

Annual Report of the Inter-American Commission on Human Rights 2016

VOLUME II

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

Edison Lanza
Special Rapporteur for Freedom of Expression



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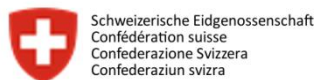
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**ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION
2016**

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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 2016

INTRODUCTION

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

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

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

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

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

6. Indeed, this section of the report places emphasis on the murders, detentions, attacks, and threats against journalists for the exercise of their profession. The report also points to numerous attacks and threats in the context of protests. According to the information received by the Office of the Special Rapporteur, 33 journalists or media workers were killed during 2016 in the region, while several others disappeared or were dislocated from the areas in which they worked, for reasons that could have been related with their exercise of freedom of expression. States have the obligation to protect journalists who confront particular risks as a result of the exercise of their profession. States have an obligation to investigate, try, and punish those

responsible for these acts, not only to provide reparation to the victims and their families, but also to prevent future occurrences of violence and intimidation.

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

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

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

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

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

12. Also, the Office of the Special Rapporteur expresses its appreciation for financial contributions made by the States of Chile, Costa Rica, the United States of America, Peru, Uruguay, and France, as well as the

Swedish Agency for International Development Cooperation, the Swiss Confederation, Open Society Foundations, and the National Endowment for Democracy (NED) which allowed for the implementation of the Office's 2016 program. The Office of the Special Rapporteur invites other States to add to this necessary support.

13. This annual report intends to contribute to the establishment of an improved climate for the exercise of freedom of expression in the region, and in this way ensure the strengthening of democracy, wellbeing, and progress of the hemisphere's inhabitants. Its objective is to collaborate with OAS Member States in raising awareness about the existing problems and in formulating viable proposals and recommendations based on regional doctrine and jurisprudence. To achieve this aim, it is necessary that the work of the Office of the Special Rapporteur be understood as a useful tool for responding to the challenges we face and for generating a broad and fluid dialogue not only with the Member States, but also with civil society and journalists in the region.

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

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

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.

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 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

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.

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.

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

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).

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

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

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

17. Since its creation, the Office of the Special Rapporteur has also had the support of civil society organizations, the media, journalists and, most importantly, individuals who have been victims of violations of the right to freedom of thought and expression, along with their family members.

Mandate of the Office of the Special Rapporteur

18. The Office of the Special Rapporteur for Freedom of Expression is a permanent office with its own operative structure and functional autonomy, which operates within the legal framework of the IACHR.⁸

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

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

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

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.

Principal Activities of the Office of the Special Rapporteur

21. During its nineteen years of existence, the Office of the Special Rapporteur has carried out each of the tasks assigned to it by the IACHR and by other OAS bodies such as the General Assembly in a timely and dedicated manner

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

1. Individual Case System

23. One of the most important functions of the Office of the Special Rapporteur is to advise the IACHR in the evaluation of individual petitions and prepare the corresponding reports.

24. The appropriate advancement of individual petitions not only provides justice in the specific case, but also helps call attention to paradigmatic situations that affect freedom of thought and expression, and creates important case law that can be applied in the inter-American human rights system itself as well as in courts in countries throughout the region. The individual case system also constitutes an essential factor within the broad strategy of promoting and defending the right to freedom of thought and expression in the region, a strategy that the Office of the Special Rapporteur carries out through various mechanisms offered by the inter-American human rights system.

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

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

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

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

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

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 provision 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.

– *Norin Catriman and Others Case (leaders, members and activists of the Mapuche Indigenous People) vs Chile*. Sentence of May 29, 2014. The case refers to criminal proceedings and sentences imposed on eight leaders, members and activists of the Mapuche Indigenous People, as perpetrators of crimes classified as terrorism in the application of Law 18,314 (known as the “Antiterrorist Law” [*Ley Antiterrorista*]), in a context of social protest aimed at recovering the ancestral territories of the Mapuche People and respect for the use and enjoyment of their lands and natural resources. In its ruling, the Court examined the compatibility of accessory penalties imposed in the present case against the victims, leaving them disqualified for 15 years from “making use of a social communications medium or being the director or administrator of one, or performing duties associated with the issuance or dissemination of opinions or information.” The Court determined that the referred-to accessory penalty implies undue restriction of the victims' exercise of the right to freedom of thought and expression, “not only for having been imposed based on sentences that applied criminal law in violation of the principle of legality and of various procedural guarantees, but also because, in the circumstances of the present case, it is contrary to the principle of proportionality of the penalty.” The Court added that, given that the victims are traditional authorities of the Mapuche Indigenous people who “are responsible for playing a determining role in communicating the interests and in the political, spiritual and social leadership of their respective communities,” the imposition of the referred-to accessory penalty “has restricted the possibility of participating in the dissemination of opinions, ideas and information by carrying out duties in the social communications media, which could limit the sphere of action of their right to freedom of thought and expression in the exercise of their duties as leaders or

representatives of their communities. At the same time, this negatively affects the social dimension of the right to freedom of thought and expression, which, as established by the Court in its jurisprudence, implies the right of everyone to know about opinions, narratives and news expressed by third parties.” It also reiterated its jurisprudence regarding the “intimidating effect on the exercise of freedom of expression that can be caused by the fear of being subjected to an unnecessary or disproportionate criminal or civil sanction in a democratic society, which can lead to self-censorship both by those upon whom the sanctions are imposed as well as other members of society.” In the present case, the Tribunal determined “that the way in which the Antiterrorist Law [*Ley Antiterrorista*] was applied to the members of the Mapuche Indigenous People could have caused reasonable fear among other members of that people involved in actions associated with social protest and claims for their territorial rights or who could possibly wish to participate in them.” It therefore determined that the State had violated the right to freedom of expression, in detriment to the victims.

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

- *Case of López Lone et al v. Honduras*. Judgment of October 5, 2015. In the judgment the Court recognized the existing relationship between political rights, freedom of expression, right of assembly and

freedom of association and that together all these rights make democracy possible. The relationship between these rights is manifested even more where there is rupture of institutional order after a coup d'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.

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

the Court reiterated the instrumental character of the law for access to information, because it is an essential means for obtaining informed consent and, therefore, the effective realization of the right to autonomy and freedom with respect to reproductive health. The Tribunal emphasized that “in the field of sexual and reproductive health, the obligation for active transparency attributable to the State goes hand-in-hand with the duty of health personnel to provide information that enables people to make free and responsible decisions about their bodies and sexual and reproductive health, which are associated with intimate aspects of their personality and private and family life”.¹⁰

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

2. Precautionary Measures

27. The Office of the Special Rapporteur has worked, within its mandate, with the IACHR Protection Group with regard to recommendations on the adoption of precautionary measures in the area of freedom of expression. In this regard, the IACHR has requested on multiple occasions that OAS Member States adopt precautionary measures to protect the right to freedom of expression. It did so, for example, in the cases of (i) Matus Acuña (Chile);¹¹ (ii) Herrera Ulloa v. Costa Rica;¹² (iii) López Ulacio v. Venezuela;¹³ (iv) Peña v. Chile;¹⁴ (v) Globovisión v. Venezuela;¹⁵ (vi) Tristán Donoso v. Panama;¹⁶ (vii) Yáñez Morel v. Chile;¹⁷ (viii) Pelicó Pérez v. Guatemala;¹⁸ and (ix) Rodríguez Castañeda v. Mexico;¹⁹ (x) Leo Valladares Lanza and Daysi Pineda Madrid

¹⁰ Corte Interamericana de Derechos Humanos. Caso I.V.* vs. Bolivia. Sentencia de 30 de noviembre de 2016. (Excepciones preliminares, fondo, reparaciones y costas). Párr.156 y ss.

¹¹ 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.

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

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

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

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

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

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

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

¹⁹ IACHR decision adopted on July 3, 2008, for the purpose of preventing the destruction of electoral ballots from the 2006 presidential elections in Mexico.

v. Honduras;²⁰ (xi) Journalists of La Voz de Zacate Grande (Honduras),²¹ y (xii) Lucia Carolina Escobar Mejia, Cledy Lorena Caal Cumes, Gustavo Girón v. Guatemala,²² (xiii) Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga v. Ecuador²³; (xiv) 15 workers of Progreso Radio v. Honduras²⁴; and (xv) Yoani María Sánchez Cordero v. Cuba²⁵; José Moisés Sánchez Cerezo (Mexico);²⁶ Miguel Henrique Otero and others (Venezuela);²⁷ X and others (Mexico).²⁸

28. During 2016, the Office of the Special Rapporteur collaborated in the study of 44 requests of precautionary measures. The following requests were granted: César Obando Flores Rodríguez regarding Honduras²⁹; Lester Toledo and family regarding Venezuela³⁰; and Braulio Jatar regarding Venezuela.³¹ For

²⁰ 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.

²¹ 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.

²² 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.

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

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

²⁵ Decisión de la CIDH de 9 de noviembre de 2012 en la cual se solicitó al Estado de Cuba que adopte las medidas necesarias para garantizar la vida y la integridad física de Yoani María Sánchez Cordero y su familia, que 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.

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

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

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

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

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

³¹ Decisión de la CIDH de 22 de diciembre de 2016 en la cual se solicitó al Estado adoptar las medidas necesarias para garantizar la vida e integridad personal del señor Braulio Jatar. En particular se proporcione una atención médica adecuada, de acuerdo a sus

additional details regarding these precautionary measures, please consult the Annual Report 2016 of the IACHR.

29. The granting of the precautionary measures does not constitute a prejudgment on the merits in question. Rather, these measures are adopted out of a need to avert grave, imminent, and irremediable harm to one of the rights protected in the American Convention of Human Rights, or to maintain jurisdiction in the case and so the subject of the action does not disappear.

3. Public Hearings

30. The IACHR received various requests for hearings and working meetings on matters involving freedom of expression during its most recent periods of sessions. The Office of the Special Rapporteur participates actively in the hearings on freedom of expression, preparing the reports and handling the corresponding interventions and follow-up.

31. Within the framework of the 157th Period of Sessions that took place April 2 to 15, several hearings took place on topics associated with the right to freedom of expression in the Americas. On April 5th, a hearing requested by the Foundation for Freedom of the Press (FLIP, for its initials in Spanish) on the case of Colombian journalist Jineth Bedoya was held. Also on April 5th, a hearing was held on “The Right to Freedom of Expression and Regulation of Audiovisual Communications Media in the Americas”. This hearing was requested by the civil society organizations Observacom and the International Association of Broadcasting (IAB). On April 7th, a hearing was held on “Student Protests and Human Rights in São Paulo, Brazil” requested by the civil society organizations Article 19 Brazil and Comitê De Mães E Pais Em Luta. On April 7th, a hearing requested by the Ministry of Culture of Brazil was held on “Cultural Rights and the Internet in Brazil”. The organizations Association for Progressive Communications (APC), Divisão de Assistência Judiciária da Universidade Federal de Minas Gerais (DAJ/UFGM), Clínica de Direitos Humanos da UFGM (CdH/UFGM), Grupo de Estudos em Direito Internacional dos Direitos Humanos (GEDI-DH/UFGM), Article 19 Brazil, and Public Knowledge were present during this hearing. Furthermore, also on April 7th, a hearing was held on “Access to Information and Indirect Restrictions on Freedom of Expression in Mexico”. The hearing was requested by a group of civil society organizations consisting of: Asociación Mexicana de Derecho a la Información (AMEDI), Centro de Análisis e Investigación A. C. (Fundar), Article 19 Mexico & Central America, Red por la Defensa de los Derechos Digitales (RED3D), Centro por la Justicia y el Derecho Internacional (CEJIL), Colectivo por la Transparencia, Transparencia Mexicana and the State of Mexico. Finally, on April 8, a hearing was held on the “Right to Freedom of Expression and Changes in the Law on Audiovisual Communication Services in Argentina” requested by the Centro de Estudios Legales y Sociales (CELS) and various organizations under the name Coalición por una Comunicación Democrática (CCD).³²

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

patologías; asegure que las condiciones de detención se adecuen a estándares internacionales, tomando en consideración su estado de salud actual; y concierte las medidas a adoptarse con el beneficiario y sus representantes.

³² IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

also met with the Argentine delegation in Santiago de Chile and the Ambassador for Human Rights of Argentina, Leandro Despouy.³³

33. Within the framework of the 159 Ordinary Period of Sessions of the IACHR in Panama City, various hearings were held that dealt with topics associated with the right to freedom of expression. On December 2, a hearing took place about the situation of the rights to freedom of expression in Venezuela at the request of the following organizations: Espacio Público and the Centro de Derechos Humanos of the Universidad Católica Andrés Bello (UCAB), who presented the violations of the right to freedom of expression recorded in Venezuela during 2016, and particularly in the context of public demonstrations. Also on December 2, a hearing was held on the “Situation of the right to freedom of expression in Paraguay”, requested by the Sindicato de Periodistas de Paraguay (SPP) (Journalists Union of Paraguay), Foro de Periodistas de Paraguay (FOPED) and VOCES Paraguay, who presented information about the alleged situation in Paraguay in terms of impunity regarding crimes committed against journalists in the country, the lack of public policies for prevention and protection for the practice of journalism, and media concentration. Finally, also on December 2, a hearing took place about the situation of the right to freedom of expression in Ecuador. The hearing was requested by various Ecuadorian civil society organizations, including Fundamedios, Asociación Ecuatoriana de Editores de Periódicos (AEDEP) and Unión Nacional de Periodistas de Ecuador (UNP) who spoke of the difficulties facing the practice of freedom of expression in that country. The hearing specifically focused on application of the Organic Communications Law in Ecuador. In addition, the Special Rapporteur also participated in the hearing “Situation of Human Right Defenders in Cuba”, requested by the CPJ, Cubalex, Damas de Blanco, among others.³⁴

34. During the 160th Extraordinary Period of Sessions of the IACHR held in Washington DC, the Office of the Special Rapporteur for Freedom of Expression held a hearing on December 9 on the “Right to Freedom of Expression and Antiterrorist Legislation of Canada”. The hearing was requested by the organization Canadian Journalists for Free Expression (CJFE), who discussed the national security norms of Canada and the impact of the antiterrorism law approved in 2015 (Bill C-51) on the rights to freedom of expression and privacy. The hearing addressed the topics of freedom of expression, national security and privacy. Additionally, the Special Rapporteur also participated in the hearing “Human Rights Situation of Indigenous Persons in the Context of Projects and Extractive Industries in the United States”.³⁵

4. Seminars and Workshops with Strategic Actors in the Region

35. Seminars are a critical tool the Office of the Special Rapporteur uses to promote the inter-American system for the protection of human rights and the right to freedom of expression. In the last nineteen (19) years, the Office of the Special Rapporteur has organized seminars throughout the region, in many cases with the cooperation of universities, government institutions, and nongovernmental organizations.

36. Hundreds of journalists, attorneys, members of the Public Prosecutor's Office, university professors, judges, and journalism; and law students among others, have attended the training sessions. These are offered by staff members of the Office of the Special Rapporteur both in country capitals and in more remote regions where there is often no access to information on the guarantees that can be sought to protect the right to freedom of thought and expression.

37. The meetings with those involved open the door for more people to be able to use the inter-American human rights system to present their problems and complaints. The seminars also enable the Office of the Special Rapporteur to expand its network of contacts. In addition, the workshops and working meetings have allowed the Office of the Special Rapporteur to work closely with strategic actors to advance the application of international standards in domestic legal systems.

³³ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

³⁴ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

³⁵ IACHR. Period of Sessions. Available at: <http://www.oas.org/en/iachr/activities/sessions.asp>

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

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

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

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

42. On March 13 and 14, the Special Rapporteur Edison Lanza traveled with IACHR President James Cavallaro, Commissioner Enrique Gil Botero and Fiorella Melzi, attorney for the Executive Secretariat of the IACHR, to Guatemala city to present the IACHR report on the “Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion”. The launching took place on March 14 at the Palacio Nacional de la Cultura and featured participation by the President of Guatemala, Mr. Jimmy Morales Cabrera, the Minister of Foreign Affairs Carlos Raúl Morales and Vice president Jafeth Cabrera Franco. During his stay, the Rapporteur held meetings with Guatemalan organizations such as Cerigua, the Cámara Guatemalteca de Periodismo, the Association of Guatemalan Journalists, directors of the Media Chamber and the Broadcasting Chamber of Guatemala. He also gave interviews to the media channels *Guatevisión*, *Plaza Pública* and *El Periódico* and had a working meeting with the Guatemalan civil society organizations Civitas, Instituto DEMOS and various community radio stations.

43. From March 14 to 16, the Special Rapporteur and the Office of the Special Rapporteur attorney, Tatiana Teubner, participated as experts in the capacity building seminar “Regional RTA Seminar: Public Policy for Access to Information and Transparency”, which was held in San Salvador. The workshop was jointly organized by the Office of the Special Rapporteur for Freedom of Expression of the IACHR with the Instituto de Acceso a la Información Pública (IAIP for its initials in Spanish) of El Salvador, and the Network for Transparency and Access to Information (RTA). The event consisted of two seminars, the first was of a public nature and was attended by over 100 people from different sectors (public, NGOs and media), while the second day was aimed at 40 professionals and government officials associated with implementation of the law for access to public information of El Salvador. Also on March 16, the Rapporteur attended a work breakfast with social and institutional actors in the field of freedom of expression that was held at the Fundación Friedrich-Ebert Stiftung of El Salvador. Additionally, he met with the Director of the General Superintendency for Electricity and Telecommunications (SIGET) Balnca Coto, and the President of the Legislative Assembly of the Republic Lorena Guadalupe Peña.

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

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

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

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

48. On April 5, the Office of the Special Rapporteur for Freedom of Expression of the IACHR launched its 2015 Annual Report in a conference titled “2015: A Key Year for Freedom of Expression in the Hemisphere”. The seminar was held at the Elliott School of International Affairs at George Washington University (GW).

Opening remarks on freedom of expression and democracy were given by the Secretary General of the OAS Luis Almagro, who was followed with presentations by the Special Rapporteur for Freedom of Expression Edison Lanza and the President of the Inter-American Commission on Human Rights, James Cavallaro. Regional experts such as the Director of Fundamedios, Cesar Ricaurte; the Executive Director of IPYS Venezuela, Marianela Balbi; and the General Director of Observacom, Gustavo Gómez; presented the challenges faced by the region. The event was moderated by Silvio Waisbord, Professor at the School of Public Affairs and Communications, George Washington University, and was attended by over 30 representatives of civil society organizations such as FLIP, Alianza Regional, Fundamedios, CELS, Fundación Led and Article 19.

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

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

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

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

53. From April 25 to 26, the Office of the Special Rapporteur journalist, Felipe Llambias, developed an academic visit to Asunción, Paraguay, where he took part in the seminar “Without Freedom of Expression there is no Democracy”, organized by the Journalists Union of Paraguay (SPP for its initials in spanish) with the support of the Fundación Friedrich Ebert. The Office of the Special Rapporteur participated in the roundtable “Narco-politics and the Mafia threaten freedom of expression. From Santiago Leguizamón to Gerardo Servian: What changed? Who protects journalists? With Dante Leguizamón, Attorney and son of murdered journalist Santiago Leguizamón”. Llambias spoke about acts of violence against journalists and employees of media outlets, pursuant to Inter-American standards and national practices for prevention, protection and imprisonment of perpetrators, published by the Office of the Special Rapporteur in 2013. The seminar was held the day before the “Day of the Journalist in Paraguay”, and was attended by 40 journalists.

54. On May 2 to 5, the Rapporteur traveled to Helsinki, Finland to participate in the “World Press Freedom Day”, jointly organized by the UNESCO and the Government of Finland. Invited by Article 19, the Special Rapporteur participated in the launch of the “Joint Declaration on Freedom of Expression and Countering Violent Extremism”. The presentation was moderated by Thomas Huges, Executive Director of Article 19 (United Kingdom and Northern Ireland), and counted with the participation of the Director of Law and Policy for Article 19 Barbora Bukovska; the Executive Director of the Center for Law and Democracy (Canada) Toby Mendel; and the Director of the Office on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Frane Maroevic. The joint declaration demonstrates the collective effort by these experts to safeguard and advance standards regarding freedom of expression and the right to public information. Annually adopted since 1999, the declaration serves as a reminder of the commitments that the interested parties must make in the defense of freedom of expression and strengthens efforts to defend, enlarge and maintain this right. The Rapporteur met on May 3 with the Assistant Director General of the Department of Asia and the Americas of the ministry of Foreign Affairs of Finland, Ms. Eija Rotinen, and with Ari Mäki.

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

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

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

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

59. On May 18 and 19, the Office of the Special Rapporteur, with support from the FLIP, organized three working groups on various topics associated with freedom of the press and access to information in

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

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

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

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

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

Rodríguez of AMARC Chile; Paulina Acevedo of the Observatorio Chile; Juan Carlos Lara of Derechos Digitales; Alberto Precht of Chile Transparente; and Javiera Olivares of the Colegio de Periodistas, among others.

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

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

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

67. From June 11 to 15, the Special Rapporteur attended the XLVI General Assembly of the OAS in Santo Domingo, where he participated in various meetings with Member States and Permanent Observers. The Special Rapporteur accompanied President James Cavallaro and the Executive Secretariat of the IACHR in various meetings with observer countries and visiting organizations, to address the serious economic situation the IACHR is currently facing. On June 14, the Rapporteur held a meeting with the new ambassador of the Federal Department of Foreign Affairs of Switzerland, Bénédict de Cerjat, and the Regional Assistant for the United States and the OAS, Yves Dominique Reymond. During his stay in the country, the Rapporteur also held meetings with the foreign ministers of Colombia, Mexico, Dominican Republic and Uruguay as well as with representatives of the European Union and Sweden.

68. From June 22 to 24, the Special Rapporteur developed an academic visit to Caracas, Venezuela. Invited by the civil society organization Transparencia Venezuela, the Rapporteur participated in the forum on “Law on Transparency, Dissemination and Access to Public Information”, approved by the National Assembly of Venezuela in its first debate. During his stay in the country, he held a meeting with the Media Commission of the National Assembly and provided technical assistance for the draft legislation on access to public information. In addition, on June 22 the Rapporteur dictated a conference at the forum “The Right to Know on the Continent”, alongside the counselor of the Council for Transparency of Chile, Marcelo Drago; Deputy José Simón Calzadilla; Director of Ecoanalítica Asdrúbal Oliveros, and journalist Liseth Boon. Moreover, on June 23 the Rapporteur gave a conference at the Universidad Andrés Bello (UCAB) about inter-American standards in the field of broadcasting and held an academic meeting with professors and students from the School of Law and the School of Communications of the Universidad Central. The conference featured executive directors of civil society organizations such as Alianza Regional and the Coalición Pro- Acceso.

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

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

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

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

73. From August 3 to 6, the Special Rapporteur held an academic visit to Tegucigalpa to participate as a speaker in the International Forum “The Status of Freedom of Expression in Honduras”, organized by the civil

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

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

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

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

77. In the context of the academic visit, the delegation of the OSR also met with senior officials of the Government of the Plurinational State of Bolivia. On August 24, the Rapporteur met with Vice Chancellor Juan Carlos Alurralde, the Minister of Communications, Marianela Paco Durán, and with the Vice-Minister for Institutional Transparency and Fight against Corruption, Jorge Flores. On August 26, the Rapporteur further met with the representative of the United Nations High Commissioner for Human Rights in Bolivia, Denis Racott, to exchange information about the status of the situation of freedom of expression in the country. On that same day, the Embassy of Sweden in Bolivia coordinated a series of informative meetings with international organizations, civil society and representatives of embassies accredited in the country. On August 26, the Rapporteur met with Jorge Velásquez, representative of the local civil society organization Diakonia, and with members of the international organizations Save the Children and Plan Internacional. In these meetings, he maintained an open dialogue about the challenges faced by Bolivian society in the field of freedom of expression and the right of association, as well as the need to establish a dialogue between the State and civil society. During his stay in La Paz, the Rapporteur Edison Lanza held interviews with Channel *Anoticiando*, radio station *RED UNO* and newspaper *Página Siete*.

78. OSR attorney Viviana Ordoñez, held two workshops on the dissemination of inter-american standards in the field of violence against journalists and employees of media outlets in Guatemala City, during an activity coordinated with the Office of the United Nations High Commissioner for Human Rights. The workshops were held from August 29 to September 2, with the purpose of disseminating inter-american standards on freedom of expression. On August 31 the first workshop on prevention, protection and justice was held in the municipality of Mazatenango entitled "Violence against Journalists and Media Workers". The encounter counted with the participation of 40 journalists, some of whom had been victims of aggressions and threats and who, as part of their concerns, spoke of the job insecurity under which they currently work. The workshop was replicated on September 1 in Guatemala City and was attended by journalists and civil society representatives.

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

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

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

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

83. From September 13 to 14, 2016, the Rapporteur and the attorney from the Office of the Special Rapporteur, Tatiana Teubner, participated as experts in the regional training seminar "Inter-American Seminar on Transparency and Access to Information", held in Brasilia. The workshop was organized by the Office of the Special Rapporteur for Freedom of Expression of the IACHR in coordination with the Controlaría General de la Unión (CGU) as a full member of the RTA in representation of Brazil, and the Network for Transparency and Access to Public Information. During the first day, the Special Rapporteur held a panel on the evolution of the right of access to public information in the region and also participated as moderator in

the panel “local regulatory frameworks and institutional changes”. The event was attended by 340 officials and members of Brazilian civil society, 70 attendees for the workshops on practical cases and dozens of people who followed the activities by streaming. The objective of the capacity building seminar was to provide public officials and professionals with theoretical-practical elements in the realm of access to information and transparency, in order to consolidate the capacities, theoretical and practical skills of the officials regarding access to information in relation to this topic associated with good governance and the development of modern democracies.

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

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

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

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

88. On September 26, a consultation was held in São Paulo on women and social protest at the headquarters of the Lawyers’ Association of the state of São Paulo (APESP, for its Portuguese acronym). The meeting was attended by Brazilian organizations: Marcha das Vadias, Marcha da Maconha, Terra de Direitos, RENAP Brasília, Tambores de Safo, Marcha Mundial das Mulheres and Brigadas Populares, among others, who spoke of the current challenges faced by women in exercising their rights. Finally, the third consultation covered the issue of youth and social protest in Brazil. The meeting provided a space for identifying challenges faced by students in the context of social protest and also concluded with recommendations for consideration by the IACHR. In São Paulo, the OSR delegation, along with Commissioner Macaulay and the

representatives of Article 19 Brazil, held meetings with media outlets, civil society organizations, and promoters from the Public Prosecutor's Office. Also on September 26, the Office of the Special Rapporteur, alongside Article 19, launched the report "Freedom of Expression in Brazil 2005-2015". The document is a compilation of the chapters relating to Brazil from the OSR's annual reports of the recent decade. Through this report, the Office of the Special Rapporteur seeks to systematize and draw attention to the relevant advances and challenges that still persist in the country for the full exercise of the right to freedom of expression.

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

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

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

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

93. On October 4, a meeting was held with Argentine deputies and senators to discuss various bills on governmental advertising that are currently under study by the Argentine Senate. The meeting was coordinated by the Secretary of Parliamentary Relations and Administration, Paula Bertol, and was attended by high-level government figures such as Deputy Karina Banfi. During his stay in the country, the Rapporteur also met with Santiago Kovaldoff, member of the Enacom Commission, had a lunch with the Argentine Human

Rights Ambassador, Leandro Despouy, and a work breakfast with the Under-Secretary for Human Rights, Brian Schapira and the Director of Judicial Affairs, Ramiro Badia. At the end of his official visit, the Special Rapporteur was interviewed by the Argentine daily newspaper *La Nación*.

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

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

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

97. During the 159 Ordinary Period of Sessions of the IACHR in Panama City, diverse hearings were held that dealt with topics associated with the right to freedom of expression. On December 2, a hearing took place on the situation of the "Situation of the Right to freedom of expression in Venezuela" and a hearing on the "Situation of the Right to freedom of expression in Paraguay". Finally, also on December 2, a hearing took place on the situation of the right to freedom of expression in Ecuador. In addition, the Special Rapporteur also participated in the hearing "Situation of Human Right Defenders in Cuba", requested by the CPJ, Cubalex, Damas de Blanco, among others.

98. Also in the framework of the 159th Period of Sessions, the Special Rapporteur also held diverse meetings with delegations from different governments and visiting civil society organizations, including; Fundamedios; FLIP; Remdmica, Committee for the Protection of Journalists (CPJ); and a breakfast with the President of the Justice Supreme Court of Uruguay and the Permanent Secretary of the Ibero-American Judicial Summit, Minister Ricardo Pérez Manrique.

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

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

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

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

5. Annual Report and Development of Expert Knowledge

103. One of the main tasks of the Office of the Special Rapporteur is the preparation of the annual report on the state of freedom of expression in the hemisphere. Every year, this report analyzes the state of enjoyment of the right to freedom of expression in the States of the hemisphere, which includes noting the main threats to the exercise of the right to freedom of expression and the progress that has been made in this area.

104. Besides its annual reports, the Office of the Special Rapporteur periodically produces specific reports on particular countries. For example, it has prepared and published special reports on the situation regarding the right to freedom of expression in Paraguay (2001), Panama (2003), Haiti (2003), Guatemala (2004), Venezuela (2004), Colombia (2005), Honduras (2009, 2010 and 2015), Venezuela (2009 and 2010) and Mexico (2010 and 2015).

105. The Office of the Special Rapporteur has also prepared thematic reports that have led to a significant process of debate in the region, as well as the implementation of legislative and administrative reforms in many States throughout the Americas. In 2016, the Office of the Special Rapporteur worked on the thematic reports included as thematic chapters of this report.

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

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

6. Special Statements and Declarations

108. Through the daily monitoring of the state of freedom of expression in the region—conducted by means of an extensive network of contacts and sources—the Office of the Special Rapporteur issues statements such as press releases, reports, and opinions on specific cases or situations that are relevant to the exercise of this fundamental right. Press releases issued by the Office of the Special Rapporteur receive wide coverage and constitute one of its most important work mechanisms.

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

110. In addition, since its creation the Office of the Special Rapporteur has participated in the drafting of joint declarations with the other regional rapporteurs and the UN rapporteur for freedom of expression. These joint statements are generally signed by the UN Special Rapporteur; the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE); the Special Rapporteur of the OAS; and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights. When the issues are regional in nature, the declarations are signed by the Rapporteurs for the UN and the OAS.

111. The joint declarations constitute an important tool for the work of the Office of the Special Rapporteur. In previous years, these statements have covered such subjects as: the importance of freedom of expression (1999); murders of journalists and defamation laws (2000); challenges to freedom of expression in the new century in areas such as terrorism, the Internet, and radio (2001); freedom of expression and the administration of justice, commercialization and freedom of expression, and criminal defamation (2002); media regulation, restrictions on journalists, and investigations into corruption (2003); access to information and secrecy legislation (2004); the Internet and anti-terrorism measures (2005); publication of confidential information, openness of national and international entities, freedom of expression and cultural and religious tensions, and impunity in cases of attacks against journalists (2006); diversity in access, ownership, and content of the media, particularly radio and television (2007); the defamation of religions and anti-terrorist and anti-extremist legislation (2008); media and elections (2009); ten key challenges to freedom of expression in the next decade (2010); Wikileaks (2010); freedom of speech on the Internet (2011); crimes against freedom of expression (2012); the universality and the right to freedom of expression (2014); and the obligations of states to protect journalists who cover armed conflicts (2015).³⁶

³⁶ The abovementioned joint declarations are available for consultation at:

<http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&IID=1>

112. On June 24, 2016 Freedom of expression experts expressed their concern in a joint press release at measures taken by the interim Federal Government in Brazil intervening in the administration of the Brazilian Public Broadcaster (EBC) and the converting the National Controller's Office (CGU) into a new ministry of Transparency, Monitoring and Oversight.³⁷

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

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

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

Funding

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

³⁷ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Special Rapporteur on Freedom of Expression Organization of American States (OAS), issued a joint press release titled: Freedom of expression experts warn of interference with the Brazilian Public Broadcaster and the National Controller's Office. <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1028&IID=1>

³⁸ Rapporteur of UN and IACHR joint press release - Venezuela / Crisis: UN and Inter-American experts raise alarm at deterioration of media freedom. <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1036&IID=1>

³⁹ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Special Rapporteur on Freedom of Expression Organization of American States (OAS), issued a joint press release titled: Ecuador / Freedom of expression: UN and IACHR Rapporteurs warn of arbitrary application of the Organic Communications Act. <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1045&IID=1>

⁴⁰ During 2016 (until December 23) the following press releases were issued: IACHR. Special Rapporteurship for Freedom of Expression. [R196/16 Press Release](#) December 23, 2016; [Press Release R186/16](#) December 14, 2016; [Press Release R177/16](#) November 28, 2016; [Press Release R171/16](#) November 21, 2016; [Joint Press Release R163/16](#) November 3, 2016; [Press Release R159/16](#) November 2, 2016; [Press Release R154/16](#) October 25, 2016; [Press Release R149/16](#) October 13, 2016; [Press Release R143/16](#) September 28, 2016; [Press Release R141/16](#) September 27, 2016; [Press Release R135/16](#) September 22, 2016; [Press Release R134/16](#) September 21, 2016; [Press Release R123/16](#) August 29, 2016; [Joint Press Release R110/16](#) August 4, 2016; [Press Release R106/16](#) July 28, 2016; [Press Release 100/16](#) July 25, 2016; [Press Release R95/16](#) July 18, 2016; [Press Release R93/16](#) July 8, 2016; [Press Release R91/16](#) July 1, 2016; [Press Release R80/16](#) June 21, 2016; [Press Release R70/16](#) May 25, 2016; [Press Release R68/16](#) May 20, 2016; [Press Release R62/16](#) May 6, 2016; [Press Release R60/16](#) May 3, 2016; [Press Release R57/16](#) April 29, 2016; [Press Release R52/16](#) April 25, 2016; [Press Release R43/16](#) March 23, 2016; [Press Release R42/16](#) March 22, 2016; [Press Release R 38/16](#) March 17, 2016; [Press Release R34/16](#) March 14, 2016; [Press Release R32/16](#) March 9, 2016; [Press Release R22/16](#) February 25, 2016; [Press Release R19/16](#) February 23, 2016; [Press Release R11/16](#) February 11, 2016; [Press Release R 12/16](#) February 11, 2016; [Press Release R4/16](#) January 27, 2016; [Press Release R 3/16](#) January 25, 2016.

⁴¹ 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.

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

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

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

⁴² 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>

⁴³ 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. Para. 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. Para. 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. Para. 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. Para. 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. Para. 54; Report to the Permanent Council. Annual Audit of Accounts and Financial Statements for the years ended December 31, 2001 and 2000. Specific Funds

Staff

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

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

B. Introduction and Methodology

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

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

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

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

5. In preparing this chapter of its 2016 Annual Report, the Office of the Special Rapporteur generally took into account information received until December 10, 2016. Information regarding incidents that occurred after the date the 2016 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/expression/index.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.

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

1. ANTIGUA & BARBUDA

A. Subsequent Liabilities

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

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

¹ Antigua Observer. March 25, 2016. [Damani Tabor charged](#); Caribbean News. March 24, 2016. [Judge Orders Bail for Jailed Opposition Legislator](#); Jamaica Observer. March 26, 2016. [Opposition legislator in Antigua charged with making false statement](#). Antigua and Barbuda Public Order Act Cap. 357 section 34.

² IACHR. Annual Report 2015. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser. L/V/II. Doc. 48. December 31, 2015.

2. ARGENTINA

A. Progress

9. On April 4, 1st Supervisory Judge [*Jueza de Garantías N° 1*] Alejandrina Herrero of Entre Ríos acquitted journalist Juan Carlos Botta of criminal defamation charges [*calumnias e injurias*] brought by the Treasury Secretary of the Municipality of Concepción del Uruguay [*secretario de Hacienda de la Municipalidad de Concepción del Uruguay*], Oscar Colombo. The secretary filed a complaint against Botta following a September 20, 2015 publication on the web page of the digital weekly newspaper *El Disparador Uruguay*, for which Botta is responsible, in which a reader called into question Colombo's actions and his alleged irregular "enrichment." In her decision, the judge found that statements referring to matters of public interest did not amount to criminal defamation under the Criminal Code. Citing the criteria set forth by the Inter-American Court of Human Rights in the case of *Kimel v. Argentina*, the judge determined that the conduct "attributed to the defendant journalist is not statutorily defined as criminal conduct, and his duty to inform takes precedence over the honor or privacy of a public servant." In addition, citing a decision of the Supreme Court of Entre Ríos, she held that the facts disclosed are "closely linked to issues of public interest and make the complainant's professional undertakings in the municipal government matters that frankly go beyond his sphere of privacy."³

10. On September 14, the Argentine Congress enacted the first federal Public Information Access Act [*Ley de Acceso a la Información Pública Federal*].⁴ The law, which passed with 182 votes in favor and 16 against. The Executive Branch introduced a legislative bill to Congress on April 7.⁵ Its objective is "to guarantee the effective exercise of the right to access public information, and to promote citizen participation and transparency in government." It further establishes that "every individual or legal entity, whether public or private, has the right to request and receive public information, without the requester being required to provide a reason for the request in order to prove the private right or legitimate interest, or to be represented by counsel." It establishes a period of 15 days, which in exceptional cases may be extended for another 15 days, for entities to respond to the request for information. It also created the Access to Public Information Agency, an entity that will operate autonomously within the Executive Branch and ensure compliance with the law. Additionally, it provides for the creation of access to public information bodies in the Legislative Branch, the Judiciary, and the Offices of the Attorney General, with operational autonomy and powers and duties identical to those of the Access to Public Information Agency.⁶

11. The Office of the Special Rapporteur commended the enactment of a Public Information Access Act. As it stated in a letter sent to the State on July 22 to request information on the progress of the legislative bill, and in a press release issued on September 22 after the law was passed, this Office has recommended since its inception that the States of the region enact laws that guarantee effective access to public information and foster their effective and efficient implementation, in accordance with the relevant international standards. In this regard, the Office of the Special Rapporteur notes with satisfaction that the law contains standards developed both by the IACHR and its Office of the Special Rapporteur and in the case law of the Argentine Supreme Court with regard to access to public information.⁷

³ Juzgado de Garantías N° 1 de Concepción del Uruguay, provincia de Entre Ríos. "Botta, Juan carlos s/Querrela por calumnias e injurias". Legajo de Investigación N° 025/15. April 4, 2016. Available at: <http://www.fopea.org/wp-content/uploads/2016/04/FALLO-CASO-BOTTA.pdf>

⁴ Directorio Legislativo. September 14, 2016. [Se sancionó la Ley de Acceso a la Información Pública](#); Télam. September 14, 2016. [Amplio respaldo a la nueva Ley de Acceso a la Información](#); La Nación. September 15, 2016. [Después de 15 años, finalmente es ley el acceso a la información pública](#).

⁵ Presidencia de la Nación. April 7, 2016. [El Gobierno enviará al Congreso un proyecto de Ley de Acceso a la Información Pública](#); Sistema Argentino de Información Jurídica. [Proyecto de Ley de Acceso a la Información Pública enviado al Congreso por el Poder Ejecutivo Nacional](#). April 7, 2016.

⁶ República Argentina. Senado y Cámara de Diputados de la Nación Argentina. [Ley 27275. Derecho de Acceso a la Información Pública](#). September 14, 2016.

⁷ Special Rapporteur for Freedom of Expression. Comunicación al Estado conforme al Artículo 41 de la Convención Americana. July 22, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Office of the Special Rapporteur for

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

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

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

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

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

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

Freedom of Expression. September 22, 2016. [Press Release R135/16 Office of the Special Rapporteur for Freedom of Expression applauds recent enactment of Public Information Access Law in Argentina.](#)

⁸ IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 208. Along the same lines: OAS. Permanent Council. Committee on Juridical and Political Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information](#). OEA/Ser.G CP/CAJP-2841/10. April 23, 2010. Para. 14.

⁹ La Nación. December 15, 2015. [El periodista atacado dijo que seguirá con sus denuncias](#); La Razón. December 13, 2015. [Areco: violaron a la mujer de un periodista que denunció a narcos](#); Infobae. December 20, 2015. [El periodista amenazado por narcos: "Temo por la vida de mi familia"](#).

¹⁰ El Esquiú. February 14, 2016. [Arbitrario arresto y hurto a un fotoperiodista de El Esquiú.com](#); Foro de Periodismo Argentino (FOPEA). February 14, 2016. [Fopea repudia detención de fotoperiodista en Catamarca](#).

¹¹ Fundación LED. March 20, 2016. [Preocupación por las amenazas a periodista de la emisora televisiva C5N](#); El diario 24. March 20, 2016. [Amenazan de muerte a Roberto Navarro por un informe de "Economía Política"](#).

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

¹³ Fundación LED. March 21, 2016. [Repudio a las amenazas al periodista Antonio Ruiz y al camarógrafo Hugo Pérez en la provincia de Formosa](#); La otra página. March 19, 2016. [Intimidación y amenazas al diario Formosa Expres, TVO y QTH Radio](#).

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

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

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

20. Journalist Gabriela Carchak of *C5N* was the victim of threats and harassment on social media after reporting, on April 6, about a demonstration that was reportedly going to take place outside the home of federal Judge Claudio Bonadío, who leads the proceedings against the former President Cristina Kirchner.²⁰

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

¹⁴ El Ancastrí. March 23, 2016. [Un hombre ingresó con explosivos en Radio Nacional](#); Fundación LED. March 23, 2016. [Preocupación por la violenta irrupción y amenaza en los estudios de Radio Nacional](#); ARG Noticias. March 23, 2016. [Un hombre detenido por la agresión a un periodista en Radio Nacional](#).

¹⁵ "Me escracharon recién los militantes ultra K en Pza de Mayo! Muy violentos Me escupieron, insultos, quisieron romper el móvil de Radio Mitre". Twitter account of Mercedes Ninci @mercedesninci1. [March 24, 2016](#); América TV. March 25, 2016. [La denuncia de Mercedes Ninci: fue agredida en la marcha de Plaza de Mayo](#); Asociación de entidades periodísticas argentinas (ADEPA). April 13, 2016. [Repudia Adepa nuevas agresiones contra periodistas](#).

¹⁶ Télam. April 11, 2016. [Agredieron a periodistas en la puerta de la casa de Cristina en El Calafate](#); TN. April 11, 2016. [El Calafate: insultos y agresiones a periodistas que cubrían la partida de Cristina](#); Foro de Periodismo Argentino (FOPEA). April 14, 2016. [Foepa reclama que cese el clima de hostilidad de militantes políticos contra periodistas](#); Asociación de entidades periodísticas argentinas (ADEPA). April 13, 2016. [Repudia Adepa nuevas agresiones contra periodistas](#).

¹⁷ Infobae. April 13, 2016. [Mercedes Ninci, agredida en la marcha kirchnerista en Comodoro Py](#); La Nación. April 13, 2016. [Militantes K agredieron a Mercedes Ninci en la puerta de Comodoro Py](#).

¹⁸ Foro de Periodismo Argentino (FOPEA). April 14, 2016. [Foepa reclama que cese el clima de hostilidad de militantes políticos contra periodistas](#); Asociación de entidades periodísticas argentinas (ADEPA). April 13, 2016. [Repudia Adepa nuevas agresiones contra periodistas](#).

¹⁹ La Izquierda Diario. April 2, 2016. [Tucumán: funcionaria agredió a periodista en Casa de Gobierno](#); Periódico Móvil. April 1, 2016. ["Entró descontrolada y a los gritos", aseguró la periodista que denunció agresiones en la casa de Gobierno](#); Contexto. April 1, 2016. [Carolina Ponce de León fue insultada por la secretaria de prensa de Manzur](#).

²⁰ Foro de Periodismo Argentino (FOPEA). April 7, 2016. [Foepa repudia las amenazas contra la periodista de C5N Gabriela Carchak](#); Diario Registrado. April 7, 2016. [Amenazan de muerte a una periodista de C5N](#); Perfil. April 6, 2016. [Amenazan y escrachan a una periodista de C5N por los datos sobre la casa de Bonadío](#).

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

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

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

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

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

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

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

²¹ Tv10Córdoba/You Tube. April 12, 2016. [Agreden a periodista en juicio por Narcoescándalo](#); Foro de Periodismo Argentino (FOPEA). April 14, 2016. [Fopea reclama condiciones de seguridad para periodistas que cubren la causa del narcoescándalo en Córdoba](#); La Voz. April 13, 2016. [Repudian agresión a periodista durante juicio por el "narcoescándalo"](#).

²² Diario de la Pampa. April 22, 2016. [Detienen a una periodista por fotografiar un operativo](#); Radio Kermes. April 24, 2016. [ADU repudió la detención ilegal de Cintia Alcaraz](#); El Intransigente/Télam. April 24, 2014. [La Pampa: arrestan a periodista por fotografiar un procedimiento policial](#).

²³ El Patagónico. May 2, 2016. [Arrojaron una "molotov" a una radio: "es un ataque directo a la libertad de expresión"](#); ADN Sur. May 2, 2016. [Tiraron una bomba molotov en una radio local](#); Fundación LED. May 4, 2016. [Repudio por el atentado a la emisora radial "CIELO - FM88.7" de la ciudad de Comodoro Rivadavia, provincia de Chubut](#).

²⁴ TN. June 21, 2016. [Un intendente rionegrino amenazó al aire a un periodista](#); De Roca. June 24, 2016. [Soria agresivo, una vez más, contra un periodista](#).

²⁵ Foro de Periodismo Argentino (FOPEA). June 26, 2016. [Fopea reclama el cese del trato insultante a periodistas y medios de parte de un intendente y presidente del PJ de Río Negro](#).

²⁶ TN. July 17, 2016. [Balearon la casa del periodista Emanuel Soverchia - la fiscalía investiga el ataque perpetrado](#); La Capital. July 19, 2016. [Repudian el atentado a un periodista de Cañada](#); Foro de Periodismo Argentino (FOPEA). July 26, 2016. [Fopea pide esclarecer balazos contra la casa de un periodista en Cañada de Gómez \(Santa Fe\)](#).

²⁷ Foro de Periodismo Argentino (FOPEA). July 6, 2016. [Fopea condena amenazas a periodista de Reconquista](#); El Litoral. July 1, 2016. [Un periodista de Reconquista denunció amenazas de muerte](#); Reconquista. June 23, 2016. [Investigan amenaza contra el periodista Luciano Mascali](#).

of corruption in connection with the former administration of Cristina Fernández. The threats were made in a text message sent to Fariña's telephone.²⁸

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

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

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

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

32. The *Foro de Periodismo Argentino* (FOPEA) "forcefully" repudiated the attack. The LED Foundation and Amnesty international called it "an attack on the right to freedom of expression." The *Asociación de*

²⁸ Clarín. September 2, 2016. [Amenazan a Luis Majul y a Leonardo Fariña](#); Perfil. September 2, 2016. [Amenazan de muerte a Fariña y a Majul](#); Foro de Periodismo Argentino (FOPEA). September 3, 2016. [Fopea condena las amenazas a Luis Majul](#).

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

³⁰ La Nación. July 4, 2016. [Imputaron al empresario Martínez Rojas por los destrozos en Tiempo Argentino](#); Asociación de Entidades Periodísticas Argentinas (ADEPA). July 4, 2016. [Episodio violento que requiere un esclarecimiento pleno](#); Foro de Periodismo Argentino (FOPEA). July 4, 2016. [Fopea repudia el ataque a los medios Tiempo Argentino y Radio América](#).

³¹ Diario Popular. July 4, 2016. [Ataque en Tiempo Argentino: patota echó a periodistas y provocó destrozos](#); Infobae. July 6, 2016. [Ataque a Tiempo Argentino: denunciaron a policías por posible incumplimiento](#); iProfesional. July 4, 2016. [Tiempo Argentino: dice Martínez Rojas que entró con autorización policial](#).

³² Tiempoar. July 9, 2016. [Gracias](#); Télam. July 4, 2016. [Periodistas y especialistas en comunicación repudiaron el ataque a Tiempo en las redes](#); Clarín. July 5, 2016. [Repudian el ataque a un medio vaciado por un empresario K](#).

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

Entidades Periodísticas (ADEPA) also condemned the attack and demanded a prompt investigation, “especially of the alleged inaction of the police while these events were unfolding.”³⁴

33. The National Government, through the Secretariat of Public Communications, expressed “its strongest repudiation of the attack on the facilities of the newspaper *Tiempo Argentino*” and stated that “it declares its support for the members of that editorial staff, who have been victims for several months now of the irresponsible actions of a group of businessmen.” Vice President Gabriela Michetti expressed her “repudiation” of the attack and her solidarity with the newspaper’s staff. The Media Secretariat of the government of the city of Buenos Aires also added its voice to the repudiation and emphatically condemned the attack.³⁵

34. Prior to this episode, businessman Martínez Rojas had already been responsible for another incident at the *Radio América* facility. On June 11, he stormed onto the premises with a group of people, alleging that he was the owner of the radio station and that he had a court order to enter. Based on available information He ordered the interruption of the live radio broadcast, demanding that it be replaced with music. The employees continued with an emergency broadcast via Internet, and would have filed a criminal complaint against the employer.³⁶

35. At the close of this report, six months after these events took place, there has been no progress in the investigations. According to a communication from the State, the case is pending before the Supreme Court, which must resolve the issue of competing jurisdiction between two Federal Courts.³⁷ The Office of the Special Rapporteur has not received any information about any disciplinary investigations arising from the police actions in question.

36. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.³⁸

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

³⁴ Asociación de Entidades Periodísticas Argentinas (ADEPA). July 4, 2016. [Episodio violento que requiere un esclarecimiento pleno](#); Foro de Periodismo Argentino (FOPEA). July 4, 2016. [Fopea repudia el ataque a los medios Tiempo Argentino y Radio América](#); Clarín. July 4, 2016. [Repudio generalizado tras el ataque a Tiempo Argentino](#); Télam. July 4, 2016. [El gobierno nacional repudió el ataque a las instalaciones de Tiempo Argentino](#); Infobae. July 4, 2016. [El Gobierno repudió el "ataque salvaje" al diario Tiempo Argentino](#); Terra. July 4, 2016. [Solidaridad en Argentina por ataque a periódico Tiempo Argentino](#).

³⁵ Clarín. July 4, 2016. [Repudio generalizado tras el ataque a Tiempo Argentino](#); Télam. July 4, 2016. [El gobierno nacional repudió el ataque a las instalaciones de Tiempo Argentino](#); Infobae. July 4, 2016. [El Gobierno repudió el "ataque salvaje" al diario Tiempo Argentino](#); Tiempoar. July 9, 2016. [Gracias](#).

³⁶ Clarín. June 11, 2016. [Un empresario sacó del aire Radio América por un conflicto con Szpolski](#); Perfil. June 11, 2016. [Conflicto en Radio América: acusan a Martínez Rojas de tomar la planta transmisora](#); Foro de Periodismo Argentino (FOPEA). June 12, 2016. [Fopea repudia la interrupción compulsiva de las transmisiones de Radio América por parte de un empresario](#).

³⁷ Permanent Mission of Argentina to the Organization of American States. Note No. OEA 301. December 2, 2016. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

³⁸ 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). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: 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 7, 2011. Para. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#).. OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available.”³⁹

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

C. Social Protest

39. On January 8, law enforcement officers suppressed a demonstration held outside the Municipality of La Plata to protest the layoff of hundreds of State cooperative employees. The police reportedly removed the protesters with rubber bullets and tear gas.⁴⁰

40. On January 16, activist Milagro Sala, leader of the Tupac Amaru group, was arrested pursuant to a complaint filed by Governor Gerardo Morales of Jujuy for the alleged “incitement of crimes and disturbances.” That day, the activist’s home was searched by police officers and court officials. The complaint was filed after Sala and other activists set up a camp outside the Governor’s Office on December 13 to protest changes in the distribution of subsidies to cooperatives initiated by the Morales administration.⁴¹ On January 18, the governor amended the complaint and accused Sala of “aggravated conspiracy” and of committing fraud and perjury against the government. The complaint alleged that Sala was part of a conspiracy that diverted public funds earmarked for housing construction.⁴² On January 29, Sala was arrested pursuant to this case.⁴³ Human rights defense organizations, trade associations, and political groups criticized Sala’s detention and demanded her release.⁴⁴ In addition, Amnesty International asserted that Sala was being criminalized for peacefully exercising her rights to freedom of expression and protest, and asked for her release.⁴⁵ The activist’s defense attorney filed a petition with the Court seeking her release from custody, but on February 12 Supervisory Judge No. 1 of San Salvador de Jujuy, Gastón Mercau, ruled the request inadmissible. On March 29, the Appellate and Supervisory Chamber of the Court of Jujuy dismissed a motion for appeal filed by the defense and upheld the decision issued by Judge Mercau.⁴⁶ On April 28, at the request of investigating prosecutor Diego Cussel, the judge ordered Sala’s pretrial detention for the alleged offenses of “conspiracy, defrauding the government, and extortion.”⁴⁷

³⁹ 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 Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

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

⁴¹ Clarín. January 16, 2016. [Detienen a Milagro Sala en Jujuy por instigar a la violencia](#); Perfil. January 16, 2016. [Detuvieron a Milagro Sala](#).

⁴² Infobae. January 19, 2016. [Ampliaron la denuncia contra Milagro Sala y ex funcionarios por "asociación ilícita"](#); Clarín. January 18, 2016. [Morales amplió la denuncia contra Sala y no desalojará la plaza](#).

⁴³ La Nación. January 29, 2016. [Milagro Sala seguirá presa en Jujuy por "asociación ilícita"](#); Infobae. February 5, 2016. [El fiscal explicó que Milagro Sala sigue detenida por asociación ilícita, defraudación al Estado y extorsión](#).

⁴⁴ El Patagónico. January 18, 2016. [Realizaron manifestaciones en todo el país por la liberación de Milagro Sala](#); CBA 24. January 22, 2016. [Manifestaciones en el país por la liberación de Milagro Sala](#); El diario 24. February 17, 2016. [Reclaman la liberación de Milagro Sala con cortes en todo el país](#); Télam. June 11, 2016. [Se concretó en Jujuy un Congreso Nacional reclamando la libertad de Milagro Sala](#).

⁴⁵ Amnesty International. January 19, 2016. [Urgent action. Peaceful protestor detained, on hunger strike](#).

⁴⁶ Ámbito. March 31, 2016. [Cámara de Jujuy rechazó apelación y Milagro Sala seguirá detenida](#); Infobae. March 31, 2016. [La Cámara de Apelaciones de Jujuy confirmó la detención de Milagro Sala](#).

⁴⁷ Perfil. April 28, 2016. [Dictan prisión preventiva para Milagro Sala](#); La Nación. April 28, 2016. [Dictan prisión preventiva para Milagro Sala](#); Clarín. April 28, 2016. [La Justicia ordenó la prisión preventiva para Milagro Sala](#).

41. On October 28, it was learned that the UN Working Group on Arbitrary Detention—which had determined that Milagro Sala’s detention was arbitrary—urged the State of Argentina to release her. The Working Group found that Milagros had been detained as a consequence of exercising her rights, since she was deprived of her liberty as a consequence of the protest encampment she led in December 2015. The Group also found the existence of a legal arrangement to keep her in custody.⁴⁸ On December 2, the IACHR issued a statement in which urged to the State of Argentina to give prompt attention to the decision issued by the United Nations Working Group on Arbitrary Detention.⁴⁹

42. On February 17, the Interior Security Council adopted the “Protocol for State Security Force Action during Public Demonstrations.” The protocol, signed by Minister of Security Patricia Bullrich, establishes that when there is a public demonstration—whether “planned” (with notice to the competent authorities) or “spontaneous”—law enforcement must “immediately” inform the ministry of Security or the provincial government authorities. Then, “a forum for negotiation will be established in order to cease cutting off (traffic), and the justice authorities will be notified.” The head of the security operation will inform the demonstrators that they should “desist from blocking the roads to traffic” and “withdraw and assemble in a specific area” in order to ensure free circulation. In the event of noncompliance with the order, the protocol says that “they will be in violation of article 194 of the Criminal Code.”⁵⁰ “If the demonstrators do not comply with the order received, they will be asked to abstain from blocking traffic, with the warning that the authorities will proceed as established for cases of criminal offenses committed *in flagrante delicto* (...) and the authorities will proceed to dissolve the demonstration.” Once the streets are cleared for traffic to circulate, the protocol provides that the authorities will establish “a forum to negotiate with the leader or representative of the group of demonstrators, for purposes of channeling their claims to the appropriate areas.” In addition, if there are persons and/or groups among the demonstrators “who incite violence and/or carry blunt objects and/or weapons of any kind, or use fire, fuel, explosive or flammable items, chemical agents, pyrotechnics, or any other item that could jeopardize the physical safety of individuals,” law enforcement “will proceed to isolate and identify such persons, take the necessary measures to prevent the possible commission of crimes, and confiscate the blunt instruments.” The protocol further establishes that “the use of force should always be limited to the minimum possible degree, as a response with which to overcome, in an orderly manner, the resistance of those who commit crimes subject to public prosecution and in situations of legitimate defense.” In addition, the protocol states that “the participation of the media will be organized so that journalists, media workers, and members of their teams conduct their news reporting work in a specific area, where the protection of their safety is ensured, and they do not interfere in the proceedings. Their work and equipment shall not be destroyed or confiscated by government authorities.”⁵¹

43. Upon its approval, representatives of the opposition and civil society called the protocol into question on the grounds that it restricted the right to demonstrate. The government opened a public consultation period, to run through March 3, and invited the interested parties to submit their suggestions and concerns about the protocol to the Ministry.⁵²

⁴⁸ United Nations. Human Rights Council. Working Group on Arbitrary Detention. Opinion number 31/2016 regarding Milagro Amalia Ángela Sala (Argentina). A/HRC/WGAD/2016. October 21, 2016. Available at: <http://www.ohchr.org/EN/Issues/Detention/Pages/Opinions76thSession.aspx>; Centro de Estudios Legales y sociales (CELS). October 28, 2016. [Naciones Unidas solicita la liberación inmediata de Milagro Sala](#); La Nación. October 29, 2016. [Un organismo de la ONU pidió la liberación de Milagro Sala](#).

⁴⁹ IACHR. December 2, 2016. Press Release 181/16. [IACHR Urges the State of Argentina to respond to the Case of Milagro Sala](#).

⁵⁰ ARTICLE 194. – “Any person who, without creating a situation of common danger, prevents, obstructs or hinders the normal operation of transport by land, water or air or services of public communications, water supply, electricity or energy substances, shall be repressed with three months to two years imprisonment.” [Código Penal de la Nación argentina](#).

⁵¹ Ministerio de Seguridad. February 17, 2016. [Consenso en seguridad para las manifestaciones públicas](#); Ministerio de Seguridad. [Protocolo de actuación de las fuerzas de seguridad del Estado en manifestaciones públicas](#). February 17, 2016.

⁵² Infobae. February 22, 2016. [El Gobierno pone a consulta de la sociedad el protocolo antipiquetes](#); Terra. February 19, 2016. [Tras las críticas, el Gobierno recibirá opiniones sobre el protocolo para protestas](#); Diario26. February 22, 2016. [El Gobierno pone a consulta protocolo contra piquetes](#).

44. On February 23, ruling on a writ of *amparo* [petition for a constitutional remedy] filed by the Association of State Workers [*Asociación de Trabajadores del Estado*] (ATE) for the organization of an anti-government protest, the Appeals Chamber for Criminal Offenses and Misdemeanors of the city of Buenos Aires found that the protocol was not valid because it had not been published in the Official Gazette.⁵³

45. With respect to public consultation, the Center for Legal and Social Studies [*Centro de Estudios Legales y Sociales*] (CELS) sent a letter on February 29 to Minister Bullrich containing its opinions on the protocol. In the organization's opinion, "It presents serious problems insofar as it is a limitation on fundamental rights, and fails to comply with the State's obligation to properly regulate police action in the context of public demonstrations." CELS affirmed that "It is concerning that it has been drafted without the participation or consultation of social and political actors (...) Only *a posteriori*, with the protocol already drafted and considered by the authorities to be in force, was a very limited channel opened up for consultation purposes," which "is far from the institutional proceedings warranted for a measure of such social, political, and institutional relevance." The organization maintained that by establishing that "public order," "social harmony," and "freedom of movement" are values that are superior to the obligations of the State to respect and protect the physical integrity of persons, the right to freedom of expression, freedom of assembly, or the exercise of freedom of the press, the protocol "is incompatible" with the Constitution and the international human rights treaties. It further stated that the protocol "also affects the work of journalists, since the police will tell press workers where they can be located so as 'not to interfere in the proceedings.'" The organization considered that one of the most serious aspects of the resolution is that it "does not explicitly prohibit the police officers who intervene in demonstrations from carrying and/or using firearms and/or lethal ammunition, or from using rubber bullets to disperse groups of people." In addition, the organization called into question the fact that the police force "would be authorized to disperse or remove protesters from public demonstrations without the need for the prior intervention of any judicial authority."⁵⁴

46. During protests and situations of heightened social unrest, States must adhere to the strictest international standards on freedom of expression in order to fully guarantee this right, without improper interventions against individuals, in keeping with Principle 2 of the IACHR's Declaration of Principles.⁵⁵ 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.⁵⁶

47. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"⁵⁷ 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."⁵⁸

⁵³ Política Argentina. February 24, 2016. [Paro de ATE: no rige el protocolo antipiquetes porque "no está vigente"](#); Centro de Estudios Legales y Sociales (CELS). [Carta dirigida a la Ministra de Seguridad de la Nación](#). February 29, 2016.

⁵⁴ Centro de Estudios Legales y Sociales (CELS). [Carta dirigida a la Ministra de Seguridad de la Nación](#). February 29, 2016.

⁵⁵ [Principle 2 of the Declaration of Principles on Freedom of Expression](#): "[e]very person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition."

⁵⁶ 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.

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

⁵⁸ 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.

48. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”⁵⁹

49. Lastly, the Inter-American Commission has found that any type of arbitrary or abusive interference affecting the privacy of human rights defenders and their organizations is prohibited under the Declaration and the American Convention.⁶⁰

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

50. On September 27, the ministry of Security adopted, through Resolution 479 - E/2016, a “General Protocol of Action for the Protection of Journalistic Activity,” the purpose of which is to establish the measures and procedures to be implemented by the police and security forces to “guarantee the free development of journalistic activity” in the country. The Ministry worked in conjunction with the Argentine *Asociación de Entidades Periodísticas* (ADEPA) and the *Foro de Periodismo Argentino* (FOPEA) in drafting the protocol, which provides a mechanism for the establishment of preventive measures for journalists that may be at risk because of journalistic missions connected to crimes of federal interest. ADEPA and FOPEA will establish an independent commission to evaluate the risk of journalistic investigations and to cooperate with the Ministry in determining the type of preventive measure that is appropriate in each case. According to the resolution, the preparation of the protocol involved “fostering an approach based on respect for human rights, public access to information, privacy and the protection of personal data, the confidentiality and security of communications, and the protection of journalistic sources, as well as the gender perspective and the protection of women journalists.” Journalists who believe that their journalistic work jeopardizes or could reasonably jeopardize their life, health, physical integrity, or property, that of their relatives, or of a third party, may ask the Ministry to implement protection measures. The Ministry and the Commission will jointly develop a Risk Matrix for the determination of risk, which will indicate, based on a scoring system, the assessed level of dangerousness and the measures applicable to each level. Ordinary protection measures may consist of distributing communications equipment such as cell phone or satellite phone equipment; the installation of security systems or early alert systems in homes and vehicles; surveillance by security forces; or the distribution of equipment for their personal safety. The protocol also provides for urgent protection measures, including the temporary residential relocation of journalists and/or their families, and the guarding of persons or properties by specialized security forces.⁶¹

51. The National Press Workers’ Roundtable [*Mesa Nacional de Trabajadores de Prensa*], made up of over 40 press unions from all over the country, challenged the drafting of the protocol and criticized the government for leaving out the organizations that represent media workers and only inviting the participation of organizations representing media companies. In a press release issued on October 1, the unions expressed their rejection of the proposal and maintained that the government “should know that in order to reduce risk in situations of conflict, it is better to have proper training and knowledge of the context, and for companies to provide the appropriate working conditions and materials. And if the risk, the threat,

⁵⁹ 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.](#)

⁶⁰ 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.

⁶¹ Boletín Oficial de la República Argentina. Ministerio de Seguridad. [Resolución 479 - E/2016.](#) September 27, 2016.

the attacks arise, press workers should avail themselves of the courts, not of the security forces.” For its part, the International Federation of Journalists (IFJ/FIP) expressed “concern” over the content of the security protocol, stating that it is “fundamental for press workers to be represented in the forums of discussion on measures that affect their own safety.”⁶²

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

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

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

E. Subsequent Liability

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

⁶² International Federation of Journalists (IFJ). October 7, 2016. [Argentina: alerta ante presentación de protocolo de seguridad para periodistas](#); SiPreBa. October 2, 2016. [La Mesa Nacional de Prensa repudia el protocolo de Bullrich, ADEPA y FOPEA](#); Diario sobre Diarios. October 3, 2016. [Controversial protocolo de “protección a periodistas”](#).

affected.”⁶³ On May 13, the magazine’s director, Ingrid Beck, reported through her Twitter account that the magazine’s filed an appeal of the trial court’s decision.⁶⁴

56. In June, Judge María Alejandra Echeverría, of the Second Chamber for Civil, Commercial, and Mining Matters [*Cámara Segunda en lo Civil, Comercial y de Minas*] of La Rioja, granted a precautionary measure requested by the Lieutenant Governor of La Rioja, Néstor Bosetti in a Civil action for moral damages against media, and ordered journalist Julio Laboranti, director of the digital media outlet *Rioja Libre*, to “abstain from publishing, referring to, and/or using images that contain crude or derisive references, using abusive or offensive language” about the Lieutenant Governor, his family life, or his “activity as a public servant,” in “any local press medium, whether written or oral.”⁶⁵

57. On June 23, the Civil and Commercial Chamber [*Cámara Civil y Comercial*] of Formosa upheld a trial court decision ordering a group of journalists to pay ARS\$ 2 million (approximately US\$ 127 thousand) to provincial Governor Gildo Insfrán, for “damages.”⁶⁶ On May 29, 2015, Civil and Commercial Court No. 1 [*Juzgado Civil y Comercial N°1*] of Formosa convicted the journalists for an act that took place on January 21, 2013, when an anonymous listener called the program *Mano a Mano*, hosted by journalist Gabriel Hernández on *Radio Fantasía*, and accused the governor of Formosa of being involved in the death of his own son 10 years earlier. The official filed a lawsuit against Hernández, Andrea Cospito, César and Alicia Orué, and María de los Ángeles López of *Radio Fantasía*. He also sued Julián González, of the newspaper *La Opinión Ciudadana*, and Carlos Varela, director of *La Corneta Noticias*, for playing the listener’s remarks.⁶⁷ The Chamber’s decision was appealed to the Superior Court [*Superior Tribunal de Justicia*] of Formosa.⁶⁸

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

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

⁶³ Poder Judicial de la Nación. Juzgado Civil N° 108 de Buenos Aires. “Pando de Mercado, María Cecilia y otro c/ Gente Grossa SRL s/ daños y perjuicios” (Expediente N° 63.667/2012). April 29, 2016. Available at: <http://www.pensamientopenal.com.ar/system/files/2016/05/fallos43401.pdf>

⁶⁴ Twitter account of Ingrid Beck @soyingridbeck. [May 13, 2016](#); Twitter account of *Revista Barcelona* @revisbarcelona. [May 16, 2016](#).

⁶⁵ Infobae. June 19, 2016. [Prohíben a un medio de La Rioja hablar del vicegobernador](#); Fundación Led. June 15, 2016. [Preocupación por la situación del sitio “RiojaLibre” de la provincia de La Rioja](#); CDN. June 2, 2016. [Néstor Bosetti sobre la cautelar: “la medida es que se abstenga de ridiculizarme; no de informar”](#); La Red. June 2, 2016. [“No es censura”, dijo el abogado de Bosetti](#).

⁶⁶ Poder Judicial de Formosa. “Insfran, Gildo c/ Hernandez, Gabriel y/u otros s/ Juicio ordinario (Daños y perjuicios)”. June 23, 2016. Available at: <http://www.jusformosa.gob.ar/index.php/jurisprudencia/jurisprudencia-fallos-autos>

⁶⁷ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 78.

⁶⁸ Noticias Formosa. June 24, 2016. [Confirman condena por daños y perjuicios a quienes “difamaron a \(Gildo\) Insfrán” con la muerte de su hijo Gildo Miguel](#); El Comercial. June 25, 2016. [Confirman condena por daños y perjuicios en el caso Gildo Miguel](#); Foro de Periodismo Argentino (FOPEA). August 29, 2016. [Fopea manifiesta su preocupación por un fallo de Formosa que condena a periodistas a pagar una suma millonaria al gobernador Insfrán](#).

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.”⁶⁹

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

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

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

62. The decree also amended some aspects of the Audiovisual Communications Services Law [*Ley de Servicios de Comunicación Audiovisual*] and the Digital Argentina Law [*Ley Argentina Digital*]. For instance, it amended the provision that limited the extensions of audiovisual licenses in order to allow for successive extensions to be granted by the Enacom. In addition, the decree amended the provision that limited the

⁶⁹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Exception, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para.129.

⁷⁰ Información Legislativa/ Presidencia de la Nación Argentina. [Ley de Ministerios. Decreto 13/2015](#). December 10, 2015; IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 24.

⁷¹ Información Legislativa/Senado y Cámara de Diputados de la Nación Argentina. [Ley 26.522 de Servicios de Comunicación Audiovisual](#). October 10, 2009.

⁷² Información Legislativa/Senado y Cámara de Diputados de la Nación Argentina. [Ley 27.078 Argentina Digital](#). December 18, 2014.

⁷³ Información Legislativa/Senado y Cámara de Diputados de la Nación Argentina. [Ley 26.522 de Servicios de Comunicación Audiovisual](#). October 10, 2009.

⁷⁴ Información Legislativa/Presidencia de la Nación Argentina. [Intervención. Decreto 236/2015](#). December 22, 2015.

⁷⁵ Información Legislativa/Presidencia de la Nación Argentina. [Decreto 267/2015. Creación del Ente Nacional de Comunicaciones](#). December 29, 2015.

partial transfer of licenses to extreme cases, authorizing their transfer with Enacom's approval. It also loosened the restriction that the Law had set on the number of licenses that a single open-signal TV and AM and FM radio operator could have. It eliminated the 35 per cent market share limit that had been in effect for private broadcasting; lifted the ceiling on the number of cities in which the cable companies can operate, and eliminated the limit according to which cable operators and free-to-air TV or radio license holders could not have more than one signal. It also eliminated the limitations on the composition of private radio and television networks.⁷⁶

63. On December 30, 2015, the Office of the Special Rapporteur sent a communication to the State, pursuant to the authority established in article 41 of the American Convention on Human Rights, to request information on the situation resulting from the changes introduced in the institutional position and operation of the Federal Communications Services Authority and the Federal Information Technologies and Communications Authority. The Office of the Special Rapporteur recalled the standards developed by the IACHR and its Special Rapporteurship to the effect that regulatory bodies that apply and control broadcasting legislation must be independent of the State and of economic interests, above all "should be so constituted as to protect them against political and commercial interference". Also recalled that "the regulation on broadcasting must be established by a law drafted in a clear and precise manner". It requested information on the legal bases for the measures adopted and the scope of those measures, as well as on the measures the State would take to ensure compliance with its obligations to limit oligopolies in the communications sector and to promote diversity and pluralism, among other issues.⁷⁷

64. In a communication sent by the Public Defender of Audiovisual Communication Services [*Defensora del Público de Servicios de comunicación Audiovisual*] to the Office of the Special Rapporteur, it was alerted on the effect that the Decrees issued could have as "dismantling the entire institutional framework that the Audiovisual Communication Services bill had created to guarantee the autonomy, independence and pluralism of the Enforcement Authority."⁷⁸ Likewise, it pointed out that these Decrees constituted "a setback in standards of plurality and diversity of communication, as well as a serious affectation to different social sectors historically marginalized from the social exercise of freedom of expression and access to information."⁷⁹

65. On February 1, the State replied to the Office of the Special Rapporteur's request for information.⁸⁰ The government indicated that the procedures carried out with respect to the AFSCA and the AFTIC were due to an "adaptation to the new objectives of the government administration." In this regard, it reported that the ministry of Communications was created in response to the "growing complexity, volume, and diversity of the work relating to the development of communications and their regulation" and to the "need for an organizational agency that could respond effectively to current and future challenges in the field." It also cited the "absence of progress" by the AFSCA and the AFTIC "toward the accomplishment of aims and objectives concerning media and telecommunications." It stated that within the framework of the "review process" conducted by the new government "a number of failures to comply" were detected in those bodies, which justified "the temporary intervention for one hundred eighty days." "The objective of the intervention was to obtain a full analysis of the actions of both entities from the time of their creation in order to confirm

⁷⁶ La Nación. December 30, 2015. [El resumen del DNU que reforma las leyes de medios y de telecomunicaciones](#); Deutsche Welle (DW). December 30, 2015. [Polémica por reforma legal en Argentina](#); BBC. December 30, 2015. [Gobierno argentino modifica polémica Ley de Medios del kirchnerismo](#).

⁷⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. Comunicación al Estado conforme al Artículo 41 de la Convención Americana sobre Derechos Humanos. December 30, 2015. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁷⁸ República de Argentina. Defensoría del Público de Servicios de Comunicación Audiovisual. Nota No. 1392/2015. December 28, 2015. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁷⁹ República de Argentina. Defensoría del Público de Servicios de Comunicación Audiovisual. Nota No. 39/2016. January 21, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁰ República Argentina. Permanent Mission of Argentina at the OAS. Nota SDH-DAI No.: 94/16. Comunicación del Estado Argentino a la Relatoría Especial de la Libertad de Expresión. February 1, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

anomalies and failures to comply with the current rules, which were detected *a priori* by the new administration, as well as to make them more efficient and ensure greater supervision of compliance of the legal and administrative obligations of the oversight bodies,” indicated the State. The irregularities the State claimed to have detected were: a) lack of progress in the implementation of the laws; b) noncompliance with the obligation to conduct the regulatory reviews pursuant to article 47 of Law 26.522; c) arbitrariness and irregularities in the allocation and assignment of radio spectrum in the main jurisdictions; e and d) irregularities in the Transition Plan and in the Technical Plan; e) position of the company Arlink S.A.⁸¹

66. Based on the “shortcomings” detected and with the objective of “adapting the regulatory framework to the new context of convergence,” the government dissolved the AFSCA and the AFTIV and created the National Telecommunications Agency [*Ente Nacional de Telecomunicaciones*] (Enacom), a body that “replaces and subsumes” the areas of responsibility of the old entities, reported the State. “It was determined that the existence of one single oversight entity for the entire system is indispensable, because otherwise (as was starting to happen) the system would become ineffective at defending the scope and protection of the rights to freedom of expression and information,” it stated.⁸²

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

68. With respect to the legal bases for the measures adopted, the State reported to the Office of the Special Rapporteur that the decrees used to make the detailed changes “fall within the powers of necessity and urgency granted to the President of the Nation by article 99(3) the Constitution.”⁸³ It specified that “A decision adopted in this manner in no way dispenses with the intervention of Congress; Congress merely acts *ex-post* the issuance of the regulation, with full authority to approve or reject the President’s action.” “Provisions issued by the President, for reasons of security and urgency, are for all purposes legislative acts with the value of a statute; it is simply that the timing of the participation of Congress is reversed due to exceptional circumstances,” said the government.

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

⁸¹ República Argentina. Permanent Mission of Argentina at the OAS. Nota SDH-DAI No. 94/16. Comunicación del Estado Argentino a la Relatoría Especial de la Libertad de Expresión. February 1, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸² República Argentina. Permanent Mission of Argentina at the OAS. Nota SDH-DAI No. 94/16. Comunicación del Estado Argentino a la Relatoría Especial de la Libertad de Expresión. February 1, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

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

70. On April 6, the House of Representatives [*Cámara de Diputados*] ratified Decree 267/2015. Under Argentine law, Decrees of Necessity and Urgency are definitively enacted with the approval of one of the two chambers of Congress, and have the force of law.⁸⁴

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

72. During its presentation, the Argentine State referred to the previous government’s infringements on freedom of expression, especially the stigmatization of media outlets and media workers, and the misuse of government advertising as a punishment or reward for journalists and media outlets. The State’s representatives indicated that the decrees amending the Audiovisual Communications Services Law were constitutional and added that days before the hearing they had been ratified by the National Congress. The State agreed to draft a new law, which would be discussed with civil society and others in the communications sector, and expressed its position in favor of respecting the inter-American standards on freedom of expression. The Special Rapporteur for Freedom of Expression, Edison Lanza, expressed his concern as a result of some of the government’s changes, including the potential effects on the diversity and pluralism of subscription-based television as consequence of the repeal of the standard *must carry* referred to the duty of them companies of television for subscribers of transmit the signal of free-to-air TV which included the signal generated from the states provincial, municipalities and universities and the exclusion of civil society from the oversight bodies. He also referred to the need to provide the National Communications Agency with independence from both government influence and from the influence of economic groups in the communications sector, as part of the measures to bring the laws into line with the inter-American standards.⁸⁵

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

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

⁸⁵ IACHR. 157 Period of Sessions. [Hearing “Right to Freedom of Expression and Changes to the Law on Audiovisual Communication Services in Argentina”](#). April 8, 2016.

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

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

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

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

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

⁸⁶ IACHR. 157 Period of Sessions. [Hearing “Right to freedom of expression and regulation of audiovisual media in the Americas”](#). April 5, 2016.

⁸⁷ Información Legislativa/Ente Nacional de Telecomunicaciones. [Resolución 1394/2016](#). April 15, 2016; Observacom. May 2, 2016. [ENACOM aprueba reglamento de TV paga en Argentina y retoma obligaciones de “must carry”](#).

⁸⁸ United Nations. Human Rights Committee. Concluding observations on the fifth periodic report of Argentina. CCPR/C/ARG/CO/5. August 10, 2016. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1031&Lang=en

⁸⁹ Ministerio de Comunicaciones. July 6, 2016. [La Comisión Redactora presentó los 17 principios de la nueva ley](#).

⁹⁰ Ministerio de Comunicaciones. October 3, 2016. [Edison Lanza visitó a la comisión redactora](#); La Nación. October 17, 2016. [Edison Lanza: “La libertad de expresión es un derecho muy frágil”](#); Ministerio de Comunicaciones. October 3, 2016. [Aguad y la Comisión Redactora de la nueva Ley de Comunicaciones recibieron a Edison Lanza](#); Ente Nacional de Comunicaciones (Enacom). October 3, 2016. [Edison Lanza visitó a la comisión redactora](#).

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

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

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

G. Internet and Freedom of Expression

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

82. In the Joint Declaration on Freedom of Expression and the Internet by the The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, it was noted that regarding the liability of intermediaries “no one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so.” “At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression.”⁹⁴

H. Media Concentration

⁹¹ Boletín Oficial de la República Argentina. Ministerio de Comunicaciones. [Resolución 1098 - E/2016](#). October 27, 2016.

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

⁹³ Parlamentario.com. November 2, 2016. [Aprobaron proyecto sobre la responsabilidad de los intermediarios de Internet](#); Página 12. November 3, 2016. [Proveedores de Internet](#).

⁹⁴ 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 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

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

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

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

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

I. Community Broadcasting

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

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

⁹⁵ Cronista. March 15, 2016. [Oficializan aprobación de las ventas de Telecom a Fintech y de Nextel a Cablevisión](#); Clarín. March 3, 2016. [Aprobaron la venta de Telecom a Fintech y de Nextel a Cablevisión](#); La Nación. March 4, 2016. [Aprobaron las ventas de Telecom a Fintech y Nextel a Cablevisión](#); La Nación. March 12, 2016. [David Martínez: "Habría mucha sinergia entre Telecom y Cablevisión, pero ahora van a competir"](#); *Ámbito*. March 3, 2016. [Gobierno aprobó venta de Telecom a Fintech y de Nextel a Clarín](#).

⁹⁶ La Nación. January 21, 2016. [El Fútbol para Todos que se viene: los partidos de Boca y River serán televisados por Canal 13 y Telefé](#); Cronista. January 21, 2016. [Telefé y Canal 13 televisarán a los cuatro grandes y se judicializa Fútbol para Todos](#).

⁹⁷ Antena Negra TV. November 14, 2016. [Nuevo procesamiento para Antena Negra TV](#); Antena Negra TV. October 17, 2016. [Avanza el juicio contra Antena Negra TV](#); Antena Negra TV. September 9, 2016. [Antena Negra Tv irá a Juicio](#); Notas. September 16, 2016. [Antena Negra TV a juicio: "Es un grave precedente contra toda la comunicación popular"](#).

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

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

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

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

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

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

⁹⁸ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 113-117.

⁹⁹ ANRed/AMARC. June 8, 2016. [Comunicado de AMARC exigiendo la descriminalización de Antena Negra TV de Argentina](#); Clarín. May 11, 2016. [Un juez ordena que cese de emitir un canal de TV comunitario](#); CPR. June 7, 2016. [La libertad de expresión, a proceso](#).

¹⁰⁰ Defensoría del Público de Servicios de Comunicación Audiovisual. No date. [La Defensoría del Público pidió la descriminalización del Caso Antena Negra y la devolución de equipos](#); Antena Negra TV. September 9, 2016. [Antena Negra Tv irá a Juicio](#).

¹⁰¹ Télam. September 3, 2016. [Hay nuevos canales en la grilla de TDA pero los medios comunitarios siguen afuera](#); Télam. May 19, 2016. [Denuncian a El Trece por bloquear las emisiones de la televisión comunitaria](#); Página 12. August 31, 2016. [David contra Goliat, el caso Barricada TV](#).

¹⁰² Chaco día por día. November 1, 2016. [La Justicia intimó al ENACOM por marginar a los medios comunitarios](#); Observacom. November 18, 2016. [ENACOM justifica las interferencias a medios comunitarios en Argentina](#).

¹⁰³ Télam. September 3, 2016. [Hay nuevos canales en la grilla de TDA pero los medios comunitarios siguen afuera](#); Télam. May 19, 2016. [Denuncian a El Trece por bloquear las emisiones de la televisión comunitaria](#); Página 12. August 31, 2016. [David contra Goliat, el caso Barricada TV](#).

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

J. Government Advertising

94. The Supreme Court [*Corte Suprema*] dismissed on April 12th an extraordinary appeal filed by the Argentine State against decision ordering the restoration of government advertising to the content producer *La Cornisa Producciones S.A.*, owned by journalist Luis Majul. The case began in 2011, when the producer asked for government advertising to be returned to its programs after having been interrupted “abruptly and without justification.” The First Division of the National Federal Administrative Court of Appeals [*Sala I de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal*] overturned a trial court decision against the plaintiff and upheld the petition for a constitutional remedy [*amparo*] action, ordering the State to devise, within 30 days, a plan for the allocation of government advertising “that provides, to the extent reasonable, for the allocation of advertising to the plaintiff’s products.”¹⁰⁴

95. On August 24, the Secretariat of Public Communications of the Office of the Head of the Cabinet of Ministers [*Secretaría de Comunicación Pública de la Jefatura de Gabinete de Ministros*] passed a resolution regulating the use of government advertising by the Executive Branch. The resolution establishes that “In order to guarantee the right to freedom of expression” it is “necessary to establish clear, fair, and objective criteria for the allocation and distribution of government advertising.” It further states that “It is essential to set forth in a law the criteria established by the Office of the Special Rapporteur for Freedom of Expression of the Organization of American States for the placement of government advertising, seeking to prevent the shortcomings that the international body has detected in different countries of the region.” The resolution mentions that the Office of the Special Rapporteur has rejected the “improper use of government advertising to impose conditions on content,” “the indiscriminate use of a system of ‘patronage’ to benefit some to the detriment of others,” and the “use of government advertising for propagandistic purposes.” Among other things, the provision establishes that only those media outlets, content producers, or marketers of advertising space registered in the National Registry of Providers of Government Advertising at the time of ad placement can be the recipients of government advertising. Budget items earmarked for government advertising will be allocated by campaigns, which will be planned by the Secretariat of Public Communications through an Annual Government Advertising Plan. Government advertising will be allocated according to objective criteria such as the medium’s circulation or audience, the relevance of the message, the geographic area, the promotion of federalism, and the plurality of voices. Additionally, the Secretariat of Public Communications must disclose information on the allocation of government advertising twice a year, specifying the recipients of that advertising.¹⁰⁵

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

¹⁰⁴ Corte Suprema de Justicia de la Nación. CSJ 164/2014 (50-L)/CSJ. *La Cornisa Producciones S.A. c/EN-JGM-SC s/amparo ley 16.986*. April 12, 2016. Available at: <http://sjconsulta.csjn.gov.ar/sjconsulta/documentos/getDocumentosExterno.html?idAnalisis=729601>; Centro de Información Judicial. April 12, 2016. [La Corte Suprema dejó firme el fallo que ordena dar publicidad oficial a La Cornisa Producciones](#); Asociación de Entidades Periodísticas Argentinas (ADEPA). April 14, 2016. [Destaca Adepa valioso fallo sobre publicidad estatal](#).

¹⁰⁵ Jefatura de Gabinete de Ministros. Secretaría de Comunicación Pública. [Resolución 247 - E/2016](#). August 24, 2016; IFEX/Asociación por los Derechos Civiles (ADC). August 26, 2016. [Una nueva resolución de la secretaría de comunicación para regular la publicidad oficial](#); Asociación de Entidades Periodísticas Argentinas (ADEPA). August 26, 2016. [Positivo anuncio sobre publicidad oficial](#).

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

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

K. Other Relevant Situations

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

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

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

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

¹⁰⁶ Notas. August 24, 2016. [Pauta oficial: sigue la discriminación a los medios comunitarios](#); Red ECO. August 25, 2016. [Pauta Oficial: nada nuevo bajo el sol](#); iProfesional. August 29, 2016. [Publicidad oficial: ¿está bien o mal que el Gobierno le dé casi todo a Google y Facebook y relegue a medios argentinos?](#)

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

¹⁰⁸ Federación Argentina de Trabajadores de Prensa. February 29, 2016. [Buenos Aires: FATPREN repudia despidos masivos en CN23 y apoya lucha por la reincorporación y continuidad del canal](#).

¹⁰⁹ Sindicato de Prensa de Buenos Aires (SiPreBa). March 2, 2016. [El SiPreBA moviliza en reclamo de una solución al vaciamiento del Grupo 23](#); La Izquierda Diario. March 4, 2016. [Trabajadores de prensa cortaron la 9 de Julio contra el vaciamiento y los despidos](#); Knight Center for Journalism in the Americas. March 5, 2016. [Journalists and media workers in Argentina protest against massive layoffs across the country](#).

that wages were owed to workers at news channel 360TV and *Radio Rivadavia*; that salaries were being paid in installments at *Radio Splendid* and *Radio del Plata*, and that job positions were at risk at media outlets in Córdoba and the radio station *El Mundo*. She added that, “Around 1000 job positions were lost due to the discontinuation of audiovisual projects fostered by public policies of the State.”¹¹⁰

102. On May 17, Ottaviano took part in a meeting announced by the Freedom of Expression Committee of the House of Representatives [*Comisión de Libertad de Expresión de la Cámara de Diputados*] and asked the members of that Commission to implement “urgent and effective measures against the mass and arbitrary layoffs” in the audiovisual communications media.¹¹¹

103. According to information received by the Office of the Special Rapporteur, the staff reductions at various media outlets is explained, in large measure, by the substantial decrease in the revenue that one sector of the media had been receiving from government advertising because their editorial line was sympathetic to the previous administration, and those media outlets had failed to meet their employment obligations following the decrease. The new administration headed by President Mauricio Macri, who took office in December 2015, reduced expenditures on government advertising by more than half, according to various media outlets.¹¹² As a consequence, the media outlets that had most benefited from government advertising during the prior administration of ex-President Cristina Fernández de Kirchner now had significantly reduced revenues and had to lay off employees. The distribution of government advertising during Fernández de Kirchner’s administration had been called into question by the Supreme Court,¹¹³ civil society organizations, and media outlets who pointed out the unfairness and opacity of the allocation process, which presumably benefitted pro-government media.¹¹⁴

104. After the new President Mauricio Macri took office in December 2015, some journalists who worked in public media were fired or their programs were suspended. In December 2015, the *TV Pública* channel canceled the program “6, 7, 8,” which was critical of the Macri administration and defended the administration of former President Cristina Fernández. According to numerous media reports, the decision not to renew the contract with the program and its journalists was made by its producer, *Pensado para Televisión* (PPT) of the company *Indalo Media*, owned by businessman Cristóbal López.¹¹⁵ Programs were also

¹¹⁰ República de Argentina. Defensoría del Público de Servicios de Comunicación Audiovisual. Nota N° 514/2016. May 13, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

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

¹¹² La Nación. March 10, 2016. [La reducción de la pauta oficial cambia drásticamente el mapa de medios](#); Clarín. April 20, 2016. [Pauta oficial: el macrismo gastará un 75% menos que los K](#); Diario Veloz. March 19, 2016. [Hernán Lombardi: "No va a haber más medios privados que vivan exclusivamente de la pauta oficial, como en el kirchnerismo"](#); Infobae. January 14, 2016. [Con el kirchnerismo era en términos amigo-enemigo. El Gobierno está pensando una cuestión mucho más racional, un achique general de la pauta.](#)

¹¹³ 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. 19.

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

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

¹¹⁵ Perfil. December 24, 2015. [678 se despide: "No estamos en democracia porque se levantan voces opositoras"](#); Clarín. December 19, 2015. [Panelistas de 6-7-8 se descargaron en las redes sociales](#); La Nación. December 18, 2015. [Cristóbal López decidió no renovar el contrato de 6,7,8 con la TV Pública](#); Clarín. December 18, 2015. [Cristóbal López informó que no renueva el contrato de 6-7-8 en la TV Pública.](#)

suspended from the public radio stations *Radio Nacional* and *Nacional Rock*, putting several journalists out of work at those stations.¹¹⁶ In addition, on January 6, President Macri issued a decree setting aside the appointment of journalist Alberto Cantero as the director of *Radio y Televisión Argentina* (RTA).¹¹⁷ On April 1, journalist Pedro Brieger reported on air on *TV Pública* that the authorities had informed him that they did not want him to continue working on the news program.¹¹⁸

105. Federal Judge Luis Rodríguez amended the prosecution of José Sbatella, the former president of the Financial Information Unit [*Unidad de Información Financiera*] (UIF), to include the alleged “abuse of authority and breach of confidentiality,” based on the dissemination of supposedly confidential reports that involved Grupo Clarín. The case began in 2010 pursuant to a complaint brought by Grupo Clarín after Sbatella reportedly provided information in a press release about a UIF complaint against companies in the group that he was supposed to keep confidential. He reportedly expanded upon this information later on the television program “6,7,8” which was broadcast on *TV Pública*. “The evidence gathered indicates that the defendant’s real intent was precisely that complained of herein: to harm the interests of Grupo Clarín S.A., the companies it controls, and its directors,” established Rodríguez in the prosecution of the former official.¹¹⁹

106. On April 18, the II Division of the Federal Criminal Court of Buenos Aires [*Sala II de la Cámara Federal penal de Buenos Aires*] upheld the conviction of former Domestic Commerce Secretary Guillermo Moreno for the offense of “misuse of public funds,” based on the alleged use of public funds to purchase advertising material against Grupo Clarín and to make statements with hostile content against the company at various official functions during the government of Cristina Fernández de Kirchner. “It is well known that the objective assigned here to these State funds—materialized in a public smear campaign against a private company, carried out in different institutional forums—was wholly unrelated to the objectives for which they could legitimately have been used,” maintained the judges.¹²⁰ The judgment upheld the conviction that had been handed down by federal Judge Claudio Bonadío on February 11.¹²¹

107. On May 31, the government introduced a bill to Congress on a tax amnesty for undeclared assets and the payment of debts owed to retirees.¹²² Article 85 of the bill caused concern among media outlets, journalists, and organizations engaged in the defense of freedom of expression, since it prohibits any person from disseminating documentation or information about the income tax returns filed by taxpayers, and punishes violations of the provision with jail time and fines. According to the bill, judges, court staff, employees of the Federal Administration of Public Revenues, tax return filers, and “third parties,” that “disclose or display documentation or information in any way related to the tax returns” regulated by the law will be punished in accordance with article 157 of the Criminal Code, which establishes a term of imprisonment between one month and two years. The bill establishes that “third parties” will additionally be subject to a fine equal to the value of the assets disclosed by the filer whose information may have been revealed. The extension of the prohibition to “third parties,” noted various organizations and academics,

¹¹⁶ El destape. December 30, 2015. [Levantán la programación de Nacional Rock: pasarán sólo música](#); Página 12. February 2, 2016. [Despidos que llegan a la radio](#).

¹¹⁷ Boletín oficial/Presidencia de la Nación Argentina. [Decreto 9/2016. Radio y Televisión Argentina sociedad del Estado](#). January 6, 2016; La Nación. January 6, 2016. [El gobierno removi6 por decreto a un director de Canal 7 que no acept6 renunciar](#).

¹¹⁸ TV pública/You Tube. April 1, 2016. Published by Carcaweb. [Pedro Brieger lo despiden de la TV Pública](#); Diario Popular. April 21, 2016. [Pedro Brieger confirm6 su despido de la TV Pública](#).

¹¹⁹ Clarín. May 11, 2016. [Amplían el procesamiento de Sbatella, por divulgar secretos de Clarín](#); Infobae. May 11, 2016. [Ampliaron el procesamiento de José Sbatella por abuso de autoridad y violación de secretos](#).

¹²⁰ Clarín. April 18, 2016. [Confirmaron el procesamiento de Moreno por el cotill6n antiClarín](#); Ámbito. April 18, 2016. [Confirmaron procesamiento de Moreno por cotill6n anti Clarín](#); Télam. April 18, 2016. [Confirman el procesamiento de Guillermo Moreno por el cotill6n anti Clarín](#).

¹²¹ La Nación. February 11, 2016. [El juez Bonadío proces6 a Guillermo Moreno en la causa por el cotill6n contra el Grupo Clarín](#); La razón. February 11, 2016. [Procesan a Guillermo Moreno por el cotill6n anti-Clarín](#).

¹²² Poder Ejecutivo Nacional. Argentina. [Proyecto de Ley N° 724](#). May 31, 2016.

infringes upon freedom of expression and affects journalistic work.¹²³ On June 7, in a meeting with journalists, President Mauricio Macri agreed to debate and amend the wording of the article during the parliamentary proceedings.¹²⁴

¹²³ La Nación. June 6, 2016. [Multas y penas de prisión para quienes informen sobre los que blanqueen activos](#); Foro de Periodismo Argentino (FOPEA). June 6, 2016. [Fopea rechaza el art. 85 del proyecto de ley de blanqueo porque afecta la libertad de prensa](#); Asociación de Entidades Periodísticas Argentinas (ADEPA). June 9, 2016. [No criminalizar el trabajo de la prensa](#); Federación Argentina de Trabajadores de Prensa (FATPREN). June 7, 2016. [El blanqueo fiscal viene con censura](#).

¹²⁴ La Nación. June 7, 2016. [Blanqueo: en un brindis con periodistas, Mauricio Macri dijo que modificará el artículo que afecta la libertad de prensa](#); Télam. June 7, 2016. [Macri admitió la posibilidad de modificar un artículo polémico del proyecto de blanqueo de capitales](#).

3. BAHAMAS

A. Subsequent Liabilities

108. According to the information available, in a parliamentary debate in March 2016 the Education Minister Jerome Fitzgerald disclosed private emails and confidential financial information of members of Save The Bays (STB) and Zachary Bacon.¹²⁵ The sources report that the Education Minister's intention was to portray that STB was part of a plot to destabilize the government.¹²⁶

109. In response to Fitzgerald action of disclosing their private emails and confidential information, STB and Bacon filed a lawsuit against him. On August 4, 2016, the Supreme Court of The Bahamas ruled for STB and Bacon and reasoned that the Members of the Parliament and Government are subject to the law and cannot breach the Constitution.¹²⁷ Furthermore, the Court held that it had the power to decide on the scope and application of the Parliamentary Privilege, reasoning that Members of the Government could not breach the Constitution and shield under their Privileges.¹²⁸ The Court granted a permanent injunction against the government that prohibits further release or publication of any information of STB and Bacon, as well as the permanent destruction of all the records containing said information.¹²⁹ Finally, the Court ordered the Education Minister to pay damages to STB and Bacon.¹³⁰ According with the information available the Government appealed the decision.¹³¹

110. Faced with the Supreme Courts decision, lawmakers and government officials argued that the ruling was a violation of the separation of powers.¹³² On the other hand, STB Chairman Joseph Darville in an open letter reported that the Minister of Foreign Affairs and Immigration, Fred Mitchell, had threatened Darville and other STB Members with imprisonment for contempt.¹³³

111. Consequently, Fitzgerald moved a resolution in the Parliament to create a Committee on Privilege.¹³⁴ The Parliament Speaker Kendal Major created the Committee on Privilege to address the Supreme Court's decision. STB Chairman Joseph Darville indicated that senior members of Government expressed an interest in having STB members being held in contempt of parliament and imprisoned.¹³⁵ and Members of the STB fear that the hearing before the Parliamentary Privileges Committee will be used to justify further disclosure of private information.¹³⁶

¹²⁵ Financial Times. [Moore Capital Founder Wins Bahamian Privacy Case](#); Tribune242. March 29, 2016. [Financial Services 'Burial' Fears Over E-Mail Leaking](#).

¹²⁶ The Nassau Guardian. March 18, 2016. [Fitzgerald Outlines Plot to 'Destabilize' Government](#).

¹²⁷ Dealbreaker. August 9, 2016. [The Bahamas Owe Louis Bacon A Serious Apology](#).

¹²⁸ Dealbreaker. August 9, 2016. [The Bahamas Owe Louis Bacon A Serious Apology](#).

¹²⁹ The Gleaner. August 10, 2016. [Is parliamentary privilege absolute?](#); Tribune242. September 3, 2016. [\\$150,000 Fine For Jerome Fitzgerald In Save The Bays Emails Row](#).

¹³⁰ Save the Bays. [Summary of the Judgement by The Supreme Court on the Constitutional Right to Privacy](#).

¹³¹ Save The Bays. September 16, 2016. [Parliament must not trample over territory of the courts](#).

¹³² The Nassau Guardian. August 9, 2016. [Mitchell Slams Justice'S Ruling On Privilege In Parliament](#); The Nassau Guardian. April 27, 2016. [Smith: The Rule of Law in The Bahamas Has Come to an End](#)

¹³³ Tribune242. August 14, 2016. [Open Letter From Save The Bays Chairman Joseph Darville To Speaker Of The House Of Assembly](#); The Nassau Guardian. August 15, 2016. [An Open Letter to the Speaker of the House of Assembly](#); Tribune242. April 12, 2016. [Save The Bays Writes To Global Groups About 'Deplorable Treatment'](#).

¹³⁴ Tribune242. September 15, 2016. [Qc: Probe Into Parliamentary Privilege Ruling Is An 'Affront To The Separation Of Powers'](#).

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

¹³⁶ The Daily Observer. September 16, 2016. [Outspoken lawyer condemns plans for sittings of Privilege Committee of Parliament](#); Tribune242. September 20, 2016. [Call For Privilege Committee To Await Court Ruling](#).

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

113. Furthermore, in August 2016 a local rapper released a song that made negative references to the Prime Minister Perry Christie, his family, parliamentarians, the police, women, and people with special needs.¹³⁷ The song went viral on the Internet and, on August 11, 2016, two singers were arrested in connection with the song, presumably the artist and the producer.¹³⁸ According to the information available, the criminal charges against the two men were unclear, although the Chief Superintendent Clayton Fernander declared that the police was working with the Attorney General's Office to determine "whatever offenses this falls under."¹³⁹ On August 12, 2016, the two men were released without charges, pending further investigations.¹⁴⁰ On August 19, 2016, the composer of the rap song known as Gee was detained and interrogated by the police. Gee was released on August 21, 2016, without being charged with any offense.¹⁴¹

114. Moreover, between August 26 and August 30, 2016, the attorney and former police officer Maria Daxon made several statements criticizing the conduct of senior police officers.¹⁴² Daxon was arrested on September 1, 2016, and charged with two counts of criminal libel.¹⁴³ On September 2, 2016, Daxon was released on bail but the criminal prosecution continues.¹⁴⁴

115. The Inter-American Commission and the Inter-American Court have established that in a democratic society those in public office should have a higher threshold of tolerance for criticism,¹⁴⁵ 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."¹⁴⁶ 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

¹³⁷Tribune242. August 12, 2015. [Two In Custody Over 'Vile' Rap Song](#); Jamaica Observer. August 16, 2016. [Bahamas rights group questions detention of young singers](#).

¹³⁸ The Nassau Guardian. August 15, 2016. [GBHRA: Arrests Over Song Undemocratic](#).

¹³⁹ The Daily Herald. August 17, 2016. [Bahamian singers detained over lyrics](#).

¹⁴⁰ The Nassau Guardian. August 12, 2016. [Police Investigating Explicit Song About the PM](#); Tribune242. August 15, 2015. [Men Arrested Over Song Are Released From Custody](#).

¹⁴¹ Tribune242. August 24, 2015. [Rapper Says He Was Detained By Police Over Song He Wrote Criticizing Prime Minister](#).

¹⁴² The Bahamas Weekly. September 7, 2016. [GBHRA: Daxon case will 'end criminal libel' in The Bahamas](#).

¹⁴³ Anotao. September 2, 2016. [Lawyer charged with libel](#).

¹⁴⁴ The Nassau Guardian. September 3, 2016. [Maria Daxon Gets \\$100 Bail](#); Tribune242. September 2, 2016. [Updated: Lawyer Granted Bail After Being Charged With 'Defaming' Top Police Off](#).

¹⁴⁵ 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.

¹⁴⁶ 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. 125-129; 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.

generate some critical speeches or even offensive to those who hold public office or are intimately involved in the formation of public policy.”¹⁴⁷ Therefore, as stated in Principle 10 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission in 2000, “[t]he protection to reputation should only be guaranteed through civil sanctions in those cases which the person offended is a public official.” That is, the use of criminal mechanisms to punish speech on matters of public interest, and especially public officials or politicians does not respond to a pressing social need that justifies it, is unnecessary and disproportionate and it can be a means of indirect censorship given its chilling effect of the debate on matters of public interest

B. Access to Public Information

116. In April this year, the government of the Bahamas announced a series of Town Meetings for public consultation on the new *Freedom of Information Bill*. A committee of experts was asked to review the existing *Freedom of Information Act* and submit recommendations after analyzing best practices in other jurisdictions. The government affirmed that the Bill would probably be tabled in the House of Assembly by November. In the meantime, citizens are invited to participate in Town Meetings scheduled across the country and submit suggestions to the Committee of experts via email or mail.¹⁴⁸ However, civil society groups have expressed concern over the quality of the public consultation process as well as some provisions of the Bill, notably the fact that the “independent information officer” would be selected by the Prime Minister and that the Minister of Information is granted extensive power to withhold information from the public.¹⁴⁹

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

¹⁴⁷ 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.

¹⁴⁸ The Bahamas Weekly. April 13, 2016. [Bahamas government invited public consultation for Freedom of Information Bill](#); Tribune 242. April 14, 2016. [Freedom of Information Act to be tabled by November - ‘Probably’](#).

¹⁴⁹ Tribune 242. May 9, 2016. [Freedom of Information key to curing Gov’ts ‘Ailments’](#); The Nassau Guardian. May 10, 2016. [Proper Freedom Information Act consultation needed](#).

4. BARBADOS

A. Harassment Against Journalists and Media Outlets

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

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

¹⁵⁰ Nation News. October 25, 2016. [Full story: We will not tolerate abuse of our journalists.](#)

5. BELIZE

A. Harassment against journalists and media outlets

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

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

¹⁵¹ Channel 5 Belize. September 28, 2016. [Amandala Journalist Micah Goodin Gets in Trouble with Police at Minister's Meeting.](#)

6. BOLIVIA

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

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

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

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

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

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

¹⁵² *Página siete*. April 1, 2016. [Alcalde Percy Fernández increpa a periodistas y los hace desalojar](#); Correo del sur. April 1, 2016. [Percy increpa a periodistas y los hace desalojar tras consultas por el dron](#)EJuTV/El Deber. April 2, 2016. [Percy pierde el control al tratarse el caso dron y arremete contra los periodistas](#); El Diario. April 5, 2016. [Periodistas marchan por maltrato de Alcalde](#).

¹⁵³ EjuTV. October 13, 2016. [Un médico del Gastroenterológico agrade físicamente a una periodista de Bolivisión](#); Los Tiempos. October 14, 2016. [Médico agrade a una periodista y camarógrafo](#); Correo del Sur. October 13, 2016. [Una entrevista termina en forcejeo y llanto](#).

¹⁵⁴ *Página Siete*. November 1, 2016. [Policía detiene a dos periodistas de Página Siete que cubrían audiencia del general Salinas](#); Radio Fides. November 1, 2016. [Detienen a dos periodistas por cubrir la audiencia de exjefe militar](#); Los Tiempos. November 2, 2016. [Policía traba cobertura periodística en un juicio](#).

¹⁵⁵ 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). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. [Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression](#). Chapter II. Mexico: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

B. Social Protest

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

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

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

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

¹⁵⁶ El Tiempo. February 17, 2016. [Seis muertos en saqueo y quema de alcaldía de El Alto en Bolivia](#); El Diario. February 18, 2016. [Manifestantes agredieron a periodistas en El Alto](#); Correo del Sur. May 3, 2016. [Bolivia suma casos de agresión a periodistas en el Día Mundial de Libertad de Prensa](#); Agencia de Noticias Fides (ANF). February 17, 2016. [Al menos cinco periodistas y un camarógrafo fueron agredidos en El Alto](#); elpotosi. February 18, 2016. [Agreden a seis periodistas en la quema del predio edil](#).

¹⁵⁷ El Universal. April 27, 2016. [Bolivia: Dispersan con gases a manifestación de discapacitados](#); Agencia EFE. April 27, 2016. [La policía boliviana reprime con gases químicos una manifestación de discapacitados](#); Infobae. April 27, 2016. [Bolivia: la policía dispersa con gases lacrimógenos una protesta de discapacitados](#).

¹⁵⁸ *Página Siete*. April 29, 2016. [Funcionario público golpea fotógrafo fr *Página Siete* en protesta de discapacitados](#); La Patria/ANF. April 30, 2016. [Fotoperiodista de *Página Siete* fue agredido por funcionario público](#); La Razón. April 27, 2016. [Detienen a periodista de *El Deber* en incidentes en Plaza Murillo](#); EjuTV/El Deber. April 27, 2016. [Detienen a periodista de *El Deber* en represión a discapacitados en La Paz](#); Los Tiempos. April 27, 2016. [Policía detiene a periodista en represión a personas con discapacidad](#).

¹⁵⁹ *Página Siete*. April 30, 2016. [Empleado público golpea a fotógrafo de *Página Siete*](#); La Patria/ANF. April 30, 2016. [Fotoperiodista de *Página Siete* fue agredido por funcionario público](#).

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

¹⁶¹ *Página Siete*. June 3, 2016. [Periodistas fueron agredidos por la Policía en la cobertura de la protesta de los discapacitados](#); EjuTV/El Deber. June 4, 2016. [Cuatro periodistas sufren agresiones](#); Correo del Sur. June 4, 2016. [Acusan a discapacitados de “autogasificarse”](#).

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

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

132. On August 26, Vice Minister of the Interior, Rodolfo Illanes Alvarado, had been killed by miners from the cooperative movement, who had kidnapped him the day before, when he had gone to meet with them to negotiate the lifting of the roadblock of the La Paz – Oruro Highway, which the group had installed beginning on the 23rd, in protest for the enactment of reforms of “General Cooperatives” Law 356, which permits the creation of trade unions in cooperative.¹⁶⁴ According to the known information, during the previous days, there had been diverse confrontations between members of the cooperatives and the police, which had caused the death of miners Severino Ichota, Germán Mamani and Rubén Aparaya Pillco, allegedly due to firearms. The authorities on August 28 confirmed the death of a fourth miner due to a dynamite detonation. Additionally, dozens of police officers and miners had been injured.¹⁶⁵ Also on the 26th, the demonstrators lifted the roadblocks and days later demanded the release of 59 of their colleagues, who, they said, had been arrested in relation to the events.¹⁶⁶

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

¹⁶² Página Siete/ANF. April 28, 2016. [Cineasta australiano que filma a discapacitados pide garantías al ministro de Culturas](#); El Diario April 29, 2016. [Grupo “Satucos” del MAS intimida a cineasta australiano](#); Notibol/El Deber. May 13, 2016. [Ayala denuncia acoso por documentar protesta](#).

¹⁶³ EFE. May 18, 2016. [La dinamita vuelve a la protesta boliviana con heridos y decenas de detenidos](#); Opinión. May 19, 2016. [Heridos y detenidos en protesta por cierre de textilera Enatex](#).

¹⁶⁴ IACHR. September 9, 2016. [Press Release 130/16. IACHR Condemns the Violent Death of Bolivia’s Vice Minister](#); El Financiero/Reuters. August 24, 2016. [Dos mineros mueren durante violento enfrentamiento con la policía de Bolivia](#); BBC. August 26, 2016. [Lo que se sabe de la muerte del viceministro Rodolfo Illanes, “brutalmente asesinado” en Bolivia por los mineros que lo habían secuestrado](#); La Razón/EFE. August 26, 2016. [Cronología del conflicto minero en Bolivia con la peor violencia en años](#); HispanTV. August 26, 2016. [Conflicto minero: Asesinan a viceministro boliviano del Interior](#).

¹⁶⁵ Página Siete. August 26, 2016. [Cronología del conflicto minero: Todo inició con el pedido de no modificar la ley de cooperativas](#); El Mostrador/EFE. August 28, 2016. [Gobierno boliviano confirma la muerte de un cuarto minero por conflicto](#).

¹⁶⁶ IACHR. September 9, 2016. [Press Release 130/16. IACHR Condemns the Violent Death of Bolivia’s Vice Minister](#); Ejutv/EFE. September 30, 2016. [Mineros denuncian 59 detenciones por conflicto con el Gobierno](#); Telesur. August 26, 2016. [Mineros cooperativistas suspenden los bloqueos en Bolivia](#).

¹⁶⁷ El Diario. August 26, 2016. [Mineros vuelven a agredir a periodistas](#); Los Tiempos/ Agencias. August 26, 2016. [Cooperativistas asesinan a Viceministro](#); El Diario. August 30, 2016. [ANP condena violencia y pide respeto al trabajo periodístico](#); Página Siete/ANF. August 25, 2016. [Mineros agreden a dos periodistas en Panduro](#); La Razón. August 25, 2016. [Fotógrafo de La Razón fue agredido por cooperativistas en Panduro](#).

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

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

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

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

C. Stigmatizing Statements

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

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

169 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.

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

171 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.

172 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](#).

173 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.

government of President Evo Morales and to discredit Chinese investment in Bolivia and Latin America. As part of the alleged cartel the government officials have point to the *Agencia de Noticias Fides* (ANF), the daily newspapers *El Deber* and *Página Siete*, and the *Erbol* network of broadcast outlets.¹⁷⁴ In addition, they have individually pointed to journalists Carlos Valverde Bravo, Amalia Pando, and Andrés Gómez as part of it. Subsequently, minister Quintana affirmed that the U.S. network *CNN* was added to the list¹⁷⁵; its inclusion led the officials to consider the existence of a “transnational cartel of lies.”

139. The statements on the alleged existence of the “cartel” began after the denounce by journalist Carlos Valverde, in the February 3 edition of his program “*Eso es todo por hoy*,”¹⁷⁶ of an alleged existence of a case of influence-peddling stemming from the fact that Gabriela Zapata Montañó, who supposedly had a sentimental relationship and a child with President Morales, held the position of commercial manager of the Bolivian branch of the Chinese company China CAMC Engineering Co. Ltd., to which the government of Bolivia awarded at least seven contracts, totaling more than US\$ 570 million, most of them no-bid contracts; this incident subsequently provoked the beginning of a criminal proceeding against Zapata Montañó and her arrest on February 26, on several charges.¹⁷⁷ Valverde himself said, on May 16, that the purported child of President Morales and Gabriela Zapata “does not exist.”¹⁷⁸ Also, Parliament determined the non-existence of influence-peddling by President Morales.¹⁷⁹

140. After the February 21 referendum by which the electorate voted against President Evo Morales being able to run for a third re-election in 2020, the government attributed the defeat to the impact of the alleged influence-peddling. The accusations led to an intensification of the accusations regarding the existence of the so-called “cartel of lies”¹⁸⁰ through multiple declarations¹⁸¹, special television programs, and the printing of an insert¹⁸² (a tabloid-size print publication) eight pages long, under the seal of the ministry of the Presidency and the ministry of Communication, with the title “The Cartel of Lies,” allegedly exposing the chronology of the facts, and individually noting the opposition politicians, media outlets, and journalists considered to be part of it. In addition, there has been information according to which the ministry of the Presidency had

¹⁷⁴ Bolivia TV/You Tube. February 16, 2016. [Conferencia de Prensa | Juan Ramón Quintana, Ministro de la Presidencia](#); Datos/Erbol. May 2016. [Quintana acusó a 4 medios de formar un cártel de la mentira](#); Los Tiempos. August 26, 2016. [Evo: Relator de la CIDH es del “cártel de la mentira”](#); Bolivia Vlog/You Tube. May 30, 2016. [Quintana delirio de conspiración el cártel de la mentira](#); elPotosí/El Deber. May 23, 2016. [Moldiz llama “perros” a periodistas de 4 medios](#); Bolivia Vlog/You Tube. [Hugo Moldiz arremete contra Carlos Valverde y todos los periodistas](#). [00:53:38].

¹⁷⁵ Iyps/ANP. July 4, 2016. [Bolivia: Ministro incluye a CNN en “cártel de la mentira”](#); Los Tiempos. July 4, 2016. [Quintana dice que el “cártel de la mentira” ahora es “transnacional”](#).

¹⁷⁶ Televisión de Bolivia. February 4, 2016. [Videos Completo Carlos Valverde denuncia a madre del hijo de Evo encargada de grandes proyectos](#); Erbol Digital. February 4, 2016. [Valverde revela al nuevo hijo de Evo y negocios de la madre](#); Correo del Sur. February 5, 2016. [Empresa que gerenta madre de hijo de Evo tiene contratos con el Estado](#); La Razón. February 4, 2016. [Gobierno desmiente tráfico de influencias en el caso de Gabriela Zapata](#); La Nación/AFP. February 12, 2016. [Denuncias por tráfico de influencias salpican al presidente Evo Morales](#).

¹⁷⁷ CNN en español. February 26, 2016. [Detienen a Gabriela Zapata, expareja de Evo Morales](#) (VIDEO); BBC. February 26, 2016. [Detienen en Bolivia a la exnovia de Evo Morales tras denuncias de tráfico de influencias](#).

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

¹⁷⁹ Deutsche Welle (DW). May 10, 2016. [Evo Morales absuelto en caso de tráfico de influencias](#); EFE. May 6, 2016. [Absuelven a Morales de un supuesto tráfico de influencias a favor de la china Camce](#).

¹⁸⁰ Vértice. October 24, 2016. [El culebrón Morales-Zapata y la guerra contra el periodismo en Bolivia](#).

¹⁸¹ RPP. May 22, 2016. [Denuncian planes para derrocar a gobierno de Evo Morales](#); RT. May 24, 2016. [¿Golpe a la vista en Bolivia? Denuncian una estrategia para derrocar a Evo Morales](#).

¹⁸² Correo del Sur. July 30, 2016. [Quintana presenta libro “Bolivia Leaks” en Sucre](#); Página Siete. September 30, 2016. [Circula publicación sobre el “cártel de la mentira” con sello del Ministerio de la Presidencia](#); La Patria. October 1, 2016. [Publican “panfleto” acusando a medios de ser “cártel de la mentira”](#); El Diario. October 6, 2016. [Ofensiva contra medios y periodistas](#).

ordered the production of a documentary with the same title, which it entrusted to journalist Andrés Salari.¹⁸³ Stemming from these events, journalist Carlos Valverde decided to leave the country and reside temporarily in Argentina. On May 27, during an interview broadcast by *Infobae*, Valverde said that even though he did not feel persecuted, he felt “pressured” and decided to leave Bolivia “for the ease of mind of my friends, my family, and my journalist colleagues, who asked me to take some distance for a time.”¹⁸⁴ As of the closing date of this report, he was continuing to reside in Argentina.

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

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

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

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

¹⁸³ El Deber. October 1, 2016. [Ejecutivo pide a argentino un filme contra la prensa](#); EJU.TV. October 2, 2016. [Alistan documental sobre el “Cártel de la Mentira”](#); Enlaces Bolivia. October 4, 2016. [Ministro Quintana ordena realizar un documental sobre el Cártel de la Mentira](#); El Potosí. October 14, 2016. [Del enfrentamiento a la guerra sucia](#).

¹⁸⁴ BoliviaVlog/You Tube. May 27, 2016. [Entrevista a CARLOS VALVERDE desde ARGENTINA](#); Community Unitel/You Tube. May 27, 2016. [Carlos Valverde abandonó el país: Está “a resguardo” en Argentina](#); Bolivisión al día/You Tube. May 27, 2016. [Las reacciones que generó la salida del país de Carlos Valverde](#).

¹⁸⁵ Reporters Without Borders (RSF). May 28, 2016. [RSF decries mounting hostility towards media in Bolivia](#).

¹⁸⁶ El Boliviano. March 8, 2016. [Quintana dice que CNN pone en ridículo al periodismo](#); Sputnik News. March 16, 2016. [Ministro boliviano acusa a CNN de conspiración contra Morales](#).

¹⁸⁷ La Razón. March 8, 2016. [Quintana pide disculpas y cuestiona a CNN por entrevistar a Valverde sin conocer sus antecedentes](#); Panam Post. March 8, 2016. [Bolivia: Gobierno arremete contra CNN por entrevistar a Carlos Valverde](#).

¹⁸⁸ Ministerio de Comunicación Bolivia/Official You Tube channel. March 3, 2016. [Entrevista Ministro Juan Ramón Quintana I](#).

¹⁸⁹ Erbol. March 5, 2016. [Evo: Corresponsal de CNN en Bolivia es un narcotraficante](#); CNN en Español. March 7, 2016. [CNN rechaza declaraciones del presidente de Bolivia Evo Morales](#).

¹⁹⁰ Página Siete. March 7, 2016. [Evo: “El corresponsal de CNN es el narcotraficante Carlos Valverde”](#); El Día. March 7, 2016. [Morales: ‘el corresponsal de CNN en Bolivia es Valverde’](#); Correo del Sur/El Deber. March 8, 2016. [Quintana aclara a CNN y ataca a Carlos Valverde](#).

145. On May 20, the Government of Bolivia issued a communiqué denouncing a media campaign against Evo Morales and noting as follows: “The Bolivian government considers that the media and opposition leaders act a sounding boxes of lies with a political objective, to discredit the Bolivian president. The Minister of Presidency of Bolivia, Juan Ramón Quintana, denounced a campaign of media and political conspiracy against President Evo Morales by the opposition in Bolivia.”¹⁹¹ That same day journalists from Santa Cruz, Tarija, El Alto, Potosí, and Sucre mobilized in defense of the freedom of expression and to support enforcement of the Press Act [*Ley de Imprenta*], the country’s statutory protection for the freedoms of press and expression.¹⁹²

146. On June 30 President Evo Morales noted in a press conference that journalist Fernando del Rincón, as well as the *CNN* network for which he works, were part of “a political conspiracy” and that del Rincón had committed the offenses of public advocacy of a crime, criminal association, aiding and abetting, complicity, and trafficking and smuggling of persons in the visit he made to Bolivia May 4 to 6, and during which he interviewed the supposed son of the president and Gabriela Zapata, an interview in which a child under 5 years of age participated, having been used to supplant the child of the president who, if he existed, would have been 9 years old.¹⁹³ Although the purported interview was never broadcast by *CNN*, the Office of the Attorney General [*Fiscalía*] of Bolivia summonsed Fernando del Rincón to testify on July 21; as he did not appear, President Morales called him a “confessed criminal” during a press conference that he offered the next day.¹⁹⁴

147. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State’s job to help create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.¹⁹⁵

148. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”¹⁹⁶

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

¹⁹¹ Tele Sur. May 20, 2016. [Bolivia denuncia campaña mediática contra Evo Morales](#).

¹⁹² La Razón. May 20, 2016. [Periodistas marchan en defensa de la Ley de Imprenta](#).

¹⁹³ Informador. July 3, 2016. [Evo Morales llama 'delincuente confeso' a periodista de CNN](#); Mundo hispánico. No date. [Evo Morales llama a Fernando del Rincón 'delincuente confeso' y a Cala 'gusano' \(VIDEOS\)](#).

¹⁹⁴ El Nacional. July 20, 2016. [Fiscalía de Bolivia citó a Fernando del Rincón por caso de supuesto hijo de Evo](#); PanamPost. July 20, 2016. [Periodista Fernando del Rincón deberá declarar en Bolivia](#); Erbol. July 21, 2016. [Fernando del Rincón faltó a su declaración ante la Fiscalía](#); Diario Libre/EFE. July 21, 2016. [Fernando del Rincón no asiste a Fiscalía boliviana por caso de supuesto hijo de Morales](#); El Comercio. July 22, 2016. [Evo Morales llama "delincuente confeso" a periodista de CNN](#); Videos Bolivia/You Tube. July 22, 2016. [Evo Morales de nuevo llama "DELINCUENTE CONFESO" a Fernando del Rincon de CNN](#).

¹⁹⁵ 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.

¹⁹⁶ 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.

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.¹⁹⁷

150. With regard to the impact of the statements of public servants on the rights of others, the Inter-American Court has held that, under certain circumstances—even if the official speech does not expressly authorize, instigate, order, instruct, or promote acts of violence against specific citizens—its reiteration and content can increase the “relative vulnerability” of those groups and the risks they face.¹⁹⁸

D. Subsequent Liabilities

151. On April 20, Judge José René Quezada, of the city of Santa Cruz de la Sierra, referred the proceeding brought against journalist Carlos Valverde Bravo to a Court of Publishing [*Tribunal de Imprenta*] and in this way discarded the regular jurisdiction, an action applauded by Valverde, who denounced a case of alleged influence-peddling that would involve President Evo Morales. The journalist was accused of the crimes of discrimination, racism, and attack on the freedom to work by the prosecutorial authorities of Santa Cruz [*ministerio Público de la Fiscalía de Santa Cruz*]¹⁹⁹ after Gabriela Zapata, who had filed a complaint against the journalist on February 24, decided to withdraw the charges on March 10. Despite the dismissal, the Office of the Prosecutor of Santa Cruz decided to carry out an investigation for 60 days. In that context Valverde was called to testify and in an interview stated that he asked the Office of the Prosecutor to set aside the action since the withdrawal of the complaint means that I am not a person against whom a complaint has been lodged. He added that if the prosecutorial authorities insisted, “we will appeal to uphold our right in the *tribunales de imprenta*.”²⁰⁰

152. On May 10, Wilson García Mérida, who directs the *Sol de Pando*, denounced through his Facebook account that he had been notified of the start-up of a judicial proceeding against him as allegedly responsible for the crime of sedition. The complaint that gave rise to the process was lodged by minister of the Presidency Juan Ramón Quintana, who he had repeatedly criticized in the media outlet of which he is the director. According to the information known, García was ordered to appear at the office of the prosecutorial authorities of Cochabamba on May 11. Nonetheless, on May 19 he revealed that he was in Brazil “safeguarding my physical integrity and my liberty.” On December 13 once again he denounced via his Facebook account that he was at risk, for he was alerted to a new incursion of hit men into Brazil to look for him, which is why he decided to go to the city of Brasília, where he would seek to meet with the federal government of Brazil.²⁰¹

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

¹⁹⁷ 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.

¹⁹⁸ 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.

¹⁹⁹ El Diario. April 20, 2016. [Juez envía a periodista al Tribunal de Imprenta](#); Correo del Sur/El Deber. April 15, 2016. [Juez pasa el caso Valverde al Tribunal de Imprenta](#); Los tiempos. April 15, 2016. [Derivan el caso Valverde al Tribunal de Imprenta](#).

²⁰⁰ Correo del Sur/ANF. April 7, 2016. [Valverde pide ser procesado por la Ley de Imprenta porque argumenta ser periodista](#);

²⁰¹ Reporters Without Borders (RSF). November 21, 2016. [Editor still unable to return to Bolivia after six months in exile](#); Wilson García Mérida/Facebook. May 10, 2016. [El ministro Quintana celebró el Día del Periodista iniciándome hoy un juicio por sedición](#); Correo del Sur. May 12, 2016. [El periodista Wilson García Mérida, procesado por Quintana, huye del país](#); Página Siete. May 13, 2016. [Periodista García escapa a Brasil por juicio de Quintana](#); Wilson García Mérida/Facebook. May 24, 2016. [En Rio Branco, Huésped, no Refugiado](#).

they consider relevant in relation to the information and opinions publicized by that program last March 23.”²⁰²

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

155. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of IACHR establishes: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.”

