold talks with all sectors of the population except the “coup plotters and destabilizers.” The newspaper initially published that he would not engage in dialogue with the opposition, for which it apologized in the correction. Nevertheless, it had to publish a second article attacking itself by saying that “*El Mercurio* lied through a one-sided headline that attempted to give the public the idea that the National Government is inflexible in its positions and to distort the President’s message of inviting the public to participate in the nationally important debates.”⁶⁵⁹

⁶⁵³ Supercom. June 12, 2015. [Diario Expreso debe publicar rectificación por inobservar artículo 23 de la LOC.](#)

⁶⁵⁴ Supercom. June 18, 2015. [Diario Expreso reincidió en la inobservancia del artículo 23 de la LOC.](#)

⁶⁵⁵ El Comercio. June 16, 2015. [Correa retira los proyectos sin perjuicio de volverlos a presentar](#); El Comercio. June 22, 2015. [“Queremos debates, no gritos: queremos argumentos, no manipulaciones.”](#)

⁶⁵⁶ La Hora/Issuu. June 23, 2015. [Pages A1 and B6.](#)

⁶⁵⁷ Expreso. July 2, 2015. [Nota de la redacción](#); Expreso. June 25, 2015. [Correa no dará “ni un paso atrás”](#); Expreso. July 22, 2015. [EXPRESO pide a la Supercom rectificar una rectificación.](#)

⁶⁵⁸ El Mercurio. July 6, 2015. [Apoteósico recibimiento en Quito al papa Francisco y sonora pitada a Correa](#); El Mercurio. July 13, 2015. [“Correa no estuvo en caravana papal”.](#)

⁶⁵⁹ Fundamedios. July 21, 2015. [Diario publica en portada y página interior dos pedidos de réplica de la Secom.](#)

492. On July 21 Secom compelled *El Comercio* to publish a reply. The state body considered the media outlet did not cover up an assault on police after the complaint by the head of state Rafael Correa. In response the newspaper published an abstract of the notes wherein those facts were recorded.⁶⁶⁰ In addition the media outlet had to publish a reply titled “Reply: The contradiction in biased media discourse” twice, as requested by the National Communications Secretary at the time, Fernando Alvarado, in an opinion column criticizing president Correa and the Secom and signed by reporter Carlos Rojas. On July 31 the state body forwarded “the response in the same space, font and color, as established by the Right to Reply,” in order to republish because of “non compliance with the request.” According to the agency, *El Comercio* published it in the Letters to the Editor section and “not where the original text was published.”⁶⁶¹

493. On August 5, *La Hora* published a reply imposed by the Internal Revenue Service (SRI) with the headline “Since 2007: Reforms Promote Tax Incentives,” in response to an article published on June 22 under the headline “Non-Stop Tax Changes Since 2007.” The newspaper stated in a sidebar next to the reply that if the tax agency wanted a “correction” it should specify “the alleged errors in the original report.” “The SRI sent a text that merely praises its management and is formatted like a news report so the reader will assume that is what it is. The text does not meet any journalistic standard, and therefore *La Hora* is not responsible for its content and publishes it under protest, knowing that failure to do so would certainly result in a penalty,” stated the newspaper.⁶⁶²

494. On August 10, the newspaper *Expreso* was required to publish a supposed correction at the request of the spokesman for the Archdiocese of Guayaquil, César Piechestein, in view of an article that reported on statements made by Pope Francis regarding divorced people. The head of the Catholic Church had referred on August 5 to those who “who have established a new union after the failure of sacramental marriage.” “It is necessary to have a fraternal and attentive welcome, in love and in truth toward these persons who are by no means excommunicated, as some people think. They are still a part of the Church.” In its original article, *Diario Expreso* ran the story under the headline “Divorced People Not Excommunicated,” as did different media outlets around the world. The spokesman for the Ecuadorian church did not like the published content and asked for another article to be published with the headline “Pope: The Doors Cannot Be Closed on Anyone.”⁶⁶³

495. The *Canela TV* channel was fined US \$1,770 on September 8 by the Supercom for broadcasting “alleged violent content about the robbery of a place of business” during morning hours. The state agency indicated that it did not intend “to prevent the dissemination of this type of news,” but that it should be broadcast at a different time.⁶⁶⁴

496. On September 10, the Supercom requested that the newspapers *La Hora* and *Expreso* publish a reply that it had previously ordered. Both papers, together with *El Mercurio* of Cuenca and *El Universo* of Guayaquil had published “a submission paid for by the Ecuadorian Association of Newspaper Editors” on July 20 that, in the opinion of the Supercom, contained “inconsistencies and 'falsehoods'” that affected the agency. Under the headline “Lack of Legal Protection from the Communications Act,” the article maintained that the government was using the law to “discipline media outlets and journalists, resorting to punishments, many of

⁶⁶⁰ El Comercio. July 21, 2015. [Agresión a Policías no es noticia para la edición impresa de El Comercio](#); El Comercio. July 12, 2015. [EL COMERCIO sí registró la agresión a policías en las marchas del 2 de julio](#); Presidencia de la República/Official YouTube channel. July 11, 2015. [Enlace Ciudadano Nro. 432 Puerto López, Manabí](#).

⁶⁶¹ El Comercio. July 21, 2015. [La contradicción como discurso presidencial](#); El Comercio. August 1, 2015. [La contradicción en el tendencioso discurso mediático](#). Page 9; El Comercio. August 8, 2015. [La contradicción en el tendencioso discurso mediático](#). Page 9; El Comercio. August 8, 2015. [Carta de la Secom](#).

⁶⁶² La Hora. August 5, 2015. [Page B1](#).

⁶⁶³ Agencia Télam/YouTube. August 5, 2015. [“Los divorciados que establecen nuevas convivencias no son excomulgados”, aseguró Francisco](#); Fundamedios. August 19, 2015. [Periódico dedica parte de su portada y página interior para publicar rectificación de sacerdote](#); Diario Expreso/Fundamedios. August 10, 2015. [Papa: “No se le puede cerrar las puertas a nadie”](#); EFE. August 5, 2015. [Los divorciados “no están excomulgados”, el mensaje del papa antes del Sínodo](#); El País de Madrid. August 6, 2015. [El Papa: “Los divorciados no están excomulgados, son parte de la Iglesia”](#).

⁶⁶⁴ Supercom. September 8, 2015. [Canela TV recibe sanción](#).

which are not provided for in that law.” It also asserted that the Supercom acts as a judge and jury. *El Mercurio* and *El Universo* had agreed to publish the reply, but *La Hora* and *Expreso* refused. On September 11, the Supercom withdrew the request.⁶⁶⁵

497. *Canal Uno* was fined US \$1,770 on September 11 for having aired a video one afternoon two months earlier in which a model was beaten and insulted. The media outlet complained that other channels had also broadcast the video but had not been penalized in any way.⁶⁶⁶

498. On October 8, *Radio Democracia* was ordered by the Supercom to air the reply of Ecuador’s representative to the World Trade Organization in view of statements made by Eduardo Valencia during an interview. According to the Supercom, the interviewee “reportedly made defamatory statements” against the official.⁶⁶⁷

499. The *Teleamazonas* channel was fined the equivalent of US \$1,770 by the Supercom on October 26 for broadcasting images of the on-air murder of a journalist and a cameraman in the United States during the afternoon. Days later, the station declared that it was resisting, and refused to pay the fine on the grounds that it was “unconstitutional, unfair, and unlawfully imposed” by “an impartial body that is judge, jury, and fine collector.” *Teleamazonas* said that other media outlets, such as the State-owned *Gama TV* and *TC Televisión*, broadcast the same news during afternoon hours, with similar images, and that the Supercom did not reprimand those stations.⁶⁶⁸

500. On October 27, the newspaper *La Hora* had to publish a reply requested by the Secom under the headline “IAPA⁶⁶⁹ Only Defends Interests of Media Companies,” and the inside page headline “Communications Act Strengthens Freedom of Expression in Ecuador.” The reply addressed a piece published by the newspaper on October 7 under the headlines “Attacks on the Press Condemned” on page 1 and “IAPA: Communications Act Restricts Freedom in Ecuador” inside. The paper said that it was publishing the reply under protest because it is an “abuse of the Communications Act” that only “affirms the objective of disseminating propaganda rather than journalistic content.”⁶⁷⁰ The same thing happened to the newspaper *El Universo*, which had published a front-page article on October 7 under the headline “IAPA Makes More than One Request of the President” which continued on the inside pages under the headline “IAPA Insists that Correa Must Consult with the Inter-American Court by Law.” The reply was published on October 28 as “Secom: IAPA Does Not Represent Ecuadorians,” and “IAPA Resolutions Serve the Interests of Media Owners.”⁶⁷¹

501. During the year there were also several warnings. Media outlets such as *Radio Atalaya*, *Los Andes* newspaper, *Extra*, *Expreso*, *Distrito FM*, *Radio Fútbol FM*, *Gama TV* and *Radio Democracia* were warned due to reasons like not publishing a reply in the appropriate day and page, publishing information about governments allegedly without verifying the data before, using terms reportedly incorrect, give an alleged morbid fashion to some news pieces or ask questions that were considered inadequate by a public official⁶⁷².

⁶⁶⁵ Supercom. September 10, 2015. [Medios inobservaron derecho a la réplica](#); *El Universo*. July 20, 2015. [Edición N° 308 Año 94](#). Page 7; Supercom. September 11, 2015. [Diario “Expreso” deberá publicar réplica y emitir disculpa pública](#); Supercom. September 11, 2015. [La Hora debe publicar réplica y disculpa pública](#).

⁶⁶⁶ Supercom. September 11, 2015. [Canal Uno, sancionado por difundir contenido violento en horario familiar](#).

⁶⁶⁷ Supercom. October 8, 2015. [Resolución N° 038-2015-DNIRD-INPS](#).

⁶⁶⁸ Supercom. October 26, 2015. [Resolución N° 041-2015-DNGIPO-INPS](#); La República. November 6, 2015. [Teleamazonas se declara en resistencia ante multa impuesta por la Supercom](#); Fundamedios. November 5, 2015. [Segundo medio privado es sancionado por transmitir noticia internacional y se declara en rebeldía](#).

⁶⁶⁹ IAPA: Inter American Press Association.

⁶⁷⁰ *La Hora*/Issuu. October 7, 2015. [Pages A1 - B1](#); *La Hora*/Issuu. October 27, 2015. [Pages A1 - B1](#).

⁶⁷¹ *El Universo*. October 7, 2015. [Pages 1 - 2](#); *El Universo*. October 27, 2015. [Pages 1 - 2](#).

⁶⁷² Superintendencia de la Información y Comunicación (Supercom). January 20, 2015. [Radio “Atalaya” de Guayaquil recibe amonestación escrita](#); Supercom. February 10, 2015. [Radio “Atalaya” reincide en infracción y recibe amonestación escrita](#); *El Universo*. January 4, 2015. [Velorio de Sharon ‘La Hechicera’ fue en el coliseo Voltaire Paladines Polo](#); *El Comercio*. January 4, 2015. [La cantante](#)

502. The Office of the Special Rapporteur reiterates that the right of reply or correction enshrined in Article 14 of the American Convention⁶⁷³ 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.

503. 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,⁶⁷⁴ this mechanism makes it possible to force a media outlet to disseminate information it does not wish to publish.⁶⁷⁵ In the absence of adequate and careful regulation, it could give rise to abuses that end up disproportionately and unnecessarily jeopardizing freedom of expression.⁶⁷⁶ 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.⁶⁷⁷

504. 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.⁶⁷⁸ In Advisory Opinion 7/86 on the Enforceability of the Right to Reply or Correction, the Inter-American Court held that the right of reply or correction for inaccurate or offensive statements disseminated to the public in general is closely related to Article 13(2) on freedom of thought and expression, which subjects that freedom to the 'respect of the rights and reputations of others.'⁶⁷⁹ 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.

505. 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

[ecuatoriana Sharon 'La Hechicera' falleció en Santa Elena](#); Supercom. January 26, 2015. [Diario "Los Andes" recibe amonestación escrita por incumplir normas deontológicas](#); Los Andes. August 26, 2014. ["Departamento de Comunicación tiene que generar la información"](#); Supercom. February 5, 2015. [Diario "Extra" recibe amonestación escrita tras admitir infracción](#); Extra. December 13, 2014. [¡En 30 segundos comienzan el "vuelo"!](#); Supercom. August 31, 2015. [Radio Fútbol FM y Luis Baldeón reciben amonestación escrita](#); Roberto Omar Machado Twitter account @MachadoRoberto0. No date. User profile: [Periodista deportivo ecuatoriano. Director de MACHDEPORTES 92.9 F.M y comentarista de MÁS FÚTBOL en TELEAMAZONAS](#). Consulted on November 25, 2015; Diario Expreso. December 19, 2014. [La Supercom también fiscaliza al alcalde de Quito, Mauricio Rodas](#); Supercom. March 5, 2015. [Diario "Expreso" recibe amonestación escrita](#); Supercom. June 10, 2015. [Amonestación escrita para radio Distrito FM 102.9](#); Supercom. September 7, 2015. [Gama Tv recibe amonestación escrita y multa](#); Supercom. September 11, 2015. [Diario Extra recibe amonestación escrita](#); Supercom. November 28, 2015. [Amonestación escrita para el señor Gonzalo Rosero Chávez](#).

⁶⁷³ 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."

⁶⁷⁴ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 80.

⁶⁷⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

⁶⁷⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

⁶⁷⁷ 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)."

⁶⁷⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

⁶⁷⁹ 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. 5.

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 alleged inaccuracies or affronts) and whether it is truly necessary and its application does not disproportionately restrict the right to freedom of expression of the media outlet in question.

D. Subsequent Liabilities

506. A 17-year-old boy was detained and taken after a judge on May 1 for having made “an obscene and insulting gesture several times” to President Rafael Correa when he passed by car in a caravan on Labor Day. According to the information provided by the State of Ecuador, the President “stepped out of the vehicle and called the young man for his attitude.” “Why are you doing this, why you disrespect the President?” Correa asked. He then got into the car and kept going. In that moment, the teenager was detained “under the unrestricted compliance with legal procedures”, the State said.⁶⁸⁰

507. In the subsequent judicial procedure, which according to the Government “is held within twenty-four hours after the arrest occurred, an oral hearing before the Judge of Juvenile Offenders of the Metropolitan District of Quito took place.” In that instance, the teenager admitted having made obscene gestures and apologized. According to the judge's ruling, the teenager violated Article 396 paragraph 1 of the Code of Criminal Integral, which states that “the person who, by any means, utters expressions of disrepute or disgrace against another” will be punished. For committing the alleged crime, he was sentenced to 20 hours of community service, with “tasks easy to perform.” The State of Ecuador reported that the teenager “had a public defender and made use of his constitutional right to defense for the hearing in accordance with the guarantees of due process”, and that the fact that the complainant was the President had nothing to do with the procedure, since the law applied protects any person.⁶⁸¹

508. The Office of the Special Rapporteur recalls that article 13 of the American Convention, in conjunction with Articles 19 and 1.1 of this treaty, guarantee to all children the right to freedom of thought and expression. This right is also protected under the Convention on the Rights of the Child of the United Nations (Articles 12-17). To be legitimate in accordance with Article 13 of the American Convention, the restrictions on the right to freedom of expression must meet the conditions imposed by Article 13.2 of the treaty, that is, must be provided by law, have a legitimate purpose and be necessary and proportionate to achieve this purpose in a democratic society. The Commission noted that while protecting the honor and reputation of others can be a legitimate purpose for establishing subsequent liability for the abusive exercise of freedom of expression,⁶⁸² when it comes to expressions referring to public officials and on matters of public interest, States have a very limited scope for imposing restrictions on freedom of expression.⁶⁸³

⁶⁸⁰ Republic of Ecuador. Permanent Mission of Ecuador at the OAS. Note No. 4-2-213-2015, of July 16, 2015, referring to Oficio Nro. MREMH-GM-2015-16722-O dated July 1, 2015, related to the information request on the criminal proceedings and sentence imposed on adolescent L.A.C. requested by the IACHR.

⁶⁸¹ Republic of Ecuador. Permanent Mission of Ecuador at the OAS. Note No. 4-2-213-2015, of July 16, 2015, referring to Oficio Nro. MREMH-GM-2015-16722-O dated July 1, 2015, related to the information request on the criminal proceedings and sentence imposed on adolescent L.A.C. requested by the IACHR.

⁶⁸² I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177, Para. 71; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 118.

⁶⁸³ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177, para. 57 and 87; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, para. 84, 86 and 87; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, Para. 127.

509. 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,⁶⁸⁴ 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.”⁶⁸⁵ 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 generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy.”⁶⁸⁶ 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.

510. Also, when it comes to protecting the honor and reputation of a person it is important to note that only the facts, not opinions, are subject to judgments of truth or falsity. Accordingly, the Inter-American Court has indicated that only expressions rigging false accusations of verifiable facts can be sanctioned for these reasons.⁶⁸⁷

511. Former political advisor and journalist Fernando Villavicencio received notice in June, along with former Congressman Cléver Jiménez and physician Carlos Figueroa, that the National Court of Justice had decided to forward the case regarding the defamation of President Correa to the Office of the Public Prosecutor, after confirming that they had failed to pay the US \$140,000 in damages ordered by the Court in 2014 upon their conviction for the offense of falsely accusing the President of a crime [*injuria judicial*].⁶⁸⁸ The sentence imposed against them upon their conviction expired in March. It had been reduced from 18 months to 12 months as a result of changes to the Criminal Code in August 2014, but they avoided serving the sentence in prison by remaining in hiding.⁶⁸⁹ In addition, a preliminary investigation reportedly continued in 2015 into the publication of the book *Ecuador Made in China*, authored by Villavicencio, as did the case against Jiménez for alleged espionage related to classified information held by high-ranking authorities.⁶⁹⁰

512. In July, columnist Miguel Palacios was ordered to pay US \$40,000 in non-pecuniary damages to President Rafael Correa, after the publication of the articles “*La loca pelucona*” [“*The crazy posh*”] and “*Mis*

⁶⁸⁴ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177, para. 86-88; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135, para. 83-84; I/A Court H. R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74, para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese vs Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para. 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87.

⁶⁸⁵ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177, para. 86-88; I/A Court H. R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Serie C No. 135, Para. 83; I/A Court H. R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Serie C No. 73, Para. 69; I/A Court H. R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Serie C No. 74, para. 152 and 155; I/A Court H. R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Serie C No. 111, Para. 83; I/A Court H. R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Serie C No. 107, para. 125 to 129; I/A Court H. R. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Serie C No. 151, Para. 87; I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2009. Serie C No. 193, Para. 115.

⁶⁸⁶ IACHR. [Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights](#). Title III Section B. OEA/Ser. L/V/II.88. Doc. 9 rev. February 17, 1995.

⁶⁸⁷ I/A Court H. R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Serie C No. 177, para. 86-88.

⁶⁸⁸ El Telégrafo. June 2, 2015. [Ochoa señala que con el desacato Jiménez, Villavicencio y Figueroa desafían a la justicia](#); Confirmado.net. June 2, 2015. [Jiménez, Villavicencio y Figueroa podrían enfrentar una nueva sentencia](#).

⁶⁸⁹ El Universo. March 23, 2015. [Cléver Jiménez y Fernando Villavicencio ya no serán detenidos: juez prescribió pena](#); Ecuavisa. March 23, 2015. [Caduca la pena impuesta a Cléver Jiménez y Fernando Villavicencio](#); Ecuavisa. March 27, 2015. [Así fue la vida de Fernando Villavicencio durante un año en la clandestinidad](#).

⁶⁹⁰ El Telégrafo. April 1, 2015. [La Fiscalía alista dictamen por el presunto delito de espionaje](#).

razones ["My reasons"], which questioned the president for speaking about political opositor Verónica Acosta Espinosa in a derogatory way. "I will never allow someone to offend a woman, and it is worse if the one who mistreats does it with the impunity of the position he holds", and "every person who mistreats a woman is a faggot" were some of the phrases Palacios wrote. According to Correa's defense, the non-pecuniary damage came from journalist's accusations of "women mistreater" and references of his sexual orientation. Palacios had sued the President for non-pecuniary damages in 2010 after the President made "slanderous and defamatory accusations against [his] honor and reputation" on the "*Enlace Ciudadano*" program, referring to the journalists as a "Mafioso," "spoiled rich kid from Urdesa," "accused rapist," "lapdog of the Social Christian Party," "phony," "thief," and "tax evader," according to the lawsuit. However, the President countersued, denying the accusations on the grounds that "the plaintiff has no legal or moral basis for his claim."⁶⁹¹

513. On a different episode, political leader Sebastián Cevallos of the opposition movement *Unidad Popular* was sentenced on November to 15 days in prison for posting Twitter messages asserting that relatives of the Minister of Labor held public positions, after the minister's niece filed a complaint alleging that Cevallos had made "discrediting and dishonoring" statements.⁶⁹²

514. In addition, journalist Roberto Aguilar—author of the blog *Estado de Propaganda*—was brought before a judge on November 17 by former National Communications Secretary Fernando Alvarado after having published that the public official and his brother had accumulated a fortune during their period in office, favoured by contracts with public funds. The journalist was required to appear at a pretrial proceeding to reply to interrogatories because Alvarado considered himself to have been the "victim of slander and defamation of character." Following the proceeding, Alvarado's attorney stated that he was examining whether to proceed with the lawsuit.⁶⁹³

515. Principle 10 of the IACHR's Declaration of Principles 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." Similarly, principle 11 of the IACHR's Declaration of Principles establishes that, "Public officials are subject to greater scrutiny by society."

516. Regarding possible civil responsibility, the Inter-American Court has established that civil restrictions are exceptional in nature and should not limit the free exercise of expression, since "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."⁶⁹⁴

⁶⁹¹ Fundamedios. July 23, 2015. [Articulista es sentenciado a pagar indemnización por daño moral al Presidente](#).

⁶⁹² Ecuavisa. November 12, 2015. [Sentencian a tuitero que denunció supuesto nepotismo](#); El Universo. November 13, 2015. [Quince días de prisión para dirigente Sebastián Cevallos Vivar por tuits](#); El Comercio. November 16, 2015. [Sebastián Cevallos apelará la sentencia](#).

⁶⁹³ La República. June 25, 2015. [Roberto Aguilar es llamado a confesión judicial a pedido de la SECOM](#); Plan V. June 29, 2015. [Fernando Alvarado: ¿el gran inquisidor?](#); "Hoy impugnamos la demanda de Fernando Alvarado en mi contra. Aquí, el documento. Gracias por compartir." Twitter account of Roberto Aguilar @raguilarrandrade. [June 30, 2015- 4:52 PM](#); El Universo. November 17, 2015. [Periodista Roberto Aguilar rindió confesión judicial](#); El Comercio. November 17, 2015. [El periodista Roberto Aguilar respondió tres preguntas en su confesión judicial](#).

⁶⁹⁴ I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Serie C No. 193. Par. 129.

E. Freedom of Expression Defenders in Ecuador

517. The National Secretariat of Communications of Ecuador (SECOM) notified Fundamedios, a civil society organization dedicated to promoting and defending freedom of expression and journalism, of the initiation of a dissolution procedure on 8 September 2015. The State said that disseminating messages with “political overtones” is allegedly banned to civil society because it is allegedly limited to political parties. The documentation attached in the order included images of messages published by Fundamedios on Twitter with links to opinion articles on other websites that criticized government policies on media control, alleged lack of guarantees for the opposition and social protest, among other topics. It also annexed as part of the proof images posted on Twitter by journalists and media, which Fundamedios retweeted in their account. The Government’s order provided a period of ten days during which the organization could present arguments for defense. On 14 September 2015, Fundamedios requested guarantees of due process, proofs of the alleged activities, and –according to the Constitution, article 98, declared its right to resist ‘deeds or omissions by the public sector’ that undermine their constitutional rights.⁶⁹⁵

518. A group of rapporteurs from the United Nations and the Inter-American Commission on Human Rights (IACHR) expressed on September 17 their grave concern over the Government of Ecuador’s moves to dissolve Fundamedios, a prominent civil society organization dedicated to the promotion of freedom of expression and media freedom in that country.⁶⁹⁶

519. “Members of associations, particularly those dedicated to defending human rights, should fully enjoy the right to freedom of expression, in particular, the freedom to be openly critical of governmental policy and practice,” the experts stressed. “Individuals who form an association have the right to hold opinions and disseminate information of all kinds, including of a political nature, without interference by the State,” the experts said. “Speech cannot be suppressed simply because it may be interpreted as ‘being political.’”

520. The rapporteurs emphasized that the role of freedom of association is a fundamental tool that makes it possible to fully carry out the work of human rights defenders, who, acting collectively, can achieve a greater impact for members of a group or society in advancing and attaining licit goals. “The forced dissolution of an association is a truly extreme measure, which can only be justified in the most exceptional cases, under strict compliance with the principles of legality, necessity and proportionality, and aimed at achieving a pressing need in a democratic society,” explained the experts. “It would be of particular concern if the State adopts any resolution in this case violating international human right standards. Indeed, it is the Government’s action that has the strongest ‘political overtones,’” underscored the group, noting that “the rationale cited for Fundamedios’ dissolution could be used to block the legitimate exercise of freedom of association.”

521. The group of experts denounced national norms invoked in the procedures against Fundamedios and previously applied in the closure of another important non-governmental organization in the end of 2013 and called for their revision in light of international standards. “Executive Decree No. 16 established unacceptable restrictions to freedom of expression and association in the country, empowering State authorities to close down organizations based on very broad and ambiguous terms,” they said. That decree was updated in 2015, but fundamental aspects questioned by human rights organizations did not change.

522. “Human rights do not cease when an individual or association goes online,” the experts pointed out in relation to SECOM’s alleged proof. “The rights to freedom of expression and of association apply both offline and online.”

⁶⁹⁵ Fundamedios. September 8, 2015. [Secom inicia proceso de disolución de Fundamedios](#); Knight Center for Journalism in the Americas. September 10, 2015. [Ecuadoran government starts a process to shut down Fundamedios, a freedom of expression advocate NGO](#). CNN en Español. September 10, 2015. [Ecuador inicia procedimiento contra organización que vigila la libertad de prensa](#).

⁶⁹⁶ IACHR. September 17, 2015. [Press Release 103/15 Ecuador / Freedom of expression: UN and IACHR experts condemn moves to dissolve prominent organization](#).

523. After this IACHR and UN experts' statement, the State of Ecuador issued a press release which said that they reiterated "its continued commitment to protecting and promoting human rights, including the respect for international treaties to which the State of Ecuador is part, that emanate from the Universal System for the Protection of Human Rights." Ecuador said the Secom "constantly checks the status and performance of the founding statutes of the more than 100 organizations registered in that Secretary of State" and that the agency had requested Fundamedios on June 23 "to comply with the existing legal provisions and the rules of its own statute." "Given the breach of that rule by this organization, the State has initiated the corresponding administrative process," they said.⁶⁹⁷

524. A few days later, the Office of the Ombudsman of the People released a statement in which it considered that Secom could close the NGO, but urged not to do it. As a consequence, the Secom decided on September 24 to stop pursuing the case, based on the Ombudsman's arguments.⁶⁹⁸

525. Shortly thereafter, on October 20, the Secom denied Fundamedios's request to amend its bylaws to define itself as an organization for the defense of freedom of expression because, in the opinion of the State agency, "It is inappropriate and inconsistent for a private legal entity to attempt, through the amendment of its internal bylaws, to assume the status of defender or protector of fundamental rights when the constitution clearly establishes that that obligation belongs to the Ecuadorian State."⁶⁹⁹

F. Direct and Indirect Censorship

526. According to the information published by the National Journalists' Union of Ecuador (UNP), the National Telecommunications Council (Conatel) notified the organization on January 21 of the unilateral license revocation for frequency 820kHz. The agency contended the UNP owed the equivalent of 100.80 US dollars, corresponding to 9 months of payment in 2002. The UNP stated it was unaware of said situation and that payments were made on time. The request for license renewal three years earlier had not been answered.⁷⁰⁰

527. On April 10, the radio program *La voz de la gente*, hosted by former Congressman Marcelo Dotti on the *Sucesos* radio station, went off the air. "(The station's director) told me just yesterday that I was going off the air, and that I had to say goodbye to you all today, Friday," said Dotti on his final program. In statements provided to Fundamedios, Dotti asserted that "Specifically, Mr. Fernando Alvarado had told the radio station's director that I had to go off the air, and that I had to do it on Friday, from one day to the next. I was even cordially asked to say goodbye without making a fuss. But I refused to do that and I said that I would not say goodbye while lying to the people." Alvarado was the National Communications Secretary at the time.⁷⁰¹

528. On August 3, columnist and academic Mónica Mancero reported that her weekly column for the state-owned newspaper *El Telégrafo* had been censored. Under the headline, "Yachay, Tip of the Iceberg," Mancero called into question the functioning of a public university after the criticisms made by a former university President dismissed shortly before. "The opinion of Orlando Pérez (director of the newspaper) is that I caused harm to the newspaper with these 'complaints.' However, at no time did he tell me that my

⁶⁹⁷ Republic of Ecuador. Permanent Mission of Ecuador at the OAS. Note No. 4-2-271-2015, of September 25, 2015, referring to Oficio Nro. SNC-CGAJ-2015-0114-0, of September 24 2015, in response to a joint release made by the rapporteurs of the United Nations Organization and the Inter-American Commission on Human Rights in relation to the administrative proceedings applied by Secom to Fundación Andina para la Observación Social y el Estado de Medios (Fundamedios). Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

⁶⁹⁸ Secretaría Nacional de Comunicación/El Universo. September 24, 2015. [Oficio N° SNC-CGAJ-2015-0117-0](#).

⁶⁹⁹ Fundamedios. October 23, 2015. [Secom alega que no puede haber organizaciones que defiendan la libertad de expresión](#).

⁷⁰⁰ Unión Nacional de Periodistas. No date. [Conatel quita a la UNP frecuencia de radio](#); Fundamedios. February 4, 2015. [Revierten frecuencia de radio de gremio periodístico y su presidente denuncia represalias](#).

⁷⁰¹ El Comercio. April 10, 2015. [Marcelo Dotti se despidió de Radio Sucesos luego de 20 años de trabajo](#); Fundamedios. April 17, 2015. [Radiodifusor deja programa y denuncia presiones para su salida](#).

article—which had been submitted the previous Saturday—was not going to be published. I have tried to get in touch with him today, but he has not replied to any of my messages. The newspaper’s copy editor did: he said that it was his Director who decided that my column would not be published,” Mancero later wrote on the portal *GkillCity*, together with the column that had not been published. Perez said that he was surprised *GkillCity* “immediately” published Mancero’s texts with her defenses without an explanation from the newspaper. “On their portal they have opted for vertigo over the responsible practice of de fact-checking and verification,” he stated. “In two years, more than 100 of Mancero’s columns have been published. And as she stated, those articles addressed political issues and were never the subject of any complaint by me or any other of the newspaper’s directors because of their content, even though we never agreed with some of them,” he added, concluding with the arguments against publishing the column: “The article about Yachay was not published (...) because I had asked her in an email for an explanation of why she would seek to resolve on social media aspects that were strictly institutional in nature, that were never addressed with the newspaper’s directors, in a clear eagerness for virtual prominence. And in that same email I had told her that unless she gave us a formal and public explanation it made no sense to keep publishing her articles if she felt that they had been mangled or mistreated, in spite of the poor quality of the writing in some of them;” “In nearly all of the articles published by columnist Mancero there is a clear abuse of adjectives;” and “Columnist Mancero fails to contextualize the problem” of the university. The director of *El Telégrafo* published the previously omitted column alongside his response.⁷⁰²

529. On August 15, the government of Ecuador declared a state of emergency throughout the country due to the eruption of the Cotopaxi volcano, which included “the prior censorship of information (...) issued by the media” on this topic. “The public can only be informed through the official bulletins released by the Ministry of Security Coordination on the matter, and the unauthorized dissemination of information by any media outlet, whether public or private, or on social media is prohibited,” it maintained.⁷⁰³ Accordingly, two *Ecuavisa* reports were censored prior to being broadcast.⁷⁰⁴

530. Another case of alleged censorship involved journalist Martín Pallares, who was fired on August 17 from the newspaper *El Comercio*, where he worked as an editor and had an opinion column entitled “*Desde mi tranquera*.” The incident occurred after he posted some tweets on his personal account that were critical of the government, which then resulted, according to his version of the events, in an exchange of internal messages with Fernando Alvarado. “They told me that I was exposing the company because of my treatment of the President of the Republic and because I had caused many confrontations with the Alvarado brothers,” he said in an interview, alluding to the former National Communications Secretary and his brother Vinicio, National Secretary of Public Administration.⁷⁰⁵

531. Principle 5 of the IACHR Declaration of Principles on Freedom of Expression reads: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression”. Principle 13 of the Declaration of Principles of the IACHR stipulates: “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. Media have the right to carry out their role in

⁷⁰² GkillCity. August 3, 2015. [Un iceberg dentro de otro iceberg: el artículo que el Telégrafo no publicó este lunes](#); El Telégrafo. August 5, 2015. [Carta a GkillCity y a Mónica Mancero](#).

⁷⁰³ El Ciudadano. August 15, 2015. [El Presidente decreta estado de excepción por proceso eruptivo del Cotopaxi \(DECRETO\)](#).

⁷⁰⁴ Ecuavisa/YouTube. September 2, 2015. [Pronunciamiento Visión 360 sobre documental Cotopaxi](#); El Comercio. August 29, 2015. [El reportaje de 'Visión 360' sobre el Cotopaxi no está autorizado a difundirse](#).

⁷⁰⁵ Fundamedios. August 20, 2015. [Periodista es despedido por sus comentarios en Twitter](#); Knight Center for Journalism in the Americas. August 28, 2015. [Ecuadoran journalist recounts how he was fired for not accepting newspaper's conditions for his Tweets](#).

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.”

532. In exceptional circumstances, such as “[i]n case of war, public danger, or other emergency that threatens the independence or security of a State Party,”⁷⁰⁶ States may adopt measures restricting the full enjoyment of rights and freedoms under the American Convention, except for those explicitly listed in the second paragraph of article 27 of the American Convention, which enshrines the non-derogable core rights, including rights to life and personal integrity. While freedom of opinion is not listed among the non-derogable rights under Article 13 and 27 of the American Convention, it is important to mention that when analyzing the provisions of the Covenant on Civil and Political Rights, the Human Rights Committee of United Nations said that there are elements that cannot be subject to lawful derogation under article 4 of the Covenant, based on which concludes: “Freedom of opinion is one such element, since it can never become necessary to derogate from it during a state of emergency.”⁷⁰⁷

533. Similarly, the structural relationship between freedom of expression to democracy, during a state of emergency in a democratic society States do not have absolute discretion to limit this right and should adhere to the principle of necessity and proportionality. The Commission has also reiterated that any decree a state of emergency shall contain the rights whose enjoyment will be restricted, and define the temporal and spatial limits that shall govern.

G. Stigmatizing Statements

534. Mainly through the Ecuadorian President’s Saturday television program, the government has continued to single out journalists and media outlets with stigmatizing statements that insulted the work of journalists and the opinions or information they provided.

535. The qualifiers of “rogue press,” “corrupt press,” or “mercantilist press” were repeated by Correa on numerous occasions throughout the year. Those most called into question by government authorities in 2015 included journalists Diego Oquendo, Alfredo Pinoargote, Martín Pallares, Vicente Ordóñez, Tania Tinoco, Alfonso Espinoza de los Monterios, Jorge Ortiz, and Manuela Picq, mainly in the segments “*La caretucada de la semana*,” “*La amargura de la semana*,” “*La canallada de la semana*,” “*Recordando las mentiras*,” “*La doble moral de la semana*,” and “*La cantinflada de la semana*,” on the program “*Enlace Ciudadano*.” The president also once again ripped up a copy of a newspaper during the broadcast.⁷⁰⁸

536. Government officials also singled out *Ecuavisa* and *Teleamazonas* due to their coverage of citizen protests. Former National Communications Secretary Fernando Alvarado made reference in televised

⁷⁰⁶ American Convention on Human Rights. Article 27. - Suspension of Guarantees.: 1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

⁷⁰⁷ United Nations. Human Rights Committee. International Covenant on Civil and Political Rights. [General Comment N° 34](#). September 12, 2011.

⁷⁰⁸ Presidencia de la República/Official YouTube channel. January 31, 2015. [Enlace Ciudadano Nro. 409 desde Chimbacalle, Pichincha](#) [58:47]; Presidencia de la República/Official YouTube channel. April 18 2015. [Enlace Ciudadano Nro. 420 desde Quito, Pichincha](#) [1:28:57]; Presidencia de la República/Official YouTube channel. May 2, 2015. [Enlace Ciudadano Nro. 422 desde Quito, Pichincha](#) [1:42:20]; Presidencia de la República/Official YouTube channel. May 18, 2015. [Enlace Ciudadano Nro. 424 desde Pifo, Pichincha](#) [34:35]; Presidencia de la República/Official YouTube channel. May 30, 2015. [Enlace Ciudadano Nro. 426 desde Girón, Azuay](#) [2:34:08]; Presidencia de la República/Official YouTube channel. June 20, 2015. [Enlace Ciudadano Nro. 429 desde Muey, Santa Elena](#) [3:22:20]; Presidencia de la República/Official YouTube channel. August 29, 2015. [Enlace Ciudadano Nro. 439 desde Anconito, Santa Elena](#) [3:05:30]; Presidencia de la República/Official YouTube channel. September 19, 2015. [Enlace Ciudadano Nro 442 desde Lumbisí Quito, Pichincha](#) [3:11:19]; Presidencia de la República/Official YouTube channel. November 14, 2015. [Enlace Ciudadano Nro 450. Desde Quito Pichincha](#) [1:47:02]; Presidencia de la República/Official YouTube channel. November 28, 2015. [Enlace Ciudadano Nro 452 desde Calceta, Manabí](#) [3:39:30].

statements “to the heirs of these media outlets that have openly declared themselves opponents of the government, such as *Ecuavisa*, such as *Teleamazonas*, who support these subversive groups that want to destroy democracy, confusing the public.” *Ecuavisa* responded: “Interior Minister José Serrano and National Communications Secretary Fernando Alvarado stated yesterday, via Twitter and on one of the seized channels, respectively, that *Ecuavisa* has been involved with the demonstrators protesting the government’s tax hikes (...) In view of that accusation, we must make absolutely clear that *Ecuavisa* does not assume such a position in any case. We do not incite protesters, and we never have.” *Teleamazonas*, for its part, asserted “the right of citizens and social groups to express their opinions regarding measures taken by the government” and that it would “continue to defend democracy and the rule of law.”⁷⁰⁹

537. As in previous annual reports, the Office of the Special Rapporteur reiterates the importance of creating a climate of respect and tolerance for all ideas and opinions. The Office of the Special Rapporteur 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. In addition, the State’s duty to create the conditions for all ideas and opinions to be freely disseminated includes the obligation to properly investigate and punish those who use violence to silence journalists or the media.⁷¹⁰ The Office of the Special Rapporteur additionally recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population.⁷¹¹

538. 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.”⁷¹²

H. Internet and Freedom of Expression

539. The Office of the Special Rapporteur expressed concern in February about the threats that Ecuadorian citizen and online user “Crudo Ecuador” –who posted satires and criticism through Facebook and Twitter– received after being criticized by high government officials. The Office also urged the authorities of Ecuador to consider the consequences that stigmatizing statements made by government officials might have on the lives and safety of persons and to act promptly to ensure the safety of the user “Crudo Ecuador”⁷¹³.

⁷⁰⁹ Fundamedios. June 12, 2015. [Medios rechazan acusaciones de funcionarios de gobierno de supuesta conspiración desestabilizadora](#); Ecuador inmediato. June 12, 2015. [Ecuavisa y Teleamazonas rechazan acusaciones de conspiración contra el Gobierno](#); El Universo. June 12, 2015. [Ecuavisa y Teleamazonas rechazan acusaciones del Gobierno](#).

⁷¹⁰ IACHR. [Annual Report 2010. 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. 5. March 7, 2011. Para. 206-207; IACHR. [Annual Report 2011. 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. 69. December 30, 2011. Para. 156 and 206.

⁷¹¹ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 32.

⁷¹² I/A Court H. R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 139; I/A Court H. R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 151.

⁷¹³ IACHR. Office of the Special Rapporteur for Freedom of Expression. February 25, 2015. [Press Release 17/15 The Office of the Special Rapporteur Urges Ecuador to Ensure the Safety of Citizen Behind “Crudo Ecuador” and Expresses Concern Regarding Comments made by High Authorities](#).

540. Through a number of “Enlace Ciudadano” airings, the president of Ecuador, Rafael Correa, expressed dissatisfaction with the publication of “Crudo Ecuador”, as well as others from users of social networks that insulted him, and urged citizens to help uncover their identity and therefore expose it to the people. He also insisted the population on sending messages through Internet whenever someone posts a new satire, and created a website, www.somosmas.ec, which works as a social network “for citizens to join the fight to end abuses in social networks.” The government explained that the creation of this website will “tackle attacks by people that, hidden behind anonymity, are permanent in these virtual spaces.” President Correa said: “We will not allow that a bunch of dishonest malevolent liars dominate us. Everybody sign up on the website [somosmas.ec](http://www.somosmas.ec) and I insist, moreover, you will sign up there and you will receive information when these defamatory campaigns on Twitter and other social networks in general are held. Furthermore, we will receive information. If you know the identity of the one who is insulting and defaming, we will bring him to the ‘Enlace’. Or we will present him on social media, to see if he is still so brave and so jocular as he believes himself to be when out of anonymity.”⁷¹⁴

541. Subsequently, the user behind “Crudo Ecuador” received several threats on Twitter. For example, he posted an anonymous note he reportedly received with a bouquet of flowers at the house of a relative. The text, which identifies him by name and surname, says: “It is great to have the opportunity to greet and congratulate you for such a beautiful family, your wife (...) and what can I say about your two cute kids, who surely fill your home with joy; with satisfaction I have to confess that it is my pleasure to have you in the beloved province of Guayas, enjoying your well-deserved holidays, which will bring a moment of relaxation, which means a break after so much stress that your ‘not so well-aimed activities’ imply, believe me when I say that you will always have our interest and attention, as long as your bravery lasts...” The words “not so well-aimed activities” were between quotation marks and in bold. The citizen involved had left his home and only told his closest next of kin where he was. According to the available information, threats have had a chilling effect and, therefore, “Crudo Ecuador” ceased to publish content on Facebook and Twitter after the harassment. The site manager posted messages on both social networks saying: “Even though I have the desire to continue, my family comes first and I do not want to expose them to this mafia (...) Ok, this is over #YouWon @MashiRafael.”⁷¹⁵ Twitter username @MashiRafael corresponds to the account of the president of Ecuador, Rafael Correa.

542. On February 21, during the 412 edition of “Enlace Ciudadano”, Correa condemned the threats that “Crudo Ecuador” had received and made some additional comments. “If there has been an excess, we reject it completely. But the excess has come from elsewhere. And be aware, if what they are telling about a bouquet of flowers, etcetera, is true, it is probably people who want to damage the government,” the president said. Correa added that the excesses were committed by “Crudo Ecuador” through “defamation” and “lie.” “We will continue with this campaign,” he said. On January 27, the Minister of Interior José Serrano filed a formal complaint regarding the threats against “Crudo Ecuador” before the District Attorney of Pichincha [Fiscalía Distrital de Pichincha]. “This Ministry of State has the protection of every human being as a policy, regardless his ideology or political belief,” the complaint says. “(...) I request you to investigate the user or users that have been threatening the integrity of @CrudoEcuador, and I request you to find those responsible for these threats,” it adds.

543. The Government of Ecuador continue its practice to request the take down of content on YouTube based on the argument of alleged copyright infringement arising from the use of clips from the government television program “*Enlace Ciudadano*.” Such was the case of a video posted by the organization *Usuarios Digitales*, which was taken down from the site on April 21 following a complaint lodged with

⁷¹⁴ Presidencia de la República/Official YouTube channel. January 24, 2015. [Enlace Ciudadano Nro. 408 desde Gonzanamá, Loja](#). [1:25:19]; El Comercio. January 24, 2015. [Rafael Correa anuncia creación de sitio web Somos + para combatir supuesta 'campaña de desprestigio' en redes](#).

⁷¹⁵ Twitter account of Crudo Ecuador @CrudoEcuador. [February 19, 2015](#); Knight Center for Journalism in the Americas. February 27, 2015. [Críticas del presidente de Ecuador y amenazas de muerte llevan al cierre de cuenta satírica de Facebook](#); Ecuavisa. February 20, 2015. [Crudo Ecuador cierra definitivamente sus cuentas por "falta de garantías"](#).

YouTube by the State channel *Ecuador TV*.⁷¹⁶ A similar situation occurred with the program “*A la mierda la mordaza*” [“*Fuck the gag*”], which had been uploaded to YouTube on a weekly basis but was subsequently taken down for using clips from “*Enlace Ciudadano*.”⁷¹⁷ According to the NGO Fundamedios, the investigative journalism portal *Focus Ecuador* was also taken down following a complaint by former Intelligence Minister Pablo Romero and for using the logo of the Ministry of Intelligence.⁷¹⁸ This tool had been in use since 2013.⁷¹⁹

544. The Office of the Special Rapporteur reaffirms the importance of creating a climate of respect and tolerance for all ideas and opinions, and recalls the duty of the State to create the conditions that allow diversity, pluralism and respect for its dissemination, as they are fundamental conditions in any democratic society. This includes the obligation to investigate and properly punish those who use violence to silence communicators or media. Moreover, the Office of the Special Rapporteur reminds that “[b]oth the right to freedom of thought and expression and the right to private life protect anonymous speech from government restrictions. Participation in public debate without revealing one’s identity is a normal practice in modern democracies. The protection of anonymous speech is conducive to the participation of individuals in public debate since—by not revealing their identity—they can avoid being subject to unfair retaliation for the exercise of a fundamental right.” Moreover, the joint declaration on freedom of expression and internet, signed by the European, African, American and UN rapporteurs on freedom of expression stated 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 recognised under international law.”⁷²⁰

545. The Permanent Mission of Ecuador to the Organization of American States rejected the communication issued by the Office of the Special Rapporteur and maintained that “the Ecuadorian State and its highest authorities have constantly repudiated all types of threats and assaults carried out against its citizens through any medium, including social networks, without distinction in regard to their nationality, gender, race, ideological, religious, or political convictions, or social, economic, or cultural status.” It further stated that it was taking “all pertinent legal and investigative actions to safeguard the lives, integrity, safety, dignity, and human rights of all of its citizens.” It indicated that “no forum, including social networks, may be used to defame or attack the dignity and honor of individuals in their public or private activities,” and therefore it finds regrettable the “bias with which the Office of the Special Rapporteur and the IACHR act, availing themselves only of the information submitted to them by the interested parties, without checking it against the actual conditions in each one of the countries, or against the facts that might be provided by other citizens whose fundamental rights are affected by the complainants.” “The Office of the Special Rapporteur and Rapporteur Lanza deny the status of democratically elected State authorities as human beings. President Rafael Correa Delgado has received death threats on numerous occasions—a fact known to Lanza, but omitted from his press release,” the State added.⁷²¹

⁷¹⁶ Fundamedios. April 27, 2015. [Youtube da de baja vídeo por uso de imágenes de sabatina](#); Inter American Press Association. 2015 – General Assembly – Charleston – South Carolina. [Ecuador](#).

⁷¹⁷ Mil Hojas. November 11, 2015. [Ares Rights tiene exclusividad de imágenes de Correa y Glas Viejó](#).

⁷¹⁸ Fundamedios. September 2, 2015. [Portal informativo es dado de baja por reclamo de Ares Rights](#).

⁷¹⁹ IACHR. [Annual Report 2014. 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. 13, March 9, 2015. Para. 404-406 and 410; IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2013](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 367-368.

⁷²⁰ Republic of Ecuador. Permanent Mission of Ecuador at the OAS. Note No. 4-2-213-2015, of July 16, 2015, referring to Oficio Nro. MREMH-GM-2015-16722-O dated July 1, 2015, related to the information request on the criminal proceedings and sentence imposed on adolescent L.A.C. requested by the IACHR. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

⁷²¹ “La Misión del Ecuador ante #OEA respecto a la nota No. R17/15 de la Relatoría Especial para la Libertad de Expresión”. Twitter account of the Permanent Mission of Ecuador at the OAS @Ecuador_OEA. [February 25, 2015 - 8:31 PM](#).

546. Principle 11 of the IACHR's Declaration of Principles establishes that "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

547. *La República's* website was the victim of at least three cyber attacks that took it offline on March 19, May 1, and June 9, in the context of anti-government protests.⁷²²

548. 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."⁷²³

I. Communications Surveillance

549. The Office of the Special Rapporteur expressed on July its concern on the disclosure of a large amount of information that says that several governments in the hemisphere have reportedly purchased and implemented surveillance programs that could cause serious harm to the rights to privacy and freedom of thought and expression.⁷²⁴ During those days, at least 400 GB of information were publicly exposed from the Italian firm Hacking Team, a company dedicated to the commercialization of the Remote Control System (RCS) spying software. The program, also known as DaVinci or Galileo, is provided to government and government agencies. According to disclosed information, the Secretariat of Intelligence of Ecuador (Senain) appeared as a client of the company, among other agencies and institutions from other countries. The documents include invoices, emails and tax data, among other files.⁷²⁵

550. The surveillance software commercialized by the company is designed to evade computers or mobile phones' encryption, allowing the gathering of information, messages, calls and emails, voice over IP and chat communication from everyday devices. This software can also remotely activate microphones and cameras. According to the Hacking Team website, "evidence collection on monitored devices is stealth and transmission of collected data from the device to the RCS server is encrypted and untraceable."⁷²⁶

551. The digital media outlet *Gkillcity*, which had published information about Hacking Team and its alleged links to Ecuador, was hacked on July 8 through a "bombardment" of web traffic that overwhelmed its servers and brought the site down, according to its editor and founder, José María León. Its Twitter account was also hijacked for several hours.⁷²⁷ Other media outlets such as *Plan V* and *Mil Hojas* reported that they had been similarly attacked.⁷²⁸

⁷²² Fundamedios. June 10, 2015. [LaRepública.ec sufre ataque cibernético mientras transmitía en vivo protestas ciudadanas](#).

⁷²³ IACHR. [Annual Report 2013. Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 129.

⁷²⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 21, 2015. [Press Release R80/15. The Office of the Special Rapporteur Expresses Concern Over the Acquisition and Implementation of Surveillance Programs by States of the Hemisphere](#).

⁷²⁵ Wikileaks. No date. [Resultados de búsqueda de la palabra "Ecuador" en los archivos filtrados de Hacking Team](#); El País de Madrid. July 7, 2015. [Una filtración revela el uso de hackers por el Gobierno mexicano](#); Hipertextual. July 6, 2015. [Los países iberoamericanos que usaron a Hacking Team para espiar](#); El País de Madrid. July 8, 2015. [Hacking Team: "Ofrecemos tecnología ofensiva para la Policía"](#).

⁷²⁶ Hacking Team. No date. [The Solution](#).

⁷²⁷ José María León Cabrera/Facebook. July 8, 2015. [No title](#); José María León Cabrera/Facebook. July 9, 2015. [Brief update](#).

⁷²⁸ Plan V. July 12, 2015. [Hacking Team: ¿un patinazo del espionaje criollo?](#); El Telégrafo. July 10, 2015. [Ecuador asegura que "respeto la privacidad" tras revelaciones sobre supuesto espionaje](#); "#ALERTA: confirmamos que nuestro sitio web está bajo ataque informático. Esperamos superar este inconveniente." Twitter account of Fundación Mil Hojas @fmilhojas. [July 18, 2015- 3:57 PM](#).

552. On July 10, the Senain denied having “any kind of contractual relationship” with Hacking Team and said that it was “completely false that any contract” it may have entered into “would have been used to attack digital media or served other political objectives.”⁷²⁹

553. The Office of the Special Rapporteur urges the authorities to investigate, provide a clear explanation on these facts and apply sanctions when it corresponds. The States should also review the pertinent legislation as well as modify their policies in order to ensure that these programs measure up to international human rights principles.⁷³⁰

554. According to international standards, the use of programs or systems for the surveillance of private communications should be clearly and precisely established by law, genuinely exceptional and selective, and must be strictly limited to the needs to meet compelling objectives such as the investigation of serious crime as defined in legislation. Such restrictions must be strictly proportionate and consistent with the international standards of the right to freedom of expression. This Office has stated that the surveillance of communications and the interference in privacy that exceeds what is stipulated by law, which are oriented to aims that differ from those which the law permits or are carried out clandestinely, must be harshly punished. Such illegitimate interference includes actions taken for political reasons against journalists and independent media.

555. In its Joint Declaration on surveillance programs and their impact on freedom of expression, the Office of the Special Rapporteur stated that the law must pursue a legitimate aim and 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. Furthermore, access to communications and personal information must be legally authorized only under the most exceptional circumstances defined by legislation. When national security is invoked as a reason for the surveillance of correspondence and personal information, the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate. Its application shall be authorized only in the event of a clear risk to protected interests and when the damage that may result would be greater than society’s general interest in maintaining the right to privacy and the free circulation of ideas and information.⁷³¹

556. As stated by this Office in its report on Freedom of Expression and the Internet,⁷³² the decisions to undertake surveillance activities that invade the privacy of individuals must be authorized 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.

557. Transparency and access to information regarding these surveillance programs are also an essential element in a democratic society. As the Office of the Special Rapporteur has repeatedly stated, the access of public information is an essential right and “should be subject to a narrowly tailored system of exceptions to protect overriding public and private interests such as national security and the rights and

⁷²⁹ Secretaría de Inteligencia de Ecuador. July 10, 2015. [Boletín de prensa](#).

⁷³⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 21, 2015. [Press Release R80/15.The Office of the Special Rapporteur Expresses Concern Over the Acquisition and Implementation of Surveillance Programs by States of the Hemisphere](#).

⁷³¹ United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. [Joint Declaration on surveillance programs and their impact on freedom of expression](#). June 21, 2013.

⁷³² IACHR. [Annual Report 2013. Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

security of other persons. 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".

558. The law must ensure that the public can access information on private communications surveillance programs, the overall legal framework, their scope, procedures to be followed for authorizing surveillance, selecting targets of surveillance, and using, sharing, storing, and destroying intercepted material, and any regulation that may be in place to guarantee that they cannot be used arbitrarily. Moreover, the States have the obligation to broadly divulge information regarding the existence of illegal programs of surveillance on private communications.

559. As mentioned in the Joint Declaration on surveillance programs and their impact on freedom of expression, and according to the Global Principles on National Security and the Right to Information (The Tshwane Principles)⁷³³, the right to access to public information includes the information regarding national security. The law may establish specific exceptions as long as they are necessary in a democratic society.

560. The Office of the Special Rapporteur draws attention to any attempts aimed at silencing journalists and media that expose such activities.

J. Government Interruption of News Programs

561. The government's interruption of radio and television news programs to respond to media outlets and journalists, among others, continued in 2015. On June 15 and 16 the government ordered the interruption of regularly scheduled programs on *Ecuavisa* and *Teleamazonas* in order to say that the protests that were taking place in the country were part of "a clear plot by power groups with certain media complicity" and that those channels used "destabilizing methods full of lies and deception" during their coverage of the protests.⁷³⁴ On June 26, when broadcasters from the Province of Azuay were forced to air an hour-long broadcast to present a "report on events of general interest to the country."⁷³⁵ Similarly, on July 30, the government aired a three-minute spot on the main radio stations in Quito to discredit opposition member Guillermo Laso for statements he had made on the *Visión* radio station,⁷³⁶ among other cases.⁷³⁷

562. In one case, on October 18, the government even ordered the interruption of an *Ecuavisa* television program, supposedly to respond to a report on journalism in Ecuador that had been announced for that day, although in the end the channel decided to broadcast a report on a different issue.⁷³⁸

563. The Office of the Special Rapporteur has recognized the authority of the President of the Republic and high-ranking government officials to use the media for purposes of informing the public of prevailing matters of public interest; nevertheless, the exercise of this power is not absolute. The information that governments convey to the public through the presidential broadcasts must be strictly necessary to meet the urgent need for information on issues that are clearly and genuinely in the public interest, and for the length of time strictly necessary for the conveyance of that information. In this respect, both the IACHR and

⁷³³ Open Society Foundations. June 12, 2013. [The Global Principles on National Security and the Right to Information \(The Tshwane Principles\)](#).

⁷³⁴ Fundamedios. June 16, 2015. [Cadena acusa a medios de conspiración por cubrir protestas ciudadanas](#); Fundamedios. June 17 2015. [Cadena descalifica protestas ciudadanas y acusa de un complot contra la democracia](#).

⁷³⁵ Fundamedios. June 26, 2015. [Cadena de radio interrumpe noticieros de emisoras en Azuay durante una hora](#).

⁷³⁶ Fundamedios. July 30, 2015. [Cadena interrumpe espacios noticiosos en radio para descalificar a político opositor](#).

⁷³⁷ Fundamedios. March 25, 2015. [Dos cadenas de gobierno interrumpen espacios y descalifican a entrevistados](#); Fundamedios. March 29, 2015. [Tres cadenas interrumpen espacios informativos](#); April 27, 2015. [Cadena descalifica a periodista por críticas a asambleístas del oficialismo](#); Fundamedios. May 20, 2015. [Cadena interrumpe espacio de entrevistas y cuestiona comentarios de Presentador](#); Fundamedios. September 3, 2015. [Cadenas interrumpen espacio de entrevistas y descalifican a su director](#); Fundamedios. September 3, 2015. [Cadena y réplica interrumpen transmisión de programa investigativo](#).

⁷³⁸ Fundamedios. October 20, 2015. [Cadena sobre reportaje que aún no se emite interrumpe programa de investigación](#); Secretaría Nacional de Comunicación/Official YouTube Channel. October 18, 2015. [Periodismo en tiempos de Revolución](#).

its Office of the Special Rapporteur,⁷³⁹ as well as some national bodies of States party to the American Convention, applying international standards, have indicated that “not just any information justifies the interruption by the President of the Republic of regularly scheduled programming. Rather, it must be information that could be of interest to the masses by informing them of facts that could be of public significance and that are truly necessary for real citizen participation in public life.”⁷⁴⁰ Additionally, the principle 5 of the IACHR’s Declaration of Principles states that: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression”.

564. Public servants must also bear in mind that they have a position as guarantors of the fundamental rights of individuals; as such, their statements cannot deny those rights.⁷⁴¹ This special duty of care is heightened particularly in situations involving social conflict, breaches of the peace, or social or political polarization, precisely because of the risks such situations might pose for specific individuals or groups at a given time.⁷⁴² The Inter-American Court has also held that situations of risk can be exacerbated if they are “[the subject of government speeches] that may [provoke], suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise [...] freedom of expression.”⁷⁴³

K. Media Concentration

565. The *Albavisión* Group, owned by Mexican businessman Ángel González, consolidated the ownership or control of 16 media outlets in Ecuador using companies allegedly distributed among relatives, attorneys, and employees, including three television channels, 11 radio stations, and two newspapers (*El Comercio* and *Últimas Noticias*), according to an investigation published by the newspaper *El Universo*.⁷⁴⁴ Two of these are media outlets with national reach. The newspaper indicated that most other media owners held a single media outlet.⁷⁴⁵

566. The government of Ecuador replied to this information, stating: “*El Universo* conceals the assets of all of its fellow AEDEP members. The groups that it says supposedly own a single media outlet in fact hold more than half a dozen. (...) All of these groups run communications emporiums, private groups that during previous administrations had fat contracts with the State; now, since they can no longer continue to do business, they are permanent opponents of the Citizen’s Revolution because they no longer have the handouts of the past. These business groups that manage the news were squarely against the Communications Act, they complained about the sale of their companies with activities unrelated to

⁷³⁹ IACHR. [Report on the Situation of Human Rights in Venezuela](#). Chapter VI (Right to Freedom of Expression and Thought). OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Para. 487.

⁷⁴⁰ IACHR. [Annual Report 2011. 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. 69. December 30, 2011. Para. 199; IACHR. [Annual Report 2010. 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. 5. March 7, 2011. Para. 226; IACHR. [Declaration of Principles on Freedom of Expression](#). Principle 5.

⁷⁴¹ I/A Court H. R. *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182. Para. 131.

⁷⁴² I/A Court H. R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 151.

⁷⁴³ I/A Court H. R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 143.

⁷⁴⁴ *El Universo*. February 22, 2015. [Un magnate de Estados Unidos controla 10 medios nacionales](#).

⁷⁴⁵ The media mentioned include: Red TV Ecuador-La Tele, Telesistema, TropicalTV, Galaxia Stereo, Alfa Stereo, Platinum, Joya Stereo, Metro Stereo, Tropicálida Stereo and *El Comercio* daily.

communications (...) This is where the true media concentration lies, in the great oligopoly of the financial groups that have always run the country—all members of the AEDEP cartel and the Television Channels association. All of this was concealed by *El Universo* so as not to offend its partners and to look after their interests.”

567. *El Universo* answered in an article saying that in the investigations they had published they had “included the most important owners of the 61 media outlets registered under Cordicom”.⁷⁴⁶

568. Principle 12 of the IACHR's Declaration of Principles on Freedom of Expression, approved in 2000, establishes 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.”

L. Other Relevant Situations

569. On December 3, Ecuador's National Assembly passed 15 amendments to the Constitution, among which were the inclusion of communications as a public service, which was already in the Communications Act. Article 314 of the Ecuadorian Constitution provides that “The State shall guarantee that public services and the provision thereof observe the principles of obligation, generality, uniformity, efficiency, responsibility, universality, accessibility, regularity, continuity and quality. The State shall take steps to ensure that the prices and fees of public services are equitable, and shall establish the monitoring and regulation thereof.”⁷⁴⁷

⁷⁴⁶ *El Universo*. February 26, 2015. [Rafael Correa escribe contra medios, pero no habla de Ángel González](#).

⁷⁴⁷ Andes. December 3, 2015. [Conozca las 15 enmiendas que aprobó la Asamblea Legislativa de Ecuador](#); Asamblea Nacional del Ecuador. April 7, 2015. [Conoce las 16 propuestas de Enmienda Constitucional](#).

13. EL SALVADOR

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

570. On May 7, the head of the Financial Investigation Unit of the Office of the Attorney General [*Fiscalía General de la República*], Tovías Armando Menjívar, sent a letter to digital newspaper *La Página* warning that if it continued to publish “confidential” information on the alleged corruption case against former President Francisco Flores Pérez, the Office of the Attorney General could institute legal proceedings against the newspaper.⁷⁴⁸

571. In an interview with *El Faro* digital outlet, León López, a reporter for *La Página*, said that on April 16 they received a first warning from the Financial Investigation Unit of the FGR. According to López, the FGR wanted any information related to the Suspicious Operations Report [*Reporte de Operaciones Sospechosas*] on alleged irregular banking transactions by the former President to be top secret.⁷⁴⁹

572. On April 11, the Asociación de Periodistas de El Salvador condemned the order of the Office of the Attorney General's Financial Investigation Unit against *La Página* digital newspaper, to refrain from publishing information related to the criminal case against former President Francisco Flores. The Office of the Ombudsman [*Procuraduría para la Defensa de los Derechos Humanos*], political analysts and journalists associations also criticized the threats made by the FGR against certain publications. “The Attorney General’s warning against *La Página* daily could be detrimental to the right of freedom of expression”, published Ombudsman David Morales on his Twitter account.⁷⁵⁰

573. On July 16, *El Faro* newspaper filed a complaint with the Office of the Attorney General, and on August 11 it filed a second complaint, after receiving several threats. The media outlet reported that the attacks could probably be related to two publications which denounced abuses and possible extrajudicial executions committed by National Civil Police [*Policía Nacional Civil*] agents.⁷⁵¹

574. On July 21, *La Prensa Gráfica* filed a criminal complaint at the Office of the Attorney General over the cloning of the newspaper’s website, which took place on July 7. The cloned publication tried to circulate a false interview with the media outlet’s CEO, José Roberto Dutriz, titled “Dutriz: We are the owners of the newspapers and we can publish whatever we want.”⁷⁵²

575. Salvadoran writer Jorge Galán left El Salvador and applied for political asylum in Spain after he was assaulted and received death threats over the publication of his latest novel, which recounts the murder of six Jesuit priests in 1989, informed on November 12 Juan José Dalton, president of *Fundación Roque Dalton*, and artists linked to the alleged victim.⁷⁵³

⁷⁴⁸ El Faro. May 8, 2015. [Fiscalía amenaza con procesar legalmente a diario La Página por publicar información “confidencial” del caso Flores](#); La Página. May 8, 2015. [Procurador y analistas dan respaldo a Diario La Página y condenan actitud de Fiscalía](#).

⁷⁴⁹ El Faro. May 8, 2015. [Fiscalía amenaza con procesar legalmente a diario La Página por publicar información “confidencial” del caso Flores](#).

⁷⁵⁰ “La advertencia fiscal contra el Diario La Página sí podría ser lesiva al derecho a la libertad de prensa”. Twitter account of David Morales @ProcuradorDDHH. [May 8, 2015- 5:56AM](#); La Página. May 8, 2015. [Procurador y analistas dan respaldo a Diario La Página y condenan actitud de Fiscalía](#); La Prensa Gráfica. May 11, 2015. [APES condena acciones de la FGR y la ANEP](#).

⁷⁵¹ Ciper Chile. August 13, 2015. [Recrudece amenaza contra periodistas de El Faro en El Salvador](#); El Faro. August 13, 2015. [El Faro denuncia amenazas contra sus periodistas](#).

⁷⁵² elsalvador.com. August 13, 2015. [Fiscal se compromete a dar resultados por ataques cibernéticos contra LPG](#); La Prensa Gráfica. July 8, 2015. [Falsa entrevista con presidente de LA PRENSA GRÁFICA circula en internet](#); La Prensa Gráfica. July 21, 2015. [Denuncia por sitio que simulaba ser LA PRENSA GRÁFICA y difundía una entrevista falsa](#).

⁷⁵³ La Página. November 12, 2015. [Jorge Galán pide asilo en España por amenazas a muerte tras publicar novela sobre jesuitas asesinado](#); Contra Punto. November 12, 2015. [Huve por amenazas escritor salvadoreño](#).

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

B. Legal Reforms

577. During 2015 the Commission of Public Security and Fight against Drug Trafficking [*Comisión de Seguridad Pública y Combate a la Narcoactividad*] of the Legislative Assembly discussed the Draft Bill Protection against Information and Related Crimes [*Ante Proyecto de Ley Especial de Protección contra Delitos Informáticos y Conexos*]. According to the available information, the main objective of the initiative is to “punish cyber crimes, that is, criminal conducts committed through the use of information and communications technologies.”⁷⁵⁴ The Commission of Public Security had to introduce the Bill to be voted before December 31. Media reports indicate that the bill also establishes penalties “up to eight years in prison for crimes that endanger or harm the dignity, honor or privacy of a person or groups of people, through the dissemination of information, images, audio, video, false claims, making use of information technologies.” The Department of Legal Studies of the *Fundación Salvadoreña para el Desarrollo Económico y Social* recommended to eliminate from the draft bill those provisions which seek a jail sentence for any person who harms the dignity and honor of another person through the use of information and communication technological tools.⁷⁵⁵ Available information indicates that the Draft Bill was later modified to distinguish “between those who defame through social networks or e-mail and those who simply exercise their right to comment on a public official.”⁷⁵⁶

578. In different opportunities, the Office of the Special Rapporteur has considered it is a matter of fundamental importance that States protect the rights to freedom of expression and access to information on the Internet and ensure that measures that affect this right have the objective of preserving the singular capacity of this medium to promote freedom of expression through the free, instantaneous and low-cost exchange of information and ideas, without consideration of borders.⁷⁵⁷ In this sense, the right to freedom of expression benefits when States protect the privacy of digital communications, as well as the confidentiality, completeness and availability of computer data and systems. The adoption of legislative frameworks to prevent and punish cyber crimes and punishable conducts that make use of computer media is an important measure to achieve those objectives.

579. In adopting a criminal policy in this field, States must ensure that it is in conformance with international obligations in the field of human rights and particularly avoid it disproportionately restricting the freedom to seek, receive and disseminate information and ideas of all kinds or generating dissuasive effects in the exercise of those rights. In this sense, the States must guarantee compliance with international standards that provide, among other things, that all restrictions on freedom of expression must be provided for by law under the clearest and most precise terms possible; pursue a legitimate objective recognized by international law and be necessary to achieve said objective (“tripartite test”). When limitations imposed by

⁷⁵⁴ Asamblea Legislativa. November 11, 2015. [Anteproyecto de Ley Especial de Protección Contra los Delitos Informáticos](#).

⁷⁵⁵ La Prensa Gráfica. September 17, 2015. [Piden ley delitos informáticos que respete libertad expresión](#); Diario Co Latino. April 15, 2015. [Novedosa Ley contra Delitos Informáticos podría ser aprobada el jueves por congreso](#); La Prensa. July 18, 2015. [Ley contra delitos informáticos no debe violar otros derechos: ARENA](#); La Página. July 9, 2015. [Diputados dan marcha atrás con “ley mordaza” que penará críticas en redes sociales](#).

⁷⁵⁶ Diario 1. October 20, 2015. [Diputados dicen que ley contra delitos informáticos ya no será “mordaza”](#).

⁷⁵⁷ The United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to 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. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#); on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [Joint Declaration by the United Nations \(UN\) Special Rapporteur for Freedom of Opinion and the IACHR-OAS Special Rapporteur on Freedom of Expression](#).

criminal norms are involved, the Inter-American Court has stated that additionally, the inherent demands of strict legality must be satisfied: “If the restriction or limitation stems from criminal law, the strict requirements characteristic of criminal classification must be observed in order to satisfy the principle of legality in this realm.”⁷⁵⁸ This leads to the need “to use strict and univocal terms that clearly delineate the punishable conducts,” which implies “a clear definition of the incriminated conduct, the determination of its elements and the demarcation of non-punishable behaviors or illicit conducts punishable with noncriminal measures.”⁷⁵⁹ In any case, with its Joint Declaration on Freedom of Expression and Internet, the Special Rapporteurs recall the importance of avoiding the establishment of special restrictions on the content of materials disseminated through the Internet.⁷⁶⁰ In accordance with this principle, the laws that establish subsequent liabilities for the abusive exercise of freedom of expression must be neutral in terms of technology and avoid, except with reasonable justification, increasing the penalties for the simple fact that the crimes are committed using the Internet or communications technologies in general.

580. Likewise, regulation in this field must make clear that under no circumstance, journalists, members of the media or members of civil society who merely disseminate public information classified as reserved, because they consider it to be of public interest, may be subjected to subsequent punishments for the mere fact of publication. Equally, confidential sources and materials relating to the dissemination of research information must be protected by law.

581. On October 29, at a plenary session of the Legislative Assembly, the parliamentary group of the Grand Alliance for National Unity [*Gran Alianza por la Unidad Nacional*], introduced a bill to reform the Criminal Code seeking jail sentences for any person responsible of crimes against honor (defamation) [*calumnia, difamación or injuria*]. Such offenses are punished with 50 to 360 day-fines. The reform imposes a one to three-year prison sentence for criminal defamation [*calumnia*], three to five-years when it is advertised or repeated, and five to eight years when they are repeated and also advertised.⁷⁶¹

582. The *Fundación Salvadoreña para el Desarrollo Económico y Social* (FUSADES) stated that freedom of expression is threatened by a proposed reform of crimes against honor. FUSADES claimed this was the second proposal this year affecting the right of freedom of expression and information, and recommended “there must be no retreat in the regulation of crimes against honor with the return to prison sentences resulting in self-censorship, or worse, the abuse of their implementation against critics, so the project should be rejected.”⁷⁶²

C. Access to Public Information

583. The publication of a list of individuals and legal entities that have debts with the State sparked a debate in El Salvador on the scope of the right of access to information of citizens’ personal data.⁷⁶³

⁷⁵⁸ I/A Court H. R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

⁷⁵⁹ I/A Court H. R. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 55.

⁷⁶⁰ United Nations Special Rapporteur for Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), the Special Rapporteur of the Organization of American States (OAS) for Freedom of Expression and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (CADHP). June 11, 2011. [Joint Declaration on Freedom of Expression and the Internet](#). Principle 1 d); *See also*, Council of Europe. Committee of Ministers. [Declaration on freedom of communication on the Internet](#). Principle 1 “Member states should not subject content on the Internet to restrictions which go further than those applied to other means of content delivery.”

⁷⁶¹ [Elsalvador.com](#). November 5, 2015. [Partidos aún están dispuestos a analizar propuesta “mordaza” presentada por GANA](#); [El Mundo](#). October 30, 2015. [GANA pide cárcel para difamación y calumnia](#).

⁷⁶² [Fusades](#). (No date) November, 2015. [Libertad de expresión amenazada mediante propuesta de reforma a delitos contra el honor](#).

⁷⁶³ [Estrategia y Negocios](#). May 7, 2015. [El Salvador: Fisco publica lista de empresas deudoras: ANEP responde](#); Ministry of Finance through Dirección General de Impuestos Internos. No date. [RESOLUCIONES DE MULTAS EMITIDAS DEL 1 DE ENERO DE 2014 AL 14 DE ABRIL DE 2015](#); [El Faro](#). May 11, 2015. [El 0.12 % de los morosos de Hacienda deben el 25 % de la deuda tributaria](#).

584. On May 4, the General Board of Internal Revenue [*Dirección General de Impuestos Internos*], announced the names of 12,519 individuals and legal entities that had debts of 372.6 million US dollars with the State as of April 14.⁷⁶⁴ On May 7, the president of *Asociación Nacional de la Empresa Privada*, Jorge Daboub, called on employers to sue the State website *Transparencia Activa* because it disclosed that list after the Ministry of Finance published it on its website.⁷⁶⁵ “To the country’s debtors we say that, as the Government, we know that this problem is serious. The country forgoes a lot of money, there is a population that does not pay and others that do; that is where the money is obtained for the projects we carry out,” said the President of the Republic, Salvador Sánchez Cerén, in an interview on May 9.⁷⁶⁶

585. Principle 4 of the IACHR Declaration of Principles states: “[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.”

D. Media Concentration

586. On July 29, 2015, the Constitutional Division of the Supreme Court of El Salvador consolidated and adjudicated⁷⁶⁷ several constitutional challenges to different provisions of the 1997 Telecommunications Law.⁷⁶⁸ According to the plaintiffs, these provisions are contrary to the principles of

⁷⁶⁴ Casa Presidencial. May 4, 2015. [Divulgan nombres de contribuyentes deudores del Estado #GobSV](#); Presidencia. No date. [El Ministerio de Hacienda a través de la Dirección General de Impuestos Internos, a partir de este día dan a conocer los nombres de 12,519 personas naturales y jurídicas que están pendiente con el Estado al 14 de abril de 2015, que acumulan un monto total de adeudos, resoluciones, sentencias y fallos por 372.639.335.03 millones de dólares con el fisco.](#)

⁷⁶⁵ *Transparencia Activa*. May 12, 2015. [Asociación de Periodistas de El Salvador condena amenazas de la ANEP en contra de Transparencia Activa](#); *Transparencia Activa*. May 7, 2015. [ANEP promueve demandas contra Transparencia Activa por publicar empresarios deudores.](#)

⁷⁶⁶ La Página. May 9, 2015. [Presidente justificó publicación de lista de morosos con el fisco](#); La Prensa. May 9, 2015. [Presidente pide a empresas pagar deudas.](#)

⁷⁶⁷ Corte Suprema de Justicia de El Salvador. Sala de lo Constitucional. [Inconstitucionalidad 65-2012/36-2014](#). July 29, 2015.

⁷⁶⁸ The plaintiffs argued that the following articles were unconstitutional: Art. 15 para. 1: “The right of use derived from licenses granted by SIGET for spectrum usage is a private good and can be transferable, and subjected to fragmentation, in time, in frequency, and in geographical space.” Art. 81 [final paragraph]. If the technical report is favorable and any further interest is stated for the requested frequencies, SIGET, respecting the provisions of Article 111 hereof, shall order a public auction procedure, indicating its date of completion, which shall not exceed sixty days from the latest publication. If SIGET in its resolution recommends further fragmentation of the requested spectrum, it shall also order an auction, respecting the previous time limit.” Art. 82. In conducting auctions, SIGET, considering the characteristics of the spectrum block requested, will determine the auction system to be used, the base fee and the bid bond or any another form of surety determined by SIGET. The bond must equal fifty percent of the base fee of the auction. --- If SIGET has decided to fragment the portion of the radio spectrum requested, it shall use the simultaneous multiple-round auction system, and the bids shall be submitted in sealed envelopes. SIGET shall determine the minimum acceptable increase for bids in each round. The rounds shall continue to be held at the place, date, time and frequency determined by SIGET, until no higher bids are made for each of the spectrum blocks under auction. --- In all cases, licenses shall be awarded to bidders submitting the highest financial bid. In the case of simultaneous multiple-round auctions, licenses shall be awarded to final-round bidders submitting the highest bid for the portion under auction. --- The auction and its allotment shall be supervised by an external auditing firm of recognized standing and will be attended by a representative of SIGET and of the Office of the Attorney General of the Republic”. Art. 83. To carry out the auction, SIGET may extend the sixty-day period stipulated in Article 81 hereof, only with the purpose to hold several auctions at the same time, but under no circumstance shall it postpone any of these for more than eighty days.” Art. 84. In all public auctions, the license shall be awarded to the bidder that submits the highest financial bid.” Art. 85. The purpose of the allocation is conditional upon payment for the license, which must occur within five days. --- Payment shall always be in cash. When payment is made by check it will be certified or cashier.--- When the successful bidder fails to pay within the stated period, the bidder will lose the surety provided as a condition to take part in the auction, and the funds shall be added to SIGET’s assets. Also, SIGET shall revoke without further ado the allotment, and shall award it to the bidder who has submitted the second highest value; and so on. SIGET shall withhold for administrative charges one point five percent of the final amount resulting from the auction, which shall be added to its assets, transferring the rest to the Fondo de Inversión en Electricidad y Telefonía.” Art. 100. If one year before the allotment expires, the licensee has not applied for its early renewal, SIGET must initiate a public auction process in accordance with the procedure established by this Act and its regulations. SIGET will have a maximum period of six months from that date to conclude the auction. The new allotment will be effective the day after the current allotment expires.” Art. 115 [para. 2]: The application of this allotment shall be in accordance with the general rules applicable to regulated usage frequencies, specifying the service to be provided and its coverage area. These allotments will be granted for a twenty-year period, automatically renewable for equal periods.” Art. 118 [para. 2]: in order to avoid problems of harmful interference and to encourage a more effective use of the Radio Frequency Spectrum allocated to free available radio broadcasting services, the narrowest width between adjacent channels shall be 30 kHz for Amplitude Modulation, AM, 525-1705 KHz; and 400 KHz for Frequency Modulation,

equality and information pluralism. They challenged the auction as the sole mechanism for allocating frequencies, and the use of automatic extensions of licenses, and the lack of anti-monopoly limits to counter media concentration.”⁷⁶⁹

587. During the legal proceedings, on February 26, the General Superintendency of Electricity and Telecommunications [*Superintendencia General de Electricidad y Telecomunicaciones*] (Siget) presented to the Constitutional Chamber [*Sala Constitucional*] a report on the available frequencies and licensees of the radio spectrum which noted the existence of high levels of media concentration in the country. This concentration is focused on the private-business sector, which accounts for 95% of AM radio frequencies, 94% of FM spaces and 94% of broadcast television. Regarding the percentage allocated to television, the report notes that only 52.24% of the spectrum is concessioned, and of that, most (94.36%) is regulated use and licensed to private entities. The rest (5.64%) of the frequencies are of Government use and require authorization. As for the allocation of AM and FM radio frequencies, Siget confirmed that it granted 100% of nationwide radio frequencies and that only a few local ones are available. However, an advertising campaign by *Medios Unidos* and the *Asociación Salvadoreña de Radiodifusores* held that the spectrum has a 34% allocation of frequencies for community radio.

588. The Court first examined whether the auction procedure provided for in the Telecommunications Law to obtain an open radio or television concession violates the principle of equality and the right to freedom of expression. The Court underscored that “Information pluralism has a dual implication: (i) the absence of any limitation on the ideological orientation of the mass media—which allows the public to receive information and opinions from diverse ideological perspectives—and (ii) preventing the concentration of the mass media in the hands of a few, thereby precluding the formation of a media oligopoly or monopoly.”

589. Citing the case law of the Inter-American Court of Human Rights on this subject, the Constitutional Division held that “the media are truly instruments of freedom of expression rather than vehicles for its restriction, and therefore it is essential that they contain the most diverse information and opinions.” It maintained that “the more information a society has, and the more diverse its sources, the better its position to evaluate its political environment, and the greater and better its opportunities to participate substantively in the building of a democratic system; therefore, one of the challenges of a democratic society is to ensure society’s access to the media, preventing them from operating solely as instruments of consumer and electoral persuasion or as vehicles for the creation of profits for certain economic sectors.”

590. The Court recalled that, because it is a limited good, the electromagnetic spectrum “is subject to management and oversight by the State.” Given the nature of radio and television services, “the economic parameter is insufficient as the sole objective requirement for allocation, nor is it effectively conducive to ensuring access to the use of [the electromagnetic spectrum] to satisfy information pluralism.” It held that this mechanism “is not consistent with the principle of proportionality and equality guaranteed in the Constitution.”

591. With respect to the principle of proportionality, the Court explained that “although the legislature’s objective is constitutional (the maximization of resources by the State and the efficient use of the spectrum), the use of a public auction as the only concrete way to acquire radio spectrum, and with a single, subjective allocation criterion (the highest bid), goes beyond what is necessary to effectively accomplish the aim pursued.” In order to comply with the principle of proportionality, the legislature is required to “take account of other criteria besides the economic factor for the allocation of radio spectrum[,] such as: the service covered by the concession; the service provision methods; its coverage area; the frequencies or frequency bands to be used and the technical features of the equipment; the minimum service expansion

88-108 Mhz”. Art. 126 [para. 2]: Also, holders of such allotments, licenses, agreements, authorizations, regardless of the time left for their expiration, are granted by operation of law a license for the operation of the above services, for a twenty-year period, automatically renewable for equal periods counted from the effective date of this Act.”

⁷⁶⁹ Izcanal. March 10, 2015. [Informe de SIGET desmiente a ASDER y MEUNO en distribución de frecuencias](#); ARPAS/Facebook. February 26, 2015. [Concentración confirmada](#).

plan; the time period for setting up facilities and operations; the technical system in general and the service quality conditions, and the rights of broadcasting programs, when appropriate.” With respect to the principle of equality, the Court found that in distributing and allocating the frequencies, the legislature must employ the mechanism that best guarantees equal opportunity and prevents the concentration of the media in the hands of a few. It stated that with this objective, it is necessary to establish “additional selection criteria besides the highest bid, such as: legal capacity, experience and financial and organizational capacity, as well as the requirements for participating in the respective selection process; the favorability of the offer from a technical perspective and the economic perspective; specific experience, and the composition of the work team.”

592. Based on the above, the Constitutional Division declared “unconstitutionality by omission,” because “the Legislative Assembly did not include in the Telecommunications Law a regulation that guarantees alternative mechanisms in addition to auction for the acquisition of the right to use the radio spectrum for [...] open radio and television services, taking account of the fundamental rights at stake, such as the exercise of the fundamental right to establish mass media outlets and the right to be informed.” It underscored that “the government’s obligation of progressiveness in the promotion of fundamental rights requires it to develop its content over time and to do so gradually, according to the historical, cultural, and legal context. This obligation is not an open-ended one that allows government authorities to indefinitely postpone the protection or guarantee of a right.” Accordingly, the Court ordered the Legislative Assembly “to issue provisions for the clear, precise, organized, and systematic regulation of the alternative mechanisms for the awarding of concessions for the use of the radio spectrum, which will operate in addition to public auction, contained in Articles 81 (final clause), 82, 83, 84, 85, and 100 of the Telecommunications Law,” no later than December 31, 2015.

593. Second, the Court examined whether the automatic 20-year extensions provided for in the Telecommunications Law for concessions granted for the use of the radio spectrum—without the need for administrative processing, authorization, or a decision of the implementing authority—violate freedom of expression and democratic pluralism with respect to the media, thereby creating in practice an undue concentration of media ownership.

594. The Court found that “the concession mechanism with automatic extensions for prolonged periods of time is inconsistent with the principle of proportionality.” It explained that “although the administrative contracts for the use of a public good or to provide a public or essential service with regularity and continuity should be temporary but of a sufficient duration to allow the private concessionaire to be able to achieve profitability and to amortize the respective investments made, this should not mean that the contract remains in force in perpetuity.” In the Court’s opinion, that would essentially turn the contract into “a privatization of the public good or public or essential service.” The Court stated that “it is clear that the automatic extension of concessions for free reception radio and television broadcasting activities and services is an unreasonable limitation on the right to free competition, because it hinders the participation of other suppliers who are technically and financially able to provide those services.” The Court also found that these extensions entail “an obstacle to the democratization of the news media.” Accordingly, it held that “the Legislative Assembly must develop the respective regulations of the conditions under which the extensions for such services will be handled. The regulations must contain, at a minimum, the State obligation to assess compliance with the established conditions, the management of the goods and resources involved, and the responsibility of the concessionaires.”

595. Without prejudice to the above, the Court found that “the amendment of the legal rules governing the duration of open radio and television concessions may only operate prospectively, without affecting the conditions under which such concessions were originally awarded, and on the basis of which those concessionaires entered into the contracts and calculated their revenue and return on investments, thus acquiring rights and obligations which, bearing in mind the nature of these activities, entails assuming long-term commitments, with the proper advance notice and with the subsequent investment that allows them to be technologically efficient in terms of the planning and execution of the news and entertainment services rigorously demanded by the public as the recipient of these services.” It indicated that when the Telecommunications Law entered into force, “the automatic extension existed only as a consolidated legal

status, as a private right of the concessionaire, which as such is protected by Article 21 of the Constitution. The automatic extension was not an expectation, but rather a vested right.” The Court stated that “the effects of this judgment, by eliminating the term ‘automatically,’ cannot change an upcoming renewal or extension of the term for current concessionaires.”

596. Third, the Court examined whether the absence from the Telecommunications Law of oversight mechanisms to control anti-competitive or monopolistic practices in the telecommunications market entailed a legislative omission. The Court acknowledged that the absence of this type of mechanism from the law could “give rise to the consolidation of significant portions of the spectrum in the hands of a few concessionaires, the predominant position of important suppliers who have the material ability to affect competition in that market, as well as possible collusive agreements.” Nevertheless, it found that “in spite of the fact that the [Telecommunications Law] does not expressly provide oversight mechanisms to control anti-competitive or monopolistic practices in the telecommunications market, that regulatory gap is filled by the Competition Law, whereby the Superintendency of Competition is responsible for verifying and monitoring the existence of dominant agents or significant changes—real or potential—to free competition in the different telecommunications sectors, specifically to prevent the consolidation of significant portions of the spectrum in the hands of a few concessionaires.”

597. Finally, the Court stated that the legislative and regulatory changes that must be made in order to guarantee “the introduction of the additional mechanisms to the concession selection and award procedure for the use of radio spectrum frequencies for free reception radio and television broadcasting must be governed by the parameters established in the ruling.

598. Based on all of the above, the Court ordered as a precautionary measure that until the SIGET reallocates the new frequencies to the television operators affected by Digital Terrestrial Television and the legislature makes the necessary and pertinent adjustments to the Telecommunications Law and the Regulations thereto, must refrain from “(i) processing the requests from any party interested in obtaining a radio frequency concession for radio or television broadcasting, including those already filed; (ii) granting any type of concession requested for the use of the radio spectrum for radio or television broadcasting, regardless of the current stage of the procedure, and whether or not there has been any opposition; (iii) carrying out any public auction procedure related to the use of the radio spectrum for radio or television broadcasting; and (iv) receiving payment from the interested parties for any previously authorized concession and awarding such concessions”.

599. On October 14, the *Red por el Derecho a la Comunicación* presented a list of amendments to the Telecommunications Act in the Legislative Assembly, whereby it proposed the creation of alternative processes to auctions for the allocation of the radio frequency spectrum, a reform in their renewal process, to consider broadcasting services as essential to the community, to raise the role of the Superintendency of Competition [*Superintendencia de Competencia*] in broadcasting-related processes, and finally that the SIGET fulfill a real role as comptroller. The director of the *Asociación de Radios y Programas Participativos de El Salvador* (Arpas), Leonel Herrera, explained that “the differentiated way in which licenses are granted: to community media by competition, the private-business by auction, and state agents by direct allocation, leads to the recognition of the three communication sectors in the law.”⁷⁷⁰

600. On November 10, the *ad hoc* committee of the Legislative Assembly in charge of analyzing the implications of the judgment issued by the Constitutional Chamber of the Supreme Court on the unconstitutionality of some articles of the telecommunications act, received the Superintendency of Competition [*Superintendencia de Competencia*], *Asociación Salvadoreña de Radiodifusores*, ARPAS, *Telecorporación Salvadoreña*, *Cámara Salvadoreña de Telecomunicaciones*, *Grupo Megavisión*, *Genteve* and *Canal 29*, to hear their views. In turn, they presented their proposals for the two points in the

⁷⁷⁰ ARPAS. October 19, 2015. [Red por el Derecho a la Comunicación participa en foro: "Sentencia sobre la Ley de Telecomunicaciones"](#); ARPAS. October 18, 2015. [ReDCo presenta propuesta de reformas a Ley de Telecomunicaciones](#).

telecommunications act regarding the allocation of the radio spectrum that the Constitutional Chamber has ordered reformed.⁷⁷¹

601. The Office of the Special Rapporteur reiterates as indicated in the communication to the State,⁷⁷² that the assignation of radio or television licenses is a decision that has a definitive impact on the right to freedom of expression in both its dimensions: the right of everyone to freely express themselves and the right to receive a variety of ideas and opinions. Both access to the media for those who request a frequency and society's right to receive plural information (in keeping with Article 13 of the Convention) depend on this decision. Effectively, when it assigns frequencies, the State decides which voice the public will be able to hear in the coming years. As a consequence, this process defines the conditions under which the democratic deliberation necessary for the informed exercise of political rights will be carried out, as well as the sources of information that will allow individuals to make informed decisions on their personal preferences and life paths.⁷⁷³

602. In that sense, this Office has expressed that the assignation criteria and the procedure employed in their application must have, as one of their goals, the promotion of plurality and diversity of voices and limit itself to considering the requirements that are necessary to achieve that objective.⁷⁷⁴ The requirements for assignation can therefore not constitute a disproportionate barrier to achieving those goals. To this extent, the procedures for assignation of licenses should involve technical or administrative requirements with reasonable demands that would not require the contracting of technicians or specialists, because that indirectly places the economic factor as a barrier to access to the frequency. Also, when the availability of money or the economic criteria is the excluding or principle factor for adjudicating all radio or television frequencies, access to the frequencies under equal conditions is compromised and the achievement of pluralism and diversity is discouraged, thus excluding broad social sectors from the process of access⁷⁷⁵. In this regard, the IACHR has already indicated that “[i]n this respect, the IACHR has indicated that, “auctions based solely on economic criteria or that grant concessions without equal opportunity to all sectors are not compatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights [...] and the Declaration of Principles on Freedom of Expression.”⁷⁷⁶

603. Similarly, the Inter-American Court in its ruling in the case of *Marcel Granier y otros Vs. Venezuela* reaffirmed that, “given that the radio electric space is a scarce good, with a determined number of frequencies, this limits the number of media that can have access to them, thus the need to ensure that a diversity of visions or informative postures or opinions is represented in that number”. The Court stressed that “the pluralism of ideas in the media cannot be measured based on the quantity of communications media, but instead that the information transmitted is effectively diverse and addressed from divergent postures without the existence of one single vision or posture. This must be taken into account in processes for adjudication and renewal of broadcasting concessions or licenses”⁷⁷⁷. In the view of the Office of the

⁷⁷¹ Contra Punto. No date. [“Si medios quieren jugar limpio, que acepten revisar concesiones”](#); La Prensa Gráfica. November 11, 2015. [Asder avala reformas a Ley Telecomunicaciones](#).

⁷⁷² IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Radio Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 60.

⁷⁷³ IAHR. Office of the Special Rapporteur for Freedom of Expression. Communication to the State of El Salvador. December 2, 2015. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

⁷⁷⁴ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Radio Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 64.

⁷⁷⁵ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Radio Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 65.

⁷⁷⁶ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Radio Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 65; IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. Chapter VII: The Situation of Freedom of Expression, para. 414. Available at: <http://www.cidh.org/countryrep/Guatemala2003eng/Chapter-VII.htm>

⁷⁷⁷ I/A Court H. R. *Case of Granier et al (Radio Caracas Televisión) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2015. Para. 170.

Rapporteur, “one measure to promote diversity and pluralism in the media is to expressly recognize that there are at least three sectors in broadcasting—commercial, public, and community—and to reserve part of the digital television spectrum for community and other nonprofit initiatives.”⁷⁷⁸

604. Despite progress in the field of freedom of expression represented in this ruling, the Office of the Rapporteur express in the communication to the State⁷⁷⁹ its concern that the Chamber has established that the renewal of a license is an “acquired right” of the current concessionaires, and therefore the effects of the declaration of unconstitutionality “cannot alter subsequent renewal or extension of the period of the current concessionaires.”

605. In this regard, the Inter-American Court in its ruling on the above-mentioned case *Marcel Granier y otros Vs. Venezuela* concluded that the obligation to renew broadcasting concessions is not contemplated in international law or in comparative law⁷⁸⁰. Specifically, the Court indicated that “the plurality of media or information constitutes an effective guarantee of freedom of expression, the State having the duty to protect and guarantee this supposition, by virtue of article 1.1 of the Convention, which both through minimizing restrictions on information as well as by seeking a balance in participation, enables the media to be open to all, without discrimination, because it seeks for there ‘not to be individuals or groups that, a priori, would be excluded.’”⁷⁸¹

606. The decision is of greater concern in the framework of the process of transition towards open digital television initiated by El Salvador. This Office of the Rapporteur has expressed that “the goal of the technological transformation in broadcasting should be to ensure that the new digital dividend makes optimal use of the spectrum to guarantee the greatest possible plurality and diversity.”⁷⁸² The fact, then, that the State must ensure that existing operators are able to continue broadcasting in the new digital environment does not necessarily mean that these operators have a vested right to have automatic access to a completely new channel or frequency for their exclusive use, without a competition and at no cost. In this regard, it is recommended that operators’ track record as broadcasters be taken into account for obtaining new licenses for use of the spectrum. But the notion of “vested rights” should not assume a right to ownership of the spectrum that is used, but rather the legal certainty that operators can continue to broadcast under equal or similar conditions as before, on another part of the spectrum designated for television services, depending on countries’ technical plans.⁷⁸³

607. Subsequent to the closing date of this report, the Special Rapporteur learned that the Supreme Court issued a clarification resolution of the judgment which contemplate the principles developed by the Inter-American system of protection, on issues relating to the transition to digital broadcasting.

608. Principle 12 of the IACHR Declaration of Principles on Freedom of Expression provides 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

⁷⁷⁸ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2014](#). Chapter III (Freedom of Expression Standards for the Transition to Open, Diverse, Plural, and Inclusive Free-To-Air Digital Television). OEA/Ser.L/V/II Doc. 13. March 9, 2015. Para 32.

⁷⁷⁹ IAHRC. Office of the Special Rapporteur for Freedom of Expression. Communication to the State of El Salvador. December 2, 2015. Available for consultation at: Archives of the Office of Special Rapporteur for Freedom of Expression.

⁷⁸⁰ I/A Court H. R. *Case of Granier et al (Radio Caracas Televisión) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2015. Para. 179.

⁷⁸¹ I/A Court H. R. *Case of Granier et al (Radio Caracas Televisión) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2015. Para. 142.

⁷⁸² IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2009](#). Chapter VI (Freedom of Expression and Radio Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 80.

⁷⁸³ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2014](#). Chapter III (Freedom of Expression Standards for the Transition to Open, Diverse, Plural, and Inclusive Free-To-Air Digital Television). OEA/Ser.L/V/II Doc. 13. March 9, 2015. Para. 70.

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." Indeed, the IACHR and the Office of the Special Rapporteur for Freedom of Expression has indicated that, "If these media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy."⁷⁸⁴

⁷⁸⁴ IACHR. [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII: The Situation of Freedom of Expression, OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para. 419.

14. UNITED STATES

A. Progress

609. In *Bitterman v. Village of Oakley*, the Michigan Court of Appeals found that Michigan's Freedom of Information Act (FOIA) did not preclude the plaintiff, Shannon Bitterman, from access to the names of the donors of the Village of Oakley Police Donation Fund. The Court held on January 22 that the circuit court had erred when ruling that the information was exempt from disclosure under FOIA. The appellate court agreed with the circuit court that she was entitled to access the names of inactive police reservists from the Oakley police department.⁷⁸⁵

610. The Federal Communications Commission (FCC) approved on February 26 a net-neutrality policy that will ensure free and open access to the internet. The new order, released on March 12, 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.⁷⁸⁶ 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," given that without net neutrality, ISPs may engage in discriminatory practices by filtering content, slowing down or blocking access to certain websites, or charging fees when granting faster access to others, either on their own accord or through government or economic pressure.⁷⁸⁷ The Office of the Special Rapporteur welcomes this decision and reiterates the importance of net neutrality in complying with the United States' duty to promote and protect freedom of expression—equally protected online and offline—in a non-discriminatory manner.⁷⁸⁸

611. The Court of Appeals for the Ninth Circuit affirmed a lower court's holding on March 18 stating that a temporary restraining order against Google to remove the "Innocence of Muslims" video from YouTube was unjustifiable, in a hearing that included all judges. The Court of Appeals concluded that the "right to be forgotten" is not recognized in the United States and that the mandatory injunction issued by a three-judge panel majority in 2014 "censored and suppressed a politically significant film," infringing on First Amendment rights, the United States' law enriching the right to freedom of expression. This decision involves the notice that the Commission nationale de l'informatique et des libertés (CNIL) from France gave to Google Inc. on May 21, 2015. The order, which has been opposed by civil society organizations, compels Google to delist "right to be forgotten" requests across all Google extensions worldwide.⁷⁸⁹ Requiring Google to remove any links that might remain accessible to European users inevitably restricts users outside of the European Union from accessing certain information online.