E. Legal Reforms

156. On July 5, the *Asociación Nacional de la Prensa* declared it was “on alert” given the purported attempt to reform the Bolivian Criminal Code that would repeal article 296, which is considered the only provision that protects the freedom of expression, for it provides that “one who unlawfully impedes or disrupts the free dissemination of thought by any means of dissemination, as well as the free circulation of a book, newspaper, or any other printed item shall be sanctioned with confinement of six (6) months to three (3) years and a fine of thirty (30) to two hundred (200) days.” Legislator Lino Cárdenas, chairperson of the Committee on Plural Justice, Office of the Attorney General, and Legal Defense of the State, of the Chamber of Deputies, denied that there was an initiative in that regard and said that the proposed reform that was under study in the legislative organ considered only the procedural part.²⁰³

F. Prior Censorship and Direct and Indirect Censorship

157. The Authority for Regulation and Oversight of Telecommunications and Transport [*Autoridad de Regulación y Fiscalización de Telecomunicaciones y Transporte*] (ATT) declared on January 19 as illegal the signal of a radio station, “*Exitosa, la más sabrosa*,” of La Paz when journalist Amalia Pando, inaugurated a new program. According to information from local media, both *Exitosa* and the radio station *Líder*, owned by the Office of the Governor [*Gobernación*] of La Paz, suffer constant cut-offs and interference, and in very few neighborhoods of La Paz can one follow the programming; and that the only way for Pando to be able to express herself without problems is through the Internet.²⁰⁴

158. On December 11 the president of the *Asociación Nacional de la Prensa* indicated that the content of article 16 of Law 045 “Against Racism and All Forms of Discrimination” [*Ley 045 “Contra el Racismo y toda forma de Discriminación”*], requires the media to engage in prior censorship in relation to certain content due to their being held liable for the likely racist or discriminatory content of opinion articles, even when signed by their authors. During the “Days of freedom of expression for the struggle against racism and all forms of

²⁰² Página Siete. September 28, 2016. [Tribunal de Ética declara probada en parte una denuncia de Campero contra Pando](#); La Razón. September 28, 2016. [Tribunal de Ética falla en contra de Pando y Lizárraga y resuelve que rectifiquen sus declaraciones sobre Campero](#); Los Tiempos/ANF. September 28, 2016. [Tribunal de Ética declara probadas 2 de 5 denuncias contra Amalia Pando](#); Erbol. September 28, 2016. [Tribunal de Ética emite fallo en proceso contra periodistas](#); Abya Yala Televisión/You Tube. September 29, 2016. [García Linera: La verdad se ha impuesto a la mentira](#).

²⁰³ Página Siete/ANF. July 6, 2016. [Proyecto elimina artículo que protege la libertad de expresión](#); Enlaces Bolivia. July 6, 2016. [Nuevo Código Penal no incluiría artículo que protege la Libertad de Expresión](#); El Diario. July 6, 2016. [ANP en alerta ante pretensión de modificaciones al Código Penal](#); Cámara de Diputados. July 6, 2016. [Diputado Cárdenas: reformas al Código Penal no afectan a la libertad de expresión](#).

²⁰⁴ Rima y Pampa. January 19, 2016. [La ATT dice que la Radio donde Amalia tiene un programa es ilegal](#); Página Siete/ANF. January 19, 2016. [La ATT dice que la radio que alberga a Amalia Pando es ilegal](#).

discrimination” [*Jornadas de libertad de expresión para la lucha contra el racismo y toda forma de discriminación*], organized by the ministry of Decolonization, the same person, who is also the director of the daily newspaper *La Patria*, recalled that the above-referenced article establishes that “Any media outlet that authorizes and publishes racist and discriminatory ideas may suffer economic sanctions and the suspension of its operating license, subject to regulation.”²⁰⁵

G. Internet and Freedom of Expression

159. Following the results of the referendum held February 21, when 51.3 percent of the voters rejected the constitutional change that would have made possible the indefinite re-election, proposed by organizations to support the fourth re-election of Morales, activists of the governing party the *Movimiento al Socialismo* (MAS) suggested regulations or controls on digital media such as Facebook and Twitter.²⁰⁶ On the part of the minister of Communications Marianela Paco in public statements said that the Government was studying the form in which the social networks might be regulated, this after in the referendum campaign would have been observed racist manifestations through the above-mentioned networks.²⁰⁷

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

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

H. Government Advertising

162. On August 10, during a press conference, Vice President Álvaro García Linera had acknowledged that the Government of the Republic does not purchase advertising from certain media outlets because of their editorial lines. According to the known information, the minister had declared: “we say this openly: there are media that lie, there are media that do not inform but instead engage in partisan politics... there are media that engage in politics, which are political parties, or quasi-parties, or para-parties and, of course, we are not going to fund certain media that are political para-parties on top of which they lie.” The organization Reporters Without Borders stated that this decision by the Bolivian Government “is a further step toward reducing the independent and opposition press in Bolivia to silence.”²⁰⁸

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

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

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

²⁰⁷ Los Tiempos de Bolivia/You Tube. March 1, 2016 [Gobierno analiza uso de las redes sociales](#); Radio Fides. February 25, 2016. [Ministra de Comunicación plantea tres contextos para regular redes sociales](#).

²⁰⁸ Página Siete. August 11, 2016. [Vice: Los medios que “mienten” no reciben la publicidad estatal](#); Reporters Without Borders (RSF). August 20, 2016. [No state advertising for “politicized” media in Bolivia](#).

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

I. Other Relevant Situations

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

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

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

²⁰⁹ Radio Rebelde. January 4, 2016. [Estrena Presidente boliviano programa televisivo Democracia Directa](#); Telesur. January 3, 2016. [Evo Morales estrena programa televisivo “Democracia Directa”](#).

²¹⁰ Página Siete. May 20, 2016. [Policías ingresan a radio Líder para notificar a Amalia Pando con una orden fiscal](#); ahoradigital/El Deber. May 20, 2016. [Notifican a Amalia con una orden de la Fiscalía](#).

²¹¹ EJU TV/El Deber. January 16, 2016. Asamblea Legislativa. [El gobernante MAS ordena juicio contra Goni, Samuel y 11 exautoridades](#); Erbol. October 13, 2016. [Fiscalía imputa a Samuel por 3 delitos en caso FOCAS](#); Página Siete. October 25, 2016. [Fiscalía pide la detención de Samuel Doria Medina](#); Facebook/account of Samuel Doria Medina. October 31, 2016. [10 AÑOS DEL MAS. 10 AÑOS DE PERSECUSIÓN POLÍTICA](#); La Razón. November 3, 2016. [Audiencia cautelar de Doria Medina es postergada por dos semanas](#).

²¹² IACHR. Office of the Special Rapporteur for Freedom of Expression. November 28, 2016. *CIDH/RELE/Art.41/10-2016/42 REF: Information on the ongoing criminal procedure against Samuel Doria* Information request based on article 41 of the ACHR. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Estado Plurinacional de Bolivia/Procuraduría General del Estado. November 30, 2016. *PGE-DESP-SPDRLE- DGD4 N° 952/2016 REF.: HACE CONOCER*. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

7. BRAZIL

A. Progress

167. On April 13, Marcos Bruno Silva de Oliveira was tried on charges of “formation of a criminal gang” [*formação de quadrilha*] and participation in the April 23, 2012 murder of journalist and blogger Décio Sá.²¹³ Silva de Oliveira was accused of driving the motorcycle on which Jhonathan de Souza Silva fled after shooting the journalist. The judgment was handed down by Judge Osmar Gomes of the 1st Division of the Jury Court of São Luís [1^a *Vara do Tribunal do Júri de São Luís*]. Silva de Oliveira had already been sentenced to the same punishment in February 2014, but his conviction was overturned after his defense attorney filed an appeal alleging that the audio recorded during the initial trial was inaudible. The Jury Court sentenced him to 18 years and 3 months in prison. According to the information available, three other people involved in the case are reportedly awaiting trial [*juízo*].²¹⁴ The confessed murderer of Décio Sá, Jhonathan de Souza Silva, was convicted in February 2014 and sentenced to 25 years and three months in prison, and his sentence was increased in November 2015 to years and 5 months in prison under a closed system.²¹⁵

168. On May 11, regulations were issued to Law 12.965 of 2014, also known as “Civil Rights Framework for the Internet” [*Marco Civil da Internet*]. Civil society took part in the process of drafting the text of the regulations, as it did with Law 12.965, which was the product of an initiative spearheaded by the ministry of Justice [*Ministério da Justiça*] and the Center for Technology and Society of the Getulio Vargas Foundation [*Centro de Tecnologia e Sociedade da Fundação Getulio Vargas*]. The process included extensive and public consultation with Brazilian society. The text establishes guarantees, principles, rights, and duties for Internet use in the country. It also sets rules on the protection of personal data – such as the treatment of data and the introduction of a definition of personal data.²¹⁶

169. Decree No. 8.724 of April 27, 2016 created the Program for the Protection of Human Rights Defenders [*Programa de Proteção aos Defensores de Direitos Humanos*] “for purposes of coordinating measures for the protection of persons who are threatened because of their human rights defense work,”²¹⁷ and established its Deliberative Council, composed of two representatives of the Special Human Rights Secretariat of the ministry of Women, Racial Equality, Youth, and Human Rights [*Secretaria Especial de Direitos Humanos do Ministério das Mulheres, da Igualdade Racial, da Juventude e dos Direitos Humanos*], one of whom serves as the coordinator and the other as the representative of the National Public Security Secretariat of the ministry of Justice [*Secretaria Nacional de Segurança Pública do Ministério da Justiça*]. The decree similarly provides that one member of the Office of the Attorney General [*Ministério Público Federal*] and one representative of the Judiciary [*Poder Judiciário*] may be invited to join the Council.²¹⁸ According to the decree, both the Council and the Program would be within the purview of the Special Human Rights Secretariat of the ministry of Women, Racial Equality, Youth, and Human Rights.²¹⁹ The protection program

²¹³ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 26, 2012. [Press Release R40/12 Office of the Special Rapporteur Condemns Murder of Journalist and Political Blogger in Brazil](#); 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. 73.

²¹⁴ 180 graus. April 14, 2016. [MP-MA garante a condenação de 2º envolvido na execução de Décio Sá](#); Ademar Souza. April 14, 2016. [Ministério Público do MA garante condenação de envolvido na morte de Décio Sá](#); O Estado. April 14, 2016. [Acusado da morte de Décio Sá é condenado a 18 anos de prisão](#).

²¹⁵ Portal AZ. November 19, 2015. [Justiça aumenta pena de assassino do jornalista Décio Sá no Maranhão](#); O Progresso. November 19, 2015. [Caso Décio Sá: assassino tem pena aumentada](#).

²¹⁶ IACHR. [Annual Report 2014. 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. 13. March 9, 2015. Para. 132; Jota. June 11, 2016. [Entra em vigor regulamentação do Marco Civil da Internet](#); Brasil. Presidência da República. [Decreto No. 8.771](#). May 11, 2016; O Globo. June 14, 2016. [Marco Civil da Internet é regulamentado, mas desagradada a operadoras](#); D24am. May 12, 2016. [Dilma Rousseff regulamenta o Marco Civil da Internet](#).

²¹⁷ Brasil. Presidência da República. [Decreto Nº 8.724](#). April 27, 2016. Art. 1.

²¹⁸ Brasil. Presidência da República. [Decreto Nº 8.724](#). April 27, 2016.

²¹⁹ Brasil. Presidência da República. [Decreto Nº 8.724](#). April 27, 2016.

also provides protection to at-risk journalists. Civil society considers some aspects of that decree problematic—for example, it does not provide for the participation of public agencies or civil society in the program’s coordination or deliberative council, nor does it cover institutions or groups that defend human rights, as it only provides protection to individuals. Also, the decree is limited to covering “threatened persons,” not people “facing risk or vulnerability.”²²⁰

170. In a July 4 decision, Judge Alfredo José Marinho Neto of the Special Criminal Division of the 2nd Criminal Court of the District of Belford Roxo [*Juizado Especial Criminal Adjunto a 2ª Vara Criminal da Comarca de Belford Roxo*] decided to shelve a complaint from the Office of the Attorney of Rio de Janeiro [*Ministério Público do Rio de Janeiro*], declaring the unconstitutionality and unconventionality of the offense of criminal insult [*desacato*]. He observed that this offense is “quite antiquated, drafted in light of the reality of the times, and not in any way consistent with the contemporary legal system.”²²¹ He held that “citizens have the right to criticize and examine the actions and attitudes of public servants in the exercise of their duties.”²²² The judge affirmed in his decision that the Federal Constitution protects the expression of thought, freedom of expression, and the right of reply. In addition, he noted that Brazil is party to several international treaties that protect this right, such as the American Convention, and cited Principles 1 and 11 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights. In performing “conventionality control,” Judge Marinho Neto observed that the IACHR has already concluded that insult [*desacato*] laws are incompatible with the American Convention, and has asked the States to repeal them. He held that “the Brazilian State, which acceded to the American Convention on Human Rights, is subject to its system of International Justice and must observe the American Convention on Human Rights, as well as the deliberations of the Inter-American Commission and the Inter-American Court of Human Rights.”²²³ The judge thus acknowledged the unconstitutionality and inconsistency with the American Convention [“unconventionality”] of the criminal offense described in article 331 of the Criminal Code, and dismissed the complaint based on article 1(II), (III), and (V) and its sole paragraph, article 5, IV, V, and IX, and article 220, all of the Constitution of the Republic; article 13 of the American Convention on Human Rights (Pact of San José, Costa Rica); article 27 of the Vienna Convention on the Law of Treaties, and article 395(III) of the Code of Criminal Procedure. He additionally invoked the Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission on Human Rights in October 2000, in support of his decision.

171. On August 8, Federal Judge Augusto Carneiro Araújo of the 12th Federal Court of Rio de Janeiro [*12ª Vara Federal do Rio de Janeiro*] granted an injunction [*liminar*] allowing “peaceful” political demonstrations during the Olympics in Rio de Janeiro and prohibiting the repression and removal of demonstrators. This decision was in response to a public civil action [*ação civil pública*] filed by the Federal Office of the Attorney General [*Ministério Público Federal*] (MPF) against the Federal Government, the State of Rio de Janeiro, and the Rio 2016 Organizing Committee. According to the MPF, the practice used by the three respondents to prevent Olympic Games spectators from displaying signs or wearing shirts bearing political statements in the sports arenas—removing them from the place by Military Police [*Polícia Militar*] or national police officers—was a violation of the constitutional principle of freedom of expression. In his decision, the judge stated that the law regarding the Olympics only prohibited racist or xenophobic expressions, and that repressing peaceful political demonstrations “is contrary to the inviolable core of the fundamental right to freedom of

²²⁰ Sur International Journal on Human Rights. July 2016. [An analysis of the Latin American context: Brazil, Colombia and Mexico.](#)

²²¹ Tribunal de Justiça do Estado do Rio de Janeiro. Juizado Especial Criminal Adjunto a 2ª Vara Criminal da Comarca de Belford Roxo. Processo No. 0013156-07.2015.8.19.0008. Judgment of July 4, 2016. Para. 4. Available at: <http://emporiododireito.com.br/juiz-do-tjrj-faz-controle-de-convencionalidade-do-crime-de-desacato/>; Justificando. July 6, 2016. [Ao arquivar acusação, Juiz do RJ entende desacato como inconstitucional.](#)

²²² Tribunal de Justiça do Estado do Rio de Janeiro. Juizado Especial Criminal Adjunto a 2ª Vara Criminal da Comarca de Belford Roxo. Processo No. 0013156-07.2015.8.19.0008. Judgment of July 4, 2016. Para. 5. Available at: <http://emporiododireito.com.br/juiz-do-tjrj-faz-controle-de-convencionalidade-do-crime-de-desacato/>; Justificando. July 6, 2016. [Ao arquivar acusação, Juiz do RJ entende desacato como inconstitucional.](#)

²²³ Tribunal de Justiça do Estado do Rio de Janeiro. Juizado Especial Criminal Adjunto a 2ª Vara Criminal da Comarca de Belford Roxo. Processo No. 0013156-07.2015.8.19.0008. Judgment of July 4, 2016. Para. 8. Available at: <http://emporiododireito.com.br/juiz-do-tjrj-faz-controle-de-convencionalidade-do-crime-de-desacato/>

expression.” In addition, in the event of noncompliance, the judge ordered the imposition of a fine of BRL\$ 10 thousand (approximately US\$ 3 thousand) for every repressed protest.²²⁴ According to reports, the Federal Government withdrew its appeal of the injunction.²²⁵ For its part, the Rio 2016 Committee’s appeal of the injunction was denied by judge Marcello Granado, chief judge of the 5th Specialized Division of the Federal Regional Court of the Second Region [*Tribunal Regional Federal da Segunda Região*] (TRF2), who upheld the legality of protests in the sports stadiums.²²⁶

172. The Fifth Panel of the Superior Court of Justice of Brazil [*Quinta Turma do Supremo Tribunal de Justiça do Brasil*] (STJ), unanimously declared by its members, the nonconventionality of contempt offense [*desacato*] (established in article 331 of the Brazilian Penal Code) with article 13 of the American Convention on Human Rights, on December 15. The ministers followed the vote²²⁷ of Minister Rapporteur Ribeiro Dantas, in the context of an appeal filed by the Public Defender’s Office of São Paulo before the STJ, against a decision of the Court of Justice of São Paulo [*Tribunal de Justiça de São Paulo*] that sentenced a man to five years and five months of detention for stealing a bottle of spirit valued at BRL\$ 9 (approximately US\$ 3), for contempt [*desacatar*] of the Military Police who had arrested him and for resisting detention. The ministers decided on the partial appraisal of the appeal, rendering null and void the condemnation for the offense of contempt [*desacato*].²²⁸

B. Killings

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

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

²²⁴ Folha de São Paulo. August 8, 2016. [Juiz federal libera manifestações políticas na Rio-2016](#); UOL. August 8, 2016. [Decisão de juiz proíbe repressão a manifestações políticas na Rio-2016](#); Consultor Jurídico (Conjur). August 8, 2016. [Justiça Federal do Rio de Janeiro libera manifestações políticas nas Olimpíadas](#); Tribunal de Justiça do Estado do Rio de Janeiro. 12^a Vara Federal do Rio de Janeiro. Ação Civil Pública No. 0500208-93.2016.4.02.5101. Judgment of August 8, 2016. Available at: <http://s.conjur.com.br/dl/justica-federal-ri-libera-manifestacoes.pdf>; O Estado de São Paulo. August 9, 2016. [Juiz proíbe repressão a manifestações na Olimpíada e diz que ação da polícia contrariou espírito olímpico](#).

²²⁵ Agência Brasil. August 9, 2016. [União desiste de recorrer de liminar que liberou protestos na Olimpíada](#); G1. August 9, 2016. [Recurso para voltar a proibir protesto político na Olimpíada é retirado](#).

²²⁶ Folha de São Paulo. August 12, 2016. [Comitê Rio-2016 perde recurso e protestos continuam liberados durante a Olimpíada](#); Agência Brasil. August 15, 2016. [Comitê Rio 2016 perde recurso, e Justiça mantém protestos em arenas esportivas](#).

²²⁷ Supremo Tribunal de Justiça. [Recurso Especial No. 1.640.084 - SP \(2016/0032106-0\)](#). Judgment of December 15, 2016; Artigo 19. December 16, 2016. [Decisão do STJ sobre desacato é positiva para a liberdade de expressão](#).

²²⁸Supremo Tribunal de Justiça. [Recurso Especial No. 1.640.084 - SP \(2016/0032106-0\)](#). Judgment of December 15, 2016; Artigo 19. December 16, 2016. [Decisão do STJ sobre desacato é positiva para a liberdade de expressão](#).

²²⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 17, 2016. [Press Release R 38/16 Office of the Special Rapporteur Condemns Murder of Journalist in Brazil and Urges the State to Adequate the Protection Mechanism to Media Worker’s Needs](#); Portal Imprensa. March 15, 2016. [Radialista morto a tiros dentro de emissora no PR pediu para deixar cobertura de crimes](#).

²³⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 28, 2016. [Press Release R106/16 Office of the Special Rapporteur Condemns Murder of Journalist in Brazil and Urges the State to Adequate the Protection Mechanism to Media Worker’s Needs](#).

²³¹ Unesco. July 12, 2016. [Director-General condemns murder of blogger Manoel Messias Pereira in Brazil](#); Artigo 19. April 21, 2016. [#ALERTA – Terceiro blogueiro maranhense é assassinado em seis meses](#).

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

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

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

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

²³² IACHR. Office of the Special Rapporteur for Freedom of Expression. July 28, 2016. [Press Release R106/16 Office of the Special Rapporteur Condemns Murder of Journalist in Brazil and Urges the State to Adequate the Protection Mechanism to Media Worker's Needs](#); Knight Center for Journalism in the Americas. July 25, 2016. [Journalist killed in central Brazil received threats, family says](#); Inter American Press Association (IAPA). July 27, 2016. [IAPA condemns murder of journalist in Brazil, calls for investigation, justice](#).

²³³ O Popular. July 27, 2016. [Servidor público é preso suspeito de participação em morte de jornalista](#); Correio Braziliense. August 29, 2016. [Polícia prende segundo suspeito do assassinato do jornalista João Miranda](#); G1. July 27, 2016. [Servidor público é preso suspeito de elo com morte de jornalista, em GO](#); Jornal de Brasília. August 28, 2016. [Suspeito preso temporariamente foi visto no local do assassinato do jornalista](#); Metrôpoles. August 29, 2016. [Preso suspeito de atirar 13 vezes contra jornalista no entorno do DF](#); Secretaria de Segurança Pública e Administração Penitenciária de Goiás. August 29, 2016. [Polícia Civil prende suspeito de atirar contra jornalista em Santo Antônio do Descoberto](#).

²³⁴ Inter American Press Association (IAPA). August 19, 2016. [IAPA outraged at murder of journalist in Brazil](#); G1. August 18, 2016. [Dono do jornal 'O Grito' morre após ser baleado em Santa Luzia](#); Artigo 19. August 20, 2016. [#ALERTA – Jornalista é assassinado em Minas Gerais com cinco tiros](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. August 29, 2016. [Press Release R123/16 Office of the Special Rapporteur Condemns Murder of Journalist in Brazil and Urges the State to Adequate the Protection Mechanism to Media Worker's Needs](#).

²³⁵ Jornal Opção. October 17, 2016. [Dois homens assassinam dono de rádio comunitária. Filha de 5 anos presenciou o crime](#); Correio. October 16, 2016. [Dono de rádio comunitária é morto na frente da filha de cinco anos em Conjunto Pirajá](#); G1. October 17, 2016. [Radialista de 51 anos é morto dentro de casa, no bairro de Pirajá](#); Artigo 19. October 18, 2016. [#ALERTA – Apresentador de rádio comunitária é assassinado na Bahia](#).

²³⁶ 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). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. [Annual Report 2010. 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. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

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

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

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

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

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

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

²³⁷ Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 6, 2016; Portal Imprensa. February 12, 2016. [Repórter de "A Crítica" é detido após filmar ação de agentes do Detran no AM](#); Associação Brasileira de Jornalismo Investigativo (Abraji). February 11, 2016. [Agentes do Detran-AM algemam repórter para impedir filmagem](#); No Amazonas é assim. February 11, 2016. [Funcionário do Detran-Am teria agredido jornalista na Banda do Galo](#).

²³⁸ Associação Brasileira das Emissoras de Rádio e Televisão (Abert). [Relatório de Liberdade de Imprensa](#). 2016; Associação de Correspondentes da Imprensa Estrangeira (ACIE). February 19, 2016. <http://www.acie.org.br/>

²³⁹ Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 6, 2016; G1. February 15, 2016. [Jornalista desabafa sobre agressão em bloco no sábado, no Rio](#); O Dia. February 15, 2016. [Jornalista mostra hematomas deixados pela GM em bloco de Carnaval](#).

²⁴⁰ Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 6, 2016; RBJ. March 9, 2016. [Equipe da TV Tarobá é feita refém do MST em Quedas do Iguacu](#); Correio do Povo do Paraná. March 9, 2016. [Equipe de TV é feita refém por Sem Terras em Quedas do Iguacu](#); O Dia. March 10, 2016. [ANJ protesta contra ação do MST que deixou repórteres da Band reféns no Paraná](#); Associação Brasileira de Imprensa (ABI). March 10, 2016. [Equipe de TV é feita refém por grupo do MST no Paraná](#).

²⁴¹ Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 6, 2016; Committee to Protect Journalists (CPJ). March 14, 2016. [Brazilian journalist's car shot](#); Notícias Capixaba. March 10, 2016. [Radialista sofre atentado e veículo é alvejado por tiros em Afonso Cláudio Destaques](#); G1. March 10, 2016. [Carro de jornalista é atingido por oito tiros em Afonso Cláudio, no ES](#).

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

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

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

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

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

²⁴² Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 6, 2016; Committee to Protect Journalists (CPJ). April 8, 2016. [Brazilian journalist injured in shooting](#); Portal Imprensa. April 1, 2016. [Radialista cearense sofre tentativa de assassinato por denunciar crimes](#); De primeira mão. March 28, 2016. [Radialista sofre tentativa de homicídio em Forquilha, no Ceará](#).

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

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

²⁴⁵ G1. April 5, 2015. [Jornalista sofre tentativa de homicídio na frente de casa em Cujubim, RO](#); Committee to Protect Journalists (CPJ). April 8, 2016. [Brazilian journalist injured in shooting](#); Associação Brasileira das Emissoras de Rádio e Televisão (Abert). [Relatório de Liberdade de Imprensa](#). 2016; Portal Imprensa. April 5, 2016. [Jornalista sofre atentado a tiros na porta de casa em Cujubim \(RO\)](#).

²⁴⁶ G1. April 11, 2016. [Mais um jornalista sofre atentado a tiros na região do Vale do Jamari, RO](#); Rondonia Real. April 14, 2016. [‘O mal está batendo em nossas portas’, diz médico que atendeu colega morto em Cujubim](#); Rondonia ao vivo. April 11, 2016. [Mais um profissional da imprensa de Cujubim é vítima de atentado](#).

²⁴⁷ Associação Brasileira de Jornalismo Investigativo (Abraji). August 4, 2016. [Equipe de afiliada do SBT é agredida ao filmar cena de crime em Manaus](#); Em Tempo. July 27, 2016. [Equipe da TV EM TEMPO é agredida durante cobertura de homicídio em Manaus](#).

²⁴⁸ Associação Brasileira de Jornalismo Investigativo (Abraji). August 5, 2016. [PM-SP apreende celular e apaga filmagem de repórter da CBN](#); CBN. August 5, 2016. [Repórter da CBN é apreendida durante cobertura de operação na Cracolândia](#).

²⁴⁹ GCN. September 28, 2016. [Dupla atira em jornalista na Grande São Paulo](#); Committee to Protect Journalists (CPJ). September 30, 2016. [Critical Brazilian journalist injured in shooting](#); Associação Brasileira de Imprensa (ABI). September 28, 2016. [Jornalista é baleado em SP após ameaças de morte](#); Portal Imprensa. September 28, 2016. [Jornalista é baleado em Franco da Rocha \(SP\) após receber ameaças de morte](#); Knight Center for Journalism in the Americas. September 28, 2016. [Brazilian journalist survives after being shot while distributing newspapers in São Paulo state](#).

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

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

191. 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

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

193. During the year, the “*Pase Libre*” Movement [*Movimiento Pase Libre*] (MPL) against public transportation fare increases held various demonstrations in the State of São Paulo. During protests held on January 8, there were alleged confrontations between the so-called *black blocks* and the Military Police. According to public information, the *black blocks* reportedly threw rocks at the Military Police, who responded with tear gas. In addition, 17 people were reportedly detained for alleged criminal acts [*práticas criminosas*].²⁵³ On January 12, some nine media professionals were reportedly assaulted by police.²⁵⁴

²⁵⁰ Agência Brasil. October 1, 2016. [Comunicador popular Rene Silva, fundador do Jornal Voz das Comunidades, é preso](#); O Globo. October 1, 2016. [Criador do 'Voz da Comunidade' é detido cobrindo ação da PM no Alemão](#); The Intercept Brasil. October 1, 2016. [Jornalistas do Voz da Comunidade são presos e agredidos pela Polícia Militar por fazer jornalismo](#); Associação Brasileira de Jornalismo Investigativo (Abraji). October 2, 2016. [Abraji repudia ação da PM-RJ contra jornalistas](#); Portal Imprensa. October 3, 2016. [Equipe do "Voz das Comunidades" é detida durante cobertura de remoção no RJ](#).

²⁵¹ Portal Imprensa. October 4, 2016. [MP pede abertura de inquérito para apurar disparos contra repórter no RJ](#); Associação Brasileira de Imprensa (ABI). October 5, 2016. [MP pede investigação de disparos contra repórter](#); O Globo. October 4, 2016. [MP pede investigação de tiros durante trabalho de repórter](#).

²⁵² Portal Imprensa. October 14, 2016. [Abraji condena agressão contra jornalista durante ação policial em SC](#); Associação Nacional de Jornais (ANJ). October 14, 2016. [ANJ e Abraji repudiam violência policial contra repórter do Diarinho, de Santa Catarina](#); Associação Brasileira de Jornalismo Investigativo (Abraji). October 13, 2016. [Abraji repudia agressão a jornalista em Santa Catarina](#); Sandro Silva/Facebook. October 13, 2016. [A PM acusada de execução. A PM que ataca inocentes. A PM que agride jornalistas](#).

²⁵³ UOL. January 8, 2016. [PM prende 17 pessoas durante protesto contra tarifa em São Paulo, diz SSP](#); El País. January 9, 2016. [Manifestação repete roteiro e batalha da tarifa segue em São Paulo](#).

²⁵⁴ According to the Brazilian Association of Investigative Journalism (Abraji), the nine media professionals who were reportedly assaulted are: Fernanda Azevedo, a *TV Gazeta* journalist; Pedro Belo, of the *Veja São Paulo* video crew; Márcio Neves, a *UOL* video reporter; Alice Vergueiro, a *Folhapress* photographer; Francisco Toledo, a photographer with *Democratize*; Camila Salmazio, a journalist with *Rede Brasil Atual*; Felipe Larozza, a photographer with *VICE*; Raul Dória, a freelance photographer; Alex Falcão, a photographer with

According to the information available, the police threw tear gas in the direction of a group of cameramen, reporters, and photographers and hit them with nightsticks, even though they had identified themselves as members of the press.²⁵⁵ In addition, some 20 people were reportedly injured.²⁵⁶ The confrontation apparently began after the demonstrators tried to take a different route from the one imposed by the Military Police.²⁵⁷ Student Gustavo Mascarenhas Camargos was reportedly hit by a tear gas canister thrown by the Military Police, resulting in a compound fracture in his finger, some broken hand bones, and a torn tendon.²⁵⁸ According to reports, 49 tear gas canisters were thrown by the Military Police in a 6 minute interval.²⁵⁹ Moreover, Military Police allegedly had used a tactic known as “kettling” [*Caldeirão de Hamburgo*], which is prohibited by the Manual for the Control of Civil Disturbances of the Military Police of the State of São Paulo. That technique consists of isolating demonstrators through police cordons that do not allow for anyone to enter or leave the demonstration, attacking them with tear gas.²⁶⁰ On January 14, CBN reporter Cinthia Gomes was reportedly hit by a rubber bullet in downtown São Paulo.²⁶¹ The demonstration was reportedly peaceful until there was a confrontation between demonstrators and security guards from the Consolação metro station. The Military Police reportedly threw non-lethal bombs. At least eight people were detained and at least two people were injured.²⁶² On January 21, seven media professionals, including photographers and reporters, were reportedly attacked by the Military Police in *Praça da República* in São Paulo during an action against demonstrators. According to public information, even though they had identified themselves as reporters, the journalists were attacked with rubber bullets, devices, pepper spray, and explosives.²⁶³

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

Futurapress; and Caio Cestari, a freelance photographer. (Associação Brasileira de Jornalismo Investigativo - Abraj). January 13, 2016. [PM fere nove repórteres em ação na Paulista](#).

²⁵⁵ Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 7, 2016; *Elastica*. January 14, 2016. [Após nove jornalistas ficarem feridos, PM/SP oferece colete para a imprensa ir ao protesto](#); Sindicato dos Jornalistas Santa Catarina. January 20, 2016. [Nove jornalistas são feridos pela PM durante protesto em SP](#); UOL. January 13, 2016. [PM reprime e fere jornalistas durante cobertura de protesto em São Paulo](#); G1. January 15, 2016. [Dois seguem detidos após ato contra aumento da tarifa: 6 foram liberados](#).

²⁵⁶ G1. January 13, 2016. [Dois manifestantes permanecem detidos após protesto na Paulista](#); Folha de São Paulo. January 12, 2016. [Polícia muda estratégia e reprime manifestação contra tarifa em SP](#); G1. January 15, 2016. [Dois seguem detidos após ato contra aumento da tarifa: 6 foram liberados](#).

²⁵⁷ Revista Exame. January 14, 2016. [Fim de protesto é marcado por confusão em metrô](#); Folha de São Paulo. January 12, 2016. [Polícia muda estratégia e reprime manifestação contra tarifa em SP](#); G1. January 15, 2016. [Dois seguem detidos após ato contra aumento da tarifa: 6 foram liberados](#); Rede Brasil Atual. January 13, 2016. [Por falta de 'contato antecipado', PM reprime novamente ato contra aumento das tarifas](#).

²⁵⁸ Folha de São Paulo. January 15, 2016. [Manifestante ferido em ato do MPL em SP deve se encontrar com secretário](#); G1. January 13, 2016. [Mãe de estudante ferido por bomba da PM diz que vai processar estado](#); NE10. January 14, 2016. [Estudante atingido por bomba durante protesto em SP vai processar estado](#); Brasileiros. February 17, 2016. [Democracia e repressão](#).

²⁵⁹ O Estado de São Paulo. January 13, 2016. [PM explodiu uma bomba a cada 7 segundos na Paulista](#); Artigo 19. January 14, 2016. [Atuação da PM foi ilegal, afirmam advogada e militante](#); Vertices. January 14, 2016. [Após repressão com bombas em protesto, associação de jornalistas repudia PM](#).

²⁶⁰ Rede Brasil atual. January 13, 2016. [Tática policial utilizada em repressão é condenada pelo próprio manual da PM](#); Justificando. January 13, 2016. [Tática policial utilizada em repressão de protesto é condenada pelo próprio manual da PM](#); Jornalistas Livres. January 19, 2016. [Protestos contra tarifa: a repressão policial e a via processual constitucional](#).

²⁶¹ Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 6, 2016; Site Miséria/Portal Comunique-se. January 15, 2016. [Repórter da CBN é atingida por bala de borracha da PM](#); Calle 2. February 9, 2016. [Desabafo de uma jornalista atingida pela PM](#); G1. January 15, 2016. [Dois seguem detidos após ato contra aumento da tarifa: 6 foram liberados](#).

²⁶² UOL. January 14, 2016. [Após dispersão das passeatas, oito são detidos por confronto no metrô](#); Carta Capital. January 14, 2016. [Terceiro protesto contra a tarifa termina com bombas no metrô](#); Revista Exame. January 14, 2016. [Fim de protesto é marcado por confusão em metrô](#).

²⁶³ Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 6, 2016; Associação Brasileira de Jornalismo Investigativo (Abraj). January 22, 2016. [PM ataca mais sete jornalistas em protesto em São Paulo](#); Associação das Emissoras Rádio e Televisão do Estado de São Paulo (Aesp). January 27, 2016. [Pouco jornalismo em reportagens enviesadas](#).

enacted during the dictatorship in Brazil, foreigners are barred from engaging in political activities, organizing marches, or taking part in labor unions or demonstrations.²⁶⁴ Pursuant to the complaint against her, Barbato was summoned to give testimony. The Office of the Attorney General reportedly filed a writ of habeas corpus with a request for a protective measure on her behalf, for purposes of closing the investigation against her, stating that such an investigation would be contrary to fundamental articles of the Federal Constitution. It further indicated that the law contained provisions that were incompatible with the democratic rule of law. It maintained that her right to join unions is protected not only by the Constitution but also by different international treaties to which Brazil is party.²⁶⁵ The protective measure was reportedly granted on May 17, and the investigation was suspended pending a decision on the merits.²⁶⁶ In April, the National Federation of Federal Police [*Federação Nacional dos Policiais Federais*] (Fenapef) publicly stated that foreigners who participate in political acts are subject to arrest and expulsion from the country pursuant to article 107 of the Law on Foreigners.²⁶⁷ The statement was issued after it was learned that foreigners might travel to Brazil to protest the impeachment of ousted President Rousseff.²⁶⁸

195. On March 4, at least eight media professionals who were covering the testimony of former President Luiz Inácio Lula da Silva were reportedly assaulted by protesters in São Paulo.²⁶⁹

196. On May 10, journalists Geilson Ferreira and Sérgio Porto of *Tribuna*, and André Falcão of *TV Gazeta*, were reportedly assaulted and kicked during a protest against the impeachment proceedings of deposed President Dilma Rousseff in Vitória, in the state of Espírito Santo. The protester who had allegedly assaulted them was identified and taken to the police station. Journalist Suelen Araújo of *TV Vitória* was also reportedly assaulted by protesters during a live broadcast of the demonstration.²⁷⁰

197. On May 31, José Valdir Misnerovicz, a leader of the Landless Workers' Movement [*Movimento dos Trabalhadores Rurais Sem Terra*] (MST) of Goiás, was reportedly detained by Military Police while visiting one of his movement's camps in Veranópolis, Rio Grande do Sul, on charges of "criminal organization, robbery and harm." The same thing happened to Luiz Batista Borges, who was detained in Goiás on April 14 on similar charges. The arrests took place pursuant to a complaint filed by the Office of the Attorney General, and were reportedly motivated by the occupation of the Santa Helena Plant. A warrant was also issued for the arrest, under the same charges, of two other members of the group, Diessyka Santana and Natalino de Jesus. According to the information available, it was the first time that those charges, established in Law 12.850/2013 [*Lei de Organizações Criminosas*], were filed against a social movement.²⁷¹ On October 18, the

²⁶⁴ Agência Brasil. May 17, 2016. [MPF reage à intimação de professora estrangeira da UFMG pela Polícia Federal](#); Empório do Direito. May 25, 2016. [O caso da professora Maria Rosaria Barbato, da UFMG: notas sobre povo e migração no Estado Democrático de Direito](#); O Estrangeiro. May 19, 2016. [A Lei e seu contrário](#).

²⁶⁵ Agência Brasil. May 17, 2016. [MPF reage à intimação de professora estrangeira da UFMG pela Polícia Federal](#); O Estrangeiro. May 19, 2016. [A Lei e seu contrário](#); Carta Capital. May 19, 2016. [Um projeto de lei contra a perseguição política aos estrangeiros](#); Agência Brasil. May 17, 2016. [Justiça suspende investigação da PF contra professora estrangeira da UFMG](#).

²⁶⁶ O Estrangeiro. May 19, 2016. [A Lei e seu contrário](#); Agência Brasil. May 17, 2016. [Justiça suspende investigação da PF contra professora estrangeira da UFMG](#).

²⁶⁷ Consultor Jurídico (Conjur). April 16, 2016. [Estrangeiro que protestar pode ser expulso do país, diz entidade de policiais](#); Carta Capital. May 19, 2016. [Um projeto de lei contra a perseguição política aos estrangeiros](#); Federação Nacional dos Policiais Federais (Fenapef). April 16, 2016. [Nota à imprensa: Estrangeiros que participarem de atos políticos podem ser detidos e expulsos do País](#).

²⁶⁸ Federação Nacional dos Policiais Federais (Fenapef). April 18, 2016. [Estrangeiros: Nota da Fenapef repercute na imprensa nacional](#); Agência Brasil. April 16, 2016. [Estrangeiro que participar de ato político pode ser expulso do país, diz Fenapef](#); Carta Capital. May 19, 2016. [Um projeto de lei contra a perseguição política aos estrangeiros](#).

²⁶⁹ Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 6, 2016; G1. March 4, 2016. [Jornalistas são hostilizados durante cobertura do depoimento de Lula](#); Associação Brasileira de Jornalismo Investigativo (Abraji). March 4, 2016. [Abraji condena agressões a jornalistas em São Paulo e São Bernardo](#).

²⁷⁰ G1. May 10, 2016. [Jornalistas são agredidos em ato contra impeachment em Vitória](#); Gazeta Online. May 10, 2016. [Jornalistas são agredidos durante ato pró-Dilma em Vitória](#); Folha Vitória. May 10, 2016. [Jornalistas são agredidos por manifestantes durante protesto em Vitória](#); Associação Brasileira de Imprensa (ABI). May 10, 2016. [Repórteres são agredidos durante manifestação](#); Tribuna Online. May 10, 2016. [Jornalistas são agredidos durante ato pró-Dilma em Vitória](#); Câmara Municipal de Vitória. [Moção de repúdio](#). May 11, 2016.

²⁷¹ Movimento dos Atingidos por Barragens (MAB). August 23, 2016. ["Não descansaremos enquanto não libertarmos todos os nossos presos políticos", afirma Via Campesina](#); Folha de São Paulo. August 5, 2016. [Membros do MST são presos com base em Lei de Organizações](#)

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

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

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

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

Criminosas; VICE. August 3, 2016. [Membros do MST são presos com base na lei de organizações criminosas](#); Council on Hemispheric Affairs. June 7, 2016. [Criminalization of Social Movements in Brazil](#).

²⁷² Jota. October 18, 2016. [STJ mantém prisão de três integrantes do MST acusados de organização criminosa](#); Agência Br. October 18, 2016. [STJ mantém prisão preventiva de três integrantes do MST](#); Brasil de Fato. October 19, 2016. [La justicia concede habeas corpus a preso político del MST de Goiás](#).

²⁷³ Revista Forum. June 1, 2016. [Vídeo: PM agride mulher durante ato do MTST em São Paulo](#); G1. June 1, 2016. ['Não teve reação', diz jovem que levou mata-leão e foi presa em ato do MTST](#); Revista Exame. June 2, 2016. [Não teve resistência, teve indignação, diz agredida por PM](#).

²⁷⁴ G1. June 1, 2016. [Polícia atira bombas em manifestação do MTST na Avenida Paulista](#); Agência Brasil. June 1, 2016. [Polícia usa bombas e gás lacrimogêneo em manifestação do MTST na Paulista](#); O Estado de São Paulo. June 1, 2016. [Polícia dispersa MTST na Paulista com cassetetes e bombas e prende 6](#); Terra. June 1, 2016. [MTST ocupa sede da presidência em SP; PM reage com bombas](#).

²⁷⁵ Na Telinha. June 2, 2016. [Repórteres de Globo e CBN são agredidos em protesto do MTST em SP](#); Polêmica Paraíba. June 2, 2016. [Repórter da CBN é agredido em protesto do MTST](#); Associação Brasileira das Emissoras de Rádio e Televisão (Abert). [Relatório de Liberdade de Imprensa](#). 2016.

²⁷⁶ IACHR. June 20, 2013. [Press Release 44/13 IACHR Expresses Concern Over Arrests And Attacks On Demonstrators And Journalists During Protests In Brazil](#); 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. 108.

²⁷⁷ Associação Brasileira de Jornalismo Investigativo (Abraji). August 18, 2016. [Justiça de SP culpa fotógrafo por perder a visão de um olho após ser atingido pela polícia](#); Tribunal de Justiça do Estado de São Paulo. 10ª Vara da Fazenda Pública. Processo No. 1006058-86.2013.8.26.0053. Judgment of August 10, 2016. Available at: <http://s.conjur.com.br/dl/fotografo-culpado-tiro-deixou-cego.pdf>

²⁷⁸ Communication of the State of Brazil to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. Note No. 356 of November 18, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

²⁷⁹ El País. December 9, 2016. [Reforma do Ensino Médio reacende mobilização um ano após ocupações em São Paulo](#); BBC Brasil. October 28, 2016. ['Nunca tinha feito um discurso antes': quem é a estudante que viralizou ao defender ocupação de escolas no Paraná](#).

Constitutional Amendment [*Proposta de Emenda à Constituição*] (PEC) 241,²⁸⁰ which would limit public spending for the next 20 years, adversely affecting the education budget and other items. They also demonstrated against several proposals to interfere in the school curriculum, backed by the movement known as “*Escola Sem Partido*.”²⁸¹

201. During the hearing on student protests and human rights in São Paulo, held on April 8 during the 157th Session, the Commission received with concern the information presented by the requesting organizations about the “persistent and systematic situation of restriction and abuse of force against protests in Brazil,” involving assaults on demonstrators and journalists covering these events, as well as the use of an “excessive number” of police officers for these operations. According to reports, the victims of the disproportionate use of force by the police in many cases were children and adolescents who were taking part in student protests. The organizations reported that during the past three years there were more than 1,500 protests in Brazil, and that they had taken place in a “true context of repression.” Students who had taken part in the protests participated in the hearing and reported cases of abuses committed by police officers, as well as an attempt to silence their dissident voices. For its part, the Brazilian State indicated that the occupation of public space—in this case the schools—is not a right, and that police force had not been used to vacate the premises. It added that the discussion is not about the right to protest, but rather the right to occupy public property. It also stated that the demonstrators had not given prior notice to the authorities, which was necessary in order to keep the streets as clear as possible and, for instance, protect other people’s right to health by keeping access to hospitals unobstructed. The Special Rapporteur for Freedom of Expression, Edison Lanza, noted that the State has the obligation to facilitate demonstrations, and he asked what the protocols would be for handling those situations. The Special Rapporteur also stated that the use of criminal legal concepts like *desacato* is incompatible with the American Convention on Human Rights.²⁸²

202. On April 28, journalist Annie Zanetti of radio *CBN* was reportedly assaulted by Military Police officers while using her cell phone to film the student protest against the State’s governor in downtown São Paulo. According to reports, in spite of being identified as a journalist, a police officer sprayed her in the face with pepper spray.²⁸³

203. On April 28, the Paula Souza Center was reportedly occupied by students, who were protesting to demand improvements in the food served at the state Technical Schools [*Escolas Técnicas Estaduais*](ETECS).²⁸⁴ On May 2, the Military Police reportedly entered the building with a court order to retake possession of it, issued by Judge Fernão Borba Franco of the 14th Public Treasury Court [*14ª Vara de Fazenda Pública*]. However, the order allegedly had not been sent previously to the students. Therefore, Judge Luis Manuel Pires of the Central of Warrants of the Court of Justice [*Central de Mandados do Tribunal de Justiça*] ordered the police to leave the student-occupied building, and for the Secretary of Public Security of the State of São Paulo to clarify, within 72 hours, whether it had been responsible for executing the court order “in advance,” by deciding to have the Military Police enter the building without a court officer having

²⁸⁰ BBC Brasil. October 25, 2016. [Aprovada na Câmara, PEC 241 segue para o Senado: entenda as polêmicas do texto](#); El País. October 26, 2016. [Câmara aprova PEC 241, do teto de gastos, que agora segue para o Senado](#).

²⁸¹ G1. August 3, 2016. [Entenda a polêmica em torno do 'Escola sem Partido'](#); Carta Educação. September 5, 2016. [Escola Sem Partido, uma escola a favor da cultura da indiferença](#); Escola Sem Partido. Available at: <http://www.escolasempartido.org/>

²⁸² IACHR. 157 Period of Sessions. Hearing Student Protests and Human Rights in São Paulo. April 7, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/157/default.asp>; IACHR. [IACHR Wraps Up its 157th Session](#). April 2016; Artigo 19. April 5, 2016. [Audiência na CIDH irá denunciar Brasil por violência contra secundaristas](#).

²⁸³ Associação Brasileira das Emissoras de Rádio e Televisão (Abert). [Relatório de Liberdade de Imprensa](#). 2016; *CBN*. April 28, 2016. [Repórter da CBN é agredida por PM com spray de pimenta durante manifestação em SP](#); Associação Brasileira de Jornalismo Investigativo (Abraji). April 28, 2016. [PM ataca repórter da CBN com spray de pimenta em SP](#).

²⁸⁴ The Huffington Post. May 6, 2016. [Adolescentes arrastados e jornalista agredido em ocupação de estudantes em São Paulo. Só mais um dia para a PM](#); Diário do Centro do Mundo. May 6, 2016. [Repórter do DCM é ferido pela PM em reintegração de posse do Centro Paula Souza](#); Conversa Afiada. May 6, 2016. [Estudantes são arrastados pela Tropa de Choque](#); Portal Imprensa. May 6, 2016. [Repórter do DCM é agredido durante reintegração de posse do Centro Paula Souza](#); Associação Brasileira das Emissoras de Rádio e Televisão (Abert). [Relatório de Liberdade de Imprensa](#). 2016; Artigo 19. May 7, 2016. [Nota sobre a reintegração de posse do Centro Paula Souza](#).

given notice of the decision to the parties involved.²⁸⁵ On May 5, a new decision from the court reportedly prohibited the use of any type of weapons (lethal or non-lethal) by the Military Police during the removal of the demonstrators. It also ordered, *inter alia*, that the Secretary of Public Security [*Secretario de Segurança Pública*] had to be present in order to oversee the action in person. However, the Secretary of Public Security appealed that decision, managing to obtain an injunction as well as authorization for the police to enter the building without complying with the two aforementioned conditions.²⁸⁶ Accordingly, on May 6, the Military Police retook possession of the building and removed the students. Reporter Mauro Donato of *Diário do Centro do Mundo* was reportedly injured after being hit in the face with a nightstick by the Military Police while covering their actions during the operation. According to reports, the Military Police barred journalists and photographers from approaching the school.²⁸⁷

204. According to the information available, on May 10, the Office of the Attorney General of the state of São Paulo [*Procuradoria Geral do Estado*] issued a legal opinion [*parecer*] instructing the state secretariats to retake possession of public buildings occupied by demonstrators without court authorization. The Public Defender's Office of the state of São Paulo [*Defensoria Pública do Estado de São Paulo*] and the Brazilian Bar Association section São Paulo [*Ordem dos Advogados do Brasil seção São Paulo*] reportedly stated that the decision was "concerning." For its part, the government argued its "self-protection" right to possession, which was established in the law and allowed people to regain possession of their invaded properties.²⁸⁸ On May 13, the Military Police reportedly cleared out three regional education offices and a state technical school occupied by students in São Paulo. According to the information available, at least 50 youths were detained and taken to the police station.²⁸⁹ The Secretary of Public Security reportedly maintained that they were taken to provide statements and were later released.²⁹⁰

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

²⁸⁵ G1. May 2, 2016. [Juiz manda polícia sair de ocupação e dá 72 horas para secretário se explicar](#); ABCD Maior. May 3, 2016. [Alckmin terá de explicar invasão do Centro Paula Souza pela PM](#); Brasil 247. May 2, 2016. [Juiz diz que invasão foi ilegal e manda PM sair do Centro Paula Souza](#); Jornal Cruzeiro do Sul. May 2, 2016. [Após determinação da Justiça, PM deixa o Centro Paula Souza](#); R7. May 2, 2016. [Justiça pede explicações após entrada da PM sem ordem judicial no Centro Paula Souza](#).

²⁸⁶ Artigo 19. May 7, 2016. [Nota sobre a reintegração de posse do Centro Paula Souza](#); UOL. May 13, 2016. [Cerca de 50 alunos são levados para DP em "reintegração" sem ordem judicial](#).

²⁸⁷ Artigo 19. May 7, 2016. [Nota sobre a reintegração de posse do Centro Paula Souza](#); The Huffington Post. May 6, 2016. [Adolescentes arrastados e jornalista agredido em ocupação de estudantes em São Paulo. Só mais um dia para a PM](#); Diário do Centro do Mundo. May 6, 2016. [Repórter do DCM é ferido pela PM em reintegração de posse do Centro Paula Souza](#); Conversa Afiada. May 6, 2016. [Estudantes são arrastados pela Tropa de Choque](#); Portal Imprensa. May 6, 2016. [Repórter do DCM é agredido durante reintegração de posse do Centro Paula Souza](#); Associação Brasileira das Emissoras de Rádio e Televisão (Abert). [Relatório de Liberdade de Imprensa](#). 2016.

²⁸⁸ Folha de São Paulo. May 13, 2016. [Gestao Alckmin libera reintegracao de posse sem passar pelo judiciario](#); Consultor Jurídico (Conjur). May 13, 2016. [Estado pode retomar imóvel ocupado sem autorização judicial, diz PGE-SP](#); G1. May 13, 2016. [Especialistas divergem sobre parecer que aceita reintegração sem mandado](#); G1. May 13, 2016. [Governo Alckmin libera reintegração de posse sem decisão judicial](#); UOL. May 13, 2016. [Cerca de 50 alunos são levados para DP em "reintegração" sem ordem judicial](#); Justificando. May 14, 2016. [OAB-SP divulga nota contra a reintegração de posse sem ordem judicial](#); Brasil 247. May 14, 2016. [Secretário de Alckmin: desocupação de escolas foi 'legítima defesa'](#).

²⁸⁹ Justificando. May 13, 2016. [Governo de SP reintegra escolas com violência e sem ordem judicial](#); O Estado de São Paulo. May 13, 2016. [PM desocupa prédio da Etesp e diretorias sem autorização judicial](#); Brasil 247. May 13, 2016. [Polícia de São Paulo desocupa prédios e prende estudantes sem ordem judicial](#); G1. May 13, 2016. [PM desocupa escolas técnicas e alunos são levados a delegacias](#); Agência Brasil. May 13, 2016. [Polícia de São Paulo desocupa prédios e prende estudantes sem ordem judicial](#); Revista Exame. May 13, 2016. [PM desocupa Etesp e diretorias sem autorização judicial](#).

²⁹⁰ Revista Exame. May 13, 2016. [PM desocupa Etesp e diretorias sem autorização judicial](#); The Huffpost Brasil. May 13, 2016. [Ocupações são encerradas sem decisão judicial e Polícia Militar leva estudantes para delegacia](#); G1. May 13, 2016. [PM desocupa escolas técnicas e alunos são levados a delegacias](#).

Police officer.²⁹¹ According to reports, press photographer Marcelo Campos of *TV Globo* was hit with a police baton while filming the actions of the police officers who were allegedly beating students at the protest.²⁹²

206. This year in Brazil there were also protests against the Olympics and Paralympics, which were held in Rio de Janeiro in August and September. On August 5, during protests in São Paulo and Rio de Janeiro, confrontations were reported between demonstrators and the police. According to reports, in São Paulo the Military Police used pepper spray on the demonstrators and made them sit on the ground surrounded by a cordon of police officers. In addition, various individuals were reportedly detained. The police alleged that the demonstrators threw rocks and sticks at them, and had not provided the itinerary for the protest.²⁹³ According to reports, the demonstration in Rio de Janeiro was peaceful, and when the demonstrators were near the spot where they planned to end the march, the Military Police used tear gas and pepper spray to disperse the crowd.²⁹⁴ The confrontation between the police and the demonstrators reportedly occurred after demonstrators burned a Brazilian flag.²⁹⁵ At least one person was reportedly detained during the protest in Rio de Janeiro.²⁹⁶

207. According to public information, demonstrators and journalists were arrested during the protests held in late August and early September in São Paulo in opposition to the impeachment proceedings against Rouseff, and there were allegations of excessive use of force by the Military Police against demonstrators and journalists. On August 29, demonstrators at the protest in downtown São Paulo were reportedly subjected to non-lethal bombs and tear gas by the state Military Police. They were also reportedly hit by a water cannon mounted on a Military Police truck. Numerous people were reportedly injured as a result. According to reports, the Military Police justified their actions on the argument that the route followed by the demonstrators had not been reported in advance.²⁹⁷

208. Similarly, at the demonstrations held on August 30 and 31, there were reports of new incidents of police violence against demonstrators and new arrests. On August 31, student Deborah Fabri—who was taking part in the demonstration—was allegedly injured by fragments of a non-lethal bomb thrown by Military Police, losing sight in her left eye. In addition, two journalists who were documenting the protest on *Consolação* Street were reportedly detained and the camera belonging to one of them was damaged. According to the information available, the journalists were detained on charges of assaulting law enforcement officers, which they denied. One of them also stated that he had been assaulted.²⁹⁸

²⁹¹ O Estado de São Paulo. May 18, 2016. [Protesto de estudantes tem confronto com a PM no centro de SP](#); Jornal Cruzeiro do Sul. May 19, 2016. [Jornalistas são agredidos pela PM em manifestação em São Paulo](#).

²⁹² Jornal Cruzeiro do Sul. May 19, 2016. [Jornalistas são agredidos pela PM em manifestação em São Paulo](#); G1. May 20, 2016. [Abert crítica agressão a jornalistas durante protesto na quarta em SP](#); Folha de São Paulo. May 19, 2016. [Jornalistas são agredidos pela PM em manifestação no centro de São Paulo](#).

²⁹³ G1. August 5, 2016. [Polícia detém manifestantes em ato contra Olimpíada região central de SP](#); Agência Brasil. August 5, 2016. [PM paulista reprime com cassetetes e spray de pimenta protesto contra Olimpíada](#); Folha de São Paulo. August 5, 2016. [Ato contra a Olimpíada termina com gás lacrimogêneo e detidos em SP](#); Artigo 19. August 7, 2016. [Repressão policial marca protestos contra legado negativo da Olimpíada](#).

²⁹⁴ Artigo 19. August 7, 2016. [Repressão policial marca protestos contra legado negativo da Olimpíada](#); Agência Brasil. August 5, 2016. [Protesto contra os Jogos termina em confronto com a PM no Rio](#); G1. August 5, 2016. [Manifestantes protestam em praça de bairro próximo ao Maracanã](#); The Intercept Brasil. August 6, 2016. [Cariocas protestam contra legado negativo dos Jogos no Rio](#).

²⁹⁵ Agência Brasil. August 5, 2016. [Protesto contra os Jogos termina em confronto com a PM no Rio](#); G1. August 5, 2016. [Manifestantes protestam em praça de bairro próximo ao Maracanã](#); The Intercept Brasil. August 6, 2016. [Cariocas protestam contra legado negativo dos Jogos no Rio](#).

²⁹⁶ Artigo 19. August 7, 2016. [Repressão policial marca protestos contra legado negativo da Olimpíada](#); G1. August 5, 2016. [Manifestantes protestam em praça de bairro próximo ao Maracanã](#).

²⁹⁷ Artigo 19. August 31, 2016. [Em conjuntura polarizada, direito de protesto deve ser assegurado](#); Brasil de Fato. August 29, 2016. [Em SP polícia militar reprime com violência manifestantes contra o golpe](#); O Estado de São Paulo. August 29, 2016. [Polícia usa bombas para dispersar ato contra impeachment](#); Sul 21. August 30, 2016. [Em São Paulo, polícia responde com violência ao pedido de democracia](#); Agência Brasil. August 29, 2016. [PM usa bombas e água para reprimir protesto na Avenida Paulista](#).

²⁹⁸ Artigo 19. August 31, 2016. [Em conjuntura polarizada, direito de protesto deve ser assegurado](#); G1. September 1, 2016. [Ferida em ato contra Temer em SP diz que perdeu a visão do olho esquerdo](#); O Dia. September 1, 2016. [Estudante atingida em protesto contra governo](#)

209. With respect to the demonstration held on September 1, there was a video report of a Military Police vehicle intentionally running over a demonstrator taking part in the protest. Later, the demonstrator was handcuffed and placed inside the police vehicle. The Ombudsman's Office of the Military [*Ouvidoria da Polícia Militar*] Police of São Paulo reportedly concluded that the Military Police struck the demonstrator intentionally.²⁹⁹ In addition, photographer Fernando Fernandes reportedly sustained an injury to his mouth when he was hit by a rubber bullet.³⁰⁰

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

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

[Temer perde visão do olho esquerdo](#); El País. September 7, 2016. [Um dia após violência policial, PM reafirma práticas e entidades civis protestam](#); G1. September 1, 2016. [Ouvidoria vai pedir para MP apurar ação da PM que feriu manifestante](#).

²⁹⁹ R7. September 2, 2016. [Exclusivo: imagens mostram viatura da PM avançando sobre manifestante em SP](#); G1. September 1, 2016. [Vídeo mostra carro avançando sobre manifestantes no Centro de SP](#); Alagoas 24 horas. September 6, 2016. [PM atropelou manifestante de propósito, diz ouvidoria](#); Região Noroeste. September 6, 2016. [PM atropelou manifestante de propósito, diz ouvidoria](#).

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

³⁰¹ El País. September 7, 2016. [Um dia após violência policial, PM reafirma práticas e entidades civis protestam](#); Revista Fórum. September 5, 2016. [Minority Report: Jovens foram detidos por crimes que “iriam cometer”](#); Secretaria da Segurança Pública do Estado de São Paulo. September 5, 2016. [Dezesseis detidos com máscaras e pedras são indiciados por associação criminosa](#); Sindicato dos Jornalistas de São Paulo. September 5, 2016. [Violência contra manifestantes será denunciada à OEA](#); Nexo. September 5, 2016. [Por que 26 pessoas foram presas antes do ato de domingo em São Paulo](#); Secretaria da Segurança Pública do Estado de São Paulo. September 4, 2016. [Nota à imprensa](#); Viomundo. September 4, 2016. [Em manifestação pacífica, milhares lotam a Paulista para pedir Fora Temer: PM acerta gás em parlamentares e bala de borracha em ex-presidente do PSB: veja as imagens](#); Human Rights Watch. September 7, 2016. [Brazil: Guarantee Protesters' Rights](#); Ponte. September 7, 2016. [Human Rights cobra 'direito de manifestantes' do governo brasileiro](#).

³⁰² Ponte. September 9, 2016. [“Infiltrado do Tinder” que espionava manifestantes é capitão do Exército](#); G1. September 10, 2016. [Presença de capitão do Exército entre manifestantes presos é investigada](#); The Huffpost Brasil. September 9, 2016. [Infiltrado do Exército no Tinder é apontado como delator de manifestantes presos no 'Fora Temer'](#); El País. September 9, 2016. [Apontado como infiltrado por manifestantes é capitão do Exército](#).

³⁰³ El País. September 9, 2016. [Apontado como infiltrado por manifestantes é capitão do Exército](#); G1. September 23, 2016. [Exército admite realizar 'operações de inteligência' em manifestações de rua](#); Brasil 247. September 10, 2016. [Apontado como infiltrado no tinder pela PM é capitão do Exército](#); Ponte. September 8, 2016. [Governo Alckmin infiltrou PM em Tinder para prender manifestantes, dizem vítimas](#); Brasil de Fato. September 23, 2016. [Exército admite realização de operações de inteligência em protestos](#).

³⁰⁴ TV Gazeta. September 5, 2016. [Justiça libera manifestantes detidos antes de ato contra Temer](#); G1. September 5, 2016. [Justiça de SP libera manifestantes detidos antes de ato contra Temer](#).

³⁰⁵ O Tempo. September 4, 2016. [Após ato sem confusões, PM atira bombas contra manifestantes em SP](#); Folha de São Paulo. September 4, 2016. [Manifestantes fazem novo protesto contra Temer e pedem novas eleições](#); UOL. September 4, 2016. [Após caminhada pacífica,](#)

Eleven of Rio de Janeiro reportedly sustained a leg injury from a rubber bullet.³⁰⁶ In addition, *BBC Brazil* reporter Felipe Souza was allegedly assaulted by four police officers who hit him with their batons while he was covering the demonstration in São Paulo, even though he had identified himself as a journalist. According to reports, Souza was wearing a photographer's vest with press credentials. The Secretary of Public Security of the state of São Paulo stated that the events alleged by the journalist would be investigated and asked him to file an incident report [*boletim de ocorrência*].³⁰⁷

212. On September 7, journalist Leandro Prazeres and cameraman Kleyton Amorim, both of *UOL*, were reportedly physically and verbally assaulted by demonstrators while conducting an interview during a protest in Brasília against the government of President Temer.³⁰⁸

213. With respect to those demonstrations held in late August and early September in São Paulo, the Special Human Rights Secretariat of Brazil maintained in a public statement issued on September 9 that, "the rights to peaceful assembly and to freedom of expression are enshrined in article 5(XVI) and (IV) of the Federal Constitution, as well as in articles 19 and 21 of the International Covenant on Civil and Political Rights and articles 13 and 15 of the American Convention on Human Rights – international protection instruments ratified by Brazil in 1992. Those rights are a condition, requirement, and onus of the democratic system. Freedom of expression, the right to peaceful assembly, to hold demonstrations without violence or destruction, and public criticism are essential components of democracy, which assumes divergence and dissent, in a plural environment. Resorting to violent methods in the exercise of the rights of assembly and freedom of expression is incompatible with the exercise of democracy."³⁰⁹ In addition, the Special Human Rights Secretariat noted "the importance of the Basic Principles on the Use of Force by Law Enforcement Officers. Pursuant to article 30 of the Code of Conduct for Law Enforcement Officers, the use of force is admissible only 'when strictly necessary and to the extent required for the performance of their duties.' The use of force by law enforcement officers must be evaluated with the proper respect for the human rights of demonstrators, human rights defenders, and media professionals. The States must ensure that the potential arbitrary use or abuse of force is properly investigated, prosecuted, and penalized. The principles of proportionality, reasonableness, and moderation in the use of force, with respect for human rights, are fundamental for the democratic rule of law, based on the culture of non-violence, dialogue, respect, pluralism, and peace."³¹⁰

214. On September 28, the Office of the Attorney of the state of São Paulo [*Ministério Público do Estado de São Paulo*] held a public hearing to listen to the accounts of journalists who were assaulted or whose journalistic work was restricted by the Military Police during demonstrations or public events. The hearing was held by the Office of the Attorney General [*Ministério Público*] in conjunction with the *Sindicato dos Jornalistas do Estado de São Paulo*, the *Fórum Brasileiro de Segurança Pública*, *Artigo 19, Sou da Paz*, and *Núcleo de Estudos da Violência da Universidade de São Paulo* (USP). 18 testimonies were officially received by the Office of the Human Rights Prosecutor [*Promotoria de Justiça dos Direitos Humanos*] and will reportedly

[protesto em SP acaba com bombas e vandalismo](#); G1. September 5, 2016. [Polícia detém 26 pessoas antes do protesto contra Temer em SP](#); Brasil 247. September 4, 2016. [Depois de ato pacífico, PM joga bombas nas pessoas que vão para casa](#).

³⁰⁶ *UOL*. September 4, 2016. [Domingo é marcado por protestos contra Temer e por "diretas já"](#); Associação Brasileira de Jornalismo Investigativo (Abraji). September 5, 2016. [Casos de jornalistas atingidos em manifestações chegam a 291](#).

³⁰⁷ Portal Imprensa. September 5, 2016. [Repórter da BBC Brasil é agredido por policiais durante protesto contra Temer em SP](#); Portal Imprensa. September 6, 2016. [Entidades condenam agressões a profissionais de imprensa em protestos](#); G1. September 5, 2016. ['Sai, lixo': repórter da BBC Brasil é agredido por policiais durante cobertura de protesto em SP](#); Associação Brasileira de Jornalismo Investigativo (Abraji). September 5, 2016. [Casos de jornalistas atingidos em manifestações chegam a 291](#).

³⁰⁸ Associação Brasileira de Internet (Abranet). September 8, 2016. [Abranet repudia agressão a jornalistas do UOL](#); *UOL*. September 7, 2016. [Equipe de reportagem do UOL é agredida por manifestantes anti-Temer em Brasília](#); Portal Imprensa. September 8, 2016. [Repórter e cinegrafista do UOL são agredidos durante protesto em Brasília \(DF\)](#); Folha de São Paulo. September 7, 2016. [Jornalistas do UOL são agredidos em ato e empresa emite nota de repúdio](#).

³⁰⁹ Secretaria Especial de Direitos Humanos – Ministério da Justiça e Cidadania. [Nota pública sobre as manifestações](#). September 6, 2016.

³¹⁰ Secretaria Especial de Direitos Humanos – Ministério da Justiça e Cidadania. [Nota pública sobre as manifestações](#). September 6, 2016.

be included in the civil inquiry [*inquérito civil*] that the office opened at the end of June. According to reports, in most of the testimonies the reporters stated that they believed that since the 2013 demonstrations journalists have become the object of violent police actions because they have publicize the way in which state agents have behave during the protests. According to the information available, these cases will be referred to the offices of the criminal prosecutors of the Office of the Attorney General [*Promotorias Criminais do Ministério Público*] (MP). At the end of the hearing, the MP reportedly provided the opportunity for the police to speak, but no police representative was present.³¹¹

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

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

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

³¹¹ Brasil 247. September 29, 2016. [MP de São Paulo ouve relatos de jornalistas agredidos pela PM em manifestações](#); Agência Brasil. September 29, 2016. [MP de São Paulo ouve relatos de jornalistas agredidos pela PM em manifestações](#); Terra. September 29, 2016. [MP-SP ouve relatos de jornalistas agredidos pela PM](#); Ministério Público do Estado de São Paulo. September 28, 2016. Press release on the public hearing held on September 28 with journalists who were assaulted or whose journalistic work was restricted by the Military Police during demonstrations or public events. Available at: http://www.mpsp.mp.br/portal/page/portal/noticias/publicacao_noticias/noticias_2016/2016_setembro/Jornalistas%20foram%20ouvidos%20na%20sede%20do%20Minist%C3%A9rio%20P%C3%ABlico

³¹² Communication of the State of Brazil to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. Note No. 356 of November 18, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

³¹³ Communication of the State of Brazil to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. Note No. 356 of November 18, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

³¹⁴ Communication of the State of Brazil to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. Note No. 356 of November 18, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

policia militar] (IPM) was opened. Similarly, an IPM was filed concerning a demonstrator who was allegedly struck by a Military Police vehicle. With respect to the arrests of the 26 individuals on September 4, the State indicated that the State Department of Criminal Investigations [*Departamento Estadual de Investigações Criminais*] (DEIC) cited two incident reports. The first one was written up by the 1st Police Station of the General Investigations Division [*1ª Delegacia de Polícia da Divisão de Investigações Gerais*], and alleged the commission of the offenses of “conspiracy” [*associação criminosa*] and “the corruption of minors” [*corrupção de menores*] by 21 individuals—18 adults and 3 adolescents. These incidents are reportedly the subject of a police investigation that it is in its concluding phase. The second incident report was written up by the 2nd Police Station of the General Investigations Division [*2ª Delegacia de Polícia da Divisão de Investigações Gerais*], and pertains to “criminal conduct involving the offenses of criminal conspiracy and receipt of stolen property” [*ato infracional versando sobre associação criminosa e receptação*], allegedly perpetrated by five adolescents. The Judicial Police Department of the Capital [*Departamento de Polícia Judiciária da Capital*] reported that its subordinate police stations had registered seven incidents related to the events that occurred in August and September.³¹⁵

218. On October 19, Judge Valentino Aparecido de Andrade of the 10th Public Treasury Court [*10ª Vara de Fazenda Pública*] of the Court of Justice of São Paulo found the state of São Paulo liable for the acts of violence that took place during eight demonstrations in São Paulo in 2013. The judge ordered the state to pay collective non-pecuniary damages [*dano moral coletivo*] of BRL\$ 8 million (approximately US\$ 2 million 300 thousand) and to devise a plan of action for police in the context of protests. The decision also prohibited the use of firearms, rubber bullets and tear gas, allowing them only in “extremely exceptional” situations in which the protest “completely” loses its peaceful nature. In that judgment, which ruled the public civil action filed in April 2014 by the Public Defender’s Office of the state of São Paulo partially admissible, the judge stated that “the state cannot be the repressive agent that, on the pretext of protecting public safety, and acting with excess, creates the suitable conditions for the protest to become aggressive, thus acting as the real cause of violence involving demonstrators.”³¹⁶ He affirmed that, “the element that gave rise to the violence at the protests was the lack of training on the part of the Military Police.” The judge gave the state 30 days to comply with the judgment, and ordered the imposition of a fine of BRL\$ 100 thousand (approximately US\$ 29 thousand) per day in the event of noncompliance.³¹⁷ On November 7, the Court of Justice of São Paulo [*Tribunal de Justiça do Estado de São Paulo*] (TJ-SP) stayed the trial court’s decision. According to the Chief Judge of the TJ-SP, “Standardizing and bureaucratizing specific conduct, and in such a thorough manner, hindering the action of the Military Police and even preventing them from using means of defense, as the Public Defender’s Office intends, jeopardizes public safety and order, as well as the lives and safety of the public and the Military Police officers themselves.”³¹⁸ At the closing of this report, the case is allegedly pending a decision by the Special Division of the Court of Justice [*Corte Especial do Tribunal de Justiça*].³¹⁹

³¹⁵ Communication of the State of Brazil to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. Note No. 356 of November 18, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

³¹⁶ Tribunal de Justiça do Estado de São Paulo. 10ª Vara de Fazenda Pública. Ação Civil Pública No. 1016019-17.2014.8.26.0053. Judgment of October 19, 2016. Available at: <https://esaj.tjsp.jus.br/esaj/portal.do?servico=190090> and <http://ponte.cartacapital.com.br/wp-content/uploads/2016/10/BcAYZF5z.pdf>

³¹⁷ Artigo 19. October 20, 2016. [Justiça condena Estado de São Paulo por violência policial em manifestações](#); Agência Brasil. October 20, 2016. [Nova decisão judicial proíbe uso de bala de borracha em protestos em São Paulo](#); Defensoria Pública do Estado de São Paulo. October 20, 2016. [Defensoria Pública de SP obtém sentença que condena Estado por violência policial em manifestações de 2013](#). Available at: <https://www.defensoria.sp.def.br/dpesp/Default.aspx?idPagina=3086>; O Globo. October 19, 2016. [Justiça condena estado de SP por violência policial em manifestações de 2013](#); Repórter Diário. October 20, 2016. [Justiça condena Estado de SP a pagar R\\$ 8 mi por violência policial em protestos](#).

³¹⁸ G1. November 8, 2016. [Justiça volta a permitir uso de bala de borracha em manifestações em SP](#); R7. November 8, 2016. [Justiça de SP volta a permitir uso bala de borracha por PM em manifestações](#); O Estado de São Paulo. November 8, 2016. [Justiça de SP volta a permitir bala de borracha e gás em manifestações](#); Artigo 19. November 9, 2016. [ARTIGO 19 repudia fim de restrição do uso de armas menos letais em protestos](#).

³¹⁹ Communication of the State of Brazil to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. Note No. 356 of November 18, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

219. In October, nearly one year after the occupations of the public schools in São Paulo to protest the state government's proposed educational reorganization, there were new reports of school takeovers in different places around the country. According to the information received, at least 1000 schools around the country were occupied, at least 800 of them in the state of Paraná. The new occupation movement was reportedly in response, among other things, to the secondary education reform bill in Brazil and proposed Constitutional Amendment [*Proposta de Emenda à Constituição*] (PEC) 241/2016, which would allegedly limit public spending for the next 20 years, affecting the education budget.³²⁰ About this particular, during the 159 Extraordinary Period of Sessions the civil society organizations reported an excessive use of force by the police in breaking up these demonstrations. The organizations denounced a setback in economic, social and cultural rights is linked to a scenario of violations of civil and political rights, such as the rights to freedom of expression and association.³²¹

220. On October 30, Judge Alex Costa de Oliveira of the Juvenile Court for the Federal District and Territories [*Vara da Infância e da Juventude do Distrito Federal e dos Territórios*] authorized the Military Police to force protesters out of the Asa Branca School [*Centro de Educação Asa Branca*] (Cemab) in the city of Taguatinga, Brasília, by cutting off the water, electricity, and gas service, and by blocking food deliveries and access by third parties to the premises – especially relatives and friends of the demonstrators. They also directed noise devices at the occupied premises continually, “to keep them from sleeping.” According to reports, the school was occupied by students who opposed a proposed amendment to the Federal Constitution [*Proposta de Emenda à Constituição*] (PEC 241). According to reports, the school was peacefully vacated on November 1.³²²

221. On November 2, photojournalist Marlene Bergamo of *Folha de São Paulo* was reportedly struck in the abdomen by a rubber bullet. According to the information available, in spite of having identified herself as a journalist, Bergamo was allegedly hit while investigating a Military Police action to remove a group of homeless people who were occupying a building in the central region of São Paulo.³²³

222. In addition, the Office of the Special Rapporteur has monitored legislative initiatives that may infringe upon the exercise of the right to freedom of expression in Brazil. Law 13.260/2016, known as the Anti-terrorism Law, was enacted in March.³²⁴ That law was an initiative of the Executive Branch and vigorously challenged by civil society on the grounds that its provisions are vague and ambiguous and may criminalize social movements and affect the right to protest. The final text was approved without some provisions that were vetoed by then-President Rousseff, including the article that made “advocating

³²⁰ Ocupa Paraná. Available at: <http://ocupaparana.org/>; El País. October 31, 2016. *MBL monta contraofensiva para desocupar escolas no Paraná*; BBC Brasil. October 28, 2016. *'Nunca tinha feito um discurso antes': quem é a estudante que viralizou ao defender ocupação de escolas no Paraná*; Catve. October 20, 2016. *Balanço aponta que mais 800 escolas estão ocupadas no Paraná*; Playground Artículos. November 15, 2016. *“Firme!”, el grito de guerra de las escuelas ocupadas en Brasil*; BBC Brasil. September 24, 2016. *5 polémicas sobre a nova reforma do Ensino Médio*; El País. September 23, 2016. *Apresentado às pressas, plano de Temer para ensino médio acende debate entre especialistas*.

³²¹ IACHR. December 7, 2016. *Anexo al Comunicado de Prensa emitido al culminar el 159 Período de Sesiones*; IACHR. 159 Period of Sessions. Hearing on Human Rights and Legislative Reform in Brazil. December 6, 2016. Available at: <https://www.youtube.com/watch?v=PVOs4W8PWc>

³²² Terra. November 1, 2016. *Juiz determina desocupação de escola no DF causa polêmica*; BOL. November 1, 2016. *Decisão de juiz para desocupação de escola no DF causa polêmica*; Brasil 247. November 1, 2016. *Juiz autoriza tortura para desocupação de colégio em Taguatinga*; The Huffpost Brasil. November 1, 2016. *Juiz autoriza técnicas de tortura da CIA para desocupar escola no Distrito Federal*; O Globo. November 1, 2016. *PM desocupa escola em Taguatinga, no Distrito Federal*; Correio Braziliense. November 1, 2016. *PM cumpre mandado de desocupação do Colégio Cemab, em Taguatinga*.

³²³ Associação Brasileira de Jornalismo Investigativo (Abraji). November 2, 2016. *Fotógrafa é atingida à queima-roupa por bala de borracha em SP*; Portal Imprensa. November 3, 2016. *Fotógrafa da "Folha" é atingida por bala de borracha durante desocupação em SP*; O Diário. November 2, 2016. *PM expulsa sem-teto de ocupação no centro de SP; fotógrafa fica ferida*.

³²⁴ Brasil. Presidência da República. *Law N° 13.260*. March 16, 2016; Espacio Público. March 16, 2016. *Alianza Regional rechaza la aprobación de Ley Antiterrorista en Brasil*; El Diario/EFE. March 19, 2016. *Rousseff sanciona la ley antiterrorista con vetos pero sin satisfacer a los críticos*.

terrorism” [*apologia ao terrorismo*] punishable by a term of imprisonment.³²⁵ Regulations classifying damage to public or private property and the sabotage of data bank information systems as terrorist practices was also removed.³²⁶ In spite of those measures, at the close of this report two legislative bills (PL 5065/2016 and PLS 272/2016) were pending in the National Congress that reportedly seek, *inter alia*, to enact provisions that have been vetoed by Rousseff.³²⁷

223. On May 4, the Conversion Bill [*Projeto de Lei de Conversão*] was adopted with respect to Provisional Measure [*Medida Provisória*] 699/2015, which increased the penalty for using vehicles to block public thoroughfares, thus amending the Brazilian Traffic Code (Law No. 9.503 of September 23, 1997) and Law No. 13.146 of July 6, 2015. The bill will take effect as Law 13.281/2016.³²⁸ This law provides for a fine of \$BRL 3 thousand 830 (approximately US\$ 1 thousand) and the suspension of the privilege to drive for 12 months.³²⁹ In addition, Law 13.284, known as the Olympics Law, was signed into law in May by then-President Rousseff. The law was harshly criticized by civil society because, among other reasons, it prohibited, in official sites of the Olympic Games, the display of flags, symbols, or other signs with content considered “offensive” in public places.³³⁰

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

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

³²⁵ Global Voices. April 27, 2016. [Brasil sancionó su primera ley antiterrorista](#); El Diario/EFE. March 19, 2016. [Rousseff sanciona la ley antiterrorista con vetos pero sin satisfacer a los críticos](#).

³²⁶ Global Voices. April 27, 2016. [Brasil sancionó su primera ley antiterrorista](#); El Diario/EFE. March 19, 2016. [Rousseff sanciona la ley antiterrorista con vetos pero sin satisfacer a los críticos](#).

³²⁷ Artigo 19. August 1, 2016. [Nota de repúdio aos PLs que querem agravar a Lei Antiterrorismo](#); Brasil Câmara dos Deputados. [PL 5065/2016](#). April 26, 2016; Brasil. Senado Federal. [Projeto de Lei do Senado No. 272 de 2016](#).

³²⁸ Brasil. Presidência da República. [Law No. 13.281](#). May 4, 2016.

³²⁹ Brasil. Câmara dos Deputados. March 22, 2016. [Plenário aprova MP que amplia punição para a interrupção de vias públicas](#); Agência Brasil. March 22, 2016. [Câmara aprova MP que aumenta punição para quem bloquear vias públicas](#).

³³⁰ Brasil. Presidência da República. [Law No. 13.284](#). May 10, 2016; Artigo 19. May 3, 2016. [Lei Geral das Olimpíadas é um retrocesso para a Democracia que ainda pode ser barrado](#).

³³¹ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

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. 139.

³³³ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

under the Declaration and the American Convention.³³⁴

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

E. Subsequent Liability

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

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

³³⁴ 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.

³³⁵ IACHR. Annual Report 2015. Chapter IV.A (The Use of Force). Available at: <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/informeannual2015-cap4a-fuerza-en.pdf>

³³⁶ Folha de São Paulo. March 1, 2016. [PF prende executivo do Facebook por empresa não liberar dados do WhatsApp](#); G1. March 1, 2016. [Polícia prende vice-presidente do Facebook na América Latina em SP](#); BBC. March 2, 2016. [Executivo do Facebook é libertado em SP](#).

³³⁷ O Popular. March 2, 2016. [Revogada prisão do executivo do Facebook detido ontem em São Paulo](#); BBC. March 2, 2016. [Executivo do Facebook é libertado em SP](#); Agencia EFE. March 2, 2016. [Revogada prisão do executivo do Facebook detido ontem em São Paulo](#).

³³⁸ G1. May 2, 2016. [WhatsApp deve ser bloqueado por 72 horas, ordena Justiça](#); Folha de São Paulo. May 2, 2016. [WhatsApp sai do ar por 72 horas no Brasil por determinação da Justiça](#).

³³⁹ Brasil 247. May 3, 2016. [Justiça de Sergipe revê decisão e libera WhatsApp](#); Folha de São Paulo. May 3, 2016. [Justiça de Sergipe libera WhatsApp no Brasil, e operadoras retomam serviço](#).

³⁴⁰ UOL. May 3, 2016. [Justiça nega recurso e mantém bloqueio do WhatsApp](#); TNH1. May 3, 2016. [Desembargador nega recurso e WhatsApp permanece suspenso](#).

229. For the fourth time in less than two years, the instant messaging service WhatsApp was blocked by a court order in Brazil. On July 19, Judge Daniela Barbosa de Souza of the 2nd Criminal Court for the District of Duque de Caxias [2^a Vara Criminal da Comarca de Duque de Caxias], Rio de Janeiro, ordered the telephone companies to temporarily suspend access to the instant messaging app WhatsApp in Brazil. The judge additionally assessed a fine of BRL\$ 50 thousand (approximately US\$ 15 thousand) per day against Facebook, the company that controls WhatsApp. The court order was issued after the company refused to share information related to criminal investigations. According to the company, it did not have the requested information in its possession, because in April it had implemented an encryption system in the messaging service. The same day, July 19, the chief justice of the Supreme Court of Brazil [Supremo Tribunal Federal] (STF), Ricardo Lewandowski, set aside the decision of Judge Daniela Barbosa de Souza.³⁴¹

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

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

³⁴¹ Artigo 19. July 19, 2016. [Nota de repúdio ao bloqueio do WhatsApp no Brasil](#); G1. July 19, 2016. [WhatsApp: Justiça do RJ manda bloquear aplicativo em todo o Brasil](#); Folha de São Paulo. July 19, 2016. [Justiça do Rio determina bloqueio do WhatsApp no Brasil](#); BBC Brasil. July 19, 2016. [STF suspende bloqueio do WhatsApp: Em tenda as polêmicas do aplicativo no mundo](#).

³⁴² Jornal GGN. June 7, 2016. [No Paraná, Gazeta do Povo sofre retaliação de juízes e promotores](#); O Globo. September 7, 2016. [Juízes do Paraná movem 36 ações contra jornal e repórteres](#); Artigo 19. September 8, 2016. [ARTIGO 19 repudia ações judiciais contra jornalistas do Paraná](#).

³⁴³ Jota. July 1, 2016. [Ministra suspende ações de juízes do Paraná contra jornal](#); G1. July 1, 2016. [Rosa Weber revê decisão e suspende ações contra jornalistas no Paraná](#); Migalhas. July 1, 2016. [Rosa Weber suspende ações de juízes do PR contra jornalistas da Gazeta do Povo](#); Gazeta do Povo. July 1, 2016. [STF suspende trâmite de ações de juízes contra a Gazeta do Povo](#); O Povo. July 1, 2016. [Rosa Weber suspende todas as ações de juízes do Paraná contra jornalistas](#).

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

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

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

234. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of IACHR establishes: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.”

F. Confidentiality of Sources

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

³⁴⁴ Folha de São Paulo. October 24, 2016. [Jornalista é processado após divulgar salário de funcionário público em MS](#); MS Diário. October 6, 2016. [Jornalista é processado por revelar super salário de servidor público em Corumbá](#); Folha MS. March 16, 2016. [Portal da Transparência revela comissionados com supersalários de até R\\$ 32 mil na Câmara de Corumbá](#); Consultor Jurídico (Conjur). November 4, 2016. [Jornalista é processado por informar supersalário de servidor municipal](#); Associação Brasileira de Jornalismo Investigativo (Abraji). November 8, 2016. [Justiça criminal baiana condena jornalista por difamação](#).

³⁴⁵ Reporters Without Borders (RSF). November 9, 2016. [Brasil: jornalista condenado a 6 meses e 6 dias de prisão por difamação](#); Consultor Jurídico (Conjur). November 5, 2016. [Por conduta “censurável”, jornalista é condenado à prisão na Bahia](#); UOL. February 9, 2011. [Jornalistas de “A Tarde” fazem greve na BA após demissão de repórter](#); Associação Brasileira de Jornalismo Investigativo (Abraji). November 8, 2016. [Justiça criminal baiana condena jornalista por difamação](#); Embargos de Declaração no processo No. 0053399-43.2011.805.0001. November 3, 2016. Available at: <http://s.conjur.com.br/dl/jornalista-condenado-noticiar.pdf>; Consultor Jurídico (Conjur). November 12, 2016. [Condenado duas vezes à prisão, jornalista ainda é réu pela mesma notícia](#); Portal Imprensa. November 7, 2016. [Jornalista que denunciou crimes ambientais na Bahia é condenado à prisão](#).

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

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

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

³⁴⁶ Folha de São Paulo. October 9, 2016. [Entidades repudiam quebra de sigilo telefônico de jornalista da 'Época'](#); *Época*. October 11, 2016. [Desembargador cobra explicações da juíza que quebrou sigilo de jornalista de ÉPOCA](#); Tribunal Regional Federal da Primeira Região. Judgment on Habeas Corpus action 0059991-77.2-16.4.01.0000/DF. October 10, 2016. Available at: <http://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2016/10/sigiloepoca.pdf>; O Estado de São Paulo. October 11, 2016. [Desembargador quer saber quais os 'fundamentos' para quebra do sigilo de jornalista](#); Jota. October 10, 2016. [TRF-1 vai decidir sobre quebra de sigilo telefônico de jornalista](#); Brasil 247. October 8, 2016. [Juíza quebra sigilo telefônico de jornalista de Época](#); G1. October 8, 2016. [Associações repudiam quebra de sigilo telefônico de jornalista da Época](#); Associação Brasileira de Imprensa (ABI). October 10, 2016. [ABI repudia quebra de sigilo telefônico da revista Época](#); Associação Brasileira de Emissoras de Rádio e Televisão (Abert). October 8, 2016. [Nota de Repúdio](#); Associação Brasileira de Jornalismo Investigativo (Abraji). October 9, 2016. [Tentativa de quebra de sigilo da fonte é absurda, diz Abraji](#).

³⁴⁷ *Época*. October 11, 2016. [Desembargador cobra explicações da juíza que quebrou sigilo de jornalista de ÉPOCA](#); Tribunal Regional Federal da Primeira Região. Judgment on Habeas Corpus action 0059991-77.2-16.4.01.0000/DF. October 10, 2016. Available at: <http://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2016/10/sigiloepoca.pdf>; O Tempo. No date. [Fundamentos da quebra](#).

³⁴⁸ *Época*. October 26, 2016. [Justica suspende quebra de sigilo de jornalista de ÉPOCA](#); O Estado de São Paulo. October 27, 2016. [Desembargador cassa quebra de sigilo do jornalista de ÉPOCA](#); O Diário. October 26, 2016. [Tribunal suspende quebra de sigilo telefônico de jornalista](#); O Globo. October 26, 2016. [Desembargador suspende quebra de sigilo de repórter da revista Época](#).

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

³⁵⁰ Associação Brasileira de Imprensa (ABRI). December 1, 2016. [ABI: quebra de sigilo telefônico viola Constituição](#); Portal dos Jornalistas. December 1, 2016. [Justica determina quebra de sigilo telefônico da jornalista Andreza Matais](#); *Época*. November 30, 2016. [Justica manda quebrar sigilo telefônico de jornalista para revelar fonte em denúncia](#).

³⁵¹ Diário Comércio Indústria & Serviços. December 2, 2016. [Juiz revoga autorização para quebra de sigilo telefônico de jornalista](#); Knight Center for Journalism in the Americas. November 30, 2016 (updated on December 2, 2016). [Brazilian judge revokes authorization to access journalist's phone records](#).

G. Freedom of Expression in Electoral Contexts

238. On August 16, journalist José Maria Portilho Borges was reportedly detained in the city of Patrocínio, state of Minas Gerais, after Judge Ana Régia Santos Chagas of the 211th Electoral District of Minas Gerais [211^a Zona Eleitoral de Minas Gerais] ordered his pretrial detention for “conduct violating the honor of another and flagrant disregard for the law and court decisions.” The arrest warrant was issued pursuant to a court case brought by the Electoral Office of the Attorney General [Ministério Público Eleitoral], which accused him of engaging in negative electoral propaganda against political opponents on his website *Portilho Online*. The website was temporarily taken down by order of the electoral court. In addition, it was reported that the journalist was a candidate for municipal councilman, but his political rights were suspended by the court. On August 31, the Superior Electoral Court [Superior Tribunal Eleitoral] reportedly granted the writ of *habeas corpus* filed on his behalf. Nevertheless, on September 2 he was transferred to the Association for the Protection and Assistance of Convicted Persons [Associação de Proteção e Assistência aos Condenados] (APAC) because of another arrest warrant stemming from his conviction in a 2013 case in which he was accused of defamation. The sentence was reportedly six months in a “semi-open” detention facility.³⁵² Because there is no prison in the city of Patrocínio in which to serve a “semi-open” sentence, Portilho is reportedly under house arrest. According to reports, he has more than 80 court cases pending against him because of his journalistic activity—mostly for crimes against honor—and he has also received threats.³⁵³

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

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

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

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

³⁵⁴ BBC Brasil. October 10, 2016. ['Liberdade de expressão tem limites', diz juiz que pediu suspensão do Facebook](#); Diário Catarinense. October 8, 2016. [Juiz Eleitoral de Joinville determina suspensão do Facebook por 24 horas em todo o Brasil](#); Poder Judiciário do Estado de Santa Catarina. 19^a Zona Eleitoral de Joinville. [Processo No. 141-28.2016.6.24](#). Judgment of October 5, 2016; O Estado de São Paulo. October 10, 2016. [Justiça Eleitoral manda tirar Facebook do ar por 24 horas](#); Consultor Jurídico (Conjur). October 8, 2016. [Juiz eleitoral de SC determina que Facebook fique fora do ar por 24 horas](#).

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

³⁵⁶ I/A Court H.R.. Case of *Canese v. Paraguay. Merit, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111 Para. 90.

opinions.³⁵⁷ As the IACHR has underscored, free speech and policial debate are essential for the consolidation of the democratic life of societies, and therefore are of compelling social interest.³⁵⁸

241. The UN, OSCE, OAS, and African Commission's Rapporteurs for Freedom of Expression made similar assertions in their 2009 Joint Statement. Indeed, on May 15, 2009, the four rapporteurs issued the "Joint Statement on the Media and Elections." In the Joint Statement, the rapporteurs underscored the importance of open and vigorous debate, access to information, and electoral processes, as well as the fundamental role of the media to raise election issues and inform the public. But they stated that only diverse and independent media, including the public service broadcasters that are independent of the government, can fulfill this role. Among other points, the Joint Statement urges the States to: (i) implement measures to create an environment in which a pluralistic media sector can flourish; (ii) repeal laws that unduly restrict freedom of expression and provisions that hold the media liable for disseminating unlawful statements made directly by parties or candidates that the media could not prevent; (iii) establish effective systems for preventing threats and attacks against the media; (iv) enact laws that prohibit the discriminatory allocation of paid political advertisements based on political opinion; (v) create independent bodies for the oversight of rules relating to the media and elections; and (vi) establish clear obligations for the public media, including: ensuring that the electorate is sufficiently informed about all the indispensable aspects for participating in the electoral process; respecting strict rules of impartiality and balance, and ensuring equitable media access for all political parties and candidates.³⁵⁹

H. Access to Public Information

242. According to the report *Access to Information and Rights of Women [Acesso à Informação e Direitos das Mulheres]* published by the organization Article 19, there are still barriers to access to public information by women. According to the organization, one of the biggest obstacles is that many women are unaware that they can seek and demand from the public power information of public interest. They are also unaware where this information is available. This has the consequence that there are fewer requests to information made by women. Other challenges identified by the organization were the lack of active transparency in information related to women's rights; as well as a percentage of response to their requests for information lower than the responses of requests made by men: 57 percent versus 72 percent.³⁶⁰

243. In February, the Secretary of Public Security of the state of São Paulo [*Secretaria de Segurança Pública*] (SSP) released a list of 22 documents related to that agency that would remain confidential.³⁶¹ The government of the state of São Paulo ordered that the information from police incident reports [*boletins de ocorrência*] (BOs) recorded by the police shall remain classified for 50 years. According to reports, the impossibility of accessing that information would, among other things, make it impossible to verify the crime statistics data disclosed by the SSP.³⁶² For its part, the SSP stated that the content of the incident report will be kept confidential only when it reveals the citizen's personal information or makes it possible to identify

³⁵⁷ I/A Court H.R. Case of *Canese v. Paraguay. Merit, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111 Para. 90.

³⁵⁸ IACHR. Arguments before the Inter American Court in the case of *Canese v. Paraguay*. Transcribed in: I/A Court H.R. Case of *Canese v. Paraguay. Merit, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111 Para. 72. B.

³⁵⁹ 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. [Press Release R29/09 Joint Declaration on Framework for Media and Elections](#). May 15, 2009.

³⁶⁰ Article 19. [Acesso à Informação e Direitos das Mulheres](#). 2016.

³⁶¹ G1. February 16, 2016. [Governo impõe sigilo a documentos da Secretaria da Segurança](#); Veja. February 18, 2016. [Tribunal de Contas questiona Alckmin sobre sigilo de documentos policiais](#); Agência Brasil. February 16, 2016. [Secretaria de Segurança de São Paulo mantém sigilo sobre manuais da polícia](#).

³⁶² Agência Brasil. February 16, 2016. [Governo de São Paulo decreta sigilo de 50 anos em registros policiais](#); Folha de São Paulo. February 16, 2016. [Gestão Alckmin põe sigilo de 50 anos em registro policial](#); R7. February 16, 2016. [Alckmin decreta sigilo de 50 anos para boletins de ocorrência registrados pela polícia](#); Band. February 16, 2016. [Alckmin põe sigilo de 50 anos em registro policial](#).

involved parties and witnesses.³⁶³ Similarly, police training and procedure manuals were reportedly classified as confidential.³⁶⁴ In view of those decisions, the Court of Auditors of the state of São Paulo [*Tribunal de Contas do Estado de São Paulo*] (TCE) reportedly decided to conduct an audit to verify whether Governor Geraldo Alckmin's order to classify documents related to public security violates Access to Information Law [*Lei de Acesso à Informação*].³⁶⁵ The same month, the government of São Paulo also published the new time periods for which documents related to the metro, the São Paulo Metropolitan Train Company [*Companhia Paulista de Trens Metropolitanos*] (CPTM) and the Secretariat of Prison Administration [*Secretaria de Administração Penitenciária*] (SAP) would remain confidential.³⁶⁶

244. Later, on February 18, state of São Paulo's governor announced that the state's governor would publish a decree to repeal the confidentiality of documents related to the Secretary of Public Security of the state of São Paulo [*Secretaria de Segurança Pública*] (SSP), public transportation, and the Secretariat of Prison Administration [*Secretaria de Administração Penitenciária*] (SAP).³⁶⁷ The decree was published on February 19,³⁶⁸ and states, *inter alia*, that "Information about conduct that involves human rights violations committed by State agents or by order of government authorities may not be classified at any level of secrecy, and access to it may not be denied."³⁶⁹ According to reports, it remains prohibited to disclose the names and personal information of victims and witnesses contained in the incident reports [*boletins de ocorrência*] (BO). That information may only be released subsequent to police and judicial investigations.³⁷⁰

245. On May 9, the state of São Paulo launched the "SSP – Transparência" portal, through which it will provide "broad access to more than 120,000 pieces of information on crime." According to the government, "All of the incident reports, including supplemental ones, may be consulted by month and year, starting from 2003, in relation to murders, larcenies, and felonious assaults resulting in death, both with respect to death resulting from resisting police intervention [*morte decorrente de oposição à intervenção policial*] and cases of suspicious deaths. There are more than 64,000 reports."³⁷¹ In addition, on May 10, the government of São Paulo complied with the decision of Judge Teresa Ramos Marques of the 10th Public Law Chamber of the Court of Justice of São Paulo [*10ª Câmara de Direito Público do Tribunal de Justiça de São Paulo*], which denied the request of the Secretary of Public Security of the state of São Paulo to set aside an injunction granted to the newspaper *Folha de São Paulo*. The injunction had ordered the government to turn over to the newspaper the police records used as the basis for the monthly crime statistics for the state of São Paulo.³⁷²

³⁶³ Revista Época. February 16, 2016. [Governo de São Paulo decreta sigilo de 50 anos em registros policiais](#); Agência Brasil. February 16, 2016. [Governo de São Paulo decreta sigilo de 50 anos em registros policiais](#).

³⁶⁴ Agência Brasil. February 16, 2016. [Secretaria de Segurança de São Paulo mantém sigilo sobre manuais da polícia](#); Brasileiros. February 16, 2016. [Alckmin volta atrás e põe sigilo de 50 anos para ocorrências policiais](#).

³⁶⁵ Veja. February 18, 2016. [Tribunal de Contas questiona Alckmin sobre sigilo de documentos policiais](#); G1. February 17, 2016. [TCE diz que sigilo de dados da polícia vai na contramão de Lei da Informação](#).

³⁶⁶ G1. February 18, 2016. [Novas resoluções redefinem sigilos em dados do Metrô, CPTM e prisões](#); Diário do Poder. February 18, 2016. [Novas resoluções redefinem sigilos em dados do Metrô, CPTM e prisões](#); Agência Brasil. February 18, 2016. [Governo de SP impõe sigilo sobre documentos do Metrô e CPTM](#).

³⁶⁷ O Dia. February 19, 2016. [Alckmin recua e proíbe sigilo de documentos](#); G1. February 19, 2016. ['Governo não tem nenhum interesse em esconder nada', diz Alckmin](#); Associação Brasileira de Imprensa (ABI). February 19, 2016. [Geraldo Alckmin proíbe sigilo prévio de documentos](#).

³⁶⁸ G1. February 19, 2016. ['Governo não tem nenhum interesse em esconder nada', diz Alckmin](#); G1. February 19, 2016. [Alckmin publica decreto que veta sigilo prévio de documentos em SP](#); Assembléia Legislativa do Estado de São Paulo. [Decreto Nº 61.836](#). February 18, 2016; Diário do Poder. February 19, 2016. [Alckmin publica decreto que veta sigilo prévio de documentos em SP](#); O Dia. February 19, 2016. [Em São Paulo, violação de direitos humanos por agentes não poderá ser sigilosa](#).

³⁶⁹ Assembléia Legislativa do Estado de São Paulo. [Decreto Nº 61.836](#). February 18, 2016, art. 9.

³⁷⁰ Correio Popular. February 19, 2016. [Decreto mantém sigilo sobre vítimas em BOs](#).

³⁷¹ Governo do Estado de São Paulo. SSP – Transparência. Available at: <http://www.ssp.sp.gov.br/transparenciassp/Default.aspx>; Portal do Governo do Estado de São Paulo. May 9, 2016. [SP lança maior portal sobre segurança pública do país](#).

³⁷² Associação das Emissoras Rádio e Televisão do Estado de São Paulo (Aesp). May 11, 2016. [Gestão Alckmin cumpre prazo judicial e entrega dados criminais à Folha](#); Folha de São Paulo. May 9, 2016. [Derrotado na Justiça, governo de São Paulo abrirá dados de crimes](#).

246. On May 12, a Provisional Measure (*Medida Provisória No. 726/2016*)³⁷³ was published, ordering the elimination of the Comptroller General of the Union [*Controladoria-Geral da União*], and replacing it with the ministry of Transparency, Oversight, and Control [*Ministério de Transparência, Fiscalização e Controle*],³⁷⁴ later called the ministry of Transparency, Oversight, and Office of the Comptroller General of the Union [*Ministério da Transparência, Fiscalização e Controladoria-Geral da União*].³⁷⁵ On June 17, the Special Rapporteur for Freedom of Expression of the IACHR and the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression sent a joint letter, and subsequently published a joint release, to the Brazilian State expressing their concern that such a measure would be a setback in the progress made in Brazil on this issue.³⁷⁶

247. On June 21, the State of Brazil sent a letter to the Inter-American Commission on Human Rights, reporting that the recent institutional developments in Brazil did not have a negative impact on the country's transparency and accountability framework. It stated that the ministry of Transparency, Oversight, and Office of the Comptroller General of the Union [*Ministério da Transparência, Fiscalização e Controladoria-Geral da União*] had retained all of the legal authority and prerogatives of its predecessor. It maintained that there were no changes in the operation of this agency, and that all of the activities that previously had been conducted by the Office of the Comptroller [*Controladoria Geral da República*] would continue to be conducted by the Ministry. This applies, for instance, to the legal prerogative of requesting information from other federal government bodies and agencies, an essential element of the auditing and inspection work. It also applies to the central role that the Ministry plays in the implementation of the Access to Information Law. The State reported that most of the Ministry's staff consists of career public servants. It indicated that the recent institutional developments in the country had no impact on their activities. According to the State, these State institutions will discharge their duties with professionalism and independence, in keeping with the rule of law, thus helping to foster transparency and accountability.³⁷⁷

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

I. Internet and Freedom of Expression

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

³⁷³ Brasil. Presidência da República. [Medida Provisória No. 726](#). May 12, 2016 (passed into [Law 13.341](#) of September 29, 2016).

³⁷⁴ Artigo 19. May 31, 2016. [Extinção da CGU prejudica promoção da transparência e combate à corrupção](#).

³⁷⁵ Official webpage of Ministério da Transparência, Fiscalização e Controladoria-Geral da União (CGU). Available at: <http://www.cgu.gov.br/sobre/institucional>

³⁷⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 17, 2016. Letter to the State of Brazil: Request for information about the intervention in the Brazilian Communications Company and the Office of the Comptroller General of the Union. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; IACHR. Office of the Special Rapporteur for Freedom of Expression. June 24, 2016. [Freedom of expression experts warn of interference with the Brazilian Public Broadcaster and the National Controller's Office](#); Radio ONU. June 24, 2016. [Críticas a medidas de gobierno interino de Brasil que afecta libertad de expresión](#).

³⁷⁷ Communication from the State of Brazil to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 21, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

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

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

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

³⁷⁸ Agrosoft Brasil. February 4, 2016. [MPF defende submissão do Internet.org às autoridades competentes](#); Época. February 13, 2016. [O Facebook quer “privatizar” a internet e o Brasil pode ser um grande aliado](#).

³⁷⁹ Gizmodo. November 12, 2016. [Ministério Público Federal diz que Internet.org, do Facebook, afronta o Marco Civil](#); Associação Brasileira de Internet (ABI). November 12, 2015. [Ministério Público Federal considera internet.org ilegal no Brasil](#); Ministério Público Federal (MPF). November 10, 2015. Nota Técnica No. 02/2015. Available at: <http://convergenciadigital.uol.com.br/inf/nota-tecnica-02-2015.pdf>

³⁸⁰ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 48/15. December 31, 2015. Para. 266.

³⁸¹ Brasil. Câmara dos Deputados. CPI – Crimes Cibernéticos. [Relatório Final](#). March 30, 2016.

³⁸² Sursiendo. April 13, 2016. [Declaración conjunta al Congreso de Brasil para abandonar ley de cibercrimen](#); Global Voices. April 12, 2016. [Brasil: Proyecto de ley de cibercrimen podría convertir a los sitios de medios sociales en “agentes permanentes de vigilancia”](#).

³⁸³ Brasil. Câmara dos Deputados. May 4, 2016. [Comissão Parlamentar de Inquérito dos Crimes Cibernéticos aprova relatório final](#).

³⁸⁴ IACHR. [IACHR Wraps Up its 157th Session](#). April 2016; IACHR. 157 Period of Sessions. Hearing Cultural Rights and the Internet in Brazil. April 7, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/157/default.asp>

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

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

³⁸⁵ The Intercept Brasil. September 26, 2016. [Comentário no Facebook criticando a polícia rende prisão no Rio Grande do Norte](#); G1. September 27, 2016. [Comandante manda prender PM que usou rede social para criticar a polícia](#).

³⁸⁶ The Intercept Brasil. September 26, 2016. [Comentário no Facebook criticando a polícia rende prisão no Rio Grande do Norte](#); G1. September 27, 2016. [Comandante manda prender PM que usou rede social para criticar a polícia](#).

³⁸⁷ Artigo 19. July 11, 2016. [Prisões por ofensas à PM na Internet atentam contra Marco Civil, dizem especialistas](#); Portal Imprensa. July 1, 2016. [Jovens de SP e CE são detidos por desacato após críticas à PM em redes sociais](#); Folha de São Paulo. July 1, 2016. [Jovens criticam PM nas redes sociais e acabam 'detidos' por desacato](#).

³⁸⁸ Brasil. Câmara dos Deputados. [PL 1676/2015](#). May 26, 2015; Brasil. Câmara dos Deputados. [PL 2712/2015](#). August 19, 2015.

³⁸⁹ Supremo Tribunal Federal (STF). Recurso extraordinário com agravo 833.248/RJ. Parecer Procuradoria-Geral da República No 156.104/2016 PGR-RJMB. June 11, 2016. Available at: <http://s.conjur.com.br/dl/parecer-pgr-direito-esquecimento.pdf>

³⁹⁰ Supremo Tribunal Federal (STF). Recurso extraordinário com agravo 833.248/RJ. Parecer Procuradoria-Geral da República No 156.104/2016 PGR-RJMB. June 11, 2016. Available at: <http://s.conjur.com.br/dl/parecer-pgr-direito-esquecimento.pdf>

³⁹¹ Supremo Tribunal Federal (STF). Recurso extraordinário com agravo 833.248/RJ. Parecer Procuradoria-Geral da República No 156.104/2016 PGR-RJMB. June 11, 2016. Available at: <http://s.conjur.com.br/dl/parecer-pgr-direito-esquecimento.pdf>

³⁹² Supremo Tribunal Federal (STF). Recurso extraordinário com agravo 833.248/RJ. Parecer Procuradoria-Geral da República No 156.104/2016 PGR-RJMB. June 11, 2016. Available at: <http://s.conjur.com.br/dl/parecer-pgr-direito-esquecimento.pdf>

dismissed by the STF; however, the plaintiffs argued that the case involved constitutional issues, such as the rights to honor and privacy.³⁹³

254. On July 25, the Brazilian Association of Investigative Journalism [*Associação Brasileira de Jornalismo Investigativo*] (Abraji) disclosed that, according to its project called *Ctrl+X*—which maps judicial actions requesting the removal of content from the Internet—of the 1,017 cases of politicians who asked the electoral courts to exclude some type of information from web pages, at least 105 (10 per cent) also requested prior censorship. In other words, in addition to requesting the removal of the information, they also reportedly asked the judge to order the media company or the journalist to screen the content in advance, not publishing terms related to the politician.³⁹⁴

255. On November 9, the 5th Private Law Chamber of the Court of Justice of São Paulo [*5ª Câmara de Direito Privado do Tribunal de Justiça de São Paulo*] released Ricardo Fraga, agronomist engineer and activist, to protest on the Internet against the effects of a real estate development project in the Vila Mariana neighborhood in south São Paulo. The Court ruled that Fraga would be allowed manifest himself on the Internet and social networks, and to participate in on-site demonstrations so long as they did not take place on the same block as the development's buildings. The Court of Justice also dismissed the construction company's request for pecuniary and non-pecuniary damages.³⁹⁵ On September 19, 2014, the 34th Civil Court of the District of São Paulo [*34ª Vara Civil da Comarca de São Paulo*] had issued a judgment on the merits upholding the imposition of a measure, dated March 2013, prohibiting the activist from making statements on the Internet against the real estate development or participating in any other activity near the project construction site. Oliveira maintained an initiative on Facebook called "*O Outro Lado do Muro – Intervenção Coletiva*", which he used to protest against the construction of the development. The Court's decision also ordered him to remove from the web any content about matter, on penalty of a fine in the amount of BRL\$ 10 thousand (approximately US\$ 3 thousand) for each violation.³⁹⁶

256. In November, it was learned that the Supreme Court [*Tribunal Superior de Justiça*] (STJ) had unanimously ruled that Google and other search engines could not be forced to comply with decisions based on the so-called "right to be forgotten." According to the information received, the judgment held that requiring web search engines to remove data or links is tantamount to forcing them to become digital information censors.³⁹⁷

J. Community Radio Stations

³⁹³ Consulto Jurídico (Conjur). July 12, 2016. [Risco do direito ao esquecimento é afastar sociedade de seu passado, diz PGR](#); Supremo Tribunal Federal (STF). Recurso extraordinário com agravo 833.248/RJ. Parecer Procuradoria-Geral da República. No 156.104/2016 PGR-RJMB. June 11, 2016. Available at: <http://s.conjur.com.br/dl/parecer-pgr-direito-esquecimento.pdf>; Associação Nacional de Jornais. July 19, 2016. [Impedir veiculação de fatos antigos na mídia remete à censura e fere o direito à liberdade de expressão, diz Janot](#); Blog Fausto Macedo – Estadão. July 18, 2016. [Para Janot, direito ao esquecimento não pode limitar liberdade de expressão](#); Teletime. July 18, 2016. [Para Janot, direito ao esquecimento não pode limitar a liberdade de expressão](#); Migalhas. July 12, 2016. [PGR: Direito ao esquecimento não pode limitar liberdade de expressão](#).

³⁹⁴ Associação Brasileira de Jornalismo Investigativo (Abraji). July 25, 2016. [10% das ações de políticos para excluir informações da web envolvem censura prévia](#); Inter American Press Association (IAPA). October 28, 2016. [Proyecto CTRL-X monitorea intentos de censurar información en Brasil](#).

³⁹⁵ Artigo 19. November 9, 2016. [Após decisão, Ricardo Fraga está livre para protestar contra impactos de obra na internet](#); Justificando. November 9, 2016. [TJSP libera parcialmente servidor público a protestar contra impactos imobiliários](#); O Estado de São Paulo. November 9, 2016. [Justiça libera vizinho a protestar contra prédio pelo Facebook](#).

³⁹⁶ 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 1 September 9, 2014; Artigo 19. October 13, 2014. [A censura continua](#); 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. 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.

³⁹⁷ Ahora noticias. November 28, 2016. [Derecho al olvido: Justicia brasileña falló a favor de Google](#); El País/Reuters. November 27, 2016. [Justicia de Brasil falló a favor del buscador Google](#).

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

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

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

³⁹⁸ Associação Brasileira de Radiodifusão Comunitária (Abraço) January 26, 2016. [ABRACO discute melhorias para rádios comunitárias com o Ministro Figueiredo](#); Ministério da Ciência, Tecnologia, Inovações e Comunicações. January 25, 2016. [Figueiredo discute melhorias para rádios comunitárias](#).

³⁹⁹ Ministério da Ciência, Tecnologia, Inovações e Comunicações. February 17, 2016. [MC lança edital de Radcom no Norte e Nordeste](#); Agência Abraço. February 17, 2016. [MiniCom lança edital para rádios comunitárias no Norte e Nordeste](#).

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

⁴⁰¹ Ministério da Ciência, Tecnologia, Inovações e Comunicações. April 18, 2016. [MC lança edital para novas rádios comunitárias no Norte e Centro-Oeste](#); Agência Abraço. April 18, 2016. [Ministério das Comunicações lança edital para novas rádios comunitárias no Norte e Centro-Oeste](#).

⁴⁰² Ministério da Ciência, Tecnologia, Inovações e Comunicações. April 28, 2016. [Plano Nacional de Outorgar 2016 - Povos e Comunidades Tradicionais](#).

⁴⁰³ Ministério da Ciência, Tecnologia, Inovações e Comunicações. April 28, 2016. [PNO para comunidades tradicionais prevê rádios em 126 municípios](#); Agência Abraço. April 27, 2016. [PNO para comunidades tradicionais prevê rádios comunitárias em 126 municípios](#).

⁴⁰⁴ Ministério da Ciência, Tecnologia, Inovações e Comunicações. May 2, 2016. [Plano Nacional de Outorgar 2016-2017 – Radiodifusão Educativa](#).

⁴⁰⁵ Ministério da Ciência, Tecnologia, Inovações e Comunicações. May 5, 2016. [Plano Nacional de Outorgas vai levar emissoras educativas para 744 cidades](#).

⁴⁰⁶ Agência Abraço. May 5, 2016. [Prefeita do PSDB invade Rádio Comunitária no Sertão do Ceará, expulsa funcionários e corta energia](#); Paraíba Hoje. May 10, 2016. [Juiz determina reabertura de emissora de rádio fechada por prefeita no sertão da PB](#); Diário do Sertão. May 9,

260. According to the Community Broadcasting Association of Brazil [*Associação Brasileira de Radiodifusão Comunitária*], the Communications Secretariat of the Office of the President of the Republic [*Secretaria de Comunicação Social de la Presidencia de la República*] (SECOM) had allegedly started assigning advertising funds for community radio station web pages and blogs. The Association reportedly negotiated with the SECOM for those funds to be earmarked for community radio stations throughout the country.⁴⁰⁷

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

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

K. Government Advertising

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

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

2016. [Após invasão da prefeita e fechamento de Rádio, juíza manda reabrir as portas. Veja!](#); Portal Brasil PB. No date. [Juíza manda reabrir rádio. Após invasão da prefeita](#); Folha do Vale. May 9, 2016. [Em Nova Olinda, rádio fechada por Prefeitura volta ao ar e Câmara aprova "Repúdio" à prefeita](#).

⁴⁰⁷ **Agência** Abraço. April 29, 2016. [Secom libera publicidade para sites e blogs de Rádios Comunitárias](#).

⁴⁰⁸ Ministério da Ciência, Tecnologia, Inovações e Comunicações. July 28, 2016. [77% das rádios AM do país pedem autorização para migrar para FM, revela levantamento do MCTIC](#); Ministério da Ciência, Tecnologia, Inovações e Comunicações. July 27, 2016. [Migração das Rádios AM - Panorama dos processos](#).

⁴⁰⁹ Folha de São Paulo. June 14, 2016. [Temer corta R\\$ 11,2 mi em contratos de sites considerados pró-PT](#); Carta Maior. July 1, 2016. [Querem calar a nossa voz](#); O Globo. June 18, 2016. [Temer suspende patrocínio de R\\$ 11 milhões para blogs políticos](#).

⁴¹⁰ Carta Maior. August 18, 2016. [Querem Calar a Nossa Voz II](#).

reported to the Office of the Special Rapporteur that once the deadlines had expired, the state agency did not reply to the request for information.⁴¹¹

L. Other Relevant Situations

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

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

⁴¹¹ Communication sent to the Special Rapporteur for Freedom of Expression by Carta Maior. January 20, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁴¹² El País. February 18, 2016. [A pretexto das Olimpíadas no Rio, Forças Armadas podem bloquear o sinal do seu celular](#); Carta Capital. February 12, 2016. [Olimpíadas no Brasil premiam a indústria da vigilância](#); Artigo 19. March 14, 2016. [Anatel autoriza o uso de bloqueadores de sinais de radiocomunicação durante as olimpíadas](#); Revista Galileu. February 19, 2016. [Forças Armadas podem bloquear telefonia celular durante as Olimpíadas](#); Tele.síntese. January 25, 2016. [Forças Armadas poderão usar bloqueador de celular nas Olimpíadas](#).

⁴¹³ Ministério da Justiça e Cidadania. Portaria No. 611. June 10, 2016. Available at: <http://www.lex.com.br/legis/27154900-PORTARIA-N-611-DE-10-DE-JUNHO-DE-2016.aspx>

⁴¹⁴ Amnesty International. September 23, 2016. [Suspensão de convênios paralisa programa brasileiro de proteção aos defensores de direitos humanos](#); Rede Brasil Atual. July 29, 2016. [Corta de verba afeta em cheio programas de proteção de testemunhas e segurança alimentar](#).

⁴¹⁵ The Huffpost Brasil. June 23, 2016. [Portaria do ministro da Justiça limita ações de direitos humanos e prejudica missão em Belo Monte](#); Brasil 247. June 20, 2016. [MP questiona Moraes sobre paralisação nos direitos humanos](#).

⁴¹⁶ Amnesty International. September 23, 2016. [Suspensão de convênios paralisa programa brasileiro de proteção aos defensores de direitos humanos](#); Rede Brasil Atual. July 29, 2016. [Corta de verba afeta em cheio programas de proteção de testemunhas e segurança alimentar](#); Ponte. June 17, 2016. [Ministro da Justiça da gestão Temer paralisa tudo o que é relacionado a Direitos Humanos no Brasil](#); Conselho Nacional dos Direitos Humanos. [Nota Pública do Conselho Nacional dos Direitos Humanos pela revogação da Portaria n. 794/2016/MJC](#). September 16, 2016; The Huffpost Brasil. June 23, 2016. [Portaria do ministro da Justiça limita ações de direitos humanos e prejudica missão em Belo Monte](#); Brasil 247. June 20, 2016. [MP questiona Moraes sobre paralisação nos direitos humanos](#).

Representation of the National Councils, which in a June 15 statement requested “the immediate revocation of the aforementioned Decree No. 611/16.”⁴¹⁷

267. On June 17, in conjunction with David Kaye, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, this office expressed its concerns over the removal of the director of the Brazil Communications Company [*Empresa Brasil de Comunicação*] (EBC) who had recently started his four-year term, the alleged suspension of journalists’ contracts due to alleged political bias against the new government, and the reported cancellation of some television programs. According to the information received, on May 17, the then-interim President of Brazil had replaced the EBC Director. On June 2, the EBC Director was reportedly reinstated to his position by means of an injunction [*liminar*] issued by the Supreme Court of Brazil [*Supremo Tribunal Federal*] (STF). Prior to his return, the new directors had reportedly fired some journalists considered to be critical of the new government and cancelled some television programs. The Special Rapporteurs stated, among other things, that “International standards require States to ensure that public broadcasting services operate in an independent manner. This means fundamentally guaranteeing their administrative autonomy and editorial freedom.”⁴¹⁸

268. On June 22, the State of Brazil sent a letter to the IACHR informing it of the decision made by the Vice President of the Republic, in his capacity as Interim President, to replace the Chairman of the EBC, in order to “redirect the operation and functioning of the company with internationally accepted standards for the proper development of a free and impartial public press compatible with the right to freedom of opinion and expression.” He stated that the decision had been motivated by preliminary evidence gathered during internal investigations, showing a deficit of more than US\$ 17 million in the company’s finances, and had been based on the *ad nutum* nature of the position of Chairman of the EBC. The State indicated that the decision was consistent with the national legal framework and that it was necessary in order to reestablish the company’s economic and financial position so that its operation would not be in jeopardy.⁴¹⁹ In addition, it observed that the decisions made by Laerte Rímoli while he was in charge of the EBC aimed to restore an impartial journalistic production to the public press, oriented toward the public interest. The Brazilian State indicated that “it considers them to be fundamental values for full respect for the right to freedom of opinion and expression as internationally protected rights.” The State maintained that it was necessary to rescind the EBC’s with journalists Paulo Moreira Leite and Tereza Cruvinel. It indicated that there was no employment relationship between those journalists and the EBC. Later, their dismissals were “materially impossible” and reportedly did not occur. According to the State, what had happened was that the contractual relationship had ended between the EBC and the private broadcasting companies belonging to the aforementioned journalists, “above all due to the strong political bias applied to their editorial line, both in the work done by those companies and in the services provided to the EBC.” Finally, it indicated that Rímoli’s decision to appoint career public servants to the positions of Journalism Directors of the EBC, *Agencia Brasil*, and *Radio Nacional* was also in line with the values promoted by the Human Rights Council and the Inter-American Commission on Human Rights for the proper observance of the right to freedom of opinion and expression in Brazil. According to the information provided by the State, its intention was to appoint career public servants to 70 per cent of the senior positions within the EBC. It stated that the ongoing connection of these public servants to the Brazilian State—which their predecessors reportedly did not have—would be “a more decisive step toward independent, impartial journalistic production oriented toward the public interest.”⁴²⁰

269. In July, the Secretary of Public Security and Social Defense of the state of Pará [*Secretaria de Segurança Pública e Defesa Social do Estado do Pará*] (SSP) announced the course entitled “Strategic

⁴¹⁷ Conselho Nacional dos Direitos Humanos. [Nota Pública do Conselho Nacional dos Direitos Humanos pela revogação da Portaria n. 794/2016/MIC](#). September 16, 2016.

⁴¹⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 24, 2016. [Freedom of expression experts warn of interference with the Brazilian Public Broadcaster and the National Controller’s Office](#).

⁴¹⁹ Communication from the State of Brazil to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 22, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁴²⁰ Communication from the State of Brazil to the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. June 22, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

Interventions in Social Movements” for agents of the state’s Shock Battalion [*Batalhão de Choque*] that would be held from September 16 to October 4. This activity raised concern on the part of social movements and human rights organizations. Through a document signed by over 150 organizations and social movements, the Pará state section of the Brazilian Bar Association [*Ordem dos Advogados do Brasil seção Pará*] (OAB-PA) reportedly asked the State Public Security Council of Pará to provide explanations about the course, as they were reportedly concerned about the content and the potential that it could lead to the criminalization of social movements. According to the Secretariat, this was not the first time a course with this content has been held in Brazil, given that in 2013 the Military Police of Minas Gerais held a course with the same name. It also asserted that during the course the Military Police would meet with leaders of social movements and representatives of organized civil society, in order to “reflect on the oversight of potential incidents during conflicts, the violation of constitutional rights, disturbances of the peace, actions of security forces at large events such as soccer games, the obstruction of public thoroughfares, and actions to retake possession of property.”⁴²¹

270. On August 31, the Supreme Court of Brazil [*Supremo Tribunal Federal*] (STF) ruled in a majority opinion to admit Unconstitutionality Action ADI 2.404/DF challenging article 254 of Law 8.069/90, the Child and Adolescent Statute [*Estatuto da Criança e do Adolescente*], which establishes a fine and the suspension of radio and television broadcasters that aired programs in unauthorized time. The majority of the STF joined Justice Dias Toffoli, who delivered the opinion on November 30, 2011, in finding that “The subordination of the program to the ministry of Justice cannot be a condition for it to be shown. It is not a matter of government permission or authorization for its showing, which is strictly prohibited by the Federal Constitution. The exercise of freedom of programming by the broadcasters prevents the airing of a specific show from depending on prior state action.”⁴²² Dias Toffoli added that, “The presentation takes place, exclusively, in order for the Federal Government to exercise its administrative authority provided for in article 21 (XVI) of the Constitution; that is, to classify public entertainment and radio and television programs for indicative purposes, which must not be confused with authorization.”⁴²³ In addition, he maintained that “There is no doubt that the challenged provision, in addition to turning the indicative classification into an act of authorization or government permission—which, as previously explained, is unconstitutional—turned the classification, constitutionally qualified as indicative, into a mandatory classification.”⁴²⁴ Accordingly, it would not be “compatible with the constitutional intent to make the [aforementioned] classification binding and mandatory, so as to create a theory of prohibition or to impose punishment of an administrative nature;”⁴²⁵ “the constitutional authorization is for the Federal Government to classify, inform, indicate the age and/or time slots that are not recommended, rather than to prohibit, ban, or censor.”⁴²⁶ With respect to the penalty

⁴²¹ Artigo 19. July 31, 2016. [Curso para a polícia do Pará criminaliza movimentos sociais](#); G1. July 27, 2016. [OAB-PA quer explicação sobre curso de PMs para intervenção em protestos](#); Diário Online. July 26, 2016. [Curso da Polícia Militar do Pará gera polêmica](#); Terra de Direitos. July 27, 2016. [Entidades apontam criminalização de movimentos sociais em curso ofertado pela PM do Pará](#); Ordem dos Advogados do Brasil – Pará (OAB-PA). July 25, 2016. [OAB cobra explicações do Governo sobre Curso de Intervenções Estratégicas em Movimentos Sociais](#).

⁴²² Supremo Tribunal Federal (STF). Ação Direta de Inconstitucionalidade 2.404 Distrito Federal. Voto del Ministro Relator Dias Toffoli. November 30, 2011, p. 23. Available at: <http://s.conjur.com.br/dl/adi-2404.pdf>; See also: <http://stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=2404&processo=2404>; Consultor Jurídico (Conjur). August 31, 2016. [Classificação indicativa é pedagógica, não censuradora, define Supremo](#).

⁴²³ Supremo Tribunal Federal (STF). Ação Direta de Inconstitucionalidade 2.404 Distrito Federal. Voto del Ministro Relator Dias Toffoli. November 30, 2011, p. 23. Available at: <http://s.conjur.com.br/dl/adi-2404.pdf>; See also: <http://stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=2404&processo=2404>; Consultor Jurídico (Conjur). August 31, 2016. [Classificação indicativa é pedagógica, não censuradora, define Supremo](#).

⁴²⁴ Supremo Tribunal Federal (STF). Ação Direta de Inconstitucionalidade 2.404 Distrito Federal. Voto del Ministro Relator Dias Toffoli. November 30, 2011, p. 23. Available at: <http://s.conjur.com.br/dl/adi-2404.pdf>; See also: <http://stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=2404&processo=2404>; Consultor Jurídico (Conjur). August 31, 2016. [Classificação indicativa é pedagógica, não censuradora, define Supremo](#).

⁴²⁵ Supremo Tribunal Federal (STF). Ação Direta de Inconstitucionalidade 2.404 Distrito Federal. Voto del Ministro Relator Dias Toffoli. November 30, 2011, p. 24. Available at: <http://s.conjur.com.br/dl/adi-2404.pdf>; See also: <http://stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=2404&processo=2404>; Consultor Jurídico (Conjur). August 31, 2016. [Classificação indicativa é pedagógica, não censuradora, define Supremo](#).

⁴²⁶ Supremo Tribunal Federal (STF). Ação Direta de Inconstitucionalidade 2.404 Distrito Federal. Voto del Ministro Relator Dias Toffoli. November 30, 201, p. 26. Available at: <http://s.conjur.com.br/dl/adi-2404.pdf>; See also:

provided for in the challenged article, Toffoli indicated that “By establishing the punishment of broadcasting companies for airing a program at a time other than the ‘authorized’ one, [the article] incurs in constitutional abuse. Let us recall: there is no authorized schedule, but rather a recommended schedule.”⁴²⁷ In his opinion, the Justice further observed that “It follows that radio and television broadcasters have a duty to show the public the age classification notice, prior to and during the broadcasting of the content, a rule that is provided in the sole paragraph of article 76 of the ECA; noncompliance is an administrative infraction pursuant to article 254, now called into question (although this part was not subject to challenge). To think otherwise would frustrate the very purpose of the classification—that is, to indicate to the viewer the content conveyed and, consequently, the segment of the public to which it is ideally directed.”⁴²⁸ He maintained that “It will always be possible to hold broadcasters liable in court for abuses or potential harm to the welfare of children and adolescents, including taking account of the recommendation of the ministry of Justice with respect to the time slots in which such programming is shown to be inappropriate.”⁴²⁹

271. According to reports, through Provisional Measure No. 744/2016, published on September 2, 2016, the Brazil Communications Company [*Empresa Brasil de Comunicação*] (EBC) was restructured. The EBC, which was previously subordinate to the Communications Secretariat of the Office of the President of the Republic, became connected to the Civil Affairs. The composition of its Board of Directors was also reformed to have more government representatives; that is, a Director/Chairperson and a member appointed by the Chief Minister of Civil Affairs, who will preside over the Board. Similarly, the Ministers of Education, Culture, Planning, Development, and Management; Science, Technology, Innovation, and Communications may each appoint a member to the Board, which shall also have a representative of the EBC’s employees. According to the original rules, the Chairperson of the Board was appointed by the Communications Secretary of the Office of the President of the Republic. The new measure establishes that the Board of Executive Directors will consist of the Director/Chairperson, Director General, and four directors, all appointed and removed by the President of the Republic. The members of the Board of Executive Directors serve for a term of four years, but now there is no possibility for renewal. Previously, according to the original Law, the EBC’s Board of Executive Directors was made up of one Director/Chairperson and one Director General, both appointed by the President of the Republic, and up to six directors, elected and subject to removal by the Board of Directors. In addition, its Board of Trustees has reportedly been eliminated, which, according to the information received by this Office of the Special Rapporteur, would be a setback in terms of the public nature of the EBC, as the Board was composed of representatives of different sectors of civil society, the government, Congress, and EBC officials.⁴³⁰

<http://stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=2404&processo=2404>; Consultor Jurídico (Conjur). August 31, 2016. *Classificação indicativa é pedagógica, não censuradora, define Supremo.*

⁴²⁷ Supremo Tribunal Federal (STF). Ação Direta de Inconstitucionalidade 2.404 Distrito Federal. Voto del Ministro Relator Dias Toffoli. November 30, 2011, p. 28. Available at: <http://s.conjur.com.br/dl/adi-2404.pdf>; See also: <http://stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=2404&processo=2404>; Consultor Jurídico (Conjur). August 31, 2016. *Classificação indicativa é pedagógica, não censuradora, define Supremo.*

⁴²⁸ Supremo Tribunal Federal (STF). Ação Direta de Inconstitucionalidade 2.404 Distrito Federal. Voto del Ministro Relator Dias Toffoli. November 30, 2011, p. 32. Available at: <http://s.conjur.com.br/dl/adi-2404.pdf>; See also: <http://stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=2404&processo=2404>; Consultor Jurídico (Conjur). August 31, 2016. *Classificação indicativa é pedagógica, não censuradora, define Supremo.*

⁴²⁹ Supremo Tribunal Federal (STF). Ação Direta de Inconstitucionalidade 2.404 Distrito Federal. Voto del Ministro Relator Dias Toffoli. November 30, 2011, p. 35. Available at: <http://s.conjur.com.br/dl/adi-2404.pdf>; See also: <http://stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=2404&processo=2404>; Consultor Jurídico (Conjur). August 31, 2016. *Classificação indicativa é pedagógica, não censuradora, define Supremo.*

⁴³⁰ Empresa Brasil de Comunicação (EBC). September 2, 2016. *Mocão de repúdio contra medida provisória que desmonta a EBC*; Brasil. Presidência da República. *Medida Provisória No.744*. September 1, 2016; Senado Federal do Brasil. September 2, 2016. *Publicada medida provisória que altera estrutura da EBC*; Artigo 19. September 2, 2016. *Decisão de extinguir Conselho Curador da EBC fere a Constituição*; G1. September 2, 2016. *Governo exonera presidente da EBC e muda regras do estatuto da emissora*; The Intercept Brasil. September 2, 2016. *Michel Temer abre caminho para interferência editorial na EBC*; Brasil. Presidência da República. *Ley No. 11.652*. April 7, 2008; O Estado de São Paulo. October 10, 2016. *Conselho de Comunicação do Congresso critica fim de conselho curador da EBC.*

8. CANADA

A. Progress

272. On June 22, 2016, the Superior Court of Quebec invalidated two provisions of Montreal By-law P-6 concerning the prevention of breaches of the peace, public order and safety, and the use of public property that were added in May 2012 in the wake of the student protests. The Court concluded that the requirement of prior communication of itinerary to police forces unduly restricted spontaneous protests. Similarly, the Court found that the prohibition of face covering in public constituted an unjustified infringement of the rights to freedom of expression and peaceful assembly protected by the Canadian Charter of Rights and Freedoms and the Quebec Charter of Human Rights and Freedoms.⁴³¹

273. The Office of the Special Rapporteur also notes that article 500.1 of the Quebec Highway Safety Code, which made illegal any “concerted action intended to obstruct in any way vehicular traffic on a public highway, occupy the roadway, shoulder or any other part of the right of way of or approaches to the highway or place a vehicle or obstacle thereon so as to obstruct vehicular traffic on the highway or access to such a highway” became invalid in May 2016. The Court ruled in November 2015 that the provision violated the rights to freedom of expression and peaceful assembly, but suspended the declaration of invalidity for six months to allow modification of the law.⁴³²

274. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”⁴³³ 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.”⁴³⁴ The Office of the Special Rapporteur welcomes these decisions which invalidate rules and requirements that hampered the exercise of the rights to peaceful assembly and freedom of expression.

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

275. In October, the *Mississauga Gazette* editorial team had allegedly received a death threat following an article on the Muslim community and Mississauga’s Major Bonnie Crombie. On October 7, *Mississauga Gazette* editor-in-chief Acton Michaels published an article regarding an alleged assault committed by a Muslim teenager. On October 10, the *Mississauga Gazette* released a statement reporting that a man called the media and threatened the staff with death and, consequently, a journalist had resigned. *Mississauga Gazette* also informed that the article had been taken down from their platform and that it is on the public domain for free circulation.⁴³⁵

276. On August 15, 2016, the reporter Tara Bradbury wrote an article for *The Telegram* regarding the FemFest NL, a local feminist comprehensive conference held in St. John’s, N.L.⁴³⁶ Bradbury’s article prompted a backlash against her and other journalists that supported her on the Internet. Bradbury reported alleged hostile, sexist reactions from readers through social networks and her personal email, due to her report on

⁴³¹ Canada. Superior Court of Quebec. [Villeneuve c. Ville de Montréal](#). June 22, 2016.

⁴³² Canada. Superior Court of Quebec. [Garbeau c. Ville de Montréal](#). November 12, 2015; Ligue des droits et libertés. May 16, 2016. [Expiration du délai donné par la Cour supérieure : l’article 500.1 est maintenant invalide](#).

⁴³³ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser. L/V/II.Doc.57. December 31, 2009. Para. 197.

⁴³⁴ 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.

⁴³⁵ CIJ News. October 10, 2016. [Mississauga: Anti Islam article prompts hate crime complaint, death threats](#); The Star. October 9, 2016. [Mississauga website yanks inflammatory article about Muslims, mayor](#).

⁴³⁶ The Telegram. August 15, 2016. [FemFest: part conference, part festival, all inclusive](#).

the feminist conference.⁴³⁷ *The Telegram* rejected the lack of respect for female journalists on its front page of the newspaper printed version.⁴³⁸

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

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

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

C. Social Protest

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

⁴³⁷ The Telegram. August 22, 2016. [Tara Bradbury: Hate, misogyny and sexism — all in a day's work.](#)

⁴³⁸ CBCNEWS. August 26, 2016. ['This is not OK': N.L. newspaper uses front page to blast sexist 'trolls'.](#)

⁴³⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [CIDH/RELE/INF. 12/13. Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators.](#)

⁴⁴⁰ UN. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. A/HRC/20/17. June 4, 2012. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Para. 52. Available for consultation at: http://ap.ohchr.org/documents/dpage_e.aspx?m=85.

⁴⁴¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [CIDH/RELE/INF. 12/13. Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators.](#)

⁴⁴² OSCE. Representative on Freedom of the Media. [Countering Online Abuse of Female Journalists.](#)

⁴⁴³ OSCE. Representative on Freedom of the Media. [Countering Online Abuse of Female Journalists.](#)

⁴⁴⁴ CBC News. May 1, 2016. [Montreal's May Day anti-capitalist march ends with arrests, broken windows](#); Montreal Gazette. May 2, 2016. [Montreal police use tear gas to disperse anti-capitalist demonstrators, make nine arrests](#); CTV News. May 1, 2016. [Anti-capitalist May Day protest turns violent in Montreal.](#)

⁴⁴⁵ Canadian Journalists for Free Expression (CJFE). May 17, 2016. [Montreal police making improvements, but there is still work to be done.](#)

281. The IACHR has indicated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. Furthermore, the *Joint Declaration on violence against journalists and media workers in the context of protests*, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”⁴⁴⁶

D. Ulterior Responsibilities

282. On January 22, 2016, the Superior Court of Quebec dismissed the claim that the alleged surveillance of reporter Éric-Yvan Lemay and his wife and the subsequent search of his residence by the provincial police forces were wrongful. The reporter had allegedly published an investigation in 2012 showing easy access to confidential medical records in several hospital of the Montreal region.⁴⁴⁷ The police was held liable for defamation and ordered to pay compensation to the journalist after posting a video online seeking to justify the search of Lemay’s residence and insinuating his guilt and breaches of deontological obligations.⁴⁴⁸

283. In October, Mississauga’s Major Bonnie Crombie filed a hate-crime complaint with the police following *Mississauga Gazette’s* article regarding the Muslim community and Mississauga’s Major Bonnie Crombie. Both Major Crombie and the National Council of Canadian Muslims deemed that the article was an act of crime and contained several islamophobic and baseless claims.⁴⁴⁹

284. In a democratic society, states should protect freedom of expression while also guaranteeing equality and the safety of others.⁴⁵⁰ 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.”

285. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of IACHR establishes: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive

⁴⁴⁶ 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](#).

⁴⁴⁷ Fédération Professionnelle des Journalistes du Québec. February 3, 2016. [Affaire Éric-Yvan Lemay : un jugement qui légitime la traque aux journalistes](#); TVA Nouvelles. March 15, 2012. [Perquisition chez un journaliste](#).

⁴⁴⁸ Superior Court of Quebec. [Lemay c. Québec \(Procureur général\)](#). January 21, 2016.

⁴⁴⁹ The Star. October 9, 2016. [Mississauga mayor files hate-crime complaint after inflammatory article](#); National Council of Canadian Muslims. October 9, 2016. [Mississauga publication criticized for islamophobic, baseless claims](#); Global News. October 9, 2016. [Mississauga publication criticized for Islamophobic, baseless claims](#); Toronto Sun. October 10, 2016. [Mississauga mayor considering legal action after allegations against her](#).

⁴⁵⁰ United Nations Human Rights Council (UNHRC). [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: 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; 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.

expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information." In fact, in a democratic society entities and public servants of the State are subject to greater scrutiny and criticism, therefore their activities are subject to societal control.⁴⁵¹ In that regard the Commission has established that "[t]he sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of, and even offensive to those who hold public office or are intimately involved in the formation of public policy."⁴⁵²

E. Confidentiality of Sources

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

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

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

⁴⁵¹ 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 V. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107. Para. 129; *Case Kimel V. Argentina. Merits, Reparations and Costs.* Judgment of May 2, 2008 Series C No. 177. Para. 86; *Case Ricardo Canese V. 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.

⁴⁵² 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.

⁴⁵³ Ontario Superior Court of Justice. [R. v. Vice Media Canada inc.](#) March 1, 2016.

⁴⁵⁴ Canadian Journalists for Free Expression (CJFE). May 13, 2016. [CJFE to Intervene in Vice News vs. RCMP Appeal](#); Fahmy Foundation. September 24, 2016. [Canadian Journalist's Fight Against RCMP Intensifies](#).

⁴⁵⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. Letter to the State of Canada: Information request regarding the protection of confidentiality of sources of VICE journalist Ben Makuch (Article 18 of the Statute of the IACHR). May 6, 2016. Available: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁵⁶ Canada. Permanent Mission at OAS. Note PRMOAS Note No. 608 to the IACHR, dated August 5, 2016, in which response to information request base on article 18 of the Statute of the Inter-American Commission for Human Rights dated May 6, 2016, is sent. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

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

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

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

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

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

⁴⁵⁷ Canada. Permanent Mission at OAS. Note PRMOAS Note No. 608 to the IACHR, dated August 5, 2016, in which response to information request base on article 18 of the Statute of the Inter-American Commission for Human Rights dated May 6, 2016, is sent. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁵⁸ Canada. Permanent Mission at OAS. Note PRMOAS Note No. 608 to the IACHR, dated August 5, 2016, in which response to information request base on article 18 of the Statute of the Inter-American Commission for Human Rights dated May 6, 2016, is sent. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁵⁹ Law Times. July 18, 2016. [B.C. ruling means journalist must hand over notes](#); Canadian Media Lawyers Association. July 19, 2016. [Mulgrew v The Law Society of British Columbia 2016 BCSC 1279](#).

⁴⁶⁰ Canada. Supreme Court of British Columbia. [Mulgrew v. The Law Society of British Columbia, 2016 BCSC 1279](#). July 11, 2016.

⁴⁶¹ Le Journal de Montréal. June 3, 2016. [Une juge «agressive», «agitée» et «désorganisée»](#).

⁴⁶² Montreal Gazette, September 22, 2016. [Journal de Montréal says it will fight police attempt to search reporter's computer](#); Le Journal de Montréal. September 21, 2016. [Le Journal est perquisitionné par la Sûreté du Québec](#); Reporters Without Borders. September 27, 2016. [Canada - RSF decries harassment of Quebec reporter](#).

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

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

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

F. Access to Public Information

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

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

⁴⁶³ *La Press*. October 31, 2016. [Patrick Lagacé visé par 24 mandats de surveillance policière](#); *Montreal Gazette*. November 1, 2016. [Montreal police monitored iPhone of La Presse journalist Patrick Lagacé](#); *The Star*. October 31, 2016. [Montreal police spied on La Presse journalist Patrick Lagacé](#); *The Canadian Press & National Observer*. October 31, 2016. [Edward Snowden cautions reporters after Montreal police caught spying on journalist](#); *Canadian Journalists for Free Expression (CJFE)*. November 1, 2016. [Coalition condemns police surveillance of montreal journalist's iphone](#); *CBC*. October 31, 2016. [La Presse columnist says he was put under police surveillance as part of 'attempt to intimidate'](#).

⁴⁶⁴ *The Guardian*. November 3, 2016. [Quebec scandal of spying on journalists widens to national broadcaster](#); *Toronto Sun*. November 2, 2016. [6 more Quebec journalists reportedly spied on by authorities](#); November 2, 2016. [Police surveillance scandal: Quebec minister calls for new probe](#); *CBC News*. November 2, 2016. [6 reporters spied on by Quebec provincial police](#).

⁴⁶⁵ *CBC*. November 1, 2016. [Premier promises greater protection of journalists, sidesteps call for inquiry](#); *The Globe and Mail*. November 1, 2016. [Quebec acts to protect press freedom after police tracking of journalists](#); *CNT News Montral*. November 1, 2016. [Couillard steps in amid new revelations of police spying on journalists](#).

⁴⁶⁶ Office of the information Commissioner of Canada. [Statement of the Information and Privacy Commissioners of Canada on the Duty to Document](#). January 25, 2016; *Canadian Journalists for Free Expression (CJFE)*. April 13, 2016. [Canadian Information Commissioners join together to improve access to information](#).

Information Act.⁴⁶⁷ The 2016 federal budget also included measures to enhance access to information, notably the creation of a website where anyone can submit information requests to any government institution and the expansion of its open data initiatives.⁴⁶⁸ Full review of the *Access to Information Act* is not slated to begin until 2018, a delay deplored by Canadian Journalists for Free Expression (CJFE), given the outdated and messy state of the current access to information system.⁴⁶⁹

297. The Office of the Special Rapporteur also notes that the government of Quebec announced on May the creation of an open data website, which enables easy public access to data and statistics from a dozen of ministries, organisms and municipalities, including the cities of Montreal and Quebec.⁴⁷⁰

298. Similarly, the Office of the Special Rapporteur observes that the government of Saskatchewan followed the recommendations of its Information and Privacy Commissioner in introducing amendments to its access to information legislation, notably to extend its reach to police forces and government officials.⁴⁷¹

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

G. Communication Surveillance

300. In January 2016, the Ontario Superior Court of justice ruled that broad police search warrants, commonly known as “tower dump” production orders, forcing telecommunications companies to provide the cellphone records of thousands of customer’s are a breach of privacy and violates the Canadian *Charter of Rights and Freedoms*. The decision also sets out a series of guidelines that police forces must follow when seeking a production order from telecommunications companies in order to ensure that only information about cellphone users relevant to their investigation are divulged.⁴⁷²

301. In June 2016, the Canadian government introduced Bill C-22, a new legislation to create a joint oversight committee with extraordinary access to scrutinize all the national security and intelligence operations across the government of Canada with the goal of ensuring that Canadian moral standards are respected.⁴⁷³ Bill C-51, commonly referred to as the Anti-Terrorism Act, provoked widespread criticism when it was passed last year and is viewed as overextending the surveillance powers of intelligence and security agencies at the detriment of fundamental rights, including freedom of expression. As announced earlier this year, the Government of Canada launched public consultation from September 8, 2016, until December 1, 2016, to undertake an expansive revamping of national security legislation.⁴⁷⁴

⁴⁶⁷ Standing Committee on Access to Information, Privacy and Ethics. [Evidence, number 012, 1st session, 42nd Parliament](#). May 5, 2016; Government of Canada. [Interim Directive on the Administration of the Access to Information Act](#). May 5, 2016.

⁴⁶⁸ Government of Canada. [Budget 2016: Chapter 7 – Open and Transparent Government](#). March 22, 2016.

⁴⁶⁹ Canadian Journalists for Free Expression (CJFE). May 3, 2016. [CJFE’S 2015-2016 Free Expression Report Card](#); Canadian Journalists for Free Expression (CJFE). May 6, 2016. [Feds take small steps to clean access to info “mess”](#).

⁴⁷⁰ Radio-Canada. April 1, 2016. [Données ouvertes : 5 grandes villes du Québec lancent un portail unique](#). Fédération professionnelle des journalistes du Québec. April 7, 2016. [Québec lance un programme de données ouvertes](#).

⁴⁷¹ CTV News. June 13, 2016. [Sask. access and privacy laws extended to cover political staff, police services](#). Fédération professionnelle des journalistes du Québec. June 16, 2016. [La police et les fonctionnaires seront enfin soumis à la loi d’accès à l’information](#).

⁴⁷² Ontario Superior Court of Justice. [R. v. Rogers Communications](#). January 14, 2016.

⁴⁷³ Parliament of Canada. [Bill C-22: An Act to establish the National Security and Intelligence Committee of Parliamentarians and to make consequential amendments to certain Acts](#). June 16, 2016; CBC News. June 16, 2016. [Liberals propose joint oversight committee with ‘extraordinary access’ to scrutinize national security](#).

⁴⁷⁴ Canada. September 8, 2016. [Government of Canada Launches Public Consultation on National Security](#); HuffPost Politics Canada. January 9, 2016. [Liberals’ C-51 changes open to consultations, Public Safety Minister says](#); Canadian Journalists for Free Expression (CJFE). January 15, 2016. [Canadian government open to public consultation on Bill C-15](#).

302. The Office of the Special Rapporteur reiterates that surveillance programs must be designed and implemented in accordance with international human rights standards. Notably, States must guarantee that the interception, collection and use of personal information are clearly authorized by law in order to protect individuals from arbitrary or abusive interference with their privacy. Moreover, the decision to undertake surveillance activities that intrude upon individual privacy must be authorized by an independent judiciary and justified in terms of the objectives pursued in the specific case and the proportionality of the measure in relation to necessity and the interests pursued. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that States should establish independent oversight mechanisms over the authorities in charge of conducting surveillance in order to ensure transparency and accountability.⁴⁷⁵

H. Internet and Freedom of Expression

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

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

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

⁴⁷⁵ 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. 415-417.

⁴⁷⁶ Canadian Radio-Television and Telecommunications Commission. Telecom Notice of Consultation CRTC 2016-192. Available for consultation at: <http://www.crtc.gc.ca/eng/archive/2016/2016-192.htm>; CBC. May 30, 2016. [CRTC reviewing controversial 'zero-rating' in internet plans](#); The Globe and Mail. May 19, 2016. [CRTC to explore Net neutrality in hearing on Internet, wireless data pricing](#); Cantech Letter. October 31, 2016. [CRTC debating net neutrality's future in hearing this week](#); Huffington Post. October 31, 2016. [CRTC's Net Neutrality Hearings Could Mean Big Changes For Canadian Internet](#); Mobilesyrupt. November 7, 2016. [Net neutrality vs. differential pricing: CRTC hearing discusses mobile internet in Canada](#).

⁴⁷⁷ 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](#).

I. Other Relevant Situations

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

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

308. Furthermore, on October 28, 2015, the government of Ontario enacted the Protection of Public Participation Act, 2015 (PPPA), which came into force on November 3, 2015.⁴⁸¹ The legislation on protection of public participation protects journalist and activists from bearing frivolous and expensive lawsuits filed by well-funded individuals or corporations. Under the PPPA, when moving to dismiss the defendant must show that the lawsuit rose from an expression related to a matter of public interest. To overcome the motion, the plaintiff must show that the proceeding has substantial merit, the moving party has not valid defense, and the dismissal of the lawsuit would cause serious harm. Furthermore, the PPPA provides that the plaintiff cannot amend the lawsuit once the defendant moved to dismiss and, if the judge dismisses the proceeding, the moving party is entitled to recover the costs on a full indemnity basis. These provisions apply on proceedings commenced on or after December 1, 2014.

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

⁴⁷⁸ CBC News. February 16, 2016. [Rachel Notley's NDP bans The Rebel from Alberta government news conferences](#); CityNews. February 16, 2016. [Alberta battling Ezra Levant's online news outlet over legislature access](#); The Blaze. February 16, 2016. [Conservative media outlet complains its reporters are excluded from government press events – get a load of the government's response](#).

⁴⁷⁹ HuffPost Alberta. February 21, 2016. [Notley won't limit media access to government news conferences](#); CBC News. February 17, 2016. [Rachel Notley's NDP Lifts ban on The Rebel, says it made a mistake](#).

⁴⁸⁰ The Star. June 16, 2016. [Government bars Canada Post from delivering controversial Your Ward News](#); Fédération Professionnelle des Journalistes du Québec. June 9, 2016. [Le gouvernement fédéral ordonne l'arrêt de distribution d'un journal controversé](#); Canadian Civil Liberties Association. June 10, 2016. [Canada Post order undermines free speech](#).

⁴⁸¹ [Protection of Public Participation Act, 2015](#). November 3, 2015; Canada. Legislative Assembly of Ontario. [Bill 52, Protection of Public Participation Act, 2015](#). November 3, 2015.

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

⁴⁸² Canada. Ontario Superior Court. 1704604 Ontario Ltd. v. Pointes Protection Association et al. April 25, 2016. Available for consultation at: <http://www.ontariocourts.ca/search-canlii/scj/scj-en.htm>; Canadian Justice Review Board. May 13, 2016. [1704604 Ontario Ltd. v Pointes Protection Association et al. 2016 ONSC 2884](#).

9. COLOMBIA

A. Progress

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

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

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

⁴⁸³ Centro Nacional de Memoria Histórica. *La palabra y el silencio*. December 2, 2015. Available at: <http://www.centrodememoriahistorica.gov.co/informes/informes-2015-1/la-palabra-y-el-silencio>

⁴⁸⁴ Centro Nacional de Memoria Histórica. *La palabra y el silencio*. December 2, 2015. Available at: <http://www.centrodememoriahistorica.gov.co/informes/informes-2015-1/la-palabra-y-el-silencio>

⁴⁸⁵ Consejo de Estado. March 4, 2016. *Boletín del Consejo de Estado*; Consejo de Estado. Sala de lo Contencioso Administrativo. Sección Tercera. Subsección B. Consejero Ponente: Ramiro de Jesús Pazos Guerrero. Radicación No. 07001-23-31-000-2004-00162-01(34507). October 29, 2015. Available at: [http://190.24.134.67/documentos/boletines/PDF/07001-23-31-000-2004-00162-01\(34507\).pdf](http://190.24.134.67/documentos/boletines/PDF/07001-23-31-000-2004-00162-01(34507).pdf)

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

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

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

315. In February, journalist Javier Gaviria from la the Voice of Yopal [*Voz de Yopal*] in Yopal, Casanare, reported that he had received death threats via his personal phone and at the station's phone. The journalist stated that the calls began after he reported the crimes allegedly committed by the director of the sports institute in that town. Additionally, other journalists in Yopal, had reported incidents of intimidation and stigmatization by the municipal mayor's office, which were allegedly in retaliation against the reports of the press regarding the problems of current mayor Jhon Jairo Torres.⁴⁹¹

⁴⁸⁶ Consejo de Estado. Sala de lo Contencioso Administrativo. Sección Tercera. Consejero Ponente: Hernán Andrade Rincón. Expediente No. 34.349. Radicación No. 25000232600020010182502. September 14, 2016. Available at: http://consejodeestado.gov.co/documentos/sentencias/14-09-2016_25000232600020010182502%20.pdf

⁴⁸⁷ Consejo de Estado. Sala de lo Contencioso Administrativo. Sección Tercera. Consejero Ponente: Hernán Andrade Rincón. Expediente No. 34.349. Radicación No. 25000232600020010182502. September 14, 2016. Available at: http://consejodeestado.gov.co/documentos/sentencias/14-09-2016_25000232600020010182502%20.pdf; El Tiempo. September 15, 2016. *Consejo de Estado condena a la Nación por homicidio de Jaime Garzón*; Semana. September 14, 2016. *¿Por qué condenaron a la Nación por el homicidio de Jaime Garzón?*; El País. September 14, 2016. *Consejo de Estado condenó a la Nación por el crimen de Jaime Garzón*.

⁴⁸⁸ Consejo de Estado. Sala de lo Contencioso Administrativo. Sección Tercera. Consejero Ponente: Hernán Andrade Rincón. Expediente No. 34.349. Radicación No. 25000232600020010182502. September 14, 2016. Available at: http://consejodeestado.gov.co/documentos/sentencias/14-09-2016_25000232600020010182502%20.pdf; Pacifista. September 15, 2016. *Las cinco claves de la sentencia que condenó a la Nación por el asesinato de Jaime Garzón*; W Radio. September 14, 2016. *Consejo de Estado condena a la Nación por homicidio de Jaime Garzón*; El Espectador. September 14, 2016. *Condenan a la Nación por crimen de Jaime Garzón*.

⁴⁸⁹ Colectivo de Abogados "José Alvear Restrepo"/Fiscalía General de la Nación. September 28, 2016. Radicado 9987. Resolución No. 048 de 2016. Available at: <https://www.colectivodeabogados.org/?La-Fiscalia-General-de-la-Nacion-reconoce-que-crimen-de-Jaime-Garzon-es-de-lesa>; Fiscalía General de la Nación. September 30, 2016. *Homicidio del humorista Jaime Garzón es de lesa humanidad: Fiscalía*.

⁴⁹⁰ Colectivo de Abogados "José Alvear Restrepo". September 30, 2016. *La Fiscalía General de la Nación reconoce que crimen de Jaime Garzón es de lesa humanidad*; Fundación para la Libertad de Prensa (FLIP). September 30, 2016. *Los asesinatos de Jaime Garzón, Mario Calderón y Elsa Alvarado ya son crímenes de lesa humanidad*; El Espectador. September 30, 2016. *El modus operandi contra Jaime Garzón y otras personas "incómodas"*; Semana. September 29, 2016. *El caso de Jaime Garzón fue declarado crimen de lesa humanidad*; W Radio. September 29, 2016. *Declaran crimen de Jaime Garzón como delito de lesa humanidad*; El País. September 29, 2016. *Fiscalía declara crimen de Jaime Garzón como delito de lesa humanidad*; RCN Radio. September 29, 2016. *Fiscalía declara delito de lesa humanidad el crimen de Jaime Garzón*.

⁴⁹¹ Fundación para la Libertad de Expresión (FLIP). February 16, 2016. *Desconocidos amenazan al periodista Javier Gaviria*; Personería municipal de Yopal. February 15, 2016. *Personería rechaza amenazas en contra de periodistas y pide acción de las autoridades*;

316. On March 28, journalists, politicians, public officials and leaders of social organizations in the department of Cauca received a pamphlet via e-mail, signed by the Black Eagles [*Águilas Negras*], which contained death threats and in which they were given a week to leave the area. In the pamphlet, the leaders and journalists were accused of being subservient and supporters of the peace process, which referred to the peace negotiations underway between the government and the FARC guerrillas. The Popayan Metropolitan Police [*Policía Metropolitana de Popayán*] announced that it was investigating the source of the pamphlet.⁴⁹²

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

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

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

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

La Voz de Yopal. February 15, 2016. [Periodista Javier Gaviria denuncia amenazas de muerte](#); El Espectador. March 1, 2016. [Periodistas de Casanare denuncian presiones por parte del alcalde "John Calzones"](#).

⁴⁹² W Radio. March 29, 2016. [Denuncian panfleto que amenaza a periodistas y líderes sociales en Cauca](#); Corporación Nuevo Arco Iris. March 29, 2016. ['Águilas Negras' amenazan a líderes y organizaciones sociales del suroccidente del país](#); El País. March 29, 2016. [Investigan panfleto que amenaza a comunicadores del Cauca](#); Contagio Radio. March 29, 2016. ['Águilas Negras' amenazan a organizaciones y líderes sociales del Cauca](#).

⁴⁹³ Fundación para la Libertad de Prensa (FLIP). April 14, 2016. [Exalcalde intimida a periodista de El Herald para no publicar una noticia](#); El Herald/You Tube. April 14, 2016. ["No aceptaremos intimidaciones": Marco Schwartz, Director de EL HERALDO](#); El Herald. April 14, 2016. [Audio: Así fue la intimidación del exalcalde al periodista Germán Corcho](#); Caracol Radio. April 15, 2016. [El Herald rechaza intimidaciones a periodista de esa casa editorial](#).

⁴⁹⁴ Colectivo de abogados "José Albear Restrepo". April 18, 2016. [Robo de información sobre Pacific Rubiales a periodista Bladimir Sánchez](#); Fundación para la Libertad de Prensa (FLIP). April 19, 2016. [Roban equipos del periodista y defensor de derechos humanos](#); Federación Colombiana de Periodistas (Fecolper). April 18, 2016. [Robo de información y equipos al periodista independiente Bladimir Sánchez](#).

⁴⁹⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 25, 2016. [Press Release R70/16. Office of the Special Rapporteur Expresses Concern over the Situation of Three Journalists Reported Missing in Colombia](#); Committee to Protect Journalists (CPJ). May 23, 2016. [Journalist Missing in Colombia](#); El Espectador. May 22, 2016. [Salud Hernández, retenida por la guerrilla en El Tarra, Norte de Santander](#); Reporters Without Borders (RSF). May 24, 2016. [Concern about Spanish newspaper reporter missing in Colombia](#); El País. May 23, 2016. [El Ejército de Colombia busca a la periodista española Salud Hernández-Mora](#); El Tiempo. May 27, 2016. [Eln libera a la periodista Salud Hernández-Mora](#); El Herald. May 27, 2016. ["Esto ha sido un secuestro": Salud Hernández-Mora](#); El Colombiano. May 27, 2016. ["Esto ha sido un secuestro": Salud Hernández](#); Publimetro. June 5, 2016. [Salud Hernández-Mora habló sobre su secuestro](#).

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

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

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

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

⁴⁹⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 25, 2016. [Press Release R70/16. Office of the Special Rapporteur Expresses Concern over the Situation of Three Journalists Reported Missing in Colombia](#); Committee to Protect Journalists (CPJ). May 24, 2016. [Two journalists disappear in Colombia while covering story of missing reporter](#); El País. May 24, 2016. [Desaparecen dos periodistas colombianos que investigaban el paradero de Salud Hernández-Mora](#); Noticias Caracol. May 24, 2016. [ELN retuvo a periodistas de Noticias Caracol y otros medios en el Catatumbo](#).

⁴⁹⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 25, 2016. [Press Release R70/16. Office of the Special Rapporteur Expresses Concern over the Situation of Three Journalists Reported Missing in Colombia](#); Reporters Without Borders (RSF). May 27, 2016. [RSF calls for release of three journalists held by Colombia's ELN](#); El Heraldo. May 27, 2016. [Gobierno responsabiliza al ELN por desaparición de Salud Hernández](#); El Tiempo. May 27, 2016. [Paso a paso del secuestro de Salud Hernández y los periodistas de RCN](#); BBC. May 23, 2016. [Fuerzas militares de Colombia buscan a la periodista española Salud Hernández-Mora](#).

⁴⁹⁸ Reporters Without Borders (RSF). May 28, 2016. [RSF celebra la liberación de la periodista Salud Hernández-Mora y de sus compañeros colombianos](#); Caracol Radio. May 27, 2016. [Liberan a Salud Hernández-Mora](#); CNN Español. May 27, 2016. [ELN libera a Salud Hernández-Mora y a los dos periodistas de RCN](#); NTN24. May 27, 2016. [ELN libera al periodista de RCN Noticias Diego D' Pablos y al camarógrafo Carlos Melo](#); El Tiempo. July 11, 2016. [RCN denuncia amenazas a periodistas que fueron secuestrados por el Eln](#).

⁴⁹⁹ Noticias RCN. July 11, 2016. [RNC televisión y su sistema informativo denuncia](#); El Tiempo. July 11, 2016. [RCN denuncia amenazas a periodistas que fueron secuestrados por el Eln](#); Panampost. July 12, 2016. [Colombia: Periodistas liberados por ELN recibieron amenazas](#); Kienyke. July 12, 2016. [Periodistas que cubrían secuestro de Salud Hernández, reciben amenazas de muerte](#); Diario del Sur. July 11, 2016. [Periodistas Diego D'Pablos y Carlos Melo declarados objetivo militar](#); Diario Las Américas. July 12, 2016. [Denuncian supuestas amenazas del ELN a periodistas colombianos exsecuestrados](#).

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

⁵⁰¹ Vanguardia. July 11, 2016. [Eln desmiente amenazas a periodistas de RCN](#); El Universal. July 11, 2016. [Eln desmiente amenazas a periodistas de RCN](#); Pulzo. July 12, 2016. [Periodistas de RCN recibieron amenaza, pero Eln niega ser autor](#); La Opinión. July 12, 2016. [Eln desmiente amenazas a periodistas de RCN](#); Publimetro. July 12, 2016. [RCN denuncia amenazas a periodistas que secuestró el Eln](#).

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

⁵⁰³ Fundación para la Libertad de Prensa (FLIP). August 8, 2016. [Policías amenazaron a reporteros del Noctámbulo de CityTV](#); El Tiempo. August 5, 2016. [Procuraduría asume investigación por violencia a periodistas de Citytv](#); Diario Las Américas/EFE. August 5, 2016.

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

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

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

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

327. The Office of the Special Rapporteur is concerned about the assaults and attacks against journalists by public officials and private citizens. *Federación Colombiana de Periodistas* (Fecolper) reported that between January and April, 70 incidents of violence and assault against journalists had been recorded, which would represent an upward trend in cases of violence against reporters compared to the same quarter in

[Policías agreden a periodistas de canal de televisión colombiano](#); CNN Español. August 5, 2016. [Indignación en Colombia por agresión de la policía a periodistas](#); El Espectador. August 7, 2016. [Periodistas de CityTV fueron amenazados por policías que los golpearon](#).

⁵⁰⁴ Caracol. August 5, 2016. [Policía abre investigación por agresión a equipo periodístico de City TV](#); El Tiempo. August 5, 2016. [Procuraduría asume investigación por violencia a periodistas de Citytv](#); El Espectador. August 6, 2016. [Agresión de policías a periodistas de CityTV será investigada por la Procuraduría](#).

⁵⁰⁵ "Lamento inexcusable comportamiento agresivo de algunos policías con equipo de CityTV anoche". Twitter account of Enrique Peñalosa @EnriquePenalosa. [August 5, 2016](#); Canal Capital. August 2016. [Equipo periodístico de city tv fue agredido por uniformados de la policía](#).

⁵⁰⁶ Fundación para la Libertad de Prensa. September 6, 2016. [Continúan las presiones contra los periodistas de City TV](#).

⁵⁰⁷ Fundación para la Libertad de Prensa (FLIP). September 14, 2016. [Comunidad de Puerto Cachicamo, Guaviare, restringe la libertad de prensa](#); La Silla Vacía. September 19, 2016. [El doble filo de la participación social en el Acuerdo de Paz](#); Las2Orillas. September 12, 2016. ['Los Informantes' en el Guaviare: ¿Intento de secuestro o enfrentamiento con la comunidad?](#)

⁵⁰⁸ Fundación para la Libertad de Prensa (FLIP). September 27, 2016. [Periodista de Semana fue agredido por miembro de comunicaciones del gobierno](#); Semana. September 26, 2016. [Habla el fotógrafo agredido en Cartagena](#).

⁵⁰⁹ Semana. September 26, 2016. [Habla el fotógrafo agredido en Cartagena](#); Primero Noticias/You Tube. September 27, 2016. [Escolta del Presidente Santos agredió a periodista en Cartagena](#); El Universal. September 26, 2016. [Fotógrafo atacado y excluido en evento previo a la firma de la paz](#); Pulzo. September 26, 2016. [Retiran a golpes a prensa nacional de la firma de paz en Cartagena](#).

⁵¹⁰ Equipo Nizkor. March 1, 2016. [Caso Claudia Julieta Duque: Un precedente mundial por la búsqueda de justicia](#); Caracol Radio. January 13, 2016. [Reanudarán juicio a José Miguel Narváez por tortura a Claudia Julieta Duque](#); El Turbión. July 1, 2016. [Dilatan juicio del caso de Claudia Julieta Duque](#); El Herald/EFE. February 23, 2016. [Eurodiputados piden a Colombia que proteja a periodista Claudia Julieta Duque](#); ¡Pacifista!. March 3, 2016. [Así ha operado la justicia en el caso de la periodista Claudia Julieta Duque](#).

2015.⁵¹¹ Among the cases of assault reported are those against journalists Jhon Jairo Jacome and Juan Pablo Bayona from the daily newspaper *La Opinión*,⁵¹² journalists Shelly Camacho Arcia and Andrés Felipe López de *La Lengua Caribe*,⁵¹³ and journalist Luz Marina Rodríguez and cameraman Marcos Soto from *Nortevisión*.⁵¹⁴

328. On November 13, journalist Lucy Flórez, was threatened via text message. Flórez received the message after capturing, with her cameraman, the assistant of the Congresswoman Karen Cure - Katherine Contreras, visiting Hospital Cari in Barranquilla, where Enilce López, aka "La Gata," is hospitalized. On November 17, groups of journalists held a march in Barranquilla to protest the threat received by Flórez.⁵¹⁵

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

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

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

⁵¹¹ Federación Colombiana de Periodistas (Fecolper). May 3, 2016. [En aumento la violencia contra la prensa en 2016](#); El País. May 3, 2016. [Se disparan agresiones contra periodistas en Colombia](#).

⁵¹² La Opinión. July 14, 2016. [Así se vive la lucha contra el contrabando en la frontera](#); Fundación para la Libertad de Prensa. July 13, 2016. [Periodistas de La Opinión fueron agredidos por contrabandistas](#); El Tiempo. July 14, 2016. [Periodistas estuvieron bajo fuego](#).

⁵¹³ La Lengua Caribe. July 2, 2016. [Exalcalde de San Pelayo y actual Secretario de salud de Córdoba agradece a Periodistas de La Lengua Caribe](#); La Lengua Caribe. July 2, 2016. [Secretario de salud departamental, protagonista de agresión a periodistas de La Lengua Caribe](#); Fundación para la Libertad de Prensa. July 5, 2016. [Agresión de Secretario de Salud de Córdoba afecta a la prensa y los derechos de los periodistas](#).

⁵¹⁴ La Lengua. October 27, 2016. [Por agredir a periodistas denuncian a Concejal de Montería](#); Montería Radio 38 Grados. October 27, 2016. [Denuncian a Concejal de Montería por arrebatarle cámara a periodista](#); La Voz del Pueblo. October 27, 2016. [Periodistas Denuncian A Concejal De Montería Por Hurto Calificado](#); Fundación para la Libertad de Prensa. October 28, 2016. [Concejal de Montería retiene material periodístico del equipo informativo de Nortevisión](#).

⁵¹⁵ Fundación para la Libertad de Prensa (FLIP). November 16, 2016. [La periodista Lucy Flórez fue amenazada a través de un mensaje de texto](#); Emisora Atlántico. No date. [Periodistas rechazan amenazas en contra de la corresponsal de Noticias Uno Lucy Flórez](#); El Herald. November 18, 2016. [Plantón en contra de amenaza a la periodista Flórez](#); La Libertad. November 17, 2016. [Periodistas protestan contra amenazas a su colega Lucy Florez](#); El Tiempo. November 17, 2016. [Periodistas de Barranquilla hacen plantón por amenazas a una colega](#); [Protestan en Barranquilla por amenazas a periodista](#); Caracol Radio. November 17, 2016. [Protestan en Barranquilla por amenazas a periodista](#); LaMetro Noticias. November 16, 2016. [Plantón de periodistas para rechazar amenazas de muerte a periodista Lucy Flórez](#).

⁵¹⁶ FLIP. 23 de noviembre de 2016. [Periodistas de Onda Opita fueron amenazados en Neiva](#); Onda Opita. Sin fecha. [Ante las amenazas, las presiones y las intimidaciones, hemos cerrado indefinidamente este portal de noticias. ¡hemos sido censurados!](#); Los Boyanos. 23 de noviembre de 2016. [Periodistas del portal Onda Opita fueron amenazados en Neiva](#); Onda Opita/Facebook. 20 de noviembre de 2016. [Comunicado a la opinión pública](#).

⁵¹⁷ Red de Comunicadores Populares del Sur (RECPSUR). 26 de noviembre de 2016. [Comunicado: Intimidación y estigmatización contra la libertad de prensa](#); HSB Noticias. 29 de noviembre de 2016. [Alcalde de San Vicente del Caguán amedrenta a medio de comunicación](#); "#Atención #ParamilitaresEnSanVicente Pobladores del barrio Villa Norte de San Vicente del Caguán denuncian que anoche patrullaban las calles del sector, un grupo de personas vestidas de negro, encapuchadas y con un brazalete que tenía un logo visible de las AUC. La comunidad pide la presencia institucional que garantice la garantía la vida y tranquilidad de los habitantes y el acompañamiento permanente de Organizaciones Defensoras de Derechos Humanos Nacionales e Internacionales con el fin de evitar hechos de violencia en el sector. ¡Noticia en desarrollo!". Cuenta de Facebook de Red de Comunicadores Populares del Sur @recpsur. 26 de noviembre de 2016.

case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.⁵¹⁸

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

C. Social Protests

333. On May 30, the Campesino, Ethnic and Popular Agricultural Summit [*Cumbre Agraria, Campesina, Étnica y Popular*] called for a national “strike” to demand that the National Government fulfill the commitments it made in 2013.⁵¹⁹ The strike lasted until June 12.⁵²⁰ During the strike there were protests and crowds of indigenous communities and peasant farmers in different areas of the country, mainly in the departments of Cauca, Meta, Huila, Nariño, Antioquia, Arauca and Norte de Santander.⁵²¹

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

⁵¹⁸ 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. 31; See also: IACHR. [Annual Report 2010. 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. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

⁵¹⁹ RCN Noticias/EFE. May 30, 2016. [Campesinos convocan a paro agrario para protestar contra políticas gubernamentales](#); Portafolio. June 3, 2016. [Cinco puntos para entender el paro agrario nacional](#); Publimetro. June 13, 2016. [Los acuerdos que pusieron fin al paro agrario en Colombia](#); Semana. May 30, 2016. [Paro agrario es por el incumplimiento del Gobierno: campesinos](#).

⁵²⁰ Portafolio. June 12, 2016. [Se levantó el paro agrario tras doce días de bloqueos y protestas](#); Resumen Latinoamericano. June 12, 2016. [Colombia: Fin del Paro: “La Cumbre Agraria sale fortalecida”](#).

⁵²¹ Portafolio. June 3, 2016. [Cinco puntos para entender el paro agrario nacional](#); RCN Radio. June 7, 2016. [Paro agrario y de transportadores afecta el abastecimiento en varias regiones del país](#); Defensoría del Pueblo. May 31, 2016. [Garantías para el derecho a la protesta y los derechos de quienes no hacen parte de ella, pide la Defensoría a propósito del Paro Agrario](#).

⁵²² United Nations. Office in Colombia of the United Nations High Commissioner for Human Rights (OHCHR). June 8, 2016. [Comunicado de prensa ONU Derechos Humanos insta a redoblar esfuerzos por mantener diálogo entre autoridades y Minga durante protesta social](#); Semana. May 31, 2016. [Paro agrario: Un muerto y cinco heridos en el suroeste del país](#); BBC. May 31, 2016. [Muere un indígena durante paro agrario en Colombia](#); El Tiempo/EFE/CALI. May 30, 2016. [Jornada de paro agrario nacional: hay tensión en vía a Buenaventura](#); El Espectador. June 5, 2016. [Al paro agrario se sumaría, a partir del lunes, el de los transportadores](#).

⁵²³ El Heraldó. June 3, 2016. [Tres indígenas han muerto en medio de las protestas del paro agrario](#). El País. May 30, 2016. [Tensión en Buenaventura por muerte de indígena en confusos hechos](#); El Heraldó. May 30, 2016. [Un indígena muerto en las primeras protestas del paro agrario](#); Semana. June 3, 2016. [Paro Agrario: tres muertos y decenas de heridos en Cauca y Valle](#).

⁵²⁴ Semana. June 3, 2016. [Paro Agrario: tres muertos y decenas de heridos en Cauca y Valle](#); Semana. June 4, 2016. [Indígenas murieron por arma de fuego artesanal](#). El Tiempo. June 2, 2016. [Muerte de dos indígenas pone suspenso a diálogos por paro en Cauca](#); El Tiempo. June 2, 2016. [Comisión investigará muertes de indígenas en protesta agraria en Cauca](#); Worldwide Movement for Human Rights (FIDH). July 13, 2016. [Colombia: Asesinatos, intentos de asesinatos, ataques, amenazas y hostigamiento contra manifestantes en la “Minga Nacional Agraria, Campesina, Étnica y Popular”](#).

that a reward would be offered to anyone with information about the deaths of indigenous men Gersaín Cerón y Marco Aurelio Díaz and it confirmed that a humanitarian commission made up of members of the United Nations, the Judicial Police, the Technical Investigation Corps from the Office of the Prosecutor and the Office of the Ombudsman, would be tasked with establishing the circumstances surrounding their deaths.⁵²⁵ On June 4, a ruling of the National Institute of Legal Medicine and Forensic Science Legal [*Instituto Nacional de Medicina Legal y Ciencias Forenses*] rindicated that the deaths of Gersaín Cerón and Marco Aurelio Díaz would had occurred due to projectile impact of artisanal weapons.⁵²⁶ As of the closing date of this report, there is no information about the reports of this humanitarian commission.

335. According to available information, hundreds of people were allegedly injured during the agricultural protest as a result of the clashes between protesters and ESMAD agents.⁵²⁷ According to the World Organization Against Torture (OMCT), at least 205 people may have been injured during the protest as a result of the excessive use of force by ESMAD and the Army.⁵²⁸ In addition, after six days of protests in the Ranchadero area, on the road between Pamplona and Bucaramanga in the department of Santander, 121 protesters were allegedly arrested and turned over to the Office of the Prosecutor for allegedly detonating explosive devices and lighting the cab of a tractor-trailer on fire, and the police allegedly seized their ammunition.⁵²⁹ In the aforementioned report, the OMCT stated that more than 172 arbitrary arrests were made during the protests in the departments of Santander, Antioquia, Cesar, Nariño, and Cauca.⁵³⁰ In a public statement, Minister of Defense Luis Carlos Villegas stated that through June 7, 145 people, 15 of whom were minors, were allegedly brought up on charges.⁵³¹

336. According to information published some days before the protests, several indigenous leaders were allegedly threatened by the illegal armed group Black Eagles [*Águilas Negras*], via e-mail and pamphlets that were openly distributed in the departments of Cauca and Cesar.⁵³² On June 3, the *Consejo Regional Indígena del Tolima* (CRIT) had allegedly received an e-mail from the illegal armed group *Águilas Negras* in which it was ordered to end the protests and in which the main leaders from different social organizations that defend the rights of indigenous groups in Colombia were declared military targets.⁵³³

⁵²⁵ El Tiempo. June 2, 2016. [Comisión investigará muertes de indígenas en protesta agraria en Cauca: El Espectador. June 2, 2016. Gobierno ofrecerá recompensa para esclarecer muerte de indígenas en paro agrario; Primero Noticias. June 3, 2016. Dos indígenas muertos deja el paro agrario en Colombia.](#)

⁵²⁶ Caracol. June 4, 2016. [Indígenas muertos en protesta tenían heridas de arma artesanal: Medicina Legal; Noticias RCN. June 4, 2016. Medicina Legal dice que indígenas muertos en paro agrario tenían impactos de armas artesanales.](#)

⁵²⁷ El Tiempo. June 2, 2016. [Desde la una de la tarde, protestas en la universidad Pedagógica; World Organisation Against Torture \(OMCT\). July 13, 2016. Colombia: Killings, attempted killings, attacks, threats and harassment against protesters in the "Minga Nacional Agraria, Campesina, Étnica y Popular"; Telesur. June 8, 2016. Paro agrario en Colombia.](#)

⁵²⁸ World Organisation Against Torture (OMCT). July 13, 2016. [Colombia: Killings, attempted killings, attacks, threats and harassment against protesters in the "Minga Nacional Agraria, Campesina, Étnica y Popular".](#)

⁵²⁹ La Opinión. June 3, 2016. [Son 121 los campesinos detenidos en Silos por disturbios en vía a Bucaramanga; El Colombiano. June 3, 2016. 121 capturados y 106 bombas molotov incautadas deja paro agrario; W Radio. June 3, 2016. Norte de Santander: capturadas 121 personas durante paro agrario; Vanguardia.com. June 4, 2016. Detuvieron a 121 personas durante el paro agrario; El Tiempo. June 3, 2016. Detienen a 121 manifestantes del paro agrario en Norte de Santander.](#)

⁵³⁰ World Organisation Against Torture (OMCT). (OMCT). July 13, 2016. [Colombia: Killings, attempted killings, attacks, threats and harassment against protesters in the "Minga Nacional Agraria, Campesina, Étnica y Popular".](#)

⁵³¹ NTN24/EFE. June 7, 2016. ["Intereses en la protesta": Ministro de Defensa colombiano reitera que el ELN se infiltró en paro agrario; Caracol Radio. June 7, 2016. Eln habría desplazado forzosamente a menores durante la protesta: MinDefensa.](#)

⁵³² Worldwide Movement for Human Rights (FIDH). July 13, 2016. [Colombia: Asesinatos, intentos de asesinatos, ataques, amenazas y hostigamiento contra manifestantes en la "Minga Nacional Agraria, Campesina, Étnica y Popular"; Verdad Abierta. May 23, 2016. Águilas Negras ponen precio a cabeza de líderes indígenas.](#)

⁵³³ Verdad Abierta. May 23, 2016. ['Águilas Negras' ponen precio a cabeza de líderes indígenas; RCN Radio. June 8, 2016. Autoridades investigan amenazas contra líderes indígenas del Tolima; Congreso de los Pueblos. June 5, 2016. Boletín de Derechos Humanos No. 7 Minga Nacional Agraria, Campesina, Étnica y Popular; Worldwide Movement for Human Rights \(FIDH\). July 13, 2016. Colombia: Asesinatos, intentos de asesinatos, ataques, amenazas y hostigamiento contra manifestantes en la "Minga Nacional Agraria, Campesina, Étnica y Popular"; El Salmon. June 7, 2016. Águilas negras declaran objetivo militar a líderes del movimiento social y ambiental del Tolima.](#)

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

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

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

340. On June 7, the agricultural protest was joined by a protest held by cargo truckers, who wished to voice their displeasure with the alleged breach by the National Government to the agreements with the labor union, which had been agreed a year ago.⁵³⁷ The cargo truckers protest lasted for 45 days until July 22.⁵³⁸

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

⁵³⁴ El Pilón. June 2, 2016. [Gobierno colombiano denuncia que el ELN infiltró protestas en “paro agrario”](#); Noticias RCN. June 1, 2016. [MinDefensa reporta 15 heridos y 30 carreteras bloqueadas durante paro agrario](#); Semana. June 7, 2016. [El ELN sí se infiltró en paro agrario: MinDefensa](#); El Heraldó. June 6, 2016. [Mindefensa dice que ELN busca presionar al Gobierno con actos violentos en el paro agrario](#); El Mundo/EFE. June 2, 2016. [Gobierno Nacional denunció que el Eln infiltró protestas en paro agrario](#); World Organisation Against Torture. (OMCT). July 13, 2016. [Colombia: Killings, attempted killings, attacks, threats and harassment against protesters in the “Minga Nacional Agraria, Campesina, Étnica y Popular”](#).

⁵³⁵ United Nations. Office in Colombia of the United Nations High Commissioner for Human Rights (OHCHR). June 8, 2016. [Comunicado de prensa ONU Derechos Humanos insta a redoblar esfuerzos por mantener diálogo entre autoridades y Minga durante protesta social](#).

⁵³⁶ Fundación para la Libertad de Prensa (FLIP). June 2, 2016. [En medio del paro agrario se presentan obstrucciones y agresiones contra la prensa](#); 90 Minutos. June 2, 2016. [Rechazan ataques a la prensa en medio de manifestaciones por el paro agrario](#); El País. June 1, 2016. [Denuncian intimidación a la prensa durante cubrimiento de paro indígena](#); Buholá/EFE. June 2, 2016. [Periodistas rechazan agresiones por parte de indígenas en Colombia](#); Fundación para la Libertad de Prensa (FLIP). June 2, 2016. [En medio del paro agrario se presentan obstrucciones y agresiones contra la prensa](#).

⁵³⁷ El Espectador. July 22, 2016. [Se acaba el paro: Gobierno Nacional y camioneros llegan a acuerdo](#); Noticias RCN. June 7, 2016. [Paro camionero: transportadores reclaman al Gobierno cumplir acuerdos de 2015](#); Enterese. No date. [Paro de camioneros y Protesta campesina: Portafolio](#). June 7, 2016. [Unos 150.000 camioneros ‘frenaron’ sus actividades: el gremio está en paro](#); Caracol Radio. June 4, 2016. [Anuncian paro camionero a partir de las cero horas del lunes festivo](#).

⁵³⁸ Semana/EFE. June 6, 2016. [Gobierno pide a camioneros no sumarse al paro](#); Portafolio. July 22, 2016. [Tras 46 días de paro camionero, Gobierno y transportadores alcanzan acuerdo](#); El Colombiano. July 22, 2016. [Tras 45 días, se levanta paro camionero en Colombia](#); Diario Las Américas/EFE. July 22, 2016. [Finaliza paro camionero en Colombia después de 45 días de protestas](#).

⁵³⁹ Contagio Radio. July 15, 2016. [Durante paro camionero van 40 denuncias de abuso de la fuerza por parte del ESMAD](#); Caracol Radio. June 30, 2016. [Fuerzas distúrbios entre camioneros y ESMAD en la vía Duitama-Tunja](#); Caracol. July 20, 2016. [Choques entre camioneros y Esmad en el occidente de Bogotá](#); HSB Noticias. July 20, 2016. [\[VIDEO\] Esmad y transportadores se enfrentan en la Calle 13 de Bogotá](#).

⁵⁴⁰ Telesur. July 13, 2016. [Investigan muerte de joven durante paro camionero en Colombia](#); Caracol Radio. July 13, 2016. [Muere un joven en disturbios por paro camionero en Duitama, Boyacá](#); Semana. July 12, 2016. [Muere joven que participaba en protesta de camioneros](#); El Heraldó. July 15, 2016. [Manifestante del paro camionero murió por granada lacrimógena, según Medicina Legal](#); Noticias RCN. July 12, 2016. [Policía confirma que un joven murió en medio de las protestas del paro camionero](#); El Espectador. July 18, 2016. [Huella encontrada en granada que mató a joven en Duitama sería de agente del Esmad](#); EL Heraldó. July 13, 2016. [Muere joven en medio de manifestación del paro camionero en Boyacá](#).

⁵⁴¹ El Espectador. July 21, 2016. [Funcionario de la Defensoría resultó herido en medio de protestas por paro camionero en Bogotá](#); El País. July 20, 2016. [Un funcionario de la Defensoría del Pueblo resultó herido en protesta en Bogotá](#); Semana. July 20, 2016. [Fuerzas distúrbios dejan herido a un funcionario de la Defensoría](#); Kienyke. July 20, 2016. [Choques entre camioneros y Esmad dejan funcionario de](#)

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

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

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

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

[Defensoría herido: El Mundo/EFE. July 21, 2016. Graves disturbios de camioneros en Bogotá: Diario de Transporte. July 21, 2016. 5 camioneros detenidos por enfrentamientos con la policía en Bogotá.](#)

⁵⁴² El Herald. July 11, 2016. [Avanza el paro de camioneros que ya completa 35 días](#); El Espectador. July 10, 2016. [Paro camionero deja 63 capturados y 80 carros averiados.](#)

⁵⁴³ NTN24. July 18, 2016. [Un muerto y más de 90 detenidos tras 42 días del paro de camioneros en Colombia](#); El Tiempo. July 17, 2016. [Líderes radicales han torpedeado levantamiento del paro camionero.](#)

⁵⁴⁴ El Tiempo. July 14, 2016. [Se cancelarán licencias a conductores que bloqueen vías: Santos](#); Semana. July 14, 2016. [Santos toma medidas extremas frente al paro camionero](#); El Espectador. July 14, 2016. [Santos anuncia fuertes sanciones a camioneros que participen en bloqueos](#); El Herald. July 15, 2016. [Santos extrema medidas contra camioneros en paro](#); Terra. July 14, 2016. [Santos endurece medidas contra líderes de paro camionero.](#)

⁵⁴⁵ El Tiempo. July 18, 2016. [Más de 977 licencias de vehículos de carga han sido suspendidas](#); El Herald. July 15, 2016. [Ordenan la suspensión de licencias a 977 vehículos de carga](#); El País. July 15, 2016. [Supertransporte suspendió licencias de tránsito a 977 vehículos de carga.](#)

⁵⁴⁶ El Tiempo. July 14, 2016. [‘Esto ya no se trata de una protesta social’: Fiscal \(e\) Perdomo](#). El Mundo. July 13, 2016. [Fiscal \(e\) Perdomo asegura que el paro camionero tiene “claros actos de ilegalidad”](#); El País. July 13, 2016. [Camiones que obstaculicen vías del país serán sometidos a extinción de dominio: Fiscalía.](#)

⁵⁴⁷ Semana. August 11, 2016. [Pelea de Hermanas](#); Fundación para la Libertad de Prensa (FLIP). July 25, 2016. [Carta abierta a las agremiaciones camioneras.](#)

⁵⁴⁸ Fundación para la Libertad de Prensa (FLIP). July 14, 2016. [Al menos cuatro periodistas han sido agredidos en medio del paro de transportadores](#). Fundación para la Libertad de Prensa (FLIP). July 25, 2016. [Carta abierta a las agremiaciones camioneras](#); El Tiempo. July 7, 2016. [Camioneros agredieron a un periodista y un camarógrafo en Manizales](#); Radio Notas. July 8, 2016. [Camioneros agredieron a un periodista y un camarógrafo en Manizales: De la Realidad. July 8, 2016. Camioneros golpearon a periodista que cubrían protesta.](#)

⁵⁴⁹ Fundación para la Libertad de Prensa. July 22, 2016. [Carta abierta a las agremiaciones camioneras](#); El Herald. July 20, 2016. [Disturbios en Bogotá por enfrentamiento en medio de protesta del paro camionero.](#)

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

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

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

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

⁵⁵⁰ Congreso de la República de Colombia. Ley 1801 de 2016. Diario Oficial No. 49.949. July 29, 2016. Available at: <http://icdpcapituloantioquia.org/articulos-de-opinion/ley-1801-2016-codigo-nacional-policia-convivencia/>; Caracol. July 29, 2016. *Nuevo Código de Policía entrará en vigencia en enero de 2017*; El País. July 29, 2016. *Santos ya le dio vía libre al Código de la Policía y empieza a regir en seis meses*; El Espectador. July 29, 2016. *"Código de Policía no limita derechos ciudadanos": Santos*.

⁵⁵¹ Colombia Informa. June 27, 2016. *Derecho a la protesta en el nuevo Código de Policía: ¿en contravía de la Paz?*; Fundación Karisma. June 1, 2016. *Que del afán no nos quede un mal #CodigoDePolicia*; TeleSur. June 17, 2016. *Colombia aprueba Código de Policía que violenta libertades*; El Colombiano. June 17, 2016. *Estos son los artículos aprobados en el nuevo Código de Policía*; El Espectador. September 8, 2016. *Demandarán Código de Policía para evitar abusos y defender la protesta social*.

⁵⁵² W Radio. November 5, 2016. *Montería: por amenazas de muerte se levanta campamento por la paz*; Caracol. November 5, 2016. *Por amenazas se levanta campamentón por la paz en Montería*; El Colombiano. November 7, 2016. *Amenazan al campamento por la paz en Montería*; El Herald. November 5, 2016. *Levantán campamento por la paz en Montería por amenazas*; El Espectador. November 5, 2016. *Por amenazas suspenden campamento por la paz en Montería*.

⁵⁵³ El País. November 19, 2016. *Malestar por operativo para desalojar campamento por la paz en Bogotá*; El Espectador. November 19, 2016. *"Con la Alcaldía nunca hubo un acuerdo de desalojo": Vocera del campamento por la paz*; RCN Radio. November 19, 2016. *Autoridades desalojan campamento por la Paz en la Plaza de Bolívar*; El Tiempo. November 20, 2016. *Denuncian agresiones en desalojo del campamento por la paz*; Semana. November 19, 2016. *Controversia por desalojo del 'Campamento por la paz'*; La FM. November 19, 2016. *Esmad desalojó 'Campamento por la paz' de Plaza de Bolívar*.

⁵⁵⁴ 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 helps prevent violence against journalists, and they must vigorously condemn assaults, investigate the facts and punish those responsible, as established in Principle 9 of the IACHR Declaration of Principles.⁵⁵⁵ It is also of special importance that the authorities have special protocols in place to protect the press in situations of social unrest and that security forces receive instruction on the role of the press in a democratic society.⁵⁵⁶

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

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

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

D. Protection Mechanisms

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

⁵⁵⁵ [Principle 9 of the IACHR Declaration of Principles on Freedom of Expression](#): “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

⁵⁵⁶ 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](#).

⁵⁵⁷ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 197.

⁵⁵⁸ 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.

⁵⁵⁹ IACHR. [Press Release 17/14. IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela](#). February 21, 2014.

⁵⁶⁰ IACHR. [Report on the Use of Pretrial Detention in the Americas](#). OEA/Ser.L/V/II. Doc. 46/13. December 30, 2013. Para. 144.

⁵⁶¹ 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](#).

⁵⁶² UNP. No date. [Rendición de Cuentas 2015](#).

over the last five years.⁵⁶³ According to the information provided by the State, as of April 30, 2016, protection arrangements were granted to 129 journalists by the UNP, with Bogotá, Antioquia, Valle del Cauca, and Arauca being the departments with the greatest number of protected journalists.⁵⁶⁴ According to the information available, between May and August, the UNP conducted training sessions and workshops to improve the skills and knowledge of public officials with regard to human rights, gender focus, and assessing risk to the indigenous population, among other things.⁵⁶⁵ The IACHR also recognizes the UNP's efforts to incorporate differentiated focuses into the protection measures it provides to journalists. For example, the FLIP reported to the IACHR that the UNP dealt with the displacement of a journalist through the Risk Assessment and Measures Recommendation Committee (Cerrem) and decided to take action to supplement the security measures by providing psychosocial care to the journalist and her son.⁵⁶⁶ The IACHR also received information on a risk assessment study conducted by the UNP for an indigenous journalist who was threatened by the FARC guerrillas. The assessment concluded that the protection must include security provided by bodyguards from the same indigenous people.⁵⁶⁷

353. The State informed the IACHR that in March 2016, it began preparing a "Protocol for Addressing Cases Involving Journalists and/or Social Communicators" [*Protocolo de Atención de Casos de Periodistas y/o Comunicadores Sociales*], which will establish the factors that must be taken into account at each stage of the process for assessing risk to journalists and social communicators. According to the information provided, the protocol has been drafted with the participation of civil society organizations, specifically the FLIP and Fecolper. Once it is validated and approved by the UNP Directorate and civil society organizations, the protocol will enter its final phase.⁵⁶⁸

354. The Commission has taken knowledge that, by virtue of Decree 567 of April 8, 2016, the National Government eliminated its ground transportation subsidy aimed at benefiting protected individuals who do not have an automobile.⁵⁶⁹ To replace it, the UNP implemented a help button: an electronic device that protected people can use to send an alert to the UNP when facing a risk to which the UNP would respond by monitoring their location and offering security. According to the information available, the UNP signed a direct contract with a private telecommunications company to implement the infrastructure needed for the help button to operate. Civil society organizations have reported a lack of clarity as to the scope of the protection provided by the UNP to protected journalists through the help button. They are concerned that the device may be used to monitor the location of protected people permanently and for other types of surveillance, such as audio. In addition to not trusting the device, the protected journalists have expressed doubts as to the UNP's capacity to respond when alerts are received, especially in remote areas.⁵⁷⁰

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

⁵⁶³ Federación Colombiana de Periodistas, [Fecolper Report 2015. Annual report on violations of freedom of the press in Colombia](#), February 7, 2016, pg. 17.

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

⁵⁶⁵ Unidad Nacional de Protección (UNP). [Informe pormenorizado del Estado de Control Interno](#). September 5, 2016.

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

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

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

⁵⁶⁹ Presidency of the Republic. Ministry for Internal Affairs. [Decreto 567](#) April 8, 2016.

⁵⁷⁰ Fundación para la Libertad de Prensa (FLIP). August 3, 2016. [Flip pide que se aclare el alcance del botón de apoyo de la UNP](#); Equipo Nizkor. August 1, 2016. [Botones de pánico: de las 'chuzadas' del DAS a las escuchas ilegales de la UNP](#); IAPA. October 10, 2016. [Colombia - 72 General Assembly](#); Programa Somos Defensores. Report January - June 2016. [¿Este es el fin?](#)

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

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

E. Stigmatizing Statements

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

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

⁵⁷¹ Fundación para la Libertad de Prensa (FLIP). May 11, 2016. [Preocupación de la FLIP por hechos en el esquema de protección del periodista Javier Osuna](#); *El Espectador*. May 11, 2016. [Preocupación por seguridad de periodista que investigó hornos crematorios de paramilitares](#); CM&. May 11, 2016. [Flip pide garantías para periodista que investigó hornos crematorios de paramilitares](#).

⁵⁷² FLIP. [Informe anual 2015. Paz en los titulares, miedo en la redacción](#). February 8, 2016. Página 28; Federación colombiana de Periodistas (Fecolper). [Informe Fecolper 2015. Informe Anual sobre afectaciones a la libertad de prensa en Colombia](#). February 7, 2016, pg. 19.

⁵⁷³ *El Espectador*. April 2, 2016. [Carta al expresidente Uribe; El Espectador. March 26, 2016. El asociado No. 82; "IohirAkerman, destenido militante del ELN que busca notoriedad con la honra de los míos y la personak". Twitter account of Álvaro Uribe Vélez @AlvaroUribeVel. March 28, 2016; El Espectador. March 30, 2016. "Afirmaciones de Uribe en twitter ponen en peligro a los periodistas": Flip; Fundación para la Libertad de Prensa \(FLIP\). March 30, 2016. \[Nuevas estigmatizaciones del senador Álvaro Uribe Vélez contra periodistas\]\(#\).](#)

⁵⁷⁴ *El Espectador*. April 2, 2016. [Carta al expresidente Uribe](#); Fundación para la Libertad de Prensa (FLIP). April 15, 2016. [Álvaro Uribe Vélez ataca de nuevo a Daniel Coronell por Twitter](#); Fundación para la Libertad de Prensa (FLIP). March 30, 2016. [Nuevas estigmatizaciones del senador Álvaro Uribe Vélez contra periodistas](#); Caracol Radio. April 10, 2016. [Nuevo 'round' entre Daniel Coronell y el expresidente Uribe](#); RCN Radio. April 10, 2016. [Álvaro Uribe Vs Daniel Coronell: nuevo Choque](#); *Semana*. April 9, 2016. [La criminalización del que investiga](#); Las2Orillas. April 11, 2016. [El golpe de mano que preparan los uribistas contra Daniel Coronell y Noticias Uno](#).

⁵⁷⁵ *Semana*. October 22, 2016. [Los dos Uribes](#).

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

⁵⁷⁷ "Daniel Coronel, extraditable, sigue en la impunidad y se luce escribiendo en contra de mi familia y de mi persona [youtu.be/jabhoZHEPPY](#)". Twitter account of Alvaro Uribe @AlvaroUribeVel. [October 25, 2016](#); Las2Orillas. October 25, 2016. [El comprometedor video que le sacó Uribe a Coronell. Se reactiva la pelea](#).

⁵⁷⁸ *Semana*. October 23, 2016. [Más pruebas](#).

and calls Coronell “extraditable (...) and the spokesman for some terrorists.”⁵⁷⁹ In this context, Daniel Coronell received threats on Twitter that came from the account of a group called the Simón Bolívar Command.⁵⁸⁰

359. This environment of marked confrontation, in which there is constant disparagement and stigmatizing, creates a climate that does not allow for reasonable, diverse deliberations on all public matters. Though it is true that tension between the press and governments is a normal phenomenon that stems from the natural role of the press and happens in many States, it is also true that such acute polarization closes off forums for calm debates and does not help the authorities or the press better fulfill the roles they play in a vigorous, deliberative, and open democracy. In these cases it is the role of the State, in light of its national and international responsibilities, to help create a climate of greater tolerance and respect for the ideas of others, even when it views these ideas as offensive or disturbing.⁵⁸¹

360. The Office of the Special Rapporteur also notes that it is the duty of public officials to make sure that their statements do not infringe the rights of those who contribute to public debate by expressing and broadcasting their thoughts, including journalists, the media, and human rights organizations, and they must be aware of the context in which they make statements to ensure that these do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”⁵⁸²

F. Subsequent Liability

361. In October, Judge 13 of the Bogotá Municipal Criminal Court with function of knowledge [*Juez 13 de Penal Municipal con Función de Conocimiento de Bogotá*] dismissed the criminal defamation [*calumnia, injuria agracavada y contumacia*] case against journalist Alfredo Serrano Zabala, which had started based on a criminal complaint filed by the former governor of Bolívar, Libardo Simancas Torres. In 2011, Serrano Zabala published a book entitled “*Las siete vidas de la Gata, La historia de Enilce López*” in which he publicly reported the alleged links between several political leaders of the Colombian Atlantic Coast and illegal armed groups, as well as the alleged friendship between Simancas Torres and gambling entrepreneur Enilse López. The case had been inactive for almost five years and charges were not filed against Serrano Zabala until March 2, 2016.⁵⁸³

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

G. Confidentiality of Sources

⁵⁷⁹ “Sobre un extraditable, contratista del Gbno y vocero de algunos terroristas”. Twitter account of Alvaro Uribe. @AlvaroUribeVel. [October 30, 2016](#); *Victimas de Daniel Coronell/You Tube*. March 22, 2014. [Este es Daniel Coronell](#).

⁵⁸⁰ Pulzo. October 30, 2016. [Daniel Coronell recibe amenazas por columna sobre el expresidente Uribe](#); Proclama del Cauca. October 31, 2016. [Nuevas amenazas a Daniel Coronell, otro atentado contra el periodismo colombiano](#).

⁵⁸¹ IACHR. [Annual Report 2014. 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. 13. March 9, 2015. Para. 65.

⁵⁸² 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.

⁵⁸³ Kienyke. October 28, 2016. [Periodista Serrano le gana pleito a “la gata” y al exgobernador Simancas](#); RCN Radio. October 30, 2016. [Archivan investigación por injuria y calumnia a periodista denunciado por exgobernador de Bolívar](#); El Espectador. October 31, 2016. [Alfredo Serrano ganó el pleito por su libro sobre la “Gata”](#); La Otra Cara. March 7, 2016. [Las garras de “La Gata”](#).

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

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

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

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

⁵⁸⁴ Fiscalía General de la Nación. May 3, 2016. [Citar a periodistas para pedirles que revelen sus fuentes está prohibido: Fiscalía General de la Nación](#); Fiscalía General de la Nación. Directiva No. 0007 “Por medio de la cual se establecen pautas para la citación de periodistas a rendir entrevista o testimonio dentro de una investigación y/o proceso penal”. March 27, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁸⁵ IACHR. [Annual Report 2014. 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.246; IACHR. [Annual Report 2015. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II Doc. 48/15. December 31, 2015. Para. 375.

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

⁵⁸⁷ Fiscalía General de la Nación. Directiva No. 0007 “Por medio de la cual se establecen pautas para la citación de periodistas a rendir entrevista o testimonio dentro de una investigación y/o proceso penal”. March 27, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

the presumption of unconstitutionality surrounding a summons for events a journalist has learned about due to the nature of his or her work.⁵⁸⁸

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

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

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

H. Freedom of Expression and the Peace Process

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

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

⁵⁸⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Technical note on the international standards for protection of journalistic information sources and adaptations to the 2016 Directive 0007 of the General Prosecutor of the Nation. June 2, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁹⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. Technical note on the international standards for protection of journalistic information sources and adaptations to the 2016 Directive 0007 of the General Prosecutor of the Nation. June 2, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

weapons. On this item of the agenda, among others, there is a stated need for institutional and regulatory review in the areas of freedom of expression, diversity and pluralism.⁵⁹¹ When the agreement was rejected after the plebiscite, the Government and the FARC announced their willingness to renegotiate several items of the Agreement.⁵⁹² On December, the Congress approved the new peace agreement.⁵⁹³

371. The draft bill to call for a plebiscite for a referendum on the Final Agreement [*Acuerdo Final*] negotiated between the National Government and the FARC guerrilla group was reviewed by the Constitutional Court [*Corte Constitucional*] in Decision C-379/16.⁵⁹⁴ The Court studied article 5 of the bill, which establishes the disclosure of the Final Agreement to end the conflict and build stable, lasting peace. The article makes reference to the mechanisms that the State was able to use to ensure that citizens could access the entire contents of the agreement before voting in the plebiscite. The article establishes that the Agreement was to be made available on the websites and social medias of all agencies of the Executive Branch, both at the central and decentralized level; it was also to be published on the Armed Forces website, in the written press, radio and television, and radio and television stations were to set aside daily five minutes during the prime time schedule for this purpose.

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

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

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

⁵⁹¹ IACHR. . [Annual Report 2014. 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. 13. March 9, 2015. Para. 249.

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

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

⁵⁹⁴ Corte Constitucional de Colombia. [Judgment C-379/16](#). M.P. Luis Ernesto Vargas Silva. July 18, 2016. M.P. Luis Ernesto Vargas Silva.

⁵⁹⁵ Corte Constitucional de Colombia. [Judgment C-379/16](#). M.P. Luis Ernesto Vargas Silva. July 18, 2016. M.P. Luis Ernesto Vargas Silva.

⁵⁹⁶ Corte Constitucional de Colombia. [Judgment C-379/16](#). M.P. Luis Ernesto Vargas Silva. July 18, 2016. M.P. Luis Ernesto Vargas Silva.

⁵⁹⁷ Corte Constitucional de Colombia. [Judgment C-379/16](#). M.P. Luis Ernesto Vargas Silva. July 18, 2016. M.P. Luis Ernesto Vargas Silva.

⁵⁹⁸ Fundación para la Libertad de Prensa (FLIP). September 1, 2016. [La reglamentación al plebiscito del CNE genera preocupaciones](#); Inter American Press Association (IAPA). September 14, 2016. [Colombia: interference in media content](#).

375. On October 1, the CNE published a resolution to “ensure full guarantees during the voting process in the Special Plebiscite [*Plebiscito Especial*].⁵⁹⁹ Article One of the resolution prohibited the disclosure or pedagogy of the Final Agreement, “as well as all kinds of electoral propaganda for the position of YES or for the position of NO” during the voting day of the plebiscite. Civil society organizations publicly rejected the actions of the CNE, arguing that it censored content and restricted the freedom of the press.⁶⁰⁰ According with the information available, the president of the CNE stated later that this limitation applied to Government material and was not intended to cover the journalistic and editorial work of the media.⁶⁰¹

376. The Office of the Special Rapporteur has stated that the freedom of expression is “one of the individual rights that most clearly reflects the virtue that marks – and characterizes – human beings: the unique and precious capacity to think about the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the model of life that each one has a right to adopt, but the model of society in which we want to live.”⁶⁰² In addition, the IACHR and the Inter-American court have underlined in their case law that the importance of freedom of expression within the catalogue of human rights also stems from its structural relationship to democracy.⁶⁰³ The link between freedom of expression and democracy is so “close” and “indissoluble” that, as the IACHR has explained, the very objective of article 13 of the American Convention is to strengthen the functioning of pluralistic and deliberative democratic systems by protecting and promoting the free circulation of information, ideas and expression of all kinds.⁶⁰⁴ Article 4 of the Inter-American Democratic Charter characterizes the freedom of expression and the freedom of the press as “essential components of the exercise of democracy.” In this regard, the Inter-American Court has reiterated that “Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural associations and, in general, those who wish to influence the public.”⁶⁰⁵

I. The Internet and Freedom of Expression

⁵⁹⁹ Consejo Nacional Electoral. September 29, 2016. Resolución 2004 de 2016. Available at <http://www.cne.gov.co/cne/RESOLUCION-2004-DEL-2016.news>.

⁶⁰⁰ El Tiempo. October 1, 2016. [CNE dice que límites de pedagogía durante plebiscito es a Gobierno](#); El Colombiano. September 30, 2016. [Consejo Nacional Electoral restringe libertad de prensa](#).

⁶⁰¹ El Tiempo. October 1, 2016. [CNE dice que límites de pedagogía durante plebiscito es a Gobierno](#); El Tiempo. October 2, 2016. [Medios sí podrán hacer pedagogía durante la jornada](#).

⁶⁰² 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. 7.

⁶⁰³ 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. 8; *See also*, 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.

⁶⁰⁴ 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.8; IACHR. Arguments before the Inter-American Court in the case of *Ivcher Bronstein v. Peru*. Transcribed in: I/A Court H.R.. Case of *Ivcher Bronstein v. Peru. Merits, Reparations, and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 143. d); IACHR. Arguments before the Inter-American Court in the case of “*The Last Temptation of Christ*” (*Olmedo-Bustos et al.*) *v. Chile*. Transcribed in: 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. 61. b).

⁶⁰⁵ 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.

377. The Constitutional Court [*Corte Constitucional*] issued decision T-050-2016⁶⁰⁶ in which it referred to private citizens' right to honor and good name on social networks. The case studied by the Court had to do with a private citizen's post on her Facebook profile, in which she said that an acquaintance was refusing to pay back a sum of money she had loaned her. The post included a photo of the alleged debtor. The woman who was the subject of the post filed a *tutela* (action for the protection of constitutional rights) against the poster, claiming damage to her human dignity, privacy and good name. In the court of first instance this action was denied, as the judge found that her rights had not been violated and that the Facebook post did not put the petitioner in a state of defenselessness as she claimed. However, at the second instance level, the judge believed that her rights had been violated and that since the respondent had extensive control over the post, this put the petitioner in a state of defenselessness. The Constitutional Court reviewed the file by virtue of the power to review decisions in *tutela* cases.

378. The Court notes that the same standards that apply to the freedom of expression in the traditional media also apply online. According to the decision, accessing social networks such as Facebook presents a greater risk to fundamental rights, because when personal information is made public on these networks, these rights are vulnerable to a greater extent. The Court finds that the ability of social networks "to communicate, publicize, disseminate, and share information, thanks to powerful tools for the exchange, analysis, and processing of information, and the reach of which users are unaware upon beginning to use them, means that the privacy of the individual is increasingly exposed, and therefore, the fundamental rights related thereto are more vulnerable."⁶⁰⁷ Upon reviewing the specifics of the case, the Constitutional Court [*Tribunal Constitucional*] found that "publishing information via media with great social impact such as Facebook, which goes beyond the private sphere of the individual, creates a state of defenselessness, as the person who generates it has ample power to decide what to publish/what is published."⁶⁰⁸ Under this assumption, the Court understands that the respondent had significant control over the post, whereas there was no mechanism that allowed the petitioner to restore her rights in a speedy fashion, placing her in a position of defenselessness.

379. The Court found that in the case, there was no conflict between the freedom of expression and the right to honor and a good name, as it was not able to determine that the respondent's post had a legitimate purpose. On the contrary, it found that the post had a considerable impact on the plaintiff's rights and that these had to be restored. As reparation, it ordered that the respondent post an apology to the plaintiff on her Facebook profile and that it be visible to the same number of people who viewed the first post.⁶⁰⁹

380. Civil society organizations reported that on March 26, the website icetextearruina.com was deleted following a request by Icetex (a State entity that promotes higher education through student loans). The website was a platform created as a forum for people to report problems with Icetex loan fees and to contact the Student Loan Borrowers' Association for legal and financial advice. According to the notification received by the site administrator, the request to remove the domain was based on alleged illegal trademark use and its removal was required.⁶¹⁰

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

⁶⁰⁶ Corte Constitucional de Colombia. [Judgment T-050 de 2016](#). M.P. Gabriel Eduardo Mendoza Martelo. February 10, 2016.

⁶⁰⁷ Corte Constitucional de Colombia. [Judgment T-050 de 2016](#). M.P. Gabriel Eduardo Mendoza Martelo. February 10, 2016.

⁶⁰⁸ Corte Constitucional de Colombia. [Judgment T-050 de 2016](#). M.P. Gabriel Eduardo Mendoza Martelo. February 10, 2016.

⁶⁰⁹ Corte Constitucional de Colombia. [Judgment T-050 de 2016](#). M.P. Gabriel Eduardo Mendoza Martelo. February 10, 2016.

⁶¹⁰ Fundación para la libertad de Prensa. March 29, 2016. [Bloqueo de página web por solicitud del ICETEX es una forma de censura](#); Fundación Karisma. March 29, 2016. [Bloqueo de página web por solicitud del ICETEX es una forma de censura](#); VICE. April 1, 2016. ['El Icetex es malo e ineficiente': Fernando Calao](#).

comment.⁶¹¹ Civil society organizations stated that the new version of the Lleras Law proposed reinforces copyright protection that may limit the expression of opinion and parody.⁶¹²

J. Communications Surveillance

382. On April 11, the ministry of Information and Communication Technologies [*ministerio de las Tecnologías de la Información y las Comunicaciones*], Ministry Of National Defense [*ministerio de Defensa Nacional*], National Directorate of Intelligence [*Dirección Nacional de Inteligencia*] and the National Planning Department [*Departamento Nacional de Planeación*] published Conpes Document 3854, which establishes the guidelines for the National Policy on Digital Security and replaces the Conpes Document 3701 from 2011.⁶¹³ *Fundación Karisma* denounced that 2016 Conpes 3854 does not take into consideration governmental practices which constitute a digital insecurity factor and omits a differential analysis on attacks suffered by sensible sectors of society, such as journalists, human rights activists, judges and others.⁶¹⁴

383. On July 29, President Juan Manuel Santos signed Law 1801 of 2016, known as the New Police Code [*Nuevo Código de Policía*], which will enter into force in January of 2017.⁶¹⁵ Article 32 defines privacy as a people's right to satisfy their needs and carry out their activities in an exclusive sphere and therefore private, but excludes property found in the public space, in an open or public private place, or which is used for social, commercial and industrial purposes, as well as in open public places or open to the public. Additionally, article 139 defines the public space as the set of goods aimed at satisfying collective needs. Also, article 237 determines that monitoring systems will consist of (i) information, images and data captured and/or stored by video systems or technological means located in the public space, or in spaces open to the public, which will be considered as public and shall be freely accessible; and (ii) the video systems and technological means that are private or public property, with the exception of those destined for Defense and National Security [*Defensa y Seguridad Nacional*], which are installed in public spaces, common areas, places open to the public or that being private transcend to the public, will be permanently or temporarily linked to the network that, for this purpose, the National Police provides. Civil society organizations have expressed concern over the limited form in which the right to privacy was defined and the broad manner in which the public space was established, which could lead to an expansive interpretation of police powers to monitor communications that circulate through the electromagnetic space, by means of the surveillance system.⁶¹⁶ In the final observations on the seventh periodic report on Colombia, the United Nations Human Rights Committee expressed concern over the broad definition contained in the new Police Code, which includes the electromagnetic space.⁶¹⁷

⁶¹¹ Ministerio de Industria y Comercio. Proyecto de Ley "Por la cual se modifica la Ley 23 de 1982 y se Adiciona la Legislación Nacional en Material de Derechos de Autor y Derechos Conexos". September 14, 2016. Available at: <http://www.mincit.gov.co/publicaciones.php?id=37102>

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

⁶¹³ Departamento Nacional de Planeación. [Documento Conpes 3854 de 2016](#). Política Nacional de Seguridad Nacional. April 11, 2016.

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

⁶¹⁵ Congreso de la República de Colombia. Ley 1801 de 2016. Diario Oficial No. 49.949, July 29, 2016. Available at: <http://icdpcapituloantioquia.org/articulos-de-opinion/ley-1801-2016-codigo-nacional-policia-convivencia/>; Caracol. July 29, 2016. [Nuevo Código de Policía entrará en vigencia en enero de 2017](#); El País. July 29, 2016. [Santos ya le dio vía libre al Código de la Policía y empieza a regir en seis meses](#); El Espectador. July 29, 2016. ["Código de Policía no limita derechos ciudadanos": Santos](#).

⁶¹⁶ Fundación Karisma. June 15, 2016. Actualización de comentarios al Código de Policía -June 15, 2016. Available at: <https://karisma.org.co/descargar/actualizacion-de-comentarios-al-codigo-de-policia-15-de-junio-de-2016/>; El Espectador. June 9, 2016. [Los desatinos del nuevo Código de Policía](#); Privacy International, Dejusticia y Fundación Karisma. September 2016. Submission in advance of the consideration of the periodic report of Colombia, Human Rights Committee, 118th Session, 17 October – 04 November 2016. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fCOL%2f25208&Lang=en

⁶¹⁷ United Nations. Human Rights Committee. Concluding observations on the seventh periodic report of Colombia. CCPR/C/COL/CO/7. Approved on November 11, 2016. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/COL/CO/7&Lang=Sp

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

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

K. Diversity and Pluralism

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

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

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

⁶¹⁸ 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. 415.

⁶¹⁹ 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.

⁶²⁰ Comisión de Regulación de Comunicaciones. Resolución 4841 de 2015. December 30, 2015. Available at: <https://www.crcom.gov.co/es/noticia/la-crc-adopta-medidas-para-promover-competencia-en-servicios-de-televisi-n-abierta-radiodifundida>; El Tiempo. January 18, 2016. '[Estamos facilitando la entrada al tercer canal': director de la CRC](#).

⁶²¹ ANTVColombia/You Tube. May 4, 2016. [Rueda de prensa Mintic / ANTV. Tema 3º Canal](#); El Tiempo. May 4, 2016. [Licitación del tercer canal y Canal Uno busca ampliar la oferta](#); El Espectador. May 4, 2016. [Tercer canal será adjudicado en 2017](#); El Universal/Colprensa. May 5, 2016. [En mayo de 2017 entraría el tercer canal a morder pauta por \\$1.15 billones](#).

programs to a single licensee.⁶²² Therefore, on September 14, the ANTV published the bid documents from the process of licensing *Canal Uno* television programs. At the same day was opened the bidding process until October 27, and the date for the hearing for the awarding of the license was set for November 22.⁶²³ Current licensee *Jorge Barón Televisión*, who was registered as a bidder in the *Canal Uno* bidding process, requested that the hearing be suspended, as he believed that he had the right to a 10-year extension of his concession.⁶²⁴ On November 4, Jorge Barón announced that he was withdrawing from the bidding process as he did not have sufficient resources pay the minimum fee established in the documents.⁶²⁵

389. The Third Channel bidding process is in its initial stage. The Cundinamarca Administrative Court found that it has been met the conditions established by the Council of State to continue with the bidding process, that suspended the whole process considering that there would be only one bidder.⁶²⁶ The ANTV had started the tender process of the Third Channel, which as was informed, would take place in December. As of the closing of this report, there is no information on the progress in this process.

390. The Foundation for Press Freedom (FLIP) reported that community radio stations in Chocó were having difficulty obtaining licenses to broadcast legally. According to available information, on August 8, officials from the National Spectrum Agency [*Agencia Nacional del Espectro*] (ANE) conducted an operating license check and at least five stations were forced to switch off their frequencies in order to avoid sanctions such as fines and the seizure of their equipment.⁶²⁷

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

L. Freedom of Expression and Discrimination

392. On September 14, the Constitutional Court [*Corte Constitucional*] published la Decision T-500/16, in which it ruled on the *tutela* action filed by the *Organización Nacional Indígena de Colombia* (ONIC) against the director of the program ‘*Séptimo Día*’, the director of *Canal Caracol* and the National Television Agency [*Agencia Nacional de Televisión*] (ANTV), in which it requested the protection of the right to a good name, honor, autonomy, to obtain true and impartial information of the indigenous peoples associated in said organization, to non-discrimination. In addition, it requested that information broadcast on the three programs that made up the series ‘*Desarmonización, la Flecha del Conflicto*’ be corrected.⁶²⁸ The Court

⁶²² Departamento Nacional de Planeación. Plan Nacional de Desarrollo. 2014-2018. Available at: <https://www.dnp.gov.co/Plan-Nacional-de-Desarrollo/Paginas/Que-es-el-Plan-Nacional-de-Desarrollo.aspx>; Congreso de la República. [Ley 1753 de 2015](#); Corte Constitucional de Colombia. [Judgment C-087/16](#). M.P. Jorge Ignacio Pretelt. February 24, 2016; Dinero. July 7, 2016. [Canal Uno se podrá adjudicar a un único operador](#).

⁶²³ El Tiempo. September 14, 2016. [Se inició proceso para adjudicar el Canal Uno](#); El Colombiano/Colprensa. September 14, 2016. [Inicia proceso licitatorio para la concesión del Canal Uno](#); El País. October 19, 2016. [Antv abrió el proceso de licitación para el Canal Uno](#); El Colombiano/Colprensa. September 14, 2016. [Canal Uno, inicia su proceso de licitación](#); El Tiempo. October 20, 2016. [ANTV abre proceso licitatorio para Canal Uno](#).

⁶²⁴ La W. September 13, 2016. [Jorge Barón Televisión pide suspender la licitación del Canal Uno](#); La República. October 28, 2016. [¡Entusiasmo! El Espectador. September 25, 2016. ¿Qué va a pasar con Canal Uno?](#)

⁶²⁵ El Espectador. October 13, 2016. [“El Show de las Estrellas” buscará seguir en la TV](#); El Espectador. September 25, 2016. [¿Qué va a pasar con Canal Uno?](#); La W. November 8, 2016. [Jorge Barón TV se retira de licitación del Canal Uno](#); El Universal. November 4, 2016. [Jorge Barón TV se retira de la licitación por el canal Uno](#).

⁶²⁶ El Espectador. June 7, 2016. [Tribunal Administrativo da vía libre para licitación del tercer canal privado de televisión](#); Semana. June 7, 2016. [Tribunal de Cundinamarca da vía libre al tercer canal de televisión](#); RCN. June 8, 2016. [En diciembre se abriría proceso licitatorio para el tercer canal en Colombia](#); El Espectador. September 25, 2016. [¿Qué va a pasar con Canal Uno?](#)

⁶²⁷ Fundación para la Libertad de Expresión. August 10, 2016. [Apaqón de emisoras en Chocó afecta la pluralidad de información](#).

⁶²⁸ Corte Constitucional de Colombia. [Expediente T-5336862](#). Judgment T-500/2016 September 14, 2016.

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

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

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

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

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

⁶²⁹ Corte Constitucional de Colombia. [Expediente T-5336862](#). Judgment T-500/2016 September 14, 2016.

⁶³⁰ Corte Constitucional de Colombia. [Expediente T-5336862](#). Judgment T-500/2016 September 14, 2016.

⁶³¹ Corte Constitucional de Colombia. [Expediente T-5336862](#). Judgment T-500/2016 September 14, 2016.

⁶³² Corte Constitucional de Colombia. [Expediente T-5336862](#). Judgment T-500/2016 September 14, 2016.

and spirit of openness without which a democratic society cannot exist.”⁶³³ The State has a primary duty of content neutrality, regardless to what degree it is accepted by the government or society.⁶³⁴

397. However, the right to freedom of expression is not absolute and is subject to limitations. In accordance with article 13.5 of the American Conventions, States must enact laws that penalize incitements to “national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin.” In this context, the U.N. Special Rapporteur on minority issues, Rita Izsák, stated that “In order to develop consistent and effective legislation and measures to prohibit and penalize incitement to hatred, hate speech should not be confused with other types of inflammatory, hateful or offensive speech.”⁶³⁵ As expressed by this Office of the Special Rapporteur, “speech that offends because of the intrinsic falseness of its racist and discriminatory content must be refuted, not silenced: those who promote these points of view need to be persuaded of their error in public debate. Given the unfairness of these opinions, there is no better response than the justice of arguments, and that requires more and better debate, not less.”⁶³⁶

M. Other Relevant Situations

398. According to information received by the Office of the Special Rapporteur, access to information for women seeking access to voluntary termination of pregnancy continues to be a challenge in Colombia⁶³⁷. In this regard, the State informed the IACHR that the Ministry of Health and Social Protection [*Ministerio de Salud y Protección Social*] has managed a set of processes aimed at reducing unsafe abortion, which would include, among others, the provision of complete, truthful and timely information to women about voluntary interruption of pregnancy.⁶³⁸

399. On February 17, it was known that journalist Vicky Dávila resigned. Dávila was director at *La FM* of the network *RCN Radio*.⁶³⁹ Her resignation took place after the events of February 16, when she and her crew were conducting an investigation about corruption and an alleged prostitution ring within the National Police. A video that allegedly proved the existence of the ring, in which the vice minister of the Interior [*vice ministro del Interior*] could be seen having a private conversation with a police officer, was published on *La FM*'s website. The video created controversy related to ethics in journalism in the country and led to the resignation of the Vice Minister and then-General of the National Police [*General de la Policía Nacional*].⁶⁴⁰ In

⁶³³ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Hate Speech and Incitement to Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). OEA/Ser.L/V/II. Doc. 48. December 31, 2015. Para. 15

⁶³⁴ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Hate Speech and Incitement to Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). OEA/Ser.L/V/II. Doc. 48. December 31, 2015. Para. 15

⁶³⁵ United Nations. Human Rights Council, Report of the Special Rapporteur on minority issues, Rita Izsák, A/HRC/28/64, January 5, 2015. Para. 54.

⁶³⁶ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Hate Speech and Incitement to Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). OEA/Ser.L/V/II. Doc. 48. December 31, 2015. Para. 22.

⁶³⁷ Contagio Radio. November 24, 2016. [Así está Colombia en materia de derechos sexuales y reproductivos](#).

⁶³⁸ República de Colombia. Observations by the Colombian State on Chapter V "Follow-up on recommendations made by the IACHR in the Truth, Justice and Reparation Report: Fourth Report on the Situation of Human Rights," received on February 28, 2017.

⁶³⁹ Semana. February 17, 2016. [Vicky Dávila renuncia a La FM](#); El Espectador. February 17, 2016. [Vicky Dávila renuncia a La FM](#); El Colombiano/Colprensa. February 17, 2016. [Vicky Dávila renunció a la dirección de la FM](#); El Tiempo. February 18, 2016. [Vicky Dávila renuncia a la dirección de 'La F.m.' de RCN](#).

⁶⁴⁰ Semana. February 20, 2016. [Almendras amargas: habla Vicky Dávila](#); El Colombiano. February 21, 2016. ["Volvería a publicar el video pero de otra manera": Vicky Dávila](#); El Universal. February 21, 2016. [Vicky Dávila cree que el presidente Santos pidió su cabeza](#).

December, 2015, the journalist and her team had reported being followed and that their communications had been intercepted, allegedly in relation to the investigation into the National Police.⁶⁴¹

400. On February 20, Dávila stated during an interview that she had resigned because the President of the Republic had pressured executives at her radio station. In her complaint, Dávila stated that on February 10, after she reported on contracts in the Office of the President that were worth millions, including a contract worth over 15 million for 400 boxes of almonds that were to be gifts for diplomatic delegations, a high executive for the radio station at which she worked gave her a box of the almonds and told her they had been sent to her from the Office of the President.⁶⁴² President Santos responded to the journalist's accusations via Twitter, saying that he was not asking for the "heads of journalists." Additionally, during a forum a few days earlier, he had stated that journalists needed to exercise some restraint and refrain from publishing things like the video Dávila had published. He added that he spoke not as President but as a journalist, alluding to his profession.⁶⁴³

⁶⁴¹ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Hate Speech and Incitement to Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas). OEA/Ser.L/V/II. Doc. 48. December 31, 2015. Para. 402.

⁶⁴² Semana. February 20, 2016. [Almendras amargas: habla Vicky Dávila](#); El Colombiano. February 21, 2016. ["Volvería a publicar el video pero de otra manera": Vicky Dávila](#); El Universal. February 21, 2016. [Vicky Dávila cree que el presidente Santos pidió su cabeza](#).

⁶⁴³ W Radio. February 22, 2016. [Yo no llamo a los directores de medio para pedir cabezas: Santos sobre Vicky Dávila](#); La Silla Vacía. February 18, 2016. [Las lecciones de periodismo de Santos](#); El País. February 17, 2016. [Santos reprochó video sobre viceministro Carlos Ferro](#); El Tiempo. February 17, 2016. ['Eso no es buen periodismo': Santos sobre video de Ferro](#); El Espectador. February 17, 2016. [Fuerte crítica de Santos a medios que publicaron video de Ferro](#); Blue Radio. February 17, 2016. [Eso no es buen periodismo: Santos sobre divulgación de video de Carlos Ferro](#); El Espectador. February 21, 2016. [Yo no pido cabezas de periodistas: Santos](#); "Yo no pido cabezas de periodistas. Soy quien más valora la crítica, cuando es seria y fundamentada". Twitter account of Juan Manuel Santos @JuanManSantos. [February 21, 2016](#).

10. COSTA RICA

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

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

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

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

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

B. Access to Public Information

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

⁶⁴⁴ *Semanario Universidad*. May 25, 2016. [Lo que tuitea un magistrado](#); “Many proboscises jumped today by reducing a causal relationship simply to an issue of doxa and episteme.” [sic]. Twitter account of Celso Gamboa Sánchez @CelsoGamboaCR. [May 10, 2016](#); “Se vinieron los proboscideos...” [sic]. Twitter account of Celso Gamboa Sánchez @CelsoGamboaCR. [May 10, 2016](#); “La imprudencia y malas decisiones pueden llevar a la extinción de Los Paquidermos”. Twitter account of Celso Gamboa Sánchez @CelsoGamboaCR. [May 10, 2016](#); *Revista Paquidermo*/Facebook. May 11, 2016. [Nunca antes nos había intimidado un alto funcionario](#).

⁶⁴⁵ *La Nación*. October 29, 2016. [Fiscalía ofrece protección a periodista ante amenaza de Ojos Bellos](#).

⁶⁴⁶ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, Para. 409.

⁶⁴⁷ *Teletica*. October 2, 2016. [Detienen a sospechosos de agredir al periodista de Telenoticias. Álvaro Sánchez](#); *La Nación*. October 2, 2016. [Policía captura a tres hombres y una mujer por agredir a periodista](#).

⁶⁴⁸ *La Prensa Libre*. October 20, 2016. [Video: Taxista amenaza a periodista de Diario Extra](#).

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

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

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

⁶⁴⁹ Sala Constitucional de la Corte Suprema de Justicia. Expediente No. 16-005057-0007-CO. Resolución No. 2016006198 of May 6, 2016. Available at: http://www.nacion.com/data/legitimo-pongan-clave-secreta-publicos-LNCFIL20160806_0001.pdf; La Nación. August 6, 2016. [Sala Constitucional limita libre acceso a base de datos públicos](#); El Financiero. September 18, 2016. [Sala IV y Gobierno avanzan en direcciones opuestas sobre datos abiertos en Costa Rica](#); Ojo al Voto. August 6, 2016. [Sala Constitucional falla contrario a derecho de acceso a información pública](#); Abriendo Datos Costa Rica. August 6, 2016. [Acceso a la información pública, sin poder analizarla, no es acceso real](#); Instituto de Prensa y Libertad de Expresión (IPLIX). August 6, 2016. [La Sala IV traiciona su tradición](#); Inter American Press Association (IAPA). October 13, 2016. [72nd General Assembly of the IAPA. Costa Rica Report](#).

⁶⁵⁰ El Financiero. September 18, 2016. [Sala IV y Gobierno avanzan en direcciones opuestas sobre datos abiertos en Costa Rica](#).

⁶⁵¹ La Nación. October 5, 2016. [Cancillería se niega a revelar 12 memorandos de Costa Rica sobre crisis en Brasil](#); Diario Extra. October 1, 2016. [Diputado Rolando González valora recurso de amparo contra Canciller](#); La Prensa Libre. October 11, 2016. [Diputado presenta recurso de amparo contra “secreto de Estado” sobre informes de Brasil](#); El Financiero. November 4, 2016. [Sala IV avala secreto de Estado sobre informes de embajador en Brasil](#); Informa-Tico. November 4, 2016. [Sala IV rechaza amparo contra Canciller sobre caso Brasil](#); La Nación. November 4, 2016. [Sala IV valida secreto de Estado sobre informes de embajador en Brasil](#); El Mundo. November 4, 2016. [Sala Constitucional avala declaratoria de secreto de Estado a informes diplomáticos sobre Brasil](#); La Prensa Libre. November 4, 2016. [Sala IV: Documentos de Brasil son secreto de Estado](#).

C. Government Advertising

408. On July 11, the daily newspaper *La Nación* denounced in an editorial that they were the victim of a strategy allegedly designed by directors of the Costa Rica National Bank [*Banco Nacional de Costa Rica*] (BNCR) which would involve reducing to zero the advertising space that the institution contracted with the media outlet, for the purpose of silencing its critical voice, after the newspaper in its February 24 edition included a report titled “*Directivos del Banco Nacional intentan acaparar juntas de subsidiarias*”. According to the daily newspaper, “*La Nación* and other media have been frequent victims of this abuse, but rarely have we denounced it. The reason is simple: there is the risk of being criticized for defending economic interests with the excuse of advocating on behalf of a principle. Silence, however, has been an error.” In that same edition of July 11, *La Nación* published an extensive report with details about the story behind the alleged attempt to apply pressure. The general manager of the Banco, Juan Carlos Corrales, had admitted adoption of the measure, based on “recommendations from his personnel.” This practice was criticized by the President of the Republic and has been rejected by the Inter-American press Association (IAPA). According to the report by the 72nd General Assembly of the IAPA, the “use of official advertising to reward and punish editorial and informative lines of the media is a practice that continues.”⁶⁵² President Solís, in a public speech, called for an investigation into the use of official advertising to affect the adequate functioning of the media and emphasized that the government does not approve of measures to coerce the media about how it refers to the State.⁶⁵³ The Legislative Branch announced the opening of an investigation, while the minister of Communications revealed that he will soon send an initiative to the Congress to establish technical criteria for the publication of advertising by public entities, an initiative about which the State in March of 2015 had requested technical advice from the Office of the Special Rapporteur. According to the known information, a similar complaint was made on November 18, 2015, by the daily newspaper *Extra*, a media outlet in relation to which BNCR had canceled its advertising after it had published a report on alleged complaints by employees of the institution.⁶⁵⁴

409. On October 18, the Constitutional Chamber of the Supreme Court [*Sala Constitucional de la Corte Suprema de Justicia*] admitted a petition for a constitutional remedy [*amparo*] filed by *La Nación* against BNCR alleging the violation of the fundamental right to information enshrined in article 29 of the Constitution and article 13 of the American Convention on Human Rights. The Court ruled that the order to gradually reduce advertising in the newspaper functioned “as a mechanism of coercion designed to remedy a supposed news imbalance, which it deemed harmful to the interests of the Bank, and that it perceived in the publication of reports on different matters of public relevance (...). The case clearly constitutes what that the doctrine has called indirect censorship, a form of unlawful harassment of a media outlet by a public entity that violates not only freedom of expression but also the right of citizens to have access to accurate information in a democracy.” The justices affirmed that it was “a perverse and undemocratic way to use public funds to shape opinion according to a system of ‘reward or punishment’ for those who exercise freedom of the press and freedom of expression, which are guaranteed in the constitution and in the convention,” and ordered the bank to adhere to its advertising allocation plan. At the same time, the Court ordered BNCR not to engage in new indirect censorship in the future.⁶⁵⁵ After the judgment was handed down, President Solís said that he shared

⁶⁵² Inter American Press Association (IAPA). October 13, 2016. [72nd General Assembly of the IAPA. Costa Rica Report](#).

⁶⁵³ World News/EFE. July 12, 2016. [Solís pide investigar la denuncia sobre el uso de la pauta estatal contra un diario](#); *La Nación*. July 12, 2016. [Solís condena uso de publicidad para coaccionar a la prensa, pero no investigará caso del Banco Nacional](#); Teletica. July 12, 2016. [Presidente Luis Guillermo Solís condenó uso de pauta publicitaria para coaccionar a la prensa](#).

⁶⁵⁴ Inter American Press Association (IAPA). July 12, 2016. [Costa Rica: IAPA rejects unlawful use of official advertising](#); *La Nación*. July 11, 2016. [Publicidad oficial](#); *La Nación*. July 11, 2016. [Banco Nacional desató ofensiva para silenciar a la prensa](#); *La Nación*. February 24, 2016. [Directivos del Banco Nacional intentan acaparar juntas de subsidiarias](#); *La Nación*. March 1, 2016. [Gobierno abre investigación contra directivos del Banco Nacional](#); Columbia. July 12, 2016. [Solís no tomará acciones contra la directiva del Banco Nacional](#); *La Nación*. July 11, 2016. [Gerente del Banco Nacional: ‘Hay que rectificar los errores’](#); *Diario Extra*. July 20, 2016. [Investigan rendimiento de inversión publicitaria en Banco Nacional](#); World News/EFE. July 12, 2016. [Solís pide investigar la denuncia sobre el uso de la pauta estatal contra un diario](#); *La Nación*. July 12, 2016. [Solís condena uso de publicidad para coaccionar a la prensa, pero no investigará caso del Banco Nacional](#); *Extra*. November 12, 2015. [Denuncian intención de vender BCR por pérdidas](#); *Extra*. November 18, 2015. [Diputados censuran acción del Bcr contra Diario Extra](#).

⁶⁵⁵ Corte Suprema de Justicia. Sala Constitucional. Press Release. *Comunicado de Prensa. La Sala Constitucional declara con lugar amparo del diario La Nación contra el Banco Nacional de Costa Rica por censura indirecta*. Available at: <https://www.poder->

the Court's opinion, and that "Costa Rica deserves a system in which public opinion is not censored, harmed, or pressured in any way."⁶⁵⁶

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

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

D. Other Relevant Situations

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

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

judicial.go.cr/salaconstitucional/index.php/component/phocadownload/category/121-c2016; La Nación. October 28, 2016. [Sala IV: Banco Nacional censuró a 'La Nación' de forma 'perversa y antidemocrática'](#); El Mundo. October 18, 2016. [Magistrados condenan al Banco Nacional por retirar pauta publicitaria a La Nación](#).

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

⁶⁵⁷ Inter American Press Association (IAPA). October 13, 2016. [72nd General Assembly of the IAPA. Costa Rica Report](#).

⁶⁵⁸ Diario Extra. January 18, 2016. [28 diputados piden a Presidente quitar frecuencias](#); Red de Medios e Iniciativas de Comunicación Alternativa (RedMica). January 20, 2016. [Comunicado de Prensa. Exigimos tomar en serio los datos sobre subutilización de frecuencias de radio y televisión y no entorpecer el debate serio](#).

⁶⁵⁹ Gobierno de la República/Open Government Partnership (OGP). October 2015. [Plan de Acción ante la Alianza por un Gobierno Abierto 2015-2017](#) (pages 6-7).

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

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

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

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

⁶⁶⁰ Inter American Press Association (IAPA). March 29, 2016. [Costa Rica Report. Mid Year Meeting. Punta Cana](#); Red de Transparencia y Acceso a la Información (RTA). July 6, 2016. [Agenda de Gobierno Abierto camina a paso firme en Costa Rica](#); Instituto de Prensa y Libertad de Expresión (IPLEx). May 6, 2016. [Foro: ¿Necesita Costa Rica una ley de Acceso a la Información Pública?](#) (VIDEOS); La Prensa Libre. June 21, 2016. [Sala IV ha fallado contra Gobierno 101 veces por negar información](#); El Mundo. June 21, 2016. [Gobierno acumula un centenar de condenas de la Sala IV por negar acceso a información pública](#).

⁶⁶¹ El Financiero. August 8, 2016. [Taxistas suben tono en protestas contra Uber](#); Holaciudad/EFE. August 9, 2016. [Policía costarricense detiene a unos 78 taxistas en protesta contra Uber](#); El Comercio/AFP. August 9, 2016. [Costa Rica: bloqueos y caos por protestas contra Uber \[VIDEO\]](#); La Jornada/AFP. February 1, 2016. [Taxistas exigen bloquear a Uber en Costa Rica](#); La Nación. February 1, 2016. [Taxistas le tiran huevos a colegas que no se sumaron a protesta contra Uber](#); CR Hoy. March 17, 2016. [Taxistas irrumpen en feria de empleo y protestan frente a stand de Uber](#); La Prensa Libre. August 10, 2016. ["Frenan a taxistas": Así informó prensa internacional sobre protesta de "fuerza roja"](#); La Prensa Libre. June 3, 2016. [Tribunales considerarán bloquear Uber](#); CR Hoy. June 3, 2016. [Dan trámite a recurso de taxistas contra Uber](#).

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

⁶⁶³ TeleTica. August 18, 2016. [Grupo Columbia anuncia apagón de sus emisoras ante próximo embargo impulsado por Fonotica](#); El País/EFE August 19, 2016. [Grupo radial denuncia intento de embargo a una de sus emisoras en Costa Rica](#); El Mundo. August 18, 2016. [Grupo Columbia denuncia intento de embargo y cierre al margen de la Ley](#); CR Hoy. August 18, 2016. [Emisora de Grupo Columbia saldría del aire por embargo](#).

11. CUBA⁶⁶⁴

A. Right to Freedom of Expression

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

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

419. In addition, the Office of the Special Rapporteur received information that in February the Cuban government had reportedly allowed seven former political prisoners of the group of 75 detained dissidents to leave the country in March 2003 during the so-called “*Primavera Negra*.” They were reportedly granted exceptional, one-time authorization to leave the country. The seven leaders were part of a group of eleven who remained in Cuba under a parole.⁶⁶⁵ This parole is reportedly a legal concept that would maintain the validity of their convictions—of up to 25 years—that were imposed during the “Black Spring” of 2003.⁶⁶⁶ This clause, supported by Decree Law 62 of 1987, stipulates that the sentence may be served under house arrest, but does not provide for the suspension of the criminal penalty and leaves open the option that the beneficiary could return to prison if the authorities determine that he or she has failed to comply with the rules of “good conduct.”⁶⁶⁷

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

420. Non-governmental organizations condemned the increase in harassment, threats, acts of intimidation, detentions, and the house arrest of journalists, activists, human rights defenders, and opponents of the government because of their expressions and positions critical of the government. They further alleged the selective and deliberate persecution of independent media and organizations responsible for gathering and disseminating citizens’ opinions with respect to matters of national interest. Restrictions on the right to demonstrate, the excessive use of force in this context, and impunity in those cases were also reported.⁶⁶⁸

421. According to the information received by the IACHR and its Office of the Special Rapporteur, during 2016 the situation of civil and political rights in Cuba continues to be of concern.⁶⁶⁹ The State security agents

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

⁶⁶⁵ El Nuevo Herald. February 23, 2016. [Cuba permite salir del país a siete ex presos políticos](#).

⁶⁶⁶ Martí Noticias. April 25, 2016. [Son 93 los presos políticos en Cuba, según comisión de DDHH](#).

⁶⁶⁷ Asamblea Nacional del Poder Popular. Decreto-Ley N° 62. Código Penal. December 29, 1987. Available at: http://oig.cepal.org/sites/default/files/1987_codigopenal_cuba.pdf

⁶⁶⁸ Arco Iris Libre de Cuba, Centro de Información Hablemos Press, Centro de Información Legal Cubalex, Mesa de Diálogo de la Juventud Cubana and Plataforma Femenina Nuevo País. July 2016. Situación del Derecho a la Libertad de Opinión y Expresión en Cuba. Available at: <https://www.scribd.com/document/320954748/Situacion-del-Derecho-a-la-Libertad-de-Opinion-y-Expresion-en-Cuba>

⁶⁶⁹ Radio HRN. April 26, 2016. [La disidencia cubana presenta una lista con los nombres de 93 presos políticos](#); Diario de Cuba. April 25, 2016. [La CCDHRN calcula que el número de presos políticos en Cuba ha aumentado hasta los 93](#).

have reportedly maintained a policy of harassment against journalists, activists involved in the area of culture, human rights defenders, and political dissidents. Cuban State agents reportedly took different measures to prevent such persons from freely carrying out those activities—measures such as arbitrary detentions (generally of short duration), internal deportations, summonses to police centers, searches of activists' homes, and the seizure of work equipment.⁶⁷⁰ Most of these incidents are reportedly not preceded by judicial involvement, and the criminal offenses most frequently invoked to put opponents of the Cuban government in jail are reportedly *desacato* ["criminal defamation"], "pre-criminal social danger," resisting arrest, disobedience, and attacks.⁶⁷¹

422. The Office of the Special Rapporteur for Freedom of Expression has documented multiple cases of journalists and activists being detained in 2016. In these cases, the detainees belonged to the following publications and/or organizations, among others: *Damas de Blanco*; *CubaNet*; *Comisión de Atención a Presos Políticos y Familiares* (CAPPF); the *Hablemos Press* agency; *Instituto Cubano por la Libertad de Expresión y Prensa* (ICLEP); *Unión Patriótica de Cuba* (Unpacu); platform #Otro18; *Foro por los Derechos y Libertades* (Foro Dyl); the independent bulletin *Voz Santiaguera*; *Periodismo del Barrio* collective and the platform #TodosMarchamos. In addition to the short-term arrests, other journalists were reportedly being held under house arrest, including, for instance, *CubaNet* members Augusto César San Martín, Manuel Días Mons, Osniel Carmona, and Elio Delgado.⁶⁷²

423. In the context of the official visit of U.S. President Barack Obama in the month of March, there was a documented increase in the harassment, threats, acts of intimidation, detentions, and house arrest of journalists, activists, rights defenders, and opponents of the government.⁶⁷³ According to reports, some 498 arbitrary detentions and other intimidating actions were reported.⁶⁷⁴

424. According to *Asociación Pro Libertad de Prensa*, since March 16 the organization has documented various attacks by the political police, who are reportedly always in plainclothes, against independent journalists.⁶⁷⁵ On March 19, Roberto de Jesús Guerra, director of the independent agency *Hablemos Press*, was reportedly detained on a public street and taken to the Fourth Unit of the National Revolutionary Police [*Cuarta Unidad de la Policía Nacional Revolucionaria*] (PNR) in Havana, together with Dutch journalist Erick Mauta and his cameraman.⁶⁷⁶ On March 20, independent blogger and activist Lázaro Yuri Valle Roca was reportedly arrested and detained for five days after attempting to cover a protest of the *Damas de Blanco*.⁶⁷⁷ In addition, Carlos Chávez Ramos, Oscar Alejandro Rodríguez and Blanca Margarita Veiga Sánchez, of the

⁶⁷⁰ Arco Iris Libre de Cuba, Centro de Información Hablemos Press, Centro de Información Legal Cubalex, Mesa de Diálogo de la Juventud Cubana and Plataforma Femenina Nuevo País. July 2016. Situación del Derecho a la Libertad de Opinión y Expresión en Cuba. Available at: <https://www.scribd.com/document/320954748/Situacion-del-Derecho-a-la-Libertad-de-Opinion-y-Expresion-en-Cuba>

⁶⁷¹ Comisión Cubana de Derechos Humanos y Reconciliación Nacional (Ccdhrn). March 21, 2016. Lista parcial de condenados o procesados por motivos políticos. Available at: http://www.14ymedio.com/nacional/Lista-Presos-Politicos-marzo-CYMFIL20160324_0001.pdf; Diario las Américas. March 25, 2016. [Divulgan lista actualizada de los condenados por motivos políticos en Cuba](#).

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

⁶⁷³ Comisión Cubana de Derechos Humanos y Reconciliación Nacional (Ccdhrn). March 2016. *Cuba: Algunos actos de represión política en el mes de marzo de 2016*. Available at: <https://informatiecuba.files.wordpress.com/2016/04/overview-marzo-2016.pdf>

⁶⁷⁴ CubaNet. June 6, 2016. [Arrestos políticos en Cuba ascienden a 6075 en 2016](#); Comisión Cubana de Derechos Humanos y Reconciliación Nacional (Ccdhrn). March 2016. *Cuba: Algunos actos de represión política en el mes de marzo de 2016*. Available at: <https://informatiecuba.files.wordpress.com/2016/04/overview-marzo-2016.pdf>

⁶⁷⁵ Diario de Cuba. March 21, 2016. [La Asociación Pro Libertad de Prensa denuncia detenciones y amenazas a periodistas](#); Cuba Prensa Libre. March 19, 2016. [Retiene a periodistas cubanos en aeropuerto de La Habana](#).

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

⁶⁷⁷ Comité para la Protección de los Periodistas (CPJ). March 25, 2016. [Encarcelan durante cinco días a bloguero cubano que intenta cubrir una protesta](#); Martí Noticias. March 24, 2016. [Liberan a Yuri Valle Roca tras ser acusado de "atentado"](#);

Independent Journalists' Union of the Island of La Juventud [*Sindicato de Comunicadores Independientes de Isla de la Juventud*], were reportedly summoned to appear before Police on March 17.⁶⁷⁸

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

426. With respect to the issue of political detainees, when asked by a journalist during a joint press conference with Barack Obama on March 21, Raúl Castro replied: "You asked whether there are political prisoners? Give me the list of the political prisoners right now, in order to release them. Give me the names, or when the meeting is over give me a list of the prisoners. If these political prisoners exist, they will be released before night falls."⁶⁸¹ In April, the Cuban Commission on Human Rights and National Reconciliation [*Comisión Cubana de Derechos Humanos y Reconciliación Nacional*] (Ccdhrn) reported that there were 93 alleged political detainees in the country.⁶⁸² Of these 93 detainees, 51 were said to be peaceful opponents convicted or prosecuted for their dissident attitudes or activities.⁶⁸³ At the end of 2016, that organization recorded at least 9,940 arbitrary detentions of opponents of the Cuban government, allegedly for political reasons.⁶⁸⁴

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

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

⁶⁷⁸ Diario de Cuba. March 16, 2016. [La policía política detiene a dos periodistas independientes y cita a varios](#); Cuba Net. March 17, 2016. [Detienen a dos periodistas independientes y la policía cita a varios más](#); Cuba Prensa Libre. March 16, 2016. [Gobierno de Cuba detiene a periodistas, previo a la visita de Obama](#).

⁶⁷⁹ CubaNet. June 6, 2016. [Arrestos políticos en Cuba ascienden a 6075 en 2016](#); Cuba en Miami. June 6, 2016. [Un poco más de 6 mil arrestos políticos en Cuba este año](#); Comisión Cubana de Derechos Humanos y Reconciliación Nacional (Ccdhrn). June 2016. *Cuba: Algunos actos de represión política en el mes de junio de 2016*. Available at: <https://files.acrobat.com/a/preview/3889c271-6f89-4358-b691-74562be2e805>

⁶⁸⁰ Comisión Cubana de Derechos Humanos y Reconciliación Nacional (Ccdhrn). March 21, 2016. Lista parcial de condenados o procesados por motivos políticos. Available at: <http://www.14ymedio.com/nacional/Lista-Presos-Policos-marzo CYMFIL20160324 0001.pdf>; Diario las Américas. March 25, 2016. [Divulgan lista actualizada de los condenados por motivos políticos en Cuba](#).

⁶⁸¹ BBC. March 22, 2016. [¿Hay presos políticos en Cuba?: la pregunta que molestó a Raúl Castro durante la visita de Barack Obama](#); CNN. March 21, 2016. [Raúl Castro: "Dame la lista ahora mismo de los presos políticos para soltarlos"](#).

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

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

⁶⁸⁴ Comisión Cubana de Derechos Humanos y Reconciliación Nacional (Ccdhrn). January 5, 2017. *Cuba: algunos actos de represión política en el mes de diciembre de 2016*. Available at: <http://iclep.org/wp-content/uploads/2017/01/Informe-de-la-CCDHRN-diciembre-2016.pdf>

⁶⁸⁵ CubaNet. January 4, 2016. [Seguridad del Estado detiene a activistas \(vídeo\)](#).