⁷⁸⁵ State of Michigan Court of Appeals. [Bitterman v. Village of Oakley](#). January 22, 2015.

⁷⁸⁶ The White House. Net Neutrality, [President Obama's Plan for a Free and Open Internet](#). No Date; Federal Trade Commission. [Open Internet](#). No date.

⁷⁸⁷ United Nations Office of the High Commissioner for Human Rights. February 27, 2015. ["A real victory for freedom of expression" – UN rights expert hails US move to keep Internet open](#); The Guardian. June 11, 2015. [Net neutrality rules to go into effect after court rejects bid to block them](#).

⁷⁸⁸ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013; Human Rights Council Res. 20/8. 20th Sess., June 29, 2013, A/HRC/20/L.13. [The Promotion, Protection and Enjoyment of Human Rights on the Internet](#).

⁷⁸⁹ United States Court of Appeals for the Ninth Circuit. [Garcia v. Google, Inc.](#) March 18, 2015; Reporters Committee for Freedom of the Press. [The CNIL Order of May 21, 2015, to Google Inc.](#) September 14, 2015; Commission nationale de l'informatique et des libertés. June 12, 2015. [CNIL orders Google to apply delisting on all domain names of the search engine](#); The New York Times. June 12, 2015. [France Wants Google to Apply 'Right to be Forgotten' Ruling Worldwide or Face Penalties](#); The New York Times. August 5, 2015. ['Right to Be Forgotten' Online Could Spread](#).

612. The Court of Appeals for the Eleventh Circuit held on September 17 that a blogger's use of a photograph for the purpose of criticizing a business owner's business practices was fair use and protected under federal copyright law. The lower court had ruled in favor of blogger, Irina Chevaldina, and the appellate court upheld the judgment noting that Chevaldina used the photograph to "warn and educate others about the alleged nefariousness" of business owner, Raanan Katz.⁷⁹⁰ According to civil society organizations, copyright laws in the United States were being misused as a tool to censor speech. In this case, Katz had reportedly acquired the copyright for the photograph to go after the blogger for copyright infringement merely to silence the blogger's criticism against him.⁷⁹¹

B. Killings

613. On August 26, reporter Alison Parker and cameraman Adam Ward, two journalists working for the television station WDBJ7 were shot during a live broadcast in Moneta, Virginia, an eastern U.S. state. The two were conducting a live interview when Vester Lee Flanagan II approached the scene and began to shoot. Flanagan, a former employee of WDBJ7, shot and killed himself following a police chase hours after the shooting. The motives of the crime remained under investigation. According to a document Flanagan sent to ABC News television network, the attack was supposedly intended as revenge for the massacre of nine African Americans earlier in the year at a church in South Carolina.⁷⁹²

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

C. Social Protest

615. On March 4, the United States Department of Justice Civil Division published the "Investigation of the Ferguson Police Department" report. The report confirmed that the Ferguson Police department arrested people for exercising their right to freedom of expression, contrary to rights protected under the First Amendment of the U.S. Constitution. According to the report, on February 9, the six-month anniversary of Michael Brown's death, several individuals were peacefully protesting outside the Ferguson police station. Video documentation shows an officer announcing "everybody here is going to jail" causing the protestors to run. Six people were arrested during this incident.⁷⁹³

616. Several protests began in Baltimore on April 18 after the death of African-American, Freddie Gray, while he was under police custody. There were at least 486 cases of arrests during the protests,⁷⁹⁴ as well as three arrests and a complaint of a police assault against journalists during the protests.⁷⁹⁵ A video

⁷⁹⁰ United States Court of Appeals for the Eleventh Circuit. [Katz v Chevaldina](#). September 17, 2015.

⁷⁹¹ Electronic Frontier Foundation. September 17, 2015. [Court of Appeals Rejects Attempt to Use Copyright to Censor Online Speech](#); Electronic Frontier Foundation. No Date. [Takedown Hall of Shame](#).

⁷⁹² Los Angeles Times. August 26, 2015. [Suspect in killing of Virginia TV crew said he was 'just waiting to go BOOM'](#); The Guardian. August 27, 2015. [Virginia shooting: how Vester Flanagan forced the world to be his audience](#); Committee to Protect Journalists (CPJ). August 26, 2015. [Two U.S. journalists killed during live broadcast in Virginia](#); USA Today. August 26, 2015. [Killing of journalists in U.S. rare](#).

⁷⁹³ United States Department of Justice Civil Division. [Investigation of the Ferguson Police Department](#). March 4, 2015.

⁷⁹⁴ CNN. May 3, 2015. [Baltimore Curfew Lifted as National Guard Plans Exit, Officials Say](#); The Washington Post. May 4, 2015. [Accurately Charging People Arrested in Baltimore Proves to be Legal Challenge](#).

⁷⁹⁵ The Baltimore Sun. April 26, 2015. [Photojournalists 'Taken Down,' Detained by Police in Baltimore Protests](#); International Business Times. April 27, 2015. [Journalists Beaten, Detained By Police At Baltimore Protests](#); The Huffington Post. April 26, 2015. [Baltimore Police Beat Journalist During Protest \(GRAPHIC VIDEO\)](#); Mint Press News. May 5, 2015. [INTERVIEW: Baltimore Police Shoot At Jail Shawn Carrié For The Crime Of Journalism](#); The Guardian. May 2, 2015. [My 49 Hours in a Baltimore Cell – for Being a Reporter](#); Truth in Media. May 13, 2015. [Baltimore Exclusive: Detained Journalist and Eyewitness Give Firsthand Account](#); Photography is Not a Crime. May 4, 2015. [Journalist Arrested Trying to Record Baltimore Police Making Arrest](#).

posted on the Internet showed the police firing what were, allegedly, non-lethal projectiles and pepper spray on press workers.⁷⁹⁶ On April 27, the governor of Maryland declared a state of emergency and deployed the National Guard. At least 100 more people were arrested in New York during the demonstrations protesting what happened in Baltimore.⁷⁹⁷

617. Further, on the weekend of August 9 in St. Louis Missouri, demonstrators gathered to march, rally, and stage acts of civil disobedience to commemorate the one-year anniversary of Michael Brown's death. Although the demonstrations were generally peaceful, gunfire broke out leading St. Louis County Executive, Steve Stenger, to declare a state of emergency. Over the course of the demonstrations nearly five dozen people were arrested outside of the federal courthouse in St. Louis, about sixty were arrested for blocking traffic, and about twenty more were arrested for refusing to clear off a street.⁷⁹⁸

618. After a hearing in Ferguson on March 24, Missouri's municipal court set a trial date for the case of video journalist, Mary Moore. Moore was charged with "failure to comply and resisting arrest" after being detained on October 3, 2014 while covering the protests that erupted in Ferguson, Missouri after the killing Michael Brown.⁷⁹⁹ The Office of the Special Rapporteur sent a letter to Secretary of State, John F. Kerry, on April 23 to request information regarding Moore's prosecution.⁸⁰⁰ The Interim Permanent Representative of the United States to the OAS responded on June 4.⁸⁰¹ Although the United States' response did not include additional information regarding Moore's case, the letter confirmed that on March 30 four journalists had sued the St. Louis County Police Department alleging First Amendment violations. The letter also included as an attachment the "Investigation of the Ferguson Police Department" report and highlighted the Department of Justice's finding that the City of Ferguson's Police Department engaged in a pattern of First Amendment violations.⁸⁰²

619. On August 11, over a year after the police shooting of Michael Brown, CTV's Los Angeles bureau chief, Tom Walters, was charged with failing to comply with police officers' commands while covering the protests that followed Brown's death in Ferguson in August 2014.⁸⁰³ In addition to Walters, *Washington Post* reporter Wesley Lowery and *Huffington Post* reporter Ryan Reilly were also facing charges for trespassing and interfering with a police officer's performance while covering the 2014 protests.⁸⁰⁴ These charges come after the American Civil Liberties Union of Missouri had already reached a settlement agreement in July with the St. Louis County Police Department on behalf of two other journalists, Bilgin

⁷⁹⁶ We Are Change/YouTube. April 28, 2015. [Baltimore Police Go After and Shoot Journalists](#).

⁷⁹⁷ Perú.com. April 29, 2015. [Nueva York: Decenas de detenidos en nueva protesta por Baltimore](#); NBC News. April 30, 2015. [Freddie Gray Protests Spread Beyond Baltimore, 100 Arrested in New York](#).

⁷⁹⁸ The New York Times. August 10, 2015. [Emergency Declared in Ferguson After Shooting](#); Saint Louis County Missouri. August 10, 2015. [St. Louis County Executive Issues State of Emergency](#); Newsweek. August 10, 2015. [Police Arrest Dozens of Black Lives Matter Protesters, Body Slam Man in Ferguson](#); The Wall Street Journal. August 11, 2015. [Ferguson Suffers Another Night of Unrest, Police arrest 22 people overnight amid protests](#); NBC News. August 11, 2015. [Ferguson Demonstrations: Authorities Declare State of Emergency in St. Louis County](#).

⁷⁹⁹ The New York Times. March 24, 2015. [Trial set for videographer arrested covering Ferguson](#); Huffington Post. March 24, 2015. [Journalist Arrested While Covering Ferguson To Appear In Court](#).

⁸⁰⁰ Communication of the Permanent Mission of the United States to the OAS. June 4, 2015. Information related to the reported arrest of the journalist Ms. Mary Moore, in Ferguson, Missouri.

⁸⁰¹ Communication of the Permanent Mission of the United States to the OAS. June 4, 2015. Information related to the reported arrest of the journalist Ms. Mary Moore, in Ferguson, Missouri.

⁸⁰² United States Department of Justice Civil Division, Investigation of the Ferguson Police Department. March 4, 2015. Available for consultation: http://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/03/04/ferguson_police_department_report.pdf

⁸⁰³ The Star. August 11, 2015. [CTV journalist Tom Walters charged one year after Ferguson protests](#); Global News. August 12, 2015. [CTV reporter charged over Ferguson coverage](#).

⁸⁰⁴ Committee to Protect Journalists (CPJ). August 11, 2015. [Two U.S. journalists charged months after being arrested in Ferguson](#); Huffington Post. August 10, 2015. [Huffington Post, Washington Post Reporters Charged For Doing Journalism In Ferguson \(UPDATE\)](#).

Sasmaz and Trey Yingst, also arrested while covering the protests in Ferguson in 2014. Sasmaz and Yingst faced charges stemming from their arrests while covering the protests.⁸⁰⁵

620. 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 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”⁸⁰⁶ 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.”⁸⁰⁷

621. 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”.⁸⁰⁸

622. 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.⁸⁰⁹

D. Confidentiality of Sources

623. On May 11, former Central Intelligence Agency (CIA) officer Jeffrey Sterling was sentenced to three and a half years in prison for espionage. Sterling was first arrested in 2011 after the government determined that Sterling had engaged in “unauthorized disclosure of national defense information” when he allegedly gave *New York Times*’ reporter James Risen information about a secret CIA operation, “Operation Merlin.” This information was published in Risen’s book, *State of War*, which also included stories about warrantless domestic wiretapping leading to subpoenas and legal threats aimed at Risen. Risen refused to identify his sources, however the government served him with three subpoenas and obtained credit card, travel, bank, and phone records that allegedly pointed to Sterling as the source. Media organizations stated that Sterling’s conviction not only highlights the government’s attempt to force journalists to identify their sources, but also the dangers whistleblowers face when talking to journalists and the difficulty for journalist to obtain information from of whistleblowers.⁸¹⁰

⁸⁰⁵ United States District Court Eastern District of Missouri. [Yingst v. County of St. Louis, Missouri, Settlement Agreement and Release](#). July 28, 2015; United States District Court Eastern District of Missouri. [Sasmaz v. County of St. Louis Missouri, Settlement Agreement and Release](#). July 28, 2015; American Civil Liberties Union. August 3, 2015. [Two Journalists Recording Ferguson Protests Will Not Face Charges](#).

⁸⁰⁶ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009. Para 197.

⁸⁰⁷ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011.Para. 139.

⁸⁰⁸ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

⁸⁰⁹ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

⁸¹⁰ The Nation. May 12, 2015. [CIA Officer Jeffrey Sterling Sentenced to Prison: The Latest Blow in the Government’s War on Journalism](#); The New York Times. January 26, 2015. [C.I.A. Officer is Found Guilty in Leak Tied to Times Reporter](#). The Nation. October 8,

624. On August 20, National Security Agency (NSA) whistleblowers, Thomas Drake, Diane Roark, and Ed Loomis filed a civil action lawsuit alleging retaliation against the NSA, former NSA directors, the Department of Justice, and the Federal Bureau of Investigation. Drake was accused of leaking information to a *New York Times* reporter regarding the NSA's use of surveillance programs on Americans post 9/11. These accusations came only after Drake had spoken against warrantless surveillance mechanisms being used domestically to various officials within the NSA. Drake ultimately pled guilty to a misdemeanor and resigned as the NSA moved to revoke his security clearance and fire him. Prior to this lawsuit, Drake had filed a retaliation case against the government but his claim was rejected. On February 10, *McClatchyDC* received a copy of the report of the investigation in which the government rejects Drake's retaliation claim and condones its treatment against Drake.⁸¹¹

625. 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."

626. The Joint Declaration on Freedom of Expression and Responses to Conflict Situations, adopted on May 2015, affirms that "[i]ndividuals 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."

E. Access to Public Information

627. On February 10, the Electronic Frontier Foundation (EFF) initiated a lawsuit against the Department of Justice requesting the expedited release of records concerning the U.S. Marshals Service's use of small airplanes equipped with receivers that act like cell towers to gather data from cellphones used on the ground. The EFF learned of the use of this technology from a *Wall Street Journal* article published last November and requested all records concerning similar devices operated from planes, pursuant to the Freedom of Information Act. Defendants failed to produce any documents in response and exceeded that general deadline for any FOIA request.⁸¹²

628. On July 13, Award-winning journalist and filmmaker Laura Poitras, dedicated to national security reporting, filed a suit against the Department of Justice and U.S. transportation security agencies urging the government to disclose all records that may show why she was subjected to security screenings, searches, and questioning at airports in the U.S. and overseas between 2006 and 2012.⁸¹³ Poitras alleges she has been subjected to harassment by transit authorities that coincide with her work as a journalist. For example, she claims that the latter incident took place when she was working on a film about the WikiLeaks

2015. [The Government War Against Reporter James Risen](#); Committee to Protect Journalists (CPJ). January 13, 2015. [CPJ Welcomes Risen decision, calls on Holder to ensure journalists are not forced to reveal sources](#).

⁸¹¹ United States District Court for the District of Columbia. [Complaint](#). August 20, 2015; Inspector General United States Department of Defense. [Mr. Thomas A. Drake WHISTLEBLOWER REPRISAL INVESTIGATION](#). February 10, 2015; *McClatchyDC*. February 23, 2015. [Rejection of NSA whistleblower's retaliation claim draws criticism](#); PBS. December 10, 2013. [United States of Secrets Thomas Drake](#).

⁸¹² United States District Court for the District of Columbia. [Complaint for Injunctive Relief](#). February 10, 2015; *Wall Street Journal*. November 13, 2014. [Americans' Cellphones Targeted in Secret U.S. Spy Program, Devices on Planes that Mimic Cellphone Towers Used to Target Criminals, but Also Sift Through Thousands of Other Phones](#).

⁸¹³ United States District Court for the District of Columbia. [Complaint for Injunctive Relief](#). July 13, 2015; Electronic Frontier Foundation. July 13, 2015. [Oscar and Pulitzer Award-Winning Journalist Laura Poitras Sues U.S. Government To Uncover Records After Years of Airport Detentions and Searches](#).

founder Julian Assange.⁸¹⁴ On 2013, she was one of the journalists contacted by Edward Snowden to work on the National Security Agency's leaked documents.

629. On August 10, the Society of Professional Journalists sent a letter to President Obama expressing concern over the constraints on accessing public information that the federal government has imposed. Specifically the letter notes the government's prohibition on staff from communicating with journalists unless they first contact political appointees or public affairs offices; the government's refusal to allow reporters to speak to staff or delaying interviews past the point that it would be useful; monitoring interviews; and speaking under the condition that staff with the title of spokesperson not be identified. They allege these constraints on information-control curtail transparency.⁸¹⁵

630. On August 27, the Reporters Committee for Freedom of the Press and the Associated Press filed a lawsuit pursuant to the Freedom of Information Act (FOIA) against the Federal Bureau of Investigation (FBI) and the U.S. Department of Justice. Plaintiffs in this case seek the release of records regarding the FBI's practice of impersonating members of the news media. The lawsuit stemmed from an FBI operation in 2007, in which the FBI tricked a criminal suspect into downloading surveillance software onto his computer. To do so, the FBI impersonated journalists and published a fake Associated Press news story. This came to light after the FBI released documents in response to a FOIA request made by the Electronic Frontier Foundation. The lawsuit alleges that since this revelation, the FBI has "withheld information from the press and the public about its practice of impersonating members of the news media in order to deliver surveillance software to targets of investigations".⁸¹⁶

631. 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."

F. Internet and Freedom of Expression

632. Journalist Barret Brown was sentenced to sixty-three months in prison on January 22 after being accused of working with Anonymous, a hacking group, and of sharing a link to information obtained by hacker Jeremy Hammond in 2011. Ultimately, Brown was only charged with accessory-after-the-fact and obstruction of justice. However, the court concluded that posting a link to hacked data was a form of aiding the hackers and therefore part of a conspiracy.⁸¹⁷

633. The Office of the Special Rapporteur reiterates that given the special role that hyperlinks have in the Internet, establishing penalties for their use could cause a devastating chilling effect over the flow of information online. Internet users, including journalists, would remain fearful of possible reprisals for hyperlinking content to which they have no control. The Office of the Special Rapporteur has expressed that "[w]hen it comes to the Internet, it is crucial to evaluate all legitimacy conditions of the limitations of the right to freedom of expression based on these unique and special characteristics. Thus for example, when establishing the proportionality of a particular restriction, it is crucial to assess the impact (or cost) of that restriction not only from the point of view of the private parties directly affected by the measure, but also

⁸¹⁴ The Guardian. July 14, 2015. [Citizenfour director Laura Poitras sues US over 'Kafkaesque harassment'](#); The Intercept. July 13, 2015. [Laura Poitras Sues U.S. Government to Find Out Why She Was Repeatedly Stopped at the Border](#).

⁸¹⁵ Society of Professional Journalists. August 10, 2015. [Letter to President Barack Obama](#).

⁸¹⁶ Reporter's Committee for Freedom of the Press. August 27, 2015. [Reporters Committee, AP sue for records about FBI's impersonation of journalists](#); United States District Court for the District of Columbia. [Complaint](#). August 27, 2015; Electronic Frontier Foundation. September 12, 2008. [Endpoint Surveillance Tools \(CIPAV\)](#).

⁸¹⁷ The Guardian. January 22, 2015. [Barrett Brown sentenced to 63 months for 'merely linking to hacked material'](#); Wired. January 22, 2015. [Barret Brown Sentenced to 5 Years in Prison In Connection to Stratfor Hack](#); Department of Justice U.S. Attorney's Office Northern District of Texas. January 22, 2015. [Dallas Man Associated With Anonymous Hacking Group Sentenced To 63 Months In Federal Prison](#).

from the perspective of the impact on the functioning of the Internet”.⁸¹⁸ In this regard, this office has affirmed that “[o]n evaluating the proportionality of a restriction to freedom of expression on the Internet, one must weigh the impact that the restriction could have on the Internet’s capacity to guarantee and promote freedom of expression against the benefits that the restriction would have in protecting other interests.”⁸¹⁹ Also, the Office of the Special Rapporteur recalls that Principle 13 of the Declaration of Principles of the IACHR stipulates that “[d]irect or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

634. Legislation was introduced in Puerto Rico that seeks to increase protections to children and teenagers when using social media networks. The law would prohibit any website classified as “social media” from publishing data on children living in Puerto Rico. In order to disclose any data outside the scope of a children’s name and the city where they are from, the new legislation would be require that the users and their parents approve the content first. Further, the law would require that all personal information be removed from any website classified as “social media” at the request of parents, guardians, or users and imposes civil penalties for non-compliance.⁸²⁰

635. On June 18, the Illinois Supreme Court affirmed the circuit court and the appellate court’s opinion ordering Comcast Cable Communications to identify a subscriber who posted an anonymous message suggesting that a political candidate molested children. The Illinois Supreme Court held that the internet service provider must identify the subscriber who commented on an article in the Freeport Journal Standards.⁸²¹

636. The Office of the Special Rapporteur recalls that the Internet has been developed through set principles in design that as implemented have led to a decentralized online environment, which is neutral and open. In order to establish any restriction on the right to freedom of expression on the Internet, the impact the restriction could have on safeguarding and promoting the right to freedom of expression in this platform must be considered. To that end, it is necessary to consider available measures that are less restrictive to the affected rights.⁸²²

637. Principle 11 of the IACHR’s Declaration of Principles establishes that, “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

G. Communications Surveillance

638. On February 10, a U.S. District Court in the Northern District of California ruled in favor of the National Security Agency (NSA) in a lawsuit challenging the interception of Internet communications without a warrant. The District Court held that plaintiffs in this case, *Jewel et al. v. NSA*, failed to establish standing and could not challenge the possible interception of their internet communications.⁸²³ The plaintiff

⁸¹⁸ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 53.

⁸¹⁹ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 54.

⁸²⁰ Open States. No Date. [Puerto Rico House Bill PC 87](#); El Nuevo Día. September 14, 2015. [Proponen limitar información sobre menores en las redes sociales](#).

⁸²¹ Supreme Court of the United States. [Hadley v. Subscriber](#). June 18, 2015.

⁸²² IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Pars. 27, 133-176.

⁸²³ United States District Court for the Northern District of California. [Order Denying Plaintiffs’ Motion for Partial Summary Judgment and Granting Defendants’ Motion for Partial Summary Judgment](#). February 10, 2015; United States District Court for the Northern District of California. [Judgment on Fourth Amendment Claim](#). May 21, 2015.

filed a notice of appeal to the Ninth Circuit on June 4 and the Ninth Circuit set oral argument for October 29.⁸²⁴

639. According to information released by *The Intercept* and *Reuters* on March 10, the CIA engaged in practices aimed at breaking into Apple products by creating a software tool, Xcode, able to break Apple's encryption coding. *The Intercept* cited documents obtained from NSA whistleblower, Edward Snowden, to show efforts aimed at obtaining secure user data and communications. The documents included information about presentations that focused on products from other carriers, such as Microsoft's BitLocker Encryption system. The documents also showed that government security researchers attempted to break into Apple products as part of a top-secret program in collaboration with British intelligence researchers. Although the documents did not address the success of the CIA's targeting mechanisms or specific uses of the intelligence, they highlight ongoing efforts aimed at accessing customers' private data and communications.⁸²⁵

640. On March 10, Wikimedia Foundation, the nonprofit behind Wikipedia, filed a suit against the Department of Justice and the NSA as a result of the NSA's collection practice commonly referred to as "Upstream" surveillance. "Upstream" surveillance refers to the government's practice of tapping into cables that are part of the internet's infrastructure and that carry a vast amount of Americans' communications that occur domestically and originate or terminate abroad. The National Association of Criminal Defense Lawyers, Human Rights Watch, Amnesty International USA, Pen American Center, Global Fund for Women, The Nation Magazine, The Rutherford Institute, and the Washington Office on Latin America also joined the suit as plaintiffs.⁸²⁶ The defendants brought a motion to dismiss the case on May 29 and the plaintiffs objected. The court set oral argument for September 25.⁸²⁷

641. Human Rights Watch sued the U.S. Drug Enforcement Administration (DEA) on April 7 over the DEA's use of a surveillance program that collected telephone metadata from telephone calls that Human Rights Watch made to foreign countries. Specifically, Human Rights Watch alleges that the DEA engaged in surveillance without reasonable suspicion when it collected data regarding the time, date, duration, and number of telephone calls made to certain foreign countries. The DEA disclosed in January the existence of its surveillance program during criminal proceedings against a man accused of illegally exporting goods to Iran.⁸²⁸

642. On May 7, the Second Circuit Court of Appeals held that Section 215 of the Patriot Act, which permits the government to "make an application for an order requiring the production of any tangible things [...] for an investigation to obtain foreign intelligence information not concerning a United States person," does not authorize the collection of mass telephone metadata.⁸²⁹ The Court affirmed that the telephone metadata collection program "exceeds the scope of what Congress has authorized and therefore violates [section] 215" of the Patriot Act. The Court of Appeals concluded that section 215 "cannot be interpreted in a way that defies any meaningful limit." The decision stems from a lawsuit filed on June 11, 2013 by the ACLU

⁸²⁴ United States District Court for the Northern District of California Oakland Division. [Plaintiffs Carolyn Jewel, Erik Knutzen and Joice Walton's Notice of Appeal and Representation Statement](#). June 4, 2015; United States Court of Appeals for the Ninth Circuit. [Order Setting Oral Argument](#). August 28, 2015.

⁸²⁵ *The Intercept*. March 10, 2015. [The CIA Campaign to Steal Apple's Secrets](#); *Reuters*. March 10, 2015. [CIA sought to hack Apple iPhones from earliest days: The Intercept](#).

⁸²⁶ United States District Court District of Maryland. March 10, 2015. [Complaint for Declaratory and Injunctive Relief](#); *The New York Times*. March 10, 2015. [Stop Spying on Wikipedia Users](#); *BBC News*. March 10, 2015. [Wikimedia Foundation sues NSA over surveillance](#).

⁸²⁷ United States District Court for the District of Maryland. [Motion to Dismiss](#). August 6, 2015; United States District Court for the District of Maryland. [Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss](#). September 3, 2015; Wikimedia blog. September 4, 2015. [Wikimedia opposes government's motion to dismiss Wikimedia v. NSA](#).

⁸²⁸ IFEX. April 8, 2015. [Human Rights Watch sues US Drug Enforcement Administration over surveillance](#); *Electronic Frontier Foundation*. April 8, 2015. [Human Rights Watch Sues DEA Over Bulk Collection of Americans' Telephone Records](#); *USA Today*. January 16, 2015. [Feds kept separate phone record database on U.S. calls](#).

⁸²⁹ United States Court of Appeals for the Second Circuit. [ACLU v. Clapper](#). May 7, 2015.

challenging the legality of the NSA's mass collection of Americans' phone records. The complaint argues that the "dragnet violates the right to privacy protected by the Fourth Amendment as well as the freedoms of speech and association protected by the First Amendment. The complaint also charges that the program exceeds the authority that Congress provided in Section 215 of the Patriot Act."⁸³⁰

643. On June 2, the United States Senate approved the USA Freedom Act. The Act places restrictions on the National Security Agency's (NSA) surveillance power. The Act requires more transparency regarding the secretive Foreign Intelligence Surveillance Court (FISC) overseeing surveillance, how much data is being collected, and what information private companies turn over to the government. The Act also allows those who receive national security letters to challenge them. National security letters contain a gag provision prohibiting the recipient of the letter from notifying their client that their information is being disclosed to the government. Significantly, the Act also blocks the intelligence community's ability to engage in the bulk phone collection program. The Act puts new constraints on how the government may obtain records under the Patriot Act and other national security laws.⁸³¹

644. On June 29, the FISC ruled that the NSA may temporarily resume its metadata telephone collection program.⁸³² The Court held that the recently-enacted USA Freedom Act ended the bulk collection of telephone metadata, but "in doing so, Congress deliberately carved out a 180-day period following the date of enactment in which such collection was specifically authorized". The FISC noted it "is aware that, prior to enactment of the USA Freedom Act, the Second Circuit in *Clapper* rejected the government's arguments that the call detail records acquired under the NSA program were relevant to an authorized investigation other than a threat assessment as required by [the law]." However, it highlighted that "Second Circuit rulings are not binding on the FISC, and this Court respectfully disagrees with that court's analysis, especially in view of the intervening enactment of the USA Freedom Act."

645. On November 9, U.S. District Court Judge Richard Leon granted a renewed motion for preliminary injunction to the plaintiff in the case *Klayman et al., v. Obama et al.*, and ordered to enjoin the future collection and querying of their telephone record metadata.⁸³³ The Judge recognized that "during the current 180-day transition period, the Bulk Telephony Metadata Program has continued by judicial, not legislative, fiat." The Court considered that it remains that "the indiscriminate, daily bulk collection, long-term retention and analysis of telephony metadata almost certainly violates a person's reasonable expectation of privacy." It concluded that "the plaintiff will likely succeed in showing that the searches during this 180-day transition period still fail to pass constitutional muster," and will suffer irreparable harm absent injunctive relief, since "the loss of constitutional freedoms for even one day is a significant harm."

646. The Joint Declaration on Freedom of Expression and Responses to Conflict Situations, adopted on May 2015 affirms that "[c]onflict 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". The Office of the Special Rapporteur recalls that surveillance programs must be designed and implemented according to international standards on human rights. Particularly, States must 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 pursue a legitimate aim, and establish limits with regard to the nature, scope and duration of these types of measures; the reasons for

⁸³⁰ ACLU. Octobre 29, 2015. [ACLU v. Clapper - challenge to NSA mass call-tracking program](#).

⁸³¹ United States House of Representatives Judiciary Committee. No Date. H.R. 2048, [The USA FREEDOM Act](#); National Public Radio. June 2, 2015. [Senate Approves USA Freedom Act, Obama Signs It, After Amendments Fail](#); IFEX. June 4, 2015. U.S. [Congress passes Freedom Act, increasing NSA oversight](#).

⁸³² United States. Foreign Intelligence Surveillance Court. [In re application of the Federal Bureau of Investigation for an order requiring the production of tangible things. Docket no. Br. 15-7529. In re motion in opposition to government's request to resume bulk data collection under Patriot Act Section. 215. Docket No. Misc 15-01](#). June 29, 2015.

⁸³³ United States District Court for the District of Columbia. *Klayman et al., Plaintiffs v. Obama et al., Defendants*. Civil Action No. 13-851. [Memorandum Opinion, November 9, 2015](#).

ordering them; the authorities with power to authorize, execute and monitor them; and the legal mechanisms by which they may be challenged. Furthermore, the law must authorize access to communications and personal information only under the most exceptional circumstances defined by legislation. When national security is invoked as a reason for the surveillance of correspondence and personal information, the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate. Its application shall be authorized only in the event of a clear risk to protected interests and when the damage that may result would be greater than society's general interest in maintaining the right to privacy and the free circulation of ideas and information.⁸³⁴

647. 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.⁸³⁵

H. Other Relevant Situations

648. The United States Supreme Court held on March 23 that Texas' specialty license plate designs were government speech, and thus the state did not violate the Constitution's free speech guarantees when it rejected a proposed design featuring a Confederate battle flag, identified with the southern states that fought in the Civil War against the abolition of slavery. The Court expanded the definition of government speech, which could allow the government to indirectly endorse some speech while suppressing opposing viewpoints.⁸³⁶

649. On June 12, the U.S. Department of Defense published a new Law of War Manual. The Manual, which is the first department-wide law of war manual, states that journalists may be treated as "unprivileged belligerents." The Manual states that "[i]n general, journalists are civilians. However, journalists may be members of the armed forces, persons authorized to accompany the armed forces, or unprivileged belligerents".⁸³⁷ The Manual also grants the United States the authority "to censor journalists' work or take other security measures so that journalists do not reveal sensitive information to the enemy. Under the law of war, there is no special right for journalists to enter a State's territory without its consent or to access areas of military operations without the consent of the State conducting those operations".⁸³⁸

650. On July 28, wireless carrier AT&T announced that it would unlock FM radio signals in mobile phones. Other carriers such as, Sprint and T-Mobile, have also activated this feature. Supporters argue that this service is critical during emergencies to access information free of charge. According to the *National Public Radio*, this service allows people to access FM broadcasts without internet or cell service, free of charge, and in a manner that conserves a mobile's battery life. United States House Democrats recently asked

⁸³⁴ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 415.

⁸³⁵ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 416.

⁸³⁶ Supreme Court of the United States. [Walker v. Sons of Confederate Veterans, Inc.](#) June 18, 2015.

⁸³⁷ Office of the General Counsel Department of Defense. [Department of Defense Law of War Manual](#). June 12, 2015.

⁸³⁸ Office of the General Counsel Department of Defense. [Department of Defense Law of War Manual](#). June 12, 2015; Committee to Protect Journalists (CPJ). July 31, 2015. [In times of war, Pentagon reserves right to treat journalists like spies](#).

the Federal Communications Committees' chairman to consider opening FM chips so that the public can use FM radio to access emergency alerts.⁸³⁹

651. On August 25, U.S. presidential pre-candidate, Donald Trump, expelled Jorge Ramos from a news conference in the state of Iowa. Body guards escorted Ramos, a journalist and leading figure of the Spanish television network *Univision*, after he began asking Trump questions without being called on. Although Trump later allowed Ramos to return and ask questions, this incident is one of several events in which Trump has reportedly retaliated against journalists for asking tough questions or expressing certain views. For example, Trump allegedly prohibited reporters with *The Des Moines Register* from attending his campaign events in Iowa after the newspaper expressed in July that Trump should abandon his presidential aspirations.⁸⁴⁰ Trump also acted hostile against *Fox News* journalist Megyn Kelly after she asked rigorous questions during the presidential debate.⁸⁴¹

⁸³⁹ Letter to Tom Wheeler. March 3, 2015. Available for consultation at: http://www.nab.org/documents/newsRoom/pdfs/030315_Wheeler_FM_radio_chips.pdf; National Public Radio. April 16, 2015. [The Hidden FM Radio Inside Your Pocket, And Why You Can't Use It](#); National Association of Broadcasters. No Date. [Expand Access to Emergency Information: Unlock FM](#); Free Radio on my Phone. July 28, 2015. [AT&T to Activate FM Chips](#).

⁸⁴⁰ The Des Moines Register. July 21, 2015. [Editorial: Trump should pull the plug on his bloviating side show](#); CNN Politics. July 26, 2015. [Trump campaign bars Iowa paper from Iowa event after critical editorial](#); The New York Times. August 25, 2015. [At Donald Trump Event, Jorge Ramos of Univision Is Snubbed, Ejected and Debated](#); Politico. July 24, 2015. [Trump bans Des Moines Register from Iowa campaign event](#).

⁸⁴¹ CNN/YouTube. August 8, 2015. [Donald Trump: I don't respect Megyn Kelly \(CNN interview with Don Lemon\)](#).

15. GUATEMALA

652. Guatemala in 2015 recorded three murders of journalists, in addition to diverse episodes of harassment and aggressions against journalists and media outlets. According to investigations carried out in some of these cases, those responsible for the murders, harassment and aggressions include both organized crime and diverse political officials and leaders as well as local state authorities. This situation generates an atmosphere of intimidation for the press with the resulting inhibitory effect and self-censorship of the communicators as well as effects on the right to information in diverse zones of the territory.

653. Implementation of a system of protection for journalists and employees at the media outlets remains under discussion. In 2015 there was progress in the design of the mechanism, with consultations with the civil society and human rights organizations, but the text must be finalized for subsequent approval and implementation.

654. In contrast, there was no information on progress regarding the obligation assumed on multiple occasions by the State to legally recognize the community broadcasting sector and implement effective allocation of authorizations for the use of frequencies by this sector and, on the contrary, the criminalization of these communications media continued.

655. Nor was there improvement in the situation of concentration of ownership of the communications media in Guatemala, in which a large number of television channels and radio stations are in the hands of Mexican entrepreneur Remigio Ángel González, who in turn continues to receive a very significant proportion of government advertising.

656. During 2015, Guatemalan society was the protagonist of multitudinous demonstrations, the great majority of which were peaceful, in protest against widespread corruption in the state apparatus and particularly to call on the branches of government to react in the face of serious cases of corruption that initially involved vice president Roxana Baldetti. Baldetti resigned her post in May of 2015 when faced with a case of alleged corruption and in August was tried by the Justice System. After the investigations progressed, the Office of the Attorney General [*Ministerio Público*] and the International Commission against Impunity in Guatemala [*Comisión Internacional contra la Impunidad en Guatemala*] also entailed president Otto Pérez Molina to that case, who was finally stripped of his presidential immunity by the Congress of Guatemala and subjected to criminal proceedings.⁸⁴² The Office of the Special Rapporteur takes note of this simple exercise of the right to freedom of expression and the right to freedom of assembly as a form of participation by societies in strengthening democracy.

A. Killings

657. There were three murders of journalists in the department of Suchitepéquez, in southwestern Guatemala, in March of 2015. Reporters Danilo López, of *Prensa Libre*, and Federico Salazar, of *Radio Nuevo Mundo*, were shot on March 10 after covering the municipality of Mazatenango. According to *Prensa Libre*, López had previously been threatened by a former mayor because of articles reporting on bad practices by government employees. In that attack, journalist Marvin Túnchez was also wounded. Days later, Servicable cameraman Guido Villatoro was killed in Chicacao, 25 kilometers from Mazatenango. In mid-March, the Guatemalan Attorney General's Office reported that prosecutors from the District Office in Suchitepéquez were threatened with attack because of investigations in the case. They also reported the arrest of the alleged masterminds and perpetrators in the murder of Villatoro⁸⁴³.

⁸⁴² BBC Mundo. September 3, 2015. [La revolución pacífica en la región más violenta del mundo](#); UN. Office of the High Commissioner. No date. [A Guatemalan awakening: the revolt for justice and change](#); Prensa Libre. May 31, 2015. [Miles de guatemaltecos manifiestan durante más de 18 horas contra corruptos](#).

⁸⁴³ IACHR. March 12, 2015. [Press release R28/15. The Office of the Special Rapporteur for Freedom of Expression condemns killing of two journalists in Guatemala](#); IACHR. March 23, 2015. [Press release R35/15. The Office of the Special Rapporteur for Freedom of Expression condemns killing of reporter in Guatemala](#); Plaza Pública. March 10, 2015. [Las últimas palabras de Danilo López: "Tengo miedo, el ambiente está muy cargado"](#); Ministerio Público. March 14, 2015. [Efectiva investigación del MP permite aprehensión de sospechosos del crimen de periodista Guido Villatoro](#); Ministerio Público. March 15, 2015. [Juez resuelve internamiento de menor por asesinato de periodista](#);

658. In early July, the Justice System prosecuted three men for the murders of López and Salazar, two of whom were police agents of the Unit for Protection of Personalities [*Unidad de Protección de Personalidades*]. Two individuals allegedly involved in the murders had previously been arrested and tried for the crimes of criminal association, homicide [*asesinato en concurso real*] and attempted murder⁸⁴⁴. The Journalists' Association of Suchitepéquez [*Asociación de Periodistas de Suchitepéquez*] denounced threats against some of its members following the arrest of the police officers.⁸⁴⁵ According to a joint journalistic investigation by four Guatemalan media outlets, four mayors or former mayors could be implicated in these crimes, and one of them had been a friend of López until they distanced themselves from each other over the adjudication of a public infrastructure project in which both had interests. They had allegedly been talking for hours before the killing.⁸⁴⁶

659. The Office of the Special Rapporteur appreciates the announcement by the Office of the Attorney General of Guatemala on July 29, which reported that he would analyze a suggestion from the Quetzaltenango Press Association [*Asociación de Prensa de Quetzaltenango*] (southwestern part of the country) to decentralize the Unit for Crimes against Journalists of the Human Rights Section of the Attorney General's Office [*Unidad de Delitos Contra Periodistas de la Fiscalía de Sección de Derechos Humanos*], in the wake of increasing violence against the press. The Attorney General said that the Five-year Plan of the Office of the Attorney General provides for decentralization and specialization of the prosecutors' offices as one of its "fundamental axes". He also stated that the opening of an agency of the International Commission against Impunity in Guatemala was planned for Quetzaltenango along with an agency of the Special Prosecutors' Office against Impunity, although he said that it would depend upon the available budget.⁸⁴⁷

660. The Office of the Special Rapporteur considers it essential for the State to clarify the motive of these crimes against journalists and media workers, identify, prosecute, and punish those responsible, both perpetrators and masterminds, and adopt fair measures of reparation for the victim's family.

661. The Office of the Special Rapporteur recalls 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. The legal systems and practices of the States must clearly reflect that crimes against freedom of expression are especially serious, given that they represent a direct attack on all fundamental rights.⁸⁴⁸

662. In addition, the Office of the Special Rapporteur has reiterated that the States have the obligation to take measures to prevent violence against journalists and media workers.⁸⁴⁹ This obligation is

Ministerio Público. March 27, 2015. [MP confirma aprehensión de supuesto autor intelectual de asesinato de periodista](#); La Nación. March 18, 2015. [Amenazan a fiscales que investigan asesinato de periodistas](#); Soy 502. March 17, 2015. [Fiscales del MP que investigan muerte de periodistas son amenazados](#).

⁸⁴⁴ Prensa Libre. July 1, 2015. [Ligan a proceso detenidos por muerte de periodistas](#); El Periódico. July 2, 2015. [Registro de llamadas implica a policías en asesinato](#); Ministerio Público. July 1, 2015. [Juez liga a proceso y envía a prisión preventiva a sindicados por caso de asesinato de periodistas](#); Prensa Libre. March 12, 2015. [Capturan en Reu a presunto asesino de periodistas](#).

⁸⁴⁵ Soy 502. June 26, 2015. [Periodistas en Suchitepéquez denuncian que amenazas continúan](#); Prensa Libre. June 26, 2015. [Amenazan a periodistas en Mazatenango por captura de policías](#).

⁸⁴⁶ Soy 502. July 3, 2015. [Los cuatro alcaldes ligados al asesinato de los periodistas de Suchi](#); Plaza Pública. March 10, 2015. [Las últimas palabras de Danilo López: "Tengo miedo, el ambiente está muy cargado"](#); Contrapoder. July 2, 2015. [Los alcaldes de Suchitepéquez y el crimen del periodista](#).

⁸⁴⁷ Ministerio Público de Guatemala. July 29, 2015. [Fiscal General atiende solicitud de periodistas de Quetzaltenango](#).

⁸⁴⁸ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation 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. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

⁸⁴⁹ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 33.

particularly important in countries where there is a risk of these acts occurring and in specific situations where the authorities know or should have known that there is a real and immediate risk that such crimes will be committed.⁸⁵⁰ In those countries or regions where journalists are especially vulnerable due to the context of violence directed against them, the State has a heightened responsibility in its obligations of prevention and protection. In those situations, the absence of a general public policy of prevention can result in the State's failure to meet its duty of prevention.⁸⁵¹

663. The obligation to prevent violence against journalists includes: a) adopting a public discourse that contributes to the prevention of violence against journalists. The Inter-American Court has emphasized that the duty to guarantee the rights to freedom of expression and humane treatment requires public officials to refrain from making statements that place journalists and media workers at greater risk of violence⁸⁵²; b) instructing its security forces to respect the media. Appropriate instruction of State security forces on the role of the press in a democratic society is an important step in preventing violence against journalists and media workers. For this reason, the Office of the Special Rapporteur has recommended that the States adopt adequate mechanisms to prevent violence against media workers, including the training of public servants, especially the police and security forces and, if necessary, the adoption of conduct manuals or guidelines on freedom of expression⁸⁵³; c) the obligation to respect the right of journalists to maintain the confidentiality of their sources of information, notes, and personal and professional records. The protection of confidential sources not only contributes to the press's fundamental role as watchdog but also helps to prevent journalists from becoming victims of violence⁸⁵⁴; d) the obligation to punish violence against journalists. In order to prevent violence against journalists and media workers, it is indispensable for the legal system to punish this conduct in a manner that is proportional to the harm committed⁸⁵⁵; e) the obligation to maintain accurate statistics on violence against journalists. Understanding the magnitude and methods of acts of violence against journalists and media workers is a fundamental condition for the implementation of effective prevention policies such as, for instance, the design of reliable risk maps. In the context of violence against journalists, the Office of the Special Rapporteur has stressed the importance of compiling detailed, disaggregated statistics as an essential prerequisite for designing, implementing and evaluating effective public policies of prevention, protection and criminal prosecution of violence against journalists.⁸⁵⁶

664. The States also have the obligation to protect at-risk journalists and media workers. According to the human rights standards of the Inter-American System, the States have an obligation to

⁸⁵⁰ I/A Court H. R. *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of September 3, 2012. Series C No. 248. 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. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

⁸⁵¹ I/A Court H. R. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 282.

⁸⁵² IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 34.

⁸⁵³ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 47.

⁸⁵⁴ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paras. 52 and 54.

⁸⁵⁵ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paras. 55.

⁸⁵⁶ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paras. 59 and 60.

protect those who are exposed to special risk with respect to their fundamental rights. The obligation to protect an at-risk journalist can be met through the individual application of the measures necessary to ensure, among other things, the beneficiaries' rights to life, humane treatment, and freedom of expression. However, when a particular country is experiencing a systematic and serious structural situation of violence against journalists and media workers, the States must establish special protection programs for those groups. In any case, the measures taken must be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue conducting the same professional activities, and his or her social and economic circumstances.⁸⁵⁷

665. The third and final element of a comprehensive State policy to address violence against journalists is the investigation, prosecution, and punishment of the perpetrators of such acts of violence. The Office of the Special Rapporteur has repeatedly urged the States to conduct serious, impartial, and effective investigations into the murders, assaults, threats, and acts of intimidation committed against journalists and media workers.⁸⁵⁸ The Inter-American Court has held that impunity—understood as the complete absence of investigation, pursuit, arrest, trial, and conviction—favors the chronic repetition of human rights violations and the total defenselessness of the victims and their relatives. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that, “Impunity [...] is widely recognized as one of the main causes of the continued killing of journalists.”⁸⁵⁹ In the same respect, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has found that impunity 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.”⁸⁶⁰ Both the Commission and the Court have referred to the chilling effect that crimes against journalists have on other media professionals as well as on citizens who attempt to speak out against abuses of power or unlawful acts of any kind.⁸⁶¹ This chilling effect can only be prevented, according to the Commission, “by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law.”⁸⁶²

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

⁸⁵⁷ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 62.

⁸⁵⁸ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 160.

⁸⁵⁹ I/A Court H. R. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211; UN. General Assembly. [Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns](#). A/HRC/20/22. April 10, 2012. Para. 43.

⁸⁶⁰ UN. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue](#). A/HRC/20/17. June 4, 2012. Para. 65.

⁸⁶¹ I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 148. IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family. (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para.58. See Also, IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716.

⁸⁶² IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family. (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. See also, IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716. See also, I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 211.

B. Aggressions, Threats and Harassments against Journalists and Media Outlets

667. Dozens of journalists and media outlets were subjected to attacks, threats, and harassment of various kinds in a context of elections and political turmoil. Given the difficulties surrounding their work, some journalists are said to have opted in the past year for self-censorship to protect themselves from attacks and threats.⁸⁶³ The State Attorney's Office for Crimes against Journalists received 81 complaints between January and August 2015, more than in any of the previous three years.⁸⁶⁴ Following are some of the more egregious cases.

668. Journalist Gustavo Berganza reported in January about a series of attacks that other colleagues and media outlets had been subjected to. "Orchestrated attacks continue against Juan Luis Font and Pedro Trujillo, precisely because of their criticism of Manuel Baldizón", said Berganza⁸⁶⁵. Baldizón was the presidential candidate of the Partido Libertad Democrática Renovada (Lider). Font directs the magazine *Contrapoder* and *Canal Antigua*, both owned by the former Minister of Energy and Mines, Erick Archila. Font and his colleague Pedro Trujillo were singled out by media allegedly linked to Lider, such as *La Nación*, *Es Primicia* and *NTV*, and by a cloned version of the *Prensa Libre* website. In addition, criminal charges were brought against both journalists for alleged crimes.⁸⁶⁶ The magazine *Contrapoder* had been critical of Baldizón and in 2014 had published several investigations claiming that the politician had plagiarized parts of a book published under his name as well as his doctoral thesis.⁸⁶⁷

669. Another journalist who suffered intimidation because of her work was Susana Morazán, of the local channel *Azteca Guatemala*. She was beaten and robbed on January 20. Morazán said: "[The robber] told me that if I continued to talk and says the things I did on the newscast and in my reports against the Government, worse things would happen to me."⁸⁶⁸

670. Erick Archila resigned from his position as Minister of Energy and Mines in May 2015 after charges of corruption were brought against him by an organization associated with Lider.⁸⁶⁹ In his speech on leaving office, Archila said he was the victim of "political persecution" designed "to silence freedom of expression in the media" in which he had shares.⁸⁷⁰ Rolando Archila, brother of Erick Archila and co-owner of *Emisoras Unidas*, said that he was being blackmailed by Baldizón to silence journalists. "I want to publicly

⁸⁶³ Cerigua. April 8, 2015. [Censura y autocensura en medios escritos de Guatemala](#); Interamerican Press Association. Asamblea 2015 – Reunión de Medio Año-Panamá, Panamá. [Guatemala](#).

⁸⁶⁴ Sistema de Protección al Ejercicio Periodístico en Guatemala. August 2015. Avances en la propuesta. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Cerigua. August 2015. Avance del Informe sobre la situación de la libertad de expresión y de prensa. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁶⁵ Soy 502/YouTube. January 17, 2015. [Entrevista Gustavo Berganza](#).

⁸⁶⁶ La Nación. August 10, 2014. [Los históricos vínculos de Juan Luis Font con el oficialismo](#); La Nación. January 6, 2015. [¿Pertenece Juan Luis Font a estructuras de corrupción?](#); "Baldizón manda a sus vasallos a denunciarme (7ma vez) por lavado y testaferrato. Sabe q no prosperará, pero le da materia para desprestigiar". Twitter account of Juan Luis Font @JLFont001. [July 15, 2015-11:49 AM](#); NTV/YouTube. July 16, 2015. [Denuncian a Juan Luis Font por lavado de dinero y otros ilícitos](#); Soy 502. July 15, 2015. [Una vez más intentan coaccionar contra periodista Juan Luis Font](#); Prensa Libre. July 20, 2015. [Identificado autor de falsificación de sitio de Prensa Libre](#); República.GT. September 26, 2014. [Un consorcio de medios para un líder](#); Es Primicia. June 19, 2015. [Pedro Trujillo acusado de defraudación tributaria](#); La Nación. June 9, 2015. [Denuncian a Pedro Trujillo por lavar Q13.8 millones](#); República.GT. June 1, 2015. [Pedro Trujillo habla sobre las acusaciones en su contra](#).

⁸⁶⁷ Contrapoder. No date. [Copy/Paste de Baldizón](#); Contrapoder. No date. [Karen Fischer denuncia a Baldizón por su libro](#); Contrapoder. No date. [¿La tesis también, doctor?](#); Contrapoder. No date. [El plagio que la Usac no quiso ver \(y que Baldizón no quiere admitir\)](#); Plaza Pública. February 4, 2015. [2015, un año complicado para la Libertad de Expresión](#).

⁸⁶⁸ Soy 502/YouTube. January 20, 2015. [Comunicadora es agredida y amenazada en asalto](#); "@susanamorazan víctima de amenaza y agresión física hace unos minutos. Se presentarán denuncias #LibertadDeExpresion". Twitter account of TV Azteca Guatemala @aztecaGuate. [January 20, 2015-9:21 AM](#); Siglo 21. January 20, 2015. [Susana Morazán denuncia agresión y amenazas](#).

⁸⁶⁹ La Nación. May 16, 2015. [Ministro del MEM Erick Archila renuncia y es arraigado](#); La Hora. May 15, 2015. [Piden arraigo del exministro Erick Archila](#).

⁸⁷⁰ Canal Antigua/YouTube. May 18, 2015. Published by Monitoreo de Medios MINFIN. [15.05.15 CA, Erick Archila renuncia a su cargo de Ministro de Energía y Minas](#).

denounce that doctor Manuel Baldizón has been carrying out political and media persecution against our media outlet, against me and particularly against my brother. Dr. Baldizón aimed to obtain better rates and credit for online media for his political campaigns in exchange for not summoning my brother, Erick Archila, before a fishing expedition in the Congress of the Republic. He also attempted to have various journalists and columnists of *Canal Antigua* fired and silenced. Doctor Manuel Baldizón told me this himself,”⁸⁷¹ said Archila.

671. Political leaders from other parties were also the protagonists of aggressions against the press. One example was the presidential candidate from the ruling Partido Patriota, Mario David García, who verbally attacked journalists during a political rally held in May. In particular, García harassed and made sexist remarks to reporter Marysabel Aldana, of the *Canal Antigua*.⁸⁷²

672. Deputy Carlos Herrera, from the Lider party, publicly criticized reporters from *Prensa Libre* and *Guatevisión* on June 19 for information that they had published. “You write a lot of lies, and you enjoy lying, that is how you get your enjoyment (...). I don’t know who is rewarding you for that, do you understand me? But I suggest that you tell the truth”, said the representative to a journalist from *Prensa Libre* during a press conference.⁸⁷³ *Prensa Libre* is a shareholder of *Guatevisión*.

673. In another episode, journalists Michelle Mendoza, of *Canal Antigua*, and Yensi López, of *Vea Canal*, denounced having been sexually harassed by a security agent from the Presidency who was protecting former vice president Roxana Baldetti. Mendoza said that they were both harassed and groped by the agent when covering an appearance by Baldetti before the Courts⁸⁷⁴.

674. Another case of harassment and intimidation, in this case by a private company, was against journalists Carlos Paredes, of *Prensa Libre*, and Aroldo Calderón, of *Nuestro Diario*, who were detained on July 11 by security personnel from the Jaguar Energy electric company for several hours while covering a protest of villagers from San Miguel Las Flores, de Masagua, Escuintla, over the alleged pollution of a river.⁸⁷⁵

675. During a police anti-smuggling operation on July 24 in Quetzaltenango, reporter Carlos Ventura, of *Prensa Libre*, was beaten by a group of vendors, who stole his camera. They also attacked his colleague Byron Bravo, of *Nuestro Diario*, and poured gasoline over him.⁸⁷⁶

676. The Guatemala Press Association denounced attacks on colleagues as they were covering a political demonstration organized by the Lider party toward the end of July. The Public Prosecutor's office said later that a 43-year-old man had been charged with the offense of coercion because of that attack. The press association also reported threats and attacks against Antonio Chitop, of *Nuestro Diario*, Héctor Ramírez and Fernando Requena, of *Canal Antigua*, and Alberto Cardona and Víctor Velásquez, of *Guatevisión*.⁸⁷⁷

⁸⁷¹ Emisoras Unidas. May 15, 2015. [Rolando Archila señala que Manuel Baldizón lo extorsiona](#).

⁸⁷² Canal Antigua. May 18, 2015. [CODISRA denunciará a Mario David García](#); Diario El Informal/YouTube. May 18, 2015. [Mario David García insulta a periodistas](#); Asociación de Periodistas de Guatemala. May 18, 2015. *Comunicado No. 12-5-2015*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁷³ Pedrovisión Noticias/YouTube. June 19, 2015. [Diputado Carlos Herrera arremete contra reporteros de Prensa Libre y Guatevisión](#).

⁸⁷⁴ Publinews. June 23, 2015. [Así reaccionó Michelle Mendoza al ser acosada por seguridad de Baldetti](#) (Video); Cerigua. June 23, 2015. [Seguridad de ex Vicepresidenta Baldetti es acusado de agresión sexual a reporteras](#); Canal Antigua. June 22, 2015. [Guardaespaldas de Roxana Baldetti es acusado de violar la intimidad de dos periodistas](#).

⁸⁷⁵ Prensa Libre. July 11, 2015. [Liberan a periodistas que fueron retenidos por seguridad de empresa Jaguar Energy](#); Diario Digital. July 11, 2015. [Seguridad de Jaguar Energy retiene a dos periodistas](#); La Hora. July 11, 2015. [Periodistas fueron retenidos por seguridad de Jaguar Energy](#).

⁸⁷⁶ Prensa Libre. July 24, 2015. [Agreden a corresponsal de Prensa Libre en Quetzaltenango](#); Soy 502. July 24, 2015. [Agreden a periodistas y los rocián de gasolina en Quetzaltenango](#).

⁸⁷⁷ Emisoras Unidas. July 24, 2015. [Gremio periodístico denuncia aumento de agresiones en su contra](#); Publinews/YouTube. July 23, 2015. [Momento en que la seguridad de Barquín se enfrenta con periodistas](#); La Tribuna de Tegucigalpa/EFE. July 24, 2015. [Periodistas de Guatemala denuncian aumento de agresiones](#); Ministerio Público de Guatemala. July 24, 2015. [Ligado a proceso por agredir a periodista](#).

677. Journalist Oswaldo Ical Jóm denounced to the Police on July 30 that a group of people had beaten him and demanded that he stop his radio reporting. Days later, Ical Jóm was accused by a woman of having beaten her husband two weeks before and a sum of money was demanded from him to supposedly cover the medical expenses in which they had incurred. The journalist denied knowing the alleged victim. Even though a telephone number was given to the journalist for making complaints against the National Civil Police [*Policía Nacional Civil*] in case of being assaulted, he stated that he lacks money for telephone service. In 2014, Ical Jóm had been assaulted and detained for several hours by inhabitants of the village of Uspantán, in Quiché (some 100 kilometers north of Guatemala City), when investigating a kidnapping.⁸⁷⁸

678. 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*.⁸⁷⁹

679. Journalist Ana Verónica Sandoval, of the Centro de Medios Independientes, said she had been detained by police on September 6, when she was recording the capture of two men, and that a police officer took away her camera. After she was forced to delete the photos she had taken, she was released. On another occasion, journalist Rolando Hernández, a correspondent of *Prensa Libre* in Jalapa, was attacked by people who appeared to be followers of the Unión del Cambio Nacional political party while he was covering a demonstration. In that incident, an alleged bodyguard of the local mayor snatched his camera.⁸⁸⁰

680. In this context, the Unit for Crimes against Journalists of the Office of the Attorney General, which has been a welcome improvement in terms of investigation and the arrest of aggressors, only has five attorneys to investigate crimes, attacks, and threats against media workers, with more than 100 cases still awaiting clarification.⁸⁸¹

681. All types of threats, attacks, or harassment directed against journalists, media personnel, or media outlets themselves must be investigated by the justice system and the authorities should not proceed to discard the practice of journalism as the motive for criminal acts before an investigation is over. States have an obligation to take effective steps to prevent attacks against journalists and others exercising their right to freedom of expression and to combat impunity, specifically by vehemently condemning such attacks when they occur, through prompt and effective investigation, in order to duly punish perpetrators and make reparation to victims, as appropriate. States also have an obligation to provide protection to journalists and others exercising their right to freedom of expression, who run a grave risk of being attacked.⁸⁸²

⁸⁷⁸ Centro Civitas/Facebook. August 3, 2015. Published by Sala de Redacción. [Pretenden criminalizar y desprestigiar a periodista Oswaldo Ical Jóm](#); IACHR. [Annual Report 2014. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13.March 9, 2015. Chapter II. Para. 549.

⁸⁷⁹ República GT. August 21, 2015. [Agreden a periodistas durante traslado de Baldetti](#); "PNC lanzó gas pimienta a periodistas que cubrían ingreso de Roxana Baldetti a Matamoros. @CanalAntigua". Twitter account of Sergio Osegueda @Sosegueda2287. [August 21, 2015-6:00 PM](#); "#CoberturaBaldetti Durante el traslado de Roxana Baldetti a Matamoros, policías rociaron gas pimienta a la prensa". Twitter account of Diario Digital @diariodigitalgt. [August 21, 2015- 05:53 PM](#); Prensa Libre. August 24, 2015. [Roxana Baldetti enfrenta primer día de audiencia](#); EFE/La Razón. August 25, 2015. [Periodistas denuncian agresiones después de audiencia de exvicepresidenta de Guatemala](#); Siglo 21. August 26, 2015. [Baldetti queda ligada a proceso por tres delitos](#); Office of the Attorney General. August 25, 2015. [Fiscal General ordena investigación de oficio por agresiones contra periodistas](#).

⁸⁸⁰ Cerigua. September 9, 2015. [Simpatizantes de alcalde intentaron agredir a periodista: guardaespaldas roba su cámara](#); Protección Internacional. September 10, 2015. [Guatemala: detención ilegal y criminalización a Defensores de la Puya](#).

⁸⁸¹ Contrapoder. April 13, 2015. [Cinco fiscales para atender 130 denuncias de periodistas](#).

⁸⁸² United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and People's Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. May 4, 2015. [Joint Declaration on Freedom of Expression and responses to conflict situations](#).

682. Principle 9 of the Declaration of Principles on Freedom of Expression provides 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. Program for Protection of Journalists

683. After three murders in Suchitepéquez, the Ministry of the Interior announced the creation of a unit for attention to the press with a direct link to the Police and for strengthening security in Suchitepéquez. It also affirmed that the “Plan for Protection of Journalists” had already been drafted “for it to be socialized and put into action.”⁸⁸³

684. The mechanism to drive the system for protection of journalists consists of the High-level Committee and Technical Committee, both made up of the Presidential Commission to Coordinate Executive Policy in the Field of Human Rights [*Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos*] (Copredek), the Ministry of the Interior, the Office of the Attorney General and the Secretariat of Social Communications of the Presidency of the Republic [*Secretaría de Comunicación Social de la Presidencia de la República*] (SCSPR). The High-level Committee is in charge of decision-making and approval of progress in building the program for protection of journalists and the Technical Committee is responsible for follow-up on building the Program. They also have accompaniment by UNESCO and the Office of the United Nations High Commissioner for Human Rights (UNHCHR). The system for protection of journalists is also the State’s response to the recommendations formulated in the framework of the Universal Periodic Review held in Geneva, Switzerland in 2012, in relation to the protection of journalists.⁸⁸⁴

685. The process of building the mechanism produced a primary document titled “Preliminary Proposal for Program for Protection of Journalists” [*Propuesta Preliminar Programa de Protección a Periodistas*] drafted by the Technical Committee under the guidelines of the High-level Committee.⁸⁸⁵ The document identified the institutions that should make up the Program, their duties in the field of protection and the functioning of the coordination. This input was shared and discussed among journalists and defenders of freedom of expression. The Special Rapporteur participated in an event for socialization in Guatemala and in meetings with the SCSPR, UNESCO and UNHCHR in June of 2015.

686. Based on the observations, recommendations and comments, the Technical Committee presented the conceptual design of the System for Protection of the Journalistic Exercise [*Sistema de Protección al Ejercicio Periodístico*] (SPEP). This design includes a proposal to develop a mechanism for interconnection between Copredek, the Ministry of the Interior, the Office of the Attorney General and elements constituting the system and its respective operative organic units in order to make the axes of the SPEP effective.⁸⁸⁶

687. The conceptual design of that System conceives of the National Interinstitutional Commission as the maximum authority that will consist of senior officials from the Ministry of Interior, Copredek and the Office of the Attorney General. The Commission will be responsible for issuing fundamental and strategic guidelines for operation of the System. The institutions that make up the Commission are part of the following areas: Prevention, Analysis of Risk and Protection and the Pursuit of Justice. The creation of a

⁸⁸³ IACHR. March 23, 2015. [Press release R 35/15. The Office of The Special Rapporteur for Freedom of Expression condemns killing of reporter in Guatemala.](#)

⁸⁸⁴ Construcción del Programa de Protección a Periodistas - Mesa Técnica. 2015. [Propuesta Preliminar Programa de Protección a Periodistas.](#)

⁸⁸⁵ Construcción del Programa de Protección a Periodistas - Mesa Técnica. 2015. [Propuesta Preliminar Programa de Protección a Periodistas.](#)

⁸⁸⁶ Sistema de Protección al Ejercicio Periodístico en Guatemala. Avances en la propuesta. August 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

Consultative Council is proposed, which will advise the National Commission. This Council will consist of individual or organized journalists, universities, research centers that work to defend the right of expression and the journalistic exercise and universities or research centers associated with the topic. The Council will, among other things, carry out social auditing of the functioning of the System and its results.⁸⁸⁷

688. The Commission will have technical, methodological and administrative support from the Executive Unit. This Unit will have a Director or Coordinator, who will put into effect the decisions that the National Commission and Consultative Council make. Similarly, the Executive Unit will consist of the Directorates and their corresponding systems: Directorate for Prevention of Threats and its National Educative System [*Dirección de Prevención de Amenazas y su sistema Educativo Nacional*]; Directorate for Protection and Analysis of Risk and its Citizen Security System [*Dirección de Protección y Análisis de Riesgo y su sistema de Seguridad Ciudadana*]; and the Directorate for the Pursuit of Justice and its Justice System [*Dirección de Procuración de Justicia y su sistema de Justicia*]. There is to be coordination among these three areas along with direct action among the systems.⁸⁸⁸

689. According to this design, the System of Protection for the Journalistic Exercise constitutes the interinstitutional coordination to protect “the lives and preserve the physical integrity of those who disseminate events, thoughts and ideas in any language and place, and are in a situation of risk of suffering from threats, intimidations and/or attacks by state and non-state agents whose interests would be to obstruct the right to freedom of opinion, thought and expression”. This coordination will provide follow-up and monitoring of complaints about threats, coercions, attacks and aggressions against those who carry out journalistic duties, will protect their lives and physical integrity and strengthen criminal investigations to contribute towards decreasing impunity. It will also promote regulations and public policies to safeguard free expression and good institutional practices for free access to public information and will oversee investigations and disciplinary or criminal punishments, as the case may be, to guarantee the pursuit of justice and decrease impunity⁸⁸⁹.

690. The Office of the Special Rapporteur welcomes the initiative of Guatemala to continue work on consolidation of the System for the Protection of Journalistic Work. Particularly the intention that the system for protection will in the short term become a body that is “social, autonomous and independent, coordinated and systemic, that permanently and systematically guarantees the physical, social, labor and legal safeguarding of the persons who carry out journalistic work, and therefore the right to freedom of expression, press and opinion.”⁸⁹⁰ It also notes with satisfaction the international accompaniment in this process and reiterates the desirability of continuing this support during the functioning of the mechanism. The Office of the Special Rapporteur also reiterates the need to continue to guarantee full participation by journalists and the civil society in this process.

691. Additionally, it stresses that the initiative expressly indicates that the institutions responsible for the system of protection shall have “institutional interconnection”, consisting of “reciprocal institutional or organic, direct physical, logical, logistical and functional communication and action”⁸⁹¹. In this regard, the Office of the Special Rapporteur and the IACHR have stressed the importance of the adoption of regulations to clearly demarcate the jurisdictions and responsibilities of the authorities that take part in the implementation and oversight of measures for protection and the need to ensure effective coordination

⁸⁸⁷ Sistema de Protección al Ejercicio Periodístico en Guatemala. Avances en la propuesta. August 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁸⁸ Sistema de Protección al Ejercicio Periodístico en Guatemala. Avances en la propuesta. August 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁸⁹ Sistema de Protección al Ejercicio Periodístico en Guatemala. Avances en la propuesta. August 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁹⁰ Sistema de Protección al Ejercicio Periodístico en Guatemala. Avances en la propuesta. August 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁹¹ Sistema de Protección al Ejercicio Periodístico en Guatemala. Avances en la propuesta. August 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

among the entities responsible for the implementation of measures for prevention, protection and the pursuit of justice. In this sense, it notes with satisfaction that this conceptual design has specified that, in addition to the measures for protection of lives and integrity, criminal investigations will be strengthened. As they have determined with regard to other contexts and programs for protection in the region,⁸⁹² the IACHR and the Office of the Special Rapporteur have considered that it is primordial for protective mechanisms to be coordinated with the competent investigative bodies, in order to carry out exhaustive and independent investigations to identify and punish possible perpetrators while preventing and reducing the sources that generate risk.⁸⁹³

692. The Office of the Special Rapporteur wishes to point out certain guidelines that must be taken into account in the design and functioning of protection programs for journalists, to be taken into account when regulating the system for protection. The system shall have sufficient trained human resources to generate trust among the beneficiaries of protection. Additionally, it is “recommendable that for the protection program, the States should have available a state security body that would be separate from the entity that carries out intelligence and counterintelligence activities; whose personnel responsible for protection would be selected, incorporated and trained with absolute transparency and with participation by representatives of the target population of the programs to create relationships of trust among the protected persons and those charged with protecting them”⁸⁹⁴. In this regard, the System should guarantee necessary funds in the budget to cover the costs derived from the expenditures of the personnel who work in the program, as well as expenditures associated with the measures for protection.⁸⁹⁵

693. For appropriate implementation of specialized protection programs, an adequate risk analysis shall be carried out that would observe a gender perspective and enable the State to determine the most effective mode for complying with its obligations for protection, taking into account specific circumstances relevant to the context and contemplating active participation by the beneficiary. The measures for protection determined in each case shall be suitable, adequate and effective for protecting both the lives and integrity of the beneficiaries and shall be consulted with the proposed beneficiaries. They shall also correspond to the necessities of the work of men and women journalists, their gender and other individual circumstances and permit them to continue their professional activity.⁸⁹⁶

694. At the same time, they shall adopt clear criteria and procedures to assess the danger faced by the beneficiary and, at a certain moment, suspend the protective measures—whose nature is essentially provisional and temporary— once the risks to life and integrity have dissipated. In this sense, the IACHR has indicated that the States must design policies that enable them to monitor the effectiveness of the selected measures for protection and that these must permit them to deal with obstacles to their work, especially journalists whose level of risk could increase. In this manner, if the protective measures are not effective, they must be adjusted in accordance with the specific situation faced by the male or female beneficiary.⁸⁹⁷ It must

⁸⁹² IAHR. [Truth, justice and reparation: Fourth report on human rights situation in Colombia](#). OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013 Para. 196

⁸⁹³ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

⁸⁹⁴ IACHR. [Second Report on the Situation of human rights defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 526.

⁸⁹⁵ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

⁸⁹⁶ IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice).OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

⁸⁹⁷ IACHR. [Second Report on the Situation of human rights defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 527; IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice).OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

also be pointed out that the lack of threats over a certain period of time does not necessarily imply that there is no risk for a person. However, if no threats occur over a certain time period, the reasons why such threats no longer occur must be analyzed to determine whether protective measures need to be maintained. In this sense, it is necessary for the States to carry out a risk assessment to decide on the appropriateness of suspending the measures for protection, in which participation by the beneficiaries is fundamental to determine their views on such a suspension.⁸⁹⁸

D. Subsequent Liabilities

695. The Justice System in 2015 continued to investigate the president of *el Periódico*, José Rubén Zamora, with respect to four complaints filed against him. There was no public information about the evolution of these cases.⁸⁹⁹

696. The Justice System admitted a complaint against six journalists from the daily *Siglo 21* filed by Verónica Taracena, a former member of the Presidential Commission for Transparency and Electronic Government [*Comisión Presidencial para la Transparencia y Gobierno Electrónico*] for the crime of defamation after publishing an article on July 20, about expenditures at the entity that she directed. The daily questioned the persecutor decision because the case was admitted even though the Law on the Expression of Thoughts [*Ley de Emisión del Pensamiento*] establishes that “attacks against public employees or officials for purely official acts in carrying out their duties do not constitute defamation or slander (...).”⁹⁰⁰

697. The mayor of Sololá, Andrés Lisandro Iboy, in early September denounced journalist Alfonso Guárquez, a member of Cerigua, before the Office of the Attorney General for allegedly organizing a demonstration of neighbors who opposed his reelection, which ended in disturbances. Guárquez said that he was covering the protest.⁹⁰¹

698. On the other hand, the trial begun by the so-called Foundation against Terror [*Fundación contra el Terrorismo*] and its president, Ricardo Méndez Ruiz, against the general coordinator of the Peasant Unity Committee [*Comité de Unidad Campesina*], Daniel Pascual, for defamation, insults and slander, for alleged declarations made at a press conference in January 2013 continued. The plaintiff affirmed that the activist accused him of wanting to murder him. Pascual denied having made those allegations. In 2015, Pascual’s defense attorney filed a motion for the case to be taken up by a Press Court instead of being under the Ordinary Criminal Justice System, which was denied by the judge in charge of the case.⁹⁰² That decision was appealed by Pascual.⁹⁰³

699. Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR 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

⁸⁹⁸ IACHR. [Second Report on the Situation of human rights defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para.529-531; IACHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Media Journalists and Employees: Inter-American Standards and National Practices on Prevention, Protection and Pursuit of Justice).OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

⁸⁹⁹ *El Periódico*. February 26, 2015. [MP trabaja en cuatro denuncias contra José Rubén Zamora](#).

⁹⁰⁰ *Siglo 21*. August 13, 2015. [Jueza admite denuncia ilegal contra periodistas de Siglo 21](#); Cerigua. August 13, 2015. [APG rechaza denuncia contra seis periodistas de Siglo 21](#).

⁹⁰¹ Cerigua. September 11, 2015. [Alcalde demanda a periodista que daba cobertura a bloqueos en su contra](#).

⁹⁰² Comité de Unidad Campesina. September 18, 2015. [“Yo no le pido por mí señora jueza, le pido por la justicia en el país, por la plena vigencia de los derechos humanos”](#); Oxfam. No date. [Solo queremos ser humanos](#); República.GT. October 14, 2015. [Daniel Pascual irá a Tribunal Penal](#); Centro de Medios Independientes. June 11, 2014. [Videoreportaje: Daniel Pascual vs. Ricardo Méndez Ruiz, el derecho a la libre expresión](#); Emisoras Unidas. February 5, 2013. [Ricardo Méndez Ruiz denuncia por difamación a Daniel Pascual](#).

⁹⁰³ Communication from the legal representatives of Daniel Pascual to the Office of the Special Rapporteur for Freedom of Expression. October 21, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

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.”

700. With regard to potential civil sanctions, the Inter-American Court has also established that civil judgments in cases concerning freedom of expression must be strictly proportional so as not to have a chilling effect on said freedom, since “the fear of a civil penalty, [in light of a] claim [...] for [...] very steep civil [damages], 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 [compromise] 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.”⁹⁰⁴

E. Access to Public Information

701. Access to public information in Guatemala continues to pose difficulties, despite the fact that the Law on Access to Public Information has been in effect since 2009. In January, the Ministry of the Interior [*Ministerio de Gobernación*] issued an agreement that created guidelines for application of the law, but various experts questioned the agreement because, in their view, it is illegal and unconstitutional. Days later, the Ministry of the Interior overturned the agreement.⁹⁰⁵

702. According to a document published in midyear by the Human Rights Prosecutor of Guatemala [*Procurador de los Derechos Humanos de Guatemala*], responsible for compiling reports on compliance with the Law on Access to Public Information, 765 entities of the 1234 legally bound by the currently-in-effect law submitted their annual reports for 2014. Even though this figure does not even amount to two thirds of the total, it nonetheless implies an increase compared to the 667 reports received the year before. The reports show that there were 35,861 requests for information received by the public sector, almost 6,000 more than in 2013. Nine out of 10 had a positive resolution, with an average response time of 5 days, two more than in the previous year.⁹⁰⁶

703. Principle 4 of the IACHR Declaration of Principles on Freedom of Expression of the IACHR states “[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.”

F. Freedom of Expression in Electoral Contexts

704. The signal from the channels *CNN en Español*, *Guatevisión* and *Canal Antigua* was interrupted at certain cable television companies in Guatemala at different times. One such case occurred in the department of Petén when *CNN en Español* was broadcasting an interview with the Commissioner from the International Commission against Impunity in Guatemala, Iván Velásquez, who was criticizing the *Lider* party.

⁹⁰⁴ I/A Court H. R. *Case of Tristán-Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 129.

⁹⁰⁵ Prensa Libre. January 28, 2015. [Ven ilegal acuerdo de Ministerio de Gobernación](#); Prensa Libre. January 29, 2015. [PDH ve ilegalidad en norma de Ministerio de Gobernación](#); Prensa Libre. February 2, 2015. [Resistencia a la transparencia](#); Prensa Libre. January 31, 2015. [Mingob deroga el acuerdo 64-2015](#); Emisoras Unidas. February 3, 2015. [Gobernación deroga acuerdo relativo al acceso a la información](#); Prensa Libre. February 4, 2015. [Mingob deroga Acuerdo 64-2015; acepta que omitió 11 artículos](#); La Hora. January 30, 2015. [Mingob da marcha atrás a decisión sobre consejo](#).

⁹⁰⁶ Procurador de los Derechos Humanos. July 17, 2015. [Informe anual de situación del derecho humano de acceso a la Información Pública 2014](#).

Various cable television companies in the Central American country are owned by members of the Lider party.⁹⁰⁷

705. The cable television channels *Óptimo 23* and *ATV 24* in Suchitepéquez were taken off the air on August 6 by decision of the company that broadcasts them, Servicable, which is owned by the candidate for deputy from the Partido Patriota, Enrique Maldonado. The measure was adopted in response to the dissemination of information about candidates from other political parties, which Servicable had warned against.⁹⁰⁸

706. Also, numerous journalists denounced aggressions during the coverage of the first round on the national elections, which took place on September 6.⁹⁰⁹

707. All of the presidential candidates, except for Baldizón, on August 6 signed the Declaration of Chapultepec, an Inter-American Press Association document in defense of freedom of expression and of the press. 13 of the 14 presidential candidates ratified this commitment.⁹¹⁰

708. The exercise of freedom of expression is especially important during political campaigns and elections. It is a fundamental element of the process because, as the Inter-American Court has explained, it is an essential tool for shaping voter opinion and strengthening the political contest among the various participants and it provides instruments for the analysis of each candidate's platform, thus enabling a greater degree of transparency and oversight of future authorities and their performance. Additionally, it fosters the shaping of the collective will manifested through voting. It is thus necessary to healthy democratic debate for there to be the greatest possible circulation of ideas, opinions and information regarding the candidates, their parties and their platforms during the period preceding elections, mainly through the communications media, the candidates and other individuals who wish to express themselves. It is necessary for everyone to be able to question and investigate the ability and suitability of candidates, and disagree with and challenge their platforms, ideas and opinions, so that voters can develop their voting criteria.⁹¹¹

709. According to inter American doctrine and jurisprudence, the American Convention requires State parties not only to respect the rights enumerated therein, but also to ensure that individuals within their jurisdictions also exercise those rights. The IACHR has said that "the continuum of human rights obligations is not only negative in nature; it also requires positive action from States."⁹¹² This obligation for the State extends to the prevention and response on acts committed by individuals.⁹¹³ The Inter-American Court has stated that this obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and,

⁹⁰⁷ Prensa Libre. No date. [Denuncian bloqueo a TV por cable durante entrevista a Velásquez](#); CNN en Español. July 31, 2015. [Manuel Baldizón vs. Iván Velásquez: las declaraciones de la discordia](#); Guatevisión. July 30, 2015. [Bloquean la señal de #Guatevisión y CNN en Petén](#).

⁹⁰⁸ Cerigua. August 8, 2015. [Candidato a diputado por el PP acusado de censurar dos canales en Suchitepéquez](#); Centro Civitas. August of 2015. Report on Aggresiones. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁰⁹ Cerigua. September 6, 2015. [Periodistas denuncian agresiones durante evento electoral](#); Cerigua. September 14, 2015. [Comisión de Libertad de Prensa condena ataques contra periodistas durante elecciones](#).

⁹¹⁰ Inter American Press Association (IAPA). August 7, 2015. [Trece aspirantes a la presidencia de Guatemala ratificaron compromiso con la libertad de prensa](#); Inter American Press Association (IAPA). March 11, 1994. [Chapultepec Declaration](#).

⁹¹¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework regarding the Right to Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 2/09. December 30, 2009. Para. 219.

⁹¹² IACHR. Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) and others. United States. July 21, 2011. Para. 117.

⁹¹³ See, for example, Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, May 26, 2004; I/A Court H. R. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgement of July 29, 1988. Serie C No. 4. Para. 166.

moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from human rights violations.⁹¹⁴

G. Media Concentration

710. Guatemala showed no progress in the diversification and plurality of voices in 2015, a situation that has remained unchanged over the past two decades, in an open television market largely dominated by entrepreneur Remigio Ángel González. Nor was their progress in the implementation of open digital terrestrial television, which could imply the entry of new operators.

711. According to information provided by the Inter-American Press Association (IAPA) at the hearing “Diversity, Pluralism and Concentration in Communications Media in America” [*Diversidad, pluralismo y concentración en los medios de comunicación en América*], during the 154th ordinary period of Sessions of the IACHR, the case of González “influences the quality and quantity of information about matters of public interest that Guatemalan citizens receive”. In addition to the four open television channels that it controls, Albavisión has 66 radio stations out of the 300 affiliated with the Broadcasting Chamber of Guatemala [*Cámara de Radiodifusión de Guatemala*]. Another 31 belong to the *Emisoras Unidas* group, 70 to *Radio Nuevo Mundo*, 20 to *Radio Corporación Nacional* and 35 to *Radio Grupo Alius*. One of the González stations, *Radio Sonora*, has the highest rating of the country’s news outlets and “is constantly used to send messages to the population that the current government wants known”. “These messages include attacks on journalists, opposition politicians, academics and persons and institutions in general that oppose or express unfavorable opinions about the current government”, said the IAPA. According to the IAPA, the dominant position in the market of Albavisión gives it “practically the power to choose presidents of the Republic and make the population receive less information critical of the governments in power”. The SIP denounced that Albavisión “blocks the creation of new cable channels, and seeks to asphyxiate the existing ones through constraints and threats against important advertisers, so that they will not advertise on media outlets other than those in which there are interests” of González.⁹¹⁵

712. The concentration of the media in a few hands has a negative impact on democracy and freedom of expression, as laid out in Principle 12 of the IACHR Declaration of Principles on Freedom of Expression: “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.” Along these lines, since its first ruling on the subject the Inter-American Court has held that any monopoly on media ownership or administration is prohibited, regardless of the form it takes, and has recognized that States must actively intervene to prevent ownership concentration in the media sector.⁹¹⁶

713. In this regard, the IACHR has indicated that “[i]f [the] media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy. Democracy requires the confrontation of ideas, debate and discussion. When this debate does not exist, or is weakened by the lack of sources of information, the main pillar for the functioning of democracy is harmed.”⁹¹⁷

⁹¹⁴ I/A Court H. R. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgement of July 29, 1988. Serie C No. 4. Para. 166.

⁹¹⁵ IACHR. 154th Period of Sessions. Hearing Diversity, Pluralism and Concentration of Communications Media in America. March 16, 2015. [Document submitted by IAPA](#).

⁹¹⁶ I/A Court H. R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Paras. 33-34. IACHR. [Annual Report 2009. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 117.

⁹¹⁷ IACHR. [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Para. 419.

714. The Office of the Special Rapporteur has also said that States should take measures to ensure that all groups in society have access to opportunities to make their voices heard, both within their communities and in wider social debates, including through measures to promote media diversity, public service broadcasting and community media. The promotion of media and digital literacy and citizen journalism, including the capacity to make effective use of online communication tools, are also important.⁹¹⁸

715. Future regulation of digital television “should have the goal of ensuring that the new digital dividend makes optimum use of the spectrum to ensure the greatest possible plurality and diversity”⁹¹⁹ and become an opportunity to limit and reduce, or at least not increase, the existing undue concentration of media in the analog environment by related persons, companies or economic groups, whether through ownership or control of the operation and programming of new television services.

H. Community Broadcasting

716. With respect to the situation of community media outlets in Guatemala, the Office of the Special Rapporteur had knowledge of harassments against community radio station *Snuq’ Jolom Konob’*, in the municipality of Santa Eulalia, department of Huehuetenango, which was closed by local authorities on January 20, 2015. On March 19, an attempt was made to reopen it, which the mayor obstructed. During the attempt at reopening, there were violent incidents.⁹²⁰

717. During the 156 Period of Sessions of the Commission held in October 2015, at the hearing Situation of the Right to Freedom of Expression in Central America, civil society organizations from Guatemala, Honduras and El Salvador showed to the Commission there is a serious situation which exists in these countries by the lack of media pluralism and diversity that has made invisible community radio and criminalize them. They said that there is non-existent of legal frameworks on distribution of airwaves and operating licenses for community radio and exist a lack of adequate mechanisms to guarantee the right to freedom of expression community. The applicants claimed that in these countries the media are handled by monopolies and oligopolies, this situation is very worrying in democratic societies as young as those in Central America where it is vital that there are full guarantees for freedom of expression in order to strengthen democratic processes. Media concentration directly affects the development of plurality of voices and the quality of democratic debate. They complained that community radio communicators are facing threats, attacks and criminalization. In the case of Guatemala, the organizations issued a call for the State to approve the legislative initiative about community communication that allows different indigenous peoples of the country to exercise their right to freedom of expression.⁹²¹

718. As of the year 2000, the IACHR and THE Office of the Special Rapporteur for the Freedom of Expression have issued recommendations to the State of Guatemala specifically regarding two aspects: the need for a more fair and inclusive legal framework for radio broadcasting and the decriminalization of unlicensed radio broadcasting.⁹²² The use of criminal law to punish violations of radio broadcasting may be

⁹¹⁸ 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. May 4, 2015. [Joint Declaration on Freedom of Expression and Responses to Conflict Situations](#).

⁹¹⁹ IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 80.

⁹²⁰ El Periódico. March 20, 2015. [Comunicadores piden a la Fiscal General que acelere investigación](#); Reports Without Borders. March 26, 2015. [Officials prevent indigenous radio station from reopening](#); Periodismo Humano. February 12, 2015. [Guatemala: Firma por la libertad de expresión para una Radio Comunitaria](#); Global Voices. March 23, 2015. [Denuncian agresiones contra radio comunitaria en Guatemala](#); Prensa Libre. January 24, 2015. [Jolom konob’](#).

⁹²¹ IACHR. 154th Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Central America. October 23, 2015. Available for consultation at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>.

⁹²² IACHR. Office of the Special Rapporteurship for the Freedom of Expression. April 18, 2000. [Press Release 24/00. Preliminary Evaluation of the Freedom of Expression in Guatemala](#). IACHR. [Annual Report 2001. 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.114. Doc. 5 rev. April 16, 2002. Paras. 114-117; IACHR. [Annual Report 2001. Annual Report of the Office of the Special Rapporteur for Freedom of](#)

problematic in light of the Inter-American Convention on Human Rights. In this respect the IACHR recalls that the establishment of punitive measures for conduct related to the irregular use or unauthorized use of commercial or community radio broadcasting would be disproportionate.⁹²³

719. Article 13.2 of the American Convention on Human Rights states that the exercise of the right to freedom of thought and expression “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.”

720. The Office of the Special Rapporteur insists that “the State must promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital dividend. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory frameworks should establish open, public, and transparent processes for assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as well as requirements that are necessary, just, and fair.” Likewise, to ensure free, vigorous, and diverse radio and television broadcasting, the private sector media must have guarantees against State arbitrariness; social media should enjoy conditions that prevent them from being controlled by the State or by economic groups; and public media should be independent of the Executive Branch.⁹²⁴

I. Government Advertising

721. While public intimidations and aggressions against the daily *elPeriódico* ended in 2015, the media outlet continued to be the victim of discrimination in contracting government advertising by the government of Guatemala. “We continue to be subjected to a commercial boycott. (The) government is the most important actor in the advertising industry. We have no advertising from them”, declared the president of the daily, José Rubén Zamora. He stated that advertising from the private sector fell by one half and as a result they had fired 102 employees. *elPeriódico* was critical of the administration of Pérez Molina and in recent years had published articles about alleged acts of corruption by officials, including vice president

[Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Paras. 139 – 141; IACHR. March 29, 2003. [Press Release Preliminary Observations of the Inter-American Commission on Human Rights on Culminating its Visit to Guatemala](#). Chapter VII (Freedom of Expression). OEA/Ser.L/V/II.118. Doc. 5 rev. 1. December 29, 2003. Paras. 412 – 414; IACHR. [Annual Report 2003. 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.124. Doc. 7. February 27, 2006. Para. 91; IACHR. [Annual Report 2007. 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.131 Doc. 34 rev. 1. March 8, 2008. Para. 152; IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. February 25, 2009. Paras. 133 and 134; IACHR. [Annual Report 2009. 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. 51. December 30, 2009. Paras. 237 and 238; IACHR. [Annual Report 2010. 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. 5. March 7, 2011. Paras. 281 – 285; IACHR. [Annual Report 2011. 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. 69. December 30, 2011. Para. 281 – 283; IACHR. [Annual Report 2012. 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.147. Doc. 1. March 5, 2013. Paras. 275 – 281; IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 483.

⁹²³ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 129; IACHR. [Annual Report 2011. 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. 69. December 30, 2011. Para. 467.

⁹²⁴ IACHR. [Annual Report 2010. Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 284.

Roxana Baldetti. Baldetti resigned from her post in May of 2015 due to a case of corruption and in August was tried by the Justice System.⁹²⁵ Pérez Molina resigned as president of Guatemala on September 3, after being entailed by the Justice System in the same case as Baldetti and having been stripped of his immunity through a vote in the Congress. Hours later he was sent to prison.⁹²⁶

722. Additionally, there was preference in the allocation of government advertising that favors the most concentrated media group owned by Mexican entrepreneur Remigio Ángel González. According to official information available at the Guatecompras website, during the administration of former president Pérez Molina, most government advertising was allocated to open television, and particularly the channels of the Albavisión Company, property of Mexican entrepreneur Remigio Ángel González. From 2012 to 2014, there was marked concentration of allocation of government advertising to this group.⁹²⁷ At the end of 2015, the contracts allocated to Albavisión during the course of that year were annulled.⁹²⁸

723. In 2014, 7 of every 10 quetzales that the Secretariat of Social Communications of the Presidency of Guatemala [*Secretaría de Comunicación Social de la Presidencia de Guatemala*], the office in charge of advertising for the central government, awarded in public tenders for direct purchases went to Albavisión, amounting to more than 75 million quetzales, whereas *Azteca Guatemala* was allocated 9 million, a *Canal Antigua* 8.1 million and *Guatevisión* 7.3 million. The allocations do not imply that the media outlets collect the money during that period.⁹²⁹

724. Of the total expenditure by all public entities in communications media (Q 260 million), including the Secretariat of Communications and other agencies, Albavisión received nearly 91 million quetzales, the Archila family media group nearly 57 million, *Prensa Libre* almost 17 million, the radio group *Nuevo Mundo* 12.6 million, *Azteca Guatemala* 10.9 million, *Nuestro Diario* 9.3 million and Corporación de Noticias 7.5 million. *El Periódico* was allocated just 2.1 million quetzals.⁹³⁰

725. From January to August of 2015, Albavisión was allocated 86.4 quetzales out of every 100 that the Secretariat of Social Communications of the Presidency of Guatemala spent on advertising in the media. The total was 22 million quetzales (some US\$2.86 million). The remaining 3.45 million quetzales were mainly distributed between the *Guatevisión* channel (Q 970,100), the *Radio Corporación Nacional* group (Q 540,500) and *Canal Antigua* (Q 256,230).⁹³¹ These contracts were not used after May 2, due to legal provisions that prohibit the emission of government advertising in the months prior to the elections. The most important public tenders by the government for purchasing advertising establish in their bases that they are for VHF television channels, which includes the four channels belonging to González but excludes the other three channels on the air broadcast in UHF: *Azteca 31*, *Azteca 35* and *Guatevisión*. As analyzed in the

⁹²⁵ Univisión/YouTube. May 3, 2015. [José Rubén Zamora: hay favorecimiento de estructuras ilegales en Guatemala](#); Inter American Press Association (IAPA). 2015 – Midyear Meeting - Panamá, Panamá. [Guatemala](#); Univisión/EFE. May 9, 2015. [Roxana Baldetti dejó la vicepresidencia de Guatemala](#); CNN en español. May 8, 2015. [Renuncia la vicepresidenta de Guatemala Roxana Baldetti](#); Ministerio Público. August 25, 2015. [Ex vicepresidente Baldetti ligada a proceso penal por tres delitos](#).

⁹²⁶ Reuters. September 3, 2015. [Juez dicta prisión provisional a ex presidente Guatemala mientras sigue proceso por corrupción](#); BBC Mundo. September 8, 2015. [Guatemala: Otto Pérez Molina sigue en prisión tras procesamiento formal](#); Univisión. September 1, 2015. [Congreso de Guatemala retira inmunidad al presidente Otto Pérez Molina](#).

⁹²⁷ Analysis based on official figures available at the Guatecompras website. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹²⁸ Secretariat of Social Communications of the Presidency (Secretaría de Comunicación Social de la Presidencia). Contrato administrativo número siete (07-2015). October 23, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹²⁹ Analysis based on official figures available at the Guatecompras website. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹³⁰ Analysis based on official figures available at the Guatecompras website. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹³¹ Analysis based on official figures available at the Guatecompras website. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

next chapter, the Albavisión group is the owner of media outlets in various countries and has a high rate of concentration in Guatemala.⁹³²

726. Comparing total expenditure by public agencies on communications media, Albavisión also took much of the pie. The Remigio Ángel González media group from January to August received 57.3% of public funds spent on media, some 31.3 million quetzales. They were followed by the group consisting of the dailies *Prensa Libre* and *El Quetzalteco*, with 5.4 million, and the Archila family media group, *Nuestro Diario* and *Corporación de Noticias* (dailies *Siglo 21* and *Al día*) each with 2 million. *Guatevisión* received 1.5 million quetzales and *Radio Corporación Nacional*, 1 million. During that time period, *elPeriódico* received some 900,000 quetzales of public funds, from agencies other than the Secretariat for Social Communication although none of this money came from the central government.⁹³³

727. Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that “[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 government 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.”

⁹³² Analysis based on official figures available at the Guatecompras website. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹³³ Analysis based on official figures available at the Guatecompras website. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

16. HAITI

A. Access to Public Information

728. During the hearing “Situation of the Right to Access to information in Haiti”, which took place on March 17, 2015 at the Inter-American Commission on Human Rights headquarters; participating civil society organizations provided valuable information to the IACHR regarding the urgent need to adopt national legislation on access to information in the country as well as mechanisms to guarantee the exercise thereof.⁹³⁴ In that regard, the participants reported that the lacking guarantee of the right to access public information has had a negative impact on the communities affected by the development of large tourism projects and exploitation of natural resources, as well as on the exercise of free and independent journalism.⁹³⁵ Specifically, they noted that by denying access to information and dissemination of relevant information regarding these projects in Creole, the language of all Haitians, community vulnerability increased.⁹³⁶

729. During the aforementioned hearing, the IACHR and Special Rapporteur received information regarding the situation in *Ile -à- Vache*, an island in the southern part of the country that was declared a “tourism development area” by a presidential decree in 2013 without the pertinent prior consultation with local communities.⁹³⁷ According to the participants, the local population had received no documents to date after protesting demanding the authorities provide access to information on the development of a tourism megaproject in the area. Specifically they were unable to obtain any information on the impact of the project, such as possible forced displacement, land expropriation and environmental degradation it would cause. This has been detrimental to the capacity of the community to collectively organize and express their demands in an effective manner. The participants indicated that “this has created a serious social conflict and the response has been to criminalize the movement and the community, as well as arbitrary detention and protestor persecution.”⁹³⁸

730. The State, for its part, did not attend the public hearing convened by the IACHR, and therefore did not assert its arguments regarding the allegations. Nevertheless, during the Office of the Special Rapporteur’s visit to Haiti on September 2 and 3, upon being asked about the country’s advances with respect to the issue, the Ministry of Communications reported on the current government’s social media strategy for keeping the public and journalists up to date from different government institutions. The State representatives additionally recalled that the Haitian parliament was dissolved in January 2015, which made it difficult to make decisions with respect to legislative bills of this kind until after the elections.

731. The Office of the Special Rapporteur also received information about violations of the right to access to information in relation to Article 23 of the 1976 Mining Act, which gives the State the authority to declare the confidentiality of documents related to mining activities in Haiti.⁹³⁹ In addition, the Office of Mines

⁹³⁴ IACHR. 154 Period of Sessions. Hearing on the Situation of the Right to Access to Information in Haiti. March 17, 2015. Available for consultation at: <https://www.youtube.com/watch?v=xZle3Zu3pKE>

⁹³⁵ IACHR. 154 Period of Sessions. Hearing on the Situation of the Right to Access to Information in Haiti. March 17, 2015. Available for consultation at: <https://www.youtube.com/watch?v=xZle3Zu3pKE>

⁹³⁶ IACHR. 154 Period of Sessions. Hearing on the Situation of the Right to Access to Information in Haiti. March 17, 2015. Available for consultation at: <https://www.youtube.com/watch?v=xZle3Zu3pKE>

⁹³⁷ RNDDH et al. April 4, 2014. [Report on the investigation on the situation of tension in Ile-à-Vache](#); Document delivered by the organizations that requested the hearing on the Situation of the Right to Access to Information in Haiti in March 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹³⁸ IACHR. 154 Period of Sessions. Hearing on the Situation of the Right to Access to Information in Haiti. March 17, 2015. Available for consultation at: <https://www.youtube.com/watch?v=xZle3Zu3pKE>

⁹³⁹ Government of Haiti. March 8, 1976. [Decree that promotes mining throughout the territory of the Republic and adapts the existing legal structures to the realities of the mining industry](#). Article 23. Original text: *Tous les documents relatifs aux résultats des travaux effectués en vertu d'un titre garderont un caractère confidentiel à l'Institut national des Ressources Minérales. Ils ne pourront être publiés par le dit Institut que dix (10) ans après leur depot.*

and Energy is reportedly not collecting information on the potential risks and consequences of the licenses that are issued, much less making this information available to the affected communities.⁹⁴⁰

732. More recently, the government was working on a mining bill to replace the 1976 law, under a project with the World Bank.⁹⁴¹ The Office of the Special Rapporteur received information that, on this occasion as well, the pertinent consultations were not conducted with civil society.⁹⁴² In the new legislative bill, the article referring to the confidentiality of documents would remain unchanged.⁹⁴³

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

B. Community Broadcasting

734. During the meeting with civil society held on September 2, the Special Rapporteur received information about the absence of guarantees for the operation of community radio stations in Haiti. To date, there is reportedly no law that recognizes and authorizes this kind of broadcasting specifically. This prevents community broadcasters from being able to access operating licenses and makes them vulnerable to mandatory shutdown by the National Telecommunications Council (Conatel) on the pretext of unlawful frequency use.