⁶⁸⁶ Diario de Cuba. January 9, 2016. [La policía política allana el domicilio del exprisionero político Egberto Escobedo, según la oposición](#).

and Freedoms (ForoDyL).⁶⁸⁷ Labrada was reportedly detained for more than 24 hours and, according to the activist, the agents threatened to send her to jail if she did not cease her activity in the #MarchamosMarchamos campaign.⁶⁸⁸ In addition, on January 10, around 200 activists from *Unión Patriótica de Cuba* (Unpacu) were reportedly detained while taking part in actions for the #TodosMarchamos campaign.⁶⁸⁹

429. On February 19, Elio Delgado Valdés, a photojournalist from *CubaNet*, was reportedly approached in the doorway of his house by a Police officer. According to reports, the officer asked him to go with him to the 2nd Police Station, located in the municipality of Central Havana. The photojournalist was reportedly interrogated about his work at *Havana Times*, *Hablemos Press*, and *CubaNet*. Valdés had been working as a photographer for three decades on contracts for the government press service and the foreign press accredited in the country.⁶⁹⁰

430. During 2016, the organization *Damas de Blanco* continued to be subjected to different kinds of harassment, arrests, and attacks. According to the organization, hundreds of women were arbitrarily detained each month by police officials. Their main office was also reportedly pelted with rocks by brigades organized by the police.⁶⁹¹ The movement—which consists of the wives, mothers, and children of men and women incarcerated for reasons they consider unjust. It was created in 2003, following a “massive wave of arrests against peaceful dissidence” and demands the release of political prisoners.⁶⁹² On March 9, the leader of the movement *Damas de Blanco*, Berta Soler, condemned the reported increase in repression against dissidents in the days leading up to the visit of President Barack Obama.⁶⁹³ According to Soler, on March 8, 17 women from the movement and other activists involved in the #TodosMarchamos platform were violently detained in Havana when they attempted to attend the trial of Jaqueline Heredia, a member of *Damas de Blanco*, who had been arrested on March 2 and accused of criminal defamation [*desacato*].⁶⁹⁴

431. *Damas de Blanco* reported serious attacks against members Rosa Escalona Gómez and Aliuska Gómez García in 2016. According to reports, Escalona Gómez was beaten on March 19 and still had a fractured.⁶⁹⁵ On March 29, Gómez García was reportedly beaten and required stitches in her ear as consequence.⁶⁹⁶ On May 23, Berta Soler reported that the police opened a file on her, accusing her of “resistance,” and ordered her to remain reachable and not to leave the country. According to Soler, the day before she and another 27 human rights activists were detained.⁶⁹⁷ Similarly, on May 29, members of the PRN and the Department of State Security detained 13 members of the movement and 4 activists at the movement’s national headquarters in Havana.⁶⁹⁸ “Lady in White” Leticia Ramor Herrería was barred from traveling to a UN human rights event in

⁶⁸⁷ Diario de Cuba. January 9, 2016. [La policía política allana el domicilio del exprisionero político Egberto Escobedo, según la oposición](#)

⁶⁸⁸ Diario de Cuba. January 13, 2016. [El régimen amenaza con la cárcel a una Dama de Blanco si continúa su activismo en #TodosMarchamos.](#)

⁶⁸⁹ CubaNet. January 11, 2016. [Fuerte represión a opositores durante jornada dominical](#); Diario de Cuba. January 10, 2016. [Más de 200 activistas detenidos en protestas de la campaña #TodosMarchamos.](#)

⁶⁹⁰ CubaNet. February 20, 2016. [Seguridad del Estado intimida a reportero de CubaNet.](#)

⁶⁹¹ CubaNet. July 18, 2016. [Atacan a pedradas sede de las Damas de Blanco y hieren a activista](#); Cuba en Miami. July 18, 2016. [La Policía cubana ataca a pedradas a activistas de las Damas de Blanco.](#)

⁶⁹² Damas de Blanco. April 1, 2003. [¿Quiénes son las Damas de Blanco?](#)

⁶⁹³ EFE. March 9, 2016. [La líder de las Damas de Blanco denuncia un aumento de la represión antes de la visita de Obama](#)

⁶⁹⁴ EFE. March 9, 2016. [La líder de las Damas de Blanco denuncia un aumento de la represión antes de la visita de Obama.](#)

⁶⁹⁵ Cuba Prensa Libre. June 13, 2016. [CCDHRN: Más de dos mil detenciones por motivos políticos en Cuba en un bimestre.](#)

⁶⁹⁶ Cuba Prensa Libre. June 13, 2016. [CCDHRN: Más de dos mil detenciones por motivos políticos en Cuba en un bimestre.](#)

⁶⁹⁷ Damas de Blanco. May 24, 2016. [El régimen prohíbe a Berta Soler salir del país y le anuncia un juicio bajo la acusación de 'resistencia'.](#)

⁶⁹⁸ Damas de Blanco. May 30, 2016. [Policía política detiene a 13 Damas de Blanco y 4 activistas, entre estos la líder Berta Soler y el exprisionero político Ángel Moya.](#)

Panama on July 2, allegedly due to an investigation into disorderly conduct and incitement of crime, which had been opened following a peaceful protest she organized together with other activists.⁶⁹⁹

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

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

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

⁶⁹⁹ Diario de Cuba. July 3, 2016. [La policía política detiene a la Dama de Blanco Leticia Ramos y le impide viajar fuera del país](#); Diario de Cuba. April 25, 2016. [Un grupo de Damas de Blanco protesta frente a una estación policial en Matanzas por el cese de la represión](#).

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

⁷⁰¹ Diario de Cuba. March 21, 2016. [La Asociación Pro Libertad de Prensa denuncia detenciones y amenazas a periodistas](#).

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

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

⁷⁰⁴ Hablemos Press. January 21, 2016. [Deportada a Guantánamo reportera de HABLEMOS PRESS](#).

⁷⁰⁵ Diario de Cuba. March 16, 2016. [La policía política detiene a dos periodistas independientes y cita a varios](#).

⁷⁰⁶ Diario de Cuba. March 16, 2016. [La policía política detiene a dos periodistas independientes y cita a varios](#).

⁷⁰⁷ Hablemos Press. June 17, 2016. [Arrestan a reportero cubano por informar problemas sociales](#).

⁷⁰⁸ CubaNet. March 29, 2016. [Detienen en Ciego de Ávila al coordinador de Candidatos por el Cambio](#); Cuba Verdad. March 30, 2016. [Arrestados Julio Aleaga Pesant y Roberto Valdivia](#).

⁷⁰⁹ 14 y medio. March 19, 2016. [Más de 200 activistas detenidos a lo largo de la Isla](#).

places while demanding the end of the repression against the *Damas de Blanco* and the release of political prisoners.⁷¹⁰ Other activists were also said to be prevented by police operations from leaving their homes.⁷¹¹

435. According to the *Instituto Cubano por la Libertad de Expresión y Prensa* (ICLEP), its journalists have been surveilled, harassed, detained, and threatened with imprisonment and even with death.⁷¹² In September, the Institute published a report on “*Monopoly of the Mass Media in Cuba and the Alternative Press.*” According to that report, from June 2015 to August 2016, there were 249 arbitrary detentions, 85 threats and psychological attacks, 428 “violations,” and 33 instances involving the destruction of work material in Cuba. The report additionally stated that there were no alternative radio or television broadcasters in the country.⁷¹³ According to an October 24 press release⁷¹⁴ issued by ICLEP, on September 29, the political police reportedly summoned and threatened to detain ICLEP’s legal director Raúl Risco Pérez and journalist Claudia Cristina Ortega. On September 30, Leovanis Correa Moroso, director of the media outlet *Voz Santiaguera*, was reportedly detained, handcuffed, and beaten about the face by a political police officer in Santiago de Cuba. According to reports, he was detained for three days and had been threatened to be put in prison if he continued with his journalistic work. Similarly, on October 13, Osmany Borroto Rodríguez, director of the media outlet *El Espirituano*, was summoned by the political police in Jatibonico. Borroto Rodríguez was reportedly accused of distributing the bulletin of Jatibonico and had been threatened with arrest. The same day in Havana, journalist Ada María López was detained by the political police and taken to a police station because she was distributing a bulletin put out by the media outlet *Amanecer Habanero*. Some 50 copies of the bulletin were seized by the authorities. On October 14, the journalist Yosdanys Blanco, of the media outlet *El Majadero de Artemisa* was reportedly detained because—according to the police—he they had received a complaint about him. The news article also states that, on October 21, four journalists and associates of the ICLEP had their homes searched simultaneously, and the political police as well as the National Revolutionary Police reportedly confiscated their work materials. According to reports, one of the homes searched served as the main office of the media publication *Panorama Pinareño*, and as the residence of its director Dianelys Rodríguez Morejón. The journalist was reportedly taken to a police station, where she was issued an official warning. They threatened to arrest her if she continued with her work as a journalist, and told her that they had orders to “make the ICLEP disappear.”⁷¹⁵ The same day, Ricardo Fernández Izaguirre, the editor of *Panorama Pinareño* was reportedly detained. Fernández was allegedly summoned to the Pinar del Río technical office, where he was reportedly threatened with prison and told that the “ICLEP would disappear.” Earlier, on September 23, his house had been searched and his laptop and cell phone were seized. Finally, on October 21, political police officers reportedly detained ICLEP’s Executive Director, Raúl Velázquez, and took him to the provincial police station. He had been in Pinar del Río investigating the alleged police repression that had taken place in that town against *Panorama Pinareño* and its journalists. His cell phone was reportedly seized, and he had been given an “official warning threatening a criminal investigation for the alleged offense of criminal defamation [*desacato*] if he ever visited Pinar del Río again.”⁷¹⁶

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

⁷¹⁰ 14 y medio. March 19, 2016. [Más de 200 activistas detenidos a lo largo de la Isla.](#)

⁷¹¹ 14 y medio. March 19, 2016. [Más de 200 activistas detenidos a lo largo de la Isla.](#)

⁷¹² CubaNet. June 3, 2016. [ICLEP advierte sobre aumento de represión a sus periodistas](#); Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). [Nota de prensa.](#) June 3, 2016.

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

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

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

⁷¹⁶ Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). October 24, 2016. [NOTA DE PRENSA: Aumenta la violencia contra los medios de comunicación y periodistas del ICLEP.](#)

March 19, hours before President Obama's visit, five Cuban journalists arriving from Costa Rica were detained upon arrival at the Havana Airport.⁷¹⁷ In June, Cuban activist Ana Margarita Perdigón Brito, who worked with independent publications like *CubaNet*, reportedly had to return to Miami after the government denied her entry into Cuba after her arrival in José Martí International Airport.⁷¹⁸ In January, two journalism students from the University of São Paulo (USP) were reportedly forced to return to Brazil before the end of their trip to Cuba because of an interview they had conducted with Ailer González, the wife of opposition figure Antonio Rodiles and member of the *Estado de Sats* project.⁷¹⁹

437. On May 5, three activists from the platform #Otro18⁷²⁰ were reportedly detained by State security agents. Carlos Amel Oliva, youth leader of *Unión Patriótica de Cuba* (Unpacu), independent journalist Boris González Arenas, and attorney Rolando Ferrer Espinosa of *Foro Anti totalitario Unido* (FANTU), were reportedly detained in Havana. Other activists were also reportedly prevented from going to a meeting of the organization.⁷²¹

438. According to information that is public knowledge, on May 13, activist Eladio Martínez Pérez questioned the management of the district 32 delegate to the *26 de julio* People's Council at the accounting assembly. As a result, the activist was reportedly summoned by the sector chief of the National Police of his town, and detained for 26 hours. Similarly, on May 28, activist Eliosbel Garriga of the Province of Pinar del Río was reportedly transferred as he was preparing to travel to Havana to meet with CxC promoters and taken to the town of La Coloma, after allegedly having received threats.⁷²²

439. Raids on the homes of independent journalists and opponents of the regime were also reported this year. On May 28, a group of ten uniformed and plainclothes police officers reportedly searched the home of independent journalist Yusmila Reyna Ferrera in Santiago de Cuba. The police officers failed to present a police search order. According to Ferrera, they removed a number of items related to her journalistic work. That same day, searches were also conducted at the house that served as the headquarters of the José María Heredia cell of *Unión Patriótica de Cuba* (Unpacu) and at the home Unpacu activist Karel Reyes, who coordinates the audiovisual magazine '*La Verdad Versus La Mentira*'.⁷²³

440. On June 18, Rolando Reyes Rabanal, an activist with the *Foro por los Derechos y Libertades* (Foro Dyl), was reportedly detained by State agents upon returning from Bogotá where he had taken part in a human rights workshop. According to reports, he was intercepted at the Havana Airport prior to going through immigration, and after having an argument with a State official he was reportedly taken to a police station and accused of "disorderly conduct."⁷²⁴

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

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

⁷¹⁹ *Martí Noticias*. January 18, 2016. [Expulsan de Cuba a dos estudiantes brasileños por entrevistar a esposa de opositor](#); *CubaNet*. January 19, 2016. [Expulsan de Cuba a dos estudiantes brasileños por entrevistar a opositora](#).

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

⁷²¹ *Diario de Cuba*. May 5, 2016. [Detenidos tres activistas de la plataforma ciudadana #Otro18](#).

⁷²² *CubaNet*. June 1, 2016. [Represión contra derechos](#).

⁷²³ *Martí Noticias*. May 28, 2016. [Allanan viviendas de periodistas independientes y opositores en Santiago de Cuba](#); *Diario de Cuba*. May 28, 2016. [La UNPACU denuncia tres nuevos 'asaltos' del régimen a viviendas y 'detenciones contra activistas'](#).

⁷²⁴ *Diario de Cuba*. June 19, 2016. [El régimen detiene a un activista del ForoDyl a su regreso de Colombia](#); *CiberCuba*. No date. [Detienen al opositor Rolando Reyes a su llegada a La Habana](#); *Martí Noticias*. June 19, 2016. [De nuevo a prisión disidente liberado tras acuerdos Cuba-EEUU](#).

441. According to information in the public domain, in July, journalists from Santa Clara presented a document denouncing censorship, political persecution, and low wages. The text, entitled “Why do we collaborate?” began circulating via email. According to reports, the letter was written after directors of the *Unión de Periodistas de Cuba* (UPEC) had demanded that journalists cease their collaborations with the digital magazine *OnCuba* because they considered it to be “work hyper-critical of the image of the Revolution.”⁷²⁵

442. On July 12, the journalists and directors of the *Asociación Pro Libertad de Prensa* (APLP), José Antonio Formaris and Odellín Alfonso Torna were reportedly detained while traveling from the province of Las Tunas to Bayamo. According to reports, they were given an official warning and certificates of confiscation, which they did not sign. Their cell phones were also confiscated.⁷²⁶

443. According to reports, activists from the platform *#Otro18* and from *Mesa de la Unidad de Acción Democrática* (MUAD) reportedly had their homes surrounded by State agents in order to prevent a *Jornada Cívica Democrática* conference from taking place, scheduled for July 19-22.⁷²⁷

444. On July 22, three journalists from *CubaNet* were reportedly detained. Ana León, Augusto César San Martín, and Elio Delgado Valdés were intercepted at the Santa Cruz del Norte Checkpoint by officers of the National Revolutionary Police [Policía Nacional Revolucionaria] (PNR) and the Department of State Security [*Departamento de Seguridad del Estado*] (DSE), and taken to the La Lisa Police Station. The journalists apparently had their work implements confiscated, and were accused of the crime of receiving stolen property.⁷²⁸ According to reports, the journalists were released the same day, but their work materials were not returned to them.⁷²⁹

445. 2016 saw a continuation of the reprisals, acts of harassment, and arrests of journalists, activists, and human rights defenders who expose the situation of freedom of expression in Cuba in international forums. In April, *Cubalex* director Laritza Diversent was reportedly detained without explanation prior to boarding a plane to the United States to participate in a hearing before the IACHR during its 157th session, among other activities. Upon her return, authorities confiscated books and pamphlets from her.⁷³⁰ In August, upon returning from Geneva, Switzerland, Diversent reported that she had once again been detained and that the authorities had confiscated, among other documents, the report on the “*Situación del derecho a la libertad de opinión y expresión en Cuba*,” that have presented by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye.⁷³¹

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

⁷²⁵ Diario de Cuba. July 1, 2016. [Periodistas oficialistas protestan contra la censura en Cuba](#); Diario de Cuba. July 1, 2016. [Carta de protesta del Comité de Base de la UJC del diario 'Vanguardia'](#).

⁷²⁶ CubaNet. July 12, 2016. [Arrestan a periodistas de la Asociación Pro Libertad de Prensa](#).

⁷²⁷ Diario de Cuba. July 22, 2016. [Cientos de activistas 'rodeados' para impedir actividades convocadas por la MUAD y #Otro18](#); “#Cuba Cientos de activistas y líderes de #Otro18 y #Muad rodeados en sus casas para impedir Jornada Cívica Democrática nacional”. Twitter account of Manuel Cuesta Morúa @cubaprogresista. [July 22, 2016](#).

⁷²⁸ CubaNet. July 22, 2016. [APLP condena arresto de periodistas de CubaNet](#).

⁷²⁹ CubaNet. July 22, 2016. [Seguridad del Estado detiene a periodistas de CubaNet](#).

⁷³⁰ *Cubalex*, Informe Especial sobre métodos de hostigamiento contra abogados y activistas defensores de derechos humanos miembros de *Cubalex*, 2016, page 27; Diario de Cuba. September 16, 2016. [El Tribunal Provincial de La Habana admite una demanda de Laritza Diversent contra la Aduana](#).

⁷³¹ Diario de Cuba. September 16, 2016. [El Tribunal Provincial de La Habana admite una demanda de Laritza Diversent contra la Aduana](#); IACHR. September 6, 2016. [IACHR Concerned over Treatment of Human Rights Defenders in Cuba](#); Institute on Race, Equality and Human Rights, Actualizaciones sobre situaciones de defensoras de derechos humanos, Cuba, August 22, 2016, page 2.

office's communications and the mobile phones of its members.⁷³² The search and seizure was apparently part of a tax investigation linking the organization to unlawful economic activities.⁷³³ In addition, it was reported that during the search of the premises, which lasted around an hour, authorities confiscated five computers (including a server), four laptops, three printers, a number of mobile phones, and the security cameras, as well as confidential documents and records on various cases handled by the office. The members of *Cubalex* had also been subject to interrogations, and five of them—four women and one man—had reportedly been required to remove their clothing for a strip search. The members of the organization were not allowed to eat for 13 hours. It was additionally reported that two members of the team were detained. Activist Dayán Alfredo Pérez Noriega was released, while independent attorney Julio Alfredo Ferrer Tamayo, as of the closing of this report, reportedly remains in a Havana prison.⁷³⁴

447. In September, State Radio station *Sagua* reportedly terminated the contract of journalist Maykel González for having collaborated with independent media such as *Diario de Cuba*. The journalist had reportedly been admonished previously when he condemned what he called a supposed “the ‘homophobia’ of the Population and Homes Census [Censo de Población y Viviendas]” carried out in 2012. According to González, he was punished for criticizing an event prioritized by the country. In addition, he stated that “there is ‘a crusade’ against journalists who had established ties with unofficial media outlets.”⁷³⁵

448. On September 23 and 24, the event *II Festival del Arte y la Literatura Independiente de La Habana* was held, organized by independent writers, artists, intellectuals, and others interested in art. The event was reportedly held under “severe political scrutiny,” and there was “strong surveillance” by the Police from the street and the surrounding area. Minutes before the start, Police reportedly entered the area in order to interrogate Víctor Manuel Domínguez, writer and the director of the festival. The organizer denounced that policemen had allegedly tried to suspend and subsequently obstruct the event.⁷³⁶

449. On October 12, nine members of *Periodismo del Barrio* were reportedly arrested in Guantánamo, including its director, Elaine Díaz. They were reportedly released hours later. According to the information available, the team was detained for attempting to report on the damage caused by Hurricane Matthew in Baracoa.⁷³⁷ The day before, journalist Roberto Jesús Quiñones Haces was called in by the Department of State Security and warned that he could not go to the areas affected by the hurricane. In addition, he was reportedly told that some news stories he had filed about the *Damas de Blanco* and the *Unión Patriótica de*

⁷³² CubaNet/EFE. September 29, 2016. [Instituto checo denuncia vejaciones a CUBALEX](#); Martí Noticias. September 24, 2016. [Asaltan consultoría Cubalex, de abogada cubana que se reunió dos veces con Obama](#); 14 y medio. September 23, 2016. [La policía irrumpe en la sede de Cubalex](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. October 13, 2016. [Press Release R149/16 IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#).

⁷³³ CubaNet/EFE. September 29, 2016. [Instituto checo denuncia vejaciones a CUBALEX](#); Martí Noticias. September 24, 2016. [Asaltan consultoría Cubalex, de abogada cubana que se reunió dos veces con Obama](#); 14 y medio. September 23, 2016. [La policía irrumpe en la sede de Cubalex](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. October 13, 2016. [Press Release R149/16 IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#).

⁷³⁴ CubaNet/EFE. September 29, 2016. [Instituto checo denuncia vejaciones a CUBALEX](#); Martí Noticias. September 24, 2016. [Asaltan consultoría Cubalex, de abogada cubana que se reunió dos veces con Obama](#); 14 y medio. September 23, 2016. [La policía irrumpe en la sede de Cubalex](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. October 13, 2016. [Press Release R149/16 IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#); IACHR. 159 Period of Sessions. Hearing Situation of Human Rights Defenders in Cuba. December 1, 2016. Available at: <https://www.youtube.com/watch?v=3uDnLrjZhW4>.

⁷³⁵ Diario de Cuba. September 5, 2016. [Radio Sagua cierra el contrato al periodista Maykel González por colaborar con medios como DDC](#); Ciber Cuba. No date. [Maykel González Vivero, la nueva víctima de la censura periodística en Cuba](#).

⁷³⁶ CubaNet. September 29, 2016. [Festival Vista, bajo la visión gubernamental](#); Diario de Cuba. September 26, 2016. [Segunda 'Vista' al arte y la literatura independiente](#); Neo Club Press. September 26, 2016. [Un Vista bajo acoso de la Seguridad del Estado](#).

⁷³⁷ Diario de Cuba. October 12, 2016. [Maykel González Vivero: 'Uno no se imagina cómo es un calabozo'](#); Diario las Américas. October 12, 2016. [Cuba: Detenidos periodistas que informaban sobre el huracán Matthew](#); Diario de Cuba. October 13, 2016. [Liberados los integrantes de 'Periodismo de Barrio'](#).

Cuba (Unpacu), in Guantánamo, were “not entirely true.”⁷³⁸ On October 12, journalist Maykel González Vivero was reportedly released after having been held for 72 hours in a prison cell, also for having tried to report on the hurricane damage. According to the journalist, his laptop and camera were confiscated.⁷³⁹

450. According to reports, Ignacio González, an independent journalist and the director of the *En Caliente Prensa Libre* (ECPL) agency, was released on October 11 after some 48 hours in detention. González stated that he was detained “arbitrarily” at his office, while conducting an interview with independent journalist Seraffín Morán, who was equally detained temporarily.⁷⁴⁰

451. On November 28, independent journalists Lisbey Lora and Manuel Guerra Pérez, from the *Cimarrón de Mayabeque* bulletin, were allegedly arrested. According to the report, police searched their residences and allegedly confiscated materials and equipment from their work.⁷⁴¹ Both journalists were released on December 5.⁷⁴²

452. During the 157 Ordinary Period of Sessions of the Inter-American Commission, at the public hearing on the “Situation of Human Rights Defenders in Cuba”, the IACHR received worrisome information regarding the situation of journalists and freedom of expression. During the session, it was informed that 3 *Hablemos Press* journalists were already incarcerated and harassment against activists, journalists and opposition had allegedly increased during 2016. Since 2011, Government had allegedly blocked access to the website *Hablemos Press* in the country. In addition, it was received with concern information about the use of violence to restrict the right of assembly and the use of arbitrary detentions to obstruct free circulation of members of organizations such as *Mesa de Diálogo*, *Juventu Cubana* and *Cubalex*. Moreover, some speakers mentioned the restriction of the right of assembly by the means of denying the legal recognition of these organizations. It was also presented information about governmental actions against members of the movement *Damas de Blanco*, framed in the context of the #*Todosmarchamos* campaign.⁷⁴³ During the 159 Ordinary Period of Sessions, at the public hearing on the “Situation of Human Rights Defenders in Cuba”, the IACHR received information regarding an alleged intensification of general repression directly related to the work of denunciation that Cuban organizations have carried out before international bodies. Additionally, the petitioners stated that Cuban media outlets such as *Hablemos Press*, *Prensa Libre*, *Palenque Visión*, among others, had been the target of various arrests of reporters. According to the reports, the human rights activists had also been victims of harassment, arrests for prolonged periods and monitoring of their communications, among other restrictions on their labors.⁷⁴⁴

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

⁷³⁸ CubaNet. October 31, 2016. [Agentes, yo no escribo mentiras](#).

⁷³⁹ Diario de Cuba. October 12, 2016. [Maykel González Vivero: 'Uno no se imagina cómo es un calabozo'](#); Diario las Américas. October 12, 2016. [Cuba: Detenidos periodistas que informaban sobre el huracán Matthew](#).

⁷⁴⁰ CubaNet. October 12, 2016. [Periodista independiente es detenido sin cargos durante casi 48 horas](#); Martí Noticias. October 13, 2016. ["Actividad económica ilícita", el delito del que se acusa a la prensa independiente en Cuba](#); Diario de Cuba. October 13, 2016. [El régimen expedienta a un periodista independiente acusándolo de 'actividad económica ilícita'](#).

⁷⁴¹ CubaNet. December 3, 2016. [Reporteros independientes arrestados son amenazados de ir a juicio](#); Committee to Protect Journalists (CPJ). December 1, 2016. [2016 prison census: 259 journalists jailed worldwide](#); Martí Noticias. December 13, 2016. [Dos cubanos en censo de periodistas en prisión 2016 del CPJ](#).

⁷⁴² Diario de Cuba. December 6, 2016. [Liberados dos periodistas independientes después de ocho días presos en Mayabeque](#); CubaNet. December 6, 2016. [Liberan a reporteros independientes tras una semana de arresto](#).

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

⁷⁴⁴ IACHR. 159 Period of Sessions. Hearing Situation of Human Rights Defenders in Cuba. December 1, 2016. Available at: <https://www.youtube.com/watch?v=3uDnLrjZhW4>

implement legal reforms and modify the restrictive legal framework that prohibits private property in press outlets. The petitioners submitted recommendations to the IACHR, such as, for example, requesting authorization for the Special Rapporteur for Freedom of Expression of the IACHR to carry out a mission to Cuba to assess the situation of freedom of expression and of the press and publicly communicate his findings and recommendations. The Special Rapporteur, Edison Lanza, among other things, regretted the absence of the State because it would have permitted a dialogue about the situations presented during the hearing, and expressed his solidarity with respect to the situation of persecution, stigmatization and harassment that they are experiencing for defending human rights and freedom of expression. He also affirmed that the situation of freedom of expression in Cuba is the backbone of a solution and the rebuilding of democracy, which would include all parties.⁷⁴⁵

454. The Inter-American Commission reiterates that Principle 9 of the IACHR's Declaration of Principles establishes that "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation." In addition, as stated by the United Nations (UN) UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission of Human Rights of the Organization of American States (OAS), the State "has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities." In addition, "the authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from making generalizations based on isolated events."⁷⁴⁶

A. Subsequent Liabilities

455. The IACHR and its Office of the Special Rapporteur have maintained that the laws on criminal defamation [*desacato*] are incompatible with the Inter-American System of Human Rights, as they present "abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions."⁷⁴⁷ In addition, they have stated that it is the right of citizens "to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office."⁷⁴⁸ During 2016, the IACHR and its Office of the Special Rapporteur continued to receive troublesome information about the use in Cuba of the criminal law—both substantive and procedural law—and the offense of *desacato* as a mechanism of subsequent liability against journalists and activists who disseminate ideas, opinions, and information critical of the government party. In this context, it was also observed that dismissal from employment was used as a penalty in administrative proceedings for criticism of the government, and common crimes were used to prosecute such persons.

456. On June 27, Resolution No. 20 of the Cuban ministry of Culture [*ministerio de Cultura de Cuba*] (Mincult) reportedly sanctioned Yanelys Núñez Leyva with permanent dismissal from her position of employment at the magazine *Revolución y Cultura*, the official publication of Mincult, because she gave an interview to CubaNet about her artistic work *Museo de la Disidencia en Cuba* and made use of the office's Internet connection to visit "irrelevant" web pages in relation to her task of cultural promoter. The interview

⁷⁴⁵ IACHR. 159 Period of Sessions. Hearing Situation of Human Rights Defenders in Cuba. December 1, 2016. Available at: <https://www.youtube.com/watch?v=3uDnLrjZhW4>

⁷⁴⁶ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

⁷⁴⁷ 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.

⁷⁴⁸ 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.

was described as “an ill-intentioned communication action” that “damages” the image “of the system, agency, or country.” Journalist and historian of art, Núñez Leyva is co-author of *Museo de la Disidencia en Cuba* along with the artist Luis Manuel Otero Alcántara, a web page that, as informed, troubles State Security officials.⁷⁴⁹ *CubaNet* is a web portal about Cuban reality that seeks to practice alternative journalism, offering forums to civil society. In addition, the sanction established that Núñez Leyva will have a period of four years to “rehabilitate” herself before being able to have her job again.⁷⁵⁰ On August 25, Núñez Leyva filed a lawsuit against the Labor Justice Organ’s [Órgano de Justicia Laboral] ruling of the ministry of Culture, which ratified his expulsion from the magazine *Revolución y Cultura*. At the close of this report, the Old Havana Municipal Tribunal [Tribunal Municipal de La Habana Vieja] had not yet ruled on the suit.⁷⁵¹

457. On September 29, the National Ethics Commission of the Union of Cuban Journalists [*Comisión Nacional de Ética de la Unión de Periodistas de Cuba*] (UPEC) reportedly approved the expulsion of journalist José Ramírez Pantoja from *Radio Holguín*. The journalist was dismissed from his job on July 11 after having transcribed on his personal blog the words of the deputy director of the official government newspaper *Granma*, warning of possible protests in Cuba if there were new power outages due to supply shortages.⁷⁵² According to reports, Pantoja was punished with a five-year suspension from his position, after which he may return to work “provided that he has an attitude consistent with the code of ethics of the UPEC.”⁷⁵³ On October 19, the People’s Municipal Court of Holguín [*Tribunal Municipal Popular de Holguín*] had reportedly upheld the decision.⁷⁵⁴

458. According to publicly known information, on November 26, artist Danilo Maldonado, known as “*El Sexto*”, was arrested in Havana for the crime of damage to property. Maldonado performed graffiti on a wall of the Hotel Habana Libre, following the announcement of the death of Fidel Castro, which read He’s gone [“*Se fue*”] and published a video on his Facebook page celebrating his death. According to the available information, at the close of this report, the artist remained in custody, even though the crime of which he was accused would be punishable by a fine and not detention.⁷⁵⁵ After the closing of this report, the Office of the Special Rapporteur learned that on January 21, 2017, the artist was released.⁷⁵⁶

459. In January, it was learned that the People’s Supreme Court [*Tribunal Supremo Popular*] dismissed the petition for cassation and affirmed the Provincial Court [*Tribunal Provincial*] of Havana’s conviction of independent attorney Julio Alfredo Ferrer Tamayo, an advisor to the Cubalex legal information center, to three years in prison for the alleged forgery of public documents in connection with the deed to his house.

⁷⁴⁹ CubaNet. May 14, 2016. [La disidencia tiene un museo en La Habana](#).

⁷⁵⁰ CubaNet. July 19, 2016. [La censura tiene nombres y apellidos](#); Diario de Cuba. July 28, 2016. [Integrante del proyecto artístico Museo de la Disidencia en Cuba pierde su trabajo por ‘no confiable’](#).

⁷⁵¹ Diario de Cuba. August 26, 2016. [La historiadora del arte Yanelys Núñez lleva a los tribunales su expulsión de la revista ‘Revolución y Cultura’](#); Diario de Cuba. December 21, 2016. [La historiadora del arte Yanelys Núñez espera el fallo de un tribunal sobre su expulsión de ‘Revolución y Cultura’](#).

⁷⁵² CubaNet. August 3, 2016. [Despiden a periodista radial por publicar advertencia de protestas en Cuba](#); 14 y Medio. September 30, 2016. [Una comisión de ética rechaza la apelación del periodista expulsado de Radio Holguín](#); CubaNet. September 29, 2016. [La UPEC suspende a periodista radial holguinero](#); CubaNet. July 1, 2016. [Subdirectora del Granma advierte peligro de otro “maleconazo”](#).

⁷⁵³ 14 y Medio. September 30, 2016. [Una comisión de ética rechaza la apelación del periodista expulsado de Radio Holguín](#).

⁷⁵⁴ Martín Noticias. October 24, 2016. [Tribunal de Holguín ratifica expulsión de periodista](#); Blog verdadecuba. October 22, 2016. [La nota que nunca quise publicar / JRP](#).

⁷⁵⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. December 23, 2016. [R196/16 Press Release The Office of the Special Rapporteur Expresses Concern over the detention in Cuba of artist Danilo Maldonado, known as “El Sexto”](#); Diario de Cuba. December 2, 2016. [El Sexto, en huelga de hambre desde la noche del jueves](#); Amnesty International. November 29, 2016. [Cuban graffiti artist arrested again](#); “#Cuba El grafitero El Sexto sigue detenido por esta pintada: “se fue” por #LaMuerteDeFidelCastro”. Twitter account of Yoani Sánchez @yoanisanchez. [November 30, 2016](#); El Nuevo Herald/EFE. December 2, 2016. [En huelga de hambre disidente cubano detenido por celebrar muerte de Castro](#); Freedom House. December 6, 2016. [Cuba: Dissident Arrested for Facebook Video Mocking Fidel Castro](#); Human Rights Watch. November 30, 2016. [Cuba debe liberar a artista de graffiti](#).

⁷⁵⁶ After the closing date of the Report, the Office of the Special Rapporteur received information that the artist had been released on January 21, 2017. EFE. January 21, 2017. [Las autoridades cubanas liberan a “El Sexto” tras casi dos meses en prisión](#); 14 y medio. January 21, 2017. [Liberan al grafitero ‘El Sexto’, tras casi dos meses detenido](#).

According to reports, the judgment was illegal because he was accused of an act that does not constitute a crime—conducting a procedure of a personal nature to obtain ownership of his house. Ferrer Tamayo apparently had been detained previously for six months for a criminal defamation [*desacato*] offense against three judges of the Supreme Court’s Division of Crimes against State Security [*Sala de los Delitos contra la Seguridad del Estado del Tribunal Supremo*]. According to information in the public domain, the penalty was in retaliation for having demanded that the authorities respect the national laws and his right to due process.⁷⁵⁷

460. The Inter-American Commission recalls that Principle 1 of the Declaration of Principles the IACHR’s establishes that “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.” Furthermore, Principle 5 of the Declaration establishes that “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” In turn, Principle 13 states that “The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

B. Internet and Freedom of Expression

461. Access to the Internet and digital communications are an essential principle for being able to effectively exercise the right to freedom of expression online. The Internet is a tool that allows for the realization of other rights and public participation, and it facilitates access to goods and services. On this point, the IACHR and its Office of the Special Rapporteur continued to receive information that the Cuban State has maintained its policy of control and harassment toward the critical press on the Internet, and continues to block content that the regime decides to censor. On August 25, the director of the United States division of Cuba’s ministry of Foreign Affairs [*ministerio de Relaciones Exteriores de Cuba para Estados Unidos*], Josefina Vidal, reportedly stated that a meeting organized by the Office of Cuba Broadcasting (OCB) in Miami with regard to Internet use in Cuba sought to foment “domestic subversion.”⁷⁵⁸

462. It bears recalling that access to the infrastructure and hardware needed to seek, receive, and share information and ideas on the Internet in Cuba remains under State control through the State-run Telecommunications Company of Cuba S.A [*Empresa de Telecomunicaciones de Cuba S.A*] (Etecsa), which restricts cultural expression, access to information, and the discussion of ideas that Cubans may access through the radio, Internet, and the press. Mobile phone service reportedly offers most users voice and SMS text messaging services, but not data services. Nevertheless, Etecsa apparently offers its users an email service that is accessible from mobile phones, called NAUTA. With respect to Internet service, Etecsa reportedly offers access through different cybercafés (“web browsing rooms”), which provide connection to Cuban websites for US\$ 0.60 per hour, and more expensive services (US \$4.50 per hour) for those who wish to connect to the World Wide Web. Permanent Internet connection, a service also provided by Etecsa, is limited to companies, universities, and other State bodies and entities that have obtained the respective authorization.⁷⁵⁹

463. According to the information available, barely 5 per cent of the population has an Internet connection at home,⁷⁶⁰ given the high cost of obtaining an Internet connection.⁷⁶¹ Similarly, only about 2 million out of a

⁷⁵⁷ Diario de Cuba. January 30, 2016. [El Tribunal Supremo confirma condena a tres años de cárcel contra el abogado independiente Julio Ferrer Tamayo](#). Cubalex. March 10, 2016. [El caso del abogado Julio Ferrer explicado en tres etapas](#); Cubalex. February 2, 2016. [Abogado de Cubalex bajo amenaza de encarcelamiento](#).

⁷⁵⁸ El Nuevo Herald. August 26, 2016. [Cuba acusa de ‘subversión’ reunión en Miami sobre uso de internet en la isla](#); El Nuevo Herald. August 23, 2016. [Miami acogerá conferencia sobre la libertad de internet en Cuba](#)

⁷⁵⁹ Anne Nelson. August 2016. *Cuba’s Parallel Worlds: Digital Media Crosses the Divide*. Available at: <http://www.cima.ned.org/wp-content/uploads/2016/08/CIMA-Cubas-Parallel-World-Digital-Media.pdf>

⁷⁶⁰ El País. March 21, 2016. [Obama anuncia que Google extenderá Internet en Cuba para dar más voz a la gente](#); ABC/Reuters/EP. April 1, 2016. [Cuba pretende conectar a la mitad de su población a internet antes de 2020](#); 14 y Medio/Agencias. March 30, 2016. [El 50% de los hogares tendrá Internet en 2020, según el Gobierno cubano](#).

population of 11 million reportedly have mobile phones, and therefore Internet access is still not within the reach of most Cubans.⁷⁶² According to reports, the government has reportedly established 500,000 new mobile phone lines in 2016 expects to reach 46 per cent telephonic density as part of the plans announced by Etecsa to improve communications in the country. It is also reportedly seeking to introduce “roaming” service.⁷⁶³ It was further reported that Etecsa and T-Mobile USA have concluded negotiations for international voice and data service between Cuba and the United States for customers of T-Mobile USA who travel to Cuba.⁷⁶⁴ Similarly, on October 18, AT&T introduced its “roaming” service in Cuba.⁷⁶⁵ With respect to Internet service, the State company reported that within the last year efforts have focused on setting up collective public areas (“web browsing rooms” and wi-fi hotspots).⁷⁶⁶

464. The Office of the Special Rapporteur received information that an investigation conducted by blogger Yoani Sánchez and journalist Reinaldo Escobar concluded that text messages containing phrases or words like “hunger strike,” “democracy,” or “human rights,” or that included the names of some political dissidents did not reach the recipient. However, they the users’ telephones showed that the messages had supposedly been sent. According to reports, the Reuters news agency attempted without success to send messages containing the words “*Somos Más*,” “democracy,” “Yoani Sánchez,” and “human rights.”⁷⁶⁷

465. In spite of the limitations discussed, initial spaces for independent journalism are beginning to open up online in Cuba, through the use of USB memory devices, flash drives, CDs, external hard drives, or other devices. According to journalist Yoani Sánchez, through these tools, “Cubans little by little began to be virtual citizens in a country where we still have not been able to be real citizens.”⁷⁶⁸ According to the observations of the Committee to Protect Journalists (CPJ) in a recent country report, “Reporters, from the most critical—who are known as dissidents—to journalism graduates, documentary filmmakers, and pro-revolutionary bloggers are opening new spaces for free expression and entrepreneurial journalism that not long ago seemed off limits.”⁷⁶⁹

466. As stated by the Rapporteurs for Freedom of Expression of the UN, the OSCE, the OAS, and the African Commission in their Joint Declaration of 2011,⁷⁷⁰ Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.” They further recalled, *inter alia*, that “Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.”

⁷⁶¹ Infobae. May 7, 2016. [Internet en Cuba: lenta y cara, pero cada vez más masiva](#); CubaNet. February 8, 2016. [ETECSA, un monopolio capitalista en Cuba](#).

⁷⁶² ABC/Reuters/EP. April 1, 2016. [Cuba pretende conectar a la mitad de su población a internet antes de 2020](#); 14 y Medio/Agencias. March 30, 2016. [El 50% de los hogares tendrá Internet en 2020, según el Gobierno cubano](#).

⁷⁶³ CubaNet/EFE. February 20, 2016. [ETECSA anuncia que instalará 500 mil nuevas líneas móviles en 2016](#).

⁷⁶⁴ Granma. May 9, 2016. [Nota de prensa de Etecsa](#).

⁷⁶⁵ CubaNet/EFE. October 18, 2016. [AT&T presenta su servicio de ‘roaming’ en Cuba](#).

⁷⁶⁶ 14 y Medio/EFE. February 19, 2016. [Cuba anuncia incremento de 500.000 nuevas líneas móviles en 2016](#).

⁷⁶⁷ ABC/Reuters/EP. September 6, 2016. [Disidentes denuncian que Cuba bloquea mensajes sobre «democracia» y «derechos humanos»](#); Martí Noticias. September 6, 2016. [Medios de prensa comprueban censura de ETECSA a mensajes con contenido político](#); 14 y medio. September 3, 2016. [Cubacel censura los SMS con las palabras “democracia” o “huelga de hambre”](#).

⁷⁶⁸ The Knight Center for Journalism in the Americas. April 16, 2016. ISOJ 2016: [Yoani Sánchez explains how technology has made Cubans more free](#).

⁷⁶⁹ Committee to Protect Journalists (CPJ). September 28, 2016. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#).

⁷⁷⁰ 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 1, 2011. [Joint Declaration On Freedom Of Expression And The Internet](#).

12. DOMINICA

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

467. Two journalists received a death threat after reporting on a scandal. The journalist Carlisle John Baptiste and radio talk show host Matt Peltier reported on local radio *Q95* an alleged sex scandal that involved three businessmen and a government minister.⁷⁷¹ On March 1, 2016, Baptiste and Peltier filed a formal report with the police regarding a threat on their lives made by a businessman. The police conducting further inquiries.⁷⁷²

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

⁷⁷¹ WinnFM. March 3, 2016. [Dominican Government Minister Resigns Over Alleged Sex Scandal](#); Mas in the Cemetery. March 4, 2016. [Roseau South MP Joshua Francis assisting police](#).

⁷⁷² Dominica News Online. March 2, 2016. [Journalists Threatened](#); CBN4. March 3, 2016. [Matt says, “Journalists don’t be intimidated”](#); Winn FM. September 9, 2016. [St Vincent’s Cybercrime Law Comes Into Effect](#).

13. ECUADOR

469. The IACHR received a communication on June 21⁷⁷³ in which the State of Ecuador formulated a series of objections, comments and requests associated with the 2015 annual report by the Office of the Special Rapporteur for Freedom of Expression.

A. Threats and Harassment Against Journalists and Media Outlets

470. In June, reporter Xavier Bustamante of *Canal Uno* denounced being the victim of death threats from suspected members of the Transit Commission of Ecuador [*Comisión de Tránsito del Ecuador*], after denouncing alleged acts of corruption within the institution in a report.⁷⁷⁴

471. On July 18, journalist Jean Paul Bardellini of *NTN24*, revealed a threat on his Twitter account that had been made from another Twitter account. The journalist indicated that he had received the threat after being photographed by an unknown individual while reporting on the deportations of Cuban migrants in Ecuador. The Twitter account from which the threat was made was closed after the journalist shared the message with his followers on that social network.⁷⁷⁵

472. The members of portal *4 Pelagatos* denounced having received threats through social networks, after publication of an article on that portal that questioned President Rafael Correa for having used the daily newspaper *El Telégrafo*, owned by the State, to publish an article written by his daughter.⁷⁷⁶

473. On March 29, Twitter user Alejandro Muñoz, whose Twitter account was @Edward_Coke, denounced to the Prosecutor's Office having been victim of intimidations. The façade of his house would have been stained with red and yellow paint and photos would have left under his door that showed him carrying out different day-to-day activities. Muñoz stated that he has had confrontations on Twitter with supporters of the National Government and that the events that took place at his home would have occurred after President Correa announced a meeting with Twitter users aimed at defeating Twitter.⁷⁷⁷

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

B. Social Protest

475. In its final observations about the sixth periodic report on Ecuador, the United Nations Human Rights Committee expressed concern over denunciations about excessive use of force by the security forces to respond to violence by demonstrators during the protests of 2015, as well as to disperse them. It also expressed concern over the opening of judicial proceedings under broad criminal classifications such as

⁷⁷³ República del Ecuador. Permanent Mission of Ecuador at the OAS. Nota No. 4-2-147-2016. June 23, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁷⁷⁴ El Universo. June 6, 2016. [Denuncia amenazas y vincula a supuestos agentes de la CTE](#); Fundamedios. June 10, 2016. [Reportero es víctima de actos intimidatorios tras divulgación de reportajes que denuncian presunta corrupción](#).

⁷⁷⁵ La República. July 19, 2016. [Periodista Jean Paul Bardellini denuncia amenaza de muerte](#); La Prensa. July 19, 2016. [Periodista de la cadena NTN24 recibe amenazas de muerte](#); "Luego de acoso x parte d este sujeto mientras cumplía con mi trabajo ahora recibo este amistoso mensaje CC @ppsesa" [sic]. Twitter account of Jean Paul Bardellini @JBardellini. [July 18, 2016](#).

⁷⁷⁶ 4 Pelagatos. September 18, 2016. [Amenazas asesinas contra 4Pelagatos](#); Fundamedios. September 17, 2016. [Difunden fotografías, direcciones y números de teléfonos acompañados de amenazas en contra de los miembros de 4Pelagatos](#).

⁷⁷⁷ El Comercio. March 29, 2016. [Tuitero puso una denuncia por supuesta intimidación](#); La Republica. March 29, 2016. [Tuitero denuncia intimidación y agresión contra lugar donde vive](#); Ecuavisa. March 29, 2016. [Tuitero crítico al Gobierno denuncia acoso ante la Fiscalía](#).

sabotage and terrorism against people who have participated in social protests. In that sense, the Council recommended that the Ecuadoran State “adopt appropriate measures to guarantee that all persons under its jurisdiction may in practice exercise their right to freedom of peaceful assembly; intensify its efforts to prevent and effectively eliminate all forms of excessive use of force by members of the forces of order and security; and adopt necessary measures to ensure that all allegations of excessive use of force will be promptly, exhaustively, independently and impartially investigated and that the alleged perpetrators will be brought to justice and, if found guilty, punished pursuant to the seriousness of their actions.”⁷⁷⁸

476. On April 7, there were demonstrations in the cities of Quito and Guayaquil that had been convoked by different civil society actors to reject the draft Organic Law for Equilibrium of Public Finances [*proyecto de Ley Orgánica para el Equilibrio de las Finanzas Públicas*], submitted by President Correa to the National Assembly [*Asamblea Nacional*] and which would include various tax reforms such as increased taxes on tobacco, alcohol and sodas. President Correa convoked sectors loyal to his government to also demonstrate on that day to express their support for the government and for the proposed tax measures and to reject the so-called destabilizing attempts by the opposition.⁷⁷⁹ According to the available information, two people were arrested and sentenced to five days imprisonment and five days of community service, accused of attacking a police officer during the protests, which had occurred when the police tried to take away a doll from the demonstrators that represented President Correa.⁷⁸⁰

477. On March 17 in the city of Quito, journalist Jean Cano denounced that he had been beaten with sticks by demonstrators who were taking part in protests by trade unions, indigenous people and citizens who rejected the economic measures adopted by the government of President Correa. The journalist had taken photos with his cellular phone and the demonstrators had struck him, even though he identified himself by showing his press credential, but the demonstrators reiterated that he must leave and attacked him.⁷⁸¹

478. On May 23, the Court of Criminal Guarantees [*Juzgado de Garantías Penales*] of Loja decided to summon to trial 12 of the persons accused in the “Saraguro case” who integrate a group of 29 indigenous against whom criminal proceedings had been opened for participating in a protest on August 17, 2015. Charges against the other 7 accused were dropped due to lack of evidence for their trials.⁷⁸² On May 30, the Court of Criminal Guarantees [*Juzgado de Garantías Penales*] of Loja sentenced to two of the other 10 defendants indigenous, and dismissed eight. Luisa Lozano and Servio Amable Angamarca were sentenced for the crime of paralysis of public service to four years imprisonment and a fine of four basic unified salaries.⁷⁸³ The General Public Defender of Ecuador [*Defensor Público General del Ecuador*] expressed concern over the disproportion of the punishment imposed on Lozano and Amable.⁷⁸⁴

⁷⁷⁸ United Nations. Human Rights Committee. Concluding observations on the sixth periodic report of Ecuador. CCPR/C/ECU/CO/6. Approved on July 11, 2016. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1031&Lang=en

⁷⁷⁹ La Republica. April 8, 2016. [Correa ve intentos de desestabilización en las protestas](#); El Comercio. April 2, 2016. [Rafael Correa estará 'en primera fila' en movilizaciones del 7 de abril](#); Agencia de Noticias Andes. April 7, 2016. [Movilización permanente y bajo cualquier excusa, estrategia de desgaste de la oposición contra el gobierno de Ecuador](#); EFE. April 8, 2016. [La oposición y el oficialismo en Ecuador miden fuerzas por la reforma tributaria](#).

⁷⁸⁰ Ecuavisa. April 8, 2016. [Cinco días de prisión para dos manifestantes de marchas en Guayaquil](#); Fundamedios. April 7, 2016. [Ciudadanos detenidos, camarógrafos heridos y ataques cibernéticos deja jornada de protestas](#); Ecuador en vivo. April 8, 2016. [Cinco días de privación de libertad y labor comunitaria para dos detenidos en protestas de Guayaquil](#); La República. April 8, 2016. [El momento exacto que capturan a los Diegos](#) (Video); El Universo. April 9, 2016. [Marcha con monigote dejó dos detenidos](#).

⁷⁸¹ Fundamedios. March 21, 2016. [Periodista es agredido con palos durante manifestación](#); “Ahí está el que me agredió. Me acusaron de infiltrado. Ni agresiones de un lado ni del otro. Respeto al periodismo!”. Twitter account of Jean Cano @jean_cano. [March 17, 2016](#).

⁷⁸² Resistir es mi derecho. No date. [Continúa la criminalización de la protesta social en Ecuador 12 personas más son llamadas a juicio en Saraguro](#); El Universo. May 25, 2016. [Llamado a juicio para doce manifestantes de Saraguro](#); Comisión Ecuémica de Derechos Humanos (CEDHU). No date. [Cronología del Levantamiento indígena y paro nacional](#).

⁷⁸³ La línea de fuego. May 30, 2016. [Tribunal de Loja sentenció a 4 años de prisión a dos procesados del caso Saraguro](#); La República. May 30, 2016. [Cuatro años de cárcel para dos de los 29 de Saraguro, ocho declarados inocentes](#); Fundación Regional de Asesoría en Derechos Humanos- Inredh. July 12, 2016. [Tribunal de Loja emite sentencia escrita en caso Saraguro](#).

⁷⁸⁴ Defensoría Pública del Ecuador. May 31, 2016. [El Defensor Público General preocupado por la desproporcionalidad de las penas](#).

479. The actions for which the two members of the community of Saraguro were sentenced took place on August 17, 2015, when 35 people were arrested, including eight minors, and a number of people were wounded, including various police officers. The indigenous people were blocking the Cuenca-Loja road, and demanded various points including the opening of closed nursery schools; nomination of the directors of the intercultural educational centers and at the Ecuadoran Agency for Ensuring Agricultural Quality [*Agencia Ecuatoriana de Aseguramiento de la Calidad del Agro*] and not to hinder commercialization of the production of milk and cheese with the argument of requiring excellent quality products. 26 of those arrested were sentenced to 30 days of preventive imprisonment in the provisional detention center of Loja.⁷⁸⁵

480. According to information published by the *Confederación de Nacionalidades Indígenas del Ecuador* (CONAIE), in August eight leaders of the indigenous movement were summoned to appear at a hearing for the formulation of charges in the alleged crime of paralysis of public services in relation to protests that had taken place in 2015 in the framework of the so-called Indigenous Uprising and National Strike [*Levantamiento Indígena y Paro Nacional*]. The summons was issued by the Attorney General's Office of the province of Morona Santiago.⁷⁸⁶

481. On August 11, the Court of Criminal Guarantees [*Tribunal de Garantías Penales*] of Morona Santiago sentenced Tomás Jimpikit, indigenous leader Shuar de Bomboiza, from the south of Amazonía in Ecuador, to 12 months imprisonment for the crime of paralysis of public services.⁷⁸⁷

482. During protests and situations of heightened social unrest, States must adhere to the strictest international standards on freedom of expression in order to fully guarantee this right, without improper interventions against individuals, in keeping with Principle 2 of the IACHR's Declaration of Principles.⁷⁸⁸ The Inter-American Commission has recognized the right to engage in public demonstrations or social protest, including in articles 13 and 15 of the American Convention.⁷⁸⁹

483. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that "in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly"⁷⁹⁰ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."⁷⁹¹

⁷⁸⁵ El Comercio. August 17, 2015. [Los saraguros recrudescieron la protesta y volvieron a cerrar la vía Cuenca-Loja](#); La República. August 22, 2015. [Niegan libertad a 26 indígenas detenidos por las protestas en Saraguro](#); El Comercio. August 18, 2015. [Prisión preventiva para 26 detenidos por protestas de Saraguro](#); Ecuador en vivo. August 17, 2015. [35 detenidos en las protestas de Saraguro](#).

⁷⁸⁶ Confederación de Nacionalidades Indígenas del Ecuador (Conaie). August 16, 2016. [Gobierno ecuatoriano inicia formulación de cargos para dirigentes de Conaie y Confeniae](#); Resistir es mi derecho. No date. [Gobierno ecuatoriano inicia formulación de cargos contra dirigentes de Conaie y Confeniae](#); Fundación Regional de Asesoría en Derechos Humanos- Inredh. April 22, 2016. [Dirigentes nacionales judicializados por resistir](#).

⁷⁸⁷ Fundación Regional de Asesoría en Derechos Humanos- Inredh. August 11, 2016. [Dirigente shuar condenado a un año de prisión por levantamiento indígena](#); El Comercio. August 11, 2016. [Un dirigente shuar es sentenciado a un año de prisión](#); Comisión Ecuemenica de Derechos Humanos (CEDHU). No date. [La lucha social de la nacionalidad indígena shuar amenazada por la criminalización y los desalojos](#).

⁷⁸⁸ [Principle 2 of the Declaration of Principles on Freedom of Expression](#): "[e]very person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition."

⁷⁸⁹ 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.

⁷⁹⁰ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

⁷⁹¹ 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.

C. Stigmatizing Statements

484. On January 9, President Rafael Correa, during his *'Enlace Ciudadano'* number 458 in the segment Freedom of expression is for everyone [*La libertad de expresión es de todos*], referred to press headlines indicating that two people were sentenced to 52 days in jail for comments on the Twitter social network. "Two people sentenced to 52 days, by which I do not mean to say that the sentence is correct, in fact I believe that the sentence of 30 days in jail for Jeannine Cruz, Councilmember of Loja, is exaggerated, but it is the judges who have to decide, not I, and I believe that this woman is appealing the sentence. What does bother me is the way the press lies: two people sentenced to 52 days for comments on Twitter, remember, for comments on Twitter, we will see what the comments were, this is a problem for the mayor of Loja, not for me, but I insist, please do not lie" after showing images of the tweets published by the Councilmember in which she accused the Mayor of Loja of corruption, and went on to say "please, no one has the right to say this, if they do not have proof then they must assume the consequences, (...) this is the comment, to call the mayor of Loja a thief, I can assure you that the mayor of Loja is no thief, my friends, but they have no right. But look at how the press presents this, prisoners of comments". He later continued "we are not discussing the punishment, we are discussing the lies by the press. 'Arrested for comments on Twitter'; someone abroad reads this, here there is no freedom of expression, there is no freedom of anything, we are crazy, you can't comment on Twitter and what does it say on Twitter: they are accusing the mayor of being a thief, no one has the right to do that; human rights are the right to honor and reputation (...) That is not a comment, it is an offense, an insult and a serious accusation, a public official is being accused of being a thief and no one has the right to do that". Subsequently, referring to the leader of *Unidad Popular* movement Sebastian Cevallos, who on his Twitter account published allegedly false information about members of the *Alianza País* party, he stated: "he is responsible for his expressions, to not be a coward and the press not to manipulate; these are not comments, they are very grave accusations that damage the honor of the person and human rights." Finally with regard to Twitter user Carlos Acosta said: "these cowards that hide on the Internet to insult in the coarsest manner (...) If anyone knows who this coward Carlos Acosta is, publish it on Twitter to see if when it is shown where he lives, what he does, etc., he continues to be so brave. Pure cowardice, pure insult on the Internet, that is not freedom of expression, it is an attack on the human rights, the reputation of the person, on the truth and it is a sign of cowardice."⁷⁹²

485. On *'Enlace Ciudadano'* 460 of January 30, President Correa referred to a section known as *la cantinflada de la semana*, a cartoon published in the daily newspaper El Universo by cartoonist Xavier Bonilla on January 27, showing white elephants representing public works carried out by the government, including the Unasur building in which the CELAC Summit was held in January. The President referred to the cartoonist as a pamphleteer and said "that is not humor that is a rag" and later telling the audience that "when you are on the street, tell them: be honest, inaugurate the decency."⁷⁹³

486. On February 20, during his *'Enlace Ciudadano'* 463, President Correa referred to the meeting of the Teachers' Network [*Red de Maestros*] convoked by the government and which was attended by nearly 60,000 teachers "Incidentally, this is called prior censorship if you do not receive the information from the media, because it is relevant and important information that is of public interest. (...) this that I present what is convenient for me and what not, not present is called prior censorship and in Ecuador there is prior censorship, but not from the Government, let a journalist tell me when has received a call from the President not to publish something, but instead from the media owners who, with their private businesses, are politicking, manipulating, practicing prior censorship. They do not publish what is inconvenient for them or what they do not want to publish."⁷⁹⁴ His comments were in reference to presumed lack of coverage by the so-called commercial media of the meeting of the Red de Maestros [*Teachers' Network*].

⁷⁹² Presidencia de la República del Ecuador ©SECOM/You Tube. January 9, 2016. [Enlace Ciudadano Nro 458 desde Malchinguí Provincia de Pichincha 09/01/2016](#). [03:05:25 - 03:13:14].

⁷⁹³ Presidencia de la República del Ecuador ©SECOM/You Tube. January 30, 2016. [Enlace Ciudadano Nro 460 desde La Libertad, Provincia de Santa Elena 30/01/2016](#). [02:35:00 - 02:37:10].

⁷⁹⁴ Presidencia de la República del Ecuador ©SECOM/You Tube. February 20, 2016. [Enlace Ciudadano Nro. 463 desde Chillanes, Bolívar](#). [00: 55:18- 00: 55:54].

487. On March 26, the president in his *'Enlace Ciudadano'* number 468, responded to press criticism about investments being made by his administration, to which he commented "what a shame that these people with complex people pretend that they are journalists, but the country has to change (...) the social networks are a great step forward for humanity, but they can also be a great step forward for certain dishonest people, for certain people who only seek to do damage, certain irresponsible people who are really politicians disguised as journalists." Then, referring to the journalist Janeth Hinestroza who denounced on her Twitter account alleged irregularities in the provision of medications by the Ecuadorian Institute of Social Security [*Instituto Ecuatoriano de Seguridad Social*] (IESS), the chief executive, said: "she is just like those crows who are looking for carrion to try and do damage and without comparing, without any journalistic ethics". Finally, he said: "the battle on the networks is a battle that we also have to win and that we are going to win."⁷⁹⁵

488. President Correa, on April 10, asked the citizenry "not to let itself be manipulated" in the case of the so-called Panama Papers - an international investigation carried out from documents documents from the Panamanian law firm Mossack Fonseca, which were leaked to media around the world and containing information about transactions of money through tax havens by various politicians and personalities- through his Twitter account, where he commented that "the tactic of the right is to neutralize political power that does not suit it". "For Ecuador, the 'investigation' was made by 'journalists' of *El Comercio* and *El Universo*. What can we expect? We must demand all of the information. We see how they are covering up even from their own bosses. Citizens, I insist: to demand all the information and not allow us to be manipulated."⁷⁹⁶

489. During *'Enlace Ciudadano'* number 478 of June 4, President Correa referred to the social networks and stated that when he is insulted on Twitter, he will expose those insults so that everyone can help to discover who the person is, to see whether or not when they no longer are anonymous "they continue to be so valiant." (...)The President added: "these social networks can be the maximum expression of freedom but they also are the refuge for a few cowards my friends."⁷⁹⁷

490. In an interview on June 3, asked President Correa was his opinion about why there was a lack of coverage in the media about the Political Ethics Pact [*Pacto ético político*] that was convoked on May 24. This was an initiative by the Ecuadorian government that was promoted after revelations from the case known as the Panama Papers, in which it was revealed that hundreds of people, including public officials from different countries, were able to evade taxes by using tax havens. In that sense, the President affirmed that "the companies that have more offshore or tax havens are the owners of the media, the champion being Francisco Vivanco of the daily newspaper *La Hora*, the Ecuadorian people must understand from whom they receive the news (...) There are the Pérez of *El Universo*, there is Guadalupe Mantilla who was the owner of *El Comercio* (...) they are defending their interests, they are not defending the truth, that is why the people must stop buying those media and organize, I think that this is fundamental for republican life."⁷⁹⁸

491. On June 6, the multistate *Telesur* television channel, in which Ecuador is a party, published a report that was linked from the press, journalists and organizations that defend freedom of expression with the Central Intelligence Agency (CIA) of the United States. According to the multi-state canal, some Ecuadorian

⁷⁹⁵ Presidencia de la República del Ecuador ©SECOM/You Tube. March 26, 2016. [Enlace Ciudadano Nro. 468 desde Santa Elena 26/03/2016](#). [00:40:20- 00:43:30].

⁷⁹⁶ "Como les dije, hace casi un año tuvieron la información y no encontraron nada contra nuestro gobierno. <http://ow.ly/10uFiB> Es el...". Twitter account of Rafael Correa @MashiRafael. [April 10, 2016](#). "...contrario. Es la táctica de la derecha para neutralizar al poder político que no le conviene. Para Ecuador, la 'investigación' fue...". Twitter account of Rafael Correa @MashiRafael. [April 10, 2016](#); "...hecha por 'periodistas' de El Comercio y El Universo. ¿Qué podemos esperar?. Exijamos TODA la información. Veremos cómo están...". Twitter account of Rafael Correa @MashiRafael. [April 10, 2016](#); "...encubriendo incluso hasta a sus propios jefes. Ciudadanos, insisto: a exigir TODA la información y a no dejarnos manipular". Twitter account of Rafael Correa @MashiRafael. [April 10, 2016](#); [La República. April 10, 2016. Correa pide no dejarse manipular por información de los "papeles de Panamá"](#).

⁷⁹⁷ Presidencia de la República del Ecuador ©SECOM/You Tube. June 4, 2016. [Enlace Ciudadano Nro 478 desde Pedernales - Manabí](#). [03:44:20- 03:44:50].

⁷⁹⁸ Ciudadano TV/You Tube. June 3, 2016. [Entrevista al Presidente Rafael Correa con medios de comunicación, desde la provincia de Manabí](#). [43:37]; [El Comercio. June 3, 2016. Rafael Correa: 'Se intenta desprestigiar al Consejo Nacional Electoral'](#).

journalists and human rights defenders would be part of a so-called plan to destabilize and end the government of President Correa. This type of affirmations had already been made by President Correa in the past.⁷⁹⁹

492. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State's job to help create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.⁸⁰⁰

493. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."⁸⁰¹

494. Public servants, like all people, are entitled to the right to freedom of expression in its many forms. Nevertheless, in their case, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized in the Inter-American case law, particularly with respect to: the special duties they acquire by virtue of their status as state officials; (b) the duty of confidentiality that may apply to certain types of information held by the State; (c) the right and duty of public officials to denounce human rights violations; and (d) the particular situation of members of the Armed Forces.⁸⁰²

495. With regard to the impact of the statements of public servants on the rights of others, the Inter-American Court has held that, under certain circumstances—even if the official speech does not expressly authorize, instigate, order, instruct, or promote acts of violence against specific citizens—its reiteration and content can increase the "relative vulnerability" of those groups and the risks they face.⁸⁰³

D. Subsequent Liabilities

496. On April 4, in a press release, the National Secretariat of Intelligence (Senain) [*Secretaría Nacional de Inteligencia*] announced the filing of an action for the crime of slander against the media outlets *La República* and *La Hora*; and against Fernando Villavicencio, Cynthia Viteri, Andrés Páez and Fernando Balda. The announcement was an official response to publication of the first analyses of the leak of 11.5 million documents from the law firm Mossack Fonseca known as the Panama Papers, (an investigation led by the International Consortium of Investigative Journalists (ICIJ) involving over 370 journalists from 76 different

⁷⁹⁹ Telesur. June 6, 2016. [teleSUR revela nexos de políticos y periodistas con CIA en Ecuador](#); Telesur. June 14, 2016. [Nueva revelación de la CIA sobre plan de injerencia en Ecuador](#); Telesur. June 8, 2016. [La CIA en Ecuador](#); El Telégrafo. June 13, 2016. [Un documento secreto de la CIA revela su estrategia en Ecuador](#).

⁸⁰⁰ 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. 65.

⁸⁰¹ 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.

⁸⁰² 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.

⁸⁰³ 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.

countries)⁸⁰⁴, that revealed financial transactions using offshore companies, in which the Secretariat of Intelligence, Rommy Vallejo and a former external advisor of the Secretariat,⁸⁰⁵ were mentioned. At the same time, President Correa from his Twitter account had urged journalists who participated in the *Panama papers* investigations to reveal all of the leaked documents and not just those in which officials or ex-officials of the government were mentioned. The published notes indicated that Attorney General Galo Chiriboga and ex-president of the Central Bank [*Banco Central*] Pedro Delgado would also appear in the Panama Papers. The government insisted that entrepreneurs and opposition political leaders also appeared in the Panama papers without the media having said anything about it. The Ecuadorian journalists that took part in the investigation were subpoenaed on April 19 to appear before the Council for Citizen Participation and Social Control [*Consejo de Participación Ciudadana y Control Social*] (CPCCS), however, those proceedings had to be postponed due to the earthquake that affected the country.⁸⁰⁶

497. On January 4, Loja Councilwoman Jeannine Cruz was declared responsible for committing a fourth class violation for having made statements discrediting or dishonoring another person, as enshrined in section 1 of article 396 of the Comprehensive Organic Criminal Code of Ecuador [*Código Orgánico Integral Penal del Ecuador*]. In September of 2015, the Councilwoman on her Twitter account had questioned the work of the mayor of Loja, José Bolívar Castillo, who then denounced her for attacking his honor.⁸⁰⁷ The Councilwoman was sentenced by the lower court to 30 days imprisonment and payment of 25 per cent of a basic salary. The sentence was appealed by the defense and ratified in the second instance by the criminal chamber of the Court of Loja. On March 8, the Councilwoman went to jail and on April 13 was released after having been secluded in a detention facility for 30 days as the sentence had ordered.⁸⁰⁸

498. On May 25, the Legislative Administration Council [*Consejo de Administración Legislativa*] sanctioned opposition assemblywoman Magali Orellana to a 30 day unpaid suspension from her post. The sanction stemmed from a verbal confrontation between assemblywoman Orellana and the President of the Assembly, Gabriela Rivadeneira, a member of the Alianza País governing party, during the debate over the draft bill on solidarity and co-responsibility for the earthquake. Assemblywoman Orellana had asked for the floor when the president resolved to close the discussion and proceed to the voting, in response to which Orellana reacted with anger and approached the podium to reproach the president for not having given her the floor. According to Rivadeneira, assemblywoman Orellana used strong language against her, such as “inept”. The Special Rapporteurship views with concern the lack of proportion of the corrective measure because preventing a voice of the opposition from taking part in the assembly for a month can be harmful when corrective measures could have been employed that are much less harmful to the right of freedom of expression of the punished individual.⁸⁰⁹

⁸⁰⁴ El confidencial. April 4, 2016. [¿Qué son los 'Panama Papers'? ¿Qué es una sociedad 'offshore'? Todo lo que debes saber](#); CNN en Español. April 4, 2016. [Las 7 cosas que debes saber sobre Los papeles de Panamá](#).

⁸⁰⁵ Secretaría de Inteligencia via El Telégrafo. April 4, 2016. [Comunicado de prensa de la Secretaría de Inteligencia](#); Knight Center for Journalism in the Americas. April 27, 2016. [Periodistas latinoamericanos de la investigación de los Panama Papers sufren críticas y retaliaciones](#); 4Pelagatos. April 3, 2016. [The Panama Papers: otro canchero en la braqueta de Correa](#).

⁸⁰⁶ Knight Center for Journalism in the Americas. April 21, 2016. [Ecuadorian journalists face “campaign of harassment” for participating in the investigation of the Panama Papers](#); “COMUNICADO. Postergamos la cita con los periodistas del caso #panamapapers debido al #SismoEcuador. #FuerzaEcuador”. Twitter account of Edwin Jarrín @edwinjarrin, Vicepresident of Consejo de Participación Ciudadana y Control Social. [April 19, 2016](#); El Universal. April 13, 2016. [Presidente de Ecuador pone en riesgo a periodistas por “Panama Papers”](#).

⁸⁰⁷ “Alcalde José Bolívar Castillo lo q pedimos l@s Lojan@s es q deje de mentir y de robar”. Twitter account of Jeannine Cruz @Jeanninecruz. [September 21, 2015](#).

⁸⁰⁸ Sala Penal, Penal Militar, Penal Policial y Tránsito de la Corte Provincial de Loja. Sentencia. February 17, 2016. Available at: <http://consultas.funcionjudicial.gob.ec/informacionjudicial/public/informacion.jsf>; El Comercio. February 1, 2016. [El Tribunal Penal ratifica la sentencia contra la Concejal de Loja](#); La Hora. March 8, 2016. [La concejala lojana Jeannine Cruz inicia pena de 30 días por un tuit](#); El Comercio. March 8, 2016. [La concejala lojana Jeannine Cruz se entregó a las autoridades judiciales](#); El Universo. April 7, 2016. [Concejala Jeannine Cruz salió de prisión e insiste en acusaciones al alcalde de Loja](#); Fundamedios. March 9, 2016. [Concejala condenada por un 'tuit' ingresa a prisión por 30 días](#); La República. December 18, 2015. [Alcalde de Loja demanda penalmente a concejala por un tuit](#).

⁸⁰⁹ La República. May 29, 2016. [Suspenden 30 días a asambleísta Magali Orellana por llamar “inepta” a Rivadeneira](#); Ecuavisa. May 26, 2016. [Asambleísta Orellana, suspendida 30 días de su cargo sin derecho a sueldo](#); El Comercio. May 26, 2016. [Asambleísta Magali Orellana fue sancionada por confrontación con Gabriela Rivadeneira](#); Ecuador Transparente. May 27, 2016. [Suspenden a asambleísta Magali](#)

499. The Vice Mayor of Quito, Eduardo del Pozo, was sentenced by the First Unit of Contraventions of Quito [*Unidad Primera de Contravenciones de Quito*] to 15 days imprisonment and made to publicly apologize to President Correa, as a result of published declarations that attacked the honor and good name of President Correa. The Vice Mayor is a member of one of the opposition parties and in a radio interview on June 10 had criticized the government's proposal to create an ethics pact which would prohibit candidates with assets in tax havens from occupying elected office. Del Pozo had accused President Correa of having money in tax havens and arbitrarily issuing sentences.⁸¹⁰

500. On August 9, it became known that the Civil Judge of Pichincha [*Juez Civil de Pichincha*] had admitted the lawsuit for alleged insolvency filed by President Rafael Correa against opposition journalist Fernando Villavicencio and ex-assemblyman Clever Jiménez, for the approximately US\$ 140 thousand that they must pay as compensation for the crime of judicial slander for which they were sentenced to 18 months imprisonment. The complaint stemmed from proceedings filed by President Correa against Jiménez, Villavicencio and physician Carlos Figueroa. According to Ecuadoran legislation, when a convicted person lacks funds to pay the fine, the judge may declare them insolvent and embargo their assets.⁸¹¹ On October 18, the court declared Villavicencio insolvent for not having fully canceled his debt and ordered the seizure of his assets.⁸¹² The IACHR issued and reiterated precautionary measures in favor of Clever Jiménez and Fernando Villavicencio, which requested the State of Ecuador to suspend the effects of the condemnatory sentence issued in 2014 until the Commission decides on the individual request.⁸¹³

501. On June 7, the Criminal Chamber of the National Court of Justice [*Sala Penal de la Corte Nacional de Justicia*] overturned the verdict against ten young people who had been convicted of the crime of attempted acts of terrorism, after nullifying the sentence by applying new criminal legislation that decriminalized the crime for which they had been sentenced. Both President Correa and the minister of Justice, Ledy Zúñiga, clarified that the finding was based on application of the principle of favorability of criminal law and not because the Court had declared their innocence.⁸¹⁴ The case known as the "los 10 de Luluncoto", when in 2012, ten young people were arrested in the locality of Luluncoto, South of the city of Quito. According to information revealed in the court hearings held during the criminal trial, the arrested young people had met to discuss their participation in civic demonstrations that were to be held in March of that year. Human rights Organizations such as Amnesty International, Ecumenical Human Rights Commission [*Comisión Ecuamélica de Derechos Humanos*] (CEDHU), the Environmental Clinic Socioenvironmental Reparation Project [*Proyecto de Reparación Socio ambiental Clínica Ambiental*] and the Regional Advisory Foundation for Human Rights [*Fundación Regional de Asesoría en Derechos Humanos*] (Inredh) had announced that enforcement of the

[Orellana por decirle "inepta" a Presidenta de la Asamblea](#); Síntesis Informativa/ Ecuavisa/You Tube. May 30, 2016. [Ecuavisa 30 05 Magaly Orellana](#).

⁸¹⁰ El Telégrafo. September 5, 2016. [Vicealcalde de Quito fue sentenciado por atentar contra la honra del presidente Correa](#); El Comercio. September 6, 2016. [Vicealcalde de Quito recibió sentencia de 15 días de prisión tras demanda planteada por el presidente Correa](#); Infobae/EFE. September 6, 2016. [El vicealcalde de Quito fue condenado a 15 días de prisión por "ofender la honra del presidente Rafael Correa"](#); La República. September 6, 2016. [Vicealcalde de Quito condenado a 15 días de prisión por ofender a Correa](#); Sonorama. June 10, 2016. [Entrevista con Eduardo del Pozo, Concejal de Quito por CREO](#).

⁸¹¹ El Diario. August 10, 2016. [Rafael Correa demanda a Fernando Villavicencio por insolvencia](#); La Hora. August 10, 2016. [A trámite demanda de insolvencia contra Villavicencio](#); El Universo. August 10, 2016. [Juez dicta medidas cautelares en contra de Fernando Villavicencio](#).

⁸¹² El Universo. October 19, 2016. [Justicia declara insolvente a Fernando Villavicencio](#); El Comercio. October 19, 2016. [Fernando Villavicencio fue declarado insolvente pero sí podrá ser candidato](#); El Telégrafo. October 19, 2016. [Fernando Villavicencio fue declarado insolvente](#).

⁸¹³ IACHR. [Resolución 6/2014. Asunto Fernando Alcibiades Villavicencio y otros respecto de Ecuador. Medida Cautelar No. 30-14](#). March 24, 2014.

⁸¹⁴ La República. June 7, 2016. [Se declara extinta la pena de los 10 de Luluncoto](#); El Telégrafo. June 8, 2016. [Sala de la CNJ declara extinta la pena en caso 'Los 10 de Luluncoto'](#); La Hora. June 7, 2016. [Se declara la nulidad de sentencia de los 10 de Luluncoto](#); El Universo. June 7, 2016. [Declaran extinta la pena en el caso de los 10 de Luluncoto](#); El Telégrafo. June 24, 2016. [Ministra aclara la sentencia contra los "10 de Luluncoto"](#); Andes. June 11, 2016. [Presidente Correa aclara que los '10 de Luluncoto' no fueron apresados por sus ideas](#).

terrorism laws in this case ignored human rights.⁸¹⁵ Finally, in late 2015, the Office of the Attorney General of the State of Ecuador published a book about social protest in which they explained that the evidence gathered by the prosecutors in this case showed that the ten who were arrested were part of the *Grupo de Combatientes Populares* (GCP) and attempted to commit terrorism.⁸¹⁶

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

503. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of IACHR establishes: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.”

E. Organic Communications Law

504. Since the enactment of the Organic Communications Law [*Ley Orgánica de Comunicación*] in 2013, the Office of the Special Rapporteur has on diverse opportunities expressed concern about the oppressive restrictions that the law establishes and the broad margin for discretion granted to the enforcement authority to restrict contents disseminated by media outlets.⁸¹⁷

505. Thus, for example, the Law enshrines the obligation for all media outlets “to cover and disseminate matters of public interest” and indicates that “[t]he deliberate and recurrent omission of the dissemination of matters of public interest constitutes an act of prior censorship” (art. 18), which shall be subject to the corresponding sanctions. Equally, the Law makes the media outlets themselves responsible for the dissemination of information of all types of contents, which shall be “contextualized”, “precise”, “verified” and that does not harm: human rights, the reputation, honor, good name of people and the public safety of the State.⁸¹⁸ The Law also establishes that it is information “of public relevance [that must be published]”⁸¹⁹ which involves public affairs and is of general interest or information through which “people’s right to honor or other constitutionally established rights are violated” (art. 7). Pursuant to article 24 of the Law⁸²⁰, it is

⁸¹⁵ 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). Guatemala. OEA Ser.L/V/II.149 Doc. 50. December 31, 2013. Para. 291.

⁸¹⁶ Fiscalía General del Estado. ‘Protesta social’. Análisis constitucional y jurídico. Segunda Edición. September 15, 2015. Page 40. Available at <http://www.fiscalia.gob.ec/index.php/sala-de-prensa/que-opinan-los-medios/4397>

⁸¹⁷ 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). Guatemala. OEA Ser.L/V/II.149 Doc. 50. December 31, 2013. Para. 327 and ff; 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.

⁸¹⁸ On the one hand, it states that media outlets must respect the freedom of opinion and expression of all persons and, on the other, holds them responsible in the administrative, civil and criminal spheres for publishing third-party comments that violate the rights enshrined in the Constitution and the law when, in the opinion of the authorities, the media have not adopted enough provisions to filter them (art. 20).

⁸¹⁹ “Art. 18.- [...]The media have the duty to cover and disseminate matters of public interest. The deliberate and recurrent omission of the dissemination of matters of public interest constitutes an act of prior censorship” [Los medios de comunicación tienen el deber de cubrir y difundir los hechos de interés público. La omisión deliberada y recurrente de la difusión de temas de interés público constituye un acto de censura previa...].”

⁸²⁰ “Art. 24.- Right of reply.- “Any human person or group that has been directly alluded through a means of communication, in a way that affects their rights to dignity, honor or reputation; has the right that the media outlet disseminate its reply for free, in the same space, page and section in written media, or in the same program in audiovisual media and within a period of no more than 72 hours

sufficient for one person to feel offended by any reference or editorial note for the media outlet to have the obligation to publish, in the same space, that person's opinion on the matter. The enforcement authority charged with defining whether or not a violation of honor has occurred as well as the consequent obligation to publish a replica or rectification is the Superintendencia of Information and Communication [*Superintendencia de la Información y Comunicación*] (Supercom), which is part of the Executive Branch.

506. In its annual reports for 2013, 2014 and 2015, the Office of the Special Rapporteur documented the sanctions imposed on journalists, cartoonists, newscasters and media in the enforcement of that law. At that time, the Office of the Special Rapporteur reiterated that the ambiguity in the terms of the restrictions and the exorbitant amount of the fines imposed could have an intimidating effect on exercise of the right to freedom of expression in Ecuador.⁸²¹

507. On October 14, the Special Rapporteur for Freedom of Expression of the IACHR and the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression sent a joint letter to the Ecuadorian State expressing their concern in relation to the Organic Communications Law of that country, and the adverse effects on freedom of expression and opinion resulting from its implementation. In particular, their concern that certain obligations contemplated in the Law lack a precise legal content, and that their enforcement, along with the severe sanctions provided for non-fulfillment, seriously inhibits freedom of expression and opinion in Ecuador.⁸²²

508. The United Nations Human Rights Committee in its final observations about the sixth periodic report on Ecuador expressed its concern regarding diverse provisions of the Organic Communications Law [*Ley Orgánica de Comunicación*] (LOC from its Spanish acronym). In its observations on the right to freedom of expression, the Council pointed out: "while it and shrines important principles associated with the right to freedom of expression, it has certain provisions that could affect the full exercise of that right, including the imposition of certain obligations that could be ambiguous or disproportionate, such as for example the obligation of the media outlets to cover and disseminate matters of public interest or the prohibition against disseminating information that directly or through third parties is produced in a concerted manner and repeatedly published through one or more media outlets for the purpose of discrediting a natural or legal person or reducing their public credibility ("media lynching"), and whose nonfulfillment could give rise to severe sanctions. At the same time, they are concerned about allegations that indicate that certain people who criticize the Government, including journalists and users of social networks, could suffer from harassment and anonymous threats after specifically being mentioned by government officials in public media and that the judicial system could be used to silence criticism through the filing of lawsuits (art. 19)."⁸²³ The Committee therefore recommended that the Ecuadorian State ensure that the Organic Communication Law is fully compatible with article 19 of the Universal Declaration of Human Rights and "that any restriction on the exercise of freedom of expression fully comply with the strict requirements established in article 19,

from the request raised by the alluded..." [Derecho a la réplica.- Toda persona o colectivo humano que haya sido directamente aludido a través de un medio de comunicación, de forma que afecte sus derechos a la dignidad, honra o reputación; tiene derecho a que ese medio difunda su réplica de forma gratuita, en el mismo espacio, página y sección en medios escritos, o en el mismo programa en medios audiovisuales y en un plazo no mayor a 72 horas a partir de la solicitud planteada por el aludido...].

⁸²¹ IACHR. [Annual Report 2014. 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. 13. March 9, 2015. Para. 375 and ff.

⁸²² IACHR. Office of the Special Rapporteur for Freedom of Expression. Joint letter with the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Ref: Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and by the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. October 14, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; IACHR. Office of the Special Rapporteur for Freedom of Expression. November 3, 2016. [Joint Press Release R163/16 Ecuador / Freedom of expression UN and IACHR Rapporteurs warn of arbitrary application of the Organic Communications Act](#).

⁸²³ United Nations. Human Rights Committee. Concluding observations on the sixth periodic report of Ecuador. CCPR/C/ECU/CO/6. Approved on July 11, 2016. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1031&Lang=en

paragraph 3, of the Pact and those developed in General Observation number 34 of the Committee (2011) on freedom of opinion and freedom of expression.”⁸²⁴

509. In this part, the Office of the Special Rapporteur documents the sanctions applied in 2016 against media outlets and journalists in enforcement of the law. Its concern over the effect that some of these cases could have on freedom of expression, which was reported to the State through a joint letter, sent on October 4. While it involves the imposition of ulterior liabilities, the ambiguity in the terms of the law and the exorbitant amount of the fines imposed could have an intimidating effect on exercise of the right to freedom of expression in Ecuador.

510. From January to November of 2016, the Supercom issued 274 resolutions through its different authorities and imposed sanctions on television, radio and press outlets in 240 cases. In 79 cases, it sanctioned media outlets for non-fulfillment of the provisions associated with classification of audiences and timeslots pursuant to title IV of the Organic Communications Law (hereinafter the LOC) on the regulation of contents; in 32 cases it sanctioned media outlets for having infringed article 28 of the LOC, which establishes that “any person who feels affected by information from a media outlet may reasonably request copies of the programs or publications”, a request that shall receive a response “in no more than 3 days”. It also sanctioned media outlets in 55 cases for non-fulfillment of ethics standards enshrined in article 10 of the LOC, and in 11 cases sanctions were imposed for non-fulfillment of articles 23 and 24 of the law regarding the right to rectification and reply. In 37 cases, the complaints were dismissed or archived. The Organic Communications Law provided for the imposition of fines for non-fulfillment of the above-mentioned norms. In that sense fines were imposed through 166 resolutions, and some media outlets have been made to pay fines ranging from US\$ 366 to US\$ 3 thousand 666.⁸²⁵

511. On January 5, the Supercom sanctioned the *Ecuavisa* Channel for non-fulfillment of article 24 of the LOC, which enshrines the right of reply. The reply was requested by retired noncommissioned Army officer Patricio Rodrigo Robayo Jaramillo, who was part of the personal security detail of Ex-President Febres Cordero and who in 2014, because of the protection that he provided during an assassination attempt, was recognized as a national hero. An investigation into the attempted assassination of Febres Cordero, on the ‘Visión 360’ program of the *Ecuavisa* Channel, questioned his role in the protection of the ex-President. The officer sent the media outlet a letter requesting rectification, and after an exchange of communications with the officer, the program made a partial reading of the letter on one of its broadcasts while referring to the channel’s webpage where the complete version could be consulted. The Supercom determined that pursuant to article 24 of the LOC, the media outlet had the obligation to fully reproduce the letter in which the rectification is requested and that the channel in not doing so committed an infraction. The channel was sanctioned to again comply with the obligation to reply and its directors were also ordered to apologize through a public letter to those offended by non-fulfillment of the legal provisions about rectification.⁸²⁶

512. On February 29, the Supercom sanctioned the daily newspaper *Extra* for non-fulfillment of art. 25 of the LOC. According to that article, “the media shall abstain from taking an institutional position regarding the innocence or guilt of persons who are involved in a legal investigation or criminal justice proceeding until the ruling issued by a competent judge is executed”. The daily newspaper in October of 2015 had published a series of articles in which it referred to a person who is being investigated for the crime of swindling, in which had used the headlines “Greedy man offered visas to United States”; “Swindled from a computer in a slum”; “He tricked them using through fast talking and by speaking English”; “A genius behind bars”; “The genius who ended up in jail”. The Supercom determined that there had been non-fulfillment of the provisions of the

⁸²⁴ United Nations. Human Rights Committee. Concluding observations on the sixth periodic report of Ecuador. CCPR/C/ECU/CO/6. Approved on July 11, 2016. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1031&Lang=en

⁸²⁵ Superintendencia de Comunicaciones. Resoluciones 2016. Available at: <http://www.supercom.gob.ec/es/marco-juridico/resoluciones/2016>

⁸²⁶ Superintendencia de Comunicaciones. January 5, 2016. Resolución No. 001-2016-DNJR-D-INPS. Available at <http://www.supercom.gob.ec/es/marco-juridico/resoluciones/2016>

law because the headlines and subheadings used by the newspaper made it possible to infer that the periodical had assumed a position and found the person under investigation guilty despite having used words like “suspected” or “alleged” in the note. The newspaper was sanctioned to pay a fine equivalent to 2 per cent of average invoicing over the past 3 months, as provided for in that same article 25 of the law.⁸²⁷

513. On March 3, the Supercom sanctioned the daily newspaper *Expreso* for non-fulfillment in its edition of January 4 of article 36 of the LOC, which provides that “all media outlets have the duty to disseminate contents that express and reflect the worldview, culture, traditions, knowledge and wisdom of the indigenous, Afro-Ecuadorian and Montubian peoples and nationalities in 5 per cent of their daily programming”. Failure to fulfill that duty is punished by a fine equivalent to 10 per cent of average invoicing for the past three months. The media outlet indicated that in the mentioned issue, it had included contents that promoted interculturality, including reporting on leaders who represent different minorities, and articles about agriculture and cultural festivities, among others. However, the Supercom declared that article 36 of the LOC had not been fulfilled, after verifying that none of the published articles satisfy the obligation to include “contents that express and reflect the worldview, culture, traditions, knowledge and wisdom of indigenous, Afro-Ecuadorian and Montubian peoples and nationalities”. The Supercom fined the newspaper 10 per cent of average invoicing for the past three months, and stipulated that the amount had to be paid within 72 hours following notification of the resolution.⁸²⁸

514. The daily newspaper *El Mercurio* was denounced before the Supercom for non-fulfillment of the LOC. The petitioners argued that the media outlet violated the ethics standards enshrined in article 10 of that law in publishing in their April 21 issue the headline “People ask for water; Correa raises the VAT”, in reference to tax measures adopted by President Correa to deal with the humanitarian crisis stemming from the earthquake of April 16.⁸²⁹ On May 11, the Supercom determined that the newspaper had violated not only the ethics standards provided in article 10 of the LOC but also article 22. The authority considered that even though the body of the article had on the one hand stated that the water shortage was a result of the earthquake and on the other hand addressed the governmental initiative to increase the VAT, the title of the note transmitted an idea that was confusing for society and particularly for those who had become victims, and that this situation could generate chaos and confusion. The Supercom in its resolution analyzes the news headlines and their function in the text. The sanction consisted of a reprimand of the newspaper, reminding it of its obligation to improve its practices of internal management and communications work “to provide informative quality contents that ensure full exercise of the right to communication.”⁸³⁰ After publication of the note in question, *El Mercurio* denounced having received insults through social networks.⁸³¹

515. On July 22, the Supercom determined that the daily newspaper *La Hora Tungurahua* was responsible for non-fulfillment of article 23 of the LOC. On June 11, the newspaper published a note titled “Afro people demand spaces for participation from the Government” [*“Pueblo Afro exige al Gobierno espacios de participación”*], in which it published the opinions of three Afro-descendent community leaders in Ecuador who demanded greater political participation. One of the interviewees submitted a request for rectification, indicating that the title of the note was imprecise and that he had not made any of the affirmations that appeared in the text. The Supercom in the resolution specified that “the title or headline assumes the function

⁸²⁷ Superintendencia de Comunicaciones. February 29, 2016. Resolución No. 007-2016-DNJRD-INPS. Available at <http://www.supercom.gob.ec/es/marco-juridico/resoluciones/2016>

⁸²⁸ Superintendencia de Comunicaciones. March 3, 2016. Resolución No. 012-2016-DNGJPO-INPS. Available at <http://www.supercom.gob.ec/es/marco-juridico/resoluciones/2016/360-matriz?site=3>

⁸²⁹ Ecuavisa. May 4, 2016. [Comienza proceso contra El Mercurio por cobertura de terremoto](#); El Universo. April 30, 2016. [Denuncia contra un diario por terremoto](#).

⁸³⁰ Superintendencia de Comunicaciones. May 11, 2016. Resolución No. 01-2016. Available at: <http://www.supercom.gob.ec/es/marco-juridico/resoluciones/2016/365-zonal-6>; Superintendencia de Comunicaciones. May 12, 2016. [Llamado de atención para Diario El Mercurio](#).

⁸³¹ Fundamedios. April 26, 2016. [Funcionarios acusan y arremeten contra diario por titular crítico](#); “(1) Una cosa es la crítica y otra el insulto, la provocación. Hemos sido víctimas, a lo largo del día de insultos por parte de #trolls...”. Twitter account of Diario El Mercurio @mercurioec. [April 21, 2016](#).

of informing and attracting, and involves a summary of the contents of the journalistic note, in other words, is part of the body of the news, and therefore may not be understood in a manner separate or distinct from the text or its development." In that sense the authority found that the headline was imprecise because the denunciation referred to a situation in Tungurahua and not that of the National Government, as suggested in the text, and therefore the right to rectify imprecise information was in order. Additionally, the Supercom determined that the rectification published by the media outlet did not comply with article 23 of the LOC because along with it, an editorial note was published stating that the original note had been published based on different sources, including the testimony of the person who requested the rectification. As punishment, the daily newspaper *La Hora* had to publish the rectification note along with a public apology in both its printed and web versions.⁸³²

516. On August 8, the Supercom sanctioned *Teleamazonas* upon determining that the media outlets had incurred in the conduct of "media lynching" [*linchamiento mediático*] pursuant to article 26 of the LOC and the journalist Janet Hinestroza for violating article 10 of the law, reporting on facts "that were not tested or contextualized". Therefore ordered them to make a public apology. The complaint was filed with the National Public Contracting Service [*Servicio Nacional de Contratación Pública*] (SERCOP) because in a 'Desayuno de 24 Horas' television program directed by Hinestroza and the 'Noticiero 24 Horas', they had issued information about a public-sector medications auction stating that the quality of the pharmaceuticals had not been taken into account. The complainant authority alleged that they had only been given the opportunity to participate and express their version of the events being denounced in four spaces while there were eleven spaces that were informed about the issue without the participation of official sources.⁸³³ Organizations such as the Committee to Protect Journalists (CPJ) and the Inter American Press Association (IAPA) rejected the decision by the Supercom. Various media outlets stated that days before finding out about the sanctions, President Correa had criticized the journalist and the media outlet. Additionally, the lawyers of the journalist and the media outlet called attention to the brevity in which the complaint was resolved, taking into account the time that the Superintendence normally takes to resolve similar cases. The journalist along with civil society organizations affirmed that this decision was an example of the difficulties for the practice of investigative journalism in Ecuador, in which the official version or decisions by public officials are questioned.⁸³⁴

517. At the same time, the Office of the Special Rapporteur has received word that during 2016, the Office of the State Comptroller General has executed different fines imposed by the Supercom as a result of the applicable sanctions. According to the LOC, the Supercom does not have the power to collectively impose fines even in response to non-fulfillment of payment by those sanctioned; they nonetheless may require the Office of the State Comptroller General to take on that task. Among the media outlets that have been sanctioned under this modality include radio station *Exa FM 92.5*⁸³⁵, radio station *Futbol FM*⁸³⁶, *Radio Superior 92.7*⁸³⁷, radio station *Flama Plus 104.5 FM*⁸³⁸, *Radio Scandalo 103.7 FM*⁸³⁹, *Radio Tropical 92.9 FM*⁸⁴⁰

⁸³² Superintendencia de Comunicaciones. July 22, 2016. Resolución No. 016-2016-DNJR-INS. Available at: <http://www.supercom.gob.ec/es/marco-juridico/resoluciones/2016/360-matriz>

⁸³³ Supercom. August 8, 2016. [Comunicado Teleamazonas y Janet Hinestroza cometieron linchamiento mediático.](#)

⁸³⁴ Committee to Protect Journalists (CPJ). August 9, 2016. [Ecuador reprimands journalist, TV station for investigative reports](#); Inter American Press Association (IAPA). August 11, 2016. [Ecuador: IAPA protests actions against journalists, media](#); Plan V. August 11, 2016. [Janeth Hinestroza: el delito de preguntar](#); El Comercio. August 8, 2016. [Sancionan canal de TV y periodista por 'desprestigio' a ente público en Ecuador](#); Ecuador Transparente. August 9, 2016. [En menos de tres días, sancionaron a periodista Janet Hinestroza](#); Ecuavisa. August 10, 2016. [Hinestroza: Sanción sienta mal precedente para la libertad de expresión](#);

⁸³⁵ Supercom. August 17, 2016. [Contraloría hace efectiva coactiva a radio "Exa FM"](#); Supercom. February 5, 2016. [Contraloría ejecuta coactiva a Radio Exa.](#)

⁸³⁶ Supercom. July 7, 2016. [Contraloría ejecuta coactiva a radio "Fútbol FM"](#).

⁸³⁷ Supercom. April 4, 2016. [Contraloría ejecuta coactiva a Radio Superior.](#)

⁸³⁸ Supercom. March 29, 2016. [Contraloría hace efectiva coactiva a Radio Flama Plus.](#)

⁸³⁹ Supercom. March 28, 2016. [Contraloría ejecuta coactiva a Radio Scandalo.](#)

⁸⁴⁰ Supercom. January 26, 2016. [Contraloría hace efectiva coactiva a Radio "Tropical"](#).

and *Radio la Premier 91.9 FM*.⁸⁴¹ In all cases the executed fines had an approximate value of between US\$ 1 thousand and US\$ 3 thousand 6 hundred.

518. The Office of the Special Rapporteur reiterates that the right of reply or correction enshrined in article 14 of the American Convention⁸⁴² is, at the same time, an important mechanism for the protection of certain rights and a type of restriction on the exercise of the right to freedom of expression.

519. Although the right of reply or correction is one of the measures least restrictive to freedom of expression when compared to civil or criminal penalties,⁸⁴³ this mechanism makes it possible to force a media outlet to disseminate information it does not wish to publish.⁸⁴⁴ In the absence of adequate and careful regulation, it could give rise to abuses that end up disproportionately and unnecessarily jeopardizing freedom of expression.⁸⁴⁵ 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.⁸⁴⁶

520. Therefore, this right must be interpreted in conjunction with the right to freedom of expression in order to keep it from becoming a mechanism of indirect censorship or having a chilling effect on the media.⁸⁴⁷ In this respect, the Office of the Special Rapporteur has insisted that, in order to be considered lawful, correction and reply must be carefully regulated and meet the requirements of legality, necessity and proportionality, in accordance with article 13. 2 of the American Convention.

521. In addition, article 14 of the Convention establishes strict conditions for its imposition on media outlets in order to respect the demands of the right to freedom of expression. Indeed, among other things, the right is not admissible in response to the mere mention of a person in a media outlet; rather, it applies where harm is caused by inaccurate or offensive information. Ordering a media outlet to disseminate information it does not wish to publish, in the application of the right of correction and reply, must be authorized by independent judicial authorities, who must state the reasons why the measure is suitable to accomplish the aims pursued by the right of reply (to offer a different version of the 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.

F. Internet and Freedom of Expression

⁸⁴¹ Supercom. January 18, 2016. [Contraloría ejecuta coactiva a radio de Ibarra](#).

⁸⁴² Article 14 of the American Convention states: "1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish. 2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred. 3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges."

⁸⁴³ 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.

⁸⁴⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

⁸⁴⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

⁸⁴⁶ I/A Court H. R. Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) And 2 American Convention On Human Rights). Advisory Opinion OC-7/85 of August 29, 1986. Serie A No. 7. Para. 25. The said Advisory Opinion states that: "The fact that the right of reply or correction (art. 14) follows immediately after the right to freedom of thought and expression (art. 13) confirms this interpretation. The inescapable relationship between these articles can be deduced from the nature of the rights recognized therein since, in regulating the application of the right of reply or correction, the States Parties must respect the right of freedom of expression guaranteed by Article 13. They may not, however, interpret the right of freedom of expression so broadly as to negate the right of reply proclaimed by Article 14(1)."

⁸⁴⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Letter to the State of Ecuador](#). June 28, 2013.

522. The Facebook page of the news portal *Ecuadorenvivo* was eliminated on April 23 along with its 26,000 followers after a cyber-attack. Alfonso Pérez, director of the portal, denounced that unknown individuals hacked the user page, deleted all of its contacts and subsequently eliminated the page from the media outlet.⁸⁴⁸

523. On May 9, the informative portal *PlanV* was the target of a cyber-attack for 24 continuous hours. According to the technical report by the web portal's administrator, the server would have received more than 400 applications for admittance per second, which exceeded its installed capacity by 300 per cent. The administrator would have detected at least 29 IP addresses from which most of the applications for access had originated, of which 20 would be registered in China and the others are of unknown origin. The attack would have prevented access to the page by readers.⁸⁴⁹

524. The organization *Ecuador Transparente* on April 14 denounced that the Ecuadorian government and the Association of companies that supply services of Internet, added value, suppliers and information technologies [*Asociación de empresas proveedoras de servicios de Internet, valor agregado, portadores y tecnologías de la información*] (Aeprovi)⁸⁵⁰ had worked jointly to block access to pages such as Google and You Tube on March 28, 2014 "at the request of the National Government." The organization said that the Government "by means of opaque agreements with this association, it has the technical capacity to block webpages throughout the national territory without having to be accountable."⁸⁵¹

525. In response to information from *Ecuador Transparente*, Aeprovi on April 14 rejected statements made in relation to blocking of the service on certain Internet portals and asserted that "the Internet is subject to temporary service interruptions caused by technical problems of different types, including: networking equipment failures, software failures or denial of service attacks."⁸⁵²

526. According to inter-American standards on freedom of expression and Internet, the State has to "investigate when a website is the object of attacks such as, for example, so-called Denial of Service Attacks (DoS); those carried out through computer viruses or worms aimed at the transmitter's equipment, among others. These types of computer attacks can be aimed at particular individuals or media outlets and can be enormously disruptive to the exercise of the right to freedom of expression. Accordingly, the State is obligated to investigate and properly redress such attacks."⁸⁵³

G. Use of Intellectual Property Rights to Block Contents on the Internet

527. On May 16, organizations that defend freedom of expression and various digital media sent a letter to the Office of the Special Rapporteur in which they gave an account of the different effects on freedom of expression on the Internet in Ecuador. According to the organizations that sent the letter, the Ecuadorian government is making indiscriminate use of regulations that protect copyrights to block contents on the web:

⁸⁴⁸ Communication sent to the Special Rapporteur for Freedom of Expression by Plan V, 4 Pelagatos, Fundación Mil Hojas, Focus Ecuador, Ecuador en Vivo, La República Ecuador and Fundamedios. May 16, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁴⁹ Communication sent to the Special Rapporteur for Freedom of Expression by Plan V, 4 Pelagatos, Fundación Mil Hojas, Focus Ecuador, Ecuador en Vivo, La República Ecuador and Fundamedios. May 16, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁵⁰ Aeprovi is made up of the majority of Internet providers in Ecuador (Claro, Movistar, CNT, Netlife, among others) and controls more than 95% of customers and Internet traffic in the country. Source: [Ecuador Transparente](#).

⁸⁵¹ Ecuador Transparente. April 14, 2016. [El gobierno ecuatoriano y la Asociación de Proveedores de Internet trabajan juntos para bloquear el acceso a páginas web](#); Enter. April 15, 2016. [Gobierno de Ecuador habría bloqueado ilegalmente varios sitios web](#); Fundación 1000 hojas. April 14, 2016. [El gobierno y la Asociación de Proveedores de Internet bloquean el acceso a páginas web](#).

⁸⁵² Aeprovi. April 14, 2016. [AEPROVI rechaza información errónea sobre bloqueo de sitios web](#).

⁸⁵³ 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.

the portals of digital communications media that have a clear editorial line that is critical of the government denounced that they were the targets of cyber-attacks.⁸⁵⁴

528. According to information provided by diverse organizations for freedom of expression⁸⁵⁵, the government of Ecuador directly and through intermediaries has requested diverse Internet service providers to eliminate web pages and accounts of activists and journalists on social networks, alleging unauthorized reproduction of images of public officials or audiovisual pieces that were registered by the Ecuadorian government under provisions for copyright protection. The claims aimed at eliminating contents or user accounts were made through the Spanish company Ares Rights or directly by the National Secretariat of Communication [*Secretaría Nacional de Comunicación*] (SECOM), and directed at social networks or platforms regarding enforcement of the Digital Millennium Copyright Act (DMCA) that is in effect in the United States.

529. Intermediaries such as Twitter and You Tube have the obligation to comply with United States copyright provisions, including the DMCA, and it is precisely the provisions of that law that are being invoked to avoid the use for informational purposes or political criticism of images of senior officials of the Ecuadorian government and audio pieces from the program '*Enlace ciudadano*', which is broadcast every Saturday and is a venue for interlocution between the President of the Republic and the citizenry.⁸⁵⁶

530. According to complaints received by the Special Rapporteurship, on December 28, 2015 the SECOM, through actions by the Spanish company Ares Rights, has attempted to eliminate the webpage of the *Fundamedios* organization for alleged copyright violation. That presidential agency argued one of its photographs was used in a screen shot of the video from an episode of '*Enlace Ciudadano*' of President Correa, and published a photographic composition including the image of journalist Emilio Palacio to illustrate an alert after the Chief Executive called the journalist a "psychopath" on December 12 of that year.⁸⁵⁷

531. The digital platform *4pelagatos.com* on May 6 reported that the SECOM made a claim about a copyright violation over use of the image of President Correa on the webpage of that media outlet. A few days before that, the digital portal had created an interactive platform called *Mashimachine*, on which it used the audio from the Saturday programs directed by President Correa. The portal affirmed on April 28 that the images from the Saturday program belong to all Ecuadorians under the justification that they involve a program produced by a public agency using public funds, and therefore expressed its rejection of the copyright claims made by the government and also denounced that the use of that type of regulations is aimed at silencing critical voices.⁸⁵⁸ The SECOM had made the claim with the aim of eliminating contents on the part of the supplier that rents the *Mashimachine* platform in enforcing the DMCA in effect in the United States.

532. On May 9, the *Fundamedios* organization denounced that at least 14 user accounts on Twitter had received complaints from the SECOM for alleged violations of copyrights owned by the State regarding contents produced by public agencies, and in some cases parts of the contents were deleted and at least six of

⁸⁵⁴ Communication sent to the Special Rapporteur for Freedom of Expression by Plan V, 4 Pelagatos, Fundación Mil Hojas, Focus Ecuador, Ecuador en Vivo, La República Ec and Fundamedios. May 16, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁵⁵ Committee to Protect Journalists (CPJ). January 21, 2016. [How U.S. copyright law is being used to take down Correa's critics in Ecuador](#); Global Post. January 19, 2015. [Is Ecuador's 'anti-imperialist' president using US copyright law to censor online critics?](#); Communication sent to the Special Rapporteur for Freedom of Expression by Plan V, 4 Pelagatos, Fundación Mil Hojas, Focus Ecuador, Ecuador en Vivo, La República Ecuador and Fundamedios. May 16, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁵⁶ Committee to Protect Journalists (CPJ). January 21, 2016. [How U.S. copyright law is being used to take down Correa's critics in Ecuador](#); Global Post. January 23, 2015. [Is Ecuador's 'anti-imperialist' president using US copyright law to censor online critics?](#).

⁸⁵⁷ Fundamedios. December 31, 2015. [SECOM intenta dar de baja página web de Fundamedios a través de reclamos de Ares Rights](#); Fundamedios. December 29, 2015. [Ares Rights reclama a nombre de la Secom el uso de una foto de Correa por parte de Fundamedios](#).

⁸⁵⁸ El Universo. May 8, 2016. [Secom reclama derechos de autor a los 4pelagatos](#); 4Pelagatos. April 28, 2016. [Cómo impedir que la Secom siga robando bienes públicos](#); La Horla. May 6, 2016. [4Pelagatos informa que Secom los demanda por 'MashiMashine'](#); 4pelagatos. May 6, 2016. [La Secom quiere que Rafael Correa se calle](#)

those accounts have received complaints over the use of parts of the Saturday program 'Enlace Ciudadano'. The organization also denounced that some 'tweets' had been retained because they contained images of President Correa.⁸⁵⁹ The SECOM had made the complaints with the aim of eliminating the contents from the Twitter social network, in enforcing the DMCA in effect in the United States.

533. On May 11, the Network in Defense of Digital Rights [*Red en Defensa de los Derechos Digitales*] reported that the Digital Rights Latin America & the Caribbean Bulletin were then immediately notified about removal of eight tweets for copyright violations.⁸⁶⁰

534. The head of the SECOM, Patricio Barriga, defended these procedures in a May 14 interview with the daily newspaper *El Comercio*. Barriga affirmed that the name of the governmental organization is registered as a trademark with the Ecuadorian Intellectual Property Institute [*Instituto Ecuatoriano de Propiedad Intelectual*] (IEPI). In this manner, in the framework of copyrights, the audiovisual material of President Correa that the SECOM creates with public funds is protected. The head of the SECOM affirmed that the objective is to ensure adequate and legitimate use of the images.⁸⁶¹

535. The investigative portal *Focus Ecuador* informed the Office of the Special Rapporteur that between March 2015 and May of 2016 it had been the target of three attacks that took it out of service. On May 6, the SECOM and the ruling party *Alianza País* denounced that the portal had violated copyrights by using visual images published on the social networks of the Presidency of the Republic. On May 9, the day on which a report on corruption in the oil sector was to have been published and which had been previously announced to the public, the portal was hacked.⁸⁶²

536. The Office of the Special Rapporteur reiterated that copyright protection is undoubtedly a legitimate goal that can give rise to the imposition of limitations on the right to freedom of expression. Nonetheless, this protection must be provided while taking into account exceptions to copyrights and the public domain, in order to promote a balanced copyright protection system pursuant to the standards of the Inter-American Human Rights System. The blocking of contents as a punishment for copyright infraction is an extreme measure whose use to restrict the dissemination of specially protected speech or those that have the presumption of protection must be avoided when that presumption has not been disproven by a competent authority that provides sufficient guarantees for independence, autonomy and impartiality.⁸⁶³ In effect, the State must provide robust guarantees to maximize the number and diversity of voices that can participate in public debate through the Internet, so that any means for restriction must be designed to exclusively impact legitimate contents (such as propaganda of war and hate speech that constitutes an incitement to violence, direct and public incitement to genocide, and child pornography) and adopted when it is the only available means to reach an imperative objective that is strictly proportional to achievement of that objective.⁸⁶⁴

⁸⁵⁹ Fundamedios. May 9, 2016. [Secom denuncia a tres medios digitales y al menos 14 cuentas en Twitter por uso "ilegítimo" de imágenes del Presidente](#). The reported Twitter accounts whose contents were deleted are: @badpons, @DavidRevelo, @FDavid_92, @Alnocu, @FrankT30, @HDelgado, @hermelito56, @bloglibrecuador, @barceblaccio, @Alfredo240866, @RebecaMorla, @Silviabuendia, @CarlitosWeyec and @CarlosFabbian.

⁸⁶⁰ R3D. May 11, 2016. [Gobierno de Ecuador censura boletín de derechos digitales vía DMCA](#); Committee to Protect Journalists (CPJ). January 21, 2016. [How U.S. copyright law is being used to take down Correa's critics in Ecuador](#).

⁸⁶¹ El Comercio. May 14, 2016. [La Secom registró en el IEPI la información pública que produce](#).

⁸⁶² Communication sent to the Special Rapporteur for Freedom of Expression by Plan V, 4 Pelagatos, Fundación Mil Hojas, Focus Ecuador, Ecuador en Vivo, La República Ecuador and Fundamedios. May 16, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁶³ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 90; 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 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

⁸⁶⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 85-87.

H. Diversity and Pluralism

537. April 12 started the contest to award 1.472 radio and television frequencies by the Telecommunications Regulation and Control Agency [*Agencia de Regulación y Control de las Telecomunicaciones*] (Arcotel) and the Telecommunications Regulation and Control Agency (Cordicom), 846 of which will be for FM radio stations, 148 for AM radio stations, and 478 for UHF (ultra-high frequency channels).⁸⁶⁵

538. According to declarations by the Minister of Telecommunications, Augusto Espín, in this first tender, compliance with the 33/33/34 constitutional formula for radio spectrum distribution (33 per cent for public media, 33 per cent for private media and 34 per cent for community stations) stipulated by the Organic Communications Law (LOC) in its article 106 regarding fair distribution of frequencies cannot be expected because the distribution will be achieved progressively.⁸⁶⁶

539. On April 15, the Arcotel during the first forum on socialization of the process reported that there had been 160,000 online interactions about it.⁸⁶⁷

540. On April 29, the Fundamedios organization denounced that the tender for VHF television channels had not been opened, with the result that 180 channels whose frequencies have expired, including *Ecuavisá*, *Teleamazonas*, *GamaTV* and *Telerama*, will have to participate with a UHF frequency. The organization requested suspension of the tender in the opinion that it is not a process that includes all national media outlets and that despite its magnitude it does not guarantee impartiality by the agencies charged with evaluating the assignation and also does not have a truly independent citizen oversight.⁸⁶⁸ On June 1, those responsible for oversight asked the authorities to extend the deadline for applications for the frequencies, which had been set for June 15.⁸⁶⁹

541. On June 27, the International Association of Broadcasting (IAB) expressed concern over the parallel development of the tender for re-adjudication of radio and television frequencies and the national elections scheduled for February 2017. For the organization, it is worrisome that the continuity of media outlets is being decided at the same time as the democratic debate over who will be the elected leaders for the next four years because in that context indirect pressures may be brought to bear on the media.⁸⁷⁰

542. The Coordinator of Community, Popular and Educational Media of Ecuador [*Coordinadora de Medios Comunitarios, Populares y Educativos del Ecuador*] (Corape), issued a press release expressing the need to guarantee that the tendering of frequencies is carried out with respect for the right to communication “from the redistribution of frequencies in a fair and transparent manner”, and indicated that “the redistribution of the radio spectrum is an historical necessity that has long been demanded by multiple social sectors. It is also the only means for the true exercise of the right by men and women Ecuadorian citizens to communication at

⁸⁶⁵ Arcotel. April 12, 2016. [Concurso para adjudicar 1472 frecuencias de radio y televisión: un hito en la historia de Ecuador](#); Observacom. April 18, 2016. [Ecuador lanzó concurso de 1.472 frecuencias de radio y televisión para medios públicos, comerciales y comunitarios](#); Arcotel. No date. Bases y Formularios. Available at: <http://concursofrecuencias.arcotel.gob.ec/bases-archivos/>

⁸⁶⁶ Teleamazonas. April 12, 2016. [Inició el concurso de adjudicación de 1.472 frecuencias de radio y televisión](#); El Universo. April 12, 2016. [Arcotel y Cordicom abren concurso para adjudicar frecuencias de radio y TV](#); Asamblea Nacional. [Ley Orgánica de Comunicación](#). Article 106.

⁸⁶⁷ Tele Ciudadanía /You Tube. April 14, 2016. [Foro de Socialización del Concurso Público para la Adjudicación de Frecuencias de Radio y Tv](#); El Telégrafo. April 15, 2016. [Hasta el 15 de junio podrán entregar la documentación las personas que deseen alguna de las 846 señales de FM, 478 canales UHF o 148 AM](#).

⁸⁶⁸ Fundamedios. April 29, 2016. [Concurso de frecuencias debe suspenderse](#).

⁸⁶⁹ El Universo. June 2, 2016. [Veeduría pide a la Arcotel ampliar plazo en concurso por frecuencias de radio y televisión](#).

⁸⁷⁰ Asociación Internacional de Radiodifusión (AIR). June 27, 2016. [Preocupa a la Air concurso público para la readjudicación de frecuencias de radio y televisión en Ecuador](#).

the service of the common good”. In that sense, the organization expressed regret over complaints about corruption in the context of the process and asked for an investigation of the facts while highlighting the importance that the process be transparent and provides clear and precise information to avoid endangering the process.⁸⁷¹

543. The Office of the Special Rapporteur also received information about difficulties faced by community radio stations, particularly in areas that are the farthest from the capital, to participate in the tender, because the content of the application form was highly technical and failed to take into consideration the characteristics inherent to community radio stations, such as their lack of generation of an added value or that most people who work there do so voluntarily and collaboratively.⁸⁷²

544. On June 30, the deadline expired for those who were interested in applying for frequencies; in the provinces of Manabí and Esmeraldas the deadline was extended until July 15. On July 21, Arcotel reported that at the conclusion of the phase for receiving applications, they had received a total of 834 applications for the adjudication of 1,486 frequencies that are to be evaluated by the Multidisciplinary Work Team [*Equipo de Trabajo Multidisciplinario*] of the organism. However persisted the complaints of the society around them concerns for lack of transparency in the process.⁸⁷³

545. In a joint letter sent on October 14, the Office of the Special Rapporteur for Freedom of Expression of the IACHR and the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression expressed concern over complaints about lack of inclusion and transparency in the competition for the allocation of frequencies of radio and television frequencies.⁸⁷⁴

546. On November 14, through a press release, Arcotel and Cordicom declared that the process was being carried out with transparency, in a technical manner and without favoritism. They informed that on October 3 a citizen oversight had been carried out at the installations of Arcotel and indicated that “Cordicom has defined processes, technical and technological tools to receive the files from Arcotel on as many as 5 of the highest scores for frequencies that had achieved at least the minimum required score, and to proceed with the respective evaluation of the Communications Project in order to draft the binding technical report, to enable Arcotel to then proceed with the corresponding adjudication of the frequencies or channels.”⁸⁷⁵

547. In November, a series of denunciations was published over alleged acts of corruption committed by an ex-official of Cordicom. The National Secretariat for Policy Management [*Secretaría Nacional de la Gestión Política*] issued a press release stating that the agency had received a complaint by a citizen interested in participating in the tendering who claimed to have been required to pay for the adjudication of a frequency. The authority reported that as soon as it received word of the matter, the information was forwarded to the

⁸⁷¹ Coordinadora de Medios Comunitarios, Populares y Educativos del Ecuador (Corape). [Comunicado Público](#). No date.

⁸⁷² Letter sent by Fundación El Churo to the Office of the Special Rapporteur for Freedom of Expression. July 11, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁷³ Arcotel. July 21, 2016. [ARCOTEL recibió en total 834 solicitudes del concurso de frecuencias](#); El Telégrafo. July 22, 2016. [834 postulaciones recibió la Arcotel para el concurso de frecuencias de radio y televisión](#); El Comercio. May 13, 2016. [Arcotel amplió 15 días la recepción de solicitudes para concurso de frecuencias](#); El Telégrafo. July 4, 2016. [Ahora hay un concurso y las frecuencias no se entregan a dedo como era antes](#).

⁸⁷⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. Joint letter with the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Ref: Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and by the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. October 14, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; IACHR. Office of the Special Rapporteur for Freedom of Expression. November 3, 2016. [Joint Press Release R163/16 Ecuador / Freedom of expression UN and IACHR Rapporteurs warn of arbitrary application of the Organic Communications Act](#).

⁸⁷⁵ Agencia de Control y Regulación de Telecomunicaciones. November 14, 2016. [ARCOTEL y CORDICOM garantizan transparencia del Concurso Público para la adjudicación de frecuencias de Radiodifusión y de Televisión de señal abierta](#).

Attorney General's Office for investigation.⁸⁷⁶ Press reports affirmed that the Justice issued an arrest warrant against the ex-official for the above-mentioned events.⁸⁷⁷

548. On August 22, president Correa ordered the merging by absorption of the public Television and Radio Company of Ecuador [*Empresa pública de Televisión y Radio de Ecuador*] E.P. RTV Ecuador with the public company El Telégrafo E.P. The latter of which will now be called *Empresa Pública de Medios Públicos de Comunicación del Ecuador- Medios Públicos E.P.* The decree stipulates that the employees of the merged media may continue their work prior to a process of evaluation and selection of the talented human in order to determine who will continue in their jobs and which jobs will be eliminated as unnecessary.⁸⁷⁸ On May 24, the President announced that this merger along with suppression of other public institutions would be carried out to optimize expenditures by the State.⁸⁷⁹

549. The assignation of radio and television licenses must be guided by democratic criteria and procedures that are pre-established, public and transparent. The criteria and procedures must serve as a check on possible State arbitrariness and guarantee equal opportunities for all individuals and sectors who wish to take part. In this regard, the Inter-American Commission's Declaration of Principles on Freedom of Expression emphasizes that, "The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

I. Other Relevant Situations

550. After the close of the Annual Report 2015, the Special Rapporteurship received word that on December 15, 2015, the Telecommunications Regulation and Control Agency [*Agencia de Regulación y Control de las Telecomunicaciones*] (Arcotel), along with the Provincial Attorney General's Office of Loja and the National Police had searched the installations of the *Ecotel TV* Channel in Loja, canton of Loja in the southern part of the country. According to the authorities, the search had been made because the channel had been operating even though the then National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (body absorbed by the Arcotel) in September of 2014 had terminated the concession contract as a result of a six-month delay in payments for the concession in 2002.⁸⁸⁰ According to the available information, the search had been made in the early-morning hours when no one was at the installations of the channel.⁸⁸¹

551. The director and owner of the channel, Ramiro Cueva, rejected the operation and termed it illegal.⁸⁸² Subsequently on January 6, after a decision by the directors, the channel had come back on air supported by

⁸⁷⁶ Gobierno Nacional de la República del Ecuador. Secretaría Nacional de Gestión Política. No date. [Comunicado Oficial](#).

⁸⁷⁷ La República. November 9, 2016. [Ex asesor de Glas es acusado de pedir coimas para repartir frecuencias](#); Ecuadorinmediato.com. November 9, 2016. [Exvocal de Cordicom con orden de prisión por presunto tráfico de influencias en concurso de adjudicación de frecuencias](#); Ecuavisa. November 9, 2016. [Proceso judicial empaña concurso de frecuencias de radio y televisión](#)

⁸⁷⁸ Presidencia República del Ecuador. Decreto 1158. Fusiónase por absorción la Empresa Pública Televisión y Radio del Ecuador E.P. RTVECUADOR a la Empresa Pública El Telégrafo EP, que pasará a denominarse Medios Públicos EP. August 22, 2016. Available at https://minka.presidencia.gob.ec/portal/usuarios_externos.jsf; El Telégrafo. August 22, 2016. [Ejecutivo decreta la fusión de los medios públicos](#); El Comercio. August 22, 2016. [El Telégrafo absorbe a Ecuador TV. Radio Pública y Agencia Andes por decreto presidencial](#).

⁸⁷⁹ Andes. May 24, 2016. [Presidente Correa anuncia eliminación de seis instituciones públicas, además de fusión y venta de otras entidades](#); Andes. August 22, 2016. [Gobierno de Ecuador decreta creación de empresa de medios públicos](#).

⁸⁸⁰ Arcotel. December 16, 2015. [Sistema de Televisión "ECOTEL TV" de Loja siguió operando a pesar de la terminación de su contrato](#); El Comercio. December 16, 2015. [Ecotel TV de Loja salió del aire tras incautación de equipos](#); El Universo. December 16, 2015. [Allanan Ecotel tv en Loja y se llevan equipos de transmisión](#).

⁸⁸¹ El Comercio. December 16, 2015. [Ecotel TV de Loja salió del aire tras incautación de equipos](#); El Universo. December 16, 2015. [Allanan Ecotel tv en Loja y se llevan equipos de transmisión](#).

⁸⁸² Ecotel tv/You Tube. December 16, 2015. [Ecotel tv sale del aire, equipos de transmisión fueron sustraídos esta madrugada](#); El Comercio. December 16, 2015. [Ecotel TV de Loja salió del aire tras incautación de equipos](#).

the legal figure of the right to resistance enshrined in Ecuadorian legislation; however on January 7 a raid was made by the authorities alleging that the channel had acted outside of the legal framework.⁸⁸³

552. On March 19, president Correa in his Saturday program asked the Attorney General's Office to accelerate investigations into the alleged hacking of e-mails of certain public officials, an action allegedly committed by ex-assemblyman Clever Jiménez and Fernando Villavicencio. The President mentioned that he was making the request as a citizen and indicated that he was worried that in such a serious case no progress had been made in the investigation.⁸⁸⁴ In 2013 the homes and offices of Jiménez and Villavicencio were searched and the president subsequently made declarations in which he indicated that during the searches serious findings had been made, however those investigated had not had access to that evidence. In early June, it became known that the Attorney General's Office asked for a date to be set for a hearing to formulate charges.⁸⁸⁵ The hearing was held on August 17, when the prosecution filed charges against Villavicencio and Jiménez for the alleged crime of disclosure of confidential information.⁸⁸⁶ Judge Jorge Blum summoned them to trial and on October 28 ordered their pre-trial detention.⁸⁸⁷ The defense of Villavicencio and Jiménez appealed the order of pre-trial detention but the judge rejected the appeal and, on November 14, issued an arrest warrant against both men.⁸⁸⁸

553. On April 22, during a visit to the earthquake disaster zone in Muisne, President Rafael Correa received complaints from various citizens over the alleged lack of water and timely aid from the Government. During the visit, the chief executive said to one of the victims of the zone "¡No one here is to lose their calm, no one is to yell, or I will have them arrested, whether they are young, old, a man or a woman! (...) no one can start to weep or complain to me (sic) about things that are lacking... unless they have lost loved ones..."⁸⁸⁹

⁸⁸³ Arcotel. January 7, 2016. [Las acciones que se encuentra ejecutando el Sistema de Televisión "ECOTEL TV" Loja se realizan fuera del marco Legal](#); El Comercio. January 6, 2016. [Ecotel reabrió la señal por decisión de sus directivos](#); El Comercio. January 7, 2016. [Otro allanamiento se registró en Ecotel TV de Loja](#); Inter American Press Association (IAPA). February 1, 2016. [La SIP condena abuso de gobierno contra canal ecuatoriano](#).

⁸⁸⁴ Presidencia de la República/Official You Tube channel. March 14, 2016. [Enlace ciudadano Nro. 467 desde Limón Indanza, Provincia de Morona Santiago](#) [03:23:23-03:25:49]; Ecuador en vivo. March 28, 2016. [Rafael Correa pide a Fiscalía reactivar proceso contra Cléver Jiménez y Fernando Villavicencio](#); Plan V. March 28, 2016. ['Un ciudadano cualquiera' versus Fernando Villavicencio](#).

⁸⁸⁵ La Hora. June 7, 2016. [Cléver Jiménez y Villavicencio en nuevo proceso penal](#); El Comercio. August 12, 2016. [Se inicia nuevo proceso contra Jiménez y Villavicencio por presunto 'hackeo' del email del Presidente](#); Ecuavisa. August 12, 2016. [Cléver Jiménez y Fernando Villavicencio son llamados a audiencia](#).

⁸⁸⁶ Teleamazonas. August 17, 2016. [Fernando Villavicencio y Cléver Jiménez enfrentan otro proceso judicial](#).

⁸⁸⁷ Ecuavisa. October 28, 2016. [Prisión preventiva para Cléver Jiménez y Fernando Villavicencio](#); El Universo. October 28, 2016. [Juez ordena prisión preventiva de Cléver Jiménez y Fernando Villavicencio](#); Plan V. October 28, 2016. [La nueva orden de prisión contra Jiménez y Villavicencio](#).

⁸⁸⁸ El Comercio. October 28, 2016. [Fernando Villavicencio y Cléver Jiménez apelaron su orden de prisión](#); El Comercio. November 14, 2016. [Desestiman apelación y ordenan detener a Fernando Villavicencio y Cléver Jiménez](#).

⁸⁸⁹ Ecuador Noticias. April 22, 2016. [Presidente Correa amenaza con encarcelar a damnificados del terremoto](#); Infobae. April 23, 2016. [La furia de Rafael Correa con las víctimas del terremoto en Ecuador](#).

14. EL SALVADOR

A. Progress

554. On September 1, the Constitutional Chamber of the Supreme Court of Justice [*Sala de lo Constitucional de la Corte Suprema de Justicia*] ordered the Presidency of the Republic to publish, on its transparency portal, all information associated with international travel made using public funds by ex-president of the Republic Mauricio Funes and his wife, Vanda Pignato, jointly or separately, during the period between 2009 and 2014, including the names of the officials and/or employees who accompanied them, destination, objective, cost of the ticket, per diems assigned and any other expenditure made. It also ordered that the expenditures for the design, production and implementation of campaigns from 2010 be made public, along with the expenditures from formal activities incurred during visits by foreign officials. The ruling revoked a resolution by the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*], issued on December 18, 2014, in which partial confidentiality was declared regarding the information with respect to services of advertising agencies and total confidentiality of the information about the travels by the ex-president and his wife, arguing in the latter case that the publication of such information “would endanger, on the one hand, public safety and national defense and, on the other hand, the lives and safety of the persons involved”.⁸⁹⁰ In justifying its resolution, the Constitutional Chamber referred to the sentence by the Inter-American Court of Human Rights in the case of *Olmedo Bustos and others vs. Chile*, which established that freedom of information is part of the social dimension of freedom of expression and consequently “[while] freedom of expression is a means for the exchange of ideas and information among people [...], it also implies the right of everyone to know opinions, stories and news. For ordinary citizens, knowledge of the opinions of others or the information that other people have, is just as important as the right to disseminate their own.”⁸⁹¹

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

B. Killings

556. On March 10, journalist Nicolás Humberto García was killed in the municipality of Tacuba, department of Ahuachapán. According to the available information, García was the director of the community radio station *Expresa Voces al aire* and had been attacked by alleged members of the criminal group known as “*Mara Salvatrucha*” after having refused to join that group and having prevented the use of his radio program to communicate messages by the criminal group. The journalist had a program dedicated to the prevention of violence, in which participation by members of the National Civil Police [*Policía Nacional Civil*] was frequent.⁸⁹² According to the available information, on October 21, four alleged members of the criminal group were sentenced to 20 years imprisonment, charged with responsibility for the murder.⁸⁹³

⁸⁹⁰ Diario La Huella. December 9, 2015. [Sala admite demanda contra IAIP por reserva de información sobre viajes de Funes](#); La Tribuna Hispana. December 17, 2015. [Sánchez Cerén veta al público en audiencia sobre viajes y gastos de publicidad](#); La Prensa Gráfica. December 23, 2014. [IAIP mantiene como reservada información de viajes de Funes](#)

⁸⁹¹ Corte Suprema de Justicia de El Salvador. Sala de lo Constitucional. [Expediente No. 713-2015 Amparo](#). Judgment of September 1, 2016; 20 minutos. September 1, 2016. [Corte ordena publicar información de viajes de Funes](#); La Prensa Gráfica. September 1, 2016. [Sala ordena publicar información sobre gastos de publicidad y viajes de Funes](#)

⁸⁹² Unesco. March 30, 2016. [Director-General condemns killing of broadcast journalist Nicolás Humberto García in El Salvador](#); Diario 1. March 19, 2016. [La brutal muerte que la MS dio a periodista por negarse a dar información de la PNC](#); Committee to Protect Journalists (CPJ). March 23, 2016. [Director of community radio station murdered in El Salvador](#); Reporters Without Borders (RSF). March 22, 2016. [Gang members kill 23-year-old radio journalist](#)

⁸⁹³ Diario1. May 5, 2016. [Pandilleros a prisión por homicidio de joven comunicador de Tacuba](#); La Prensa. October 21, 2016. [Dan 20 años de cárcel a 4 pandilleros por asesinar a periodista salvadoreño](#); El Herald. October 21, 2016. [Condenan a pandilleros que asesinaron a periodista salvadoreño](#)

557. On May 24, Darwin Zelaya, announcer of the *Radio Sky fm* station, was murdered. According to the known information, Zelaya was about to enter the building where the radio station is located when he was attacked by unknown individuals who fired upon him. According to the director of the radio station, Manuel Álvarez, the murdered journalist had not previously received threats.⁸⁹⁴

558. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.⁸⁹⁵

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

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

560. *Red Salvadoreña de Medios* (RSM) denounced on February 10 an assault against one of its journalistic teams. According to the information available National Police [*Policía Nacional*] agents assaulted the journalists and seized their equipment when they were covering a traffic accident on the road leading to Ataco, Ahuachapán. The National Civil Police acknowledged the event and issued an apology by means of a press release, stating that they would open an investigative process into the matter.⁸⁹⁶

561. On March 9, journalist Claudia Campos and cameraman Walter Rivera of *Noticiero 4 Visión* were attacked by an alleged official of the National Administration of Aqueducts and Sewers [*Administración Nacional de Acueductos y Alcantarillados*] (ANDA). The attacked allegedly had happened while they attempted to enter the building of the public agency to cover incidents of a work slowdown organized by the Union of Workers [*Sindicato de Trabajadores*] of the ANDA, who had alleged the existence of irregularities in their working conditions. The alleged employee of the ANDA, who would be the secretary of the management of the Metropolitan Region [*Región Metropolitana*], insulted and physically attacked the journalistic team in addition to blocking their access to the building. The president of the ANDA issued an apology for the incident through his Twitter account.⁸⁹⁷

562. On May 22, journalist Fidel Hernández of the station *TRV Noticias Canal 16*, in the municipality of San Miguel, had his cellular telephone stolen, which he used to record incidents prior to a football game in which

⁸⁹⁴ Notimerica. May 25, 2016. [Asesinan a Darwin Zelaya, locutor de radio Sky Sonsonate](#); Asociación de Periodistas de El Salvador/Facebook. May 26, 2016. [APES condena asesinato de locutor de radio "Sky fm"](#); El Salvador. May 24, 2016. [Asesinan a conductor de radio en Sonsonate](#); La Prensa. May 25, 2016. [Asesinan a locutor de radio de El Salvador](#).

⁸⁹⁵ 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). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. [Annual Report 2010. 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. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

⁸⁹⁶ El Salvador. February 10, 2016. [Denuncian agresión policial contra periodistas](#); El Mundo. February 10, 2016. [Investigarán agresiones a dos periodistas por policías](#); "Comunicado Oficial @PNC_SV <http://goo.gl/dcojro>". Twitter account of Policía Nacional Civil El Salvador. [February 10, 2016](#).

⁸⁹⁷ La Prensa Gráfica. March 9, 2016. [Anda bajo más críticas, tras agresión de empleada a periodistas](#); "#IMPORTANTE Presidente de ANDA ofrece disculpas a @noticias4vision". Twitter account of Administración Nacional de Acueductos y Alcantarillados (ANDA) @anda_oficial. [March 9 2016](#).

confrontations had occurred among those attending the event. A fan and an alleged employee of the office of the Mayor of San Salvador, who were traveling aboard a bus, had grabbed his cellular phone to avoid his filming the confrontation in which they were taking part. According to the available information, the events occurred in the presence of agents of the police who refrained from intervening.⁸⁹⁸

563. Journalist Cristian Meléndez of *La Prensa Gráfica* was threatened with death on November 28 from a Facebook account called “Sociedad Civil”. Meléndez denounced the threats to the Attorney General’s Office of the Republic [*Fiscalía General de la Republica*] on December 1. Civil society organizations and media outlets rejected the threats and asked the Government to protect journalists. The threats occurred after Meléndez had published an article on alleged acts of corruption in which the mayor of San Salvador, Nayib Bukele, would be implicated.⁸⁹⁹

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

D. Social Protest

565. A group of vendors gathered on April 7 in the *Bulevar del Ejército* to protest against the change in 19 bus routes in the city of Soyapango, San Salvador, a decision that had affected their sales. Injuries were reported along with four people who were arrested after the Unit for Maintenance of Order of the National Civil Police [*Unidad de Mantenimiento del Orden de la Policía Nacional Civil*] (PNC) dissolved the demonstration using teargas.⁹⁰⁰

566. During the Labor Day march on May 1, individuals with their faces covered had vandalized vehicles belonging to the television channels, *Telecoporación Salvadoreña* and *Canal 33* and threatened to set one of the automobiles on fire. The journalistic teams were covering the incorporation into the commemorative march of a group of students who had departed from the installations of the Universidad de El Salvador. According to the available information, the events had been witnessed by agents of the police, who abstained from intervening, presumably because they require “an order from a superior” in order to do so. Through a press release, the National Civil Police [*Policía Nacional Civil*] issued an apology for the behavior of the agents and announced the opening of an investigation.⁹⁰¹

567. On August 29, the journalistic team from The Newscast of *Canal 6* had been attacked by members of the National Civil Police during a protest march held by police agents demanding a salary increase, the establishment of norms for retirement and the payment of a bonus. According to the available information, the police, who demonstrated wearing masks, had tried to prevent the journalists from filming images of the protest and therefore grappled with the journalists.⁹⁰²

⁸⁹⁸ La Prensa Gráfica. May 22, 2016. [Aficionado del alianza roba celular a periodista de San Miguel frente a PNC](#); “Ahí está el aficionado impidiendo nuestro trabajo”. Twitter account of Fidel Hernández @fidelhernandez. [May 22, 2016](#); EDH Deportes. May 22, 2016. [Periodista migueleño denuncia presunto robo de equipo de trabajo](#)

⁸⁹⁹ La Prensa Gráfica. November 30, 2016. [Amenazas contra periodista LPG constituye delito y debe investigarse: diputados](#); La Página. December 1, 2016. [Periodista pone aviso ante la Fiscalía por amenazas recibidas desde cuenta de Facebook Sociedad Civil](#); El Mundo. December 2, 2016. [SIP pide investigar amenazas contra periodista salvadoreño](#); Clases de Periodismo. December 7, 2016. [El Salvador: Periodista denuncia acoso y amenazas de muerte](#)

⁹⁰⁰ La Prensa Gráfica. April 7, 2016. [Vendedores se enfrentan con UMO en hulevar del Ejército](#); El Salvador. April 7, 2016. [Enfrentamiento entre UMO y vendedores por Sitramss en Soyapango](#).

⁹⁰¹ El Salvador. May 1, 2016. [Dañan vehículo de TCS frente a policías durante marcha del Día del Trabajo](#); Medio Lleno. October 6, 2016. [Entérate de algunos casos de agresión a periodistas salvadoreños](#); La Página. May 1, 2016. [Manifestantes manchan vehículos de dos canales de televisión](#); Asociación de Periodistas de El Salvador/Facebook. May 3, 2016. [APES, presenta hoy Informe situación de la Prensa en El Salvador, con motivo del Día Mundial de La Libertad de Prensa 2016](#).

⁹⁰² El Salvador. August 29, 2016. [Agreden a periodistas durante protesta de la Policía](#) (VIDEO); Elblog. August 29, 2016. [Policías manifestantes agreden a periodistas de El Noticiero](#) (VIDEO).

568. On September 29, the deputy from the *Alianza Republicana Nacionalista* (ARENA), Ricardo Velázquez Parker, had physically attacked cameraman Walter Rivera of the television channel *Telecorporación Salvadoreña* (TCS) while he was covering a demonstration by members of the health, education and safety trade union [*Sindicato de salud, educación y seguridad*] to demand better working conditions. According to the available information, Rivera had accidentally touched the lawmaker's shoulder with his camera, which had inconvenienced Velázquez who reacted by taking hold of the cameraman's back and separating him from the rest of the journalists who were covering the event.⁹⁰³

569. 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"⁹⁰⁴ 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."⁹⁰⁵

570. 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."⁹⁰⁶

E. Stigmatizing Statements

571. On October 8, during an act to commemorate the 36th anniversary of the founding of the *Frente Farabundo Martí para la Liberación Nacional* party (FMLN), its Secretary General, Medardo González, affirmed that media outlets, specifically the daily newspapers *La Prensa Gráfica* and *El Diario de Hoy*, published information that aimed to "dismantle, disfigure the heads of the citizenry, even affecting people like us, militants of the FMLN" and called upon those present "to continue the battle of ideas against the lies of *El Diario de Hoy*, *La Prensa Gráfica* and all of those media outlets."⁹⁰⁷

⁹⁰³ La Prensa Gráfica. September 29, 2016. [Diputado Velázquez Parker agrade a periodista durante](https://www.facebook.com/123853664102/photos/a.143905729102.113593.123853664102/10153935367279103/?type=3&theater); Asociación de Periodistas de El Salvador (APES)/Facebook. September 30, 2016. <https://www.facebook.com/123853664102/photos/a.143905729102.113593.123853664102/10153935367279103/?type=3&theater>; El Salvador Times. September 30, 2016. [APES denuncia agresión de diputado Velázquez Parker contra periodista de TCS](#); La Página. September 29, 2016. [Diputado Ricardo Velázquez Parker agrade a periodista](#); El Salvador. September 29, 2016. [Diputado jalonea a periodista durante protesta](#).

⁹⁰⁴ La Prensa Gráfica. September 29, 2016. [Diputado Velázquez Parker agrade a periodista durante](https://www.facebook.com/123853664102/photos/a.143905729102.113593.123853664102/10153935367279103/?type=3&theater); Asociación de Periodistas de El Salvador (Apes)/Facebook. September 30, 2016. <https://www.facebook.com/123853664102/photos/a.143905729102.113593.123853664102/10153935367279103/?type=3&theater>; La Página. September 29, 2016. [Diputado Ricardo Velázquez Parker agrade a periodista](#); El Salvador. September 29, 2016. [Diputado jalonea a periodista durante protesta](#).

⁹⁰⁵ 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.

⁹⁰⁶ 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](#).

⁹⁰⁷ 102nueve. October 8, 2016. [Con multitudinaria concentración, el FMLN celebró 36 años de fundación](#); El Salvador/El Diario de hoy. October 8, 2016. [FMLN arremete contra magistrados y periódicos](#); La Prensa Gráfica. October 10, 2016. [FMLN se queja de la forma de informar de los medios](#).

572. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”⁹⁰⁸

F. Subsequent Liabilities

573. Entrepreneur José Enrique Rais López filed a lawsuit for the crimes of libel and defamation against the journalist and coeditor of the website *Revista Factum*, Héctor Silva Ávalos. The text of the complaint was filed on August 15 with the Sentencing Court [*Tribunal de Sentencia*] of Santa Tecla and was based on diverse publications by the journalist in which he had denounced the alleged relationship of the entrepreneur with the ex-Attorney General of El Salvador, Luis Martínez, to whom the former had loaned his airplanes to make multiple trips, allegedly in exchange for helping him in the investigation of a complaint filed against him by several Canadian citizens with whom he had been previously associated in a company dedicated to the handling of solid wastes.⁹⁰⁹ Both Rais and Martínez had been arrested on August 23, accused of the crimes of “procedural fraud, ideological falsehood and bribery”, accusations that would be associated with the publications made by journalist Héctor Silva.⁹¹⁰ As of the close of this report, the accused faced the proceedings at liberty.

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

G. Internet and Freedom of Expression

575. On November 12, 2015, the Attorney General’s Office [*Fiscalía General de la República*] announced the arrest of Andrés Ricardo Ortiz Lara, as the alleged perpetrator of the cloning of the website of the newspaper *La Prensa Gráfica*, which had been denounced to that same office on July 21, 2015.⁹¹¹ Based on that arrest, the Attorney General’s Office on February 16, 2016 carried out nine operations in which four other people were arrested who would be involved in the operation of an alleged marketing company that in reality operated as a “troll center”. According the information available, in the investigations, the mayor of

⁹⁰⁸ 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.

⁹⁰⁹ La Página. April 16, 2016. [Demandan a periodista de Factum por calumnia y difamación](#); Factum. April 17, 2016. [La demanda de Enrique Rais](#). El Faro. August 12, 2016. [“Lo que está haciendo el señor Rais es un ataque a la profesión periodística”](#); Radio Cadena Mi Gente. August 16, 2016. [Periodista Héctor Silva persiste en su denuncia de amedrentamiento](#); Wola. May 4, 2016. [Legal Attacks on Salvadoran Journalist Héctor Silva Have a Chilling Effect on Freedom of Expression](#).

⁹¹⁰ La Prensa Gráfica. July 15, 2016. [Exfiscal Luis Martínez vendió justicia: TEG](#); La Prensa Gráfica. August 22, 2016. [Capturan a empresario Enrique Rais y a su sobrino](#); El Salvador. August 22, 2016. [Detienen a empresario Enrique Rais, vinculado al exfiscal de la República](#); Factum. August 23, 2016. [¿Por qué están detenidos el exfiscal Martínez y Enrique Rais?](#)

⁹¹¹ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 574. La prensa Gráfica. November 12, 2015. [Capturan a responsable de clonar página LPG](#); La Página. February 16, 2016. [Cuatro capturados por caso “troll center”](#); La Prensa Gráfica. February 9, 2016. [“Troll center” lanzó ataques contra Zamora](#); La Prensa Gráfica. July 8, 2015. [Falsa Entrevista con presidente de La Prensa Gráfica circula en internet](#); Diario1. November 26, 2015. [Los ataques cibernéticos, dos payasos y el alcalde Bukele](#); La Prensa Gráfica. November 17, 2016. [“Sigamos atacando... Hacelos mierda”](#); El Salvador. February 16, 2016. [Capturan a cuatro involucrados en caso de ciberataques a La Prensa Gráfica](#); La Página. February 16, 2016. [Cuatro capturados por caso “troll center”](#); Prensa Libre. February 16, 2016. [Detienen a cuatro señalados por ciberataques a medios de comunicación](#).

San Salvador, Nayib Bukele, was implicated in the cyberattacks made against the daily newspaper as the actual perpetrator. The mayor has denied participation in the events and has accused his political rivals, the ARENA party, along with the “powers that be” of El Salvador, among whom he has mentioned the newspaper La Prensa Gráfica, of having undertaken a campaign against him by creating an “inexistent” case.⁹¹²

576. In the context of investigations carried out in the case known as “troll center”, on February 19 a group of hooded individuals who had identified themselves as war veterans marched towards the installations of the newspaper *La Prensa Gráfica* and launched rockets against the parking lot of the daily newspaper. The demonstrators carried signs that said “Nayib is not alone” and “Enough slander against Nayib”. The Inter-American Press Association (IAPA) urged the State to investigate the degree of participation by Mayor Bukele in this case.⁹¹³

577. The main political forces represented in the Legislative Assembly have maintained a debate about the possibility of creating a Directorate of Cybersecurity and Forensic Informatics [*Dirección de Seguridad Cibernética e Informática Forense*] as part of a legislative initiative to combat cybercrime. One of the aspects of the legislation that has caused the greatest controversy is that it would force Internet service companies to maintain records of the activities of their customers for 15 years.⁹¹⁴

578. According to inter-american standards on freedom of expression and internet, the State has to “investigate when a website is the object of attacks such as, for example, so-called Denial of Service Attacks (DoS); those carried out through computer viruses or worms aimed at the transmitter’s equipment, among others. These types of computer attacks can be aimed at particular individuals or media outlets and can be enormously disruptive to the exercise of the right to freedom of expression. Accordingly, the State is obligated to investigate and properly redress such attacks.”⁹¹⁵

H. Diversity and Pluralism

579. On April 25, a study was disseminated that had been made by the Secretariat of Participation, Transparency and Anticorruption [*Secretaría de Participación, Transparencia y Anticorrupción*] according to which at least 60 per cent of the radio and television frequency concessions that operate in El Salvador were not transparently granted, which is why “they have no documentary support for the concession, authorization, licenses, conventions, agreements or permits; 34 per cent have some type of document (but it is not complete) and only 6 per cent are duly supported.”⁹¹⁶

580. On May 5, the Legislative Assembly unanimously approved diverse modifications of the Telecommunications Law that imply, among other things, the recognition of community media, which are defined as “those made up of radio and television broadcasting stations, aimed at a determined audience,

⁹¹² La Prensa Gráfica. November 17, 2015. [Bukele se desliga de “troll center” sin presentar pruebas](#); Diario1. November 26, 2016. [Los ataques cibernéticos, dos payasos y el alcalde Bukele](#); Y así mi país... Twitter account of Nayib Bukele @nayibbukele. [February 16, 2016](#); El Salvador. February 25, 2016. [Peritaje judicial reveló posibles vínculos de alcalde Bukele con ataques cibernéticos a LPG](#); La Prensa Gráfica. February 19, 2016. [Bukele lanza más amenazas contra LPG](#); La Prensa Gráfica. October 18, 2016. [FGR: Tenemos circunstancias en caso “Troll Center” en las que aparece Bukele](#);

⁹¹³ El Salvador. February 19, 2016. [Encapuchados atentan contra instalaciones de La Prensa Gráfica](#); La Prensa Gráfica. February 19, 2016. [Veteranos de Guerra vandalizan instalaciones de LPG](#); El Salvador. February 19, 2016. [Simpatizantes del alcalde Bukele atacan a la Prensa Gráfica](#); Inter American Press Association (IAPA). October 17, 2016. [El Salvador](#).

⁹¹⁴ Elsalvador.com. January 14, 2016. [FMLN propone crear la “Policía” informática bajo control de Gobierno](#); La Prensa Gráfica. July 7, 2016. [Diputados acuerdan aprobar Ley de delitos Informáticos](#); La Prensa Gráfica. January 27, 2016. [FMLN pide sanciones para quienes usurpen identidad de personas](#); La Prensa Gráfica. January 15, 2016. [FMLN va tras instalación de policía informática](#); La Prensa Gráfica. January 15, 2016. [FMLN va tras instalación de policía informática](#); El Mundo. January 27, 2016. [Polémico artículo para ley delitos informáticos](#).

⁹¹⁵ 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.

⁹¹⁶ Observacom. April 26, 2016. [60% de las concesiones de televisión comercial de El Salvador no tienen documentos que respalden su autorización](#); Transparencia Activa. April 25, 2016. [La mayoría de las concesiones de frecuencias de TV sin documentación](#).

administered by a nonprofit association or foundation, of social interest, providing them with the right to information and communication, as an exercise of freedom of expression, fostering civic participation to contribute towards accessible, fair, inclusive, sustainable development of the communities and social sectors of the country” which are also exempted from payment of the annual tariff for management of the spectrum of the radio stations and their connections. The reform also eliminated the auction mechanism as the sole way of gaining access to radio spectrum concessions, along with automatic renewal of the previously granted concessions. The reforms of the abovementioned law were made by the Legislative Branch in compliance with sentence issued on July 29, 2015 by the Constitutional Chamber of the Supreme Court of Justice, after a group of civil society and academic organizations filed an appeal to promote the unconstitutionality of that regulation. The sentence declared unconstitutionality by omission, given that the legislative body had not regulated alternative mechanisms to the auction for the selection and adjudication of concessions of radio spectrum frequencies for regulated use, and ordered the Legislative Assembly to issue said regulations by December 31, 2015, at the latest. Additionally, it declared the unconstitutionality of the system of automatic renewal of the concessions that have been granted, because it considered that said system violated the right to free competition.⁹¹⁷

581. The executive director of the Association of Participative Radio Stations and Programs of El Salvador [*Asociación de Radios y Programas Participativos de El Salvador*] (ARPAS), Leonel Herrera, considered that it is “a historic event for the country, for the community radio stations that have fought for this since their emergence...”, now that after 22 years of struggle they can be part of Salvadoran legislation and “repay a historic debt.”⁹¹⁸

582. The General Superintendence of Electricity and Telecommunications [*Superintendencia General de Electricidad y Telecomunicaciones*] (SIGET) emphasized in a press release that the reform of the Telecommunications Law [*Ley de Telecomunicaciones*] is based on nine pillars: the legal certainty of the State, private investments and compliance with the Sentence; plurality of the media; freedom of expression; process of transition towards digitalization; convergence of services; transparency and systematization of the processes; efficient use of scarce resources; transparency of the benefits of use of the technology, innovation and competition to the citizenry, and finally, the governmental agency considered it necessary to emphasize that the reform only deals with radio and television regulations and that telephony operators have not been previously contemplated within the bill.⁹¹⁹

I. Other Relevant Situations

583. On July 14, the digital newspaper *El Faro* received the “Premio Gabo 2016” recognition for excellence. The award, according to the communiqué issued by the Foundation for a New Ibero-American Journalism [*Fundación para el Nuevo Periodismo Iberoamericano*] (FNPI), constitutes a recognition of “the courage of the journalists of *El Faro*, who carry out their work under risks and in very adverse conditions, to investigate and disseminate stories and topics that have unavoidable resonance in public debate”. The editorial team of the newspaper has been the target of constant threats in recent years.⁹²⁰

584. On March 5, the President of the Republic, Salvador Sánchez Cerén, scolded journalist Paola Alemán when she posed a question to the minister of Defense, David Munguía Payés, during a press conference about

⁹¹⁷ Corte Suprema de Justicia. de El Salvador. Sala de lo Constitucional. [Expediente 65-2012/36-2014 Inconstitucionalidad](#). Judgment of July 29 2015; El Salvador. May 5, 2016. [Aprueban reformas a la Ley de Telecomunicaciones](#); La Página. May 5, 2016. [Asamblea aprueba reformas a la Ley de Telecomunicaciones](#); Voces Nuestras. May 13, 2016. [En El Salvador: Histórica reforma otorga reconocimiento legal a los medios comunitarios](#); Superintendencia General de Electricidad y Telecomunicaciones (Siget). No date. [Consenso liderado por SIGET logra dictamen favorable de Proyecto de Reforma de la Ley de Telecomunicaciones](#).

⁹¹⁸ Voces Nuestras. May 13, 2016. [En El Salvador: Histórica reforma otorga reconocimiento legal a los medios comunitarios](#).

⁹¹⁹ Superintendencia General de Electricidad y Telecomunicaciones (SIGET). No date. [Consenso liderado por SIGET logra dictamen favorable de Proyecto de Reforma de la Ley de Telecomunicaciones](#).

⁹²⁰ Premio ggm. July 14, 2016. [El Faro, de El Salvador, gana el Reconocimiento a la Excelencia del Premio Gabo 2016](#); El Mundo. July 14, 2016. [El Faro, de El Salvador, gana el Reconocimiento a la Excelencia García Márquez](#); El Faro. September 29, 2016. [Los incómodos de El Faro, perfil del ganador del Reconocimiento a la Excelencia Periodística](#)

a celebration performed in the interiors of a penal facility. The President had allegedly stated that the question made by the reporter, who works for the newscast of *canal 6*, implied “an accusation” and therefore a lack of respect towards the official, in addition to the fact that it would be the prosecutor who should respond to the question, which was why he prevented the minister of Defense from giving an answer. The journalist had asked about a celebration that allegedly had taken place in the jail of Izalco, in August of 2013 – when the Minister served as minister of Justice and Security- and regarding which a few days before a video had circulated on the social networks showing a group of prisoners watching three nude women dance.⁹²¹

585. On March 17, journalist Romeo Lemus had been fired from *Canal 12*, where he was in charge of an interview segment on the newscast ‘*Hechos*’. Through his personal Twitter account, the journalist announced his firing, stating that “the search for the truth has its cost in a country where intolerance of justified criticism persists”. Two weeks later, he was reinstated by the same media outlet, stating that he returned “under the commitment by the company to remove any obstacle that would violate the free exercise of (his) work.”⁹²²

586. On August 9, the Minister of Defense, David Munguía Payés, held a press conference accompanied by the 86 officers of the High Command who are in charge of all military units and offices of the Salvadoran army. According to the known information, the Minister had stated that the purpose of the press conference was to present “to the Salvadoran people, the position of the Armed Forces regarding certain reports that have been made in relation to our institution”. The day before, the daily newspaper *La Prensa Gráfica* had published a report revealing the alleged loss of 1,545 arms that were the property of the army.⁹²³

587. During the press conference, the minister of Defense had read a communiqué stating that “we have recently been witnesses to the irresponsible way and without going into details in their investigations, in which certain traditionally serious writers of the media have made efforts to discredit one of the most trusted and beloved institutions of the Salvadoran people, namely the Armed Forces, trying to damage their image and the morale of their members”. He subsequently characterized as “erroneous”, “inconclusive” (sic) and “biased” the information used to write the report by *La Prensa Gráfica* and affirmed that the arms are in the warehouses of the institution.⁹²⁴ In addition to holding the press conference, Minister Munguía Payés had sent a letter to the president and director general of *La Prensa Gráfica*, José Roberto Dutriz, complaining of the “continuous reports” published in the daily newspaper about the Armed Forces of El Salvador “that generate discredit of the institution”.

⁹²¹ El Salvador. February 29, 2016. [Penales valida video de fiesta en cárcel de Izalco](#); El Salvador. March 5, 2016. [Periodista le contesta al presidente Sánchez Cerén](#); La Prensa Gráfica. March 2, 2016. [Presidente Cerén a la defensiva tras consultar a payés sobre pornofiesta](#); Asociación de Periodistas de El Salvador (APES)/Facebook. March 2, 2016. [APES respalda a periodista Paola Alemán](#);

⁹²² “Debido a las muestras de solidaridad emito el siguiente comunicado oficial ante mi despido de canal 12”. Romeo Lemus on Twitter @romeolemusam. [March 18, 2016](#); La Página. March 30, 2016. [Romeo Lemus regresa mañana a canal 12](#); Comunicado oficial por mi retorno a Canal12. Twitter account of Romeo Lemus @romeolemusam. [March 30, 2016](#).

⁹²³ La Prensa Gráfica. August 8, 2016. [Defensa sin explicar faltante de 1.545 armas](#)

⁹²⁴ OrbitaTV/You Tube. August 9, 2016. [Fuerza Armada se defiende de acusaciones](#) [04:18-7:51]; Entrevistas Canal 12/You Tube. August 9, 2016. [Ministro de la Defensa negó acusaciones por extravío de armas](#).

15. UNITED STATES

A. Progress

588. On June 30, President Barack Obama signed the FOIA Improvement Act of 2016⁹²⁵, passed by both houses of Congress.

589. The new law limits application of the exceptions to public access to State information under subsection (b) of the FOIA. The paragraph added in subsection (a) establishes that an agency shall withhold information “only” if it “reasonably foresees that disclosure would harm an interest protected by an exception described in subsection (b)” or if “disclosure is prohibited by law;” it also establishes that an agency must “consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible” and “take reasonable steps necessary to segregate and release nonexempt information”.

590. The amendment to the law also strengthens active transparency by State bodies by ordering that all information requested three or more times be made available to the public online. It also limits the ability of agencies to charge a fee for searching for the information requested when the deadline established in the law is not met. It establishes that applicants have at least 90 days to appeal decisions to refuse information to the agency head. Also, the FOIA Public Liaison offices set up to help the public make requests for information must notify requestors of their right to request the dispute resolution services of the Office of Government Information Services.

591. The memos or interagency letters that are not available to the public under the law may remain confidential “provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.”

592. The amendment extends FOIA supervision to the Office of Government Information Services. The annual report that each agency must submit to the Attorney General now must also be sent to the director of the Office of Government Information Services. The report should include the number of times the agencies have denied a request for information under subsection (c)—that is, based on the reasonable expectation that releasing the information would interfere with criminal investigations or proceedings. Similarly, agents must report annually the number of records made available to the public electronically in the form of content that the law requires to be released actively (subsection (a)(2)). The agencies also must make these reports available to the public online, and the statistical information used to prepare it must be available upon request.

593. Additionally, the amendments establish that the Attorney General must submit an annual report to the House Committee on Oversight and Government Reform, the Senate Committee on the Judiciary, and the President that includes the cases that have arisen under the FOIA law, exceptions to access to information made by State agencies, and a description of the efforts made by the Department of Justice to encourage agency compliance with the law, among other things. The report and statistical information on which it was based should be available to the public online. Likewise, the director of the Office of Government Information Services must submit an annual report to the aforementioned committees and to the president containing an analysis of the public information requested, a summary of the agency’s activities, the disputes between requestors and agencies that have been resolved, and the recommendations issued, among other issues. This report must be available to the public. The new law also establishes that the director of the Office of

⁹²⁵ Congress of the United States of America. [FOIA Improvement Act 2016](#). January 4, 2016; Department of Justice. [OIP summary of the FOIA Improvement Act of 2016](#). August 5, 2016; Department of Justice. [The Freedom of Information Act, 5 U.S.C. § 552](#). August 2, 2016.

Government Information Services “shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States.”⁹²⁶

594. The Office of the Special Rapporteur was informed that the Pentagon adjusted certain aspects of the Law of War Manual it submitted in June 2015 after holding meetings with journalism organizations and freedom of the press defenders who expressed concern at certain aspects of it that could endanger the work of journalists during armed conflict. The original manual stated that journalists could be considered “unprivileged belligerents,” a legal category that provides less protection than for combatants. It also equated collection of information for the purposes of journalism with intelligence or spy activities. The revised manual explicitly recognizes the role of journalists as impartial and independent actors who inform on armed conflicts and recognizes their right to report freely, including the fact that in order to do this work, they must stay in contact or meet with the different sides in a conflict. The manual clarifies that these activities do not constitute “direct participation in hostilities.” Organizations such as the Committee to Protect Journalists and Reporters without Borders celebrated the changes.⁹²⁷

B. Killings

595. On June 13, the body of Mexican journalist and photographer Jacinto Torres Hernández was found in Garland, Texas. According to Garland police, the journalist was allegedly murdered with a firearm. Torres Hernández was a member of the National Association of Hispanic Journalists (NAHJ) and contributed to *La Estrella*—the Spanish-language newspaper of the Fort Worth, Texas *Star-Telegram*—for 20 years.⁹²⁸ His daughter, Aline Torres said during a press conference that she believed his death could be connected to his journalism work because at the time of his murder, he was working on stories about illegal immigration and human trafficking.⁹²⁹ Toward the end of June, local police stated that the FBI, the Secret Service, and the US Marshals would work together to investigate the crime.⁹³⁰

596. On June 27, the Office of the Special Rapporteur asked the State for information on the murder of Torres Hernández and the progress of the investigation.⁹³¹ On August 19, the State informed that the Garland Police Department was the lead agency in charge of the investigation and that it was being assisted by federal agencies including the FBI and Secret Service. It stated that the investigation into the murder of Torres Hernández was a priority for the Garland Police Department and a number of detectives had been assigned to work the case. It also set up a hotline for information on the case and offered a reward of US\$ 5 thousand to anyone who can provide information on the death of the reporter. The State maintained that so far, there was no indication that the murder was connected to his journalism work and committed to keeping the IACHR informed on the investigation’s progress.⁹³²

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

⁹²⁶ Congress of the United States of America. [FOIA Improvement Act 2016](#). January 4, 2016; Department of Justice. [OIP summary of the FOIA Improvement Act of 2016](#). August 5, 2016; Department of Justice. [The Freedom of Information Act, 5 U.S.C. § 552](#). August 2, 2016.

⁹²⁷ Committee to Protect Journalists (CPJ). July 22, 2016. [Pentagon's revised Law of War Manual recognizes role of independent journalists](#); The New York Times. July 22, 2016. [Pentagon Revamps Law of War Manual to Protect Journalists](#); Reuters. July 22, 2016. [Pentagon revises law of war manual after criticism of press treatment](#).

⁹²⁸ Garland Police News Release. June 15, 2016. [Man found Murdered](#).

⁹²⁹ Al Día Dallas. June 14, 2016. [Familia de periodista hispano Jay Torres pide justicia, pasar cualquier pista sobre asesinato a la policía](#); Committee to Protect Journalists (CPJ). June 16, 2016. [Journalist Jay Torres murdered in Garland, Texas](#).

⁹³⁰ Univisión. June 28, 2016. [Autoridades federales investigarán asesinato en Texas de periodista mexicano](#).

⁹³¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Comunicación al Estado conforme al artículo 18 del Estatuto de la Comisión Interamericana de Derechos Humanos. June 27, 2016.

⁹³² Informe del Estado de Estados Unidos en respuesta a la solicitud de información conforme el artículo 18 del Estatuto de la Comisión Interamericana de Derechos Humanos transmitida el 27 de junio de 2016. United States, August 19, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.⁹³³

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

C. Social Protest

599. More than 400 demonstrators were arrested while participating in a peaceful protest in front of the Capitol building in Washington, DC, on April 11. The demonstrators were staging a "sit in" as part of the Democracy Spring campaign to protest the influence of money in American politics and Congress's failure to take action.⁹³⁴ The Capitol Police said that day in a press release that it had arrested "more than 400 individuals" for "unlawful demonstration activity." They were "being processed using mass arrest procedures." It added that most arrestees were being charged with "Crowding, Obstructing, and Incommoding."⁹³⁵ The demonstrations continued the following days. On April 12, police arrested 85 demonstrators;⁹³⁶ on April 13, approximately 90 people were arrested;⁹³⁷ on April 14, about 60 people were arrested;⁹³⁸ on the 15th, the police arrested another 12;⁹³⁹ and on April 18, approximately 300 demonstrators were arrested.⁹⁴⁰ In all cases, the police said that the demonstrators were processed in situ and then released. Detainees had to pay a fine of US\$ 50.⁹⁴¹

600. According to information received by the Office of the Special Rapporteur, more than 100 people were arrested for participating in protests against the construction of an oil pipeline in Morton County, North Dakota. The Native American tribes who lived there, the Standing Rock Sioux, and other residents of the area oppose the project, that crosses lands considered cared by the indigenous peoples, as it poses a risk to potable water reserves. Since August, tribes from throughout the country have been meeting there to demonstrate. The Native Americans who were arrested said the police treated them cruelly and inhumanely.⁹⁴²

⁹³³ 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). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. [Annual Report 2010. 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. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

⁹³⁴ CNN. April 12, 2016. [Hundreds of 'Democracy Spring' protesters arrested at Capitol Hill sit-in](#); RT. April 11, 2016. [300+ arrested at 'Democracy Spring' sit-in at US Capitol \(VIDEO\)](#).

⁹³⁵ United States Capitol Police. April 11, 2016. [U.S. Capitol Police Arrest Demonstrators at U.S. Capitol](#).

⁹³⁶ United States Capitol Police. April 12, 2016. [U.S. Capitol Police Arrest Additional Demonstrators at U.S. Capitol](#).

⁹³⁷ United States Capitol Police. April 13, 2016. [U.S. Capitol Police Address Unlawful Demonstration Activity at U.S. Capitol](#).

⁹³⁸ United States Capitol Police. April 14, 2016. [U.S. Capitol Police Respond to Demonstration Activity at U.S. Capitol](#).

⁹³⁹ United States Capitol Police. April 15, 2016. [U.S. Capitol Police Arrest Demonstrators in U.S. Capitol Rotunda](#).

⁹⁴⁰ United States Capitol Police. April 18, 2016. [U.S. Capitol Police Arrest Approximately 300 Demonstrators at U.S. Capitol](#).

⁹⁴¹ USA Today. April 18, 2016. [More than 900 'Democracy Spring' protesters arrested in D.C. - so far](#); US Weekly. April 17, 2016. [Rosario Dawson Arrested at Democracy Spring Protest, Praises How Police Acted](#).

⁹⁴² The Guardian. October 30, 2016. [Dakota Access pipeline: Native Americans allege cruel treatment](#); RT. September 1, 2016. [Over 30 activists arrested over Dakota oil pipeline protests](#); Democracy Now!. October 24, 2016. [Standing Rock: Police Arrest 120+ Water Protectors as Dakota Access Speeds Up Pipeline Construction](#).

601. Repeatedly, the police allegedly used dogs, pepper spray and water cannons to disperse the protests in North Dakota.⁹⁴³ On October 27, 141 demonstrators were arrested by the Police. The police authorities of Morton County alleged that the demonstrators threw rocks, logs, bottles and rubble at the officers. Those arrested were booked and kept in custody for hours in cages that they described as similar to those found in dog kennels.⁹⁴⁴ The North Dakota Department of Corrections and Rehabilitation reported in a communiqué that they had used “temporary detention cells” at the Morton County Correctional Center that were used only for situations of “mass detention”.⁹⁴⁵ On October 29, all of those arrested were released on bail after an anonymous donor contributed US\$ 2 million 500 thousand to pay for their bail.⁹⁴⁶ On November 20, at least 17 people had to be taken to medical centers for treatment, some of whom for hypothermia, after the police sprayed the demonstrators with water during cold weather conditions.⁹⁴⁷ Also, some hundreds of demonstrators were injured.⁹⁴⁸ Furthermore, 21-year-old Sophia Wilansky had to receive various medical interventions at the risk of losing her arm, in the wake of injuries caused by the alleged explosion of a concussion grenade allegedly used by the security forces. The Police and the demonstrators do not agree about the cause of the explosion and the event is under investigation by state and federal authorities.⁹⁴⁹ On November 25, around 30 people who were supposedly protesting against the project in a shopping center in the city of Bismarck were arrested by the Police.⁹⁵⁰

602. On November 26, the president of the Standing Rock Sioux tribe, Dave Archambault, allegedly received notification from the US Army Corps of Engineers ordering the closure of the camp installed by activists opposed to the oil pipeline. According to a letter published by the tribe on its webpage, it was ordered to abandon the camp by December 5, and anyone resisting eviction could face trespassing charges. At a press conference organized at the camp site, where some 5000 people were installed, the demonstrators announced that they would not abandon the area.⁹⁵¹

603. The Office of the United Nations High Commissioner for Human Rights (UNHCHR) accused the security forces of using “excessive force against demonstrators” who stand against the project for construction of the oil pipeline. In a communiqué issued on November 15, the Office of the United Nations Special Rapporteur for Freedom of Assembly and Peaceful Association, Maina Kiai, declared that the Police,

⁹⁴³ NBC. November 3, 2016. [Police Fire Rubber Bullets as Pipeline Protesters Try to Protect Sacred Site](#); The Guardian. November 21, 2016. [Standing Rock protest: hundreds clash with police over Dakota Access Pipeline](#); The New York Times. November 23, 2016. [Power Imbalance at the Pipeline Protest](#).

⁹⁴⁴ Business Insider. October 31, 2016. [Dakota Access protesters say police held them in 'dog kennels' after arrests last week](#); Los Angeles Times. October 28, 2016. [North Dakota pipeline activists say arrested protesters were kept in dog kennels](#); The Guardian. October 28, 2016. [North Dakota pipeline: 141 arrests as protesters pushed back from site](#).

⁹⁴⁵ FOX. October 29, 2016. [Morton County Sheriff's Office responds to reports of 'dog kennels' used to incarcerate protesters](#).

⁹⁴⁶ ABC. October 31, 2016. [Officials Defend Use of Alleged 'Dog Kennel' Cells in Dakota Access Pipeline Protest](#); Democracy Now!. November 16, 2016. [Indigenous Activist Zip-Tied & Locked in Dog Kennel for 6 Hours for Protesting Dakota Access Pipeline](#); The Washington Post. November 1, 2016. [Dakota Access protesters accuse police of putting them in 'dog kennels,' marking them with numbers](#).

⁹⁴⁷ The Washington Post. November 21, 2016. [Police defend use of water cannons on Dakota Access protesters in freezing weather](#); NBC. November 21, 2016. [Dakota Pipeline Protesters Drenched With Water Cannons](#); BBC. November 21, 2016. [North Dakota pipeline: Police fire water cannon at protesters](#).

⁹⁴⁸ The Guardian. November 21, 2016. [Dakota Access pipeline: 300 protesters injured after police use water cannons](#); USA Today. November 21, 2016. [Hundreds hurt as Dakota pipeline protesters clash with police](#).

⁹⁴⁹ Los Angeles Times. November 21, 2016. [Dakota Access pipeline protester may lose her arm after small explosion, activists say](#); The Washington Post. November 23, 2016. [The police crackdown on pipeline protesters in North Dakota](#); The Guardian. November 22, 2016. [Dakota Access pipeline protester 'may lose her arm' after police standoff](#); The New York Times. November 24, 2016. [Cause of Severe Injury at Pipeline Protest Becomes New Point of Dispute](#).

⁹⁵⁰ Pittsburgh Post-Gazette/AP. November 25, 2016. [The Latest: Pipeline protesters arrested at Bismarck mall](#); The Bismarck Tribune. November 25, 2016. [At least 33 arrested at Kirkwood Mall](#).

⁹⁵¹ Stand with Standing Rock. November 26, 2016. [Press Release: Army Corp Closes Public Access to Oceti Sakowin Camp on Dec. 5th](#); The Guardian. November 26, 2016. [Standing Rock: army engineer corps order closure of protest camp, tribe says](#); Huffington Post. November 26, 2016. [Dakota Access Pipeline Protesters Vow To Stay Despite Eviction Order](#); NBC. November 27, 2016. [Dakota Pipeline Protesters Vow to Stay Despite Army Corps' Order](#).

private security companies and the North Dakota National Guard “have used unjustified force in dealing with those who oppose the oil pipeline”. It also stated that some of the 400 people arrested during the demonstrations suffered from “inhumane and degrading conditions during their detention”, and that the demonstrators affirm that they were repressed using rubber bullets, tear gas and compression grenades. It is a “worrisome response against people who are taking measures to protect the natural resources and ancestral territory against an activity in search of benefits”, declared the Special Rapporteur. “The excessive use of security apparatus of the State to repress protests against corporate activities that allegedly violate human rights is incorrect and contrary to the United Nations Guiding Principles on Business and Human Rights”, he added.⁹⁵²

604. During a hearing on the “Situation of the Human Rights of Indigenous People in the Context of Extractive Projects and Industries in the United States” of the 160th Extraordinary Period of Sessions of the IACHR, the petitioners confirmed the above-mentioned events and also reported that the camp where the demonstrators are is lit by brilliant white lights during the night, which does not allow the demonstrators to sleep adequately. The petitioners also complained that the cellular phone signal had been allegedly cut off at the site where the demonstrators are. The United States delegation confirmed its commitment to continue working jointly to improve the quality of life of Native Americans and stressed the importance of application of the prior consultation, by means of US Federal Executive Order No 13175. They stated that they have taken diverse measures to promote and guarantee the rights of Native Americans, such as to support United Nations initiatives aimed at protecting their rights. They reported that the Office of Tribal Justice is the contact point within the Department of Justice for creating public policies associated with Native Americans, which has been working to guarantee the constitutional rights of Native Americans during the demonstrations, trying to de-escalate confrontations between demonstrators and the security forces. They also acknowledged the importance of the debate that has arisen with the aim of improving the prior consultation mechanism with Native Americans for the development of infrastructure projects, which has been materialized through public consultations held in September, in which Native Americans participated.⁹⁵³

605. On September 8, the State of North Dakota charged journalist Amy Goodman, a producer and host of “Democracy Now!,” with trespassing on private property supposedly after she filmed security guards using dogs and pepper gas to repress protesters demonstrating against the construction of the oil pipeline in Morton County on September 3. County police issued a statement saying that the protesters had entered private land after breaking through a fence. According to “Democracy Now!,” the video shows Goodman identifying herself as a journalist and interviewing the demonstrators.⁹⁵⁴ “I was doing my job by covering pipeline guards unleashing dogs and pepper spray on Native American protesters,” Goodman said. Later, prosecutor Ladd R. Erickson dropped the trespassing charges against the journalist and on October 14 sought charges against her for participating in a riot.⁹⁵⁵ On October 17 District Judge John Grinsteiner formally disallowed the charges.⁹⁵⁶

606. On October 11th, the IACHR sent the State a letter requesting information on the arrest of the demonstrators and the charges brought against Goodman.⁹⁵⁷

⁹⁵² United Nations. Office of the United Nations High Commissioner for Human Rights (OHCHR). November 15, 2016. [Native Americans facing excessive force in North Dakota pipeline protests – UN expert](#).

⁹⁵³ IACHR. 160 Extraordinary Period of Sessions. Hearing “EEUU: Indígenas e industrias extractivas”. December 9, 2016. Available at: https://www.youtube.com/watch?v=L_5UHH1YBhI

⁹⁵⁴ Democracy Now!. September 12, 2016. [North Dakota v. Amy Goodman: Arrest Warrant Issued After Pipeline Coverage](#); Committee to Protect Journalists (CPJ). September 12, 2016. [Arrest warrant for muckraking U.S. journalist](#).

⁹⁵⁵ Democracy Now!. October 15, 2016. [Breaking: ND Prosecutor Seeks “Riot” Charges Against Amy Goodman For Reporting On Pipeline Protest](#).

⁹⁵⁶ Reporters Committee for Freedom of the Press. October 17, 2016. [Judge disallows rioting charge against “Democracy Now” host](#); New York Times. October 17, 2017. [Judge Rejects Riot Charge Against Amy Goodman of ‘Democracy Now’ Over Pipeline Protest](#).

⁹⁵⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. Comunicación al Estado conforme al artículo 18 del Estatuto de la Comisión Interamericana de Derechos Humanos. October 11, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

607. According to the information received by the Office of the Special Rapporteur, the police had supposedly retaliated against a number of individuals for filming, documenting, or disseminating images of the death of African American citizens at the hands of officers. On July 5, Alton Sterling died after he was shot by the police while sitting in a shopping center parking lot in Baton Rouge, Louisiana.⁹⁵⁸ Chris LeDay, one of the individuals who distributed images of Sterling being shot, was arrested hours later after he published a video on the Internet. After he was handcuffed and taken to prison, he was told that he was being arrested because he owed traffic fines. He was released after paying the fines and spending 26 hours in jail.⁹⁵⁹ Abdullah Muhlafi, the owner of the store where Sterling was when he was murdered, filed a complaint alleging that he had been abused by the police. According to his complaint, right after shooting Sterling, the officer had supposedly ordered the recordings on the store's security cameras confiscated and arrested the store owner. According to his account, the police confiscated his cell phone and held him for four hours.⁹⁶⁰ On July 6, Philando Castile, also an African American, was murdered by the police during a traffic stop in St. Anthony, Minnesota. His partner, Lavish Reynolds, who recorded the encounter with the police, had allegedly been handcuffed and detained for interrogation, and her telephone confiscated.⁹⁶¹

608. The deaths of Sterling and Castile at the hands of the police sparked a wave of protests in a number of cities in the United States, led by the "Black Lives Matter" movement.⁹⁶² During the demonstrations that took place over several days in July in dozens of cities and with greater intensity in St. Paul, Minnesota, and Baton Rouge, Louisiana, more than 300 people were arrested, according to media reports.⁹⁶³ One of the people arrested on July 9 in Baton Rouge was DeRay Mckesson, one of the leaders of the "Black Lives Matter" movement. He was freed on the following day.⁹⁶⁴

609. During the protests in St. Paul, demonstrators supposedly had thrown bottles and rocks at the police and blocked certain streets. In Baton Rouge, members of the "New Black Panthers" confronted the police carrying guns.⁹⁶⁵ On July 7, during a demonstration in Dallas, Texas, a sniper shot at the police from a building, killing five officers. The attacker, identified as Micah Xavier Johnson, was killed by police.⁹⁶⁶

610. On September 9, after a police officer in Charlotte North Carolina killed African American Keith Lamont Scott, hundreds of people took to the streets to protest. During clashes between the police and demonstrators, 16 officers were injured. Disturbances also took place as demonstrators allegedly had blocked some streets and thrown rocks and bottles at passing traffic, damaging some vehicles.⁹⁶⁷

⁹⁵⁸ New York Times. July 6, 2016. [Alton Sterling Shooting in Baton Rouge Prompts Justice Dept. Investigation](#); Vox. July 10, 2016. [Alton Sterling was shot and killed by Baton Rouge police officers. Here's what we know.](#)

⁹⁵⁹ Mother Jones. July 15, 2016. [Police Arrest the Guy Who Helped the Alton Sterling Video Go Viral](#); Independent. July 15, 2016. [Alton Sterling shooting: Man who posted video of killing arrested.](#)

⁹⁶⁰ The Daily Beast. July 11, 2016. [Alton Sterling Witness: Cops Took My Phone, My Surveillance Video, Locked Me Up](#); Nola.com. July 11, 2016. [Owner of Triple S convenience store files suit against BRPD, city.](#)

⁹⁶¹ Inquisitr. July 7, 2016. [Diamond Reynolds arrested: girlfriend who took video of Philando Castile dying after being shot by police taken into custody following traffic stop for broken taillight](#); PEN America. September 12, 2016. [Retaliation for documenting Police.](#)

⁹⁶² Aljazeera. July 10, 2016. ['Black Lives Matter': Thousands protest in US cities](#); The New York Times. July 16, 2016. [At Least 88 Cities Have Had Protests in the Past 13 Days Over Police Killings of Blacks.](#)

⁹⁶³ CNN. August 4, 2016. [Hundreds arrested in protests over shootings by police](#); The Telegraph. July 10, 2016. [Hundreds arrested as Black Lives Matter protests spread throughout America](#); Reuters. July 10, 2016. [Protests over shootings block roads in U.S. cities, arrests made](#); NBC. July 9, 2016. [More Than 100 Arrested at Baton Rouge, Rochester Black Lives Matter Protests.](#)

⁹⁶⁴ New York Times. July 10, 2016. [DeRay Mckesson, Arrested While Protesting in Baton Rouge, Is Released](#); The Washington Post. July 10, 2016. [I'm under arrest, ya'll': Black Lives Matter activist arrested, then released in Baton Rouge.](#)

⁹⁶⁵ The Washington Post. July 10, 2016. [A tough day in Baton Rouge: Prominent activist detained and confrontations with Black](#); BBC. July 10, 2016. [US police shootings: Protests spread with dozens of arrests.](#)

⁹⁶⁶ CNN. July 9, 2016. [Dallas sniper attack: 5 officers killed, suspect identified](#); BBC. July 10, 2016. [US police shootings: Protests spread with dozens of arrests.](#)

⁹⁶⁷ The Charlotte Observer. September 20, 2016. [Charlotte faces aftermath of protests ignited by fatal police shooting; 16 officers injured.](#)

611. On September 10, the second day of protests in Charlotte, CNN journalist Ed Lavandera was injured. The reporter was on the air live covering the tense situation in the city following the death of Lamont Scott when someone presumed to be a protester appeared and pushed him, causing him to fall to the ground. That day, four officers were injured, as were two journalists with WLTX. The governor of North Carolina, Patrick McCrory, declared a state of emergency at the request of the local police.⁹⁶⁸

612. The IACHR has reiterated that social protest is a fundamental tool for human rights defense work and is essential for critical political and social speech regarding the activities of the authorities. The Commission has maintained that “in principle, criminalization *per se* of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the right to freedom of expression and to freedom of assembly,”⁹⁶⁹ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”⁹⁷⁰

613. In addition, the Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, states that the rights of assembly and freedom of expression “son fundamentales y su garantía es una condición necesaria para la existencia y el funcionamiento de una sociedad democrática. Un Estado puede imponer limitaciones razonables a las manifestaciones con el fin de asegurar el desarrollo pacífico de las mismas o dispersar aquellas que se tornan violentas, siempre que tales límites se encuentren regidos por los principios de legalidad, necesidad y proporcionalidad. Además, la desconcentración de una manifestación debe justificarse en el deber de protección de las personas, y deben utilizarse las medidas más seguras y menos lesivas para los manifestantes. El uso de la fuerza en manifestaciones públicas debe ser excepcional y en circunstancias estrictamente necesarias conforme a los principios internacionalmente reconocidos.”⁹⁷¹ Finally, the Inter-American Commission has found that any type of arbitrary or abusive interference that might affect the privacy of human rights defenders and their organizations is prohibited under the Declaration and the American Convention.⁹⁷²

614. With respect to the use of force in contexts of social protest, the IACHR and its Office of the Special Rapporteur for Freedom of Expression developed relevant standards in their 2015 report on the Use of Force.⁹⁷³ In that report, the IACHR stated that “The social interest imperative associated with the right to participate in public demonstrations is such that there is a general presumption in favor of its exercise.” The IACHR maintained that “The presumption in favor of the exercise of social protest implies that states must act based on the legality of the protests or public demonstrations and under the assumption that they do not constitute a threat to public order, even in those cases in which they are held without prior notice.” In the same report, the IACHR underscored that, “Whatever the format adopted by those who exercise this right, the action of the police should have as its main objective facilitating demonstrations and not containing or confronting the demonstrators. Hence, as a general rule police operations organized in the context of protests should be geared to guaranteeing the exercise of this right and to protecting the demonstrators and third persons who are present.” In this regard, the Commission has considered that breaking up a demonstration does not, in itself, constitute a legitimate aim that justifies the use of force by security forces. “When a

⁹⁶⁸ CNN. September 21, 2016. [CNN correspondent Lavandera knocked to ground by protester](#); RT. September 22, 2016. [VIDEO: Atacan en directo a un periodista que cubría las protestas de Charlotte](#).

⁹⁶⁹ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 197.

⁹⁷⁰ 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.

⁹⁷¹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

⁹⁷² 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.

⁹⁷³ IACHR. Annual Report 2015. Chapter IV.A (The Use of Force). Available at: <http://www.oas.org/es/cidh/docs/annual/2015/doc-es/InformeAnual2015-cap4A-fuerza-ES.pdf>

demonstration or protest leads to situations of violence it should be understood that the State was not capable of guaranteeing the exercise of this right. [...] The State's obligation is to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims."

D. Confidentiality of Sources

615. On January 22, Judge Christopher S. Sontchi withdrew an order he had issued the previous week requiring 123 people involved in negotiations over the bankruptcy of mining company Molycorp, Inc., to testify regarding any contact they had with *Bloomberg* journalists over the last 60 days. He issued the order after a *Bloomberg* journalist published articles with information on the confidential mediation the judge had ordered for Molycorp's bankruptcy. After hearing *Bloomberg's* objections, the judge allegedly admitted that the order was too broad and ordered the media outlet and the parties to work together to agree on a more targeted measure.⁹⁷⁴

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

E. Freedom of Expression in Electoral Context

617. The Office of the Special Rapporteur received information on incidents that took place during the presidential campaign. President-elect Donald Trump—the presidential candidate of the Republican Party—and his campaign staff maintained a tense and sometimes aggressive relationship with the press, according to a number of journalists and social organizations.⁹⁷⁵ For example, on January 23, Trump said he would not attend the Republican debate in Des Moines, Iowa, organized by Fox News and set to take place on January 25. Supposedly, this was because he disagreed with the selection of journalist Megyn Kelly to moderate the event. Kelly was one of the moderators during the first debate between Republican candidates in August 2015. According to Trump, her treatment of him was "unfair and biased."⁹⁷⁶ Following Trump's decision, the network issued a press release backing the journalist's work and confirming that she would be one of the moderators. He also accused Trump of "viciously" attacking the reporter for months and demanding she be removed from the debate.⁹⁷⁷

618. On February 29, a US Secret Service agent allegedly had assaulted *Time* photographer Christopher Morris during a Trump campaign event in Radford, Virginia. The reporter was trying to photograph a protest and had just left the designated media area when the agent grabbed him by the throat and struck him. The Secret Service stated in a press release that its local office was investigating the incident along with the local police to determine the exact circumstances of what took place.⁹⁷⁸

⁹⁷⁴ Reporters Committee for Freedom of the Press. January 22, 2016. [Reporters Committee pleased that judge rescinds overreaching order for Bloomberg sources](#); The Wall Street Journal. January 22, 2016. [Bankruptcy Judge Limits Probe of Bloomberg News Sources](#); Reuters. January 20, 2016. [Bloomberg gets hearing to contest order for information from its sources](#); Reporters Committee for Freedom of the Press. January 18, 2016. [Reporters Committee leads coalition objecting to bankruptcy court investigation of Bloomberg sources](#).

⁹⁷⁵ Committee to Protect Journalists (CPJ). May 18, 2016. [Why Trump's insults of journalists must be taken seriously](#); Reporters Without Borders (RSF). March 29, 2016. [Reporters Without Borders \(RSF\) condemns aggressive behavior from Trump campaign manager](#); Inter American Press Association (IAPA). [United States Report](#). April 5, 2016; PR Newswire. March 14, 2016. [National Press Club Concerned by Attacks on Journalists Covering Presidential Campaign](#).

⁹⁷⁶ The Guardian. January 27, 2016. [Donald Trump reignites feud with Fox News by boycotting debate](#); The New York Times. January 26, 2016. [Donald Trump, in Feud With Fox News, Shuns Debate](#); Washington Post. January 26, 2016. [Trump says he won't participate in GOP debate on Fox News](#).

⁹⁷⁷ Time. March 4, 2016. [Trump Faced His Toughest Debate Opponent: Megyn Kelly](#); Fox News. January 26, 2016. [Fox News' Official Statement on Trump's Decision Not to Participate in Debate](#).

⁹⁷⁸ Time. February 29, 2016. [TIME Responds to Confrontation With Secret Service at Trump Event](#); The Huffington Post. February 29, 2016. [Secret Service Agent Roughs Up Journalist Reporting At A Donald Trump Rally](#); Politico. March 7, 2016. [Probe into Secret Service-photographer altercation at Trump rally](#).

619. Following the incident, *Time* magazine said that in contrast to other presidential campaigns, which generally allow reporters to move freely about during events, candidate Trump's event had a very strict policy requiring journalists and photographers to remain in a closed-off area. The entrance to this area is monitored by Secret Service agents. *Time* also said that candidate Trump often pointed to the area where the reporters were located to ridicule them during his speeches.⁹⁷⁹

620. On March 8, during coverage of a Trump campaign event in Jupiter, Florida, campaign manager Corey Lewandowski had allegedly physically assaulted journalist Michelle Fields.⁹⁸⁰ According to the reporter, when she approached candidate Trump to ask him a question, Lewandowski aggressively grabbed her arm and forced her away. On her Twitter account, the reporter published a photograph of her arm with the bruises caused by the assault.⁹⁸¹ Lewandowski later denied having touched the journalist and accused her of being "totally delirious."⁹⁸² Candidate Trump said he thought the journalist had "invented" the story.⁹⁸³ On March 29, the Jupiter Police released a video showing the moment when Lewandowski grabbed the reporter by the arm.⁹⁸⁴ That same day, Lewandowski was arrested.⁹⁸⁵ Days later, the Palm Beach County state prosecutor said he would not bring charges against him.⁹⁸⁶

621. On March 11, CBS News reporter Sopan Deb was temporarily detained while covering protests during a Trump campaign event in Chicago that had been suspended. Deb allegedly was recording images of an individual on the ground, injured, near the police, during confrontations between protesters supporting and opposing candidate Trump, when he was taken from behind and wrestled to the ground. The Illinois State Police charged Deb with resisting arrest, even though CBS News reported that there were no indications in any of the images recorded by Deb or his colleagues there that he had resisted. Deb supposedly had identified himself as a journalist and shown his credentials to the police.⁹⁸⁷ On March 17, the Chicago Police Department and Illinois State Police published a statement saying they have dropped all charges against the journalist.⁹⁸⁸

622. In October, the *Washington Post* published an article stating that hostility toward journalists during Trump's campaign events had been increasing over the months and become more intense during the final weeks of the campaign as scrutiny of the candidate increased. The article said that the attitude of Trump supporters toward members of the press had become more tense and aggressive in recent weeks, incited by a candidate who had "demonized" journalists. The situation led reporters to hide their press credentials when leaving the candidates events to avoid confrontations with his supporters. Many journalists attributed this growing hostility to Trump's constant criticism of the press. According to the *Washington Post*, which

⁹⁷⁹ Reporters Without Borders (RSF). January 29, 2016. [US presidential election a rocky road for journalists.](#); *Time*. February 29, 2016. [TIME Responds to Confrontation With Secret Service at Trump Event.](#)

⁹⁸⁰ Reporters Without Borders (RSF). March 31, 2016. [Reporters Without Borders \(RSF\) condemns aggressive behavior from Trump campaign manager.](#); Politico. March 10, 2016. [Trump campaign denies reporter incident, Breitbart suspends another reporter.](#)

⁹⁸¹ "I guess these just magically appeared on me @CLewandowski_ @realDonaldTrump. So weird." Official Twitter account of Michelle Fields @MichelleFields. [March 10, 2016 - 10:02 AM.](#)

⁹⁸² "You are totally delusional. I never touched you. As a matter of fact, I have never even met you." Official Twitter account of Corey Lewandowski @CLewandowski. [March 10, 2016 - 9:28 PM.](#)

⁹⁸³ The Guardian. March 11, 2016. [Donald Trump accuses reporter in assault row of 'making the story up';](#) CNN. March 12, 2016. [Donald Trump says reporter made up story about being grabbed by his campaign manager.](#)

⁹⁸⁴ The Guardian. March 29, 2016. [CCTV shows moment Corey Lewandowski allegedly grabs Michelle Fields - video;](#) The Washington Post. March 29, 2016. [Video shows Trump campaign manager Corey Lewandowski grabbing Michelle Fields.](#)

⁹⁸⁵ Think Progress. March 29, 2016. [Police Charge Trump Campaign Manager With Battering Reporter. Release Video Evidence;](#) The Atlantic. March 29, 2016. [Why Trump's Campaign Manager Was Arrested for Battery.](#)

⁹⁸⁶ The Atlantic. April 14, 2016. [No Charges for Corey Lewandowski;](#) The Guardian. April 14, 2016. [Trump's campaign manager Corey Lewandowski will not face battery charges.](#)

⁹⁸⁷ Business Insider. March 12, 2016. [CBS journalist reportedly thrown to the ground by police at canceled Trump rally;](#) The Huffington Post. March 12, 2016. [CBS News Reporter Sopan Deb Arrested While Covering Donald Trump Rally.](#)

⁹⁸⁸ CNN. March 17, 2016. [First on CNN: Charges dropped against CBS reporter, Chicago police say;](#) CBS. March 17, 2016. [Charges dropped against CBS News journalist Sopan Deb.](#)

consulted a number of journalists covering the his campaign, he has had one of the most combative relationships with the press of any presidential candidate.⁹⁸⁹

623. Over the course of the campaign, the Republican candidate Donald Trump allegedly had banned journalists from a total of 12 media outlets at different times. Trump also threatened that, if elected, he would push for defamation laws to make it easier for public figures to sue the media.⁹⁹⁰

624. On October 6, the Committee to Protect Journalists (CPJ) passed a resolution declaring Trump “an unprecedented threat to the rights of journalists and to CPJ’s ability to advocate for press freedom around the world.” According to the organization, “since the beginning of his candidacy, Trump has insulted and vilified the press and has made his opposition to the media a centerpiece of his campaign. Trump has routinely labeled the press as ‘dishonest’ and ‘scum’ and singled out individual news organizations and journalists.” It also noted that “Trump has refused to condemn attacks on journalists by his supporters. His campaign has also systematically denied press credentials to outlets that have covered him critically, including *The Washington Post*, *BuzzFeed*, *Politico*, *The Huffington Post*, *The Daily Beast*, *Univision*, and *The Des Moines Register*.”⁹⁹¹

625. On October 12, one of Trump’s attorneys supposedly sent a letter to *The New York Times* asking it to remove an article from its front page published that day and issue a retraction and an apology for disseminating defamatory information. The article included the testimony of two women who accused candidate Trump of having sexually assaulted them. On October 13, David McCraw, the newspaper’s vice president and general counsel, sent a letter responding to candidate Trump. He stated that the women quoted in the article had spoken about a nationally important issue, one that candidate Trump himself had discussed in front of the entire country. He also said that the reporters worked hard to confirm the women’s story and that the article included a response from Trump denying the allegations. “It would have been a disservice not just to our readers but to democracy itself to silence their voices,” he said. “We did what the law allows: We published newsworthy information about a subject of public concern. If Mr. Trump disagrees, if he believes that American citizens had no right to hear what these women had to say and that the law of this country forces us and those who dare to criticize him to stand silent or be punished, we welcome the opportunity to have a court set him straight.”⁹⁹²

626. Since he was elected president on November 8, Trump has maintained his hostile attitude towards the press, questioning or discrediting the work of the media and journalists.⁹⁹³ On November 10, president elected Trump traveled to Washington D.C. supposedly without notifying the group of journalists assigned to cover his movements and without permitting them to travel with him. The press team, which consists of a reduced number of journalists responsible for following the president in his daily agenda, known as the press pool, is generally notified by the presidential team about the planned activities. Certain journalists and media outlets criticized the president elected Trump’s attitude, which breaks with historically established standards that govern the relationship of the president with the press. The White House Correspondents Association issued a communiqué stating that it was “deeply concerned” by the decision of the president elect in rejecting the practice of traveling with a group of journalists during his first trip to Washington since the election. “In addition to breaking with decades of historic precedents and First

⁹⁸⁹ The Washington Post. October 14, 2016. [The press always got booed at Trump rallies. But now the aggression is menacing.](#)

⁹⁹⁰ Político. February 26, 2016. [Donald Trump: We're going to 'open up' libel laws](#); The Washington Post. October 14, 2016. [The press always got booed at Trump rallies. But now the aggression is menacing](#); Committee to Protect Journalists (CPJ). October 13, 2016. [CPJ chairman says Trump is threat to press freedom.](#)

⁹⁹¹ Committee to Protect Journalists (CPJ). October 13, 2016. [CPJ chairman says Trump is threat to press freedom.](#)

⁹⁹² The New York Times. October 13, 2016. [The New York Times's Lawyer Responds to Donald Trump.](#)

⁹⁹³ Media Matters. November 22, 2016. [Trump's Ongoing Contempt For The Press Requires Journalists To Step Up](#); El País. November 22, 2016. [Trump recrudescer la guerra contra los medios ya como presidente electo.](#)

Amendment principles, this decision could leave Americans in the dark about his location and well-being in case of a national crisis”, said the Association.⁹⁹⁴

627. On November 21, during a meeting with senior executives and journalists from the principal television channels of the United States (*ABC, NBC, CBS, Fox News, MSNBC, CNN*), elected president Trump criticized journalistic coverage by those media during the electoral campaign and of his subsequent election as president.⁹⁹⁵

628. On November 13, Trump stated on his Twitter account that the daily newspaper *The New York Times* was losing “thousands of subscribers due to its very poor and very imprecise coverage of the ‘Trump phenomenon’”.⁹⁹⁶ The media outlet responded through that same social network that its subscriptions, in both printed and digital versions, had increased more than usual.⁹⁹⁷

629. In electoral contexts, freedom of expression is directly connected to political rights and their exercise, and both types of rights mutually strengthen one another.⁹⁹⁸ Reasoned democratic debate requires the greatest possible circulation of ideas, opinions and information about the candidates, their parties, and their platforms during the period preceding an election, principally through the media, the candidates, and others who wish to express themselves. Everyone must be able to question and investigate the capacity and suitability of the candidates, disagree with and confront their ideas and opinions, so that voters can form their opinions.⁹⁹⁹ As the IACHR has underscored, free speech and political debate are essential for the consolidation of the democratic life of societies, and therefore are of compelling social interest.¹⁰⁰⁰

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

⁹⁹⁴ ABC. November 11, 2016. [In Unprecedented Move, Trump Ditches Press on First Visit to DC as President-Elect](#); CNN. November 10, 2016. [Trump team promises press pool, but concerns remain](#); The Huffington Post. November 11, 2016. [Donald Trump Limits Traditional Press Access On First White House Visit](#); FOX6. November 16, 2016. [President-elect Donald Trump ditches his press pool again, spurring sharp criticism](#).

⁹⁹⁵ NPR. November 21, 2016. [Trump Airs Grievances, Fields Questions In Meeting With Top TV News Figures](#); The New York Times. November 21, 2016. [Trump Summons TV Figures for Private Meeting, and Lets Them Have It](#); The New Yorker. November 22, 2016. [Donald Trump personally blasts the press](#).

⁹⁹⁶ “Wow, the @nytime is losing thousands of subscribers because of their very poor and highly inaccurate coverage of the “Trump phenomena.” Official Twitter account of Donald Trump @realDonaldTrump. [November 13, 2016 – 6:16 AM](#).

⁹⁹⁷ @realDonaldTrump @nytimes fact: surge in new subscriptions, print & digital, with trends, stops & starts, 4 X better than normal.” Official Twitter account of The New York Times Communications @NYTimesComm. [November 13, 2016 – 9:45 AM](#); CNN. November 14, 2016. [President-elect Trump’s Sunday morning tweetstorm at the New York Times](#).

⁹⁹⁸ 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. 90.

⁹⁹⁹ 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. 90.

¹⁰⁰⁰ IACHR. Alegatos ante la Corte Interamericana en el caso *Canese vs. Paraguay*. Transcribed in: 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. 72. B.)

process; respecting strict rules of impartiality and balance, and ensuring equitable media access for all political parties and candidates.¹⁰⁰¹

F. Access to Public Information

631. On January 28, 25 news organizations signed an open letter to legislators in the state of Florida “strongly” urging them to reject two bills in both chambers of the State Congress proposing eliminating a state law known as the “Sunshine Law” that requires the legal expenses be covered for people who successfully request public records in cases in which the information was illegally withheld.¹⁰⁰² The letter, which is signed by organizations including the American Society of News Editors, The Associated Press, The Center for Investigative Reporting, and The National Press Club, states that the law “ensures that the press and the public will not shy away from enforcing the public’s right to government records and information,” saying that eliminating it would “substantially” weaken the Florida’s Public Records Law.¹⁰⁰³ In the end, the legislative proposals to amend the law were not passed by Congress.¹⁰⁰⁴

632. On February 8, journalist Jessica Huseman filed suit in the Supreme Court for the County of New York against the Department of Education after it allegedly denied a number of her requests for information under the Freedom of Information Act for an investigation called “The Teacher Project” as part of her studies at the Columbia University School of Journalism. In June 2015, she requested information on complaints received about a special education center, on equipment purchases, and on employee salaries, among other issues. According to the lawsuit she filed with the Court with the support of Reporters Committee for Freedom of the Press and Levine Sullivan Koch & Schulz, this was considered a “dispute about improperly withheld records that shed light on important public issues at the very heart of FOIL’s guarantees: the manner in which New York City educates its children, spends taxpayer money, and responds to complaints about the provision of services to particularly vulnerable students.”¹⁰⁰⁵

633. On May 19, journalist David Yanofsky, with the publication *Quartz*, filed a FOIA suit in DC Federal Court seeking free access to a Commerce Department database containing information on the travel of foreigners to and from the United States. The Department said that the information was not available under FOIA. It therefore denied the journalist’s request to provide the information free of charge and told him he would have to purchase it, which would cost more than US\$ 173 thousand. Yanofsky, who is represented in the case by the attorneys of the Reporters Committee for Freedom of the Press, allegedly seeks access to the data to report on public policies related to trade and immigration.¹⁰⁰⁶

634. Principle 4 of the IACHR’s Declaration of Principles states that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

¹⁰⁰¹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, 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 15, 2009. [Joint Declaration on Framework for Media and Elections](#).

¹⁰⁰² Reporter’s Committee for Freedom of the Press. January 28, 2016. [Reporters Committee, media organizations urge Florida lawmakers to reject bills that would undermine transparency](#); Miami Herald. January 26, 2016. [Bill undermines Florida’s public records law, opponents charge](#); The Huffington Post. January 27, 2016. [Florida Legislature Votes to Gut Sunshine Law; Bill Would End Open Records Access Advocacy](#).

¹⁰⁰³ Reporter’s Committee for Freedom of the Press. [Letter to Florida legislature regarding FOIA fee shifting legislation](#). January 28, 2016.

¹⁰⁰⁴ Tampa Bay. March 12, 2016. [What passed, what failed in the 2016 Florida legislative session](#); MyPalmBeach Post. March 16, 2016. [Editorial: Florida’s open-government laws must constantly be defended](#).

¹⁰⁰⁵ Reporter’s Committee for Freedom of the Press. February 10, 2016. [Reporters Committee attorneys help education reporter take action against info denials from NYC officials](#).

¹⁰⁰⁶ Quartz. May 20, 2016. [I’m suing the US government for its data on who’s entering the country](#); Reporter’s Committee for Freedom of the Press. May 20, 2016. [Reporters Committee attorneys represent reporter in FOIA lawsuit for access to travel databases](#).

G. Revelation of Confidential Information

635. On February 17, a group of freedom of expression defenders marched to the White House with a petition requesting that the president pardon former Central Intelligence Agency (CIA) official Jeff Sterling, who has been in prison since June 2015 for revealing classified information. His wife, Holly Sterling, led the petition, which collected some 150,000 signatures, according to the group of organizations that participated in the demonstration.¹⁰⁰⁷ Sterling was convicted on May 11, 2015, and sentenced to three and a half years in prison for spying.¹⁰⁰⁸ He was arrested for the first time in 2011 and the government determined that he had made an “unauthorized disclosure of national defense information” when he allegedly gave information on a secret CIA operation called “Operation Merlin” to *New York Times* reporter James Risen. The information was then published in Risen’s book *State of War*. Risen refused to identify his sources, but the government subpoenaed him three times and obtained his credit card, travel, bank, and phone records, all of which allegedly pointed to Sterling as the source. Media organizations stated that Sterling’s conviction not only highlights the government’s attempts to force journalists to identify their sources, but the danger that whistleblowers face by talking to journalists and the difficulties involved in obtaining information from them.¹⁰⁰⁹

636. On May 18, former soldier Chelsea Manning appealed her sentence of 35 years in prison for leaking classified documents to Wikileaks.¹⁰¹⁰ In the appeal, Manning’s defense argues that the sentence was “grossly unfair and unprecedented” and describes it as “perhaps the most unjust sentence in the history of the military justice system.” It states that, “No whistleblower in American history has been sentenced this harshly.”¹⁰¹¹ On June 30, 2013, Manning was convicted by the U.S. Army Military District of Washington on 20 counts, including “wanton publication,” “stealing USG property,” and seven violations of the 1917 Espionage Act for having sent Wikileaks information on incidents that took place during the Iraq and Afghanistan wars.¹⁰¹² On August 21, she was sentenced to 35 years in prison, the longest prison term ever handed down in a case of leaking classified information to the public in the history of the United States.¹⁰¹³ After the closing of this report, it became known that president Barack Obama commuted her sentence.¹⁰¹⁴

637. Tech company Yahoo granted requests by United States intelligence agencies to access millions of its clients’ emails, according to an October 4 report by *Reuters*. According to the report, which was based on the statements of the company’s former employees, in 2015, Yahoo designed software to scan incoming email for specific information requested by the National Security Agency and the FBI. According to *Reuters*’ sources, the decision by Yahoo CEO Marissa Mayer to acquiesce to the directive of the security agencies bothered a number of executives and led to the resignation of Chief Information Security Officer Alex Stamos in June

¹⁰⁰⁷ SHFWire. February 17, 2016. [Advocates petition for pardon of CIA whistleblower](#); RT. February 18, 2016. [Wife of jailed CIA whistleblower Jeffrey Sterling demands his release with WH petition](#); Washington Post. February 21, 2016. [He was fired from the CIA and jailed for a leak. Now he’s trying to hang on.](#)

¹⁰⁰⁸ 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.](#)

¹⁰⁰⁹ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 623.

¹⁰¹⁰ The Guardian. May 19, 2016. [Chelsea Manning files appeal against ‘grossly unfair’ 35-year prison sentence](#); Wired. May 19, 2016. [Chelsea Manning’s Appeal Took Three Years to File. Here’s Why](#); Independent. May 21, 2016. [Chelsea Manning appeals 35-year prison sentence.](#)

¹⁰¹¹ United States Army Court of Criminal Appeals. [United States v. Private First Class \(E-3\) Chelsea E. Manning, United States Arm. Appeal](#). May 18, 2016 (Source: The Guardian).

¹⁰¹² United States Army Military District Court. United States vs. PFC. Bradley E. Manning. Verdict. July 30, 2013. Available at: <https://www.documentcloud.org/documents/742326-20130730-ae-624-verdict.html>

¹⁰¹³ The New York Times. August 21, 2013. [Manning Sentenced to 35 Years for a Pivotal Leak of U.S. Files](#); The Washington Post. August 21, 2013. [Judge sentences Bradley Manning to 35 years](#); IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 435-437.

¹⁰¹⁴ The Guardian. January 18, 2017. [Chelsea Manning’s prison sentence commuted by Barack Obama](#); Eldiario.es. January 17, 2017. [Obama conmuta la pena a Chelsea Manning.](#)

2015. Yahoo said in a press release that it is a “law abiding company” that “complies with the laws of the United States.”¹⁰¹⁵ The United Nations Special Rapporteur on the right to freedom of opinion and expression, David Kaye, stated in a press release that “Government monitoring of digital communications, when conducted as described in recent reports, could undermine the privacy that individuals depend on in order to seek, receive and impart information online.” Kaye said that based on the allegations reported, he would have had “serious concerns that the alleged surveillance fails to meet the standards of necessity and proportionality for the protection of legitimate government interests.” He added that “Yahoo’s apparent accession to government surveillance requests, without evident legal challenge, also raises concern about the involvement of technology companies in questionable government programs that impact freedom of expression.”¹⁰¹⁶

H. Media Concentration

638. On March 17, the Justice Department filed an antitrust lawsuit to keep Freedom Communications Inc., publisher of the *Register*, in Orange County, California, and the *Press-Enterprise*, in Riverside County, California, from being acquired by the Tribune Publishing Company, which publishes the *Los Angeles Times*. In a statement, the Justice Department said that the Tribune was selected to purchase Freedom Communications’ newspapers following a bankruptcy auction and would seek bankruptcy court approval for the acquisition. The Justice Department filed the lawsuit in federal district court in Los Angeles, seeking a temporary restraining order to prevent the sale from going forward. According to the lawsuit, *Los Angeles Times* and *Register* together account for 98 per cent of newspaper sales in Orange County, while the *Los Angeles Times* and the Freedom newspapers together accounted for 81 per cent of sales in Riverside County. The Tribune’s acquisition of its main competitor would give it a monopoly on the sale of newspapers and enable it to increase the prices of subscriptions and advertising while reducing investments in maintaining the quality of its products, the Justice Department argued.¹⁰¹⁷

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

I. Other Relevant Situations

640. On June 24, journalist Mark Thomason was arrested. Thomason publishes local weekly *Fannin Focus* in Blue Ridge, Georgia. He was charged with attempted identity fraud, identity fraud, and making a false statement in connection with a request for public records—under the Open Records Act—on the bank accounts of the Pickens County Superior Court. Thomason and his attorney, Russell Stookey, were arrested and released after posting bail of US\$ 10 thousand. The reporter’s request supposedly originated in a legal dispute over a prior request for access to information submitted by Thomason while he was investigating allegations that a judge had used racial slurs in court. The journalist requested access to the stenographic and audio records, and after inspecting them, reported that the transcription of the court reporter Rhonda Stubblefield was incomplete because it did not specify precisely who had used the offensive expressions. Stubblefield sued Thomason for defamation, but eventually dropped the suit and the case was shelved. Later,

¹⁰¹⁵ Reuters. October 4, 2016. [Exclusive: Yahoo secretly scanned customer emails for U.S. intelligence - sources](#); The Guardian. October 5, 2016. [Yahoo ‘secretly monitored emails on behalf of the US government’](#).

¹⁰¹⁶ United Nations. Office of the United Nations High Commissioner for Human Rights (OHCHR). October 7, 2016. [USA: UN rights expert troubled by allegations that Yahoo complied with surveillance demands](#).

¹⁰¹⁷ Bloomberg. March 21, 2017. [Even for Ailing Newspapers, U.S. Says a Monopoly Is a Monopoly](#); Department of Justice. March 17, 2016. [Justice Department Files Antitrust Lawsuit to Stop L.A. Times Publisher from Acquiring Competing Newspapers](#); United States of America. Plaintiff, v. TRIBUNE PUBLISHING CO., Defendant. [Plaintiff’s ex parte application for temporary restraining order and order to show cause why a preliminary injunction should not issue](#). March 17, 2016; United States of America. Plaintiff, v. TRIBUNE PUBLISHING CO., Defendant. [Complaint](#). March 17, 2016.

Stubblefield filed a lawsuit against the journalist to recover the costs of litigation. Following that, Thomason requested access to information on the bank accounts of the Court to show that it had covered the court reporter's legal expenses.¹⁰¹⁸

¹⁰¹⁸ The Atlanta Journal-Constitution. July 1, 2016. [North Georgia newspaper publisher jailed over open records request](#); The Atlanta Journal-Constitution. July 1, 2016. [Media groups want criminal charges against newspaper publisher dropped](#); Committee to Protect Journalists (CPJ). July 6, 2016. [Georgia journalist arrested over open records request related to court](#).

16. GUATEMALA¹⁰¹⁹

A. Killings

641. The Office of the Special Rapporteur was deeply concerned at the information received on the murder of eight communicators in Guatemala during 2016. On March 17, journalist Mario Roberto Salazar Barahona, director of radio station *Estéreo Azúcar*, in the municipality of Asunción Mita, Jutiapa department, was murdered. On April 8, Winston Leonardo Túnchez Cano, a host with the radio station *La Jefa* in the department of Escuintla, was shot to death.¹⁰²⁰ On April 30, in the municipality of Ixcán, Quiché department, three armed individuals murdered journalist Diego Salomón Esteban Gaspar, host of the radio station *Radio Sembrador*.¹⁰²¹ On June 7, communicator and physician Víctor Hugo Valdés Cardona, was murdered in the city of Chiquimula, Chiquimula department. Valdés Cardona had been walking with his grandson when two unknown assailants traveling on a motorcycle intercepted them and shot him several times. For nearly 30 years, he had hosted cultural program '*Chiquimula de Visión*' on a local television station.¹⁰²² On June 25, journalist Álvaro Alfredo Aceituno López was murdered. He was the director of Radio Ilusión and hosted a news program entitled '*Acontecer Coatepecano*' in the municipality of Coatepeque, Quetzaltenango department. Aceituno was the victim of an armed attack. He died from his wounds hours later in a hospital.¹⁰²³ On August 2, the journalist's daughter was murdered.¹⁰²⁴

642. On September 4, Felipe David Munguía Jiménez was murdered, he was a cameraman for *Canal 21* and a social activist in the municipality of Santa María Xalapán, Jalapa department. Munguía Jimenez was murdered by an individual with a firearm as he left a community assembly. Hours later, the National Police [*Policía Nacional*] announced that they had arrested the individual allegedly responsible for the murder.¹⁰²⁵

643. On September 9, communicator Ana Leonor Guerra Olmedo was murdered as she left the *San Juan de Dios Hospital*, where she worked as a spokesperson. Guerra Olmedo was shot to death, allegedly by a minor with links to criminal organizations (*pandillas*). The murder had allegedly been in retaliation for measures

¹⁰¹⁹ This section corresponds to the section on freedom of expression in Guatemala in Chapter V, Volume I, of the IACHR 2016 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

¹⁰²⁰ IACHR. July 1, 2016. [Press Release R91/16 Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); Reporters Without Borders (RSF). June 8, 2016. [RSF sounds alarm on violence against media in Guatemala](#); Prensa Libre. April 9, 2016. [Locutor es ultimado a balazos cuando se disponía a comprar cigarrillos](#); Unesco. July 12, 2016. [Director-General condemns killing of local radio journalist Winston Leonardo Cano Túnchez in Guatemala](#).

¹⁰²¹ IACHR. July 1, 2016. [Press Release R91/16 Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); Reporters Without Borders (RSF). June 8, 2016. [RSF sounds alarm on violence against media in Guatemala](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). May 2, 2016. [Joven locutor asesinado en Ixcán, Quiché](#); Prensa Libre. May 1, 2016. [Locutor es ultimado a balazos en Ixcán](#).

¹⁰²² IACHR. July 1, 2016. [Press Release R91/16 Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); Reporters Without Borders (RSF). June 9, 2016. [GUATEMALA | Víctor Hugo Valdez Cardona, cuarto periodista asesinado en lo que va de año](#); Prensa Libre. June 7, 2016. [Muere baleado en Chiquimula el comunicador Víctor Hugo Valdés](#); Knight Center for Journalism in the Americas. June 10, 2016. [Colleagues urge authorities to investigate deaths of Guatemalan and Salvadoran journalists](#).

¹⁰²³ IACHR. July 1, 2016. [Press Release R91/16 Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); Inter American Press Association (IAPA). June 28, 2016. [Guatemala: SIP condenó el asesinato de un periodista](#); Committee to Protect Journalists (CPJ). June 28, 2016. [Radio journalist murdered in Guatemala](#); Freedom House. June 29, 2016. [Fifth Journalist Murdered in Guatemala This Year](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). June 27, 2016. [Alerta: Matan a Periodista en Coatepeque, Quetzaltenango](#).

¹⁰²⁴ Prensa Libre. August 2, 2016. [Matan a hija de periodista ultimado hace un mes](#); El Heraldo. August 3, 2016. [Matan a hija de periodista asesinado en Guatemala](#); La Prensa. August 2, 2016. [Matan a hija de periodista asesinado hace un mes en Guatemala](#).

¹⁰²⁵ IFEX/ Centro de Reportes Informativos sobre Guatemala (Cerigua). September 6, 2016. [Camera operator and community leader killed in Jalapa, Guatemala](#); Prensa Libre. September 4, 2016. [Capturan a sospechoso de ultimar a camarógrafo en Jalapa](#); Unesco. October 13, 2016. [Director-General condemns murder of TV journalist Felipe David Munguía Jiménez in Guatemala](#); Terra. September 4, 2016. [Asesinado a tiros un periodista en Guatemala](#); Knight Center for Journalism in the Americas. September 7, 2016. [Cameraman and community leader killed in southeastern Guatemala](#).

implemented by the *San Juan de Dios* and Roosevelt hospitals to not accept transfers of prisoners for medical care due to the danger these transfers involved for their staff.¹⁰²⁶

644. On November 6, the journalist Hamilton Hernández and his wife Ermelina González were killed on the highway between the municipalities of Coatepeque and Flores Costa Cuca in the department of Quetzaltenango. Hernandez was the host of the TV program *Punto Rojo* on *Canal 5*, a local cable channel. Their bodies were found dead and showed gunshot wounds. The murders reportedly took place when Hernández and his wife were on their way home after Hernandez covered an event on the night of November 5. The Attorney General, Thelma Aldana, had allegedly announced that the Unit for Crimes Against Journalists would be restructured and strengthened.¹⁰²⁷

645. The authorities have opened investigations in these cases, but it is still not known whether these crimes are connected to the work these individuals performed as journalists and social communicators. For the Office of the Special Rapporteur, it is crucial for the Guatemalan State to investigate these crimes fully, effectively, and impartially to discover the motives, as they affect all of Guatemalan society. The Guatemalan State must also legally establish any connection there may be to journalism activity and freedom of expression. It is therefore crucial for authorities to investigate these facts without dismissing their possible connection to journalism and freedom of expression.¹⁰²⁸

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

646. On January 15, journalists Miguel Salay and Marvin Pérez, with news show *Guatevisión*, were attacked while covering the arrest of Antonio Coro, the former mayor of Santa Catarina Pinula, who faced allegations of criminal acts. Municipality officials and the former mayor's sympathizers insulted and attacked the journalists and tried to prevent them from covering the incident. One person stole one of the reporters' cell phones as he tried to film the attacks.¹⁰²⁹

647. Columnist Miguel Ángel Albizures reported acts of intimidation and slander against him and other two people from individuals assumed to be retired soldiers and their family members. In his column in *El Periódico* dated January 21, Albizures accused family members of soldiers who were imprisoned due to the *Creompaz* case and members of the Military Veterans Association of Guatemala [*Asociación de Veteranos Militares de Guatemala*] and *Fundación contra el Terrorismo* of distributing flyers throughout the city accusing him of being a "terrorist." The flyers also mentioned Frank la Rue, former president of the Presidential Human Rights Commission and former Special Rapporteur for Freedom of Expression of the United Nations, and activist Iduvina Hernández.¹⁰³⁰

¹⁰²⁶ Asociación de Periodistas de Guatemala (APG). Comunicado No. 24-09-2016. September 10, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Prensa Libre. September 9, 2016. [Comunicadora del Hospital General es ultimada a balazos](#); El Mundo. September 10, 2016. [Asesinan a tiros a la comunicadora del Hospital General de Ciudad de Guatemala](#).

¹⁰²⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 1, 2016. [Press Release R91/16 Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. November 21, 2016. [Press Release R171/16 Office of the Special Rapporteur Expresses Concern over Murder of Journalist in Guatemala](#).

¹⁰²⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 1, 2016. [Press Release R91/16 Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. November 21, 2016. [Press Release R171/16 Office of the Special Rapporteur Expresses Concern over Murder of Journalist in Guatemala](#).

¹⁰²⁹ República. January 15, 2016. [Acompañantes de Coro agreden a periodistas \(Video\)](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). January 18, 2016. [Empleados de Antonio Coro agreden a periodistas de Guatevisión](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). January 19, 2016. [APG condena agresión contra periodistas de Guatevisión](#); Notas Periodísticas. January 19, 2016. [Condena y rechazo de la CLP de la APG por ataque a 2 periodistas de Guatevisión](#).

¹⁰³⁰ Centro de Reportes Informativos sobre Guatemala (Cerigua). January 22, 2016. [Columnista denuncia actos intimidatorios en su contra](#).

648. On April 16, during a concert organized by the *Kojk'astaj Xenacoj* collective in the *Santo Domingo Xenaco* Park, Sacatepéquez, several artists and activists were threatened and harassed by armed individuals. The Sacatepéquez Department [*Departamento de Sacatepéquez*] supposedly was in the route of a road that a cement company would try to build in the region. According to what was informed, the state ignored a community consultation against the construction performed in 2007 and since then a conflict allegedly exists. The artists and activists assaulted were Sara Curruchich, Lucía Ixchú Hernández, Yxmučané Choy, Marcos Hernández and Laura Penados.¹⁰³¹

649. On April 29, unknown individuals entered the house of journalist Ángel Martín Tax, a correspondent with the *Prensa Libre* in the city of Cobán, Alta Verapaz, and stole his camera and personal computer containing journalistic material and files.¹⁰³²

650. On May 9, journalist José Rubén Zamora, president of the newspaper *El Periódico*, reported in his newspaper's pages that he was again the target of threats and intimidations.¹⁰³³

651. On June 30, two unknown individuals went to the home of journalist Irma Tzi, who works for *Nuestro Diario* in the department of Alta Verapaz, and threatened to burn it down if she did not come out and talk to them. They also threw rocks at the house. Tzi thought the attack could be connected to her journalism work and filed a complaint with the Public Prosecutor. Also, the Department Auxiliary Office of the Human Right Ombudsman [*Auxiliatura Departamental de la institución del Procurador de los Derechos Humanos*] asked the Justice of the Peace for security measures for the journalists.¹⁰³⁴

652. On July 7, a group of residents of the village of El Tablón, in Sololá, blocked journalist Mario Guzmán, a correspondent with the news channel *Telecentro 13*, from covering a police operation in a local business and threatened to attack him if he did not erase the images he had captured. The journalist agreed to erase the material so they would let him go.¹⁰³⁵

653. On July 13, journalists Fredy Chalí and William Cuxil, from Canal 48 of San Juan Comalapa, Chimaltenango, were verbally intimidated by the municipality's mayor, Justo Rufino Similox, when he tried to stop them from taking pictures for an investigation they were performing. The mayor asked them who would defend the journalists when they were murdered and who would take care of their children, insinuating possible attacks on them.¹⁰³⁶

654. On August 6, journalist Santiago Palomo, a commentator with the news program 'A las 10pm' on *Canal Antigua*, was physically attacked by Steven Mejía, a former candidate for deputy with *Movimiento*

¹⁰³¹ Unidad de Protección a Defensoras y Defensores de Derechos Humanos de Guatemala (Udefegua). Denuncia 02-2016. April 19, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; International Federation For Human Rights (FIDH). June 1, 2016. [Seguimiento y hostigamiento en contra de artistas, activistas y periodistas participantes en el "Festival Solidario en Santo Domingo Xenacoj"](#); Prensa Comunitaria Km. 169. April 19, 2016. [Comunicado de Festivales Solidarios ante agresión sufrida en Santo Domingo Xenacoj](#).

¹⁰³² Centro de Reportes Informativos sobre Guatemala (Cerigua). April 29, 2016. [Desconocidos allanan casa de periodista: roban equipo de trabajo](#); World Organisation Against Torture (OMCT)/Observatorio para la Protección de los Defensores de Derechos Humanos. June 22, 2016. [Guatemala: Oleada de ataques contra periodistas incluyendo asesinato de Víctor Hugo Valdés Cardona y Diego Salomón Esteban Gaspar](#).

¹⁰³³ Asociación de Periodistas de Guatemala. Comunicado de Prensa No. 12-05-2016. May 10, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Federación Latinoamericana de Periodistas (FELAP). May 11, 2016. [Guatemala: Sale la AGP en defensa del periodista José Rubén Zamora](#).

¹⁰³⁴ Procurador de los Derechos Humanos de Guatemala. July 5, 2016. [PDH abre expediente de intervención inmediata por amenazas en contra de periodista](#); S0y502. July 1, 2016. [Amedrentan a corresponsal de Nuestro Diario en Cobán](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). July 9, 2016. [Observatorio de los Periodistas reporta agresiones contra el gremio](#).

¹⁰³⁵ Centro de Reportes Informativos sobre Guatemala (Cerigua). July 9, 2016. [Observatorio de los Periodistas reporta agresiones contra el gremio](#).

¹⁰³⁶ Prensa Libre. July 12, 2016. [Alcalde intimida a periodistas e impide ingreso a comuna](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). July 13, 2016. [APG rechaza intimidación de alcalde contra dos reporteros](#).

Reformador and former member of *Partido Patriota*. Palomo was at a bar with other colleagues when he was attacked by Mejía. He had to be taken to a hospital for his wounds. The reporter said the attack was connected to his journalism work.¹⁰³⁷

655. The IACHR and the Office of the Special Rapporteur recall that public servants must unequivocally repudiate attacks perpetrated in retaliation for the exercise of freedom of expression, and must abstain from making statements that may increase the vulnerability of those who are persecuted for exercising their right to freedom of expression. Similarly, it is essential that the authorities who hold elective positions or who hold responsibilities within the State structure encourage the competent authorities to act with due diligence and speed to investigate the facts and punish those responsible.¹⁰³⁸

656. Based on the foregoing, the IACHR reiterates its recommendation that the State protect the lives and physical integrity of journalists and refrain from making statements that stigmatize or discredit journalists and media workers, and that it strengthen measures to fight impunity for crimes committed against journalists.

C. Protection of Journalists Program

657. Despite the repeated recommendations of the IACHR, its office of the special Rapporteur, UNESCO, and the UN High Commissioner for Human Rights that Guatemala should move forward in creating a program for protecting journalists and media workers, the implementation of such a protection system is still only the subject of talks. In 2014, a high-level roundtable and a technical roundtable were established—including the participation of the Presidential Committee for Coordinating Executive Policy on Human Rights [*Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos*] (Copredek), the Governance ministry [*ministerio de Gobernación*], the Public Prosecutor [*Ministerio Público*], and the Department of Social Communication of the Presidency of the Republic [*Secretaría de Comunicación Social de la Presidencia de la República*] (SCSPR)—to design and implement a program to protect journalists.¹⁰³⁹ In 2015, the government took positive steps toward designing a mechanism, with consultations with civil society and human rights organizations. The high-level roundtable [*Mesa de Alto Nivel*] and the technical roundtable [*Mesa Técnica*] worked to design and implement the mechanism for protecting journalists. The work continued with support from Unesco and the Office of the UN High Commissioner for Human Rights (UNHCR). The process to build a mechanism resulted in a document entitled “Preliminary Proposal for a Program to Protect Journalists.” The document identifies the institutions that would form the program, their protective functions, and how coordination would operate. The document was discussed by journalists and defenders of the right to freedom of expression. Based on their comments, recommendations, and observations, the technical roundtable presented the conceptual design of the System for the Protection of Journalism Activities [*Sistema de Protección al Ejercicio Periodístico*] (SPEP).¹⁰⁴⁰ However, a number of journalism associations said they had had little or no involvement in drafting the proposal. In 2016, following the inauguration of a new government, the administration of President Jimmy Morales moved to suspend the process and begin a new process for setting up the mechanism.

¹⁰³⁷ Santiago Palomo Vila/Facebook. August 7, 2016. [Amigos, con mucha tristeza, les comparto que fui víctima del constante estado de violencia y hostilidad en la que esta sumergido este país](#); Cámara Guatemalteca de Periodismo. Comunicado de Prensa No. 8-2016. August 7, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Diario Digital. August 7, 2016. [Agreden a analista de Canal Antigua](#); Soy502. August 7, 2016. [Ex candidato a diputado agrade a periodista en un bar](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). August 8, 2016. [La APG repudia y condena agresión a periodista Santiago Palomo](#).

¹⁰³⁸ 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](#).

¹⁰³⁹ 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. 557-560.

¹⁰⁴⁰ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 683-694.

658. On February 1, 16 of the country's journalism institutions issued a joint press release claiming they had been "excluded from the process through which" the document on the journalism protection program was drafted. They stated that they had not seen the "final version" of the proposal that would be a basis for institutionalizing the protection mechanism, and said they were not part of the technical roundtable that the previous government had set up to work on the issue, "nor involved in the consultations and discussions inherent to a process of this nature." They asked that "the discriminatory methodology employed by the previous government be rectified and a roundtable be set up with representatives of the journalism profession to discuss the serious safety problems journalists face in Guatemala." For this reason, they requested a "hearing as soon as possible" with the Secretary of Social Communication of the Presidency to submit their "demands and points of view" on the mechanism.¹⁰⁴¹

659. After issuing this statement, on February 4, the Association of Journalists of Guatemala (APG), the Guatemalan Journalism Chamber (CGP), *Cámara de Locutores Profesionales de Guatemala* (ALPG), and other departmental associations met with the secretary of Social Communication of the Presidency, Alfredo Brito, to submit their demands regarding the process for setting up the mechanism for protecting journalists. According to the organizations, Brito committed to reviewing and correcting the procedure used for setting up the program due to the fact that it excluded communicators during the drafting of the proposal presented by the technical roundtable. According to the information published by the local organization Cerigua, representatives of the media highlighted the need to open an effective channel of communication with government authorities for the safety of journalists and asked the officials of the Office of the Secretary to set up a roundtable of journalists and professional associations. The secretary committed to addressing their demands, analyzing the proposal submitted by the technical roundtable, and suspending the process until the participation of journalists is included.¹⁰⁴² On June 8, media organizations delivered a proposal to Brito for the creation of a mechanism to protect journalists.¹⁰⁴³

660. On July 19, representatives of the alliance of media organizations met with the President of Guatemala, Jimmy Morales, and presented him with the content of the proposal for creating a program or mechanism for protecting journalists [*Programa o Mecanismo de Protección a Periodistas*]. The president pledged to support the proposal and assured them they would have the "full support" of the presidency for "making the project a reality."¹⁰⁴⁴

661. The organizations' proposal includes the creation of a surveillance and coordination unit [*Unidad de Vigilancia y Coordinación*] made up of a highly qualified technical team, as well as a training unit with experts on freedom of expression and freedom of the press to work in coordination with the structure of the State. The fundamentals highlighted by the proposal include the following: the program must be apolitical; it must have space for agreement on and coordination of the defense of journalists; the State must commit to its responsibility on the issue, and journalists and communicators, professional associations, the media, and specialized institutions must all cooperate; and finally, the minimal necessary structure for supporting the mechanism adopted and designation of the necessary human and material resources for effectively implementing the program must be provided. Also, having up-to-date, trustworthy, and accurate information on the situation of journalists, along with an instrument with data specific to the program, were seen as indispensable for building the safety and protection mechanism. The proposal recommends that preventative

¹⁰⁴¹ Centro de Reportes Informativos sobre Guatemala (Cerigua). February 2, 2016. [Comunicado conjunto de entidades de prensa; Notas Periodísticas](#). February 2, 2016. [Prensa de Guatemala denuncia exclusión en documento que protege a periodistas](#).

¹⁰⁴² Centro de Reportes Informativos sobre Guatemala (Cerigua). February 2, 2016. [Comunicado conjunto de entidades de prensa; Centro de Reportes Informativos sobre Guatemala](#). February 2, 2016. [Rectificar procedimiento e incluir a actores claves piden periodistas](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). February 5, 2016. [SCSP ofreció rectificar proceso de construcción del Programa de Protección a Periodistas](#); Knight Center for Journalism in the Americas. February 18, 2016. [Mecanismo de protección para periodistas en Guatemala: una promesa sin cumplir](#).

¹⁰⁴³ Centro de Reportes Informativos sobre Guatemala (Cerigua). June 8, 2016. [Alianza de entidades de prensa entrega propuesta de Programa de Protección a Periodistas](#).

¹⁰⁴⁴ Gobierno de la República de Guatemala. July 19, 2016. [Presidente de Guatemala expresa compromiso con protección a periodistas](#); IFEX/ Centro de Reportes Informativos sobre Guatemala (Cerigua). July 20, 2016. [Presidente de Guatemala recibe propuesta de Programa de Protección a Periodistas y asume compromiso](#); Prensa Libre. July 23, 2016. [Total apoyo del presidente](#).

actions, training for police, prosecutors and judges on the issue, and providing the public prosecutor's crimes against journalists unit [*Unidad Fiscal de Delitos contra Periodistas*] with the necessary resources be seen as priorities. Upon its delivery to the president, the proposal had the support of Unesco, as ratified by its representative in Guatemala, Julio Carranza.¹⁰⁴⁵

662. The IACHR and its Office of the Special Rapporteur believe there is an urgent need to complete the process for creating the mechanism to protect journalists and implement it as soon as possible. In particular, it is essential that the mechanism be implemented through a high-level official and inter-institutional committee; be led by a State authority with the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation, and evaluation.

663. The Office of the Special Rapporteur would like to point out a number of guidelines for the design and function of programs to protect journalists that should be taken into account when establishing them. The system must have sufficient and sufficiently-trained human resources to gain the trust of the beneficiaries of the protection. In addition, "The best course of action is for the States to have a State security force exclusively for the protection program, separate from those elements in the police that engage in intelligence and counterintelligence work. The members of this special security force for protection of human rights defenders should be selected, recruited, and trained with complete transparency and with the participation of representatives of the programs' target population, so as to create confidence and trust between the persons being protected and those who are protecting them."¹⁰⁴⁶ The system should therefore guarantee the budgetary resources necessary to cover the costs of expenditures for the staff working on the program, as well as expenditures related to the measures of protection.¹⁰⁴⁷

664. The Commission and its Office of the Special Rapporteur have stated that not only does violence against journalists violate the freedom of thought and expression of the affected person in an especially drastic way, but also effects the collective dimension of this right. Acts of violence against journalists or people who work in the media and that are connected to their professional activities violate the rights of victims to express and disseminate their ideas, opinions, and information and violate the right of citizens and society in general to seek and receive information and ideas of any kind.¹⁰⁴⁸ As noted by the Inter-American Court of Human Rights, "journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment."¹⁰⁴⁹

665. In this same sense, States have the obligation to protect at-risk journalists and media workers. Pursuant to the human rights laws of the inter-American system, States have an obligation to protect those who face special risk to their fundamental rights. The obligation to protect an at-risk journalist can be satisfied through the individual application of the measures necessary to ensure, among other things, the beneficiaries' right to life, to personal integrity, and to freedom of expression. However, when a particular

¹⁰⁴⁵ IFEX/Centro de Reportes Informativos sobre Guatemala (Cerigua). July 20, 2016. [Presidente de Guatemala recibe propuesta de Programa de Protección a Periodistas y asume compromiso](#); Prensa Libre. July 23, 2016. [Total apoyo del presidente](#).

¹⁰⁴⁶ 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.

¹⁰⁴⁷ 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.

¹⁰⁴⁸ 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. Office of the Special Rapporteur for Freedom of Expression. [Special Study of the Status of Investigations into the Murder of Journalists in the Region for Reasons that May Be Related to their Work in Journalism \(1995-2005 Period\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 67.

¹⁰⁴⁹ 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.

country faces a systematic and grave structural situation of violence against journalists and media workers, States must establish special protection programs in order to serve these groups.¹⁰⁵⁰

D. Subsequent Liabilities

666. On February 22, the 12th Criminal Sentencing Court [*Juzgado Duodécimo de Primera Instancia de Delitos Penales*] accepted a criminal defamation and slander complaint filed in February 2013 by Ricardo Méndez Ruiz, president of *Fundación contra el Terrorismo*, against Daniel Pascual, a leader and coordinator of *Comité de Unidad Campesina de Guatemala* (CUC). According to the information received, Méndez Ruiz had allegedly brought a criminal complaint against Pascual for statements he made during a press conference on January 25, 2013, when he stated that he had been attacked and threatened by individuals supporting a mining project near Las Trojes, San Juan Sacatepéquez municipality that residents have resisted.¹⁰⁵¹

667. Pascual's defense has argued that according to the law, accusations of crimes committed in the framework of freedom of expression must be processed through the Constitutional Law on Dissemination of Thought [*Ley Constitucional de Emisión del Pensamiento*], not through the ordinary Penal Code. However, the judge of the Twelfth Court of First Instance of Criminal Sentencing against Environment and Narco-Activity [*Juzgado Duodécimo de Primera Instancia de Delitos Penales, contra el Ambiente y Narcoactividad*] ruled that this only applied to journalists, and since Pascual was not a journalist, the case would proceed under ordinary criminal law. The judge allegedly had rejected several objections raised by the defense.¹⁰⁵²

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

E. Confidentiality of Sources

669. On May 30, the newspaper *Prensa Libre* reported that in recent months, it had received requests from prosecutors and assistant prosecutors of the Office of the Public Prosecutor for its journalists to answer questions on their sources for a variety of news articles it had published. "The requests seeking cooperation with the authorities this morning arrived to our offices in a series of official letters. They asked, for example, for information on how or in what way a source communicated with the journalists, what kind of information was provided for certain of the published news items, and whether information distributed through social networks or published by other journalism enterprises was used," the paper reported. Moreover, the paper indicated that the requests from the prosecutors "have no legal basis because according to Guatemalan case law, the confidentiality of journalists' sources of information is protected." *Prensa Libre* said it sent text messages to the Attorney General and head of the Office of the Public Prosecutor, Thelma Aldana, asking the

¹⁰⁵⁰ 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. 62.

¹⁰⁵¹ Centro de Reportes Informativos sobre Guatemala (Cerigua). March 1, 2016. [Daniel Pascual pide que se garantice su derecho a la emisión del pensamiento](#); International Federation For Human Rights (FIDH). March 25, 2016. [La libertad de expresión de los defensores en riesgo: Daniel Pascual debe ser absuelto](#); Sala de Redacción. September 1, 2014. [Libertad de expresión y marco legal](#); Document sent by Comité de Unidad Campesina (CUC). February 28, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁰⁵² Document sent by Comité de Unidad Campesina (CUC). February 28, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

reasons for the requests from the prosecutors. She responded that she had not given any orders in this regard.¹⁰⁵³

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

F. Direct and Indirect Censorship

671. On January 21, armed individuals stole the copies of *Prensa Libre* circulating in the municipality of Barberena, Santa Rosa. On that day, the newspaper was reporting a news item involving former mayor Rubelio Recinos, who, according to the Supreme Electoral Tribunal [*Tribunal Supremo Electoral*], had not been registered as a candidate during the last elections and could therefore not continue in the office.¹⁰⁵⁴

G. Community Broadcasting

672. The association *Mujb’ab’l yol-Encuentro de Expresiones* reported that on April 20, agents of the Public Prosecutor and National Police [*Policía Nacional Civil*] conducted a search and confiscated the equipment of community broadcaster *Radio Esperanza*, located in the municipality of La Esperanza, Quetzaltenango department.¹⁰⁵⁵

673. During February, the IACHR and its Office of the Special Rapporteur learned that the Congress of the Republic of Guatemala [*Congreso de la República de Guatemala*] was in the third phase of considering draft law 4087, the “Community Media Act” [*Ley de Medios de Comunicación Comunitaria*]. The bill, supported by civil society and the country’s indigenous peoples, sought to guarantee “access to media for indigenous communities and marginalized minority sectors.” At the time, the Office of the Special Rapporteur stated that the legislative debate on the bill represented an extraordinary opportunity for the State to effectively comply with its international obligations in this area.¹⁰⁵⁶

674. To date, the bill has still not been approved. According to available information, the president of the Congress assigned analysis of the initiative to a technical committee comprised of members of Congress.¹⁰⁵⁷ On April 12, the technical committee submitted an opinion to Congress, recommending that it “not approve Decree 4087, the Community Media Act, because its content is lacking in the technical and legal grounds to make its application to the radio spectrum viable.” It also recommended that the Telecommunications Superintendence [*Superintendencia de Telecomunicaciones*] be asked, via the ministry of Communications, Infrastructure, and Housing [*ministerio de Comunicaciones, Infraestructura y Vivienda*], to conduct an audit of the radio spectrum (i) in a national level, how much of the frequency modulation (FM) band is being used to find out how much space is available and determine which users are operating legally and which illegally; (ii) on the power of the typical radio broadcasters operating currently; and (iii) which frequencies are not being used. The technical committee proposed to Congress that once the diagnostic is carried out, “the appropriateness of presenting an initiative for amending the General Telecommunications Act [*Ley General de*

¹⁰⁵³ Prensa Libre. May 30, 2016. [MP presiona para que se revelen fuentes](#); Prensa Libre. May 31, 2016. [APG respalda a Prensa Libre](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). May 30, 2016. [Prensa Libre denuncia que MP exige revelar fuentes informativas](#).

¹⁰⁵⁴ Prensa Libre. January 21, 2016. [Rubelio Recinos, exalcalde de Barberena, bloquea circulación de Prensa Libre](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). January 21, 2016. [Hombres armados robaron ejemplares de Prensa Libre](#); Prensa Libre. January 21, 2016. [Rubelio Recinos nunca fue candidato, dice TSE](#).

¹⁰⁵⁵ Asociación Mujb’ab’l yol-Encuentro de Expresiones. [Comunicado](#). April 20, 2016.

¹⁰⁵⁶ IACHR. February 11, 2016. [Press Release R 12/16. The Office of the Special Rapporteur for Freedom of Expression of the IACHR Urges Guatemala to Adopt Legislation on Community Broadcasting](#); Knight Center for Journalism in the Americas. March 17, 2016. [Bill to recognize community media up for debate in Guatemala, again](#).

¹⁰⁵⁷ Congreso de la República de Guatemala. February 29, 2016. [Mesa Técnica Legislativa analiza contenido de Ley de Medios de Comunicación Comunitaria](#).

Telecomunicaciones] decree 94-96 as far as the assignment of frequencies to community media be evaluated. The goal is to avoid legal distractions and conflicts, strengthening technical parameters and standardizing them to improve use and allocation of the spectrum,” including frequencies for community radio stations that include all the country’s ethnic groups.¹⁰⁵⁸ Civil society organizations representing the community radio sector rejected the technical committee’s report.¹⁰⁵⁹

675. Since 2000, and in its 2015 country report, both the IACHR and the Office of the Special Rapporteur of the IACHR have recommended that Guatemala adopt a more just and inclusive legal framework for radio broadcasting that recognizes the community radio sector and guarantees nonprofit social actors equal conditions for accessing and using licenses, especially the country’s indigenous peoples who have historically been excluded from accessing and managing media outlets. During these years, Guatemalan indigenous organizations have submitted more than four draft bills aimed at guaranteeing community media outlets access to frequencies. The bills have gone nowhere.

676. Likewise, on a number of occasions, the IACHR and its Office of the Special Rapporteur have indicated that using criminal law to punish violations of radio broadcasting regulations may be problematic under the American Convention. Along these lines, the IACHR recalls that criminal punishments for conduct involving the unauthorized exercise of commercial or community radio broadcasting would be disproportionate.¹⁰⁶⁰

677. Based on this, the IACHR reiterates that the State needs urgently to adopt adequate legislation on this subject so as to recognize community radio and television broadcasting and set aside an equitable portion of the spectrum and the digital dividend for this important sector.

H. Government Advertising

678. In the framework of the “*Cooptación del Estado*” investigation conducted by the Office of the Public Prosecutor of Guatemala and the International Commission against Impunity in Guatemala [*Comisión Internacional contra la Impunidad en Guatemala*] (ICIG), a corruption scheme was revealed that financed the campaign of *Partido Patriota*, leading to the election of its leader, Otto Pérez Molina, as President of the Republic, along with Vice President Roxana Baldetti. According to the findings of the investigation, revealed on June 2, the illegal activities to raise funding for the *Partido Patriota* were conducted between 2008 and 2011 and continued during the term of the government of that party (2012-2015). As the ICIG explained in a press release, the “illegal electoral financing” was obtained through a web of companies controlled by Baldetti. These companies had no real business activity but rather were “instruments for channeling the money secretly delivered by the representatives” of Radiotelevisión Guatemala S.A. (*Canal 3*) and Televisiete S.A. (*Canal 7*), owned by Mexican businessman Ángel González. The documents seized during the investigation demonstrated that González’s two companies contributed a total of GTQ\$ 17 million 679 thousand 200 (about US\$ 2 million 300 thousand) to the Patriot Party between 2008 and 2011. “This money was not reported to the Supreme Electoral Tribunal [*Tribunal Supremo Electoral*]” as campaign contributions and “was used to purchase late-model vehicles,” the ICIG concluded. Since Pérez Molina and Baldetti took power, these television companies have been awarded contracts worth millions in State advertising. According to the findings of the investigation, the contracts signed between 2012 and 2015 were worth more than GTQ\$ 200 million (about US\$26 million), meaning that they receive 69 per cent of all government

¹⁰⁵⁸ Congreso de la República de Guatemala. Informe Mesa Técnica Iniciativa 4087, Ley de Medios de Comunicación comunitaria. April 12, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁰⁵⁹ Sala de Redacción. May 2, 2016. [Comunicado. Exigimos que el pleno del Congreso de la República conozca en tercera lectura la iniciativa de Ley de Medios de Comunicación Comunitarios \(4087\)](#); Observacom. May 19, 2016. [Rechazan bloqueo a la aprobación de Ley de Medios Comunitarios en Guatemala](#).

¹⁰⁶⁰ 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). December 31, 2013. Para. 129; Annual Report 2011. [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.

television advertising placed during the period.¹⁰⁶¹ Gonzalez's wife, Alba Elvira Lorenzana, has an international warrant out for her arrest due to her alleged involvement in illegally financing the *Partido Patriota* in exchange for the millions in State advertising.¹⁰⁶²

679. Former president Pérez Molina and former Vice President Baldetti resigned in 2015 after a series of accusations of corruption. Both of them are in pretrial detention and facing trial.

680. Likewise, in December 2012, Decree 34-2012 entered into force. The decree amended the General Telecommunications Act [*Ley General de Telecomunicaciones*] by extending the licenses for the use of the radio spectrum by 20 years.¹⁰⁶³ One of the main beneficiaries of the amendment was González, who owns the four private VHF channels broadcast in Guatemala. As detailed in the report on financing politics in Guatemala, published by the ICIG in July 2015, "probably in no other place in the world does a single individual own all four existing private VHF channels. But in Guatemala, this has been possible, and Mr. Ángel González has no VHF competition. The *Congress Channel*, *Channel 9*, and *Channel 5*, of *Academia de Lenguas Mayas*, only exist on paper: the frequency is assigned, but they do not broadcast."¹⁰⁶⁴

681. On June 9, dozens of students demonstrated in Guatemala City to demand that the over-the-air contracts granted to the Mexican magnate be declared injurious due to the alleged corruption surrounding them.¹⁰⁶⁵

682. According to *El Periódico*, following news of the investigations demonstrating the legal mechanism by which González' channels benefited from government advertising, the businessman organized a campaign through the media that he controls to discredit the ICIG and the trial known as "*Cooptación del Estado*."¹⁰⁶⁶

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

¹⁰⁶¹ Comisión Internacional contra la Impunidad en Guatemala (CICIG). June 2, 2016. [Comunicado de prensa 047. Caso Cooptación del Estado de Guatemala](#); El Periódico. July 25, 2016. [Ángel González: el encantador de presidente está molesto](#); Observacom. July 28, 2016. ["El Fantasma" González rodeado por la Justicia: pedido de captura internacional para su esposa por caso "Cooptación del Estado" en Guatemala](#); Proceso. June 6, 2016. [Magnate mexicano de medios es vinculado con red de corrupción en Guatemala](#); Observacom. June 14, 2016. [Ángel González recibió US\\$ 27 millones de publicidad oficial tras financiar ilícitamente campaña presidencial de Otto Pérez Molina en Guatemala](#).

¹⁰⁶² Comisión Internacional contra la Impunidad en Guatemala (CICIG). June 2, 2016. [Comunicado de prensa 047. Caso Cooptación del Estado de Guatemala](#); Prensa Libre. June 2, 2016. [Esposa de magnate de la TV y banqueros con orden de captura](#); Observacom. July 28, 2016. ["El Fantasma" González rodeado por la Justicia: pedido de captura internacional para su esposa por caso "Cooptación del Estado" en Guatemala](#).

¹⁰⁶³ Congreso de la República de Guatemala. [Decreto 34-2012](#). November 20, 2012.

¹⁰⁶⁴ Comisión Internacional contra la Impunidad en Guatemala (CICIG). [Financiamiento de la política en Guatemala](#). July 16, 2015.

¹⁰⁶⁵ Sin embargo/EFE. June 9, 2016. [Estudiantes protestan contra televisoras del mexicano Ángel González en Guatemala: lo acusan de corrupción](#); Terra. June 9, 2016. [Estudiantes claman contra televisoras de mexicano Ángel González en Guatemala](#).

¹⁰⁶⁶ El Periódico. July 25, 2016. [Ángel González: el encantador de presidente está molesto](#).

17. GUYANA

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

684. On June 4, 2016, a live fragmentation grenade was thrown under the vehicle of *Kaieteur News* publisher, Glenn Lall. Luckily, the device did not explode.¹⁰⁶⁷ Shortly after the event, the Government of Guyana issued a statement condemning the incident stating: “[t]he coalition Government stands resolutely in defense of press freedom in Guyana and condemns, in the strongest possible manner, this heinous and dastardly act of cowardice against Kaieteur News. The coalition Government is thankful, as are all right-thinking Guyanese that no lives or limbs were lost and there was no damage to property.”¹⁰⁶⁸ The incident was also condemned by the Guyana Press Association who called upon the police forces to execute an in-depth investigation into the events.¹⁰⁶⁹ A few days later, six persons were arrested after detectives from the Guyana Police Force reviewed surveillance footage.¹⁰⁷⁰

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

B. Subsequent Liabilities

686. Guyana’s Attorney General Basil Williams accused journalist Vanessa Narine of misleading the public by inaccurately reporting on the proceedings of the House during the consideration of the 2016 Budget estimates. In an article published by the online news agency *Citizen’s Report*, Narine alleged that Williams had misled the National Assembly regarding the US\$16 million budgeted for a luxury vehicle. Williams claimed that the article was libelous, inaccurate and an abuse of the privilege of the House. He asked the Speaker of the National Assembly to sanction Narine for her actions and requested that an apology be issued and the published report be corrected.¹⁰⁷¹

687. 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,¹⁰⁷² 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.”¹⁰⁷³ In this regard, principle 11 of the IACHR’s

¹⁰⁶⁷ Kaieteur News. June 11, 2016. [Condemnation grows...Grenade attack was meant to silence freedom of expression – Chilean envoy!](#); Jamaica Observer. June 8, 2016. [Six detained in Guyana after grenade attack on newspaper.](#)

¹⁰⁶⁸ Stabroek News. June 5, 2016. [Gov’t expresses solidarity with KN over grenade found outside premises](#); Citizens Report. June 6, 2016. [Gov’t says grenade attack on KN an act of ‘domestic terrorism.’](#)

¹⁰⁶⁹ Guyana Times. June 7, 2016. [Pressure mounts on Police to expedite probe](#); News Room. June 6, 2016. [PPP/PSC/GPA condemn attack on KN publisher.](#)

¹⁰⁷⁰ Caribbean360. June 8, 2016. [Guyana police hold six in Kaieteur News grenade attack](#); Demerara Waves. June 7, 2016. [Six arrested for Kaieteur News grenade incident](#); Jamaica Observer. June 8, 2016. [Six detained in Guyana after grenade attack on newspaper.](#)

¹⁰⁷¹ Kaieteur News. February 18, 2016. [Attorney General seeks apology or sanction for reporter, news outfit in Parliament](#); Stabroek News. February 18, 2016. [Speaker postpones ruling on sanctioning reporter for inaccurate news story.](#)

¹⁰⁷² 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.

¹⁰⁷³ 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

Declaration of Principles on Freedom of Expression states that “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.”