735. Conatel, for its part, defended its actions to shut down radio stations considered “clandestine”, alleging that they violate Articles 13 and 19 of the October 12, 1977 decree that gives the Haitian State a monopoly over telecommunications services.⁹⁴⁴ Conatel officials additionally informed the Special Rapporteur during the September 3 meeting of problems that cause interference in the radio spectrum due to the abuse of radio frequencies. According to the agency, this not only affects the quality of radio broadcasting but also reportedly endangers the lives of passengers arriving on flights into Haiti, as they affect air communications and make flight navigation more difficult.⁹⁴⁵

736. 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. On several occasions, the Office of the Special Rapporteur of the IACHR have expressed that community media have the right to be legally recognized and that, as part of this recognition, they have the right for community broadcasting to be properly regulated under equitable conditions. According to Inter-American standards, the law on community broadcasting must: (1) provide simple and equitable procedures for obtaining licenses; (2) refrain from demanding strict technological requirements that prevent access to them; and (3) allow for the possibility of using different sources of funding, such as advertising, as a mean to finance operations.

⁹⁴⁰ Document delivered by the organizations that requested the hearing on the Situation of the Right to Access to Information in Haiti in March 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁴¹ Shafer, Hartwig. World Bank. March 31, 2015. [Letter to Accountability Counsel](#).

⁹⁴² Associated Press. April 13, 2015. [Mining in Haiti on hold amid uncertainty and opposition](#).

⁹⁴³ Republic of Haiti. August 2014. Article 115. [Mining Bill](#).

⁹⁴⁴ Conseil National de Télécommunications (Conatel) [Décret Accordant A L'Etat le monopole des services de télécommunications](#). October 12, 1977. Article 13: Those entitled to operate telecommunications services will be so determined by the authorization granted for this purpose; Article 19: Any system of installation or telecommunications is subject to prior authorization, except for installations with network systems that do not make use of public property and private broadcasting receivers. Equipments or facilities operating without authorization are considered illegal.

⁹⁴⁵ Le nouveliste. April 21, 2015. [Le CONATEL ferme 6 stations de radio à Port-de-Paix](#).

17. HONDURAS⁹⁴⁶

I. Safety of Journalists and Media Workers

a. Violence

737. During its on-site visit, the Commission paid particular attention to violence perpetrated against journalists and media workers in the country, and its effects on the respect and guarantee of the right to freedom of expression. While acknowledging that the problem of violence and the high homicide rate affecting all sectors of the Honduran population, the IACHR confirmed the serious situation of insecurity in which journalists and media communicators work and exercise their freedom of expression, making them a particularly vulnerable population group.⁹⁴⁷

738. In the course of meetings held with State authorities, members of civil society and journalists in the country, the Commission received troubling information about the high number of murders of journalists and communication media workers perpetrated in 2014. The reasons for this have not been clarified; as well as other serious incidents affecting the exercise of the profession, such as threats, assaults and harassment. According to the information gathered, these facts can be included into the general context of violence against journalists and media workers in Honduras, which worsened after the 2009 coup d'état⁹⁴⁸ and that persist to date.

739. Given the gravity of the situation faced by those engaged in journalism in the country, the Commission has recommended that the State adopt defined and specialized protective mechanisms permanently to guarantee the life and integrity of journalists at risk, and to investigate effectively crimes in accordance with international standards in this area.⁹⁴⁹ The recent adoption of the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators on April 15, 2015, is a significant step in this direction.

740. In this regard, the Commission has indicated that violence against journalists not only violates in a particularly egregious way the freedom of thought and expression of the person concerned, but also affects the collective dimension of this right. The acts of violence committed against journalists and people working in the media, which are linked to their professional activity, violate the right of these people to express and impart ideas, opinions and information. It also violates the rights of citizens and society in general to seek and receive information and ideas of any kind.⁹⁵⁰ 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."⁹⁵¹

⁹⁴⁶ This section corresponds to the section on freedom of expression in Honduras on the Report of the IACHR regarding Human Rights Situation in Honduras. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

⁹⁴⁷ IACHR. December 5, 2014. [Press Release 146A/14. Preliminary Observations concerning the Human Rights Situation in Honduras.](#)

⁹⁴⁸ IACHR. [Honduras: Human Rights and Coup d'Etat.](#) OEA/Ser.L/V/II. Doc. 55. December 30, 2009. In its Report *Honduras: Human Rights and Coup d'état*, the IACHR noted with concern the increase in the murders of journalists recorded in 2010; threats, attacks and harassment perpetrated against journalists and media, particularly on those journalists who expressed their opposition to the coup; and the widespread impunity for these crimes.

⁹⁴⁹ IACHR. [Honduras: Human Rights and Coup d'Etat.](#) OEA/Ser.L/V/II. Doc. 55. December 30, 2009.

⁹⁵⁰ I/A Court H. R., *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012.* Series C No. 248. Para. 142-149; IACHR. Special Rapporteur for the Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism.](#) OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 67.

⁹⁵¹ I/A Court H. R., *Case of Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of September 3, 2012. Series C No. 248. Para. 209.

741. According to international human rights standards, the State of Honduras is not only obliged to ensure that its agents do not commit acts of violence against journalists, but also to reasonably prevent attacks from third party individuals. The State also has an obligation to investigate, prosecute and, if necessary, punish the perpetrators of such violence, even when those responsible are not state actors. In this sense, Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

i. Killings

742. According to official figures, between 2003 and 2014, 50 journalists and media workers were killed in Honduras.⁹⁵² Ten of these journalists and media workers were killed in 2014. These were: the journalists José Roberto Ugarte, radio host and television producer; Carlos Mejía Orellana, marketing manager of *Radio Progreso*; Hernán Cruz Barnica, a journalist at *Radio Opoa*; Antony Oscar Torres Martínez, *Patuca Stereo Radio* announcer; Luis Alonso Funez Duarte, announcer of the *Super 10* radio station; Herlyn Ivan Espinal Martínez, a journalist of the 'Hoy mismo' of *Channel 3*; Nery Francisco Soto Torres, *Channel 23* of Olanchito; Dagoberto Díaz, owner of *Channel 20* and *Cable Visión*; Dorian Argenis Ortez Rivera, host of the program "The World of Little Giants" in *La Nueva 96.1*; and Reinaldo Paz Mayes, owner of *RPM TV, Channel 28*.⁹⁵³

743. In the first half of 2015, the Commission registered a worrying number of unclarified murders of communicators and media workers. On February 5, 2015, the communicator Carlos Fernández, host of the news program on *Channel 27 Naked City*, was killed in the municipality of Roatán, Department of Islas de la Bahía.⁹⁵⁴ The operator of *Radio Globo* Erick Arriaga was killed on February 23, 2015 in Tegucigalpa.⁹⁵⁵ On April 23, 2015, radio host Artemio Deras Orellana died after being shot while he was traveling in the western department of Lempira, in the vehicle of Justice of the Peace Jorge Pérez Aleman, who was also killed;⁹⁵⁶ the next day Cristel Joctan López Bermúdez, editor of VTV's *Channel 12*, in Tegucigalpa was killed.⁹⁵⁷ In May, Johan Franklin Dubon, host of *Radio Sulaco*, Yoro was murdered.⁹⁵⁸ On June 23, Juan Carlos Cruz Andara, *Teleport* channel journalist in Puerto Cortes was found stabbed to death.⁹⁵⁹ On June 27, Deibi Adali Rodríguez, a cameraman for *Channel 13 Telemás* in Copan was murdered.⁹⁶⁰ On July 3, hitmen murdered

⁹⁵² Comisionado Nacional de los Derechos Humanos (Conadeh). February 6, 2015. [11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas](#).

⁹⁵³ Conadeh. February 6, 2015. [11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas](#); See, also, Comité por la Libre Expresión (C-Libre). December 15, 2015. [Asesinan a otro periodista en Honduras](#).

⁹⁵⁴ Conexihon. February 6, 2015. [Periodista de Rapcos asesinado al finalizar noticiario](#); Univisión. February 7, 2015. [El periodista Carlos Fernández fue asesinado a tiros en Honduras](#)

⁹⁵⁵ La Prensa. February 24, 2015. [Matan a operador de Radio Globo en Tegucigalpa](#); Tiempo. February 24, 2015. [Asesinan a operador de Radio Globo en la capital de Honduras](#).

⁹⁵⁶ La Tribuna. April 24, 2015. [Muere comunicador social que iba con juez asesinado](#); Cerigua. April 27, 2015. [Dos periodistas asesinados en Honduras](#).

⁹⁵⁷ La Prensa. April 25, 2015. [Matan a balazos a camarógrafo de canal de televisión en Tegucigalpa](#); Cerigua. April 27, 2015. [Dos periodistas asesinados en Honduras](#).

⁹⁵⁸ La Prensa. May 14, 2015. [Locutor asesinado en Yoro había sido amenazado and golpeado](#); CNN en español. May 14, 2015. [Asesinan a locutor invidente en Honduras](#).

⁹⁵⁹ Reporters Without Borders. July 8, 2015. [Three more killings in country where murders go unpunished](#); Hondudiario. June 23, 2015. [Asesinan a comunicador en Puerto Cortés](#).

⁹⁶⁰ Tiempo. June 28, 2015. [Honduras: Ultiman a camarógrafo en La Entrada, Copán](#); La Tribuna. June 29, 2015. [Ultiman camarógrafo de medio de comunicación en Copán](#).

Joel Aquiles Torres, owner of *Channel 67* and shareholder of a cable television company in Taulabé, Comayagua.⁹⁶¹

744. According to the information received by the Commission through its meetings with journalists and civil society organizations during its on-site visit, 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.

745. The lack of effective investigations - which according to official figures affects "about 96%" of these cases⁹⁶² - has impeded clarification as to whether a majority of these crimes are connected with the information role of communicators. In this regard, the civil society organizations consulted expressed concern because the investigations promoted the notion that the killings were unrelated to the practice of this profession, without adopting strict criteria for evaluating evidence and monitoring avenues of enquiry.⁹⁶³ After its 2010 on-site visit, the Commission questioned the conclusion reached by some authorities that the murder of a group of journalists was not linked to their professional work and emphasized the State's obligation to "investigate the deaths, including [...] the determination whether the crimes were related to the exercise of the profession and to allow the prosecution and conviction of those responsible for them."⁹⁶⁴ The Commission is pleased to observe that during its 2014 on-site visit, the State authorities consistently expressed their willingness to investigate and clarify these crimes and pledged to exhaust the avenues of investigation related to the profession or occupation of the victims. It also appreciates the creation in 2014 of the Technical Criminal Investigation Agency, a specialized unit of public prosecutors, who are dedicated to the investigation and prosecution of serious offenses with a strong social impact⁹⁶⁵ and their ability to investigate the murders of journalists.

746. For the Inter-American Commission it is essential that the Honduran government fully, effectively and impartially investigate these crimes affecting the whole of Honduran society, to clarify the motives and to judicially determine the relationship they may have with journalism and the freedom of expression. The authorities should not exclude the practice of journalism as a motive for the murder and/or aggression before completing their investigation. In this regard, in the context of his 2012 official visit, the former UN Special Rapporteur on the promotion and protection of the right to freedom of expression, Frank La Rue, recommended to the State of Honduras that "[i]n all cases of violence directed at journalists or human rights defenders, the initial presumption - until proven otherwise - should be that the incident occurred as a result of the person's profession or activities."⁹⁶⁶ In this regard, the Commission stresses the need to create special investigation protocols requiring the definition and exhaustion of criminal theories related to the assaulted individual's exercise of their profession.

⁹⁶¹ Reporters Without Borders. July 8, 2015. [Three more killings in country where murders go unpunished](#); La Prensa. July 4, 2015. [Aseñan a dueño de canal de televisión en Taulabé](#).

⁹⁶² Conadeh. February 6, 2015. [11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas](#).

⁹⁶³ IACHR. December 5, 2014. [Press Release 146A/14. Preliminary Observations concerning the Human Rights Situation in Honduras](#).

⁹⁶⁴ IACHR. [Preliminary Observations of the Inter-American Commission on Human Rights on its visit to Honduras, May 15 to 18, 2010](#). OEA/SER.L/V/II. Doc. 68. June 3, 2010. Para. 26.

⁹⁶⁵ Diario Oficial de la República de Honduras. [Decreto Ley No. 379-2013, que reforma la Ley del Ministerio Público](#). March 18, 2014.

⁹⁶⁶ United Nations. Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. Addendum. Mission to Honduras. A/HRC/23/40/Add.1. March 22, 2013. Para. 40. Available for consultation at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=21720

747. The omission of logical avenues of investigation or lack of diligence in the gathering of evidence in this respect can have a serious impact on the development of proceedings at the indictment or trial stages.⁹⁶⁷ The failure to completely exhaust all logical avenues of investigation leads, above all, to the inability to identify the masterminds.⁹⁶⁸

748. The IACHR and its Special Rapporteur for Freedom of Expression reminds the State that “it is essential that the authorities vigorously condemn attacks committed against media workers and encourage the competent authorities to act with due diligence and speed to investigate such events and punish those responsible.” Likewise, “a simple but highly effective protective measure consists of the highest authorities of the State recognizing in a consistent, clear, public and firm manner the legitimacy and value of the journalistic profession, even when the information disseminated may prove critical of, inconvenient to or inopportune for the interests of the government.”⁹⁶⁹

749. The Commission acknowledges the initiatives promoted by the National Human Rights Commission [*Comisionado Nacional de los Derechos Humanos*] (Conadeh), under the leadership of Roberto Herrera Caceres, who has publicly condemned the crimes against journalists and urged the competent authorities to prevent, protect and investigate the murder, kidnapping, intimidation and the threats to members of the media.⁹⁷⁰ The dissemination of such messages is a highly positive practice that should be made official policy by high-ranking government authorities, including the Secretariat of Security and the agencies responsible for law enforcement.

750. Likewise, the Commission has acknowledged that “the media also have a key role to act against aggression committed against a journalist.”⁹⁷¹ The condemnation of the attacks by the media, their reports on the facts and monitoring the measures taken by the State to protect journalists and investigate attacks are essential to ensure that the State complies with its obligations to prevent violence against communicators, take protective measures, and combat impunity for the crimes committed.⁹⁷²

ii. Attacks and Threats

751. The Commission also received information about physical assaults, attacks and threats against journalists for exercising their profession of reporting during 2014 and the first half of 2015 in several cities. Although many of these attacks and threats were not formally denounced due to a lack of

⁹⁶⁷ IACHR. Special Rapporteur for the Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 116.

⁹⁶⁸ IACHR. Special Rapporteur for the Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125-126; IACHR. Special Rapporteur for the Freedom of Expression. [Impunity, Self-censorship and Armed Internal Conflict: An Analysis of the State of Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 65-66.

⁹⁶⁹ IACHR. [Annual Report 2013. Report of the Special Rapporteur for the Freedom of Expression](#). Chapter III (Violence against Journalists and media workers: Inter-American standards and national practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 37. In the same sense the observations of Frank La Rue, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, in the context of his official visit to Honduras. Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. Addendum. Mission to Honduras. A/HRC/23/40/Add.1. March 22, 2013. Para. 93 a). Available for consultation at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=21720

⁹⁷⁰ Conadeh. February 6, 2015. [11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas](#); Conadeh. May 7, 2015. [Ante el CONADEH: Periodista denuncia que teme por su vida and pide protección para él and su familia](#).

⁹⁷¹ IACHR. [Annual Report 2013. Report of the Special Rapporteur for the Freedom of Expression](#). Chapter III (Violence against Journalists and media workers: Inter-American standards and national practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, Para. 274.

⁹⁷² United Nations. The United Nations Organization for Education, Science and Culture (Unesco). [San Jose Declaration](#). May 2-4, 2013.

confidence in the actions by the respective authorities, various sources consulted confirm that the number of attacks and threats is still high.⁹⁷³

752. During the period under review in this Report, the Commission recorded an act of aggression in January 2014, against the car of journalist Hector Antonio Madrid Vallecillo, of *Channel 35* and *Channel 10* in the city of Tocoa, Department of Colón. The journalist's car was shot at by unknown individuals. The journalist filed a complaint with the National Directorate of Criminal Investigation (DGIC).⁹⁷⁴ Also, in February 2015, there was a report of an attack with several shots fired at the building of the *National Radio of Honduras*. The incident occurred in the early hours of the morning and there were no injuries.⁹⁷⁵ There were reports of attacks by police on journalists while covering student demonstrations in the city of Catacamas.⁹⁷⁶ The IACHR received information on acts of aggression against a journalist and a cameraman of *Televisión Centro* by alleged members of the Military Police. Given this fact, the spokesperson of the National Force of Interagency Security, Santos Nolasco, said: "We will investigate this [...] to punish the perpetrator if necessary, because this type of behavior can definitely not be tolerated."⁹⁷⁷

753. The Commission was also informed on alarming incidents of threats to the lives and safety of journalists in 2014 and 2015. This is the case with journalists: Alex Sabillón, presenter and reporter of the news "Hechos de Choloma" which was broadcast by the *Multicanal* channel;⁹⁷⁸ Ramon Rojas, a correspondent for the newspaper *Tiempo* and *Channel 5*;⁹⁷⁹ Yanina Romero, Carlos Rodriguez and Lourdes Ramirez of the *KTV*⁹⁸⁰ channel; Rogelio Trejo, *Honduvision TV* journalist and correspondent for "*Hable como Habla*,"⁹⁸¹ journalist Maria Chinchilla, *Abriendo Brecha*⁹⁸² news correspondent; Carlos Posadas, of "*Hable como Habla*,"⁹⁸³ Ely Vallejo, of *Cholusat Sur Canal 36*;⁹⁸⁴ David Romero Ellner, director of *Radio Globo* and *Globo TV*;⁹⁸⁵ and Cesar Silva, a journalist for *Globo TV*, all of whom were seriously threatened during that period.⁹⁸⁶

⁹⁷³ Comité por la Libre Expresión (C-Libre). December 1, 2014. Acts of Aggression against Journalists in Honduras (information received during the IACHR's on-site visit to Honduras held between December 1-5, 2014). Available at: Archives of the Office of the Special Rapporteur for the Freedom of Expression; Pen International. [Honduras: Journalism in the shadow of Impunity](#). 2014; Conadeh. February 6, 2015. [11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas](#); Conadeh. May 7, 2015. [Ante el CONADEH: Periodista denuncia que teme por su vida and pide protección para él and su familia](#).

⁹⁷⁴ C-Libre. January 3, 2014. [Desconocidos tirotean vehículo de periodista frente al canal de televisión](#); Proceso Digital. January 2, 2014. [Corresponsal de Abriendo Brecha espera pronta acción judicial tras atentado criminal](#).

⁹⁷⁵ La Prensa. February 2, 2015. [Disparan contra la Radio Nacional de Honduras](#); C-Libre. February 3, 2015. [Disparan dos balazos contra edificio de Radio Nacional de Honduras](#).

⁹⁷⁶ C-Libre. March 27, 2015. [Policías amenazan con sus armas a 10 periodistas](#).

⁹⁷⁷ Televisión Centro/YouTube. March 14, 2015. [TVC TN5 Matutino – Policías Militares agreden a personal periodístico de Televisión Centro en SPS](#).

⁹⁷⁸ C-Libre. December 1, 2014. Acts of Aggression against Journalists in Honduras (information received during the IACHR's on-site visit to Honduras held between December 1-5, 2014). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁷⁹ C-Libre. February 5, 2014. [Por difundir información deportiva, periodista recibe amenazas de muerte](#).

⁹⁸⁰ Reporters Without Borders. July 25, 2014. [Three investigative reporters get death threats in Honduras](#); El Heraldo/EFE. July 25, 2014. [Piden a Honduras que proteja a tres periodistas amenazados de muerte](#); Knight Center for Journalism in the Americas. July 30, 2014. [RSF pide protección a gobierno de Honduras para su correspondiente no país](#).

⁹⁸¹ C-Libre. August 18, 2014. [Periodista responsabiliza a hijo de alcalde municipal si sufre atentado](#); Noticias Honduras. August 31, 2014. [Reportero responsabiliza a hijo de alcalde por cualquier atentado](#).

⁹⁸² Conexihon/C-Libre. September 3, 2014. [Hombres armados amenazan de muerte a periodista en Choluteca](#); El Libertador. September 3, 2014. [Hombres armados amenazan de muerte a periodista hondureña](#).

⁹⁸³ Conadeh. May 7, 2015. [Ante el Conadeh: Periodista denuncia que teme por su vida and pide protección para él and su familia](#); La Prensa. May 7, 2015. [Amenazan a muerte a dos periodistas hondureños](#); C-Libre. May 12, 2015. [Dos periodistas hondureños amenazados a muerte](#).

⁹⁸⁴ C-Libre. January 26, 2015. [Periodista abandona el país por amenazas a muerte](#); Cholutas Sur Canal 36. January 28, 2015. [Video: Periodista Ely Vallejo sale del país por temor a perder su vida](#); C-Libre. January 8, 2015. [Periodista perseguido por desconocidos después de interrogar al presidente de Honduras](#).

⁹⁸⁵ Reporters without Borders. June 10, 2015. [Call for threatened radio director to be given effective protection](#); Conexihon C-Libre/YouTube. May 19, 2015. [Amenazas a muerte para periodista que denunció corrupción del IHSS](#).

754. There is special concern for the situation of journalist Alex Sabillón, presenter and news reporter of “Hechos de Choloma” broadcast by the outlet *Multicanal*. According to sources consulted by the Commission during its visit, Sabillón was a victim of continuing acts of intimidation and death threats following a report on corruption in the Aguas de Choloma Company, in the Department of Cortés.⁹⁸⁷ On May 23, 2014, a young man photographed him several times at his home and then fled in an unlicensed car. On May 27, Sabillón captured images of a young man who also photographed him performing his investigative work. The journalist also reported intimidation and threats through text messages and phone calls. Following these complaints, the police have taken over the journalist’s security granted by the Secretariat of Security.⁹⁸⁸ On June 16, 2014, the director of the Road Commission of the Choloma Mayor’s Office, Miguel Callejas, threatened to kill Sabillón in the presence of the officer responsible for the journalist’s security. “I don’t care if you go with the police, you bastard, we’ll kill you” the official told him.⁹⁸⁹ Indeed, according to information provided to the Commission by the NGO *C-Libre*, in 2014, the police officer escorting Sabillón was murdered. The President of the Water Board of San Francisco Ceibón, Benito López was also murdered after denouncing, through the journalist Sabillón, acts of alleged corruption in the *Aguas de Choloma* Company. As a result of this situation, on August 30, 2014, the journalist fled his home to somewhere else in the country.⁹⁹⁰

755. Likewise, the Commission is concerned to learn about the death threats and harassment against journalists of *Radio Globo* and *Globo TV*. According to the information received, journalist David Romero Ellner, director of *Radio Globo* and *Globo TV* indicated that he had received death threats after disclosing an investigation into the misappropriation of funds from the Honduran Institute of Social Security to the ruling National Party.⁹⁹¹ Romero Ellner, whom the IACHR granted precautionary measures in 2009,⁹⁹² had received threats and had been attacked in the past.⁹⁹³ Also in January 2015, *Globo TV* journalist César Silva reported that he was intimidated by the head of special security of the president of the National Congress of Honduras, who, according to the journalist, pointed at him and said: “Keep spreading videos of military ‘dog eaters’ and you’ll be gagged in a ditch with yellow feet.” This comment was in reference to a report released a few days earlier on television.⁹⁹⁴ Silva was beneficiary of precautionary measures granted by the Commission in 2009, after being kidnapped.⁹⁹⁵ According to available information, five workers of *Radio Globo* and *Globo TV* have been killed since 2011.⁹⁹⁶ The most recent is the case of the radio operator

⁹⁸⁶ C-Libre. January 29, 2015. [Periodista amenazado por el jefe de Seguridad del presidente del Congreso Nacional de Honduras](#).

⁹⁸⁷ C-Libre. December 1, 2014. Acts of Aggression against Journalists in Honduras (information received during the IACHR’s on-site visit to Honduras held between December 1-5, 2014). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁸⁸ C-Libre. May 28, 2014. [Persiste la intimidación and el asecho en contra de reportero de televisión](#); Reporters Without Borders. May 30, 2014. [Another journalist murdered in Honduras, no end to violence in sight](#); Connection. December 2, 2014. [Alex Sabillón, un retrato de la impunidad de los agresores](#).

⁹⁸⁹ C-Libre. June 17, 2014. [Frente a custodia policial empleado municipal amenaza de muerte a reportero](#); Reporters Without Borders. June 19, 2014. [RWB encourages Honduras to step up efforts to combat impunity](#).

⁹⁹⁰ C-Libre. December 1, 2014. Acts of Aggression against Journalists in Honduras (information received during the IACHR’s on-site visit to Honduras held between December 1-5, 2014). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁹¹ Reporters Without Borders. June 10, 2015. [Call for threatened radio director to be given effective protection](#); Conexihon C-Libre/YouTube. May 19, 2015. [Amenazas a muerte para periodista que denunció corrupción del IHSS](#).

⁹⁹² IACHR. July 3, 2009. [Press Release 47/09. IACHR expresses concern at the suspension of guarantees in Honduras and grants precautionary measures](#).

⁹⁹³ IACHR. [Annual Report 2014. Report of the Special Rapporteur for the Freedom of Expression](#). Chapter II (Evaluation of the Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 13. March 9, 2015. Para. 635; IACHR. [Annual Report 2011. Report of the Special Rapporteur for the Freedom of Expression](#). Chapter II (Evaluation of the Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 69. December 30, 2011. Para. 342.

⁹⁹⁴ C-Libre. January 29, 2015. [Periodista amenazado por el jefe de Seguridad del presidente del Congreso Nacional de Honduras](#).

⁹⁹⁵ IACHR. No date. [Precautionary Measures granted in Honduras](#).

⁹⁹⁶ [Luz Mariana Paz Villalobos](#) (December 6, 2011); [Aníbal Barrow](#) (June 24, 2013); Manuel Murillo Varela (October 23, 2013); [Juan Carlos Argeñal Medina](#) (December 7, 2013). See: Reporters without Borders. May 2015. [Entre crímenes, amenazas, acosos and más, los periodistas de Radio Globo and Globo TV transmiten la información](#); Pen International. [Honduras: Journalism in the shadow of Impunity](#). 2014.

Erick Arriaga murdered on February 23, 2015. *Radio Globo* and *Globo TV* have been opposition media outlets since the 2009 coup d'état.

756. In this context, the Commission has monitored the situation of the independent journalist and president of PEN Honduras, Dina Meza Elvir. According to available information, during 2014, threats against Meza Elvir increased, "by telephone, by email and directly on the streets. Unknown individuals constantly follow her and take her picture."⁹⁹⁷ Also during 2015, the journalist and human rights defender reported "20 security incidents," some of which were linked to the defense of journalists who have denounced the alleged corruption of the Honduran Institute of Social Security [*Instituto Hondureño de Seguridad Social*].⁹⁹⁸ The Commission adopted precautionary measures in favor of Dina Meza in 2006.⁹⁹⁹

757. During its on-site visit, the Commission received information on the lack of effectiveness of internal protection mechanisms implemented by the Human Rights Unit of the Secretary of State's Bureau of Security [*Unidad de Derechos Humanos del Despacho de Seguridad de la Secretaría de Estado*],¹⁰⁰⁰ and the institutional constraints of this entity. Also, whilst many journalists and civil society organizations acknowledged the efforts made by the Government and Conadeh to ensure protection of some journalists,¹⁰⁰¹ they expressed concern regarding the institutional weaknesses of the State institutions charged with protecting journalists' rights in terms of mutual coordination, and stressed the importance of creating a special protection mechanism for this population group.

758. In this regard, the Commission notes with satisfaction the adoption of the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators in April 2015, which provides the State with a clear legal framework for the adoption of effective and appropriate measures in this area, representing a significant improvement over the pre-existing situation. As will be explained below, the new legislation contains several valuable features, such as: a wide and functional definition of journalists and media communicators; the participation of press and civil society representatives working on freedom of expression in the National Council for Protection; the adoption of the principle of a differentiated approach; establishing clear rules on the implementation of precautionary and provisional measures of the Inter-American system; and the existence of rapid proceedings to protect journalists who face an imminent risk of serious injuries. The State, in its response to the draft of this report, noted that according to a July 30, 2015, report by the Secretariat of Security, 21 journalists and media workers have internal security measures in place for them, which are implemented at the request of the Office of the Special Prosecutor for Human Rights [*Fiscalía Especial de Derechos Humanos*].¹⁰⁰²

759. Finally, and without prejudice to the primary obligation that the protection of the life and integrity of journalists lies with the State, the Commission takes note that the UN has urged media organizations to provide adequate training and guidance on security issues, risk awareness and self-defense to permanent employees or to those rendering such services independently, as well as safety equipment when necessary.¹⁰⁰³ As such, the United Nations Plan of Action on the Safety of Journalists and the Issue of

⁹⁹⁷ Reporters Without Borders. July 29, 2014. [RWB calls for protection for its Honduran correspondent, Dina Meza.](#)

⁹⁹⁸ C-Libre. June 22, 2015. [Presidenta de PEN Honduras corre riesgo por 20 incidentes en su contra.](#)

⁹⁹⁹ IACHR. [Annual Report 2006](#). OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Vol. I. Chapter III.

¹⁰⁰⁰ Ciprodeh. Report on compliance with provisional and precautionary measures granted by the Commission and Inter-American Court of Human Rights, 2013. On file with the IACHR; Pen International. [Honduras: Periodismo a la Sombra de la Impunidad](#). 2014.

¹⁰⁰¹ Also, according to the information available, Conadeh issued precautionary measures in favor of journalists during the period covered by this report. Such is the case of journalists Francisco Zuñiga and Carlos Posada, of *HRN* and news program "Hoy mismo" of the channel *Telecentro*, who requested protection on May 7, 2015, from the Conadeh after receiving death threats. Conadeh reported that it asked the government to take precautionary measures to safeguard the integrity of journalists and their families. Conadeh. May 7, 2015. [Ante el CONADEH: Periodista denuncia que teme por su vida and pide protección para él and su familia.](#)

¹⁰⁰² Communication from the State of Honduras. Note No. SG/064/MHOEA/2015. Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

¹⁰⁰³ UN Special Rapporteur on the Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Special Rapporteur of the Organization of American States (OAS) for

Impunity points to the importance of convening “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.”¹⁰⁰⁴

760. In this connection, the Commission recommends that the State makes public statements that contribute to the prevention of violence against journalists, including the acknowledgement of the role of journalists and public condemnation of the assassination of and any physical violence towards journalists, omitting any statements that might raise the risk for them; and to adopt training and exercise programs, as well as formulating and implementing behavioral guidelines and directives, for public servants and especially the police or security forces about respect for the media, including those specifically related to gender.

761. Similarly, the State must ensure the urgent adoption of effective and specific protective measures to guarantee the safety of those who are subject to special risk by exercising their right to freedom of expression, whether the threats emanate from State officials or third party individuals. The measures should ensure that journalists can continue the exercise of their professional activity and their right to freedom of expression. Similarly, the State must take the necessary measures for those media workers who have been displaced or exiled for being in a risk situation to be able to return home in safety. When it is not possible for these individuals to return, the States must adopt measures enabling them to remain in the place chosen in dignity, with security measures and the financial support needed to keep their jobs and family life.

b. Impunity

762. During its on-site visit, the IACHR and its Office of the Special Rapporteur for Freedom of Expression asked the State for detailed information on the status of investigations involving the killings of journalists and media workers. According to the information provided by the State, in 2013 six investigations were opened into cases in which journalists were killed, orders to prosecute were issued in two cases, and one conviction and two acquittals were handed down. In 2014, seven investigations were opened into these types of cases, orders to prosecute were issued in two cases, and there were two convictions.¹⁰⁰⁵ According to figures the IACHR received, in only 4 of the 50 cases in which members of the media were killed in 2013 and 2014 have the authorities handed down convictions.¹⁰⁰⁶

763. According to the information provided, on March 14, 2014, a children’s court found an 18-year-old youth guilty of perpetrating the killing of journalist Aníbal Barrow, who was kidnapped on June 24, 2013, by armed subjects in the city of San Pedro Sula.¹⁰⁰⁷ The journalist’s body was found on July 9 near a lagoon in the municipality of Villanueva. According to news accounts, the journalist’s body had been mutilated and partially burned.¹⁰⁰⁸ The journalist had been host of the TV program “Aníbal Barrow y nada más,” which aired on *Globo TV*. The other suspects in the crime are reportedly in custody and awaiting trial.

Freedom of Expression and the Special Rapporteur on Freedom of Expression and access to Information of the African Commission on Human and Peoples’ Rights (ACHPR). June 25, 2012. [Joint Declaration on Crimes against the Freedom of Expression](#).

¹⁰⁰⁴ United Nations. The United Nations Organization for Education, Science and Culture (Unesco). International Programme for the Development of Communication. [UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Point 5.22.

¹⁰⁰⁵ IACHR. [Press Release 146A/09. Preliminary Observations concerning the Human Rights Situation in Honduras](#). December 5, 2014.

¹⁰⁰⁶ Conadeh. February 6, 2015. [11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas](#).

¹⁰⁰⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 15, 2013. [Press Release R50/13. Office of the Special Rapporteur Condemns Murder of Kidnapped Journalist in Honduras](#); Proceso Digital. July 10, 2013. [Fiscalía confirma que cuerpo encontrado en Siboney pertenece a Aníbal Barrow](#); La Prensa. July 10, 2013. [Honduras: Confirman que cadáver hallado es de Aníbal Barrow](#).

¹⁰⁰⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 15, 2013. [Press Release R50/13. Office of the Special Rapporteur Condemns Murder of Kidnapped Journalist in Honduras](#); Proceso Digital. July 10, 2013. [Fiscalía confirma que cuerpo encontrado en Siboney pertenece a Aníbal Barrow](#); La Prensa. July 10, 2013. [Honduras: Confirman que cadáver hallado es de Aníbal Barrow](#).

However, the masterminds apparently have not been identified or arrested.¹⁰⁰⁹ According to the information available, Barrow's killing was ordered by a drug trafficker.¹⁰¹⁰

764. Also, on June 11, 2014, the Tegucigalpa Sentencing Court of National Jurisdiction [*Tribunal de Sentencia con Jurisdicción Nacional de Tegucigalpa*] handed down a prison sentence for three men who had been found guilty of killing journalist Alfredo Villatoro in May 2012. According to the information received, Marvin Alonso Gómez and two brothers, Osman Fernando and Edgar Francisco Osorio Arguijo, were arrested weeks after the killing, and in March 2014 the court had found them guilty but they were still awaiting sentencing.¹⁰¹¹ Villatoro was kidnapped by armed men on May 9. On May 15, his body turned up on a lot on the southern outskirts of Tegucigalpa with two gunshots to the head and dressed in the uniform of a special police squadron, with a red handkerchief across his face. Villatoro was a well-known and influential journalist who worked as news coordinator at the *HRN* radio network, one of the most important in the country, where he hosted a morning program.¹⁰¹²

765. In 2013, the man who killed Héctor Francisco Medina Polanco was reportedly convicted. Medina Polanco was host of the TV9 news program on the cable channel *Omega Visión* in San Pedro Sula.¹⁰¹³ In 2012, the man who killed Jorge Alberto Orellana was sentenced to 28 years in prison. Orellana directed the program "En vivo con Georgino," broadcast by *Televisión de Honduras* in San Pedro Sula. The investigations that were carried out determined that the journalist's killing was not connected to his work in journalism.¹⁰¹⁴

766. On the occasion of its visit, the IACHR and its Office of the Special Rapporteur also requested detailed information from the State concerning the killing of Carlos Hilario Mejía Orellana, who was marketing director for *Radio Progreso* and a beneficiary of precautionary measures issued by the IACHR.¹⁰¹⁵ *Radio Progreso* was one of the media outlets taken over by the armed forces on June 28, 2009. Since then, it has been subjected to various pressures, and a number of journalists from the radio station have received repeated threats.¹⁰¹⁶ On April 11, 2014, Mejía Orellana was stabbed to death in his home.¹⁰¹⁷ According to information the Commission received, in November 2014 the Criminal Court in the city of El Progreso, Yoro, ordered that Edwin Donald López Munguía be held in "judicial detention" as the person allegedly

¹⁰⁰⁹ La Prensa. March 15, 2014. [Declaran culpable al "Chele" por el asesinato de Aníbal Barrow](#); Honduprensa/Tiempo. March 14, 2014. [Ocho años de cárcel para asesino de Aníbal Barrow](#).

¹⁰¹⁰ El Herald. July 13, 2013. [Intensifican búsqueda del autor intelectual de crimen contra Barrow](#).

¹⁰¹¹ Inter American Press Association (IAPA). June 12, 2014. [IAPA welcomes conviction in Alfredo Villatoro case in Honduras](#); El País. June 12, 2014. [Cadena perpetua a los asesinos de un periodista hondureño](#); El Universal/AFP. June 12, 2014. [Cadena perpetua para asesinos de periodista en Honduras](#); El Herald. June 11, 2014. [Cadena perpetua a asesinos de Alfredo Villatoro](#); Clases de periodismo. June 12, 2014. [Honduras: Asesinos de periodista son condenados a cadena perpetua](#).

¹⁰¹² IACHR. Office of the Special Rapporteur for Freedom of Expression. May 17, 2012. [Press Release R52/12. The Office of the Special Rapporteur Condemns Murder of Journalist Kidnapped in Honduras](#); Knight Center for Journalism in the Americas. May 16, 2012. [Kidnapped Honduran radio journalist found dead](#); C-Libre. May 16, 2012. [Ángel Alfredo Villatoro Rivera](#); Reporters without Borders. May 16, 2012. [Kidnapped Radio Journalist Alfredo Villatoro Found Shot Dead](#).

¹⁰¹³ Radio Progreso. November 23, 2013. [Roger Mauricio condenado por asesinato de periodista Héctor Polanco](#); Proceso Digital. March 24, 2014. [Justicia hondureña ha logrado sentencias en cuatro de 40 casos de periodistas asesinados](#).

¹⁰¹⁴ IFEX/Reporters without Borders. September 12, 2012. [Robber Gets 28 Years in Prison for Murdering TV Journalist](#); La Tribuna. September 11, 2012. [28 años de cárcel para el homicida de "Georgino" Orellana](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. April 22, 2010. [Press Release R45/10. Office of the Special Rapporteur Expresses its Concern at the Latest Murder of a Journalist in Honduras and at the Grave Vulnerability of the Media There](#).

¹⁰¹⁵ IACHR. [Annual Report 2011](#). Chapter III (The Petition and Case System). OEA/Ser.L/V/II. Doc. 69.30. December 2011. Para. 74.

¹⁰¹⁶ IACHR. [Honduras: Human Rights and the Coup d'État](#). OEA/Ser.L/V/II. Doc. 55. December 30, 2009.

¹⁰¹⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 15, 2014. [Press Release R29/14. Office of the Special Rapporteur Condemns Murder of Radio Worker in Honduras](#); Reporters without Borders. April 14, 2014. [Radio Progreso Employee Murdered after Getting Threats](#); Religión Digital. April 14, 2014. [Carlos Mejía Orellana, asesinado en Honduras](#); La Prensa. April 14, 2014. [Organizaciones condenan asesinato de empleado de Radio Progreso](#); Knight Center for Journalism in the Americas. April 16, 2014. [Honduran media employee killed after having requested police protection for years](#).

responsible for the death of Carlos Mejía Orellana.¹⁰¹⁸ The authorities reported that preliminary results of the investigation indicate that the killing was not linked to Mejía Orellana's work at *Radio Progreso*. The IACHR welcomed the efforts undertaken to investigate this crime and urged the authorities to duly exhaust all theories that would suggest that the crime was connected with his job at the radio station.¹⁰¹⁹

767. The prosecutions and criminal convictions in these cases represent steps forward in combatting the impunity that prevails in the vast majority of crimes against journalists and media workers in Honduras. The IACHR has indicated a number of times that this impunity creates a widespread inhibiting effect that restricts people's freedom of expression, their right to have access to information, and the richness and vigor of public debate.

768. Notwithstanding this progress, it is of concern to the Commission that, according to information provided by civil society organizations and Conadeh, nearly 96% of killings of journalists and media workers remain unpunished.¹⁰²⁰ Moreover, the IACHR is extremely concerned that so far none of the masterminds in these cases have been identified or convicted. The State has the obligation to investigate and criminally punish everyone who participates in a crime, including the masterminds, accomplices, collaborators, and those who later participate in covering up the human rights violations committed. The State must also investigate the structures involved in the execution of the crimes or the criminal structures to which the perpetrators belong.¹⁰²¹

769. Specifically, the IACHR received information regarding the delay and ineffectiveness of investigations into crimes committed against journalists over the exercise of their freedom of expression in opposition to the coup d'état. These crimes include the killing on March 10, 2010, of Nahúm Palacios Arteaga, a journalist from *Canal 5* in Tocoa, and the killing the next day of David Meza Montesinos, a journalist with *Radio El Patio*, *Radio América*, and *Canal 45*, in La Ceiba.¹⁰²²

770. It is not only killings that have high levels of impunity; physical assaults, attacks, and threats against journalists and media workers are not investigated effectively either.¹⁰²³ In this regard, the IACHR reiterates that the lack of protection measures and a failure to immediately investigate assaults and threats significantly hampers clarification of the facts and the possibility of criminally prosecuting those

¹⁰¹⁸ IACHR. December 5, 2014. [Press Release 146A/14. Preliminary Observations concerning the Human Rights Situation in Honduras](#); Radio Progreso. November 21, 2014. [Dictan detención judicial a supuesto asesino del jefe de mercadeo de Radio Progreso](#).

¹⁰¹⁹ IACHR. December 5, 2014. [Preliminary Observations concerning the Human Rights Situation in Honduras](#); Radio Progreso. November 21, 2014. [Dictan detención judicial a supuesto asesino del jefe de mercadeo de Radio Progreso](#).

¹⁰²⁰ Ciprodeh. Informe de cumplimiento de las medidas cautelares y provisionales otorgadas por la Comisión y la Corte Interamericana de Derechos Humanos. 2013. Available in the IACHR archives; PEN International. [Honduras: Journalism in the Shadow of Impunity](#); Reporters without Borders. May 2015. [Entre crímenes, amenazas, acosos y más, los periodistas de Radio Globo y Globo TV transmiten la información](#); C-Libre. December 1, 2014. *Agresiones contra periodistas en Honduras* (information on attacks on journalists, provided during the IACHR's on-site visit to Honduras, December 1-5, 2014). Available at: archives of the Office of the Rapporteur for Freedom of Expression; Conadeh. February 6, 2015. [11 personas vinculadas a los medios de comunicación murieron en circunstancias violentas](#).

¹⁰²¹ IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 166.

¹⁰²² PEN International. [Honduras: Journalism in the Shadow of Impunity](#). 2014; Reporters without Borders. May 2015. [Entre crímenes, amenazas, acosos y más, los periodistas de Radio Globo y Globo TV transmiten la información](#).

¹⁰²³ Ciprodeh. Informe de cumplimiento de las medidas cautelares y provisionales otorgadas por la Comisión y la Corte Interamericana de Derechos Humanos. 2013. Available in the IACHR archives; PEN International. [Honduras: Journalism in the Shadow of Impunity](#); Reporters without Borders. May 2015. [Entre crímenes, amenazas, acosos y más, los periodistas de Radio Globo y Globo TV transmiten la información](#); C-Libre. December 1, 2014. *Agresiones contra periodistas en Honduras* (information on attacks on journalists, provided during the IACHR's on-site visit to Honduras, December 1-5, 2014). Available at: archives of the Office of the Rapporteur for Freedom of Expression.

responsible.¹⁰²⁴ Under these circumstances, many journalists choose not to report threats or attacks on them, further fueling the cycle of impunity.¹⁰²⁵

771. According to various sources consulted, the impunity of these crimes is the result of the ineffectiveness and institutional weakness of the agencies in charge of investigating and prosecuting these crimes; the failure to meet international standards in carrying out effective investigations; and the high levels of corruption and influence of criminal organizations in the security forces and the judiciary.¹⁰²⁶ These issues were addressed by nongovernmental organizations that participated in the hearing about “Reports of Killings of Journalists and Impunity in Honduras,” held on March 25, 2014, during the 150th regular session of the IACHR. The organizations indicated that violence against journalists and the current state of impunity for those crimes “has had a devastating effect on the exercise of freedom of expression in Honduras.”

772. The State, for its part, indicated that of the cases that had been prosecuted, the homicides had been committed by common criminals or organized crime. They further indicated that the Office of the Public Prosecutor [*Ministerio Público*] has a Special Prosecutor to investigate and prosecute cases of violence against journalists in which members of the National Police, the armed forces, or the judicial branch may be involved (Special Prosecutor’s Office for Human Rights) [*Fiscalía de Derechos Humanos*], as well as a Special Prosecutor’s Office for Crimes against Life [*Fiscalía Especializada de delitos contra la vida*], which is in charge of investigating killings of journalists,¹⁰²⁷ through its Technical Agency for Criminal Investigation. This special agency of the Public Prosecutor’s Office was created in 2014, and it apparently handles the investigation and prosecution of serious crimes that have a high social impact.¹⁰²⁸

773. In adopting an adequate institutional framework for the investigation, trial, and criminal sanction of crimes against journalists, the State has a duty to “clearly define the formal jurisdiction of the authorities in charge of investigating and processing these crimes.”¹⁰²⁹ The absence of clear rules regarding jurisdiction can lead to delays and procedural errors that can affect the investigations carried out, thus contributing to impunity. Moreover, the authorities ultimately assigned to the investigation must be those who can act with the most autonomy and independence. Along these lines, the IACHR and its Office of the Special Rapporteur have indicated that:

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. The State must ensure that the judges and prosecutors with authority to act in cases of violence against journalists can operate without being subjected to influence by the public official or criminal organization allegedly involved in the crime, given the existence of indications that

¹⁰²⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Paras. 117-118.

¹⁰²⁵ Meeting with civil society in Tegucigalpa and San Pedro Sula. See also, United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/20/17. June 4, 2012, para. 66. Available for consultation at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=21720

¹⁰²⁶ United Nations. Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión. Addendum. Misión a Honduras. A/HRC/23/40/Add.1. March 22, 2013. Available for consultation at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=21720

¹⁰²⁷ IACHR. 150th Period of Session. Public Hearing: Reports of Killings of Journalists and Impunity in Honduras. March 25, 2014. Available for consultation at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>; IACHR. April 4, 2014. [Press Release No. 35/14. IACHR Wraps Up its 150th Session](#); IACHR. May 13, 2014. [Press Release No. 35/A/14. Report on the 150th Session of the IACHR](#).

¹⁰²⁸ Diario Oficial de la República de Honduras. [Decreto Ley No. 379-2013, que reforma la Ley del Ministerio Público](#). March 18, 2014.

¹⁰²⁹ IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 183.

said persons participated in the act of violence. Should the investigation and criminal prosecution agencies be acting within such a sphere of influence, the State has the duty to provide them with sufficient capacity to resist it.¹⁰³⁰

774. In any case, 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.

775. Finally, during its on-site visit, the Commission received complaints from civil society and groups of journalists concerning the lack of official information on progress in the investigation of crimes against journalists and media workers. The obligation to compile detailed, disaggregated statistics as an essential prerequisite for designing, implementing, and evaluating effective public policies of prevention, protection, and criminal prosecution of violence against journalists has been addressed by the IACHR on numerous occasions.¹⁰³¹ At a minimum, these statistics should include: the type of crime committed (murder, assault, etc.), the suspected person and/or group responsible (if known), the investigating authority and relevant investigation reference number or code, and the current status of the investigation and/or prosecution.¹⁰³² This information should be disseminated regularly and proactively by the State, to ensure broad access to the information and to promote public debate and scrutiny of the policies implemented in this area. The Inter-American Commission has indicated that this obligation necessarily involves producing information and statistical data on the reporting and processing of cases involving violence against women journalists.¹⁰³³

776. With regard to this point, the IACHR recommends that the State carry out diligent, impartial, and effective investigations into the killings, attacks, threats, and acts of intimidation committed against journalists and media workers, in accordance with what has been laid out in this report. This assumes the existence of special units and investigative protocols, as well as the identification and exhaustion of all possible theories that would link the attack to the victim's practice of journalism. Moreover, the State should promote the investigation, prosecution, and conviction of the masterminds behind the killings of those exercising the right to freedom of expression; provide appropriate technical training and formulate and implement guidelines and manuals for action with regard to crimes against freedom of expression, including those that are specifically gender-related, for officials in charge of investigating and prosecuting such crimes, including police, prosecutors, and judges; and strengthen the Technical Agency for Criminal Investigation in the Office of the Public Prosecutor [*Agencia Técnica de Investigación Criminal del Ministerio Público*], providing it with sufficient human and financial resources and clearly defining its jurisdiction with respect to the investigation of crimes against freedom of expression. The State should ensure that all those responsible for killings, attacks, threats, and acts of intimidation motivated by the exercise of freedom of expression are judged by impartial and independent courts; remove any legal obstacles to the investigation and punishment of such crimes; ensure the broadest participation possible by victims and their family members in the investigations and judicial proceedings, as well as ensure them adequate reparation and eliminate gender barriers that stand in the way of access to justice; prepare and maintain accurate statistics on violence against

¹⁰³⁰ IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 176.

¹⁰³¹ IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 60.

¹⁰³² IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. December 31, 2013, paras. 59-61.

¹⁰³³ IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68, January 20, 2007. Paras. 42-43. See also: United Nations. CEDAW. General Recommendation No. 19: Violence against women. UN Doc. A/47/38.1. 11th Session 1992. Para. 24.c). Available for consultation at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>; ECLAC. [Cuaderno 99. Si no se cuenta, no cuenta: Información sobre la violencia contra las mujeres](#). April 2012.

journalists and the prosecution of such crimes; and generate reliable indicators on the various factors conducive to violent or criminal acts. Finally, in the context of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, the State should continue to work with international human rights organizations in the preparation and implementation of effective measures to end impunity for crimes against journalists and members of the media.

II. Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators

777. The IACHR welcomes the adoption of the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators, unanimously approved by the National Congress on April 15, 2015 in the third and final debate.¹⁰³⁴ According to information provided by the State in its response to the draft of this report, the protection mechanism's sustainability has been ensured with the allocation of 10 million Lempiras.¹⁰³⁵

778. The approved text of the law provides for the creation of the "National Council for the Protection of Human Rights Defenders"¹⁰³⁶ [*Consejo Nacional de Protección para las y los Defensores de Derechos Humanos*] which is the consultative and advisory body of the System whose powers are reflected in Article 24 of the Law. Additionally, it creates a General Directorate of the Protection Mechanisms [*Dirección General del Sistema de Protección*], which will be part of the structure of the Secretariat of Human Rights, Justice, Interior and Decentralization, constituting the executive body of the National System of Protection for Human Rights Defenders [*Sistema Nacional de Protección para Personas Defensores de Derechos Humanos*].¹⁰³⁷ Among its functions is that of: receiving all requests for protection and to address them; develop operating protocols required for the effective implementation of the Law; and request and follow-up on a regular basis on provisional measures from the Inter-American Court of Human Rights, precautionary measures from Inter-American Commission on Human Rights and the corresponding security measures adopted by the

¹⁰³⁴ 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](#). (Spanish only). The project had been submitted by the Executive Branch on May 28, 2014 before the National Congress. In early June 2014, Congress had passed the first debate. On August 6, 2014, Congress had approved on second debate the law.

¹⁰³⁵ Communication from the State of Honduras, Note No. SG/064/MHOEA/2015, Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015. The IACHR has closely monitored the discussion of the Draft Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators. After the project was approved in first debate, the IACHR received information about a number of concerns that civil society had. In this regard, it was noted that the mechanism would involve the representation in the National Council for the Protection of the Bar Association, the Association of Journalists and five representatives of human rights organizations, but not include the participation of journalists not affiliated with the Association of Journalists such as community radio journalists. It was also noted that the functions of the General Directorate of Mechanisms and Ancillary Units would be similar as to dictate, modify and suspend measures, which could generate confusion. On the other hand, it was stressed that the fact that resource allocation would be progressive according to budget availability was of concern. It was also noted that the project did not refer to the characteristics of each target group in relation to the root causes of risk, the nature of the risks they face and their specific protection needs. Further to the information received, on August 1, 2014 the IACHR sent a request for information to the State on the bill. The state in its response to the inquiry said Congress had opened a consultation process with civil society and other stakeholders. In particular, it noted that on August 6 a first meeting with civil society took place, especially people working in the promotion and defense of human rights, which delivered a document with recommendations. The second meeting had been done with media directors, journalists, associations of journalists and the Honduran Press Association. The third meeting with justice officials that included representatives of the Supreme Court of Justice, the Attorney General's office, the Bar Association, the Association of Judges and Prosecutors. The fourth was done with representatives from the Secretariat of Security, Secretariat of Defense and representatives of the Armed Forces, National Police, National Bureau of Investigation and Intelligence, and FUSINA. The State also reported that the particularities of each target group would be addressed via regulations, manuals and protocols that would be issued by the Secretary of Human Rights, Justice, Interior and Decentralization through the General Directorate of Protection Mechanisms and Analysis of Social Conflicts in coordination with the Secretariat of Security because for the risk assessment a causal link between the generating cause of risk, the specific needs and the legal right to be protected, had to exist. Republic of Honduras. Attorney General of the Republic. Office GT HDI-326-2014 dated September 8, 2014 that transmits Note No. SP-A-111-2014 signed by Assistant Attorney General of the Republic sent to the Executive Secretary of the IACHR, dated September 8.

¹⁰³⁶ 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](#). (Spanish only), article 20.

¹⁰³⁷ 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](#). (Spanish only), article 28.

courts of the State. The Law also provides for the creation of a Technical Committee of the Protection Mechanism [*Comité Técnico del Mecanismo de Protección*], responsible for conducting the risk analysis, deliberation and decision on requests for protection submitted to the Directorate General.¹⁰³⁸ Additionally, Title IV of the Law provides the provisions concerning the technical and financial assistance and its transitional provisions contemplate that within three months of the entry into force of the Law, the regulations and respective protocols to implement the law shall be issued.

779. The IACHR received information indicating that several civil society organizations have positively assessed the initiative of Congress, nevertheless expressed some concerns about the final text of the law, among which are: (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 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.¹⁰³⁹

780. The State, in its response to the draft of this report, indicated that under the Law on the Protection of Human Rights Defenders, Journalists, Media Workers, and Justice Operators, “the State recognizes the right of every person, individually or collectively, to defend, seek, promote, protect, and realize human rights, as well as the obligation of the State to respect rights defenders’ human rights and reasonably prevent threats, harassment, and attacks that may be carried out against them, regardless of whether these come from State institutions or private parties.”¹⁰⁴⁰ It also noted that with the approval of this law, the National System of Protection was created, which lays the groundwork for coordination among sectors for the enforcement of the law. The State also indicated that on August 3, 2015, organizations of human rights defenders held a public assembly and elected their representatives to the National Council for Protection. The State reported that this council was formally installed and sworn in by the Secretary Coordinator General of Government [*Secretario Coordinador General de Gobierno*] on December 10, 2015.¹⁰⁴¹

781. In addition, in its response to the draft of this report, the State indicated that the process of developing regulations to this law is underway.¹⁰⁴² The State indicated that the regulation development process, which is participatory and includes the sectors protected by the law, will be supported by Freedom House, a leader on this issue and a driver behind the “National Mechanism of Mexico.”¹⁰⁴³

782. The State also made reference to four cases of human rights defenders—without mentioning which ones—who have accepted the protection mechanism as the legal avenue for the implementation of any relevant actions established in the law.¹⁰⁴⁴ The State, in its response to the draft of this report, also indicated that as a reflection of its commitment to this issue, on September 22, 2015, Honduras joined a group of

¹⁰³⁸ 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](#). (Spanish only), article 31.

¹⁰³⁹ Protection International. [Honduras: Project for Human Rights Protection Act at risk](#), April 16, 2015.

¹⁰⁴⁰ Communication from the State of Honduras, Note No. SG/064/MHOEA/2015. Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights, December 14, 2015.

¹⁰⁴¹ Communication from the State of Honduras, Note No. SG/064/MHOEA/2015. Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights. December 14, 2015.

¹⁰⁴² Communication from the State of Honduras, Note No. SG/064/MHOEA/2015. Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights. December 14, 2015.

¹⁰⁴³ Communication from the State of Honduras, Note No. SG/064/MHOEA/2015. Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights. December 14, 2015.

¹⁰⁴⁴ Communication from the State of Honduras, Note No. SG/064/MHOEA/2015. Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights. December 14, 2015.

countries at the United Nations Human rights Council in supporting a joint declaration to condemn any type of acts of intimidation or reprisals against human rights defenders.¹⁰⁴⁵

783. The adoption of specialized protection mechanisms is a significant step forward in implementing its recommendations. In this regard, the IACHR stated that the proper implementation of these mechanisms may facilitate the State to fulfill its obligation of protection by allowing closer and concrete knowledge of the particular situation of human rights defenders at risk, and consequently to provide timely intervention, specialized and proportionate to the risks that the defender might face.¹⁰⁴⁶

784. In turn, the IACHR recalls that for a protection program to be effective, it requires to be backed by a strong political commitment of the State and have sufficient trained and skilled human resources to receive requests for protection, assess the level of risk, adopt and implement protection measures and monitor the measures in force.¹⁰⁴⁷ It is worth noting that following the decision of the Inter-American Court in case *Antonio Luna Lopez vs. Honduras*, the State will implement within a reasonable time a comprehensive public policy to protect human rights defenders.¹⁰⁴⁸

III. Pluralism and diversity in radio broadcasting

785. During the on-site visit, the IACHR and the Special Rapporteur for Freedom of Expression evaluated the current state of pluralism and diversity in radio broadcasting in Honduras, as one of the fundamental requirements of the right to freedom of expression.

786. The IACHR has stated:

the right to freedom of expression is based on one hand on the right to establish or use a media outlet to exercise freedom of expression and, on the other, on society's right to have access to a free, independent, and pluralistic media that allows for the most and most diverse information. In other words, the media – and especially the audio visual media- perform an essential function in guaranteeing the freedom of expression of individuals, as the media serve to distribute individuals' thoughts and information while at the same time allowing them access to the ideas, information, opinions, and cultural expressions of other individuals.¹⁰⁴⁹

Therefore, freedom and diversity should be guiding principles in broadcast regulation, and media activities protected by the standards of the right to freedom of expression.¹⁰⁵⁰

787. At different meetings with civil society and State authorities, the IACHR has received information regarding the regulation of the radio spectrum and the way in which the State manages the

¹⁰⁴⁵ Communication from the State of Honduras, Note No. SG/064/MHOEA/2015. Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights. December 14, 2015.

¹⁰⁴⁶ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#). OAS / Ser.L / V / II. Doc 66, December 31, 2011. Para. 484.

¹⁰⁴⁷ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#). OAS / Ser.L / V / II. Doc 66, December 31, 2011. Para. 487.

¹⁰⁴⁸ I/A Court H. R. *Case Luna Lopez vs. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, paras. 239-244.

¹⁰⁴⁹ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter V I (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 4.

¹⁰⁵⁰ Inter. Amer. Ct. HR. *Compulsory Membership in Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights)*. Advisory Opinion OC5-/85 of November 13, 1985. Series A Nbr. 5, Par. 34; IACHR. [Office of the Special Rapporteur for Freedom of Expression. Freedom of Expression Standards for Free and Inclusive Broadcasting](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 3/09. December 30, 2009. Par. 7.

assignment of frequencies within the framework of the transition to the broadcast technology digital dividend, as well as the acknowledgment of community radio in Honduras.

a. Regulation of the radio spectrum for broadcasting in the new digital dividend

788. The IACHR has noted that the regulation of the radio spectrum should not only guarantee freedom of expression for the greatest number of people or perspectives, but also provide equal opportunity to media access and right to plural and diverse information of contemporary society.¹⁰⁵¹

789. The regulatory framework governing the radio spectrum in Honduras is established by the Framework Act on the Telecommunications Sector [*Ley Marco del Sector de Telecomunicaciones*]¹⁰⁵² and its rules.¹⁰⁵³ It regulates all audio-visual and telecommunications media activity as well as information technology and communication (ICTs), pursuant to a recent amendment to the Act that was published in 2014.¹⁰⁵⁴

790. This law creates the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel), a state agency that is independent from the President of the Republic, with administrative, technical, budget and financial independence. Conatel has three commissioners who are appointed to a four-year term by the President of the Republic, said term is renewable for additional terms. The 2014 amendment included “the legitimately recognized corporate organizations and professional associations at the university level may submit candidate lists to the President of the Republic for consideration as members of the agency.”¹⁰⁵⁵ In accordance with the Law, Conatel has been tasked with the administration and control of the radio spectrum, as well as the regulation and oversight of telecommunications operations and use, specifically: the granting, renewal and revocation of titles for radio and television services and ICT applications. Likewise, Conatel is empowered with the application of the sanctions pursuant to the Law and its Rules. In accordance with the most recent reform, “in no case shall sanctions be used as an indirect method of affecting or restricting the free broadcasting of expression.”¹⁰⁵⁶

791. According to the legislation, the State may grant permits for broadcasting services in 15-year terms, with automatic renewal for the same period of time, as long as requirements are met and the conditions and stipulations for the permit have been met. The Law does not specifically establish the procedures to grant these permits. Pursuant to Conatel Regulations, in order to grant direct broadcasting permits, the interested party must apply for the permit (Art. 141 a) or participate in open competition. The Framework Law does not expressly recognize community media, nor is it incorporated in the regulations. Nevertheless, in 2013 Conatel issued Resolution 009/13, the Community Broadcast Services Regulation [*Reglamento de Servicios de Difusión con Fines Comunitarios*].

792. According to the May 2015 Conatel report on telecommunications performance; at the end of 2014 there were 649 television and radio broadcast operators, 1 community television, 412 radio sound broadcasting stations, 6 community radio broadcasting stations and 126 national audiovisual service

¹⁰⁵¹ IACHR. [2009 Annual Report. Special Rapporteur for the Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009; IACHR. [2014 Annual Report. Special Rapporteur for the Freedom of Expression](#). Chapter III (Freedom of Expression Standards for the Transition to Open, Diverse, Plural and Inclusive Free-to-Air Digital Television). OEA/Ser.L/V/II Doc. 13. March 9, 2015.

¹⁰⁵² Honduras. Legislative Branch. [Ley Marco del Sector de Telecomunicaciones](#). Decreto No. 185-95. November 28, 1995, amended by Decreto No. 118-97 October 25, 1997.

¹⁰⁵³ Conatel. [Reglamento General de la Ley Marco del Sector de Telecomunicaciones](#). December, 2002.

¹⁰⁵⁴ Honduras. Legislative Branch. [Reformas a la Ley Marco del Sector de Telecomunicaciones](#). Decreto No. 325-2013. March 4, 2014.

¹⁰⁵⁵ Honduras. Legislative Branch. [Reformas a la Ley Marco del Sector de Telecomunicaciones](#). Decreto No. 325-2013. March 4, 2014.

¹⁰⁵⁶ Honduras. Legislative Branch. [Reformas a la Ley Marco del Sector de Telecomunicaciones](#). Decreto No. 325-2013. March 4, 2014.

operators. According to the information there are 101 television services, 1 community television service 412 radio sound broadcasting, 6 community radio broadcast and 126 national audiovisual services in operation authorized by the agency.¹⁰⁵⁷

793. During its visit, the IACHR learned of the efforts made by the State of Honduras for transitioning into digital television. Conatel announced that television in Honduras will be digital by 2018 and gave the television operators a five year time limit in order to switchover to the standard ISDB-T. The agency approved a “National Transition Plan from Analog Television to Digital Television Broadcasting” [*Plan Nacional de Transición del Servicio de Radiodifusión de Televisión Analógica a Televisión Digital*] wherein it establishes channel distribution for the 10 regions the country is divided into,¹⁰⁵⁸ however there has been no information on key aspects of the process such as: the criteria for the distribution of the higher number of frequencies that are available in the digital arena; measures to be adopted in order to impact the historical processes of concentration; and the inclusion of the community sector in radio broadcasting.

794. In the 2010 Universal Periodic Review of the United Nations Human Rights Council, Honduras committed to “generating a debate in the National Congress and civil society with a view to harmonizing the regulatory framework of the Telecommunications Sector Law and ensuring that it is was line [sic] with the international human rights conventions and standards, in particular with regard to the levels of public, private and community broadcasting.”¹⁰⁵⁹ After his visit to Honduras in August of 2012, the former United Nations Special Rapporteur on the Promotion and Protection of Freedom of Expression, Frank La Rue, recommended the government should “amend the Telecommunications Framework Act, in line with international human rights standards, to ensure that permits for the use of telecommunications frequencies are awarded on an equitable basis to organizations and communities of indigenous peoples and persons of African descent”. In that regard, the former Rapporteur Frank La Rue, explained that:

auctioning off bandwidths is an essentially discriminatory procedure that favors sectors that wield economic power; therefore, auctions should be used only for the allocation of commercial frequencies, not for the bandwidths used for community or public non-profit purposes, including those used by different peoples and ethnic groups in the country. Commercial uses should not prevail over public service applications.¹⁰⁶⁰

795. In that regard, the Commission on Truth and Reconciliation of Honduras [*Comisión de la Verdad y Reconciliación de Honduras*] Report recommended the State “amend the National Telecommunications Commission Law, specifically with regard to the system established by said commission for granting frequencies, as it is not the most appropriate for promoting a true exercise of freedom of expression and information.”¹⁰⁶¹

796. According to the information received during his on-site visit on May of 2013 the Executive Branch proposed an amendment to the Telecommunications Law before the Legislative Branch wherein the intent was to regulate both the assigning and managing of radio spectrum frequencies as well as media content. The bill was highly criticized by different civil society sectors. The media believed the bill contained language restricting freedom of press and ambiguous content control provisions for audiovisual media.¹⁰⁶²

¹⁰⁵⁷ Conatel. [Informe Trimestral sobre el Desempeño del Sector de Telecomunicaciones \(4to Trimestre 2014\)](#). May 2015.

¹⁰⁵⁸ Conatel. [Resolución NR002/15](#). January 30, 2015.

¹⁰⁵⁹ UN. Human Rights Council. A/HRC/16/10. November 15, 2010. *Report of the Working Group on the Universal Periodic Review Honduras*. Par 85b. Available for consultation at : <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/HNSession9.aspx>

¹⁰⁶⁰ United Nations. *Report of the Special Rapporteur for the Promotion and Protection of Freedom of Opinion and Expression*. Addition. Mission of Honduras. A/HRC/23/40/Add.1. March 22, 2013. Para. 65. Available for consultation at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=21720

¹⁰⁶¹ Commission on Truth and Reconciliation Commission of Honduras. [Informe: Hallazgos y Recomendaciones](#). July 2011.

¹⁰⁶² Observacom. April 25, 2013. [Comisión comparte separar contenidos en “ley mordaza”](#); La Prensa/EFE. April 30, 2013. [Periodistas hondureños rechazan ley de Telecomunicaciones](#); El Herald. March 19, 2013. [Gobierno de Honduras copia proyecto de “ley mordaza” de Ecuador](#); La Prensa. August 15, 2013. [Otro rechazo a “ley mordaza”](#)

Lastly, the bill was not debated in the National Congress and the community sector was partially included by a lower regulation.

797. Likewise, during the visit the IACHR received information from several civil society organizations affirming that the obstacles remain to equal access for use and management of radio frequencies. They noted that although during these recent years Conatel attempted the “rechanneling” of bandwidths in order to make more FM radio frequencies and more television channels available, the vast majorities were auctioned off to private parties paying high prices in a manner that lacked transparency. On the other hand, it was noted that Conatel denied frequency requests from social organizations known to “critically oversee” the State, although they met the requirements in the regulations at that time.

798. Likewise, during the visit, different stakeholders expressed concern about the levels of media concentration in Honduras. As in other countries in Latin America, the trending high concentration of ownership and control of the larger media outlets in Honduras, especially those that are acquired by transnational capital, is of concern. Information was also received about the municipalities and departments having a higher concentration of smaller media outlets with a larger number of owners, nonetheless most are owned by political leaders producing targeted ideological content. According to experts, “the coup d’etat affecting the country in 2009 created media spots for the opposition, but was unable to promote a communications model that was different from the traditional one. The main difference is the party banner or leader that is followed, however plurality in information *per se* does not exist.”¹⁰⁶³

799. As the IACHR and the Special Rapporteur have stated,¹⁰⁶⁴ the regulation of broadcasting should strive to establish a framework wherein freedom of expression is broad, free and independent therefore; facilitating access to the greatest number of groups or persons; in order to guarantee this power is not used for indirect censorship, but rather guarantees diversity and plurality in radio broadcasting. In that regard, the criteria for the assigning licenses shall have, as one of the goals, the promotion of plurality and diversity of voices. Due to this, the requirements for granting them should not constitute disproportionate barriers. In that regard, when paying money or economic criteria is the principal or excluding factor to assign television or radio frequencies then equal access to these is compromised, undermining advances in plurality and diversity. Although these may be considered objective or non-discretionary criteria, when used to assign all frequencies they actually exclude large social sectors from access. In that regard, the IACHR has indicated that “auctions based solely on economic criteria or that grant concessions without equal opportunity to all sectors are not compatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights [...] and the Declaration of Principles on Freedom of Expression”. For the same reasons, procedures for assigning licenses should not include technical or administrative requirements that are unreasonable and require all license holders to hire technicians or specialists. Such requirements indirectly raise an economic barrier to access to radio frequencies. Neither should geographic distance serve as a barrier to access to licenses by, for example, requiring rural media outlets to travel to the capital to file a request.¹⁰⁶⁵

800. The IACHR recalls that digital television poses regulatory challenges that are not always properly accounted for within the analog broadcast legal framework therefore review of the current legislation may be necessary. In that regard, the transition from analog to digital television signals requires specific regulation for the adoption of new technical standards for transmission; for establishing requirements, procedure and criteria so the current or new operators have access to the new technology; and for the approval of plans, time frames and stages occur before the transmission of analog signals cease.

¹⁰⁶³ Observacom. September 2014. [Concentración y dispersión mediática en Honduras](#).

¹⁰⁶⁴ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter V I (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009.

¹⁰⁶⁵ IACHR. [2009 Annual Report of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras 65 and 66.

801. In that regard, the Commission recommends the State ensure, through legislation, transparent, public and equal criteria for assigning radio frequencies in the new digital dividend. These criteria must consider media outlet control and ownership concentration, and assign broadcasting administration to a body with political and economic independence, subject to due process and judicial review. In that regard it encourages the State of Honduras to utilize “broadcast possibilities deriving from the use of digital frequencies, taking this technological change as an opportunity to broaden diversity in voices and increase media outlet access by new sectors of the population” in an efficient manner.

802. Regarding this, the IACHR notes that although Conatel has autonomy in “administration, technology, budget and finances” the Commission is under the Executive Branch and the President of the Republic has full discretion in member appointment. In that regard, it recalls “regulation of the media to promote diversity, including governance of public media, is legitimate only if it is undertaken by a body that is protected against political and other forms of unwarranted interference, in accordance with international human rights standards.”¹⁰⁶⁶

803. In that regard, the IACHR and Special Rapporteur have recommended the authority on broadcasting use and oversight, be an autonomous body, independent from the executive branch so it is independent from both political pressure of the government and pressure from the private sector linked to broadcasting. For this reason, it is necessary the State move forward on establishing rules that ensure this body has sufficient operating, organizational and administrative guarantees to maintain independence from the pressure of both the political majority and economic interest groups.¹⁰⁶⁷

b. Acknowledgment of the community sector

804. On several occasions the IACHR and Special Rapporteur have recognized that community media outlets play a fundamental role in our region for the exercise of freedom of expression and access to information by different sectors of society.¹⁰⁶⁸ The aforementioned establish that it is necessary for States to legally recognize and consider reserving portions of the spectrum for these types of media outlets, as well as equal access to licensing keeping the different conditions of private non-commercial media in mind.¹⁰⁶⁹

805. During the on-site visit the IACHR Office of the Special Rapporteur for the Freedom of Expression was afforded the opportunity of a meeting with Conatel authorities. During that meeting welcomed information was received regarding the positive measures taken by Conatel to guarantee community audio-visual broadcasting media outlets have access to frequencies on the radio spectrum, as of the enactment of the Community Broadcast Services Regulation [*Reglamento de Servicios de Difusión con Fines Comunitarios*] in August of 2013. During the visit, the authorities provided details regarding the process for granting licenses and assigning frequencies on the radio spectrum to different communities in the country, among them communities of the Miskito peoples.¹⁰⁷⁰

¹⁰⁶⁶ The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples’ Rights) Special Rapporteur on Freedom of Expression and Access to Information, December 12, 2007. [Joint Declaration on Diversity in Broadcasting](#).

¹⁰⁶⁷ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter V I (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009.

¹⁰⁶⁸ IACHR. [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118.Doc. 5 rev 1. December 29, 2003, para. 414; IACHR. [Annual Report 2002. Report of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of expression and poverty).OEA/Ser.L/V/II.117. March 17, 2003. Para. 41.

¹⁰⁶⁹ IACHR. [Annual Report 2007. Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Conclusions and Recommendation). OEA/Ser.L/V/II. 131 Doc. 34 rev. 1. March 8, 2008. Para. 5.

¹⁰⁷⁰ IACHR. December 5, 2014. [Press Release 146A/14. Preliminary Observations on the IACHR visit to Honduras](#): Conatel. No date. Operadores del Servicio de Radiodifusión Sonora FM y de Televisión con Fines Comunitarios (information provided to the Office of the Special Rapporteur during the on-site visit December 1-5, 2014). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

806. Without prejudice to these advances, the IACHR learned through several civil society organizations and community media outlets about procedural deficiencies and flaws in the process of assigning frequencies to community media outlets and the need to have these regulations adopted as law, in its formal and tangible sense. Specifically, according to the information provided, the regulation will establish rules that could affect broadcasting access by new community stakeholders and make community radio operation difficult. In that regard, some civil society organizations have noted that the regulation will establish unequal requirements for community media outlets to access frequencies, for example by requiring “documentation by the Community Media Association of Honduras [*Asociación de Medios Comunitarios de Honduras*] (AMCH), duly legalized, stating the applicant is in operation and belongs to the association” (Art. 6 b) iv) as well as the requirement that all necessary documents for the application “be originals or certified copies, authenticated by a Notary Public, with every page signed and numbered”(Art. 6).

807. Likewise, the Commission was interested to learn that some representatives of the Garífuna, and Indigenous Peoples of Honduras, maintain that the regulatory framework establishes conditions to access that do not recognize traditional customs and forms of social organization and land use of the people and have a disproportionate impact to the exercise of their rights to freedom of expression, information and culture, a violation of ILO Convention 169, which obliges the States to adopt special measures to protect people, institutions, property, and culture of these peoples. Additionally, it establishes that said special measures should be adopted pursuant to the freely expressed will of these peoples.¹⁰⁷¹

808. In that context, the IACHR learned of the citation that was issued by the National Telecommunications Commission (Conatel) for the country to *Radio Comunitaria Sugua 100.9 FM* located in the garífuna community Sambo Creek, in the department of Atlántida. According to the information received, in the citation issued by Conatel the body noted that “installing, building or operating a telecommunications service without CONATEL authorization” is a violation of Article 25 of the Telecommunications Law. It also noted that said station belonged to the Fraternal Order of Black Hondurans [*Organización Fraternal Negra Hondureña*] (Ofraneh). Conatel stated that “pursuant to its power to administer and control the radio spectrum, on December 4, 2013, it verified that the OFRANEH was illegally using frequency 100.9 Mhz, in the Sambo Creek community in the department of Atlántida, without the proper authorization granted by this body, therefore the Ofraneh was in violation as of September 17, 2014, in accordance with the constitutional right of defense, so they may present the appropriate defense in this situation.” It also noted that “the Office of the Prosecutor will be contacted pursuant to Article 39 of the Framework Law on the Telecommunications Sector [*Ley Marco del Sector de Telecomunicaciones*] and other parts of the regulation, to wit: When there is indicia of a crime, the Office of the prosecutor must be alerted.”¹⁰⁷² Ofraneh made a public plea to “prevent the abusive act of closing the Sugua community radio station,” which reportedly had gone off the air in 2009, following the coup d’état in Honduras.

809. On this matter, in its Joint Declaration of 2007, the Special Rapporteurs on Freedom of Expression for the UN, OAS, OSCE and African Commission state “[d]ifferent types of broadcasters – commercial, public service and community – should be able to operate on, and have equitable access to, all available distribution platforms.” In that regard, community media outlets should benefit from fair and simple licensing procedures, should not have to meet technological or other criteria creating disproportionate barriers in access to licensing, and while operating they should not be subject to unjustified different treatment.¹⁰⁷³

810. Legal recognition for licensing is not enough to guarantee freedom, plurality and diversity if there are rules establish arbitrary or discriminatory conditions for the access and use of the license. To that

¹⁰⁷¹ IACHR. December 5, 2014. [Press Release 146A/14. Preliminary Observations on the IACHR visit to Honduras.](#)

¹⁰⁷² C-Libre. September 30, 2014. [Comisión Nacional de Telecomunicaciones pretende cerrar radio garífuna](#); Communication sent by Radio Comunitaria Garífuna Sugua to the Office of the Special Rapporteur for Freedom of Expression, dated September 23, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹⁰⁷³ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 92 *et seq.*

end, it is essential that administrative, economic and technical requirements for use and access of licenses be only those that are strictly necessary to guarantee operation, be clearly and precisely established in the regulation and remains unaltered without proper justification during the life of the license.

811. In that regard, the IACHR recommends the State of Honduras address the matter through legislation and review the established criteria and formal requirements to ensure that only the truly necessary ones to promote plurality and diversity of voices remain, without creating a disproportionate barrier to this end. Specifically, the current regulation includes a requirement that may be discriminatory and seems unnecessary; the endorsement from a radio association. The requirement of and endorsement from an established radio association implies that those stations that do not belong to the association would face a barrier to accessing frequencies. In the same regard, the existence of indigenous peoples in different regions of Honduras makes legislation necessary in order to facilitate expedited mechanisms of access to frequencies with minimal administrative requirements, aligned with their organizational forms.

812. On the other hand, some civil society organizations also noted that the 2013 Regulation of Community Broadcast Services [*Reglamento de Servicios de Difusión con Fines Comunitarios*] limits community media outlets information content and programming, with vague rules, that could become a barrier due to the lack of clarity and indeterminate nature that allows for several different interpretations of the regulation. The regulation states “in principle information content should be for progress, development and general wellbeing of the inhabitants of said community, without going against public interest.” Likewise, it states, “the transmission of open programming should mainly be to serve the community” and cannot have “a political agenda – for any party whatsoever.” They expressed concern over the provisions that establish this programming should, among other things, “praise ethical, civic and cultural values;” respect honor, dignity, private affairs and all rights and freedoms enshrined in the Constitution of Honduras; “report on national and international events;” and “commit to promote truthful communication.” In that regard, they noted that the Conatel officials would be the ones to determine the scope and content.

813. In that regard, the IACHR learned about an administrative hearing opened against radio station *La Voz de Puca*, in the community of Asomada, Gracias Lempira municipality. Said hearing was requested by Conatel for “spreading criticism of the government and its discriminatory social compensation policies.” According to the information received, during the hearing Conatel threatened with shutting the station down, citing the Community Broadcast Services Regulation [*Reglamento de Servicios de Difusión con Fines Comunitarios*], which prohibits the broadcasts of programs that are “political-partisan in any way.”¹⁰⁷⁴

814. According to international standards, the legal framework must provide for citizen judicial security, in the most clear and precise manner possible, the conditions and limits should be the same as those on the exercise of freedom of expression.¹⁰⁷⁵ In that regard, it is important to note that the State must remain neutral regarding the content broadcast by media outlets, except for the restrictions specifically granted by Article 13 of the American Convention, in accordance with international Human Rights Law and as prescribed by it. As the Inter-American Doctrine notes: “[v]ague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression.”¹⁰⁷⁶

¹⁰⁷⁴ World Sssociation of Community Radio Broadcasters (AMARC) of Honduras. No date. Information given to the IACHR during the on-site visit. Available at: Archives of the Office of the Special Rapporteur.

¹⁰⁷⁵ In addition in European Court case-law “prescribed by law” used in Articles 9 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms not only require that an interference with the rights enshrined in these Articles should have some basis in domestic law, but also refer to the quality of the law in question. That law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”. *Glas Nadezhda Eood and Elenkov v. Bulgaria*, No. 14134/02, § 45, E.C.H.R. (11/10/2007). Available at: <http://echr.ketse.com/doc/14134.02-en-20071011/view/>

¹⁰⁷⁶ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 72.

815. Extensive restrictions in administrative provisions or broad or ambiguous regulations that are imprecise as to the area of the law that is protected and where its interpretation may lead to arbitrary decisions illegitimately compromising the right to the freedom of expression run counter to the American Convention,¹⁰⁷⁷ by rewarding or punishing media outlets because of their editorial line. Due to the foregoing, the regulation should be written in a manner to avoid vagueness or ambiguity.

816. The foregoing is important especially since the lack of clear and precise requirements could unjustifiably impede the operation or even the very existence of the media or create an intimidation effect that is incompatible with a democratic society. Even more, if non-compliance with communication content requirements allows for sanctioning comments that are of public interest.¹⁰⁷⁸

817. Due to the foregoing, it is recommended the State legislate on community broadcasting so it receives an equitable portion of the radio spectrum and television channels in the digital dividend, by establishing democratic criteria that guarantee all individuals equal opportunity to access and operate these media outlets equally, without disproportionate or unreasonable restrictions. Likewise, the regulation should identify the conditions of the exercise of the right to broadcast and the limitations community radio broadcasting is subject to in the most clear and precise manner possible; therefore preventing the possibility of State authorities to assign frequencies or sanction media outlets in order to reward or punish the media outlet for its editorial line, and simultaneously promote plurality and diversity in public discourse.

IV. Legal action as it relates to the exercise of freedom of expression

818. During the on-site visit to Honduras, the IACHR was concerned by the increase in legal actions related to the exercise of freedom of expression, specifically criminal action for defamation and slander. According to the information received, legal action is used to criminalize and sanction criticism of public officials and matters of public interest, which has disproportionately affected the work of journalists and human rights defenders.

819. The IACHR and the Office of the Special Rapporteur have noted that the use of criminal action as a mechanism of ulterior responsibilities in the face of protected discourse is a violation of freedom of expression protected by Article 13 of the American Convention and Article IV of the American Declaration on the Rights and Duties of Man. The Commission and the Inter-American Court have pointedly maintained that these types of expressions enjoy a greater protection within the Inter-American System.¹⁰⁷⁹ Said

¹⁰⁷⁷ United Nations General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/23/40. April 17, 2013, para. 26. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?m=85

¹⁰⁷⁸ In that regard, it should be noted that principle 10 of the IACHR Declaration of Principles 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 journalist had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news". Likewise, principle 11 of the Declaration establishes that "[p]ublic officials are subject to greater scrutiny by society."

¹⁰⁷⁹ 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; IACHR. [Annual Report 2004](#). Report of Office of the Special Rapporteur for Freedom of Expression. Chapter VI ("Desacato" Laws and Criminal Defamation). OEA/Ser.L/V/II.122. Doc. 5 rev. 1 February 23, 2005. Para. 155 and on; IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 245 and on; Inter-Am. C.H.R. *Case Ivcher Bronstein v. Perú. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74; *Case Herrera Ulloa Vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107; *Case Ricardo Canese Vs. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111; *Case Palamara Iribarne Vs. Chile Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135; *Case Kimel Vs. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177; Office of the Special Rapporteur for Freedom of Expression of the Organization of American States (OAS) and United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. [Nota técnica sobre los parámetros internacionales respecto a la libertad de expresión y los crímenes contra el honor y la adecuación de los dispositivos respecto a los crímenes contra el honor presentes en el proyecto de reforma del Código Penal brasileño](#). November 4, 2013.

protection has been justified, among other reasons, by the importance of maintaining judicial framework that promotes public discourse; in light of the fact that public officials have voluntarily exposed themselves to more social scrutiny and are better equipped to respond to public discourse.¹⁰⁸⁰

820. 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.¹⁰⁸¹ 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.”¹⁰⁸²

821. According to the information learned, on December 9, 2013 journalist Julio Ernesto Alvarado was convicted by the Supreme Court of Justice Criminal Court [*Sala de lo Penal de la Corte Suprema de Justicia*] for the crime of “defamation and expressions constituting slander.” He was convicted to one year and four months of incarceration, special ban on the exercise of journalism during the principal portion of the sentence, and civil interdiction during that same time, as well as the corresponding civil penalties. According to the information learned, on April 28, 2014, the Sentencing Execution Judge of the Tegucigalpa Judicial Unit [*Juez de Ejecución de las Penas de la Sección Judicial de Tegucigalpa*] ruled in favor of commuting the sentence and accompanying sanctions imposed on the journalist. This judgment was partially overturned by the Court of Appeals in September of 2014, stating “revoking the commutation on the accompanying sanctions” (civil interdiction and special ban) of his sentence, and upholding the commutation in the execution of the incarceration portion of the sentence.¹⁰⁸³ In addition, the journalist filed a complaint stating he was a victim of stalking and harassment as a result of orders issued in this case.¹⁰⁸⁴

822. On November 5 2014 the IACHR issued precautionary measures on the matter and requested the State stay the execution of the sentence issued on December 9, 2013, by the Supreme Court of Justice and to abstain from taking any action to ban Julio Ernesto Alvarado from working as a journalist until the IACHR makes a determination on the case lodged by him.¹⁰⁸⁵ In spite of the precautionary measures, the IACHR has continued to receive information about actions to enforce the decision disqualifying Julio Ernesto Alvarado from the practice of journalism. Accordingly, and given the IACHR’s on-site visit to Honduras in December 2014, the reiteration of the precautionary measures on October 15, 2015, and a recent working

¹⁰⁸⁰ Inter-Am. C.H.R. Case *Tristán Donoso v Panama. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C. No 193, para. 122.

¹⁰⁸¹ In that regard, Principle 11 of the Declaration on Principles of Freedom of Expression adopted by the IACHR states: “[p]ublic officials are subject to greater scrutiny by society”; Inter-Am. C.H.R.. *Case Herrera Ulloa Vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Par. 129; *Case Kimel Vs. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177. Para. 86; *Case Ricardo Canese Vs. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Parr. 103; IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009.Para. 106.

¹⁰⁸² 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.

¹⁰⁸³ Republic of Honduras. Secretary of State for Foreign Affairs and International Cooperation. Note No. 882-DGPE/DPM-14 to the IACHR Executive Secretary dated June 10, 2014, forwarded as No. SP-A-073-2014 June 5, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Conexihon/C-Libre. April 30, 2014. [Carta de libertad para periodista Julio Ernesto Alvarado](#); PEN International. October 1, 2014. [Honduras: PEN member barred from journalism after covering corruption in state university](#); Reporters without Borders. October 1, 2014. [BROADCASTER BANNED AGAIN FROM WORKING AS JOURNALIST](#). Honduprensa/Honduras Tierra Libre. September 29, 2014. [Honduras: Funesta decisión de Corte de Apelaciones contra periodista hondureño](#).

¹⁰⁸⁴ IACHR. 150th Period of Sessions. Public hearing “Reports of Killings of Journalists and Impunity in Honduras”. March 25, 2014. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/150/default.asp>; PEN International. March 25, 2014. [Audiencia sobre la situación de la violencia contra periodistas y el problema de la impunidad en Honduras ante la Comisión Interamericana de Derechos Humanos](#). Document given to the IACHR at the thematic hearing on March 25, 2014. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Knight Center for Journalism in the Americas. March 5, 2014. [Organizations denounce government harassment against two Honduran journalists in recent months](#); PEN International. October 1, 2014. [Honduras: PEN member barred from journalism after covering corruption in state university](#); Reporters Without Borders. October 1, 2014. [broadcaster banned again from working as journalist](#).

¹⁰⁸⁵ IACHR. Precautionary Measure No. 196-14. [Resolution 33/2014 of November 5, 2014](#).

meeting held during its 154th session, the Inter-American Commission has requested compliance with the precautionary measures in order to prevent irreparable harm to the rights of Mr. Julio Ernesto Alvarado to freedom of expression and practicing journalism as a manifestation that cannot be separated from the exercise of this freedom.

823. The Supreme Court of Justice accepted a case filed against journalist David Romero Ellner by attorney Sonia Inés Gálvez for defamation and libel. David Romer is a journalist for *Radio Globo* and *TV Globo*. Gálvez also filed a complaint against *Radio Globo* and *TV Globo* journalists Ivis Alvarado, César Silva and Rony Martínez for 15 counts of defamation for alleged expressions on the “*Interpretando la Noticia*” and “*Noticias Radio Globo*” programs. The Court did not take the case against the later three journalists.¹⁰⁸⁶ Days earlier, Romero Ellner denounced the threats he received after publishing a story stating that Gálvez and her husband, the Deputy Attorney General, were involved in corruption cases in the Office of the Public Prosecutor.¹⁰⁸⁷ On September 22, 2014, a judge ordered an oral and public trial after mediation of the dispute failed.¹⁰⁸⁸ According to Gálvez, Romero Ellner defamed her because ten years ago she was the prosecutor on the case wherein Romero Ellner was convicted and sentenced to imprisonment for raping his daughter. Romero Ellner was to appear before the Court on June 11, 2015, but on that day the proceedings were continued because a judge was absent. According to one report, the judges ruled that a continuance would be granted until December or even until 2016 because of case overload. Hours later, the hearing was set for June 18.¹⁰⁸⁹

824. In this context, the IACHR notes with satisfaction the draft bill presented by the Secretary of Justice and Human Rights for Honduras, [*Secretaría de Justicia y Derechos Humanos de Honduras*], proposing to reform the Criminal Code to decriminalize libel, slander and defamation, following the recommendation of the Office of the Special Rapporteur for Freedom of Expression to the States in the region found in the 2012 Annual Report of the Inter-American Commission of Human Rights regarding the regulations that punish expression in criminal or civil actions.¹⁰⁹⁰ The Inter-American Commission invites the State to move forward with this draft bill, which could contribute to ensuring these cases are heard in civil court, ensuring criminal law is not used as a tool for intimidation which affects freedom of expression, especially when used by public officials to silence criticism.

¹⁰⁸⁶ Reporters Without Borders. August 27, 2014. [Leading opposition broadcaster facing criminal libel charges](#); Radio HRN. August 25, 2014. [Corte Suprema admite querrela en contra de David Romero](#); El Heraldo. August 21, 2014. [Por 15 delitos de difamación acusan a periodistas](#).

¹⁰⁸⁷ C-Libre. August 20, 2014. [Periodista que denunció corrupción por parte del Fiscal General Adjunto, teme por su vida](#); Reporters Without Borders. August 27, 2014. [Leading opposition broadcaster facing criminal libel charges](#); Honduras Tierra Libre. August 20, 2014. [Honduras: periodista David Romero denuncia amenazas de fiscal adjunto // Periodista que denunció corrupción por parte del Fiscal General Adjunto, teme por su vida](#).

¹⁰⁸⁸ C-Libre. September 22, 2014. [Un juicio oral y público afrontará periodista acusado de injurias y calumnias](#); Conexihon. September 22, 2014. [A juicio oral el periodista David Romero por 15 casos de difamación](#).

¹⁰⁸⁹ C-Libre. June 15, 2015. [Poder Judicial recibe presiones para reactivar juicio de periodista](#); La Prensa. June 11, 2015. [Reprograman juicio al periodista David Romero](#); Conexihon. September 22, 2014. [A juicio oral el periodista David Romero por 15 casos de difamación](#); C-Libre. September 22, 2014. [Un juicio oral y público afrontará periodista acusado de injurias y calumnias](#); La Prensa. September 23, 2014. [Periodista David Romero irá a juicio oral y público](#).

¹⁰⁹⁰ Secretary of State, Office of Justice and Human Rights. May 22, 2013. Communication to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. In its response to the draft of this report, the State referred to the fact that Conadeh has recommended that the State of Honduras amend the Criminal Code to decriminalize libel, slander, and defamation. Communication from the State of Honduras, Note No. SG/064/MHOEA/2015. Observations of the State of Honduras to the 2015 Draft Report on Honduras of the Inter-American Commission on Human Rights. December 14, 2015.

V. The right to access public information

825. The right to seek information is a fundamental right protected by Article 13 of the American Convention. It is of particular importance for the consolidation, functioning and preservation of a democratic society.¹⁰⁹¹

826. Honduras passed the Transparency and Access to Public Information Act [*Ley de Transparencia y Acceso a la Información Pública*] in 2006.¹⁰⁹² The aforementioned law's primary objective is the "development and execution of the national transparency policy, as well as the exercise of the right of every person to access public information to strengthen the Rule of Law and consolidate democracy through citizen participation."

827. The law created the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*] (IAIP) as "an independent body, in operation, decision making and budget, charged with the promotion and facilitation of citizen access to public information, as well as regulation and oversight of the procedures for those institutions responsible for the protection, classification and safekeeping of public information in accordance with this Law" (Art. 8). The Institute is an independent entity, it is not beholden to governmental oversight. It has national jurisdiction and the power to create and establish regional offices in places where deemed necessary.¹⁰⁹³ The IAIP is composed of three commissioners elected by the National congress by a two-thirds majority.¹⁰⁹⁴

828. The Institute has the power to resolve disputes on access to public information. Its resolutions are binding and the only remedy is "amparo recourse as defined by the Law of Constitutional Justice [*Ley de Justicia Constitucional*]" (Art. 4[15] and 26). This body also has the power to implement rules of transparency, as follows: a) establish manuals and guides for the classification, archiving, and safekeeping of public information; b) support actions of the national archive in regards to the creation and protection of National documentary collections; c) establish criteria and recommendations for the operation of the National Public Information System [*Sistema Nacional de Información Pública*]; and d) promote and make individuals aware of their right to seek public information (Art. 11).¹⁰⁹⁵

829. The legislation also establishes the creation of a National Public Information System [*Sistema Nacional de Información Pública*] (Sinaip) that "shall integrate, organize, publish and provide access to public information utilizing all available information subsystems, which shall be integrated into a uniformed format pursuant to the rules and regulations established therein" (Art. 12). The IAIP, in coordination with other entities, is in charge of establishing the necessary procedures for the organization and functioning of said system.

830. During the on-site visit, the Office of the Special Rapporteur of the IACHR had the opportunity to meet with IAIP authorities. During the meeting, information on the notable advances made by the IAIP, despite its limitations, in the implementation of the National Public Information System was welcomed. According to the information received, in 2014 the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*] officially launched the SINAIP online, an "automated system

¹⁰⁹¹IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 1.

¹⁰⁹² National Congress/Instituto de Acceso a la Información Pública (IAIP). [Ley de Transparencia y Acceso a la Información Pública](#); Diario Oficial La Gaceta. Legislative Decree No, 170 -2006. December 30, 2006.

¹⁰⁹³ IAIP. [Reglamento de la Ley de Transparencia y Acceso a la Información Pública](#). March 6, 2008. Article 11.

¹⁰⁹⁴ National Congress/IAIP. [Ley de Transparencia y Acceso a la Información Pública](#); Diario Oficial La Gaceta. Legislative Decree No, 170 -2006. December 30, 2006; Information sent by the Instituto de Acceso a la Información Pública de Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹⁰⁹⁵ National Congress/Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#); Diario Oficial La Gaceta. Legislative Decree No, 170 -2006. December 30, 2006.

based on a web platform with sufficient tools to access public information from or to other subsystems of the institutions bound by the law.”

831. One of the tools available is the Electronic Information System of Honduras [*Sistema de Información Electrónico de Honduras*] (Sielho):

is a mechanism designed for processing requests for information and for online review. The system standardizes the process and redirects the requests for information from citizens to Public Information Officers [*Oficial de Información Pública*] (OIP) for each of the institutions bound by the law. It also provides the requestor with feedback regarding the status of the request. Sielho allows OIP to monitor all pending requests and prioritize them according to their due date.¹⁰⁹⁶

According to official data, in 2013, before Sielho, the government received 1,363 requests for public information. Once the system began to operate in 2014, two thousand one hundred fifty-three requests were received online. Another tool Sinaip has established is the Sole Portal on Transparency [*Portal Único de Transparencia*]. This portal is designed to be the only website used by state entities to publish the information they are required to publish by law, pursuant to Article 13 of the Transparency and Access to Public Information Act [*Ley de Transparencia y Acceso a la Información Pública*]. In 2014, the site had 26,486 hits.

832. Likewise, according to available information, in May of 2015 the IAIP presented the Policy on National Transparency [*Política Nacional de Transparencia*] and the 2015-2030 Action Plan, which includes several steps and strategic goals to achieve transparency and access to information.¹⁰⁹⁷

833. The IACHR acknowledges that these actions demonstrate the commitment by the IAIP and the ability it has to protect the rights individuals have to seek information and to promote the development of a culture of transparency in public administration entities. The IACHR encourages the State to continue adopting measures for the effective and efficient implementation of access to information legislation. It should also provide the IAIP with sufficient human, economic and material resources, as well as guaranteed independence for the Commissioners. There should also be a redoubling of efforts so the National Public Information System is accessible and effective in the rural areas of the country.

834. Without prejudice to these important advances, during the visit to Honduras, the Commission learned about concerning information regarding the passing and enactment of the Law for Classification of Public Documents Related to National Security and Defense [*Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*].¹⁰⁹⁸ It imposes limitations and restrictions on the right to information in this arena. The aforementioned law would not be in agreement with the law on access to public information or the international standards.

835. According to the information received during the on-site visit to Honduras, said law was not subject to consultation with civil society and specialized entities. The Commissioners of the Institute for Access to Public Information and different civil society organizations presented to the Office of the Special Rapporteur text which contains regressive provisions on the publicity standard established by the current law on access to information, contradicts the current regulations on access to information and is contrary to international standards on access to public information and protection of national security interests.¹⁰⁹⁹ The

¹⁰⁹⁶IAIP. [Sistema De información Electrónico de Honduras \(SIELHO\)](#).

¹⁰⁹⁷ IAIP. May 29, 2015. [Se presenta la Política Nacional de Transparencia](#); La Tribuna. June 5, 2015. [IAIP presenta Política Pública de Transparencia](#).

¹⁰⁹⁸ Decree No. 418-2013 (Published in the Gazette on January 24, 2014).

¹⁰⁹⁹ See Reporters Without Borders. January 16, 2014. [Secrecy law deals major blow to public's right to be informed](#); Knight Center for Journalism in the Americas. January 20, 2014. [Honduran Secrecy Law endangers access to public information: RSF](#); El Herald. January 16, 2014. [Ley de Secretos cercena al IAIP y convenios](#); CNN en Español. January 17, 2014. [Descontento en Honduras por la aprobación de la Ley de Secretos Oficiales](#); La Prensa. January 15, 2014. [“Ley de secretividad es inconstitucional”: directora de Instituto de Transparencia](#); Conexihon. December 2, 2014. [Análisis del riesgo de la Ley de secretos en Honduras](#).

IACHR notes that the approved legal language establishes the possibility of security agencies classify security and defense information as “secret” and “top secret” in the name of “national interest.”¹¹⁰⁰

836. In fact the law empowers the National Defense and Security Council to classify and protect information deemed “risky to national defense and security, and the achievement of national goals if revealed.” To this end, the law establishes four classification categories for public information “as to the degree of protection required.” Information will be considered restricted if it is “information, documentation or material that refers to the internal strategic environment of State entities” if their dissemination could “produce unwanted institutional effects [...] counter to the effective development of State policy or normal functioning of public sector institutions.” This type of information may be declassified after five years. Information will be deemed confidential if publication could “create eminent risk or direct threat to security, national defense and public order” and “damage or harm internal national security,” therefore it may be declassified after 10 years. Information classified as secret may keep its secret classification up to 15 years if it could “cause eminent risk or directly threaten constitutional order, security, national defense, international relations and the achievement of national objectives” and eventually cause “serious internal and external harm to national security.” Information classified as top secret could be confidential for up to 25 years. This category includes information that “if publically available, could cause serious internal and external damage to national security” (Art. 4 and 7).¹¹⁰¹

837. According to Article 7 of the law, “if the circumstances under which a matter was classified persist, the National Defense and Security Council could expand the original classification time frame, through a duly supported and well founded edict.” Furthermore, it establishes that a request for declassification outside of the time limits imposed will only be considered “in cases of national interest, or for investigations of possible crimes.”¹¹⁰²

838. Article 10 provides “[i]f a person receives classified information or material, pursuant to this law, and as long as the person is aware the information is classified, they must keep it secret and turn it over to the closest civil, police or military authority.” In that regard, it states “when it is foreseen that classified material will be made known to the media, the outlets will be notified of the classification so said classification is respected.”¹¹⁰³

839. Lastly, Article 14 of the law provides that “no public administration official or employee is forced to reveal classified matters in public or private hearings, be it administrative or judicial proceedings,” except in cases where “information related to alleged genocide, extrajudicial executions, torture, forced disappearance, mass sexual violence, or crimes against humanity.” If an authority requires classified information or material, said authority shall take steps to receive the appropriate authorization from the National Defense and Security Council.¹¹⁰⁴

840. In July of 2014, the National Defense and Security Council [*Consejo Nacional de Defensa y Seguridad*] issued Resolution 069/2014 based on this law, wherein it classified the information from the following agencies as confidential: (a) Supreme Court of Justice [*Corte Suprema de Justicia*]; (b) Secretariat of the Interior Security and National Police Directorate [*Secretaría de Estado en el Despacho de Seguridad y la*

¹¹⁰⁰ IACHR. December 5, 2014. [Press Release 146A/14.Preliminary Observations on the Human Rights situation in Honduras](#); Diario Oficial la Gaceta of Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

¹¹⁰¹ Diario Oficial la Gaceta of Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

¹¹⁰²Diario Oficial la Gaceta of Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

¹¹⁰³Diario Oficial la Gaceta of Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

¹¹⁰⁴Diario Oficial la Gaceta of Honduras. [Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional](#). March 7, 2014.

Policía Nacional]; (c) Office of the Public Prosecutor for Drug Trafficking [*Ministerio Público – Dirección contra el Narcotráfico*]; (d) National Bureau of Investigation and Intelligence [*Dirección Nacional de Investigación e Inteligencia*]; (e) Armed Forces Strategic Investigation Agency [*Dirección de Investigación Estratégica de las Fuerzas Armadas*]; (f) Ministry of the Interior Foreign Affairs and International Cooperation Directorate [*Secretaría de Estado en el Despacho de Relaciones Exteriores y Cooperación Internacional*]; (g) National Migration Institute [*Instituto Nacional de Migración*]; (h) Executive Revenue Agency [*Dirección Ejecutiva de Ingresos*]; (i) National Registry of People [*Registro Nacional de las Personas*]; (j) Social Security Institute of Honduras [*Instituto Hondureño de Seguridad Social*]; (k) Property Institute [*Instituto de Propiedad*]; (l) Financial Intelligence Unit for the Bank and Securities Commission [*Unidad de Inteligencia Financiera de la Comisión de Bancos y Seguros*]; (m) Merchant Marines [*Dirección General de Marina Mercante*]; (n) Aviation Authority [*Dirección General de Aeronáutica Civil*]; (o) National Electric Power Firm [*Empresa Nacional de Energía Eléctrica*]; and (p) Autonomous National Service of Aqueducts [*Servicio Autónomo Nacional de Acueductos*].¹¹⁰⁵ The Council considered these state entities “administer information in the interest of national defense and security” and should therefore “provide the corresponding information, and input and update data bases,” with the object of “contributing to the fight against conventional and unconventional crime.”

841. The Commission observes that on July 28, 2015 the Institute for Access to Public Information (IAIP) issued an important decision determining the Classification of Public Documents Related to National Security and Defense Act [*Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*] is inconsistent with the international obligations of the State of Honduras and ordered the legislature to: (i) amend the Law so it complies with the Constitution, Transparency Act, American Convention on Human Rights, and international principles; (ii) amend the law so it specifically defines “National Security,” so it may not be used in a “discretionary or subjective” manner; (iii) amend the law so when something is classified as confidential, the person who has information regarding alleged acts of corruption may testify about it without being subject to retaliation or personal risk; amend the law so restrictions apply only to the specific information that is confidential and not the information in its entirety, to repeal Articles 4 and 10 of the law, and (iv) while discussing the reform as ordered, to include IAIP opinions.¹¹⁰⁶

842. The Inter-American Commission especially recognizes the IAIP for adopting measures to guarantee the right to seek information on matters of national security, simultaneously it calls upon the State to review the Classification of Public Documents Related to National Security and Defense Act [*Ley para la Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*] and legislation adopted later, to guarantee it is compatible with International Human Rights Law. For example, The Joint Declaration on Access to Information and on Secrecy Legislation the Special Rapporteurs for Freedom of Expression recalled “[c]ertain 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.”¹¹⁰⁷ In that regard, this Rapporteurship has emphasized that a restriction of freedom of expression that seeks to justify itself on grounds of national security cannot be based on an idea that is not compatible with democratic society.¹¹⁰⁸

¹¹⁰⁵ Republic of Honduras. National Defense and Security Council. National Bureau of Investigation and Intelligence. July 14, 2014.

¹¹⁰⁶IAIP. File No. 001-2015. Resolution No. SO-001-2015. July 28, de 2015.

¹¹⁰⁷ 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. December 6, 2004.

¹¹⁰⁸ IACHR. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II.149. Doc. 50. Decemer 31, 2013. Para. 60.

843. In addition, the IACHR recommends not establishing subsequent sanctions against public officials who disseminate confidential information when it pertains to serious corruption cases, human rights violations and other matters of obvious general interest. As the Office of the Special Rapporteur noted on the 2010 Joint Statement on Wikileaks, and the 2013 Joint Declaration on Surveillance Programs and their impact on Freedom of Expression, “[p]ublic authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. In addition, government “whistleblowers” releasing information on violations of the law, on wrongdoing by public bodies, [serious corruption cases], on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in good faith. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal. The imposition of criminal sanctions must be exceptional and strictly limited according to necessity and proportionality.”¹¹⁰⁹ Similarly, the Global Principles on National Security and the Right to Information (Tshwane Principles),¹¹¹⁰ states that the law should protect public employees from retaliation for the disclosure of information concerning wrongdoing so long as, among others, “the person making the disclosure had reasonable grounds to believe that the information disclosed tends to show wrongdoing” that falls into one of the following categories “(a) criminal offenses; (b) human rights violations; (c) international humanitarian law violations; (d) corruption; (e) dangers to public health and safety; (f) dangers to the environment; (g) abuse of public office; (h) miscarriages of justice; (i) mismanagement or waste of resources; (j) retaliation for disclosure of any of the above listed categories of wrongdoing; and (k) deliberate concealment of any matter falling into one of the above categories.”¹¹¹¹

VI. Freedom of Expression on the Internet and privacy of communications

844. The right to freedom of expression has found in the Internet a unique tool for incrementally extending its enormous potential to broad sectors of the population. The Internet is transforming and is a medium where people in the entire world can express their opinions, while simultaneously significantly increasing their capacity to access information, it promotes pluralism and the dissemination of information.¹¹¹² Similarly, freedom of expression in the digital sphere presents enormous challenges, the IACHR and Office of the Special Rapporteur for Freedom of Expression were interested in learning about these challenges and follow up on them during the visit to Honduras. According to the information learned during the on-site visit, in March of 2014 Honduras reformed the Framework Law on the Telecommunications Sector [*Ley Marco del Sector de Telecomunicaciones*].

845. According to the information received, the Telecommunications and Information Technology Investment Fund [*Fondo de Inversión de Telecomunicaciones y Tecnologías de la Información*] (FITT), was created as a strategy to achieve universal access to the Internet and Communication and Information Technology (ICT) services, as well as bridging the digital divide. The aforementioned Fund will finance the

¹¹⁰⁹ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. [Joint Statement on Wikileaks](#); United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#).

¹¹¹⁰ Open Society Foundations. [The Global Principles on National Security and the Right to Information \(The Tshwane Principles\)](#). June 12, 2013.

¹¹¹¹ Open Society Foundations. [The Global Principles on National Security and the Right to Information \(The Tshwane Principles\)](#). June 12, 2013. Principles 37-40. See also: IACHR. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II.149. Doc. 50. December 31, 2013.

¹¹¹² IACHR. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser. L/V/II.149. Doc. 50. December 31, 2013.

promotion and development of telecommunications projects and application in ICTs. It is tasked with bridging the digital divide and guaranteeing equal opportunity for beneficiaries, through subsidized projects and/or projects that “will be financed in order to strengthen growth in neglected areas or communities”¹¹¹³ and the country as a whole. Likewise, it shall promote access to quality telecommunications services, in a timely manner, efficiently and at accessible and competitive prices, for the inhabitants of the country who do not have sufficient resources to access them.¹¹¹⁴

846. According to the most recent performance report on the telecommunications sector, during the final quarter of 2014 advances were made. Specifically, the number of subscribers to fixed Internet reached 159,276, which, according to the report, represents a 21.24% growth from the previous quarter. The number of subscribers to mobile Internet reached 1,350,109, a 19.73% growth from the previous quarter. The number of Honduran Internet users increased by 16.4% from 2012 to 2013.¹¹¹⁵

847. The IACHR and the Office of the Special Rapporteur for Freedom of Expression take note of the advances to ensure universal and effective enjoyment of the right to freedom of expression online. In that regard, it encourages the State of Honduras to continue adopting positive measures of inclusion, or bridging the digital divide in a progressive manner; and to continue efforts on the development of plans to ensure the infrastructure and services tend to increasingly guarantee universal access.

848. Without prejudice to these notable advances, the Commission received information from different actors of civil society regarding the prejudicial impact the implementation of the Special Law on Interception of Private Communication [*Ley Especial para la Intervención de las Comunicaciones Privadas*]¹¹¹⁶ would have on the exercise of the right to privacy and freedom of expression in the country.¹¹¹⁷

849. The IACHR observes that the law, passed in 2011, has the goal of establishing a “legal framework for rules of procedure in the intervention of communications, to be used rarely in investigations, thus making it a tool to combat conventional crime and especially organized or non-conventional crime, guaranteeing the human right to communication, without more restrictions than those provided for by the Constitution and the law” (Art. 1).

850. According to the law, communications by any means or transmission may be intercepted.¹¹¹⁸ In order to intercept the “Office of the Public Prosecutor, the National Police, or any other competent authority” shall obtain a court order. The judge shall resolve the petition immediately, not to exceed 4 hours, and said authority shall continue “the investigation, processing and persecution of crimes requiring the use of

¹¹¹³ According to FITT regulations, “rural, marginal urban, or underserved areas in national territory, in other words, places that are a social interest priority, where there are no telecommunications services, or insufficient services to meet current and future demands”. Conatel. May 7, 2014. [Resolution NR 007/14. Reglamento del Fondo de Inversión de Telecomunicaciones y Tecnologías de la Información y las Comunicaciones.](#)

¹¹¹⁴ Conatel. May 7, 2014. [Resolution NR 007/14. Reglamento del Fondo de Inversión de Telecomunicaciones y Tecnologías de la Información y las Comunicaciones.](#)

¹¹¹⁵ Conatel. May, 2015. [Desempeño del Sector de Telecomunicaciones. Informe Trimestral.](#)

¹¹¹⁶ Judicial Branch. La Gaceta. [Decree No. 243-2011. Ley Especial para la Intervención de las Comunicaciones Privadas.](#) January 26, 2012.

¹¹¹⁷ Conexihon. December 5, 2011. [Análisis sobre la Ley Especial de Intervención de las Comunicaciones Privadas](#); PEN Internacional, et al. September 15, 2014. [Contribución a la 22a sesión del Grupo de Trabajo de la presentación del Examen Periódico Universal sobre Honduras](#); El Comité de Familiares de Detenidos Desaparecidos en Honduras, Cofadeh, et al. September, 2014. [Informe Conjunto presentado para el Segundo Examen Periódico Universal al Estado de Honduras.](#)

¹¹¹⁸ Article 3. Definitions (...) 11) Communication interception. “Communication interception is a special investigation technique, part of the special process of investigation, consisting in the process of listening, capturing, registering, saving, recording, or observing, by the authorities, without the consent of the owners or participants, a communication that occurs by any means of signal transmission, emission, or reception, or written signs, images, sounds, emails, or any type of information made by cord, radioelectricity, optical, or other media, electromagnetic system, telephone, radio communication, telegraphy, computer or telematics, of similar nature or analog, just as communication through any other means or transmission”. National Congress. La Gaceta. [Decree No. 243-2011. Ley Especial para la Intervención de las Comunicaciones Privadas.](#) January 26, 2012.

this special technique, taking into account the seriousness, usefulness and appropriateness of the measure in regards to the crime” (Articles 7, 8 and 16). Furthermore, this law created the Communication Interception Unit [*Unidad de Intervención de Comunicaciones*], which falls under the National Investigation and Intelligence [*Dirección Nacional de Investigación*], Directorate of the National Defense and Security Council [*Consejo Nacional de Defensa y Seguridad*] and shall be the body tasked with executing the interception court order (Art. 33).

851. Moreover, Article 39 of the aforementioned law requires “compan[ies], institution[s], or any other natural or juridical entity that offers communications services,” the obligation to “keep the data on all connections of each user for the period of 5 years.” Data includes all contacted telephone numbers, length and time of the call, and if on a cellular telephone, the location from where the call is made, answered or a message is sent.¹¹¹⁹

852. The IACHR notes with concern, that the aforementioned Article 39 does not clearly define who is responsible for data retention on the connections, or the type or category of data to be preserved. The clear definition of those subject to data retention and the type of data is crucial given the number of communication service providers and access to Internet and information actors, as well as the complexity of the data according to the type of service provided. The Act is not clear on the obligations of personal data retention by Internet service providers; and those are precisely the platforms used to transmit electronic communication, like email, social networks and messaging services.

853. The aforementioned is even more serious, since the Act does not clearly define the types of crimes subject to these methods for their investigation and prosecution. It establishes one of the longest and most onerous time limits (5 years) in the region, and does not provide for destroying the preserved data at the end of the retention period. To that extent, the Office of the Special Rapporteur for Freedom of Expression of the IACHR has expressed concern over the adoption of policies that obligate Internet and telecommunications service providers to retain the communications metadata for historical surveillance, in contrast to selective retention mechanisms clearly defined by law. In that regard, the Special Rapporteurs of the UN, OSCE, OAS and African Commission have affirmed that:

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.¹¹²⁰

854. The Commission reiterates that all possible effects on the freedom of expression and right to privacy shall be truly necessary and proportionate to the legitimate goals of a democratic State. Freedom of Expression is invaluable for democracy and individuals, that is why it enjoys special protection in both national constitutions and the American Convention on Human Rights.

855. In that regard, the IACHR reiterates a call to the state of Honduras to review its legislation keeping international standards and principles in mind in light of our report on Freedom of Expression and the Internet and Resolution 68/167, The right to privacy in the digital age, adopted by the United Nations General Assembly, wherein it calls upon the States to review:

their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full

¹¹¹⁹ Judicial Branch. La Gaceta. [Ley Especial sobre Intervención de las Comunicaciones Privadas](#). December 12, 2011.

¹¹²⁰ 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. May 3, 2015. [Joint Declaration on Freedom of Expression and Response to Conflict Situations](#).

and effective implementation of all their obligations under international human rights law.¹¹²¹

¹¹²¹ UN. General Assembly, Resol. 68/167, December 18, 2013. The Right to Privacy in the Digital Era, p. 3, number 4.c).

18. JAMAICA

856. Jamaica introduced a new copyright law in July. The Copyright Amendment Act extends copyright protections by 45 more years for a total of 95 years from the date of publication for content belonging to corporations and government works. This Act applies retroactively and places works that have already passed into the public domain back in copyright protection status. Civil society organizations have expressed concern that this Act has the potential to limit access to information that would otherwise been in the public domain.¹¹²²

857. Principle 5 of the Declaration of Principles on Freedom of Expression states that “[r]estrictions 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.”

¹¹²² Electronic Frontier Foundation. July 24, 2015. [Anatomy of a Copyright Coup: Jamaica's Public Domain Plundered](#); Jamaica Observer. July 1, 2015. [Golding says Copyright Law will bolster creative industries](#).

19. MEXICO

A. Progress

858. On April 16, 2015, the Congress of the Union (*Congreso de la Unión*) approved the decree for issuance of the General Transparency and Public Information Access Law (*Ley General de Transparencia y Acceso a la Información Pública*).¹¹²³ This law is the result of a process over a number of years that culminated in approval of a series of constitutional reforms to provide constitutional protection for the right of access to public information and establish independence and autonomy for the body that applies the laws and regulations for access to information and protection of data.

859. The General Transparency and Public Information Access Law is the result of an inclusive process with participation by different actors, including academia and civil society organizations, which played a fundamental role in making sure that the law would not deviate from the constitutional text and international standards in the field of access to information.

860. The law has a federal scope and its objective is to establish specific means to strengthen the culture of transparency in governance, access to information, civic participation and accountability (art. 2), at all levels of the State. It establishes the guiding principles for maximum publicity and good faith recognized by the Inter-American system to guarantee full and effective exercise of the right of access to information. It also provides that, in addition to the authorities and entities of the different branches of government, the political parties, autonomous entities, trusts, public funds and any natural or legal private person or trade union that receives and executes public funds or carries out acts of authority in the federal, state or municipal realms are also legally bound reporting parties. (art. 23).

861. The law creates the National System for Transparency, Access to Public Information and Protection of Personal Data, (*Sistema Nacional de Transparencia, Acceso a la Información Pública y Protección de Datos Personales*) making it responsible in the field of transparency and access to information. The system aims to strengthen accountability of the State and its objective is to coordinate and evaluate public policy actions for transparency, access to information and protection of data, as well as to establish the criteria and guidelines for application of the above-mentioned law. (art. 28). The system consists of the National Institute for Transparency, Access to Information and Protection of Personal Data (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*) (INAI), the guarantor agencies of the Federative Entities, the General Archives of the Nation and the National Statistics and Geography Institute (art. 30).

862. The System has a National Council consisting of its members and chaired by the President of the INAI (art. 32), which can work by commissions or with the full membership and shall meet at least once every six months. The System shall also have an Executive Secretary designated by the full INAI (art. 36).

863. To ensure compliance with the guidelines of the law, in addition to the guarantor bodies, the law provides for the creation of transparency committees in each of the legally bound reporting parties (art. 43).

864. The law also regulates the proof of damage that the legally bound reporting parties must provide when refusing access to information based on one of the exceptions established by the law. In responding to the request for information, the legally bound reporting party shall demonstrate through the above-mentioned proof that (i) disclosure of the information in question represents a real, demonstrable and identifiable risk of significant damage to the public interest or to national security; (ii) the risk of damage that disclosure would imply is greater than the general public interest that the information be disseminated; and (iii) the limitation is in accordance with the principle of proportionality and represents the least restrictive means available to avoid the damage (art 104).

¹¹²³ Diario Oficial de la Federación. May 4, 2015. [Decreto por el que se expide la Ley General de Transparencia y Acceso a la Información Pública.](#)

865. It also establishes mechanisms to enable appeals of decisions by individuals who require information that has been denied them by the legally bound reporting party. Appeals may be filed directly or electronically with the guarantor body or the Transparency Committee of the legally bound reporting party from whom the information is requested, and the appeal must be resolved weighing the elements of stability, need and proportionality to determine if restriction on access to the information is feasible (article 149). Decisions by the guarantor body are definitive for the legally bound reporting parties and only the Government Legal Advisor can file appeals in response to rulings that endanger national security or the public interest.

866. Private individuals may turn to the INAI or the judicial branch to file an appeal against a ruling by the guarantor body (article 159) and INAI rulings can be appealed through the judicial branch (article 180). On the other hand, the law provides that the INAI, with a favorable vote by the majority of the Commissioners, on its own initiative or at the request of the guarantor body, can take up those appeals for review whose resolution is pending and that because of their interests or transcendence justify it (article 181).

867. The IACHR and the Special Rapporteurship have established that “States should enshrine the right to administrative review and subsequent judicial review of administrative decisions through a recourse that is simple, effective, quick, and non-onerous, that allows the challenging of decisions of public officials that deny the right of access to specific information or simply neglect to answer the request.¹¹²⁴ Together with that, the remedy should also: a) review the merits of the controversy to determine whether the right of access was inhibited, and b) in the affirmative case, order the corresponding government body to turn over the information. In these cases, the recourses should be simple and quick, since the expeditious delivery of the information is indispensable for the fulfillment of the functions this right presupposes”.¹¹²⁵

868. In November, the Federal Telecommunications Institute (IFT) awarded the first concession of a frequency for social community use to the radio station Autogestión Comunicativa A.C., in Hermosillo, Sonora.¹¹²⁶

869. In the communiqué issued by the regulatory body, they stated that, “this involves a transcendental and historic resolution that materializes a category recently incorporated in the constitutional text to recognize other civic alternatives that maintain links with their community and shall be governed under the principles of direct civic participation, social coexistence, fairness, gender equality and plurality pursuant to current applicable legislation”.¹¹²⁷

870. The above is the result of application of the Federal Telecommunications and Broadcasting Law, which recognized the possibility of awarding concessions to the country’s indigenous peoples and communities, as well as awarding concessions for community social use. According to the information received by the Office of the Special Rapporteur, in 2015 the IFT had authorized ten concessions for social use, seven of which are to operate radio stations and 3 for television stations with just one concession for a community social use radio station.

871. Regarding community media, on several occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media perform an essential function in our hemisphere for

¹¹²⁴ I/A Court H. R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 137.

¹¹²⁵ I I/A Court H. R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. paras. 116-139.

¹¹²⁶ Aristegui Noticias. November 6, 2015. [Por primera vez en la historia, IFT otorga concesión para uso social a radio comunitaria](#); Voces. November 10, 2015. [Otorgan primera concesión para uso social comunitaria en México a autogestión comunicativa](#); Sem México. November 9, 2015. [Otorga el IFT primera concesión de uso social comunitaria](#).

¹¹²⁷ Instituto Federal de Comunicaciones (IFT). November 6, 2015. Press Release 93/2015. [El pleno del IFT aprueba el acceso a multiprogramación del Instituto Politécnico Nacional en diferentes ciudades](#).

different sectors of society to exercise their rights to freedom of expression and access to information.¹¹²⁸ In this respect, it is necessary for the States to legally recognize community media outlets and to provide for the reservation of equitable amounts of spectrum for this kind of media as well as adequate conditions for access to licenses that take account of their circumstances. In addition, community media should benefit from fair and simple licensing procedures, should not have to meet technological or other requirements that amount to disproportionate barriers to access to licenses, and in their operation should not be subject to disparate treatment that is not properly justified.¹¹²⁹

872. The First Court of the Supreme Court of Justice for the Nation, in a ruling of May 20, 2015,¹¹³⁰ declared 398 Bis of the Criminal Code of Chiapas that prohibits the so-called “*halconeo*” or lookouts as unconstitutional. The norm provides for penalties from 2 to 15 years of imprisonment for those “who obtain and provide confidential or reserved information from the public security bodies or armed forces with the aim of preventing the perpetrator or perpetrators of a crime from being arrested or to enable them to undertake a criminal activity against a third party.” The action alleging unconstitutionality was filed by the nongovernmental organization Article 19, which question the vagueness of the terms of the provision under which “practically any search for information about matters of public safety is absolutely restricted”.¹¹³¹ In this important ruling, the First Chamber determined that while the norm sought a legitimate objective – to protect public safety – “it is neither clear nor precise from the material point of view, because the punishable conducts are ambiguous. Additionally, as shall be shown, the restriction is not aimed at satisfying the public interests that it pretends to protect (need) and the restriction imposed is not the one that restricts freedom of access to information to the least possible extent (suitability). As a whole, this relates to violation of the principle of specificity of criminal standards.”

873. In this respect, it established that “non-fulfillment of the principle of specificity, applied in aspects of freedom of expression and access to information, generates a constitutional flaw ordinarily associated [...] with the failure of the law to prevent the type of prohibited conduct with certainty in relation to the target. However, the specific nature of its application in this realm stems from the existence of an additional dual constitutional flaw: a) a criminal law that does not satisfy the principle of specificity generates damaging effects for public debate –in which freedom of expression and access to information are projected –, because people, lacking certainty about the type of discourse in which they may not take part, will preventively decide not to fully participate in said communicative activity for fear of being penalized. That is where the inhibited effect generated by the lack of specificity of a criminal type lies. b) Non-fulfillment of the principle of specificity generates a penal type that serves as the basis for ministerial and/or judicial authority to exercise discretion and introduces personal judgments about the type of discourse that should be prohibited in a specific circumstance. The flaw of validity is established when the law or the authorities are given the power to prohibit communicative actions with which they do not agree. This discretionary power (generated by the lack of specificity) goes against the main democratic control mechanism that citizens have over the authorities: unpopular criticism.”

874. The First Court ruled that the law does not respect the principle of specificity, because “(i) the reference to confidential or reserved information refers to other laws; (ii) it establishes that the intention or purpose of the conduct is that said information would enable a crime to be committed or for someone who has committed a crime to avoid arrest; and (iii) that the criminal type is left open when the law establishes

¹¹²⁸ IACHR. [Justice and Social Inclusion: The challenges of democracy in Guatemala](#). Chapter VII (The situation of freedom of expression). OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para. 414; IACHR. [Annual Report 2002. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of expression and poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 41.

¹¹²⁹ IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 92 *et seq.*

¹¹³⁰ Suprema Corte de Justicia de la Nación. Appeal 492/2014. May 20, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹¹³¹ Article 19. October 14, 2015. [Mexico: The Crime of Investigation](#).

that the information is to avoid arrest when a crime has been committed (no matter which), or to avoid carrying out a ‘criminal activity’ (no matter which)”.

875. In that sense, it explained that “while the disputed article does not *prima facie* impose absolute reserve on the type of information that is obtained and provided, because it limits reserved or confidential information, it is clear that by generally referring to other laws in a generic fashion, it makes it impossible, in fact, for a person seeking information of public interest to know, *ex ante*, that the information is reserved or confidential and that it also satisfies the proof of damage. Therefore, this Court finds that the enunciation associated with the type of information to which the disputed article refers constitutes, in practice, an *a priori* obstruction of the search for information.” It also found that “defining the ‘intention’ for the information to be used by someone to commit a crime not only constitutes a vague and imprecise determination impossible to verify, but also poses obstacles and imposes requirements for taking part in debates in the public space, in the center of which are the journalists.” Finally, it found that “the reference that it be any crime or criminal activity, without making any distinction as to its gravity, which would allegedly be committed through reporting on the activities of elements of public safety or of the Army clearly constitutes an open criminal type. The article, as defined, would imply the absurdity that through lookouts (*halconeos*), support for any type of crime would be fostered, even those of lesser quantity and penalty.” The chamber also determined that the disputed law has a disproportionate impact on journalists, who “have the social duty to seek and disseminate information about matters of public interest to place them on the agenda of public debate, so that the law ends up having not only an inhibiting effect on journalism but makes the profession illegal in that specific realm.”

B. Killings

876. In the year to date, the Office of the Rapporteur has recorded 6 journalists murdered for reasons that could be associated with freedom of expression.

877. Journalist and activist José Moisés Sánchez Cerezo, owner of the weekly newspaper *La Unión*, in Medellín de Bravo, Veracruz, was found dead on January 24, 2015 in a nearby locality, after having disappeared 22 days before. His body showed signs of mutilations.¹¹³² Sánchez Cerezo published information about his municipality that had offended the mayor, Omar Cruz Reyes.¹¹³³

878. On January 26, 2015,¹¹³⁴ the Commission issued precautionary measures “to determine the situation and whereabouts of José Moisés Sánchez Cerezo, with the purpose of safeguarding his life and personal integrity”.¹¹³⁵ The investigation of this case is under the Office of the office of the General Prosecutor of the State of Veracruz [*Fiscalía General del estado de Veracruz*], which to date has been able to link in 4 people who participated in the plan to make Moisés Sánchez disappear and to kill him.

879. Although the victim is a journalist and there are indicia to believe this crime was related to his work, the FEADLE decided not to exercise jurisdiction. That decision was based on two arguments, the first is that Mr. Sánchez was not a journalist but rather a taxi driver;¹¹³⁶ the basis for this argument relies

¹¹³² El Economista. January 26, 2015. [Encuentran cuerpo del periodista Moisés Sánchez](#); CNN México. January 25, 2015. [El periodista Moisés Sánchez, de Veracruz, es encontrado muerto](#); Article 19. February 6, 2015. [PGR identifica con exámenes periciales el cuerpo del periodista Moisés Sánchez](#).

¹¹³³ Article 19. January 3, 2015. [Tres días antes de su desaparición, alcalde amenazó al periodista Moisés Sánchez](#).

¹¹³⁴ IACHR. January 26, 2015. [Resolution 1/2015. Precautionary Measure No. 5/15](#).

¹¹³⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. January 6, 2015. [Press Release R 1/15. Office of the Special Rapporteur expresses concern over disappearance of journalist in the state of Veracruz, Mexico](#); IACHR. January 26, 2015. [Resolution 1/2015. Precautionary Measure No. 5/15](#).

¹¹³⁶ Animal Político. September 11, 2015. [Fiscalía para la libertad de expresión descarta caso de Moisés Sánchez: dice que no es periodista](#); Imagen del Golfo. September 11, 2015. [FEADLE no atraerá investigación del caso de Moisés Sánchez Cerezo, dice que no era periodista](#); El Diario de Coahuila. September 11, 2015. [Fiscalía para la libertad de expresión descarta caso de Moisés Sánchez porque dice que no es periodista](#).

upon the fact that he was doing that over the last few years in order to support his family, and the second argument was that the Office of the Prosecutor for Veracruz had jurisdiction. The family of the journalist lodged and *amparo* recourse to demand FEADLE takes on the case; nevertheless that same Special Prosecutor revoked it. The Commission is concerned that the very same investigative entity utilizing different arguments creates its own obstacles for leading the investigation. These may very well have a negative impact on the investigation, especially when it comes to identifying masterminds for prosecution. As we will see later this will be repeated in other cases.

880. On April 14, 2015 the owner and director of community radio station *Spacio 96.1*, Abel Manuel Bautista Raymundo, was killed by multiple gunshots. The event took place in locality of Santiago Juxtlahuaca. Bautista was also president of the Association of Community Radio Stations, “Vara 7”.¹¹³⁷

881. The IACHR recorded the murder of journalist Armando Saldaña Morales on May 4, 2015 near the locality of Acatlán de Pérez Figueroa, in the state of Oaxaca. Saldaña Morales worked at radio station “La Ke Buena 100.9 FM” in the locality of Tierra Blanca, state of Veracruz, some 30 kilometers from where he was found dead with various gunshot wounds and signs of torture. The reporter had covered local news on politics and conflicts in the region.¹¹³⁸

882. On July 1, 2015, journalist Juan Mendoza Delgado director of the news site “Escribiendo la verdad”¹¹³⁹ was found dead, having been hit by an automobile. On July 2 Filadelfo Sánchez, an announcer at radio station *La Favorita* in Miahuatlán, was killed when leaving the station. Reports indicate that he had previously received death threats.¹¹⁴⁰

883. Filadelfo Sánchez, who was an announcer at the radio station *La Favorita* in Miahuatlán, was shot on the morning of Thursday, July 2, 2015 when leaving the station. Reports indicate that he had previously received death threats. The governor of Oaxaca instructed the state prosecutor in charge of the case to carry out a diligent investigation to solve the crime.¹¹⁴¹

884. On July 31, 2015 in the Federal District of Mexico, press photographer Rubén Espinoza and activist Nadia Vera Pérez and three other women were killed. According to the information available, Rubén Espinoza worked in the state of Veracruz for the magazine *Revista Proceso* and the *Cuartoscuro* and *AVC Noticias* agencies. He was also an activist demanding the government of that state issue measures to prevent, investigate and punish violence against journalists.¹¹⁴²

¹¹³⁷ AMARC/Facebook. April 15, 2015. [Amarc-México condena el asesinato de comunicador en Oaxaca](#); Article 19. April 16, 2015. [Asesinan comunicador en Oaxaca: gobiernos incapaces de garantizar libertad de expresión](#); NoticiasNet. April 15, 2015. [Ejecutan a director de radio comunitaria](#); Milenio. April 15, 2015. [Asesinan a director de radio comunitaria en Oaxaca](#); Sin Embargo. April 14, 2015. [Director de radio comunitaria de Oaxaca es asesinado a balazos en el municipio de Juxtlahuaca](#); Procuraduría General de Justicia del Estado de Oaxaca. April 14, 2015. [Investiga PGJE homicidio de comunicador en la Mixteca, no se descarta al momento ninguna línea de investigación](#).

¹¹³⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 11, 2015. [Press Release R 48/15. Office of the Special Rapporteur Condemns the Murder of a Journalist and Expresses its Concern over the Disappearance of Another in Mexico](#); Article 19. May 6, 2015. [Veracruz: sin lugar para la libertad de expresión, 17 periodistas asesinados desde 2000](#); Mundo de Córdoba. May 5, 2015. [Asesinan a reportero](#); Animal Político. May 5, 2015. [Matan a otro periodista veracruzano: van 12 en la administración de Javier Duarte](#); Mundo Veracruzano. May 5, 2015. [Asesinan a Armando Saldaña locutor de noticias de la Ke Buena Tierra Blanca](#); Quadratin Veracruz. May 4, 2015. [En Oaxaca localizan sin vida a periodista Armando Saldaña](#).

¹¹³⁹ Proceso. July 2, 2015. [Hallan en el Semefo cuerpo de reportero desaparecido en Veracruz: “fue atropellado”: autoridades](#); El País. July 3, 2015. [El asesinato de dos periodistas sacude México](#).

¹¹⁴⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 6, 2015. [Press Release R 76/15. Office of the Special Rapporteur Condemns Killing of Two Journalists in Mexico](#); Aristegui Noticias. July 6, 2015. [Asesinan a periodista en Oaxaca y desaparece reportero en Veracruz](#); Reporters Without Borders. July 3, 2015. [Three Journalists Murdered in One Week in Mexico](#).

¹¹⁴¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 6, 2015. [Press Release R 76/15. Office of the Special Rapporteur Condemns Killing of Two Journalists in Mexico](#); Committee to Protect Journalists (CPJ). July 2, 2015. [Journalist gunned down outside radio station in Mexico](#); Article 19. July 2, 2015. [Filadelfo Sánchez, tercer locutor de radio asesinado durante 2015](#).

¹¹⁴² IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2015. [Press Release R 84/15. The Office of the Special Rapporteur Condemns the Killing of Graphic Reporter in Mexico in a Crime with Four Other Victims](#); Article 19. August 3, 2015.

885. In June he decided to take refuge temporarily in the Federal District (Mexico City) after being threatened.¹¹⁴³ In an interview days before his murder Espinosa expressed his fear on an attack and discussed the following events that took place while he was covering a student protest: “a person from the State Government Adjutancy [*Aydantía del Gobierno de Estado*]” for Veracruz approached him and warned him: “stop taking pictures if you do not want to end up like Regina.” Regina Martínez, also a journalist killed in 2012, was well known for reporting and investigating and her colleagues see her death as the beginning of a tragic and violent era against the press in Veracruz.¹¹⁴⁴

886. On several occasions Espinosa noted that Javier Duarte Ochoa, the governor of Veracruz, was responsible for the lack of freedom of expression in the state. The photographer also reported recent harassment and surveillance incidents.¹¹⁴⁵ Although he was at risk he decided not to go to the state or federal mechanism for journalist protection because, according to several sources, he expressed his distrust towards those instances. The murder of Espinosa is the first killing of a journalist taking refuge in Mexico City; this sends a message of insecurity to several journalists who have left their regions to seek refuge in the safety of Mexico City after receiving threats. The multiple victim crime has created a general rejection by Mexican society. After the murder hundreds of people protested to demand justice and in fact close to five-hundred journalists from around the world signed an open letter to President Peña Nieto demanding justice be served in the cases of the killed journalists and guarantee the exercise of journalism as it has become one of the most dangerous countries for journalists.¹¹⁴⁶ PFGDF is currently heading the investigation. Currently, the PFGDF is in charge of investigation and the Special Public Prosecutor for Crimes against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos contra la Libertad de Expresión*] (FEADLE) provides accompaniment, although until now it has refused to make use of its discretionary power in this case.

887. On the other hand, Nadia Vera Pérez an activist for the #YoSoy132 student movement in Xalapa (Veracruz), in an interview published eight months earlier, Vera Pérez pointed the finger at Duarte de Ochoa and “all his cabinet” for “anything” that could have happened to those who participate in social movements in that state: “they are the ones who are ordering to repress us,” she said.¹¹⁴⁷ According to the information available, Nadia was tortured before she was killed.¹¹⁴⁸

888. The Office of the Special Rapporteur also received information about the murder of two journalists and/or communications media employees in which there is no clear connection with the exercise of their professions. In this sense, the IACHR considers it of fundamental importance that the authorities investigate these events without discarding the hypothesis of a link with journalistic activity and freedom of expression. On July 9, 2015, the director general of the digital newspaper in Oaxaca, Foro Político, Edgar Hernández García, was murdered in Huatulco Oaxaca.¹¹⁴⁹ On June 26, the body of journalist Gerardo Nieto,

Mexico: Photojournalist Ruben Espinosa murdered; Committee to Protect Journalists (CPJ). August 3, 2015. [Mexican photojournalist who fled violent Veracruz state murdered in capital](#).

¹¹⁴³ Plumas Libres. June 13, 2015. [Fotoperiodista de Proceso sale de Veracruz por acoso e intimidaciones](#); El Diario. August 2, 2015. [Salió de Veracruz para huirle a la muerte: en DF lo alcanzó](#).

¹¹⁴⁴ Animal Político. July 9, 2015. [Entrevista: Rubén Espinosa, el fotoperiodista hallado muerto en la Ciudad de México](#); Proceso. August 11, 2015 [Las últimas entrevistas de Rubén Espinosa](#).

¹¹⁴⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2015. [Press Release R84/15. The Office of the Special Rapporteur Condemns the Killing of Graphic Reporter in Mexico in a Crime with Four Other Victims](#); Article 19. August 3, 2015. [Mexico: Photojournalist Ruben Espinosa murdered](#); Committee to Protect Journalists (CPJ). August 3, 2015. [Mexican photojournalist who fled violent Veracruz state murdered in capital](#).

¹¹⁴⁶ El País. August 19, 2015. [La carta dirigida al presidente mexicano Enrique Peña Nieto](#); El Universal. August 17, 2015. [Carta de intelectuales dirigida a Peña Nieto](#).

¹¹⁴⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2015. [Press Release R84/15. The Office of the Special Rapporteur Condemns the Killing of Graphic Reporter in Mexico in a Crime with Four Other Victims](#); Aristegui Noticias. August 3, 2015. [Responsabilizo a Javier Duarte de cualquier cosa que me pase: Nadia Vera, antes de su asesinato](#).

¹¹⁴⁸ Revista Proceso. August 18, 2015. [El multihomicidio fue por encargo](#).

¹¹⁴⁹ Periodistas en español. July 13, 2015. [Asesinado en México el periodista Edgar Hernández García](#); Vanguardia MX. July 10, 2015. [Asesinan a Edgar Hernández, ex candidato a la presidencia municipal de Huatulco](#).

director of the local weekly *El Tábano*, was found in the locality of Comonfort, Guanajuato.¹¹⁵⁰ On June 18, 2015, journalist Ismael Díaz López, correspondent for the daily “*Tabasco Hoy*”, was found stabbed to death in his home in the municipality of Teapa, Tabasco.¹¹⁵¹ In mid-August, reporter Juan Heriberto Santos Cabrera was killed by men who opened fire when he was at a bar in Orizaba, Veracruz.¹¹⁵²

889. It is fundamental for the Inter-American Commission that the State of Mexico fully investigates the murders of the journalists in an effective and impartial manner, shedding light on the motives and making a judicial determination on whether it is related to the exercise of journalism or freedom of expression. The authorities should not discard the exercise of journalism as motive for murder and/or attacks before the investigation is completed. In that regard, the IACHR reiterates the 2010 recommendation issued by Frank la Rue, the former United Nations Special Rapporteur on the promotion and protection of the right to freedom of expression to “[a]dopt special protocols for the investigation of crimes against journalists whereby the hypothesis that the motive for the crime was the profession be privileged and exhaustive”.¹¹⁵³

890. The omission of logical avenues of investigation, or the lack of diligence in the gathering of evidence has had repercussions on the course of the proceedings for indictment or at trial.¹¹⁵⁴ Any deficiency in the logical avenues of investigation affects, above all, the identification of the masterminds.¹¹⁵⁵

C. Attacks, Treats and Harassment against Journalist and Media Outlets

891. Journalist Bernardo Javier Cano Torres disappeared in the locality of Iguala, Guerrero, as reported on May 7, 2015 by the Prosecutors’ Office of that state. The journalist had been kidnapped along with three other people traveling with him in a truck, and the perpetrators of the crime had asked for ransom. Cano worked at ABC Radio in Iguala, on the program “*Hora Cero*”. The locality of Iguala has reported events of significant violence in recent months and the state of Guerrero is one of the country’s most dangerous for practicing journalism. The Prosecutors’ Office of Guerrero reported that it is investigating the case.¹¹⁵⁶ According to the local press, on May 27, 2015 and following payment of a ransom, the journalist was freed.¹¹⁵⁷

892. Similarly, the Office of the Rapporteur received with concern information about the kidnapping of another 2 journalists: on May 30, a journalist from the digital medium *TV Sureste* was

¹¹⁵⁰ 20 Minutos. June 26, 2015. [El periodista Gerardo Nieto es asesinado en Guanajuato, al parecer durante una discusión](#); Zona Franca. June 26, 2015. [Descarta PGJEG relación del asesinato de Gerardo Nieto en Comonfort con su labor periodística](#).

¹¹⁵¹ Proceso. June 18, 2015. [Asesinan a corresponsal del diario “Tabasco Hoy”](#); La Prensa Gráfica. June 20, 2015. [SIP pide indagar muerte de periodista](#).

¹¹⁵² BBC. August 13, 2015. [Another journalist dies in Veracruz in attack by armed group in Mexico](#); CNN en español. August 13, 2015. [¿Quién era Juan Heriberto Santos, el reportero asesinado en Orizaba?](#); Animal Político. August 13, 2015. [Hombres armados asesinan a seis personas en Veracruz; entre ellas a un reportero](#).

¹¹⁵³ UN. General Assembly. May 19, 2011. A/HRC/17/27/Add.3. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Frank La Rue- Mission to Mexico](#).

¹¹⁵⁴ IACHR. Office of the Special Rapporteur on Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 116.

¹¹⁵⁵ IACHR. Office of the Special Rapporteur on Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125-126.

¹¹⁵⁶ IACHR. Office of the Special Rapporteur on Freedom of Expression. May 11, 2015. [Press Release R 48/15. Office of the Special Rapporteur Condemns the Murder of a Journalist and Expresses its Concern over the Disappearance of Another in Mexico](#); El Financiero. May 8, 2015. [Fiscalía de Guerrero confirma secuestro de periodista en Iguala](#); Reporters Without Borders. May 12, 2015. [Radio Journalist Kidnapped in Guerrero State](#).

¹¹⁵⁷ Sin Embargo. May 29, 2015. [Familiares del periodista secuestrado en Iguala pagan el rescate y es liberado](#); El Financiero. May 28, 2015. [Reportan liberación de periodista secuestrado en Iguala](#).

kidnapped for several hours and sexually assaulted;¹¹⁵⁸ and on February 4, 2015 the editorial director of the newspaper *El Mañana* in Matamoros, Enrique Juárez Torres, was kidnapped by an armed group.¹¹⁵⁹

893. Enrique Juárez Torres was kidnapped from his own office by two armed men and then placed in a truck, where he was threatened with death and beaten while riding around the city. The kidnapers warned him that the newspaper must not publish any more information about criminal groups; he was finally freed¹¹⁶⁰. Juárez Torres fled from Matamoros a few days later, and the newspaper – which had decided to report on attacks against the municipal government building, after one month without publishing news referring to local groups linked to drug trafficking¹¹⁶¹– again decided to stop publishing this type of news. The self-censorship took effect immediately and the newspaper did not report on the kidnapping of its own editorial director, which only appeared in its associated newspaper, *El Mañana* in Reynosa.¹¹⁶² After the kidnapping, four of the newspaper’s journalists resigned from their jobs.¹¹⁶³

894. Journalist Edwin Meneses of the weekly *BMM* and community radio station *La Joya 107.5*, and announcer Samuel López, were detained by members of the Office of the General Public Prosecutor of the Republic (*Procuraduría General de la República*) (PGR) and accused of allegedly using the radioelectric spectrum without authorization to put a community radio station on the air. They both had to pay 70,000 pesos (some \$ 4,000 US dollars) as bail. That same day, the PGR closed and confiscated the equipment of three community radio stations in Salina Cruz and one in Tehuantepec, in the state of Oaxaca.¹¹⁶⁴

895. At the same time, the Office of the Rapporteur had information that the office of *Televisa* in Tamaulipas was attacked twice with explosives at the beginning of the year.¹¹⁶⁵

896. On August 10, unknown individuals fired at the home of journalist Alejandra Corona in the city of Puebla, Puebla. The journalist worked as a reporter for the newspaper *El Heraldo* in Puebla, a medium that has been characterized by its questioning of the administration of the current governor, Rafael Moreno Valle. In April, administrative personnel at the newspaper were threatened when they arrived at the installations.¹¹⁶⁶

897. The IACHR learned that two reporters for the *Contralínea* magazine, beneficiaries of the precautionary measures issued by the IACHR, were victims of searches in their homes in September, where their documents and computers were taken.

¹¹⁵⁸ Article 19. June 1, 2015. [Privan de la libertad a mujer periodista en Veracruz y es víctima de violencia de género](#); El Piñero de la Cuenca. May 31, 2015. [Tras festejar día de Libertad de Expresión, desconocidos secuestran y violan a una reportera en Veracruz](#); Realidad de la Cuenca. May 31, 2015. [Desconocidos secuestran y violan a una reportera en Veracruz](#).

¹¹⁵⁹ Committee to Protect Journalists (CPJ). February 6, 2015. [Mexican editor flees after gunmen abduct and beat him](#); El Mañana. February 5, 2015. [Atentado a EL MAÑANA](#).

¹¹⁶⁰ Comité para la Protección de Periodistas. February 6, 2015. [Mexican editor flees after gunmen abduct and beat him](#); The Independent. March 4, 2015. [Voices in Danger: With the drug cartels in control, a Mexican editor has been forced to flee for his life](#).

¹¹⁶¹ Global Journalist. February 10, 2015. [Mexican editor flees after abduction](#).

¹¹⁶² Fox News Latino. February 6, 2015. [FBI searches for two Americans missing in Mexico as cartel violence surges in border town](#).

¹¹⁶³ CNN México. February 5, 2015. [Director de diario en Matamoros acusa haber recibido golpes y amenazas](#).

¹¹⁶⁴ Página 3. May 22, 2015. ["Fue terrible" la experiencia que viví: Periodista Edwin Meneses tras ser detenido por la PGR](#); Página 3. May 20, 2015. [PGR decomisa cuatro radios comunitarias en el Istmo; detiene a dos periodistas](#); Red Acción. May 22, 2015. [AMARC México llama a no criminalizar a comunicadores](#).

¹¹⁶⁵ El Espectador. March 26, 2015. [Nuevo ataque con granada contra sede de Televisa en ciudad fronteriza de México](#); Animal Político. March 26, 2015. [El segundo del año: explota una granada en la sede de Televisa en Matamoros](#); IACHR. Office of the Special Rapporteur on Freedom of Expression. February 11, 2015. [Press Release R 10/15. The Office of the Special Rapporteur Condemns Death and Attacks to Journalists in Mexico](#).

¹¹⁶⁶ La Vanguardia. August 12, 2015. [Disparan frente a casa de periodista en estado mexicano de Puebla](#); Municipios. August 11, 2015. [Disparan frente al domicilio de la periodista Alejandra Corona](#); Proceso. August 11, 2015. [Intimidan a reportera de 'El Heraldo de Puebla'; Artículo 19 exige garantías](#).

898. In the framework of the electoral context in Mexico during the first half of 2015, a period in which 10 candidates were killed according to information provided by the State¹¹⁶⁷, information was received about different acts of violence that also affected journalists and communicators. Diverse sources reported physical aggressions, thefts of equipment, warnings to erase journalistic material, threats and cyber-attacks (blocking of pages, hacking and denial of service -DDoS). Guerrero was one of the states where the electoral context was most adverse for communicators and demonstrators.¹¹⁶⁸

899. In addition, two police dressed in civilian clothing during the Xalapa, Veracruz Independence Day celebration, assaulted photojournalist Karlo Reyes. These events are in addition to the aforementioned assaults taking place in the context of elections.¹¹⁶⁹

900. On October 22, armed individuals entered the residence of journalist Raymundo Martínez in Xalapa, Veracruz.¹¹⁷⁰ At that moment, the communicator's wife was alone in the home and was beaten and threatened. The perpetrators asked about her husband's journalistic work and also threatened the journalist with death. Raymundo and his family had also been the target of attacks in 2014.

D. Protection Mechanisms

901. Moreover, information has been received regarding the high number of persons who resort to the mechanism in order to request protection and a considerable number of persons that are actually protected by it; including beneficiaries of IACHR precautionary measures. According to information provided by the State, the mechanism has 463 beneficiaries, 190 journalists and 273 human rights defenders.¹¹⁷¹ In this regard the Commission notes the willingness of the State to adopt material protective measures. Without prejudice to the preceding or to the important advances that have been noted, the Commission received consistent information both prior to and during the visit, from civil society, beneficiaries of precautionary measures and the United Nations system,¹¹⁷² on a series of shortcomings in the operation of the mechanism. According to the testimony and information received, there is considerable distrust of the efficiency of the mechanism due to some identified issues and violent acts people under the protective mechanism continue to face. This has created additional difficulty when a person makes the decision to request admittance into the program, they are subject to established procedures or limited to protective measures to be implemented.

902. Over three years after the Law was passed, in spite of the identified advances, the Commission has learned about serious obstacles threatening the effectiveness of the mechanism and the application of the Law. Several of these difficulties are related to the lack of financial resources for the operation of the institution and for financial sustainability in the long term, constant personnel training in

¹¹⁶⁷ According to the information provided by the State, all of the homicides are currently under investigation. Estados Unidos Mexicanos. Informe del Estado mexicano en respuesta a la solicitud de información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos transmitida el 19 de junio de 2015. México, Mexico City, August 24, 2015.

¹¹⁶⁸ Centro de investigación y capacitación Propuesta Cívica. July 7, 2015. Elecciones y Agresiones. [Monitoreo de agresiones contra periodistas en contexto electoral](#); Reporters Without Borders. June 10, 2015. [Attacks on journalists mar Mexico's elections](#); Article 19. July 6, 2015. [Más Violencia, más silencio](#); Article 19. May 19, 2015; [Temporada electoral, una agresión contra la prensa cada 10.6 horas](#); Imagen Siglo XXI. June 7, 2015. [Hackean AVC Noticias](#).

¹¹⁶⁹ Animal Político. September 16, 2015. [Presuntos policías encubiertos de Veracruz golpean y le roban la cámara a un fotoperiodista](#); 24 Horas. September 18, 2015. [Fiscalía de Veracruz investiga agresión contra el reportero Karlo Reyes](#); Libertad bajo palabra. September 17, 2015. [El video sobre la agresión de Karlo Reyes: ¿qué dice?](#)

¹¹⁷⁰ Gobernantes.com. October 22, 2015. [Roban domicilio y amenazan familia del periodista Raymundo León Martínez](#). Golpe Político. October 22, 2015. [Por tercera vez roban en casa del periodista xalapeño Raymundo León Martínez: "dejaron amenazas sobre mi trabajo", dice el comunicador](#); Versiones. October 22, 2015. [Roban y amenazan por tercera ocasión al periodista xalapeño Raymundo León Martínez](#).

¹¹⁷¹ "Visit of the Inter-American Commission on Human Rights to Mexico: Information from the Mexican State," Mexico City, Mexico, September 25, 2015.

¹¹⁷² Office in Mexico of the United Nations High Commissioner for Human Rights (OHCHR). [Informe sobre la situación de las y los defensores de derechos humanos en México: actualización 2012 y balance 2013](#). Para. 77 - 78.

order to guarantee effective operation of the mechanism; an appropriate distribution of power and operating procedures; deploy strategies for different state and federal agencies work in a coordinated manner at all levels (some lack political will to participate). Since the inception of the mechanism these challenges have been of great concern to the United Nations System.¹¹⁷³

903. The Mexican State reported that in the implementation and operation of the protection measures, to June 2015, a total of 68.9 million Mexican pesos (approximately 4.2 million U.S. dollars) have been spent by the Fund for the Protection of Human Rights Defenders and Journalists. As of November 30, the Fund has a remaining patrimony of 331.8 million Mexican pesos (approximately 20 million U.S. dollars).¹¹⁷⁴ The Mechanism had 34 authorized sites to carrying out its work.¹¹⁷⁵ In this regard, members of civil society have indicated that the budgetary allocation is not up to par with the needs of the Mechanism, which they claim shows the low political support that is being provided to the Mechanism.¹¹⁷⁶

904. National organizations that have followed the mechanism have assured that one of the components that affect implementation in a crosscutting manner is the lack of transparency and accountability, “just as zero interest in having a proactive dissemination strategy”.¹¹⁷⁷ Under these circumstances they maintain that the high number of acts of violence, threats and harassment to different human rights defenders, journalists and related organizations is not at the same level as the number of cases received by the mechanism.¹¹⁷⁸

905. With respect to the efficacy of the means of protection available for the mechanism, some of the people who have panic buttons and satellite telephones. The people who live in isolated, rural and mountainous zones – who are predominantly indigenous peoples – reported that these measures are of little use, because they are in zones that are too isolated for the authorities to respond to a possible activation of the panic buttons, and that it is difficult for the satellite telephones to work because of the topographic characteristics of these regions.¹¹⁷⁹

906. Regarding the panic buttons, the Governing Body explained to the Commission that for the device to work correctly – which is by means of a cellular telephone line directly connected to the mechanism and the security company contracted for this purpose-, it must remain turned on with the battery sufficiently charged. The equipment is provided by private companies contracted by the mechanism. However, the Governing Body recognized that in some federative entities it has been difficult to coordinate with the local authorities so that they would support the protected persons in case of emergency, given that it is those same authorities who have generated the risk.

907. According to the announcement by the State the first evaluation of emergency buttons will take place in January 2016. The analysis will be presented to the Government Board along with a proposal to

¹¹⁷³ Office in Mexico of the United Nations High Commissioner for Human Rights (OHCHR). Informe sobre la situación de las y los defensores de derechos humanos en México: actualización 2012 y balance 2013. Para. 77 and 78; and United Nations. Human Rights Council. Draft report of the Working Group on the Universal Periodic Review Mexico. A/HRC/WG.6/17/L.5. October 25, 2013

¹¹⁷⁴ Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015 para. 70.

¹¹⁷⁵ According to the information provided by the State in September 2015, the balance of the trust as of August 31, 2015 was 238,083,567.44 Mexican pesos (approximately 16,990,700 U.S. dollars). Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

¹¹⁷⁶ Peace Brigades International, Front Line Defender, Latin American Working Group, Washington Office on Latin America, Press release. April 2, 2014. [Concerns about Protection of Human Rights Defenders and Journalists in Mexico](#).

¹¹⁷⁷ Espacio OCS. July 28, 2015. [Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas](#). Para. 40.

¹¹⁷⁸ Espacio OCS. July 28, 2015. [Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas](#). Para. 70.

¹¹⁷⁹ Information received from civil society organizations in the framework of the on-site visit in Monterrey, Nuevo León, on September 29, 2015.

address the problems identified. The methodology announced by the State will contemplate collecting information from different sources, such as the beneficiaries themselves, the implementation periods, the reports of the company that provides the infrastructure, on-site observation, and the application of indicators developed in 2015 with the UN Office of the High Commissioner for Human Rights.¹¹⁸⁰ The IACHR welcomes the announcement made by the State, in the sense that in 2016 the principal measures utilized by the Mechanism will be evaluated.

908. The Office of the Rapporteur views with concern the difficulties involved in this type of measure to effectively provide protection, along with observing the need to have tools for follow-up on the measures implemented. In that sense, it seems necessary to strengthen the channels of communication that would enable the beneficiaries to inform the levels of the mechanism about possible defects in the measures for protection and, at the same time, for the mechanism to act promptly in response to these warnings, in order to strengthen the circle of trust.

909. Regarding risk assessment and the implementation of material protective measures, members of civil society have manifested: i) there is considerable delay in risk assessments and the personnel assigned to this task is minimal;¹¹⁸¹ ii) there are no specific protocols in place for the analysis and implementation of material protective measures, to include the gender and indigenous peoples approach, among others;¹¹⁸² iii) multiple instances and lack of coordination among the different institutions in charge of supporting the protective measures and their follow up;¹¹⁸³ iv) challenges on more specific data on the number of cases received, length of the procedures, as well as information on the main reasons for deciding not to process or to reject some cases;¹¹⁸⁴ to name a few of the issues raising deep distrust by civil society and the people protected by the program.¹¹⁸⁵

910. The Governing Body (which includes representatives of the State and Civil Society) stressed that in recent months the response times for applications have notably improved and has recognized that although in the beginning the mechanism faced serious problems in responding to the applications, after the process for strengthening that the mechanism carried out advised by the Freedom House organization, this is one of the aspects in which the most progress has been observed. As part of the strengthening process with the above-mentioned organization, processes and procedures were established so that the operability of the mechanism would work in a much more optimum fashion.¹¹⁸⁶

911. In this same manner the Commission observes with concern that said shortcomings have also affected human rights defenders and journalists who are beneficiaries of the precautionary measures issued by the IACHR and provisional measures issued by the Inter-American Court. In the meetings held with beneficiaries for the IACHR visit to the country and in working meetings held at Commission headquarters in 2015, on precautionary measures issued related to Mexico, the Commission learned of a series of alleged shortcomings in the implementation of material protective measures for the beneficiaries, where there have

¹¹⁸⁰ Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015. Para 93.

¹¹⁸¹ Peace Brigades International, Front Line Defender, Latin American Working Group, Washington Office on Latin America. April 3, 2014. press release: [Concerns about Protection of Human Rights Defenders and Journalists in Mexico](#).

¹¹⁸² International Service for Human Rights (ISHR). Press release. March 10, 2015. [Mexico: Strengthen mechanism to protect women human rights defenders](#).

¹¹⁸³ Peace Brigades International. August 18, 2015. Observaciones "[¿Qué hace falta para la cabal implementación del Mecanismo?](#)"

¹¹⁸⁴ Espacio OCS. July 28, 2015, [Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas](#), Para. 41.

¹¹⁸⁵ Espacio OCS. July 28, 2015. [Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas](#), Para. 71.

¹¹⁸⁶ Freedom House. December, 2014. Proyecto para el fortalecimiento técnico del mecanismo para la protección de personas defensoras de derechos humanos y periodistas-México. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

been issues at the time of matching said measures to the creation of the protection program adapted to each individual.¹¹⁸⁷

912. On the other hand, on November 3, the Ministry of the Interior (*Secretaría de gobernación*) (SEGOB) issued an Early Warning System and Contingency Plans to protect the journalists of Veracruz, which involves a Public Policies Program aimed at avoiding potential aggressions against men and women journalists. It was adopted at the request of a group of journalists and the Federal Protection Mechanism for Journalists (*Mecanismo Federal de Protección a Periodistas*). Coinciding with the diagnosis by various civil society organizations, the Office of the Special Rapporteur, the United Nations High Commissioner for Human Rights, among others, and the State recognize in formulating this mechanism that Veracruz is a state where serious risks exist for practicing journalism, with the greatest number of journalists murdered along with Chihuahua and with the second highest number of persons protected by the federal protection mechanism.

913. The program has 13 actions to be executed in 12 months, each of which has indicators for results, and the measures are grouped under the following categories: i) Respect for the right to free expression; ii) Map of risks; iii) Security of journalists; iv) Strengthening and follow-up on ministerial investigations; v) Training for men and women public servants vi) Strengthening of journalists' capacities for self-protection; vii) Dignified working conditions for men and women journalists; viii) Measures for immediate response; and ix) Evaluation of the Program.

914. The Office of the Special Rapporteur views as a positive step the official recognition of the difficult situation faced by journalists working in the state of Veracruz and hopes that all of the involved parties, both federal and state, will fulfill their acquired commitments, and that both journalists and the civil society can effectively and actively participate with full guarantees in developing and monitoring the Early Warning System.

915. At the same time, the Office of the Special Rapporteur received information during the recent on-site visit about the existence of serious risks and obstacles for freedom of expression at other federative entities, such as in Tamaulipas, Guerrero and Chihuahua. In that sense, this type of specific mechanisms for prevention, protection and obtaining justice in zones silenced by organized crime, in connivance with local authorities, can be very effective for zones with situations of structural violence, harassment and self-censorship of local communications media.

E. Subsequent Liabilities

916. On May 28, Mayan journalist and activist Pedro Celestino Canché was freed in the wake of a ruling by the Second Collegiate Circuit Tribunal (*Segundo Tribunal Colegiado de Circuito*) in the state of Quintana Roo. The Tribunal determined that there were no proofs to demonstrate that the journalist had committed the crime of sabotage for which he had been imprisoned. In February, the Sixth District Judge of Quintana Roo had recognized the arbitrariness of the proceedings against the journalist and confirmed that his right to a fair trial had been violated, however the Judge did not order his release.¹¹⁸⁸

917. Journalist Canché had been arrested and accused of the crime of sabotage on August 30, 2014, after publishing photos and videos of a protest in his state in reaction to an increase in water utility rates and questioning the governor of that state.¹¹⁸⁹

¹¹⁸⁷ During the 154th session of the IACHR in Washington DC, on March 21, 2015, the Commission held two meetings in connection with precautionary measures MC 252-14, related to members of *Contralínea* magazine, and MC 185-13, regarding the human rights defender Sofia Lorena Mendoza and others.

¹¹⁸⁸ Reporters Without Borders. June 3, 2015. [Mayan Journalist Released After Nine Months](#); El Informador. May 29, 2015. [Sale de la cárcel periodista maya Pedro Canché](#). CNN México. May 29, 2015. [El periodista maya Pedro Canché, acusado de "sabotaje", sale de prisión](#). Article 19. June 4, 2015. [Mexico: Pedro Canché freed](#).

¹¹⁸⁹ IACHR. [Annual Report 2014. Annual Report of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II Doc. 13. March 9, 2015. Para. 773.

918. On May 11, the IACHR issued Recommendation 13/2015, ordering the governor of the state, Roberto Borge, the judicial branch and the municipal authorities of Carillo Puerto to comply with that Resolution before June 1, apologize to the journalist, offer compensation and hold workshops on sensitivity about freedom of expression for public servants.¹¹⁹⁰

919. The Qualifying Commission for Publications and Illustrated Magazines (*Comisión Calificadora de Publicaciones y Revistas Ilustradas*) that is part of the Ministry of the Interior issued an opinion in reference to the first edition of the magazine Cañamo, a publication dedicated to the different uses of marihuana. The state entity determined that the publication advocates the consumption of cannabis, acting against public morality, and to determine the illegality of the publication requested an opinion from the PGR and from the Federal Commission for Protection against Health Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios*) (Coepris); the magazine may present its arguments for defense at a hearing, with the date to be defined.¹¹⁹¹

F. Indirect Censorship

920. Journalist Carmen Aristegui, who revealed a case of presumed corruption involving senior authorities in the purchase of a luxurious home used by the President of the Republic,¹¹⁹² was unexpectedly removed from her radio program on radio station MVS, which cited reasons of image for unilaterally breaking the contract with one of the journalistic teams with the largest audience on the dial.

921. After that and other investigations, the journalist and her team were fired by the company that had the concession for the radio station with which they were under contract. The MVS company alleged that Aristegui and her team had used the image and brand of the media outlet for unauthorized purposes when joining the Mexico Leaks platform, with the aim of obtaining information from confidential sources.¹¹⁹³ The company stated that termination of the contract was not in response to government pressures, but rather in defense of the brand of the firm without consultation. However, Aristegui indicated that the excuse was unsustainable and required clarification on the air: that she and her team had joined this mechanism to protect their sources and gain access to confidential information individually, which definitely benefited the journalistic quality of the program.¹¹⁹⁴

922. It also stated that the real reason for interruption of the program was the displeasure of the federal government over its journalistic investigations and the links between the MVS Company and the Executive Branch. Among other things, it indicated that the former attorney for MVS had gone on to coordinate the communications of the Presidency and that MVS was awaiting renewal of the use of the 2.5 gigahertz broadband regarding which it had a lawsuit since the administration of Felipe Calderón.¹¹⁹⁵

923. Upon hearing of the removal of Aristegui, the Special Rapporteur through a series of public pronouncements expressed his concern over the strange explanation given by the concessionaire for

¹¹⁹⁰ Comisión Nacional de Derechos Humanos (CNDH). May 6, 2015. [Recomendación 13 de 2015. Sobre el caso de las violaciones a la libertad de expresión, a la seguridad jurídica y a la integridad personal cometidas en agravio de V1.](#)

¹¹⁹¹ Animal Político. August 25, 2015. [Gobernación se lanza contra la revista Cañamo México, por burlar "las buenas costumbres"](#); Etcétera. August 25, 2015. [SEGOB intenta censurar a la revista Cañamo México; dice que vulnera "las buenas costumbres" al hablar de marihuana.](#)

¹¹⁹² Aristegui Noticias. November 9, 2014. [La casa blanca de Enrique Peña Nieto \(investigación especial\)](#).

¹¹⁹³ El Tiempo. March 16, 2015. [Despiden a periodista que destapó escándalo de mansión de Peña Nieto](#); BBC. March 16, 2015. [El escándalo que condujo al despido de la destacada periodista mexicana Carmen Aristegui](#); La Jornada. March 15, 2015. [MVS despide a la periodista Carmen Aristegui](#); CNN en español. July 14, 2015. [Termina batalla judicial: Carmen Aristegui pierde amparo contra MVS](#); Animal Político. July 14, 2015. [Carmen Aristegui pierde amparo contra MVS.](#)

¹¹⁹⁴ El Economista. March 23, 2015. [La entrevista de Proceso a Carmen Aristegui](#); Proceso. March 21, 2015. [Aristegui: la censura y el despido, por presión de Los Pinos.](#)

¹¹⁹⁵ Proceso. Aristegui Revela: MVS censuró la Casa Blanca. Printed edition No. 2003. March 22, 2015. Pages 7, 8 and 9; Aristegui Noticias. September 18, 2015. [En 24 horas, dos fallos favorables a MVS: must carry y banda de 2.5](#); Aristegui Noticias. September 18, 2015. [Banda ancha 2.5, un premio para MVS tras despido de Aristegui: Tuiteros.](#)

removing the main voice of independent journalism in Mexico, which could constitute a mechanism for indirect censure, and could in fact imply a step backward for Mexico in terms of the diversity of formats and pluralism of ideas and information.¹¹⁹⁶ The government of Mexico sent a letter to the Special Rapporteur presenting its position in this matter, stating that “it is desirable that this conflict among individuals be resolved so that the communications company and the journalist can continue to provide valuable content for Mexican society. The Government of the Republic has respected and permanently valued the critical and professional exercise of journalism, and will continue to do so with the conviction that a plurality of opinions is indispensable for strengthening the democratic life of the country”.¹¹⁹⁷

924. In tandem with this controversy, Aristegui and her team initiated a protective action for their right to freedom of expression and to demand that the concessionaire of a public good respect journalistic independence; the motion was admitted by the Ninth District Judge for Administrative Matters of the Federal District, who ordered MVS to suspend the effects of the termination of the contract and generate the payments owed to the journalist from the time in which the contract had been terminated; at the same time, the judge ordered the parties to submit to arbitration in accordance with what they had agreed upon in the contract.¹¹⁹⁸ Subsequently, the MVS company filed an appeal, which was resolved by the Fifth Collegiate Tribunal for Administrative Matters of the Federal District, dismissing the protective action upon determining that MVS is a company and not a responsible authority despite being the concessionaire of a broadcasting frequency.¹¹⁹⁹

G. Access to Information and the Interests of National Security

925. Without leaving aside the importance and relevance of approval of the General Law for Transparency and Access to Public Information, the Office of the Rapporteur received information concerning the obstacles that remain in guaranteeing access to information associated with human rights violations.

926. While the law provides for a prohibition against concealing or denying information associated with serious human rights violations, the Office of the Special Rapporteur wishes to call attention to the fact that Article 157 of the law empowered the Legal Department of the Presidency of the Republic (*Consejería Jurídica de la Presidencia de la República*) to appeal any decision to declassify information issued by the National Institute for Access to Information that could endanger the interests of national security.¹²⁰⁰

927. This regulation is applicable to any material and will have a particularly complex impact on information associated with investigations into human rights violations. According to the norm, the appeal must be filed with the Supreme Court of Justice and poses at least two challenges for obtaining justice in human rights matters: it delays access to key information for investigating these grave violations, and establishes the guidelines or criteria to be applied in making a decision.

928. In that sense, the Inter-American Court of Human Rights “has established that in cases of human rights violations, the state authorities cannot depend on mechanisms such as state secrecy or confidentiality of the information, or on reasons of public interest or national security, to abstain from

¹¹⁹⁶ Animal Político. March 23, 2015. [“Tiene un fuerte olor a censura”: relator de la CIDH sobre el caso Aristegui-MVS](#); Proceso. March 23, 2015. [Relator de la CIDH pide a Peña mediar en conflicto MVS-Aristegui](#); La Jornada. March 23, 2015. [Despido de Aristegui “huele a censura”: relator de la CIDH](#).

¹¹⁹⁷ Estados Unidos Mexicanos. Secretaría de Relaciones Exteriores. Carta oficial dirigida al Relator Especial para la Libertad de Expresión. Washington D.C. March 31, 2015.

¹¹⁹⁸ Milenio. May 13, 2015. [Juez ordena que Aristegui y MVS se sometan al árbitro](#).

¹¹⁹⁹ CNN México. May 13, 2015. [Un juez falla a favor de Aristegui, sin obligar a que MVS la reinstale](#); La Jornada. May 15, 2015. [Notifican a MVS del amparo en favor de Carmen Aristegui](#); Animal Político. April 15, 2015. [MVS impugna orden de juez sobre iniciar un proceso de conciliación con Aristegui](#); CNN Expansión. June 14, 2015. [MVS gana batalla legal a Carmen Aristegui](#); Vanguardia MX. April 1, 2015. [Juez federal rechazó demanda mercantil de MVS contra Carmen Aristegui](#); El Informador MX. July 16, 2015. [Carmen Aristegui pierde amparo contra MVS](#).

¹²⁰⁰ Congreso de los Estados Unidos Mexicanos. July 2014. Article 157 [Ley General de Transparencia y Acceso a la Información Pública](#).

providing information required by judicial or administrative authorities charged with the investigation or pending proceedings. At the same time, when the investigation of a punishable act is involved, the decision to qualify the information as secret and refuse to provide it can never exclusively depend on a state body whose members are attributed with commission of the illegal act. Equally, the final decision about the existence of the requested documentation cannot be at its discretion".¹²⁰¹

929. During the on-site visit in September, the Commission and the Office of the Rapporteur became aware of a progressive regression in the policy for active transparency and public information about civilian and military deaths in security operations, particularly when the armed forces take part. In that sense, it has been reported that the defense bodies have stopped reporting periodically about deaths that occur in operations and over the last two years the communications media and social organizations have had to resort to the use of actions for access to information to gain partial access to this information, both at the national and state levels.

930. During the 156th period of sessions of the Commission, civil society organizations stressed the advances that the Transparency Law represents, while expressing their concern because it is not compatible with the national security law, given that it is the latter law that defines the content and scope of national security. Due to this law and the interpretations made by the authorities, it is difficult to gain access to statistics about disappearances, persons killed in the struggle against the drug cartels and access to the military budget. The Federal Archives Law (*Ley Federal de Archivos*) provides for a period greater than 30 years to maintain classified documents as confidential, and there is also concern about the archives of the SIDENA, because this entity provides for its documents to remain in the archive for three years, after which they can be destroyed.¹²⁰²

931. The state security bodies, particularly the Army and Navy, during meetings held with the Commission and the Special Rapporteur in the framework of the on-site visit, admitted that they no longer record or report on wounded and dead in military actions aimed at combating organized crime. They alleged that the above-mentioned laws support them and that since the Supreme Court established that these actions must be investigated by the ordinary justice system, they are not responsible for documenting and recording the results of their actions.

932. The Office of the Rapporteur also had knowledge of the existence of two actions of protection under study by the Supreme Court of Justice, which were filed by civil service organizations seeking to obtain information about the San Fernando massacre in Tamaulipas; the INAI determined that it could not reveal that information because other entities such as the PGR or CNDH had not declared that those events would constitute a serious Human Rights violation. The actions of protection sought for the Supreme Court to determine whether the INAI can autonomously declare the prima facie existence of a possible serious violation of Human Rights and reveal the information or if on the contrary, until there is a pronouncement by other competent authorities, they cannot make that declaration and can therefore not provide information.

933. Beyond concern over this power of the executive branch to try to block the declassification of information for protection and investigation of serious human rights violations, there is also concern over the use of this power to block access to another type of information associated with national security interests, that should not be secret in a democratic state, such as the surveillance mechanisms acquired by the State, arms procurement and other expenditures, places of detention, etc. During the 156th period of sessions of the IACHR, civil society organizations during the public hearing on access to information and national security in the Americas stated that the vagueness of the concepts of public safety and public interest make it impossible to have clarity on the parameters used to determine when information is classified or confidential.

¹²⁰¹ I/A Court H. R. *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219. Para 202.

¹²⁰² IACHR. 156 Period of Sessions. October 20, 2015. "Access to Information and National Security in America". Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

Thus in the case of Mexico, they denounced the existence of problems when gaining access to information associated with disappeared persons, victims of the policy for the fight against drugs and the military budget.¹²⁰³

934. As the Special Reppourtership has noted “when there is in fact a reason allowed by the Convention for the State to limit access to information in its possession, the person who requests the access must receive a reasoned response that provides the specific reasons for which access is denied.¹²⁰⁴ According to the Inter-American Commission, if the State denies access to information, it must provide sufficient explanation of the legal standards and the reasons supporting such decision, demonstrating that the decision was not discretionary or arbitrary, so that individuals may determine whether the denial meets the requirements set forth in the Convention.¹²⁰⁵

H. Internet and Freedom of Expression

935. The National Institute for Transparency, Access to Information and Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos*) (INAI)¹²⁰⁶ reported on 27 January by a press release that hosted the high request by a citizen to remove the contents of the database of Google search engine, as these contents would be violating his honor.¹²⁰⁷

936. In late 2014, the INAI was informed of the request filed by a citizen dedicated to business activities who, by virtue of the law for data protection, requested that the Google México search engine be ordered to suppress certain links to information referring to the petitioner and which spoke of their financial situation, presumably affecting their financial transactions. The petitioner had filed a petition with Google and after the company’s refusal, resorted to the data protection authority.

937. As stated in the INAI Resolution, Google México argued that it was not responsible for the contents in the search engine and also stated that the branch operates as a subsidiary of the principal, Google inc., which is really responsible for the contents and is located in the United States.

938. The INAI interpreted the law for personal data protection, ruling that Google México was responsible for the contents that appear in the Google México search engine and therefore when the citizen requested withdrawal of the damaging information, the company itself failed to fulfill the obligations that said law stipulates for private parties. The entity states that “the provider of a search engine on the Internet is responsible for the treatment that applies to the data of a personal nature that appear on the webpages published by third parties, so that under certain conditions, when, due to a search based on a person’s name, the list of results provides links to webpages containing information about that person, the person can directly notify the manager of the search engine to eliminate those links from the list of results”.¹²⁰⁸

¹²⁰³ IACHR. 156 Period of Sessions. October 20, 2015. Public hearing “Access to Information and National Security in America” Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹²⁰⁴ I/A Court H. R. *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151

¹²⁰⁵ IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*, cited in I/A Court H. R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.c)-d).

¹²⁰⁶ Before Federal Institute of Access to Information and Data Protection [*Instituto Federal de Acceso a la Información y Protección de Datos* (IFAI)]

¹²⁰⁷ Instituto Federal de Acceso a la Información y Protección de Datos (IFAI). [Comunicado: En un hecho sin precedente, el IFAI inició un procedimiento de imposición de sanciones en contra de Google México](#). January 27, 2015.

¹²⁰⁸ Instituto Federal de Acceso a la Información y Protección de Datos (IFAI). [Google México, S de R.L. de C.V. Expediente PPD. 0094/14. Resolución del 27 de enero de 2015](#). Page 35.

939. The entity ordered Google México to withdraw the contents from the search engine that referred to the petitioner within 10 days, and began a parallel proceeding against that same company for failing to comply with the data protection law, which could generate a fine.

940. In October it became known that there was a legislative initiative to enact a federal law to prevent and punish computer crimes;¹²⁰⁹ the initiative, known in the media as the “Fayad Law” in allusion to senator Omar Fayad who proposed it, would include various suppositions that, beyond regulating matters associated with security on the web, limited exercise of the right to freedom of expression on the Internet.¹²¹⁰ Even though the initiative was withdrawn, the Office of the Rapporteur views with concern that this type of legislative initiatives are carried out without consideration for the standards that international bodies, including the Inter-American System, have adopted to protect and guarantee the exercise of human rights on the Internet.

941. The Commission and the Special Rapporteur office have said that, the Internet has special characteristics that make it a “unique transformational tool”,¹²¹¹ given its unprecedented potential for the effective fulfillment of the right to seek, receive and disseminate information, and its enormous capacity to serve as an effective platform for the fulfillment of other human rights.¹²¹² Consequently, when it comes to the Internet, it is crucial to evaluate all legitimacy conditions of the limitations of the right to freedom of expression based on these unique and special characteristics. Thus for example, when establishing the proportionality of a particular restriction, it is crucial to assess the impact (or cost) of that restriction not only from the point of view of the private parties directly affected by the measure, but also from the perspective of the impact on the functioning of the Internet. In effect, as explained hereinafter, a particular restrictive measure may seem minor if it is examined only from the perspective of the individual affected. However, the same measure may have a seriously devastating impact on the general operation of the Internet and, as a consequence, on the right to freedom of expression of all users. In this sense, it is crucial to evaluate each measure in a specialized way, from what one could call a systemic digital perspective.¹²¹³

I. Community Broadcasting

942. The Office of the Special Rapporteur views with concern what occurred with the community radio station Calentana Mexiquense in Luvianos, state of México, directed by journalist Indalecio Benítez who in 2014 was the victim of aggressions.¹²¹⁴ According to information received by the Office of the Rapporteur, on October 14, personnel from the IFT accompanied by personnel from the Navy arrived at the installations of the radio station and forced the journalist who was at that moment in charge of programming, to suspend transmission without even giving him the possibility of announcing it to the listeners.¹²¹⁵

¹²⁰⁹ Congreso de la Unión. Cámara de Senadores. October 22, 2015. [Iniciativa con proyecto de decreto por el que se expide la ley federal para prevenir y sancionar los delitos informáticos.](#)

¹²¹⁰ Hipertextual. October 29, 2015. [Ley Fayad: un proyecto de ley en México plantea criminalizar Internet.](#); Animal Político. November 3, 2015. [Fayad retira su iniciativa de ley sobre internet: dice que construirá nueva propuesta.](#)

¹²¹¹ UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR SpecialRapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet.](#)

¹²¹² UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR SpecialRapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet.](#)

¹²¹³ IAHR. [Annual Report 2013. Annual Report of the Special Rapporteur for Freedom of Expression.](#) Chapter IV (Freedom of Expression and the Internet). OEA /Ser.L/V/II.149 Doc. 50. December 31, 2013. Para 53.

¹²¹⁴ Propuesta Cívica. October 16, 2015. [Comunicado: Desmantela IFETEL y la Marina, radio comunitaria en Luvianos Estado de México;](#) AMARC Mexico. October 23, 2015. [Decomisa IFT radio comunitaria “Calentana Mexiquense”, arrecia censura.](#)

¹²¹⁵ Propuesta Cívica. October 16, 2015. [Comunicado: Desmantela IFETEL y la Marina, radio comunitaria en Luvianos Estado de México;](#) AMARC Mexico. October 23, 2015. [Decomisa IFT radio comunitaria “Calentana Mexiquense”, arrecia censura.](#)

943. The IFT personnel took the broadcasting equipment away, arguing that the legality of the frequency could not be verified, even though Indalecio was carrying out the process with the entity to obtain the license.

944. Days later, Indalecio went to the DF where he carried out a demonstration outside of the installations of the IFT, after insisting that the officials receive him and explain what had occurred, and he held a meeting with the Directors of the Concessions and Processing areas. Although the officials had expressed interest in helping him to resolve the problem, according to information that the Office of the Rapporteur has until now, he was not permitted access to the case file, because the verification area argued that the journalist could not have access and that the matter would be resolved in the courts. Therefore, until now, circumstances that led to closing of the radio station have not been clarified.

945. Regarding community media, on several occasions, 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.¹²¹⁶ In this respect, it is necessary for the States to legally recognize community media outlets and to provide for the reservation of equitable amounts of spectrum for this kind of media as well as adequate conditions for access to licenses that take account of their circumstances. In addition, community media should benefit from fair and simple licensing procedures, should not have to meet technological or other requirements that amount to disproportionate barriers to access to licenses, and in their operation should not be subject to disparate treatment that is not properly justified.¹²¹⁷

J. Law on Telecommunications and the Right of Response

946. In the framework of implementation of the Telecommunications and Broadcasting Law, the Office of the Rapporteur gained knowledge of the Project for General Guidelines on the Rights of Audiences (*Proyecto de Lineamientos Generales sobre los Derechos de Audiencias*) created by the IFT,¹²¹⁸ intended to regulate, in the framework of the jurisdiction of the Institute, the scopes and mechanisms to defend the rights of audiences. The project was subjected to public consultation and has not yet been approved.

947. Even though these guidelines seek the legitimate goal of protecting the rights of vulnerable groups, the Office of the Rapporteur views with concern some of the provisions contained in the referred-to project, given their extent, ambiguity and capacity to disproportionately affect the functioning of the communications media.

948. The topics to which the Office of the Special Rapporteur wishes to call attention include the obligation to designate an advocate for the audiences and their responsibilities. While the obligation to have a mechanism for self-regulation, such as an advocate for audiences, does not in and of itself violate freedom of expression, according to the regulation a general mechanism cannot exist for different media and each must name an advocate, which also implies setting up an administrative support office for the advocates, which in the long term could be damaging to small media. The proposed advocate must fulfill the requirements provided in the guidelines, which refer to (i) being at least 30 years of age; (ii) having recognized prestige in the fields of communications, broadcasting and telecommunications; (iii) not having worked at the broadcasting concession during the two years prior to the designation, among others. Additionally, the Concessionaire must register the nomination with the IFT, which in turn will make sure that all of the

¹²¹⁶ IACHR. [Justice and Social Inclusion: The challenges of democracy in Guatemala](#). Chapter VII (The situation of freedom of expression). OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para. 414; IACHR. [Annual Report 2002. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of expression and poverty). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 41

¹²¹⁷ IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 92 *et seq.*

¹²¹⁸ Instituto Federal de Telecomunicaciones –IFT. Public Consultation. July 14- September 3, 2015. [Anteproyecto de Lineamientos Generales sobre los Derechos de las Audiencias](#).

requirements are fulfilled. For the Office of the Rapporteur, the condition of accrediting prestige is somewhat ambiguous and could generate complications when making interpretations.

949. On the other hand, the guidelines enshrine the media's obligation to create codes of ethics, but the guidelines indicate the contents that such codes must include, and which must also be registered with the IFT who will have the possibility to review them and suggest changes. The guidelines are not clear about the terms of the sanctions that could be imposed upon a media outlet that fails to fulfill the guidelines of the code of ethics.

950. The guidelines include the possibility to suspend transmissions in a precautionary manner to protect the rights of audiences, a power that would correspond to the Unit for Media and Audiovisual Content (*Unidad de Medios y Contenidos Audiovisuales*) of the IFT. The Unit would be responsible for determining whether there are merits for the suspension and set a time limit for the Concessionaire to compensate for the losses. At the end of that time limit, the Concessionaire would be evaluated to determine whether or not compensation was provided, in accordance with which the suspension could be withdrawn or lifted. While the telecommunications law enshrines the possibility of precautionary suspensions, the Office of the Special Rapporteur views this provision with concern, because it could give rise to interpretations and applications that function as a mechanism to censure content.

951. Finally, the Office of the Rapporteur considers it relevant to refer to what is enshrined in Article 37 of a regulation under study about the procedure the advocate must apply to petitions submitted by the audience, pursuant to which he shall acknowledge receipt of each application and forward it to the responsible area or department of the Concessionaire, so that they in turn will provide a response and clarify the situation in two days; if they fail to do so, the defenders shall make it known to the Institute to assess the possibility of initiating a punitive administrative procedure.

952. The Office of the Rapporteur points out that the scope of the right of reply, established in article 14 of the American Convention on Human Rights (ACHR), has been defined by the Commission and the Court at various times. The right of reply must be interpreted in harmony with article 13 of that same text, which defines the content, scope and protection of the right of freedom of expression, to avoid it becoming a mechanism for indirect censure or intimidation. In Consultative Opinion 7/86 on Enforceability of the Right of Rectification or Reply, the Inter-American Court of Human Rights ruled that the Right of Reply must not be regulated so broadly as to violate the provisions of Article 13 of the ACHR with respect to freedom of expression, but at the same time freedom of expression must not be interpreted so permissively that it would violate the right of rectification or reply.¹²¹⁹

953. It is thus clear that the broadcasting regulation should aim to overcome existing inequalities in access to communications media, for example by disadvantaged social sectors. In that sense, the states must abstain from discriminating against the sectors while also promoting active public policies for social inclusion. Nonetheless, the consolidated jurisprudence of the Inter-American System determines that limitations on freedom of expression must be "necessary in any democratic society", proportionate and suitable for achieving the objectives sought and to the extent that they impose restrictions on freedom of expression by the media, they shall respect these three requirements.¹²²⁰

954. In a sense, the provisions of the project that are becoming clearer could constitute a disproportionate restriction, given that they impose significant burdens on all of the audiovisual communications media, whether large companies or media conglomerates, small local or community media, in order to respond to audiences regarding possible complaints. The regulation seems to convert the mechanism for evaluation and promotion of good practices that the advocate for audiences must carry out

¹²¹⁹ I/A Court H. R. Enforceability of the Right of Rectification or Reply (arts. 14.1, 1.1 and 2 American Convention on Human Rights). Consultative Opinion OC-7/86 of August 29, 1986. Series A No. 7 Paragraph 25.

¹²²⁰ IACHR. Office of the Special Rapporteur on Freedom of Expression. [Freedom of expression standards for free and inclusive broadcasting](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 3/09 30 December 2009. Para.38

into a punitive mechanism that would activate complaints, rectification, responses and punitive proceedings in the case of each application. In that sense, the Office of the Rapporteur wishes to stress that the nature of the right of rectification and response is to give people affected by imprecise information or aggravating circumstances the possibility to respond in reasonable venues, but not to punish the media for its information, which must perhaps be resolved in another type of proceedings and under other guarantees. The right of rectification or response or other mechanisms, such as the advocates, must also not serve to interrupt broadcasts and occupy space on the media, whether printed or audiovisual, in an arbitrary or disproportionate manner.

955. The SIDH has reiterated that there is an ethical duty for journalists and the media that must be resolved basically under self-regulation and not through punitive schemes or sanctions. In a recent ruling, the Inter-American Court considered that journalists have the duty to reasonably, although not necessarily exhaustively, verify the facts upon which their information is based 192. In other words, it is valid to demand fairness and diligence in confronting sources and seeking information. This implies people's right not to receive a manipulated version of the facts. Journalists therefore have the right to take a certain critical distance in relation to their sources and compare them with other relevant data 193. In a similar sense, the European Court has stated that freedom of expression does not guarantee unlimited protection for journalists, even in matters of public interest. Even when they are protected under freedom of expression, journalists must carry out their work in accordance with the principles of responsible journalism, in other words, act in good faith, provide precise and reliable information, objectively reflect the opinions of those involved in the political debate and abstain from falling into sensationalism 194. Similarly, the European Court has affirmed that carrying out responsible and ethical journalism is particularly relevant in contemporary society where the media not only inform but also can suggest, by the way in which they present the information, the way the information must be understood.¹²²¹

956. Finally, in consultative opinion 7/86, on the scopes of the right of rectification and response, the Court established that while the right to rectification and response is enshrined in the Convention, this must be strictly interpreted as a restriction on freedom of expression, and that it must be implemented under the following parameter: "the location of the rights to rectification or response (art. 14) immediately following freedom of thought and expression (art. 13), confirms this interpretation. The necessary relationship between the contents of these articles stems from the nature of the rights that they recognize, in that, by regulating application of the right to rectification and response, the States Parties must respect the right to freedom of expression guaranteed in article 13 and that article cannot be interpreted so broadly as to make the right proclaimed by article 14.1 meaningless."¹²²²

K. Government Advertising

957. The Office of the Special Rapporteur received information about the lack of legislation to regulate the allocation of official advertising, which has contributed to its arbitrary allocation, mainly benefiting Televisa and Estudios Azteca, according to information handled by society organizations, who report that 25% of the money was received by these two channels.¹²²³ The Office of the Rapporteur was also informed that the civil society experiences difficulties in obtaining information on the amounts of official advertising and the media to which it is allocated, both at the federal and local levels. Nonetheless, the Office of the Rapporteur takes a positive view that the General Law on Transparency and Access to Public Information has incorporated the obligation for all branches of the government and all levels to make public information concerning "the amounts allocated for expenditures associated with social communication and official advertising disaggregated according to the type of medium, suppliers, contract number and concept or campaign through their Internet transparency pages."

¹²²¹ I/A Court H. R. *Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2015. Series C No. 293

¹²²² 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. Series A No. 7

¹²²³ World Association of Newspapers and News Publishers-WANIFRA and Fundar Centro de análisis e investigación. November 3, 2015. [Censura Indirecta en México: Rompiendo Promesas, Bloqueando Reformas](#). Para. 8.

958. The Office of the Special Rapporteur recalls that Article 13.3 of the American Convention 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.” 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.”

20. NICARAGUA

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

959. The Nicaraguan Institute for Telecommunications and Mail [*Instituto Nicaragüense de Telecomunicaciones y Correos*] (Telcor) closed down two television channels: *Canal 29*, retransmitted on *canal 49* in the *Claro* de Chinandega company and open UHF band,¹²²⁴ and *canal 50 Rey TV* broadcast by paid television. These television channels reported news information and often disseminated information criticizing local and municipal government.

960. Telcor gave the owners documentation stating *canal 50 Rey TV* was closed due to a debt with the regulating body and the “equipment described are the deposit towards the overdue amount that the owner Haitham Naim Abu Shehab owed at the time the license was cancelled, as well as to ensure the compliance of the aforementioned cancellation”. Shehab, who directed and presented the program *En Broma y En Serio*, affirmed this “was a political decision in response to the broadcast of constructive criticism.”¹²²⁵

961. According to station owner Haitham Shehab, on January 30, a large group of police surrounded the *Canal 29* studios operating in Chinandega, with the purpose of closing the television station and seizing the transmitter, computers and other electronic equipment needed for the media outlet to broadcast. The government alleged the company had a debt of 40,000 córdobas (14,920.00 dollars) with the Nicaraguan Institute of Social Security [*Instituto Nicaragüense de Seguridad Social*] (INSS), Shehab denied it: “We reported on and broadcasted constructive criticism of some local and municipal officials. That is the reason the channel was blocked.”¹²²⁶

962. Legislator Edwin Castro prohibited the newspaper *La Prensa* to publish an article containing information about him. He warned the media outlet that if this report were published that would mean legal action would be taken. On February 26 after his presence at a special session to commemorate National Journalism Day Castro did not talk to the media outlet and affirmed: “No, I do not authorize it, you cannot make whomever you choose be a right. You cannot do it,” and he added that he would carry out a “legal protest” if reports pertaining to his person were published.¹²²⁷ According to *La Prensa*, “Castro said there is ethics in journalism as well as laws that do not allow the invasion of privacy.” The newspaper explained: “the purpose is for the people of Nicaragua to better know a very influential political leader in the country, since he belongs to the Sandinista National Liberation [*Frente Sandinista de Liberación Nacional*] (FSLN) party that holds absolute majority in parliament.”

963. Antoine Joly, the French Ambassador to Nicaragua confirmed on May 19 that French caricaturist Julien Berjeaut was denied entrance to the country. He explained that notice from Nicaraguan Foreign Affairs explaining that Berjeaut could not go to the country was received at the embassy days before the event the caricaturist was supposed to participate in. He was one of the guests for the Centroamerica Cuenta 2015 dialogue.¹²²⁸

964. Radio *Camoapa* environmental journalist Raúl Martínez denounced on August 16 before the Nicaraguan Center for Human Rights that he had received death threats from unknown persons for over two years. This was done before national television, radio and print media. According to the information available,

¹²²⁴ La Prensa. March 4, 2015. [Telcor confirma cierre de Canal](#); Confidencial. January 30, 2015. [Telcor cierra tres canales en Occidente](#); Hoy. January 28, 2015. [Cierran canales](#); La Prensa. January 26, 2015. [Telcor cierra canal en Chinandega](#).

¹²²⁵ La Prensa. January 28, 2015. [Telcor cierra dos canales de cable](#); Hoy. January 28, 2015. [Cierran canales](#).

¹²²⁶ Confidencial. January 30, 2015. [Telcor cierra tres canales en Occidente](#).

¹²²⁷ La Prensa. September 11, 2009. [Edwin Castro: “A tu periódico no le contesto”](#); La Prensa. March 3, 2015. [Castro prohíbe perfil sobre él](#).

¹²²⁸ La Prensa. June 6, 2015. [“Fue ataque al periodismo”](#); 14 y Medio. May 21, 2015. [Niegan entrada a Nicaragua a caricaturista francés Julien Berjeaut](#); El Diario/EFE. May 21, 2015. [Niegan la entrada a Nicaragua al caricaturista francés Julien Berjeaut](#).

in July 2015 the journalist had brought to the attention of the authorities the death threats he had received, without them taking steps to ensure his safety.¹²²⁹

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

B. Social Protest

966. In 2015 occurred an event in which authorities restricted the coverage of social protests from the media. Journalists and human rights defenders attempted to enter the area in order to work but the PN officers denied access by blocking all routes to the location.¹²³⁰ *La Prensa* newspaper reported that National Police officers violently entered the Mina El Limón community, at 5:30 am on October 16 to stop the protest that began on September 25 by workers and the community against the dismissal of three B2Gold union workers.¹²³¹

967. As reported by the newspaper *El Confidencial*, on October 26 the police prevented the media to enter the Mina El Limón, located in the department of León Reveló. Journalist Julián Navarrete and photographer Carlos Herrera for the *Confidencial* digital media outlet finally were able to access the area and verify that the community was in a state of siege after hundreds of riot police conducted surprise searches in the homes of union leaders in the early morning hours of October 16. The news team documented the protests of women demanding the release of those who were detained by the National Police (PN) and their statements on the crisis lived by those in the area. The conflict had its genesis in a union protest demanding the B2Gold Company to comply with a collective agreement¹²³².

968. President of the Independent Liberal Party [*Partido Liberal Independiente*] (PLI) Eduardo Montealegre, reported that legislators and journalists were attacked by a group of minors during the so called "protest Wednesday", held for free and transparent 2016 elections. The events took place on November 11 in Managua where PLI members allegedly threw rocks at them, stole megaphones and attacked women with sheets demanding the right to clean elections.¹²³³ The journalists injured corresponded to workers of *Canal 8*, *Canal 23*, *Agencia EFE* and *La Prensa*, reported José Adán Aguerrí, president for the Superior Council of Private Business [*Consejo Superior de la Empresa Privada*] (Cosep). Two were reported wounded in the march. Photo reporters' work equipment was ruined and their cellular phones and wallets taken.¹²³⁴

969. Legislator Carlo Legrand tweeted "PLI journalist Gerardo Mercado was attacked by gang mobs that stole his wallet, cell phone and ruined his camera".¹²³⁵

¹²²⁹ La Prensa. August 15, 2015. [La Policía engavetó su caso](#); Asociación Mundial de Radios Comunitarias (Amarc). August 17, 2015. [Comunicador ambiental de Radio Camoapa denuncia amenazas ante el CENIDH](#).

¹²³⁰ Confidencial. October 26, 2015. [Censura policial, ataque a la libertad de prensa](#).

¹²³¹ La Prensa. October 18, 2015. [Policía "limpia" Mina El Limón](#).

¹²³² Confidencial. October 22, 2015. [Censura policial a periodismo independiente en El Limón](#).