C. Diversity and Pluralism

688. Under the Bharrat Jagdeo administration, broadcasting licenses were allegedly granted only to friends and supporter of the ruling party, while all other requests were rejected. In January 2016, the Guyana National Broadcasting Authority (GNBA) stated that the licenses issued by the former government are considered flawed and a revocation process is contemplated. In April 2016, GNBA announced that it would be re-evaluating all radio, television and cable licenses, meaning all current license holders and the 44 new applicants, in keeping with a new national plan for frequency allocation and coverage. The GNBA also indicated that it was preparing a set of guidelines for all broadcasters to follow and expressed its opposition to political parties holding broadcast licenses.¹⁰⁷⁴

689. The IACHR notes that article 13.3 of the American Convention on Human Rights states that “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

690. The IACHR and the Inter-American Court have recognized the legal authority and the need for States to regulate broadcasting, which includes the establishment of procedure for granting, renewing and revoking licenses through objective and impartial criteria prescribed by law with clear and precise language.¹⁰⁷⁵ The Office of the Special Rapporteur further notes that the State’s authority to regulate broadcasting is based on the “the duty to guarantee, protect and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and the right of society to access all types of information and ideas.” Broadcasting regulations should therefore function in such a way that it guarantees diversity and plurality while simultaneously ensuring that the State’s authority will not be used for censorship.¹⁰⁷⁶

691. Furthermore, principle 13 of the Declaration of Principles on Freedom of Expression stipulates: “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

18. HAÏTI

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.

¹⁰⁷⁴ Guyana Times. April 30, 2016. [All radio/TV/cable licences to be re-evaluated](#); Kaieteur News. May 3, 2016. [GNBA against political parties holding Broadcast Licence](#); Demerara Waves. April 29, 2016. [All radio, TV licences to be re-evaluated – Broadcasting authority](#).

¹⁰⁷⁵ IACHR. [Annual Report of the Office 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 13-20; I/A Court H.R. [Case of Grainer et al \(Radio Caracas Televisión\) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs](#). Judgment of June 22, 2015. Para 170-171; IACHR. Office of the Special Rapporteur for Freedom of Expression. May 25, 2007. [Press Release N° 29/07. The Commission recognizes the State’s prerogative to administer the waver bands, to previously establish the duration of concessions and to decide on their renewal at the end of those periods](#).

¹⁰⁷⁶ IACHR. [Annual Report of the Office 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. 12.

A. Social Protest

692. On Tuesday, November 29th¹⁰⁷⁷, one days after publication of the preliminary results of the presidential elections, public demonstrations were reported in different localities of Port-au-Prince¹⁰⁷⁸, such as Delmas, Bourdon, Canapé-Vert and Pont-Morin. Specifically, in the locality of Delmas, demonstrations allegedly organized by members and sympathizers of the Fanmi Lavalas¹⁰⁷⁹ political party took place, stemming from discontent with the preliminary results that gave the victory to *Tèt Kale* party (PHTK) candidate Jovenel Moïse. According to the information received by the Office of the Special Rapporteur, the National Police of Haiti used tear gas to disperse the demonstrators in the wake of violent incidents that occurred around the demonstrations, including use of firearms, throwing of stones and burning of tires.¹⁰⁸⁰

693. The response by the National Police would be justified by the prohibition against public demonstrations until the definitive results are obtained, which would be planned for December 29, 2016, once the period for verification of the votes has ended. That prohibition stems from article 123 of the Electoral Decree of 2015, which orders that “all public demonstrations, on behalf of one or more candidates, of one or more parties, political groups, is prohibited from election day until the proclamation of the definitive results.”¹⁰⁸¹

694. In response to the demonstrations and the appeal by the *Famni Lavalas* party to the citizenry to remain mobilized to demand respect for the results of the balloting¹⁰⁸², the minister of Justice and Public Safety [*ministre de la Justice et de la Sécurité Publique*], Cammile Edouard Junior, reiterated that challenges to the preliminary results must be made through legal channels, which is why it is necessary to maintain public order.¹⁰⁸³

695. The IACHR has reiterated that social protest is a fundamental tool for human rights defense work and is essential for critical political and social speech regarding the activities of the authorities. The Commission has maintained that “in principle, criminalization *per se* of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the right to freedom of expression and to freedom of assembly,”¹⁰⁸⁴ 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.”¹⁰⁸⁵

B. Stigmatizing Statements

696. On January 21st 2016, then President Michel Martelly supposedly launched a new carnival song which lyrics criticize the opposition and lash out at two journalists, Jean Monard Metellus and Liliane Pierre Paul. The song, which also allegedly contained sexist metaphors, was presented during an interview on *Radio-*

¹⁰⁷⁷ Embassy of the United States in Port au Prince. November 29, 2017. [Demonstration with Gunfire and Burning Tires today](#); Reuters. November 29, 2017. [Violence in Haiti as losers reject presidential vote results](#).

¹⁰⁷⁸ Haiti Libre. November 30, 2016. [Haïti - FLASH : Incidents et violences autour des résultats préliminaires](#).

¹⁰⁷⁹ AlterPresse.org. December 1, 2016. [Haïti-Élections : Une manifestation violente de Fanmi Lavalas fait des casses à Delmas](#).

¹⁰⁸⁰ Embassy of the United States in Port au Prince. November 29, 2017. [Burning Tires and Gunshots near Malpasse. Rt. National 8, today](#); Reuters. November 29, 2017. [Violence in Haiti as losers reject presidential vote results](#).

¹⁰⁸¹ Republic of Haiti. President of the Republic. [Electoral Decree. June 1, 2015](#). Article 123.

¹⁰⁸² Haiti Libre. November 30, 2016. [Haïti - FLASH : Les 3 principaux perdants contestent la victoire de Jovenel Moïse](#); Alterpresse. November 22, 2016. [Haïti-Élections : Poursuite des manifestations de Fanmi Lavalas, malgré une mise en garde légale et institutionnelle](#).

¹⁰⁸³ Signal FM Haiti. December 2, 2016. [Elections: mise au point du ministre de la justice sur les manifestations](#).

¹⁰⁸⁴ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁰⁸⁵ 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.

tele Metropol where former President Martelly supposedly declared that the press was transmitting lies against his government.¹⁰⁸⁶ On January 27th journalists in Haiti and the Dominican Republic replied by issuing a statement urging President Martelly to stop attacks on freedom of expression and to respect all the guarantees necessary to ensure proper coverage of the electoral process.¹⁰⁸⁷ On February 3, the local organization *Réseau National de Défense des Droits Humains* (RNDDH) had also published a press release stating that former President Martelly did not live up to his responsibilities as then president of Haiti for having verbally insulted and offended those who had allegedly criticized his administration. The same communiqué encouraged journalists Liliane Pierre-Paul and Jean Monard Métellus to take legal action against him, for "insults" and "demeaning treatment".¹⁰⁸⁸

697. The Office of the Special Rapporteur reiterates the importance of creating a climate of respect and tolerance for all ideas and opinions and recalls that diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions for the proper functioning of any democratic society. Accordingly, the authorities must contribute decisively to the building of a climate of tolerance and respect in which all people can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.

698. The Office of the Special Rapporteur additionally recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to the public discourse through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights organizations. They must bear in mind the context in which they express themselves, in order to ensure that their expressions are not, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts."¹⁰⁸⁹

C. Subsequent Liabilities

699. The journalist and ex-candidate for president of Haiti, Luckner Désir, was called to testify by the Attorney General's Office over a complaint about defamation filed by the Director General of the National Telecommunications Council [*Conseil National des Télécommunications*], (Conatel) Jean Marie Altéma.¹⁰⁹⁰ In his radio program '*Bon Signal*' of November 23, Désir affirmed that Mr. Altéma was receiving monthly payments from a mobile telephone company seeking renewal of a contract between the Haitian State and that company.¹⁰⁹¹ The date set by the Attorney General's Office was for December 5, 2016.

700. In accordance with Principle 10 of the IACHR Declaration of Principles on Freedom of Expression, "privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in

¹⁰⁸⁶ Knight Center for Journalism in the Americas. February 3, 2016. [Amid attacks, journalists demand guarantees for election coverage from outgoing Haitian president](#); Inter American Press Association (IAPA). April 3, 2016. [Midyear Meeting 2016 Punta Cana, Dominican Republic April 8-11, 2016: Haiti](#); El Nuevo Herald. January 31, 2016. [Presidente de Haití lanza canción para el carnaval criticando a periodista](#); Alter Presse. January 28, 2016. [Haiti-Prensa: Amenadaza por los esbirros del poder, la Radio Tele Kiskeya hace un llamado a los sectores responsables de la vida nacional](#).

¹⁰⁸⁷ Acento. January 31, 2016. [Periodistas haitianos y dominicanos protestan por ataques a prensa que cubre incidencias electoral](#); Alter Presse. January 29, 2016. [Periodistas haitianos y dominicanos exigen de Martelly garantías libre funcionamiento prensa en Haiti](#).

¹⁰⁸⁸ Réseau National de Défense des Droits Humains. February 3, 2016. [Carnaval 2016 : Le Président de la République attaque l'intégrité psychique et morale de deux journalistes haitiens](#); Haiti Press Network. February 3, 2017. [Haïti-Carnaval: Le RNDDH encourage Liliane Pierre Paul et Jean Monard Metellus à porter plainte](#).

¹⁰⁸⁹ 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.

¹⁰⁹⁰ Plug.ht. November 25, 2016. [Luckner Désir attaque le DG du Conatel](#); Le nouveliste. November 29, 2016. [Louko Désir attendu au Parquet de Port-au-Prince pour diffamation](#); Signal FM Haiti. December 5, 2016. [Louko Désir entraîné en justice por « diffamation »](#).

¹⁰⁹¹ Signal FM Haiti. November 24, 2016. [Le DC de Conatel pris en flagrant délit par Louko?](#); RadioMega.net. November 26, 2016. [Luckner Désir attaque le DG du Conatel](#).

which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

701. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of IACHR establishes: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.”

19. HONDURAS¹⁰⁹²

A. Killings

702. On June 16, photographer and TV producer Dorian Hernández was murdered in the town of Lepaera, Lempira department. Hernández had worked as a producer for channels *GRT* and *Copán TV*. His body was found alongside a road, with several gunshot wounds. The motive of the murder is unknown.¹⁰⁹³ On June 19, the body of journalist Elmer Cruz was found in the municipality of Morazán, Yoro. Cruz was a host on channels *Tele Morazán 10* and *Max TV 22*. He was found with a bullet wound to the head. The motives of this crime are also unknown, although police have ruled out robbery.¹⁰⁹⁴ On July 5, Henry Roberto Reyes Salazar was murdered in the municipality of Jesus de Otoro, Intibuca department. Reyes Salazar was a radio announcer on *Estéreo Control 100.7 FM*. According to police investigations, the announcer was shot by unknown individuals who attacked him to steal his motorcycle.¹⁰⁹⁵

703. For the Inter-American Commission, it is crucial for the Honduran State to investigate these crimes fully, effectively, and impartially to discover the motives, as they affect all of Honduran society. The Honduran State must also legally establish any connection there may be to journalism activity and freedom of expression. The authorities must not dismiss journalism as a motive for the murders and/or attacks until the investigation is complete. The omission of logical lines of investigation or lack of diligence in collecting evidence along these lines may have serious repercussions during the charging or trial processes.¹⁰⁹⁶ In particular, a failure to fully pursue all logical lines of investigation would mean that the masterminds behind the crimes could not be identified.¹⁰⁹⁷

704. The IACHR and its Office of the Special Rapporteur recall that State officials must unequivocally repudiate attacks carried out in retaliation for the exercise of freedom of expression and must abstain from making statements that could increase the vulnerability of those who are under attack for exercising this right. States should clearly demonstrate through their legal systems and actions that crimes against freedom of expression are especially serious because they represent a direct attack on all fundamental rights.¹⁰⁹⁸

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

¹⁰⁹² This section corresponds to the section on freedom of expression in Honduras in Chapter V, Volume I, of the IACHR 2016 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

¹⁰⁹³ Tiempo. June 16, 2016. [Matan a conocido fotógrafo en carretera que conduce a Lempira](#); Comité por la Libre Expresión (C-Libre). June 16, 2016. [Asesinan periodista que trabajó en canal de familia presidencial](#); La Prensa. June 16, 2016. [Hallan ultimado a un fotógrafo hondureño en Lempira](#).

¹⁰⁹⁴ Tiempo. June 19, 2016. [Hallan cadáver de presentador de TV en Morazán, Yoro](#); Prensa Libre/EFE. June 19, 2016. [Hallan muerto a un presentador de televisión en Honduras](#).

¹⁰⁹⁵ IFEX/Comité por la Libre Expresión (C-Libre). July 11, 2016. [Asesinan locutor en la zona occidental de Honduras](#); La Tribuna. July 5, 2016. [Ultiman a locutor de radio en Intibucá](#).

¹⁰⁹⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 116.

¹⁰⁹⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125-126; IACHR. Office of the Special Rapporteur for Freedom of Expression. Impunity, Self-censorship and Armed Internal Conflict: An Analysis of the State of Freedom of Expression in Colombia. Available at: <http://www.oas.org/en/iachr/expression/listDocuments.asp?categoryID=1&IID=1>. OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 65-66.

¹⁰⁹⁸ 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](#).

705. On December 2, journalist Ernesto Alonso Rojas, a correspondent with television channel *HCH* in San Pedro Sula, had his journalism equipment stolen.¹⁰⁹⁹ On December 6, unknown individuals looted a car belonging to journalist Elsa Oseguera, also with television channel *HCH*, and left her a note containing a death threat. The channel's director, Eduardo Maldonado, said Oseguera had received threats before and had recently been transferred from San Pedro Sula to Tegucigalpa for security reasons.¹¹⁰⁰

706. *Canal 36* journalist Ely Vallejo reported that on January 28, agents with the Office for Police Investigations (DPI) blocked his work and prevented him from filming a police operation.¹¹⁰¹

707. Journalists Rolando Gutiérrez and Selvin Milla, with community radio stations *Voz Lenca* and *Radio Guarajambala*, were attacked, temporarily detained, and had their work equipment taken from them by soldiers belonging to the Presidential Honor Guard [*Guardia de Honor Presidencial*] on February 4 while they were covering an event involving the first lady, Ana García, at the Valero Meza school in La Esperanza, Intibucá department. The journalists were detained for violating article 100 of the Police and Social Coexistence Act [*Ley de Policía y de Convivencia Social*], which establishes that people who are 'suspiciously loitering for no reason will be taken to the police station to be identified and subject to surveillance for the defense of society,' reported the organization *C-Libre*.¹¹⁰²

708. The Civic Council of Popular and Indigenous Organizations of Honduras [*Consejo Cívico de Organizaciones Populares e Indígenas de Honduras*] (CopinH) reported in March that workers with community radio stations *La Voz Lenca*, *Guarajambala*, *La Voz Lenca en FM*, *La Voz del Gualcarque*, and *La Voz de Puca Opalaca* were harassed by the police, who systematically blocked their journalism work.¹¹⁰³

709. On March 12, journalist Cesar Obando Flores, with *Radio Popular del Aguán*, *Canal 37*, and *Radio Progreso*, was harassed and prevented from doing his work by officers of the Municipal Police of Tocoa [*Policía Municipal de Tocoa*] and Military Police [*Policía Militar*] while covering the presentation of the results of an audit of the municipality of Tocoa, Colón, performed by the Supreme Tribunal for Accounts [*Tribunal Superior de Cuentas*].¹¹⁰⁴ Two days later, he was threatened and had to take refuge in the headquarters of the *Coordinadora de Organizaciones Populares del Aguán*. Flores has reported on allegations of irregularities in the municipality of Tocoa and on issues related to mining.¹¹⁰⁵

710. On April 11, journalist Gerardo Torres, a correspondent with international Venezuelan network *Telesur*, was intercepted and intimidated by two unknown individuals riding a motorcycle.¹¹⁰⁶

¹⁰⁹⁹ Comité por la Libre Expresión (C-Libre). December 9, 2015. [Robo de equipo y amenazas a muerte sufren periodistas de canal HCH en sólo cuatro días.](#)

¹¹⁰⁰ Tiempo Digital. December 7, 2015. [Honduras: Amenazan de muerte a la periodista Elsa Oseguera \(VIDEO\)](#); La Prensa. December 7, 2015. [Amenazan a muerte a periodista Elsa Oseguera.](#)

¹¹⁰¹ Comité por la Libre Expresión (C-Libre). January 31, 2016. [Periodista agredido por policías de investigación.](#)

¹¹⁰² Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH). February 5, 2016. [CopinH: Urgente! Jóvenes miembros del equipo de comunicación del Copinh detenidos por la Guardia Presidencial](#); Pasos de Animal Grande. February 4, 2016. ['Por ser de la oposición' comunicadores del COPINH detenidos por la Guardia Presidencial, Ejército y Policía Nacional en reunión de la primera dama](#); Comité por la Libre Expresión (C-Libre). February 4, 2016. [Comunicadores indígenas sufren destrucción de material informativo, detención ilegal y falsa imputación.](#)

¹¹⁰³ Comité por la Libre Expresión (C-Libre). March 16, 2016. [Comunicadores de cinco radios comunitarias sufren hostigamiento policial.](#) Comité por la Libre Expresión (C-Libre). March 16, 2016. [Comunicador de radio comunitaria del COPINH amenazado por militares.](#)

¹¹⁰⁴ Comité por la Libre Expresión (C-Libre). March 9, 2016. [Policía Municipal y Policía Militar obstruyen labor informativa de comunicador](#); Pasos de Animal Grande. May 5, 2016. [Caso Cesar Obando: Es una persecución silenciosa con campañas de desprestigio en mi contra.](#)

¹¹⁰⁵ Comité por la Libre Expresión (C-Libre). March 9, 2016. [Periodista del Valle del Aguán se refugia en organización popular con temor por su vida](#); Pasos de Animal Grande. May 5, 2016. [Caso Cesar Obando: Es una persecución silenciosa con campañas de desprestigio en mi contra.](#)

¹¹⁰⁶ Comité por la Libre Expresión (C-Libre). April 13, 2016. [Corresponsal de Telesur atacado por dos motociclistas.](#)

711. Journalist Marco Escobar, a member of *Red de Alertas a Protección de Periodistas y Comunicadores Sociales* (RAPCOS), fled the country May 8 due to fears of retaliation after being threatened by National Party deputy Alfredo Moradel. Several days earlier, on his program on *Canal 33* in Catacamas, Olancho, the reporter had questioned some of the deputy's actions.¹¹⁰⁷

712. On May 2, journalist Félix Molina, director of the *Asociación Alternativas en Comunicación* (Alter-Eco) and host of the radio program '*Resistencia*,' broadcast by *Radio Globo* and *Radio Progreso*, was the victim of a shooting. Molina was shot several times in both legs when he was attacked by two unknown individuals while traveling in a taxi. Hours earlier, two men had tried to assault him when he was in another taxi. That day, the journalist had publicly reported allegations that politicians, businessmen, and soldiers were connected to the Agua Zarca hydroelectric project on the Gualcarque River and the murder of indigenous activist Berta Cáceres on March 3.¹¹⁰⁸

713. In May, unknown individuals pointed guns at journalist Óscar Ortiz and cameraman Luis Jorge Torres, with *TV Azteca Honduras*, and took the vehicle in which they were traveling, along with their video camera and cellular telephones.¹¹⁰⁹

714. On June 1, journalist Digna Aguilar, with the newspaper *El Heraldo*, fled the country over alleged death threats against her and her family. According to information disclosed by the news media, the journalist left the country with the cooperation of the State, through the Ministries of Defense and Human Rights, under precautionary measures put in place after she learned that her life and the lives of her children were at risk. The threats against Aguilar are supposedly connected to information on law enforcement issues published in her newspaper.¹¹¹⁰

715. On June 9, cameraman Juan Carlos Álvarez, with television channel *Mundo TV*, was robbed and attacked while on his way to work in a taxi. The motive for the attack was robbery, although the possibility that the attack was in retaliation for his work has not been ruled out.¹¹¹¹

716. Also on June 9, journalist Benjamín Zepeda Carranza, with *Globo TV*, was attacked by a National Department of Transportation [*Dirección Nacional de Tránsito*] police officer while he was traveling by bus in Tegucigalpa. The journalist recorded how the police officer was abusing the bus driver, and in retaliation, the officer grabbed him by the throat and physically assaulted him, warning him not to film it. The journalist reported the incident to the Director for Transportation [*Director de Tránsito*], Leonel Saucedo, who assured him that he would take administrative actions to punish the official's behavior.¹¹¹²

717. On June 11, officers with the Military Police and the National Police [*Policía Nacional*] beat journalists Igmer Gerardo Chevez, with *Radio Progreso*, and Linda Donaire and Víctor Ordóñez, with the newspaper

¹¹⁰⁷ Comité por la Libre Expresión (C-Libre). May 8, 2016. [Periodista sale forzosamente de Honduras amenazado a muerte por diputado del Partido Nacional](#); Noti bomba. May 9, 2016. [Acusan a Diputado suplente de Reinaldo Sánchez de amenazar a muerte a periodista](#); Noticias Honduras. May 8, 2016. [Diputado amenaza de muerte a periodista](#).

¹¹⁰⁸ World Organization Against Torture (OMCT)/ Observatorio para la Protección de los Defensores de Derechos Humanos. May 6, 2016. [Honduras: Doble intento de asesinato contra Félix Molina](#); La Prensa May 7, 2016. ['Esta vez no te vas a escapar', dijeron atacantes a periodista Félix Molina](#); La Tribuna. May 3, 2016. [Periodista que sufrió atentado pide al Estado una investigación](#); Reporters Without Borders (RSF). May 6, 2016. [HONDURAS | RSF pide a las autoridades que investiguen el intento de asesinato del periodista Félix Molina](#).

¹¹⁰⁹ Comité por la Libre Expresión (C-Libre). September 12, 2016. [Roban carro a periodista de Casa Presidencial](#).

¹¹¹⁰ Criterio. June 1, 2016. [Periodista abandona el país por amenazas a muerte](#); Tiempo. June 1, 2016. [Periodista abandona Honduras por supuestas amenazas](#); Comité por la Libre Expresión (C-Libre). June 6, 2016. [Otra comunicadora abandona Honduras por presuntas amenazas a muerte](#).

¹¹¹¹ Comité por la Libre Expresión (C-Libre). June 13, 2016. [Asaltan y hieren en la pierna a reportero de televisión](#); Tiempo. June 9, 2016. [Hieren de bala a camarógrafo del canal Mundo Tv](#).

¹¹¹² Comité por la Libre Expresión (C-Libre). June 13, 2016. [Policía de tránsito ataca a periodista](#).

Libertad Digital, while they were covering a demonstration by locals against the installation of a tollbooth in the municipality of San Manuel, Cortés department.¹¹¹³

718. On July 13, sports journalist Rudy Urbina, who works with *Radio América* and the newspaper *La Tribuna*, was attacked by two unknown individuals who shot at them from a vehicle and wounded him in his right arm.¹¹¹⁴

719. On July 27, the newspaper *El Libertador* was robbed of materials and reporting equipment. According to the newspaper, in the early hours of the morning, unknown individuals entered its offices and stole equipment on which information was being stored. The perpetrators of the assault did not take anything else of value that was in the offices, indicating that the purpose of the attack was to collect information on the newspaper and its reporting. The stolen items included three professional cameras, two portable computers, one desktop computer, three cell phones, two external hard drives, four USB storage devices, and two camera lenses. The newspaper reported that over its 13 years of existence, its journalists have been attacked and threatened several times.¹¹¹⁵

720. Journalist and human rights defender Milthon Robles, a correspondent with the website *Criterio.hn*, reported that an attempt was made on his life on August 21 when an unknown individual tried to run him over. The incident took place in San Pedro Sula, Cortés department.¹¹¹⁶ On September 3, a person traveling in the same vehicle that had tried to run him over threatened him with a gun. According to the organization Reporters Without Borders (RSF), the attacks took place after the journalist began investigating the “war taxes” [“*impuestos de guerra*”] collected by local criminal groups and reported that local officials were involved.¹¹¹⁷

721. In September, journalist Leonel Juárez, host of the program ‘Juárez informa’ on channel *TV Centro*, was forced to end his television program and flee the city of Siguatepeque, Comayagua department, allegedly due to pressure from Mayor Juan Carlos Morales. According to the journalist, following his criticism of the mayor, he was threatened and subject to a smear campaign allegedly orchestrated by the mayor.¹¹¹⁸ Also, journalists Anselmo Rubio, host of *Libre Opinión TV*, and Walter Ulloa Bueso, a radio announcer with local radio station *Estéreo Cielo*, have been similarly harassed, apparently in retaliation for disseminating negative information about the mayor.¹¹¹⁹

722. On September 19, in the Miramontes neighborhood of Tegucigalpa, unknown individuals threatened journalist Belinda Rodríguez with a firearm and stole her vehicle.¹¹²⁰ On September 29, Guillermo Paz

¹¹¹³ Comité por la Libre Expresión (C-Libre). June 13, 2016. [Golpiza y brutalidad policial sufren tres periodistas](#); El Libertador. June 14, 2016. [Brutal golpiza reciben tres periodistas del norte de Honduras](#); Desinformémonos. June 14, 2016. [Policía hondureña golpea brutalmente a periodistas de Radio Progreso y Libertad Digital](#).

¹¹¹⁴ La Tribuna. July 13, 2016. [Periodista de La Tribuna Rudy Urbina sufre atentado](#); La Prensa. July 14, 2016. [Atacan a balazos al periodista hondureño Rudy Urbina en Tegucigalpa](#); Comité por la Libre Expresión (C-Libre). July 14, 2016. [Hieren con arma de fuego a periodista deportivo](#).

¹¹¹⁵ El Libertador. July 28, 2016. [Asalto sospechoso a periódico hondureño ‘El Libertador’](#); Comité por la Libre Expresión (C-Libre). August 3, 2016. [Periódico sufre robo de equipo e impunidad en investigación, juzgamiento y sanción de agresores](#).

¹¹¹⁶ Comité por la Libre Expresión (C-Libre). August 22, 2016. [Periodista sufre atentado](#).

¹¹¹⁷ Reporters Without Borders (RSF). September 16, 2016. [Attempts by Honduran authorities to silence outspoken journalists](#).

¹¹¹⁸ Criterio. August 1, 2016. [Periodista cierra programa de TV ante acoso de alcalde de Siguatepeque](#); El Libertador. August 26, 2016. [Periodista huye por amenazas del alcalde de Siguatepeque](#); Comité por la Libre Expresión (C-Libre). August 22, 2016. [Periodista sufre desplazamiento forzoso por amenazas a muerte de alcalde de Siguatepeque](#).

¹¹¹⁹ Reporters Without Borders (RSF). September 16, 2016. [Attempts by Honduran authorities to silence outspoken journalists](#).

¹¹²⁰ Proceso Digital. September 29, 2016. [Le roban vehículo a periodista de televisión en Tegucigalpa](#); El Tiempo. September 29, 2016. [Roban vehículo de magistrada de la Corte Suprema de Justicia](#).

Manueles, a journalist with *Canal 11*, was mugged in the Las Colinas neighborhood of Tegucigalpa. The attackers struck the journalist and stole his vehicle.¹¹²¹

723. On October 19, journalist Ricardo Matute was shot while covering a traffic accident on a highway near San Pedro Sula. Matute and two other members of the news team with news program ‘TN5 Matutino,’ of *Televisión Centro*, were shot at by people who had been traveling in one of the cars involved in the crash. The assailants fled in the journalists’ car, which was later found a short distance from the scene of the accident.¹¹²²

724. The IACHR reiterates its recommendation to the State that its public statements contribute to preventing violence against journalists, including by recognizing the work of journalists and publicly condemning the murderers and all physical violence against journalists. The State should refrain from making statements that could increase the risk faced by journalists and put training programs in place and draft and implement guidelines for public officials—especially police and security forces—on respecting the media, including guidelines that specifically address issues of gender.

725. Additionally, it stresses that the that the State must ensure that effective and specific protective measures are urgently adopted to guarantee the safety of people who are particularly at risk when they exercise their right to freedom of expression, whether the threats come from State agents or private parties. The measures must guarantee that communicators are able to continue to perform their professional activities and guarantee their right to freedom of expression. Similarly, the State must adopt the measures necessary to ensure that those working in the media who have had to flee or exile themselves in response to a risk are able to return home safely. When it is not possible for these people to return, States must adopt measures enabling them to live in the place they chose in dignified conditions and with the necessary security measures and financial support to continue their work and family lives.

C. Social Protest

726. Jairo Ramírez, a student with the *Universidad Nacional de Agricultura*, was kidnapped by a group of unknown individuals on March 3 and later found dead in Catacamas, Olancho department. Although the motives of the crime are unknown, the organization *C-Libre* reported that the kidnapping occurred shortly after the student participated in a protest over the death of environmentalist Berta Cáceres.¹¹²³

727. Miguel Briceño, leader of the “*Indignados*” movement, was detained during a protest near the *Universidad Nacional Autónoma de Honduras* (UNAH) on November 4, 2015, for allegedly attacking a person and damaging that person’s cell phone. On November 5, a court ordered measures in lieu of prison requiring him to appear once a week before it. At a hearing held on December 2, the 12th Criminal Law Court of Tegucigalpa [*Juzgado N° 12 de Letras de lo Penal de Tegucigalpa*] confirmed the charges and ruled to keep the measures in place.¹¹²⁴

728. Also in December, members of the National Association of Auxiliary Nurses of Honduras [*Asociación Nacional de Enfermeras y Enfermeros Auxiliares de Honduras*] (Aneah) reported that Minister of Health [*Ministra de Salud*] Yolany Batres threatened to withdraw their contracts and tried to intimidate them to prevent them from protesting the dismissal of the association's president, Janeth Almendares, after she made allegations of public health irregularities.¹¹²⁵

¹¹²¹ Proceso Digital. September 29, 2016. [Le roban vehículo a periodista de televisión en Tegucigalpa](#); Comité por la Libre Expresión (C-Libre). September 30, 2016. [Golpean y roban vehículo a periodista de Canal 11](#).

¹¹²² La Prensa. October 19, 2016. [Atacan a balazos a periodista hondureño en San Pedro Sula](#); Punto por punto. October 19, 2016. [Periodista herido en Honduras en atentado](#).

¹¹²³ La Tribuna. March 7, 2016. [Misterio rodea la muerte de estudiante de Universidad de Agricultura](#); Comité por la Libre Expresión (C-Libre). March 16, 2016. [Universitario asesinado tras participar en protesta por muerte de Berta Cáceres](#).

¹¹²⁴ Comité por la Libre Expresión (C-Libre). December 7, 2015. [Auto de prisión a líder de Indignados](#); El Heraldo. November 5, 2015. [Medidas sustitutivas contra Miguel Briceño](#); La Prensa. November 5, 2015. [Dictan medidas sustitutivas contra indignado Miguel Briceño](#).

¹¹²⁵ Comité por la Libre Expresión (C-Libre). No date. [Con amenazas impiden manifestación de enfermeras, denuncia ANEAH](#).

729. On January 12, National Water and Sewer Service [*Servicio Nacional de Acueductos y Alcantarillados*] (Sanaa) authorities reported that a disciplinary process had been launched over Alba López's participation in a protest by the Workers Union [*Sindicato de Trabajadores*] (Sitranaaays) demanding payment of salaries. The process could result in her dismissal. Eighteen other employees had been suspended after participating in the protests.¹¹²⁶

730. On January 24, members of the Military Police and the National Police attacked two members of the movement known as "Los Indignados" while they demonstrated outside the National Congress to demand the election of a new Supreme Court of Justice.¹¹²⁷ On January 25, one of the movement's leaders, Miguel Briceño, received a death threat from an unknown individual as he left a demonstration demanding the election of a new Supreme Court. Briceño said this was not the first time he had been attacked or threatened, often by members of the National Police and the Military Police.¹¹²⁸

731. On February 20, during a peaceful march against the execution of the *Agua Zarca* hydroelectric project, more than 100 people were allegedly detained and harassed by security forces.¹¹²⁹

732. On April 5, Office of the Attorney General [*Ministerio Público*] security guards and members of the Military Police attacked indigenous demonstrators protesting in front of the Public Prosecutor's offices.¹¹³⁰

733. On May 9, members of the National Police and Military Police used teargas against members of the Civic Council of Popular and Indigenous Organizations of Honduras [*Consejo Cívico de Organizaciones Populares e Indígenas de Honduras*] (Copinh) who were protesting in front of the Presidential House to demand justice for the murder of Berta Cáceres. Four demonstrators were arrested.¹¹³¹

734. On June 8, a group of demonstrators protesting the installation of a tollbooth in the San Manuel zone, in the department of Cortés, were removed by police officers. Police used tear gas to disperse the protesters, who threw stones at toll booths under construction. Three people were arrested.¹¹³²

735. On October 3, during a demonstration held by the *Libertad y Refundación* (LIBRE) opposition party to protest the new tolls and power outages, and to demand electoral reforms, members of the National Police repressed the demonstrators using tear gas. The protest took place at three tollbooths on the highway between Tegucigalpa and San Pedro Sula and at the La Lima and Puerto Cortés exits in San Pedro Sula. One minor was injured and 14 people were arrested.¹¹³³

¹¹²⁶ Comité por la Libre Expresión (C-Libre). January 14, 2016. [Empleados del SANAA hostigados por protestar](#); Pasos de Animal Grande. January 12, 2016. ["A esta ñángara hay que reventarla": La sentencia de despido contra Alba López](#). Federación de Sindicatos de Trabajadores de la Agroindustria. January 18, 2016. [Denuncia por acoso laboral hacia la compañera Alba López, afiliada al SITRASAAYS y Coordinadora Departamental del FNPR](#).

¹¹²⁷ Comité por la Libre Expresión (C-Libre). January 25, 2016. [Indignados reprimidos en el Congreso Nacional](#).

¹¹²⁸ Comité por la Libre Expresión (C-Libre). January 27, 2016. ["La policía ya le puso precio a tu cabeza": le dicen a líder de Indignados](#).

¹¹²⁹ IACHR. March 4, 2016. [IACHR Condemns the Killing of Berta Cáceres in Honduras](#). The New York Times. March 3, 2016. [Berta Cáceres, líder indígena y ambientalista, asesinada en Honduras](#).

¹¹³⁰ Comité por la Libre Expresión (C-Libre). April 5, 2016. [Fuerzas Armadas reprimen protesta por asesinato de Berta Cáceres](#); Pasos de Animal Grande. April 6, 2016. [Tácticas de terror implementa la policía para desarticular protesta de mujeres leucas en el Ministerio Público](#); Tiempo. April 5, 2016. [VÍDEO: Miembros del Copinh provocan zafarrancho en el MP](#).

¹¹³¹ El Herald. May 9, 2016. [Enfrentamiento entre copines y policías frente a casa presidencial](#); El Diario/EFE. May 9, 2016. [Manifestación en apoyo a Berta Cáceres acaba con enfrentamientos y detenidos](#); Comité por la Libre Expresión (C-Libre). May 9, 2016. [Indígenas hondureños sufrieron violencia militar y policial cuando protestaban](#).

¹¹³² La Prensa. June 8, 2016. [Desalojan con gases lacrimógenos a manifestantes del peaje hacia El Progreso](#); La Tribuna. June 8, 2016. [Desalojan a manifestantes en casetas de peaje en Cortés](#); Tiempo. June 8, 2016. [VÍDEO: Heridos y detenidos en protesta en peaje de San Manuel](#).

¹¹³³ Comité por la Libre Expresión (C-Libre). October 4, 2016. [17 Personas detenidas en protesta social en Honduras](#); La Prensa/AFP. October 3, 2016. [Tomas de peajes dejan 14 detenidos, un vehículo quemado, y la reparación de Patricia Rodas](#); Tiempo. October 3, 2016. [PAC y LIBRE protestan en los peajes de Honduras](#).

736. According to the information received by the IACHR, in 2016, at least 75 students with the *Universidad Nacional Autónoma de Honduras* (UNAH) were charged criminally with sedition, usurpation, and damaging public property for their participation in student protests. During the criminal proceedings, some of those students were subjected to arrest warrants, deprivation of liberty, or alternative restrictive measures. According to the defense attorneys of some of the students, they had been subject to illegal surveillance by the Technical Criminal Investigation Agency [*Agencia Técnica de Investigación Criminal*] (ATIC).¹¹³⁴

737. According to the information available, new academic laws for the University took effect in May, resulting in student demonstrations rejecting them. During the protests, a group of students occupied a number of buildings on university campuses in Tegucigalpa and San Pedro Sula.¹¹³⁵ On July 1, after the students had been occupying the buildings for 26 days, specialized National Police forces entered the University to remove them. Following the operation, 24 UNAH students were arrested, and arrest warrants were issued for another 19. The detainees were taken to the headquarters of the Police Investigations Department in Tegucigalpa. The IACHR received information indicating that the State agents used excessive force during the operations to remove the students and to control the demonstrations, resulting in injuries for a number of students.¹¹³⁶

738. On July 20, the University and the student movement *Movimiento Estudiantil Universitario* (MEU) signed an agreement in which the authorities committed to asking judicial authorities to end the criminal proceedings brought against the students, while the movement committed to releasing the University's spaces and buildings.¹¹³⁷

739. On August 15, the Inter-American Commission on Human Rights and its Office of the Special Rapporteur for Freedom of Expression sent a letter to State under the auspices of the provisions of article 41 of the American Convention on Human Rights to request information on the situation of the UNAH students being criminally prosecuted for participating in student protests and movements.¹¹³⁸

740. In a letter dated September 13, the State told the IACHR that criminal charges had been filed against six UNAH students for crimes of usurpation of public State property. The State noted that none of the students are being deprived of liberty. A settlement hearing was held on July 26 with four of the students. As a result of it, the file was closed on the proceedings and the criminal charges were dropped at the request of the representatives of the University, in exchange for vacating the occupied university buildings. Two other

¹¹³⁴ Letter from social organizations addressed to the IACHR and other international organizations on the criminalization of students. June 9, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Campaña Latinoamericana por el Derecho a la Educación. Letter addressed to the Office of the Special Rapporteur for Freedom of Expression. July 15, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; United Nations. Office of the High Commissioner. July 4, 2016. ["Preocupa la judicialización de la protesta estudiantil de la UNAH"](#); Comité por la Libre Expresión (C-Libre). June 7, 2016. ["Rectora de la UNAH arrecia criminalización contra seis estudiantes por protestar"](#); PEN. June 22, 2016. ["HONDURAS: Miembro de PEN se enfrenta a pena de cárcel tras protestas estudiantiles"](#); Comité por la Libre Expresión (C-Libre). June 23, 2016. ["Más criminalización, intimidación y amenazas contra estudiantes de la UNAH"](#); Comité por la Libre Expresión (C-Libre). June 30, 2016. ["Juzgado prohíbe a seis universitario asistir a manifestaciones"](#); Comité por la Libre Expresión (C-Libre). July 3, 2016. ["Piden militarizar la UNAH: 60 estudiantes criminalizados y una desaparición temporal."](#)

¹¹³⁵ Jóvenes y Educación. Campaña Latinoamericana por el Derecho a la Educación. June 8, 2016. ["Estudiantes de la Universidad Nacional Autónoma de Honduras movilizadas/os contra nuevas normas académicas son objeto de represión y criminalización."](#)

¹¹³⁶ La Prensa. July 1, 2016. ["Capturan a 24 estudiantes que tenían tomada la UNAH, tras desalojo"](#); Campaña Latinoamericana por el Derecho a la Educación. July 2, 2016. ["Policía desaloja a estudiantes de la Universidad Nacional Autónoma de Honduras"](#); Comité por la Libre Expresión (C-Libre). July 3, 2016. ["Piden militarizar la UNAH: 60 estudiantes criminalizados y una desaparición temporal."](#)

¹¹³⁷ El Heraldo. July 21, 2016. ["El periodismo necesita inversión. Para compartir esta nota utiliza los íconos que aparecen en la página"](#); La Prensa. July 20, 2016. ["Estudiantes y autoridades de la UNAH por fin firman acuerdo."](#)

¹¹³⁸ IACHR. Carta Artículo 41. Ref. Situación de presunta criminalización de las protestas estudiantiles en la UNAH. August 15, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

students did not appear for the hearing, but their defense attorneys stated they would do so voluntarily, for which reason the warrant for their arrest was suspended, the State reported.¹¹³⁹

741. The State also indicated that 19 students were charged with crimes of sedition and usurpation of public State property. Arrest warrants were issued for two of them, while statements were taken from the other 17 in a hearing held on July 22. Following the reconciliation with the University authorities, and based on an out-of-court agreement reached by the parties, the criminal action was declared vacated. One of the students being processed did not want to join the reconciliation. Following a hearing on August 8, he was dismissed because his participation in the incidents was not proven. Another defendant did not appear before the court, and the warrant for his arrest therefore remains in force.¹¹⁴⁰

742. The State also reported that it recognizes social protest as a fundamental human right under the rule of law, a right that is regulated by the Constitution, criminal law, and international conventions. Pursuant to these laws, demonstrations must be peaceful, without disturbances or violence, as well as temporary. According to the Special Public Prosecutor for Human Rights [*Fiscalía Especial de Derechos Humanos*], because the UNAH student demonstrators occupied University property ‘and blocked entry to the UNAH,’ criminal charges were brought against them for the crime of usurpation of public spaces, and they were removed from the buildings.¹¹⁴¹

743. It was also reported that two complaints were filed with the Public Prosecutor for Human Rights alleging that UNAH authorities have retaliated against the students who participated in the demonstrations. The complaints were filed against these authorities for abuse of authority to the detriment of students. They remain under investigation. In one of the complaints, a group of students alleged they were suspended for two academic terms for committing a serious infraction, that being the demonstrations. A complaint was also filed accusing security forces of excessive use of force in their response to the protests. The complaint is being investigated by the Public Prosecutor [*Fiscalía*]. The student who filed the complaint, Rommel Dario Morán Espinal, was charged with the crimes of assault and illegal demonstration because during the protests, he threw a rock at a police officer’s face. However, “this would not justify security forces’ excessive use of force,” the Public Prosecutor stated. For this reason, it continues to investigate the complaint to determine responsibility for the perpetrators of the act.¹¹⁴²

744. The Commission indicated that “strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests may naturally cause annoyances or even damages that are necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression. The Commission has expressed its concern about the existence of provisions that make criminal offenses out of the mere participation in a protest, road blockages (at any time and any kind), or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected rights such as those to life, security, or the liberty of individuals.”¹¹⁴³

¹¹³⁹ Carta del Estado de Honduras en respuesta a la solicitud de información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos transmitida el 15 de agosto de 2016. September 13, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹¹⁴⁰ Carta del Estado de Honduras en respuesta a la solicitud de información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos transmitida el 15 de agosto de 2016. September 13, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹¹⁴¹ Carta del Estado de Honduras en respuesta a la solicitud de información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos transmitida el 15 de agosto de 2016. September 13, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹¹⁴² Carta del Estado de Honduras en respuesta a la solicitud de información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos transmitida el 15 de agosto de 2016. September 13, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹¹⁴³ IACHR. [Criminalization of the Work of Human Rights Defenders](#). OEA/Ser.L/V/II. Doc. 49/15. December 31, 2015. Para. 127.

745. Accordingly, the IACHR reiterates that approaches focused on dialogue and negotiation are the most effective ways to handle protests and to prevent any act of violence. The Commission considers it essential in the case of student protests for the State to make available adequate mechanisms to channel the demands toward actors with decision-making power in the area that is the subject of the protest, instead of resorting to the institutional apparatus of bringing criminal proceedings.

D. Protection Mechanism

746. In its 2015 Report, the IACHR highlighted the efforts made by the State to protect human rights defenders, operators of justice and journalists, among others, in the context of the situation of widespread violence that has affected the country over the past years and that has had a particular bearing on the performance of the duties of these groups. Particularly, the Commission took note of steps aimed at modernizing the protection program, enactment of a specific law regulating the procedures and powers of the protection mechanism,¹¹⁴⁴ initiatives to create regulations to the protection law, several human rights trainings for public officials, among other actions that show the willingness of the State to protect persons devoted to the defense or promotion of human rights and the exercise of freedom of expression and journalism.¹¹⁴⁵

747. One year after issuing the Country Report and after the murder of respected rights defenders, including Berta Cáceres¹¹⁴⁶ and Kevin Ferrera,¹¹⁴⁷ the Inter-American Commission on Human Rights finds that there is still a high degree of distrust in the legitimacy, effectiveness and operability of the protection mechanism,¹¹⁴⁸ reflecting the fact that serious acts of violence have continued to be perpetrated against beneficiaries of the protection mechanism over the course of 2016 and have been cause for concern internationally. Even though both the United Nations System and the Inter-American Commission have recognized progress,¹¹⁴⁹ which ranges from putting a specific legal framework into place to implementing certain physical protection measures, the steps that have been taken are still inadequate for human rights defenders and journalists, among others, to be able to perform their jobs in safe conditions in Honduras, regarded as “one of the most dangerous countries for human rights defenders.”¹¹⁵⁰

748. The State announced on June 6, 2016, that the Regulation of the “Law Protecting Human Rights Defenders, Journalists, Social Communicators and Operators of Justice” [*Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia*] was approved, in order to effectively implement the protection law in Honduras. According to the information received, in the process of drafting the regulations, several recommendations made by international organizations, including the IACHR, were taken into account and members of civil society took part.¹¹⁵¹ With regard to the budgetary side of the mechanism, the State has highlighted the decision of the National Congress [*Congreso Nacional*] to allocate a budget of “10 million lempiras (US\$ 425 thousand) to ensure sustainability of

¹¹⁴⁴ 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](#). May 15, 2015.

¹¹⁴⁵ IACHR. [Situation of Human Rights in Honduras](#). December 31, 2015.

¹¹⁴⁶ IACHR. March 4, 2016. [IACHR Condemns the Killing of Berta Cáceres in Honduras](#).

¹¹⁴⁷ IACHR/United Nations. August 19, 2016. [Honduras, one of the most dangerous countries for human rights defenders – Experts warn](#).

¹¹⁴⁸ Periódico Paso del Animal Grande. July 27, 2016. [“32 periodistas y 6 defensores de derechos humanos se han acogido al mecanismo de protección según informe”](#); La Prensa. April 2, 2016. September 1, 2016. [“Crímenes sin castigo en Honduras”](#); Amnesty International. [Honduras/Guatemala: Attacks on the rise in world’s deadliest countries for environmental activists](#).

¹¹⁴⁹ IACHR/ United Nations. August 19, 2016. [Honduras, one of the most dangerous countries for human rights defenders – Experts warn](#).

¹¹⁵⁰ IACHR/ United Nations. August 19, 2016. [Honduras, one of the most dangerous countries for human rights defenders – Experts warn](#).

¹¹⁵¹ Honduras. “Informe sobre el estado de cumplimiento de las recomendaciones contenidas en el informe de la Situación de Derechos Humanos en Honduras”. August 17, 2016. Para. 12.

implementation of the law” and the authorization of “10 million lempiras (US\$ 425 thousand) for a Special Protection Fund, which will help to make provide for effective protection.”¹¹⁵²

749. These initiatives represent another step toward operationalizing the mechanism and building ties of trust with the members of civil society. On this subject, it is the understanding of the IACHR that the particular protocols for implementation of some of the procedures of the mechanism have yet to be drafted. Consequently, it calls on the State to make sure that civil society and human rights defender organizations have a chance to be heard at each stage of the pending process, in order for all concerns to be taken into consideration and thus lend legitimacy to the decisions it makes. Also, because of the importance that the mechanism holds for the protection of at-risk persons, which includes beneficiaries of IACHR-granted precautionary measures and Inter-American Court-granted provisional measures, the Commission urges authorities to earmark the necessary funding, as well as provide the political support for the protection mechanism to function properly.

750. With respect to current functionality of the mechanism, the State claims that the processes, procedures, forms and protocols for the auxiliary units to function, as well as the protection mechanism manuals, are still in the stage of joint development with the authorities of the General Office of the Protection System [*Dirección General del Sistema de Protección*], members of the Technical Committee [*Comité Técnico*] and representatives of the National Protection Council [*Consejo Nacional de Protección*]. As for the statistical data breakdown, from July 2015 to June 2016, a total of 38 protection requests were processed and another 25 requests are pending, of which 13 are human rights defenders, 8 are journalists, one operator of justice, and 3 human rights defender groups.¹¹⁵³ In this regard, several civil society organizations have asserted that because of the distrust in the mechanism, no protection requests are being filed by organizations, that defend land, indigenous peoples, the rights of women, among other things.¹¹⁵⁴ According to information made available to the Commission, it is necessary to bring protection measures in line with the specific risk of the defender requesting them. Additionally, there are reports that the Technical Committee of the mechanism has coordination problems, because the officials taking part in the meetings are low-ranking and, consequently, lack the legal authority to make decisions, in addition to high turnover of those taking part. This situation makes it difficult to monitor the cases before us on an ongoing basis.¹¹⁵⁵

751. With relation to implementation of physical protection measures, through the precautionary measure mechanism, the Commission has received information about the willingness of the State to implement several protection measures, which include safe rooms, police patrols, police patrol accompaniment, home visits, telephone monitoring, among other physical measures. Despite these actions, the IACHR has been repeatedly receiving reports of serious failures in the implementation of physical protection measures, including: i) poor quality safe rooms, often subsidized by the beneficiaries themselves;¹¹⁵⁶ ii) inconsistent patrolling;¹¹⁵⁷ iii) failure to train the persons in charge of providing

¹¹⁵² Honduras. “Informe sobre el estado de cumplimiento de las recomendaciones contenidas en el informe de la Situación de Derechos Humanos en Honduras”. August 17, 2016. Para. 12 and 13.

¹¹⁵³ Honduras. “Informe sobre el estado de cumplimiento de las recomendaciones contenidas en el informe de la Situación de Derechos Humanos en Honduras”. August 17, 2016. Para. 15.

¹¹⁵⁴ Periódico Paso del Animal Grande. July 27, 2016. [“32 periodistas y 6 defensores de derechos humanos se han acogido al mecanismo de protección según informe”](#).

¹¹⁵⁵ CEJIL. Observaciones al informe sobre la situación de derechos humanos en Honduras. October 14, 2016.

¹¹⁵⁶ Report submitted by Cejil on April 21, 2016, in the context of precautionary measures (MC 18-10) in favor of Indyra Mendoza Aguilar and others; report submitted by Cejil on 21 January 2016, in the context of precautionary measures (MC 399-09) in favor of the employees of Radio el Progreso.

¹¹⁵⁷ Report submitted by COFADEH on June 20, 2016, in the context of precautionary measures (MC 180-10) in favor of Juan Ramón Flores Bueno et al.; report submitted by CEJIL on January 21, 2016, in the context of precautionary measures (MC 399-09) in favor of the employees of Radio el Progreso; report submitted by MADJ on July 6, 2016 in the context of precautionary measures (MC 416-13) in favor of 18 members of MADJ; report submitted by CODEH on June 7, 2016, in the context of precautionary measures (MC 95-10) in favor of Jorge Fernando Jiménez Reyes and family.

protection;¹¹⁵⁸ iv) failure to implement police liaisons;¹¹⁵⁹ v) in some cases, the beneficiaries' representatives have not been informed about the option of conducting a risk assessment and about how said procedures are carried out.¹¹⁶⁰ Several civil society organizations have expressed frustration because, despite having held a number of consensus building meetings, both in the domestic arena and at IACHR headquarters, and despite the host of commitments made by the competent authorities, the State has been breaking most of the agreements that had been reached, leaving the beneficiaries of precautionary measures, who are also covered under the national protection mechanism, totally defenseless.¹¹⁶¹ The resulting lack of trust has been reflected in the decision of some beneficiaries of precautionary measures to not attend the working meetings in the national framework, because the State authorities lack the political will to implement the protection measures.¹¹⁶²

752. In the Commission's view, it is essential that in applying any legal framework, protection programs must have "sufficient human resources, [who are] trained and instructed to receive protection requests, assess risk level, adopt and implement suitable and effective protection measures, as well as monitor measures already in place."¹¹⁶³ In order for measures to be adequate, they must be suitable to protect the person from the situation of risk he or she faces and, in order to be effective, they must produce the desired results.¹¹⁶⁴

753. The Commission believes that it is of particular importance for the State to redouble its efforts to ensure effective protection of persons who are beneficiaries through the protection mechanism and to continue to assess the effectiveness thereof in order to be able to make the necessary adjustments to reduce situations of risk faced by beneficiaries in the current program.

754. As for the issue of investigation, in the report submitted by the State, it is noted that the Office of the Special Prosecutor for Human Rights of the ministry of Public Prosecution [*Fiscalía Especial de Derechos Humanos del Ministerio Público*] (FEDH) has appointed "an agent of the courts (assistant prosecutor)" to investigate any complaints that were brought by persons who were engaged in the defense of human rights.¹¹⁶⁵ Despite the commitments made by the State in the area of investigations, the Inter-American Commission notes with the utmost concern that serious challenges in this field continue to exist and these challenges have been underscored by different beneficiaries of precautionary measures throughout 2016.¹¹⁶⁶ Consequently, the Commission wishes to reiterate the dire need for the State to establish, as policy in the

¹¹⁵⁸ Report submitted by MADJ on July 6, 2016, in the context of precautionary measures (MC 416-13) in favor of 18 members of MADJ; report submitted by CEJIL on January 21, 2016, in the context of precautionary measures (MC 399-09) in favor of the employees of Radio el Progreso; report submitted by COFADEH on June 20, 2016, in the context of precautionary measures (MC 180-10) in favor of Juan Ramón Flores Bueno et al.

¹¹⁵⁹ Report submitted by CODEH on June 7, 2016, in the context of precautionary measures (MC 95-10) in favor of Jorge Fernando Jiménez Reyes and family.

¹¹⁶⁰ Report submitted by COFADEH on June 20, 2016, in the context of precautionary measures (MC 180-10) in favor of Juan Ramón Flores Bueno et al.

¹¹⁶¹ Report submitted by CODEH on June 7, 2016, in the context of precautionary measures (MC 95-10) in favor of Jorge Fernando Jiménez Reyes and family; report submitted by CEJIL on April 21, 2016, in the context of precautionary measures (MC 18-10) in favor of Indyra Mendoza Aguilar et al.

¹¹⁶² Report submitted by CEJIL on April 21, 2016, in the context of precautionary measures (MC 18-10) in favor of Indyra Mendoza Aguilar et al.

¹¹⁶³ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc. 66, December 31, 2011. Para. 505.

¹¹⁶⁴I/A Court H.R., [Matter of Mery Naranjo et al. regarding Colombia](#). Provisional Measures. Order of the Inter-American Court of Human Rights of November 25, 2010.

¹¹⁶⁵¹¹⁶⁵I/A Court H.R., [Matter of Mery Naranjo et al. regarding Colombia](#). Provisional Measures. Order of the Inter-American Court of Human Rights of November 25, 2010. Para. 16.

¹¹⁶⁶ Report submitted by MADJ on July 6, 2016, in the context of precautionary measures (MC 416-13) in favor of 18 members of MADJ; report submitted by CEJIL January 21, 2016, in the context of precautionary measures (MC 399-09) in favor of the employees of Radio el Progreso; report submitted by COFADEH, on June 20, 2016, in the context of precautionary measures (MC 180-10) in favor of Juan Ramón Flores Bueno et al.

short, medium and long term, investigations as a prevention measure. The IACHR recalls that failure to investigate incidents, which prompt a situation of risk, brings about a context of impunity that fuels, over the course of time, consistent repetition of acts of violence affecting the performance of the job of human rights defenders and journalists.

Based on all of the foregoing considerations, the IACHR reiterates its recommendations and encourages the State of Honduras to continue its efforts to reduce violence. In particular, the IACHR urges the State to gradually withdraw the armed forces from law enforcement duties and strengthen the police in tasks of citizen security. In this context, it hopes that training of law enforcement officials on the topics of respect for and protection of human rights is expanded and that the mechanisms of evaluation of these programs are institutionalized. Additionally, the Commission calls on the State to make every effort to achieve the full and effective functioning of the protection mechanism, by providing the necessary resources for this purpose and with the full participation of civil society organizations. Likewise, the IACHR urges the State to allocate more human and technical resources to investigate with due diligence the murders of human rights defenders and apply criminal punishments, as appropriate, in order to prevent impunity and repetition thereof.

E. Stigmatizing Statements

755. On December 1, the general coordinator of *Consejo Cívico de Organizaciones Populares e Indígenas de Honduras* (Copinh), Berta Cáceres,¹¹⁶⁷ alleged that Cardinal Óscar Andrés Rodríguez had urged the San Francisco de Lempira business community not to organize or join Copinh and ordered them not to listen to or watch *Radio Globo* or *Canal 36*, media outlets that had been critical of the government.¹¹⁶⁸

756. The president of the Constitutional Chamber of the Supreme Court of Justice, Víctor Manuel Lozano, called *Radio Globo* and *TV Globo* a “media toilet” and accused them of carrying out an “insidious campaign” to “incite hate” against him. He made the statements during a radio interview on January 16 after the aforementioned media outlets revealed transcripts of calls that Lozano had made that were recorded by the State.¹¹⁶⁹

757. On March 6, the office of the mayor of Roatán published a statement on its official webpage on certain information revealed regarding administrative expenditures. The statement attacks journalist José Ramón Romero, president of *Red de Alertas y Protección a Periodistas y Comunicadores Sociales de Roatán* (Rapcos-Roatán). After the reporter published allegations that the head of the mayoral council was negligent regarding the execution of certain projects, the office of the Mayor published on its website, in reference to Romero, that “some individuals with certain media outlets who call themselves journalists report to the public, but they don’t inform themselves well enough before doing so and therefore lack objectivity.”¹¹⁷⁰

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

¹¹⁶⁷ IACHR. March 4, 2016. [IACHR Condemns the Killing of Berta Cáceres in Honduras](#).

¹¹⁶⁸ Comité por la Libre Expresión (C-Libre). December 4, 2015. [Cardenal hondureño prohíbe a indígenas organizarse y escuchar la Voz Lenca, Radio Globo y Canal 36](#); Pasos de Animal Grande. December 2, 2015. [Cardenal prohíbe a feligreses organizarse en COPINH y escuchar las radios indígenas](#); Telesur. December 3, 2015. [Honduras: clérigo instó a fieles a no organizarse en el Copinh](#).

¹¹⁶⁹ Criterio. January 17, 2016. [Magistrado Víctor Lozano califica de ‘letrina informativa’ a Radio y Globo TV](#); El Heraldo. January 16, 2016. [Magistrado Víctor Lozano saldría del país por amenazas a muerte](#); Comité por la Libre Expresión (C-Libre). January 18, 2016. [Magistrado de Sala Constitucional usa discurso público violento contra Radio y Tv Globo](#).

¹¹⁷⁰ Comité por la Libre Expresión (C-Libre). March 9, 2016. [Periodista sufre daño moral](#); La nueva Roatán. March 6, 2016. [Resumen del Informe de Rendición de Cuentas de la Municipalidad de Roatán del año 2015](#).

harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”¹¹⁷¹

F. Subsequent Liabilities

759. Over the course of 2016, the IACHR and its Office of the Special Rapporteur continued to observe with concern the use of legal actions linked to the exercise of freedom of expression, particularly private criminal actions for defamation of character and slander in Honduras. Based on the information received, these private criminal charges are used to criminalize and punish statements criticizing public officials and regarding matters of public interest, which disproportionately undermines the work of journalists and human rights defenders.

760. A criminal suit was filed against journalist Selvin Euceda by the president of the National Farmers' Association of Honduras [*Asociación Nacional de Acuicultores de Honduras*], Javier Amador, after he reported in September 2015 on his program 'Sin Censura,' on Canal 45, that the Police Directorate of Investigations [*Dirección Policial de Investigaciones*] (DPI) had in its possession a suit against Mr. Amador for embezzlement. Amador wants a public apology and compensation of HNL\$ 50 thousand (approximately US\$2 thousand 200) and is demanding that the journalist reveal the documents and the sources on which he based his reporting.¹¹⁷² On April 5, a mediation hearing was held, but the parties did not reach an agreement.¹¹⁷³

761. On March 14, the Fourth Chamber of the Sentencing Tribunal [*Cuarta Sala del Tribunal de Sentencia*] convicted journalist David Romero Ellner, director of *Radio Globo and Globo TV*, of defamation, sentencing him to 10 years in prison. The litigation was initiated by former Honduran prosecutor Sonja Inez in August 2014.¹¹⁷⁴ On November 13, 2015, the Tribunal found Romero Ellner guilty of six of the 15 charges brought against him. Gálvez pressed charges against Romero after the journalist stated that she and her husband, an assistant attorney general with the Office of the Attorney General [*Ministerio Público*], were involved in cases of corruption and influence. According to Gálvez, Romero Ellner defamed her because 10 years ago, she was the public prosecutor in a case in which the journalist was convicted and sent to prison for raping his daughter.¹¹⁷⁵ On April 15, the journalist's defense attorney filed a writ of cassation against the ruling.¹¹⁷⁶

762. On April 12, Venezuelan Robert Carmona Borjas, Vice President of the Arcadia Foundation, headquartered in the United States, filed a defamation suit against journalist David Romero Ellner after he accused him of being a “criminal” and committing crimes against the Honduran State. On May 5, a mediation hearing was held, but the parties did not reach an agreement.¹¹⁷⁷

763. On June 26, journalist Ariel Armando D'Vicente, director and host of news program 'Prensa Libre,' broadcast in the city of Choluteca by *Libertado TV*, was convicted of defamation and sentenced by a Sentencing Tribunal [*Tribunal de Sentencia*] to three years in prison. The sentence also bans him from practicing journalism during that period. The charges were brought by the former chief of police of the

¹¹⁷¹ 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.

¹¹⁷² Comité por la Libre Expresión (C-Libre). January 19, 2016. [Periodista querellado por presidente de Asociación Nacional de Acuicultores de Honduras](#); Pasos de Animal Grande. February 24, 2016. [Delitos contra el honor creados para enmudecer a periodistas que denuncian ilegalidades y corrupción](#).

¹¹⁷³ Comité por la Libre Expresión (C-Libre). April 7, 2016. [Ante jueza exigen a periodista revelar sus fuentes informativas](#).

¹¹⁷⁴ Committee to Protect Journalists (CPJ). March 17, 2016. [Honduran journalist sentenced to 10 years in prison for defamation](#); La Prensa. March 15, 2016. [Condenan a 10 años de prisión al periodista David Romero](#).

¹¹⁷⁵ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 823.

¹¹⁷⁶ La Prensa. April 15, 2016. [Periodista David Romero interpone recurso de casación: Tiempo Digital. 15 de abril de 2016. Defensa presenta recurso de casación contra sentencia a periodista David Romero](#).

¹¹⁷⁷ Comité por la Libre Expresión (C-Libre). April 19, 2016. [Extranjero querrela a periodista que reveló escándalo de corrupción del Seguro Social](#); El Heraldo. May 13, 2016. [Tras audiencia no hay conciliación en caso de Robert Carmona contra David Romero](#); Terra. May 13, 2016. [Sin acuerdo acto conciliación entre venezolano Carmona y periodista hondureño](#).

department of Choluteca, Oquell Mejía Tinoco, after the journalist linked him to illegal livestock trafficking between Central America and Mexico. The Tribunal also ordered the journalist to pay Mejía's legal costs. In 2014, the reporter, who regularly reports on government corruption in Choluteca, published stories indicating that Mejía and the police officers under his command received bribes from criminal groups trafficking livestock. The police chief denied the accusations and pressed charges against the reporter, who announced he would appeal the conviction.¹¹⁷⁸

764. On July 26, *Partido Nacional* Deputy Oswaldo Ramos Soto filed a criminal complaint against journalist Armando Villanueva after statements he made on a discussion program he hosts on *Canal 10* alleging that there were management irregularities when the deputy was the rector of the *Universidad Nacional Autónoma de Honduras* (UNAH).¹¹⁷⁹ On August 12, the Supreme Court of Justice [*Corte Suprema de Justicia*] admitted the criminal complaint, and on August 24, the deputy and the journalist met for a mediation hearing. They were not able to reach an agreement, so the matter was ordered to go to trial.¹¹⁸⁰

765. The Commission appreciates the decision made by the Sentence Execution Court of Tegucigalpa [*Juzgado de Ejecución de Tegucigalpa*] on December 11, 2015, suspending the ban from practicing the profession imposed on journalist from Globo TV and member of PEN Honduras Julio Ernesto Alvarado, in compliance with the precautionary measure issued by the Inter-American Commission on Human Rights (IACHR) in November 2014. On December 13, Alvarado went back to hosting his program, '*Mi Nación*' on *Globo TV*.¹¹⁸¹ In December, 2013, the journalist had been convicted by the Supreme Court of Justice [*Corte Suprema de Justicia*] of the crime of defamation and sentenced to 16 months in prison, as well as been banned from doing journalism. On November 5, 2014, the IACHR issued precautionary measures and asked the State to suspend execution of the sentence and refrain from taking any action to ban the journalist from exercising his profession until the IACHR could rule on the application submitted by him. The Commission extended the precautionary measures on October 15, 2015.¹¹⁸²

766. During the IACHR's *in loco* visit, the State provided information on the bill drafted by the Department Of Justice and Human Rights of Honduras [*Secretaría de Justicia y Derechos Humanos de Honduras*] that seeks to amend the Penal Code [*Código Penal*] to decriminalize defamation and slander. As of the drafting of this report, the IACHR has no information on whether the legislative initiative was passed. The Inter-American Commission recommends that the government move forward with that reform process, which could contribute to ensuring that these types of actions are processed through civil courts. This would guarantee that criminal law is not used as a means of intimidation that affects freedom of expression, especially when used by public officials to silence critics.

G. Direct and Indirect Censorship

767. Journalist Edgar Andino, host of a program on *Televida, Canal 63*, was taken off the air after he criticized the Church during a broadcast and stated that he should be the one teaching the word of God. The

¹¹⁷⁸ Reporters Without Borders (RSF). September 16, 2016. [Attempts by Honduran authorities to silence outspoken journalists](#); Committee to Protect Journalists (CPJ). August 25, 2016. [Honduran reporter convicted of criminal defamation](#); Confidencial. August 23, 2016. [Otro Periodista Hondureño Es Condenado Por Acusaciones Contra Jefe Policial](#); Comité por la Libre Expresión (C-Libre). August 23, 2016. [Condenan a prisión e inhabilitan a otro periodista hondureño](#).

¹¹⁷⁹ El Heraldo. July 27, 2016. [Diputados Oswaldo Ramos Soto querrela al periodista Armando Villanueva](#); Tiempo. July 26, 2016. [Oswaldo Ramos Soto querrela al periodista Armando Villanueva](#); Comité por la Libre Expresión (C-Libre). August 1, 2016. [Periodista sufre acoso judicial por informar sobre gestión de exrector de la UNAH](#).

¹¹⁸⁰ Tiempo. August 12, 2016. [CSJ admite querrela de Oswaldo Ramos Soto contra periodista](#); HCH. August 12, 2016. [Tribunales admiten querrela de Oswaldo Ramos Soto en contra del periodista Armando Villanueva](#); La Prensa. August 29, 2016. [Aun sin fecha juicio por querrela contra periodista](#); HCH. August 24, 2016. [Periodista Armando Villanueva no logra 'ponerse de cachetitos' de Oswaldo Ramos Soto](#).

¹¹⁸¹ PEN Internacional. December 17, 2015. [Honduras: Después de 13 meses, el estado hondureño finalmente cumple con la orden de la CIDH de suspender la inhabilitación del ejercicio periodístico de Julio Ernesto Alvarado](#); Pasos de Animal Grande. December 12, 2015. [Juzgado de Ejecución por fin cumple medida cautelar de la CIDH a favor de periodista Julio Ernesto Alvarado](#).

¹¹⁸² IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 821 and 822.

manager of *Televida* told the organization *C-Libre* that the communicator offended the church with his statements, and when management asked him to retract them, he left the air.¹¹⁸³

768. The National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel) reported in a statement dated May 20 that 21 audiovisual communication service providers were operating without a license because “they did not renew their permits to operate legally,” leading to the ‘launching of the corresponding process to penalize them for the infraction.’ Conatel ordered the broadcasts suspended and said that the legal counsel of the media outlet in violation must raise a legal defense and make use of the remedies provided for by law within a period of 10 days. Once this deadline had expired, they must reapply for broadcasting licenses. Although the generic measure of suspending the broadcasts would affect a number of television channels with a variety of different content, one of the channels affected by the measure, *Globo TV*, has been critical of the current Honduran government and reported on alleged acts of corruption in the Honduran Social Security Institute [*Instituto de Seguridad Social de Honduras*] (IASS).¹¹⁸⁴

769. Under the authorities established in article 41 of the American Convention on Human Rights, on June 1, the Office of the Special Rapporteur sent the Illustrious State a letter requesting information on the administrative measure handed down by Conatel. The Office of the Special Rapporteur also asked the regulatory body to guarantee due process and, where necessary, apply proportional penalties that affect the right to freedom of expression of those who express themselves through the media as little as possible.¹¹⁸⁵

770. In its response, dated July 1, the State said that the measure applied to the National Audiovisual Service [*Servicio Nacional Audiovisual*], whose signals are broadcast through a channel that is included in the cable television programming bundle of channels. It noted that the Telecommunications Sector Framework Law [*Ley Marco del Sector de las Telecomunicaciones*] establishes that the license authorizing the National Audiovisual Service to provide service stipulates the conditions for doing so, including a provision indicating that the license can be canceled in the event of expiration or revocation. The law also establishes the rights and obligations of the operator to request renewal of the license a minimum of two months before its expiration. Otherwise, the rights to provide the service will expire.¹¹⁸⁶

771. In this framework, the regulatory body conducted audits of the validity of the permits granted starting in 2009 and found that 21 operators of the Audiovisual Service, including *Globo TV*, were operating with expired licenses and had not submitted the necessary request for renewal. This constituted an administrative violation as established in the law. Conatel issued resolution OD098/2016, which gave operators 10 days to raise a legal defense and explain why they were operating illegally. It also ordered cable television service operators to drop the channels that were in violation from their bundles and ordered the owners of the 21 channels to cease providing the service.

772. The State reported that as of July 1, 10 of the 21 channels had exercised their right to defense, including Alejandro Villatoro Aguilar, the owner of *Globo TV*. At the same time, *Globo TV* and five other channels had submitted requests for new licenses. The State added that the requests were being processed administratively. It also stated that Conatel’s actions were within the bounds of the law and that at no time were the rights or guarantees recognized in the Constitution violated.

773. The State reported that no penalty involving suspension of broadcasts was handed down. Rather, the rights granted to operate the service expired along with the licenses. By continuing to provide the service

¹¹⁸³ Comité por la Libre Expresión (C-Libre). April 15, 2016. [Periodista censurado en canal de TV por miembros de iglesia Cristiana.](#)

¹¹⁸⁴ Comisión Nacional de Telecomunicaciones. May 20, 2016. [COMUNICADO](#); El Heraldo. May 21, 2016. [Gobierno cancelará 21 canales por permisos vencidos](#); Telesur. May 22, 2016. [Gobierno de Honduras podría sacar del aire a 21 canales.](#)

¹¹⁸⁵ Office of the Special Rapporteur for Freedom of Expression. Comunicación al Estado conforme al Artículo 41 de la Convención Americana. June 1, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹¹⁸⁶ Carta del Estado de Honduras en respuesta a la solicitud de información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos transmitida el 1 de junio de 2016. July 1, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

without authorization from the regulatory body, the owners of the channels were violating the Telecommunications Sector Framework Law. The State clarified with regard to the process to issue penalties for infraction that the guarantees established in the Constitution of the Republic were respected, and at no time was the right to defense or due process violated.

774. One month after the closure of television channel *Globo TV*, it had to fire 16 of its employees because it was not able to pay their salaries.¹¹⁸⁷ On July 18, the director of *Globo TV*, David Romero Ellner, said during a press conference that the channel had requested a two-month provisional license to start broadcasting again, but that Conatel had so far not responded to this request.¹¹⁸⁸

775. On August 22, journalist Héctor Amador reported that Conatel had notified television channel *Planeta TV* that it had to stop broadcasting because it was doing so illegally. According to the journalist's reporting, the channel was shut down hours after it announced it would begin broadcasting the program '*Interpretando la Noticia*,' hosted by Amador and journalist David Romero Ellner, the editorial stance of which was to be critical of the government.¹¹⁸⁹ On July 25, Conatel issued a press release containing a list of public telecommunications service operators and distributors who had not complied with 'the delivery of the regular regulatory reports (monthly, quarterly, and/or six month) required pursuant to the regulatory framework in force for the second quarter of 2016.' The list of media outlets included *Planeta TV*.¹¹⁹⁰

776. In this regard, the IACHR recalls that rules regulating radio broadcast must be designed in such a way as to grant sufficient guarantees against possible arbitrary acts of the State. In order for this goal to be met, the following requirements, *inter alia*, must be met: (1) the rules establishing rights and obligations must be clear and precise; (2) the rules must provide for transparent procedures and due process—which enable, among other things, judicial review of decisions made in the administrative realm—; (3) the permit must be granted for use of the frequency for a sufficient length of time to be able to carry out the communications project or to recover the investment and make it profitable; (4) there must be assurances that while the frequency is being used, further requirements will not be demanded than what is established in the law; and (5) decisions shall not be made that impair the exercise of freedom of expression based on the editorial or news line. These and other protections, which will be discussed hereunder, are essential for the existence of truly free and vigorous radio broadcast.

H. Access to Public Information

777. On January 4, agents with the National Police [*Policía Nacional*] prevented journalists Fernando Maldonado, Lidieth Díaz, and Oswaldo Estrada, with *Radio and TV Globo*, from covering an event of President Juan Orlando Hernández at the Police Directorate of Investigations [*Dirección Policial de Investigaciones*] (DPI) offices.¹¹⁹¹ Fernando Maldonado alleged he was repeatedly harassed by soldiers when he tried to enter the State offices.¹¹⁹²

778. On January 25, a number of journalists were prevented from entering a parliamentary session to cover the swearing-in of a new legislature and the selection of new magistrates for the Supreme Court of Justice [*Corte Suprema de Justicia*] because there was allegedly only space for a limited number of reporters.

¹¹⁸⁷ Comité por la Libre Expresión (C-Libre). June 22, 2016. [Más de 20 periodistas afectados por cierre de Globo TV: Criterio. 17 de junio de 2016. Despiden a empleados de Globo TV](#); El Libertador. June 17, 2016. [Urgente: despiden al personal del Canal Globo Tv de Honduras](#).

¹¹⁸⁸ Comité por la Libre Expresión (C-Libre). July 21, 2016. [Gobierno muestra intransigencia al cumplirse dos meses del cierre de Globo TV](#).

¹¹⁸⁹ Comité por la Libre Expresión (C-Libre). August 22, 2016. [Denuncian al gobierno por cerrar tercer medio de comunicación hondureño](#); Conexhion. September 12, 2016. [Denuncian al gobierno por cerrar tercer medio de comunicación hondureño](#); Confidencial HN. August 23, 2016. [Régimen Hondureño Ordena Clausura Del Canal Planeta Tv](#).

¹¹⁹⁰ Comisión Nacional de Telecomunicaciones (Conatel). [AVISQ](#). July 25, 2016.

¹¹⁹¹ Comité por la Libre Expresión (C-Libre). January 4, 2016. [Policía Nacional obstruye labor informativa de periodistas](#); Pasos de Animal Grande. January 4, 2016. [Gobierno impide por enésima vez acceso de periodistas de radio y GloboTV a evento de JOH](#).

¹¹⁹² Comité por la Libre Expresión (C-Libre). December 17, 2015. [Militares requisan a periodista para permitirle entrar a sus fuentes](#).

The media outlets that were denied access included *Hoy Mismo*, *TN5*, *Cadena Hondureña de Noticias*, *Teleceiba*, *Canal 11* and *Mi Nación*, and *Radio Progreso*.¹¹⁹³

779. Civic Counsel of Popular and Indigenous Organizations of Honduras [*Consejo Cívico de Organizaciones Populares e Indígenas de Honduras*] (Copinh) reported that the head of the Energy, Natural Resources, and Environment Department of Honduras [*Secretaría de Energía, Recursos Naturales y Ambiente de Honduras*] (MiAmbiente) denied it access to some 50 case files on concessions for hydroelectric, wind, and mining projects.¹¹⁹⁴

780. The president of the Association of Municipalities of Honduras [*Asociación de Municipios de Honduras*], Nery Cerrato, announced on March 21 that he would file for a writ of *amparo* before the Constitutional Chamber of the Supreme Court of Justice [*Sala de lo Constitucional de la Corte Suprema de Justicia*] to ban publication of the audit reports of the Superior Accounting Tribunal [*Tribunal Superior de Cuentas*].¹¹⁹⁵

781. On July 4, the Institute on Access to Public Information [*Instituto de Acceso a la Información Pública*] (IAIP) announced that it had resolved to recommend that the Executive Branch temporarily suspended nine mayors, the minister of education, and the rector of the *Universidad Nacional de Agricultura* (UNA), Marlon Escoto, for failure to comply with the Transparency and Access to Public Information Act [*Ley de Transparencia y Acceso a la Información Pública*].¹¹⁹⁶

782. In its 2015 country report, the Commission expressed concern at the approval and entry into force on March 7, 2014, of the Classification of Public Documents Related to Security and National Defense Act [*Clasificación de Documentos Públicos Relacionados con la Seguridad y Defensa Nacional*].¹¹⁹⁷ The law places limits and restrictions on the right to information in this area that are not in line with the principles of the access to public information law itself or with international standards on the topic.

783. Civil society organizations filed for a constitutional remedy before the Supreme Court, asking it to strike down this law. Spokespeople with The Support Mission Against Corruption and Impunity in Honduras [*Misión de Apoyo contra la Corrupción y la Impunidad en Honduras*] (Maccih) have said that the Secrecy Act, as it is known, needs to be amended by Congress.¹¹⁹⁸ During the international forum entitled “the status of freedom of expression and Honduras” [*El estado de la libertad de expresión en Honduras*], which was held in August and included the participation of the Special Rapporteur, experts on the subject expressed concern regarding this law and its application.¹¹⁹⁹

784. In this regard, the IACHR reiterates its appeal to the State to review the Law for the Classification of Public Documents Relating to Security and National Defense and the regulations thereof approved subsequently, in order to ensure that it is compatible with the principles fleshed out in international human

¹¹⁹³ Comité por la Libre Expresión (C-Libre). January 25, 2016. [Discriminan e impiden acceso de Radio Progreso a cobertura informativa en Congreso Nacional](#); Comité por la Libre Expresión (C-Libre). January 25, 2016. [Congreso Nacional bloquea acceso a periodistas durante elección de la CSJ](#).

¹¹⁹⁴ Comité por la Libre Expresión (C-Libre). February 3, 2016. [Indígenas Lencas denuncian bloqueo informativo](#).

¹¹⁹⁵ Comité por la Libre Expresión (C-Libre). March 31, 2016. [Alcaldes anuncian recurso legal para impedir publicación de informes sobre auditorías](#); El Heraldo. March 19, 2016. [Amhon procederá legalmente contra el TSC](#); La Tribuna. March 21, 2016. [Presidente de la Amohn y magistrada del TSC se palabrean por auditorías](#).

¹¹⁹⁶ La Tribuna. July 5, 2016. [IAIP pide sancionar a Marlon Escoto](#); La Prensa. July 5, 2016. [IAIP pide suspender a Marlon Escoto y a nueve alcaldes](#); Comité por la Libre Expresión (C-Libre). July 4, 2016. [Por negar información: IAIP resuelve suspensión de nueve alcaldes y de ministro de educación hondureño](#).

¹¹⁹⁷ Decreto No. 418-2013 (Published by Gaceta of January 24, 2014).

¹¹⁹⁸ Hondudiario.com. October 20, 2016. [MACCIH pedirá varias reformas legislativas al congreso entre ellas la ley de secretos](#); El Informativo.hn. April 28, 2016. [Macchi define líneas de trabajo en el combate a la corrupción en Honduras](#); La Tribuna. February 16, 2016. [Ley de 'Secretos' primera 'traba' para la MACCIH](#).

¹¹⁹⁹ La Prensa. August 4, 2016. [Expertos piden revisar la ley de secretos en Honduras](#).

rights law. Accordingly, for example, in the Joint Declaration on Access to Information and on Secrecy Legislation, the Special Rapporteurs for Freedom of Expression recalled: “certain information may legitimately be secret on grounds of national security or protection of other overriding interests. However, secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label “secret” for purposes of preventing disclosure of information which is in the public interest. Secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret. Such laws should be subject to public debate.”¹²⁰⁰ In this regard, the Office of the Special Rapporteur has emphasized that a restriction on access to public information, which is claimed to find its justification in defense of national security, must not be based on an idea of national security incompatible with a democratic society.¹²⁰¹

I. Internet and Freedom of Expression

785. On January 17, the National Office of Investigation and Intelligence [*Dirección Nacional de Investigación e Inteligencia*] (DNII) said in a press release that it had launched an investigation to identify the individuals who published supposedly false information on social networks indicating that banks would close. ‘A number of individuals have already been identified who made those publications, misdirecting the public and raising fears among the account holders of a number of banking entities, as well as giving rise to speculation and doing considerable damage to the financial security and emotional stability of savers,’ the press release stated. It stated that ‘in the coming hours, in coordination with the Office of the Public Prosecutor, legal actions will be brought against those individuals to bring them before the competent courts to establish responsibilities in this case.’¹²⁰² In that context, on January 21, Elvin Francisco Molina was arrested and charged with distributing supposedly false information on the situation of banks.¹²⁰³ Molina was released on March 14.¹²⁰⁴

786. In January, the website of the organization *Vía Campesina* and the Facebook page of the *Movimiento de Mujeres por la Paz Visitación Padilla* came under cyberattack. In April, *Vía Campesina’s* Facebook page was hacked. Both groups say that the attacks are in retaliation for the organizing they do.¹²⁰⁵

J. Other Relevant Situations

787. On February 22, a Sentencing Court of Ceiba [*Tribunal de Sentencia de la Ceiba*], Atlántida, acquitted the main suspect in the murder of journalist Nery Francisco Soto, which took place on August 14, 2014, and the municipality of Olancho, Yoro department.¹²⁰⁶ Soto, who was a host and reporter for *Canal 23*, was

¹²⁰⁰ United Nations (UN) Special Rapporteur on Freedom of Opinion and of Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur for Freedom of Expression. December 6, 2004. [Joint Declaration on Access to Information and on Secrecy Legislation](#).

¹²⁰¹ 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. 60.

¹²⁰² La Prensa. January 17, 2016. [Inteligencia ya identificó a quienes iniciaron rumor de cierre de Banco de Occidente](#); El Heraldo. January 17, 2016. [Identifican a los autores del rumor sobre el cierre de Banco de Occidente](#); Comité por la Libre Expresión (C-Libre). January 21, 2016. [Inteligencia hondureña pretende imponer condicionamiento de veracidad en redes sociales](#).

¹²⁰³ La Tribuna. January 21, 2016. [Capturan a supuesto autor de rumores sobre cierre de bancos](#); La Prensa. January 21, 2016. [Lo acusan de difundir información falsa de bancos en las redes sociales](#); Comité por la Libre Expresión (C-Libre). January 21, 2016. [Hondureño detenido por divulgar información en redes sociales](#); Comité por la Libre Expresión (C-Libre). March 9, 2016. [Joven sigue criminalizado por publicar en redes sociales](#).

¹²⁰⁴ Pasos de Animal Grande. March 15, 2016. [Jueza invoca convenios internacionales de libertad de expresión para dar sobreseimiento definitivo a Elvin Molina](#); La Tribuna. March 14, 2016. [Queda libre acusado de difundir información falsa sobre bancos](#).

¹²⁰⁵ Comité por la Libre Expresión (C-Libre). April 20, 2016. [Hackean Facebook de Vía Campesina y de organización de mujeres](#).

¹²⁰⁶ La Prensa. February 22, 2016. [Absuelven a supuesto asesino de periodista Nery Soto](#); Comité por la Libre Expresión (C-Libre). February 22, 2016. [Absuelto supuesto asesino de periodista hondureño](#).

murdered by unknown individuals who shot him several times as he arrived home. Authorities have ruled out robbery as a motive.¹²⁰⁷

788. On May 9, the minister of the General Government Coordination Department [*Secretaría General de Coordinación de Gobierno*], Jorge Ramón Hernández Alcerro, said during a press conference that he had ordered the National Office of Intelligence [*Dirección Nacional de Inteligencia*] (DNII) and the National Migration Institute [*Instituto Nacional de Migración*] to identify the members of foreign human rights organizations participating in violent demonstrations or inciting the violence after a number of international observers joined protests held by Civic Counsel of Popular and Indigenous Organizations of Honduras [*Consejo Cívico de Organizaciones Populares e Indígenas de Honduras*] (Copinh).¹²⁰⁸

¹²⁰⁷ ¹²⁰⁷ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 602.

¹²⁰⁸ Comité por la Libre Expresión (C-Libre). May 10, 2016. [Gobierno amenaza a prensa internacional y a defensores internacionales de DD.HH.](#)

20. JAMAICA

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

789. During the weeks leading up to the General Elections, *Nationwide News Network* reporter and co-host of the evening news, Abka Fitz-Henley, received numerous threatening phone calls alluding to his murder. The death threats were made anonymously, but appeared to come from supporters of the People's National Party. The journalist had to be assigned armed security to guarantee his safety.¹²⁰⁹

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

¹²⁰⁹ Jamaica Observer. February 29, 2016. [Nationwide's Abka Fitz-Henley assigned armed security after death threats](#); Loop Jamaica. February 29, 2016. [Journalist Abka Fitz-Henley receives death threats. PAJ expresses alarm](#); The Montserrat Reporter. March 1, 2016. [PAJ condemns threat made to journalist](#).

21. MEXICO

A. Progress

791. In January, the First Chamber of the Supreme Court of Justice of the Nation [*Primera Sala de la Suprema Corte de Justicia de la Nación*] resolved application for *amparo* in review 622/2015 and declared the partial unconstitutionality of article 230 of the Federal Telecommunications and Broadcasting Law [*Ley Federal de Telecomunicaciones y Radiodifusión*] (LFTR), regarding the restriction placed on the language that must be used by broadcasters. Article 230 of the LFTR establishes that broadcasters must use the national language (Spanish), notwithstanding the fact that the concessions for indigenous social use make use of the corresponding language of the indigenous people. The Court determined that the provision violates the rights to equality and freedom of expression of indigenous persons, insofar as the use of indigenous languages is limited to the social concessions. The Court recognized that the above-mentioned provision violated their right to express themselves in their indigenous language, which is intrinsic to the right to freedom of expression because it implies the freedom to express oneself in one's language of choice in order to participate in a culturally diverse democratic society. The Court concluded that it is the duty of the State to adopt measures to ensure the availability and massive access by indigenous peoples to the media without discrimination. Therefore, on June 2, the decree to reform article 230 of the LFTR went into effect, as published by the Secretariat of Communications and Transport in the Official Gazette of the Federation [*Diario Oficial de la Federación*], permitting broadcasters to use any native language that coexists with the Spanish language in Mexico.¹²¹⁰

792. The IACHR applauds the joint initiative of the INAI and civil society organizations to carry out the “Memory and Truth” project. According to the information furnished by the State, the project involves an online platform to present information on cases of alleged human rights violations and the probable commission of crimes against humanity. The purpose of the initiative is to “promote guarantees of nonrepetition and the right to the truth, and to provide access to information for victims, investigating agencies, jurisdictional and human rights bodies, courts, and all other interested parties.” The information available for consultation deals with the cases of Acteal, Aguas Blancas, Apatzingán, Atenco, Ayotzinapa 2011, Ayotzinapa 2014, Cadereyta, Cotton Field, El Halconazo, San Fernando 2010, San Fernando 2011, the Dirty War, Tlatelolco, and Tlatlaya. In order to create a useful store of public knowledge, after locating the information it was classified, systematized, and analyzed according to the type and theme of the alleged violation.¹²¹¹

B. Killings

793. On January 31, the journalist Marcos Hernández Bautista was killed in San Andrés Huaxpaltepec, state of Oaxaca. Hernández was a correspondent for the daily newspaper *Noticias Voz e Imagen de Oaxaca* and collaborated with some other communications media. He also served as a public official in his local government and was active in the National Regeneration Movement party. According to the editorial director of the paper, the journalist had expressed fear regarding possible reprisals in response to the publication of articles dealing with “political interests and the interests of bosses in the region.” However, the State informed the Special Rapporteurship that the Mechanism for the Protection of Human Rights Defenders and Journalists [*Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas*] had not recorded threats, assaults, or harassment against him or a request to guarantee his safety.”¹²¹²

¹²¹⁰ Suprema Corte de Justicia de la Nación. January 20, 2016. Comunicado No. 007/2016. [Primera sala declara inconstitucional porción normativa que limita el uso de las lenguas originarias a concesionarias indígenas](#); El Economista. June 1, 2016. [Radio mexicana transmitirá en lengua indígena](#); Amedi. June 7, 2016. [Reconocimiento a las lenguas indígenas](#); Secretaría de Gobierno. Diario Oficial de la Federación. June 1, 2016. [Decreto por el que se reforma el artículo 230 de la Ley Federal de Telecomunicaciones y Radiodifusión](#).

¹²¹¹ Communication from the Mexican State. Response of the Mexican State to the draft of Chapter V of the 2016 Annual Report of the Inter-American Commission on Human Rights, January 16, 2017; Memory and Truth project. Undated. [About the Project](#).

¹²¹² Office of the Special Rapporteur for Freedom of Expression. January 27, 2016. [Press Release R4/16 Office of the Special Rapporteur Condemns New Killing of Journalist in Mexico](#); Freedom House. January 23, 2016. [Debe investigarse el asesinato del periodista Marcos Hernández Bautista](#); Committee to Protect Journalists (CPJ). January 26, 2016. [Critical reporter shot dead in Oaxaca, Mexico](#); Reporters Without Borders (RSF). January 29, 2016. [Two journalists murdered in 2 days in Oaxaca state](#).

794. On February 25, Jorge Armando Santiago Martínez, First Commander of the Second Shift of the Municipal Police of Santiago Jamiltepec was taken into custody as being responsible for the murder of the journalist Marcos Hernández Bautista. The Prosecutor's Office of the state of Oaxaca stated that there is probably another person responsible for whom there is an arrest warrant.¹²¹³

795. On February 9, the journalist Anabel Flores Salazar was found lifeless on the highway of the state of Puebla. She had been taken from her home on February 8 in the community of Orizaba, Veracruz by armed men who came looking for her in three trucks and, when they found her in one of the rooms, forced her into one of the vehicles and fled.¹²¹⁴ Flores Salazar worked as a political reporter for the local paper *El Sol de Orizaba*.¹²¹⁵

796. After learning of her disappearance, the State of Veracruz Commission for the Attention of Journalists [Comisión Estatal para la Atención de los Periodistas de Veracruz] publicly announced that it had initiated a protective measures procedure to find the journalist and provided protection to her family, after it learned of the kidnapping.¹²¹⁶ After learning of the journalist's death, the Prosecutor's Office of Veracruz [Fiscalía de Veracruz] insinuated that the events had occurred as the result of a romantic relationship the journalist had with a member of a criminal organization.¹²¹⁷ That version was rejected by journalists, civil society organizations and members of the Veracruz parliament, who also demanded an exhaustive investigation and an adequate response from state authorities, particularly the investigative agency, in order to shed light on the facts and exhaust the hypothesis of the relationship with her work as a journalist.¹²¹⁸

797. A few days after her murder, the governor of the state of Veracruz, Javier Duarte, announced via twitter that a member of the criminal gang *Los Zetas* was the mastermind of the journalist's murder. He also stated that Flores had made complaints against organized crime on social networks, using a pseudonym.¹²¹⁹ On May 4, the Prosecutor indicated at a press conference that another person implicated in the crime had been captured and also indicated that the death of Flores was related to her work because one of her reports

¹²¹³ Revista Proceso. February 25, 2016. [Un policía, presunto asesino del periodista Marcos Hernández](#); Knight Center for Journalism in the Americas. February 26, 2016. [Police commander arrested for murder of journalist in Mexico](#); Excelsior. February 25, 2016. [Detienen a presunto asesino de periodista oaxaqueño](#).

¹²¹⁴ Committee to Protect Journalists (CPJ). February 8, 2016. [Mexican crime reporter abducted in Veracruz](#); Article 19. February 8, 2016. [Es responsabilidad de las autoridades federales y locales localizar con vida a la periodista Anabel Flores](#); Animal Político. February 8, 2016. [Hombres armados secuestran a la reportera Anabel Flores Salazar, en Veracruz](#).

¹²¹⁵ Office of the Special Rapporteur for Freedom of Expression. [Press Release R11/16 Office of the Special Rapporteur Condemns the Murder of a Journalist in Mexico](#); United Nations. Mexico Office of the High Commissioner for Human Rights. February 11, 2016. [ONU-DH y ONU-Mujeres condenan el asesinato de la periodista veracruzana Anabel Flores](#); Committee to Protect Journalists (CPJ). February 9, 2014. [Body of missing Veracruz crime reporter Anabel Flores Salazar found in neighboring state](#); Freedom House. February 11, 2016. [Mexico: Count of Murdered Journalists in Veracruz Now Sixteen](#); Reporters Without Borders (RSF). February 10, 2016. [Third journalist murdered this year in Mexico](#); Sin embargo. February 9, 2016. [Anabel Flores Salazar, 32 años, madre de dos bebés y periodista de Veracruz, fue asesinada](#).

¹²¹⁶ Comisión Estatal para Atención y Protección de los Periodistas. February 8, 2016. [Comunicado de Prensa 055. Anabel Flores Salazar](#); Comisión Estatal para Atención y Protección de los Periodistas. February 9, 2016. [Comunicado de Prensa 006. La CEAPP condena el homicidio de Anabel Flores Salazar](#).

¹²¹⁷ E-Consulta Veracruz. February 8, 2016. [Fiscalía vincula a reportera de Orizaba con la delincuencia](#); Vanguardia. February 8, 2016. [Fiscalía de Veracruz criminaliza a Anabel Flores Salazar, reportera desaparecida](#).

¹²¹⁸ Senado de la República. February 11, 2016. Boletín Número 1047. [Senadores piden que caso de la periodista Anabel Flores sea atraído por la PGR](#); Animal Político. February 10, 2016. ["Criminalizar a periodistas asesinados es cobarde": reporteros de Veracruz](#); United Nations . Mexico Office of UN Women and Mexico Office of the High Commissioner for Human Rights . February 11, 2016. [ONU-DH y ONU-Mujeres condenan el asesinato de la periodista veracruzana Anabel Flores](#); Centro Nacional de Comunicación Social (Cencos). February 11, 2016. [Pronunciamiento ante el feminicidio de la periodista Anabel Flores](#).

¹²¹⁹ "A Josele Márquez (a) El Chichi se le relaciona entre muchos crímenes la autoría intelectual del asesinato de la periodista Anabel Flores". Twitter account of Javier Duarte @Javier_Duarte. [February 13, 2016](#); "Anabel Flores bajo el seudónimo de Mariana Contreras publicó lo siguiente luego de la detención del Chichi:" Twitter account of Javier Duarte @Javier_Duarte. [February 13, 2016](#); "Una vez que detuvimos a Josele Márquez (a) El Chichi, la Fuerza Civil de #Veracruz resguarda las instalaciones del periódico "El Buen Tono". Twitter account of Javier Duarte @Javier_Duarte. [February 13, 2016](#); El Economista. February 13, 2016. [Arrestan a presunto asesino de periodista Anabel Flores](#); El Financiero. February 13, 2016. [Arrestan a presunto asesino de la reportera Anabel Flores](#).

had bothered the *Los Zetas* criminal organization to which the accused belonged.¹²²⁰ The State informed the Office of the Special Rapporteur on September 9 that the First Prosecutors Unit of the Integrated Unit for Obtaining Justice of the City of Orizaba, Veracruz [*Fiscalía Primera de la Unidad Integral de Procuración de Justicia de la Ciudad de Orizaba, Veracruz*], had opened an investigative file that is being processed, and that the Directorate of Preliminary Investigations [*Dirección de Averiguaciones Previas*] of the Special Prosecutor's Unit for Attention to Crimes against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión*](Feadle) had begun the Minutes of Verification [*Acta Circunstanciada*] which are also in process.¹²²¹

798. The journalist Moisés Dagdug Lutzow was murdered on February 20 in the state of Tabasco. Persons unknown entered his house, stabbed him, and then left in his vehicle, which was found hours later on the highway in the city of Villahermosa. According to the available information, Dagdug Lutzow was recognized as the owner of the communication company *Grupo VX* and for presenting a radio program on channel *XEVX, La grande de Tabasco*. The journalist commented on various occasions that he had been the victim of anonymous verbal threats, allegedly because of his critical position against the Tabasco state government, headed by Arturo Núñez Jiménez.¹²²² On May 2, the Prosecutor of Tabasco [*Fiscal General de Tabasco*] revealed progress made in the investigation and indicated that a joint operation with the Federal Police had arrested the alleged murderer of Dagdug Lutzow.¹²²³ The State informed the Office of the Special Rapporteur on September 9 that the Attorney General's Office [*Procuraduría General de Justicia*] had begun an investigation of the case that is currently underway.¹²²⁴

799. The journalist Francisco Pacheco Beltrán was murdered on April 25 in Taxco, state of Guerrero. According to the available information, Pacheco worked for *El Sol de Acapulco, El Faro de Taxco* and the radio station *Capital Máxima de Chilpancingo*. He also had his own news portal, *Pacheco Digital*, where he covered events occurring in his state, one of the most violent in the country.¹²²⁵ Journalists from Guerrero marched to demand justice in his case.¹²²⁶

¹²²⁰ Fiscalía General del Estado. May 4 2016. [Esclarece FGE homicidio de periodista Anabel Flores: un detenido](#); Tiempo. May 5, 2016. [Esclarece FGE muerte de reportera Anabel Flores](#); Excelsior. May 5, 2016. [Cae presunto asesino de la periodista Anabel Flores: está ligado al narco](#).

¹²²¹ 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. September 9, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²²² Office of the Special Rapporteur for Freedom of Expression. February 25, 2016. [Press Release R22/16 Office of the Special Rapporteur Condemns the Killing of a Journalist in Mexico, the Third in that Country in the First Two Months of 2016](#); Committee to Protect Journalists (CPJ). February 22, 2016. [Owner of Mexican news outlet who was threatened for his reporting killed in Tabasco](#); Reporters Without Borders (RSF). February 24, 2016. [Fourth journalist murdered in Mexico since start of 2016](#); Freedom House. February 22, 2016. [Debe investigarse el asesinato del periodista Moisés Dagdug Lutzow](#); Fiscalía General del Estado de Tabasco. February 20, 2016. [Boletín Informativo No. 1131. Comunicado](#); Aristegui Noticias. February 20, 2016. [Tabasco: asesinan al empresario, político y periodista Moisés Dagdug Lutzow](#); Proceso. February 26, 2016. [Descartan robo en crimen del empresario Moisés Dagdug Lutzow](#).

¹²²³ Fiscalía General del Estado de Tabasco. May 2, 2016. [Boletín Informativo No. 1161. Investigación de la FGE ubica a presunto homicida del empresario Moises Dagdug: ya se encuentra detenido](#); Knight Center for Journalism in the Americas. May 2, 2016. [Authorities arrest man suspected of murdering Mexican journalist and media company owner Moisés Dagdug](#); Proceso. April 30, 2016. [Detienen a presunto asesino del empresario de Tabasco Moisés Dagdug](#).

¹²²⁴ 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. September 9, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²²⁵ Office of the Special Rapporteur for Freedom of Expression. April 29, 2016. [Press Release R57/16 Office of the Special Rapporteur Condemns New Killing of Journalist in Mexico](#); Comisión Nacional de Derechos Humanos (CNDH). April 25, 2016. [Comunicado de Prensa CGCP/114/16. Expresa CNDH su indignación por el asesinato del periodista Francisco Pacheco Beltrán ocurrido en Taxco, Guerrero](#); Committee to Protect Journalists (CPJ). April 25, 2016. [Mexican reporter shot to death in Guerrero state](#); Article 19. April 25, 2016. [Francisco Pacheco, cuarto periodista asesinado en 2016](#); El País. April 25, 2016. [Asesinado a tiros un periodista a la puerta de su casa en México](#); El Universal. April 25, 2016. [Asesinan a periodista Francisco Pacheco en Taxco](#); Sin embargo mx. April 25, 2016. [El periodista Francisco Pacheco es asesinado afuera de su casa en Taxco, Guerrero](#).

¹²²⁶ Televisa Hermosillo. April 27, 2016. [Marchan periodistas de Guerrero por asesinato de reportero](#).

800. On May 4, the director of the Special Prosecutor's Unit for Attention to Crimes against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión*] (Feadle) reported that it would assert its jurisdiction to take on the case and also announced the opening of a preliminary investigation into the killing of Pacheco. Moreover, Feadle and the Executive Commission for Attention to Victims [*Comisión Ejecutiva de Atención a Víctimas*] (CEAV) provides support for the family members of the journalists along with the means for protection, attention and assistance recognized by law.¹²²⁷ The State informed the Office of the Special Rapporteur on September 9 that the Feadle had begun a preliminary inquiry into the events and that this is currently underway. It also indicated that the victim's family members were incorporated into the Mechanism for the Protection of Human Rights Defenders and Journalists [*Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas*].¹²²⁸

801. The journalist Manuel Torres González was murdered on May 14 in Poza Rica, state of Veracruz. Torres had been a correspondent for *TV Azteca* and a reporter for *Diario Noreste*. He had recently launched his own website called *Noticias MT* and according to the available information on occasion he collaborated with the town council of Poza Rica.¹²²⁹ Through a press release, the General Prosecutor's Office of the state of Veracruz [*Fiscalía General del Estado de Veracruz*] indicated that the facts would be investigated, without making any mention of the journalistic work of Torres.¹²³⁰ The Veracruz State Commission for the Attention and Protection of Journalists [*Comisión Estatal para la Atención y Protección de los Periodistas de Veracruz*] condemned the murder and urged the authorities to conduct a diligent investigation to shed light on the murder.¹²³¹

802. On June 19, the journalist Elidio Ramos Zárate was murdered in Juchitán de Zaragoza, Oaxaca. According to the available information, Ramos had covered the disturbances between teachers and police agents in Oaxaca; he was murdered on the street when he was approached by persons unknown who shot him. Ramos Zárate worked for *El Sur*, *Diario Independiente* and covered the police source.¹²³²

803. On June 20, journalist Zamira Esther Bautista was killed in the city of Victoria in Tamaulipas state. Bautista worked as an independent reporter and had worked as a social reporter for the newspapers *El Mercurio* and *La Verdad*. According to available information, those responsible for the homicide left a card linking them to an illegal group that operates in Victoria. Civil society organizations rejected this act of violence against journalists.¹²³³

¹²²⁷ Animal Político. May 3, 2016. [PGR abre una averiguación previa por el homicidio del periodista Francisco Pacheco](#); Televisa.News. May 4 2016. [PGR atrae investigación del asesinato del periodista Francisco Pacheco](#).

¹²²⁸ 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. September 9, 2016. . Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²²⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 20, 2016. [Press Release R68/16 Office of the Special Rapporteur Condemns New Killing of Journalist in Mexico](#); Reporters Without Borders (RSF). May 16, 2016. [Manuel Santiago Torres González, sexto periodista mexicano asesinado en 2016](#); Committee to Protect Journalists (CPJ). May 17, 2016. [Mexican reporter killed in Veracruz](#); Article19. May 16, 2016. [Quinto periodista asesinado en 2016: autoridades desestiman labor informativa en su homicidio](#); Animal Político. May 14 2016. [El comunicador Manuel Torres González es asesinado en Veracruz](#).

¹²³⁰ El del Sur. May 16, 2016. [Investiga Fiscalía hechos en los que perdió la vida colaborador del Ayuntamiento de Poza Rica](#); Sin Embargo. May 14 2016. [Ex corresponsal de Tv Azteca es asesinado en Veracruz; Fiscalía asegura que no es periodista](#).

¹²³¹ Comisión Estatal para la Atención y Protección de los periodistas. May 14, 2016. [Condena CEAPP homicidio de Manuel Torres González](#).

¹²³² IACHR. Office of the Special Rapporteur for Freedom of Expression. June 21, 2016. [Press Release R80/16 Office of the Special Rapporteur Condemns the Murder of a Sixth Journalist in Mexico in 2016](#); Committee to Protect Journalists (CPJ). June 21, 2016. [Mexican reporter killed covering protests](#); Inter American Press Association (IAPA). June 20, 2016. [México: La SIP condena asesinato de periodista](#); Comisión Nacional de Derechos Humanos (CNDH). June 19, 2016. [Comunicado de Prensa DGC/174/16. Lamenta la CNDH la pérdida de vidas y lesionados durante los hechos registrados este día en distintas localidades del estado de Oaxaca](#); United Nations. Mexico Office of the High Commissioner for Human Rights. June 21, 2016. [La ONU-DH México hace un llamado a realizar una investigación exhaustiva de los hechos violentos ocurridos en Oaxaca y a privilegiar el diálogo](#); Knight Center for Journalism in the Americas. June 20, 2016. [Mexican journalist killed while covering teachers' protest in Oaxaca](#).

¹²³³ Knight Center for Journalism in the Americas. June 21, 2016. [Journalist killed in Tamaulipas, Mexico is second journalist killed in that country in less than 24 hours](#); Vanguardia. June 20, 2016. [Asesinan a reportera en Tamaulipas](#); Clase de Periodismo. June 20, 2016. [México: Reportera Zamira Esther Bautista fue asesinada en Tamaulipas](#); United Nations Organization for Education, Science and Culture

804. On June 26, *Tuun N̄uu Savi* community radio announcer Salvador Olmos García was killed in the municipality of Huajapan de León in the state of Oaxaca. According to the available information, Municipal Police [*Policía Municipal*] officers had arrested, tortured and beaten him, supposedly for having taken a critical position about the mayor of Huajapan de León on his program 'Pitaya Negra'.¹²³⁴

805. Journalist Pedro Tamayo Rosas was killed on July 20 in Tierra Blanca, state of Veracruz. The homicide occurred in front of the journalist's home, when unknown individuals arrived in a truck and opened fire. According to the available information, Tamayo worked with the local daily newspapers *El Piñero de la Cuenca* and *Al Calor Político* in the state of Veracruz covering police matters and had reported on kidnappings, the finding of cadavers in clandestine graves and executions. In January, he was reported by the media outlets as missing but days later the police had located him in the locality of Acatlán de Pérez Figueroa, state of Oaxaca. As a result of that event, the State Commission for Attention and Protection for Journalists [*Comisión Estatal para la Atención y Protección de los Periodistas*] a public entity of the state of Veracruz, had provided for extraordinary protection measures.¹²³⁵

806. The state reported that after the murder an investigation had been initiated by the Comprehensive Subunit for the Pursuit of Justice [*Subunidad Integral de Procuración de Justicia*] of Tierra Blanca, Veracruz, as well as the Prosecutor in Charge of the Office of the Agency Specializing in Electoral Crimes and Attention to Complaints against Journalists and/or Communicators [*Fiscal Encargado del Despacho de la Agencia Especializada en Delitos Electorales y en la Atención de Denuncias contra Periodistas y/o Comunicadores*] in the City of Tierra Blanca. Feadle opened an investigative file.¹²³⁶ The Veracruz State Commission for the Attention and Protection of Journalists condemned the murder and reported that it was in constant communication with the journalist's family to provide them with assistance and support.¹²³⁷ In addition, exercising its investigative powers, the CNDH initiated an investigation *ex officio* and called on the authorities to investigate the crime and provide the necessary protection to the journalist's family.¹²³⁸

807. The journalist Aurelio Cabrera Campos was murdered while driving his vehicle on the night of September 14 near the town of Huauchinango, in the state of Puebla. The authorities were alerted through a telephone call and although medical services found him still alive when they reached him, the journalist died hours later at the hospital to which he was taken. According to the available information, Cabrera had worked for the newspaper *Voz de la Sierra* and had recently created his own outlet, a weekly called *El Grafico de la Sierra*, where he was the director. The journalist was known for covering the police source and public safety in the north of the state of Puebla, an area bordering on the state of Veracruz. The Office of the General Prosecutor of the state of Puebla [*Fiscalía General del Estado de Puebla*] and Feadle worked together to

(Unesco). June 21, 2016. [Director-General condemns murder of Mexican journalist Zamira Esther Bautista](#); Inter American Press Association (IAPA). June 21, 2016. [Mexico: IAPA outraged at another murder of a journalist](#).

¹²³⁴ United Nations Organization for Education, Science and Culture (Unesco). July 7, 2016. [Director-General condemns killing of journalist Salvador Olmos García in Mexico](#); Resumen. June 27, 2016. [México. Asesinan a periodista de radio comunitaria en Oaxaca](#); Sin Embargo. August 7, 2016. [A Salvador lo mataron policías por criticar al Edil de Huajuapán: familia del periodista](#); Partido Obrero. July 1, 2016. [México: asesinan a periodista que denunció la masacre de Oaxaca](#).

¹²³⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 25, 2016. [Press Release 100/16 Office of the Special Rapporteur condemns latest murder of a journalist in Mexico](#). Committee to Protect Journalists (CPJ). July 22, 2016. [Veracruz journalist under police protection shot dead](#); Freedom House. July 21, 2016. [Debe investigarse el asesinato del periodista Pedro Tamayo Rosas](#); Article 19. July 21, 2016. [Asesinato de Pedro Tamayo confirma ineficacia de mecanismos de protección gubernamentales](#); El País. July 22, 2016. [Asesinado a balazos en México un periodista que estaba bajo protección](#); Sin embargo. July 21, 2016. [Pedro Tamayo, el periodista que huyó de Veracruz por amenazas de policías, es asesinado a tiros](#); Animal Político. July 21, 2016. [Matan al periodista Pedro Tamayo en Tierra Blanca, Veracruz: van 17 con Duarte](#).

¹²³⁶ 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. September 9, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²³⁷ Comisión Estatal para la Protección de los Periodistas. July 21, 2016. [Condena CEAPP homicidio del comunicador Pedro Tamayo Rosas](#).

¹²³⁸ Comisión Nacional de Derechos Humanos (CNDH). July 21, 2016. [Comunicado de Prensa CGCP/206/16. Determina CNDH atraer el caso Pedro Tamayo y pide a las autoridades investigar la relación entre el homicidio y la labor periodística de la víctima](#).

promote investigations to exhaust the lines of investigation, including the issue of the exercise of freedom of expression.¹²³⁹

808. On September 13, the journalist Agustín Pavía Pavía was murdered in front of his home in the town of Huajuapán de León, in the state of Oaxaca. He was hosting a community radio program called *Tu Un Nuu Savi*. According to the available information, Pavía used the radio to criticize the state government and had also covered issues related to environmental protection and movements against mining. Pavía had been the founder of the Morena party in the municipality of Huajuapán.¹²⁴⁰

809. On December 13, Adrián Rodríguez was murdered in Chihuahua, Chihuahua. The journalist was in his automobile in front of his home when unknown individuals approached and shot him. According to the available information, the journalist worked at *Antena Radio* and covered matters associated with the state government; in the past, he had carried out investigations into topics associated with public safety for written media such as *El Heraldo* de Chihuahua. Family members indicated that the journalist had received death threats. He was recently carrying out an investigation into people who are arbitrarily imprisoned.¹²⁴¹ The governor of Chihuahua through a press release expressed regret over the killing of the journalist and stated that it will not remain in impunity.¹²⁴²

810. The Office of the Special Rapporteur also received information about the killing of other journalists and/or media outlet employees in which there is as yet no clear connection with the practice of their profession. In this regard, the IACHR views as fundamentally important that the authorities investigate these events without discarding the hypothesis concerning links with journalistic activity and freedom of expression. On January 22, *El Manantial* community radio announcer Reinel Martínez Cerqueda was killed while traveling in an automobile in the outskirts of the city of Santiago Loallaga in the state of Oaxaca.¹²⁴³ On April 26, Apolónio Hernández González, an announcer for an online radio station, was killed in the municipality of Ejutla de Crespo in the state of Oaxaca.¹²⁴⁴

811. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and

¹²³⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 21, 2016. [Press Release R134/16 Office of the Special Rapporteur Condemns Murder of Journalists in Mexico](#); Inter American Press Association (IAPA). September 16, 2016. [Mexico: Another murder of a journalist](#); Article 19. September 17, 2016. [Director de medio es asesinado en Puebla; segundo periodista muerto en una semana](#); Comisión Nacional de Derechos Humanos (CNDH). September 15, 2016. [Comunicado de Prensa DGC/231/16. Condena CNDH el homicidio del periodista Aurelio Campos, director del semanario "El Gráfico", en Huauchinango, Puebla, y solicita medidas cautelares para su familia](#); Aristegui Noticias. September 16, 2016. [CNDH y Fiscalía de Puebla investigan asesinato del periodista Aurelio Campos](#); Animal Político. September 15, 2016. [Asesinan a un periodista en Puebla; era director del semanario El Gráfico de la Sierra](#).

¹²⁴⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 21, 2016. [Press Release R134/16 Office of the Special Rapporteur Condemns Murder of Journalists in Mexico](#); Article 19. September 16, 2016. [Asesinan a segundo locutor de estación de radio comunitaria en Oaxaca](#); Informativo. September 15, 2016. [Marchan para exigir justicia por asesinato de activista político de Morena](#); La Jornada. September 15, 2016. [Asesinan frente a su casa a fundador de Morena en la Mixteca de Oaxaca](#); Knight Center for Journalism in the Americas. September 16, 2016. [Two Mexican journalists killed in Puebla and Oaxaca](#).

¹²⁴¹ Article 19. December 11, 2016. [Asesinan a periodista en Chihuahua; 2016 es el año más letal para la prensa](#); Sin embargo. December 10, 2016. [El reportero Adrián Rodríguez es ejecutado en Chihuahua; periodistas exigen esclarecer el caso](#); La Opción de Chihuahua. December 11, 2016. [Tuvo amenazas previas Adrián Rodríguez por trabajos periodísticos](#); El Heraldo de Chihuahua. December 10, 2016. [Asesinan al reportero Adrián Rodríguez afuera de su casa](#); Excelsior. December 10, 2016. [Asesinan a periodista de Chihuahua afuera de su casa](#).

¹²⁴² Gobierno de Chihuahua. December 12, 2016. [Asesinato de periodista Adrián Rodríguez no quedará impune: Gobierno del Estado](#).

¹²⁴³ United Nations Organization for Education, Science and Culture (Unesco). February 10, 2016. [Director-General denounces assassination of radio journalist Reinel Martínez Cerqueda in Mexico](#); Proceso. January 23, 2016. [Otro comunicador asesinado en Oaxaca; el segundo en 24 horas](#).

¹²⁴⁴ Unión de Periodistas. August 3, 2016. [Siete comunicadores asesinados en México de enero a mayo de 2016](#); SDP Noticias. April 26, 2016. [Asesinan a Apolonio Hernández, locutor de radio por internet en Oaxaca](#); Proceso. April 26, 2016. [Asesinan a locutor de radio en Oaxaca](#); Zocalo Saltillo. April 28, 2016. [Asesinan a locutor de radio en Oaxaca](#).

freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹²⁴⁵

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

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

813. On January 6, the journalist and director of *Rotativo Digital* in Tacámbaro, Michoacán, Martínez Castañeda, was hospitalized due to injuries allegedly inflicted by the son of a local entrepreneur. According to the available information, the son of a gas station owner attacked the journalist as he walked by with his grandson in the public square of Tacámbaro. The attack was related to articles published by the journalist on irregular practices committed by the gas station owner's family to avoid competition in the gas station business. Martínez Castañeda had already received threats from another member of that family in late 2015.¹²⁴⁶

814. According to the information available in the media, the attacker was apprehended and brought before the judge who decided to bring criminal action for aggravated injuries. Both the communicator and his family have been offered protection measures.¹²⁴⁷

815. In January, various media outlets reported threats as well as proceedings filed against the journalist Víctor Badillo, CNN correspondent in Monterrey. Badillo was conducting an investigation on corruption in the Nuevo León Health Secretariat (SSNL) involving the businessman Cano Sánchez in his capacity as an SSNL provider. On December 30, 2015, the journalist's family received threats on their mobile phones; the available information indicates that the journalist is currently the beneficiary of the federal protection mechanism.¹²⁴⁸

816. On February 3, the journalist Paula Carrizosa, in charge of the cultural section of the *Jornada de Oriente*, was threatened by Francisco Trejo, director of the Communications Unit of Puebla Communications [Unidad de Comunicación de Puebla Comunicaciones] (public television, radio, and digital technology organization of the state of Puebla). She had been invited by Trejo on behalf of the state Governor to an event at the *Museo Internacional Barroco* (MIB), in the city of Puebla. The journalist was taking notes at the event when the official told her in a challenging and threatening way to remember that she couldn't publish anything because it was an informal event. Various organizations complained and demanded the imposition

¹²⁴⁵ 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). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; IACHR. [Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression](#). Chapter II: *Informe Especial sobre la Libertad de Expresión en México 2010*. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹²⁴⁶ Article 19. January 8, 2016. [Empresario gasolinero golpea a periodista que denunció corrupción con el gobierno municipal](#); Comisión Nacional de Derechos Humanos (CNDH). January 7, 2016. [Comunicado de Prensa CGCO/006/16. Demanda la CNDH el esclarecimiento de la artera agresión contra el periodista Jorge Martínez Castañeda, en Michoacán](#); 90 Grados. January 26, 2016. [Temen impunidad en caso de periodista agredido en Tacámbaro, Michoacán](#).

¹²⁴⁷ El Universal. January 7, 2016. [PGJE indaga agresión a periodista en Michoacán](#); SDP Noticias. February 3, 2016. [Procesan a agresor de periodista de Tacámbaro](#).

¹²⁴⁸ Article 19. January 19, 2016. [Periodista es hostigado por denunciar contrabando de equipo médico](#); El Universal. January 2, 2016. [Denuncia acoso: PGJE cita por difamación](#); La Jornada. January 11, 2016. [Amenazas y demanda contra periodista que indaga contrabando de medicinas](#); Proceso. March 21, 2016. [Empresario acosa a reportero que descubrió su red de contrabando con la SS](#).

of sanctions. According to the information available, the *Jornada del Oriente* had an editorial position critical of the government of Rafael Moreno Valle, governor of Puebla.¹²⁴⁹

817. The journalist Ezequiel Flores Contreras, a correspondent for *Proceso* in the state of Guerrero, was threatened by former representative Roger Arellano Sotelo on February 10. According to the available information, the journalist was participating in a demonstration in the Congress of Guerrero in Chilpancingo, demanding justice for the murder of the journalist Anabel Flores, when the former representative approached in his vehicle and made a death threat against the journalist.¹²⁵⁰ The organization *Artículo 19* denounced the threats made through Twitter against the journalists Álvaro Delgado, from *Proceso*, and Aranzazú Ayala, from *Lado B*, who were also demanding justice in the case of the journalist Anabel Flores through that social network.¹²⁵¹

818. On May 5, the daily *Vanguardia* of Saltillo, capital of the state of Coahuila, made public a record of attacks occurring since January 2016, alerting the journalist community and the authorities. The attacks mentioned included the creation of social network pages to insult and defame the media and journalists and a cyber-attack on the newspaper's server. On May 3, a vehicle remained parked in front of the *Vanguardia* facilities and on May 4 the same vehicle followed the journalist Roxana Romero all the way to her home where it approached and repeatedly passed by the home, causing her to be absent from work temporarily. Roxana Romero, along with *Vanguardia*, had previously been sued by Humberto Moreira Valdés, former governor of Coahuila and former national leader of the PRI, who alleged moral damage due to an article published after his release from prison this past January 23 in Madrid, Spain.¹²⁵²

819. On May 6, forces from the elite security group "*Fuerza Coahuila*," which reports to the state Government Secretariat [*Secretaría de Gobierno estatal*], broke into the home of the director of *Vanguardia* in Saltillo, state of Coahuila, enforcing an eviction order decreed by the Judicial Branch of Mexico City for alleged debts. The media and civil society organizations characterized the display and use of force as out of proportion to the objectives sought. The government of Coahuila maintained in a statement that the police had acted fully in compliance with the law.¹²⁵³ The National Human Rights Commission [*Comisión Nacional de los Derechos Humanos*] (CNDH) submitted a request for precautionary measures to the Coahuila state General Government Secretary [*Secretario General de Gobierno*] "in order to avoid to put at risk the personal integrity and the physical safety of staff *Vanguardia*, as well as its facilities and equipment. Also, it requested evidence attesting compliance with such measures to be forwarded".¹²⁵⁴

820. On June 8, journalist Estrella Pedroza, a reporter for the daily newspaper *Regional del Sur* and correspondent for the *La Silla Rota*, was attacked by Single Control [*Mando Único*] of Cuernavaca. According to the available information, she was using her cellular phone to record an act of alleged abuse of power by the police when one of them approached her to question her and told her not to film anything that was happening, after which the police officer threw the reporter's cellular phone onto the street. When she tried

¹²⁴⁹ Comunicación e Información de la Mujer (CIMAC). February 5, 2016. [Vocero de Puebla amenaza a reportera Paula Carrizosa](#); Article 19. February 5, 2016. [Reportera de Puebla es intimidada por funcionario estatal](#); La Jornada de Oriente. February 4, 2016. [Amenazas contra reportera de La Jornada de Oriente por difundir información del MIB](#).

¹²⁵⁰ Proceso. February 10, 2016. [Exdiputado perredista amenaza de muerte a corresponsal de Proceso en Guerrero](#); Article 19. [Es responsabilidad del Mecanismo garantizar integridad física del periodista Ezequiel Flores](#); SDPnoticias. February 10, 2016. [Exdiputado del PRD irrumpe en protesta por Anabel Flores and amenaza a periodista](#); El Universal. February 11, 2016. [Denuncian en el Senado amenazas contra periodista](#).

¹²⁵¹ Article 19. February 11, 2016. [Periodistas agredidos en redes sociales por protestar sobre el asesinato de reportera](#).

¹²⁵² Committee to Protect Journalists (CPJ). May 12, 2015. [Mexican newspaper faces harassment](#); Article 19. May 6, 2016. [Gobierno de Coahuila obligado a garantizar labor informativa de Vanguardia](#); Vanguardia. May 5, 2016. [Espionaje, intimidación y ataque a Vanguardia](#).

¹²⁵³ Committee to Protect Journalists (CPJ). May 12, 2015. [Mexican newspaper faces harassment](#); Article 19. May 6, 2016. [Gobierno de Coahuila obligado a garantizar labor informativa de Vanguardia](#); Vanguardia. May 7, 2016. [Despliegue de 'fuerza' contra el director de VANGUARDIA](#); Proceso. May 6, 2016. [Policía de Coahuila irrumpe con violencia en finca del director del diario Vanguardia](#); El Comercio. May 13, 2016. [Condenan violento operativo contra director de diario mexicano](#).

¹²⁵⁴ Comisión Nacional de Derechos Humanos (CNDH). May 6, 2016. [Comunicado de Prensa CGCP/126/16. Solicita CNDH medidas cautelares al gobierno de Coahuila ante actos intimidatorios contra personal del diario vanguardia y ataques cibernéticos a sus equipos](#).

to pick it up, the officer hit her in the face. The journalist filed a complaint with the Secretariat of Civic Safety [*Secretaría de Seguridad Ciudadana*] and the Human Rights Commission of Morelos opened an investigation into the case. Subsequently, the Secretariat of Safety [*Secretaria de Seguridad*] denied the events that had been denounced by the journalist. The Congress of the Union [*Congreso de la Unión*] urged the Office of the Attorney General of Morelos [*Fiscalía de Morelos*] to investigate the agents involved.¹²⁵⁵

821. The Special Rapporteur also learned of cases in which journalists were the victims of theft of journalistic material; according to the available information, unknown persons entered the homes of the photojournalists Germán Canseco (*Revista Proceso*)¹²⁵⁶ and Jonathan Rosas Ramírez (*Imagen del Golfo* and *Unión de Medellín*, state of Veracruz)¹²⁵⁷ and took only their work equipment and devices on which they stored journalistic information. Threats were also received by the columnist for the *El Universal* newspaper, Héctor De Mauleón,¹²⁵⁸ in Mexico City, as well a journalist for the *Diario Noroeste* in the state of Sinaloa.¹²⁵⁹ The journalist Ana Espinosa Rosete (*Crónica Hoy*) was attacked by police agents while she was covering demonstrations in Mexico City.¹²⁶⁰

822. In August, the journalist Noe Zavaleta, director of the newspaper *Crónica de Xalapa* and correspondent for *Proceso* in state of Veracruz, had to leave the state after receiving threats on social networks. The threats occurred because of the publication of the book “*El infierno de Javier Duarte*,” in which the journalist denounced acts of corruption by the governor of the state of Veracruz, Javier Duarte, and contracts for high sums of money signed between Governor Duarte and the newspaper *El Buen tono*. In addition to the threats, there was a campaign against the journalist on the social networks, pointing to him as a part of the Los Zetas cartel. According to the information available, the journalist reported the threats and returned to Veracruz after a few months. Since that episode, the journalist has had protection measures from the Federal Protection Mechanism. The state reported to the Special Rapporteurship that the Office of the General Prosecutor [*Fiscalía General*] of Veracruz is responsible for the investigation.¹²⁶¹

¹²⁵⁵ Informador.mx. June 8, 2016. [Denuncian agresión a reportera en Morelos](#); El Universal. June 9, 2016. [Niega Seguridad Pública de Morelos agresiones a periodista](#); Senado de la República. June 23, 2016. [La agresión contra los periodistas, cada vez más evidente en Morelos: senadora Martha Tagle](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). June 24, 2016. [México: Comisión Permanente del Congreso de la Unión pide investigar agresión a reportera](#).