¹²³³ Agencia EFE. November 11, 2015. [Agreden a periodistas y diputados que exigían elecciones libres en Nicaragua](#); Eduardo Montealegre Rivas/Facebook. November 11, 2015. [Sin lugar a dudas nuestra lucha pacífica por elecciones libres le está llegando a Daniel Ortega y su círculo de poder](#).

¹²³⁴ El Nuevo Herald. November 11, 2015. [Denuncian 'salvaje' agresión contra opositores y periodistas en Nicaragua](#); Terra/EFE. November 11, 2015. [Empresarios se solidarizan con periodistas atacados en protesta en Nicaragua](#).

¹²³⁵ "Periodista Gerardo Mercado del Pli fue agredido por turbas pandilleras, le robaron cartera, celular y dañaron cámara." Carlos Langrad Twitter account @clangrad. [November 11, 2015- 10:08 AM](#).

970. 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 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”¹²³⁶ 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.”¹²³⁷

971. 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.”¹²³⁸

972. 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.¹²³⁹

C. Subsequent Liabilities

973. First lieutenant and army doctor Yader Nicolás Meza was convicted on March 10 for a “crime against military decorum” in a trial initiated by the Nicaraguan Army. Although the hearing was supposed to be public, the press was denied access. The officer was incarcerated as of January 8 for expressing his solidarity with *campesinos* of the El Tule community in the department of Río San Juan, repressed by the police in December of 2014 while protesting the Daniel Ortega administration expropriation plans to build an interoceanic canal. The Nicaraguan Center for Human Rights (Cenidh) team of attorneys claimed to have “received 28 complaints and testimony of inhabitants who were threatened, incarcerated, beaten and tortured by the National Police on December 24, 2014 during the repression of the protest which began on December 16 of that year”.¹²⁴⁰

974. Civil society organizations and witnesses in the area said that Montiel were vacationing in the San Miguelito community where the wounded from El Tule were sent and had stated: “we are in the 80s, facing a red Christmas because our *campesino* brothers are shedding their blood to claim their rights”. According to the file this sentence uttered in public was the argument utilized to order his pretrial detention as of January 8 and subsequently, indicated by the military prosecution to request the conviction of the

¹²³⁶ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.66. December 31, 2009. Para 139.

¹²³⁷ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹²³⁸ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

¹²³⁹ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

¹²⁴⁰ La Prensa. March 10, 2015. [Solicitan anulación de juicio a militar](#); Fox News Latino. March 10, 2015. [Declaran culpable a militar por faltar al decoro del Ejército de Nicaragua](#); Confidencial. March 10, 2015. [Ejército condena a médico militar](#); Centro Nicaragüense de Derechos Humanos (Cenidh). January 9, 2015. [CENIDH continúa documentación de represión policial del 24 de diciembre en El Tule](#).

doctor. He was finally released on April 25 after a 3 months and 15 days incarceration sentence and being forced to write a letter of apology to Army Command.¹²⁴¹

975. Principle 10 of the IACHR's Declaration of Principles 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." Also, principle 11 of the Declaration establishes that, "[p]ublic officials are subject to greater scrutiny by society."

D. Media Concentration

976. In their 71 General Assembly, the Inter-American Press Association (IAPA) denounced the concentration of television media in Nicaragua in the hands of president Ortega's family members. According to the IAPA the presidential family controls the Nicaraguan radio and television group as well as other private media outlets through allies, thus restricting pluralist information since official advertising is notorious in those media outlets currently under control of the Ortega family and allies.¹²⁴²

977. Different media outlets associated the presidential family with buying media outlets. According to the newspaper *Las Américas* President Ortega's sons handle some media, Rafael Ortega Murillo manages some of the family companies, including television channels and radio stations; Camilo Ortega Murillo directs television *canal 13* where Luciana Ortega Murillo works; Juan Carlos Murillo directs canal 8; Maurice Ortega Murillo the *Difuso* advertising agency which creates part of the official advertising; Daniel Edmundo Ortega Murillo serves as the *canal 4* director.¹²⁴³

978. Nicaraguan journalist and owner of the media *Esta Semana* and *Confidencial* Carlos Fernando Chamorro assured on September 15 in Miami Florida that the "contradictory" regime of President Daniel Ortega, is defined by its "authoritarianism, concentration of power and media control" in the country and he added that "in Nicaragua [state and civil society] democratic institutions are being demolished with the creation of the duopoly under the Ortega presidential family that owns four channels; and Mexican entrepreneur and the leader's business partner Ángel González owns another five".¹²⁴⁴

979. On February 25 the Ecuadorian newspaper *El Universo* stated that "the media power held by entrepreneur Ángel González González in Latin America included until this date 82 FM and AM stations in different countries and 26 television channels, 21 owned by him and the remainder are owned in association with other programmers". The report also noted AlbaVisión TV, González property, as "the only television and radio operating network in Latin America" with operations in "Mexico, Guatemala, Nicaragua, El Salvador, Honduras, Costa Rica, Panama, Ecuador, Peru, Chile, Argentina, Uruguay and Paraguay". Its headquarters are in the United States in Miami where González has resided since 1995. He controls his entertainment business from there as well as media outlets, movie theaters and film distribution. Several reports and experts

¹²⁴¹ La Prensa. March 10, 2015. [Solicitan anulación de juicio a militar](#); Fox News Latino. March 10, 2015. [Declaran culpable a militar por faltar al decoro del Ejército de Nicaragua](#); Confidencial. March 10, 2015. [Ejército condena a médico militar](#); Centro Nicaragüense de Derechos Humanos (Cenidh). January 9, 2015. [CENIDH continúa documentación de represión policial del 24 de diciembre en El Tule](#); La Prensa. April 25, 2015. [Médico militar Yader Montiel es liberado](#).

¹²⁴² elsalvador.com. March 16, 2015. [SIP llama a la CIDH a vigilar la peligrosa concentración de medios de comunicación en A.L.](#); La Prensa. October 7, 2015. [SIP: Panorama sombrío para el periodismo](#).

¹²⁴³ Diario Las Américas. January 8, 2015. [La dinastía Ortega-Murillo intenta perpetuarse en Nicaragua](#); Armando Info. June 6, 2015. [La bonanza de Daniel Ortega se llama Venezuela](#).

¹²⁴⁴ Fox News Latino/EFE. September 15, 2015. [El periodista Carlos Chamorro denuncia concentración de poder en Nicaragua](#); Diario Las Américas. September 15, 2015. [El periodista Carlos Chamorro denuncia concentración de poder en Nicaragua](#).

maintain that his method is to associate himself with the government in exchange for official advertising and frequency control.¹²⁴⁵

980. According with Principle 12 of the Declaration of Principles on Freedom of Expression “[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.

E. Other Relevant Situations

981. Journalists critical of the government in Nicaragua often see limitations on their access to information according to a Reporters Without Borders analysis published on March 1. The organization stated: “In the absence of any regulation, state advertising continues to be allocated unfairly. Media that do not criticize the government are more likely to get state advertising and the extra income that entails. This undermines media pluralism.”¹²⁴⁶

982. Newspaper *La Prensa* complained about the lack of access the media has to the president of the country Daniel Ortega. They blame the first lady and government chief of communication Rosario Murillo. On March 24 a publication stated three thousand days have gone by since the last Ortega press conference. Radio entrepreneur and director of *Radio Corporación* Fabio Gadea Mantilla stated “[Ortega] only offers monologues with no questions or answers to the situations citizens are interested in regarding the administration”.¹²⁴⁷

983. On May 4 Telcor presented a draft bill “Promotion and Development of the National Network of Broadband Telecommunication Service Act [*Ley de Promoción y Desarrollo de la Red Nacional de Servicios de Telecomunicaciones de Banda Ancha*]” to Internet service providers in the country, ordering companies to renew their ‘titles’ (operation permits) “within 180 days of the law going into effect”. The World Association of Community Radio Broadcasters [*Asociación Mundial de Radio Comunitarias*] (Amarc) said that this proposal should be evaluated from the freedom of expression perspective in addition to concentrating on technical aspects. In a press release Amarc affirmed: “we believe it is appropriate to discuss government intent on regulating the Internet, specifically because we do not see any guarantees favoring the human rights of freedom of expression and communication in the bill”. An article in the *It Now* magazine affirmed: “if there is no change to the language of the bill it threatens user information confidentiality”. As of the month of July the bill was still held up.¹²⁴⁸

¹²⁴⁵ El Universo. February 25, 2015. [Dominio de medios de Ángel González preocupa a defensores de libertades](#); El Universo. February 22, 2015. [Un magnate de Estados Unidos controla 10 medios nacionales](#).

¹²⁴⁶ Reporters Without Borders. February 27, 2015. [Nicaraguan journalists need protection, access to information](#).

¹²⁴⁷ La Prensa. March 29, 2015. [Tres mil días de silencio de Ortega](#); Committee to Protect Journalists (CPJ). March 24, 2015. [Long silence from Nicaragua’s president as first lady keeps press at arm’s length](#).

¹²⁴⁸ La Jornada. May 13, 2015. [El internet para la libertad de expresión](#); Marti Noticias. May 14, 2015. [Gobierno de Nicaragua busca controlar acceso a internet](#); Confidencial. May 4, 2015. [Telcor cambia reglas del juego](#); Revista It Now. July 27, 2015. [Proyecto de telecomunicaciones en Nicaragua sigue estancado](#).

21. PANAMA

A. Progress

984. In August of 2015 the National Legislative Assembly of Panama [*Asamblea Nacional de Diputados de Panamá*] passed bill of law number 152 to modify the Organic Law of National Police [*Ley Orgánica de Policía Nacional*] number 18 of 1997 to establish “procedures related to non-lethal use of force to be used by National Police crowd control during public or street protests” prohibiting the “use of rubber, plastic or lead bullets or the use of any other weapon that causes wounds with fragments that cannot be found by X-ray of the human body.”¹²⁴⁹ The bill is pending enactment by the Executive Branch.¹²⁵⁰

985. On September 9 there was a trial in the Third Judicial District Court [*Sala de Audiencias del Tercer Distrito Judicial*], with headquarters in David, in the province of Chiriquí, for the homicide of journalist Ramón Monchi Cano, murdered in 2014. Three defendants were on trial, among them one identified as the journalist’s godson.¹²⁵¹ According to available information, the journalist was killed on April 1, 2014 upon leaving his residence on his way to the *Ondas Chiricanas* radio station where he produced the “5 Noticias y un comentario” program.¹²⁵² In December, the mentioned Court issued a guilty verdict of 36 years to each one of those implicated in the death of the journalist under the charges of homicide and aggravated theft.

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

986. Journalist Judith Peña from *El Siglo* newspaper, was detained on May 10 by substation police officers in the sector of San Miguel, in Calidonia, while she was recording alleged police abuse against a detainee in said station. According to available information she was detained for two hours.¹²⁵³

987. The Tenth Criminal Court [*Juzgado Décimo Penal*] suspended the criminal case against former secretary for the National Security Council of Panama Alejandro Garuz, after impeachment recourse was presented by the defense. Cruz was on trial for the June 11, 2013 attacks on Filemón Medina, journalist and general secretary for the Journalists Union of Panama [*Sindicato de Periodistas de Panamá*].¹²⁵⁴ The attacks against Medina caused two fractured vertebrae.¹²⁵⁵

¹²⁴⁹ Asamblea Nacional de Panamá. August 6, 2015. [Proyecto de Ley No. 152](#); El Nuevo Herald. August 6, 2015. [Parlamento de Panamá aprueba ley que prohíbe uso de perdigones en protestas](#); Asamblea Nacional de Panamá. August 6, 2015. [Prohíben uso de perdigones](#).

¹²⁵⁰ TVN Noticias. August 8, 2015. [Prohibición de uso de perdigones en Panamá, en espera de sanción presidencial](#).

¹²⁵¹ Telemetro. September 9, 2015. [Realizan audiencia a implicados en homicidio de Ramón "Monchi" Cano](#); La Prensa. September, 2015. [Implicados en homicidio de Ramón 'Monchi' Cano se declaran inocentes](#); La Prensa. September 9, 2015. [A juicio implicados en homicidio del periodista Ramón 'Monchi' Cano](#); Panamá América. September 9, 2015. [Acusados de asesinar y robar a 'Mochi' Cano se declaran inocentes](#).

¹²⁵² La Prensa. December 15, 2015. [36 años de prisión a homicidas de Monchi Cano](#); La Estrella de Panamá. December 14, 2015. [Homicidas del periodista "Monchi" Cano condenados a 36 años de cárcel](#).

¹²⁵³ El Siglo. May 10, 2015. [Detienen a reportera de "El Siglo" por grabar abuso policial](#); Crítica. May 10, 2015. [Periodista es detenida por filmar video](#); La Prensa. May 10, 2015. [Periodista del diario El Siglo denuncia que fue retenida por la Policía](#); La Prensa. May 10, 2015. [Periodista del diario El Siglo denuncia que fue retenida por la Policía](#); El Siglo. May 12, 2015. [DRP investiga caso de detención de periodista](#).

¹²⁵⁴ La Prensa. August 31, 2015. [Suspenden juicio a Alejandro Garuz por caso de agresión](#); La Estrella. August 31, 2015. [Suspenden audiencia contra Alejandro Garuz](#); La Prensa. December 5, 2014. [Alejandro Garuz asiste a diligencia por caso de agresión a Filemón Medina](#); Fox News Latino/EFE. August 31, 2015. [Juicio a exdirector de Seguridad de Panamá por supuesta agresión a periodista](#); Contra Injerencia. September 19, 2013. [Panamá: Líder sindical de periodistas víctima de brutalidad policiaca](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). September 20, 2013. [Periodista panameño sufre secuelas tras agresión física](#).

¹²⁵⁵ La Prensa. June 13, 2013. [Medina reitera que presentará querrela contra Garuz](#); La Prensa. September 10, 2013. [Periodista incluye informe por agresión](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). September 20, 2013. [Periodista panameño sufre secuelas tras agresión física](#); Crítica. June 12, 2013. [Sindicato condena agresión contra periodistas](#); La Estrella de Panamá. June 11, 2013. [Viceministro Garuz y tres agentes golpearon a periodista Filemón Medina](#); Contra Injerencia. September 19, 2013. [Panamá: Líder sindical de periodistas víctima de brutalidad policiaca](#).

988. 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.”

C. Subsequent Liabilities

989. On November 25, the Thirteenth Civil Court of the First Judicial Circuit of Panamá condemned the daily *La Prensa* to pay 60.000 balboas (same amount in US dollars) in legal fees and 600.000 balboas in moral damages to two government contractors. The judge also ordered *La Prensa* to publish in part of the operative paragraphs of the ruling in the both the print and online version of the newspaper.¹²⁵⁶ The ruling came as a result of a civil suit for damages filed against the newspaper *La Prensa* following the publication of a series of notes of July 31, 1 and 2 August 2012 on the allocation of public resources for the execution of works for the government of then President Ricardo Martinelli. The judge in charge determined that “[w]hen the moral damage comprises in the violation of any personality rights an individual, the mere demonstration of the existence of such violation shall constitute at the same time, proof of the existence the moral damage caused. The test of moral damage arises or occurs immediately from the facts constituting the offending activity, as the moral damage is presumed by the mere realization of the harmful event”. As a result of the foregoing, the Court concluded “it is proved in the case, the responsibility of the defendants in the wrongful act that has caused moral damage to the plaintiff, only for the David lords and Daniel Ochy Ten [...] product of the publications made in the newspaper LA PRENSA[...].”¹²⁵⁷

990. Principle 10 of the IACHR’s 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 of inflicting harm, was fully aware that false news were being disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

991. Regarding the possible imposition of civil liability, the Inter-American Court has established that civil sanctions must be strictly proportionate in cases involving freedom of expression, so that they do not have an inhibiting effect over the exercise of this freedom, since, “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.”¹²⁵⁸

¹²⁵⁶ Juzgado Decimo Tercero del Circuito de lo Civil del Primer Circuito Judicial de Panamá. David Marco Ochy Diez, Daniel Miguel Ochy Diez and Transcribe Trading SA (TCT) v. Corporación La Prensa y Editorial por la Democracia (diario La Prensa). Judgment of November 25, 2015; Available for consultation at: <http://www.organojudicial.gob.pa/wp-content/uploads/2015/12/Sentenciajuzgadocivil13.pdf>; Eco TV Panamá. December 10, 2015. [Corte condenó a La Prensa a pagarle \\$600 mil a los Ochy Diez](#); TVN Noticias. December 10, 2015. [Gremios periodísticos en alerta por condena contra La Prensa](#); La Prensa. December 11, 2015. [Ataque a la libertad de prensa](#).

¹²⁵⁷ Juzgado Decimo Tercero del Circuito de lo Civil del Primer Circuito Judicial de Panamá. David Marco Ochy Diez, Daniel Miguel Ochy Diez and Transcribe Trading SA (TCT) v. Corporación La Prensa y Editorial por la Democracia (diario La Prensa). Judgment of November 25, 2015. Available for consultation at: <http://www.organojudicial.gob.pa/wp-content/uploads/2015/12/Sentenciajuzgadocivil13.pdf>; Eco TV Panamá. December 10, 2015. [Corte condenó a La Prensa a pagarle \\$600 mil a los Ochy Diez](#); TVN Noticias. December 10, 2015. [Gremios periodísticos en alerta por condena contra La Prensa](#); La Prensa. December 11, 2015. [Ataque a la libertad de prensa](#).

¹²⁵⁸ I/A Court H. R. *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 129.

D. Legal Reforms

992. According to the information received by the Special Rapporteurship, a draft bill was introduced to the Congress of the Republic on August 6 that would “Regulate the careers of professional journalists and photo journalists in Panama”.¹²⁵⁹ The language the Office of the Special Rapporteur had access to provides: “[i]n order to practice in the profession of journalism Panamanian journalists shall a) have a degree in journalism or communications; or a Masters or Doctorate in any discipline or specialization in communications granted by a national private or public university in the country, or a degree legally validated at the University of Panama, as a normative entity in university academics; and b) hold Professional Certification issued by the Technical Academic Commission of Journalism.”¹²⁶⁰

993. It also establishes that “[r]egarding Panamanians practicing without completing their studies from 2010 forward they shall complete their studies in five years at the most in order to continue practicing; or those who have not completed their studies before 2010 will be considered, for professional certification purposes, if they hold a certification by a media outlet that endorses their professional practice for an uninterrupted time period of 10 years (2015)”. It establishes that “[i]n cases where Panamanians are not empirically practicing and do not meet the requirements of the aforementioned paragraph, they cannot be beneficiaries of this law.”¹²⁶¹

994. Civil society organizations and media workers rejected the draft bill as it “violates fundamental rights of freedom of thought and expression.”¹²⁶² According to the information, on October 15 the bill had been removed by its promotor, the deputy Juan Moya.¹²⁶³

995. The Office of the Special Rapporteur reminds the State that this issue was addressed in detail by the Inter-American Court in *Advisory Opinion on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism OC-5* adopted in 1985.¹²⁶⁴ In that opinion, the Inter-American Court explained that because of its close relationship with freedom of expression, journalism “cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional “*colegio*.” Thus, for the Court, reasons of public order that justify the requirement that other professionals be members of professional organizations cannot be invoked validly in the case of journalism because it would permanently limit - to the detriment of those not members of the professional association - the right to make full use of the rights that Article 13 of the American Convention recognizes for all individuals, “it would violate the basic principles of a democratic public order on which the Convention itself is based.”

¹²⁵⁹ Congreso de la República de Panamá. No date. Bill of law “Reglamenta la Carrera Profesional del Periodista y del Reportero Gráfico en Panamá”. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Crítica. July 28, 2015. [Presentan anteproyecto que regula ejercicio del periodismo](#).

¹²⁶⁰ Congreso de la República de Panamá. No date. Bill of law “Reglamenta la Carrera Profesional del Periodista y del Reportero Gráfico en Panamá”. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Crítica. July 28, 2015. [Presentan anteproyecto que regula ejercicio del periodismo](#).

¹²⁶¹ Congreso de la República de Panamá. No date. Bill of law “Reglamenta la Carrera Profesional del Periodista y del Reportero Gráfico en Panamá”. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Crítica. July 28, 2015. [Presentan anteproyecto que regula ejercicio del periodismo](#).

¹²⁶² Inter American Press Association (IAPA). August 5, 2015. [La SIP expresa a presidente de Panamá preocupación por contenido restrictivo de iniciativa de ley](#); Crítica/EFE. August 6, 2015. [Caricaturistas repudian ley de periodismo](#); El Nuevo Diario. August 3, 2015. [Partido en el Gobierno propone duras restricciones al periodismo en Panamá](#).

¹²⁶³ La Vanguardia. October 16, 2015. [Diputado proponente retira polémico proyecto de ley de periodismo en Panamá](#); Terra. October 15, 2015. [Diputado proponente retira polémico proyecto de ley de periodismo en Panamá](#); El Día/EFE. October 16, 2015. [Diputado proponente retira polémico proyecto de ley de periodismo en Panamá](#); El Nuevo Diario. October 15, 2015. [Retiran en Panamá anteproyecto que limitaba ejercicio del periodismo a extranjeros](#).

¹²⁶⁴ I/A Court H. R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5.

996. Principle 6 of the IACHR Declaration of Principles on Freedom of Expression establishes, “[e]very person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.”

E. Internet and Freedom of Expression

997. According to information received by the Office of the Special Rapporteur, in April 2015, during the II Business Summit of the Americas in Panama, the CEO of the social network Facebook reportedly announced an agreement with Panama to offer free Internet access for the country’s low-income population.¹²⁶⁵ As reported, Panama was the third country in the region to adopt said initiative.¹²⁶⁶

998. According to information available on the website of the "internet.org", now called "Free Basics", its purpose would be “bringing together technology leaders, nonprofits and local communities to connect the two thirds of the world that doesn’t have internet access.”¹²⁶⁷ The initiative created in July 2014, has worked “closely with more than a dozen mobile operators across 17 countries to give people access to relevant basic internet services without data charges.”¹²⁶⁸ Additionally, the web page indicated that “Free Basics” it is no exclusive to any operator, and Facebook is willing to work with any operator that wants to provide free basic services. Therefore, to form part of the “Free Basics” platform it’s necessary that the developer and the application meet two criteria: have low data consumption and meet the technical specifications outlined in the technical guidelines.¹²⁶⁹

999. Some concerns of civil society on the initiative "internet.org" are related, among others, to (1) net neutrality; (2) Facebook gets access to all usage data of sites that are “Free Basics”; and (3) the alleged creation of an unfair internet access model. In Panama, as in other countries in the region such as Brazil, Ecuador and Colombia, organizations working for digital rights signed a joint letter addressed to the CEO of Facebook in order to “criticize many of the practices of Internet.org for reasons of justice, privacy and security.”¹²⁷⁰ The letter signed by 60 organizations in 28 countries worldwide, further states that “[F]acebook is defining improperly net neutrality in public statements and is building a wall where the poorest people of the world can only access to a limited group of websites and unsafe services.”¹²⁷¹

1000. The initiative indicates that “Facebook supports net neutrality and has worked throughout the world to ensure that services can’t be blocked or throttled and to ensure that fast lanes are prohibited”. Additionally, it indicates that Facebook would not store any personal navigation information from within the service beyond 90 days.¹²⁷² Furthermore, Facebook would not share “any personally identifiable information

¹²⁶⁵ El País. April 10, 2015. [Facebook anuncia Internet gratis en Panamá](#); FayerWayer. April 14, 2015. [El proyecto de Internet "gratis" de Facebook seduce a América Latina](#); Noticias RCN/EFE. April 9, 2015. [Presidente Varela y Mark Zuckerberg anunciaron internet gratis para Panamá](#); El Comercio. July 29, 2015. [Panamá accederá a la web gratis con Internet.org de Facebook](#).

¹²⁶⁶ FayerWayer. April 14, 2015. [El proyecto de Internet "gratis" de Facebook seduce a América Latina](#); El País. April 10, 2015. [Facebook anuncia Internet gratis en Panamá](#); Sursiendo. April 21, 2015. [Internet\[.org\]: no queremos un puñado de sitios. Internet es toda la Red](#).

¹²⁶⁷ Internet.org. November 19, 2015. [Free Basics: Myths and Facts](#).

¹²⁶⁸ Internet.org. July 27, 2015. [One Year In: Internet.org Free Basic Services](#).

¹²⁶⁹ Internet.org. November 19, 2015. [Free Basics: Myths and Facts](#).

¹²⁷⁰ MIT Technology Review. May 19, 2015. [Internet.org, el proyecto gratuito de Facebook, recibe críticas en todo el mundo](#); El Espectador. January 15, 2015. [Internet.org no es Internet](#); ST News. January 15, 2015. [Facebook lanzó Internet.org en Colombia, con la presencia de Zuckerberg y el presidente Santos](#); Fundación Karisma. May 20, 2015. [Carta abierta a Mark Zuckerberg sobre Internet.org, Neutralidad de la Red, Privacidad, y Seguridad](#).

¹²⁷¹ MIT Technology Review. May 19, 2015. [Internet.org, el proyecto gratuito de Facebook, recibe críticas en todo el mundo](#); El Espectador. January 15, 2015. [Internet.org no es Internet](#); ST News. January 15, 2015. [Facebook lanzó Internet.org en Colombia, con la presencia de Zuckerberg y el presidente Santos](#); Fundación Karisma. May 20, 2015. [Carta abierta a Mark Zuckerberg sobre Internet.org, Neutralidad de la Red, Privacidad, y Seguridad](#).

¹²⁷² Internet.org. November 19, 2015. [Free Basics: Myths and Facts](#).

with [its] content partners and there is no requirement for those partners to send Facebook such information about their users.”¹²⁷³ Lastly, Facebook informs that the initiative would seek to “introduce people to the value of the internet through hundreds of free basic services, beyond Facebook.”¹²⁷⁴

¹²⁷³ Internet.org. November 19, 2015. [Free Basics: Myths and Facts](#).

¹²⁷⁴ Internet.org. November 19, 2015. [Free Basics: Myths and Facts](#).

22. PARAGUAY

A. Progress

1001. On March 30, the Ministry of Foreign Affairs of Paraguay delivered to the State of Brazil the international arrest warrant in which requested Brazil to maintain the preliminary detention and subsequent the extradition of the former Paraguayan mayor Vilmar Acosta Marques, who was a fugitive in Brazil thanks to his double nationality and charged as the mastermind in the homicide of journalist Pablo Medina in October of 2014.¹²⁷⁵ The international warrant was presented in Brasilia in the International Cooperation Division of the Brazilian Ministry of Foreign Affairs to Under Secretary General Alberto Simas Magalhães.¹²⁷⁶ On August 24 the Supreme Court of Justice for Brazil approved the extradition requested by the Paraguayan authorities.¹²⁷⁷ According to available information, Judge Dias Toffoli of the Supreme Court of Justice in Brazil “noted in his opinion that there are countless elements of proof to strongly support the certainty that defendant Vilmar Acosta Marques was born on Paraguayan soil, therefore he is not covered by the National Constitution of Brazil protecting Brazilian citizens from extradition.”¹²⁷⁸

1002. Journalist Pablo Medina for *ABC Color* was murdered on October 16, 2014 in the area close to Villa Ygatimí, department of Canindeyú. Medina was in his car returning from covering a story in the town of Ko'ë Porã, and during that incident his assistant Antonia Maribel Almada also died. Medina was a correspondent for *ABC Color* in the area of Curuguaty and reported drug trafficking and irregular activities allegedly committed by the local authorities.¹²⁷⁹ According to the Minister of the Interior Francisco Vargas, the journalist received sporadic police protection while on some types of news coverage because he was a victim of constant threats.¹²⁸⁰

B. Killings

1003. On March 5, Paraguayan journalist Gerardo Servián was murdered in Ponta Porã, in a small border town in the state of Mato Grosso do Sul, Brazil; about 200 meters from the border with Paraguay. The victim directed the *Ciudad Nueva FM* news program in the Guaraní language on a community radio station in Zanja Pytã. The 45-year-old journalist was shot several times by two men on a motorcycle.¹²⁸¹

1004. Taking the characteristics of the crime into account, it is fundamental to the Special Rapporteurship for Paraguay to cooperate with the investigation of this event in order to guarantee an

¹²⁷⁵ Última Hora. August 25, 2015. [Brasil decide conceder extradición de Vilmar "Neneco" Acosta](#); Acosta La Nación. August 25, 2015. [Brasil aprueba extraditar a Vilmar Acosta](#); Reuters. August 25, 2015. [Ex alcalde paraguayo será extraditado desde Brasil por crimen de periodista: canciller](#).

¹²⁷⁶ Ministerio de Relaciones Exteriores de Paraguay. March 30, 2015. [Exhorto que solicita la extradición de Acosta Márquez fue entregado hoy en Brasilia](#).

¹²⁷⁷ Ministerio de Relaciones Exteriores de Paraguay. August 25, 2015. [Supremo Tribunal Federal del Brasil concede por unanimidad la extradición de Vilmar Acosta Márquez](#); El Confidencial/EFE. November 4, 2014. [Miembro de la Corte Suprema paraguaya carga contra periodista asesinado](#); Paraguay. November 4, 2014. [Núñez: "Negocian sobre el cadáver de Pablo Medina para perjudicarme"](#); ABC TV/YouTube. November 4, 2014. [Núñez cuestiona labor de Medina y se aferra al cargo](#).

¹²⁷⁸ Ministerio de Relaciones Exteriores de Paraguay. August 25, 2015. [Supremo Tribunal Federal del Brasil concede por unanimidad la extradición de Vilmar Acosta Márquez](#).

¹²⁷⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. October 17, 2014. [Press Release R 122/14. Office of the Special Rapporteur Condemns Murder of Journalist in Paraguay](#); ABC Color. October 16, 2014. [Asesinan a corresponsal de ABC Color](#); La Nación. October 16, 2014. [Asesinan a periodista en la zona de Curuguaty](#); Caracol Radio/EFE. October 16, 2014. [Asesinan a periodista en Paraguay, el tercero en lo que va de año](#).

¹²⁸⁰ Committee to Protect Journalists (CPJ). October 17, 2014. [Paraguayan journalist shot dead on way back from covering story](#); ABC Color. October 16, 2014. ["Pablo Medina recibía constantes amenazas"](#).

¹²⁸¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 23, 2015. [Press Release R 34/15. The Office of the Special Rapporteur Condemns Killing of Paraguayan Journalist in Brazil](#); Reporters Without Borders. March 9, 2015. [Paraguayan reporter gunned down on Brazilian side of border](#); ABC. March 10, 2015. [Video revela como asesinaron a periodista](#); El Nuevo Herald. March 6, 2015. [Matan a un periodista en Paraguay](#).

effective identification, prosecution and punishment of those responsible, and to adopt fair measures of reparation for the victim's family. It is also important to determine if the crime was related to journalism activities. The Special Rapporteurship insist on the need to create special investigative bodies and protocols, as well as guarantee the effective inclusion of those who are being threatened because of their work in journalism in protection mechanisms designed to ensure their safety.¹²⁸²

1005. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR 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. Attacks, Threats and Harassment Against Journalists and Media Outlets

1006. On June 18 legal affairs journalist for *Última Hora* Raúl Ramirez reported threats texted to him after publishing information on an attorney who “used public documents with false information and certifications of merit and services not rendered”. According to the disseminated information, the attorney said: “I am going to find you on the street and you will meet my fists (beat) [...] I swear that [...] I find you on the street and I don't know what's going to happen to you [...] you don't have a steel chest.”¹²⁸³ Due to these threats the attorney was later charged with criminal threats and instigating crime.¹²⁸⁴

1007. Vanesa Silguero, journalist for *Radio Cardinal* and *Canal 13* reported on October 26 that a civil servant of the municipality of Limpio physically assaulted her during a search. She explained that when she attempted to capture images of the municipal office, the civil servant physically assaulted her.¹²⁸⁵

1008. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR 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.”

D. Social Protest

1009. The Special Rapporteurship received information about disproportionate use of force in the context of a union social protest where 30 protesters were injured by the indiscriminate use of nightstick. Other protesters were kicked or hit with police clubs. On August 26 close to five hundred workers went to the Ministry of Labor in Paraguay to demand the resignation of the Minister Guillermo Sosa.¹²⁸⁶

1010. 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

¹²⁸² IACHR. Office of the Special Rapporteur for Freedom of Expression. March 23, 2015. [Press Release R 34/15. The Office of the Special Rapporteur Condemns Killing of Paraguayan Journalist in Brazil.](#)

¹²⁸³ Hoy. June 18, 2015. [Círculo expresa solidaridad con periodista amenazado](#); ABC. June 18, 2015. [SPP se solidariza con periodista amenazado](#); Última Hora. July 2, 2015. [Colegas se solidarizan con periodista de ÚH y piden sanción a imputado.](#)

¹²⁸⁴ Judiciales.net. July 3, 2015. [Imputan a supuesto abogado por amenazar a periodista](#); Hoy. July 3, 2015. [Imputan a “abogado” que amenazó a periodista con molerlo a golpes.](#)

¹²⁸⁵ ABC. October 26, 2015. [Repudian agresión contra periodista radial](#); Última Hora. October 26, 2015. [Periodista denuncia agresión de funcionaria municipal.](#)

¹²⁸⁶ Diario Las Américas. August 26, 2015. [Una protesta sindical deja 30 heridos tras un choque con policías en Asunción](#); Telesur. August 26, 2015. [Paraguay: policía reprime protesta sindical y deja 30 heridos.](#)

assembly”¹²⁸⁷ 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.”¹²⁸⁸

1011. 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.”¹²⁸⁹

1012. Lastly, the Inter-American Commission has said 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.¹²⁹⁰

E. Subsequent Liabilities

1013. On March 27, the Judiciary’s General Superintendency of Justice for the Republic of Paraguay notified Julia Cabello, the executive coordinator for the NGO “Tierraviva a los Pueblos Indígenas del Chaco”, about the opening of an administrative summary after the complaint presented by Gladys Bareiro de Módica, Chief Justice for the Constitutional Chamber of the Supreme Court of Justice [*Sala Constitucional de la Corte Suprema de Justicia*](CSJ). She accused Cabello of serious lack of decorum considering the attorney was dishonorable, insulting and using expletives against her and other members of the Supreme Court of Justice (CSJ).¹²⁹¹ On April 6, Bareiro also filed a complaint against journalist Roberto Pérez for alleged slander against her.¹²⁹²

1014. According to available public information, the investigation was initiated following a publication in the daily *Última Hora* on February 24, 2015, which reflected the position of Tierraviva and Cabello’s statements on Minister Bareiro of Modica’s actions in a case on the unconstitutionality of law 5194/2014, whereby the expropriation of 14,404 hectares was authorized on behalf of the Paraguayan Institute of the Indigenous People [*Instituto Paraguayo del Indígena*] (INDI) for its allocation to the Sawhoyamaxa Indigenous Community of the Enxet people. In that statement, the organization had stated that Minister Bareiro of Modica had proceeded on a second action on constitutionality filed by the companies that own the expropriated lands, noting that in this way “they would have violated the principle of *res judicata* and the prohibition of double jeopardy.” Tierraviva reportedly warned that if the Supreme Court did not revoke

¹²⁸⁷ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹²⁸⁸ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹²⁸⁹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

¹²⁹⁰ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

¹²⁹¹ EA. April 13, 2015. [Sumarian a abogada por criticar a ministra](#); ABC. April 15, 2015. [Ministra pide que Corte sancione a abogada que criticó su providencia](#); ABC. April 16, 2015. [Ratifican que ministra se apartó de la ley y que pedirán su juicio político](#).

¹²⁹² Hoy. April 12, 2015. [Juzgado que admitió querrela violentó derecho a la defensa de Pérez](#); ABC. April 6, 2015. [Ministra de la Corte querrela a periodista](#).

that order, it would report the Minister before Congress and would ask for her prosecution and removal from office for malfeasance.¹²⁹³

1015. Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR 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.”

1016. In addition, principle 11 establishes that “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information”. Equally, the Inter-American Court has reiterated that “their jurisdiction should be restricted to military personnel in active service only,” and ordered that States to respect the “restrictive and exceptional scope of military courts, and exclude the trial of civilians from the jurisdiction thereof”, including cases filed for contempt.¹²⁹⁴

F. Internet and Freedom of Expression

1017. The Special Rapporteurship observes with satisfaction the June 4 decision adopted by the Senate Chamber of the National Congress of Paraguay to reject the bill “establishing mandatory data retention” known as Pyrawebs.¹²⁹⁵ This bill had the goal of “regulating and retaining traffic data by individuals or entities providing Internet access or data transmission services” and establishing the obligation to “provide this data when there is authorization by the judge safeguarding constitutional rights [*juez de garantías*], as required; in order to investigate, prosecute and punish those responsible of crimes codified in the Criminal Code of Paraguay and other special criminal laws.”

1018. The bill provided for the data to be retained for twelve months of “data traffic generated by Internet use.” The bill defined “traffic data” as “data generated by electronic or magnetic communication through a computer program or computer system that includes an IP [Internet Protocol] address, origin and destination, connection time and date, and if generated, disconnect time and date,” as well as other “data available for the identification of the geographic area and equipment used for the communication” (Articles 3 and 5). According to the bill would be “binding” by the law “individuals and private or public entities providing Internet access and data transmission” (Art. 4).

1019. At the request of senator Blanca Fonseca Legal, Chair for the Senate Chamber Commission on Human Rights in the National Congress of the Republic of Paraguay [*Presidenta de la Comisión de Derechos Humanos de la Cámara de Senadores del Congreso de la República del Paraguay*] the Special Rapporteurship sent a technical note with observations on the bill to Congress.¹²⁹⁶ The Special Rapporteurship expressed concern with the indiscriminate collection and retention of Internet traffic data proposed by the law and the impact it has on the right to privacy and the right to freedom of thought and expression.

¹²⁹³ EA. April 13, 2015. [Sumarian a abogada por criticar a ministra](#); ABC. April 15, 2015. [Ministra pide que Corte sancione a abogada que criticó su providencia](#); Hoy. April 12, 2015. [Juzgado que admitió querella violentó derecho a la defensa de Pérez](#); ABC. April 6, 2015. [Ministra de la Corte querrela a periodista](#).

¹²⁹⁴ I/A Court H. R. *Caso Palamara Iribarne Vs. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Serie C No. 135. Paras. 124-144.

¹²⁹⁵ Pyrawebs. No date. [Paremos la ley #Pyrawebs](#); Global Voices. March 5, 2015. [#Pyrawebs: Activismo online contra proyecto de ley de retención de metadatos en Paraguay](#); ABC. June 4, 2015. [Congreso rechaza "Pyrawebs"](#).

¹²⁹⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. Technical note on the bill that establishes the obligation to retain traffic data under discussion by the National Congress of Paraguay and its compliance with the international standards on Freedom of Expression and Internet. June 2, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

1020. With great concern this office observed the vague terminology used for the objectives of the bill. In fact, the bill does not clearly defined who would be subject to retaining the metadata of digital communications, or the type or category of data to be retained (Articles 4 and 5). The clear definition of those under the obligation to retain and the data categories to be retained are crucial due to the variety of actors providing Internet access services and information services as well as the complexity of data handled depending on the type of service. The possibility of indiscriminately retaining navigation history is of particular concern. The bill was unclear as to the personal data retention obligation for the intermediary platforms used to transmit electronic communication, for example, email, social networks and messaging services. The aforementioned is even more serious since the bill did not clearly define the types of crimes for which access would be allowed for the purposes of investigation and prosecution; in fact it broadly refers to all crimes in the Criminal Code and other punitive laws (Art. 1). The bill did not specify the use of different types of data for the purpose of a specific application of the law. In this regard, this office reiterated that Internet legislation should not include broad and ambiguous definitions, nor disproportionately affect its legitimate use. If the need and appropriateness of data retention are demonstrated, it is recommended these programs be limited exclusively to prevention, detection or prosecution of serious crimes clearly defined by legislation. The Special Rapporteurship also warned about the lack of clarity on the aforementioned criteria which impedes the determination of the appropriateness and proportionality of the retention period in the bill (one year) in order to guarantee that it be limited to what is strictly necessary. This time frame should be based on objective criteria and be specifically related to the proposed goals.

1021. Likewise, the Special Rapporteurship noted that the bill made it “mandatory to provide this data when authorized by a judge safeguarding constitutional rights [*juez de garantías*], when they so require” (Art. 1). In addition provided for “stored data by those bound in accordance to the [...] law, shall be turned over to the requesting judge with jurisdiction in a period of under ten days” (Art. 7). Nevertheless, the bill does not provided for the procedures and objective conditions the competent authorities must utilize in order to access and use traffic data, nor does it specifically provided for prior control or judicial guarantees the authorities must follow. These controls are important to avoid a practice where judicial authorization becomes a routine approval of the investigating and prosecuting agency request. Considering the risk of misuse of power, discrimination or human rights violations in this arena, the conditions and burden of proof must be high and specifically defined by law in order to establish the need for subsequent surveillance. The implementation of these types of mechanisms must be used with caution and must respect the rights journalists and other actors with the right to keep an information source secret have to confidential sources. The legislation and supervisory judge [*juez de control*] must ensure journalism work or other professions are not affected by making people fearful of offering pertinent information or information of public interest because their communications with the press are being documented.

1022. Likewise, it was concerning that the bill does not set the necessary resources for challenging access or illegal use or abuse of traffic data, nor the obligations of active transparency, thereby excluded all government accountability. In this regard the Special Rapporteurship recalls that Paraguay does not have specialized legislation on personal data protection with enough safeguards, including an autonomous and specialized body, for the possible abuse of power public and private agents have over sensitive personal data. As far as transparency is concerned, this Rapporteurship has indicated that laws must ensure the public access to information on the scope, use and controls available in order to guarantee these programs are not used in an arbitrary manner.¹²⁹⁷ Also, it has recommended, “intermediaries should have sufficient protection to disclose the requests received from government agencies or other legally authorized actors who infringe upon users’ rights to freedom of expression or privacy. It is good practice, in this respect, for companies to regularly publish transparency reports in which they disclose at least the number and type of the requests that could lead to the restrictions to users’ rights to freedom of expression or privacy.”¹²⁹⁸

¹²⁹⁷ United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#).

¹²⁹⁸ IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 113.

1023. Lastly, the legislative bill was extremely broad on the obligation of those subject to the law to adopt the necessary measures to guarantee the “quality and confidentiality” of the data (Art. 8). It is concerning that the destruction of retained data is not established upon the end of the term. By virtue of this observation the Special Rapporteurship concluded that the proposed legislation runs the risk of exceeding the proportionality limits established by international human rights law on the subject.

1024. The Rapporteurship reiterates that digital communication metadata which includes location, online activities and whom Internet users communicate with, among other things, can be highly revealing and their collection and retention are equivalent to a direct limitation of the individual’s right to privacy.¹²⁹⁹ In the recent report *The Right to Privacy in the Digital Age*, the United Nations Office of the High Commissioner for Human Rights noted that from the perspective of the right to privacy, “[t]he aggregation of information commonly referred to as “metadata” may give an insight into an individual’s behaviour, social relationships, private preferences and identity that go beyond even that conveyed by accessing the content of a private communication.”¹³⁰⁰

1025. To that extent the Special Rapporteurship has expressed serious concern over the adoption of legislation that obligates Internet and telecommunications service providers to retain metadata on communications for historical surveillance purposes – as opposed to selective retention mechanisms clearly limited by law–. In this regard, the Joint Declaration on Freedom of Expression and Responses to Conflict Situations, adopted on May 3, 2015, the UN, OSCE, OAS, and African Commission Special Rapporteurs affirmed, “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.”¹³⁰¹

G. Diversity and Pluralism

1026. On June 4, National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel) officials along with Joint Task Force agents, seized equipment and closed community radio stations *KAAGUY POTY FM* of the Núcleo 3 *campesino* community in the settlement of Arroyito and *TAPE PYAHU FM* of the rural community of Alfonso Kue; both in the district of Horqueta in the department of Concepción. The Voces de Paraguay organization classified this event as an “intentional repressive and intimidation situation.”¹³⁰² Later, on September 9, Conatel confiscated all community radio equipment for “Mandu’arâ”, of Yasy Kañy, belonging to the *campesino* organization of rural development for the settlement of Mandu’arâ [*Organización campesina de desarrollo rural del asentamiento Mandu’arâ*](Odran) and “Ko’aju” in Araujo Kue, Curuguaty part of the Paraguayan Campesino Movement [*Movimiento Campesino Paraguayo*] (MCP).¹³⁰³ Civil society organizations denounced that the State has not promoted a government plan to regulate the community broadcasting sector and, on the contrary, has applied criminal law to punish community radio stations currently operating without a license.

¹²⁹⁹ United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#).

¹³⁰⁰ United Nations. [Report of the Office of the United Nations High Commissioner for Human Rights. The right to privacy in the digital age](#). A/HRC/27/37. June 30, 2014. Para. 19.

¹³⁰¹ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation 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. May 4, 2015. [Joint Declaration on Freedom of Expression and Responses to Conflict Situations](#).

¹³⁰² EA. June 5, 2015. [Duro golpe del gobierno de Cartes a la organización y a la libertad de expresión en el Norte](#); Voces Paraguay/Facebook. June 5, 2015. [RECRUDECEN ATAQUES A RADIOS COMUNITARIAS EN PARAGUAY](#).

¹³⁰³ Voces Paraguay/Facebook. September 10, 2015. [Hostigamiento y represión a radios comunitarias es un atentado a la libertad de expresión](#).

1027. According to the available information published in the local press, during 2015, Sarah Cartes, sister of the President of the Republic of Paraguay, Horacio Cartes, acquired seven media outlets in the country. According to press reports, in April Sarah Cartes bought most of the shares of *Grupo Nación Comunicaciones*, formed by the daily *La Nación*, the tabloid *Crónica* and radio stations *970 AM* and *Montecarlo*. In August, Sarah Cartes bought the tabloid *Diario Popular*, the digital outlet *Hoy* and the web radio station *LaserStream*, belonging to the group *Multimedia* of former Paraguayan President Juan Carlos Wasmosy.¹³⁰⁴ These acquisitions were criticized by opposition political groups and civil society organizations, who rejected the concentration of media in the hands of the President of the Republic's relatives.¹³⁰⁵

1028. To those events the Association of Community Radio and Alternative Media in Paraguay [*Asociación de Radios Comunitarias y Medios Alternativos del Paraguay*] denounced a practice of media concentration "impeding diversity and plurality in production and information content." The Association condemned oligopolies of that type and demanded the State adopt public policy that respects the right to freedom of expression, by guaranteeing diversity and plurality in information.¹³⁰⁶

1029. According with Principle 12 of the Declaration of Principles on Freedom of Expression of the IACHR "[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 IACHR and the Office of the Rapporteur have indicated that "[i]f these media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy."¹³⁰⁷

¹³⁰⁴ EFE. August 18, 2015. [Hermana del presidente de Paraguay compra otros tres medios de comunicación](#); Otra Prensa. August 26, 2015. [Paraguay: polémica compra de medios de familia del presidente Cartes](#).

¹³⁰⁵ Otra Prensa. August 26, 2015. [Paraguay: polémica compra de medios de familia del presidente Cartes](#); Voces Paraguay/Facebook. August 21, 2015. [Peligroso camino para la democracia y la libertad de expresión en Paraguay](#).

¹³⁰⁶ Ea. September 14, 2015. [Cartes sigue acumulando medios y cerrando radios comunitarias, denuncian](#); Voces Paraguay/Facebook. August 21, 2015. [Peligroso camino para la democracia y la libertad de expresión en Paraguay](#).

¹³⁰⁷ IACHR. [Justice and Social Inclusion: The challenges of democracy in Guatemala](#). Chapter VII (The situation of freedom of expression). OEA/Ser.L/V/II.118. Doc.5rev.1. December 29, 2003. Para 419.

23. PERU

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

1030. On January 6 the journalist Samuel Montenegro Cruzado from the radio show *El Informativo* in *Las Colinas* was covering a public meeting convened by Front for the Development and Defense of the San Martín Interests [*Frente Cívico de Desarrollo y Defensa de los Intereses de San Martín*] (FRECIDES) where they was evaluating the strike results and making decisions on the mayor continuing in office after the district elections were nullified. When the journalist was in the room where the assembly, the elected peace judge for the District of Piscoyacu, expelled him and instigated a group of people who attend the event to insult him.¹³⁰⁸

1031. The same day Joan Pierre Ríos, photo reporter for the *El Comercio* newspaper, was detained by police officers, allegedly in an arbitrary manner. He was with Miguel Bellido Almeyda, another photo reporter for the same newspaper, the police asked him for his documents, to which the journalists complied, Ríos didn't have his documents even though Ríos did show them his press pass, he was forced to get in a truck to be taken to the Santoyo police office.¹³⁰⁹

1032. On January 15 during the fourth march against the Juvenile Labor Law [*Ley Laboral Juvenil*], Raúl Arriarán, photo reporter for *Diario Uno*, was attacked by police while he was taking pictures of their activities against the protesters. The journalist was accused of assault and resisting arrest although, there are pictures and video of the violence the officers exhibited towards him and those who tried to help him. Other press workers present were also attacked.¹³¹⁰

1033. On January 20 Oscar Capuñay Ramos, video reporter for the *Canal 33 Controversia* program, was attacked while was covering the student election for the director of the *Universidad Nacional Pedro Ruiz Gallo* in the department of Lambeyque. The reporter arrived at a polling station and the journalist was asked to identify himself, he showed his credentials and the journalist asked the person for his identification too. The person excused himself left the premises and appeared a few minutes latter with several men who attacked Ramos García and took his camera.¹³¹¹

1034. On January 20 unknown people threw a Molotov bomb to the door house of the newscaster of *La Ribereña* radio station in Juanjui. According with the available information these attacks were related to the criticism of the José Pérez Silva municipality administration did by the journalist.¹³¹²

1035. Police agents assaulted journalist Juan Jordan Lino Escobar, for the *Vocero de Pichanaki* program on *Radio Montaña*, on February 10 while he was covering the second day of the strike against the presence of the Pluspetrol Company in the area. During the attack they took his work equipment, he was

¹³⁰⁸ Asociación Nacional de Periodistas del Perú (ANP). No date. [Huallaga: Juez de Paz electo ataca a reportero y le impide cumplir con su labor periodística.](#)

¹³⁰⁹ El Comercio. January, 2015. [Policía detiene de forma arbitraria a fotógrafo de El Comercio](#); Centro Liber. January, 2015. [Reportero gráfico detenido por agentes de la Policía](#); Revista Velaverde. January, 2015. [PRENSA Y DEMOCRACIA.](#)

¹³¹⁰ Raúl Arriarán/YouTube. January 21, 2015. [Entrevista a Raúl Arriarán - denuncia abuso policial. 15E](#); RPP. January 16, 2015. [Marcha juvenil: Reportero gráfico fue agredido por policías](#); Peru.com. January 16, 2015. [Ley Pulpín: Secuencia de la brutal detención de fotógrafo \(FOTOS\)](#); Diario Uno. January 17, 2015. [Condenan abuso contra fotoperiodista Arriarán](#); Diario Uno. January 16, 2015. [Policía golpea y detiene a fotógrafo Raúl Arriarán](#); Tempus Noticias/YouTube. January 19, 2015. [Policías agreden a periodistas en la cuarta marcha contra régimen juvenil.](#)

¹³¹¹ La República. January 22, 2015. [Periodista fue agredido en elecciones de la UNPRG](#); Instituto Prensa y Sociedad (IPYS). January 23, 2015. [Agreden a reportero durante proceso de elecciones universitarias.](#)

¹³¹² Infosaposa. January 21, 2015. [Intentan quemar domicilio de periodista Tomás Arévalo en Juanjui](#); Voces. January 21, 2015. [Lanzan bomba molotov a domicilio de Tomás Arévalo, periodista de Juanjui](#); Juanjui Noticias. January 20, 2015. [Periodista de Juanjui es amedrentado, desconocidos intentaron quemar su domicilio.](#)

thrown to the floor and kicked. Due to the severity of his injuries, the journalist was transported to the city of Lima where he had medical attention.¹³¹³

1036. Journalist Claudia Cisneros Méndez, columnist for the *La República* newspaper and freelancer was struck and thrown to the ground by a Peruvian National Police riot squad agent in the province of Lima on February 12. The journalist was covering close to 300 adolescents protesting against the former Minister of the Interior, Daniel Urresti Helera. This protest was caused by the events that took place in the district of Pichanaki, where the police used violence to repress protestors against the Argentine company Pluspetrol.¹³¹⁴

1037. On February 14, unknown persons entered the residence of Mary Espinoza Santiago and took a laptop, a video camera, USBs, DVDs, and a key to her office as well as cash. The police investigated the event and was able to ascertain that the door to the residence was forced opened with a tool. It seems the criminals were searching for information at that location.¹³¹⁵

1038. On February 27, a group of protestors participating in the march “against trash TV,” arrived at the *Canal N* and *América Televisión* facilities and broke their windows by throwing rocks at them. The event took place in Lima and was organized days earlier through social networks. Said event was described as “a peaceful event in search of respect for the Radio and Television Law, in regards to the Code of Ethics and family friendly programming schedules.”¹³¹⁶

1039. The *Andina de Televisión* (ATV), *Canal 9*-news team was attack by two Orión public transportation workers. The incident took place on March 11 when the journalist team recording a transit operation. One of the journalists was recording the workers violent reaction and one of them attack the journalist noticed threw brake liquid on the journalist causing damages on his face. The police detain the workers and some days after the company condemn the facts in a press release and announced they were fired.¹³¹⁷

1040. On May 24, in a port located in the Madre de Dios region in the south eastern part of the country three unknown persons beat Manuel Calloquispe and yanked his equipment from him. Manuel, a correspondent for *Info Región*, was investigating clandestine operations of a mafia in the area mining for gold illegally.¹³¹⁸

1041. In May, the Third Criminal Provincial Prosecutor of Arequipa [*Tercera Fiscalía Provincial de Delito de Arequipa*] issued the Resolution No. 218-2015, wherein the media, especially radio and television,

¹³¹³ International Federation of Journalists (IFJ). March 2, 2015. [Reportero es herido por efectivos policiales durante cobertura informativa en la provincia peruana de Chanchamayo](#); Asociación Nacional de Periodistas del Perú. No date. [Chanchamayo: Reportero es herido por efectivos policiales en cobertura informativa](#); Punto de vista y propuesta. February 18, 2015. [FPP condena atentado a la libertad de prensa en Pichanaqui y brutal agresión contra población civil](#).

¹³¹⁴ “Este abusivo me empuja y tira al piso solo pq tomo fotos #UrrestiDeberse.” Twitter account of Claudia Cisneros Méndez @claudiacisneros. [February 12, 2015- 5:50 PM](#); Info Región. February 15, 2015. [Periodista Claudia Cisneros fue agredida por la policía antimotines](#); ANP. No date. [Lima: Policía antimotines golpea y tira al suelo a periodista](#).

¹³¹⁵ Asociación Nacional de Periodistas del Perú (ANP). No date. [Satipo: Sospechosa sustracción de equipos de casa de periodista](#); International Federation of Journalists (IFJ). March 2, 2015. [Sospechosa sustracción de equipos en casa de periodista en Satipo, Perú](#).

¹³¹⁶ El Comercio. February 27, 2015. [Marcha contra TV basura: mira aquí todo lo que ocurrió](#); Peru.com. February 28, 2015. [TV Basura: Así atacaron sedes de canales de televisión en marcha](#); La República. February 28, 2015. [Marcha contra la TV basura: vandalismo opacó protesta contra canales de televisión | VIDEO | FOTOS](#).

¹³¹⁷ Asociación Nacional de Periodistas del Perú (ANP). No date. [Lima: Trabajadores de empresa de transporte público atacan a periodistas](#); International Federation of Journalists (IFJ). March 17, 2015. [Perú: Trabajadores de empresa de transporte público atacan a equipo periodístico](#).

¹³¹⁸ Las Rutas de Oro. June 2, 2015. [Perú | Agreden y roban equipos a periodista que cubría operaciones de minería ilegal](#); Instituto Prensa y Sociedad (IPYS). May 26, 2015. [Agreden y roban equipos de periodista que cubría operaciones de la minería ilegal](#); El Comercio. May 24, 2015. [Agreden y roban equipos de periodista que cubría operaciones de la minería ilegal](#); Info Región. May 24, 2015. [Agreden y roban equipos de corresponsal de INFOREGIÓN en Madre de Dios](#); Group 10 noticias huancayo. May 24, 2015. [Agreden y roban equipos a periodista Manuel Calloquispe en Madre de Dios](#).

was urged to cast aside all information, comment and opinion on the macro regional strike for May 27 and 28. Associations and journalists came out against the Resolution The press considered this resolution a restriction on freedom of press.¹³¹⁹

1042. On August 12, Francisco Córdova, television director for the information-based program for *Canal 21-Globovisión*, reported attacks by police officers of the Foot Patrol Department in Ayacucho. He noted that he was called by neighbors and therefore went downtown to record the police operation against vehicles, at that moment the police stopped him from filming by taking his video camera.¹³²⁰

1043. On August 14, Carlos Zanbria Angulo, correspondent for *El Comercio* in Arequipa, was assaulted by police officers when he covered the Arequipa anniversary activities. The journalist was arrested when he and other journalists were taking pictures and recording in front of the platform, the military parade. A National Police Mayor approached them and asked them to leave, in a violent manner. He was released after being detained for one hour.¹³²¹

1044. On August 14 journalist Dayana Cieza was threatened with death after a report exposing the Lurigancho penitentiary, where for a fee inmates partook of parties with alcohol, a night club, commodities in their cells and even an indoor pool. The journalist reported receiving messages on her cell phone that she reported to the local authorities and media outlets.¹³²²

1045. The governor of Áncash, Waldo Ríos Salcedo, would have prompted inhabitants to react violently against reporters covering a public event. The incident occurred on August 15 in the area called "Inca Trails" [*Caminos del Inca*] when the governor visited the area. In this event the press asked about his administration. And as answer Ríos Salcedo would have prompted to his supporters to violently kick the journalists out to the present journalists.¹³²³

1046. The journalist Paul Pilco Dorregaray, correspondent for the *Correo* newspaper in Apurímac and director of the information-based program "*informativo de las 7*," of canal 11, *Televisión Amistad* was threatened by the National Peruvian Police Commander Victor Langle Flores, for an article where in he noted the officer had been discharged as a disciplinary action.¹³²⁴

1047. On August 31 Sports reporter Cintya Malpartida Guarniz would have attacked when she was covering a Copa Perú game between the Unión Bambamarca and Santa Ana de Cajamba teams. During the match player would have argued which she began to document, a soccer player notice and let some fans know. The fans assaulted her by kicking her and dragging her and taking her camera.¹³²⁵

¹³¹⁹ Aler. May 27, 2015. [Pronunciamiento por "El derecho a informar y ser informados" amenazado por resolución que atenta contra la libertad de prensa en Arequipa](#); Asociación Nacional de Periodistas del Perú (ANP). May 25, 2015. [ANP denuncia amenaza contra la libertad de prensa en Arequipa](#); Colegio de Periodistas del Perú. May 25, 2015. [Pronunciamiento de alerta al periodismo nacional](#).

¹³²⁰ RPP. August 12, 2015. [Ayacucho: denuncian agresión de policía a periodista](#); San Miguel FM. No date. [Ayacucho: denuncian agresión de policía a periodista](#).

¹³²¹ El Comercio. August 14, 2015. [Arequipa: policías agredieron a periodista en parada militar](#); La República. August 15, 2015. [Policías agreden y detienen a periodista en Parada Militar](#); Crónica Viva. August 17, 2015. [Alerta OFIP: agreden a periodistas durante cobertura en Arequipa](#).

¹³²² La República. August 15, 2015. [Amenazan de muerte a periodista que reveló beneficios en penal de Lurigancho](#); Instituto Prensa y Sociedad (IPYS). August 15, 2015. [Perú: nuevas amenazas contra periodista que denunció beneficios para presos en una cárcel de la capital](#); "Nueva amenaza desde el número 993556821 a reportera Dayana Cieza, por reportaje sobre discoteca en #Lurigancho. #NoNosVanACallar." Twitter account of Panorama @PanoramaPTV. [August 14, 2015- 7:19 PM](#).

¹³²³ Radio Santo Domingo en Línea. August, 2015 (Video). [Igual que Álvarez: Waldo Ríos azuza a invasores para que agredan a periodistas](#); Asociación Nacional de Periodistas del Perú (ANP). August 18, 2015. [ANP Casma se pronuncia por agresión a periodistas](#).

¹³²⁴ Expresión. August 27, 2015. [Comandante de la policía amenaza con agredir a periodista](#); Crónica Viva. August 27, 2015. [Alerta OFIP: policía amenaza con agredir a periodista en Abancay](#).

¹³²⁵ "Este es el video que no quisiera tener que compartirles. Perdonen los gritos pero fue la desesperación de ser..." Twitter account of Cintya Malpartida @cfrejya. [August 30, 2015- 11:47 PM](#); Perú 21. August 31, 2015. [Copa Perú: Esta terrible agresión contra una periodista muestra el lado salvaje del torneo](#) (Video); El Comercio. August 31, 2015. [Golpearon a mujer periodista que cubría Copa Perú](#) (Video).

1048. The Special Rapporteurship learned of a series of attacks by protestors and police on journalists covering events opposing mining projects in the southeast of the country. According to the information available, in 2015 journalists Daniel Torzano and Marcos Chicana for *Cable Visión*,¹³²⁶ Carlos Zambria,¹³²⁷ correspondent for *El Comercio* newspaper, Victoria Bazan Cossi,¹³²⁸ for *JBC* radio; and Jean Nickyn Cornejo¹³²⁹ for *El Norteño* newspaper, were attacked. The Rapporteur also had notice of cases in the Northeast where the demonstrators who were allegedly committed aggression against the press, according to the information available in Yurimaguas protesters would attack the infrastructure of RTV Total 98.3 FM radio station and television channel 23 and allegedly assaulted journalists Fachín Melendez, Segundo Arbildo Torres and Elvis Luchuma.¹³³⁰ In Iquitos they have attacked the journalist Dany Sifuentes as part of a protest against the regional director of work.¹³³¹

1049. Principle 9 of the Declaration of Principles on Freedom of Expression states: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

B. Impunity of Crimes against Journalists

1050. According to information received by the Office of the Special Rapporteur, on 27 February the chief prosecutor Luis Landa Burgos filed charges against former Minister of Interior Daniel Urresti Elera for his alleged role in the attack against journalist Hugo Bustíos and his colleague Eduardo Rojas Arce, occurred on November 24, 1988. The journalist were in the way to Erapata, Ayacucho for cover the new of die of a member of Sendero Luminoso, the army controled the zone and nobody can stay in it without their authorization. According to the prosecutor Landa Burgos, who had attacked Bustíos and Rojas were from the section in which Urresti Elera was the immediate boss. At the time of the facts, Urresti Elera exerts functions as the Head of the Intelligence (S-2) of the countersubversive headquarters of Castropampa, Ayucho.¹³³²

1051. In May the accusation was rejected by the Collegiate body "B" of the National Criminal Court [*Colegiado "B" de la Sala Penal Nacional*]. According to the collegiate body, the prosecutor lacked to solidly support the allegations he presented, returning the dossier to him so he could precise the arguments of his accusation. On June 11, fiscal Landa Burgos reiterated the accusation against Urresti at the National Criminal Court, providing further argument. On June 16, the judges unanimously accepted the request of the prosecutor and opened proceedings against Urresti. In its indictment, the prosecutor Landa Burgos requested 25 years in prison for the former Minister of Internal Affairs, by attributing to him the crime against humanity. Meanwhile, Urresti Elera rejected the accusations of the Public Prosecutor, and said there would be

¹³²⁶ Instituto Prensa y Sociedad (IPYS). May 25, 2015. [Dos periodistas que cubren conflicto social abandonan la zona por amenaza de detención.](#)

¹³²⁷ Perú 21. May 11, 2015. [Tía María: Hacen seguimientos a los periodistas que cubren protestas](#); La República. May, 2015. [Arequipa: periodistas son agredidos por opositores a proyecto Tía María](#) (Video); Correo. May 14, 2015. [Arequipa: Manifestantes atacan Radio Exitosa y a periodistas](#) (Video).

¹³²⁸ Instituto Prensa y Sociedad (IPYS). May 25, 2015. [Varios reporteros agredidos y amenazados por manifestantes opositores a proyecto minero](#); Asociación Nacional de Periodistas del Perú. May, 2015. [Caylloma: Policías agreden a periodista durante paro regional en Arequipa.](#)

¹³²⁹ Canal N. May 21, 2015. [Chiclayo: encapuchados agreden a periodista que cubría protesta de azucareros](#); La República. May 21, 2015. [Chiclayo: cuatro heridos deja enfrentamiento entre la Policía y trabajadores de la azucarera Pomalca](#); Trome. May 21, 2015. [Chiclayo: Bronca en Pomalca.](#)

¹³³⁰ Crónica Viva. October 6, 2015. [Alerta OFIP: atacan medios de comunicación en Alto Amazonas](#); Al Día Perú. October 5, 2015. [RTV TOTAL 98.3 F.M y canal 23, sufre atentado.](#)

¹³³¹ La Cotorra FM 94.3 La Radio Comunitaria del Cerro/Facebook. June 4, 2015. [Boletín Nro. 368 --- 03.06.2015.](#)

¹³³² La República. July 19, 2015. [Daniel Urresti: "El juicio no afectará mi candidatura porque tengo el apoyo de la población"](#); La República. June 18, 2015. [Sala Penal dispuso abrir juicio a Urresti por crimen de Bustíos](#); El Comercio. February 27, 2015. [Caso Bustíos: ¿Por qué la justicia implica a Daniel Urresti?](#); América Noticias. June 18, 2015. [Daniel Urresti enfrentará juicio por caso Hugo Bustíos.](#)

no evidence against him. On July 17, the prosecution against Urresti started and is ongoing by the closing date of this report.¹³³³ On the other hand, Urresti was elected by the *Partido Nacionalista Peruano* as their official candidate for the presidential elections.

1052. On February 22, 2001, the Commission held a meeting with representatives of the Peruvian State, in which the State submitted a comprehensive proposal to resolve a significant number of cases. Among the cases with recommendations made by the IACHR in final reports adopted and published in accordance with Article 51 of the American Convention, a list of 102 reports would be found, including the case concerning Bustíos and Rojas Arce. To these 102 reports the State is committed to finding solutions to the human rights violations established by the IACHR in their reports.¹³³⁴

C. Subsequent Liabilities

1053. The Minister of Culture of Peru, Diana Álvarez Calderón, reported on January 19 that she filed civil lawsuit against the NGO Greenpeace. The lawsuit was based on the authorities' reporting an alleged damage on the Nazca Lines area by a Greenpeace protest campaign in December 8, 2014. The lawsuit involves Rodrigo Abd, Argentine photographer for the Associated Press United States news agency who was covering the events. Frank Bajak, the boss of the journalist, tweeted that the photographer was not part of the environmental protest.

1054. Former Supreme Court Justice Walter Vásquez Bejarano, threatened *Perú 21* newspaper reporter Carlos Castillo Cordero with legal action on October 15, under the argument “[he] lied when reporting former legislator Tula Benites Vásquez- Bejarano Vásquez’s niece- was responsible for contracting a ‘ghost’ employee in 2000.” Then the reporter filed a complaint for harassment.¹³³⁵

1055. Principle 10 of the IACHR’s Declaration of Principles 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.” Also, principle 11 of the Declaration establishes that, “[p]ublic officials are subject to greater scrutiny by society.”

D. Indirect Censorship

1056. On February 7 the columnist Martha Meier was separated from her position in the *El Comercio* newspaper, as consequence of an article about the eviction of Máxima Acuña by the Yanacocha mining company. The editing company *El Comercio* believed it to be a “defamation column” and the article was deleted from the media outlet’s portal. On Twitter the communicator asserted that “the truth cannot be kept quiet,” to which the media outlet journalist director Fernando Berckemeyer responded with the publication of an editorial to answer to the accusations of censorship wherein he stated: “columnists have freedom of expression but not freedom of defamation.”¹³³⁶

¹³³³ La República. July 19, 2015. [Daniel Urresti: “El juicio no afectará mi candidatura porque tengo el apoyo de la población”](#); La República. June 18, 2015. [Sala Penal dispuso abrir juicio a Urresti por crimen de Bustíos](#); El Comercio. February 27, 2015. [Caso Bustíos: ¿Por qué la justicia implica a Daniel Urresti?](#); América Noticias. June 18, 2015. [Daniel Urresti enfrentará juicio por caso Hugo Bustíos](#); América Noticias. December 7, 2015. [Ana Jara pide que aceleren juicio a Daniel Urresti por caso Hugo Bustíos](#); Andina. December 7, 2015. [Ana Jara espera celeridad en proceso por caso Bustíos](#).

¹³³⁴ IACHR. February 22, 2001. [Press Release S/N](#).

¹³³⁵ Spacio Libre. October 13, 2015. [Expresidente de la Corte Suprema y tío de Tula Benites amenaza con denunciar a periodista de Peru21](#); Crónica Viva. October 16, 2015. [Alerta OFIP: periodista es hostigado por rondas campesinas](#).

¹³³⁶ “Insisto #MaximaNoEstaSola @pavese @MilagrosLeivaG @lamula @vozdelatierra @hcmujica @pacosanseviero y la verdad no es “callable”!!” Twitter account of Martha Meier @miermq. [February 7, 2015- 6:21 PM](#); La Mula. February 7, 2015. [El Comercio censura a... ¿Martha Meier Miró Quesada?](#)

1057. Journalist Milagros Leiva, news anchor for *No Culpes a la Noche*, *Canal N* and *Sin Peros en la Lengua*, *América TV* was fired on September 9. The company argued it was for “violating the driving principles of her contract.” Both spots were dedicated to diverse subject matter but with special influence over politicians. On her Twitter account the journalist asserted: “I thank you for your messages in solidarity. What we should be concerned about is the government’s plan to silence journalists. So scared over the agenda.”¹³³⁷

E. Communications Surveillance

1058. The *Correo Semanal* magazine reported on March 19 that the National Intelligence Service of Peru [*Dirección Nacional de Inteligencia*] (DINI) illegally collected personal information on journalists and other citizens. The data collection began in January 2011 and continued until February 2015.¹³³⁸

1059. On March 30, 2015, a news report by web *Utero.pe* published in *La República* newspaper exposed additional information on (DINI) operations during the last three administrations. The media had access to four intelligence agent notes showing the tracing and following of people considered “a nuisance” to the administration, including one journalist, Aldo Mariátegui, columnist for *Perú 21* newspaper and director of the television program “*Sin medias tintas*.” Both he and his wife, entrepreneur Laura Cáceres were followed and photographed by government agents.¹³³⁹

1060. On July 26, 2015 the Executive enacted Legislative Decree No. 1182.¹³⁴⁰ The objective of this decree is to “regulate the access the Special Unit of the National Police of Peru has *in flagrante delicto* for the location or geolocation of mobile telephones or other similar electronics.” Likewise, the Legislative Decree establishes the obligation of conserving traffic data resulting from telecommunications for three years permitting its access by state authorities within the framework of crime investigation. The legislative decree states “the unit in charge of the police investigation may request the specialized unit provide immediate access to location and geolocation data from cellular telephones or other similar electronic devices, as long as it complies with the following: A. *In flagrante delicto*, as stated in Article 259 of Legislative Decree No. 957 of the Code of Criminal Procedure. B. When the crime under investigation carries an incarceration period of four years or more. C. When access to data is necessary for the investigation.” (Art. 3) “Upon verification of the requirements in the Article above, the Office of the Prosecutor is informed of the fact and a request is made to the Specialized Unit of the National Police of Peru for location and geolocation.” Upon submitting the request, “the public telecommunication service providers or other public entities related to these services must immediately provide location and geolocation data.” (Art. 4)

1061. Pursuant to the Legislative Decree, “the unit in charge of the police investigation will send a report within twenty-four (24) hours to the corresponding Prosecutor recognizing the satisfaction of legal requirements.” Meanwhile, “within the twenty-four (24) hour period the Prosecutor will request a Court

¹³³⁷ “Agradezco los mensajes de solidaridad. Lo que debe preocuparnos es el plan del gobierno para callar periodistas. Tanto miedo por las agendas.” Twitter account of Milagros Leiva @MilagrosLeivaG. [September 10, 2015- 1:12 PM](#); Trome. September, 2015. [Milagros Leiva fue separada de América TV y Canal N](#); Terra. September 10, 2015. [Milagros Leiva: Periodista fue separada de Canal N y América](#); La República. September 10, 2015. [Canal N confirma que Milagros Leiva renunció](#).

¹³³⁸ La República. March 23, 2015. [DINI rastreó a periodistas tras publicación de investigaciones](#); Liber. March 23, 2015. [Denuncian que dirección de inteligencia del gobierno acopiaba indebidamente información de periodistas y otros ciudadanos](#); La Prensa. March 21, 2015. [Fiscalía ya investigaba denuncia sobre la DINI](#); El Comercio. March 19, 2015. [“La DINI entregó información de mis propiedades a red Orellana”](#); Diario Correo. March 19, 2015. [La DINI rastreó bienes de miles de ciudadanos](#); La República. March 23, 2015. [Dinileaks: aspectos legales de la recopilación de datos personales por entidades de inteligencia](#).

¹³³⁹ La República. March 23, 2015. [DINI rastreó a periodistas tras publicación de investigaciones](#); Liber. March 23, 2015. [Denuncian que dirección de inteligencia del gobierno acopiaba indebidamente información de periodistas y otros ciudadanos](#); La Prensa. March 21, 2015. [Fiscalía ya investigaba denuncia sobre la DINI](#); El Comercio. March 19, 2015. [“La DINI entregó información de mis propiedades a red Orellana”](#); Diario Correo. March 19, 2015. [Busque aquí: Políticos, periodistas y personalidades rastreados por la DINI](#); Diario Correo. March 19, 2015. [La DINI rastreó bienes de miles de ciudadanos](#); La República. March 23, 2015. [Dinileaks: aspectos legales de la recopilación de datos personales por entidades de inteligencia](#); La República. March 30, 2015. [Notas de inteligencia de la DINI confirman seguimientos a personajes de oposición](#).

¹³⁴⁰ El Peruano. [Decreto Legislativo No. 1182](#). July 27, 2015.

affirm the request. The Court with jurisdiction shall issue a confidential order including legal requirements in an expedited manner not to exceed 24 hours.

1062. If the request is denied it is null and the Prosecutor may appeal. A higher Cudge shall rule on the appeal within the same time frame and no formal procedure. The presiding judge will set a timeline that shall not exceed sixty (60) days. Under extreme circumstances the timeline may be extended in consecutive increments when the Prosecutor meets the necessary requirements.” (Art. 5)

1063. Additionally, the final second supplement to Legislative Decree No. 1182 states: “Public telecommunications service providers and public entities associated with these services shall maintain the data related to telecommunications for twelve (12) months in computer systems that are searchable online and in real time. Upon expiration of the referenced time frame, the data must be stored electronically for an additional twenty-four (24) months. The stored data for a period not exceeding twelve (12) months shall be delivered online and in real time once judicial authorization is received. In cases where the data has been stored over twelve months, delivery shall be made by the responsible party within seven (7) days of receipt of legal authorization.”

1064. The Legislative Decree has been questioned by civil society organizations in Peru,¹³⁴¹ which have asserted that the bill was enacted directly by the Executive using exceptional powers to legislate, and without a prior public debate in Congress. In August 2015, the Office of the Special Rapporteur submitted a communication to the State, in accordance with Article 41 of the American Convention on Human Rights, to request information regarding the objective of the Legislative Decree No. 1182 and to present some recommendations in light of the American Convention on Human Rights.¹³⁴²

1065. In its report on Citizen Security and Human Rights, the IACHR stated that the insecurity created by crime and violence in the Americas is a serious problem where Human Rights are at stake, raising red flags for democratic governance and the validity of the Rule of Law.¹³⁴³ As the State is tasked with guaranteeing people the free exercise of their rights, they have adopted various measures to prevent and counteract violence and insecurity, especially when it comes to organized crime. These measures include the creation of laws and internal procedures in order to prevent, investigate, prosecute and sanction crime and illegal activity. When proposing initiatives states must meet their international obligations, including those within the framework of International Law on Human Rights. In that regard, the IACHR has systematically underscored that the fulfillment of Human Rights must play a fundamental role in any policy in this arena.

1066. In its report on Freedom of Expression and the Internet, the Office of the Special Rapporteur affirmed that the protection of citizen security and the fight against organized crime are legitimate ends to justify the use of extraordinary surveillance of private communication. However, in order to be considered legitimate, this limitation on the rights to privacy and freedom of expression, must meet a series of conditions according to Articles 11, 13, 8 and 25 of the American Convention. These are: (1) legal enshrinement; (2) seeking a crucial goal; (3) necessity, suitability and proportionality of the measure for achieving the aim sought; (4) judicial guarantees; and (5) satisfaction of due process.¹³⁴⁴

1067. As this Office has indicated, the limitations on those rights must be established *a priori* by law. This means that it must be a law that results from the deliberation of a legislative body, which precisely defines the causes and conditions that would enable the State to intercept the communications of individuals, collect communications data or “metadata,” or to subject them to surveillance or monitoring that invades

¹³⁴¹ Hiperderecho. July 27, 2015. [Nueva norma permite a la Policía saber dónde está cualquier persona sin orden judicial](#); La República. July 30, 2015. [Cinco claves para entender la 'Ley de Geolocalización'](#).

¹³⁴² Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Communication sent to the State of Perú according to Article 41 of the American Convention. August 28, 2015.

¹³⁴³ IACHR. [Report on citizen security and human rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009.

¹³⁴⁴ IACHR. 2013 Annual Report. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

spheres in which they have reasonable expectations of privacy.¹³⁴⁵ As previously mentioned, “vague or ambiguous legal provisions that grant very broad discretionary powers are incompatible with the American Convention, because they can serve as the basis for potential arbitrary acts that translate into violations of the right to privacy or the right to freedom of thought and expression.”¹³⁴⁶

1068. Besides the legal basis, the Office of the Special Rapporteur has called upon the States to review the suitability and proportionality of every infringement on rights to the Internet, pondering the impact it could have on this medium to guarantee and promote freedom of expression in relation to the benefits the infringement may have in the protection of other interests. To that end, it is necessary to consider available measures that are less restrictive to the affected rights. Considering the importance of the exercise of these rights for the democratic system, the law should authorize access to communication and personal data only in exceptional circumstances as defined within the legislation. When relying on broader reasoning, such as national security, for surveillance of correspondence and personal information, the law must be clear on the specific applicable criteria necessary to identify the cases where these limitations are legitimate.¹³⁴⁷

1069. Similarly the Office of the Rapporteur has noted that any restriction to freedom of expression or privacy on the Internet as a result of a state security measure should respect the procedural requirements imposed by Inter-American law. Decisions to undertake surveillance activities that invade the privacy of individuals must be authorized 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. To this end, 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 human rights. In addition, sufficient resources to carry out assigned tasks should be available.¹³⁴⁸

1070. Furthermore, the Office of the Special Rapporteur has expressed serious concern for the enactment of policies that force Internet service and telecommunications providers to store communications metadata for historical surveillance- as opposed to retention mechanisms that are targeted and clearly limited by law-. In that regard, in the Joint declaration on freedom of expression and responses to conflict situations, adopted on May 3, 2015, Offices of the Special Rapporteurs for the UN, OSCE, OAS and the African Commission on Human and People’s Rights stated that the “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.”¹³⁴⁹

1071. In its report Impact of State Surveillance on Privacy and Freedom of Expression, the United Nations (U.N.) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, “mandatory data retention is facilitating massive collection of communications data that can later be filtered and analyzed”. The Rapporteur adds that these policies “are invasive and costly, and

¹³⁴⁵ IACHR. 2013 Annual Report. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 153.

¹³⁴⁶ IACHR. 2013 Annual Report. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para 58.

¹³⁴⁷ IACHR. 2013 Annual Report. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 54, 64, 162.

¹³⁴⁸ IACHR. 2013 Annual Report. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

¹³⁴⁹ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation 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. May 3, 2015. [Joint declaration on freedom of expression and responses to conflict situations](#).

threaten the rights to privacy and free expression. By compelling communications service providers to create large databases of information about who communicates with whom via a telephone or the Internet, the duration of the exchange, and the users' location, and to keep such information (sometimes for years), mandatory data retention laws greatly increase the scope of State surveillance, and thus the scope for infringements upon human rights. Databases of communications data become vulnerable to theft, fraud and accidental disclosure."¹³⁵⁰ In this report the Rapporteur recommended States not to retain particular information purely for surveillance purposes.

1072. 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.¹³⁵¹

1073. In the joint declaration by the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights on surveillance programs and their impact on freedom of expression, noted 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."

F. Pluralism and Diversity

1074. Lizy Béjar Monge, former judge who accepted the *amparo* recourse presented by a group of journalists and academics against *Grupo el Comercio*, against the alleged concentration of media ownership reported in early February that it is the subject of an unfounded legal persecution. In early 2015 the *El Comercio* editing company reported before the Office of Judicial Control [*Oficina de Control de la Magistratura*] that, according to the available information, when Béjar Monge was in charge of the Fourth Constitutional Court for Lima [*Cuarto Juzgado Constitucional de Lima*], the resolution admitting the lodging of the *amparo* recourse against the association between the El Comercio and Epensa groups was issued in an irregular manner.¹³⁵²

1075. According to the complainants the Group El Comercio acquired 54% of the companies Epensa and Alfa Beta Systems, the latter would have been acquired through the Special Edition Services SA [*Servicios Especiales de Edición S.A.*], a company related to El Comercio. After the shareholding acquisition it was determined by part of the Group El Comercio to divide Epensa and leave a part that would be dedicated only to news content in which the Angois Banchemo group will have 100% of participation and another dedicated to the newspaper printing and marketing will have a participation of 56% of El Comercio and the

¹³⁵⁰ UN. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), Frank La Rue, A/HRC/23/40. April 17, 2013.

¹³⁵¹ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para 416.

¹³⁵² Manuel Dammert. February 25, 2015. [Concentración de Medios: Grupo El Comercio persigue con insidia y ánimo de venganza a jueza Lizy Béjar](#); El Comercio. January 3, 2014. [El Comercio denuncia a jueza ante la OCMA por irregularidad en resolución](#); La República. February 23, 2015. [Jueza Lizy Béjar: "Me persigue un poder que busca someter al Poder Judicial y al Ministerio Público"](#).

46% will correspond to the Angois family, which would be reflected in the composition of the same directory.¹³⁵³

1076. The National Association of Peruvian Journalists [*Asociación Nacional de Periodistas del Perú*] (ANP) expressed concern over the first visible consequence on what they called “media concentration.” According to this union, this translated into stripping hundreds of people from their jobs as journalists, administrative personnel and production personnel with experience and seniority in their daily activities. Through a press release on August 5, they reported the shutdown of the Prensart printing plant (formerly Epena -National Press Company [*Empresa Periodística Nacional*]), where the *Correo* and *Ojo y Bocón* newspapers were printed.

1077. On July 31, 80 Lima plant workers were sent on vacation and only 20% remained in the work area cleaning and providing maintenance for the machinery. According to reports from the workers, it was progressively dismantled and the shutdown was eminent. The shutdown of the Piura, Huancayo and Trujillo plants, and the changes in administrative and editing staff in the *Correo* and *Ojo Bocón* newspapers, are additional company modifications that have affected workers with seniority as well as others. This created lack of job security, especially in the regional editorial offices of *Correo*.¹³⁵⁴

1078. Principle 12 of the IACHR Declaration of Principles on Freedom of Expression states: “[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.”

G. Other Relevant Situations

1079. On March 17, Lima Metropolitan Municipal security agents did not allow *Diario 16* journalists to participate in a press conference organized by Mayor Luis Castañeda in Lima. Carlos Hinojosa and photo reporter John Rojas went to the place where the media was requested to be; however they were denied entry and only found out about the event a few minutes before it began. The aforementioned took place because as of 2014 the municipality excluded *Diario 16* from event calls.¹³⁵⁵

1080. After the October 22 broadcast, journalists Melissa Peschiera and Perla Berríos for the “90 Matinal” show on *Latina* channel were fired. Peschiera tweeted: “the arbitrary, overbearing, abuse of authority, the ugliness, the lack of humanity and lack of respect have first and last names. Until forever”. She also said: “I am just a person who sees the goings on in my country through journalist’s eyes, and I do not like what I am seeing in the government and our society one bit.”¹³⁵⁶

1081. Principle 1 of the IACHR’s Declaration of Principles on Freedom of Expression provides that “[f]reedom 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.”

¹³⁵³ Asociación Nacional de Periodistas del Perú (ANP). August 5, 2015. [ANP denuncia primeros efectos de concentración de medios](#).

¹³⁵⁴ International Federation of Journalists (IFJ). August, 2015. [La FIP se une a su sindicato ANP para denunciar la vulneración del derecho al trabajo en Perú](#); Asociación Nacional de Periodistas del Perú (ANP). August 5, 2015. [ANP denuncia primeros efectos de concentración de medios](#); La República. March 8, 2015. [Tema de concentración de medios presente en debate sobre la situación del Perú](#).

¹³⁵⁵ *Diario 16*. March 18, 2015. [¡Luis Castañeda Censura \(Otra Vez\) a Diario 16!](#); Instituto Prensa y Sociedad (IPYS). March 19, 2015. [Seguridad de municipio impide ingreso de periodistas a conferencia de prensa del alcalde](#).

¹³⁵⁶ *Diario Correo*. October 23, 2015. [Melissa Peschiera y Perla Berríos fueron despedidas de Latina](#); “La arbitrariedad, la prepotencia, el abuso de poder, la maldad, la falta de humanidad y de respeto tienen nombres y apellidos. Hata siempre”. Twitter account of Melisa Peschiera @MelissaPeschier. [October 23, 2015- 2:28 AM](#); Perú 21. October, 2015. [Melissa Peschiera y Perla Berríos fueron separadas de Latina](#).

24. DOMINICAN REPUBLIC

A. Killings

1082. Journalist Blas Olivo, who was a long-time press officer with Junta Agropempresarial Dominicana (JAD), was found dead on April 13 in the province of Monsignor Nouel. On June 2, the head of National Police [*Policía Nacional*], Manuel Castro Castillo, stated that the murder was perpetrated by a gang engaged in various illegal activities.¹³⁵⁷

1083. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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

1084. Journalists Huchi Lora, Juan Bolívar Díaz, Roberto Cavada and Amelia Deschamps reported on February 2 they had received death threats and accusations of being “traitors of the homeland” by unknown persons, because of how they cover the immigration problem linked to the Dominican citizenship of people of Haitian descent born in Dominican Republic.¹³⁵⁸ They also reported that on January 10, journalist Roberto Cavada was heckled by a man who allegedly stated: “We’re going to kill the traitors and the first to die will be the journalists.”¹³⁵⁹ Likewise, they said that on January 16, an unknown man reportedly yelled at journalist Amelia Deschamps: “You are the first one we have to take down, traitor! And then Huchi and Juan Bolívar! You’re all traitors to the homeland!”¹³⁶⁰ The Commission noted that the Office of the General Attorney of the city of Santiago opened an investigation into the facts and had begun enquiries.¹³⁶¹

1085. On February 27, 2015,¹³⁶² as part of the commemoration of the 171st anniversary of the independence of Dominican Republic, a rally reportedly took place at Independencia Park of Santo Domingo, organized by the Independent Patriotic Movement [*Movimiento Patriótico Independiente*], among others, where they displayed banners bearing the photograph of President Danilo Medina and journalists Huchi Lora, Marino Zapete and Juan Bolívar Díaz, accusing them of being “traitors of the homeland” and describing them as “pro-Haitians,” while calling for their deaths.¹³⁶³

¹³⁵⁷ Reporters Without Borders. June 25, 2015. [Hostile climate for Dominican media since start of 2015](#); Diario Libre. April 13, 2015. [Encuentran muerto al periodista Blas Olivo](#); El Nacional. April 14, 2015. [PN sin pista asesinato periodista Blas Olivo](#); Acento. June 3, 2015. [PN acusa a banda de asaltantes de muerte de Blas olivo](#); El Caribe. April 15, 2015. [Misas por novenario periodista Blas Olivo serán realizadas en parroquia de Arroyo Hondo](#); Impacto Digital. June 2, 2015. [Jefe PN revela periodista Blas Olivo fue asesinado tras resistir asalto](#).

¹³⁵⁸ Acento. February 2, 2015. [“Patriotas” gritan a comunicadores: “Les vamos a dar muerte a los traidores y los primeros serán los periodistas”](#); Tira Piedras. February 2, 2015. [Juan Bolívar Díaz, Huchi Lora, Amelia Dechamp y Cavada denuncian amenaza de muerte acusados de ser “traidores de la patria”](#); Diario Libre. February 2, 2015. [Juan Bolívar Díaz, Huchi Lora, Amelia Deschamps y Cavada denuncian amenaza de muerte](#); El Nacional. February 2, 2015. [Periodistas denuncian los amenazan de muerte](#).

¹³⁵⁹ Acento. February 2, 2015. [“Patriotas” gritan a comunicadores: “Les vamos a dar muerte a los traidores y los primeros serán los periodistas”](#); Tira Piedras. February 2, 2015. [Juan Bolívar Díaz, Huchi Lora, Amelia Dechamp y Cavada denuncian amenaza de muerte acusados de ser “traidores de la patria”](#).

¹³⁶⁰ Periódico Hoy. February 2, 2015. [Comunicadores denuncian reciben amenazas de muerte de “nacionalistas”](#); El Nacional. February 2, 2015. [Periodistas denuncian los amenazan de muerte](#).

¹³⁶¹ Diario Digital RD. February 3, 2015. [Fiscalía investiga amenazas de nacionalistas contra 4 periodistas](#); Hoy Digital. February 5, 2015. [Fiscalía investiga origen de amenazas de muerte contra periodistas](#); El Sol de Santiago. February 3, 2015. [Fiscal Luisa Liranzo Investiga Denuncia Periodistas](#).

¹³⁶² The Dominican Republic gains independence from Haiti on February 27, 1844, after 22 years of Haitian occupation.

¹³⁶³ El Jacaquero. February 27, 2015. [Nacionalistas piden muerte de Danilo Medina acusándolo de “traidor a la patria”](#); Acento. February 27, 2015. [Nacionalistas piden muerte de Danilo Medina acusándolo de “traidor a la patria”](#); Poder Latino. February 27, 2015. [Nacionalistas piden muerte de Danilo Medina acusándolo de “traidor a la patria”](#).

1086. According to press report, during the demonstration were repeated slogans such as “Duarte said it, death to traitors,” “Haitians out of Dominican,” “I demand the President of the Republic put on Duarte’s, the Trinitarian’s [*trinitarios*] pants and defend the homeland,” “We are defending Dominicaness.” Participants reportedly carried banners with the phrases: “I’m not racist but I don’t want Haitians in my country”, “Don’t reward Civil Registry fraud,” “We demand massive deportation of Haitians,” and “Haitians out of our territory.”¹³⁶⁴

1087. On October 6, journalist Salvador Holguín reported a plot to kill him led by the current Chief of Police, Nelson Peguero Paredes, due to a comment he made on his show, *Hilando Fino*, about crime statistics in the country.¹³⁶⁵

1088. On October 26, radio and television journalist and producer Huchi Lora reported that he had received a death threat. Speaking at a panel of journalists on *Color Visión* television channel, he said “If there were real and absolute freedom in journalism it would not be risky, but it is, because watch out when it comes to shutting the press’s mouth.”¹³⁶⁶

1089. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

C. Other Relevant Situations

1090. In a hearing held in August, the Second Court of the National District [*Segundo Tribunal Colegiado del Distrito Nacional*], sentenced Oscar Pérez, Luis Manuel Estévez Ponciano and Joel Rafael Miliano Rodríguez to 30 years in prison for the murder of journalist Claudio Nasco, committed on December 13, 2013 at Chévere motel.¹³⁶⁷ In its judgment the Court found that his murder was not related to his journalistic work, convicting the three men for murder, aggravated robbery, illegal possession of weapons and criminal association.¹³⁶⁸ During said hearing, Joel Miliano, one of the three men convicted for the murder of journalist Claudio Nasco, threw a shoe at photographer Daniel Duverge.¹³⁶⁹ On August 14, journalist Nuria Piera, Director of *CDN Canal 37*, where Claudio Nasco worked, said justice had been served.¹³⁷⁰

¹³⁶⁴ El Jacaquero. February 27, 2015. [Nacionalistas piden muerte de Danilo Medina acusándolo de “traidor a la patria”](#); Acento. February 27, 2015. [Nacionalistas piden muerte de Danilo Medina acusándolo de “traidor a la patria”](#); Poder Latino. February 27, 2015. [Nacionalistas piden muerte de Danilo Medina acusándolo de “traidor a la patria”](#).

¹³⁶⁵ Primicias. October 6, 2015. [Periodista Salvador Holguín acusa al jefe de la Policía de plan para matarlo](#); El Masacre. October 6, 2015. [Periodista Salvador Holguín acusa al jefe de la Policía de plan para matarlo](#).

¹³⁶⁶ El Caribe. October 26, 2015. [Huchi Lora revela recibe amenazas de muerte: advierte “no le cerrarán la boca”](#); Diario Digital RD. October 26, 2015. [Periodista Huchi Lora denuncia lo amenazan de muerte](#).

¹³⁶⁷ 7 Días. August 14, 2015. [Condenados a 30 años de prisión acusados asesinar a Claudio Nasco](#); Acento. August 13, 2015. [Tribunal conoce juicio penal a los acusados del asesinato de Claudio Nasco](#); Listin Diario. July 11, 2015. [Tribunal declara culpable a los acusados de asesinar al periodista Claudio Nasco](#).

¹³⁶⁸ Acento. July 11, 2015. [Jueces declaran culpables de asesinato imputados de caso Claudio Nasco](#); CDN. August 14, 2015. [Jueces ofrecen detalles de la sentencia que condena acusados asesinato Claudio Nasco](#); Diario Libre. August 14, 2015. [Tribunal condena a 30 años tres acusados de asesinar al presentador de televisión Claudio Nasco](#); 7 Días. August 14, 2015. [Condenados a 30 años de prisión acusados asesinar a Claudio Nasco](#).

¹³⁶⁹ CDN. August 14, 2015. [Uno de los asesinos de Nasco lanzó zapato a fotógrafo en plena audiencia](#); Remolacha. August 14, 2015. [QUE FRECO! – Acusado asesinar comunicador lanza zapato a fotógrafo \[RD\]](#).

¹³⁷⁰ CDN. August 15, 2015. [Comentario de Nuria Piera sobre sentencia acusados asesinar a Claudio Nasco](#); Hoy Digital. August 14, 2015. [Nuria Piera: Se hizo justicia en caso Claudio Nasco](#).

25. URUGUAY

A. Progress

1091. The Administrative Court on February 3 unanimously rejected an action for nullification brought by various radio stations and television channels against an Executive Branch decree of 2011 that established that all stations must report the name of their owners in their daily broadcasts during prime time and news programs and on their webpages. The ruling states that the Community Broadcasting Services Law declares as principles for administration of the radiometric spectrum, “transparency and publicity in the procedures and conditions for awarding frequency assignments to permit effective control by the citizens.” The result of the application of those principles “is that all citizens can gain access to the knowledge of the physical or legal persons who obtained the corresponding authorizations to use those frequencies by means of the relevant procedures, which definitely leads us to conclude that the disputed act does not affect any legal situation of the persons appearing,” concluded the Court.¹³⁷¹

1092. An Administrative Court judge on October 19 ruled in favor of an action for access to public information promoted by the Centro de Archivos y Acceso a la Información Pública (Cainfo) and the Instituto de Estudios Legales y Sociales del Uruguay (Ielsur) against the Banco de Previsión Social (BPS) and ordered that body to provide information on the benefits awarded to families and personnel suffering from mental illness within 15 days. The organizations had filed an application for access to public information to determine, among other things, the number of people with psychiatric afflictions that receive pensions and the number of pension applications denied, along with the criteria for awarding them. The entity did not provide information and based its refusal on a decision regarding two distributions that maintained that the required information was not in its possession. In his ruling, the judge affirmed that because the BPS did not make a formal response to the application, this gave rise to a “positive silence” and therefore the entity had the obligation to provide the information. The ruling stressed that the right of access to public information is enshrined in the Universal Declaration of Human rights, the American Convention on Human Rights, the International Covenant on Civil and Political Rights and the Principles of Freedom of Expression approved by the IACHR. The ruling also recalled that Uruguay signed and ratified the Convention on the Rights of Persons with Disabilities, article 31 of which establishes that “the States Parties shall gather adequate information, including statistical and research data, to enable them to formulate and apply policies” to give effect to the Convention. In the judgment of the magistrate, “clearly the requested information” refers to statistical data or documentation that “obviously is in possession of the defendant” and “in no way can it be understood that (the information) involves sensitive data or requires prior informed consent, nor does it deal with reserved, confidential or secret information.” “If the requested information of notorious public interest is not in the possession of the defendant, it must be concluded that the obligations assumed by the State are not being fulfilled” in ratifying the above mentioned Convention, ruled the judge.¹³⁷²

B. Aggressions, Threats and Harassments against Journalists and Media Outlets

1093. Journalist Eduardo Mérica, of *Radio Uruguay*, was insulted and threatened on February 8 by an official of the *Organización del Fútbol del Interior*, Eduardo Mosegui.¹³⁷³ In another episode, journalist Ramiro Zeballos, of department Thirty-three (eastern part of the country), was threatened on February 21 with a firearm by the secretary of the Local Board of Cerro Chato, Elías Fuentes. The official approached him

¹³⁷¹ Tribunal de lo Contencioso Administrativo. February 3, 2015. *Telesistemas Uruguayos S.A. y otros con Estado, Ministerio de Industria, Energía y Minería. Invalidation Action. Sentencia 33/2015.*

¹³⁷² Centro de Archivos y Acceso a la Información Pública (Cainfo). No date. [Justicia ordena al BPS hacer pública información sobre prestaciones a personas con padecimientos psiquiátricos](#); Juzgado Letrado de Primera Instancia en lo Contencioso Administrativo de 2 Turno. October 19, 2015. *SALAMANO, IGNACIO Y OTRO C/ BANCO DE PREVISION SOCIAL. ACCION DE ACCESO A LA INFORMACION PUBLICA (ART. 22 LEY 18.381).* IUE 0002045805/2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹³⁷³ Fútbol Uruguay. August 20, 2015. [Tras lo pasos del tesorero de la OFI que viajó a Rivera para amenazar](#); Asociación de la Prensa Uruguaya (APU). March 2, 2015. [Nueva agresión a periodista](#); Centro de Archivos y Acceso a la Información Pública (Cainfo). May 2015. [Periodismo y libertad de expresión en Uruguay. Monitoreo de amenazas.](#)

in the street and complained about coverage of his work on the local board.¹³⁷⁴ Also in February, journalist Gustavo Rodríguez, of *Canal 3* and *Canal 8* in Rocha, was beaten by the technical director of the Rocha Fútbol Club, José Luis Bitabares, when covering an exhibition game. The Justice System tried but did not imprison Bitabares and prohibited him from attending games for 90 days.¹³⁷⁵

1094. In March, cartoonist Fernando Videla, of the weekly *Batoví* in Tacuarembó (center of the country), was threatened by Pedro Permanyer, an official from the Partido Nacional who reproached him for a cartoon published along with a political column.¹³⁷⁶ Also in March, journalist Martín Corujo was verbally attacked by unidentified individuals while taking photographs of transit controls carried out by inspectors from the Municipal Government (*Intendencia*) of Soriano (Southwest).¹³⁷⁷ Journalist Carlos Hornos was attacked by Miguel Rondán, an official from the Partido Nacional, while broadcasting his radio program.¹³⁷⁸

1095. In May, a journalist from the daily newspaper *El País* was threatened with death because of information published about the alleged connection between fans of the Peñarol football team and certain criminal acts.¹³⁷⁹

1096. Also in May, a journalist from the daily newspaper *El Pueblo* de Salto (Northwest) reported to the Uruguayan Press Association [*Asociación de la Prensa Uruguaya*] that he had been threatened by political activists during coverage of a campaign event in a sector belonging to the governing party, Frente Amplio.¹³⁸⁰

1097. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that: “[t]he murder, kidnapping, intimidation, threats against social communicators, along with the material destruction of means of communication, violate the fundamental rights of people and severely encroach upon freedom of expression. It is the duty of the States to prevent and investigate these events, punish their perpetrators and ensure adequate reparation for victims.”

C. Social Protest

1098. Students and members of the Association of Secondary Education Teachers of Montevideo [*Asociación de Docentes de Educación Secundaria de Montevideo*], of the Single Unit of Automobiles with Taxi Meters and Telephonists [*Sindicato Único de Automóviles con Taxímetro y Telefonistas*] (Suatt), of the Federation of University Students of Uruguay [*Federación de Estudiantes Universitarios del Uruguay*] (FEUU) and the radical organization Plenaria Memoria y Justicia on September 22 confronted members of the Republican Guard when the police forcibly vacated the building where the offices of the National Public Education Administration are located and which for a number of days had been occupied to demand a larger budget for education. During the eviction, various police officers and demonstrators were injured and there

¹³⁷⁴ Asociación de la Prensa Uruguaya (APU). February 3, 2015. [Amenaza a periodista en Cerro Chato](#); Montevideo Portal. February 3, 2015. [Infierno grande](#); Centro de Archivos y Acceso a la Información Pública (Cainfo). May 2015. [Periodismo y libertad de expresión en Uruguay. Monitoreo de amenazas](#).

¹³⁷⁵ Asociación de la Prensa Uruguaya (APU). March 2, 2015. [Nueva agresión a periodista](#); Futbol. March 2, 2015. [Derecho a réplica](#); FM Gente. February 28, 2015. [Técnico de Rocha F.C. agredió a periodista deportivo y fue procesado sin prisión](#); Centro de Archivo y Acceso a la Información Pública (Cainfo). May 2015. [Periodismo y libertad de expresión en Uruguay. Monitoreo de amenazas](#).

¹³⁷⁶ Centro de Archivo y Acceso a la Información Pública (Cainfo). May 2015. [Periodismo y libertad de expresión en Uruguay. Monitoreo de amenazas](#).

¹³⁷⁷ Centro de Archivo y Acceso a la Información Pública (Cainfo). May 2015. [Periodismo y libertad de expresión en Uruguay. Monitoreo de amenazas](#).

¹³⁷⁸ Centro de Archivo y Acceso a la Información Pública (Cainfo). May 2015. [Periodismo y libertad de expresión en Uruguay. Monitoreo de amenazas](#).

¹³⁷⁹ Asked by El Observador newspaper, the journalist denied it, although the daily confirmed with several sources that a criminal investigation was underway into those events. Source: Asociación de la Prensa Uruguaya (APU). May 9 2015. [Hechos que afectan la libertad de expresión](#); El Observador. April 30, 2015. [Indagan amenaza de muerte a periodista](#).

¹³⁸⁰ Asociación de la Prensa Uruguaya (APU). May 9, 2015. [Hechos que afectan la libertad de expresión](#).

were 12 arrests.¹³⁸¹ Social organizations and trade unions from the education sector accused the government of violently repressing the demonstrators, but the Ministry of the Interior insisted that the police did not assault the occupants, that the eviction from the building was “peaceful” and that the disturbances arose outside of the building and were provoked by members of the Suatt and the Plenaria Memoria y Justicia, who attacked agents of the Republican Guard.¹³⁸² In a press release, the Ministry also reported that the eviction was carried out “in fulfillment” of a resolution by the Ministry of Labor and Social Security at the request of various public entities that operate in the building and whose normal operations had been hindered by the occupation.¹³⁸³ On September 28, the Justice System tried five demonstrators as being responsible for the crime of aggravated attack but rather than imprison them imposed community service as substitute measures.¹³⁸⁴ An additional five demonstrators were subsequently tried but not imprisoned.¹³⁸⁵

1099. 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”¹³⁸⁶ 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.”¹³⁸⁷

1100. 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.”¹³⁸⁸

1101. 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.¹³⁸⁹

¹³⁸¹ El País. September 23, 2015. [Incidentes entre la Republicana y estudiantes en desalojo del Codicen](#); Teledoce. September 22, 2015. [Guardia Republicana desalojó la sede del Codicen y se enfrentó con los gremios](#).

¹³⁸² Semanario Búsqueda. September 23, 2015. *El gobierno y algunas organizaciones radicales de izquierda quedaron en el centro de las críticas tras el desalojo de la sede del Codicen*; Semanario Búsqueda. October 15, 2015. *Policía esperaba encontrar solo estudiantes “menores” en la ocupación del Codicen y no estaba preparada para enfrentar a manifestantes*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹³⁸³ Ministerio del Interior. September 22, 2015. [Incidentes en desocupación de edificio público](#).

¹³⁸⁴ Juzgado de Primera Instancia en lo Penal de sexto turno. IUE 102-342/2015. September 28, 2015. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹³⁸⁵ Subrayado. September 30, 2015. [Otros tres manifestantes procesados por incidentes en el Codicen](#); Espectador. September 30, 2015. [Jueza procesó a otros tres detenidos por los incidentes en el Codicen](#); El País. October 7, 2015. [Ocupantes dan su versión sobre el desalojo: ya son 10 los procesados](#); El Observador. October 7, 2015. [Justicia procesó a otro estudiante por incidentes en el Codicen](#).

¹³⁸⁶ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹³⁸⁷ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 139.

¹³⁸⁸ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and 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](#).

¹³⁸⁹ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 58.

D. Audiovisual Communication Services Law

1102. The Office of the Special Rapporteur observes that the Audiovisual Communication Services Law approved by the Congress and promulgated by the government on December 29, 2014, has not yet been regulated. As publicly expressed by government authorities, the Executive Branch is waiting for the Supreme Court of Justice (SCJ) to rule on actions of unconstitutionality filed by the companies DirecTV, Canal 10, Canal 4 and Canal 12, Nuevo Siglo, Montecable, Multicanal, Emisora del Este and various channels associated with the Uruguayan Subscription Television Chamber [*Cámara Uruguaya de Televisión para Abonados*]. The opposition party Partido Independiente also filed suit, as well as two pay television companies in the Department of Maldonado, in the southeastern part of the country (Cablevisión Pan de Azúcar and Piriápolis Cable TV)¹³⁹⁰. At the time of this report, the SCJ had not yet ruled on the constitutionality of the law.

1103. The SCJ on August 11 rejected a request from the Asociación de la Prensa Uruguaya, the Centro de Archivos y Acceso a la Información Pública and the Instituto de Estudios Legales y Sociales del Uruguay to act as *Amicus Curiae*¹³⁹¹ and issue an opinion on the proceedings for unconstitutionality of the Audiovisual Communication Services Law being studied by the Court.¹³⁹²

1104. The Office of the Rapporteur takes note that during parliamentary study of the draft Budget submitted by the Executive Branch, the Chamber of Deputies reallocated funds for the application and functioning of the Audiovisual Communication Services Law, which had not been provided for in the draft Budget submitted by the Executive Branch.¹³⁹³ On October 15, the Chamber of Deputies finished voting on the Budget, which was then sent to the Chamber of Senators.¹³⁹⁴ In July, during a visit to the country, the Special Rapporteur for Freedom of Expression of the IACHR, Edison Lanza, referred to the importance of allocating funds to apply the law and for the functioning of the control bodies created by it.¹³⁹⁵

E. Subsequent Liabilities

1105. In March, various ex-employees of the departmental government of Cerro Largo (North of the country) filed a criminal complaint for defamation against journalists and other persons who disseminated information about the supposed salaries of a group of 46 public servants during the administration from 2010 to 2015.¹³⁹⁶

1106. Two people supposedly linked to the organization Plenaria, Memoria y Justicia accused the Minister of the Interior, Eduardo Bonomi, of "lying" and asked for his resignation during the presentation of a book about his life on October 11. The demonstrators were removed from the room by security personnel, detained and taken to a police station. After making declarations to the Justice System, the judge in charge

¹³⁹⁰ Semanario Búsqueda. "Tomar la decisión". Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Semanario Búsqueda. October 22, 2015. [Juan Andrés Ramírez advierte que la "ley de medios" aprobada en 2014 es "una forma elaborada pero inequívoca de censura previa"](#). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; El Observador. July 25, 2015. [La Suprema Corte de Justicia tiene a estudio 19 expedientes contra la ley de medios](#).

¹³⁹¹ Amicus Curiae: Latin for "friend of the court." Frequently, a person or group who is not a party to a lawsuit, but has a strong interest in the matter, will petition the court for permission to submit a brief in the action with the intent of influencing the court's decision. Source: [Legal Information Institute. Cornell University Law School](#).

¹³⁹² Asociación de la Prensa Uruguaya (APU). August 13, 2015. [Organizaciones sociales expresan profunda preocupación por decisión de la Suprema Corte de Justicia que bloquea la participación ciudadana en los procesos judiciales de interés público](#).

¹³⁹³ El Observador. October 5, 2015. [Al final, el Frente reasignó solo el 5% del aumento de los gastos](#); La República. October 5, 2015. [Bancada del FA acordó nueva reasignación de los recursos](#); Asociación de la Prensa Uruguaya. September 7, 2015. [Preocupación ante decisión del Ejecutivo de no prever recursos para aplicar Ley de Servicios de Comunicación Audiovisual](#); La Diaria. September 2, 2015. [Se congeló la imagen](#).

¹³⁹⁴ El Observador. October 15, 2015. [La Cámara de Diputados terminó votación del Presupuesto](#). La República. October 16, 2015. [Votación del Presupuesto visto desde la tisanería del Palacio](#).

¹³⁹⁵ Espectador. June 17, 2015. [Lanza plantea incluir presupuesto para regular ley de medios](#).

¹³⁹⁶ Diario Atlas. March 26, 2015. [Confirmado: denuncia penal por difusión de lista de sueldos en redes sociales](#); Centro de Archivo y Acceso a la Información Pública (Cainfo). June 8, 2015. [Hostigamiento a través de la Justicia – Caso 34](#).

asked one of those involved to again appear at the installations to submit to a psychiatric evaluation. Representatives from the Ministry of the Interior affirmed to the Justice System that no complaint about the event had been filed.¹³⁹⁷

1107. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR affirms that: “public servants are subject to greater scrutiny by society. The laws that penalize offensive expression aimed at public servants generally known as ‘contempt laws’ are contrary to freedom of expression and the right to information.” Principle 10 of that same Declaration establishes that protection for reputation must be guaranteed only through civil sanctions in cases in which the offended individual is a public servant or a public or private person who has become voluntarily involved in matters of public interest.

F. Direct and Indirect Censorship

1108. According to the available information, in April, journalist Emiliano Wigman quit his job at radio station *Emisora Color* in Cardona (department of Soriano) after the owner prohibited him from airing a report on the use of the telephone at an office of the municipality for coordinating interviews with candidates of the Partido Nacional during the political campaign.¹³⁹⁸

1109. The Mercedes Benz representative in Uruguay, Carlos Bustin, on June 10 threatened a journalist from the weekly *Búsqueda* with withdrawal of his company’s advertising in that medium if it were to publish information associated with the possible sale of an airplane to the Presidency of the Republic. Acquisition of the aircraft had been questioned by opposition politicians and by the Court of Auditors of the Republic control body, because it was a direct purchase made without the issuance of a tender.¹³⁹⁹

1110. Principle 5 of the Declaration of Principles on Freedom of Expression of the IACHR states that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

G. Access to Public Information

1111. An Administrative Court judge in March ruled in favor of a lawsuit filed by the Uruguay Libre de Megaminería movement and ordered the Ministry of Industry, Energy and Mining [*Ministerio de Industria, Energía y Minería*] (MIEM) to provide information about a mining project by the Aratirí Company to extract iron. In June 2014, journalist Víctor Bacchetta, a member of the movement, submitted a request to the Ministry for access to public information to obtain environmental information about that enterprise. In the absence of a response by the Ministry, the Justice System on November 10, 2014 ordered the MIEM to provide the information. The MIEM appealed the decision and the Fourth Circuit Civil Appeals Court [*Tribunal de Apelaciones en lo Civil de cuarto turno*] upheld the first instance ruling.¹⁴⁰⁰ The Ministry supplied part of the requested information and declared that the rest of the data was reserved information. On February 2, 2015, the movement once again appeared before the Justice System, questioning the criterion for confidentiality of the Ministry and requested that that entity be ordered to provide the complete information. The Ministry

¹³⁹⁷ El País. October 12, 2015. [Piden pericia psiquiátrica para hombre que acusó a Bonomi de "mentiroso"](#); EFE. October 12, 2015. ["Bonomi", el libro que repasa la vida del ministro del Interior de Uruguay](#); El Observador. October 12, 2015. [Le gritó a Bonomi, lo detuvieron y ahora la Justicia le pidió pericia psiquiátrica](#).

¹³⁹⁸ Agesor. May 1, 2015. ["No me pases nada en el informativo de eso"](#); Sala de Redacción. No date. [Las llamadas](#); Asociación de la Prensa Uruguaya (APU). May 9, 2015. [Hechos que afectan la libertad de expresión](#).

¹³⁹⁹ Semanario Búsqueda. June 11, 2015. [Defensa espera una definición del TCR sobre el avión presidencia](#). Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Inter American Press Association (IAPA). June 12, 2015. [La SIP condenó amenaza contra semanario Búsqueda de Uruguay](#).

¹⁴⁰⁰ IACHR. [Annual Report 2014. 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. 13 March 9, 2014. Para. 957.

filed an appeal against the ruling, but the judge rejected it as “inadmissible” and again ordered it to provide information.¹⁴⁰¹

1112. The CAinfo organization on March 9 filed a lawsuit against the Ministry of the Interior for access to public information, after that entity had failed to respond to a request for information promoted by the organization in October of 2014, in which it required information about a system for surveillance and interception of telecommunications acquired by the Ministry and known as “El Guardián.” On March 13, the Justice System threw out the lawsuit with the understanding that “the right of access to public information cannot be considered absolute, as the laws and regulations themselves provide for exceptions” when dealing with reserved or confidential information, and the information required by the organization fell under those categories.¹⁴⁰² On April 22, the Appeals Court confirmed the ruling and considered that the required information – a copy of the protocol drafted by the Ministry of the Interior for telecommunications companies for implementation of the “El Guardián” electronic surveillance system – was “clearly covered by secrecy.” According to the Court, “it involves an instrument to fight against crime and public dissemination of its strengths and weaknesses could frustrate implementation of that task, opening the door to activities by hackers and/or persons who illegitimately aim to obstruct or impede investigations or repressions subject to jurisdictional control.”¹⁴⁰³

1113. After the ruling, Cainfo and the Instituto de Estudios Legales y Sociales del Uruguay (Ielsur) issued a press release expressing their “concern” over rejection of the request that the protocol be made public. “El Guardián will exponentially increase the surveillance capacity of the State towards people. In the framework of a Democratic State under the Rule of Law, these matters must be subject to a broad public debate and robust regulatory frameworks to prevent arbitrary actions and violation of rights,” they affirmed in the press release.¹⁴⁰⁴

1114. According to an investigation disseminated on October 15, titled “Del dicho al hecho: derecho de acceso a la información pública en Uruguay” (From Words to Deeds: Right of Access to Public Information in Uruguay) carried out by political scientists from the Department of Social and Political Sciences at the Universidad Católica, seven years after approval of the Law for Access to Public Information, lack of information persists in public administration regarding the obligation to permit citizens access to information held by the State. The researchers interrogated 320 entities about the number of budgeted employees on their payrolls. Information was provided in response to only 17.2% (55 requests). The low level of response, according to the researchers, shows that “the public servants seem to be negligent in complying with the law.” Certain entities that refused to supply the information demanded more data from the applicant, such as their profession, reason for requesting the information and whether they intended to publish it. However, the law for access to public information in Uruguay establishes that any person can request the information “that emanates from or is in the possession of any public entity, whether a state or non-state entity” and does not have to state the reasons why it wishes to obtain the information nor what it plans to do with it. The entity has the obligation to provide the information, except when it is reserved or confidential.¹⁴⁰⁵

1115. After certain events that cast suspicion on the quality of potable water in certain departments of the country, and which generated an intense public debate, academics and journalists

¹⁴⁰¹ La Red 21. April 1, 2015. [Justicia rechaza nuevo recurso de Ministerio de Industria para no entregar información sobre Aratirí](#); Montevideo Portal March 31, 2015. [Toda la información](#).

¹⁴⁰² Juzgado Letrado de Primera Instancia en lo Contencioso Administrativo de Primer Turno. *DA ROSA PÍREZ, TANIA c/ MINISTERIO DEL INTERIOR - ACCESO A LA INFORMACIÓN. LEY 18.381. IUE N° 0002-007603/2015*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. March 13, 2015.

¹⁴⁰³ Tribunal de Apelaciones en lo Civil de Quinto Turno. April 21, 2015. [DA ROSA PÍREZ, TANIA c/ MINISTERIO DEL INTERIOR - ACCESO A LA INFORMACIÓN. LEY 18.381. IUE N° 2-7603/2015](#).

¹⁴⁰⁴ Centro de Archivo y Acceso a la Información Pública (Cainfo). April 23, 2015. [“El Guardián” seguirá siendo secreto](#).

¹⁴⁰⁵ Semanario Búsqueda. October 22, 2015. *Funcionarios incumplen la ley de acceso*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

denounced that the national government had decided to centralize communication about the topic and prevent diverse actors involved with the problem –such as departmental governments, academia, the state company that provides tap water– from making statements to the communications media without authorization.¹⁴⁰⁶

1116. The Index of Active Online Transparency [*Índice de Transparencia Activa en Línea*] (ITaEL), an instrument created by (Cainfo) and implemented by the Universidad Católica del Uruguay with the objective of measuring the transparency of public entities through their webpages, stressed that the departmental governments and ministries did not achieve high levels of active online transparency in 2014. According to the report, presented on September 3, the ministries reduced their compliance with the obligations of the ITaEL from 47% in 2013 to 41% in 2014 and the municipalities reduced it from 41% to 35% during that same period.¹⁴⁰⁷

1117. Principle 4 of the Declaration of Principles of the IACHR affirms that: “[a]ccess to information held by the State is a fundamental right of individuals. The States have the obligation to guarantee the exercise of this right. The principle only admits 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.”

H. Communications Surveillance

1118. On September 17, the SCJ reported that, pursuant to an agreement signed with the Ministry of the Interior, the Justice System will not have the possibility of controlling the “El Guardián” software, a system for surveillance and interception of communications acquired by that Ministry. Its operation will be exclusively in the hands of the government, said SCJ minister Ricardo Pérez Manrique. Access by the judges would be limited to the computer program that will be used to approve the interceptions –which will later be executed using the “El Guardián”– which is called the Legal Interceptions Administrator System [*Sistema Administrador de Interceptaciones Legales*] (Sail). Therefore, according to the Minister of the Court, the Judicial Branch will be unable to audit the operation of the computer surveillance software.¹⁴⁰⁸

1119. The Office of the Special Rapporteur recalls that surveillance programs must be designed and implemented according to international standards on human rights. Particularly, States must 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 pursue a legitimate aim, and 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. Furthermore, the law must authorize access to communications and personal information only under the most exceptional circumstances defined by legislation. When national security is invoked as a reason for the surveillance of correspondence and personal information, the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate. Its application shall be authorized only in the event of a clear risk to protected interests and when the damage that may result would be greater than society’s general interest in maintaining the right to privacy and the free circulation of ideas and information.¹⁴⁰⁹

¹⁴⁰⁶ Semanario Búsqueda. June 28, 2015. *El gobierno restringe la información sobre la calidad del agua potable*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹⁴⁰⁷ Centro de Archivos y Acceso a la Información (Cainfo) y Instituto de Estudios Legales y Sociales del Uruguay (Ielsur). [Índice de Transparencia Activa en Línea \(ITaEL\) 2014](#); Centro de Archivos y Acceso a la Información Pública (Cainfo). September 3, 2015. [Ministerios e intendencias sin niveles altos de transparencia activa](#).

¹⁴⁰⁸ Semanario Búsqueda. September 17, 2015. *La Justicia no tendrá control directo sobre el software espía “El Guardián” y solo podrá ejercer una supervisión “cuantitativa”*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹⁴⁰⁹ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 415.

1120. 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.¹⁴¹⁰

I. Transition to Digital Television

1121. Implementation of digital television in Uruguay made little progress in 2015. After the Administrative Court on June 11 ruled in favor of a claim by the terrestrial digital pay television company Cablevisión and, for formal reasons, declared nullification of the decree that regulated the implementation of open digital television,¹⁴¹¹ the government prepared a new decree to extend the time limit until April 2016 in order to enable the new channels *VTV* and *Giro* to begin transmitting a digital signal, according to information from the press.¹⁴¹² The proposed date for the “analog blackout” (the moment in which all analog open television signals stop transmitting and only digital signals are left) was November of 2015. Similarly, as reported by the communications media, the government has not yet begun its publicly announced communications campaign to inform the population about the new digital technology and the adaptations that must be incorporated into their television sets to receive the signal.

J. Community Broadcasting

1122. The World Association of Community Radio Broadcasters [*Asociación Mundial de Radios Comunitarias*] (Amarc) in a communiqué called for prompt designation and integration of the Honorary Advisory Commission of Audiovisual Communication [*Comisión Honoraria Asesora de la Comunicación Audiovisual*] (Chasca), created by the Audiovisual Communication Services law [*Ley de Servicios de Comunicación Audiovisual*] to begin the work of regulation of the community sector. The law eliminated the Honorary Advisory Council on Community Radio Broadcasting [*Consejo Honorario Asesor de la Radiodifusión Comunitaria*] (Charc), so that integration of the new body is of “vital importance” for the sector, they said. They also urged the government authorities to undertake the “planning of specific policies for promotion of the community sector” and “regulations to ensure fair participation by the community sector in the distribution of official advertising.”¹⁴¹³

¹⁴¹⁰ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 415.

¹⁴¹¹ Tribunal de lo Contencioso Administrativo. June 11, 2015. *BERSABEL S.A. Y OTRA con PODER EJECUTIVO y MINISTERIO DE INDUSTRIA, ENERGÍA Y MINERÍA. Invalidity Action*. [Sentence 455/2015](#). Available for consultation at: <http://www.tca.gub.uy/fallos.php>

¹⁴¹² El País. August 30, 2015. [Tevé en señal de ajuste](#); El Observador. August 22, 2015. [Sin apagón analógico VTV desiste de TV digital](#); TodoTVnews. August 19, 2015. [VTV y Giro comenzarían a emitir en abril de 2016](#); Semanario Búsqueda. July 9, 2015. *A pocos meses del comienzo previsto para sus emisiones, el consorcio Giro aún no se instaló en el estudio de televisión*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Semanario Búsqueda. June 25, 2015. *A tres meses del “apagón analógico”, falta de iniciativa del gobierno para promover la televisión digital genera clima de “incertidumbre”*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹⁴¹³ Asociación Mundial de Radios Comunitarias (Amarc) Uruguay. September 1, 2015. [Comunicado de Amarc Uruguay en relación a la reglamentación y aplicación de la Ley de Servicios de Comunicación Audiovisual y la conformación de la Comisión Honoraria Asesora de la Comunicación Audiovisual \(CHASCA\)](#).

K. Government Advertising

1123. On August 10, a bill was submitted to the Congress at the initiative of CAinfo to regulate the production, planning, contracting and distribution of official advertising. After signature by lawmakers from four of the five parties with parliamentary representation, it became draft legislation. In the exposition of reasons for the draft legislation, it establishes that “in accordance with the best international practices and standards in the field of freedom of expression and good governance, as well as to promote more efficient expenditure of public funds, it is necessary to approve specific legislation that would regulate the distribution and allocation of official advertising.”¹⁴¹⁴

1124. Among other things, the bill establishes the prohibition against using official advertising to pressure and punish or reward and privilege communicators or media; the use for propagandistic purposes by political parties; or to include the voice, image or any other reference that identifies political officials who hold elected office or positions of confidence in the advertising pieces of public entities. It also prohibits official advertising during electoral campaigns, except for information issued by electoral authorities in relation to the organization of elections, or in case of emergencies. At the same time, it proposes that public entities would have the obligation to publish complete, permanent and up-to-date information on their webpage about the total amount allocated for advertising, the advertising investment plan approved by the entity and the amount of investment executed.¹⁴¹⁵

1125. The Office of the Rapporteur recalls that article 13.3 of the American Convention establishes that “the right of expression cannot be restricted through indirect ways or measures such as the use of official or private controls over newsprint, radio electric frequencies or elements or apparatus used to disseminate information or through any other measures aimed at preventing the communication and circulation of ideas and opinions.” In this sense also, the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights, in principle 13 indicates that “the use of the power of the State and funds from public finance; the concession of tariff privileges; the arbitrary and discriminatory allocation of official advertising and official credits; the awarding of radio and television frequencies, among others, with the objective of pressuring and punishing or rewarding and privileging social communicators and communications media according to their reporting lines, is contrary to freedom of expression and must be expressly prohibited by law.”

L. Other Relevant Situations

1126. Argentine entrepreneur Daniel Hadad in February acquired and took control of radio stations *Radio Colonia* AM 550 and *FM Mágica* 93.5, in the city of Colonia (Western part of the country, facing Buenos Aires), despite lacking authorization from the Regulatory Unit of Communication Services [*Unidad Reguladora de Servicios de Comunicación*] (Ursec). On March 25, the Asociación de la Prensa Uruguaya (APU) and Cainfo filed a complaint against Ursec in which they stated that those who appear as owners of the radio stations carried out a “transference of the real ownership and absolute management” of the stations to the Argentine entrepreneur. In their complaint, they maintained that this violates national legislation, which “to transfer, cede, sell, donate or carry out any other type of legal business that directly or indirectly implies a total or partial change in the ownership of authorizations or licenses shall require approval from the Executive Branch. According to the complaint by the organizations, the entrepreneur began a restructuring process by firing employees and making changes in the programming prior to having the authorization.¹⁴¹⁶ Finally, Hadad desisted from finalizing the purchase of these radio stations.¹⁴¹⁷

¹⁴¹⁴ Centro de Archivos y Acceso a la Información Pública (Cainfo). August 11, 2015. [Iniciativa de CAinfo es proyecto de ley](#); 180. August 9, 2015. [Regulación de publicidad oficial será proyecto de ley](#).

¹⁴¹⁵ Centro de Archivos y Acceso a la Información Pública (Cainfo). No date. [Anteproyecto de Ley sobre Asignación de Publicidad Oficial](#).

¹⁴¹⁶ El Observador. May 14, 2015. [Denuncian que argentino compró radios y violó la ley de medios](#); InfoyCom. March 4, 2015. [Coalición por una Comunicación Democrática reclama que URSEC investigue compra de radios en Colonia](#); Centro de Archivos y Acceso a la Información Pública (Cainfo). May 14, 2015. [CAinfo y APU presentaron nueva prueba por compra irregular de radios en Colonia](#); Semanario Búsqueda. March 5, 2015. [El argentino Daniel Hadad empieza a gestionar dos radios de Colonia aunque todavía no cuenta con el permiso](#)

1127. First Circuit criminal judge Carmelo Alexandra Facal on February 18 ordered the seizure of computer equipment from the weekly *El Eco* in Colonia following a complaint by the Antipiracy Association of Uruguay [*Asociación Antipiratería del Uruguay*] that demanded payment of compensation for the use of Adobe software without a license.¹⁴¹⁸ Cainfo, APU and the Organización de la Prensa del Interior (OPI) in a press release charged that the measure by the Justice System implied a “serious violation of freedom of expression” and involved a “severe non-fulfillment of the international treaties signed by the country in that field.” On April 16, the Adobe software company published a communiqué in which it denied any relationship with the initiatives carried out by the Antipiracy Association [*Asociación Antipiratería*] and gave assurances that it had not sent or authorized anyone to sign agreements that could involve the payment of fines, compensations or fees associated with the copyrights of Adobe Systems Inc. The equipment was subsequently returned.¹⁴¹⁹

1128. On June 21, the daily *El Telégrafo*, in the Department of Paysandú (Northwest), disseminated photographs and videos showing the damages caused by the collapse of one of the warehouses at the state company Alcoholes del Uruguay (Alur).¹⁴²⁰ Days later, the daily reported the collapse but the company did not provide information about the event, so the newspaper decided to use a drone to overfly the area and take photographs. After disseminating the images, on August 30 the newspaper received a summons from the Infractions Board of the National Civil Aviation and Infrastructure Directorate [*Dirección Nacional de Aviación Civil e Infraestructura*] (Dinacia), based on a complaint filed by Alur.¹⁴²¹ The Infractions Board [*Junta de Infracciones*] issued a “warning” to the newspaper for non-fulfillment of the regulations in “taking photographs without having previously registered with the corresponding authority.”¹⁴²²

que exige la ley. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Centro de Archivos y Acceso a la Información Pública (Cainfo). May 5, 2015. [Nuevos elementos en denuncia ante URSEC por compra irregular de radios en Colonia.](#)

¹⁴¹⁷ Asociación de la Prensa Uruguaya (APU). April 17, 2015. [Sobre situación en Radio Colonia y FM Mágica](#); Perfil. May 17, 2015. [No hay más información para este boletín: Hadad desistió de comprar Radio Colonia.](#)

¹⁴¹⁸ Asociación de la Prensa Uruguaya (APU). February 19, 2015. [Procedimiento judicial contra el semanario El Eco de Colonia viola la libertad de expresión.](#)

¹⁴¹⁹ Portal TNU. May 4, 2015. [Impactante procedimiento judicial contra el semanario El Eco de Colonia](#); Asociación de la Prensa Uruguaya (APU). April 22, 2015. [Caso El Eco: se cumplen dos meses de la incautación de los equipos sin avances en la Justicia.](#)

¹⁴²⁰ El Telégrafo. June 21, 2015. [Desde el aire, cómo quedó el techo del depósito de ALUR.](#)

¹⁴²¹ El Telégrafo. August 30, 2015. [ALUR denuncia a EL TELEGRAFO por fotografiar siniestro en flamante planta de alcoholes de Nuevo Paysandú](#); Semanario Búsqueda. September 3, 2015. [Alur denunció a “El Telégrafo” por usar dron con fines periodísticos.](#) Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹⁴²² El Telégrafo. October 27, 2015. [La Dinacia entiende que hay que sancionar con “apercibimiento” a EL TELEGRAFO por fotos en ALUR](#); El País. October 28, 2015. [La Dinacia apercibió a El Telégrafo por usar dron para sobrevolar ALUR.](#)

26. VENEZUELA¹⁴²³

1129. With regards to the right to freedom of expression, the Commission has already identified, in Venezuela the absence of a climate of tolerance that could facilitate active participation and the exchange of ideas among diverse sectors of society. The acts of violence against journalists and the media, in relation to their work, and the disqualifying statements by highly-placed civil servants that, as will be explained in this chapter, continues creating a restrictive scenario that continues to inhibit the exercise of freedom of expression.¹⁴²⁴ Furthermore, the Commission has also identified as one of the challenges for the very exercise of democracy in Venezuela the lack of mechanisms for access to public information on the administration of State organs as well as data that can serve to effectively assess the efficacy of human rights.¹⁴²⁵

1130. Different state legislation and state practices have discouraged expression critical of the government in the media, social networks and social protest. The criminal system, the main corrective body of the State, has continued to be used to punish, repress and inhibit critical expressions or press information on senior government authorities. In recent years important media outlets have been sold to entrepreneurs unknown in the media, changing editorial lines becoming friendlier to the government. Moreover, official control of news print and discretionary state advertising have contributed to reduce pluralism of information and opinion, representing a significant risk to the very existence of independent journalism and independence in investigation.

1131. On the other hand, several media outlets and civil society organizations have reported that there is surveillance and monitoring of the press and the opposition, all the while several media outlets are on the air with no legal protection because of the delay in frequency renewal. Venezuela is yet to adopt legislation on access to public information and has not published or handed over information that is undoubtedly of public interest, such as health matters or information regarding public accounts. The justice system in Venezuela has denied legal actions of *amparo* to guarantee access to information, counter to international law principles on the subject.

A. The Right to Peaceful Protest

1132. In terms of demonstrations, based on figures from the Venezuelan Observatory of Social Conflict (*Observatorio de Conflictividad Social (OVCS)*), in April 2015, students from the *Universidad Central de Venezuela (UCV)*, reported in the IV Youth Forum of the Americas that in 2014 9,286 protests took place in Venezuela, which represent an increase of 111% in comparison to 2013.¹⁴²⁶ They stated that 52% of the demonstrations that took place in 2014 were against the Government in general.¹⁴²⁷ They reported that in January 2015, 518 protests had already taken place, which represented an increase of 16% in comparison to January 2014.¹⁴²⁸ They pointed out that these protests were grounded on the rejection of the shortage of food, medicines and hygiene products (28%); labor rights (22%); citizen security and right to justice (15%); Government rejection (6%); and educational requirements (3%).¹⁴²⁹

¹⁴²³ This section corresponds to the section on freedom of expression in Venezuela in Chapter IV B, Volume I, of the IACHR 2015 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

¹⁴²⁴ IACHR. Annual Report 2014, Ch. IV Venezuela, para. 501.

¹⁴²⁵ IACHR. Annual Report 2014, Ch. IV Venezuela, paras. 651 ff.

¹⁴²⁶ UCV. Federación de Centros Universitarios. Informe sobre la crisis venezolana 2015, April 2015, Seventh Summit of the Americas, Fourth Young Americas Forum.

¹⁴²⁷ UCV. Federación de Centros Universitarios. Informe sobre la crisis venezolana 2015, April 2015, Seventh Summit of the Americas, Fourth Young Americas Forum.

¹⁴²⁸ UCV. Federación de Centros Universitarios. Informe sobre la crisis venezolana 2015, April 2015, Seventh Summit of the Americas, Fourth Young Americas Forum.

¹⁴²⁹ UCV. Federación de Centros Universitarios. Informe sobre la crisis venezolana 2015, April 2015, Seventh Summit of the Americas, Fourth Young Americas Forum.

1133. In its 2014 Annual Report, the Commission referred to the situation of demonstrations in Venezuela in which 43 deaths were recorded.¹⁴³⁰ In that respect, civil society organizations reported in the hearing on General Situation on Human Rights held in March that according to data from the Ministry of Public Prosecution, in 85.3% of the cases that were brought for alleged torture, the procedure was not continued and there were no conclusive acts. Therefore, they considered that these had created an institutionalized frame of impunity.¹⁴³¹

1134. Venezuelan *Penal Forum (Foro Penal Venezolano (FPV))* reported that from February 4, 2014 to May 31, 2015, 3,758 detentions related to demonstrations were recorded. Among the detainees, there were 372 children and adolescents. They stated that of these detainees, 296 were deprived of liberty following a warrant from a court and were or are deprived of liberty and the others were detained between 1 and 4 days and released by judicial order.¹⁴³² They also reported that through May 2015, 2,048 persons were under restricted liberty or subject to precautionary measures; that 767 detainees got their full release and that at least 638 persons were released without being brought before a judicial authority.¹⁴³³ It also reported that as of May 31, 2015, there were still 31 persons imprisoned as a result of the demonstrations and 46 on political grounds. Among these 77 imprisoned persons, 12 are students and 6 are women.¹⁴³⁴

1135. In addition, the Human Rights Clinic from the Catholic University “Andrés Bello” (CDH UCAB) also reported a series of violations committed during the detention and judicial processing of demonstrators, such as: solitary confinement of injured detainees in detention centers and military hospitals, where secrecy was maintained about their health and access by relatives was hampered; pressure against victims of violations to their physical integrity, who were forced to sign statements denying having been subjected to ill-treatment; prevention of private contact between detainees and their lawyers; use of public defenders as a mechanism to impede the victims from speaking about the circumstances in which they were injured in the first hearing before the court; the appearance in court of persons visibly injured or in precarious health conditions without judges leaving any record of it in the hearing minutes; a lack of forensic medical reports in the files; attempts to transform victims into perpetrators, by alleging that the injuries occurred in response to alleged injuries suffered by agents; and the submission into the files of medical reports prepared by non-independent health professionals working for the body that made the detention.¹⁴³⁵

1136. Amnesty International (AI), stated in its 2015 report that more than 3,000 people were detained during these protests and that even though most were accused and released, more than 70 remained in detention awaiting trial.¹⁴³⁶

1137. The Human Rights Committee of the United Nations also issued a statement about human rights violations that occurred during these demonstrations, and even though it took into account that some of the demonstrators had resorted to violence, it was concerned about the several reports about human rights violations committed in the context of the demonstrations, including cases of excessive and disproportionate use of the force, torture or ill-treatment, arbitrary detentions and lack of compliance with fundamental legal

¹⁴³⁰ IACHR, Annual Report, Chapter IV Venezuela. Section II.B.

¹⁴³¹ Information submitted by civil society during the hearing on [General Situation of Human Rights in Venezuela](#), IACHR 154th Period de Session, March 17, 2015.

¹⁴³² FPV. [Detenciones por motivos políticos, torturas y otros tratos crueles, inhumanos y degradantes, asesinatos. Resumen a mayo 2015.](#)

¹⁴³³ FPV. [Detenciones por motivos políticos, torturas y otros tratos crueles, inhumanos y degradantes, asesinatos. Resumen a mayo 2015.](#)

¹⁴³⁴ FPV. [Detenciones por motivos políticos, torturas y otros tratos crueles, inhumanos y degradantes, asesinatos. Resumen a mayo 2015.](#)

¹⁴³⁵ UCAB. Human Rights Clinic. *Que no quede rastro. El ocultamiento de evidencia médica y legal en el marco de manifestaciones y detenciones*, April, 2015.

¹⁴³⁶ AI. [Report 2014/15 “The State of the World’s Human Rights”](#), February 25, 2015. [Venezuela.](#)

safeguards.¹⁴³⁷ In this respect, the Human Rights Committee of the United Nations observed with concern that only eight State agents were found guilty and the reports concerning the participation of military personnel in exercising control over peaceful meetings and demonstrations.¹⁴³⁸ Among other things, the CCPR recommended that the State must ensure that the task of maintaining public order is entrusted to civilian authorities and not to military forces, to the possible extent.¹⁴³⁹

1138. Another issue of concern to the Commission this year, is the passing on January 27 of Order 8610 of 2015¹⁴⁴⁰ by the Ministry of Popular Power for Defense, which establishes “the standards on the task of the Bolivarian National Armed Forces in control functions of public order, social peace, and citizen coexistence in public meetings and demonstrations.” Likewise, this Order expressly authorizes the use of firearms in controlling public meetings and peaceful demonstrations. Paragraphs 3¹⁴⁴¹ to 9 of its Article 15¹⁴⁴² establish the possibility of using chemical agents with extreme caution and the use of firearms in the control of meetings and public demonstrations.

1139. In view of this, on February 27, 2015, according to the attributions laid down in Article 18 of its Statute, the IACHR requested from State information about the aforementioned Order.¹⁴⁴³ In it, the IACHR made reference to inter-American standards on peaceful protest and reiterated that the State must avoid the intervention of Armed Forces on issues of internal security and professional tasks that, according to their nature, are of the exclusive competence of a civilian police force, and efficient and respectful of human rights. The State did not submit the requested information.

1140. The Office of the UN High Commissioner for Human Rights expressed concern about said Order when observing that the use of military law-enforcement purposes should only be an exceptional way to respond to an emergency situation, when there is a need to support the civilian police. In such cases, the use of the military should only be temporary and the military should act under civilian command and control.¹⁴⁴⁴ Also, it indicated that, in line with international standards, the use of lethal force must be a last resort, only applied in accordance with principles of necessity and proportionality, and only in situations where it is strictly unavoidable in order to protect life.¹⁴⁴⁵ It urged the Government not to use the armed forces in the control of peaceful demonstrations, and to adhere in all circumstances to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and its own Constitution, which protect the right to peaceful demonstration and forbid the use of firearms and toxic substances in the control of peaceful demonstrations.¹⁴⁴⁶

1141. During the hearings held in March 2015, civil society organizations provided the IACHR information about this Order, stating that it is the only one that rules the armed forces in the control of public

¹⁴³⁷ CCPR. [Observaciones finales sobre el cuarto informe periódico de la República Bolivariana de Venezuela](#), (available only in Spanish), July 23, 2015.

¹⁴³⁸ CCPR. [Observaciones finales sobre el cuarto informe periódico de la República Bolivariana de Venezuela](#), (available only in Spanish), July 23, 2015.

¹⁴³⁹ CCPR. [Observaciones finales sobre el cuarto informe periódico de la República Bolivariana de Venezuela](#), (available only in Spanish), July 23, 2015.

¹⁴⁴⁰ Official Gazette of the Bolivarian Republic of Venezuela Decree No. 40.589 of January 27, 2015.

¹⁴⁴¹ Art. 15(3): Precautions on the use of chemical agents in a strictly localized way will be elevated in order to prevent their dissemination and extension in the immediate vicinity or close to buildings where people congregate at increased risk of suffering its consequences such as hospitals, retirement homes, schools, colleges and lyceums, as well as confined spaces or enclosed sites, and will refrain from propelling them directly against persons avoiding harmful consequences.

¹⁴⁴² Art. 15(9): They will not carry or use firearms in controlling public meetings and demonstrations, unless that, grounded on necessity and proportionality of the means employed to counter it, its wear and use become necessary.

¹⁴⁴³ Information request to the State (Article 18 of the IACHR Statute), February 18, 2015.

¹⁴⁴⁴ UN. [OHCHR: on the control of public demonstrations in Venezuela](#). February 10, 2015.

¹⁴⁴⁵ UN. [OHCHR: on the control of public demonstrations in Venezuela](#). February 10, 2015.

¹⁴⁴⁶ UN. [OHCHR: on the control of public demonstrations in Venezuela](#). February 10, 2015.

order with regard to cases of meetings and demonstrations, which means that the regulations for the use of force are not of a legislative nature.¹⁴⁴⁷ They also emphasized that this Order allows for the use of potentially lethal weapons.¹⁴⁴⁸ Human rights organizations also raised these concerns about this Order to the UN Human Rights Committee in June, 2015.¹⁴⁴⁹

1142. In this regard, the Commission recalls that peaceful social protests, as a manifestation of rights of assembly and freedom of expression, are a fundamental tool for the work of defending human rights, essential for political and social expression that may be critical of the authorities' activities, as well as for establishing positions and action plans with respect to human rights.¹⁴⁵⁰

1143. On this regard, the Commission has already considered that agents may impose reasonable restraints on demonstrators to ensure that they are peaceful or to contain those who are violent, as well as to disperse demonstrations that become violent and obstructive.¹⁴⁵¹ However, the Commission has been very clear when stating that "the actions of the security forces should protect, rather than discourage, the right to assembly and therefore, the rationale for dispersing the demonstration must be the duty to protect people. The law enforcement officer deployed in such contexts must contemplate the safest and quickest methods of dispersal that cause the least harm to the demonstrators."¹⁴⁵²

1144. In another demonstration that took place on February 24, 2015, 14 year-old Kluibert Roa received a gunshot wound to the head during clashes between students and State security forces in the area around the Catholic University of Táchira (UCAT). The information received indicates that Kluibert Roa, a high school student, was not participating in the protests. The Public Prosecutor's Office reported that a police officer has been arrested in the case and announced that the launch of an investigation.¹⁴⁵³

1145. In light of the above, the Commission issued a press release lamenting the death of the student¹⁴⁵⁴ and recalling the importance of rights of freedom of association and expression for the consolidation of democratic societies, and in that sense, any restriction must be justified by an imperative social interest. It also reiterated that the limitations that a State may impose on a demonstration or protest must be justified by the duty to protect people, and the means used must be the safest and least harmful for demonstrators and passersby. It also recalled that actions by State agents must not discourage the exercise of these rights and that any limitations on demonstrations must be governed by the principles of legality, necessity and proportionality.

¹⁴⁴⁷ Information submitted by civil society during the hearing on [General Situation of Human Rights in Venezuela](#), IACHR 154 Period de Session, March 17, 2015.

¹⁴⁴⁸ Information submitted by civil society during the hearing on [General Situation of Human Rights in Venezuela](#), IACHR 154 Period de Session, March 17, 2015.

¹⁴⁴⁹ OMCT and COFAVIC, *Informe Alternativo al Cuarto Informe Periódico Universal de la República Bolivariana de Venezuela sobre el cumplimiento del Pacto Internacional de Derechos Civiles y Políticos al Comité de Derechos Humanos de la ONU*. Prepared by: Coalition of Non-Governmental Organizations of Venezuela, academic institutions and organized civil society, June 2015; International Bar Association, *Comisión Internacional de Juristas and Asociación Internacional de Jueces. Informe alternativo conjunto al examen del cuarto informe periódico de la República Bolivariana de Venezuela presentado al Comité de Derechos Humanos, 114 Sesión del Comité de Derechos Humanos de las Naciones Unidas*, 29 June to 24 July, 2015, p. 14; AI. Venezuela, Submission to the United Nations Human Rights Committee, 114th Session, 29 June-24 July 2015.

¹⁴⁵⁰ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 129.

¹⁴⁵¹ Information request to the State of Venezuela (Article 18 of the IACHR Statute), February 18, 2015. (IACHR, Press Release No. 12/10. IACHR expresses concern regarding violence, persons dead and wounded during demonstrations in Venezuela. February 2, 2010.)

¹⁴⁵² Information request to the State of Venezuela (Article 18 of the IACHR Statute), February 18, 2015. (IACHR, Press Release No. 12/10. IACHR expresses concern regarding violence, persons dead and wounded during demonstrations in Venezuela. February 2, 2010.)

¹⁴⁵³ IACHR, March 3, 2015. [Press Release No. 22/15. IACHR laments Death of a Student during protests in Venezuela.](#)

¹⁴⁵⁴ IACHR, March 3, 2015. [Press Release No. 22/15. IACHR laments Death of a Student during protests in Venezuela.](#)

1146. The Commission recalls in this chapter that the use of force in public demonstrations must be the exception, not the rule, and must be under strictly necessary circumstances, in keeping with recognized international principles.¹⁴⁵⁵ The Commission considers that firearms should be excluded from the devices used to control social protests. The ban on carrying firearms and ammunition lead by officials who may come in contact with the protesters has been proven as the best measure of prevention of lethal violence and deaths occurring in a context of social protests.

1147. Operations can allow that somewhere outside the range of the event firearms and ammunition are available for exceptional cases where there is such a violent situation that its usage becomes necessary. In this case end, there must be explicit rules about who has the power to authorize their usage and the ways in which this authorization is properly documented.

1148. Moreover, the Commission notes that many of the less lethal weapons used in the context of social protests have indiscriminate and in certain cases lethal effect. This is the case with rubber bullets fired at close range and to the upper body, tear gas fired into persons' bodies, irritating gases used against children or elderly, or stun guns used against people with cardiac affections. Therefore, it must be considered not only the design or the characteristics of the weapon, but also other factors related to the use and control.

1149. Also, it urges the State to adopt mechanisms to avoid excessive use of force by public law enforcement in protest marches and demonstrations, an obligation that must be taken into account especially in the case of children and adolescents.¹⁴⁵⁶ The Commission reiterates that one should avoiding armed forces intervention in matters of internal security and professional tasks which, by their nature, correspond exclusively to a civilian police force that is efficient and respectful of human rights.

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

1150. Threats, aggressions and harassment against journalists and the media continued in 2015, and dozens of cases were reported. According to several social organizations in Venezuela, 166 cases have been reported for the first nine months of the year. In addition they reported that all these events lie in "total impunity." "Not one of the cases where complaints were filed with the Office of the Public Prosecutor, have been brought to justice", stated Marco Ruiz, secretary general of the National Union of Press Workers, during a hearing before the Inter-American Commission on Human Rights (IACHR) on the situation of freedom of expression in Venezuela, held on October 19.¹⁴⁵⁷ Some of these cases will be further described in the following paragraphs.

1151. During 2015, several cases of aggression were reported against journalists covering demonstrations, protests over scarcity of products, or lines that formed at supermarkets, while costumers were attempting to purchase food and other home products. The cases involved journalists from *Telegen*, *Globovisión*, *Canal 11*, *Contrapunto*, *InfoVzla*, *El Nuevo País*, *Nueva Prensa de Oriente*, *Últimas Noticias*, *La Mañana*, *Diario Visión Apureña*, *El Norte*, *En Pauta* and *NTN24*, among others. In some of these occasions, the reporters were detained by the National Bolivarian Guard [*Guardia Nacional Bolivariana (GNB)*], which is a branch of the Armed Forces, and their video or photographic materials were destroyed.¹⁴⁵⁸

¹⁴⁵⁵ IACHR, March 3, 2015. [Press Release No. 22/15. IACHR laments Death of a Student during protests in Venezuela.](#)

¹⁴⁵⁶ IACHR, March 3, 2015. [Press Release No. 22/15. IACHR laments Death of a Student during protests in Venezuela.](#)

¹⁴⁵⁷ IACHR. 156 Period of Sessions. Hearing "Situation of Freedom of Expression in Venezuela". October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹⁴⁵⁸ Espacio Público. January 12, 2015. [Amenazan a equipo de prensa de Contrapunto y NTN24 en el Clínico](#); Instituto Prensa y Sociedad (IPYS). January 13, 2015. [Caracas: Dos reporteros gráficos fueron dejados en libertad con régimen de presentación cada 30 días](#); "Reporteros gráficos Blas Santander y Anthony Lares detenidos por la GNB se encuentran en Fuerte Tiuna. Exigimos inmediata liberación". Twitter account of Sindicato Nacional de Trabajadores de la Prensa de Venezuela @sntpvenezuela. [January 10, 2015- 17:55 PM](#); NTN24. January 11, 2015. [Foro Penal Venezolano informa de la detención de dos periodistas en protesta de Santa Fe](#); Voz de América. January 13, 2015. [Imputados por fotografiar colas y protestas](#); El Universal. January 13, 2015. [Llevan a tribunales a detenidos de Santa Fe y San Bernardino](#); El Universal. January 13, 2015. [Liberado con régimen de presentación dirigente vecinal Carlos Julio Rojas](#); Espacio Público. January 15, 2015. [PNB agrede a fotógrafo en Anzoátegui](#); El Venezolano. January 12, 2015. [Militantes del Psuv retuvieron a médicos y periodistas en hospital de Caracas](#); El Universal. February 2, 2015. [Expresión Libre: Enero fue un mes de retrocesos a la Libertad de](#)

1152. The elimination of records was repeated in the coverage of other news. It occurred in situations that involved reporters from *El Nacional*, *El Propio*, *Televen*, *El Norte*, *El Metropolitano*, *Noticia al Día*, *Versión Final*, *Antorcha TV*, *Televisa*, *Nueva Prensa de Guayana*, and *El Carabobeño*. In some cases, the victims denounced that they were hit by the authorities during the attempt to take away their equipment.¹⁴⁵⁹

1153. Pableysa Ostos, a journalist from the Delta Amacuro newspaper *Notidiario*, reported that she was harassed by city councilors from the municipality of Casacoima on January 21, due to an article that she had published a few days earlier.¹⁴⁶⁰

1154. There were also aggressions against State-based media outlets. On February 8, two individuals threw explosives at the headquarters of the public TV channel *Vive*, in Maracaibo. No injured persons and no material losses were reported.¹⁴⁶¹ On February 18 a team of the program *Zurda Konducta* was attacked by a group of individuals during a manifestation in Caracas, due to the imprisonment of the opposition politician Leopoldo López.¹⁴⁶²

1155. The arrests for exercising the right to freedom of expression continued in 2015. The president of the Venezuelan Association of Medical Offices [*Asociación Venezolana de Clínicas y Hospitales*], Carlos Rosales Briceño, was arrested on February 6 by the Bolivarian Intelligence Service [*Servicio Bolivariano de Inteligencia – SEBIN*] after going to the media to denounce the scarcity of basic supplies for health centers. He was freed hours later.¹⁴⁶³ In another case, journalists from the television channel

Expresión; Espacio Público. January 19, 2015. [Apedrean a equipo de Últimas Noticias en Catia](#); Noticiero Digital. January 19, 2015. [Periodista de UN: En Catia ya no quieren a UN, allá la escasez es peor que en el Este](#); Confirmado. February 3, 2015. [Violentan a periodista Diana Carolina Ruiz en Farmatodo La Florida](#); “Integrante de consejo comunal la Florida dentro de Farmatodo vigilan a consumidores y hasta se atreven a quitarle el teléf a quien grabe”. Twitter account of Diana Carolina Ruiz @dianacaroruiz. [February 3, 2015- 4:38 AM](#); Espacio Público. February 19, 2015. [Golpean a periodistas en Falcón mientras cubrían una cola](#); Venezuela Awareness. March 16, 2015. [16Mz Sargento mayor agredió periodistas en Apure](#); Venezuela al Día. July 29, 2015. [Sobre detención de periodista Nazareth Montilla Machado: “Ella es expresión de la ciudadanía que se rebela”](#); InfoVzla. August 4, 2015. [Julio fue también un mes aciago para la prensa en Venezuela](#); Espacio Público. July 29, 2015. [“GNB me apuntó con un arma larga para que dejara de grabar”](#); Instituto Prensa y Sociedad (IPYS). September 16, 2015. [Yaracuy: Funcionarios de la GNB retuvieron a periodista durante cobertura](#); Espacio Público. September 11, 2015. [Detienen a periodista en Yaracuy mientras hacía cobertura en una cola](#).

¹⁴⁵⁹ *El Nacional*. January 26, 2015. [PNB quitó memoria de cámaras a fotógrafos de El Nacional y El Propio](#); Espacio Público. February 25, 2015. [GNB intenta quitar cámara a periodistas en el Zulia](#); RunRun.es/YouTube. February 25, 2015. [Agresión a camarógrafo de Televen en el estado Zulia](#); El Tiempo. March 9, 2015. [Editor del diario Metropolitano culpó a diputado Arteaga por agresiones](#); En Oriente. March 9, 2015. [Reportero gráfico fue agredido en terminal Bolivariano de Barcelona](#); Espacio Público. March 10, 2015. [Cicpc interrumpe labores periodísticas en el Zulia](#); El Norte. March 22, 2015. [Antorcha Tv repudia agresiones contra equipo del canal](#); Antorcha Tv. March 21, 2015. [Comunicado Antorcha TV, C.A.](#); Henry Chirinos/YouTube. May 30, 2015. [Marcha Venezuela #30M Efectivos de la GNB agreden a periodista en el zulia](#); Colegio Nacional de Periodistas. June 1, 2015. [CNP Zulia solicita la destitución inmediata del Director Polimaraçaiba](#); Venezuela Reporta. June 1, 2015. [PARA OCULTAR REPRESIÓN! GNB pateó, golpeó y sometió a periodista para quitarle su cámara +VIDEO](#); NTN24. July 31, 2015. [Un muerto y 30 detenidos deja ola de saqueos en San Félix, Venezuela](#); InfoVzla. August 4, 2015. [Julio fue también un mes aciago para la prensa en Venezuela](#); Espacio Público. July 31, 2015. [Agreden y roban a reporteros durante saqueos en Bolívar](#); “El funcionario de la PNB me hizo borrar las fotos y me regreso la camara. Identificado como prensa igual arremetió contra mi persona”. Twitter account of Andrews Abreu @AndrewsAbreu. [August 4, 2015- 8:48 AM](#); La Patilla. August 4, 2015. [Libertad de expresión? PNB golpea a fotógrafo y le borra material de la cámara](#); “Fotorreportero @AndrewsAbreu se encontraba cubriendo situación irregular en Makro Valencia cuando fue atacado por PNB”. Twitter account of Sindicato Nacional de Trabajadores de la Prensa @sntpvenezuela. [August 4, 2015- 8:42 AM](#).

¹⁴⁶⁰ Espacio Público. January 21, 2015. [Periodista es hostigada por concejales en Delta Amacuro](#); Instituto Prensa y Sociedad (IPYS). January 26, 2015. [Delta Amacuro: Periodista de impreso regional fue intimidada por concejales de Cámara Municipal](#).

¹⁴⁶¹ La Verdad. February 9, 2015. [Lanzan bombas molotov a la sede de Vive TV en Maracaibo](#); “La detonación de las molotov generó daños materiales en una de las unidades móviles d @ViVeOccidente”. Twitter account of Richard Luzardo @richardluz4. [February 9, 2015- 2:53 AM](#).

¹⁴⁶² La Verdad. February 18, 2015. [Fiscalía investiga agresión a equipo de VTV](#); Venezolana de Televisión. February 18, 2015. [Periodista y camarógrafo del programa Zurda Konducta fueron agredidos durante manifestación en Chacaíto](#).

¹⁴⁶³ El Impulso. February 7, 2015. [Preso médico por alertar sobre falta insumos](#); El Impulso. February 6, 2015. [Sebin deja en libertad al Presidente de la Asociación de Clínicas y Hospitales](#); *El Nacional*. February 6, 2015. [Liberado presidente de la Asociación de Clínicas y Hospitales](#).

VerTVNoticias.com were detained for two hours on February 20 at the SEBIN headquarters, as they were covering the news of the arrest of the mayor of Caracas, Antonio Ledezma.¹⁴⁶⁴

1156. On their turn, governmental authorities also mentioned the media. On March 3, President Nicolás Maduro accused the TV channels *Telegen* and *CNN* of being involved in plans to overthrow the government. He affirmed that he received the information that both TV stations were disseminating a video to “activate” the alleged insurrection.¹⁴⁶⁵

1157. On March 10, President Maduro stated that the media outlets that reported on the alleged dungeons known as “La Tumba” would be fined, since, in his words, such places did not exist. The existence of “La Tumba” was mentioned by social organizations and media outlets as a center of torture located inside the SEBIN headquarters. According to these allegations, students and political prisoners were sent to this place.¹⁴⁶⁶

1158. On March 19, the president of the National Assembly, Diosdado Cabello, verbally harassed representatives of NGOs from Venezuela and journalists on his TV show *Con el mazo dando*. Cabello mentioned representatives of Venezuelan NGOs who were outside the country and provided details regarding flight numbers and times of departure and arrival.¹⁴⁶⁷ He also accused the president of the newspaper *El Nacional*, Miguel Henrique Otero, of leaving the country and squandering money, while refusing to pay 320,000 bolivars to the tax office.¹⁴⁶⁸

1159. On March 20, President Maduro affirmed that he asked the owners and directors of the TV channels of Venezuela “why are they causing so much damage” to the country with “the garbage that they sell.” He also stated that *Globovisión* “is already beyond the point of cure” and “is a total failure for the nation.”¹⁴⁶⁹

1160. Journalist Luis Córdoba, from the newspaper *El Tiempo*, denounced that he was “barbarically hit” by members of the Municipal Police of Anaco and of the Bolivarian National Police on April 30 while covering a protest outside the municipality of Anaco, state of Anzoátegui.¹⁴⁷⁰

1161. Journalist Saúl Acevedo denounced the governor of Táchira, José Vielma Mora, for ordering a smear campaign against his person via the Twitter account of the Governor’s Office. On May 25 were published messages on that profile that affirmed that the journalist launched a call to burn public transportation units.¹⁴⁷¹

¹⁴⁶⁴ VerTV Noticias/YouTube. February 20, 2015. [EXCLUSIVA A periodista Gabriela Salcedo la detuvieron por maquillarse frente al SEBIN](#); Espacio Público. February 20, 2015. [Retenidos en el Sebin tras identificarse como periodistas](#).

¹⁴⁶⁵ Tal Cual. March 4, 2015. [Investigarán a Telegen](#); Espacio Público. March 4, 2015. [Maduro hostiga a Telegen](#); 2001. No date. [Maduro acusó a Telegen y CNN de estar involucrados en el golpe](#).

¹⁴⁶⁶ Colegio Nacional de Periodistas. March 11, 2015. [Sancionarán a medios que informen de “La Tumba”](#); Espacio Público. March 11, 2015. [Sancionarán a medios que hablen de “La Tumba”](#); Info Cifras/CNN/YouTube. February 20, 2015. [Polémica entrevista de Fernando del Rincón a Tarek William Saab](#).

¹⁴⁶⁷ IACHR. March 20, 2015. [Press Release No. 32/15. IACHR Expresses Alarm over Intimidation in Venezuela directed against People Who Come before the Inter-American Human Rights System](#); Instituto Prensa y Sociedad (IPYS). March 19, 2015. [Caracas: Presidente del Parlamento intimidó activistas de DD HH](#); Espacio Público. March 19, 2015. [Cabello ataca a defensores de Derechos Humanos](#).

¹⁴⁶⁸ Espacio Público. March 19, 2015. [Cabello ataca a defensores de Derechos Humanos](#).

¹⁴⁶⁹ La Patilla/Venezolana de Televisión/YouTube. March 20, 2015. [Maduro: Globovisión es una pérdida total para la patria](#); El Nacional/Venezolana de Televisión. March 20, 2015. [Maduro afirma que “Globovisión es una pérdida total para la patria”](#).

¹⁴⁷⁰ Diario El Vistazo. May 1, 2015. [Periodista Luis Córdoba agredido por PNB y Policía de Anaco](#); El Tiempo. May 1, 2015. [Detienen a ocho opositores por manifestar en Anaco](#); Espacio Público. May 6, 2015. [Golpean y detienen por unas horas a periodista en Anzoátegui](#).

¹⁴⁷¹ La Nación. May 26, 2015. [“Me quiere incriminar el gobernador en delitos que yo no he cometido”](#); “El @GobiernoTachira y @VielmaEsTachira PROMUEVEN la VIOLENCIA y pretenden culpar @Juanpalencia y @SaulAcevedo”. Twitter account of Juan Carlos Palencia @Juanpalencia. [May 25, 2015- 8:23 PM](#); “El Pueblo ya sabe en qué andan @Juanpalencia y @SaulAcevedo y la orden que dieron.”

1162. Cameraman Alejandro Ledo and journalist Elena Santini, of the press team of the Office of the Mayor of the municipality of Mario Briceño Iragorry, in the state of Aragua, were beaten and thrown out from the second floor of the headquarters of the local government on June 2, by a group of allegedly pro-government partisans that were manifesting against the Mayor. The demonstrators burst into the building and attempted to take away Ledo's camera, who was recording the protest. Journalist Pedro Hjansser, also from the press team of the Office of the Mayor, hit along with Ledo and Santini. One year and a half before the incident, Ledo was submitted to a spine surgery after being trampled at a rally.¹⁴⁷²

1163. On June 19, journalist Beatriz Lara and photojournalist Alfredo Paradas, from the newspaper *El Aragüeño*, were detained, insulted and physically assaulted by members of the Corp for Scientific, Penal and Criminal Investigations [*Cuerpo de Investigaciones Científicas Penales y Criminalísticas – CICPC*] while covering the transfer of highly dangerous common prisoners in Villa de Cura, state of Aragua.¹⁴⁷³ When the reporter approached a sub-inspector to make him questions about the ongoing activities, he replied to her with insults. She was then handcuffed to a light pole, along with the accompanying photographer. After the episode, the involved public officials apologized and argued that they were “very stressed.”¹⁴⁷⁴ The State of Venezuela reported that an investigation was opened after the complaint by the journalist and that officials of the CICPC had been accused “of committing the criminal offenses of injuries, unlawful deprivation of liberty, and inhuman and degrading treatment.” It also indicated that Lara has had protection as of July, “with daily and nightly rounds at the victim’s residence.”¹⁴⁷⁵

1164. On June 19, Gabriela Di Giancaterino, journalist of the newspaper *La Nación*, was arrested for taking pictures of procedures against smuggling on the route between San Cristóbal and San Antonio, in the state of Táchira, at the frontier with Colombia. Di Giancaterino was transferred to a military post, where she remained for over one hour and was warned that her acts could have legal consequences.¹⁴⁷⁶

1165. On July 9, the Vice-President of Venezuela, Jorge Arreaza, accused the radio station *Fe y Alegría* [Faith and Happiness] of undertaking a “psychological work against the population”, after he disliked the station’s coverage of the floods in the state of Apure, and ironically referred to the name of the station as “terrorism and sadness.”¹⁴⁷⁷

1166. On August 10, the Twitter account of journalist Pedro Carvajalino, host of the TV show “*Zurda Konducta*,” broadcasted by public television VTV, was hacked. The TV host was insulted and threatened to have his user account deleted from Twitter. It was the fourth time when a similar threat occurred to him.¹⁴⁷⁸ The Twitter account of journalist Ibéyise Pacheco was also hacked on August 12.¹⁴⁷⁹

Twitter account of Gobierno de Táchira @GobiernoTachira. [May 25, 2015- 7:11 PM](#); Espacio Público. May 26, 2015. [Gobernación de Táchira vincula a periodista con hechos vandálicos que no ocurrieron.](#)

¹⁴⁷² Telemundo 51. June 4, 2015. [Venezuela: tiran a camarógrafo de segundo piso](#); El Nacional. June 3, 2015. [Camarógrafo agredido en Aragua presenta edema cerebral](#); Diario Las Américas. June 4, 2015. [Chavistas violentos tiran a periodista de un segundo piso](#); Instituto Prensa y Sociedad (IPYS). June 3, 2015. [Aragua: Agredidos brutalmente dos periodistas y camarógrafo de la Alcaldía Mario Briceño Iragorry.](#)

¹⁴⁷³ Colegio Nacional de Periodistas Seccional Aragua. June 19, 2015. [CNP Aragua exige todo el peso de la ley contra violadores de los DDHH](#); Instituto Prensa y Sociedad (IPYS). June 19, 2015. [Aragua: Funcionarios del CICPC golpearon y humillaron a periodista y reportero gráfico de impreso regional](#); Sumarium. June 19, 2015. [Periodista de El Aragüeño denuncia salvaje agresión de funcionarios.](#)

¹⁴⁷⁴ Colegio de Periodistas Seccional Aragua. June 19, 2015. [CNP Aragua exige todo el peso de la ley contra violadores de los DDHH](#); Sumarium. June 19, 2015. [Periodista de El Aragüeño denuncia salvaje agresión de funcionarios.](#)

¹⁴⁷⁵ Government of the Bolivarian Republic of Venezuela. Communication from the State on the draft of “IACHR Report 2015 Observations of the State on Chapter IV.” AGEV-000136, received December 14, 2015.

¹⁴⁷⁶ La Nación. June 19, 2015. [Detenida periodista de La Nación en un puesto militar fronterizo por tomar una foto](#); Instituto Prensa y Sociedad (IPYS). June 21, 2015. [Táchira: Agentes de la GNB detuvieron a periodista por tomar una fotografía.](#)

¹⁴⁷⁷ Radio Fe y Alegría. July 9, 2015. [Vicepresidente Jorge Arreaza opinó sobre el trabajo de Radio Fe y Alegría ante emergencia de Guasdalito \(+Audio y Video\)](#); Noticias Venezuela/YouTube. July 9, 2015. [Jorge Arreza evalúa situación de Apure.](#)

¹⁴⁷⁸ Correo del Orinoco. August 10, 2015. [Recuperan cuenta en Twitter del conductor de Zurda Konducta](#); El Nacional. August 10, 2015. [Hackearon la cuenta Twitter del conductor de Zurda Konducta](#); “Cuenta Recuperada. Estamos de regreso no podrán con nosotros!

1167. On August 18, reporters from several media outlets were attacked and detained by agents of the Bolivarian National Guard while covering a police operation in the estate of Carabobo. In some cases, the agents also destroyed the equipment of the reporters.¹⁴⁸⁰

1168. On August 26, Cabello accused journalist Damián Prat of being linked to an alleged plan to destabilize the government. “Wilson Castro from Justice First in the State of Bolívar [*Primero Justicia en el Estado de Bolívar*], (...) joined by councilman Julián Briseño, journalist Damián Prat, Igor Naranjo Rojas and Muhamad Yusef Díaz, currently are holding very secret meetings at El Callao (...) led by Luis Espinoza, councilman for Will of the People [*Voluntad Popular*], (...) to propel street activities in all of Guyana, claiming an alleged food scarcity.”¹⁴⁸¹

1169. Several journalists were harassed and assaulted by pro-government demonstrators on September 10, during the coverage of the main hearing of the trial of political leader Leopoldo López.¹⁴⁸²

1170. On September 23, the Board of Social Responsibility of Conatel criticized journalist César Miguel Rondón for allowing the Mayor of the bordering Colombian city of Cúcuta, to question Venezuelan authorities on a radio interview. The body considered these to be “insulting accusations” wherein “the interviewee did not support” his statements. The body noted: “Quite to the contrary, he remained embarrassingly silent, which leads to the belief that he was in complete agreement with the Mayor of Cúcuta and his slander against Venezuela. Conatel called upon a need for patriotism within the context of the border conflict between Colombia and Venezuela, and requested both the journalist and the radio station “use the radio spectrum in a responsible manner.”¹⁴⁸³

1171. In August the IACHR and the Special Rapporteurship stated in a press release that within the context of an election year, and with a reduction in pluralism of information and fewer independent media outlets, it was urgent to cease verbal and judicial harassment that restrict the flow of ideas and opinions. The Commission has been especially concerned and is still concerned about the number of State actions aimed at limiting the media outlets that have an informational line that is independent or criticizes the government, as

#VivaChavez #CorreLaVoz #EntreChavistasNosSeguimos”. Twitter account of Pedro Karvajalino @pedrokconducta. [August 10, 2015- 4:46 PM](#).

¹⁴⁷⁹ Espacio Público. August 13, 2015. [Hackearon cuenta de Twitter de la periodista Ibéyise Pacheco](#); “Recuperada”. Twitter account of Ibéyise Pacheco @ibepacheco. [August 14, 2015- 7:50 AM](#); A Todo Momento. August 12, 2015. [Cuenta oficial de twitter de Ibéyise Pacheco fue hackeada](#).

¹⁴⁸⁰ The journalists assaulted were Carlos Bermúdez, cameraman of *Venevisión*; Ketherine Ledo, journalist of *Notitarde*; Robert Mogollón, press photographer of *Notitarde* and Rafael Freites, journalist of *El Carabobeño*, among others. Espacio Público. August 18, 2015. [Detienen a siete trabajadores de la prensa en OLP de Carabobo](#); “#AHORA 01:10 Fotografo y Chofer de El Carabobeño ya fueron liberados despues de ser detenidos en Brisas del Hipodromo”. Twitter account of Andrews Abreu @AndrewsAbreu. [August 18, de 2015, 10:35 AM](#); IPYS. August 18, 2015. [Carabobo: Periodistas fueron agredidos y retenidos por efectivos de la GNB durante cobertura](#); “Periodista de #Venevisión Lisolet García también fue agredida durante cobertura en Brisas del Hipódromo”. Twitter account of Ruth Lara Castillo @rlaracastillo. [August 18, 2015- 9:29 AM](#); Notitarde. August 18, 2015. [CNP exige que efectivos de la GNB paguen con todo el peso de la ley tras brutal agresión a periodistas](#); “Equipo de Notitarde ya fue liberado del punto de control de la GNB. Todos estamos bien. Funcionarios alegaban que teníamos que pedir permiso”. Twitter account of Ketherine Ledo @KetherineLedo. [August 18, 2015- 10:30 AM](#); Sindicato Nacional de Trabajadores de la Prensa – National Union of Press Workers. August 18, 2015. [SNTP rechaza detención de 7 periodistas que cubrían OLP en Carabobo](#).

¹⁴⁸¹ Noticias 24/YouTube. August 26, 2015. [Con el Mazo Dando, miércoles 26 de agosto de 2015](#). [03:00:15 – 03:01:24].

¹⁴⁸² “Alexandra Castillo, corresponsal de SuNoticiero.com también fue golpeada por chavistas q nos echaron del Palacio de Justicia #10S”. Twitter account of Andreina Flores @andreina. [September 10, 2015- 10:37 AM](#); “Disturbios a los alrededores del Palacio de Justicia, denuncian ataque de presuntos encapuchados en moto a los presentes en el lugar”. Twitter account of Alessandra Artal @alessartal. [September 10, 2015- 10:06 AM](#); El Nacional. September 10, 2015. [Intentamos evadir a los oficialistas, pero los mismos guardias no lo permitían](#); Espacio Público. September 10, 2015. [Agredidos cinco periodistas en el Palacio de Justicia](#).

¹⁴⁸³ Comisión Nacional de Telecomunicaciones (Conatel). September 24, 2015. [Directorio de Responsabilidad Social a la colectividad nacional](#).

this poses a significant risk to independent journalism and freedom of expression, as well as the free circulation of information available to the public facing the December elections.¹⁴⁸⁴

C. Harassment on Foreign Media

1172. The president of the National Assembly, Diosdado Cabello, linked journalist Mónica Villamizar, of the Qatari TV station *Al Jazeera*, with intelligence agencies of the United States of America after some TV reports in Caracas about the scarcity of supplies and the poor conditions of the public transportation service. In his TV program “Con el mazo dando”, Cabello read a “warning” sent by an informant, who claimed that: “Journalists, correspondents for international press agencies tied to North American intelligence agencies or their allies, have been entering Venezuela. It is not by coincidence that there are correspondents who have experience in warlike conflicts and domestic conflict in the Middle East”. Cabello added: “Such is the case with Mónica Villamizar Villegas, Texas born North American journalist, closely linked to urbanism and the international extreme right. (...) She has held meetings with several right wing people from the Venezuelan opposition.” He remarked: “We do not know if they have work authorization. That is a matter that should be looked into by the State security agencies, for them to determine if these people are authorized to work as journalists.” Villamizar denied the accusations.¹⁴⁸⁵

1173. Nicolás Maduro, president of the Republic, stated in March that “the directors of Spanish EFE Agency are stupid people undertaking a campaign against Venezuela,” since they “hate Venezuela.” According to President Maduro, EFE published that there were plans for an internal coup d’état in the country. The agency denied that it had issued such information.¹⁴⁸⁶ President Maduro ascribed to the agencies the attempt to promote a “psychological war machinery aimed at imposing opinion matrices (...), to manipulate the human mind.”¹⁴⁸⁷

1174. During the Summit of the Americas held in Panama in April, President Maduro also harassed the US-based TV channel *CNN en Español* for disseminating what he saw as “lies against Venezuela and Latin America.”¹⁴⁸⁸ In August, the governor of the state of Aragua, Tareck El Aissami, referred to *CNN en Español* as a “terrorist” and “criminal” channel, and disparaged its correspondent Osmar Hernández after *CNN* published a text reporting cases of looting in Venezuelan cities, which were taking place at the time when Hernández was covering the shortage of supplies in those locations. A few hours later, *CNN en Español* apologized for what it considered to have been a mistake.¹⁴⁸⁹

1175. On May 24, Minister of Foreign Affairs Delcy Rodríguez affirmed that the social media “are the armed wing” of a public opinion used by an “internationally orchestrated policy of communications to lash out against Venezuela”. According to Rodríguez, 71% of the information about Venezuela in the Spanish media was negative. She mentioned this figure as a “ferocious campaign.”¹⁴⁹⁰

¹⁴⁸⁴ IACHR. August 24, 2015. [Press Release 93/15. IACHR and the Special Rapporteur Express Deep Concern over the Stigmatization and Judicial Harassment against Three Media Outlets in Venezuela.](#)

¹⁴⁸⁵ SucreRanda 2 Hugo Chávez Venezuela/YouTube. January 15, 2015. [Mazazos de Diosdado Cabello. Con El Mazo Dando. Venezuela, 14 de enero, 2015](#) [03:36:05 – 03:37:45]; “To my friends who have asked what happened thx for support, im ok, here is the statement i gave to #Venezuela media”. Twitter account of Mónica Villamizar @monica_vv. [January 22, 2015- 5:26 AM](#); RunRun.es. January 20, 2015. [Corresponsal de Al Jazeera salió de Venezuela tras ser acusada por Diosdado Cabello](#); Al Jazeera. January 13, 2015. [Wear and tear hits Venezuela transport system.](#)

¹⁴⁸⁶ Primicias 24/YouTube. March 5, 2015. [Maduro: Los estúpidos de la agencia EFE dicen que yo me quiero dar un Golpe de Estado](#); EFE. March 6, 2015. [EFE niega haber dado información alguna sobre un “autogolpe” de Maduro.](#)

¹⁴⁸⁷ Noticias Venezuela/YouTube. May 5, 2015. [Critica reseña de medios internacionales a los visita de “Los Cinco”](#); 2001/EFE. May 5, 2015. [Maduro arremete contra agencias de prensa AP, Reuters, Afp y Efe.](#)

¹⁴⁸⁸ La Patilla. April 10, 2015. [Maduro la agarra contra CNN y Patricia Janiot le responde](#); CNN en Español. April 10, 2015. [“EE.UU le tiene que pedir perdón a Panamá por la invasión en 1989”.](#)

¹⁴⁸⁹ Telesur/YouTube. August 7, 2015. [Rechaza Venezuela campaña de desestabilización impulsada por CNN.](#)

¹⁴⁹⁰ Correo del Orinoco. May 24, 2015. [Delcy Rodríguez: Venezuela es víctima del acoso mediático](#); La Patilla. May 24, 2015. [Según Delcy Rodríguez, Venezuela sufre acoso mediático a nivel internacional.](#)

1176. Colombian news channel *NTN24* remained outside the grid of paid television companies in Venezuela, it was removed in February of 2014, for coverage on public demonstrations in the country.”¹⁴⁹¹

1177. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

1178. The Inter-American Commission also recalls that public officials have the obligation of guaranteeing that their statements do not harm the rights of the individuals and groups who contribute to public deliberation by expressing and disseminating their thoughts, such as journalists, the media and organizations that advocate for human rights. Public officials must also consider the context in which they speak, to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful oppression of the rights of those who seek to contribute to public deliberation through expressing and disseminating their thoughts.”¹⁴⁹²

1179. The Commission recalls the importance of “creating a climate of respect and tolerance for all ideas and opinions.” The Commission reminds that:

diversity, pluralism and respect for the dissemination of all ideas and opinions is a necessary condition for the functioning of any democratic society. Therefore, the authorities must work resolutely to help build a climate of tolerance and respect in which everyone can express his or her thoughts and opinions without fear of being attacked, punished or stigmatized for doing so. Moreover, the State’s obligation to create conditions that allow for the free circulation of all ideas or opinions includes the obligation to investigate and adequately punish those who use violence to silence members of the media or media outlets.¹⁴⁹³

1180. The Inter-American Commission “additionally recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent, but also in cases of speech that is offensive, shocking, unsettling, unpleasant, or disturbing to the State or to any segment of the population.”¹⁴⁹⁴

D. Censorship, Cancelled Programs and Journalists Fired

1181. Several radio programs were suspended in 2015, journalistic contents were censored and several journalists were fired from the media outlets where they worked, allegedly for reasons connected with freedom of expression.

¹⁴⁹¹ Telesur. February 14, 2014. [Gobierno venezolano descarta censura a medios internacionales](#).

¹⁴⁹² I/A Court H. R. *Case of Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C, No. 194. Para. 139; I/A Court H. R. *Case Perozo et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C, No. 195. Para. 151.

¹⁴⁹³ IACHR. [Annual Report 2012. Report 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.147. Doc. 1. March 5, 2013. Para. 214; IACHR. [Annual Report 2011. Report 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. 69. December 30, 2011. Para. 156 and 206; IACHR. [Annual Report 2010. Report 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. 5. March 7, 2011. Para. 206-207.

¹⁴⁹⁴ IACHR. [Annual Report 2012. Report 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.147. Doc. 1. March 5, 2013. Para. 214; IACHR. [Annual Report 2012. Report of the Special Rapporteur for Freedom of Expression](#). Chapter III (Domestic Case Law on Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para 32.

1182. On January 15, journalists and other members of the newsroom of *El Universal* stated their concern with the editorial line adopted by the newspaper six months after the arrival of a new president. “We are alarmed at the increasing enclosure of communications that was built around some spokespersons and institutions of the Venezuelan society, as they represent important sectors that are being left little by little by the wayside in the news coverage, to the detriment of the constitutional right to information,” as they wrote. They also highlighted that a news piece about a press conference with the governor of Miranda, Henrique Capriles, was censored in the printed version of the newspaper, at the time when “instructions had been issued to ‘qualify’ on the web page all information received from spokespersons of the Democratic Unity Roundtable [*Mesa de la Unidad Democrática*] regarding ‘mobilizations’ and ‘street protests.’”¹⁴⁹⁵

1183. Ingrid Bravo Balabú, a reporter of *FM Center*, affirmed that she was fired on January 27 due to the “pressure of the Government” after covering a rally of the opposition in Caracas a few days before.¹⁴⁹⁶

1184. Journalist Sugeidy Parra affirmed that the newspaper *Notitarde*, where she worked, censored an article written by her about a tribute to a student who was killed during public demonstrations.¹⁴⁹⁷

1185. The newspaper *Últimas Noticias* asked journalist Víctor Amaya to renounce his work post, as a measure “to reduce costs”, according to the words of the responsible authorities. Amaya affirmed his belief that the real reason was the arrival of a new direction in the newspaper, which was not willing to accept critical publications about the government.¹⁴⁹⁸ *Últimas Noticias* also fired journalist Jesús Hurtado, in violation of his union rights. The dismissal process started in August 2014 and ended on April 15, 2015.¹⁴⁹⁹

1186. Program “Al Rojo Vivo,” at *Radio Anaco* and *104.3 FM* in the state of Anzoátegui, was cancelled on March 25 after 18 years on air. According to a group of neighbors of Anaco, this program was one of the few spaces where one spoke about the problems of the community.¹⁵⁰⁰

1187. Journalist Eliana Andrade was fired from the opinion program “*Polos Encontrados*,” broadcasted by the *TVS* channel from the state of Aragua, after she criticized an unfavorable reply on Facebook about the change in the policies to purchase foreign currency. According to her account, she was told at the channel that she could no longer “be the image” of the program. Andrade recognized that her posted comments had been unsuitable.¹⁵⁰¹

¹⁴⁹⁵ Sindicato Nacional de Trabajadores de la Prensa. January 15, 2015. [Comunicado: Trabajadores de El Universal solicitamos apoyo en la defensa del pluralismo.](#)

¹⁴⁹⁶ Espacio Público. January 27, 2015. [Despedida Ingrid Bravo de FM Center por presiones](#); Venezuela al Día. January 27, 2015. [Periodista de FM Center fue despedida por “presiones desde el poder”.](#)

¹⁴⁹⁷ El Propio. February 19, 2015. [Censuran nota del homenaje a Génesis Carmona en diario Notitarde](#); “Ayer cubrí el homenaje a #GénesisCarmona en La Cedeño y mi nota fue censurada y sacada de edición en @webnotitarde”. Twitter account of Sugeidy Parra @SugeidyParra. [February 19, 2015- 4:37 AM.](#)

¹⁴⁹⁸ Informe 21 TV/YouTube. March 4, 2015. [Víctor Amaya: Me pidieron la renuncia en Últimas Noticias](#); Espacio Público. February 20, 2015. [GUN pide renuncia al periodista Víctor Amaya.](#)

¹⁴⁹⁹ Diario Contraste. April 15, 2015. [Trabajadores de Últimas Noticias protestan por el despido injustificado de Jesús Hurtado \(Fotos\)](#); “ALERTA. @UNoticias se gana el favor del Ministerio del Trabajo y despide sin razón al dirigente sindical del SNTP, Jesús Hurtado”. Twitter account of Sindicato Nacional de Trabajadores de la Prensa @sntpvenezuela. [April 15, 2015- 1:15 PM](#); Ya Venezuela. April 16, 2015. [Despido del periodista Jesús Hurtado viola inamovilidad laboral y fuero sindical.](#)

¹⁵⁰⁰ El Tiempo. March 25, 2015. [Vecinos piden reapertura de programa “Al Rojo Vivo”](#); Espacio Público. March 25, 2015. [Exigen que vuelva al aire el programa Al Rojo Vivo de Anaco.](#)

¹⁵⁰¹ El Pitazo/YouTube. April 15, 2015. [Periodista aragüeña fue botada de canal de TV por criticar en su Facebook la providencia de Cencox](#); Espacio Público. April 17, 2015. [Despiden a periodista de Aragua por opinar en Facebook](#); Expresión Libre. May 13, 2015. [Estamos mal...pero vamos bien.](#)

1188. Journalist Geisha Torres denounced that channel *Tves*, after agreeing verbally to sign a labor contract, decided not to hire her; according to her account, the decision was motivated by some pictures that were circulating, in which she appeared along with opposition politician Henrique Capriles¹⁵⁰².

1189. Mariana de Barros, journalist of *Globovisión*, was fired after publishing information on May 20 at *Globovisión's* Twitter account about a study that criticized *Globovisión's* coverage of the arrest of opposition politician Leopoldo López. According to Barros, the news was published on the web site of the channel and she was asked to write a Twitter message about it.¹⁵⁰³

1190. On June 10, journalist Génesis Arévalo was fired from the newspaper *La Verdad*, from the state of Vargas, after publishing an article about alleged irregularities in the construction of a stadium. According to her version of the facts, the state government asked the newspaper to fire her.¹⁵⁰⁴ *La Verdad* was closed down temporarily on June 12 by the governor of Vargas, who affirmed that it should comply with its tax obligations and obligations vis-à-vis other state agencies.¹⁵⁰⁵ On Sunday 14 the newspaper restated its circulation.¹⁵⁰⁶

1191. On June 24, journalist Juan José Peralta denounced the cancellation of the program "*Amanecer en la Noticia*", which he hosted on channel *Telecentro* from Barquisimeto. Peralta stated that he was accused of being an informant of a written piece that reported outstanding payments to employees of the channel and the non-compliance with the social security institute.¹⁵⁰⁷

1192. Comedian Vanessa Senior was fired from the TV channel *Canal-i* after publishing videos in which she complained about the scarcity and restrictions to acquire certain products.¹⁵⁰⁸

1193. The newspaper *El Universal* was accused of censoring two columns written by human rights advocate Rafael Garrido, who had written an article in March about some declarations against homosexual employees by a representative of the assembly and another in June, which denounced the absence of State protection to lesbians, gays, bisexuals, transgender and intersex people in Venezuela.¹⁵⁰⁹

¹⁵⁰² Espacio Público. April 28, 2015. [Tves no contrató a periodista por campaña en Twitter](#); TV Venezuela/YouTube. April 28, 2015. [Periodista Geisha Torres explica las razones por las cuales fue despedida de TVES](#).

¹⁵⁰³ "La libertad consiste en poder hacer lo que se debe hacer". Gracias a todos por la solidaridad!!! Seguiremos informando". Twitter account of Mariana De Barros @marianadb28. [May 24, 2015- 8:08 AM](#); Espacio Público. May 22, 2015. [Globovisión despide a periodista por tuitear](#); Siete Clicks. May 23, 2015. [¡ABSURDO! Globovisión despide a periodista por tuitear](#).

¹⁵⁰⁴ Instituto Prensa y Sociedad (IPYS) Venezuela. June 12, 2015. [Vargas: Periodista fue despedida de diario luego de recibir presiones del gobierno regional](#); La Patilla. June 12, 2015. [García Carneiro "pidió la cabeza" de periodista de La Verdad de Vargas... ¡Y se la dieron! \(+ amenazas\)](#); La Verdad. June 4, 2015. [Falta de material y denuncias de corrupción retrasan estadio de los Tiburones](#).

¹⁵⁰⁵ El Universal. June 12, 2015. [PJ: Cierre del Diario La Verdad es un ataque a la libertad de expresión](#); 2001. No date. [Acusan a García Carneiro por cierre temporal de Diario La Verdad de Vargas](#).

¹⁵⁰⁶ "Triunfa la Democracia cuando el pueblo no calla. @LaVerdadVargas de hoy domingo 14 de junio". Twitter account of Marbella Leydenz @Marbellaleydenz. [June 14, 2015- 7:31 AM](#); Colegio Nacional de Periodistas. June 8, 2015. [En Aragua se produjeron los peores atropellos contra periodistas](#).

¹⁵⁰⁷ "@unaiamenabar Denuncio que fui despojado sin razón de mi programa Amanecer en la Noticia por el gerente de Telecentro Jesús Granadillo". Twitter account of Juan José Peralta @jperaltag. [June 24, 2015- 5:59 AM](#); Espacio Público. June 29, 2015. [Telecentro despide a periodista tras presumir que filtró información](#).

¹⁵⁰⁸ El Nacional. July 7, 2015. [Despiden a Vanessa Senior de Canal-i](#); El Informador. July 6, 2015. [Mario Silva pide a Fiscalía detener a Vanessa Senior por "instigación al odio" \(+Video\)](#); Informe 21. July 8, 2015. [Despiden a la comediante Vanessa Senior de Canal-i](#); NTN24 Venezuela/YouTube. July 9, 2015. [Drama de la humorista Vanessa Senior tras publicación de un video que evidencia escasez en Vzla](#); Arnaldo Bello/YouTube. July 1, 2015. [Disculpas de Vanessa Senior tras incidente en Farmatodo](#).

¹⁵⁰⁹ Sin Etiquetas. July 1, 2015. [El Universal de Venezuela censura columnas sobre LGTBI](#); Sin Etiquetas. March 18, 2015. [El "don't ask, don't tell" venezolano: gays declarados no deben ser policías](#); "El Universal (Venezuela) censuró un artículo que escribí sobre temas #LGBTI <http://bit.ly/1CaK18P> #CensuraHomofóbica @LGBTIdeEcuador". Twitter account of Rafael Garrido @Rafa 1985. [July 1, 2015- 1:19 PM](#).

1194. On July 31, journalist and radio broadcaster Manuel Naveda informed the cancellation of his show “*Al Son de la Kalle*” at *La Kalle 107.3 FM*, from the state of Falcón, due to, allegedly, his questioning of the government of his municipality. Naveda stated, “The only thing I have done was to make known the denouncements sent by the listeners.”¹⁵¹⁰

1195. Desireé Santos Amaral, the Communication and Information Minister of Venezuela denied the existence of censorship in her country. “If the media tells the truth that’s enough for us. We are not telling them not to be critical. Criticize!” she said. Then added, “We have never censored. We have never imposed censorship. And prove it then! Just show me one piece of evidence! One piece of evidence. I can go anywhere in the world and defend the news articles of the Bolivarian Revolution because they were created under the beautiful doctrine of good journalism.”¹⁵¹¹

1196. During an IACHR Freedom of Expression hearing on Venezuela, social organizations reported that articles critical of the regime, already written and designed in some newspapers, were replaced at the last minute by other reports or by advertisements. To support their claims, civil society showed the diagram of newspaper pages with two versions, when it was supposedly completed by the journalistic team and the one that eventually went to press. The government said it was not responsible for that situation. William Castillo, general director of Conatel stated: “That is commonplace in the media (...) everywhere around the world. That is an issue for everyone in the industry, the industry needs to reject it and fight in any media outlet, whether it is public or private. Now, to present that as a violation to freedom of expression is nonsense.”¹⁵¹²

1197. Principle 13 of the IACHR Declaration of Principles on Freedom of Expression holds that “[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.”

E. Paper Shortages

1198. In 2015, some Venezuelan newspapers once again faced restrictions to the purchase of press paper, which is used in order to print their daily editions. According to the information provided by the social organizations of Venezuela to the IACHR, between January and the first two weeks of October, 2015, four media outlets reduced their format and two returned to circulation with a limited amount of newsprint in their inventory. They also noted that the State press paper company, which has the monopoly on production in the country, sells paper to media outlets critical of the administration in a discretionary manner. In addition, the government is unwilling to sell foreign currency and this makes it difficult to purchase the necessary print items, as they have to pay up to 66 times the official price.”¹⁵¹³

1199. On January 27, the newspaper *TalCual* announced that it would close its daily edition in one month, and would continue its activities as a weekly newspaper. The decision was due, among other reasons, to the “systematic harassment by the government”, which was exerting “pressure on the advertisers” so that

¹⁵¹⁰ Primera Noticia. July 31, 2015. [Sacan del aire programa comunitario “Al Son de la Kalle”](#); El Informador. June 9, 2015. [SNTF invita a marchar este sábado en apoyo a El Carabobeño](#).

¹⁵¹¹ TV Venezuela/YouTube. October 6, 2015. [Desireé Santos Amaral, Ministra de Comunicación e Información](#).

¹⁵¹² IACHR. 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹⁵¹³ IACHR. 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

they would not publish their ads in the newspaper. On May 7, *TalCual* stopped being a daily newspaper and became a weekly publication.¹⁵¹⁴

1200. In March, the newspaper *El Carabobeño* affirmed that in a few days it would run out of paper due to alleged non-fulfillment from the State supplier. In June the newspaper informed that it was forced to stop issuing a Sunday magazine in order to extend the newspaper's life. It also pointed that it could not purchase paper from foreign suppliers, due to the governmental restrictions regarding the purchase of foreign currency. On June 25, *El Carabobeño* started to print the newspaper in a smaller format.¹⁵¹⁵ Social organizations noted that only in few occasions the State sells newsprint to *El Carabobeño* and that the paper needs to use a secondary, more expensive market, in their opinion this puts the very survival of the media outlet at risk.¹⁵¹⁶

1201. The *Correo del Caroní* Newspaper changed its tabloid format on April 13, due to the "paper supply crisis" in the country. By the beginning of 2014 it had already reduced its eight-page format. In August it became a weekly paper, because it refused to negotiate with the State newsprint supplier the paper believes to be "fleeting and conditioned."¹⁵¹⁷

1202. The State newsprint supplier reported that on May 9, *El Impulso* newspaper decided to reduce the number of pages in its publications due to lack of paper.¹⁵¹⁸

1203. The newspaper *El Propio* stopped circulating on September 7 due to paper scarcity.¹⁵¹⁹

1204. William Castillo, the general director of Conatel, stated before the IACHR in October that 75% of the newspapers in Venezuela receive paper. "It is unfortunate for one newspaper or another to come defend itself by distorting human rights work". He likewise claimed that Miguel Henrique Otero, editor in chief of the *El Nacional* newspaper, resells newsprint to other Venezuelan newspapers at "outrageous prices and in dollars."¹⁵²⁰ In a television interview, Castillo stated that newspaper editing companies "request more paper than they need and then resell it to smaller newspapers at outrageous prices and often in dollars. (...) For that reason, the State reorganized the system and created an importation company to import the paper."¹⁵²¹

1205. Principle 13 of the IACHR Declaration of Principles on Freedom of Expression holds that "[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

¹⁵¹⁴ El Universal. January 27, 2015. [Diario Tal Cual cierra su edición diaria el 27 de febrero](#); "#28E Diario Tal Cual cierra su edición diaria el 27 de febrero #360ucv". Twitter account of 360 Mundo @360mundo. [January 28, 2015- 4:54 AM](#); TalCual. May 5, 2015. [TalCual se reinventa](#).

¹⁵¹⁵ El Carabobeño. March 15, 2015. [El Carabobeño tiene papel para circular nueve días](#); El Carabobeño. June 7, 2015. [Presión oficial sacó de circulación al Suplemento Infantil](#); Colegio Nacional de Periodistas. June 7, 2015. [CNP Carabobo retomará acciones de calle](#); El Carabobeño/YouTube. June 19, 2015. [Conferencia de Prensa de El Carabobeño a medios internacionales](#); El Universal. June 19, 2015. [SNTP: Gobierno es responsable de garantizar que El Carabobeño no cierre](#); NTN24. June 22, 2015. [Préstamo de papel permitirá a diario venezolano "circular por unos días más"](#); El Carabobeño. June 22, 2015. [Préstamo de papel permitirá extender circulación de El Carabobeño](#).

¹⁵¹⁶ IACHR 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹⁵¹⁷ Correo del Caroní. April 12, 2015. [Correo del Caroní cambia de formato por la crisis de papel en Venezuela](#); Correo del Caroní. July 27, 2015. [Correo del Caroní pasa a semanario en agosto](#); El Nacional. July 28, 2015. [Correo del Caroní pasa a semanario](#).

¹⁵¹⁸ El Impulso. May 9, 2015. [Corporación Maneiro anunció que no hay papel para #ELIMPULSO](#); El Impulso. May 11, 2015. [EL IMPULSO circula a partir de este martes en un solo cuerpo #sinpapelnohayperiodico](#).

¹⁵¹⁹ El Nacional. September 3, 2015. [El Propio tiene papel hasta el lunes](#); Instituto Prensa y Sociedad (IPYS). September 9, 2015. [Caracas: Diario de capital privado dejó de circular por falta de materia prima](#).

¹⁵²⁰ IACHR. 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹⁵²¹ RT en Español/YouTube. July 23, 2015. [Censura mediática en Venezuela?: Una acusación de la oposición sin pruebas](#).

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.”