¹²⁵⁶ Article 19. June 24, 2016. [Allanan and roban domicilio de fotoperiodista de Proceso en la Ciudad de México](#); Proceso. June 24, 2016. [Roban en domicilio de fotoreportero de Proceso: se llevan computadoras and equipo](#); Periodistas en riesgo. June 24, 2016. [Roban equipo a fotoperiodista de Proceso](#); SDPnoticias.com. June 24, 2016. [Asaltan de madrugada casa de fotoreportero de Proceso](#); El Sur. June 26, 2016. [Protestan periodistas frente a la PGR por robo al fotoreportero Germán Canseco, de la revista Proceso](#).

¹²⁵⁷ Aristegui noticias. July 29, 2016. [Veracruz: despojan a fotoperiodista de equipo, computadora and archivo](#); Notiver. July 30, 2016. [Saquean vivienda de fotógrafo!](#); AGN Veracruz. July 29, 2016. [Roban casa de fotoreportero en Veracruz Jonathan Rosas Ramírez](#); Article 19. July 29, 2016. [Allanan and roban domicilio de fotoperiodista en Veracruz](#).

¹²⁵⁸ Freedom House. June 28, 2016. [Preocupación por las amenazas contra el periodista Héctor De Mauleón](#); PEN International. No date. [México: Héctor de Mauleón, periodista y escritor, amenazado por investigación](#); El Universal. June 22, 2016. [Amenazan a Héctor de Mauleón tras operativo en la Condesa](#); Sinemabrgo. June 22, 2016. [La Asamblea de Barrios amenaza a Héctor de Mauleón por denunciar predio en el que se halló un túnel](#); Sopitas.com. September 22, 2016. [Otro más: amenazan a Héctor de Mauleón por denunciar crimen en la Condesa](#); El Universal. September 22, 2016. [Amenazan de nuevo a De Mauleón tras denunciar crimen en la Condesa](#); Sinemabrgo.mx. September 22, 2016. [El periodista Héctor de Mauleón recibe amenazas tras denunciar violencia en la colonia Condesa](#).

¹²⁵⁹ La Jornada. July 5, 2016. [Amenazan desconocidos a reportero del diario Noroeste: exigen retirar información](#); Zócalo. July 5, 2016. [Amenaza a reportero del diario Noroeste, de Sinaloa](#); El imparcial. July 5, 2016. [Amenazan a periodista que subió video de balacera en un concierto](#).

¹²⁶⁰ Crónica.com. July 7, 2016. [Reportera agredida por policías presenta denuncia ante PGJDE](#); Sin embargo. July 5, 2016. [Granaderos de la CdMx agreden a reportera durante manifestación en apoyo a la CNTE](#); Vanguardia. July 5, 2016. [Granaderos de la CDMX agreden a reportera durante manifestación de la CNTE](#); Etcétera. July 5, 2016. [Reportera de La Crónica de Hoy denuncia agresión por parte de granaderos de la CDMX](#).

¹²⁶¹ Reporters Without Borders (RSF). August 11, 2016. [Mexico: threats against author of book about Veracruz governor](#); Aristegui Noticias. August 12, 2016. [Tras amenazas, el periodista Noé Zavaleta huye de Veracruz](#); Knight Center for Journalism in the Americas. August 16, 2016. [After threats and harassment, Mexican journalist leaves the state of Veracruz](#); Sin embargo. August 7, 2016. [El periodista Noé Zavaleta, corresponsal de Proceso, es amenazado en Veracruz por su primer libro](#); Liberal. August 12, 2016. [Noé Zavaleta se exiliará de Veracruz](#); Aristegui Noticias. October 4, 2016. [Vuelve a Veracruz el periodista Noé Zavaleta](#); Liberal. October 4, 2016. [Reportero de Proceso regresa con guardaespaldas a trabajar](#); Estados Unidos Mexicanos. Informe del Estado mexicano en respuesta a la Solicitud de

823. In August, the organizations Freedom House and Article 19 denounced acts of harassment and threats against the journalist Jaime Nava in the capital of the state of San Luis de Potosí. Nava is a journalist for *La Jornada de San Luis* and according to the available information he published an investigation against alleged acts of corruption through a pharmaceutical supplier in the city of San Luis de Potosí. According to the reporting organizations, Nava was not the only journalist harassed; another journalist, José Guadalupe González, was also the victim of harassment, threats, and institutional violence. These events occurred since April when the investigation was published.¹²⁶²

824. On November 13, five people entered the offices of the digital medium *Aristegui Noticias* without authorization and stole a portable computer, which contained confidential information about judicial proceedings involving journalist Carmen Aristegui. In addition to the computer, they stole other material goods that were in the office. According to the available information, the Saio Servicios company that administered the property had filed a criminal complaint with the Prosecutor's Office of the Attorney General's Office [*Fiscalía de la Procuraduría General de Justicia*] of Mexico City.¹²⁶³

825. On November 27, the Secretariat of Public Safety [*Secretaría de Seguridad Pública*] of the state of Baja California notified the directors of the weekly periodical *Zeta* that they had uncovered a plan by the Jalisco drug cartel in the state of Tijuana to attack their offices in the early morning hours, but that the attack had been postponed. The attack was planned following publication of a report on illegal actions by the Jalisco Nueva Generación Cartel. The Committee for the Protection of Journalists urged the Mexican authorities to guarantee the safety of journalists who work at the weekly periodical *Zeta*.¹²⁶⁴

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

D. Prevention, Protection and Impunity for Crimes Against Journalists

827. On February 11, the Federal National Human Rights Commission [*Comisión Nacional de Derechos Humanos Federal*] (CNDH), issued General Recommendation No. 24 on the practice of freedom of expression in Mexico.¹²⁶⁵ The CNDH affirmed in its recommendation that the right to freedom of expression is undergoing one of its most critical moments and faces serious and complex obstacles such as the high rates of violence against those who disseminate information and the alarming impunity that exists in those crimes. The recommendation is directed at the Office of the Attorney General of the Republic [*Procuraduría General de la República*], the Secretary of the Navy [*Secretario de Marina*], the Head of Government of Mexico City, National Safety Commissioner [Comisionado Nacional de Seguridad], President of the Governing Board of the Mechanism for the Protection of Human Rights Defenders and Journalists [*Presidente de la Junta de Gobierno del Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas*], Prosecutors

Información conforme al artículo 41 de la Convención Americana sobre Derechos Humanos. September 9, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²⁶² Freedom House. August 10, 2016. [Preocupación por hostigamiento and amenazas contra periodistas de San Luis Potosí](#); Article 19. August 6, 2016. [Agreden a periodistas en San Luis Potosí por investigar actos de corrupción](#).

¹²⁶³ Aristegui Noticias. November 23, 2016. [Allanan redacción de Aristegui Noticias y sustraen computadora de Investigaciones Especiales](#); TVnotas. November 23, 2016. [Carmen Aristegui confirma robo y difunde video para identificar a los responsables](#); Zócalo Saltillo. November 22, 2016. [Irrumpen en oficinas de Aristegui y roban computadora](#)

¹²⁶⁴ *Zeta*. November 28, 2016. [CJNG ordena atentado contra ZETA](#); Aristegui Noticias. November 29, 2016. [Semanao Zeta es blanco de amenazas del Cartel Jalisco Nueva Generación](#); Vanguardia. November 29, 2016. [Ordena Cartel de Jalisco Nueva Generación, atentado contra Semanario 'Zeta'](#); Committee to Protect Journalists (CPJ). November 30, 2016. [Cartel plots to shoot at offices of Mexico's Zeta magazine](#).

¹²⁶⁵ Comisión Nacional de Derechos Humanos (CNDH). February 11, 2016. [Comunicado de Prensa CGCP/039/16. Difunde CNDH la Recomendación General 24 sobre el ejercicio de la libertad de expresión en México, que enfrenta momentos críticos y complejos](#).

[*Procuradores*]and Attorneys General [*Fiscales Generales de Justicia*], Secretaries of Public Safety [*Secretarios de Seguridad Pública*] of the federative entities, Municipal Presidents [*Presidentes Municipales*]and Heads of Delegations [*Jefes de Delegaciones*].

828. The CNDH through this recommendation strongly urges the Federal Government and the federative entities to implement “Policies aimed at generating a safe and respectful environment for journalists, communications and media outlets. In this way, not only will it be guaranteeing full exercise of the right to freedom of expression for journalists but it will also be contributing towards the consolidation of a more democratic, participative and tolerant society”.¹²⁶⁶

829. The recommendation warns of the increase in the number of homicides against journalists, as well as the fact that the authorities responsible for guaranteeing public safety have not been able to stop the attacks against the media. Also, the ineffective actions by the authorities in obtaining justice, who have been unable to clarify the attacks against the press. The CNDH concluded that whether by omission or action, both the authorities charged with preventing crime along with those responsible for carrying out investigations have failed in their duties.¹²⁶⁷

830. According to the recommendation, the federative entities with the highest percentage of aggressions against journalists are Veracruz, Tamaulipas, Guerrero, Chihuahua and Oaxaca. It also warns that women journalists have increasingly become the target of aggressions since 2010.¹²⁶⁸

831. The recommendation emphasizes that 90 per cent of the aggressions remain in impunity, and the CNDH stresses that while the investigating authorities carry out their work, they are not always able to clarify the facts and identify those allegedly responsible. It reiterates the lack of an adequate pursuit of justice, which has led to a climate of growing impunity that has facilitated the increase in aggressions against the press, silencing freedom of expression.¹²⁶⁹

832. The CNDH in its recommendation values the efforts made to provide guarantees for the practice of journalism and stresses the Mechanism for the Protection of Human Rights Defenders and Journalists, despite the difficulties of implementation and functioning that it faced in the beginning and the challenges that it currently faces. However, it warns that, despite efforts to guarantee freedom of expression, censorship has found new ways to limit this right by means of direct measures such as judicial harassment through the use of criminal classifications in those federative entities in which they still exist.¹²⁷⁰

833. The Office of the Special Rapporteur values the effort by the CNDH to capture and gather information about aggressions against the press during the past 10 years in Mexico, along with the analysis by the institution of the deficiencies that exist in the different government bodies to prevent, protect and obtain justice with respect to aggressions against the media and journalists. In particular, the Special Rapporteurship values the follow-up by the CNDH on the situation of impunity in crimes against the press, which in general continues to be the rule, and leaves those who exercise their right to freely express themselves unprotected while making it impossible to reduce this extreme form of censorship. General Recommendation 24 gathers together the different standards that have been developed by the IACHR and its Office of the Special Rapporteur for Freedom of Expression, as well as by other bodies of the Universal Human

¹²⁶⁶ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación General No. 24. Sobre el ejercicio de la libertad de expresión en México](#). February 8, 2016. Para. 4.

¹²⁶⁷ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación General No. 24. Sobre el ejercicio de la libertad de expresión en México](#). February 8, 2016. Para. 13.

¹²⁶⁸ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación General No. 24. Sobre el ejercicio de la libertad de expresión en México](#). February 8, 2016. Para. 22 and 28.

¹²⁶⁹ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación General No. 24. Sobre el ejercicio de la libertad de expresión en México](#). February 8, 2016. Para. 140, 144 and 160.

¹²⁷⁰ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación General No. 24. Sobre el ejercicio de la libertad de expresión en México](#). February 8, 2016. Para. 169 and following.

Rights System and hopes that the state authorities to whom the above-mentioned recommendation is directed will adopt its content and work to fulfill the recommendations contained therein, in order to generate a better climate for the exercise of freedom of expression in Mexico.

E. Social Protest

834. On April 6, journalists Salvador Adame and Frida Pardo, director and the owner of the media outlet 6 TV Tu Canal, were arrested while covering a demonstration in the municipality of Múgica, Michoacán. Along with the journalists, 17 women who were participating in the protest were also arrested. The journalists were documenting a protest at the Múgica town hall against the change of headquarters of the Ciudad Mujer social project, which had been awarded to that municipality in 2014 and recently relocated to the municipality of Huetamo. The journalists filmed the arrival at the site of the demonstration of a convoy consisting of the municipal president [*presidente municipal*], Salvador Ruiz Ruiz; the Deputy Secretary of Public Safety of the state [*Subsecretario de Seguridad Pública del estado*], Carlos Gómez Arrieta, and special forces from the Single Police Command [*fuerzas especiales del Mando Único Policial*]. After carrying out the eviction and arresting the women who took part in the protest, the police arrested Frida Pardo even though she identified herself as a journalist, and then arrested Salvador Adame, and all of the detainees were taken to Morelos in police cars. The journalists were freed hours later and the demonstrators on the following day.¹²⁷¹

835. On April 11, authorities and police officers evicted residents of the community of San Francisco Xochicuautla, in the state of Mexico, to begin construction of the Toluca-Naucaupan Highway, a project that the community has opposed for nearly 5 years. Various individuals were injured during the eviction.¹²⁷²

836. In April, the civil society organizations that make up the *Frente por la Libertad de Expresión y la Protesta Social* (Fleps) expressed concern over statements by environmental consultants and the Environmental Commission of the Megalopolis [*Comisión Ambiental de la Megalópolis*] (CAME) through several media outlets, regarding restrictions on social mobilizations or demonstrations, arguing that they contribute to pollution, in the context of the environmental contingency declared in March by the Government of Mexico City. In a public declaration, the Secretary of the Environment of the Government [*Secretaría del Medio Ambiente*] of Mexico City, Tanya Müller García, reported that studies would be carried out to measure the impact of demonstrations on the increase of environmental pollution. The organizations of the Fleps expressed their rejection of those statements and called upon the authorities not to use a legitimate discourse such as defense of the environment to restrict the right to demonstrate, which also bears no relation to the real causes of the pollution that afflicts Mexico City.¹²⁷³

837. On June 19, 2016 a joint police operation was carried out between State and Federal Forces in the roadblock of the Oaxaca-Mexico Highway, in the municipality of Nochixtlán, state of Oaxaca, with the objective of removing the roadblock being carried out by members of the National Coordinator of Education Workers [*Coordinadora Nacional de Trabajadores de la Educación*] (CNTE), in protest against the educational reform proposed by the Federal Government. The teachers, who belonged to section 22 of the Union of workers in education [*Sindicato de Trabajadores de la Educación*], with support from parents, had staged an occupation in the city of Oaxaca as well as placing roadblocks on the highways since May 15. The operation

¹²⁷¹ Committee to Protect Journalists (CPJ). April 12, 2016. [Police detain Mexican journalists covering protest](#); Article 19. April 9, 2016. [Periodistas son golpeados y detenidos arbitrariamente por policías de Michoacán durante una protesta](#).

¹²⁷² 24 horas. April 11, 2016. [Policía Estatal desaloja a otomíes de Xochicuautla para construir la Toluca-Naucaupan](#); Animal Político. April 11, 2016. [Policías del Edomex desalojan a habitantes de Xochicuautla, que se oponen a un proyecto de Higa](#); Sinembargo. May 23, 2016. [Grupo de choque desaloja a comuneros de Atenco para permitir obras del NAICM](#); Frente por la libertad de expresión y la protesta social/Fundar. April 13, 2016. [Autoridades del Estado de México agreden y desalojan a la comunidad de San Francisco Xochicuautla](#).

¹²⁷³ Frente por la libertad de expresión/ Propuesta Cívica. May 16, 2016. [Comunicado Restringir derechos contamina a una democracia: no a la protesta social](#); Vanguardia. May 1, 2016. [Marchas propician más contaminación](#); El Universal. May 1, 2016. [Ciudad de México registra cuatro marchas por día](#); Foro Ambiental. May 7, 2016. [Marchas y bloqueos multiplican contaminación en la CDMX](#); La Jornada. May 6, 2016. [Marchas ocasionan aumento en nivel de contaminación](#); Información en Movimiento. April 13, 2016. [Medirán contaminación por marchas en CDMX](#); Excelsior. April 13, 2016. [Medirán contaminación generada por las marchas](#); Hipertextual. June 10, 2016. [Causan contaminación las marchas en la Ciudad de México?](#)

led to a confrontation between the security forces and demonstrators. That same day there were acts of vandalism and looting in the state.¹²⁷⁴

838. As a result of the confrontations, and according to official figures, 8 people died, 7 of whom were shot, along with 1 person from handling an incendiary device, 41 federal police were injured, 14 state police were hurt and 53 civilians were injured. Additionally, according to the CNDH, 24 people were arrested. The CNDH issued cautionary measures on behalf of the people who were injured to enable them to obtain adequate medical attention.¹²⁷⁵ According to information provided by civil society organizations, 137 people were treated at diverse healthcare establishments in Nochixtlán, of whom 33 were minors. Most of the wounded had injuries stemming from firearms, burns, blows and intoxications.¹²⁷⁶ In Huitzo and Telixtlahuaca, 81 people were reported as having been hurt by rubber bullets, blows, fractures, intoxications and burns, among others.¹²⁷⁷ The organizations also denounced that the people who were arrested had been the victims of torture and many had not been brought before a judge; they also denounced abuse in the use of force by the police agents.¹²⁷⁸

839. On June 21, the Office of the Human Rights Ombudsman of Oaxaca [*Defensoría de Derechos Humanos de Oaxaca*] issued precautionary measures on behalf of 7 people who were reported as disappeared after the confrontations of June 19. The precautionary measures were issued on behalf of Ángel Santiago Hernández, Juan Velasco Méndez, Daniel Medina, María Carrillo, Gustavo Moreno Bravo, Inocente Pinacho, and Alejandro “NN.”¹²⁷⁹

840. On June 20, a team of journalists from *TV Azteca* travelled to Nochixtlán to document what had taken place the day before and the roadblocks that persisted in the zone. According to the available information, members of the community retained cameraman Fernando Albarrán and editor Pedro Cortés, demanding to be given 15 minutes of airtime on the newscast to explain what had happened the day before. After retaining them for several hours, they were freed.¹²⁸⁰ The Office of the Special Rapporteur later received information

¹²⁷⁴ IACHR. June 22, 2016. [Press Release 083/16 IACHR Condemns Violence in Oaxaca, Mexico](#); Secretaría de Gobernación. June 19, 2016. [Comunicado conjunto del Gobierno de la República y Gobierno del Estado de Oaxaca](#); Comisión Nacional de Derechos Humanos (CNDH). June 19, 2016. [Comunicado de Prensa CGCP/174/16. Lamenta la CNDH la pérdida de vidas y lesionados durante los hechos registrados este día en distintas localidades del estado de Oaxaca](#); Comisión Nacional de Derechos Humanos (CNDH). June 22, 2016. [Comunicado de Prensa CGCP/177/16. Pronunciamiento de la Comisión Nacional de los Derechos Humanos en relación con los lamentables hechos violentos ocurridos el día 19 de junio, en Nochixtlán, Oaxaca](#); Comisión Nacional de Derechos Humanos (CNDH). June 28, 2016. [Comunicado de Prensa CGCP/183/16. Deplora CNDH los actos de vejación contra policías federales en Oaxaca y llama a los manifestantes a respetar la dignidad de las personas](#); El País. June 21, 2016. [Ocho muertos en violentos enfrentamientos entre policías y maestros en Oaxaca](#); Expansión. June 19, 2016. [El conflicto magisterial en Oaxaca provoca enfrentamientos y saqueos](#); Excelsior. June 20, 2016. [Enfrentamientos en Oaxaca: seis muertos; chocan federales y miembros de la CNTE](#).

¹²⁷⁵ IACHR. June 22, 2016. [Press Release 083/16 IACHR Condemns Violence in Oaxaca, Mexico](#); Secretaría de Gobernación. June 19, 2016. [Comunicado conjunto del Gobierno de la República y Gobierno del Estado de Oaxaca](#); Comisión Nacional de Derechos Humanos (CNDH). June 19, 2016. [Comunicado de Prensa CGCP/174/16. Lamenta la CNDH la pérdida de vidas y lesionados durante los hechos registrados este día en distintas localidades del estado de Oaxaca](#); Comisión Nacional de Derechos Humanos (CNDH). June 22, 2016. [Comunicado de Prensa CGCP/177/16. Pronunciamiento de la comisión nacional de los derechos humanos en relación con los lamentables hechos violentos ocurridos el día 19 de junio, en nochixtlán, Oaxaca](#); Comisión Nacional de Derechos Humanos (CNDH). June 19, 2016. [Comunicado de Prensa CGCP/173/16. Emite CNDH medidas cautelares por los hechos de violencia ocurridos hoy en Oaxaca y refuerza su presencia con más visitantes adjuntos y peritos: observa la evolución de los hechos en Tabasco, Chiapas, Guerrero y Michoacán](#); Comisión Nacional de Derechos Humanos (CNDH). June 21, 2016. [Comunicado de Prensa CGCP/176/16. Informe de acciones de la CNDH en Nochixtlán, Oaxaca](#).

¹²⁷⁶ Comité de Defensa Integral de Derechos Humanos Gobixha. Informe Final sobre los hechos del 19 de junio en Oaxaca. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²⁷⁷ Comité de Defensa Integral de Derechos Humanos Gobixha. Informe Final sobre los hechos del 19 de junio en Oaxaca. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²⁷⁸ Comité de Defensa Integral de Derechos Humanos Gobixha. Informe Final sobre los hechos del 19 de junio en Oaxaca. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²⁷⁹ IACHR. June 22, 2016. [Press Release 083/16 IACHR Condemns Violence in Oaxaca, Mexico](#); Defensoría de los Derechos Humanos del Pueblo de Oaxaca. June 21, 2016. [Boletín 433. Pide Defensoría proteger a 7 personas desaparecidas en el desalojo](#).

¹²⁸⁰ TV Azteca/video. June 22, 2016. [Video: Crónica del secuestro de periodistas de TV Azteca](#); El Informador. June 22, 2016. [Liberan a periodistas de TV Azteca tras ser retenidos en Oaxaca](#); La Jornada. June 22, 2016. [Liberan a reporteros de Televisión Azteca retenidos en Oaxaca](#).

indicating that the inhabitants were angry about information that *TV Azteca* and other media outlets had disseminated in which they were portrayed as responsible for what happened to the teachers and other demonstrators. Moreover, the information indicates that the journalists were not retained but were instead accompanied so that they would provide an objective coverage portraying the excesses committed by members of the security forces.¹²⁸¹

841. On June 29, a Permanent Commission of the Congress of the Union [*Comisión Permanente del Congreso de la Unión*] unanimously approved the agreement creating the Follow-up Commission on the events that took place in Nochixtlán, Oaxaca on June 19, 2016, with the aim of following up on the investigations into the events. On August 31, the final report of activities was published, in which the Commission concluded among other things that, when planning the operation, the authorities failed to take into account that it was to be carried out on a Sunday, when there is greater movement by people in the zone where the events took place, and near the site of the roadblock in a zone with numerous homes and that the risk of affecting children was therefore quite high. The report also points out that there were deficiencies in coordination of the responsibilities of the authorities and the police from the two territorial orders that took part in the operation. The Commission stated that it is important for the competent authorities to determine whether or not there was abusive use of force by the police agents and in that sense affirmed that they were able to verify that firearms were used by agents of the security forces as well as by the demonstrators.¹²⁸²

842. On July 5, journalist Ana Espinosa Rosete, a reporter for *Crónica Hoy*, was beaten by police agents while covering demonstrations by the National Coordinator for Education Workers [*Coordinadora Nacional de Trabajadores de la Educación*] (CNTE), in Mexico City. According to the available information, the police agents obstructed the journalistic work of the reporters present, which was why Espinosa Rosete began to film them, at which time a policewoman struck her in the face and pushed her until she fell on the street. The events were denounced to the office of the Attorney General of Mexico City.¹²⁸³

843. The IACHR has reiterated that social protest is a fundamental tool for human rights defense work and is essential for critical political and social speech regarding the activities of the authorities. The Commission has maintained that “in principle, criminalization *per se* of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the right to freedom of expression and to freedom of assembly,”¹²⁸⁴ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹²⁸⁵

844. In addition, the Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, states that the rights of assembly and freedom of expression “son fundamentales y su garantía es una condición necesaria para la existencia y el funcionamiento de una sociedad democrática. Un Estado puede imponer limitaciones razonables a las manifestaciones con el fin de asegurar el desarrollo pacífico de las mismas o dispersar aquellas que se tornan violentas, siempre que tales límites se encuentren regidos por los principios de legalidad, necesidad y proporcionalidad. Además, la desconcentración de una manifestación debe justificarse en el deber de protección de las personas, y deben utilizarse las medidas más

¹²⁸¹ Comité de Defensa Integral de Derechos Humanos Gobixha. Informe Final sobre los hechos del 19 de junio en Oaxaca. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹²⁸² Estados Unidos Mexicanos. Poder Legislativo Federal. Comisión Permanente. [Informe Comisión de Seguimiento a los hechos ocurridos en Nochixtlán, Oaxaca el 19 de junio de 2016](#). No date; Estados Unidos Mexicanos. Senado de la República. August 31, 2016. [Comisión de Seguimiento al caso Nochixtlán entrega informe de trabajo a Comisión Permanente](#).

¹²⁸³ *Crónica.com*. July 7, 2016. [Reportera agredida por policías presenta denuncia ante PGJDE](#); Sin embargo. July 5, 2016. [Granaderos de la CdMx agreden a reportera durante manifestación en apoyo a la CNTE](#); Vanguardia. July 5, 2016. [Granaderos de la CDMX agreden a reportera durante manifestación de la CNTE](#); Etcétera. July 5, 2016. [Reportera de La Crónica de Hoy denuncia agresión por parte de granaderos de la CDMX](#).

¹²⁸⁴ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹²⁸⁵ 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.

seguras y menos lesivas para los manifestantes. El uso de la fuerza en manifestaciones públicas debe ser excepcional y en circunstancias estrictamente necesarias conforme a los principios internacionalmente reconocidos.”¹²⁸⁶ Finally, the Inter-American Commission has found that any type of arbitrary or abusive interference that might affect the privacy of human rights defenders and their organizations is prohibited under the Declaration and the American Convention.¹²⁸⁷

845. With respect to the use of force in contexts of social protest, the IACHR and its Office of the Special Rapporteur for Freedom of Expression developed relevant standards in their 2015 report on the Use of Force.¹²⁸⁸ In that report, the IACHR stated that “The social interest imperative associated with the right to participate in public demonstrations is such that there is a general presumption in favor of its exercise.” The IACHR maintained that “The presumption in favor of the exercise of social protest implies that states must act based on the legality of the protests or public demonstrations and under the assumption that they do not constitute a threat to public order, even in those cases in which they are held without prior notice.” In the same report, the IACHR underscored that, “Whatever the format adopted by those who exercise this right, the action of the police should have as its main objective facilitating demonstrations and not containing or confronting the demonstrators. Hence, as a general rule police operations organized in the context of protests should be geared to guaranteeing the exercise of this right and to protecting the demonstrators and third persons who are present.” In this regard, the Commission has considered that breaking up a demonstration does not, in itself, constitute a legitimate aim that justifies the use of force by security forces. “When a demonstration or protest leads to situations of violence it should be understood that the State was not capable of guaranteeing the exercise of this right. [...] The State’s obligation is to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims.”

F. Protection Mechanism

846. In its country report, in the chapter on the Protection Mechanism, the IACHR emphasized the efforts made by the State to protect persons at risk, in the context of serious violent acts occurring as a consequence of the defense or promotion of human rights, and in exercising freedom of expression and practicing journalism in Mexico in recent years. In particular, the Commission saw as especially important the creation of the “Mechanism for the Protection of Human Rights Defenders and Journalists” (hereinafter “the Mechanism” or the “Protection Mechanism”) in 2012, the issuance of specific regulatory frameworks, the disbursement of funds for operating the protection program, implementation of procedures for those who come to the Mechanism to request protection measures and a considerable number of protected persons, among other actions implemented with the objective of creating bonds of confidence regarding the effectiveness of the Mechanism.¹²⁸⁹ In this respect and in view of the information received through the various monitoring mechanisms of the IACHR, including precautionary measures, the Commission formulated a series of recommendations for the State in this specific area.

847. In following up those recommendations, the Inter-American Commission appreciates the efforts made by the State and its commitment to protecting an increasing number of beneficiaries of the Protection Mechanism, including beneficiaries of precautionary measures requested by the IACHR and provisional measures of the Inter-American Court. According to official State data, as of September 2016, 90 requests for protection were received and 79 persons have been incorporated. Since its creation in 2012, the Mechanism has provided protection measures for a total of 612 beneficiaries. There are currently 501 beneficiaries with

¹²⁸⁶ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

¹²⁸⁷ 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.

¹²⁸⁸ IACHR. Annual Report 2015. Chapter IV.A (The Use of Force). Available at: <http://www.oas.org/es/cidh/docs/annual/2015/doc-es/InformeAnual2015-cap4A-fuerza-ES.pdf>

¹²⁸⁹ IACHR. [Country Report, Situation of Human Rights in Mexico.](#) OEA/Ser.L/V/II.Doc. 44/15. 31 December 2015. Para. 431 et seq.

protection measures in effect; of these 321 are human rights defenders and 180 are journalists.¹²⁹⁰ Organizations that work with human rights defenders and journalists have indicated that measures are being implemented to reduce the delay in dealing with pending cases. The authorities have shown more openness to participating with civil society in evaluating the performance of the Mechanism and discussing how to address its limitations.¹²⁹¹

848. The IACHR considers as an important step the decision made by the Governing Board of the Protection Mechanism to issue an early warning on August 1, 2016 intended to prevent assaults against human rights defenders and journalists in the state of Chihuahua. This same mechanism was used in 2015 for the state of Veracruz. According to various organizations, this decision “constitutes a significant advance, in that it expressly recognizes the gravity of the at-risk situation faced by those engaged in the work of defending human rights or the practice of journalism in Chihuahua, one of the states with the largest number of attacks on human rights defenders and the largest numbers of murdered journalists.”¹²⁹² The decision was adopted after a request was made by a group of 25 human rights defense organizations in Chihuahua. In this respect, the IACHR appreciates the effort made by the Protection Mechanism to develop the diagnosis of the situation of human rights defenders and journalists in Chihuahua published in July 2016, which exposes some of the causes for the attacks on human rights defenders and journalists as well as the principal types of attacks to which they are exposed, and also reiterates the recommendations that the CNDH and the State Human Rights Commission of Chihuahua had made to different government agencies involved in preventing and protecting against attacks on target populations.¹²⁹³ The Commission hopes that all the authorities involved, both federal and state, fully perform the commitments assumed and also hopes that journalists, human rights defenders, and civil society are able to effectively participate, with full guarantees, in the development and monitoring of the Early Alert System.

849. The State informed the Special Rapporteurship for Freedom of Expression regarding the implementation of the “Inter-Institutional Collaboration Agreement to Implement the Program of Public Policies in Favor of Journalists who Practice Freedom of Expression in the state of Veracruz” signed in November 2015 between the Governing Board of the Federal Mechanism for the Protection of Human Rights Defenders and Journalists and the Government of the state of Veracruz, which was adopted as an early alert mechanism in response to a request made by a group of journalists due to the serious security situation journalists face in that state. According to the information provided by the State, the agreement has made possible training for institutional personnel in human rights and freedom of expression and ongoing cooperation between the federal mechanism and the state authorities in Veracruz. Maps and statistics have also been developed to identify at-risk areas and populations, and there has been follow-up on investigations opened based on attacks committed against journalists.¹²⁹⁴

850. During the on-site visit of the IACHR, the Protection Mechanism announced an evaluation of the effectiveness of the panic button as a protection measure. In this regard, the State reported that between December 2015 and March 2016 a process to evaluate that measure was conducted by the Prevention, Monitoring, and Analysis Unit (UPSA). The study found that 55 per cent percent of the beneficiaries indicated they had used the Help Button on at least one occasion, 70 per cent percent of the calls made were for an emergency. As a result of that evaluation a series of recommendation were made, notably including training

¹²⁹⁰ Mechanism for the Protection of Human Rights Defenders and Journalists. [Informe Estadístico-Agosto 2016](#). August 2016.

¹²⁹¹ WOLA/PBI. [The Mechanism for Protection of Human Rights Defenders and Journalists in Mexico](#). May 2016, pp. 2 et seq.

¹²⁹² FIDH, Observatory (OMCT-FIDH) and the Center for Women’s Human Rights (CEDEHM). September 15, 2016. [MÉXICO: Por primera vez se emite una alerta temprana para prevenir agresiones a defensores/as de derechos humanos and periodistas](#).

¹²⁹³ United Mexican States. Ministry of the Interior. Under-Secretariat of Human Rights, Mechanism for the Protection of Human Rights Defenders and Journalists. [Diagnóstico sobre la situación de las personas defensoras de derechos humanos and periodistas en el estado de Chihuahua](#). July 2016.

¹²⁹⁴ United Mexican States. Report of the Mexican State in response to the request for information in accordance with Article 41 of the American Convention on Human Rights submitted on August 12, 2016. Mexico, Federal District, September 9, 2016. Available at: Archive of the Special Rapporteurship for freedom of expression.

for the beneficiaries of this measure by the Mechanism as well as by the private company that handles the devices.¹²⁹⁵

851. Without prejudice to the foregoing, the Inter-American Commission has continued to receive information on significant delays in risk assessment procedures and implementation of material protection measures due to a lack of human and financial resources,¹²⁹⁶ circumstances that are exacerbated in some states in the country's interior.¹²⁹⁷ In this regard, as the IACHR has reiterated through the two reports on the Situation of Human Rights Defenders in the Americas, the States have the duty to provide the budgetary and logistical resources necessary to guarantee the effectiveness of protection programs. In this regard, in its comments on the draft version of this report, the State said that "coordinated work has taken place with the PGR on reviewing the Mechanism's guidelines, criteria, methods, and procedures as approved by the Board of Governors. This has led to an increase in the number of cases reviewed and adopted, from four cases per session in 2012 to an average of 38 cases per session in 2016; as a result, the backlog has been brought down. In 98 per cent of the cases the protection plans were adopted unanimously."¹²⁹⁸

852. One of the main issues with a cross-cutting effect on all institutional policy regarding protection is the persistent lack of coordination among the various institutions at the state and federal level.¹²⁹⁹ Under this scenario, members of civil society have indicated that the number of persons who seek protection from the Mechanism is not equal to the magnitude and intensity of the at-risk situation faced daily by a large number of human rights defenders and journalists in Mexico.¹³⁰⁰ These circumstances are likely related to the level of mistrust that currently persists regarding the effectiveness of the Mechanism, which was identified by the IACHR in its 2015 country report.¹³⁰¹ In this regard, in its comments on this report, the State informed the IACHR that the Protection Mechanism's National Executive Coordinating Office entered into cooperation agreements with 31 of the nation's 32 states. In those agreements, the federal and state authorities agreed to: (i) investigate and punish attacks suffered by human rights defenders and journalists on account of their activities, (ii) develop and implement preventive measures in order to avoid potential attacks, and (iii) pursue the legal amendments and additions needed to improve the situation of human rights defenders and journalists.¹³⁰²

853. The State indicated that the Fund for the Protection of Human Rights Defenders and Journalists, which has been operating through a trust since 2012, had spent a total of MXN\$ 68 million 928 thousand 868 (approximately US\$ 4 million 162 thousand) on the implementation and operation of protective measures. The total available in the Fund as of May 31, 2016, was MXN\$ 290 million 166 thousand 747 (approximately US\$ 14 thousand 120).¹³⁰³

¹²⁹⁵ United Mexican States. Report of the Mexican State in response to the request for information in accordance with Article 41 of the American Convention on Human Rights submitted on August 12, 2016. Mexico, Federal District, September 9, 2016. Available at: Archive of the Special Rapporteurship for freedom of expression.

¹²⁹⁶ According to the report "The Protection Mechanism for Human Rights Defenders and Journalists in Mexico," issued in May 2016 by WOLA/PBI, "only 37 employees work in this Mechanism."

¹²⁹⁷ Artículo 19. Segundo Informe Trimestral de 2016: Un periodista asesinado cada 26 días. August 4, 2016; and WOLA/PBI, [El Mecanismo de Protección para personas Defensoras de Derechos Humanos and Periodistas en México](#). May 2016. Page 11.

¹²⁹⁸ Communication from the Mexican State. Response of the Mexican State to the draft of Chapter V of the 2016 Annual Report of the Inter-American Commission on Human Rights, January 16, 2017.

¹²⁹⁹ Artículo 19. Seguimiento a las recomendaciones realizadas por la Comisión Interamericana de Derechos Humanos en su informe sobre la situación de Derechos Humanos en México. September 15, 2016. Page . 5.

¹³⁰⁰ Centro Mexicano de Derecho Ambiental (CEMDA). Follow-up on recommendations made by the Inter-American Commission on Human Rights in its report on the situation of human rights in Mexico. September 15, 2016. Page. 2.

¹³⁰¹ IACHR. [Country Report, Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II.Doc. 44/15. 31 December 2015. Para. 445 et seq.

¹³⁰² Communication from the Mexican State. Response of the Mexican State to the draft of Chapter V of the 2016 Annual Report of the Inter-American Commission on Human Rights, January 16, 2017.

¹³⁰³ Communication from the Mexican State. Response of the Mexican State to the draft of Chapter V of the 2016 Annual Report of the Inter-American Commission on Human Rights, January 16, 2017.

854. Within the IACHR's precautionary measures mechanism, while the Commission has noted the willingness of the competent authorities to deal with decisions granting precautionary measures and to hold consensus-building meetings on protective measures, information has been received on serious difficulties with the protective measures implemented by the competent authorities, including those that are a part of the Protection Mechanism. In particular, throughout 2016, information has continued to be received on: i) the failure to implement protection measures from a collective perspective, with a differentiated and culturally appropriate approach;¹³⁰⁴ ii) unjustified delays in the implementation of material protective measures¹³⁰⁵ iii) challenges in the implementation of protective measures intended to address specific risks, including with respect to the situation of journalists;¹³⁰⁶ iv) precarious allocation of funds to implement material protective measures, including the lack of fuel so that security agents can make their rounds, limitations on the number of security personnel assigned to beneficiaries, defective panic buttons and satellite phones;¹³⁰⁷ among other situations that affect the security situation of various beneficiaries of precautionary measures and the National Protection Mechanism.¹³⁰⁸ On the persistence of such failures, the Inter-American Commission considers it important for every protection measure that is implemented to be adequate, and thus suitable for protecting the beneficiary against the situation of risk, and effective, in that it must produce the expected results.¹³⁰⁹ Therefore, the States must design policies that allow them to monitor the effectiveness of the measures and constantly follow up their implementation, as it relates to the risks the beneficiaries may face.¹³¹⁰

855. In the case of human rights defenders and journalists who have been displaced because of their work and who have requested protection from where they have relocated, members of civil society have indicated that risks have been assessed and protection measures implemented in the new location rather than in the area from which they were displaced. "This makes it difficult for them to return and continue with human rights work and does not reduce the real risk level they face."¹³¹¹ On this subject, the Commission urges the State to redouble its efforts to strengthen the Protection Mechanism, taking into account the specific risks faced by the beneficiaries of the program, so that they can continue their work as human rights defenders and journalists.

856. Moreover, members of civil society have continued to express their concern regarding the lack of a strategy on prevention and on the punishment of those responsible for the attacks that continue to be faced by human rights defenders and journalists,¹³¹² which perpetuate cycles of violence and limit the performance of their work. In the words of a Mexican civil society organization, "one of the main weaknesses of the

¹³⁰⁴ IACHR. In the matter of the members of the Otomí-Mexica indigenous community of San Francisco Xochicuautila with respect to Mexico. May 11, 2016; and In the matter of Lauro Baumea et al. with respect to Mexico (Pueblo Yaqui). Resolution extending the scope of the precautionary measures of March 22, 2016.

¹³⁰⁵ IACHR. Matter of Edgar Ismael Solorio Solis et al. with respect to Mexico. Resolution expanding the scope of the measure of of January 13, 2016.

¹³⁰⁶ IACHR. Matter of Norma Madero Jiménez et al. with respect to Mexico. April 7, 2016.

¹³⁰⁷ Report presented by CEJIL on September 8, 2016, within the framework of the precautionary measures (MC 185-16) granted in favor of Sofia Lorena Mendoza and others with respect to Mexico. Report submitted by the CEDEM on July 28, 2016, within the framework of the precautionary measures (MC 208-10) in favor of Estela Angela Mondragón and others with respect to Mexico; Report presented by CEJIL on September 9, 2016, within the framework of precautionary measures (MC 77-15) in favor of the human rights defenders E and K with respect to Mexico; among other reports received during 2016.

¹³⁰⁸ WOLA/PBI. [The Protection Mechanism for Human Rights Defenders and Journalists in Mexico](#). May 2016. p. 7.

¹³⁰⁹ IACHR. [Second report on the situation of human rights defender in the Americas](#), OEA/Ser.L/V/II. Doc. 66, December 31, 2011. Para. 133.

¹³¹⁰ IACHR. [Second report on the situation of human rights defenders in the Americas](#), OEA/Ser.L/V/II. Doc. 66, December 31, 2011. Para. 337.

¹³¹¹ WOLA/PBI. [The Protection Mechanism for Human Rights Defenders and Journalists in Mexico](#). May 2016, p. 11.

¹³¹² Artículo 19. Segundo Informe Trimestral de 2016: Un periodista asesinado cada 26 días. August 4, 2016, p. 7; and WOLA/PBI. [The Protection Mechanism for Human Rights Defenders and Journalists in Mexico](#). May 2016. p. 3.

institutions [...] is their limited work in the area of prevention, as they carry out merely reactive work.”¹³¹³ Along these lines, with respect to the investigation of the factors that cause the entry and permanence of persons supported by the Protection Mechanism, as well as persons benefiting from precautionary measures, the IACHR notes with concern that it has not received information on short-, medium- and long-term measures that the competent authorities are implementing to establish investigation as a prevention measure as the policy of the State. In its comments on this report, the State acknowledged the importance of strengthening its capacity to create long-term public policies so that the justice authorities are responsible for preventing and effectively investigating crimes committed against persons covered by the Mechanism’s protection.¹³¹⁴ The Commission feels that the failure to investigate the facts that lead to at-risk situations generates a context of impunity that constantly reproduces the repetition of violent acts that affect the work of human rights defenders and journalists. Thus, as indicated emphatically in the 2015 country report,¹³¹⁵ the Inter-American Commission recalls that “the most efficient medium to protect [...] is to efficiently investigate acts of violence and punish those responsible.” Therefore, it again repeats its call on the State to conduct exhaustive independent investigations on attacks suffered by all persons linked to protection programs, including those who are beneficiaries of IACHR precautionary measures.

857. The IACHR encourages the efforts of the mechanism intended to develop statistics regarding attacks on journalists and human rights defenders, broken down by gender, state, and perpetrator. In this regard, the IACHR and its Special Rapporteurship for freedom of expression learned that as of September 2016¹³¹⁶ the prevention, monitoring, and analysis unit of the Federal Mechanism had statistics regarding requests for protection under the mechanism, beneficiary individuals or groups, types of attacks, precautionary measures, protective measures, legal actions, files completed, meetings of the governing board, and requests for public information. This information has been developed thanks to the construction of a database and a georeferencing map that make it possible to systematize the information collected by the Prevention Unit through national monitoring of attacks against journalists and the communications media.

G. Subsequent Liabilities

858. The 69th Civil Judge [69° *Juez de lo Civil*] of Mexico City on April 19 sentenced journalist Sanjuana Martínez to provide nonmaterial damages to Jesús Ortega Martínez, ex leader of the *Partido de la Revolución Democrática* (PRD). According to the available information, the journalist published two articles in 2013 titled “*Consumidores de sexo comercial*” (Commercial Sex Consumers) and “*Infierno en el Cadillac: sexo, poder y lágrimas*” (Hell in a Cadillac: Sex, Power and Tears), in which she linked the political leader to prostitution and human trafficking. Ortega Martínez filed a civil suit for nonmaterial damages and asked the judge to set compensation; when the sentence was issued, the amount that the journalist would have to pay as compensation was unknown.¹³¹⁷

859. According to the journalist and her legal representatives, the sentence had serious procedural irregularities, including her not having been duly notified by the court of the proceedings against her, as well as not having specified the manner in which the specific effects on the image of the plaintiff had occurred and failing to duly prove the relationship between the alleged crime and the alleged damage caused. The complaint was filed in Monterrey and then at the request of the journalist was transferred to Mexico City. During that period, the journalist and her attorneys did not know where the complaint was nor did they have access to it and it was only when the sentence was announced in the media that they had knowledge of the

¹³¹³ Artículo 19. Seguimiento a las recomendaciones realizadas por la Comisión Interamericana de Derechos Humanos en su informe sobre la situación de Derechos Humanos en México. September 15, 2016. p. 5.

¹³¹⁴ Communication from the Mexican State. Response of the Mexican State to the draft of Chapter V of the 2016 Annual Report of the Inter-American Commission on Human Rights, January 16, 2017.

¹³¹⁵ IACHR, “Country report: Situation of Human Rights in Mexico,” December 31, 2016, paras. 452 et seq.

¹³¹⁶ Mechanism for the Protection of Human Rights Defenders and Journalists, “Informe Estadístico-Agosto 2016.” August 2016.

¹³¹⁷ El Universal. April 19, 2014. [Ordenan a Sanjuana Martínez pagar indemnización a Jesús Ortega](#); Etcétera. April 29, 2016. [Jesús Ortega rechaza irregularidades en el proceso contra Sanjuana Martínez](#); Article 19. April 19, 2016. [Juzgado vulnera libertad de expresión y debido proceso de Sanjuana Martínez](#).

situation. On April 26, the Eighth District Civil Court [*Juzgado Octavo de distrito en materia civil*] suspended execution of the sentence and the journalist also filed an action for *amparo* to protect her fundamental rights.¹³¹⁸

860. Journalist Carmen Aristegui was the target of a civil lawsuit filed by Joaquín Vargas, owner of the concession MVS –the company where the journalist had previously worked-, stemming from publication of the book *La Casa Blanca de Peña Nieto, la historia que cimbró un gobierno*, in the prologue to which the journalist had made statements that the entrepreneur viewed as having caused him nonmaterial damage.¹³¹⁹ On October 28, the Superior Court of Justice of Mexico City [*Tribunal Superior de Justicia de la Ciudad de México*] convicted the journalist in the first instance for having caused nonmaterial damages to the president of the MVS communications group. The ruling ordered Aristegui to publish the sentence at her own cost and to include a fragment of the sentence in the prologue to all publications of the book.¹³²⁰ The Court considered that Vargas Guajardo is a public figure, which is why society has a legitimate interest in receiving information about him and he must tolerate a higher level of interference in his private life. Nonetheless, the Court stated that Vargas Guajardo's right to privacy prevails over the right to freedom of expression when, among other circumstances, the information has been disseminated although known to be false. When analyzing the evidentiary material submitted, it found that Vargas Guajardo demonstrated the falsehood of the information contained in the prologue to the book *La Casa Blanca de Peña Nieto, la historia que cimbró un gobierno*. Therefore, the Court concluded that Aristegui exceeded in exercising her right to report, causing damage to the rights of honor and prestige of Vargas Guajardo, in not having provided evidence that would prove the content of the above-mentioned prologue. The journalist announced that she would file an appeal against the sentence. These events took place in the framework of the termination of the contract of Aristegui and her team by Vargas Guajardo, as reported in the 2015 Annual Report.¹³²¹ The journalist had announced that her firing stemmed from the publication of an investigation into a case of alleged corruption in the purchase of a luxurious home used by the President of the Republic.¹³²²

861. On June 28, the academic and columnist Sergio Aguayo Quesada was the target of a civil suit filed with the 15th Civil Court of the Superior Court of Justice of Mexico City [*Juzgado 15 de lo Civil del Tribunal Superior de Justicia de la Ciudad de México*] by Humberto Moreira Valdés, Ex-Governor of Coahuila and ex national leader of the *Partido Revolucionario Institucional* (PRI), following publication of an article in January of 2016, which referred to the politician's arrest in Spain. In the text, Aguayo maintained that the public career of Moreira "smelled of corruption and... was an example of impunity". The plaintiff has demanded payment of approximately US\$ 530 thousand as a settlement.¹³²³

862. On June 8, journalist Pedro Ferriz de Con was the target of a civil suit filed with the Superior Court of Justice [*Tribunal Superior de Justicia*] of Mexico City by the Ex-Governor of Coahuila and ex national leader of the *Partido Revolucionario Institucional* (PRI), Humberto Moreira Valdés. In his suit, the politician demanded

¹³¹⁸ La Jornada. April 26, 2016. [Suspensión provisional a sentencia contra la periodista Sanjuana Martínez](#); Sin embargo. April 26, 2016. [Juez otorga suspensión temporal a fallo contra Sanjuana Martínez por demanda de Jesús Ortega](#).

¹³¹⁹ La Jornada. July 21, 2016. [MVS demanda a Aristegui: la periodista denuncia "persecución judicial"](#); El País. July 22, 2016. [El dueño de MVS demanda a Carmen Aristegui por daño moral](#).

¹³²⁰ Aristegui Noticias. November 23, 2016. [¿Quién miente aquí?](#); Informador. July 21, 2016. [Denuncia MVS a Carmen Aristegui por daño moral](#); Informador. November 7, 2016. [Juez condena a Aristegui por daño moral al presidente de MVS](#); Sin Embargo / EFE. November 7, 2016. [Un juez condena a Carmen Aristegui por supuestamente "dañar el honor y prestigio" del presidente de MVS](#); Vanguardia. November 7, 2016. [Carmen Aristegui es condenada por daño moral](#).

¹³²¹ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere).OEA/Ser.L/V/II. Doc 48/15. December 31, 2015. Para. 920 - 924

¹³²² Aristegui Noticias. November 23, 2016. [¿Quién miente aquí?](#)

¹³²³ Animal Político. July 13, 2016. [Humberto Moreira demanda a periodista por daño moral: quiere intimidarme, dice Sergio Aguayo](#); Vanguardia. July 13, 2016. [Demanda Humberto Moreira a periodista restituir su honor ¡y 10 mdp!](#); Freedom House. July 13, 2016. [Preocupación por la demanda en contra de Sergio Aguayo](#); Aristegui noticias. July 13, 2016. [Humberto Moreira demanda a Sergio Aguayo por daño moral: reclama 10 mdp de indemnización](#).

a settlement of US\$ 1 million 590 thousand 288 for nonmaterial and property damages. In 2012, the former state governor had filed a civil suit against the same journalist but had later dropped the suit.¹³²⁴

863. On June 12, the First Civil Judge [*Juez Primero de lo Civil*] of Campeche sentenced the newspaper *La Opinión*, edited in the state of Campeche, to pay a settlement of US\$ 32 thousand 636 to the ex-local leader of the *Confederación Nacional Campesina*, Sonia Cuevas Kantún, who had sued the newspaper for nonmaterial damages following the publication of interviews with the family members of a young woman killed in 2012, in which the peasant leader, who is also an alternate senator, was accused of attempting to use her political influence to cover up for her nephew, who was found guilty of homicide. According to the available information, the sentence will be appealed. The Inter-American Press Association (IAPA) expressed concern over the impact this decision would have on the practice of journalism in Mexico.¹³²⁵ Subsequently, on June 22, Cuevas Kantún filed an action for direct *amparo* with the Second District Judge in Campeche, so that the Attorney General's Office would process his complaint filed in December of 2015 to investigate the origin of the funds of *La Opinión*, which he alleged were illegal.¹³²⁶

864. The Supreme Court of Justice of the Nation [*Suprema Corte de Justicia de la Nación*] granted the action for *amparo* filed by the actress and singer Lucía Méndez against article 41 of the Law of Civil Responsibility for Protection of the Right to Private Life, Honor and the Image of the Federal District Itself [*Ley de Responsabilidad Civil para la Protección del Derecho de la Vida Privada, el Honor y la Propia Imagen del Distrito Federal*],¹³²⁷ to be economically compensated by the announcer Javier Parra Cortés, known as Alex Kaffie. The Court declared the partial unconstitutionality of the abovementioned article 41, which permitted people who have been found guilty of nonmaterial damages to not pay any compensation whatsoever if the judge considered that the damage could be compensated through publication and dissemination of the guilty verdict at the cost of the defendant in the same medium as using the same format in which the facts and opinions that generated the affectation have been published; and in any case that the compensation could not exceed “three hundred sixty-five days of the general minimum wage currently-in-effect in the Federal District”. The Court considered that the model established in the above-mentioned article 41 was contrary to the reparation regimen of common source established in article 63.1 of the American Convention on Human Rights, which provides for the payment of a fair settlement for damages caused. That being the case, the Court declared the constitutionality of the phrase “In cases in which the damage cannot be compensated in terms of article 39” and the maximum ceiling for the amount of the economic compensation. Therefore, the Court established that reparation for nonmaterial damage must include both publication of the guilty verdict as well as the payment of an economic settlement in accordance with what has been proven in the proceedings.¹³²⁸ The Court ordered revocation of the sentence issued by the Tenth Civil Chamber of the Federal District [*Décima Sala Civil del Distrito Federal*], so that the competent judge may issue a new sentence pursuant to the

¹³²⁴ Vanguardia. July 15, 2016. [Demanda de nuevo Humberto a Ferriz de Con](#); El Siglo de Torreón. July 19, 2016. [Humberto vuelve a demandar a Ferriz](#); Proceso. November 21, 2012. [Moreira demanda a Ferriz de Con por daño moral](#); Vanguardia. January 27, 2014. [Desiste Humberto Moreira de demanda contra Pedro Ferriz](#).

¹³²⁵ Proceso. June 21, 2016. [Diarios de Campeche acusan a juez de servir a intereses ajenos](#); Animal Político. June 23, 2016. [Juez de Campeche sentencia a periodistas a pagar 6 mdp a una ex líder sindical por daño moral](#); SinEmbargo.com. June 24, 2016. [Juez falla a favor de Senadora del PRI y exige a periodistas de Campeche pagarle 6 mdp](#); El Expreso. June 21, 2016. [Juez Luis Lanz y Sonia Cuevas quieren callar a La Opinión](#). Inter American Press Association (IAPA). June 24, 2016. [México: Violencia, demanda y embargo debilitan la libertad de prensa](#).

¹³²⁶ Proceso. July 6, 2016. [Directivos de diarios denuncian acoso por segunda demanda de exlideresa](#); Animal Político. July 5, 2016. [Exlíder sindical presenta una nueva demanda contra el diario La Opinión de Campeche](#); El Expreso. July 5, 2016. [Con una nueva demanda Sonia acusa a La Opinión](#).

¹³²⁷ Original version of Article 41 of the *Ley de Responsabilidad Civil para la Protección del Derecho de la Vida Privada, el Honor y la Propia Imagen del Distrito Federal*: “In cases in which the damage can not be compensated in terms of article 39, compensation shall be settled taking into account the greater or lesser disclosure that the unlawful act has had, the personal conditions of the victim and the other circumstances of the case, under no circumstances the indemnity amount shall exceed three hundred and fifty days of the general minimum wage in force in the Federal District, the foregoing does not include the expenses and costs that must be paid and which may be reimbursed according to the provisions of the Civil Procedures Code for the Federal District.”

¹³²⁸ Primera Sala de la Suprema Corte de Justicia de la Nación. [Amparo Directo en Revisión 3226/2015](#). May 4, 2016; El Universal. May 5, 2016. [Lucía Méndez le gana pleito a Alex Kaffie](#); El Debate. May 5, 2016. [Periodista agrede a Lucía Méndez, ella demanda y gana](#); e-consulta. May 10, 2016. [Abogados afirman que Lucía Méndez no ha ganado demanda a Alex Kaffie](#).

new constitutional interpretation of the abovementioned article 41. This decision was handed down in the framework of litigation between Méndez and Parra Cortés, in which Parra Cortés had been found guilty of nonmaterial damage to Méndez in 2014 but absolved from the payment of economic compensation.

865. In November of 2015, the Third Civil Court of the State [*juzgado Tercero de lo Civil*] of Baja California issued precautionary measures on behalf of the spouse of the Municipal President of Mexicali, who had sued journalist Jaime Delgado Gaxiola, director of the *Periodismo Negro* news portal, for nonmaterial damages. The precautionary measure on behalf of the plaintiff involved ordering the journalist to abstain from publishing news associated with the mayor's wife, which has been called an act of prior censorship.¹³²⁹

866. In March, the attorney, social activist and columnist Teresa Guerra Ochoa reported that she had been sued for non-material damages by the ex-candidate for governor of the state of Sinaloa, Héctor Melesio Cuén Ojeda, whom the journalist had criticized in her spaces for opinion on different media outlets. According to the available information, the plaintiff has not specified the amount demanded as compensation.¹³³⁰ In August, Guerra Ochoa publicly announced that unknown individuals entered her office and extracted information about the litigation with Cuén Ojeda.¹³³¹

867. In May, the legal representative of the newspaper *Vanguardia* announced that the ex-governor of Coahuila, Humberto Moreira Valdés, had filed a civil lawsuit against the newspaper, edited in the City of Saltillo, Coahuila, and also against journalist Roxana Romero, whom he accuses of having caused him nonmaterial damage stemming from journalistic coverage by the daily newspaper of a story in which the ex-governor had benefited from the payment of a pension, as a teacher in the public education system, despite only having served as a teacher for a fraction of the time that is ordinarily required for teachers to gain access to retirement benefits.¹³³²

868. In August, columnist Rosa Esther Beltrán was sued by the attorney and political leader Ariel Maldonado Leza, after publication of an article on April 8 in which the plaintiff was criticized along with his sister, who works for a medical services clinic for state magistrates. Maldonado Leza requested payment of a settlement the amount of which was left up to the judge to determine.¹³³³

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

870. The Inter-American Court has also established, as regards possible civil liability, that civil judgments in freedom of expression cases must be strictly proportionate so as not to have an inhibitory effect on that freedom, as “the fear of a civil penalty, considering the claim [...] for a very steep civil reparation, may be, in

¹³²⁹ Zeta. February 15, 2016. [Vida privada, vida pública](#); Informador. November 29, 2015. [Juez prohíbe a periodista escribir sobre novia de alcalde de Mexicali](#); Zócalo Saltillo. November 29, 2015. [Prohíben a periodista escribir sobre novia del alcalde de Mexicali](#); MonitorBC. August 29, 2016. [Se reaviva el pleito Sonia Carrillo Pérez-Jaime Delgado](#).

¹³³⁰ La Jornada. March 6, 2016. [El Partido Sinaloense demanda a activista](#); Fuentes fidedignas. March 16, 2016. [Demanda Cuen a la abogada Tere Guerra por daño moral](#).

¹³³¹ Informador. August 21, 2016. [Saquean oficina de activista social en Sinaloa](#); La Silla Rota. August 21, 2016. [Saquean despacho de activista de Sinaloa](#).

¹³³² Vanguardia. May 6, 2016. [Demanda Humberto Moreira a Vanguardia y periodista por nota de su pensión](#); Proceso. May 6, 2016. [Denuncia Humberto Moreira al diario Vanguardia: exige se le repare un supuesto daño moral](#); SinEmbargo. May 6, 2016. [Humberto Moreira demanda por daño moral al diario Vanguardia por nota sobre su pensión](#).

¹³³³ Vanguardia. August 10, 2016. [Ponen nueva demanda: ahora es en contra de editoralista de Vanguardia](#); Vanguardia. April 8, 2016. [El colmo de los excesos](#).

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.”¹³³⁴

H. Access to Public Information

871. On June 22, the INAI ordered the Secretariat of National Security [*Secretaría de Seguridad Nacional*] (Sedena) to deliver the written and audiovisual documents that were collected by military personnel on the night of September 26, 2014 in the city of Iguala, when 43 students from the *Escuela Normal Rural Raúl Isidro Burgos* in Ayotzinapa disappeared. The request had been made by a private individual and after receiving a partial response from the security force, filed an appeal for review with the National Institute for Transparency, Access to Information and Personal Data Protection [*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*] (INAI). In effect, the Sedena replied to the request for information that the requested information did not exist, but that in fulfillment of the principle of maximum publicity, they made available a compact disc with 4 photographs taken by the military personnel that night. In response to that reply, the petitioner filed an appeal for review with the INAI, arguing that the version of a member of the military confirming the existence of photos and videos taken that night was a matter of public knowledge.¹³³⁵

872. The INAI regarded the response by the Sedena as imprecise, because it indicated that the information did not exist while at the same time making documents available like those that had been requested. It also considered that the response failed to provide certainty about how exhaustive the effort to find the required information was. In that sense, it compiled documents showing the existence of videos and photographs made by military personnel. The INAI recalls in its resolution that the case of the disappearance of the 43 students was declared to be of public interest because it involves a case of grave human rights violations and that same authority had therefore already ordered the PGR to create a public version of the case file of the investigation. The Institute instructed the Sedena to carry out an exhaustive search according to the provisions of the law to locate the written and audiovisual documents obtained on the night of September 26, 2014, and stated that “the authorities have explained the legal arguments that justify this decision; however, they can strengthen them through transparency. The best way to show that the Mexican Army is not associated with the grave human rights violations in the case of Ayotzinapa, is to punctually respond to the demands for information and to guarantee that they at all times act pursuant to the relevant legislation. We Mexicans have the right to know and evaluate whether the Army fulfilled its duties.”¹³³⁶

873. On July 13, the INAI resolved the appeal for review filed against the response made by the Federal Police that denied access to the investigation file on fulfillment of the obligations by the members filed with the Internal Affairs Unit, regarding the deaths of civilians in Apayzingán, Michoacán on January 6, 2015. In their response, the Federal Police [*Policía Federal*] had indicated that the requested information had been classified for a period of 10 years, due to the existence of a deliberative process pending resolution.

¹³³⁴ I/A Court H.R., Case of *Tristán Donoso v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 27, 2009. Series C No. 193. Para.129.

¹³³⁵ Instituto Nacional de Transparencia Acceso a la Información y Protección de Datos Personales. Resolución del recurso de revisión RDA 2128/16. Comisionado Ponente Joel Salas Suárez. June 22, 2016. Available at: <http://consultas.ifai.org.mx/Sesionessp/Consultasp?next=51>; Instituto Nacional de Transparencia Acceso a la Información y Protección de Datos Personales. June 26, 2016. *SEDENA debe buscar y dar a conocer fotografías y videos tomados por militares la noche que desaparecieron los 43 normalistas de Ayotzinapa: INAI*.

¹³³⁶ Instituto Nacional de Transparencia Acceso a la Información y Protección de Datos Personales. Resolución del recurso de revisión RDA 2128/16. Comisionado Ponente Joel Salas Suárez. June 22, 2016. Available at: <http://consultas.ifai.org.mx/Sesionessp/Consultasp?next=51>; Instituto Nacional de Transparencia Acceso a la Información y Protección de Datos Personales. June 26, 2016. *SEDENA debe buscar y dar a conocer fotografías y videos tomados por militares la noche que desaparecieron los 43 normalistas de Ayotzinapa: INAI*.

874. The INAI determined that none of the grounds for classification of information provided for under the law had been demonstrated, the information did not compromise national security, it is not part of an adversarial process but rather that the elements obtained in that investigation would determine the beginning of a punitive procedure before the Federal Police Development Council [*Consejo Federal de Desarrollo Policial*]. In that sense, the rapporteur counselor clarified that the requested information refers to possible administrative offenses committed by agents of the Federal Police [*Policía Federal*] and not human rights violations, although that may have been the origin of the investigation by internal affairs. The INAI urged the police authority to provide the public version of the case file omitting the names of the agents that had served as witnesses in the investigation in order not to affect its development.¹³³⁷

875. On June 27, the Fifth Collegiate Tribunal for Administrative Matters [*Quinto Tribunal Colegiado en Materia Administrativa*] of the Federal District resolved that the information from the inquiry begun by the Military Attorney General's Office into military crimes allegedly committed in the municipality of Tlatlaya, state of Mexico, was classified. The Petition for Information had been filed with the Sedena in 2015 by *Aristegui Noticias* and Artículo 19 and was subsequently forwarded to the INAI. In June of 2015, the INAI had determined that the information was classified for a period of two years or until a sentence is issued in the case. The petitioners filed an action for *amparo* against the decision by the INAI and in November of 2015, the First Judge for Administrative Matters granted the *amparo* so that the information in question would be revealed, among other reasons because the Judge decided that because the information was associated with grave human rights violations, it could not be treated as classified. The INAI filed an appeal for review against the decision and the SEDENA and the PGR, who were constituted as interested third parties within the process, did the same. Subsequently, the INAI in a press release declared that the Institute would desist from the appeal for review filed against the sentence, despite the continued processing of the appeal deriving from the PGR and the SEDENA having also filed it.¹³³⁸

876. In the 157th period of sessions, during the public hearing on Access to Information and Indirect Restrictions on Freedom of Expression in Mexico, civil society organizations expressed concern over the lack of obligation to publish asset declarations and declarations of conflicts of interest of public officials because, pursuant to current laws and regulations, their publication is discretionary. The organizations stated that making the publishing of asset declarations obligatory would make the fight against corruption much more effective. The State expressed its commitment in the fight against corruption and had therefore carried out a constitutional reform to create the National anti-corruption system [*Sistema Nacional Anticorrupción*] (SNA), which includes mechanisms for prevention, arrest and trial in relation to corruption. That System is under construction.¹³³⁹

877. Principle 4 of the IACHR's Declaration of Principles states that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

I. Communications Surveillance

¹³³⁷ Instituto Nacional de Transparencia Acceso a la Información y Protección de Datos Personales. Resolución del recurso de revisión RDA 2265/16. Comisionada Ponente Patricia Kurczyn Villalobos. July 13, 2016. Available at: <http://consultas.ifai.org.mx/Sesionessp/Consultasp?next=51>; Instituto Nacional de Transparencia Acceso a la Información y Protección de Datos Personales. August 1, 2016. [PF debe dar a conocer versión pública de investigación de su departamento de asuntos internos, sobre la muerte de civiles en Apatzingán, en enero de 2015](#); El Financiero. August 1, 2016. [INAI ordena a PF informar sobre muerte de civiles en Apatzingán](#).

¹³³⁸ Instituto Nacional de Transparencia Acceso a la Información y Protección de Datos Personales. January 13, 2016. [INAI determina desistirse de recurso interpuesto en un amparo relativo al caso Tlatlaya](#); Lexnal Diario. January 15, 2016. [INAI se desiste de interponer recurso de revisión en caso Tlatlaya](#); El Economista. January 13, 2016. [INAI retira recurso de reserva de documentos sobre caso Tlatlaya](#); La Jornada. January 15, 2016. [En Tlatlaya sí se violaron los derechos humanos: juez](#); Regeneración. June 27, 2016. [Cierran impunemente caso Tlatlaya](#); *Aristegui Noticias*. June 27, 2016. [Tlatlaya: cierran en definitiva acceso a expediente](#); Article 19. June 27, 2016. [Tribunal ordena mantener oculto expediente militar de Tlatlaya](#).

¹³³⁹ IACHR. 157 Period of Sessions. Hearing "Acceso a la información y restricciones indirectas a la libertad de expresión en México". April 7, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/157/default.asp>

878. On May 4, the Supreme Court of Justice of the Nation [*Suprema Corte de Justicia de la Nación*] declared as constitutional articles 189 and 190 of the Federal Telecommunications and Broadcasting Law [*Ley Federal de Telecomunicaciones y Radiodifusión*] (LFTR), which forces telecommunications concessionaires to preserve a record for two years of communications made along with metadata that enable identification of the user, the type of communication, the information associated with the communication services utilized and information about real-time geolocation of mobile telephones. The above-mentioned articles also force the telecommunications concessionaires to provide the competent authorities with the information collected, when it is requested in a written and well-founded manner. The Court established that the above-mentioned articles are not contrary to the principles of legality and legal security to the extent that they identify the authorities that would be competent to have access to the information and that this must be done pursuant to the applicable laws and the guidelines established by the Federal Telecommunications Institute. Additionally, the Court established that the disputed articles do not violate the right to privacy with respect to access and use of personal data, to the extent that the established exceptions are within the law and comply with legitimate ends, such as national security and public order. Regarding the human right to inviolability of communications, the Court specified that it involves not only the content of the communications but also the data associated with the traffic of the communications, so that judicial authorization is required to gain access.¹³⁴⁰

879. The Court established that the abovementioned articles only establish the obligation of the telecommunications concessionaires to respond to subpoenas from the competent authorities, pursuant to the legal procedure established for that purpose in constitutional article 16, without this implying authorization to intercept the content of the communications. The Court concluded that real-time geolocation of mobile telephones does not constitute an interception of the communications, so that it can thus be undertaken without a court order. The ruling came about as the result of an appeal for *amparo* submitted by the *Red en Defensa de los Derechos Digitales* (R3D), arguing that the retention of communications metadata is a disproportionate measure and contrary to the right to privacy. In this respect, the R3D expressed concern over the decision by the Court to validate the obligation imposed by the LFTR on the telecommunications concessionaires to preserve the record of communications metadata for two years, as well as to permit real-time geolocation of mobile telephones without a court order.¹³⁴¹

880. The Office of the Special Rapporteur has observed that decisions to undertake surveillance tasks that invade people's privacy must be authorized by independent judicial authorities, who must state the reasons why the measure is suitable for achieving the goals sought in the specific case; that it is sufficiently limited so as not to affect the particular right more than necessary and is proportional to the interest that it aims to promote. Investigative processes that are carried out and imply an invasion of privacy authorized by law and are ordered by a competent judge must also respect other guarantees associated with due process. The States must guarantee that the judicial authority is specialized and competent to make judicial decisions about the legality of the communications surveillance, the technologies utilized and their impact in the realm of the rights that could be compromised and that they have sufficient guarantees to adequately carry out their duties. Finally, the Office of the Special Rapporteur observes that the decision-making criteria adopted by the courts should at the very least be public.¹³⁴²

J. Diversity and Pluralism

¹³⁴⁰ Suprema Corte de Justicia de la Nación. Sala Segunda. Amparo en Revisión 964/2015. Magistrado Ponente Ministro Alberto Pérez Dayan. May 4, 2016. Available at <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=185299>; Red en Defensa de los Derechos Digitales R3D. May 5, 2016. [La SCJN y la #LeyTelecom: Lo malo, lo bueno, lo absurdo y lo que sigue.](#)

¹³⁴¹ Suprema Corte de Justicia de la Nación. Sala Segunda. Amparo en Revisión 964/2015. Magistrado Ponente Ministro Alberto Pérez Dayan. May 4, 2016. Available at <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=185299>; Red en Defensa de los Derechos Digitales R3D. May 5, 2016. [La SCJN y la #LeyTelecom: Lo malo, lo bueno, lo absurdo y lo que sigue.](#)

¹³⁴² 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.

881. On January 27, by means of a press release, the Federal Telecommunications Institute [*Instituto Federal de Telecomunicaciones*] (IFT) announced that it was making a digital tool available to the public for making “denunciations of broadcasters without concessions, in which the public may anonymously or personally report on the illegal operation of frequencies”, and that the tool is available on the IFT webpage. It stated that “within its powers, by means of the Unit for Compliance, the Institute carries out activities for monitoring and visits for verification and inspection with the purpose of safeguarding the legal, effective and efficacious use of the radio spectrum, and therefore the functioning of telecommunications and broadcasting services.”¹³⁴³ Civil society organizations and representatives of community radio stations expressed their rejection of the campaign.¹³⁴⁴

882. In the framework of the 157th period of sessions of the IACHR, civil society organizations that participated in the public hearing on Access to Information and Restrictions on Freedom of Expression in Mexico expressed concern about the abovementioned campaign led by the IFT. The organizations denounced that the messages and images used by the campaign stigmatize community radio stations and their journalists, and explained that many of these radio stations are forced to operate without a license because they lack the necessary resources for gaining access to one.¹³⁴⁵

883. In June, a full session of the IFT resolved to grant four concessions to provide FM audio broadcasting services for community social use. According to the press release issued by the IFT, three of those concessions correspond to authorization by the full IFT to provide an equal number of broadcasting permits under the concession regimen provided for in the Federal Telecommunications and Broadcasting Law [*Ley Federal de Telecomunicaciones y Radiodifusión*] (LFTR). Each one was granted a concession to use and exploit frequency bands of the radio spectrum to provide the public service of FM audio broadcasting under the category of community social use. The fourth concession was granted to the *Calentana Luvimex* radio station, in Luvianos, state of Mexico, which is directed by Indalecio Benítez. In its 2015 report, the Office of the Special Rapporteur had warned of the confiscation of the equipment of *Radio Calentana*.¹³⁴⁶ The Office of the Special Rapporteur welcomes the decision by the IFT to grant these concessions and particularly that of *Radio Calentana*, which had been forced to operate illegally, and hopes that the IFT will continue with the process of legalization of various community radio stations that are currently in the same situation.

884. On June 14, the IFT announced the Convocation and the Bases of the public tender for the concession for use, development and commercial exploitation of 191 radio frequencies on the FM band and 66 on AM (IFT-4) for a period of 20 years, in diverse localities of 27 of the country’s entities. The tender for the licenses will be divided between one corresponding to the 191 frequencies of the FM band and the other for the 66 AM frequencies. According to the press release of the IFT, “the Procedure for Submitting Bids is based on an ascending simultaneous mechanism, in which points are awarded for a bid in relation to the economic component and the noneconomic components of the evaluation formula corresponding to each tender (AM and FM). The process provides for a stimulus in points for new participants in the market and, for FM, an additional stimulus for transmission in analogic/digital hybrid format using the standard IBOC.”¹³⁴⁷

¹³⁴³ Instituto Federal de Telecomunicaciones IFT. January 27, 2016. [comunicado de prensa no.5/16. el ift publica herramienta para denunciar estaciones de radio sin concesión.](#)

¹³⁴⁴ AMARC México. March 28, 2016. [AMARC México expresa su rechazo a la campaña criminalizadora emprendida por el IFT](#); Centro Nacional de Comunicación social Cencos. April 6, 2016. [OSC piden a IFT descarte campaña "Se Busca por Robo" por discriminatoria](#); Cholollan radio comunitaria. April 4, 2016. [Comunicado respecto a la campaña del IFT "SE BUSCA POR ROBO"](#); El Universal. April 5, 2016. [Solicitan al IFT que elimine la campaña "Se busca por robo"](#); Global Voices. April 21, 2016. ["Se busca por robo": la polémica campaña que perjudica a las radios indígenas en México.](#)

¹³⁴⁵ IACHR. 157 Period of Sessions. Hearing “Acceso a la información y restricciones indirectas a la libertad de expresión en México”. April 7, 2016. Available at <http://www.oas.org/es/cidh/multimedia/sesiones/157/default.asp>

¹³⁴⁶ Instituto Federal de Telecomunicaciones. June 21, 2016. [El pleno del IFT resuelve otorgar concesiones para uso social comunitario \(Comunicado 68/2016\)](#); Amarc. June 17, 2016. [Cuatro radios, cuatro historias. Aprueba Pleno del IFT Concesión Social Comunitaria para cuatro radios comunitarias de AMARC](#); Zócalo. June 15, 2016. [Otorgan concesión a la radio comunitaria "La Calentana"](#).

¹³⁴⁷ Instituto Federal de Telecomunicaciones. June 14, 2016. [El Pleno del IFT aprobó la convocatoria y las bases de licitación de 191 frecuencias de radio FM y 66 de AM de uso comercial \(Comunicado 63/2016\)](#); Aristegui Noticias. June 15, 2016. [IFT aprueba primera licitación de frecuencias en la radio comercial](#). El Financiero. June 27, 2016. [Arranca licitación de radio de uso comercial en AM y FM](#).

885. The Second Chamber and the First Chamber of the Supreme Court of Justice of the Nation [*Sala Segunda y la Sala Primera de la Suprema Corte de Justicia de la Nación*] resolved in August and October, respectively, the actions for *amparo* in review 80/2016 and 1308/2015, declaring the constitutionality of article 89 of the Federal Telecommunications and Broadcasting Law [*Ley Federal de Telecomunicaciones y Radiodifusión*] (LFTR), which enshrines the sources from which concessionaires of social use may obtain revenues. Under this provision, community radio stations may not sell advertising to public entities, while at the same time stipulating that federal and municipal public entities may allocate as much as 1 per cent of their advertising budget for community radio stations. It also excludes the broadcasting of commercial messages and the sale of private advertising as revenue sources. The Court in both cases declared the constitutionality of article 89 in considering that it permits the sale of advertising on behalf of public entities and that the limit of 1 per cent constitutes a positive action aimed at permitting the viability of social use concessions, without this violating the absence of profitability that characterizes them. Additionally, the Court considered that there is no discrimination between radio stations of social use and those of commercial use, because the former are nonprofit while the latter are profit-seeking, which generates a different legal situation and permits them to have differential treatment. The main basis for the actions for *amparo* was precisely that article 89 of the LFTR limits sources of financing in a discriminatory manner, violating the rights of freedom of expression and nondiscrimination.¹³⁴⁸ At the close of this report, the Supreme Court of Justice of the Nation had not published the final versions of the abovementioned rulings.¹³⁴⁹

886. On various occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media in our region fulfill a fundamental function for the exercise by diverse sectors of society of freedom of expression and access to information.¹³⁵⁰ In that sense, it is necessary for the states to legally recognize community media and to consider fair spectrum reserves for this type of media, along with adequate conditions of access to licenses that would take into account the circumstances. Similarly, community media must benefit from fair and simple procedures for obtaining licenses, must not have to comply with technological or other types of requirements that involve disproportionate barriers for access to licenses, and in their operation must not be the target of differentiated treatments that are not adequately justified.¹³⁵¹

887. The Office of the Special Rapporteur recalls that the right to freedom of expression requires the States to adopt measures to guarantee its exercise under conditions of equality and nondiscrimination. It is indispensable that all disproportionate or discriminatory restrictions that prevent radio or television operators in all modalities to be able to fully comply with the commercial, social or public mission assigned to them be removed. In this sense, legislation should appropriately define the concept of community media outlets, including their social and noncommercial purpose, and their operative and financial independence of the State and of economic interests. At the same time, the legislation should: (1) provide for simple procedures for obtaining licenses; (2) not demand severe technological requirements that prevent them from

¹³⁴⁸ Aristegui Noticias. August 10, 2016. [SCJN declara constitucional que radiodifusoras sociales no tengan patrocinios](#); Observacom. September 26, 2016. [Corte de México rechaza inconstitucionalidad de límites a la publicidad en radios comunitarias e indígenas](#); Amedi. September 22, 2016. [Sufren revés radios comunitarias](#). Suprema Corte de Justicia de la Nación. May 5, 2016. Comunicado No. 173/2016. [Artículo 89 de la Ley Federal de Telecomunicaciones y Radiodifusión, acorde con la Ausencia de Lucro que Rige Concesiones de Uso Social: Primera Sala](#); Radio Formula. October 5, 2016. [Artículo 89 de Ley de Telecomunicaciones y Radiodifusión, acorde con ausencia de lucro: SCJN](#).

¹³⁴⁹ Aristegui Noticias. August 10, 2016. [SCJN declara constitucional que radiodifusoras sociales no tengan patrocinios](#); Observacom. September 26, 2016. [Corte de México rechaza inconstitucionalidad de límites a la publicidad en radios comunitarias e indígenas](#); Amedi. September 22, 2016. [Sufren revés radios comunitarias](#). Suprema Corte de Justicia de la Nación. May 5, 2016. [Artículo 89 de la Ley Federal de Telecomunicaciones y Radiodifusión, acorde con la Ausencia de Lucro que Rige Concesiones de Uso Social: Primera Sala](#); Suprema Corte de Justicia de la Nación. Sala Primera.

¹³⁵⁰ 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. Report 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.

¹³⁵¹ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression and Broadcasting](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 92 and following.

gaining access to licenses; and (3) include the possibility that diverse sources of funding may be used, such as advertising as a means for financing⁹⁹. In any case, the legislation should include sufficient guarantees so that they do not become dependent upon the State through official funding.¹³⁵²

¹³⁵² 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. 96, 110 and 93.

22. NICARAGUA

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

888. On October 7, the director of the newspaper *Confidencial*, Carlos Fernando Chamorro, filed a complaint, accompanied by directors of the *Centro Nicaragüense de Derechos Humanos* (Cenidh), regarding alleged acts of espionage and intimidation committed against the news outlet that he directs and which consisted of an attempt by members of the governing *Frente Sandinista de Liberación Nacional* party, and members of the Army, to obtain information on the internal functioning of the company, along with its mechanisms for computer security.¹³⁵³ According to the information available, a company employee, assigned to the administrative area, had been contacted on September 20 by two individuals who originally had made him a job offer through a person known to him. However, upon meeting with them, the supposed job offer became a request for information about the functioning of the news outlet. A second employee, assigned to the computer area, was contacted two days later at his home by an individual who identified himself by showing an ID from the Army of Nicaragua and required information about the passwords for access to the website of the newspaper and about its computer security measures.¹³⁵⁴ Both employees refused to provide the requested information and informed the directors of the company of the situation.

889. Principle 9 of the Declaration of Principles on Freedom of Expression establishes that “[t]he murder, kidnapping, intimidation, threats against journalists as well as the material destruction of media outlets violates the fundamental rights of people and severely restricts freedom of expression. The States have the duty to prevent and investigate these events, punish their perpetrators and ensure adequate reparation for the victims.”

B. Social Protest

890. By means of different measures, the State has prevented the free circulation of ideas and exercise of the right to demonstrate. From April 2015 to July 2016, convoked by the *Partido Liberal Independiente*, which is an opposition party, numerous demonstrations were held, some of them in front of the Supreme Electoral Council [*Consejo Supremo Electoral*], as well as in different parts of the city of Managua, to demand the holding of free elections. At the end of 2015, during some of these marches, known as “Wednesdays of protest”, groups of hooded civilians allegedly assaulted representatives of the media and other civilians, actions that, according to the available information, reportedly occurred in the presence of the police without their having intervened to prevent them.¹³⁵⁵

891. On July 21, the Supreme Electoral Council [*Consejo Supremo Electoral*] (CSE) of Nicaragua published an “Electoral Ethics Regulation” [*Reglamento de Ética Electoral*] in the Official Daily *La Gaceta*. That regulation aimed to make it obligatory to obtain prior permission to hold demonstrations during the period prior to Election Day on November 6. Article 6 of that regulation established that “[d]uring the period of the Electoral Campaign, contemplated in the Electoral Calendar, public demonstrations, concentrations and meetings of political parties or coalitions of political parties held in the outdoors will require authorization from the respective Electoral Council”. Additionally, the Regulation formulated the need to “post a solidarity bond with the National Police Headquarters, pursuant to the relevant Law, to respond for damages to third

¹³⁵³ *Confidencial*. October 7, 2016. [Periodismo contra el espionaje político](#). Centro Nicaragüense de Derechos Humanos (Cenidh). October 7, 2016. [Equipo periodístico de Confidencial y Esta Semana denuncia espionaje e intimidación](#).

¹³⁵⁴ *Confidencial*. October 7, 2016. [Confidencial denuncia actos de intimidación y espionaje](#); Centro Nicaragüense de Derechos Humanos (Cenidh). October 7, 2016. [Equipo periodístico de Confidencial y Esta Semana denuncia espionaje e intimidación](#); La Prensa. October 7, 2016. [Carlos Fernando Chamorro denuncia intimidación y espionaje político](#); Radio Corporación. October 8, 2016. [Denuncian intimidación y espionaje contra trabajadores de Confidencial y Esta Semana](#).

¹³⁵⁵ Inter American Press Association (IAPA). April 3, 2016. [Nicaragua Report/Midyear Meeting 2016](#); La Prensa. February 28, 2016. [Una década de asedio contra el periodismo en Nicaragua](#); Radio Corporación. March 2, 2016. [Miércoles de Protesta continuarán hasta que haya elecciones libres](#); La Vanguardia/EFE. June 1, 2016. [Oposición de Nicaragua reanuda “miércoles de protesta” con nuevas demandas](#).

parties.”¹³⁵⁶ Publication of the Regulation generated discontent among the media outlets and civil society organizations. As a result, the CSE announced revocation of the Regulation on August 9.¹³⁵⁷

892. On November 29 and 30, while peasants protesting against the construction of the interoceanic canal were traveling from different parts of southern Nicaragua to demonstrate in Managua on November 30, military checkpoints reportedly prevented their arrival to the Nicaraguan capital. According to the available information, riot police forces militarized the roads which the peasants were to use and engaged in an abusive use of force to prevent them from passing through the checkpoints and arriving in Managua. At least 80 people were reportedly injured, one of them shot with a firearm while others were intoxicated by tear gas.¹³⁵⁸

893. The IACHR has stated that protection of the exercise of the rights of assembly and freedom of expression involve not only the obligation of the State to not interfere in their exercise but also the duty, in and in response to certain circumstances, to adopt positive measures to ensure it.¹³⁵⁹ These measures include the duty during a protest to protect the rights of demonstrators in relation to acts committed by private or non-state actors. They also include the obligation to investigate and punish those who commit acts of violence against the lives or personal integrity of demonstrators.

894. It has also stated that “in a democracy, the States must act based on the legality of public protests or demonstrations and under the supposition that they do not constitute a threat to public order. This implies an approach focused on building greater levels of civic participation, with the streets and plazas as privileged places for public expression.”¹³⁶⁰ In that sense, it has reiterated that imposition of the requirement for prior authorization or permission to hold demonstrations and protests in public spaces is incompatible with international human rights law and best practices and has urged States that still require prior authorization or permission to eliminate this requirement and expressly establish the general assumption in favor of the exercise of the right of assembly and freedom of expression.

C. Indirect Censorship

895. On August 14, the newspapers *La Prensa* and *Hoy* denounced attempts to prevent them from covering the patriotic parade in Nicaragua in honor of the independence of Central America and the Battle of San Jacinto. According to available information, elements of the National Police and members of the Federation of Secondary Education Students [*Federación de Estudiantes de Secundaria*], who provided security for the event, tried to prevent the journalists from gaining access to the space of the public thoroughfare where the parade was being held, arguing that only government media had the right to do so.¹³⁶¹

¹³⁵⁶ La Gaceta. Diario Oficial. July 21, 2016. [Reglamento de Ética Electoral \(págs. 5974 a 5977\)](#).

¹³⁵⁷ Agencia EFE. August 9, 2016. [El Poder Electoral de Nicaragua anula el reglamento que regulaba la libertad de expresión](#); Confidencial. August 9, 2016. [CSE se retracta con Reglamento de Ética](#); La Nación/AFP. August 10, 2016. [Tribunal electoral de Nicaragua desiste de plan para restringir libertad de expresión](#).

¹³⁵⁸ EFE. November 30, 2016. [Campesinos de Nicaragua denuncian presión policial por marcha contra el canal](#); Hoy. November 29, 2016. [Inician enfrentamientos entre campesinos y antimotines](#); E&N. November 30, 2016. [Nicaragua: Ortega aplasta marcha campesina anti canal](#); Confidencial. November 30, 2016. [Campesinos resisten represión con valentía](#); La Prensa. November 30, 2016. [Así resistieron los campesinos la represión policial](#).

¹³⁵⁹ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 192; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II.Doc.66. December 31, 2011. Para. 133.

¹³⁶⁰ In that sense, the UN Human Rights Council recognized that protests “can make a positive contribution to the development, strengthening and effectiveness of democratic systems, and to democratic processes.” Human Rights Council of the United Nations. Resolution A/HRC/25/L., March 20, 2014. Preamble. Available for consultation at: http://www.un.org/ga/search/viewm_doc.asp?symbol=A/HRC/25/L.20 Also, the Special Rapporteurship for Freedom of Expression of the IACHR has emphasized that society’s participation through public demonstration is important for the consolidation of democratic life. 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. February 27, 2006. Para. 91.

¹³⁶¹ La Prensa. August 14, 2016. [Desfiles y censura a LA PRENSA en inicio de fiestas patrias](#).

896. On October 9, journalist Yolidia Navas Salomon, director of the newscast 'Hoy' on *Radio Zinica*, a station that broadcasts from the city of Bluefields, received word that her radio program, which had existed for 15 years, would be canceled. According to the known information, Navas was informed of the decision by the director of the media outlet, Arturo Valdez Robleto, who is also a member of the delegation of the *Partido Frente Sandinista de Liberación Nacional* in the National Assembly. In the telephone conversation, the legislator told the journalist that it was a "decision by the *Frente Sandinista* party", supposedly because the criticisms made on her program caused "much damage... to the National Police, the office of the Mayor and government institutions."¹³⁶²

897. Diverse media outlets and opposition political leaders denounced the refusal by the CSE to accredit representatives of independent Nicaraguan media outlets, along with foreign ones, to cover incidents of the November 6 election day. According to the available information, the accreditations issued by the electoral authority are indispensable for entry into places where the tables that receive the votes operate along with the computer centers, as well as to cover the election results. Some media outlets even had refrained from trying to gain accreditation by the CSE because throughout the electoral process they had not been permitted to enter press conferences convoked by that entity.¹³⁶³

898. The Nicaraguan State has also carried out actions to unduly obstruct the right of journalists and scholars to research, receive and diffuse information of public interest. These include the implementation of policies to prevent entry into the country of journalists, academics and activists who try to obtain or provide information about the situation of human rights or freedom of expression in Nicaragua.

899. On February 3, the Director for Latin America of the civil organization Freedom House, Carlos Ponce, denounced having been expelled from the country when he tried to enter to take part in a series of meetings with civil society organizations, diplomats and governmental agents. According to the known information, Ponce arrived at Managua International Airport on the night of February 2 and was then informed that his stay in the country would not be authorized due to "an administrative decision". However, with the argument that the airport was to be fumigated at that moment, he was taken to a hotel in the capital city where he remained under police custody to be deported hours later.¹³⁶⁴

900. On June 14, United States researcher Evan Ellis, a member of the Strategic Studies Institute of the U.S. Army War College, was expelled from Nicaragua the day after his arrival in the country, supposedly to carry out research on the Inter-oceanic Canal project. According to the known information, around midnight on June 13, when he had been in Nicaragua for just a few hours, Ellis received a visit by three supposed migration agents in the hotel where he was staying, who, without identifying themselves, told him that he had not been authorized to enter the country to obtain information about the canal, also urging him to leave the country by 5 AM the following day at the latest. The communication occurred a few hours before the researcher, according to his agenda, was to meet with the editor-in-chief of the newspaper *La Prensa*, Eduardo Enríquez.¹³⁶⁵

¹³⁶² La Prensa. October 10, 2016. [FSLN ordena cierre del noticiero en Bluefields](#); Centro Nicaragüense de Derechos Humanos (Cenidh). October 11, 2016. [Comunicado por cierre de Noticiero Hoy](#); Contacto Hoy/EFE. October 12, 2016. [Condenan cierre de noticiero radial crítico con el Gobierno en Nicaragua](#).

¹³⁶³ La Jornada. November 2, 2016. [CSE no entrega credenciales de prensa a los periodistas independientes](#); La Prensa. November 3, 2016. [CSE niega acreditaciones a medios de comunicación independientes](#); El Nacional. November 4, 2016. [Poder Electoral de Nicaragua no acreditó a medios independientes para comicios](#); NicaraguaPatriaMia.com. November 5, 2016. [Poder Electoral de Nicaragua acredita sólo a medios afines al FSLN](#).

¹³⁶⁴ Confidencial. February 3, 2016. [Gobierno de Ortega expulsa a director de Freedom House](#); Freedom House. February 3, 2016. [Freedom House Latin America Director Denied Entry to Nicaragua](#); Milenio. February 3, 2016. [Freedom House denuncia que Nicaragua impidió el ingreso de su director](#); ElSalvador.com. February 3, 2016. [Expulsan de Nicaragua al director de Freedom House](#).

¹³⁶⁵ La Prensa. June 15, 2016. [Ortega expulsa a investigador sobre el Canal](#); Confidencial. June 15, 2016. [Gobierno expulsa a un analista de EE.UU.](#); La Prensa. June 27, 2016. [Evan Ellis: "Mi nada placentera experiencia con el gobierno de Nicaragua"](#).

901. On June 25, Mexican political scientist Viridiana Ríos, who is a researcher at the Wilson Center in the city of Washington D.C., revealed that, for fear of being arrested, she was forced to leave Nicaragua on June 22, just one day after having arrived in the country to carry out research on inequality and economic growth. According to the available information, the academic, who is also a collaborator for the Mexican newspaper *Excelsior*, decided to leave Nicaragua because at the hotel where she was staying as well as at the headquarters of the Inter-American Development Bank, she was warned that two police officers had come to ask about her. After being informed of this situation, Ríos went to the Mexican consulate in Managua, where diplomatic personnel recommended that she leave the country.¹³⁶⁶

902. On June 27, six environmentalists of Mexican, Argentine, Costa Rican and Spanish nationalities and members of the “*Caravana mesoamericana para el buen vivir*,” a civil organization made up of collectives from Mexico, the United States and Germany, were expelled from Nicaragua, two days after being arrested by elements of the National Police of Nicaragua, in the community of La Fonseca, in the municipality of Nueva Guinea, in the region of Atlántico Sur. According to the known information, the environmentalists were arrested along with Francisca Ramírez, leader of the *movimiento anticanal de Nicaragua* (Anti-canal Movement of Nicaragua), along with three other individuals of Nicaraguan nationality, while holding a workshop on technology for the creation of efficient ovens that use less firewood. The attorney for the movement, Mónica López, has reported, that the authorities justified the arrest based on charges of handling explosives, even though the Attorney General’s Office did not file charges against any of those arrested, proceeding to free the Nicaraguan citizens and deport the foreigners through the country’s borders with Honduras and Costa Rica.¹³⁶⁷

903. Between August 3 and 4, four Venezuelan politicians, including Luis Florido, a member of the National Assembly of Venezuela [*Asamblea Nacional de Venezuela*] and chairman of the Foreign Policy Commission [*Comisión de Política Exterior*], were expelled from Nicaragua following their arrival in the country with the intention of meeting with a group of opposition Nicaraguan deputies whom a ruling by the Electoral Court [*Tribunal Electoral*] had deprived of their seats. According to the known information, the lawmakers were detained upon arrival at Managua International Airport and expelled from Nicaragua after officials from the Department of Migration and Foreigners [*departamento de Migración y extranjería*] alleged “reasons of State” to prevent them from remaining in the country. The politicians denounced that the real reason for their expulsion was that they were militants of Venezuelan opposition parties.¹³⁶⁸

D. Freedom of Expression in Electoral Contexts

904. The “Electoral Ethics Regulation” [*Reglamento de Ética Electoral*], published on July 21 by the CSE, in addition to the restrictions mentioned above, aimed “to regulate the exercise of all activities by Political Organizations that participate during the Electoral Process of November, 2016”, but considered “journalists, owners, directors, hosts of social communication programs, websites and social networks” to be bound by its obligations. According to the text of the Regulation, journalists were obliged to observe “the ethical and moral norms” that imply, among other things, respect for “[t]he dignity of public officials and employees, officials, leaders, militants, sympathizers and activists of the Political Organizations, candidates, electors and the society in general.”¹³⁶⁹

¹³⁶⁶ Excelsior. June 25, 2016. [Académica mexicana huye de Nicaragua: consulado le recomendó abandonar el país](#); Confidencial. June 24, 2016. [Policía “seguía” a una académica mexicana](#); La Prensa. June 25, 2016. [Política mexicana denuncia que fue perseguida en Nicaragua](#).

¹³⁶⁷ La Jornada. June 27, 2016. [Expulsó Nicaragua a mexicanos detenidos](#); La Prensa. June 27, 2016. [Gobierno de Nicaragua expulsa a ambientalistas](#); Panampost. June 28, 2016. [Daniel Ortega expulsa de Nicaragua a ambientalistas extranjeros](#); Milenio. June 28, 2016. [Nicaragua expulsa a seis extranjeros ambientalistas](#); Confidencial. June 29, 2016. [Ortega ha expulsado de Nicaragua a 25 extranjeros](#); La Tribuna. June 28, 2016. [Nicaragua expulsa a seis ambientalistas extranjeros](#).

¹³⁶⁸ El País. August 4, 2016. [Nicaragua expulsa a cuatro políticos opositores venezolanos](#); La Prensa. August 4, 2016. [Tres diputados venezolanos expulsados de Nicaragua en 24 horas](#); NTN24. August 4, 2016. [Expulsan de Nicaragua al diputado Luis Florido tras “arbitraria” detención](#); Diario de Cuba. August 5, 2016. [El Gobierno de Nicaragua expulsa a cuatro políticos opositores venezolanos](#).

¹³⁶⁹ La Gaceta. Diario Oficial. July 21, 2016. [Reglamento de Ética Electoral](#) (págs. 5974 a 5977); La Gente. July 26, 2016. [CSE publica reglamento de ética sobre proceso electoral](#); La Prensa. August 8, 2016. [Propuesta de reglamento de CSE “es ley del bozal”](#); La Voz del Sandinismo. August 9, 2016. [CSE divulga reglamento de ética para el proceso electoral](#).

905. In electoral contexts, freedom of expression is directly connected to political rights and their exercise, and both types of rights mutually strengthen one another.¹³⁷⁰ Reasoned democratic debate requires the greatest possible circulation of ideas, opinions and information about the candidates, their parties, and their platforms during the period preceding an election, principally through the media, the candidates, and others who wish to express themselves. Everyone must be able to question and investigate the capacity and suitability of the candidates, disagree with and confront their ideas and opinions, so that voters can form their opinions.¹³⁷¹ As the IACHR has underscored, free speech and political debate are essential for the consolidation of the democratic life of societies, and therefore are of compelling social interest.¹³⁷²

E. Access to Public Information

906. Despite the existence, since May of 2007, of a law on access to public information in Nicaragua, citizens have found it impossible to exercise that right because of repeated refusals by different State bodies to respond to requests for information, as well as refusals to fulfill obligations for active transparency.¹³⁷³

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

F. Media Concentration

908. In Nicaragua, a media system has been set up with high degrees of concentration and scarce pluralism. There is a television duopoly controlled by the family of President Daniel Ortega and Mexican entrepreneur Ángel González. At the same time, according to the known information, the telecommunications regulatory agency ordered the closing of five community radio stations and two regional cable channels. The apparent motive for the decisions was the maintenance of an editorial line contrary to the interests of the Government.¹³⁷⁴

909. Principle 12 of the Declaration of Principles on Freedom of Expression establishes that “[t]he monopolies or oligopolies in the ownership and control of media outlets must be subject to antimonopoly laws because they conspire against democracy and restrict the plurality and diversity that ensure the full exercise of the right to information for the citizens. In no case must these laws be exclusive for the media. Radio and television allocations must consider democratic criteria that would guarantee equality of opportunities for all individuals for access to them”.

G. Government Advertising

¹³⁷⁰ I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 90.

¹³⁷¹ I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 90.

¹³⁷² IACHR. Arguments before the Inter-American Court in the case of Canese v. Paraguay. Transcribed in: I/A Court H.R., *Case of Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para 72. B).

¹³⁷³ Freedom House. No date. [Freedom of the press 2016/Nicaragua](#); The Knight Center for Journalism in the Americas. April 4, 2016. [A government closed to the media: lack of public statements and access to information in Nicaragua](#); Fundación Violeta B. de Chamorro. February 22, 2016. [Doce años promoviendo el derecho de acceso a información](#); La Prensa. March 15, 2016. [La falta de transparencia](#); La Prensa. January 28, 2016. [Nicaragua entre los más corruptos](#); Confidencial. January 27, 2016. [Nicaragua aplazada en transparencia pública](#); Vértice. August 9, 2016. [Ecuador y Nicaragua en “El Club de los Opacos” del Departamento de Estado](#).

¹³⁷⁴ Inter American Press Association (IAPA). April 3, 2016. [Nicaragua Report/Midyear Meeting 2016](#); Confidencial. January 9, 2016. [Se profundiza el duopolio televisivo](#); Confidencial. March 3, 2016. [Duopolio controla la TV](#); La Prensa. April 27, 2016. [Hay menos libertad de prensa en Ecuador, México y Nicaragua; en Panamá es parcial](#).

910. The IACHR and its Office of the Special Rapporteur have received information about the use of indirect mechanisms to obstruct journalistic activity, inducing them to self-censorship. The particular form of the use of the discretionary power of the State to allocate official advertising as an instrument to reward and punish the editorial line of the media is worrisome, a situation that has been denounced through diverse means and civil organizations.¹³⁷⁵

911. 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.”

¹³⁷⁵ La Prensa. April 29, 2016. [Aumenta deterioro a libertad de prensa en Nicaragua](#); Onda Local. March 2, 2016. [Continúa asedio al periodismo en Nicaragua](#); Redlad. July 27, 2016. [Reporte 1-Nicaragua](#); Inter American Press Association (IAPA). April 3, 2016. [Nicaragua Report/Midyear Meeting 2016](#); Inter American Press Association (IAPA). October 11, 2016. [Nicaragua Report 72nd General Assembly](#); Confidencial. October 14, 2016. [“El Estado está en la obligación de investigar”](#).

23. PANAMA

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

912. On January 18, journalist Álvaro Alvarado denounced an alleged plan to silence him, which would be, according to his denounce, carried out through the National Security Council [*Consejo Nacional de Seguridad*]. The journalist also indicated he had received e-mails warning him to stop his denunciations otherwise data from his bank accounts would be sent to the General Board of Income [*Dirección General de Ingresos*] for an audit of his finances, which he would have to justify.¹³⁷⁶ Subsequently, on March 9, Alvarado filed a criminal complaint with the Public Prosecutor [*Ministerio Público*] for the possible commission of a crime against his honor [*calumnia e injuria*], because on *WhatsApp* there began to circulate “affirmations that he would be fired from *Medcom*”, the company where he worked as the director of the morning edition of *Telemetro Reporta*.¹³⁷⁷ In this context, on August 31, using his Twitter account, Alvarado criticized the appointment of Jaime Alemán as Executive Assistant to the ministry of the Presidency [*Asistente Ejecutivo del ministerio de la Presidencia*], because he is the nephew of Álvaro Alemán, Minister of the Presidency. In response, first lady Lorena Castillo said that Alvarado was irresponsible and living in the stratosphere.¹³⁷⁸ According to the available information, during a meeting with the National Security Council [*Consejo Nacional de Seguridad*] (CNS) in October, Alvarado had to announce that certain CNS officials were reviewing his bank accounts.¹³⁷⁹ Additionally, on October 20, Alvarado publicly announced that the National Government was carrying out a campaign to discredit him, questioning his independence by means of messages in the gourmet section of the newspaper *La Estrella de Panamá*, which suggested that Alvarado had applied to be the communications advisor for President Juan Carlos Varela.¹³⁸⁰

913. On July 26, journalists Mauricio Valenzuela and Hugo Vera were attacked while covering an event at the *Universidad de Panamá*. Ex-United Nations consultant Amparo Medina gave a presentation on sexual education. At the end, Valenzuela and Vera tried to approach Medina to interview her but were physically attacked by members of the security team for the event, who also threatened the journalists with taking away their cameras. On July 27, Valenzuela and Vera filed a criminal complaint against the organizers of the event and against Medina.¹³⁸¹

914. On October 22, attorney Ramón Fonseca Mora, one of the founding members of the Mossack-Fonseca Law firm implicated in the case known as the Panama Papers, made statements about the journalistic work of Chilean journalist Jenny Pérez and Panamanian journalist Álvaro Alvarado through her Twitter account. On October 21, President Juan Carlos Varela gave an interview to Pérez for the *Deutsche Welle* channel, in which he referred to the Panama Papers. Fonseca Mora referred to Pérez as a “left-handed activist” who resembled the “hysterical professional morning alarmist” Alvaro Alvarado. Subsequently, Fonseca Mora advised the public to avoid alarmist programs and newspapers and not to be bitter or engage in witch hunts like journalists Pérez and Alvarado. Finally, Fonseca Mora labeled the media as yellow and morbid.¹³⁸²

¹³⁷⁶ *La Estrella de Panamá*. January 18, 2016. [Periodista Alvarado denuncia ataques en su contra](#); Panamá América. January 18, 2016. [Alvarado acusa a Varela de perseguir a los periodistas](#).

¹³⁷⁷ *La Prensa*. March 9, 2016. [Periodista Álvaro Alvarado presenta querrela por supuesta calumnia e injuria](#); Día a día. March 9, 2016. [Álvaro Alvarado presentó una querrela criminal](#); Panamá América. March 9, 2016. [Álvaro Alvarado presenta querrela por calumnia e injuria](#).

¹³⁷⁸ *La Estrella*. August 31, 2016. [Primera Dama Lorena Castillo y periodista Álvaro Alvarado activan el twitter](#); Panamá América. September 1, 2014. [Primera Dama arremete en contra de periodista](#).

¹³⁷⁹ Panamá América. October 20, 2016. [Temen por la seguridad del periodista Álvaro Alvarado](#).

¹³⁸⁰ Panamá América. October 20, 2016. [Álvaro Alvarado denuncia campaña de difamación para silenciar su voz crítica](#); Lo Que se Oculta. October 21, 2016. [Denuncian ataques a reputación de periodistas críticos](#).

¹³⁸¹ TVN Noticias. July 27, 2016. [Periodistas presentan denuncia tras agresiones en evento con Amparo Medina](#); El Siglo. July 28, 2016. [Denuncian a iglesia por agresión de periodistas](#); Crítica. July 28, 2016. [Empujones por proyecto sexual](#); N7D. July 27, 2016. [Yo solo fui a hacer mi trabajo, dijo Mauricio Valenzuela después de ser agredido](#).

¹³⁸² “Señores: todo lo que sucedió es que el Presi cayó en manos, NO de una periodista investigativa seria e imparcial, sino de una activista zurda”. Twitter account of Ramón Fonseca Mora @ramonfonsecamor. [October 22, 2016](#); “Como se parece esta periodista a nuestro alarmista profesional matutino histeric@”. Twitter account of Ramón Fonseca Mora @ramonfonsecamor. [October 22, 2016](#); “Puedo dar un consejo? Eviten programas y periódicos alarmistas, que condenan por delante. No estarán amargados y cazando brujas,

915. On November 10, journalist Guadalupe Chanis of the *Nextv* channel was allegedly scolded by an official of the Presidency of the Republic while covering the processions in the Villa de los Santos, where a group of pensioners had gathered to perform some exigencies to President Varela. Chanis was interviewing a member of a group of retirees in the province of Herrera, when the official, Ibón Ramos, asked Chanis about the reasons for the interview and affirmed that *Nextv* only published negative and false news. Chanis then left the site to avoid problems. The journalists' union condemned the attack against Chanis and asked the Government to punish Ramos.¹³⁸³

916. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR, approved in 2000, establishes that “[t]he murder, kidnapping, harassment, threats against journalists, as well as the destruction of material of the media, violate the fundamental rights of persons and severely undermine freedom of expression. It is the duty of the States to prevent and investigate these events, punish their perpetrators and ensure adequate reparation for the victims.”

B. Social Protest

917. Since May, a group of indigenous people from the Ngäbe Buglé comarca along with members of the *Movimiento 10 de Abril* (M-10) and the *Movimiento 22 de septiembre* had allegedly opposed the *Barro Blanco* Hydroelectric project, on the grounds that it occupies their territory without their having been taken into account to carry out the construction, which has led to grave confrontations with the security forces. On May 23, at least 35 indigenous representatives of the comarcas of Ngäbe Buglé were arrested and evicted from areas near the *Barro Blanco* Hydroelectric project, where they had been camping in protest. Additionally, on August 26, during a demonstration in *Bocas del Toro* and the subsequent eviction by the Police led to at least four Ngäbe Buglé indigenous people being injured along with five members of the security forces. According to the available information, on September 6, four police officers and one demonstrator were injured, and 18 people were arrested as a result of demonstrations by the Ngäbe Buglé indigenous people in the *Plaza Cinco de Mayo* in Panama City.¹³⁸⁴

918. The IACHR has reiterated that social protest is a fundamental tool for the work of the defense of human rights and is essential for critical political and social expression regarding activities by the authorities. The Commission has affirmed that “the criminalization *per se* of demonstrations on public thoroughfares is inadmissible in principle when they are carried out in the framework of the right to freedom of expression and the right of assembly”¹³⁸⁵ and that “the exercise of the right of assembly through social protest must not be subject to authorization by the authorities nor excessive requirements that make their implementation difficult.”¹³⁸⁶

como ellos”. Twitter account of Ramón Fonseca Ramos @ramonfonsecamor. [October 22, 2016](#); Panamá América. October 22, 2016. [Fonseca Mora arremete contra periodistas y medios de comunicación](#); Telemetro. October 22, 2016. [Entrevista en Alemania incomoda a Juan Carlos Varela y causa revuelo en Panamá](#).

¹³⁸³ Next. November 11, 2016. [Sindicato de Periodistas exige sanción para Ivón Ramos por atropello a periodista de NexTv](#); Panamá América. November 11, 2016. [Periodista de NEXtv es intimidada en La Villa](#); Panamá América. November 11, 2016. [Sindicato de Periodista exige sanción energética, tras nueva violación a libertad de expresión](#); Panamá América. November 11, 2016. [Califican como "acto grave" la intimidación a periodista de NEXtv](#); Crítica. November 10, 2016. [Periodista es Fustigada por Funcionaria de la Presidencia](#).

¹³⁸⁴ La Estrella de Panamá. May 24, 2016. [Ngäbes cierran la Vía España, se oponen al proyecto Barro Blanco](#); La Prensa. June 1, 2016. [Indígenas Ngäbe, en pie de lucha contra el proyecto hidroeléctrico](#); TVN Noticias. May 23, 2016. [Desalojan a indígenas de áreas cercanas a Barro Blanco](#); Alianza Mesoamericana de Pueblos y Bosques. May 24, 2016. [Indígenas agredidos y desalojados por defender sus territorios de megaproyecto hidroeléctrico extranjero en Panamá](#); Crítica. May 24, 2016. [Desalojos, arrestos, puño y patadas en Barro Blanco](#); TVN Noticias. August 26, 2016. [Confirmado: varios heridos en Bocas del Toro en protesta por acuerdo de Barro Blanco](#); La Estrella de Panamá. August 27, 2016. [Protesta se salda con indígenas y policías heridos](#); La Estrella de Panamá. September 7, 2016. [Acuerdo de Barro Blanco genera nuevo enfrentamiento](#); TNV Noticias. September 6, 2016. [Reportan enfrentamientos entre indígenas y antidisturbios en la 5 de Mayo](#).

¹³⁸⁵ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 197.

¹³⁸⁶ 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.

919. Similarly, the Joint Declaration on violence against journalists in the framework of social demonstrations, adopted in 2013, indicates that the rights of assembly and freedom of expression “are fundamental and their guarantee is a necessary condition for the existence and functioning of a democratic society. A State may impose reasonable limitations on demonstrations to ensure their peaceful development or to disperse those that become violent, as long as those limitations are governed by the principles of legality, necessity and proportionality. Additionally, the breaking up of a demonstration must be justified by the duty to protect people, and the safest and least harmful measures for the demonstrators must be utilized. The use of force in public demonstrations must be exceptional and in strictly necessary circumstances pursuant to internationally recognized principles.”¹³⁸⁷

C. Subsequent Liabilities

920. At the beginning of the year, the Electoral Tribunal [*Tribunal Electoral*] (TE) imposed a fine of US\$ 1 thousand on the media outlet *KW Continente*, a radio station critical of the government and the TE, for an alleged infraction of article 194 of the Electoral Code. Diverse local press associations characterized the situation as “worrisome” and asked the TE to act through its punitive processes against the social media, explaining in detail the reasons that led the TE to apply this type of sanctions.¹³⁸⁸

921. The Supreme Court of Panama [*Corte Suprema de Panamá*] on January 11 confirmed the sentencing of the daily newspaper *Panamá América* to pay a fine of US\$ 25 thousand for alleged damages to the honor of the Ex-Minister of Government and Justice, Winston Spadafora, who sued the newspaper and two of its journalists, Jean Marcel Chéry and Gustavo Aparicio, for an article published in 2001 that announced the construction with public funds of a road that personally benefited him by providing access to one of his properties.¹³⁸⁹

922. On November 15, Dutch journalist Okke OrNSTEIN, director of the web portal *Bananama Republic*, was arrested for the crimes of slander, insult and calumny in a conviction from December 14, 2012 which was confirmed in second instance on December 5, 2013. The original lawsuit was performed by a Canadian businessman after OrNSTEIN published various articles about the illegal commercial practices of performed by this person in Panama. According to the available information, the Canadian businessman had been further convicted in the United States for fraud and faced similar criminal persecutions in Panama. Civil society organizations have expressed their concern over the situation and demanded that OrNSTEIN be freed.¹³⁹⁰ On 23 December the journalist was released following the decision by the Panamanian President to reduce the totality of the sentence that had been imposed.¹³⁹¹

923. Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that “[t]he privacy laws must not inhibit or restrict the investigation and dissemination of information of public

¹³⁸⁷ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

¹³⁸⁸ Código Electoral. April 22, 2013. [Article 194](#). - In order to avoid the massification of propaganda or state advertising during the electoral process, public institutions will not be able to announce on any day or any month, in the mass media, more slots, advertisements or any type of publicity or propaganda, resulting from the average that each institution has had during the six months prior to said electoral process; La Estrella. January 7, 2016. [CNP solicita más información al TE de multa a KW Continente](#); Crítica. January 8, 2016. [APR, preocupada por presiones del Gobierno a KW Continente](#).

¹³⁸⁹ Inter American Press Association (IAPA). January 15, 2016. [La SIP deplora condena judicial en Panamá](#); Panamá América. January 11, 2016. [Condenan a Panamá América](#).

¹³⁹⁰ The Guardian. November 22, 2016. [Dutch journalist facing prison term in Panama for criminal libel](#); La Estrella de Panamá. November 23, 2016. ["El periodismo crítico no es posible en el país"](#); El Mundo/EFE. November 21, 2016. [FIP pide liberar a periodista condenado en Panamá por escribir sobre fraude](#); Committee to Protect Journalists (CPJ). November 29, 2016. [Dutch journalist Okke OrNSTEIN jailed in Panama for criminal defamation](#); Committee to Protect Journalists (CPJ). December 13, 2016. [Jailed Dutch reporter OrNSTEIN says Panama failed to inform him of legal proceedings](#).

¹³⁹¹ La Prensa. December 20, 2016. [Gobierno otorga rebaja de pena a Okke OrNSTEIN](#); Deutsche Welle DW. December 23, 2016. [Panamá: liberan a periodista holandés encarcelado](#); Knight Center for Journalism in the Americas. December 21, 2016. [Dutch journalist jailed in Panama gets reduction in sentence and will be released](#).

interest. The protection of reputation must be guaranteed only through civil sanctions, in cases in which the offended person is a public official or a public or private person that has been voluntarily involved in matters of public interest. Also, in these cases, it must be proven that in disseminating the news, the journalist had the intention to inflict harm or had full knowledge that they were disseminating false news or acted with clear negligence in seeking the truth or falsehood of the news”.

924. Additionally, principle 11 establishes that “[t]he public officials are subject to greater scrutiny by society. Laws that punish offensive expression aimed at public officials generally known as ‘insult laws’ infringe upon freedom of expression and the right to information.”

D. Access to Public Information

925. The Office of the Special Rapporteur received information about restrictions on access to public information in the framework of an administrative investigation into the work of Abigail Benzadon as the Director General of the National Authority for Transparency and Access to Information [*Autoridad Nacional de Transparencia y Acceso a la Información*] (ANTAI). On June 16, Benzadon had allegedly found out from different media outlets that an administrative process against her for material damage [*lesión patrimonial*] to the administration had been opened by the Office of the Comptroller General of the Republic [*Contraloría General de la República*], based on an internal auditing report by the ANTAI.¹³⁹² As a result, starting on June 17, 2015, Benzadon filed various petitions for information with the ANTAI, which have been denied by that entity because it considers that the information is of restricted access because it is part of a material damage proceeding.

926. By virtue of various Habeas Data actions filed by Benzadon, the Supreme Court of Justice [*Corte Suprema de Justicia*] has recognized that Benzadon has the right to access to the personal information contained in the internal auditing report and the information about assets allegedly damaged during her work. However, the Antai has not provided the requested information to Benzadon. As a result, on September 27, Benzadon filed a *Habeas Data* action with the Supreme Court of Justice. As of the date of closing of this report, the *Habeas Data* was under study.

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

E. Other Relevant Situations

928. The economic stability of the daily newspapers *El Siglo* and *La Estrella de Panamá* has been compromised because in May, the entrepreneurial group Wisa S.A., principal owner of the *Grupo Editorial La Estrella y El Siglo* (GESE), was included on the “Clinton List” of activities linked to money laundering and drug trafficking of the United States Department of the Treasury. Beginning in June, GESE had to adopt measures to deal with the economic complications, such as reducing the frequency and number of pages of its publications, eliminating certain products from its portfolio, suspending certain projects and reducing its personnel. In an open letter, the journalists of GESE requested the government of the United States to exclude the daily newspapers *El Siglo* and *La Estrella de Panamá* from the “Clinton List”.¹³⁹³

¹³⁹² Estrella de Panamá. June 16, 2016. [ANTAI pide que investiguen a Benzadón por posible lesión patrimonial](#); Telemetro. June 16, 2016. [ANTAI solicita investigar contrato hecho por Benzadón por posible lesión patrimonial](#); El Siglo. June 16, 2016. [Benzadón podría ser investigada por posible lesión patrimonial](#).

¹³⁹³ La Prensa. May 5, 2016. [Departamento del Tesoro de Estados Unidos incluye a Abdul y Nidal Waked y sus sociedades en la 'Lista Clinton'](#); Forbes. May 6, 2016. [Éstos son los negocios de Abdul y Nidal Waked](#); Panamá América. June 6, 2016. [Situación del Grupo Editorial El Siglo y La Estrella \(GESE\) se agrava](#); Portada. June 29, 2016. [Lista Clinton, camisa de fuerza para La Estrella y El Siglo](#); La Estrella de Panamá. June 4, 2016. [El Grupo El Siglo y La Estrella de Panamá aplica plan contingente ante la crisis](#); La Estrella de Panamá. June 20, 2016. [Periodistas de GESE piden que los excluyan de la "Lista Clinton"](#); La Estrella de Panamá. May 5, 2016. [WISA responde a acusaciones](#); El

929. According to the available information, on November 8, the National Government issued a draft regulation of Law 82 of 2013, aimed at creating the Directorate for the Promotion of Freedom of Expression [*Dirección para la Promoción de la Libertad de Expresión*] charged with maintaining a record of the communications media and monitoring editorial content in order to trace sexist or discriminatory affirmations or those that promote violence against women. According to the draft regulation, the media would have the obligation to register and provide information under oath to the above-mentioned Directorate. Civil society organizations have expressed concern over the regulation, arguing that it would impose restrictions on freedom of expression. Additionally, on November 7, attorney Ernesto Cadeño filed a suit of unconstitutionality with the Supreme Court of Justice against article 70 of Law 82 of 2013, which would empower the ministry of Government [*ministerio de Gobierno*] to impose fines on media outlets that incur in discrimination or violence against women.¹³⁹⁴

930. On July 18, Deputy Melitón Arrocha submitted proposed legislation to the National Assembly [*Asamblea Nacional*] by virtue of which Internet portals would have the obligation to eliminate information about any person who considers that their rights to honor or privacy are violated by the content, better known as the draft legislation for the right to be forgotten. Civil society organizations have warned of the restriction on freedom of expression that this would generate, stressing the ambiguity of its wording and its possible scope outside of the jurisdiction of Panama. Due to rejection by the civil society, on July 28, Deputy Arrocha withdrew the above-mentioned proposed legislation.¹³⁹⁵

931. The First Anticorruption Prosecutor [*Fiscalía Primera Anticorrupción*] ordered an inquiry into Riccardo Francolini Arosemana, president of the Compañía Digital de Televisión, which broadcasts the signal for *Canal NexTv*. As a result, on October 12, official agents escorted him from his residence to the office of the prosecutor. After questioning him, the Attorney General's Office ordered the provisional detention of Francolini for the alleged commission of a crime against the public administration, in the modality of graft.¹³⁹⁶ On October 17, the anchor and producer of the television channel *NexTv*, Fernando Correa Jolly, was apprehended for questioning by official agents of the First Anticorruption Prosecutor when he was broadcasting the afternoon newscast. Civil society organizations expressed concern over the way in which Correa Jolly had been apprehended. The Inter-American Press Association (IAPA) expressed concern about the consequences that the on-the-air arrest of Correa Jolly could have on journalists critical of the government.¹³⁹⁷ Also on October 17, official agents arrived at the residence of the president of the *Grupo*

País/EFE. May 25, 2016. [Presidente de grupo WISA afirma que nunca se enteró de que era investigado](#); Panamá América. May 25, 2016. [Waked recibe presión del Gobierno para que venda sus empresas](#).

¹³⁹⁴República de Panamá. Asamblea Nacional de Panamá. [Ley 82 de 2013](#); República de Panamá. Ministerio de Gobierno. [Propuesta borrador de normas que reglamentarán los artículos de la ley 82 de 2013 que atribuyen responsabilidad al ministerio de gobierno en temas de medios de comunicación social](#). No date; Fórum de Periodistas, Consejo Nacional de Periodismo, Asociación Panamericana de Radiodifusión. November 4, 2016. [Comunicado](#); La Prensa. November 7, 2016. [Demandan artículo de la Ley 82 de 2013 que impone multas de hasta \\$3,000 a los medios](#); La Estrella de Panamá. November 8, 2016. [Demanda ante la Corte contra Ley 82](#); El Siglo. November 8, 2016. [Piden eliminar el artículo que coarta la libertad de expresión](#); Telemetro. November 5, 2016. [Mingob entregará el martes borrador de regulación a medios por ley de feminicidios](#); Panamá América. November 7, 2016. [Presentarán recurso de inconstitucionalidad contra artículo 70 de la Ley de femicidio](#); TVN Noticias. November 9, 2016. [Un Ministerio no debe tener facultad de multar a medios: Mingob](#).

¹³⁹⁵ Asamblea Nacional. [Anteproyecto de Ley de 2016, que faculta a los usuarios del Internet a exigir a portales y redes sociales que eliminen sus datos personales](#). July 18, 2016; La Prensa. July 25, 2016. ['Anteproyecto vulnera abiertamente el derecho a la libertad de expresión'](#); TVN Noticias. July 26, 2016. [Anteproyecto de ley 'Derecho al Olvido' riñe contra la libertad de expresión: Vásquez](#); TVN Noticias. July 25, 2016. [Gremios periodísticos contra ley que ataca 'el derecho a la memoria en Internet'](#); La Prensa. July 26, 2016. [Derecho al olvido: 'censura y presión'](#); La Prensa. July 28, 2016. [Diputado Melitón Arrocha retira propuesta sobre 'derecho al olvido'](#); TVN Noticias. July 27, 2016. [Diputado Arrocha retirará el anteproyecto de ley 'Derecho al olvido'](#).

¹³⁹⁶ La Prensa. October 12, 2016. [Riccardo Francolini es conducido a la fiscalía anticorrupción, para que responda por préstamo de la CA](#); Panamá América. October 12, 2016. [Riccardo Francolini, presidente de NexTv es aprehendido](#); La Estrella de Panamá. October 12, 2016. [Allanan residencia de Riccardo Francolini; lo llevan a la fiscalía](#); Radio Panamá. October 12, 2016. [El caso que se investiga está vinculado con los préstamos otorgados para el desarrollo del Centro de Convenciones Amador](#); La Estrella de Panamá. October 13, 2016. [Fiscalía ordena detención provisional para Riccardo Francolini](#); La Estrella de Panamá. October 15, 2016. [Cuestionan medida de detención contra Riccardo Francolini](#). TVN Noticias. October 28, 2016. [Cambian medida cautelar a Rodrigo Arosemena por caso de la Caja de Ahorros](#).

¹³⁹⁷ La Prensa. October 17, 2016. [Terminan indagatorias de dos exintegrantes de la junta directiva y el exgerente de la Caja de Ahorros por el préstamo de Amador](#); Consejo Nacional de Periodismo y Fórum de Periodistas. No date. [Comunicado a la Ciudadanía](#); N7D. October

Epasa, Ricardo Chanis, to take him to the First Anticorruption Prosecutor. However, Chanis was not in Panama.¹³⁹⁸

932. According to the available information, Misters Francolini Arosemana, Correa Jolly and Ricardo Chanis were members of the Board of Directors of the Savings Bank [*Caja de Ahorros*], a state financial entity, during the presidential period of Ricardo Martinelli. The First Anticorruption Prosecutor of the Office of the Public Prosecutor of the Nation [*Fiscalía Primera Anticorrupción de la Procuraduría General de la Nación*] was investigating an alleged crime against the public administration associated with a loan granted by the *Caja de Ahorros* and approved by the board of directors chaired by Francolini Arosemana. Luis Eduardo Camacho, leader of the opposition party *Cambio Democrático*, the Inter-American Press Association (IAPA) and certain media outlets affirmed that the actions described are an attack on freedom of expression aimed at silencing media outlets critical of the National Government.¹³⁹⁹ In this regard, the Public Prosecutor issued a communiqué stating that the investigations carried out by the Attorney General's Office [*Ministerio Público*] are not aimed against a particular media outlet nor are they associated with exercise of the journalistic profession.¹⁴⁰⁰ The Government of Panama issued a press release rejecting the declaration by the IAPA and affirming its commitment to respect for the right to freedom of expression.¹⁴⁰¹

933. The *Epasa* editorial group, owner of the daily newspapers *Panamá América*, *Crítica* and *Día a Día*, has denounced having received harassments by officials of the National Government and the President of the Republic. In this context, journalist Santiago Fascetto had been detained at the Panama City airport by officials of the State Security Council [*Consejo de Seguridad del Estado*].¹⁴⁰²

17, 2016. [Conducen a Fernando Correa Jolly](#); *Día a Día*. October 17, 2016. [Fernando Correa fue conducido a la Fiscalía Anticorrupción](#); Inter American Press Association (IAPA). October 14, 2016. [Panama](#).