F. Access to Information, Public Officials and Public Places

1206. There is no law on access to public information in Venezuela; there are very high barriers to obtain public management data. According to the NGO Transparencia Venezuela report, there are 60 regulations in that country establishing restrictions to this right and permitting public officials not to provide information. Current legislation also requires anyone interested in the information must show they have a “legitimate interest,” and the Supreme Court of Justice has believed that requesting information from the State “runs counter to the effectiveness and efficiency” of public administration because “time and human resources would be used to provide explanation (...).”¹⁵²²

1207. In several occasions, members of the military force in charge of security during an electoral period obstructed the access of journalists to voting facilities in 2015.¹⁵²³

1208. Moreover, NGO Espacio Público informed that several state agencies did not respond to requests of public information, and, for this reason, complaints were presented to the Judiciary.¹⁵²⁴ Venezuela does not have a law of access to public information. Marianela Balbi, from the NGO Instituto Prensa y Sociedad, stated before the IACHR that lack of information in Venezuela is such that “not even inflation numbers are published in Venezuela.”¹⁵²⁵

1209. The United Nations Human Rights Committee noted concern for “limited access” to public information in Venezuela, in a report published in July.¹⁵²⁶

1210. The State of Venezuela said that it has made efforts “to accelerate the establishment of models of e-government with transparency and efficient and participatory management,” but it recognized that “some agencies certainly do not respond with the requested speediness to certain petitions or are right in the midst of modernizing their platforms.”¹⁵²⁷ And it added: “In other cases, the requests lack legal quality:

¹⁵²² Transparencia Venezuela. October 19, 2015. [Informe sobre la “Situación del derecho a la libertad de expresión en Venezuela ante la CIDH”](#); Tribunal Supremo de Justicia – Supreme Court of Justice. August 6, 2014. [Sentencia N° 01177](#).

¹⁵²³ Instituto Prensa y Sociedad (IPYS). June 30, 2015. [Caracas: Agentes de seguridad limitaron a periodista cobertura de las elecciones primarias del PSUV](#); Instituto Prensa y Sociedad (IPYS). June 30, 2015. [Monagas: Militar del Plan República trata de impedir cobertura de primarias del PSUV a periodista](#); Instituto Prensa y Sociedad (IPYS). June 30, 2015. [Caracas: Impidieron a periodista el acceso a centro de votación](#); Instituto Prensa y Sociedad (IPYS). July 1, 2015. [Caracas: Limitaron cobertura de primarias del PSUV a periodista de portal digital](#); Instituto Prensa y Sociedad (IPYS). July 2, 2015. [Caracas: Limitaron acceso de periodistas del Diario Tal Cual a centro de votación electoral](#).

¹⁵²⁴ Espacio Público. August 12, 2015. [Espacio Público demanda al diputado Pedro Carreño por negar información pública](#); Espacio Público. August 13, 2015. [Espacio Público demanda al MPPRIJP por negar estadísticas de criminalidad](#); Espacio Público. August 13, 2015. [Espacio Público demanda a Iris Varela por negar estadísticas de muertes en centros penitenciarios](#).

¹⁵²⁵ IACHR. 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹⁵²⁶ United Nations. Human Rights Committee. [Concluding Observations on Venezuela \(Bolivarian Republic of\)](#). Versión avanzada no editada. Available in Spanish: [Observaciones finales sobre el cuarto informe periódico de la República Bolivariana de Venezuela](#). Versión avanzada no editada. July 23, 2015.

¹⁵²⁷ Government of the Bolivarian Republic of Venezuela. Communication of the State in response to the draft of the “2015 Report of the IACHR, Observations of the State on Chapter IV,” AGEV-000136, received December 14, 2015.

the petitioner does not argue the need for that information, and their request is immediately elevated to the courts, seeking to put together a case against the State.”¹⁵²⁸

1211. Principle 4 of the Declaration of Principles of the IACHR affirms 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. Presidential Broadcasts and the Use of Public Television

1212. In 2015, governmental broadcasts by radio and television nationwide continued being a methodology to transmit official messages. According to project *Cadenómetro*, executed by the non-governmental organization Monitoreo Ciudadano, from January to September, there were 118 national broadcasts, amounting to 112 hours and 50 minutes – the equivalent to almost five days on air, and to an average of 25 minutes per day.¹⁵²⁹

1213. The president of Venezuela, Nicolás Maduro, was also a key protagonist on the State channel VTV. According to the figures of project *Cadenómetro*, Maduro appeared 164 times on TV in the nine initial months of the year, totaling 213 hours and 40 minutes - almost nine days on air, considering the overall time, and the equivalent to 47 minutes of television per day.¹⁵³⁰

1214. The Inter-American Commission recognized the power of the President of the Republic and of the high authorities of State to use the media with the purpose of informing the population about the priority issues of public interest. However, the exercise of such power is not absolute. The information that the governments transmit to citizens by means of the presidential broadcasts must be strictly necessary in order to meet pressing information needs in regard to issues with a clear and genuine public interest, and such broadcasts should only take the time that is strictly necessary to convey the information. In this sense, in the exercise of the international standards, both the IACHR and its Office of the Special Rapporteur,¹⁵³¹ as well as some national agencies of States that are parties to the American Convention, pointed that “not just any information justifies the interruption by the President of the Republic of regularly scheduled programming. Rather, it must be information that could be of interest to the masses by informing them of facts that could be of public significance and that are truly necessary for real citizen participation in public life.”¹⁵³²

1215. Principle 5 of the IACHR Declaration of Principles points out that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

¹⁵²⁸ Government of the Bolivarian Republic of Venezuela. Communication of the State in response to the draft of the “2015 Report of the IACHR, Observations of the State on Chapter IV,” AGEV-000136, received December 14, 2015.

¹⁵²⁹ Monitoreo Ciudadano. Proyecto Cadenómetro. [Contador de horas de Nicolás Maduro en Cadena Nacional de Radio y Televisión en Venezuela.](#)

¹⁵³⁰ Monitoreo Ciudadano. Proyecto Cadenómetro. [Contador de horas de Nicolás Maduro en Cadena Nacional de Radio y Televisión en Venezuela.](#)

¹⁵³¹ IACHR. [Report on the situation of human rights in Venezuela.](#) OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Para. 487.

¹⁵³² IACHR [Annual Report 2012. Report 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.147. Doc. 1. March 5, 2015. Para. 232; IACHR. [Annual Report 2011. Report 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. 69. December 30, 2011. Para. 199; IACHR. [Annual Report 2010. Report 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. 5. March 7, 2011. Para. 226.

H. Media Concentration

1216. Media concentration by the State, in particular TV outlets, continued being a reality in Venezuela in 2015. There are 15 open television channels in Venezuela, which are funded with public resources, and three private channels. According to the official information, the government expects to create two additional channels: *+Deportes*, and *Canal Obrero*.¹⁵³³

1217. Until the present, the channels *Globovisión*, *TV Familia*, *Vale TV*, *Canal I*, and *TVepaco* (formerly *La Tele*) only transmit in analog, since they were not included from the open system of digital TV, which by the middle of the year reached 500,000 households and 60 per cent of the territory. Digital transmissions also include two TV signals owned by other States: *RT* (from Russia) and *CCTV* (from China).¹⁵³⁴

1218. The State, however, informed that most licenses and most of the audience are in the private sector. Conatel president William Castillo stated: “In Venezuela, the control of the radio spectrum is in hands of the private sector. Companies control 60% of radio licenses and 54% of open television licenses. Business groups control 70% of the broadcasting capacity and hold 80% of the audience,” he added that “private radio and television licenses doubled between 2000 and 2015.”¹⁵³⁵ Also, the State informed that Venezuela had 244 community radios and 36 community TV stations registered at Conatel in November 2015.¹⁵³⁶

1219. According to the Chamber for Broadcast Industry of Venezuela [*Cámara Venezolana de la Industria de Radiodifusión*], over 300 stations in the industry have not had their licenses renewed, therefore they are operating in a precarious situation under expired concessions that have not been renewed by Conatel even though it has been requested. “This situation creates a mechanism of indirect pressure on the media; the outlets understand that if their editorial line is critical against the national government, their licenses may not be renewed,” stated Oswaldo Cali of the Espacio Público NGO.¹⁵³⁷

1220. To this the Conatel director-general William Castillo stated: “radio stations sold out, they rented out and gave themselves up.” “There are radio stations that are not in operation requesting concessions, there are radio stations with unknown operators, operating from abroad and sold abroad, in foreign currency; then they appear giving numbers on alleged concessions that were not renewed. Nonetheless, we understand the radio spectrum must be deeply reviewed and reorganized, this is a commitment the State has.”¹⁵³⁸

1221. The government of Nicolás Maduro also continued editing the newspapers *Correo del Orinoco* and *Ciudad Valencia* “with the aim of strengthening the artillery of Bolivarian thinking and guaranteeing the right to opportune and truthful information to the Venezuelan population.” These

¹⁵³³ Ministerio del Poder Popular para la Educación Universitaria, Ciencia y Tecnología – Ministry of the Popular Authority for University Education, Science and Technology. Televisión Digital Abierta (TDA) Venezuela. *Programación*; RunRun.es. July 31, 2015. [La señal interrumpida de la TV digital en Venezuela](#); El Nacional. May 3, 2015. [La hegemonía roja](#); Ministerio del Poder Popular para la Comunicación y la Información – Ministry of the Public Authority for Communication and Information. January 2015. [Memoria 2014](#).

¹⁵³⁴ Producto. October 13, 2015. [La Tele es ahora TVepaco](#); VTV. August 18, 2015. [Venezuela impulsa transición de la radiodifusión analógica a la digital](#); Globovisión. July 11, 2015. [Señal de Televisión Digital Abierta llega a 504.610 hogares venezolanos](#); El Universal. February 21, 2013. [Televisión digital excluye a Globovisión](#).

¹⁵³⁵ IACHR. 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹⁵³⁶ Comisión Nacional de Telecomunicaciones – National Commission of Telecommunications (Conatel). [Medios comunitarios habilitados](#).

¹⁵³⁷ IACHR. 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹⁵³⁸ IACHR. 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

newspapers printed 20.1 million copies in 2014 at a cost of 241 million bolivares (38 million US dollars at the exchange rate of 6.3 bolivares per dollar).¹⁵³⁹

1222. The concentration of media ownership results in a uniformity of the content that media outlets produce or disseminate. The IACHR affirmed that “governments and national regulators should adopt public policies to increase diversity in the media, pluralism of content and prevent concentration in broadcasting.”¹⁵⁴⁰ The IACHR pointed that “[i]f [the] media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy. Democracy requires the confrontation of ideas, debate and discussion. When this debate does not exist, or is weakened by the lack of sources of information, the main pillar for the functioning of democracy is harmed.”¹⁵⁴¹

1223. Principle 12 of the IACHR Declaration of Principles on Freedom of Expression states 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.”

I. Radio Caracas Televisión (RCTV)

1224. May 27, 2015, was the date of the eighth year without *Radio Caracas Televisión (RCTV)*. RCTV ended transmissions when former president Hugo Chávez did not renew its broadcasting license, after 53 years on air. The government then in office considered that RCTV had taken part in the coup d’état against Chávez in 2002.¹⁵⁴²

1225. On June 22, the Inter-American Court of Human Rights ruled that the closure of *RCTV* was arbitrary and that the reason behind it was “to mute this media outlet.” For this reason, the Court ordered the State of Venezuela to “restore its frequency license” and to “return the property” that had been seized, in order to start an “open, independent and transparent process” within a reasonable time to assign the *RCTV* license.¹⁵⁴³ The Court highlighted that “when the government resorts to a differentiated treatment based on being either pleased or displeased at the editorial line of a channel, this [attitude] produces a deterrent, intimidating and inhibiting effect on all those who exercise the right to freedom of expression, since it conveys an intimidating message to the other media outlets concerning what could occur to them if they should follow an editorial line similar to that of *RCTV*.” The Court held that the State was “responsible for violating the right to freedom of expression established by article 13, regarding the obligation of no discrimination contained in article 1.1 of the American Convention.”¹⁵⁴⁴

1226. The Supreme Court of Justice [Tribunal Supremo de Justicia – TSJ] of Venezuela subsequently declared that this decision was unenforceable and affirmed that it contradicts “the Inter-

¹⁵³⁹ Ministerio del Poder Popular para la Comunicación y la Información – Ministry of the Popular Authority for Communication and Information. January 2015. [Memoria 2014](#).

¹⁵⁴⁰ IAHR. [Freedom of expression standards for the transition to a diverse, plural and inclusive free-to-air digital television](#). Chapter 3 (Promotion of diversity and pluralism in digital broadcasting). OEA/Ser.L./V/II. CIDH/RELE/INF.13/15. March 9, 2015. Para. 21.

¹⁵⁴¹ IAHR. [Justice and social inclusion: The challenges of democracy in Guatemala](#). Chapter VII (The situation of freedom of expression). Para. 419.

¹⁵⁴² 25 segundos/YouTube. April 4, 2012. – [Segundos de la historia: Cierre de Radio Caracas Televisión - RCTV](#); El País. May 28, 2007. [Chávez cierra el canal privado RCTV en medio de violentas protestas](#); Espacio Público. May 27, 2015. [Ocho años sin RCTV](#).

¹⁵⁴³ I/A Court H. R. *Case Granier et al (Radio Caracas Televisión) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 22, 2015. Serie C No. 293.

¹⁵⁴⁴ I/A Court H. R. *Case Granier et al (Radio Caracas Televisión) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 22, 2015. Serie C No. 293. Para. 234 y 235.

American Convention of Human Rights” and “is a serious affront to the Constitution of the Bolivarian Republic of Venezuela, and to the international system of protection of human rights.” The TSJ stated that there was an “indiscriminate and one-sided use of the tools with which it was endowed a system that was theoretically set in place to protect the human rights, but in practice seemed to pursue the aim of raising precautions and protection to spurious economic interests.” The TSJ accused the Inter-American Court of “arbitrarily and disrespectfully interfering in the free development of the existing judicial processes” in Venezuela and attempt “against the inalienable right of the Venezuelan people to self-determination, sovereignty and the preeminence of human rights.”¹⁵⁴⁵

J. Government Advertising

1227. According to civil society, the distribution of government advertising in Venezuela is used as a reward or punishment for the media, depending on how the media outlets describe a positive view of the Venezuelan reality or adopt a critical stance.¹⁵⁴⁶ Research published by Instituto Prensa y Sociedad (IPYS) says that such practice affected “private newspapers that were mentioned by national and regional governmental authorities as the ones responsible for a ‘media war.’” The research lists the following newspapers: *Tal Cual*, *El Nacional*, *Quinto Día*, *6to Poder*, and *El Nuevo País* (Caracas), *El Siglo*, and *El Periodiquito* (Aragua), *El Impulso*, and *El Informador* (Lara), *El Tiempo* (Anzoátegui), *La Verdad* (Zulia), *El Carabobeño*, and *Notitarde* (Carabobo), *El Oriental* (Monagas), *Frontera* (Táchira), and *Correo del Caroní* (Bolívar). On their turn, newspapers considered favorable to the government of Maduro, such as *Últimas Noticias*, *El Universal*, and *Diario VEA*, received numerous advertising campaigns with public funds¹⁵⁴⁷. In this manner, there is a “disproportionate benefit to the media in agreement with the governing party, directly affecting the possibility of keeping media independent” from the government, stated Oswaldo Cali, from the Espacio Público NGO before the IACHR¹⁵⁴⁸. The overall budget for State advertising and propaganda in 2015 was 612.9 million bolívares (97 million USD).¹⁵⁴⁹

1228. The chief editor of *Tal Cual*, Xabier Coscojuela, stated that the only two government advertisements that his newspaper received in seven years were the notices of the population census of 2011 – by the National Institute of Statistics [*Instituto Nacional de Estadísticas*] – and of the 2012 presidential elections – by the National Electoral Council [*Consejo Nacional Electoral*]. He also affirmed that advertising by private companies decreased in the recent years, because large companies passed into the hands of the State, and because other companies are exhorted to not advertise. In Coscojuela’s words, “Some companies told us – in private meetings – that they cannot continue to advertise in this newspaper because they are subject to pressure by the government.”¹⁵⁵⁰

1229. In some cases, the dependence on government advertisements resulted in self-censorship among journalists. Based on his experience with radio and television, reporter Héctor Caldera affirmed: “At the TV station, one could not – one would actually avoid the issue when faced with bad news about Diosdado Cabello, the President of the National Assembly. I would not touch the issue, and so there was self-censorship. I covered him in the channel when it was requested. For instance, when covering the elections of the United Socialist Party of Venezuela, there could be no critical questions – only guided questions, since they were already pre-determined.” Caldera stated that in the radio station, “one avoids” covering “critical themes” and

¹⁵⁴⁵ Tribunal Supremo de Justicia – Supreme Court of Justice. September 10, 2015. [TSJ declara inejecutable fallo de la CIDH sobre RCTV](#); Tribunal Supremo de Justicia – Supreme Court of Justice. Sala Constitucional. Ponencia Conjunta. [Expediente N° 15-0992](#). September 10, 2015.

¹⁵⁴⁶ Inter American Press Association (IAPA). April 16, 2015. [SIP alerta a gobiernos sobre inminente cierre de diarios en Venezuela](#); IACHR. 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹⁵⁴⁷ Instituto Prensa y Sociedad (IPYS). April 2015. [Reportes Ipys #3](#).

¹⁵⁴⁸ IACHR. 156 Period of Sessions. Hearing Situation of Freedom of Expression in Venezuela. October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

¹⁵⁴⁹ Instituto Prensa y Sociedad (IPYS). April 2015. [Reportes IPYS #3](#).

¹⁵⁵⁰ Instituto Prensa y Sociedad (IPYS). April 2015. [Reportes IPYS #3](#).

journalists receive from their chiefs the order to broadcast only 30% of news that criticize the government or its officials.¹⁵⁵¹

1230. Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission of Human Rights states that “[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.”

K. Legislation and Restrictive Rules

1231. On November 18, 2014 President Maduro issued the decree on Organic Law on National Security [*Ley Orgánica de Seguridad de la Nación*], which establishes that “all public officials serving in any of the government bodies or any other State institution who disclose or divulge data or information to any individual or to another State, therefore compromising the security and defense of the nation, shall be sentenced to five to ten years imprisonment.” The decree also contains restrictions on freedoms of association and assembly, with the same punishment as the aforementioned for those who organize, hold or instigate activities within what the government has called “security zones” and that affect the functioning of military facilities, public services, basic industries or businesses, or “the economic and social life of the country.”¹⁵⁵²

1232. The president also issued a decree on November 18, 2014 that reforms the Fair Price Law [*Ley de Precios Justos*], making boycotts punishable by 10 to 12 years of imprisonment for those who by action or inaction, impede the production, manufacturing, supply, transportation, distribution and placing on the market of goods and services. The law includes the crime of “fraudulent alteration of prices”, which punishes with imprisonment from two to six years who “spread by any means, false information, use violence, threats, deceit or any other scheme to alter prices goods or services.”¹⁵⁵³

1233. On August 21, Maduro implemented a 60-day exception for the municipalities of Bolívar, Pedro María Ureña, Junín, Capacho Nuevo, Capacho Viejo and Rafael Urdaneta, in the state of Táchira, on the Colombian border. Through this rule, he banned public meetings and peaceful protests that were not authorized beforehand, among other restrictions. The government extended the exception period for two additional months.¹⁵⁵⁴

1234. In a July report on Venezuela issued by the United Nations Human Rights Committee the committee noted “a series of provisions and practices that may have a chilling effect on the expression of

¹⁵⁵¹ Instituto Prensa y Sociedad (IPYS). April 2015. [Reportes IPYS #3](#).

¹⁵⁵² Ministerio del Poder Popular para la Comunicación y la Información. February 2015. [Leyes para la seguridad y la defensa. Reforma de la Ley Orgánica de Seguridad de la Nación. Decreto N° 1.473](#); Gaceta Oficial Extraordinaria de la República Bolivariana de Venezuela N° 6.156. November 19, 2014. [Decreto 1.473, mediante el cual se dicta el decreto con rango, valor y fuerza de Ley de Reforma Orgánica de Seguridad de la Nación](#); Espacio Público. January 22, 2015. [Presidente Nicolás Maduro usó ley habilitante para legislar contra la libertad de expresión](#).

¹⁵⁵³ Gaceta Oficial Extraordinaria de la República Bolivariana de Venezuela N° 6.156. November 19, 2014. [Decreto 1.473, mediante el cual se dicta el decreto con rango, valor y fuerza de Ley de Reforma Orgánica de Seguridad de la Nación](#); Espacio Público. January 23, 2015. [Ley de Precios Justos afecta la libertad de expresión](#).

¹⁵⁵⁴ Gaceta Oficial de la República Bolivariana de Venezuela N° 6.194. August 21, 2015. [Decreto N° 1.950, mediante el cual se declara el Estado de Excepción en los Municipios Bolívar, Pedro María Ureña, Junín, Capacho Nuevo, Capacho Viejo y Rafael Urdaneta del estado Táchira](#); Globovisión. August 24, 2015. [Oficializado Estado de Excepción en 6 municipios de Táchira](#).

criticism of the government or publication of criticism in the media and social networks on matters of public interest.”¹⁵⁵⁵

1235. In exceptional circumstances, such as “[i]n case of war, public danger, or other emergency that threatens the independence or security of a State Party,”¹⁵⁵⁶ States may adopt measures restricting the full enjoyment of rights and freedoms under the American Convention, except for those explicitly listed in the second paragraph of article 27 of the American Convention, which enshrines the non-derogable core rights, including rights to life and personal integrity. While freedom of opinion is not listed among the non-derogable rights under Article 13 and 27 of the American Convention, it is important to mention that when analyzing the provisions of the Covenant on Civil and Political Rights, the Human Rights Committee of United Nations said that there are elements that cannot be subject to lawful derogation under article 4 of the Covenant, based on which concludes: “Freedom of opinion is one such element, since it can never become necessary to derogate from it during a state of emergency.”¹⁵⁵⁷

1236. Similarly, the structural relationship between freedom of expression to democracy, during a state of emergency in a democratic society States do not have absolute discretion to limit this right and should adhere to the principle of necessity and proportionality. The Commission considers that any decree a state of emergency shall contain the rights whose enjoyment will be restricted, and define the temporal and spatial limits that shall govern.

L. Subsequent Liabilities

1237. In April, Diosdado Cabello, speaker of the National Assembly filed a criminal and civil defamation law suit against media outlets *El Nacional*, *La Patilla* and *Tal Cual* and their directors, after they copied information published in the Spanish newspaper *ABC*, wherein a former officer in a Cabello trust position tied him to drug trafficking. Cabello denied the allegations and stated he was filing the case “in accordance with the law” because “everyone needs to accept responsibility.”¹⁵⁵⁸ On May 12, the Court issued a judgment wherein it did not allow the 22 directors who were involved in the case to leave the country, although some were not in Venezuela at the time. According to the lawsuit Cabello filed, this measure was requested under “reasonable presumptions” of flight and obstruction of justice.¹⁵⁵⁹ Miguel Henrique Otero, editor in chief of the *El Nacional* newspaper, stated that the restriction was issued in an “irregular” manner, “without the proper subpoenas.” “Judges are under the Executive Branch and receive direct orders from the government. (...) Justice does not exist in Venezuela, justice in Venezuela is a tool the Executive uses to

¹⁵⁵⁵ United Nations. Human Rights Committee. [Concluding Observations on Venezuela \(Bolivarian Republic of\). Versión avanzada no editada](#). Available in Spanish: [Observaciones finales sobre el cuarto informe periódico de la República Bolivariana de Venezuela. Versión avanzada no editada](#). July 23, 2015.

¹⁵⁵⁶ American Convention on Human Rights. Article 27. - Suspension of Guarantees: 1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

¹⁵⁵⁷ United Nations. Human Rights Committee. Covenant on Civil and Political Rights. [Draft general comment No. 34 \(Upon completion of the first reading by the Human Rights Committee\)](#). November 25, 2010.

¹⁵⁵⁸ Con el Mazo Dando. April 9, 2015. [Diosdado Cabello demandará a medios por campaña difamatoria](#); Hoy Venezuela. April 9, 2015. [Cabello autoriza a abogados entablar demanda ante campaña difamatoria](#); Últimas Noticias. April 9, 2015. [Cabello autoriza a abogados entablar demanda ante campaña difamatoria](#); ABC. January 27, 2015. [El jefe de seguridad del número dos chavista deserta a EE.UU. y le acusa de narco tráfico](#); “La demanda en Venezuela es contra los medios El Nacional, La Patilla y Tal Cual, incluye accionistas, directores, consejo editorial y dueños”. Twitter account of Diosdado Cabello @dcabellor. [April 21, 2015- 10:59 AM](#); El Nacional. April 21, 2015. [Diosdado Cabello interpuso demanda contra El Nacional](#); La Patilla. April 23, 2015. [Demanda de Diosdado Cabello contra los medios independientes \(texto completo\)](#).

¹⁵⁵⁹ El Nacional. May 12, 2015. [Imponen prohibición de salida del país a 22 directivos de medios](#); NTN24. May 12, 2015. [Imponen prohibición de salida del país a 22 directivos de medios en Venezuela acusados por Diosdado Cabello](#); “No he recibido citación de ningún tribunal. La Patilla no cambiara su línea editorial”. Official Twitter account of Alberto Ravell @AlbertoRavell. [May 12, 2015- 6:12 PM](#); Inter American Press Association. May 13, 2015. [IAPA condemns action taken against Venezuelan journalists](#); VTV. May 6, 2015. [Cabello ratifica que demanda por difamación contra medios de derecha continúa su curso](#); Ministerio del Poder Popular para la Comunicación e Información. May 7, 2015. [Cabello ratifica que demanda contra medios de derecha por difamación continúa su curso](#).

criminalize dissent.” Opined Otero.¹⁵⁶⁰ On August 2, the judiciary posted a subpoena in the press for the directors of the media outlets.¹⁵⁶¹ Cabello reported that the civil law suit was admitted on August 12.¹⁵⁶² On August 17, the justice system seized the *El Nacional* facilities within the framework of the civil case.¹⁵⁶³

1238. On November 9 the IACHR asked the Venezuelan State to adopt precautionary measures on behalf of Miguel Henrique Otero, president and publisher of *El Nacional*; Alberto Federico Ravell, director of *La Patilla*, and his daughter Isabel Cristina Ravell; and Teodoro Petkoff, director of *Tal Cual*, after a series of acts of harassment initiated by officials against those media outlets and their directors.¹⁵⁶⁴ The beneficiaries said they had been victims of attacks, assaults, threats, and persecution by the Venezuelan State for exercising their right to freedom of expression independently and critically through media outlets.¹⁵⁶⁵ Among the incidents were repeated stigmatizing statements by high-level officials, monitoring and surveillance, expedited criminal and civil proceedings initiated by Cabello, a prohibition on leaving the country, prejudging by the Supreme Court, and seizure of real state properties.¹⁵⁶⁶

1239. The program “100% Venezuela” on the *Televén* channel faced Conatel proceedings in April after disseminating content that could create “a tense environment” and “anxiety” among the television audience for “creating an imaginary chaos, violence, human rights violations and destruction of community life.” Conatel criticized the “biased information handling” in that journalism space. The body stated they could be punished by a fine or even be shut down, although the adopted decision was not made public.¹⁵⁶⁷

1240. On June 1, a Violence Against Women Court notified journalist Saúl Acevedo of a criminal complaint filed against him by Karla Jiménez de Vielma, the wife of the governor of Táchira. Said complaint was filed because of images he had posted on Twitter satirizing her and her husband. The justice system later forced Acevedo to delete the tweets and disallowed him from “intervening (...) on any media outlet or communication platform violating the rights” of Jimenez and her family.¹⁵⁶⁸

1241. The government of Venezuela defended the rights of its public officers to file criminal complaints against journalists. “It seems some citizens have rights and others do not. It seems if I am a public official I am stripped of my honor, reputation, and I do not have the right to defend it before a court. A double edged sword, dual morality, double standard,” said Conatel Director William Castillo, in an IACHR hearing.¹⁵⁶⁹

¹⁵⁶⁰ *El Nacional*. May 12, 2015. [MHO: los jueces dependen del ejecutivo, reciben órdenes directas del gobierno.](#)

¹⁵⁶¹ NTN24. August 3, 2015. [Citan a dueños de medios a tribunales para responder ante demanda interpuesta por Diosdado Cabello](#); Producto. July 30, 2015. [Citan a directivos de Tal Cual, El Nacional y La Patilla](#); Contrapunto. August 2, 2015. [Directivos de medios demandados por Diosdado Cabello deben designar defensores.](#)

¹⁵⁶² Versión Final. August 13, 2015. [Admiten demanda civil de Diosdado Cabello contra tres medios](#); *El Nacional*. August 12, 2015. [Admiten demanda civil de Diosdado Cabello contra El Nacional.](#)

¹⁵⁶³ Últimas Noticias. August 19, 2015. [Decretan medida de prohibición de enajenar y gravar edificio de El Nacional](#); *El Nacional*. August 20, 2015. [Tribunal prohíbe enajenar y gravar edificio de El Nacional.](#)

¹⁵⁶⁴ IACHR. [MC 179-15](#) Miguel Henrique Otero et al. (Venezuela), November 9, 2015.

¹⁵⁶⁵ IACHR. [MC 179-15](#) Miguel Henrique Otero et al. (Venezuela), November 9, 2015.

¹⁵⁶⁶ IACHR. [MC 179-15](#) Miguel Henrique Otero et al. (Venezuela), November 9, 2015.

¹⁵⁶⁷ *La Patilla*. April 23, 2015. [Conatel actúa contra “100% Venezuela” de Televén y lo acusa de “ofender, humillar y descalificar”](#); Comisión Nacional de Telecomunicaciones (Conatel). April 16, 2015. [Directorio de Responsabilidad Social analizó contenidos del programa 100% Venezuela.](#)

¹⁵⁶⁸ “A esta hora 11:02PM gobierno d Vielma Mora esta armando n #ZonaEducativa #SanCristobal grupos motorizados colectivos”. Twitter account of Saúl Acevedo @SaulAcevedo. [February 24, 2015- 7:32 PM](#); Espacio Público. July 2, 2015. [Prohíben a comunicador hablar sobre familia Vielma](#); YVKE Radio Mundial. May 27, 2015. [Esposa de Vielma Mora es víctima de terrorismo cibernético \(+Reporte\)](#); Noticia 24. May 27, 2015. [Karla de Vielma denunció ante la Fiscalía “un ataque mediático” a través de Twitter.](#)

¹⁵⁶⁹ IACHR. 156 Period of Sessions. Hearing “Situation of Freedom of Expression in Venezuela.” October 19, 2015. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp>

1242. Principle 10 of the IACHR's Declaration of Principles 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."

1243. In addition, principle 11 establishes that "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as '*desacato* laws,' restrict freedom of expression and the right to information".

1244. The IACHR expressed in a public statement its concerns about the judgment issued on September 10 against Leopoldo López, leader of the opposition party Voluntad Popular, finding him guilty of crimes related to exercising freedom of expression and his political rights. The ruling found Leopoldo López guilty of public incitement, property damage, arson, and conspiracy to commit a crime, and slapped him with a prison term of more than 13 years and 9 months. Convicted along with Leopoldo López were students Christian Holdack, to just over 10 years and 6 months in prison, for arson and damage, public incitement, and conspiracy; and Demian Martín García and Angel de Jesús González, to 4 years and 6 months in prison, for the crime of public incitement. The case against Leopoldo López was triggered by statements against the government of Nicolás Maduro in February 2014.¹⁵⁷⁰

1245. According to the ruling, López calls to demonstrate on the streets "produced a series of violent incidents, repudiation of legitimate authority and disobedience of laws, setting off in the disproportionate attack by a group of persons who acted moved by" his statements. López "did not use the appropriate means provided for in the Constitution so that his demands were met, but used the art of the word to make his followers believe that there was an alleged constitutional solution" for the resignation of President Nicolas Maduro, the document states. The judge, Susana Barreiros, acknowledged that the political leader had made "calls for peace and tranquility," but she said that his purpose was to "get the current government out of power through the streets, the disobedience of law and repudiation of government powers", and that "he had sent an inappropriate message to his followers."¹⁵⁷¹

1246. The IACHR notes that Inter-American case law and doctrine on this matter¹⁵⁷² provides that the imposition of penalties for abusing freedom of expression in keeping with the charge of inciting violence (understood as inciting commission of crimes, breach of public order or national security) is to be based on current, reliable, objective and strong evidence that the person was not simply expressing an opinion (no matter how harsh, unjust, or disturbing it may be), rather that the person had the clear intention of committing a crime and there was a current, real, and effective likelihood that he could achieve these objectives. Were this not to be the case, this would mean opening up the possibility of punishing opinions, and any States would be empowered to suppress any critical thought or statement about authorities which, as would be the case with anarchism or opinions that are radically opposed to the established order, questions even the very existence of the established institutions.

1247. Furthermore, Inter-American case law and scholarly legal opinion has stipulated that laws establishing limitations on freedom of expression are to be drawn up in the clearest and most exact terms possible, inasmuch as the legal framework must provide legal certainty to citizens.¹⁵⁷³ This requirement takes

¹⁵⁷⁰ IACHR. September 25, 2015. [Press Release 107/15. IACHR Voices Concern over Ruling against Leopoldo López in Venezuela](#); Voluntad Popular/YouTube. February 9, 2015. [Leopoldo López El 12F vamos a la calle con la consigna justicia y cárcel para los corruptos](#).

¹⁵⁷¹ La Prensa/Juzgado Vigésimo Octavo de Primera Instancia. [Sentencia Condenatoria. Causa N° 28J-810-14](#). October 1, 2015.

¹⁵⁷² IACHR. [2009 Annual Report. Report of the Special Rapporteurship for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paragraph 59.

¹⁵⁷³ IACHR. [2009 Annual Report. Report of the Special Rapporteurship for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paragraph 70.

on even greater importance when it is a question of limitations imposed on freedom of expression by criminal law. In this regard, the Inter-American Court of Human Rights has indicated that these kinds of limitations must also meet the strict requirements of the principle of legality, in keeping with Article 9 of the American Convention on Human Rights: “If such restriction or limitations are under criminal law, it is important to observe the strict requirements characteristic of the criminal codification to satisfy the principle of legality.”¹⁵⁷⁴ The foregoing reveals itself in the need “use strict and unequivocal terms, clearly restricting any punishable behaviors,”¹⁵⁷⁵ which implies “a clear definition of the incriminatory behavior, setting its elements, and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures.”¹⁵⁷⁶

M. Internet and Freedom of Expression

1248. William Castillo, director-general of the National Commission of Telecommunications [*Comisión Nacional de Telecomunicaciones – Conatel*], threatened to “block out” Twitter in Venezuela, after his personal account was suspended from Twitter on March 11. His user account was reactivated two hours later. Castillo affirmed that the number of his followers was cut by 70,000 upon the reactivation of his account.¹⁵⁷⁷ A few days later, on March 26, the Attorney General of the Republic, Luisa Ortega Díaz, indicated the need to regulate the use of on-line social networks in the country, after a wave of rumors regarding the alleged kidnapping of children.¹⁵⁷⁸

1249. The director-general of Conatel, William Castillo, informed during the 114th period of sessions of the United Nations (UN) Human Rights Committee that the office blocked access to 1,060 Internet links by order of Justice or violations of the law. Of this total, 924 correspond to links of the webpage Dolar Today, which he accused of being part of a “conspiracy” against Venezuela.¹⁵⁷⁹

N. Communications Surveillance

1250. Citizen Lab, a University of Toronto (Canada), research laboratory on information technology and human rights published a list in October of the governments that allegedly began using FinFisher spyware for the surveillance of communications; Venezuela was on the list.¹⁵⁸⁰

1251. Surveillance programs must be designed and implemented according to international standards on human rights. Particularly, States must 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 pursue a legitimate aim, and 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

¹⁵⁷⁴ I/A Court H. R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paragraph 55.

¹⁵⁷⁵ I/A Court H. R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paragraph 55.

¹⁵⁷⁶ I/A Court H. R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paragraph 55.

¹⁵⁷⁷ El Nacional. March 11, 2015. [Twitter suspendió la cuenta del director de Conatel](#); “Twitter acaba de suspender la cuenta personal del Director de @Conatel @planwac la campaña de guerra sucia continúa en la redes”. Twitter account of Comisión Nacional de Telecomunicaciones @Conatel. [March 11, 2015- 7:59 AM](#); “Gracias!! Twitter me devolviste mi cuenta, pero me tumbaste + de 70.000 seguidores. Devuélvemelos o te bloquearé en Venezuela ;-)”. Twitter account of William Castillo @planwac. [March 11, 2015- 11:01 AM](#).

¹⁵⁷⁸ 2001. March 26, 2015. [Luisa Ortega Díaz: A las redes sociales hay que regularlas](#); Noticias 24. March 26, 2015. [Cree que se debería “regular” por medio de una legislación el tema de las redes sociales en el país](#).

¹⁵⁷⁹ Manifiestar.org. June 30, 2015. [Castillo: Internet en Táchira lo suspendieron los manifestantes en 2014](#); Noticias 24. June 30, 2015. [Castillo ante la ONU: “El Estado venezolano es garante absoluto de la libertad de expresión”](#); El Universal. June 30, 2015. [Castillo: Legislación venezolana protege a usuarios y operadores de medios](#).

¹⁵⁸⁰ Citizen Lab. October 15, 2015. [Pay No Attention to the Server Behind the Proxy: Mapping FinFisher’s Continuing Proliferation](#).

authorize, execute and monitor them; and the legal mechanisms by which they may be challenged. Furthermore, the law must authorize access to communications and personal information only under the most exceptional circumstances defined by legislation. When national security is invoked as a reason for the surveillance of correspondence and personal information, the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate. Its application shall be authorized only in the event of a clear risk to protected interests and when the damage that may result would be greater than society's general interest in maintaining the right to privacy and the free circulation of ideas and information.¹⁵⁸¹

1252. 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.¹⁵⁸²

¹⁵⁸¹ IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 415.

¹⁵⁸² IACHR. [Annual Report 2013. 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.149. Doc. 50. December 31, 2013. Para. 415.

ACCESS TO INFORMATION, VIOLENCE AGAINST WOMEN, AND THE ADMINISTRATION OF JUSTICE IN THE AMERICAS

A. Introduction

1. Objectives and scope of the report

1. The objective of this report is to examine the challenges women face in gaining adequate and effective access to State-controlled information on the prevention of and protection from violence and discrimination, as well as on access to justice for victims. This report also seeks to systematize the international standards on this subject that have been developed in the inter-American system, to highlight some priority challenges, and to identify good practices in the region with regard to the application and enforcement of those standards.

2. The IACHR has continuously received information from various resources – for example, in the context of individual case petitions, hearings, communications from civil society organizations, and working visits – which demonstrates that violence and discrimination continue to be widespread and serious issues in the Americas which merit priority attention. Many of the cases decided by the Commission and the Court also have taken place in contexts where victims of violence and/or their family members have faced a number of barriers to access basic information about their cases before the justice system and ongoing investigations pertaining to disappearances and murders. In a significant number of these cases, the family members have been mistreated by the authorities in their efforts to seek information managed by the State. The Commission has issued statements pertinent to the content and scope of the right to access to information in cases such as *Paloma Ágelica Escobar Ledezma et al.* (Mexico),¹⁵⁸⁴ *Jessica Lenahan (Gonzales) et al.* (United States),¹⁵⁸⁵ *María Eugenia Morales de Sierra* (Guatemala),¹⁵⁸⁶ *Ana, Beatriz and Celia González Pérez* (Mexico),¹⁵⁸⁷ *Maria da Penha Maia Fernandes* (Brazil),¹⁵⁸⁸ *Diana Ortiz* (Guatemala),¹⁵⁸⁹ and *X and Y* (Argentina),¹⁵⁹⁰ among others. Likewise, the Inter-American Court has delivered judgments in the cases of *María Isabel Véliz Franco v. Guatemala*;¹⁵⁹¹ *J. v. Peru*;¹⁵⁹² *Valentina Rosendo Cantú et al. v. Mexico*;¹⁵⁹³ *Inés Fernández Ortega v. Mexico*;¹⁵⁹⁴ *Claudia Ivette González, Esmeralda Herrera Monreal, and Laura Berenice Ramos Monárrez (“Cotton Field”) v. Mexico*;¹⁵⁹⁵ and *Miguel Castro-Castro Prison v. Peru*,¹⁵⁹⁶ among others.

¹⁵⁸³ Approved by the Inter-American Commission on Human Rights on March 27, 2015. This report was prepared by the Office of the Rapporteur on the Rights of Women, with the technical assistance from the IACHR Office of the Special Rapporteur for Freedom of Expression.

¹⁵⁸⁴ IACHR, Report No. 51/13, Merits, Case 12.551, *Paloma Ágelica Escobar Ledezma et al.* (Mexico), July 12, 2013.

¹⁵⁸⁵ IACHR, Report No. 80/11, Merits, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011.

¹⁵⁸⁶ IACHR, Report No. 4/01, Merits, Case 11.625, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001.

¹⁵⁸⁷ IACHR, Report No. 53/01, Merits, Case 11.565, *Ana, Beatriz and Celia González Pérez* (Mexico), April 4, 2001.

¹⁵⁸⁸ IACHR, Report No. 54/01, Merits, Case 12.051, *Maria da Penha Maia Fernandes* (Brazil), April 16, 2001.

¹⁵⁸⁹ IACHR, Report No. 31/96, Merits, Case 10.526, *Diana Ortiz* (Guatemala), October 16, 1996.

¹⁵⁹⁰ IACHR, Report No. 38/96, Merits, Case 10.506, *X and Y* (Argentina), October 15, 1996.

¹⁵⁹¹ I/A Court H.R., Case of *Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277.

¹⁵⁹² I/A Court H.R., Case of *J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275.

¹⁵⁹³ I/A Court H.R., Case of *Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216.

¹⁵⁹⁴ I/A Court H.R., Case of *Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215.

¹⁵⁹⁵ I/A Court H.R., Case of *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 20.

3. Although the Inter-American Commission has adopted several regional reports focused on access to justice and violence and discrimination against women, it has only recently begun to examine access to information in greater detail from a gender perspective. The IACHR has emphasized that access to information is closely linked to women's enjoyment of other fundamental human rights, such as the right to personal integrity, the right to privacy, the right to protection of the family, and the right to live free from violence and discrimination.¹⁵⁹⁷ For example, the IACHR has maintained that, in the sphere of health, the right of access to information is especially important for ensuring that women are in a position to make free and informed decisions regarding reproduction and their sexuality.¹⁵⁹⁸

4. This report thus focuses on access to information as a right that is instrumental in order to respect and guarantee women's rights to live free from violence and discrimination. In this framework, the Commission will first set forth the principal international standards on this subject and will then examine information received from State and non-State actors on the main challenges faced by women in accessing the information they need in order to exercise their rights in the spheres of the administration of justice; the implementation of legislation and violence and discrimination prevention, assistance, and protection programs; and State collection and production of information and statistics. Further on, the report will discuss information received by the States about the initiatives they are carrying out in the foregoing spheres on access to information, and lastly, it will make recommendations to the States in this area.

2. Methodology

5. In order to prepare this report, the Commission carried out a number of activities to collect information on issues related to access to information on violence and discrimination against women in the region.

6. As one of those activities, the IACHR circulated a questionnaire to consult States and civil society with the goal of collecting relevant information on the main roadblocks faced by women in obtaining adequate access to State-held information concerning violence and discrimination.¹⁵⁹⁹ The IACHR thanks the States and civil society organizations that responded to the questionnaire and sent their responses to the Commission.¹⁶⁰⁰

7. The IACHR also undertook a working visit to Colombia from September 29 to October 3, 2014. As part of this trip, the IACHR delegation visited the cities of Cali, Cartagena, and Bogotá, and met with organizations of Afro-descendent women, women victims of armed conflict, and community leaders. The IACHR delegation also organized two events—one academic and one public—to disseminate the inter-American standards on the rights of women and access to information. During the visit, the IACHR received information on specific cases of Afro-Colombian women, which will be discussed in this report in order to illustrate the main challenges in this field.

¹⁵⁹⁶ I/A Court H.R., *Case of Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160.

¹⁵⁹⁷ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 4; IACHR, *Access to information on reproductive health from a human rights perspective*, November 22, 2011, paras. 1, 26, 31.

¹⁵⁹⁸ IACHR, *Access to information on reproductive health from a human rights perspective*, November 22, 2011.

¹⁵⁹⁹ See, Annex, Questionnaire circulated by the IACHR on *Access to information in the Americas from a gender perspective*, March 29, 2014 (hereinafter "Questionnaire").

¹⁶⁰⁰ The States that sent their responses to the questionnaire prepared by the Commission were: Argentina, Bolivia, Colombia, Ecuador, the United States, Guatemala, Guyana, Mexico, Paraguay, Peru, and Suriname. Likewise, the Commission received the responses prepared by the Inter-American Commission on Women, the organization Alianza Política Sector de Mujeres de Guatemala [Guatemala Women's Sector Political Alliance], and the Due Diligence Project. The Commission also received a response from the International Pro Bono network consisting of information provided by civil society organizations from Argentina, Bolivia, Chile, Colombia, Mexico, Panama, Peru, and Venezuela.

8. In drafting this report, the Inter-American Commission took into account the information received during its working visits, as well as those situations dealt with by the IACHR in the exercise of its authority with regard to petitions and cases; precautionary measures; public hearings; thematic and country reports; and in the context of its press releases and the requests for information made to the States based on the competencies granted to the Commission by Article 41 of the American Convention. In its analysis, the IACHR also included the approaches developed by various international organizations charged with overseeing international treaties. Specifically, those approaches developed by the Offices of the UN Special Rapporteurs on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and on Violence against Women, as well as by the United Nations Committee on the Elimination of Discrimination against Women (hereinafter “CEDAW”), in addition to other mechanisms of the universal system of human rights, were taken into account in this report. The IACHR also took into consideration the information that States and various civil society organizations provided to the Commission itself, as well as the public information available through public institutions and in the media, which it duly verified.

9. Finally, the IACHR is especially grateful for the support of the Swedish International Development Cooperation Agency (ASDI-SIDA) in the execution of the Latin America and Caribbean component of this initiative.

B. Standards on the Right of Access to Public Information on Violence and Discrimination against Women

10. The inter-American system has firmly established the right of access to information.¹⁶⁰¹ In this regard, the organs of the system have developed a number of standards related to its content and scope, the requirements for its restriction, as well as the State obligations to which it gives rise. OAS Member States have also affirmed in different occasions their commitment to adopt the legal and policy measures necessary to guarantee the right to access to information within their jurisdictions.¹⁶⁰²

11. In the next section, the Commission briefly reviews the main standards and develops in more detail specific aspects related to the scope of the right to access information as an essential instrument to guarantee the rights of women to live free from violence and discrimination, the right to access justice, and the need for an inter-sectional perspective in the treatment of violence and discrimination.

1. Content and Scope of the Right of Access to Information

12. Access to information is a human right protected by Article 13 of the American Convention and Article IV of the American Declaration. In this regard, the Inter-American Court established in the case *Claude Reyes et al. v. Chile* that

“by expressly stipulating the right to ‘seek’ and ‘receive’ ‘information,’ 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.”¹⁶⁰³

¹⁶⁰¹ See, for example, IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011.

¹⁶⁰² See, e.g., OAS General Assembly Resolutions AG/RES. 1932 (XXXIII-O/03) June 10, 2003; AG/RES. 2057 (XXXIV-O/04) June 8, 2004; AG/RES. 2121 (XXXV-O/05) June 7, 2005; AG/RES. 2252 (XXXVI-O/06) June 6, 2006; AG/RES. 2288 (XXXVII-O/07) June 5, 2007; AG/RES. 2418 (XXXVIII-O/08) June 3, 2008; AG/RES. 2514 (XXXIX-O/09) June 4, 2009; AG/RES. 2607 (XL-O/10) June 8, 2010; AG/RES. 2661 (XLI-O/11) June 7, 2011; AG/RES. 2727 (XLII-O-12) June 4, 2012, and AG/RES. 2811 (XLIII-O/13) June 6, 2013.

¹⁶⁰³ I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, para. 77.

13. With this judgment, the Inter-American Court of Human Rights became the first international tribunal to recognize that the right of access to public information is a fundamental human right, protected by human rights treaties that bind countries to respect it. As the IACHR has acknowledged, since then the countries of the region have furthered the legal recognition of the right and the establishment of procedures and bodies responsible for protecting and guaranteeing it. However, the IACHR has insisted on the need to disseminate the scope and possibilities of this right since, in practice, only rights that are known are demanded and protected.

14. Both the universal and inter-American human rights systems have widely stressed the fact that access to information facilitates the exercise of other human rights; that is to say, access to information is, in many cases, essential in order for individuals to give effect to other rights.¹⁶⁰⁴ The IACHR thus considers access to information to be a condition precedent for demanding and exercising other human rights.

15. Under the terms established by Article 13 of the American Convention, all individuals have the right to request access to information. In this respect, the Inter-American Court has specified that it is not necessary to prove direct interest or personal involvement in order to procure State-held information,¹⁶⁰⁵ except in cases where a legitimate restriction allowed by the American Convention applies, under the terms that will be explained below. Along these lines, the Model Inter-American Law on Access to Public Information¹⁶⁰⁶ adopted by the OAS General Assembly establishes that any person making a request for information to any public authority covered by said law shall be entitled “to make an anonymous request for information [and] to make a request without providing justifications for why the information is requested.”¹⁶⁰⁷

16. With respect to the entities obligated to guarantee the right of access to information, the IACHR and the Office of the Special Rapporteur have specified that “the right of access to information generates obligations at all levels of government, including for public authorities in all branches of government, as well as for autonomous bodies. This right also affects those who carry out public functions, provide public services, or manage public funds in the name of the State. Regarding the latter group, the right of access to information obligates them to turn over information exclusively on the handling of public funds, the provision of services in their care, and the performance of public functions.”¹⁶⁰⁸

17. The IACHR has further noted that the right of access to information covers all of “the information that is in the care of, possession of, or being administered by the State; the information that the State produces, or the information that it is obliged to produce; the information that is under the control of those who administer public services and funds and pertains to those specific services or funds; and the information that the State collects and that it is obligated to collect in the performance of its functions.”¹⁶⁰⁹

¹⁶⁰⁴ In the framework of the Inter-American System, see, for example: IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 4; IACHR, *Access to information on reproductive health from a human rights perspective*, November 22, 2011, paragraphs 1, 26, 31. In the framework of the United Nations System, see, for example: *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, September 4, 2013, U.N. Doc. A/68/362, para. 19.

¹⁶⁰⁵ I/A Court H.R., Case of *Claude Reyes et al. v. Chile*, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, paragraph 77; Inter-American Court of Human Rights, Case of *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2010, Series C No. 219, para. 197.

¹⁶⁰⁶ OAS, Model Inter-American law on access to public information, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010.

¹⁶⁰⁷ OAS, Model Inter-American law on access to public information, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010, paragraph 5.e.-f.

¹⁶⁰⁸ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 19.

¹⁶⁰⁹ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 21.

18. Lastly, the IACHR has defined the various State obligations generated by the right of access to information: the obligation to respond in a timely, complete, and accessible manner to requests made; the obligation to offer a legal recourse that satisfies the right of access to information; the obligation to provide an adequate and effective legal remedy for reviewing denials of requests for information; the obligation of active transparency; the obligation to produce or gather information; the obligation to create a culture of transparency; the obligation to adequately implement the laws on the access to information; and the obligation to adjust domestic legislation to the demands of the right of access to information.¹⁶¹⁰

19. The Commission considers important to clarify that these principles and obligations are also pertinent to the scope of the right to access information under the American Declaration. The Commission has recognized in the past that the right to access information is contained in various dispositions of the American Declaration – in particular Article IV – and can be implicated in cases of violence against women.¹⁶¹¹ This is of particular relevance for OAS Member States that have not ratified the American Convention or have denounced the same.¹⁶¹²

20. The Commission takes advantage of this opportunity to reiterate that the American Declaration is a source of international obligations for all the OAS Member States.¹⁶¹³ These obligations are considered to flow from the human rights obligations of Member States under the OAS Charter.¹⁶¹⁴ Member States have agreed that the content of the general principles of the OAS Charter is contained in and defined by the American Declaration, as well as the customary legal status of the rights protected under many of this instrument's provisions.¹⁶¹⁵

21. The American Declaration is part of the human rights framework established by the OAS Member States, referring to the obligations and responsibilities of the States, and requires that they refrain from supporting, tolerating, or participating in acts or omissions that contravene their commitments in the area of human rights. As the Declaration is a source of legal obligations, the States must implement in practice, within their jurisdictions, the rights established in that Declaration.¹⁶¹⁶ One such right is the right to freedom of investigation, opinion, expression and dissemination under Article IV of the Declaration, protecting the right to access to information. When elaborating on the content and interpreting Article IV of the Declaration, the Commission considers appropriate to take into account Article 13(1) of the American Convention and the inter-American system's pronouncements on access to information. As has been indicated in the past, the American Convention represents in many instances an authoritative expression of the

¹⁶¹⁰ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paras. 23-44.

¹⁶¹¹ IACHR, *The Right to Truth in the Americas*, August 13, 014, para. 34; IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paras. 181-198.

¹⁶¹² A group of 23 OAS Member States have ratified the American Convention and continue being State parties to said instrument. See, Table, Status of Ratifications and Signatures, American Convention on Human Rights, available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm

¹⁶¹³ See I/A Court H.R., Advisory Opinion OC10/89 “Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights,” July 14, 1989, Ser. A, No. 10 (1989), para. 45. In that opinion, the Court maintained that “for the Member States of the Organization, the Declaration is the text that defines the human rights referred to in the Charter.”

¹⁶¹⁴ OAS Charter, Articles 3, 16, and 51.

¹⁶¹⁵ IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 115.

¹⁶¹⁶ See, as a reference, the Statute of the Inter-American Commission on Human Rights (1979), Article 1, which establishes that the Commission was created “to promote the observance and defense of human rights” and defines human rights as those set forth in the American Declaration and in the American Convention. See also, Articles 18 and 20 of the Statute and the American Convention on Human Rights, Article 29(d.), which provides that no provision of this Convention shall be interpreted in the sense of “excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.” See also, Rules of Procedure of the Inter-American Commission on Human Rights (2009), Articles 51 and 52, which empower the Commission to receive and examine petitions alleging the violation of rights enshrined in the American Declaration with respect to OAS Member States that are not parties to the American Convention.

fundamental principles set forth in the American Declaration.¹⁶¹⁷ In this sense, while the Commission does not apply the American Convention in relation to Member States that have yet to ratify said treaty, its provisions are relevant to informing an interpretation of all dispositions of the Declaration.¹⁶¹⁸

2. Main Guiding Principles Behind the Right of Access to Information

22. The IACHR has noted that in order for the full and effective exercise of the right of access to information to be guaranteed, state administration must be governed by the principles of maximum disclosure and good faith.¹⁶¹⁹

23. The principle of maximum disclosure calls for designing a legal regime in which transparency and the right of access to information are the general rule and only subject to strict and limited exceptions.¹⁶²⁰ Along the same lines, principle 4 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission establishes that “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”¹⁶²¹

24. Likewise, the Model Inter-American Law on Access to Public Information is based on the principle of maximum disclosure, “so that all information held by public bodies is complete, timely, and accessible, subject to a clear and narrow regime of exceptions set out in law that are legitimate and strictly necessary in a democratic society.”¹⁶²²

25. As the IACHR has maintained, the following consequences derive from the principle of maximum disclosure: “(1) the right of access must be subject to a limited regime of exceptions, and these exceptions must be interpreted restrictively, with all their provisions interpreted to favor the right of access; (2) denials of information must be reasoned, and in this sense the burden of proving that the requested information cannot be released falls to the State; and (3) the right of access to information should take precedence in the event of doubts or legal vacuums.”¹⁶²³

26. In turn, the principle of good faith establishes that

“to guarantee the effective exercise of the right of access to information, it is crucial that those bound to guarantee this right act in good faith; that is, that they ensure the strict application of the right, provide the necessary measures of assistance to petitioners, promote a culture of transparency, contribute to making public administration more transparent, and act with due diligence, professionalism, and institutional loyalty. They must

¹⁶¹⁷ IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, doc. 30/14, December 21, 2014, para. 110.

¹⁶¹⁸ IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev. February 28, 2000, para. 38.

¹⁶¹⁹ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 8.

¹⁶²⁰ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 10.

¹⁶²¹ IACHR, *Declaration of Principles on Freedom of Expression*, approved by the Inter-American Commission on Human Rights during its 108th regular period of sessions, held on October 2-20, 2000. Available at: <http://www.oas.org/en/iachr/mandate/Basics/principlesfreedom.asp>

¹⁶²² OAS, *Model Inter-American Law on Access to Public Information*, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010, para. 2.

¹⁶²³ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 10.

take the actions necessary to serve the general interest and not betray the people's confidence in State administration."¹⁶²⁴

27. Furthermore, the IACHR considers that the guarantee of women's full and effective exercise of the right of access to information on violence and discrimination requires, in addition to the application of the aforementioned principles, that State actions be motivated by the principles of equality and non-discrimination, which are the core of the inter-American human rights system.¹⁶²⁵

28. In this regard, the Declaration of Principles on Freedom of Expression sets forth 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."

29. Likewise, the IACHR has maintained that "the right of access to information constitutes a legal tool for securing transparency in government undertakings and for assuring oversight and effective participation by all sectors of society on a nondiscriminatory basis. Encouraging and promoting information access among the poorest sectors of the hemisphere's societies will enable their active and informed participation regarding the design of public policies and measures that directly affect their lives."

3. Restrictions on the Right of Access to Information

30. The right of access to information is not an absolute right; rather, it may be subject to limitations. These limitations must fully comply with the requirements derived from Article 13.2 of the American Convention, that is, they must fulfill the conditions of exceptional nature, legal establishment, legitimate purpose, and necessity and proportionality.¹⁶²⁶

31. The exceptional nature of permissible limitations on the right of access to information is a consequence of the principle of maximum disclosure. On this issue, the IACHR has stated that, according to this principle, "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."¹⁶²⁷

32. In the same way, limitations on the right of access to information must be expressly prescribed by law in advance, and the establishment thereof must be sufficiently clear and specific so as to avoid an excessive degree of discretion from being granted to the public officials who decide whether or not to disclose the information.¹⁶²⁸ According to the interpretation provided by the Inter-American Court, the word "law" in this context—as well as in all cases in which the American Convention makes use of that term with regard to the restrictions that it authorizes for each of the protected rights—shall be understood to mean a "general legal norm tied to the general welfare, passed by democratically elected bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose."¹⁶²⁹

¹⁶²⁴ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 15.

¹⁶²⁵ IACHR, *Access to justice for women victims of violence in the Americas*, January 20, 2007, paragraph 23.

¹⁶²⁶ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 45.

¹⁶²⁷ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 48.

¹⁶²⁸ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 49; IACHR. Arguments before the Inter-American Court in the case of *Claude Reyes et al. v. Chile*. Transcribed in: Case of *Claude Reyes et al. v. Chile*, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, para. 58 f).

¹⁶²⁹ I/A Court H.R., *The word "Laws" in article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 38.

33. Furthermore, the laws that set limitations on the right of access to public information must expressly correspond to an objective that is permissible under Article 13.2 of the American Convention, that is, to ensure “respect for the rights or reputations of others” or the protection of “national security, public order, or public health or morals.” The scope of these concepts must be clearly and precisely defined and must coincide with their meaning in a democratic society.¹⁶³⁰

34. In addition, all limitations imposed on the right of access to public information must be necessary in a democratic society in order to satisfy a legitimate public interest. In this regard, the IACHR has noted:

Among several options for accomplishing this objective, the one least restrictive to the right must be chosen, and the restriction must (i) be conducive to the attainment of the objective; (ii) be proportionate to the interest that justifies it; and (iii) interfere to the least extent possible with the effective exercise of the right. With specific regard to the requirement of proportionality, the Inter-American Commission has asserted that any restriction to access to information held by the State, in order to be compatible with the Convention, must overcome a three-part proportionality test: (a) it must be related to a legitimate aim that justifies it; (b) it must be demonstrated that the disclosure of the information effectively threatens to cause substantial harm to this legitimate aim; and (c) it must be demonstrated that the harm to the objective is greater than the public’s interest in having the information.¹⁶³¹

35. In addition to the aforementioned requirements, “when there is in fact a reason allowed by the Convention for the State to limit access to information in its possession, the person who requests the access must receive a reasoned response that provides the specific reasons for which access is denied.”¹⁶³²

36. With regard to the legitimacy of these limitations, the organs of the Inter-American system have particularly emphasized that victims and their relatives, as well as the society as a whole, have the right to access information on serious violations of human rights in the archives of the State. This is the case even if the archives in question pertain to the security agencies or military or police agencies. Specifically, the Inter-American Court has noted that “it is essential that, in order to guarantee the right to information, the public powers act in good faith and diligently carry out the necessary actions to assure the effectiveness of this right, particularly when it deals with the right to the truth of what occurred in cases of gross violations of human rights [...]”¹⁶³³ To this respect, it has stated that it cannot be left to the institution accused of committing mass human rights violations to decide whether or not the information exists, and whether or not to make it public. Similarly, the State cannot release itself from its obligations simply by alleging that the required information on mass human rights violations committed in the past was destroyed. On the contrary, the State has the obligation to search for such information by all possible means¹⁶³⁴. In that sense, the Model Inter-American

¹⁶³⁰ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 52.

¹⁶³¹ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 53.

¹⁶³² IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 55; Inter-American Court of Human Rights, Case of *Claude Reyes et al. v. Chile*, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, paragraph 77; Inter-American Court of Human Rights, Case of *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2010, Series C No. 219, para. 230.

¹⁶³³ I/A Court H.R., Case of *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2010, Series C No. 219, para. 211.

¹⁶³⁴ I/A Court H.R., Case of *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2010, Series C No. 219, para. 211.

Law, establishes that the exceptions to access to public information “do not apply in cases of serious violations of human rights or crimes against humanity.”¹⁶³⁵

37. With regard to the right to truth, the Court and the Commission have held that the right to truth is closely linked with access to information and access to justice.¹⁶³⁶ The right to truth has two dimensions. The first dimension is, as mentioned above, “the right for victims and their family members to know the truth about the events that led to serious violations of human rights, and the right to know the identity of those who played a role in those violations.”¹⁶³⁷ The second dimension is that both the victims and all of society are considered holders of the right to truth, meaning that “every society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future.”¹⁶³⁸ Thus, the dissemination of information to all of society enables it to recognize and learn from past mistakes, make reparations and rebuild the society in a way to prevent the repetition of such human rights violations.¹⁶³⁹

4. Access to Information on Discrimination and Violence against Women

38. As noted above, access to information is closely tied to the attainment of other human rights.¹⁶⁴⁰ That is to say, access to information is a prerequisite for demanding and exercising other human rights, and therefore, the failure to respect and guarantee this right for women may lead to the infringement of their rights to live free from violence and discrimination. In these areas, in particular, access to information is instrumental in preventing discrimination and violence as well as in ensuring victims’ access to justice.

39. In this regard, it is important to underscore that the rights to live free from discrimination and violence are closely related. This connection is reflected in Article 6 of the Belém do Pará Convention, which establishes that the right of all women to live free from violence includes, inter alia, the right to live free from all forms of discrimination.¹⁶⁴¹ The IACHR has also established that this link is also reflected in the American Declaration. In this sense, one important precedent is the Commission’s merits decision in the case of *Jessica Lenahan (Gonzales) et al. v. United States*, in which the prevention and eradication of violence against women were found to be key obligations comprehended within the duty to eliminate all forms of discrimination under Article II of the American Declaration on the Rights and Duties of Man.¹⁶⁴² The IACHR has also consistently reaffirmed the connection between the problems of violence and discrimination in its reports.¹⁶⁴³

40. Article 1 of the Belém do Pará Convention defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to

¹⁶³⁵ OAS, Model Inter-American Law on Access to Public Information, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010, para. 44.

¹⁶³⁶ IACHR, *The Right to Truth in the Americas*, August 13, 2014, para. 69.

¹⁶³⁷ IACHR, *The Right to Truth in the Americas*, August 13, 2014, para. 70.

¹⁶³⁸ IACHR, *The Right to Truth in the Americas*, August 13, 2014, para. 71.

¹⁶³⁹ IACHR, *The Right to Truth in the Americas*, August 13, 2014, para. 109.

¹⁶⁴⁰ See, for example: IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 4; IACHR, *Access to Information on Reproductive Health from a human rights perspective*, November 22, 2011, paras. 1, 26, 31.

¹⁶⁴¹ Here, the Commission considers it important to note that all OAS Member States, with the exception of the United States and Canada, have ratified the Convention of Belém do Pará.

¹⁶⁴² IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paras. 115-121.

¹⁶⁴³ See, for example: IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, paragraphs 59 et seq.; IACHR, *Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application*, November 3, 2011, para. 22 et seq.

women, whether in the public or the private sphere.” According to Article 1 of the same Convention, that definition includes any form of violence

“(a) that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery, and sexual abuse; (b) that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping, and sexual harassment in the workplace, as well as in educational institutions, health facilities, or any other place; and (c) that is perpetrated or condoned by the State or its agents regardless of where it occurs.”

41. In establishing its standards on State obligations with regard to discrimination and violence, the Commission has highlighted the importance of taking into account the differences among women and the specific conditions of vulnerability to which some groups of women are subjected. The Commission has thus underscored

“the duty of States to take special account of the inextricable link between the factors that expose women to discrimination along with their sex, such as their age, race, ethnicity, and economic position, among others. The principle of intersectionality has been established in Article 9 of the Convention of Belém do Pará, since discrimination and violence do not always affect women in the same measure. There are women that are exposed to the violation of their human rights on the basis of more than one risk factor. Some examples highlighted by the Commission are the alarming situation of girls and indigenous women in the guarantee and exercise of their human rights.”¹⁶⁴⁴

42. As noted above, the right of access to information generates a number of specific obligations for States. According to the Commission, access to information as an instrumental right for the effective exercise of women’s rights to live free from discrimination and violence requires the fulfillment of three main obligations: (i) the obligation to collect and produce information, (ii) the obligation of active transparency, and (iii) the obligation to respond to requests for information made thereto, and to offer a recourse that satisfies the right of access to information. These obligations will be discussed below.

i. The Obligation to Collect and Produce information

43. In general, due to the principle of good faith, States have the obligation to guarantee the availability of and access to information by collecting, recording or producing the information they need in order to fulfill their international, constitutional, and legal obligations.¹⁶⁴⁵

44. To comply with these obligations, States should produce statistical information that is disaggregated by groups in a situation of vulnerability, and in this respect the Commission has maintained that “the production of information that is properly categorized so as to determine what sectors are disadvantaged or relegated in the exercise of their rights, from this perspective, is not only a way to guarantee the effectiveness of a public policy, but is also an indispensable obligation that allows the State to fulfill its duty to provide such sectors with special and prioritized attention. As an example, the desegregation of data by sex, race, or ethnicity is an indispensable tool for illustrating problems of inequality.”¹⁶⁴⁶

¹⁶⁴⁴ IACHR, *Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application*, November 3, 2011, para. 28.

¹⁶⁴⁵ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 35.

¹⁶⁴⁶ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 35.

45. In particular, regarding access to public information on discrimination and violence, the Belém do Pará Convention establishes that States undertake to progressively adopt a set of measures and programs that guarantee women's right to adequate, effective, and timely access to justice in cases of violence against them. Pursuant to Article 8 (h) of the Convention, these include measures designed "to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences, and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish, and eradicate violence against women and to formulate and implement the necessary changes."

46. The obligations derived from Article 8 of the Belém do Pará Convention must be interpreted jointly with the obligations set forth in Article 7 of that same international instrument, which establishes a number of immediate State duties, such as the duty to apply due diligence to prevent, investigate, and impose penalties for violence against women. The IACHR has expressly stated that:

The obligation of due diligence to prevent situations of violence, especially where widespread or deeply-rooted practices are concerned, imposes upon the States a parallel obligation. On the one hand [sic], States should monitor the social situation by producing adequate statistical data for designing and assessing public policies. On the other hand, States should take into account the policies implemented by the civil society. The obligation undertaken in Article 7.b of the Convention of Belém do Pará must be read in combination with the obligation established in Article 8.h to guarantee that statistics and other relevant data on the causes, consequences, and incidence of violence against women are researched and compiled with a view to evaluating the effectiveness of measures to prevent, punish, and eradicate violence against women and then formulating and introducing any needed changes.¹⁶⁴⁷

47. In the same way, the need to gather and disseminate information on discrimination and violence against women has been affirmed on many occasions in the United Nations framework.¹⁶⁴⁸ In this sphere, particular emphasis has been placed on the idea that court statistics represent an important contribution towards understanding the response of the criminal justice system to violence against women by, for example, making it possible to assess the effectiveness of laws and sanctions designed to protect women through statistics that track repeat offenders.¹⁶⁴⁹

48. In this regard, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) establishes positive obligations regarding information on education (Article 10), health care for rural women (Article 14.2.b), and family planning (Article 16.1.e). Furthermore, the CEDAW Committee has stated that "States parties have an international responsibility to create and continuously improve statistical databases and the analysis of all forms of discrimination against women in general and against women belonging to specific vulnerable groups in particular."¹⁶⁵⁰ The Committee has recommended that States encourage "the compilation of statistics and research on the extent, causes, and effects of violence, and on the effectiveness of measures to prevent and deal with violence"¹⁶⁵¹ and specifically, the analysis and

¹⁶⁴⁷ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 42.

¹⁶⁴⁸ See, for example: United Nations, *Resolution 26/15 of the Human Rights Council: Accelerating efforts to eliminate all forms of violence against women: violence against women as a barrier to women's political and economic empowerment*, July 11, 2014, U.N. Doc. A/HRC/RES/26/15, paragraph 7; United Nations, *Resolution 23/7 of the Human Rights Council: Elimination of discrimination against women*, June 20, 2013, U.N. Doc. A/HRC/RES/23/7, paragraph 12; United Nations, *Report of the Working Group on the issue of discrimination against women in law and in practice*, April 19, 2013, U.N. Doc. A/HRC/23/50, paragraph 97(g); United Nations, *Intensification of efforts to eliminate all forms of violence against women. Report of the Secretary-General*, August 1, 2012, U.N. Doc. A/67/220, paras. 77-78.

¹⁶⁴⁹ See, for example: United Nations, Report of the Secretary-General, *In-depth study on all forms of violence against women*, July 6, 2006, U.N. Doc. A/61/122/Add.1, para. 209.

¹⁶⁵⁰ United Nations, Committee on the Elimination of Discrimination against Women, *General recommendation No. 28: on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, December 16, 2010, U.N. Doc. CEDAW/C/GC/28, para. 10.

¹⁶⁵¹ United Nations, Committee on the Elimination of Discrimination against Women, *General recommendation No. 19: violence against women*, February 19, U.N. Doc. A/47/38(SUPP) para. 24.

use of data on violence against women, in particular in relation to the number of reported cases, prosecutions, and convictions, as well as on the sentences imposed on the perpetrators and the compensation, in order to determine the benefits of the law, and to elaborate policies and programs to promote women's access to justice.¹⁶⁵²

49. Along the same lines, the Report of the United Nations Secretary-General on the intensification of efforts to eliminate all forms of violence against women provides specific recommendations on the obligations that States must fulfill with regard to gathering, disseminating, and using information on violence against women:

States should ensure the systematic and coordinated collection and dissemination of data, as well as its analysis, including on prevalence, frequency, causes, and consequences of violence against women and on the impact of measures to address such violence. Statistical data should be disaggregated by sex, race, age, ethnicity, and other relevant characteristics. [...]

States should use available data to monitor trends and progress and inform legislative and policy reforms and the provision of targeted and effective services. The development of uniform standards of data collection and capacity-building of statisticians to collect data in a gender-sensitive manner are critical. Qualitative research should be intensified to cover the economic, political, and social determinants of violence against women.¹⁶⁵³

50. Consequently, and with regard to access to information for the prevention of violence and discrimination against women, States have the specific obligation to produce meaningful statistics and other types of relevant information on the causes, consequences, and incidence of violence against women. This information should be used as a foundation for designing and assessing the effectiveness of public policies and other measures adopted in order to prevent, punish, and eradicate violence and discrimination against women. The Commission has reiterated numerous times that State data collection efforts—both quantitative and qualitative—are indispensable in order to fully understand the scale of the existing problems and to properly design legislation and public policies in order to respond to these issues.¹⁶⁵⁴

51. The IACHR stresses the importance of States incorporating women and the organizations that represent them into their mechanisms for gathering information. In this respect, the IACHR has previously set forth that “States must compile that information in partnership and consultation with the various sectors that have the critical data, including the victims themselves, their communities, state centers and agencies tasked with this issue, academia, international organizations, and civil society organizations. A cooperative relationship between the producers and users of statistics must be institutionalized.”¹⁶⁵⁵

ii. The Obligation of Active Transparency

52. As the IACHR has maintained, “the obligation to provide information proactively (also called the obligation of active transparency) 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.”¹⁶⁵⁶

¹⁶⁵² United Nations, Committee on the Elimination of Discrimination against Women, *Access to Justice – Concept note for Half Day General Discussion*, endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd session, 2012, page 7. Available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ConceptNoteAccessToJustice.pdf>

¹⁶⁵³ United Nations, *Intensification of efforts to eliminate all forms of violence against women. Report of the Secretary-General*, August 1, 2012, U.N. Doc. A/67/220, paras. 77-78.

¹⁶⁵⁴ IACHR, *Press release 9/13: IACHR concludes its working visit to Suriname*, February 12, 2013.

¹⁶⁵⁵ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 44.

¹⁶⁵⁶ IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, para. 25.

53. Concerning the scope of the obligation of active transparency, the IACHR has indicated that States have the obligation to “provide the public with the maximum quantity of information proactively, at least in terms of: (a) the structure, function, and operating and investment budget of the State; (b) the information needed for the exercise of other rights—for example, those pertaining to the requirements and procedures surrounding pensions, health, basic government services, etc.; (c) the availability of services, benefits, subsidies, or contracts of any kind; and (d) the procedure for filing complaints or requests, if it exists.”¹⁶⁵⁷

54. On this matter, the Model Inter-American Law stipulates that States should disseminate proactively information regarding any direct request or complaints mechanisms available; a description of the powers and duties of its senior officers, and the procedure they follow to make decisions; any statutes, policies, decisions, rules, guidelines, manuals, or other records containing interpretations, practices, or precedents regarding the discharge by the public authority of its functions, that affect the general public; any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that public authority.¹⁶⁵⁸

55. With regard to discrimination and violence, the Commission has already pointed out, that women cannot possibly claim their rights unless they know what those rights are.¹⁶⁵⁹ The Commission recalls that, indeed, “the lack of information about the judicial recourses available and the fact that violence and discrimination against women are still accepted in American societies, have kept down the number of complaints of acts of violence against women.”¹⁶⁶⁰ Highlighting the need for active transparency, ISIS International described the problem as follows:

Women do not know what their rights are. Women in general, but particularly women of little means, do not understand their rights and are unfamiliar with the mechanisms available to them to assert those rights. Violence against women continues to be a widespread and culturally accepted practice. Laws are a means of regulation but cannot by themselves effect the cultural change needed to eradicate violence against women.¹⁶⁶¹

56. Consequently, active transparency with regard to discrimination and violence entails the state obligation to disseminate information on women’s rights and the legal avenues for claiming and enforcing those rights, as well as information related to the development of laws and public policies on violence and discrimination. This information must be complete, understandable, up to date, and written in accessible language.

57. In this respect, the CEDAW Committee has also established that the policy followed by the States to eliminate discrimination against women “must ensure that women, as individuals and groups, have access to information about their rights under the Convention and are able to effectively promote and claim those rights. The State party should also ensure that women are able to participate actively in the development, implementation, and monitoring of the policy. To this end, resources must be devoted to ensuring that human rights and women’s non-governmental organizations are well-informed, adequately

¹⁶⁵⁷ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 32.

¹⁶⁵⁸ OAS, Model Inter-American law on access to public information, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010, para. 12.1.

¹⁶⁵⁹ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 230.

¹⁶⁶⁰ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 231.

¹⁶⁶¹ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 231; Elizabeth Guerrero, *Violencia Contra las Mujeres en América Latina y el Caribe: Balance de Una Década 1990-2000* [Violence against Women in Latin America and the Caribbean 1990-2000: An Assessment of a Decade], ISIS International, Santiago, Chile, April 2002, p. 21.

consulted, and generally able to play an active role in the initial and subsequent development of the policy.”¹⁶⁶²

58. The foregoing implies that the State has the obligation to create forums for participation where the women who receive State-produced information can be heard with regard to their specific access-to-information needs. This is especially important for women in traditionally marginalized groups, such as indigenous women and Afro-descendants, given that they face greater obstacles to accessing public information and formal forums for participation.

59. Likewise, the Commission recalls that, as it has stated in the past, in order to meet the objectives of effectively distributing information on discrimination and violence, it is essential for States to adopt specific measures targeted at “the need to legitimize, protect, and support the work of nongovernmental organizations that provide interdisciplinary services to victims of violence by providing information on how to file complaints when women become the victims of violence and how to seek and obtain effective judicial protection.”¹⁶⁶³ Regarding this point, the IACHR underscores that it is essential for States to adopt specific measures targeted at protecting the organizations and journalists that work to research, promote and defend the rights of women, particularly when they request that the State provide access to public information. The Model Inter-American Law on Access to Public Information stipulates that the State is obligated to guarantee that “the requester shall not be sanctioned, punished, or prosecuted in response to the exercise of the right of access to information.”

60. Along these lines, in resolution AG/RES 2579 (XL-0/10)¹⁶⁶⁴ the OAS General Assembly recognized the work that women human rights defenders are doing within the region and noted that, in view of their gender-specific role and needs and the particular risks they face by virtue of the discrimination they have traditionally suffered, women human rights defenders deserve to have States ensure that the important activities that they carry out are fully protected and effective.¹⁶⁶⁵ The State duty to prevent and respond to these issues is not limited to providing material measures to protect the lives and personal integrity of the defenders, or to ensuring that State agents do not interfere in the full exercise of their human rights.¹⁶⁶⁶ It also entails the obligation to act to address the structural causes that have a detrimental impact on their security,¹⁶⁶⁷ in order to create the conditions necessary for the effective enjoyment of the rights established in the American Convention.¹⁶⁶⁸

61. Similarly, the IACHR expresses its concern with regard to the situation of women journalists and the differential risks that they face over their exercise of the profession in the Americas. Especially concerning is the lack of attention that has thus far been paid to the phenomenon and the obstacles to denouncing and understanding it. For this reason, States are reminded of the need to improve mechanisms of

¹⁶⁶² United Nations, Committee on the Elimination of Discrimination against Women, *General recommendation No. 28: on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, December 16, 2010, U.N. Doc. CEDAW/C/GC/28, para. 27.

¹⁶⁶³ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 239.

¹⁶⁶⁴ OAS General Assembly, *Human Rights Defenders: Support for individuals, groups, and organizations of civil society working to promote and protect human rights in the Americas*, adopted in the plenary session held on June 8, 2010.

¹⁶⁶⁵ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, para. 281.

¹⁶⁶⁶ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, (2011), para. 42; IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 47.

¹⁶⁶⁷ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 47.

¹⁶⁶⁸ I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111.

prevention, protection and judicial responses in order to fully comply with the obligations described in this report and guarantee women the full exercise of their freedom of expression.¹⁶⁶⁹

62. In the judicial sphere, the obligation of proactive transparency implies that the State has the duty to promote women's effective access to information in their own languages about their rights, how to access protective and preventive legal proceedings, the processing of the cases, and how to facilitate further investigations and clarify the facts. In this regard, the IACHR has recommended that the States, in the sphere of the administration of justice, "undertake efforts and initiatives to get the available information to the general public in a format that is responsive to the needs of a variety of audiences and populations of differing economic and educational levels, different cultures and different languages."¹⁶⁷⁰ In this sense, the Commission highlights the need to develop educational programs for the general public regarding human rights and the available judicial avenues to present complaints.¹⁶⁷¹

63. It is thus particularly essential for States to guarantee access to the information necessary in order for women to know the protective measures set forth by law for situations in which there is an immediate danger of violence, as well as the channels for demanding those measures in court and for ensuring that the police execute and implement them.

64. The foregoing in turn generates three specific State obligations. First, the States have the obligation to produce and disclose adequate information to facilitate access to mechanisms for providing appropriate, high-quality, free legal aid to women who require it, so that women may quickly and effectively access justice when facing situations of risk.

65. Second, the States should hold training programs for all public officials—especially the police, officers of the court, and public health center employees—on women's human rights, including access to information rights, the international standards in this area, the State obligations with regard to discrimination and violence, and the institutional channels for ensuring that women in situations of risk are supported effectively and without delay.

66. In this respect, the Commission has recognized the prejudicial role of gender stereotypes in the access to justice for women and the need to train all public officials to eradicate this problem. In this sense, the CEDAW Committee has recommended that States implement education and public information programs to help eliminate prejudices that hinder women's equality¹⁶⁷², while the Special Rapporteur on violence against women, its causes and consequences, has maintained that all frameworks of violence prevention should include, inter alia, "capacity-building activities, including training and awareness-raising, such as gender-sensitive training for all civil servants addressing violence and discrimination against women, awareness-raising campaigns with an aim to eliminating discriminatory attitudes and addressing stereotypical attitudes, and the integration of a gender equality perspective into school textbooks and curricula."¹⁶⁷³

¹⁶⁶⁹ IACHR. *Annual Report 2013*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 269.

¹⁶⁷⁰ IACHR, *Access to justice for women victims of violence in the Americas*, January 20, 2007, page 128.

¹⁶⁷¹ IACHR, *Access to justice for women victims of violence in the Americas*, January 20, 2007, page 230.

¹⁶⁷² United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation N° 19: Violence against women*, 19 February 1993, U.N. Doc. A/47/38(SUPP) para. 24.f).

¹⁶⁷³ United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, August 1, 2011, U.N.Doc. A/66/215, para. 75. Along the same lines, the Office of the Special Rapporteur has maintained that in order to fulfill their international obligations of due diligence with regard to prevention, States should adopt measures like "making the criminal justice system and police more aware of gender issues; access to and availability of support services; the promotion of awareness and a modification of discriminatory policies in the sphere of education and the media, and the collection of data and publication of statistics on violence against women." (United Nations, *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, submitted in accordance with Commission on Human Rights resolution 1995/85, UN Doc. E/CN.4/1999/68, March 10, 1999, para. 25.

67. Third, States should produce and widely disseminate the protocols for addressing violence against women in place with the courts of justice, the police, the office of the attorney general, the office of the ombudsman, hospitals, and any other public organization that could be involved in serving women at risk of imminent acts of violence; these action protocols must set forth the specific responsibilities and obligations of State agencies that attend to women in this situation.

68. All these measures must take into account the specific needs that certain groups of women may have when they try to access information, for example, girls, indigenous women, Afro-descendent women, and rural women. This implies that dissemination of information cannot be limited to the use of Internet portals. While the Commission has recognized the importance of Internet for the exercise of the right of access to information and has stated that it is a unique tool to unlock the huge potential of this right in broad sectors of the population, the fact is that in many countries of the region universal access is still not guaranteed. To that extent, States should make efforts to ensure that information reaches all women without discrimination, through the use of the most effective and adequate communication channels according to the needs of each group of women, such as print media, public radio and television, public interest campaigns in private commercial and community media; as well as newsletters, brochures and billboards available in government offices, schools and hospitals.

iii. The Obligation to Respond to Requests for Information Made Thereto, and to Offer a Recourse that Satisfies the Right of Access to Information

69. While active transparency in this field is the primary means to guarantee the right of access to information of women, the Commission recalls that States also have the obligation to guarantee access to public information to those who request it.

70. As it has been previously explained, for most victims of gender violence, access to information facilitates the effective exercise of rights and decision-making. Also, for those civil society organizations working to defend and promote the rights of women, information requests are indispensable tools to fulfill its role of government “watchdog” and to allow their participation in public policy making.

71. In this sense, States have the obligation to respond in a timely, complete, and accessible manner to requests for information made thereto, pursuant to which they are obligated to offer a recourse that satisfies the right of access to information and to provide an adequate and effective legal remedy for reviewing denials of requests for information.¹⁶⁷⁴

72. The IACHR has stated that the recourse that must be made available to enable individuals to request information from the State, must include the following characteristics:

- (a) it must be a simple recourse that is easy for everyone to access and only demands basic requirements, like a reasonable method of identifying the requested information or providing the personal details necessary for the administration to turn over the requested information to the petitioner; (b) it must be free or have a cost low enough so as not to discourage requests for information; (c) it must establish tight but reasonable deadlines for authorities to turn over the requested information; (d) it must allow requests to be made orally in the event that they cannot be made in writing—for example, if the petitioner does not know the language or does not know how to write, or in cases of extreme urgency; (e) it must establish an obligation for administrators to advise the petitioner on how to formulate the request, including advising the petitioner on the authority competent to reply to the request, up to and including filing the request for the petitioner and keeping the petitioner informed of its progress; and (f) it must establish an obligation to the effect that in the event that a request is denied, it must be reasoned and there must be a possibility of appealing the

¹⁶⁷⁴ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 23 et seq.

denial before a higher or autonomous body, as well as later challenging the denial in court.¹⁶⁷⁵

73. In this regard, the Commission reiterates that States cannot require those requesting information to justify the reasons for the request and that this right can be exercised anonymously. Similarly, it is recalled that the State must ensure that persons requesting information are not be criminalized, punished or prosecuted for exercising this right.

74. Finally, the Commission notes that the answer to requests of information necessary to prevent and eradicate violence and discrimination against women often reveal gaps in the availability of information. In this type of cases and in accordance with the principle of progressivity, States must ensure that the public interest information obtained through requests for information is subsequently and proactively released and available to the whole society, so that no use of further remedies to obtain it is needed.

C. Access to State-Controlled Information in Cases of Discrimination and Violence against Women: Principal Challenges

75. In this section, the IACHR will review some of the issues that require States' priority attention with regard to access to information on violence and discrimination, focusing on three specific areas: (i) the deficiencies in the availability of public information; (ii) the problems in the domestic implementation of international standards on access to information; and (iii) the challenges in the area of the administration of justice.

76. The challenges presented in this section were put together from the information that the IACHR received by means of its various working mechanisms, such as the processing of individual petitions and precautionary measures, hearings on the topic, and working visits. In addition, the Commission has received relevant information from the States and the civil society in their responses to the questionnaire on access to information in the Americas from a gender perspective, which is also included in this section. Finally, the information received by the IACHR is complemented with the standards of the United Nations human rights system with regard to the issues addressed.

1. Shortcomings in the Availability, Quality, and/or Integrity of Public Information on Discrimination and Violence against Women

77. The IACHR has found in several instances that specific problems exist in regards to the availability, quality, and integrity of public information on violence and discrimination against women. Among the problems illustrated in the information received by the IACHR are the failure to compile complete information on all forms of violence and discrimination in the various organs of the State, the failure to produce comprehensive statistics based on that information, and the lack of any breakdown of statistical information by factors such as sex, race, ethnicity, age, disability, social condition, and other criteria that would make it possible to take stock of the actual impact of violence and discrimination on specific groups of women.

78. The IACHR has stated that it is concerned about "the disorganized proliferation of state efforts to compile data on [violence] and the fact that the various agencies are all using different formats. Coordination among institutions is poor and sectors (government, administration of justice, health, international and regional organizations, academia and civil society) have to do more to share information."¹⁶⁷⁶ In that regard, the IACHR has emphasized the problem of the failure of the various state organs to produce comprehensive statistics and the need for a breakdown of that information by factors such

¹⁶⁷⁵ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 26.

¹⁶⁷⁶ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 193.

as sex, race, ethnicity, social condition, disability, and sexual orientation, among others, with a view to making visible the real impact of violence and discrimination on specific groups of women.¹⁶⁷⁷

79. In particular, the IACHR has found that lack of institutional coordination also occurs among state entities when it comes to designing and implementing statistical systems related to sexual violence against women that include complaints, investigations, socio-demographic variables, characteristics of the victims, and investigative procedures, among other situations.¹⁶⁷⁸

80. The Mexican State informed the IACHR that the General Law on Women's Access to a Life Free from Violence included a provision establishing a National Data and Information Bank on cases of Violence against Women (BANAVID), which creates unique electronic records for each woman affected by violence. This data base generates a record on protection orders and identifies situations that require urgent governmental measures in light of the best interest of women in situations of violence. The record is formed from the information entered by the various offices or mechanisms involved in preventing, addressing, and punishing violence. One of the objectives of this tool is to direct the development of statistics on and assessments of violence that make it possible to systematically learn of the characteristics and patterns of this phenomenon, with the aim of detecting geographic areas and spheres of society that pose a risk to women, as well as the needs for services for women.¹⁶⁷⁹

81. The Commission considers that this initiative is a major step forward in establishing a uniform system of data on violence against women, yet it observes that no data has been provided on the level of coverage of this information system. In view of this circumstance, the Commission invites the State to incorporate into the Data Bank those States of the Mexican federation that are not yet part of it, and to adopt measures to incorporate indicators in the record such as the race, ethnicity, and socioeconomic status of women victims of violence so as to generate information that allows for an approach to the problem of violence with an intersectional perspective.¹⁶⁸⁰

82. The Commission also received information from the State of Argentina in its response to the questionnaire regarding a Treaty of Cooperation implemented on September 11, 2012 between the National Counsel of Women and the National Institute of Statistics and Census (INDEC) to produce statistics on gender-based violence, including as indicators the victims' age, sex, civil status, occupation, connection with the aggressor, among other factors.¹⁶⁸¹ The State of Argentina further informed the Commission that each of the administrative agencies responsible for registering information on gender-based violence receives training and technical assistance from specialized staff in order to ensure uniformity across administrative agencies.¹⁶⁸²

83. The Commission received information from civil society organizations on the availability and quality of the statistical information during its working visit to Colombia in 2014. For example, the organization *Corporación Humanas* informed the Commission that one of the difficulties when it comes to monitoring the State's information system on sexual and family violence is that there is no clarity as to the

¹⁶⁷⁷ IACHR, *Press Release 119/14: IACHR Urges States to Respect and Guarantee Human Rights of Rural Women*, October 15, 2014.

¹⁶⁷⁸ IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 9, 2011, para. 283.

¹⁶⁷⁹ IACHR, *Response of Mexico to the questionnaire on access to information from a gender perspective in the Americas*, July 24, 2014; National Data and Information Bank on Cases of Violence against Women, available at: <https://www.mujereslibresdeviolencia.gob.mx/>.

¹⁶⁸⁰ CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Mexico*, August 7, 2012, CEDAW/C/MEX/CO/7-8, paras. 15 and 16(a).

¹⁶⁸¹ IACHR, *Response of the State of Argentina to questionnaire on access to information from a gender perspective in the Americas*, August 19, 2014.

¹⁶⁸² IACHR, *Response of the State of Argentina to questionnaire on access to information from a gender perspective in the Americas*, August 19, 2014.

databases the state institutions have, and that the information provided by different entities is varied and difficult to reconcile, for they do not have uniform or complete variables. By way of example, the organization indicated that in the State's figures on sexual violence it is very difficult to distinguish when the data reported reflects incidents in the context of the armed conflict.¹⁶⁸³

84. Along similar lines, the Commission has observed that collecting statistics on violence in Haiti is hindered by the existence of rudimentary data systems that lack coordination.¹⁶⁸⁴ The IACHR has had an opportunity to note that, in Bolivia, there is a disparity in the figures on violence among the various civil society organizations and state entities, particularly in relation to violence against indigenous and peasant women in rural areas.¹⁶⁸⁵ In this respect, the Commission has indicated that this "suggests that violence against women is rendered 'invisible' as a consequence of the failure to report cases and the lack of mechanisms for recording and establishing statistics on the issue. This situation is directly related to ... the discontinuity and absence of effective measures for implementing policies against violence, for there is no thorough diagnosis of the dimension of the problem."¹⁶⁸⁶

85. The Commission has also received information that indicates that in some countries of the region the institutional mechanisms needed to compile comprehensive information on violence against women and to produce complete statistics have not been sufficiently developed. Thus, for example, according to the information received by the IACHR from the State of Ecuador, several mechanisms exist in the country that provide attention in relation to violence against women and that keep an administrative record in this respect. Nonetheless, that information is not processed so as to make it available to the citizenry.¹⁶⁸⁷ Similarly, the IACHR has been informed by the State of Suriname that information on violence is collected mainly by the police, but they have not developed sufficient data-gathering mechanisms in the Office of the Attorney General or in the courts of justice.¹⁶⁸⁸

86. The State of Guatemala, in its response to the questionnaire, informed of the creation of the National Institute of Statistics partly to improve national efforts to collect information on violence against women.¹⁶⁸⁹ The creation of this institute is a product of the adoption of the Law against Femicide and other forms of Violence against Women by means of Decree 22-2008. The State of Venezuela reported to the Commission that the only statistics available on violence against women are gathered solely from denunciations to the Ombudsman and other public offices, but such information is not disaggregated and includes no statistics on the types of violence against women at the national and local level.¹⁶⁹⁰ Additionally, the State of Venezuela indicates that it includes such information on the webpage of the Ministry of Women and makes printed copies of the laws available.¹⁶⁹¹ The State of Venezuela however also reported that

¹⁶⁸³ IACHR, Responses of Corporación Humanas, Centro Regional de Derechos Humanos y Justicia de Género, to the questions asked in the context of the meetings with Commissioner Tracy Robinson during her working visit to Colombia, September 1, 2014.

¹⁶⁸⁴ IACHR, *Observations upon Conclusion of its April 2007 Visit to Haiti*, March 2, 2008, para. 48.

¹⁶⁸⁵ IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, June 28, 2007, para. 327.

¹⁶⁸⁶ IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, June 28, 2007, para. 327.

¹⁶⁸⁷ IACHR, Ecuador's Response to the Questionnaire on the protection and prevention of violence and discrimination against women, July 31, 2014.

¹⁶⁸⁸ IACHR, Suriname's Response to the Questionnaire on access to information in the Americas from a gender perspective, March 19, 2014.

¹⁶⁸⁹ IACHR, Response of the State of Guatemala to questionnaire on access to information from a gender perspective in the Americas, August 18, 2014.

¹⁶⁹⁰ IACHR, Response of the State of Venezuela to questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

¹⁶⁹¹ IACHR, Response of the State of Venezuela to questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

problems such as illiteracy and access to the internet have repercussions for the right to access information in general.¹⁶⁹²

87. The IACHR has observed that even in those States that have institutionalized mechanisms for the compilation, processing, and production of information on violence against women, often the dissemination of such information is insufficient. The Commission recalls that the obligation of active transparency in this respect requires not only making the information in the hands of the State formally available to the population, but also requires that the State adopt positive measures to ensure that the information is actually received by those to whom it is directed. In this regard, the Commission has reiterated that, as it has indicated in the past, “given the public interest in statistical information on the problem of violence against women, States must have appropriate legal and administrative mechanisms for guaranteeing broad access to such information, and must establish means for publicizing it and fostering debate and public scrutiny over policies in this area.”¹⁶⁹³

88. The Commission underscores the obligation of States to compile and make available complete statistical information to address the situation described in the foregoing paragraphs. The IACHR has elaborated on the scope of this obligation in several thematic reports, reiterating that States must collect and report information in a uniform format. The Commission has also underscored that the information collected is disaggregated on the basis of race, gender identity, ethnicity, sexual orientation, situation of disability, among other factors. In order to fulfill this obligation, the Commission has recommended for States to design a coordinated, interdisciplinary information reporting policy across all relevant Ministries in order to collect and make available reliable information that accurately reflects the specific situation of women.¹⁶⁹⁴ This is a key ingredient to adequately assess and evaluate the progress of public policies aimed at the prevention, sanction and eradication of discrimination and violence against women.¹⁶⁹⁵ For its part, the Economic Commission for Latin America and the Caribbean (ECLAC) has also emphasized the need for States to “develop unified and standardized methods for data collection, which guarantee the validity and reliability of the information” in relation to access to information in the context of violence against women.¹⁶⁹⁶

89. In connection with the aforementioned, the Commission recalls that in its previous thematic reports on violence and discrimination against women it has made specific recommendations to States on the need to compile comprehensive statistical information, in a unified and suitably disaggregated manner.¹⁶⁹⁷

90. Finally, the Commission notes the treatment of this matter by the United Nations treaty bodies. In the context of the mechanism for reviewing periodic reports by the States on the level of compliance with the United Nations human rights treaties, the Committee on Economic, Social and Cultural

¹⁶⁹² IACHR, Response of the State of Venezuela to questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

¹⁶⁹³ IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, June 28, 2007, para. 357.

¹⁶⁹⁴ See, for example, IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 9, 2011, recommendation 14; IACHR, *Access to Women Victims of Sexual Violence: Education and Health*, December 28, 2011, recommendation 1; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, recommendation 11; IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, November 3, 2011, recommendation 2.

¹⁶⁹⁵ See, for example, IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 9, 2011, recommendation 14; IACHR, *Access to Women Victims of Sexual Violence: Education and Health*, December 28, 2011, recommendation 1; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, recommendation 11; IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, November 3, 2011, recommendation 2.

¹⁶⁹⁶ ECLAC, *No More: The right of women to live a life free of violence in Latin America and the Caribbean*, October 2007, p. 106.

¹⁶⁹⁷ See, for example, IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 9, 2011, recommendation 14; IACHR, *Access to Women Victims of Sexual Violence: Education and Health*, December 28, 2011, recommendation 1; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, recommendation 11; IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, November 3, 2011, recommendation 2.

Rights has emphasized, in general, “the importance of the availability of reliable and comprehensive data for the development of public policies”¹⁶⁹⁸ and in that vein it has recommended that the States take “the necessary steps to make their official statistics comparable with data produced by relevant international institutions.”¹⁶⁹⁹ With respect to gender based violence in particular, the Committee specifically addressed the lack of information on gender based violence in the review of Ecuador’s last report, indicating:

The Committee is deeply concerned about the sexual violence and exploitation to which girls and women are being subjected[...]. The Committee is also concerned that disaggregated information on the age and sex of victims and on whether they live in rural or urban areas has not been forthcoming from the State party[...].

The Committee recommends that the State party step up its efforts to combat gender-based violence through prevention programmes and mechanisms for the protection of women, giving due consideration to the input that can be provided by women and women’s organizations[...]. The Committee requests the State party to include statistics in its next periodic report that are disaggregated by age, sex and geographic location of the victims of such violence.¹⁷⁰⁰

91. Similarly, the Committee on the Elimination of Discrimination against Women has persistently reiterated to the States the need to and importance of improving the systems for compiling and producing statistical data that is broken down by sex, age, race, ethnicity, geographic location, and socioeconomic context in the areas covered by the Convention on the Elimination of All Forms of Discrimination against Women, as evident in its most recent concluding observations on the reports submitted by Peru¹⁷⁰¹, Colombia¹⁷⁰², and Chile¹⁷⁰³, among others. By way of example, on examining compliance with the state obligation to compile and analyze data, with respect to Peru, the Committee held:

The Committee welcomes the national system of gender indicators launched in 2013. It reiterates its concern, however, that statistical information disaggregated by sex, rural and urban areas and ethnicity in many aspects covered by the Convention is not available, which may constitute an obstacle to designing and implementing targeted policies and programmes and in monitoring their effectiveness with regard to the implementation of the Convention.

The Committee reiterates its recommendation ... that the State party include in its next periodic report statistical data and analysis, disaggregated by sex, rural and urban areas and ethnicity, indicating the impact of measures taken and results achieved in order to illustrate the situation of women in all areas covered by the Convention, in particular with regard to the issue of violence against women.¹⁷⁰⁴

¹⁶⁹⁸ United Nations, Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Argentina, U.N.Doc. E/C.12/ARG/CO/3, December 14, 2011, para. 11.

¹⁶⁹⁹ United Nations, Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Argentina, U.N.Doc. E/C.12/ARG/CO/3, December 14, 2011, para. 11

¹⁷⁰⁰ United Nations, Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Ecuador, U.N. Doc. E/C.12/EQU/CO/3, December 13, 2012, para. 21.

¹⁷⁰¹ United Nations, Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of Peru*, U.N.Doc. CEDAW/C/PER/CO/7-8, July 24, 2014, paras. 40, 43, and 44.

¹⁷⁰² United Nations, Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth reports of Colombia*, U.N.Doc. CEDAW/C/COL/CO/7-8, October 29, 2013, paras. 16, 37, and 38.

¹⁷⁰³ United Nations, Committee on the Elimination of Discrimination against Women, *Concluding observations on the fifth and sixth periodic reports of Chile*, U.N.Doc. CEDAW/C/CHL/CO/5-6, November 12, 2012, paras. 43, 50, and 51.

¹⁷⁰⁴ United Nations, Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth reports of Peru*, U.N.Doc. CEDAW/C/PER/CO/7-8, July 24, 2014, paras. 43-44.

92. In conclusion, the IACHR observes that the main challenges to compliance with the state obligation to collect and produce information have to do with developing coordinated institutional mechanisms for compiling complete data on all forms of violence and discrimination against women, and producing data that is integral, unified, and duly disaggregated at least by sex, race, ethnicity, age, socioeconomic status, and urban/rural location. The Commission also highlights the importance of the States adequately disseminating the information that is compiled and produced through such mechanisms, for which all measures necessary should be taken to ensure that such information is made available in several languages and that it is actually received by all women.

2. National Implementation of International Standards on Access to Information Managed by the State in Relation to Discrimination and Violence against Women

93. The Inter-American Commission has received a significant amount of information on constitutional and/or statutory provisions on the right of access to information in the countries of the region. Nonetheless, the IACHR observes with concern the scarcity of information about the implementation of access-to-information laws in the area of discrimination and violence against women.

94. Thus, for example, the State of Suriname informed the IACHR that its Constitution contains a general provision that declares that all persons have the right to be informed, by the organs of the public administration, of progress in the processing of cases in which the person has a direct interest and on the final decisions reached in such cases, but that nonetheless there is no specific statute that regulates this provision.¹⁷⁰⁵ The information provided by the State indicates that the lack of a clear regulatory procedure challenges the proper implementation of the constitutional provision at issue.

95. On the other hand, the State of Bolivia informed the IACHR that its Constitution contains provisions that establish the responsibility of the federal government to release official statistics through a specialized institution. The State indicated to the Commission in its response to the questionnaire that it implemented this constitutional provision through the National System of Statistics Law (DL14100), which created the National Institute of Statistics. Specifically in the context of information on violence against women, the State informed the IACHR of Law No. 348 "Integral Law to guarantee women a life free from violence," which charges the Ministry of Justice with the responsibility to generate information and facts as part of the integral care provided to women in situations of violence.¹⁷⁰⁶

96. In this regard, the IACHR and the Office of the Special Rapporteur have recognized the progress made in 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. However, it has observed 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, particularly with regard to the training of public employees and 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 process¹⁷⁰⁷.

97. Likewise, the United Nations Special Rapporteur on promotion and protection of the right to freedom of opinion and expression has observed. Nonetheless, the Special Rapporteur has found that notwithstanding the positive steps taken by a number of States, as reflected in the many national legal instruments regulating access to information, multiple obstacles are frequently encountered in their implementation. Altering long-standing practices of government workforces is a complex process, especially

¹⁷⁰⁵ IACHR, Response of the State of Suriname to questionnaire on access to information from a gender perspective in the Americas, May 12, 2014.

¹⁷⁰⁶ IACHR, Response of the State of Bolivia to questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

¹⁷⁰⁷ IACHR, *Annual Report 2013*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Conclusions and Recommendations). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paras. 19 and 20.

when public bodies have been established or subjected to reforms during a previous authoritarian rule. The provision of information in a timely manner requires not only improvement of the technical capacity of public bodies to process and share information, but also the training and awareness-raising of public officials at all levels with regard to their duty to respond to public requests for information, while assigning absolute priority to information relating to human rights violations.¹⁷⁰⁸

98. In this regard, the IACHR underscores the importance of having specific information on the implementation of the domestic provisions in order to evaluate the States' level of compliance with international standards in the area of access to information, which requires focusing the States' attention on the areas in which women require specific services.

99. In this sense, and recalling the instrumental nature of access to information, the IACHR considers that the effective implementation of this right for women should necessarily encompass access to information in relation to women's sexual and reproductive health, for this enables women to make free and informed decisions with respect to the most intimate aspects of their personality. Next, the IACHR examines three relevant cases in this regard.

Case study on access to information in relation to sexual and reproductive health

100. The IACHR has developed a series of standards on the right of access to information on reproductive matters, which include: (i) respect for the principle of informed consent; (ii) the duty of health care providers to protect the confidentiality of the patient's information; (iii) the State obligation to ensure the availability of all "information with respect to family planning methods as well as to other lawfully provided sexual and reproductive health services;"¹⁷⁰⁹ (iv) ensuring women's access to their medical history; and (v) the state obligation to produce reliable statistics on sexual and reproductive health.¹⁷¹⁰

101. The IACHR has had the opportunity to explore the content and scope of the standard of informed consent in the performance of medical procedures in the context of individual case petitions. The Commission has processed a number of cases concerning the performance of sterilizations without a proper informed consent process, such as María Mamérita Mestanza (Peru), I.V. (Bolivia), and F.S. (Chile).

102. In the case of María Mamérita Mestanza, an indigenous peasant woman was pressured and harassed by a health center to have a tubal ligation, which was finally done without her being informed of the consequences and risks entailed in the intervention. Ms. Mestanza died a few days later, as a result of a post-operative infection that was not addressed by the health center even though she had asked for assistance on several occasions.

103. On August 26, 2003, a friendly settlement agreement was reached by which the State recognized its responsibility for the violation of Ms. Mestanza's rights, including the violation of her right to freely give her consent as a condition for performing the tubal ligation, and it undertook to adopt measures of reparation to benefit the victim, investigate and sanction those responsible in the regular courts, and to adopt measures of prevention to prevent the recurrence of such events. Among the measures that the State undertook to adopt are those necessary "so that that rules established for ensuring respect for the right of informed consent are scrupulously followed by health personnel."¹⁷¹¹

¹⁷⁰⁸ United Nations, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, September 4, 2013, U.N. Doc. A/68/362, para. 74.

¹⁷⁰⁹ IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, para. 48.

¹⁷¹⁰ IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011.

¹⁷¹¹ IACHR, Report No. 71/03, Petition 12,191, Friendly Settlement, María Mamérita Mestanza Chávez, Peru, October 10, 2003, para. 14, eleventh clause.

104. In the case of I.V. (Bolivia)¹⁷¹², the IACHR examined the admissibility of a petition filed by a woman who was subjected to the surgical procedure of tubal ligation with respect to which she did not give her informed consent. The IACHR concluded that the facts, if proven, tended to establish violations of I.V.'s rights to personal integrity, access to information, and privacy and family life. Specifically, the IACHR indicated that the scope of Article 13(1) of the Convention could include a failure to adequately inform a woman of the effects, risks and consequences of the surgical sterilization and/or alternative methods.¹⁷¹³

105. In the case of F.S.¹⁷¹⁴, the IACHR examined the admissibility of a petition filed by a rural woman living with HIV in which it was alleged that she was subjected to sterilization without her consent. The petition was admitted to analyze claims concerning the rights to humane treatment, personal liberty, a fair trial, privacy, family, equal protection and to judicial protection. In this admissibility report, the Commission emphasized that States can be held internationally responsible under Article 7 of the Convention of Belém do Pará for the surgical sterilization of a woman that is performed without her consent and the subsequent physical and psychological effects of the procedure, which constitute a form of violence against women a violation of access to information under Article 13(1).¹⁷¹⁵

106. In addition, in the context of its visit to Colombia in September of 2014, the IACHR received a number of stories from presumed victims of human rights violations which are emblematic of some of the main challenges that women face to access information from government entities in cases related to violence against women.

107. The Commission learned during the Colombia visit of the very alarming story of a young Afro-descendent woman who, after self-identifying to her father as a lesbian at the age of 11 years, was reportedly subjected to repeated rapes by her fathers' friends for a period of 14 years, which allegedly resulted in five pregnancies. After the young woman escaped, she claims she was raped by members of illegal armed groups as a form of punishment for her sexual orientation, which resulted in her forced displacement. She also informed the Commission that she lacked knowledge of her rights, did not know where to report these acts, or where to obtain any health-related information. The Commission considers that this type of situation illustrates the marginalization that women can face on the basis of their race, gender and sexual orientation, which can be particularly acute when they are victims of sexual violence. It also evidences the need for States to disseminate information about the available legal avenues for women to report acts of sexual violence and of the reproductive health and interdisciplinary services available by law.¹⁷¹⁶

108. The IACHR also received information during the visit from P.P., a Colombian woman who towards the end of her second pregnancy reportedly sought emergency care from a public hospital since she was bleeding. While treating her, the attending physician allegedly informed her the baby was dead and scheduled surgery to extract the dead fetus the next day, with no more than a cursory examination. P.P. claims that she was mistreated by the medical team during the preparation for the surgery and that following the procedure no physician came to inform her of the outcome, and did not deliver her child's body. She also contends that her medical history had numerous irregularities, and she suffered a post-surgical infection that was not properly treated in the hospital. The IACHR considers that this set of facts illustrates the need for public health officials to provide complete and timely information to women patients regarding maternal health issues, including ensuring that the women involved have access to medical treatment records.

109. By way of conclusion, the IACHR underscores that to effectively guarantee the right of access to information requires that the States bring their domestic law and institutional framework into line with the requirements of this right, and that they adequately implement the domestic provisions related to access to

¹⁷¹² IACHR, Report 40/08, Petition 270-07, Report on Admissibility, I.V., Bolivia, July 23, 2008.

¹⁷¹³ IACHR, Report 40/08, Petition 270-07, Report on Admissibility, I.V., Bolivia, July 23, 2008, para. 81.

¹⁷¹⁴ IACHR, Report, 52/14, Petition 112-09, Report on Admissibility, F.S., Chile, July 21, 2014.

¹⁷¹⁵ IACHR, Report No. 52/14, Petition 112-09, Report on Admissibility, F.S., Chile, July 21, 2014, para. 41.

¹⁷¹⁶ IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, para. 48.

information with a gender perspective. As a result, the Commission observes with concern the unavailability of specific information on the implementation of these standards in the States, and in particular on the measures adopted to effectively ensure this right in the areas of state activity that have a special impact on the exercise of the human rights of women, such as the provision of sexual and reproductive health services.

3. Challenges in the Area of the Administration of Justice to Guarantee Access to Information in Relation to Discrimination and Violence against Women

110. One aspect of special concern to the IACHR has to do with the availability and accessibility of judicial information on violence and discrimination against women. This aspect is of particular alarm considering that access to information for women victims of violence is a requirement for them to be able to effectively access justice and to obtain the judicial remedies available under national legislation. In this section, the IACHR will examine some of the principal challenges in this area in light of the international standards set forth at the beginning of this report.

111. The IACHR's 2007 report *Access to Justice for Women Victims of Violence in the Americas* offered a general overview of the structural problems within the justice systems which affect the prosecution of cases of violence against women. Among these, are the precarious nature of and lack of coordination in the information system for compiling statistics on incidents and cases of violence against women. In the same report the IACHR noted that within the systems for the administration of justice it has observed "faults and weaknesses in processing and recording data on cases involving violence against women. These faults and weaknesses are compounded by the fact that the statistics from every quarter of government grossly underestimate the magnitude of the problem of gender-based violence."¹⁷¹⁷ In this respect, the IACHR has noted that the failings in the availability and quality of information and the statistical data on violence against women stand in the way of developing public policies in the area of justice which are coherent with the seriousness and prevalence of this problem.

112. The structural problems affecting the information systems for compiling statistics in cases of violence against women also raise important concerns regarding public accountability. The United Nations established that "accurate and comprehensive data and other documentation are crucial in monitoring and enhancing State accountability for violence against women and for devising effective state responses."¹⁷¹⁸ Making such information public—for example, on the number of complaints, investigations, prosecutions and conviction rates—facilitates the monitoring of how public funds are spent and the results achieved. The availability of these statistics to the public would also inform civil society organizations' advocacy for and States' implementation of reforms and actions related to the prevention, investigation, prosecution and sanction of violence against women.

113. One of the areas in which the Commission has identified important failings with respect to access to information controlled by the administration of justice is the judicial prosecution of cases of violence and discrimination.

114. One first relevant element in this area is the guarantee of victims' access to information about their cases pending before the administration of justice. While various States expressly provide in their legal systems for victims' ability to access their judicial records, the Commission observes that in practice this can become difficult due to factors such as the lack of training of judicial officers, women's lack of knowledge of the means of requesting information on their cases, the lack of legal assistance, not speaking the official language of the State, and the challenges persons in rural areas face in accessing courts due to the long distances, among others.

¹⁷¹⁷ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 188.

¹⁷¹⁸ United Nations, Report of the Secretary-General, *In-depth Study on All Forms of Violence against Women*, A/61/122/Add.1, July 6, 2006, para. 274. Available at: <http://www.un.org/womenwatch/daw>

115. In this respect, the IACHR recalls the observations it made in 2009 with respect to Bolivia, when it noted that

a series of shortcomings continue to plague investigations into cases of violence against women and that matters are made worse when the victim lacks the necessary wherewithal or information to follow up and ensure that the authorities responsible perform their legal obligations. Concretely, the IACHR was informed that a series of obstacles continued to hinder access to adequate and effective judicial protection mechanisms, including a shortage of justice operators and the lack of independence and suitability of a number of them; high illiteracy rates among women, in particular indigenous women and those who live in poverty and in rural areas; lack of information about their rights; lack of legal assistance adequate to their needs; delays in judicial proceedings and the costs associated therewith; absence of institutionalized training programs for justice administration officials and the police, and lack of statistical data, among other difficulties.¹⁷¹⁹

116. In addition, in the context of its working visit to Colombia in September and October of 2014, the IACHR received information with respect to the problems Afro-descendent women face accessing justice in situations of violence. The information received indicates that women victims of violence and their families often do not have direct access to information about their cases within the justice system, and similarly, access to the case files is often denied to the organizations that represent them.

117. Second, in this area, it is essential that free legal services exist and are available to women who require them. According to the information received by the IACHR a significant number of the States in the region have such mechanisms in place. Nonetheless, the Commission notes with concern the information it has received indicating that the capacity of the existing legal services frequently fails to meet the demand for the same, and that these services are inadequate for handling the particular needs of women victims of violence. In this regard, the compilation of information regarding the functioning of free legal services, their level of coverage, and their quality is fundamental for the States to be able to evaluate the design and implementation of such programs and to make the adjustments necessary to ensure that all women have access to legal counsel to facilitate their access to justice effectively and in equal conditions.

118. Third, effective access to justice for women victims of violence or discrimination requires that special measures are adopted to ensure that women who do not speak the official language of the State receive information in their own language and have interpreters available during all stages of the proceedings. This is of particular importance for indigenous women in cases of violence and discrimination. It is also important that interpretation is available in all instances with relevance to a case of violence, such as the police, the Prosecutor's Offices, and health institutions, among others.

119. In this respect, the Inter-American Court has underscored that several rights can be implicated when an indigenous woman who has suffered sexual violence is unable to file a complaint before the authorities in her own language. These types of barriers can violate the obligation to guarantee, free from all forms of discrimination, access to justice in the terms of the American Convention and other inter-American instruments.¹⁷²⁰

120. As a result, the IACHR considers that some noteworthy challenges to ensuring effective access to information in the area of the administration of justice have to do with the possibility of persons to readily consult judicial records and to obtain information on the progress of their pending judicial proceedings. Additionally, basic information related to ongoing judicial processes should be available in a language other than the official language of the State at issue and interpreters should be available. In addition,

¹⁷¹⁹ IACHR, *Follow-up Report– Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, August 7, 2009, para. 204.

¹⁷²⁰ I/A Court HR. *Case of Rosendo Cantú and one other v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216, para. 185; I/A Court HR. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, para. 201.

the IACHR reiterates that the provision of legal assistance services free of charge for the victims of discrimination and violence who require them is fundamental for women to know their rights and to exercise them before the justice system. The offer of free legal services can achieve a two-fold objective: it can serve to advance both the right to access to information and the right to justice for women victims of discrimination and violence.

i. Inter-American jurisprudence on access to information related to the prevention, investigation, prosecution, and punishment of violence against women

*a. Inter-American Court: Case of González et al. ("Cotton Field") v. Mexico*¹⁷²¹

121. In this case the Inter-American Court analyzed the State duty to duly investigate the acts of violence against women in relation to irregularities during the investigation into the disappearance and death of three young women in Ciudad Juárez, Mexico. Those irregularities refer to the custody of the crime scene, the collection and handling of evidence, preparation of the autopsies, and identification and handing over of the victims' remains¹⁷²², as well as the unjustified delay in and failure of the investigations to make substantial progress, which resulted in impunity in the cases¹⁷²³, and the denial of access to the record and delays or refusal to provide copies of it¹⁷²⁴, among other aspects.

122. In its analysis of the case the Court considered that the lack of information about progress in the investigations and the treatment accorded to the family members during the whole process of seeking the truth were factors that had caused a violation of the victims' family members' right to humane treatment.¹⁷²⁵ In this respect, the Court found the existence of "a pattern of state conduct towards the next of kin of women victims of violence in Ciudad Juárez, consisting in derogatory, disrespectful and even aggressive treatment when they try to obtain information about the investigations. In most cases, this results in distrust and fear, so that they do not denounce the facts."¹⁷²⁶ Accordingly, among the reparations ordered by the Court consideration was given to the duty of the State to effectively conduct the criminal proceedings to identify, prosecute, and punish those responsible, and that in such proceedings one should "provide the victims' next of kin with information on progress in the investigation regularly, and give them full access to the case files, and the investigation shall be carried out by officials who are highly trained in similar cases and in dealing with victims of discrimination and gender-based violence."¹⁷²⁷

¹⁷²¹ I/A Court HR. Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

¹⁷²² I/A Court HR. Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 296-333.

¹⁷²³ I/A Court HR. Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 347-378.

¹⁷²⁴ I/A Court HR. Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 379-387.

¹⁷²⁵ I/A Court HR. Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 424.

¹⁷²⁶ I/A Court HR. Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 435.

¹⁷²⁷ I/A Court HR. Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 455.b.

b. *Inter-American Court: Cases of Rosendo Cantú¹⁷²⁸ and one other v. Mexico and Fernández Ortega et al. v. Mexico¹⁷²⁹*

123. The Inter-American Court had an opportunity to refer to the special obligations of States to respond to violence against indigenous women in the cases of Valentina Rosendo Cantú and Inés Fernández Ortega. Those cases refer to rape committed by members of the military to the detriment of Ms. Rosendo Cantú and Ms. Fernández Ortega, both from the Me'phaa indigenous community, as well as the failure to investigate and punish the persons responsible. With respect to both victims, the Court considered it proven that they did not have an interpreter provided by the State when they filed their initial complaints nor had they received information in their language concerning the actions that stemmed from their complaints¹⁷³⁰. In the view of the Court, the impossibility of filing a complaint and receiving information in their language at the initial moments demonstrated that, in both cases, the justice system had failed to take into account the victims' situation of vulnerability, based on their language and ethnicity; all factors which resulted in violations of their right to access justice.¹⁷³¹

c. *IACHR: Jessica Lenahan (United States)¹⁷³²*

124. In this case, Ms. Lenahan had a judicial protection order against her former husband, Mr. Gonzales, which also protected their daughters. In violation of that protection order, Mr. Gonzales picked up the girls and took them with him, without the mother's knowledge and outside the terms of visitation. Jessica Lenahan called the police department several times to report what had happened and to try to get the police to enforce the protection order, with no results. Hours later, the girls were found dead in their father's vehicle. In its report on the merits in this case, the IACHR found that the authorities had not adequately investigated the facts and that impunity had persisted for 11 years, which constituted a breach of the duty to act with due diligence to prevent and investigate domestic violence under the terms of the American Declaration.¹⁷³³

125. The Commission noted its concern in relation to both the conduct of the police in response to the calls of Ms. Lenahan and in the investigation after her daughters were found dead. When she called the police to report her daughters missing, the IACHR observed with particular concern the "insensitive nature" of the police dispatcher's comments to Ms. Lenahan. Rather than offering help and assistance to a woman calling out of concern for the well-being of her daughters, the police dispatcher dismissed her concerns as ridiculous. The IACHR reiterates that this kind of mistreatment undermines access to justice because it "results in a mistrust that the State structure can really protect women and girls from harm, which reproduces the social tolerance towards these acts," and that police authorities have an internationally-recognized obligation to "respect and protect human dignity and maintain and uphold the human rights of all persons in the performance of their duties."¹⁷³⁴

¹⁷²⁸ I/A Court HR. *Case of Rosendo Cantú and one other v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216.

¹⁷²⁹ *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215.

¹⁷³⁰ I/A Court HR. *Case of Rosendo Cantú and one other v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216, para. 185; I/A Court HR. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, para. 201.

¹⁷³¹ I/A Court HR. *Case of Rosendo Cantú and one other v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216, para. 185; I/A Court HR. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, para. 201.

¹⁷³² IACHR, Report 80/11, Merits, Case of 12,626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011.

¹⁷³³ IACHR, Report No. 80/11, Merits, Case of 12,626, *Jessica Lenahan (Gonzales) et al.* (United State), July 21, 2011, para. 160.

¹⁷³⁴ IACHR, Report No. 80/11, Merits, Case of 12,626, *Jessica Lenahan (Gonzales) et al.* (United State), July 21, 2011, para. 167.

126. In particular, the IACHR referred to the failure to clarify the circumstances surrounding the deaths of the three girls – a situation that the State was under an obligation to investigate – and its relationship to the right to access information. In this regard, the Commission held:

A critical component of the right to access information is the right of the victim, her family members and society as a whole to be informed of all happenings related to a serious human rights violation. The inter-American system has established that this right - the right to truth - is not only a private right for relatives of the victims, affording them a form of reparation, but also a collective right that ensures that society has access to information essential for the workings of democratic systems.

Eleven years have passed since the murders of Leslie, Katheryn and Rebecca Gonzales, and the State has not fully clarified the cause, time and place of their deaths. The State has not duly communicated this information to their family. The petitioners have presented information highlighting the challenges that Jessica Lenahan and her family members have faced to obtain basic information surrounding the circumstances of Leslie, Katheryn and Rebecca Gonzales' deaths.¹⁷³⁵

iv. National Stories Illustrating Challenges to Access Information Relevant to the Prevention, Investigation, Prosecution and Punishment of Violence Against Women

127. During its visit to Colombia on September of 2014, the Commission received a significant number of personal accounts of barriers allegedly faced by women, in particular from afro-descendent women, in obtaining basic information from the State which is needed to exercise their human rights. In most of the stories shared with the delegation, it was evident that having or not having access to information managed by the State had a specific impact on the exercise of the rights of the women affected. In this section, the Commission discusses some of the stories shared with the delegation to exemplify the scope of the roadblocks which need to be addressed by all States in their public interventions concerning public information, violence, and discrimination against women.

128. The IACHR received information on the case of L.L., whose partner and son were allegedly murdered, and whose adolescent daughter has reportedly gone missing in the context of the armed conflict in Colombia. According to the testimony of L.L., all of these events have remained in impunity. L.L. is also reportedly facing death threats from armed groups and has not been able to report these threats to the authorities for fear of reprisals. A similar case is that of M.M., whose husband was allegedly killed by armed actors in 2003, after which she claims she was forcibly displaced, along with her children. M.M. allegedly reported these events to the pertinent authorities and began to investigate, on her own, the motives behind the murder, as a result of which she has received a death threat. To date, M.M. reports that her husband's death has not been clarified.

129. These accounts, as well as many other similar ones, exemplify the impunity which can affect all cases of violence in the context of an armed conflict, and how this impunity can reproduce and perpetuate human rights violations. The IACHR takes advantage of this opportunity also to underscore that the family members of victims of human rights violations also have the right to truth, which involves the proper access to information about ongoing investigations, the eventual sanction of those responsible, and the grant of the relevant reparations. Moreover, the administration of justice authorities should be trained on the different challenges that women and their family members can face in different contexts to seek information from the judicial authorities about ongoing investigations, such as armed conflicts, and to afford them the needed protection in order to participate in the judicial process at issue.

¹⁷³⁵ IACHR, Report No. 80/11, Merits, Case of 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 193-194.

130. Also in the context of its visit to Colombia, the IACHR received information about a case reportedly involving a group of approximately 24 women from San Miguel, a rural municipality, who allegedly made the decision to come forward to testify about situations of sexual abuse perpetrated by paramilitaries. According to the information shared with the delegation, it has been cumbersome for the complainants to go before the authorities to follow up on their cases, due to the distance and the lack of economic resources required for traveling. In addition, the complainants do not have the services of an attorney who is providing free legal assistance in Bogotá but they claim that in practice, it is difficult for them to reach her. They have also stated that, after giving their statements, many of them reportedly received threats and ended up abandoning their claims, given the alleged lack of an institutional response.

131. The Commission considers that the facts alleged pertinent to the San Miguel case also illustrate the connection between the respect and guarantee of the rights of access to information and access to justice. The women from San Miguel claim they have faced a number of barriers to effectively see justice fulfilled in their cases of sexual abuse, including their distance from the attorney that represents them and the tribunals at issue, and the threats they have received in their pursuit of justice. This situation reflects a series of institutional shortcomings in carrying out the obligations arising from the right of access to information and from the right of access to justice, among which special mention can be made of the obligation to disseminate complete information on the women's rights and how to uphold them, and the obligation to ensure protection of the victims from human rights violations in the face of threats stemming from the search for justice.

D. State Efforts in Relation to Access to Information in Cases of Discrimination and Violence Against Women

132. Next the IACHR will discuss information it has received from the States on efforts being made with a view to strengthen respect for and guarantees of the right of access to information for women victims of discrimination and violence. The initiatives highlighted in this section describe measures adopted by the States of the region to establish a culture of transparency in the public institutional framework and to advance towards the full realization of women's right to live free from all forms of discrimination and violence.

133. The information discussed in this section was received by the IACHR by means of responses to the questionnaires circulated as part of the preparation of this thematic report. In several specific cases, information is included that was provided by both the States and civil society.

1. Statutory and Constitutional Recognition of the Right of Access to Information

134. As mentioned earlier, one of the obligations imposed on the State by the right of access to information is to bring its domestic legal order into line with the demands of this right. As the Office of the Special Rapporteur for Freedom of Expression has stated, this implies "(a) implementing an adequate legal framework; (b) removing legal or administrative obstacles that impede access to information; (c) promoting the right of access within all of the State's entities and authorities, through the adoption and enforcement of rules and procedures and through the training of public officials on the custody, administration, filing and provision of information; and (d) in general terms, adopting public policy that is favorable to the full exercise of this right."¹⁷³⁶

135. Based on the information provided by the States in their responses to the questionnaire on access to information from a gender perspective in the Americas, the IACHR notes a widespread effort in the region to reflect access to information as a human right in the Constitutions, and to adopt specific laws to regulate the exercise of that right.

¹⁷³⁶ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 43.

136. In terms of including the right of access to information in the constitutions, the States of Argentina,¹⁷³⁷ Bolivia,¹⁷³⁸ Colombia,¹⁷³⁹ Mexico,¹⁷⁴⁰ and Peru¹⁷⁴¹ informed the IACHR that this right is guaranteed in their constitutions. Ecuador,¹⁷⁴² Guatemala,¹⁷⁴³ and Guyana¹⁷⁴⁴ did include information on the recognition of the right in their constitutions, but did indicate that they have laws on access to public information.

2. Establishment of Mechanisms for Compiling, Producing, and Disseminating Information on Cases of Violence and Discrimination Against Women

137. As was established at the beginning of this report, a key obligation that emerges for States as a consequence of the right of access to information is the duty to compile information and produce complete statistics that are duly disaggregated and updated. In the area of violence and discrimination against women, it is fundamental that unified mechanisms for compiling information be implemented. Doing so requires a coordinated effort among the various governmental entities with competence in that area.

138. The information in the hands of the IACHR indicates that this is one of the areas that poses the greatest challenges, for in the vast majority of countries of the region effective and unified mechanisms for compiling, systematizing, and disseminating statistical information about violence and discrimination against women have not been implemented. In particular, one area in which these mechanisms are especially absent is the administration of justice.

139. In this regard, the IACHR highlights the efforts undertaken by Peru to make progress in this area. According to the information provided by the State to the Commission,¹⁷⁴⁵ the National Program against Family and Sexual Violence (PNCVFS) of the Ministry of Women and Vulnerable Populations (MIMP) has a Unit for Generating Information and Knowledge Management, which is in charge of compiling and producing information on family and sexual violence to be used in decision-making and devising public policies for prevention and attention. The information produced by this mechanism is updated and is available on the Internet.¹⁷⁴⁶

140. Along similar lines, the IACHR also received information on the efforts undertaken by Paraguay to make progress in this area. According to the information provided by the State to the

¹⁷³⁷ IACHR, Argentina's Response to the questionnaire on access to information from a gender perspective in the Americas, August 19, 2014.

¹⁷³⁸ IACHR, Response of the State of Bolivia to the questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

¹⁷³⁹ IACHR, Response of the Ministry of Foreign Affairs of Colombia to the questionnaire on access to information from a gender perspective in the Americas, May 14, 2014. The State of Colombia reported that Article 74 of the Constitution enshrines the fundamental right of all persons to access public documents, and that this right is closely associated with the right to petition provided for in Article 23 of the Constitution.

¹⁷⁴⁰ IACHR, Mexico's Response to the questionnaire on access to information from a gender perspective in the Americas, July 25, 2014.

¹⁷⁴¹ IACHR, Response of the State of Peru to the questionnaire on access to information from a gender perspective in the Americas, April 2014.

¹⁷⁴² IACHR, Response of the State of Ecuador to the questionnaire on protection and prevention from violence and discrimination against women, July 30, 2014.

¹⁷⁴³ IACHR, Response by the State of Guatemala to the questionnaire on access to information from a gender perspective in the Americas, August 18, 2014.

¹⁷⁴⁴ IACHR, Response of the State of Guyana to the questionnaire on access to information from a gender perspective in the Americas, July 21, 2014.

¹⁷⁴⁵ IACHR, Response of the State of Peru to the questionnaire on access to information from a gender perspective in the Americas, April 2014.

¹⁷⁴⁶ Available at the web page of the Ministry of Women and Vulnerable Peoples: <http://www.mimp.gob.pe/>

Commission in its response to the questionnaire,¹⁷⁴⁷ Article 9, subsection D of Law 1600/00 establishes a registry of information on domestic violence collected periodically from Judges of the Peace throughout the country. The judges are required to use the “Form for Compiling Statistical Information” in all districts pursuant to Supreme Court Agreements No. 454 of 2007 and No. 705. The information collected under this law is updated and available on the internet.¹⁷⁴⁸

141. The Commission encourages States to continue adopting appropriate measures for progressing in constructing mechanisms for compiling and producing information on violence and discrimination against women that complies with the relevant international standards. As has been indicated, these standards include the existence of unified mechanisms that produce comprehensive and duly disaggregated statistics on the causes, consequences, and frequency of violence and discrimination against women, on their treatment by all organs of the state (i.e., police, courts, public ministry, public defenders’ offices, offices of legal assistance to victims, and all others that may exist in each country) and regarding the effectiveness of state action. The information produced through these mechanisms should be useful for guiding the design, adaptation, and evaluation of public policies and state programs to address violence and discrimination.

3. Initiatives to Promote Access to Information in the Administration of Justice

142. The IACHR reiterates that access to information that is under the control of the administration of justice is fundamental for women victims of discrimination and violence if they are to be able to have access to justice, obtain punishment for the acts, and secure reparation for the damages suffered.

143. In this regard, the IACHR has observed three areas in which State efforts should be focused on in order to effectively guarantee the right to access information for women victims of violence and discrimination: victims’ access to the judicial records of their cases that are ongoing, the availability of free legal services for women who require them, and the production of judicial statistics.

144. As regards expeditiously offering women and their family members information about their cases pending before the courts, the IACHR notes that some States, such as Argentina, Chile, and Colombia, have systems for consulting the status of judicial proceedings by Internet, which can facilitate access to judicial information for those women who have access to the Internet.

145. As to the availability of programs providing free legal counsel, the IACHR notes the information sent by the Argentine State to the effect that in 2012 the Public Ministry inaugurated a service to provide free legal counsel to victims of gender violence for those cases that fall under the jurisdiction of the federal courts of the Autonomous City of Buenos Aires. This mechanism seeks to ensure free access to justice in cases of violence, independent of one’s economic condition.¹⁷⁴⁹

146. Along the same lines, the National Women’s Service (SERNAM) of Chile has Women’s Centers, made up of interdisciplinary teams that offer specialized care nationwide to those experiencing family violence, whose general objective is to contribute locally to reducing violence against women. The professional team is multidisciplinary and is made up of a woman social worker, a woman psychologist, an attorney (man or woman), and three community monitors (women).¹⁷⁵⁰

¹⁷⁴⁷ IACHR, Response of the State of Paraguay to questionnaire on access to information from a gender perspective in the Americas, June 30, 2014.

¹⁷⁴⁸ Available at the web page of the Ministry of the Interior: [http://www.mdi.gov.py; http://www.ministeriopublico.gov.py/documentos/informes/informe12/05_estadisticas.pdf](http://www.mdi.gov.py;http://www.ministeriopublico.gov.py/documentos/informes/informe12/05_estadisticas.pdf).

¹⁷⁴⁹ IACHR, Argentina’s response to the questionnaire on access to information from a gender perspective in the Americas, August 19, 2014.

¹⁷⁵⁰ IACHR, Responses compiled by the Red Pro Bono International to the questionnaire on access to information from a gender perspective in the Americas: Chile, September 22, 2014.

147. In relation to the production of judicial statistics, according to Red Pro Bono,¹⁷⁵¹ the judiciary of the Republic of Panama produces up-to-date judicial statistics accessible by Internet on the composition and organization of the courts, and the functioning of the civil, family, child and adolescent, and criminal jurisdictions, among others. The available information includes the gender composition of the judicial branch. In addition, the State of Argentina reported that the Judicial Information Center of the Supreme Court of Justice of the Nation¹⁷⁵² has been implemented; it has a search engine for judicial decisions.¹⁷⁵³

148. Recalling the instrumental nature of access to information for attaining women's right of access to justice, the IACHR considers that the initiatives noted in the previous paragraphs contribute to promoting a culture of transparency in the judicial realm, enabling women to have the information needed for effective and timely access to justice in the face of situations of discrimination and violence. As a result, the Commission hopes that other States will imitate these examples, adapting them to their national reality, and thereby advance towards effectively guaranteeing the right of access to information in the administration of justice.

E. Recommendations to the States

149. This report has outlined the aspects that should be given priority when it comes to the guarantee of women's effective access to information in the areas of violence and discrimination. The Commission considers that adapting the legal systems and state practices to the inter-American standards in this area, as well as implementing such provisions, is a process already under way in the region. Therefore, the Commission hopes that its recommendations will contribute to the ongoing efforts of States to overcome the challenges identified, and to improve the initiatives that they have begun to implement in this area.

Recommendations:

1. Bring the domestic legal order concerning access to information, violence against women, and discrimination into line with the inter-American and international standards that the States have undertaken to observe.
2. 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.
3. Related to the previous point, produce, based on the information collected, 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.
4. Proactively publish and disseminate the statistical information produced.
5. Incorporate the information compiled as per the foregoing points in the design of the new state policies and programs on violence and discrimination against women.

¹⁷⁵¹ IACHR, Responses compiled by the Red Pro Bono International to the questionnaire on access to information from a gender perspective in the Americas: Panama, September 22, 2014.

¹⁷⁵² Available in: <http://www.cij.gov.ar/inicio.html>

¹⁷⁵³ IACHR, Argentina's response to the questionnaire on access to information from a gender perspective in the Americas, August 19, 2014.

6. Perform periodic evaluations of the effectiveness of the existing policies and programs in the area of discrimination and violence against women, and adapt those programs as necessary in keeping with the information available.

7. Create spaces for non-State actors to be able to participate in the compilation and production of information and in the design and evaluation of the effectiveness of state policies and programs in relation to discrimination and violence, ensuring that those spaces include the participation of civil society organizations that represent the interests of those groups of women that have historically been marginalized, such as Afro-descendent and indigenous women.

8. Adopt appropriate measures for ensuring access to interpreters in all stages of the prosecution of cases of violence and discrimination for women who require them, from the initial police actions to the handing down of the judgment.

9. Ensure, by the means necessary, access for women victims of violence to the judicial records of their cases pending before the administration of justice, during all stages of the process and without restrictions.

10. 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.

11. 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.

CHAPTER IV¹⁷⁵⁴
HATE SPEECH AND INCITEMENT TO VIOLENCE AGAINST LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX PERSONS IN THE AMERICAS

A. Introduction

1. The Inter-American Commission has received information that indicates that violence against lesbian, gay, bisexual, trans and intersex (LGBTI) persons in the region is fueled by the dissemination of “hate speech” targeted at this community in different contexts, including through public debate, manifestations against events organized by LGBTI persons, such as pride parades, the media and the internet. Although there is a need for further study this phenomenon, evidence shows that when crimes against LGBTI persons occur, they are frequently preceded by a context of heightened dehumanization and discrimination.

2. In a democratic society, states should protect freedom of expression while also guaranteeing equality and the safety of others.¹⁷⁵⁵ In this complex task, States are called to, on the one hand, identify and adequately respond to these incidents, with a view to effectively guaranteeing the rights to personal integrity and security of LGBTI persons. On the other hand, all measures must be respectful of the right to freedom of expression, according to article 13 of the American Convention. Similar to Article 13.1 of the American Convention, Article IV of the American Declaration establishes 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.” Unlike the American Convention, this provision does not include the conditions to be met by any restriction to this right. However, the Commission has traditionally interpreted the scope of the obligations established under the American Declaration in the context of the international and inter-American human rights systems more broadly, in light of developments in the field of international human rights law since the instrument was first adopted, and with due regard to other rules of international law applicable to members states.¹⁷⁵⁶

3. In recent years, several countries in the Americas have proposed legal initiatives to promote equality, sanction discrimination and prohibit “hate speech.” However, the IACHR has received information that in many cases these legislations do not meet the principle of legality. Some of the definitions are vague, which could compromise the effective enjoyment of the right to freedom of expression on issues of public interest. Hence, the growing need to ensure that measures adopted to discourage intolerance and respond to hate speech against LGBTI persons, are part of a policy aimed at promoting the right to freedom of expression of everyone, without discrimination.

4. In order to elaborate on these points, this section of the report provides an overview of the Inter-American legal framework concerning hate speech and incitement to violence. This section also identifies and analyses various non-legal measures and good practices that can contribute to prevent and counter hate speech. The overall goal of this section is to establish the basis for an understanding of the scope of hate speech and allow for the development and implementation of effective responses. This report primarily addresses the obligations of States, but additionally examines the significant role that media can play in the implementation of varied strategies to prevent and combat hate speech.

¹⁷⁵⁴ Approved by the Inter-American Commission on Human Rights on November 12, 2015. This report was jointly prepared by the IACHR Office of the Rapporteur on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons and the IACHR Office of the Special Rapporteur for Freedom of Expression.

¹⁷⁵⁵ [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012. Para. 2. See also, for example: United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013. Par. 45; United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 43; Article 19. [Responding to Hate Speech against LGBTI People](#). October 2013; Article 19. [The Camden Principles on Freedom of Expression and Equality](#). April 2009.

¹⁷⁵⁶ IACHR, Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) et al. United States, 21 July 2011, para. 118.

B. Freedom of expression and equality

5. Pursuant to the American Convention, all human beings are entitled to equal enjoyment and exercise of all rights, without discrimination on the basis of race, color, sex, language, religion, political or other opinions, national or social origin, birth, or any other social condition. As has been recognized by the Inter-American Court, “the prohibition of discrimination due to sexual orientation should include, as protected rights, the conduct associated with the expression of homosexuality.”¹⁷⁵⁷ The IACHR is of the opinion that this rationale also applies to the expression of one’s gender identity. The IACHR’s Office of the Special Rapporteur for Freedom of Expression has stated that Article 13 of the American Convention encompasses the right to express one’s own sexual orientation and gender identity and that this kind of expression enjoys a special level of protection under Inter-American instruments, because it conveys an integral element of personal identity and dignity.¹⁷⁵⁸

6. The rights to equality and freedom of expression are “mutually supportive”¹⁷⁵⁹ and have an “affirmative relationship,” as they make a “complementary and essential contribution to the securing and safeguarding of human dignity.”¹⁷⁶⁰ In this regard, the Inter-American Commission and the Inter-American Court have systematically reiterated the importance of the right to freedom of expression in guaranteeing the right to equality of members of groups that have suffered from historical discrimination.¹⁷⁶¹ This importance stems from the role of freedom of expression both in its own right and as an essential tool for the defense of all other rights, and makes freedom of expression a core element of democracy.¹⁷⁶²

7. The right to freedom of expression is key in the redress by vulnerable groups of “the balance of power among the components of society.”¹⁷⁶³ Further, freedom of expression is useful in promoting intercultural understanding and tolerance, deconstructing stereotypes, facilitating the free exchange of ideas, and offering alternative views and counterpoints.¹⁷⁶⁴ Inequality results in the exclusion of certain voices from the democratic process, undermining values of pluralism and diversity of information. The individual

¹⁷⁵⁷ I/A Court H. R., Case of Atala Riffo and Daughters v. Chiles. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 139.

¹⁷⁵⁸ IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 54-57; I/A Court H. R., Case of López-Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, para. 169.

¹⁷⁵⁹ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 3; United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, para. 45.

¹⁷⁶⁰ Article 19. [The Camden Principles on Freedom of Expression and Equality](#). April 2009.

¹⁷⁶¹ IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 1-4; I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 50; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁷⁶² IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 6-10; I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70; I/A Court H. R., Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 85; I/A Court H. R., Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 112; I/A Court H. R., Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 82; I/A Court H. R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 105; I/A Court H. R., Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 116.

¹⁷⁶³ United Nations, Committee on the Elimination of Racial Discrimination. General Recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 39 - 42.

¹⁷⁶⁴ United Nations, Committee on the Elimination of Racial Discrimination. General Recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 39 - 42.

members of the social groups that have been traditionally marginalized and discriminated against, or that are in a situation of helplessness, are for various reasons systematically excluded from public debate. These groups do not have institutional or private channels for the serious, robust and constant exercise of their right to express publicly their ideas and opinions, or to be informed of the issues that affect them. This process of exclusion has simultaneously deprived the rest of society of knowledge of the interests, needs, and proposals of those who have not had the opportunity to access democratic debate on an equal footing. The effect of this phenomenon of exclusion is similar to the effect of censorship: silence.¹⁷⁶⁵ When members of vulnerable or marginalized groups are excluded from public debate, “their issues, experiences and concerns are rendered invisible, and they become more vulnerable to bigotry, prejudice and marginalization.”¹⁷⁶⁶

8. According to report examining the media in five countries in the Caribbean region, media outlets tend to completely ignore LGBTI persons and their specific issues in their coverage. When reported, matters related to LGBTI persons are frequently covered in a “sensationalized and demeaning” way. Further, according to the information received, in some of the countries included in that report, “the generalized ridicule of LGBTI persons,” in combination with threats and violence against LGBTI activists and supporters, leads to a limited pool of individuals willing to be publicly associated with promoting non-discrimination and an end to violence. According to this study, this results in the general public having a distorted view of LGBTI individuals and reinforces an erroneous belief that not many people are willing to publicly defend their rights. Moreover, the report concludes that this situation in turn “has a direct impact on the safety and security of LGBTI people. The fact that prejudice is entrenched against a marginalized group combined with the perception that no one will protect or uphold their rights contributes directly to an environment that encourages discrimination and violence.”¹⁷⁶⁷

9. In light of the above, the IACHR reiterates that the promotion and protection of the right to freedom of expression should coincide with efforts to combat intolerance, discrimination, hate speech, and incitement to violence. Particularly, with the promotion of proactive public policies to ensure social inclusion in the media, as a means to guarantee that LGBTI persons and communities can exercise their right to freedom of expression, without discrimination. All these efforts should be in strict conformity with international human rights law in general, and freedom of expression standards in particular.

C. Definition of Hate Speech

10. While the inter-American system has developed certain specific standards, there is no universally accepted definition of “hate speech” under international law. According to a recent UNESCO report that surveyed different definitions of hate speech in international law, the concept of hate speech usually refers to “expressions that advocate incitement to harm (particularly, discrimination, hostility or violence) based upon the target’s being identified with a certain social or demographic group. It may include, but is not limited to, speech that advocates, threatens, or encourages violent acts. For some, however, the concept extends also to expressions that foster a climate of prejudice and intolerance on the assumption that this may fuel targeted discrimination, hostility and violent attacks.”¹⁷⁶⁸

11. In its report UNESCO states that notwithstanding the aforementioned, the concept of hate speech, in any of its formulations under national and international law, does not consist of broad and abstract ideas, such as political views and ideologies, faiths, or personal beliefs. Nor is it correct to automatically label as hate speech any insult or derogatory or inflammatory expression regarding an individual. When the concept is defined vaguely, the prohibition of hate speech can be easily manipulated to encompass

¹⁷⁶⁵ IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 36.

¹⁷⁶⁶ Article 19. [The Camden Principles on Freedom of Expression and Equality](#). April 2009, at “introductory statement.”

¹⁷⁶⁷ International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia*, 2015, p. 1.

¹⁷⁶⁸ UNESCO. [Countering Online Hate Speech](#). 2015, pp. 10 -11.

expressions that are deemed offensive to others, particularly those in power, leading to misapplication of the law in attempts to curb dissenting and critical speech. Further, hate speech needs to be differentiated from “hate crimes” based on conducts, such as threats and sexual harassment, which are outside of the protection of the right to freedom of expression.

12. A lack of clear definition of hate speech is also evident in terms of national legislation. In this regard, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has expressed concern about the “continuing existence and the use of flawed domestic laws that purport to combat hate speech but are in fact used to suppress critical or opposing voices.”¹⁷⁶⁹ These laws are characterized by vague and overbroad legal provisions prohibiting incitement to hatred, and are abused in order to censor discussions that are in the public interest.

13. As explained below, under the principles established under the inter-American human rights system, States are only *mandated to prohibit* hate speech in certain circumstances, this is, when the speech constitutes “incitements to lawless violence or to any other similar action against any person or groups of persons on any grounds including those of race, color, religion, language, or national origin.” (Article 13(5) of the American Convention).

14. In other cases, even though the inter-American legal framework *allows* States to limit by legal measures the right to freedom of expression, under strict compliance with the requirements of legality, necessity and proportionality (Article 13(2) of the American Convention), the IACHR considers it necessary to highlight that censorship of the debate of controversial issues will not address structural inequalities and prejudice that affect LGBTI persons in the Americas. On the contrary, as a principle, states must encourage more and richer debates as a means of exposing and addressing negative stereotypes.

D. Freedom of Expression and the prohibition of hate speech: Inter-American Law and Standards

15. In principle, all forms of speech are protected by the right to freedom of expression, independently of the content and the degree of government and social acceptance of the speech in question. The State has a primary duty of content-neutrality and, as a consequence, it must guarantee that there are no persons, groups, ideas or means of expression that are excluded *a priori* from public debate.¹⁷⁷⁰ Particularly important is the rule according to which 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.¹⁷⁷¹

16. Notwithstanding this strong protection of free speech, the right to freedom of expression is not an absolute right and can be subject to limitations. Such limitations are specifically established in Articles 13(2) and 13(5) of the American Convention. First, in Article 13(2), the American Convention establishes that freedom of expression may be limited to the extent necessary to ensure certain public interests or the rights

¹⁷⁶⁹ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 42.

¹⁷⁷⁰ IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 36.

¹⁷⁷¹ IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 31; I/A Court H. R., Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107. para. 113; I/A Court H.R., Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 69; I/A Court H. R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 105; I/A Court H. R., Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 116; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

of other persons. Article 13(2) prohibits prior censorship, but allows for the subsequent imposition of liability. The establishment of such limitations must be exceptional in nature, and in order to be permissible must be subject to three basic conditions, also set forth in Article 13(2): (a) the limitation must be clearly and precisely defined in a substantive and procedural law; (b) it must pursue objectives authorized by the American Convention; and (c) it must be necessary in a democratic society for the attainment of the aims pursued, suitable for accomplishing the intended objective, and strictly proportional to the aims pursued.

17. Further, Article 13(5) of the American Convention states that “[a]ny 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.” The IACHR and its Special Rapporteurship on Freedom of Expression are of the view that, according to general principles of treaty interpretation, “advocacy of hatred” that is directed against individuals on the basis of their sexual orientation, gender identity, or bodily diversity, and that constitutes incitement to lawless violence or “to any other similar action,” falls within the scope of this provision and is therefore a violation of Article 13 of the American Convention.¹⁷⁷²

18. There is a distinction between Articles 13(2) and 13(5) of the American Convention in terms of the level of obligation imposed on the State. In interpreting Article 13(5) of the American Convention, the IACHR has indicated that States *are required* to adopt legislation to punish advocacy of hatred that constitutes “incitement to lawless violence or to any other similar action.”¹⁷⁷³ Whereas Article 13(2) of the American Convention considers other intolerant expressions or comments that do not strictly amount to “incitement to violence.” Under Article 13(2), such speech *could be* subject to the imposition of subsequent liability to ensure the rights to dignity and non-discrimination of a particular group in society, including LGBTI persons. The International Covenant on Civil and Political Rights (ICCPR) provides a similar approach.¹⁷⁷⁴ The United Nations “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (“UN Rabat Plan of Action”), adds a third type of speech that while not punishable, raises a concern in terms of tolerance and civility. As such the UN Rabat Plan of Action establishes that it is important for States to make a clear distinction between: (i) expressions that constitute a criminal offence, (ii) expressions that are not criminally punishable but may justify a civil suit or administrative sanctions, and (iii) expressions that are not legally punishable “but still rais[e] a concern in terms of tolerance, civility and respect for the rights of others.”¹⁷⁷⁵

19. In interpreting similar standards in the universal human rights system, the UN Special Rapporteur on minority issues, Rita Izsák, has expressed 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 experts have stated, the intended or actual effects of speech can be a useful indicator to distinguish incitement to hatred from other categories of hate

¹⁷⁷² IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 58-59. IACHR, Annual Report 2014: Chapter V: Follow-up to the 2012 Jamaica Report, para. 238.

¹⁷⁷³ IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 58.

¹⁷⁷⁴ In the universal human rights system, “expression labelled as ‘hate speech’ can be restricted under articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR) on different grounds, including respect for the rights of others, public order, or even sometimes national security. States are also obliged to ‘prohibit’ expression that amounts to ‘incitement’ to discrimination, hostility or violence” under article 20.2 of the ICCPR. [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, para 14.

¹⁷⁷⁵ United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 20, 25; United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 32; [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, para. 11.

speech.”¹⁷⁷⁶ Indeed, several United Nations human rights bodies¹⁷⁷⁷ have highlighted that the application of criminal sanctions on hate speech should be seen as a last resort measure to be applied only in “strictly justifiable situations,” in accordance with the requirements set out in Article 20.2 of the ICCPR.¹⁷⁷⁸

20. To combat hate speech, experts have suggested that “civil sanctions and remedies should also be considered, including pecuniary and non-pecuniary damages, along with the right of correction and the right of reply. Administrative sanctions and other remedies should also be considered, including those identified and put in force by various professional and regulatory bodies.”¹⁷⁷⁹ The IACHR is of the opinion that expressions that openly denigrate, stigmatize, or discriminate against a person or a group of persons on the grounds of perceived or actual sexual orientation or gender identity, but that do not reach the threshold of *advocacy of hatred that incites lawless violence* according to Article 13(5) of the American Convention (“hate speech”), *may be* subject to the imposition of subsequent sanctions of a civil or administrative nature, or to remedies such as the right of correction and reply. Notwithstanding this, the IACHR highlights that such sanctions cannot be aimed at inhibiting or restricting the dissemination of information and ideas concerning issues of public interest. Further, as with any other restriction on freedom of expression, the imposition of subsequent sanctions must satisfy the requirements set forth in Article 13(2) of the American Convention and be applied by an independent state entity.

21. Negative or derogatory portrayal and other expressions that stigmatize LGBTI persons are certainly offensive and hurtful and they increase the marginalization, stigmatization, and general insecurity of LGBTI persons. However, the IACHR is of the opinion that the legal prohibition of this type of speech will not do away with the stigma, prejudice, and hatred against LGBTI persons that is deeply rooted in the societies of the Americas. In many contexts, given the structural social inequalities, discriminatory views and prejudice in public discourse cannot be eradicated through legal sanctions. As will be explained below, more should be done to promote a comprehensive approach that goes beyond legal measures and includes preventive and educational mechanisms and measures implemented by States, media, and society in general.

22. The Commission and its Special Rapporteurship on Freedom of Expression deem of particular importance that States take action to guarantee the exercise of the right to freedom of expression of LGBTI persons and to empower those affected and made invisible by hate speech. As observed by the Special Rapporteurship on Freedom of Expression of the IACHR, “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.”¹⁷⁸⁰ However, in order to enable a vigorous debate it is necessary to guarantee that members of groups

¹⁷⁷⁶ UN, Human Rights Council, Report by the Special Rapporteur on Minority Issues, Rita Izsák, A/HRC/28/64, 5 January 2015, para. 54.

¹⁷⁷⁷ In 2011 and 2012, the United Nations Office of the High Commissioner for Human Rights (OHCHR) held four regional expert workshops focused on the relationship between freedom of expression and hate speech. The goal was to “conduct a comprehensive assessment of the implementation of legislation, jurisprudence and policies regarding advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence at the national and regional levels, while encouraging full respect for freedom of expression as protected by international human rights law.” The workshops resulted in the “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”, a document containing a series of recommendations to States, United Nations bodies and other stakeholders on implementing the prohibition of incitement to discrimination, hostility or violence contained in Article 20 of the International Covenant on Civil and Political Rights. The Rabat Plan of Action was subsequently supported and adapted by other international bodies in the fulfillment of their mandates.

¹⁷⁷⁸ [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, paras. 20 - 22; United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, para. 12.

¹⁷⁷⁹ [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, paras. 14 - 19.

¹⁷⁸⁰ IACHR. [Annual Report 2010. 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. 5. March 4, 2011, para. 50.

affected by hate speech can fully exercise their freedom of expression, which includes fostering greater diversity and pluralism in access to the media.¹⁷⁸¹

23. In light of the foregoing, the Commission has stated that the imposition of sanctions under the charge of advocacy of hatred that constitutes “incitements to lawless violence or to any other similar action” – as defined and prohibited by Article 13(5) of the American Convention – requires a high threshold. Such sanctions must be backed by truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had: (a) the clear *intention* of promoting lawless violence or any other similar action against LGBTI persons; and (b) the *capacity* to achieve this objective and create an *actual* risk of harm to LGBTI persons.¹⁷⁸²

24. Complementary requirements or “threshold tests” have been proposed by different international bodies and civil society organizations in order to clearly differentiate between speech that constitutes “incitement to lawless violence or to any other similar action,” allowing for the separation of speech warranting the imposition of criminal sanctions from speech that is intolerant or offensive but not criminal.¹⁷⁸³ For instance, the UN Rabat Plan of Action sets forth the following criteria that should be taken into account by legislators, prosecutors and judges when assessing expressions which are criminally prohibited: (i) the social and political context prevalent at the time the speech was made and disseminated;¹⁷⁸⁴ (ii) the position or status of the speaker in the society, including the individual’s or organization’s standing in the context of the audience to whom the speech is directed; (iii) the intent of the speaker;¹⁷⁸⁵ (iv) the content or form of the speech, which may include “the degree to which the speech was provocative and direct, as well as a focus on the form, style, nature of the arguments deployed in the speech at issue or in the balance struck between arguments deployed;” (v) the extent of the speech, including elements such as the reach of the speech, its public nature, magnitude and the size of its audience;¹⁷⁸⁶ and (vi) the likelihood, including imminence, that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.¹⁷⁸⁷

¹⁷⁸¹ IACHR. [Annual Report 2010. 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. 5. March 4, 2011, para. 50; IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting), OEA/Ser.L/V/II. Doc.51. December 30, 2009, paras. 24-37. IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression), para. 100.

¹⁷⁸² IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 59.

¹⁷⁸³ See, for example: United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 15 - 16; United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 45; Article 19. [Responding to Hate Speech against LGBTI People](#). October 2013, p. 27.

¹⁷⁸⁴ “Context is of great importance when assessing whether particular statements are likely to incite to discrimination, hostility or violence against the target group and it may have a bearing directly on both intent and/or causation.” Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Adopted on October 5, 2012. Par. 22. Available at: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

¹⁷⁸⁵ “Negligence and recklessness are not sufficient for an article 20 situation which requires ‘advocacy’ and ‘incitement’ rather than mere distribution or circulation. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech as well as the audience.” [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, para. 22.

¹⁷⁸⁶ “Further elements are whether the speech is public, what the means of dissemination are, considering whether the speech was disseminated through one single leaflet or through broadcasting in the mainstream media or internet, what was the frequency, the amount and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work of art) was circulated in a restricted environment or widely accessible to the general public.” [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012. Para. 22.

¹⁷⁸⁷ “Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for that speech to amount to a crime. Nevertheless some degree of risk of resulting harm must be identified.” [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, para. 22.

25. It is important to recognize that any limit on freedom of expression, especially limits that could bring serious sanctions such as prison sentences, must meet three basic guarantees: they must be applied by a body that is independent of the Executive Branch and that has structural guarantees of independence and autonomy; they must respect the principles of due process; and they must be accompanied by sanctions that are proportional. In any case, as has been repeatedly held by the IACHR and the Inter-American Court, any restriction imposed on the right to freedom of expression should be established in advance, expressly, restrictively, unambiguously and clearly in law – in the formal and material sense.¹⁷⁸⁸ The restriction must also serve compelling objectives as set out in the American Convention, be necessary to serve the compelling objectives pursued in a democratic society, be strictly proportionate to the objective pursued, and be appropriate to serve said compelling objective.¹⁷⁸⁹

26. When limits on freedom of expression are established by criminal law, the Court has established that they must further satisfy the principle of strict legality. The Court has held that should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the principle of legality. The Court has indicated that this principle is understood as the requirement to use strict and unequivocal terms, clearly restricting any punishable behavior, which in turn requires “a clear definition of the incriminated behavior, setting its elements and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures.”¹⁷⁹⁰

27. With regard to implementation of Article 20.2 of the ICCPR, the “Rabat Plan of Action” recommends that definitions of hate speech, especially of a criminal nature, incorporate robust definitions of key terms used, for example: hatred, incitement, and advocacy.¹⁷⁹¹ Similarly, the Camden Principles on Freedom of Expression and Equality, developed by a civil society organization on the basis of discussions involving a group of high-level UN and other officials, as well as civil society actors and academic experts, recommend that “[n]ational legal systems should make it clear, either explicitly or through authoritative interpretation, that: i. The terms ‘hatred’ and ‘hostility’ refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group; ii. The term ‘advocacy’ is to be understood as requiring an intention to promote hatred publicly towards the target group; iii. The term ‘incitement’ refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.”¹⁷⁹²

¹⁷⁸⁸ IACHR. [Annual Report 2010. 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. 5. March 4, 2011, para. 51; Inter-American Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85, November 13, 1985. Series A No. 5, paras. 39-40; Inter-American Court, Case of Palamara Iribarne v. Chile. Judgment dated November 22, 2005. Series C No. 135, para. 79; Inter-American Court, Case of Herrera Ulloa v. Costa Rica. Judgment dated July 2, 2004. Series C No. 107, para. 120; Inter-American Court, Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment dated January 27, 2009. Series C No. 193. para. 117; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” laws with the American Convention on Human Rights. Title IV. OAS/Ser. L/V/II.88. doc. 9 rev. February 17, 1995, IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996, para. 55; IACHR. Arguments before the Inter-American Court in the case of Ricardo Canese v. Paraguay. Transcripts available at: InterAmerican Court, Case of Ricardo Canese v. Paraguay. Judgment dated August 31, 2004. Series C No. 111. para. 72. a). Further, in this respect, the definition of the Inter-American Court in its Advisory Opinion OC-6/86 is applicable. It states that the term “laws” does not mean any legal provision, but rather general legal provisions established by the legislative body that is constitutionally provided for and democratically elected, according to the procedures established in the Constitution, hewing to the common good.

¹⁷⁸⁹ IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 62 *et seq.*

¹⁷⁹⁰ I/A Court H.R., Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 55; IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 73.

¹⁷⁹¹ [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, p. 14.

¹⁷⁹² Article 19. [The Camden Principles on Freedom of Expression and Equality](#). April 2009.

28. The IACHR and its Special Rapporteurship on Freedom of Expression believe that independent “watchdog” bodies can serve an important role in identifying and reporting hateful content and promoting the application of the highest ethical standards. While doing so, however, they must adhere to international human rights standards. Examples of non-punitive administrative remedies employed by independent “watchdog” bodies can be found in measures recently adopted by the Ombudsperson of the Audience of Broadcasting Services in Argentina [*Defensoría del Público de Servicios de Comunicación Audiovisual*] to promote the right to equality and non-discrimination on broadcasting services programming.¹⁷⁹³ For instance, in December 2014 the Ombudsperson of the Audience recommended that a certain radio station adopt a code of ethics or style manual incorporating guidelines on the principle of non-discrimination that reflect national legal requirements in this regard. The Ombudsperson also mandated that its own legal department “process, prepare and distribute a guide on responsible press coverage of sexual diversity in the audiovisual media services.”¹⁷⁹⁴

29. Finally, the IACHR recognizes that other international and regional human rights instruments and treaties prohibit ‘promotion or incitement of hatred’ with different implications for conceptualizing and defining the varied forms of hate speech. The IACHR notes the adoption in June 2013 of the Inter-American Convention against All Forms of Discrimination and Intolerance, which as of the date of release of the instant report is yet not in force.¹⁷⁹⁵ Once this convention enters into force, the Inter-American Commission and Court are called to, in accordance to international law principles, interpret the relationship between this convention and the American Convention.

E. Hate Speech and Public Officials

30. The Inter-American Court has established that even when official speech might not have authorized, instructed, or directly incited violence, it may often put potential victims of violence in a situation of greater vulnerability before the State and some sectors of society.¹⁷⁹⁶ The Commission and the Court have reiterated that given the State’s obligations to guarantee, respect, and promote human rights, it is the duty of

¹⁷⁹³ According to Article 3(m) of the Act 26.522 of Audiovisual Communication Services, broadcasting media should “promote the protection and safeguarding of equality between men and women, and a plural, equal and non-stereotypical coverage, avoiding discrimination by gender or sexual orientation.” Congreso de la Nación Argentina. [Act 26.522. Servicios de Comunicación Audiovisual](#). October 10, 2009.

¹⁷⁹⁴ Ombudsperson of the Audience (Defensoría del Público). [Resolución N° 141/2014](#). December 29, 2014.

¹⁷⁹⁵ For example, Article 4 of the Inter-American Convention against All Forms of Discrimination and Intolerance establishes that “[t]he states undertake to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of discrimination and intolerance, including: i. Public or private support provided to discriminatory activities or that promote intolerance, including the financing thereof; ii. Publication, circulation or dissemination, by any form and/or means of communication, including the Internet, of any materials that: a. advocate, promote, or incite hatred, discrimination, and intolerance; b. condone, justify, or defend acts that constitute or have constituted genocide or crimes against humanity as defined in international law, or promote or incite the commission of such acts; [...] Preparing and introducing teaching materials, methods, or tools that portray stereotypes or preconceptions, based on any of the criteria set forth in Article 1.1 of this Convention.” OAS General Assembly, [Inter-American Convention against all Forms of Discrimination and Intolerance](#), adopted on June 5, 2013 at the 43rd Regular Session. Further, The International Convention on the Elimination of All Forms of Racial Discrimination obligates States to condemn “all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination” (art. 4). Further, three situations constitute offences punishable by law: (a) all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) organizations, organized and all other propaganda activities which promote and incite discrimination—which must be declared illegal and prohibited—, and participation in such organizations or activities; (c) promotion or incitement of racial discrimination by public authorities or public institutions, national or local. International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by the UN General Assembly on 21 December 1965 (entered into force 4 January 1969).

¹⁷⁹⁶ I/A Court H. R., Case of Ríos et al. vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 138; I/A Court H. R., Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 157; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 208.

public officials to ensure that when they exercise their freedom of expression they are not causing fundamental rights to be ignored.¹⁷⁹⁷

31. In this regard, the Inter-American Commission has expressed its concern over public officials in different States of the region promoting harmful stereotypes of, and expressing discriminatory views regarding, LGBTI persons.¹⁷⁹⁸ For example, the IACHR received information regarding the use of expressions of stigmatization and intolerance by the President of the Human Rights Commission of the House of Representatives in Brazil in 2013. According to the information received, he has publicly indicated that LGBT people “want to impose a gay dictatorship in the country, in order to expel God out of Brazil” and that “the putrefaction of gay feelings leads to hate, crime and rejection.”¹⁷⁹⁹ Similarly, in 2013 the President of the Human Rights Commission of Congress, in Costa Rica, made a series of intolerant and discriminatory remarks regarding the congressional debate of a bill to protect LGBTI people from discrimination. He reportedly said to the press “[b]ut who is bothering them? Who is bothering them? We cannot tell who they are. If they are not “fruity” and they do not declare themselves as such, in reality one does not know who they are.”¹⁸⁰⁰

32. In similar terms, a Councilman in La Candelaria, Bogotá, Colombia, indicated in 2013 that LGBT people “are involved with the judges and they are perverse or perverted [they] sleep with 5, 20 or 30 people. They sleep with children. They sleep with girls ... because the ones who are buying children are judges of the Republic, senators and magistrates. And we have a big problem. People run for office and they do not say whether or not they are LGBTI. Gay and bisexual men are being elected, but if the voters knew what kind of people [they are], they would not vote for them. But here, people are being lied to.”¹⁸⁰¹ Colombian civil society organizations have claimed that the Inspector General has also publicly expressed negative and demeaning views of LGBTI people. For example, the Inspector General considers same-sex relationships or couples to be “aberrations,” and equates them to bestiality.¹⁸⁰² Along these lines, on August 13, 2013, a Member of the House of Representatives for the Partido Socialista Unido de Venezuela (PSUV), used homophobic slurs while in a parliamentary session, when he referred to a state governor as “*maricón*” [Spanish equivalent to “faggot”] and a “homosexual.”¹⁸⁰³

33. Further, the Commission calls on authorities to not only refrain from disseminating hateful messages against LGBTI people but also to “contribute decisively to the building of a climate of tolerance and respect in which all people, including lesbian, gay, trans, bisexual and intersex persons and those who defend

¹⁷⁹⁷ I/A Court H. R., Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008 Series C No. 182. para. 131. See also (related): IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 204; I/A Court H. R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. para. 139; I/A Court H. R., Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195. para. 151; IACHR, [Annual Report 2013. 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.149 Doc. 50. December 31, 2013, para. 44.

¹⁷⁹⁸ IACHR, Press Release No. 37/13. [The IACHR Calls Member States to Ensure Respect of the Rights of LGBTI Persons by Public Officials](#). May 17, 2013.

¹⁷⁹⁹ FELGTB. [La FELGTB denuncia la homofobia del presidente de la Comisión de Derechos Humanos de Brasil](#). April 15, 2013; Tribuna da Bahia. [Marco Feliciano põe o projeto sobre a “cura gay” para ser votado na Câmara](#). May 2, 2013.

¹⁸⁰⁰ The original quote in Spanish: “*si a ellos no se les ve el plumero y no se declaran así, en realidad uno no sabe quiénes son.*” Dos Manzanas. [Costa Rica: el presidente de la Comisión de Derechos Humanos avergüenza a sus compatriotas con sus declaraciones homófobas](#). March 4, 2013; El PeriodicoCR. [Comentarios homofóbicos de diputado Orozco causan indignación en las redes sociales](#). February 22, 2013.

¹⁸⁰¹ El Espectador. [Edil de Bogotá, en líos por posible discriminación](#). May 2, 2013.

¹⁸⁰² Colombia Diversa, “*Todos los Derechos, Pocos los Deberes.*” *Situación de Derechos Humanos de Lesbianas, Gay, Bisexuales y Transgeneristas en Colombia 2008-2009*, p. 11; citing Ordoñez, Maldonado Alejandro, *Ideología de Género: Utopía Trágica o Subversión Cultural*. 2006, pp. 108 and 153. This information has also been submitted by civil society organizations to the IACHR. IACHR, Public Hearing Situation of Human Rights Defenders of Reproductive Rights in Colombia,” 147th Period of Sessions, 14 March 2013, video available at [www.iachr.org](#).

¹⁸⁰³ Noticias24, [Pedro Carreño a Capriles: “Acepta el reto, mari...”](#) (video), August 13, 2013.

their rights, can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.”¹⁸⁰⁴

34. Likewise, the UN Special Rapporteur has warned that when high-level officials engage in hate speech, “they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy.” Consequently, States should “take appropriate disciplinary measures with regard to hate speech or incitement to hatred by public officials.”¹⁸⁰⁵

35. In this regard, the UN Special Rapporteur on Freedom of Expression has noted that public officials have a “special responsibility” to clearly and formally denounce hate speech.¹⁸⁰⁶ Similarly, the UN Rabat Plan of Action affirms the crucial role of political and religious leaders in “speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech.”¹⁸⁰⁷ For its part, the UN Committee against Racial Discrimination has found that the formal rejection of hate speech by high-level public officials and the condemnation of hateful ideas expressed can work as a preventive measure to combat incitement to violence and discrimination.¹⁸⁰⁸

F. Non-legal measures to counter hate speech

36. The IACHR and its Special Rapporteurship on Freedom of Expression reaffirm that in order to effectively combat hate speech, a comprehensive and sustained approach that goes beyond legal measures and includes preventive and educational mechanisms should be adopted.¹⁸⁰⁹ As previously stated by the Special Rapporteur of the IACHR, these types of measures 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.¹⁸¹⁰

37. In this context, preventive mechanisms could include: education to promote understanding and combat negative stereotypes and discrimination against LGBTI persons, including programs aimed at schoolchildren and informational campaigns; training for law enforcement agents and those involved in the administration of justice on the prohibition of hate speech and incitement to violence; and data collection and analysis in relation to freedom of expression and hate speech.

38. Education and awareness-raising measures should include the promotion of digital and media literacy. The IACHR has stated that in order to ensure access to the internet, educational measures intended to promote the training of all users in the autonomous, independent, and responsible use of the internet and digital technologies is needed. This is because “full access to information and communications technologies, particularly the Internet, is closely related to the capacity to make effective use of these

¹⁸⁰⁴ IACHR. Press Release No. 37/13. [The IACHR Calls Member States to Ensure Respect of the Rights of LGBTI Persons by Public Officials](#). May 17, 2013.

¹⁸⁰⁵ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 67.

¹⁸⁰⁶ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 64.

¹⁸⁰⁷ [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, para. 24.

¹⁸⁰⁸ United Nations Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 37 and 38.

¹⁸⁰⁹ [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, para. 11; United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 33.

¹⁸¹⁰ IACHR. [Annual Report 2010. 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. 5. March 4, 2011, para. 48.

tools.”¹⁸¹¹ The IACHR views as positive that in Argentina, the National Institute against Discrimination, Xenophobia and Racism [*INADI*] established the “Platform for an Internet Free of Discrimination.” The initiative aims to promote digital literacy among children, teenagers, and parents in order to guarantee that the Internet remains a space free from discriminatory violence that affects the rights of groups, communities, and individuals.¹⁸¹² The Platform provides information to enable users to identify and report discriminatory language on the web. Civil society also plays a role in addressing hate speech against LGBTI persons, through education and awareness-raising efforts. In Canada, for example, the non-profit organization *Media Smarts* is dedicated to the promotion of media and digital literacy. It launched an initiative on diversity, non-discrimination, and hate online that provides practical tools for a diverse audience of internet users, including parents, teachers, and children, for identifying and facing hate speech.¹⁸¹³

39. A preventive policy should include the collection and analysis of data and information on hate speech. In most countries in the region, such data is not collected and analyzed. The goals of data collection and analysis could include the assessment of: the various forms of hate speech; the perpetrators involved; the circumstances under which hate speech emerges; and the audiences reached or targeted. Other areas of assessment should include the impact of existing hate speech laws and the extent to which they comply with international norms, as well as the effects of counter-speech/counter-narrative techniques.¹⁸¹⁴

40. Another important measure is the promotion of proactive public policies for social inclusion in the media to ensure that LGBTI individuals and communities can realize their right to freedom of expression without discrimination.¹⁸¹⁵ The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stressed the need to “address and redress the indirect censorship, powerlessness and/or alienation felt by many groups and individuals,” especially those that have been frequent targets of severe harassment and intimidation by both state and non-state actors, since “explicitly or implicitly, through such actions an illusion is created that only those with the requisite authority can speak on particular issues,” resulting in a culture of fear that hampers public debate and violates the right to freedom of expression.¹⁸¹⁶ Therefore, States should “proactively facilitate counter-speech of individuals belonging to groups that are systematically targeted by hate speech.”¹⁸¹⁷

41. One example of good practice is the strengthening of the obligations of public broadcasters to serve the informational and expressive needs of the LGBTI community and promote awareness of LGBTI issues. Another example is the reservation of parts of the radio spectrum for community media outlets operated by LGBTI groups, together with the establishment of special procedures to assist those sectors in obtaining radio licenses. Efforts should also be made to provide support, whether of a financial or regulatory nature, for media outlets or media content that serve the informational and voice needs of LGBTI groups.

¹⁸¹¹ IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 48.

¹⁸¹² National Institute against Discrimination, Xenophobia and Racism [*INADI*], [Plataforma por una Internet Libre de Discriminación](#).

¹⁸¹³ For more information visit: [Media Smarts.com](#).

¹⁸¹⁴ [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#). October 5, 2012, paras. 23 to 29; UN, Committee on the Elimination of Racial Discrimination. General recommendation No. 35, Combating racist hate speech. CERD/C/GC/35. September 26, 2013, paras. 34-36; United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, paras. 58-69.

¹⁸¹⁵ The 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. [Joint Declaration on Universality and the Right to Freedom of Expression](#). May 6, 2014.

¹⁸¹⁶ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 62.

¹⁸¹⁷ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 62.

These are examples of measures that are aimed toward generating equal opportunities and real equality in the exercise of the right to freedom of expression.¹⁸¹⁸

42. It is important to emphasize the role of media as channels of information, ideas, and opinions. This role is fundamental to the development of narratives that value diversity and condemn arbitrary discrimination.¹⁸¹⁹ In this regard, the IACHR has expressed its concern over the use of discriminatory language and harmful stereotyping by media outlets, which disregard the humanity or dignity of LGBTI persons.¹⁸²⁰ The Special Rapporteur for Freedom of Expression has expressed concern over the promotion by media outlets of openly discriminatory content that could incite violence against LGBTI persons, especially when those messages come from shapers of public opinion.¹⁸²¹

43. The IACHR welcomes a recent joint study by several civil society organizations monitoring media in five countries in the region (Belize, Grenada, Guyana, Jamaica and St. Lucia). According to this study, many media outlets reinforce negative stereotypes that can lead to violence against LGBTI persons, and overall, they create an “unbalanced, inaccurate and largely unflattering picture” of LGBTI persons. The study also found that stories depicting LGBTI persons engaged in positive activities, or important stories regarding policy issues or concerns about discrimination and exclusion, were largely ignored by the media.¹⁸²² Further, the study indicated that because much of the coverage consisted of depictions of LGBTI persons purportedly engaged in criminal activity, or negative depictions of LGBTI persons more generally, the coverage contributed to a heightened risk of violence against these persons.¹⁸²³

44. Coincidentally, the IACHR has expressed concern over the “systematic publication by some media articles with messages that could foment hatred and violence against members of the LGBTI community” in 2013 and 2014 in Jamaica.¹⁸²⁴ For example, the IACHR noted¹⁸²⁵ that on March 23, 2014, the *Jamaica Observer* newspaper reportedly published a cartoon indicating “the invasion of Jamaica by homosexuals” [*homos over run Jamaica*], which was alleged to be comparable to the increase in crime and government corruption.¹⁸²⁶ On July 1, 2014, an article was published under the headline “Local churches vow to prevent homosexuality from dominating society,” which contained phrases such as “The local church

¹⁸¹⁸ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting), OEA/Ser.L/V/II. Doc.51. December 30, 2009, paras 37 and 96 *et seq.* IACHR. [Annual Report 2012. 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.147. Doc. 1. March 5, 2013, para. 155.

¹⁸¹⁹ IACHR. [Annual Report 2010. 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. 5. March 4, 2011, para. 46.

¹⁸²⁰ IACHR, [An Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014](#). Annex to Press Release No. 153. December 17, 2014.

¹⁸²¹ IACHR, Annual Report 2014: Follow-up to the 2012 Jamaica Report, para. 183. IACHR. [Annual Report 2012. 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.147. Doc. 1. March 5, 2013, para. 351; IACHR. [Annual Report 2013. 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.149 Doc. 50. December 31, 2013, paras. 560-563; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 58-59. Similarly, see: United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 43.

¹⁸²² International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia*, 2015, p. 1.

¹⁸²³ International Gay and Lesbian Human Rights Commission (IGLHRC) and United and Strong, in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica, and Saint Lucia*, 2015, p. 2.

¹⁸²⁴ IACHR, Annual Report 2014: Follow-up to the 2012 Jamaica Report, para. 236.

¹⁸²⁵ IACHR, Annual Report 2014: Annual Report by the Special Rapporteur of Freedom of Expression, para. 657.

¹⁸²⁶ Maurice Tomlinson. March 23, 2014. More Anti-gay material from the Jamaica Observer. E-mail message sent to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

community is vowing never to sit idly by and allow homosexual lifestyles to infiltrate the Jamaican society.”¹⁸²⁷ On July 13, 2014, it published the article “Police hunt gay murder suspect,” which contained statements like “The men who often dress in drag and pose as prostitutes, live subnormal lives and according to the police, pose a serious threat to the New Kingston environment,” and “Police say that they have strong evidence that more than 90 per cent of the robberies were perpetrated by persons purported to be members of the gay community.”¹⁸²⁸ On July 16, 2014, the same newspaper published an editorial entitled “Homosexuality: the long, painful search for workable rules of engagement,” apparently justifying that “[a]ll Jamaicans, including entertainers, have the right to hold views against homosexuality without discrimination,” but also calling for tolerance and non-violence.¹⁸²⁹

45. In its 2014 Report to follow-up to the 2012 Report on the human rights situation in Jamaica,¹⁸³⁰ the IACHR indicated that in the framework of the hearing “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica” held on October, 28, 2014, the IACHR and its Special Rapporteur received information on the constant stigmatizing by media regarding LGBTI persons. According to civil society organizations, State authorities have omitted promoting positive views to reduce the discrimination and stigma against LGBTI persons. The State reported that the government is aware of the debate in Jamaica on the rights of LGBTI persons and has made efforts to guarantee the right to equality for these people. Regarding public discussions on the subject, the State indicated that takes the position that these are issues covered by the right to freedom of expression in the context of private and independent media and acts in the debate only in the scope of institutions subject to the government’s control.¹⁸³¹ The Office of the Special Rapporteur has warned that these types of discriminatory statements can potentially cause violence, depending on the context in which they are disseminated.¹⁸³²

46. The Commission recalls that principle 6 of the Declaration of Principles on Freedom of Expression, adopted in 2000, establishes, *inter alia*, that journalistic activities must be guided by ethical conduct, although such ethical conduct should in no case be imposed by the State. The IACHR notes that the adoption of voluntary professional codes of conduct for the media and journalists can play a fundamental role in combating discrimination and in promoting equality principles. The voluntary conduct can include being alert to the danger of media outlets furthering discrimination or negative stereotypes, and reporting in a factually accurate and sensitive manner.¹⁸³³ Similarly, the UN Special Rapporteur has underscored the importance of ensuring accountability for what is reported in the media, and has stressed that “media outlets and journalists should adopt voluntary ethical codes and standards that do not allow hate speech and promote high standards of professional journalism.”¹⁸³⁴ Further, that media outlets and journalists should

¹⁸²⁷ Jamaica Observer. [Local churches vow to prevent homosexuality from dominating society](#). July 1, 2014.

¹⁸²⁸ Jamaica Observer. [Police hunt gay murder suspect](#). July 13, 2014.

¹⁸²⁹ Jamaica Observer. [Homosexuality: the long, painful search for workable rules of engagement](#). July 16, 2014.

¹⁸³⁰ IACHR, Annual Report 2014: Follow-up to the 2012 Jamaica Report, para. 237.

¹⁸³¹ IACHR, Hearing on “Monitoring the Report of the Commission on the Situation of Human Rights in Jamaica,” 153rd Regular Session, October 28, 2014.

¹⁸³² In the context of Jamaica, there have been numerous attacks and assaults against persons because of their sexual orientation or gender identity. One example is the case of the murder of Dwayne Jones on July 22, 2013. IFEX/Human Rights Watch. August 1, 2013. [Cross-dressing teenager murdered in Jamaica](#); Huffington Post/AP. August 11, 2013. [Dwayne Jones, Jamaican Transgender Teen, Murdered By Mob: Report](#). IACHR, Annual Report 2014: Follow-up to the 2012 Jamaica Report, para. 237.

¹⁸³³ IACHR, [An Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014](#). Annex to Press Release No. 153. December 17, 2014. See also: Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Adopted on October 5, 2012. Recommendations to other stakeholders. Available at: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

¹⁸³⁴ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 74.

establish “independent and self-regulatory bodies to elevate standards of journalism and to ensure the accountability of all media professionals.”¹⁸³⁵

47. Indeed, media should play a positive role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to groups that have suffer from historical discrimination (including LGBTI persons), and by giving members of these groups an opportunity to speak and to be heard.¹⁸³⁶ This is consistent with the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, which recommend that “mass media avoid the use of stereotypes in relation to sexual orientation and gender identity, and promote tolerance and the acceptance of diversity of human sexual orientation and gender identity, and raise awareness around these issues.”¹⁸³⁷

48. In sum, 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, stigmatizing, or offensive speech. Further, States should adopt legislation prohibiting any advocacy of hatred that constitutes incitement to violence or other similar action. The imposition of sanctions under the charge of advocacy of hatred – as defined in and prohibited by Article 13(5) of the American Convention – requires a high threshold. This is because, as a matter of fundamental principle, prohibition of speech must remain an exception. Restrictions on speech must be backed by actual, truthful, objective, and strong proof that the person was not simply issuing an opinion (even if that opinion was unfair or disturbing), but that the person had the clear *intention* of promoting lawless violence or any other similar action against LGBTI persons, along with the *capacity* of achieving this objective and creating an *actual* risk of harm being committed against persons who are part of these groups. These elements should be made clear by national legal systems, either explicitly in the law or through authoritative interpretation by the judiciary. In other words, criminal sanctions should be seen as last resort measures, only to be applied in strictly justifiable situations, according to article 13(5) of the American Convention. Civil and administrative sanctions and remedies should also be considered, along with the right of correction and the right of reply.

49. Further, when high-level officials engage in hate speech, they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy. Consequently, States should adopt appropriate disciplinary measures with regard to hate speech or incitement to hatred by public officials. The media also plays an important role in countering discrimination, stereotypes, prejudices, and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, and by adopting voluntary professional codes of conduct.

¹⁸³⁵ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/67/357](#). September 7, 2012, para. 74.

¹⁸³⁶ 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. [Joint Declaration on Universality and the Right to Freedom of Expression](#). May 6, 2014.

¹⁸³⁷ [Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity](#). March, 2007.

CHAPTER V 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, 27 journalists or media workers were killed during 2015 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. Also, other 12 journalists were killed where the motive was not clear or where no additional information was known to determine a possible link to their work until the date of closure of this report. 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. It is important to highlight that during 2015 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.

4. 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

5. 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 2015. 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.

6. 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.

7. 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

8. 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.

9. 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 disproportionately 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

10. In 2013, 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.

11. 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

12. 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.

13. 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

14. 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.

15. 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

16. 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.

17. 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.

18. 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

19. 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.

20. 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 information

21. 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. 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.

22. Likewise, as documented in the IACHR report "Access to Information, Violence against Women, and the Administration of Justice in the Americas", the region confronts important challenges with regard to access to public information on discrimination and violence against women. In particular, it has been reported on a number of occasions that there are deficiencies in the availability, quality, and completeness of public information on violence and discrimination against women. These include the failure to gather complete information in the various State bodies on all the different types of violence and discrimination, as well as the failure to produce comprehensive statistics based on that information and to disaggregate the statistical information. Another priority challenge involves Access to information in the realm of the administration of justice, especially regarding ensuring access by women and their family members to information on their pending violence or discrimination cases; the availability of appropriate and sufficient free legal aid services; and access to interpreters and information in other languages for women who do not speak the official State language, among other challenges. The importance of having public information on the following topics is of utmost importance: justice system operations, including data on the number of arrests, prosecutions, convictions, restraining orders, and judgments issued; the amount of time it takes to decide cases; the gender makeup of the justice systems; the budgets allocated to judicial activities; and the internal accountability mechanisms.

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-O/10), by means of which it adopts the “Model Inter-American Law on Access to Information.”

e. Promote the widespread dissemination of information on the human rights of women and how to uphold them, the mechanisms of protection available to women at potential risk of suffering violence and how to access them, the programs for free legal assistance available to women victims of violence and discrimination, and all other mechanisms for addressing these issues.

f. Step up efforts to move towards the effective implementation of comprehensive systems for compiling information on discrimination and violence against women that incorporate information from all State organs with authority in this area, especially the judicial systems. Based on the information collected, States should produce complete statistics on violence and discrimination against women, as well as other kinds of quantitative and qualitative information in this respect. Those statistics should be updated periodically and should include information that is disaggregated at least by sex, gender identity, age, race, ethnicity, sexual orientation, socioeconomic status, and situation of disability so as to make it possible to construct an accurate image of the specific forms in which violence and discrimination affect the women in most vulnerable situations. The statistical information produced should be proactively published.

g. Establish systematic policies for the education and training of state officials, in particular judicial officers, on international standards in relation to access to information and violence and discrimination against women. In addition, train 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 Offices 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. Imperiously promote greater diversity and pluralism in the media system, adopting public policies and legislative frameworks that recognize different types of ownership and management of media (commercial, public and community), as well as the requirement that the media outlets are open to a diversity of ideas, opinions and information. States should also set rules and policies to limit and prevent undue concentration in the control and ownership of media by a small number of people or groups, whether these are made up of natural or legal persons.

b. 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.

c. 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.

d. 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." (2007)

e. 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.

K. Hate speech and incitement to violence against LGBTI persons

29. In 2015, the Office of the Special Rapporteur received information indicating that, as it happens with other historically discriminated groups, violence against LGBTI persons is enhanced by the dissemination of "hate speech" directed toward this community in different contexts, including public debates, demonstrations against events organized by LGBTI persons – such as pride marches -, the media and the Internet. The IACHR and its Office of the Special Rapporteur for Freedom of Expression reaffirm that the right to freedom of expression is important in order to guarantee the right to equality for groups that have suffered historic discrimination.

30. The promotion and protection of the right to freedom of expression must be combined with efforts to combat intolerance, discrimination, hate speech and incitement to violence, particularly by promoting proactive public policies for social inclusion among the media to ensure that LGBTI individuals and their communities may exercise their right to freedom of expression without discrimination. All these efforts must strictly conform to the international law of human rights in general, and to standards on freedom of expression in particular. In this regard, the American Convention states that freedom of expression can be limited to the extent necessary to ensure certain public interests or the rights of others. These limits should have an exceptional nature and meet the requirements set out in Articles 13.2 and 13.5 of the American Convention.

31. In view of the foregoing and following what was said in the IACHR report on Violence against LGBTI persons in the Americas, the Office of the Special Rapporteur recommends that Member States:

a. Undertake all necessary measures in order to ensure that LGBTI persons are able to exercise their right to freedom of expression without discrimination.

b. Establish an enabling legal framework for community media, and provide support, whether of a financial or regulatory nature, for media outlets or media content that serve the informational and expressive needs of LGBTI individuals and groups.

c. Take appropriate steps to combat hate speech against LGBTI persons on the basis of the principles and standards developed in this Report.

d. Ensure that these measures form part of a comprehensive approach that goes beyond legal measures and includes preventive and educational measures to address and respond to hate speech. Preventive mechanisms could include: education to promote understanding and combat negative stereotypes and discrimination against LGBTI persons, including programs aimed at schoolchildren and informational campaigns; training for law enforcement agents and those involved in the administration of justice regarding the prohibition of hate speech and incitement to violence; and data collection and analysis in relation to freedom of expression and hate speech.

e. Adopt legislation to punish hate speech that constitutes incitement to lawless violence against LGBTI persons, in accordance with Article 13(5) of the American Convention on Human Rights and the principles and standards established by the Inter-American Commission and Court, as set out in this Report.

f. Raise awareness among public officials at all levels of their responsibility to publicly reject hate speech against LGBTI persons whenever it occurs and refrain from statements which may reasonably be understood as legitimizing hatred or discrimination against them. When appropriate, establish appropriate sanctions for hate speech that constitutes incitement to lawless violence.

g. Adopt appropriate measures to strengthen the role of public broadcasters to serve the informational and expressive needs of the LGBTI community, as well as to promote awareness of issues that concern this community.

h. Encourage media to play a positive role in countering discrimination, stereotypes, prejudices and biases, including by highlighting their dangers, by adhering to the highest professional and ethical standards, by addressing issues of concern to affected groups and by giving members of these groups an opportunity to speak and to be heard.

i. Promote, but never impose, ethical conduct in journalism.

j. Stimulate the adoption of voluntary professional codes of conduct for the media and for journalists, because these actors can play a fundamental role in combating discrimination and in promoting equality principles. The voluntary conduct can include being alert to the danger of the role media outlets can play in furthering discrimination or negative stereotypes, and reporting in a factually accurate and sensitive manner.

APPENDIX

Joint Declaration on Freedom of Expression and Responses to Conflict Situations

May 4, 2015

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,

Having discussed these issues together with the assistance of *ARTICLE 19, Global Campaign for Free Expression* and the *Centre for Law and Democracy*;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009, 3 February 2010, 1 June 2011, 25 June 2012, 4 May 2013 and 6 May 2014;

Deploring systematic or targeted attacks on democracy and freedom of expression by State and non-State actors in many countries which take place in different contexts, including international and non-international armed conflicts, terrorist attacks, and widespread organized crime resulting in the effective failure of the rule of law;

Alarmed particularly at recent abhorrent direct attacks on freedom of expression, including the calculated killings of journalists, some of which have been widely disseminated publicly;

Deeply concerned about the impact of systematic attacks, which usually involve physical attacks on those exercising their right to freedom of expression, and which can lead to widespread self-censorship and the suppression of open debate about certain public interest issues;

Also concerned that States often respond to such situations in a rapid, reactive manner by imposing unjustifiable or disproportionate restrictions on freedom of expression;

Emphasizing that censorship is not an effective response to extremism, that open and critical debate is an important part of any strategy to address systematic attacks on freedom of expression and their underlying causes, and that overbroad criminalization of expression can drive grievances underground and foster violence;

Stressing that the protections of human rights law apply to all who seek, receive and impart information, and emphasizing the importance of promoting media professionalism and respect for journalistic standards, as part of the media's critical contribution to fostering dialogue and providing access to information and ideas in times of conflict;

Recalling statements in our previous Joint Declarations which have addressed some of the issues raised here;

Adopt, in Riga, on 4 May 2015, the following Joint Declaration on Freedom of Expression and Responses to Conflict Situations:

1. Scope of the Joint Declaration

This Joint Declaration addresses systematic or targeted attacks on freedom of expression which are aimed at silencing certain perspectives or voices, whether internationally, nationally or locally, and State responses to such attacks. Such attacks are perpetrated in different contexts, including of international and non-international armed conflicts, terrorist attacks and widespread organized crime.

2. General Principles

- a. States have a direct responsibility under international human rights law to respect freedom of expression and they are also under a positive obligation to take effective measures to protect freedom of expression against attacks by third parties, including by ensuring accountability for any attacks on those exercising their right to freedom of expression and by raising awareness about the importance of freedom of expression.
- b. States should not respond to crisis situations by adopting additional restrictions on freedom of expression, except as strictly justified by the situation and international human rights law.
- c. Any restriction on freedom of expression must meet the three-part test under international human rights law, namely that it is provided for by law, it serves to protect a legitimate interest recognized under international law and it is necessary to protect that interest.
- d. In the context of systematic attacks on freedom of expression, non-State actors bear direct responsibility for their actions where these represent breaches of domestic law, or of international humanitarian or criminal law.

3. Criminal Restrictions on Content

- a. All criminal restrictions on content – including those relating to hate speech, national security, public order and terrorism/extremism – should conform strictly to international standards, including by not providing special protection to officials and by not employing vague or unduly broad terms.
- b. In particular, States should refrain from applying restrictions relating to ‘terrorism’ in an unduly broad manner. Criminal responsibility for expression relating to terrorism should be limited to those who incite others to terrorism; vague concepts such as ‘glorifying’, ‘justifying’ or ‘encouraging’ terrorism should not be used.

4. Administrative Measures

- a. Administrative measures which directly limit freedom of expression, including regulatory systems for the media, should always be applied by an independent body. This should also normally be the case for administrative measures which indirectly limit freedom of expression and, where this is impossible, for example for security reasons, application of the measures should be overseen by an independent body. It should also be possible to appeal against the application of administrative measures to an independent court or other adjudicatory body.
- b. Administrative measures restricting freedom of expression should be imposed only where they can be justified pursuant to the three-part test for such restrictions.
- c. Filtering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.
- d. Administrative measures should not be used to restrict the movement of journalists, including the entry of foreign journalists into a country, or media coverage of demonstrations or other events of public interest, unless this is strictly justified by the exigencies of the situation, in line with the three-part test.

5. Protections

- a. Natural and legal persons who are regularly or professionally engaged in the collection and dissemination of information to the public via any means of communication have the right to protect

the identity of their confidential sources of information against direct and indirect exposure, including against exposure via surveillance.

- b. 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.
- c. States have an obligation to take effective measures to prevent attacks against journalists and others exercising their right to freedom of expression and to combat impunity, in particular by vigorously condemning such attacks when they do occur, by investigating them promptly and effectively in order to duly sanction those responsible, and by providing compensation to the victims where appropriate. States also have an obligation to provide protection to journalists and others exercising their right to freedom of expression who are at a high risk of being attacked.

6. Positive Measures

States should take measures to ensure that all groups in society have access to opportunities to make their voices heard, both within their communities and in wider social debates, including through measures to promote media diversity, public service broadcasting and community media. The promotion of media and digital literacy and citizen journalism, including the capacity to make effective use of online communication tools, are also important. Such measures can contribute, among other things, to reducing the feelings of alienation which can increase the risk of participation in attacks on freedom of expression.

7. Political Stances

Political leaders should avoid exploiting systematic attacks on freedom of expression for political ends and, in particular, should avoid making statements which might encourage discrimination, otherwise undermine equality or attacks on media workers or members of minority groups. They should, instead, provide leadership in promoting intercultural understanding.

8. Privacy of Communications

- a. 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.
- b. 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.
- c. States should always be fully transparent regarding their systems of surveillance, including the legal and policy framework for this.
- d. There should be adequate independent oversight of systems of surveillance, including of the authorities tasked with actually conducting surveillance.

- e. Encryption and anonymity online enable the free exercise of the rights to freedom of opinion and expression and, as such, may not be prohibited or obstructed and may only be subject to restriction in strict compliance with the three-part test under human rights law.

9. Law Enforcement

- a. Law enforcement authorities should avoid reacting to systematic attacks on freedom of expression by engaging in broad and large-scale application of laws restricting freedom of expression and should, instead, ensure that such laws are applied only in cases which appear to involve a clear breach of their provisions.
- b. The judiciary should refrain from engaging in hasty or summary trials or applying excessive sanctions in reaction to systematic attacks on freedom of expression, and should always ensure full respect for due process guarantees and interpret and apply laws, as relevant, in the manner which best gives effect to the right to freedom of expression.
- c. Training programs should be put in place for law enforcement and administration of justice officials to ensure the above and also to ensure more generally that law enforcement is consistent with international human rights guarantees.

10. States of Emergency

States of emergency should be imposed only as permitted under international law, including because the situation poses a threat to the life of the nation.

11. Situations Where the Rule of Law is no Longer Effective

States and private actors are still bound to respect international humanitarian law even where the rule of law has failed, including provisions which call for media workers to be treated as civilians rather than as combatants.