¹³⁹⁸ Metro Libre. October 17, 2016. [MP emitió orden de conducción a Ricardo Chanis](#); TVN Noticias. October 17, 2016. [Orden de conducción contra Ricardo Chanis](#).

¹³⁹⁹ La Prensa. October 12, 2016. [Riccardo Francolini es conducido a la fiscalía anticorrupción, para que responda por préstamo de la CA](#); *Panamá América*. October 12, 2016. [Riccardo Francolini, presidente de NexTv es aprehendido](#); TVN Noticias. October 13, 2016. [Las consecuencias para Francolini por un préstamo millonario](#); Transparency International. October 30, 2016. [Transparencia internacional pide llegar 'al fondo' en caso de la caja de ahorros](#); Inter American Press Association (IAPA). October 17, 2016. [Panama II](#); *Crítica*. November 6, 2016. [Francolini, secuestrado por el Varelistmo](#); *Panamá América*. November 9, 2016. [Directivo de NEXtv, Riccardo Francolini, cumple un mes de arresto](#).

¹⁴⁰⁰ Procuraduría General de la Nación. October 17, 2016. [Comunicado](#).

¹⁴⁰¹ Gobierno de la República de Panamá. October 17, 2016. [Comunicado del Gobierno de la República de Panamá ante la resolución de la SIP](#).

¹⁴⁰² Inter-American Press Association (IAPA). October 17, 2016. [Panama II](#). Lo Que se Oculta. September 2, 2016. [Epasa denuncia ataque del gobierno e intento de bloqueo de sus recursos](#); *Crítica*. November 14, 2016. [Epasa sufre otro ataque por parte del Gobierno](#); *Panamá América*. No date. [Ataques Gubernamentales contra Nextv y Epasa](#).

24. PARAGUAY

A. Progress

934. On March 18, the mandate went into effect for all obligated parties subject to the Law on Government Transparency and Free Citizen Access to Public Information [*Ley de Libre Acceso Ciudadano a la Información Pública y Transparencia Gubernamental*], to use the Unified Public Information Portal [*Portal Unificado de Información Pública*], the technological platform designed to facilitate online access to public information in the possession of government institutions. The Office of the Special Rapporteur has also received information on the launch of the “Third Open Government Plan of Action” [*“Tercer Plan de Acción de Gobierno Abierto”*], which entails greater interaction between government institutions and schools, civil society organizations, and private initiatives.¹⁴⁰³

935. On March 21, Arnaldo Javier Cabrera López was sentenced to five years in prison for the offense of failing to report an unlawful act. This was the first conviction handed down in connection with the murders of journalist Pablo Medina and his assistant, Antonia Almada, on October 16, 2014. Cabrera López was the driver of Vilmar Acosta Marques, the former mayor of Ypejhú, in the Department of Canindeyú, and the alleged mastermind behind the murders. He was indicted for these crimes on May 16, 2016, after being extradited from Brazil, where he was arrested in March, 2015. Cabrera López’s conviction was handed down in a summary proceeding, as he cooperated with the authorities in establishing the facts and pled guilty to the charges. He was acquitted of the charge of accomplice to murder.¹⁴⁰⁴

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

936. Gerardo Escobar, owner of the radio station *La Favorita*, which broadcasts from the city of Yby Yaú, department of Concepción was shot on December 27, 2015. According to reports, the incident occurred in the town of Pedro Juan Caballero, in the Department of Amambay. When the businessman went out to attend a religious service, he was attacked by an unknown assailant riding a motorcycle. After receiving medical attention, Escobar was out of danger.¹⁴⁰⁵

937. On September 8, a group of individuals reportedly carried out an attack against the newspaper *La Jornada*, which is printed in Ciudad del Este department of Alto Paraná, opening fire on two of the newspaper’s facilities while circling in a pickup truck. According to the information available, the attack took place near midnight when the attackers fired 15 to 18 shots at the exterior of the building that houses the newspaper, then fled. The paper’s director, José Espínola, attributed the incident to the recent publication of reports that implicated three police officers in the kidnapping and robbery of two employees of a private company. The next day, a National Police [*Policía Nacional*] officer was arrested as the alleged perpetrator of the attack.¹⁴⁰⁶ Following the attack it was revealed that two days earlier an unknown subject had set fire to a

¹⁴⁰³ Gaceta Oficial. [Ley 5282 De Libre Acceso Ciudadano a la Información Pública y Transparencia Gubernamental](#). September 19, 2014; Secretaría Nacional de Tecnologías de la Información y Comunicación (SENATICS). [Informe de gestión. Proyectos 2015](#). 2015. Page 11; República de Paraguay. Presidencia de la República. [Decreto N° 4064. Por el cual se reglamenta la Ley No. 528/2014 “De libre Acceso Ciudadano a la Información Pública y Transparencia Gubernamental”](#). September 17, 2015. Art. 9; Inter American Press Association (IAPA). April 4, 2016. [Paraguay Report. Mid-year Meeting. Punta Cana](#); ABC Color. March 18, 2016. [Uso de Portal es obligatorio](#); La Nación. June 15, 2016. [Paraguay presentará avances en transparencia e innovación](#); Open Government Partnership (OGP). July 27, 2016. [Transición entre la finalización del segundo plan y el inicio del tercer plan de acción de gobierno abierto de la República de Paraguay](#).

¹⁴⁰⁴ ABC Color. March 28, 2016. [Primera condena por el crimen de Pablo y Antonia](#); EFE. March 22, 2016. [Condenan a cárcel al chófer del acusado por el asesinato de un periodista en Paraguay](#); Última hora. May 17, 2016. [Fiscalía acusa a Vilmar Acosta y pide juicio oral por muerte de Pablo Medina](#).

¹⁴⁰⁵ ABC Color. December 27, 2015. [Balean a dueño de radio de Yby Yaú](#); Oasis 94.3FM. December 27, 2016. [Baleado tras salir de una misa del Perpetuo Socorro](#).

¹⁴⁰⁶ ABC Color. September 9, 2016. [Balearon diario La Jornada de CDE](#); Última Hora. September 9, 2016. [Detienen a sospechoso de atentar contra el diario La Jornada](#); Hoy. September 9, 2016. [Atentaron a balazos contra diario de Ciudad del Este](#); ABC Color. September 9, 2016. [Videos de los atentados a diario de Ciudad del Este](#); Vanguardia. September 10, 2016. [Acribillan con 15 balazos local del diario regional La Jornada](#); La Nación. September 10, 2016. [Policías habrían atentado contra el diario La Jornada](#); Paraguay.Com. September 11, 2016. [Sindicato de Periodistas condena ataques contra sede de dos medios](#).

vehicle that was parked outside the newspaper's building, most likely in the belief that it belonged to the newspaper or one of its employees—although it in fact belonged to a person visiting an adjacent building. The incident was not thought to be important at first, but after the attack the newspaper considered the possibility that it may have been a “warning” of what would happen later.¹⁴⁰⁷

938. On September 9, unknown persons reportedly threw explosive devices at the building occupied by the *Radio Amambay* radio station in the town of Pedro Juan Caballero, on the Brazilian border, injuring two people who were inside. The incident took place around 9:00 p.m., during the broadcast of a program hosted by Patricia Ayala. At least three individuals arrived in a vehicle, tossed three hand grenades at the front of the radio station's building, and fled the scene. Police authorities later located two unexploded grenades.¹⁴⁰⁸

939. The radio station is owned by Senator Robert Acevedo, President of the Congress of Paraguay [*Congreso de Paraguay*]. He reportedly stated that the incident was a warning to his family because of his instrumental role in the “fight against narcotrafficking,” and that this was the third attack carried out against the media outlet owned by his family.¹⁴⁰⁹ Prior to the incident, the senator had received threats on his phone, sent through the instant messaging service WhatsApp, warning him that there would be an attack on his brother José Carlos Acevedo, who is the mayor of Pedro Juan Caballero, and that things would continue like this “until you all shut your mouths.” Three individuals allegedly behind the telephone threats were detained by police.¹⁴¹⁰

940. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁴¹¹

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

C. Social Protest

¹⁴⁰⁷ La Jornada. September 9, 2016. [¿Atentado o amenaza?](#)

¹⁴⁰⁸ ABC Color. September 9, 2016. [Lanzan una bomba contra Radio Amambay](#); Paraguay.Com/EFE. September 11, 2016. [Sindicato de Periodistas condena ataques contra sede de dos medios](#); Hoy. September 9, 2016. [Así atentaron contra Radio Amambay](#); TN23/You Tube. September 13, 2016. [Asociación Internacional de Radiodifusión repudia ataque contra Radio paraguayá](#); TelefuturoInfo/You Tube. September 10, 2016. [Hallan dos granadas en el techo de radio tras atentado](#).

¹⁴⁰⁹ ABC Color. September 12, 2016. [Hermética reunión con presidente del Congreso](#); ABC Color. September 13, 2016. [Para Acevedo, atentado contra la radio de su familia sería una “distracción”](#).

¹⁴¹⁰ Hoy. September 10, 2016. [Atentado a radio de los Acevedo: “Los próximos van a ser ustedes”](#); Hoy. September 11, 2016. [Ataques a los Acevedo serán “hasta que se callen la boca”](#); Hoy. September 12, 2016. [Amenaza a Senador: caen tres, una es hermana de narco “mejicaneado”](#); Radio 970. September 12, 2016. [Tres detenidos tras amenazas a senador Acevedo](#); Última Hora. September 12, 2016. [Más detenidos tras amenazas al presidente del Congreso](#).

¹⁴¹¹ 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). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. [Annual Report 2010. 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. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

942. On June 28, Nelson Zapata, the director of the newspaper *Vanguardia*, and the paper's photographer, Éver Portillo, were physically assaulted while covering a confrontation between partisans of the mayor of Ciudad de Este, Sandra McLeod, and detractors of her administration. According to reports, Zapata was attacked first by municipal employee Aida Molinas, and then by the crowd she was leading. The photographer, Portillo, was reportedly beaten by a police officer while trying to document the incident. The newspaper's Director filed a complaint, and the employee was charged with disturbing the peace [*perturbación de la paz pública*].¹⁴¹²

943. 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"¹⁴¹³ 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."¹⁴¹⁴

944. 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."¹⁴¹⁵

D. Protection Mechanisms

945. On April 12, the Report of the Working Group on the Universal Periodic Review was presented during the 32nd Session of the United Nations Human Rights Council. The report contained several recommendations accepted by the Paraguayan State and some of them related to the exercise of the right to freedom of expression, all of which were accepted by the State. The commitments assumed by the State include, most notably, the establishment of a Special Commission in the Office of the Attorney General to investigate the murders of 17 journalists since 1991 and the strengthening of the laws that promote freedom of expression. The State also agreed to take measures to recognize the legitimate role of human rights defenders and journalists, as well as to guarantee that they are able to conduct their activities and that all of their rights are effectively protected, particularly those related to life and physical integrity.¹⁴¹⁶

946. On April 27, the legislative bill on "Freedom of Expression and the Protection of Journalists and Press Workers" [*Sobre la libertad de expresión y protección a periodistas y trabajadores de prensa*] was presented at

¹⁴¹² ABC Color. June 29, 2016. [Agreden a periodista durante una violenta protesta en el Este](#); Última Hora. June 28, 2016. [Ex concejal agrede a periodista en CDE](#); ABC Color. June 30, 2016. [Entregaron evidencias de la agresión a periodista en CDE](#); Vanguardia. July 5, 2016. [Imputan a Aida Molinas por perturbación de la paz pública](#); Vanguardia. August 3, 2016. [Seccionalera Molinas solicita medidas alternativas a la prisión](#).

¹⁴¹³ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁴¹⁴ 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.

¹⁴¹⁵ 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](#).

¹⁴¹⁶ United Nations. General Assembly. Human Rights Council. Report of the Working Group on the Universal Periodic Review. A/HRC/32/9. April 12, 2016. Available at: <http://www.ohchr.org/SP/HRBodies/UPR/Pages/PYSession24.aspx>; IFEX-SPP. [Report for Universal Periodic Review Paraguay 2016](#). No date; IFEX. January 22, 2016. [Success at the UN: Paraguay commits to investigate attacks against journalists](#).

a press conference. The bill, sponsored by the Human Rights Committee of the House of Representatives of the National Congress [*Comisión de Derechos Humanos de la Cámara de Diputados del Congreso Nacional*], aims to “guarantee the life, integrity, freedom, and safety of all persons who are at risk as a consequence of the practice of journalism or press work,” according to Committee Chair Olga Ferreira de López. She additionally reported that debates, analytical discussions, and public hearings would be held to enrich the initiative following the introduction of the bill. On June 1, the Human Rights Committee held a public hearing that involved the participation of representatives of the Paraguayan journalists’ union, *Asociación de Reporteros Gráficos* and press workers from different media outlets.¹⁴¹⁷

947. Representative Olga Ferreira, the Chair of the legislative committee sponsoring the initiative, presented the final bill, under the title “Freedom of Expression and the Protection of Journalists, Press Workers, and Human Rights Defenders” at a press conference on November 16. The initiative proposes, among other things, the creation of a national mechanism for the protection of journalists and human rights defenders, composed of representatives of the Executive, Legislative, and Judicial Branches, as well as journalists’ professional associations and civil society organizations engaged in human rights defense work.¹⁴¹⁸

948. The State of Paraguay informed the Office of the Special Rapporteur that “a bill is before the National Congress on the protection of journalists and human rights defenders. The bill was submitted on November 17, 2016, as the Freedom of Expression and Protection of Journalists, Media Workers, and Human Rights Defenders Act [*De libertad de expresión protección a periodistas, trabajadores de prensa y defensores de derechos humanos*].”¹⁴¹⁹

949. On November 28, the State of Paraguay signed a letter of intent with UNESCO to establish a protection mechanism for journalists. The letter was signed by Foreign Minister Eladio Loizaga, the Chairman of the National Congress [*Presidente del Congreso Nacional*], Roberto Acevedo, the Representative of the Supreme Court of Justice [*Representante de la Suprema Corte de Justicia*], Minister Raúl Torres Kinser, and Assistant Director-General for Communication and Information at UNESCO [*Subdirector General de la UNESCO de Comunicación e Información*], Frank La Rue. According to the available information, the State seeks to develop policies to prevent violence against journalists, “including training and preparation for them, for security forces and for justice operators, in addition to establishing a rapid protection response procedure when a press worker is under imminent threat”.¹⁴²⁰

950. The IACHR and its Office of the Special Rapporteur have defined some of the requirements for protective mechanisms to be effective. For example, the Office of the Special Rapporteur has recommended placing emphasis on: 1) the importance of guaranteeing the necessary personnel and financial resources for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and procurement of justice; 3) the need to adequately define protective measures called for in the mechanism and the procedure for their adoption; 4) the need to guarantee the full participation of journalists, civil society and beneficiaries in the

¹⁴¹⁷ Congreso Nacional. Cámara de Diputados. April 27, 2016. [Presentan proyecto que busca proteger a los trabajadores de la prensa](#); Knight Center for Journalism in the Americas. April 27, 2016. [Congress members present bill for protection of journalists and press workers in Paraguay](#); Última Hora. April 28, 2016. [Presentan proyecto de ley para proteger a periodistas](#); Congreso Nacional. Cámara de Diputados. June 1, 2016. [Debaten anteproyecto sobre libertad de expresión y protección a periodistas](#).

¹⁴¹⁸ Última Hora. November 17, 2016. [Presentan proyecto de protección a periodistas y DDHH](#); ADN Paraguayo. November 17, 2016. [Presentan propuesta sobre libertad de expresión](#); Agenda Paraguayo. No date. [Presentan proyecto de Ley sobre libertad de expresión y protección a periodistas](#).

¹⁴¹⁹ Misión Permanente del Paraguay Ante la Organización de los Estados Americanos. Nota 1283/16/MPP/OEA. Ref: Informe del Estado Paraguayo. Washington DC. November 28, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁴²⁰ Presidencia de la República. November 28, 2016. [Paraguay, primer país del mundo donde tres Poderes del Estado se unen para dar seguridad a periodistas](#); United Nations Educational, Scientific and Cultural Organization (UNESCO). November 28, 2016. [Paraguay signs pioneering commitment to journalists' safety](#); Knight Center for Journalism in the Americas. November 30, 2016. [Is a protection mechanism for journalists on the horizon in Paraguay?](#); ABC Color. November 28, 2016. [Paraguay firma carta de protección a periodistas](#).

implementation and operation of the mechanism; and 5) the benefits of seeking support from the international community for the mechanism's operation.¹⁴²¹

E. Subsequent Liabilities

951. On July 18, Judge Elio Rubén Ovelar Frutos reportedly acquitted Nelson Zapata and Aldo Zuccolillo, directors of the newspapers *Vanguardia* and *ABC Color*, respectively, who were sued by Héctor Guerín—also a journalist—for criminal defamation [*calumnia, difamación* and *injuria*]. The complaint arose from the November 6, 2013 publication in both newspapers of the article entitled “*Parientes de periodistas esteños con jugosos salarios en entes públicos,*” which asserted that at least six of the journalist's relatives, including a daughter of his, had obtained positions in the government institutions *Itaipu Binacional* and *Petropar* as a result of influence peddling. According to reports, the judge in the case stated in his judgment that the indications made in the news piece were based on official sources, and therefore did not constitute the offenses of which the defendants were accused.¹⁴²²

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

F. Indirect Prior Censorship

953. On December 3, 2015, journalist Jorge Chávez was reportedly fired from the *Radio Ñandutí* radio station following the publication of a tweet from his personal Twitter account criticizing Congressman Hugo Rubín for speaking out during a congressional debate against the initiative to create a Friendship Commission with Iran. According to reports, Congressman Rubín, who is the son of the radio station's owner, acknowledged having asked for the journalist to be fired after learning of his criticism.¹⁴²³

954. On April 26, members of the editorial staffs of the newspapers *Última Hora*, *ABC Color*, and *La Nación* demonstrated outside their employers' buildings to protest an alleged act of censorship committed against a group of journalists from the newspaper *La Nación*. According to the information available, starting on April 22, *La Nación* allegedly published a series of articles under the headline “*iglesia oscura,*” allegedly condemning the presence in Paraguay of Argentine catholic priests accused of sexually abusing children in Argentina. The second part of the report, which was slated for publication on April 26 did not appear in *La Nación* on that date. The newspaper belongs to the *Grupo Cartes* consortium, which has ties to the family of the President of the Republic.¹⁴²⁴

¹⁴²¹ 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.

¹⁴²² *Vanguardia*. July 18, 2016. [Juez sobreseyó a directores de ABC Color y Vanguardia](#); *ABC Color*. July 19, 2016. [Director de nuestro diario y el de Vanguardia fueron absueltos](#); *ABC Color*. July 12, 2016. [ABC ni Vanguardia falsearon información sobre los nombramientos sin concursos](#).

¹⁴²³ *Última Hora*. December 4, 2015. [Radio Ñandutí despide a periodista por criticar al diputado Rubín en un tuit](#); Paraguay.com. December 4, 2015. [Diputado ordena despido de periodista por criticarlo](#); *ABC Color*. December 9, 2015. [Diputado Rubín admite que solicitó el despido de un periodista de Ñandutí](#); “@OviedoFidel @DiputadosPy que vergüenza me da. En lugar de sumar vínculos comerciales/culturales con otros países los rompe. Impresentable”. Twitter account of Jorge Chávez @GoriChavez. [December 3, 2015](#); *Ñandutí* 1020AM. December 2, 2015, [El diputado Hugo Rubín “le pone freno” a una comisión de amistad con Irán](#); *Hoy*. December 4, 2015. [Rubín hizo rajar a periodista: “Que diga lo que sea donde yo no le pague”](#).

¹⁴²⁴ *La Nación*. April 22, 2016. [Sacerdotes con casos de abusos sexuales, ocultos en Paraguay](#); *Última Hora*. April 26, 2016. [Periodistas de varios medios se manifiestan contra la censura](#); Extra. April 17, 2016. [Denuncian censura en un diario de Cartes](#); *Clarín*. April 26, 2016. [Censuran en Paraguay un informe sobre curas argentinos acusados de abusos](#); *ABC Color*. April 26, 2016. [Censura en diario de la hermana](#)

G. Access to Public Information

955. On March 17, the Sixth Division of the Civil and Commercial Court of Appeals [*Sexta Sala del Tribunal de Apelación en lo Civil y Comercial*] overturned the December 10, 2015 judgment of the Civil and Commercial Trial Court [*Juzgado de Primera Instancia en lo Civil y Comercial*] that had upheld a decision of the National Customs Bureau [*Dirección Nacional de Aduanas*] (DNA) denying attorney Julio César Martinessi Real access to public information. According to the information available, attorney Martinessi had requested, on behalf of a business group representing insurance companies, for information on automobiles stolen in Spain and brought into Paraguayan territory. The DNA reportedly denied the request for information on the grounds that the attorney had not properly proven the representation of the insurance companies, an argument that was upheld by the Trial Court judge [*Juzgado de Primera Instancia*].

956. In adjudicating the appeal, the Court of Appeals [*Tribunal de Apelación*] held that the Constitution and the laws of Paraguay recognize the right of citizens to access to public information, and that that right may be exercised, “without any need to justify the reasons for their request.” In addition, the Court conducted an analysis of the “conventionality” of the judgment, referencing the judgment of the Inter-American Court of Human Rights in the case of *Claude Reyes v. Chile*. In that case, the Court determined that “Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied”.¹⁴²⁵

957. Principle 4 of the IACHR’s Declaration of Principles states that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

H. Media Concentration

958. In celebration of the Day of the Journalist, on April 26, the union of Paraguayan journalists, *Foro de Periodistas Paraguayos* and the organization *Voces Paraguay* demanded, through a number of acts, the reversal of the process of concentration of media ownership in the hands of a few business groups. They noted that those groups include *Grupo Cartes*, which has ties to the family of President Horacio Cartes, and has been acquiring print and electronic media outlets in recent years.¹⁴²⁶ The organizations that took part in the hearing Freedom of Expression in Paraguay, during the 159th session, expressed their concern about the concentration of media and the exclusion of community radio stations. They pointed out that two business groups control seven out of the nine open television channels existing in the country. Six concentrated groups handle ninety percent of the information agenda. They stated that the business group belonging to President Horacio Cartes has acquired thirteen media in the last eighteen months. Also, they alleged that the media concentration has deteriorated the working conditions of mass media workers. Regarding community radio

[de Cartes](#); RTV. April 27, 2016. [#IglesiaOscura: El material censurado por La Nación](#) [VIDEO]; La Nación. April 27, 2016. [Ariotti: “No era oportuna la publicación, fue nomás lo que le dije a Sarah Cartes”](#); Clarín. April 27, 2016. [Un periodista paraguayo le escribió a Francisco sobre los curas argentinos acusados de abusos](#).

¹⁴²⁵ Poder Judicial de Paraguay. Sala Sexta del Tribunal de Apelación en lo Civil y Comercial. “[Centro Zaragoza S.A. C/Dirección General de Aduanas. LIC. Nelson ValienteS/Amparo](#)”. Judgment N° 17 of March 17, 2016; ABC Color. March 23, 2016. [Ordenan dar informe sobre autos robados en España](#).

¹⁴²⁶ Observacom. April 28, 2016. [Periodistas de Paraguay denuncian precarización laboral, censura, agresiones y concentración de medios del presidente](#); EFE. April 26, 2016. [Los asesinatos y la concentración mediática preocupan a los periodistas en Paraguay](#); EA. August 9, 2016. [¿Cuáles son los grupos que controlan la agenda informativa del país?](#)

stations they stated that at least 20 community radio stations are waiting for an operating license, and that the State is constantly pursuing community radios and workers.¹⁴²⁷

959. The chairman of the National Telecommunications Board [*Dirección Nacional de Telecomunicaciones*] pointed out that the broadcasting service's licensing procedure differs in the way in which commercial and community radio licenses are awarded. In the case of commercial radios, these must bid under special administrative and technical regulations, whereas the process for community radios requires that they are backed by an organization, given that they are not-for-profit and because of the social role they play. además es a pedido de parte She informed that currently there are 251 community radios operating with legal authorization.¹⁴²⁸

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

¹⁴²⁷ IACHR. 159 Period of Regular Sessions. Audiencia Situación del derecho a la libertad de expresión en Paraguay. December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

¹⁴²⁸ IACHR. 159 Period of Regular Sessions. Audiencia Situación del derecho a la libertad de expresión en Paraguay. December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

25. PERU

A. Progress

961. On August 9, the Fourth Criminal Division of the Superior Court of Justice of Lima [*Cuarta Sala Penal, de la Corte Superior de Justicia de Lima*] overturned the conviction of journalist Fernando Valencia Osorio, the former Director of *Diario 16*, who had been convicted by the 7th Criminal Court of Lima [*7^o Juzgado Penal de Lima*] of the aggravated criminal defamation of former President Alan García Pérez.¹⁴²⁹ The Superior Court's judgment vacated the sentence imposed against the journalist, which consisted of one year and eight months in prison, a fine of PEN\$ 1 thousand 900 (approximately US\$ 565) and the payment of PEN\$ 100 thousand (approximately US\$ 29 thousand 775) to the former President as civil restitution. Reportedly, the prison sentence had originally been suspended by the judge on the condition that the defendant not leave his place of residence without prior judicial authorization, appear before the court every 30 days to report his activities, sign the biometric control registry, refrain from committing any further offenses like the one for which he was convicted, and redress the caused harm by the means of paying Civil Repairs.¹⁴³⁰

962. The trial court judge, in stating the reasoning for his decision, maintained that, although politicians and former presidents “are exposed to challenges and the criticism of their administrations must be broader because citizens have a legitimate interest in knowing the truth [...] they also enjoy the right to their honor, and therefore such criticism must be made with accurate, unadulterated information or information about things that in fact took place, rather than subjective interpretations that describe the victim in negative terms.”¹⁴³¹

963. On August 29, the Sixth Criminal Division of the Superior Court of Lima for Defendants Not in Custody [*Sexta Sala Penal para Reos Libres, de la Corte Superior de Justicia de Lima*], overturned the conviction of journalist Rafael Enrique León Rodríguez, a columnist for the magazine *Caretas*, by the Forty-second Specialized Criminal Court of Lima [*Cuadragésimo Segundo Juzgado Especializado en lo Penal de Lima*]. The lower court had found him guilty of the offense of aggravated defamation against fellow journalist Martha Meier Miró Quesada, editor of the newspaper *El Comercio*.¹⁴³²

964. The Court held that there was no “criminal content” in the journalist's conduct because the publication that gave rise to the complaint was an opinion column that concerned matters of public interest. Moreover, the article criticized the opinion of a journalist who must be considered a “public figure” given her activities as a columnist who addresses matters of public interest in her own publications. The Court based its reasoning on Peruvian case law and on the judgments of the Inter-American Court of Human Rights in the case of *Herrera Ulloa v. Costa Rica*, in which it held that, “Those individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate,” as well as in the case of *Ricardo Canese v. Paraguay*, in which the Inter-American Court held that “the protection of the reputation of individuals who are involved

¹⁴²⁹ Corte Superior de Justicia de Lima. Séptimo Juzgado Penal de Lima. [Expediente No. 701-2014](#). Judgment of April 18, 2016.

¹⁴³⁰ Agencia Andina. August 9, 2016. [Anulan condena contra periodista querrellado por Alan García](#); La República. August 9, 2016. [Alan García: anulan condena contra periodista querrellado por expresidente](#); Knight Center for Journalism in the Americas. August 10, 2016. [Peruvian judge overturns defamation conviction against journalist in case involving former president](#); Ideeleradio. August 10, 2016. [Fernando Valencia: Anulación de sentencia es un triunfo a la libertad de expresión](#).

¹⁴³¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 25, 2016. [Press Release R52/16. The Office of the Special Rapporteur expresses concern over the criminal conviction for defamation of a journalist in Peru](#); Corte Suprema de Justicia de la República del Perú. [Acuerdo plenario N° 3-2006/CJ-116](#) of October 13, 2006; Noticias en Línea. April 19, 2016. [ANP denuncia persecución judicial a periodistas y pide respeto a libertad de opinión](#); Instituto Prensa y Sociedad (IPYS). April 18, 2016. [Perú: periodista denunciado por ex presidente es condenado por difamación](#); Committee to Protect Journalists (CPJ). April 19, 2016. [CPJ calls on Peru to decriminalize defamation as two journalists face court](#); Reporters Without Borders (RSF). April 27, 2016. [After two more prosecutions, RSF urges Peru to decriminalize libel](#).

¹⁴³² La República. September 9, 2016. [Sala Superior absuelve a periodista Rafo León por delito contra el honor](#); Knight Center for Journalism in the Americas. September 9, 2016. [Court annuls defamation sentence against Peruvian journalist 'Rafo' León](#).

in activities of public interest should be carried out according to the principles of democratic pluralism,” and that “the margin of acceptance and tolerance of criticism by the State itself, and by public officials, politicians and even individuals who carry out activities subject to public scrutiny, must be much greater than that of individuals.”¹⁴³³

965. Consequently, the Court overturned the one-year probation sentence ordering the defendant to notify the court of any change of address; report to the Biometric Control Office every 30 days to provide his signature, and pay 6,000 soles (approximately US\$ 1 mil 786) as civil restitution.¹⁴³⁴

B. Killings

966. The Office of the Special Rapporteur learned of the murder of Yrinea Martínez Purihuamán, who was reportedly working as a journalist in the Province of Chiclayo, Department of Lambayeque. According to the information available, the journalist died after being shot while covering an alleged confrontation between community members and land invaders of San Francisco de Asís in the district of Salas, Province of Lambayeque, where he had resorted to, presumably at the request of one of the groups involved in the dispute. As of the closing date of this report, there was no information available about the investigation that the authorities had reportedly opened with regard to events, in which two other people died, and a fourth person was seriously injured.¹⁴³⁵

967. On November 20, journalist Hernán Choquepata Ordóñez was murdered by unknown persons who entered the booth from which he was broadcasting a radio program. They reportedly shot him after beating him, and he died after being transported to a hospital in Arequipa. Choquepata Ordóñez—who was known to his radio listeners as “Randy Ordóñez”—had been working for the radio station *La Ribereña*, which broadcast from the city of Camaná, in the Department of Arequipa, where he hosted the program “*Hablan los pueblos*,” known for allowing citizens to express complaints and criticism of the government authorities. According to media accounts, the journalist’s assailants also destroyed the station’s equipment.¹⁴³⁶

968. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the

¹⁴³³ Corte Superior de Justicia de Lima. Expediente N° 14156-2014. Judgment of August 29, 2016. Available at: <http://legis.pe/wp-content/uploads/2016/09/Lee-aqu%C3%AD-la-sentencia-de-segunda-instancia-que-absuelve-a-Rafo-Le%C3%B3n-Legis.pe.pdf>

¹⁴³⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 6, 2016. [Press Release R62/16. Office of the Special Rapporteur Expresses Concern over a New Criminal Conviction for Defamation against a Journalist in Peru](#); Corte Superior de Justicia de Lima. Cuadragésimo Segundo Juzgado Especializado en lo Penal de Lima. [Expediente No. 14156-2014](#). Judgment of May 3, 2016; Pontificia Universidad Católica de Perú (PUCP). Instituto de Democracia y Derechos Humanos. May 6, 2016. [Caso Rafael León: verros y posibles plagios en la sentencia](#); Inter American Press Association (IAPA). May 4, 2016. [IAPA calls tendency to penalize opinions in Peru 'absurd'](#); La República. May 4, 2016. [Autopsia de una sentencia](#); Utero.Pe. April 12, 2016. [Cualquier periodista queda expuesto a sufrir una pena de cárcel por delito de opinión](#); La República. April 23, 2016. [Fiscal de la Nación preocupado por sentencia a periodista](#); Pen International. May 12, 2016. [Llamamiento a la acción. Perú: anule la sentencia por difamación del periodista Rafo León](#); Committee to Protect Journalists (CPJ). April 19, 2016. [CPJ calls on Peru to decriminalize defamation as two journalists face court](#); Reporters Without Borders (RSF). April 27, 2016. [After two more prosecutions, RSF urges Peru to decriminalize libel](#).

¹⁴³⁵ Correo. October 1, 2016. [Chiclayo: tres muertos deja violento desalojo de tierras en el distrito de Salas](#); La República. October 1, 2016. [Invasores asesinan a periodista y comuneros en distrito de Salas](#); La República. October 2, 2016. [Chiclayo: Periodista llamó a su hermano antes de ser asesinado en Salas](#); Radio Programas del Perú (RPP) Noticias. October 2, 2016. [Familiares de comuneros asesinados cruelmente claman justicia](#); ANP Filial Chiclayo/Facebook. October 2, 2016. [Muerte de Yrinea Martínez no debe quedar impune](#).

¹⁴³⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. November 28, 2016. [Press Release R177/16. Office of the Special Rapporteur Condemns Murder of Journalist in Peru and urges the State to Swiftly and Opportunely Investigate and Punish those Responsible](#); El Comercio. November 21, 2016. [Arequipa: locutor fue asesinado en cabina de radio de Camaná](#); La República. November 21, 2016. [Arequipa: Matan de un balazo a locutor de radio en Camaná](#); Periodistas en español. November 23, 2016. [Periodistas asesinados en Perú: Hernán Choquepata Ordoñez](#); El Búho. November 21, 2016. [Asesinan a periodista mientras conducía programa de radio en Camaná](#); Terra. November 23, 2016. [RSF vincula el asesinato de un periodista de "La Ribereña" con su trabajo](#); Reporters Without Borders (RSF). November 22, 2016. [Peru- Radio presenter shot dead in mid-broadcast](#).

Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁴³⁷

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

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

970. On November 30, 2015, journalists Miller Cueva Pérez, director of the news program "Noticias, Farándula y Más," which is broadcast on *Radio Concierto* from the city of Tocache, in the Department of San Martín, was reportedly subjected to insults and an attempted physical assault by provincial Mayor David Bazán Arévalo during a public event held to celebrate the 31st anniversary of the province's founding. According to the information received, the journalist's video camera was also destroyed by that same public official, who presumably acted in reaction to a criticism that the journalist had disseminated through social media.¹⁴³⁸

971. On November 6, 2015 the Regional Government Council [*Consejo del Gobierno Regional de Lima*] unanimously passed a resolution to instruct the Regional General Manager, Luis Custodio Calderón, from hiring "journalists, media workers, or media outlets that constantly defame, insult, and offend the Regional Council of Lima as an institution and its regional council members." The resolution, voted on at the proposal of the regional councilman of the Province of Huaura, Miguel Ángel Murafech Nemy, was condemned by the civil organization National Association of Peruvian Journalists [*Asociación Nacional de Periodistas del Perú*].¹⁴³⁹

972. On December 1, 2015, journalist Óscar Esteban de la Cruz, who works for the news programs "*El Silencio de la Verdad*" on *Radio Miel*, and "Cable Noticias," on *Canal 21*, was reportedly assaulted by a group of individuals while he was covering a police eviction operation in el Cerro de San Bernardo, in the Province of Chanchamayo, in the Department of Junín. According to the information available, when the attack was imminent, the journalist attempted to take refuge in the *La Merced* Hospital, located in the vicinity, but was prevented from doing so by the hospital's own security guards, who allowed the assailants to surround and assault him, injuring him and destroying his work equipment. The journalist was reportedly hospitalized as a consequence of the assault.¹⁴⁴⁰

973. On January 7, journalists Paul Pilco Dorregaray, a correspondent for the newspaper *Correo* in Apurímac, and Carlos Peña Costillo, a correspondent for *ATV Abancay*, were reportedly assaulted by a group of individuals, allegedly relatives of Herbert Juárez Vera, mayor of the district of Pacobamba, in the Province

¹⁴³⁷ 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). OEA/Ser. L/V/II. 149. Doc. 50. December 31, 2013. Para. 31; See also: IACHR. [Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression](#). Chapter II. Mexico: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹⁴³⁸ Crónica Viva. December 8, 2015. [Alerta OFIP: Intentan agredir a director de programa en Tocache](#); Inter American Press Association (IAPA). April 4, 2016. [Midyear meeting 2016 Punta Cana, Dominican Republic. Peru report](#).

¹⁴³⁹ Gobierno Regional de Lima. [Acuerdo del Consejo Regional N° 295/2015-CR/GRL](#). November 6, 2015; Blog ANP Región Lima. December 27, 2015. [Consejo Regional agravia y veta a periodistas críticos a su gestión](#); Inforegión. January 13, 2016. [ANP rechaza acuerdo del Gobierno Regional de Lima sobre periodistas](#); Radio Programas del Perú (RPP). December 24, 2015. [Huacho: Consejo Regional de Lima condiciona la libertad de prensa](#).

¹⁴⁴⁰ Asociación Nacional de Periodistas del Perú (ANP). No date. [Chanchamayo: periodista es agredido por delincuentes](#); Radio Programas del Perú (RPP) Noticias. December 1, 2015. [Chanchamayo: enfrentamiento entre invasores deja heridos y vehículos quemados](#); Correo. December 2, 2015. [Periodista agredido por vándalos sufrió indiferencia en hospital](#).

of Andahuaylas, Department of Apurímac, while covering the mayor's arrival to the emergency room at the Guillermo Díaz de la Vega Hospital, in the Province of Abancay, where he was taken following a traffic accident. According to the information available, individuals who were allegedly the mayor's family members tried to prevent them from capturing images of the incident, attempting to take the journalists' work equipment, as well as insulting and physically attacking them, injuring one of them in the left arm.¹⁴⁴¹

974. On January 28, reporter Jorge Chávez, who works for the *RPP Noticias* group, was threatened by a man who put a knife to his neck while he was covering a police operation to carry out an eviction in Villa El Salvador, in the Province and Department of Lima.¹⁴⁴²

975. On March 13, journalist Nino Bravo Damián, host of the news program '*Los Bravos*,' broadcast by the *Antena Norte* channel in the city of Chimbote, Province of Santa, in the Department of Ancash, was reportedly arrested by police officers while covering a protest against presidential candidate Keiko Fujimori Higuchi. According to the information available, the journalist was reportedly initially berated by a plainclothes police officer and subsequently arrested by officer Miguel Acuña Gallo, Chief of the Chimbote Police Division [*División Policial Chimbote*]. Bravo Damián reportedly remained in custody for over seven hours.¹⁴⁴³

976. On March 15, journalist Guillermo Ibarra Méndez, a reporter for *Canal 13, Global TV* and *Radio Armonía Digital* in the Province of Huaraz, Department of Ancash, was reportedly assaulted by a group of individuals while covering a confrontation between government employees and private citizens in the building that houses the regional government of Ancash. According to the information available, the assailant was provincial alderman Hugo Edgar Cáceres, who had also reportedly incited a group of individuals who were with him, one of whom grabbed the reporter's video camera from him.¹⁴⁴⁴

977. On March 29, journalist Julio Blanco Rocca, host of the program '*La Voz del Pueblo*' which airs on *Radio Selva 105.1*, in the city of Puerto Maldonado, Province of Tambopata, in the Department of Madre de Dios, was reportedly assaulted by relatives of congressional candidate Sharon Ore Rengifo. According to the information available, the journalist was assaulted at the conclusion of a session of the Regional Council of Madre de Dios [*Consejo Regional de Madre de Dios*] that he was covering. The attack was reportedly motivated by Blanco Rocca's criticism, on his social media, of Ore Rengifo's participation in the competitive bidding procurement processes of the Regional Government of the Department.¹⁴⁴⁵

978. On May 3, a group of armed criminals reportedly robbed a team of journalists from *RPP* and *Latina* in the district of San Martín de Porres, while they were covering a robbery that had taken place hours earlier.¹⁴⁴⁶

979. On August 11, journalist Doris Aguirre, who works for the newspaper *La República*, reportedly received a telephone call in which an individual warned her: "[...] Don't be investigating things that are none of your business, you are getting closer to death. You're going to be the next victim." That statement, according to the report the journalist filed at the police station for the Municipality of Lince [*Comisaría de la*

¹⁴⁴¹ Asociación Nacional de Periodistas del Perú (ANP). No date. [Abancay: familiares de alcalde agreden a periodistas](#).

¹⁴⁴² Radio Programas del Perú (RPP) Noticias. January 28, 2016. [VES: sujeto desconocido amenazó con cuchillo a periodista de RPP](#); El Popular. January 29, 2016. [Viral: periodista es amenazado con cuchillo durante transmisión en vivo](#); Joe Olivas Panizo/RPP/You Tube. January 29, 2016. [Amenazan con cuchillo a periodista de RPP Noticia \(VIDEO\)](#).

¹⁴⁴³ Correo. March 13, 2016. [Chimbote: Policía se enfrenta a manifestantes del "No a Keiko"](#); RSD. March 14, 2016. [Denunciarán al jefe de la Policía de Chimbote por abuso de autoridad](#); Asociación Nacional de Periodistas del Perú (ANP). No date. [Santa: periodista es detenido durante cobertura informativa](#); La República. March 26, 2016. [Agente de inteligencia fue quien dirigió agresión a opositores a Keiko Fujimori](#).

¹⁴⁴⁴ Crónica Viva. March 17, 2016. [Alerta OFIP: Periodista es agredido por turba en Huaraz](#); Huaraz Noticias. March 16, 2016. [Periodista Guillermo agredido por regidor Hugo Cáceres](#).

¹⁴⁴⁵ Infoeregión. March 30, 2016. [Madre de Dios: Periodista agredido por familiares de candidata al Congreso](#); Julio Blanco Rocca/Facebook. March 30, 2016. [Aquí el video completo \(VIDEO\)](#); Infonota. March 31, 2016. [Familiares de candidata Sharon Ore Rengifo de Alianza Popular agarraron a patadas a periodista](#).

¹⁴⁴⁶ Capital. May 3, 2016. [SMP: asaltan a periodistas de RPP y Latina cuando cubrían robo en casino](#); Radio Programas del Perú (RPP) Noticias. May 3, 2016. [Periodistas de RPP y Latina fueron víctimas de asalto en SMP](#).

Municipalidad de Lince] on the same day as the incident, was reportedly connected to a journalistic investigation published under her byline about the alleged existence of a “death squad” composed of Peruvian National Police officers, currently under investigation as suspects in a number of extrajudicial executions that were carried out between 2011 and 2015.¹⁴⁴⁷

980. Based on these events, on September 13, the Office of the Special Rapporteur sent the Peruvian State a request for information in order to find out what actions it had taken to guarantee the journalist’s safety and physical integrity, as well as to investigate the facts.¹⁴⁴⁸ On October 26, the Peruvian State submitted a report prepared by the Office of the Provincial Prosecutor of Lima [*Fiscalía Provincial de Lima*], indicating that a criminal investigation had been opened. Its initial objective was reportedly to conduct inquiries to determine the identification of the direct perpetrator of the threats received by the journalist, through the geolocation of the telephone from which the call was made.¹⁴⁴⁹ Additionally, on December 6 the State sent additional information pointing out, among other things, that protective measures regarding the journalist had allegedly been put in place and the journalist was aware of them.

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

D. Subsequent Liabilities

982. On May 13, a criminal complaint was filed against journalists Kariana Novoa Lescano, Rosana Cueva Mejía, and Jorge Ipanaque Neira, members of the team that produces and directs the television program ‘*Panorama*’, which airs on *Panamericana Televisión*. The complaint alleged the criminal offense of Disclosure of National Secrets [*Revelación de Secretos Nacionales*], defined in article 330 of the Peruvian Criminal Code. It was filed by the ministry of Defense, through its Office of the Inspector General, and was based on the April 17 broadcast of a report¹⁴⁵⁰ exposing the alleged existence of a network of corruption in the management of the military intelligence budget in the region comprised by the Apurímac, Ene and Mantaro Rivers, commonly known as “the VRAEM.”¹⁴⁵¹ According to the information available, the Inspector General’s Office found that the images of documents stamped “secret” shown in the televised report gave rise to the offense in question.

983. On August 29, Defense Minister Mariano González Fernández, who had assumed his position on August 1, announced the replacement of Inspector General Sara Farfán, the person responsible for filing the

¹⁴⁴⁷ La República. July 24, 2016. [Fiscalía investiga a 96 policías por presunto asesinato extrajudicial de 27 delincuentes](#); La República. August 11, 2016. [Amenazan de muerte a periodista Doris Aguirre por investigar ejecuciones extrajudiciales en PNP \(VIDEO\)](#); La República. August 12, 2016. [Mininter recogerá denuncia de amenazas de muerte contra periodista Doris Aguirre](#); La República. August 12, 2016. [Amenazan de muerte a periodista Doris Aguirre](#); Radio Programas del Perú (RPP) Noticias. August 13, 2016. [Amenazan a periodista por investigar a 'Escuadrón de la muerte'](#); El Comercio. August 22, 2016. [Interior confirma "serios indicios" de escuadrón de la muerte](#); El Comercio. August 16, 2016. [Basombrío sobre escuadrón de la muerte: "Están identificados"](#).

¹⁴⁴⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. Solicitud de Información al Estado conforme al artículo 41 de la Convención Americana sobre Derechos Humanos. September 13, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁴⁴⁹ República de Perú. Misión Permanente de Perú ante la OEA. Nota 7-5-M/213. October 26, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; República de Perú. Misión Permanente de Perú ante la OEA. Nota No. 7-5-M/0231. December 6, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁴⁵⁰ Panorama/You Tube. April 17, 2016. [Inteligencia fantasma: irregularidades en el manejo de fondos Vraem \(1/2\)](#).

¹⁴⁵¹ Altavoz. June 27, 2016. [Rosana Cueva y equipo de Panorama denunciados por presunta traición a la Patria](#); La República. Radio Programas del Perú (RPP) Noticias. June 29, 2016. [Ministerio de Defensa: "Denuncia contra Panorama no es por Traición a la Patria"](#); La República. June 29, 2016. [Rosana Cueva: "Denuncia del Ministerio no va a hacer que dejemos nuestro trabajo" \(VIDEO\)](#); El Comercio. June 29, 2016. [Rosana Cueva sobre Mindef: "Es absurdo que nos enjuicien"](#); Radio Programas del Perú (RPP) Noticias. June 30, 2016. [Rosana Cueva: denuncia del Mindef está vinculada a traición a la patria](#); International Federation of Journalists (IFJ). July 1, 2016. [Peru: three journalists face jail for accusing government of corruption](#); Federación de Periodistas del Perú. July 1, 2016. [PRONUNCIAMIENTO FPP SOBRE "PANORAMA" Y ROSSANA CUEVA](#); Congreso de la República. [Moción de censura](#). July 2016.

criminal complaint against the journalists from *Panorama*. Upon making this announcement, the minister indicated that “The current position of the sector is that there has been no prejudice to the State with this journalistic report,” further inviting the Office of the Attorney General to “have a reflective attitude based on this new position of the ministry and will consider the definitive shelving” of the complaint.¹⁴⁵² At the time of writing this report, the Office of the Special Rapporteur has not received any information to indicate that the complaint has been withdrawn.

984. On March 18, Judge Ross Mary Quiroz Cornejo, of the First Single-Judge Court of Justice of Paucarpata [*Primer Juzgado Unipersonal del Módulo Básico de Justicia de Paucarpata*], in the Province and Department of Arequipa, reportedly ruled to shelve the complaint filed by the former head of the logistical department of the Regional Government of Arequipa, Ángel Flores Hala, against journalist Zenaida Condori Contreras, who works for the newspaper *La República*. According to the information available, the complaint was based on the August 12, 2015 publication of an article that revealed the alleged excess valuation of purchases made by the department under Flores Hala’s responsibility. In his complaint, the official reportedly asked the court to punish the journalist with three years in prison and the payment of PEN\$ 180 thousand (approximately US\$ 54 thousand) as civil restitution. The judge reportedly ruled the complaint unfounded. That same day, before the judgment was handed down, representatives of different media outlets held protests to demand impartial action from the courts in cases brought against journalists.¹⁴⁵³ Ángel Flores Hala had appealed this decision, but the Fourth Criminal Chamber of Appeals [*Cuarta Sala Penal de Apelaciones*] declared the appeal unfounded.¹⁴⁵⁴

985. On June 2, the *Asociación Nacional de Periodistas* condemned the conviction of journalist Carol Villavicencio Lizárraga, editor of the weekly publication *El Huacón*, in the Province of Huancayo, Department of Junín. The conviction was handed down by Judge Efraín Solís Aliaga, the regular judge of the First Single-Judge Court of Junín, after hearing the evidence in the case filed against the journalist by Congressman Casio Huirac Huairu Chuquichaico. The congressman’s name appeared in a report entitled “*Top 50: Los morosos de Huancayo*,” published by *El Huacón* on June 1, 2015, naming him as one of the main tax debtors of the Tax Administration System [*Sistema de Administración Tributaria*] (SAT) of the Province of Huancayo.¹⁴⁵⁵

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

987. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of IACHR establishes: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “desacato laws,” restrict freedom of expression and the right to information.”

¹⁴⁵² Congreso de la República. August 29, 2016. [Ministro anunció primeras acciones en sector Defensa](#); La República. August 29, 2016. [Retiran del Mindef a procuradora que denunció a periodistas de 'Panorama'](#); El Comercio. August 29, 2016. [Remueven a procuradora que denunció a periodistas de "Panorama"](#); El Comercio. September 15, 2016. [Oficializan renuncia de procuradora que denunció a "Panorama"](#).

¹⁴⁵³ La República. August 12, 2015. [Sobrevaloración al descubierto en el Gobierno Regional de Arequipa](#); Radio Programas del Perú (RPP) Noticias. March 18, 2016. [Periodistas se movilizaron vestidos de negro y amordazado \(VIDEO\)](#); HBA Noticias. March 17, 2016. [Periodistas arequipeños se movilizan en contra de autoridades](#); Correo. March 14, 2016. [Centro Federado de Periodistas: "Falconí atenta contra la libertad de expresión"](#); Crónica Viva. March 20, 2016. [Congresista exige reparación civil de S/ 10 millones a periodistas de Correo](#); Diario Sin Fronteras. May 5, 2016. [Libertad condicionada: Colegio de Periodistas advierte sobre intención de acallar a la prensa](#); El Pueblo. March 19, 2016. [Jueza archivó denuncia contra periodista en Arequipa](#); La República. August 20, 2016. [Denuncias contra periodista son infundadas](#).

¹⁴⁵⁴ La República. August 20, 2016. [Denuncias contra periodista son infundadas](#).

¹⁴⁵⁵ Inforegión. June 3, 2016. [Huancayo: ANP rechaza inaudita sentencia contra periodista](#); ISSUU/El Huacón. June 1, 2015. [Top 50: los morosos de Huancayo \(p. 8\)](#); Correo. May 27, 2016. [Sentencian a periodista por informar sobre morosidad de congresista](#).

E. Prior Censorship and Indirect Censorship

988. On February 16, *Instituto Prensa y Sociedad* (IPYS) and the *Centro de Información Abierta* (Liber) reported an alleged case of prior censorship orchestrated from the Chambers of the Chief Justice of the Superior Court of Justice of the Department of Cusco, against the Regular Superior Judge of that Court, Fernando Murillo Flores, who has been a regular contributor to since 2009, of *El Diario del Cusco*, in which he published opinion pieces.¹⁴⁵⁶ According to the information available, on January 25 Judge Murillo Flores received an email, sent by the newspaper's executives, stating that, "by express order of the Chief Judge of the Superior Court [*Presidenta de la Corte Superior*] Elizabeth (Grossman Casas)," he should send his articles henceforth to the Court's Institutional Image Department, "for the respective coordination for their."¹⁴⁵⁷ The case of prior censorship was reportedly orchestrated after Judge Murillo published an article entitled "*Preguntas de un obrero que lee*" ["Questions from a Worker Who Reads"], in which he indirectly criticized a decision made by the Chief Judge of the Superior Court of Justice to lay off personnel assigned to the courts. As a result, the newspaper reportedly refused to publish the pieces that the judge submitted on January 28, and February 5 and 12. After the final submission, the newspaper's managers reportedly sent Judge Murillo an email saying there were "strict orders not to publish any type of article not sent from the institutional image office," and he was therefore directed to "request the approval of his writing from that office." According to the information received, the prior censorship mechanism later extended to another of the Court's judges, Judge Begonia del Rocío Velásquez Cuentas, and to Judge Murillo's son, attorney Javier Murillo Chávez, for the same reasons.¹⁴⁵⁸

989. On May 2, directors of the weekly publication *Hildebrandt en sus trece* were reportedly told by executives of the company Imprenta Andina S.A.C.—which prints the publication—that printing had to be suspended for "two, three or more" weeks for equipment maintenance. The notice, which jeopardized the publication of the next edition of the weekly paper, was given three days after it had published an investigative piece reporting that Congressman Joaquín Ramírez—who is also the Secretary General of the *Fuerza Popular* party—had allegedly omitted to include two properties worth \$US 2 million 600 thousand that he had purchased in the United States in his financial disclosure affidavit to Congress. The company Imprenta Andina S.A.C. is reportedly owned by Fidel Ramírez, an uncle of the congressman referred to in the article.¹⁴⁵⁹

F. Communications Surveillance

990. On December 9, 2015 the Congress of the Republic approved the amendment of the final report of the Intelligence Committee [*Informe Final de la Comisión de Inteligencia*] relating to the "Investigation of complaints of unlawful actions carried out by the National Intelligence Directorate [*Dirección Nacional de Inteligencia*] (DINI)," which concluded that there had been systemic actions, ordered by the Executive Branch,

¹⁴⁵⁶ Instituto Prensa y Sociedad (IPYS). February 16, 2016. [Juez sufre censura previa tras criticar en un diario a presidenta de la Corte; Cusco en Portada](#). February 19, 2016. [Correos electrónicos del Diario del Cusco demuestran censura a juez Fernando Murillo; Catedrajudicial Blogspot](#). April 29, 2016. [Yo acuso](#).

¹⁴⁵⁷ Catedrajudicial Blogspot. April 29, 2016. [Yo acuso](#).

¹⁴⁵⁸ Centro de Información Abierta (Liber)/Scribid. April 7, 2016. [Informe: Censura previa a magistrados de la Corte Superior de Justicia del Cusco y a otro abogado; Cusco en Portada](#). February 19, 2016. [Correos electrónicos del Diario del Cusco demuestran censura a juez Fernando Murillo \(AUDIO\)](#); La Ley. February 25, 2016. [Juez denuncia censura previa en la Corte Superior del Cusco](#); Altavoz. February 23, 2016. [Cusco: ¿censura de la presidenta de la Corte Superior de Justicia? \(AUDIO\)](#); La República. April 26, 2016. [Los jueces amordazados](#).

¹⁴⁵⁹ El Comercio. May 5, 2016. [Denuncian represalias contra semanario Hildebrandt en sus trece](#); La República. April 30, 2016. [Congresista Joaquín Ramírez omitió propiedades en su hoja de vida](#); La República. May 3, 2016. [Semanario de Hildebrandt denuncia que publicación no saldrá por represalias de fujimorista](#); Hildebrandt en sus trece/Facebook. April 29, 2016. [Los depas en Miami del vocero de Keiko](#); Utero. May 3, 2016. [El fujimorismo empieza a arremeter contra la prensa saboteando a Hildebrandt en sus trece](#); Capital. May 3, 2016. [Hildebrandt denuncia que semanario no se publicaría por represalia de fujimorista](#); Hildebrandt en sus trece/Facebook. May 6, 2016. [Aquí estamos](#).

to monitor and gather personal information on public servants and their relatives, as well as on political leaders, journalists, and citizens, with the intention of using it for political purposes.¹⁴⁶⁰

991. The Intelligence Committee's report was drafted at the conclusion of the investigations that followed the March 19, 2015 publication of a report in the magazine *Correo Semanal* revealing the existence of operations to spy on and gather information about public servants, politicians, and citizens. The Office of the Special Rapporteur mentioned these events in its 2015 Annual Report.¹⁴⁶¹ The information contained in the document reportedly proved that public servants had engaged in activities to systematize the personal data of individuals found in publicly accessible databases like the one administered by the National Superintendency of Public Records (Sunarp), or in the possession of private institutions such as Equifax Peru S.A., a company that compiles individual credit histories. In this regard, it bears noting that the Intelligence Committee's report contains the statements of journalists Iván Slocovich Pardo, Director of the magazine *Correo Semanal*, and Américo Zambrano, one of the magazine's editors, who stated that they had received the documents on which the March 19, 2015 article was based directly from public servants from the Department of the Interior, with express indications to disseminate the information as a way to criticize the conduct of specific public figures.¹⁴⁶²

992. The Committee's report contains the statement of Congressman Víctor Andrés García Belaunde, presenting a report from the company Infocorp that contains the credit history of a private individual, thus evidencing the shortcomings of the oversight mechanisms designed to ensure the protection of personal data in the possession of private parties.¹⁴⁶³

993. The Office of the Special Rapporteur observes that decisions to undertake surveillance activities that invade the privacy of individuals must be allowed by independent judicial authorities, who must state why the measure is appropriate for the accomplishment of the objectives pursued in the specific case; whether it is sufficiently restricted so as not to infringe upon the right in question more than necessary; and whether it is proportionate in relation to the interests pursued. Investigative proceedings involving an invasion of privacy authorized by law and by a competent judge must also respect other due process safeguards. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that at the least, the decision-making criteria adopted by the courts should be public.¹⁴⁶⁴

26. DOMINICAN REPUBLIC

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

¹⁴⁶⁰ Congreso de la República. December 9, 2015. [Ampliación del informe en minoría de la Comisión de Inteligencia](#). Pages 58 and 64; IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2015. Para. 1058-1059; Correo. December 19, 2015. [La DINI rastreó bienes de miles de ciudadanos](#).

¹⁴⁶¹ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2015. Para. 1058.

¹⁴⁶² Correo. December 19, 2015. [La DINI rastreó bienes de miles de ciudadanos](#); IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2015. Para. 1058; Blog Catarsis y Harakiri/Scribid. No date. Informe "Investigación de las denuncias de acciones ilegales ejecutadas desde la Dirección Nacional de Inteligencia - DINI". Available at: <https://www.scribd.com/document/285941516/Informe-en-Minoria-Sobre-La-DINI-Direccion-Nacional-de-Inteligencia-Peru#>

¹⁴⁶³ Scribid/Blog Catarsis y Harakiri. No date. Informe "Investigación de las denuncias de acciones ilegales ejecutadas desde la Dirección Nacional de Inteligencia - DINI". Available at: <https://www.scribd.com/document/285941516/Informe-en-Minoria-Sobre-La-DINI-Direccion-Nacional-de-Inteligencia-Peru#>

¹⁴⁶⁴ 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.

994. On February 4, a reporter for the newspaper *El Caribe*, Danny Polanco, was hit on his right eye by buckshots that had been fired by the police while covering a confrontation between the police officers and students at the *Universidad Autónoma de Santo Domingo* (UASD), where the students were protesting to demand the resumption of classes, which had been suspended by the professors, who demanded a salary increase.¹⁴⁶⁵

995. On September 23, a cameraman of *RNN*, Jorge Disla, was attacked by an individual while taking part in the coverage of demonstrations held outside of the Constitutional Court of the Dominican Republic [*Tribunal Constitucional de República Dominicana*] to commemorate the third anniversary of the handing down of Sentence 168-13, through which thousands of Dominicans, who are the descendants of Haitian immigrants, lost their right to citizenship. According to the known information, the cameraman was wounded in one of his legs and the aggressor, who allegedly was a “nationalist” group, was arrested by the police.¹⁴⁶⁶

996. Cameramen Jose Miguel Méndez and Jose Miguel Flores, of the channel *Boca Chica TV 3*, allegedly had been hand-cuffed by members of the National Police [*Policía Nacional*] while filming a transit accident in the municipality of Boca Chica on June 14. The cameramen had been hand-cuffed despite allegedly identifying themselves as press members.¹⁴⁶⁷

997. Journalist Diana Rodríguez, of the newspaper *El Caribe*, and cameraman Cándido Méndez, of *CDN canal 37*, were physically attacked by members of the personal security team of President Danilo Medina. The journalist was struck in the stomach and the cameraman in an eye. The equipment of Cándido Méndez was also damaged. According to known information, the events took place during coverage of a visit by the President on May 5 to construction work on line 2B of the Santo Domingo Metro.¹⁴⁶⁸

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

B. Social Protest

999. The results of the municipal elections held on May 15 in San Domingo Este, capital of the province of Santo Domingo, allegedly had sparked tension among opposition party members, who allegedly were in disagreement with the results. In May and June, demonstrations were held at the headquarters of the Central Electoral Board [*Junta Central Electoral*] (JCE) demanding first of all a recount of the votes and subsequently the annulment of the elections. Due to post-electoral tensions, the authorities decided to “militarize” the

¹⁴⁶⁵ El Caribe. February 5, 2016. [Reportero de elCaribe interno por disparos que le hizo la Policía](#); Nuria. February 5, 2016. [elCaribe condena agresión contra fotógrafo Danny Polanco](#); Listín Diario. February 7, 2016. [Suspenden raso acusado de herir en un ojo a fotoreportero durante protestas en la UASD](#); Diario Libre. February 15, 2016. [Dan de alta médica al fotógrafo Danny Polanco, herido en huelga de la UASD](#); Metro. February 17, 2016. [Fotógrafo herido por un policía sigue sin visión en ojo derecho](#).

¹⁴⁶⁶ El Caribe. September 23, 2016. [Hieren camarógrafo durante protesta contra sentencia 168-13 frente al Tribunal Constitucional](#); Informativos Tele Antillas. September 23, 2016. [Agreden a un camarógrafo durante protesta contra sentencia 168-13 frente Tribunal Constitucional \(VIDEO\)](#); Seguidores del Jarabe de Zapete/Facebook. [Marino comenta sobre suceso frente al Tribunal Constitucional RD \(VIDEO\)](#); Proceso. September 27, 2016. [Reporteros Gráficos piden al MP y a la PN tomar acciones contra coronel retirado que agredió a camarógrafo](#).

¹⁴⁶⁷ Noticias del Cibao. No date. [AGENTES DE LA POLICÍA NACIONAL EN BOCA CHICA AGREDEN TRABAJADORES DE LA PRENSA](#); Noticias Sin. June 13 2016. [Agente de PN agrede camarógrafos en Boca Chica](#); Hispaniola TV. June 13 2016. [Policía agrede a camarógrafos canal 3 de Boca Chica](#).

¹⁴⁶⁸ El Día. May 5, 2016. [Codazos, empujones y vejaciones a la prensa en prueba ampliación línea II del Metro](#); Diario Libre. May 5, 2016. [Seguridad de Danilo agrede con un codazo en un ojo a un camarógrafo](#); Listín Diario. May 6, 2016. [Danilo encabeza recorrido de prueba en línea 2B del Metro](#).

protection of the municipal electoral boards. According to known information, on June 27 Police allegedly had thrown tear gas bombs over demonstrators while they walked off the Supreme Electoral Court building.¹⁴⁶⁹

1000. On February 4, a confrontation took place between presumed university students and elements of the police during a protest by the former demanding resumption of classes at the *Universidad Autónoma de Santo Domingo* (UASD). According to available information, in addition to teargas canisters and rubber bullets, the police used lethal weaponry against protestors. A photojournalist was wounded in the eye by buckshot allegedly fired by the uniformed personnel.¹⁴⁷⁰

1001. 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.¹⁴⁷¹ 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.¹⁴⁷²

1002. 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"¹⁴⁷³ 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."¹⁴⁷⁴

C. Subsequent Liabilities

1003. On February 21, the Constitutional Court [*Tribunal Constitucional*] declared the unconstitutionality of seven articles of Law No. 6132, on Expression and Dissemination of Thought [*Ley No. 6132, sobre Expresión y Difusión del Pensamiento*], promulgated in 1962. The Court was called upon to adjudicate a direct unconstitutionality action challenging eleven provisions of the law, and five articles of the Criminal Code [*Código Penal*]. The plaintiffs, the directors of three newspapers—Rafael Molina Morillo, the director of *El Día*, Miguel Franjul, the director of *Listín Diario*, and Osvaldo Santana, the director of *El*

¹⁴⁶⁹ Acento. May 19, 2016. [Dirigentes opositores en SDE realizan manifestación frente a JCE y piden anular elecciones](#); *Diario Libre*. May 19, 2016. [Los resultados de las elecciones generan tensión en algunos partidos](#); *Diario Libre*. May 27, 2016. [Candidatos de Santo Domingo Este se declaran en huelga de hambre por nuevas elecciones](#); 7 Días.com.do. June 27, 2016. [Manuel Jiménez y Dño Astacio penetran por la fuerza edificio del TSE](#); *Noticias SIN*. June 27, 2016. [Empujones, forcejeos y bombas lacrimógenas en TSE en apoyo a Manuel Jiménez](#); *Diario Libre*. June 27, 2016. [Lanzan bombas lacrimógenas a seguidores de ex candidatos de Santo Domingo Este](#); *Teleradio America*. May 27, 2016. [Candidatos SDE se declaran en huelga de hambre reclamando nuevas elecciones](#); *Orgulloho Dominicano*. May 28, 2016. [Candidatos SDE se van a huelga de hambre](#); *The Dominican Journal*. May 19, 2016. [Desastre electoral: En Santo Domingo Este y Oeste piden anular las elecciones](#).

¹⁴⁷⁰ CDN. January 13, 2016. [Profesores UASD advierten que no iniciarán labores sin aumento de sueldo](#); *El Nacional*. January 22, 2016. [Profesores UASD no darán clases inicio semestre](#); *Listín Diario*. February 3, 2016. [Inician vigilia para que los maestros de la UASD reinicien docencia](#); 7 Días.com.do. February 4, 2016. [Violenta protesta en la UASD exigiendo inicio de la docencia](#); *Metro RD*. February 4, 2016. [Enfrentamientos violentos entre policía y estudiantes en la UASD](#); *Atento RD*. February 4, 2016. [A bombazos, tiros y piedras, se enfrentaron estudiantes y Policías en la UASD](#); *Hoy*. February 5, 2016. [Estudiantes UASD protestan en reclamo de docencia: un herido](#).

¹⁴⁷¹ [Principle 2 of the Declaration of Principles on Freedom of Expression](#): "[e]very person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition."

¹⁴⁷² 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.

¹⁴⁷³ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁴⁷⁴ 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.

Caribe—and the Fundación Prensa y Derecho [Press and Law Foundation], alleged that the challenged articles made “speech crimes” and “liability for the acts of another” criminal offenses punishable by imprisonment, which was inadmissible under the inter-American standards and the constitutional protection of the right to freedom of expression in the country.¹⁴⁷⁵

1004. The ruling, which partially admitted the action, established that the penalization of expression associated with public servants in the exercise of their duties or those who carry out public duties, is inadmissible and “affects the essential nucleus of freedom of expression and opinion”, because “in providing for sanctions of a criminal nature against any defamatory or slanderous act against any public servant in the exercise of their duties, or persons who exercise public duties, it constitutes a legal limitation that affects the essential nucleus of freedom of expression and opinion through the press when it involves public servants who are naturally subject to social control through public opinion, which is why it leads to unconstitutional acts.”¹⁴⁷⁶

1005. Although the Constitutional Court ruling eliminated the articles cited in the Dominican norm, slander and defamation continue to be part of the catalog of criminal classifications in the legislation in effect in the country, along with the Law on Expression and Dissemination of Thought [*Ley sobre Expresión y Difusión del Pensamiento*], and therefore the possibility that journalists and media outlets may be subject to criminal proceedings and receive prison sentences even for merely administrative actions, such as failing to publish the name and address of the printer of any advertising information, or omitting the publication of information associated with those who are members of the management board (if the company is owned by the media outlet), or its annual balance sheet,¹⁴⁷⁷ among others. On April 18, *Colegio Dominicano de Periodistas* organized a session to analyze the ruling. At the session, journalists and attorneys called the Constitutional Court ruling discriminatory, ambiguous and incomplete, among other reasons because it should have declared the unconstitutionality of all of the articles of the Law on Expression and Dissemination of Thought that criminalize journalistic activity, and also because the declaration of unconstitutionality frees the media owners from responsibility and places the entire burden on their employees.¹⁴⁷⁸

1006. Principle 10 of the Declaration of Principles on Freedom of Expression, according to which “[t]he protection of reputation must be guaranteed only through civil sanctions, in cases in which a public servant or a public or private person has voluntarily been involved in matters of public interest. Also, in these cases, it must be proven that in disseminating the news, the journalist had the intention to inflict damage or had full knowledge that they were disseminating false news or that they behaved with manifest negligence in seeking to establish the truth or falsehood of that news.”¹⁴⁷⁹

D. Other Relevant Situations

1007. On December 7, 2015, journalists Marino Zapete and Edith Febles, who for nearly 7 years directed the program ‘El Despertador’, which is broadcast by *Color Visión canal 9*, announced that the company for which they worked, *Servicio Internacional de Noticias* (known as *Grupo SIN*), had decided to do without their services. The program was known as a venue for critical and independent journalism, and although there was no explicit complaint of censorship, through his Twitter account Marino Zapete said: “Our journalism does not fit into the business. We were removed by power”. The same day that they announced that they were leaving *Grupo SIN*, through their program “El Jarabe de Zapete”, which is broadcast over the Internet, the journalist said: “...as long as a media outlet has space for someone who is not for sale, I am there.

¹⁴⁷⁵ Tribunal Constitucional. [Judgment TC/0075/16](#) of April 4, 2016.

¹⁴⁷⁶ Tribunal Constitucional. [Judgment TC/0075/16](#) of April 4, 2016.

¹⁴⁷⁷ Consejo de Estado de República Dominicana. [Ley N° 6132, de Expresión y Difusión del Pensamiento](#). December 15, 1962. Articles 1-17.

¹⁴⁷⁸ Acento. April 21, 2016. [Califican de discriminatoria y ambigua sentencia del TC sobre ley 6132](#); El Día. April 20, 2016. [Califican de discriminatoria sentencia del Constitucional sobre ley Libertad de Expresión](#).

¹⁴⁷⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Declaration of Principles on Freedom of Expression](#).

When a media outlet feels the need to sell everything, then I do not fit in ... we respect the right of *Grupo SIN* to surrender to power, or to the business, or whatever they want". The resignation by the journalists was viewed as regrettable by the Dominican College of Journalists [*Colegio Dominicano de Periodistas*]. The company denied that the firing of the journalists was due to political pressures.¹⁴⁸⁰

1008. On January 19, personnel from the United States diplomatic representation prevented representatives from the newspaper *Diario Libre* from gaining access to the residence of Ambassador James W. Brewster, who arrived to cover the event of presentation of the project "*El Béisbol está Contigo*", an initiative developed by the United States Agency for International Development (USAID), Major League Baseball (MLB) and the Association of Major League Baseball Players (MLBPA), which aims to promote actions on behalf of Dominican children. According to the known information, other media outlets were invited to attend the event but not *Diario Libre*, whose reporters had found out about it from colleagues from other media but who, when they arrived at the diplomatic residence, were told that the ambassador had issued instructions for them not to be invited, which was why they were denied access. The situation was condemned by diverse civil organizations and other Dominican media outlets.¹⁴⁸¹

1009. Diverse journalists' associations along with relatives of journalist Blas Olivo, murdered in 2015,¹⁴⁸² in March and April denounced what in their judgment would be a case of negligence by the authorities responsible for investigating the crime, because after a year, no progress had been made that would make it possible to identify, prosecute and try the perpetrators and masterminds.¹⁴⁸³ On April 12, the National Police [*Policía Nacional*] announced they had identified two individuals, members of a gang, as the alleged perpetrators of the homicide. Subsequently, on April 27 the capture of a fifth responsible for the murdering was reported. On August 22, five individuals implied in the assassination of Blas Oliva had allegedly been sent to trial. Subsequently reports have been disseminated to the effect that another individual implicated in the events had been arrested.¹⁴⁸⁴

1010. According to *Colegio Dominicano de Periodistas*, the main problems facing the practice of journalism in the Dominican Republic include low salaries, precarious working conditions, lack of guarantees for safety in carrying out their work and the existence of a policy of judicial harassment and recurrent

¹⁴⁸⁰ Hoy. December 7, 2015. [Marino Zapete y Edith Febles explican su salida de El Despertador \(VIDEO\)](#); Acento. December 7, 2015. [Grupo SIN niega despido de Marino Zapete y Edith Febles se deba a presiones del poder político](#); 7 Días.com.do. December 7, 2015. [Grupo SIN despidió a Marino Zapete y Edith Febles de El Despertador](#); "Hoy comienza la última semana de @edithfebles y yo en El Despertador. Nuestro periodismo no encaja en el negocio. Nos sacó el poder". Twitter account of Marino Zapete. @mzapete. [December 7, 2015](#); Colegio Dominicano de Periodistas (CDP). December 11, 2015. [CDP lamenta salida de Zapete y Febles de programa El Despertador](#); Listín Diario. December 7, 2015. [Marino Zapete y Edith Febles fueron despedidos del programa El Despertador](#); El Jarabe de Zapete/You Tube. December 7, 2015. [El Escandalo de Hoy Seg /-3 07/12/15](#) [17:37]; Listín Diario. December 8, 2015. [SIN niega que salida de Zapete y Febles fuera por presiones políticas](#); El Caribe. December 7, 2015. [SIN despidió a periodistas Marino Zapete y Edith Febles de "El Despertador"](#); Diario Libre. December 8, 2015. [Grupo SIN dice la salida de Marino Zapete y Edith Febles fue por causas financieras](#).

¹⁴⁸¹ Embassy of the United States in Dominican Republic. January 19, 2016. [Nota de prensa. El Embajador de EE.UU. Presenta proyecto "El Béisbol está Contigo"](#); Diario Libre. January 20, 2016. [La embajada de los Estados Unidos "castiga" a Diario Libre por fotografía](#); El Nuevo Diario. January 22, 2016. [Llueven reacciones por actitud discriminatoria embajada de EEUU a periódico; la SIP censura](#); Entorno Inteligente. January 22, 2016. [Censura Actitud de Embajada EU Contra Diario Libre](#); Diario Libre. January 22, 2016. [La SIP critica discriminación de Embajada de EE.UU. contra Diario Libre](#); Listín Diario. January 22, 2016. [Un absurdo discrimen contra Diario Libre](#).

¹⁴⁸² IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 1082.

¹⁴⁸³ Colegio Dominicano de Periodistas (CDP). March 22, 2016. [Denuncian negligencia Fiscalía en caso asesinato Blas Olivo](#); Diario Libre. April 9, 2016. [Asesinatos, agresiones y amenazas a periodistas dominicanos preocupan a miembros de la SIP](#); Hoy. March 22, 2016. [Denuncian negligencia de Fiscalía en caso asesinato de Blas Olivo](#); 7 Días.com.do. March 17, 2016. [Denuncian negligencia de Fiscalía en caso asesinato de Blas Olivo](#).

¹⁴⁸⁴ Diario Libre. April 12, 2016. [Policía Nacional identifica a supuestos responsables del asesinato del periodista Blas Olivo](#); Periodismo 360RD. April 12, 2016. [Policía identifica supuestos asesinos de Blas Olivo](#); Diario Libre. April 27, 2016. [Policía Nacional apresó presunto integrante de la banda que asesinó al periodista Blas Olivo](#); Hoy. August 23, 2016. [Juez envía a juicio de fondo a implicados en asesinato periodista Blas Olivo](#); Diario Digital RD. September 6, 2016. [El nombrado Joel Peña Rodríguez narró a la PN que fue el autor de muerte de periodista Blas Olivo y que había ultimado y herido a otras personas en diferentes hechos](#); Hoy. September 6, 2016. [Apresan uno que era buscado por la muerte de Blas Olivo](#); Informativos TA/You Tube. September 7, 2016. [Apresan a otro acusado de asesinar al periodista Blas Olivo](#).

aggressions against journalists by agents of the State. To analyze that problem, the *Colegio*, with sponsorship from the United Nations Organization for Science and Culture (Unesco), from January 22 to 24 carried out a workshop on the safety of journalists in the Dominican Republic, titled “*Seguridad del Periodista en República Dominicana*”, which was attended by international specialists who facilitated the drafting of a document of conclusions listing necessary actions to improve the conditions for the practice of journalism in the country.¹⁴⁸⁵ The existence of a climate of hostility towards the press, which involves physical aggressions against representatives of the media, has also been denounced by the Inter-American Press Association (IAPA).¹⁴⁸⁶

¹⁴⁸⁵ Colegio Dominicano de Periodistas (CDP). No date. [CDP organiza taller internacional para discutir situaciones que afectan la seguridad de los periodistas en RD](#); Diario Digital RD. January 28, 2016. [Conclusiones del taller sobre seguridad social de periodistas](#); Actualidad dominicana. January 31, 2016. [¿Sabe usted cuál es el salario de un periodista?](#); El Nacional. January 31, 2016. [CDP la UNESCO analizan desafíos para “La Seguridad del Periodista en RD”](#); Hoy. January 31, 2016. [Estudio revela 72% periodistas devenga menos de RD\\$30,000](#); Colegio Dominicano de Periodistas (CDP). February 15, 2016. [CDP denuncia acoso judicial contra periodistas](#).

¹⁴⁸⁶ Inter American Press Association (IAPA). April 3, 2016. [Dominican Republic Report](#); Diario Libre. April 9, 2016. [Asesinatos, agresiones y amenazas a periodistas dominicanos preocupan a miembros de la SIP](#).

27. SAINT VINCENT & THE GRENADINES

A. Social Protest

1011. On January 20, the journalist Hamlet Mark was arrested in Kingston by the police while covering a protest of the supporters by the main opposition party, New Democratic Party (NDP). Mark was recording the police breaking the protest when an official ordered his arrest and was insulted while in custody. The police also took nine protesters into custody and charged four of them with illegal assembly. Mark was released on January 21 free of charges and the police returned his camera and microphone along with the files. Later that month, Prime Minister Ralph Gonsalves labeled Mark as a paid political operative of the NDP.¹⁴⁸⁷

1012. The IACHR has reiterated that social protest is a fundamental tool for defending human rights and it is essential for expressing social and political criticism on the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”¹⁴⁸⁸ and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”¹⁴⁸⁹

1013. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.”¹⁴⁹⁰

B. Internet and Freedom of Expression

1014. The Cybercrime Act 2016 was passed on August and the Governor General’s Deputy assented to it on August 22, 2016.¹⁴⁹¹ Several civil society organizations have criticized the Act and have requested its repeal.¹⁴⁹² The Cybercrime Act 2016 creates a series of offenses related to cybercrimes, provides for rules and procedures for investigating the offences and establishes the contours of the liability of Internet service providers. While the Office of the Special Rapporteur applauds measures taken to prevent identity and data theft or fraud online or child pornography, several provisions of the Cybercrime Act 2016

¹⁴⁸⁷ iWitness News. January 21, 2016. [St. Vincent Police Detain Grenada journalist](#); Caribbean News Now. January 25, 2016. [Grenada journalist arrested in St Vincent](#); Jamaica Observer. January 30, 2016. [St. Vincent PM labels Grenadian journalist ‘paid political operative’](#).

¹⁴⁸⁸ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁴⁸⁹ 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.

¹⁴⁹⁰ 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](#).

¹⁴⁹¹ Saint Vincent and The Grenadines. [Cybercrime Act, 2016](#). August 22, 2016.

¹⁴⁹² International Press Institute. August 16, 2016. [St. Vincent and Grenadines adopts cybercrime law](#); IFEX. August 15, 2016. [Cybercrime law adopted in Saint Vincent and Grenadines is fundamentally flawed](#); iWitness News. August 28, 2016. [Repeal the Cybercrime Act 2016](#); Committee to Protect Journalists CPJ. August 8, 2016. [St. Vincent and the Grenadines draft law would allow prison for defamation online](#); Reporters Without Borders. July 27, 2016. [Saint Vincent and the Grenadines - Prime Minister and Minister of Information urged to revise Cybercrime bill](#).

may have a negative impact on freedom of expression. The Act creates a series of new criminal offences, among which Cyberbullying, is reportedly defined in section 16(5) in very broad terms: “to use a computer system repeatedly or continuously to convey information which causes (a) fear, intimidation, humiliation, distress or other harm to another person; or (b) detriment to another person’s health, emotional well-being, self-esteem or reputation.” Moreover, that section 16(2) incorporates into the cybercrime legislation criminal libel, although criminal libel under Section 274 of the Criminal Code has reportedly fallen into disuse.¹⁴⁹³ The Office of the Special Rapporteur also noted that all of the offences created by section 16 are subject to up to 5 years imprisonment and a fine as high as XCD\$ 200 thousand (approximately US\$ 75 thousand). Furthermore, Sections 19 to 26 reportedly widen the power of police investigating the newly created offences, including Cyberbullying and online criminal libel, by stipulating that police officers may apply *ex parte* for difference types of judicial orders.

1015. On August 11, 2016, the Office of the Special Rapporteur sent an information request to the Permanent Mission of Saint Vincent and the Grenadines regarding enactment of the Cybercrime Act 2016. However, the Office of the Special Rapporteur did not receive a response.

1016. As stated in the report on Freedom of Expression and the Internet, the Office of the Special Rapporteur noted that as the Internet has facilitated unprecedented opportunities for the free expression, communication, search, possession, and exchange of information, it has also facilitated the rise of new kinds of crimes.¹⁴⁹⁴ The Office of the Special Rapporteur recognizes the importance of protecting the privacy of digital communications; the confidentiality, integrity and availability of data and computer systems in order to promote and protect the right to freedom of expression.¹⁴⁹⁵ Nonetheless, cybersecurity laws and policies that imposed restrictions on the right to freedom of expression and information online must comply with established international standards and infringe upon this right to the least extent possible. Notably, the restrictions have to be provided for by law and ought to be necessary to protect an interest recognized under international law.¹⁴⁹⁶

1017. The Office of the Special Rapporteur highlights that all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, the Office of the Special Rapporteur indicated that any legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect the free flow of information and legitimate websites and services.¹⁴⁹⁷ To prevent the criminalization of the use of the Internet, “Cybersecurity” legislations should avoid creating new offences or increasing the penalties of criminal conducts that are not aimed at attacking the integrity, the infrastructure or the confidentiality of the Internet. For example, defamation or fraud should not be considered “computer crimes” and the punishment of those offenses should not be aggravated in exclusive consideration of the technological medium used to carry them out.

¹⁴⁹³ Reporters Without Borders. July 27, 2016. [Saint Vincent and the Grenadines - Prime Minister and Minister of Information urged to revise Cybercrime bill](#); Committee to Protect Journalists. August 8, 2016. [St. Vincent and the Grenadines draft law would allow prison for defamation online](#); Journalism in the Americas. August 17, 2016. [St. Vincent and the Grenadines passes Cybercrime Bill that allows prison sentences for online defamation](#).

¹⁴⁹⁴ IACHR. [Office of the Special Rapporteur for Freedom of Expression. Freedom of Expression and the Internet](#); 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 Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#).

¹⁴⁹⁵ 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 Inter-American Commission on Human Rights. June 21, 2013. [Joint Declaration on surveillance programs and their impact on freedom of expression](#).

¹⁴⁹⁶ UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

¹⁴⁹⁷ UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

1018. Furthermore, the Declaration of Principles on Freedom of Expression, adopted by the IACHR in October 2000, sets forth that “privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest”. Indeed, the Office of the Special Rapporteur has expressed on several opportunities that the application of criminal law is disproportionate when dealing with speech that is especially protected, that is to say, information or expression regarding matters of public interest and public officials or individuals voluntarily involved in matters of public interest.¹⁴⁹⁸

¹⁴⁹⁸ 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.

28. SAINT LUCIA

A. Subsequent Liabilities

1019. On September 23, the legal counsel of Saint Lucia Prime Minister Allen Chastanet threatened the *HTS* television journalist Rehani Isidore with a defamation lawsuit due to a report regarding an alleged conflict of interest. On September 16, while hosting the TV show 'E-Poll', Isidore reported that Britain's Prince Harry would stay at the Coco Palm Resort, which is owned by the Chastanet family and run by the Prime Minister's sister. Isidor's report was based on an online press release posted on the Resort's webpage and latter taken down.¹⁴⁹⁹

1020. Principle 10 of the Declaration of Principles on Freedom of Expression of IACHR establishes: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

1021. In addition, principle 11 of the Declaration of Principles on Freedom of Expression of IACHR establishes: "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "*desacato* laws," restrict freedom of expression and the right to information."

¹⁴⁹⁹ Caribbean News Now. September 28, 2016. [St Lucia PM threatens local journalist with defamation lawsuit](#); Caribbean News Now. October 10, 2016. [St Lucia's prime minister is playing wannabe dictator](#); Cayma iNews. September 28, 2016. [St Lucia PM threatens local journalist with defamation lawsuit](#); Caribflame. September 21, 2016. [Don't Disrespect Me!" St. Lucia's PM Tells Journalists](#).

29. TRINIDAD & TOBAGO

A. Harassment Against Journalists and Media Outlets

1022. The Inter-American Press Association (IAPA) and the Media Association of Trinidad and Tobago expressed concerns about the numerous cyberbullying attacks against Trinidad and Tobago journalists in reprisal for their news coverage. Notably, investigative reporter at the *Trinidad Express Newspaper*, Asha Javeed, was harassed and insulted on Facebook after reporting on the distribution of subsidized state housing. Similarly, the editor-in-chief and a number of other journalists of *Trinidad Express* have been vilified on social media for their work. In its public statement, the Inter American Press Association stated that “[w]hen social media are used as a tool to punish, denigrate and defame, alleging invented situations such as in this case, we are referring to cyber-attack as another form of attack on the press”. The Media Association of Trinidad and Tobago has been denouncing instances of cyberbullying since 2013 and demanding police investigation on the attacks and threats to media and journalists made on the internet.¹⁵⁰⁰

1023. Principle 9 of the Declaration of Principles on Freedom of Expression establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

¹⁵⁰⁰ CNC3. May 5, 2016. [Guardian photographer attacked as murder-accused breaks free from police](#); Media Association of Trinidad & Tobago. May 8, 2016. [Statement: Attack on Guardian photographer](#); Guardian. May 9, 2016. [MATT blames cops for attack on journalist](#); Stabroek News. June 13, 2016. [Inter-American press body concerned at cyber-bullying of T&T journalists](#); The Jamaica Gleaner. June 15, 2016. [IAPA Uneasy about cyberbullying of journalists in Trinidad](#); Caribbean 360. May 4, 2016. [T&T association says journalists facing cyber bullying, character assassinations](#); Guardian. June 20, 2016. [MATT wants swift probe on attacks against journalists](#).

30. URUGUAY

A. Progress

1024. On July 21, the Fourth Circuit Court of Criminal Appeals [*Tribunal de Apelaciones Penal de 4º Turno*] acquitted the mayor of the department of Salto, Andrés Lima, who was being tried for defamation after stating in a press conference that three councilmembers of his political party were alleged to have falsified official expense reports. One of the legislators that he accused filed a defamation complaint against Lima, and on May 25, First Instance Trial Judge of the Fourth Circuit Hugo Rundie [*Primera Instancia de Salto de 4º turno*] found him guilty of the crime of defamation committed through the media. The Court unanimously overturned the ruling. The ruling stated that the Inter-American Court of Human Rights has indicated that "freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information favorably received or considered inoffensive or indifferent, but also with regard to those that offend and shock." The Court found that it was "undeniably in the public interest to know about allegations of corruption" and stated that in this case, there was no "deliberate, calculated, methodical intent to damage the honor of the Councilmember with false or reckless accusations." It also highlighted that "all expression related to issues in the public interest or individuals holding public office deserves special protection." The judgment concluded that Lima revealed "true information for the purposes of public transparency, with no indication of the existence of actual malice in doing so to harm the plaintiff. Rather, for the good of the public, transparency was put first."¹⁵⁰¹

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

1025. On January 20, journalist Enrique Lecaille was verbally assaulted while covering a basketball game between Bella Vista, in the city of Dolores, and Anastasia, in Fray Bentos. Anastasia fans and a manager with that club insulted and intimidated the reporter when he took photographs of them.¹⁵⁰²

1026. On March 8, a camera person with *Televisión Nacional de Uruguay* (TNU) was assaulted while covering a March during International Women's Day. A group of people who were painting graffiti on stores and buildings during the march down Avenida 18 de julio verbally and physically attacked the reporter and broke some of his equipment after seeing that he was recording them.¹⁵⁰³

1027. On June 21, journalist María Paz Sartori, with weekly publication *Búsqueda*, was verbally attacked by the director of the Uruguayan Meteorological Institute [*Instituto Uruguayo de Meteorología*], Gabriel Pisciotano, who shouted at her in the agency's headquarters. The journalist had gone to the State offices to gather information for an article. However Pisciotano, who had refused to make statements or provide information on how the Institute functions, shouted at her to leave while making threatening gestures with his hand and tried to grab her arm to remove her from the building.¹⁵⁰⁴

1028. In June, journalist Daniel García Poggi reported that he had been threatened and insulted by the acting mayor of Ciudad del Plata, Laura Colombo. After publishing an article in local magazine *Identidades* on the management of the municipality, the reporter received an aggressive message from Colombo on her mobile phone that included threats.¹⁵⁰⁵

¹⁵⁰¹ Poder Judicial. July 21, 2016. [TAP 4º Turno absolvió al Intendente de Salto que fuera procesado por difamación](#); Poder Judicial. "[L. P. A. - Un delito de Difamación \(Ley de medios de comunicación\)](#)". July 21, 2016.

¹⁵⁰² Asociación de la Prensa Uruguaya (APU). January 25, 2016. [Preocupación por agresión a periodista en Soriano](#); Centro de Archivos y Acceso a la Información Pública (Cainfo). [Periodismo y libertad de expresión en Uruguay. Segundo Informe de Monitoreo de Amenazas](#). May 3, 2016.

¹⁵⁰³ Asociación de la Prensa Uruguaya (APU). March 9, 2016. [Comunicado ante agresión a trabajador de TNU](#); Subrayado. March 9, 2016. [Camarógrafo de Canal 5 agredido hasta con una bicicleta durante una marcha](#).

¹⁵⁰⁴ *Búsqueda*. June 23, 2016. [Presidente del Inumet expulsó a gritos a una periodista que intentaba chequear información del organismo estatal](#); Asociación de la Prensa Uruguaya (APU). June 23, 2016. [APU denuncia actitud violenta de director de Inumet](#).

¹⁵⁰⁵ Asociación de la Prensa Uruguaya (APU). June 14, 2016. [Comunicados ante hechos que afectan la libertad de expresión](#); El espejo radio. June 15, 2016. [Alcaldesa suplente: "sos un hijo de puta...inútil...traidor"](#).

1029. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

C. Social Protest

1030. On January 14, the municipality of the city of Punta del Este asked the Judiciary to clear the Plaza de las Américas, where members of the Unified Food Workers Union of Uruguay [*Sindicato Único Gastronómico del Uruguay*] (SUGHU) had camped out to protest for salary increases. The mayor of Punta del Este, Andrés Jafif, said the complaint was lodged after the workers were asked twice to vacate the premises.¹⁵⁰⁶

1031. 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"¹⁵⁰⁷ and that "the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out."¹⁵⁰⁸

D. Stigmatizing Statements

1032. On March 5, the Plenary of *Frente Amplio*, the political party of the current president, issued a statement accusing the media of launching a campaign "to smear the image and credibility" of members of the administration and "weaken the country's democratic institutions." This statement came days after the media published information calling into question whether the Vice President of the Republic, Raúl Sendic, held a degree in human genetics, as had been claimed in official events and *curricula*. In the statement, Frente Amplio expressed "solidarity" with Sendic "in the unjust and injurious scrutiny to which both he and his family have been subjected."¹⁵⁰⁹

1033. 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."¹⁵¹⁰

E. Application of the Audiovisual Communication Services Act

¹⁵⁰⁶ Telenoche. January 15, 2016. [Municipio solicita desalojo del SUGHU](#); El País. January 14, 2016. [Alcalde pidió el desalojo del sindicato que acampa en plaza de las Américas](#); PIT-CNT. January 19, 2016. [SUGHU y las movilizaciones que «incomodan» a algunos en Punta del Este: «Nos van a tener que soportar porque vamos a continuar acá»](#).

¹⁵⁰⁷ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II.Doc.57. December 31, 2009. Para. 197.

¹⁵⁰⁸ 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.

¹⁵⁰⁹ El Observador. March 5, 2016. [Frente Amplio acusa a medios y oposición de «desestabilizar» la democracia](#); El País. March 5, 2016. [El FA acusa a medios y oposición de debilitar la institucionalidad del país](#); Asociación de la Prensa Uruguaya (APU). March 7, 2016. [Comunicado de APU ante declaración del Frente Amplio](#).

¹⁵¹⁰ 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.

1034. The Office of the Special Rapporteur observes that regulations for Law No. 19,307 on Audiovisual Communication Services [*Ley N° 19.307 de Servicios de Comunicación Audiovisual*] (SCA),¹⁵¹¹ passed by Congress and promulgated by the executive on December 29, 2014, have still not been established. According to public statements from President Tabaré Vázquez, the Executive Branch was waiting for the Supreme Court of Justice [*Suprema Corte de Justicia*] to finish ruling on a series of constitutional challenges that a number of audiovisual communication service companies and others have brought against the law.¹⁵¹² Although as of the closing date of this report, the Supreme Court had handed down 13 judgments, establishment of the regulations for the law by the executive remained pending.¹⁵¹³

1035. On May 16, 36 social organizations stated in a press release that they had sent a list of demands to the President of the Republic and the president of the Senate asking for regulations for the SCA Act to be established and for the members of the Audiovisual Communication Council [*Consejo de Comunicación Audiovisual*] to be selected soon. Secretary of the Presidency Miguel Angel Toma repeated President Vazquez's statement to the effect that they would await resolution of the remaining decisions of the Supreme Court before establishing the regulations.¹⁵¹⁴

1036. On August 12, Carolina Cosse, the minister of Industry, Energy, and Mining [*Industria, Energía y Minería*], reiterated that the administration would wait to establish regulations for the law until the Court rules on all the suits filed against it.¹⁵¹⁵ Following these statements, the organizations forming the Coalition for democratic communication (including the Uruguayan Press Association [*Asociación de la Prensa Uruguaya*] and the School of Information and Communication of the Universidad de la República [*Facultad de Información y Comunicación de la Universidad de la República*]) —issued a press release expressing their disagreement with the decision. As they understand it, "it is not necessary to wait until the Supreme Court issues its final judgment to begin implementing a law that is fundamental for democratizing communication." They added that "should this approach of freezing the implementation of policies that ensure greater diversity and pluralism in our concentrated media system to at least 2017 be maintained, with the pre-election year drawing nearer it will be ever more difficult to move forward on changes for the sector." The coalition also stated that the rulings issued thus far by the Court show "case law that is clearly in support of the law."¹⁵¹⁶

F. Judgments of the Supreme Court of Justice on the Constitutionality of the Audiovisual Communication Services Act

1037. As of the closing date of this report, the Supreme Court of Justice has issued 13 judgments on constitutional challenges to the Audiovisual Communication Services Act, Law No. 19,307 [*Ley de Servicios de Comunicación Audiovisual N° 19.307*].¹⁵¹⁷ The court declared that most of the law's articles are

¹⁵¹¹ Senado y la Cámara de Representantes de la República Oriental del Uruguay. [Ley N° 19.307 de Servicios de Comunicación Audiovisual](#). December 29, 2014.

¹⁵¹² El Observador. June 28, 2015. [Vázquez da la derecha a la Corte con ley de medios](#); Semanario Búsqueda. April 7, 2016. [Con unanimidades y votos discordes, la Suprema Corte de Justicia declaró inconstitucionales cuatro artículos de la "ley de medios"](#); Teledoce. April 6, 2016. [Opinión de la Suprema Corte sobre Ley de Medios se conocerá con los siguientes fallos](#).

¹⁵¹³ Poder Judicial. November 1, 2016. [SCJ dictó 7 nuevos fallos referidos a inconstitucionalidad de ley de medios n° 19.307](#); Poder Judicial. April 7, 2016. [Están pendientes otras 27 acciones de inconstitucionalidad contra ley de medios audiovisuales](#); Poder Judicial. June 2, 2016. [Suprema Corte prepara otros cuatro fallos referidos a la ley de medios n° 19.307](#); La Diaria. September 15, 2016. [Vázquez transmitió su voluntad de agilizar implementación de la LSCA](#).

¹⁵¹⁴ Coalición por una comunicación democrática. May 16, 2016. [Representantes de 36 organizaciones sociales firman peticionario para que gobierno reglamente Ley SCA](#).

¹⁵¹⁵ Presidencia. August 12, 2016. [Gobierno espera sentencias de Suprema Corte sobre recursos para adoptar acciones sobre ley de medios audiovisuales](#).

¹⁵¹⁶ Coalición por una comunicación democrática. August 14, 2016. [Es hora de aplicar plenamente Ley de Servicios de Comunicación Audiovisual](#); La Diaria. August 30, 2016. [Esperando la carroza](#).

¹⁵¹⁷ Poder Judicial. November 1, 2016. [SCJ dictó 7 nuevos fallos referidos a inconstitucionalidad de ley de medios n° 19.307](#).

constitutional.¹⁵¹⁸ In its first statement on the issue, on April 5, the Court issued a number of preliminary considerations on the law. It stated that at their core, the challenges of the law argued that there was "a conflict between the right to freedom of expression in its collective dimension and other fundamental rights: freedom of expression in its individual dimension, the right to free enterprise, and the right to property." The Court stated that freedom of expression "is a fundamental human right" that must be interpreted, as established by the Inter-American Court of Human Rights in its Advisory Opinion 5/85, according to its two basic pillars: the first being the "democratic standard" and the second being the "standard of two dimensions." With the "democratic standard," the Inter-American Court establishes that should the right to freedom of expression be lost, it would put at risk the validity of principles that are essential for the existence of a democratic society. On the other hand, the standard of two dimensions proposes that the content of freedom of expression must not be solely be associated with the individual aspect of the right: it is also related to its collective or social dimension. In this sense, the freedom to seek, receive, and disseminate information and ideas of all kinds guaranteed in article 13 of the American Convention on Human Rights means that "when an individual's freedom of expression is illegally restricted, it violates not only that individual's right, but also the right of everyone to 'receive' information and ideas. Consequently, the right protected in article 13 has special scope and character." Moreover, the judgment found that Law 19,307 was a "legislative tool through which legislators, in the exercise of their authority to make laws, have sought to promote freedom of expression and communication in its collective dimension," and expressed that "in contrast to what happens with freedom of expression in its individual dimension, where the State's statutory intervention must be minimal, the collective dimension requires the State to provide active protection." The Court stated that "that is without question the protection that Law 19,307 seeks to establish, as can be ascertained from its content and the history of its drafting and passage."¹⁵¹⁹

Executive Branch Authority to Establish Regulations

1038. The Court rejected the arguments that the establishment of certain programming content and sanctions in the event of noncompliance could constitute a form of prior censorship. "The law is in line with the State's regulatory authorities." The plaintiff's arguments result from an interpretation of an incorrect application of the law that cannot be derived from its text (...) When the operator voluntarily assumes a commitment, it must necessarily maintain the general programming lineup and the content promised when it was granted the authorization or license. The Court found that "it is clear that the constitutional model adopted by the Republic grants legislators the authority to regulate the activities of private parties and public entities within the bounds established in the Constitution."

Protection of Children

¹⁵¹⁸ Suprema Corte de Justicia. "[DirecTv de Uruguay Limitada c/ Poder Legislativo. Acción de inconstitucionalidad. Arts. 32, 33, 39 inc. 3, 40, 55, 56, 60, 66, 68, 97, 98, 115 a 117, 139, 142 y 176 a 186 de la ley N° 19.307. IUE 1-18/2015](#)". April 5, 2016; Suprema Corte de Justicia. "[Partido Independiente c/ Poder Ejecutivo y otros - Acción de inconstitucionalidad Art. 143 de la Ley Nro. 19.307. IUE: 1-27/2015](#)". April 11, 2016; Suprema Corte de Justicia. "[Tractoral S.A. c/ Poder Legislativo y otro. Acción de inconstitucionalidad. Arts. 1, 10, 11, 24 lits. B y D, 26, 28, 31, 32, 33 lits. A, B, C y F, 34 a 40, 43, 44, 49, 50, 51, 54, 56, 57, 60, 63 lits. B, C, F, y H, 64, 68 lits. G, I, K, M, Ñ, O, R, U e Y, 70, 86, 87 inc. 2, 89, 91, 94, 95 lits. A y B, 96 a 98, 100 a 102, 105 a 109, 116, 117, 118, 139, 141 a 148, 149 inc. 2, 178 lits. J, M, N, O y P, 179 lits. B, C, D, E, F, G, I y H, 180, 181, 182, 187, 189, 190, 192 y 193 de la ley N° 19.307". IUE 1- 59/2015. June 13, 2016; Suprema Corte de Justicia. "\[Monte Cablevideo S.A. c/ Poder Legislativo. Acción de inconstitucionalidad. Arts. 1 Lit. A, 4, 10, 11, 24 Lits. B Y D, 26, 28, 31 A 40, 43, 49 Y 50, 51, 54, 56, 57, 59 Y 60, 63, 64, 65, 68, 70, 86, 87, 94, 95 LITS. A Y B, 97, 98, 101, 102, 105, 107, 113, 115 A 118, 124, 139, 142 A 145, 176, 178 A 182 Y 187 de la ley Nro. 19.307". individualizados con la IUE: 1-39/2015. August 8, 2016; Suprema Corte de Justicia. "\\[Monte Carlo TV S.A. c/ Poder Legislativo - Acción de inconstitucionalidad Arts. 1 Lit. A, 10, 11, 24 Lits. B y D, 26, 28, 31 a 40, 43, 49, 50, 51, 53, 56, 57, 59, 60, 63, 64, 65, 68, 70, 86, 87, 89, 91, 94, 95, 96, 97, 98, 99, 101, 102, 105 Lit. F, 113, 115, 117 Incs. 2 y 5, 124 a 127, 139, 142 a 145, 176 A 186, 188 a 192 y 194 de la Ley Nro. 19.307". individualizados con la IUE: 1-58/2015. August 8, 2016; Suprema Corte de Justicia. "\\\[Riselco S.A. \\\\(Nuevo Siglo\\\\) c/ Poder Legislativo - Acción de inconstitucionalidad Arts. ARTS. 1, 4, 10, 11, 24 LITS. B Y D, 26, 28, 31, 32, 33 Lits. A, B, C, Y F, 34 A 40, 43, 49 A 51, 54, 56, 57, 59, 60, 61, 63 B, C, F Y H; 64, 65, 68 LITS. G, I, K, M, Ñ, R, Y U, 70, 86, 94, 95 LITS. A Y B, 97, 98, 101, 105, 107, 113, 115 A 118, 124, 139, 142 A 145, 176, 178, 179, 180, 181, 182 Y 187 de la Ley Nro. 19.307". IUE: 1-33/2015. August 22, 2016.\\\]\\\(#\\\)\\]\\(#\\)\]\(#\)](#)

¹⁵¹⁹ Suprema Corte de Justicia. "[DirecTv de Uruguay Limitada c/ Poder Legislativo. Acción de inconstitucionalidad. Arts. 32, 33, 39 inc. 3, 40, 55, 56, 60, 66, 68, 97, 98, 115 a 117, 139, 142 y 176 a 186 de la ley N° 19.307. IUE 1-18/2015](#)". April 5, 2016.

1039. The Court also rejected challenges to requirements of a child-friendly timeslot to protect minors, which establishes that during that slot, the programs, advertising, and self-promotion “must pursue educational objectives.” The Court stated that the law does not limit freedom of expression because “it does not prohibit inclusion of the content it limits but rather postpones it, to be broadcast outside of a particular time slot.” In addition, “the limit is clearly in the general interest (...) It is clear that the rights of children and adolescents take priority over the media outlets’ right to broadcast” certain content, “something that is perfectly reasonable and aims at protecting the moral integrity of the most sensitive audience: children. This harmonizes perfectly with the constitutional values and principles aimed at protecting minors.” The Court said that “Article 13 of the Convention itself sets the standards for regulating freedom of expression and pays special attention to the moral protection of children and adolescents.” The law being challenged “not only does not infringe upon the highest human rights standard on freedom of expression but applies it, weakening the attempted challenge.” Another reason to dismiss challenges to the constitutionality of articles on the protection of minors is that they are “one of the exceptions for restricting freedom of expression that are explicitly authorized by the human rights legal system,” pursuant to section 4, article 13 of the American Convention on Human Rights, the Court found.

Discrimination

1040. The Court upheld the constitutionality of article 28 of the law, which establishes that audiovisual communication services “shall not disseminate content that incites or argues for discrimination and hate based on nationality, race, or religion, or that represent incitements to violence or any other similar illegal action against any individual or group of individuals, whether motivated by race, ethnicity, sex, gender, sexual orientation, gender identity, age, disability, cultural identity, place of birth, creed, or socioeconomic status.” The Court unanimously found that “it cannot be concluded that this provision represents a generic and unspecific burden. Just the opposite. Nor can it be found to impose content in violation of freedom of expression.” The Court noted that article 13(5) of the American Convention establishes that “Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.” “As will be noted, not only does the law not infringe upon the highest human rights standard on freedom of expression but applies it, making it difficult to argue (...) that article 28 of the law violates freedom of expression.”

Diversity, Pluralism, and Concentration

1041. The Court rejected the constitutional challenge to article 59 of the law, which requires the owner of a radio or television station to obtain authorization from the Audiovisual Communication Council [*Consejo de Comunicación Audiovisual*] to rebroadcast programs originating from a different radio or television signal. It also states that broadcasting services cannot spend more than 70 per cent of their daily broadcast time rebroadcasting another signal. The Court did not accept the argument that by placing a limit on the amount of material that can be rebroadcast, the broadcaster’s freedom was being restricted. “The law in question does not limit freedom of expression and communication (...) What it does limit is the right to offer a service as a mere vehicle for rebroadcasting third-party signals.” The limits established in article 59 “do not involve banning broadcast of particular thought or communication. Rather, they limit a certain way in which cable and television channels conduct their commercial activities (selling the rebroadcast of their programming to third parties or purchasing it). This limitation falls within the framework of the reasons of general interest established by the legislature in the body of the law. From the context of the law, there is no question that the legislature seeks to ensure the greatest possible diversity and pluralism in the ownership of audiovisual communication services. Indeed, the provision is in line with one of the aims sought by the legislature, which is to prevent indirect violation of the ban on concentration of ownership and the establishment of agreements or oligopolies that are not permitted under the Law.”

1042. Also, challenges to article 51 were rejected. This article gives the State the duty to prevent or limit the existence and formation of monopolies and oligopolies in audiovisual communication services. “In itself, this provision does nothing to affect communication services because it is simply a law that gives the

State a mandate to pursue a goal (...)." The Court also dismissed the claim that article 53 was unconstitutional. The article limits ownership of over-the-air radio and television services. It found that "the limits established in the aforementioned article are constitutional and in compliance with inter-American standards on freedom of expression. One of the most crucial measures for full protection of the right to freedom of expression in both its dimensions is the prevention of the formation of media monopolies or oligopolies of any kind (public or private)." The Court indicated that the Office of the Special Rapporteur for Freedom of Expression has found that "media monopolies or oligopolies violate the right to freedom of expression enshrined in article 13 of the American Convention by impeding the diversity and plurality of voices necessary in a democratic society." It also indicated that "both the IACHR and the Inter-American Court have found that it is important for the State to intervene to guarantee competition and promote pluralism and diversity. Among the effective measures that States must adopt are antitrust laws that limit ownership concentration and centralized control of broadcast media."

1043. Despite all this, the Court found that the law contains "specific solutions" that "are unconstitutional because they involve a restriction of the enjoyment of fundamental rights without complying with the constitutional requirements for doing so." The Court thus found that eight of the law's articles violate the Constitution: article 39, section 3; article 55; article 56, section 1; article 60, part C, sections 1, 2, and 3; article 98, section 2; article 117, section 5; article 143; and article 149, section 2.¹⁵²⁰

1044. With regard to article 39, section 3, which authorizes the executive branch to decide which events of general interest must be broadcast live by over-the-air television channels, the Court found that, although the legislature's authority to establish which events are in the public interest and therefore must be broadcast on over-the-air television complies with the requirements established in the Constitution, the provision is unconstitutional because "it improperly limits the actions of enterprises that decide whether to invest in the exclusive broadcast of a particular event." Article 55, which limits the number of subscribers that enterprises providing television services may have, is unconstitutional because, among other things, "it distorts the free market," the Court said. Regarding section 1 of article 56, which prohibits cable operators from providing telephony and Internet services, the Court found that it "violates the principle of liberty" established in the Constitution because "there are no general interest reasons for limiting these rights." With regard to article 60, section C, which regulates part of the content that must be included in television programming, the Court found that it imposes "a specific type of content on certain audiovisual service providers, violating freedom of expression." Article 98, section 2, authorizes the suspension of broadcasts if the owners of the service prevent the regulatory body from performing inspection; the Court found that this provision was unconstitutional because "it infringes on the right to due process" by establishing administrative authority to punish a subject without a prior hearing. Regarding section 5 of article 117, which establishes that subscription television services must include a number of channels in their basic package without the right to "any remuneration," the Court found that it "violates the right to property by not allowing for just and prior compensation" for depriving the channels of their exclusive right "to their broadcasts." Article 143 of the law, which establishes guidelines for the distribution of campaign advertising free of charge, affects the "principle of equality" between political parties because it results in "unjustified

¹⁵²⁰ Suprema Corte de Justicia. [DirecTV de Uruguay Limitada c/ Poder Legislativo. Acción de inconstitucionalidad. Arts. 32, 33, 39 inc. 3, 40, 55, 56, 60, 66, 68, 97, 98, 115 a 117, 139, 142 y 176 a 186 de la ley N° 19.307. IUE 1-18/2015.](#) April 5, 2016; Suprema Corte de Justicia. [Partido Independiente c/ Poder Ejecutivo y otros - Acción de inconstitucionalidad Art. 143 de la Ley Nro. 19.307. IUE: 1-27/2015.](#) April 11, 2016; Suprema Corte de Justicia. ["Tractoral S.A. c/ Poder Legislativo y otro. Acción de inconstitucionalidad. Arts. 1, 10, 11, 24 lits. B y D, 26, 28, 31, 32, 33 lits. A, B, C y F, 34 a 40, 43, 44, 49, 50, 51, 54, 56, 57, 60, 63 lits. B, C, F, y H, 64, 68 lits. G, I, K, M, Ñ, O, R, U e Y, 70, 86, 87 inc. 2, 89, 91, 94, 95 lits. A y B, 96 a 98, 100 a 102, 105 a 109, 116, 117, 118, 139, 141 a 148, 149 inc. 2, 178 lits. J, M, N, O y P, 179 lits. B, C, D, E, F, G, I y H, 180, 181, 182, 187, 189, 190, 192 y 193 de la ley N° 19.307". IUE 1- 59/2015.](#) June 13, 2016; Suprema Corte de Justicia. ["Monte Cablevideo S.A. c/ Poder Legislativo. Acción de inconstitucionalidad. Arts. 1 Lit. A, 4, 10, 11, 24 Lits. B Y D, 26, 28, 31 A 40, 43, 49 Y 50, 51, 54, 56, 57, 59 Y 60, 63, 64, 65, 68, 70, 86, 87, 94, 95 LITS. A Y B, 97, 98, 101, 102, 105, 107, 113, 115 A 118, 124, 139, 142 A 145, 176, 178 A 182 Y 187 de la ley Nro. 19.307". individualizados con la IUE: 1-39/2015.](#) August 8, 2016; Suprema Corte de Justicia. ["Monte Carlo TV S.A. c/ Poder Legislativo - Acción de inconstitucionalidad Arts. 1 Lit. A, 10, 11, 24 Lits. B y D, 26, 28, 31 a 40, 43, 49, 50, 51, 53, 56, 57, 59, 60, 63, 64, 65, 68, 70, 86, 87, 89, 91, 94, 95, 96, 97, 98, 99, 101, 102, 105 Lit. F, 113, 115, 117 Incs. 2 y 5, 124 a 127, 139, 142 a 145, 176 A 186, 188 a 192 y 194 de la Ley Nro. 19.307". individualizados con la IUE: 1-58/2015.](#) August 8, 2016; Suprema Corte de Justicia. ["Riselco S.A. \(Nuevo Siglo\) c/ Poder Legislativo - Acción de inconstitucionalidad Arts. ARTS. 1, 4, 10, 11, 24 LITS. B Y D, 26, 28, 31, 32, 33 Lits. A, B, C, Y F, 34 A 40, 43, 49 A 51, 54, 56, 57, 59, 60, 61, 63 B, C, F Y H: 64, 65, 68 LITS. G, I, K, M, Ñ, R, Y U, 70, 86, 94, 95 LITS. A Y B, 97, 98, 101, 105, 107, 113, 115 A 118, 124, 139, 142 A 145, 176, 178, 179, 180, 181, 182 Y 187 de la Ley Nro. 19.307". IUE: 1-33/2015.](#) August 22, 2016.

differences." Article 149, section 2, which establishes that public audiovisual communication services "will take preference" over private services in the assignation of over-the-air broadcast channels, station location, and other infrastructure, violates the principle of equality, the Court found.

G. Access to Public Information

1045. On December 22, 2015, second circuit civil judge Alejandro Martínez issued a ruling ordering the ministry of Transportation and Public Works [*ministerio de Transporte y Obras Públicas*] (MTO) and the National Development Corporation [*Corporación Nacional para el Desarrollo*] (CND) to turn over information on expenditures made by the Interministerial Commission on Deep Water Ports [*Comisión Interministerial del Puerto de Aguas Profundas*] (CIPAP) within 15 days. The information have been requested in March 2015 by the Uruguay Libre de Megaminería movement. The Office of the Presidency turned over the information that it had available, but the MTO and the CND refused to do so, arguing that according to an agreement signed between these agencies, the information was confidential. With the support of the Center for Archives and Access to Public Information [*Centro de Archivos y Acceso a la Información Pública*] (Cainfo), the organization filed a lawsuit under the Access to Public Information Act demanding the information be turned over. The agencies did not appeal the ruling and on February 15, they delivered the information requested.¹⁵²¹

1046. On August 18, second circuit civil judge Alejandro Martínez de las Heras granted a request for access to information filed by environmental organization *Movimiento Uruguay Libre de Megaminería* and ordered State company ANCAP to disclose the hydrocarbon exploration and exploitation contract it had signed with French multinational company Total. The request for access to information had been denied by the State company, which argued that the contract signed with Total included a confidentiality clause. In his ruling, the judge highlighted that the right to access to public information is a fundamental human right that is "closely tied to the 'republican form of government'" established in the National Constitution. He also found that the right is consistent with the rights of citizens to "seek, receive, and impart information and ideas of all kinds" and to "take part in the conduct of public affairs," as established in articles 13 and 23 of the American Convention on Human Rights. The judge also held that exceptions to access to public information must be interpreted "strictly" in accordance with Law 18,381 regulating access to public information in Uruguay. "Generic or baseless classification of information as classified, secret, or confidential is inadmissible." He also indicated that the confidentiality on which the two companies agreed is an obligation "attributable to the 'contractor' and not the Ancap," for which reason "the argument that the ANCAP can take refuge or shelter in a contractual confidentiality clause to reject a request for access to public information when the clause does not establish such obligations is inadmissible. In addition, "considering that Ancap is a State enterprise" that "handles public resources," "it goes without saying that the obligations it takes on through the contracts whose disclosure is sought (...) entail a net public interest in the method and form of the Administration's actions and their consequences for society, including, among other issues, on environmental aspects."¹⁵²²

1047. On October 23, the Center for Archives and Access to Public Information [*Centro de Archivos y Acceso a la Información Pública*] (CAinfo), the Uruguayan Press Association [*Asociación de la Prensa Uruguaya*] (APU), and the Coalition for Democratic Communication [*Coalición por una Comunicación Democrática*] released a statement saying that obstacles persists to the application of Law 18,381, which regulates citizens' right to access public information. The obstacles include inadequate categorization of information, as well as the incorrect application of the special procedures established in the law, resulting in delayed and/or incomplete disclosure of information. The organizations also noted that "it should not be overlooked that in a number of cases invoking this right, applicants had to turn to the courts and/or the oversight agency, the Access to Public Information Unit." They also indicated that it was necessary to consider and move forward on improving the law, with amendments aimed at strengthening the oversight body the

¹⁵²¹ El País. December 29, 2015. [Un juez ordena dar información sobre puerto en Rocha](#); Centro de Archivos y Acceso a la Información Pública (Cainfo). February 22, 2016. [Entregan información sobre comisión que estudió puerto de aguas profundas](#); Observatorio Minero del Uruguay. April 3, 2016. [Los gastos de la CIPAP](#).

¹⁵²² Poder Judicial. [VIÑASORTIZ, RAUL c/ ANCAP - Acción de Acceso a la Información Pública \(Art. 22 Ley 18.381\) IUE N° 0002-034515/2016](#). August 18, 2016; El País. August 26, 2016. [Juez falla a favor de difundir contrato entre Ancap y la francesa Total](#); La Diaria. August 29, 2016. [Por la fuerza](#).

law establishes, expanding the list of agencies to which it applies, and fine tuning the regimen of exceptions, among other things.¹⁵²³

1048. In a report on journalism and freedom of expression prepared by Cainfo and APU, a number of cases were detailed in which Executive Branch authorities did not take questions from journalists after holding press conferences. For example, on January 7, the press was invited to a meeting between President Tabaré Vázquez and Argentine President Mauricio Macri on the presidential estate in Anchorena. However, although the journalists had been told they would have a chance to ask questions, when the time came for the press conference, they were told no questions would be taken. On February 24, after a press conference giving his version of information released by the media raising questions as to whether he had his degree in human genetics, Vice President Raúl Sendic refused to take questions from reporters. On March 14, the new board of directors of State petroleum company Ancap was instated in a ceremony to which the media was not invited. The speeches given by the authorities were published on the website of the Presidency of the Republic.¹⁵²⁴

1049. Principle 4 of the IACHR's Declaration of Principles states that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

H. Surveillance of Communication

1050. According to a study released on September to biweekly publication *Brecha*, the Armed Forces intelligence services [*servicios de Inteligencia de las Fuerzas Armadas*] maintained a surveillance system that operated during the military dictatorship (1973-1985), then continued to operate it after the country returned to democracy in 1985. The illegal surveillance supposedly continued through at least 2009, according to documentation that deceased retired soldier Elmar Castiglioni, former head of the National Intelligence Office during the military dictatorship, had in his possession. The surveillance included monitoring of politicians, political parties, unions, journalists, judges, prosecutors, and social organizations. The documents were found in Castiglioni's home after he died. A complaint was filed with the courts and the information was ordered seized.¹⁵²⁵ Legislators with *Frente Amplio*—the party of the current president—submitted a proposal to Parliament to create a committee to investigate the issue. The Investigating Committee would have the backing of lawmakers from all parties. As of the closing date of this report, this proposal still had not been discussed in the Parliament's plenary.¹⁵²⁶

1051. The Office of the Special Rapporteur observes that decisions to undertake surveillance activities that invade the privacy of individuals must be allowed by independent judicial authorities, who must state why the measure is appropriate for the accomplishment of the objectives pursued in the specific case; whether it is sufficiently restricted so as not to infringe upon the right in question more than necessary; and whether it is proportionate in relation to the interests pursued. Investigative proceedings involving an invasion of privacy authorized by law and by a competent judge must also respect other due process safeguards. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to fulfill its duties in an adequate manner.

¹⁵²³ Centro de Archivos y Acceso a la Información Pública (CAinfo). October 23, 2016. [Día del Periodista](#).

¹⁵²⁴ Centro de Archivos y Acceso a la Información Pública (Cainfo). [Periodismo y libertad de expresión en Uruguay. Segundo Informe de Monitoreo de Amenazas](#). May 3, 2016.

¹⁵²⁵ Brecha. September 2, 2016. [Servicios continuados](#); Subrayado. September 2, 2016. [Archivo militar revela espionaje en democracia de gremios y líderes](#); República. September 3, 2016. [Espionaje militar siguió al menos hasta 2009, en plena democracia](#).

¹⁵²⁶ El País. September 6, 2016. [Sectores del Frente piden investigar espionaje militar](#); Semanario Búsqueda. October 13, 2016. [El oficialismo duda si promover una investigadora de Inteligencia, porque saldría a la luz información "delicada"](#); El País. November 2, 2016. [Una investigadora por espionaje con amplia mayoría](#).

Finally, the Office of the Special Rapporteur observes that at the least, the decision-making criteria adopted by the courts should be public.¹⁵²⁷

I. Diversity and Pluralism

1052. The implementation of digital television in Uruguay saw little progress in 2016. After the Adversarial Administrative Court [*Tribunal de lo Contencioso Administrativo*] declared in June 2015 that the decree regulating the implementation of over-the-air television was invalid for technical reasons, the administration modified the decree and extended the deadline to April 1, 2016, for new channels *VTV* and *Giro*—which had been assigned digital commercial over-the-air television signals in Montevideo—to begin broadcasting.¹⁵²⁸ However, on April 1, *VTV* and *Giro* did not begin broadcasting and therefore lost their licenses. Both companies argued that the delay of the analog switch-off (the moment at which all over-the-air analog television signals cease broadcasting and only digital signals remain), originally set for November 2015 but at the moment unscheduled, placed them at a disadvantage to private channels already broadcasting over-the-air that, by broadcasting using both technologies, reached the whole population. Digital signals can only reach a smaller portion of the public.¹⁵²⁹ The companies also argued that the government did not conduct a campaign to inform people about the new digital technology and the adapters they must connect to their television sets to receive the signal, as had been announced.¹⁵³⁰

1053. In addition, according to press reports, companies Raildor SA, in the Florida department, and Lejano Norte SRL, in Tacuarembó, also lost their digital broadcasting licenses because they failed to begin broadcasting on the date required. None of the public stations belonging to departmental governments began broadcasting, with the exception of that of the Montevideo city government, whose channel *TV Ciudad* was already on the air.¹⁵³¹

J. Government Advertising

1054. The Office of the Special Rapporteur notes that the Constitution and Codes Committee of the Chamber of Representatives [*Comisión de Constitución y Códigos de la Cámara de Representantes*] has before it a draft bill to regulate the production, planning, placement, and distribution of government advertising. The bill was submitted by CAinfo in August 2015 and enjoys broad political backing.¹⁵³² According to the information received, on August 29, 2016, the public debate was held on "Government Advertising, Freedom of Expression, and Transparency." The event was organized by the Center for Archives and Access to Public Information [*Centro de Archivos y Acceso a la Información Pública*] (CAinfo) to contribute to the debate on regulation of government advertising in the context of the bill before Congress. Legislators, journalists, media owners, activists, academics, attorneys, and government officials participated in the activity.¹⁵³³ Also, in September, CAinfo submitted a collection of proposals to the Constitution and Codes Committee for improving

¹⁵²⁷ 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.

¹⁵²⁸ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 1121.

¹⁵²⁹ Búsqueda. April 7, 2016. [Giro y VTV perdieron la adjudicación de nuevos canales de televisión](#); El Observador. April 8, 2016. [VTV y Giro pierden señales de TV abierta y analizan qué hacer](#); El País. April 8, 2016. [Incertidumbre sobre la TV digital](#); El Observador. April 14, 2016. [Ejecutivo rechaza prórroga de TV digital y Giro se quedará sin canal](#); El Observador. August 22, 2015. [Sin apagón analógico VTV desiste de TV digital](#).

¹⁵³⁰ Búsqueda. June 25, 2015. [A tres meses del "apagón analógico", falta de iniciativa del gobierno para promover la televisión digital genera clima de "incertidumbre"](#); Semanario Búsqueda. October 8, 2015. [El proceso hacia la TV digital es "vergonzoso", dicen empresarios](#); El País. April 8, 2016. [Incertidumbre sobre la TV digital](#).

¹⁵³¹ Búsqueda. April 7, 2016. [Giro y VTV perdieron la adjudicación de nuevos canales de televisión](#).

¹⁵³² IACHR [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015. Para. 1123-1125.

¹⁵³³ Unesco. September 5, 2016. [Conversatorio sobre Publicidad Oficial. Libertad de Expresión y Transparencia en Uruguay](#).

the bill. The proposals cover the main comments and contributions from the hearings the Committee held with the different stakeholders involved.¹⁵³⁴

1055. Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights states that “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

K. Other Relevant Situations

1056. On March 28, television company Tenfield did not allow a news team from *Canal 4* to cover the inauguration of *the Club Atlético Peñarol* soccer stadium. Tenfield had the exclusive right to broadcast the event and blocked reporters from entering the stadium to cover the inaugural match. *Canal 4* journalist Mario Bardanca denounced this publicly and alleged that the measure was in retaliation for his journalism work in which she had criticized the actions of Tenfield and its owners, and for the commercial agreement the channel had reached with the Fox Sports network, Tenfield’s competitor.¹⁵³⁵ On April 1, Tenfield issued a statement saying that it “permitted free access to a number of print, radio, and digital media outlets that submitted their accreditation paperwork to Club Atlético Peñarol on time.” It added that for television companies, it granted access to those with which it had commercial agreements. According to the company, “whether to allow a media outlet access to an event is exclusively the purview of whoever has paid for the rights” and “blocking access to a media outlet is not censorship, but rather simply the free exercise of the right purchased from the entity selling it.”¹⁵³⁶

1057. The Montevideo government launched an administrative investigation into the general manager of Montevideo’s philharmonic orchestra, Álvaro Méndez, after he dyed his hair blue to protest a cut to the orchestra’s budget that the administration had ordered.¹⁵³⁷ Once the investigation was concluded, the Administrative Unit of the City Government concluded that “the verified conduct could be considered an administrative offense” and advise that a preliminary investigation be conducted, without a preventative suspension, “in order for his responsibility for the incidents in question to be determined with all due process guarantees.” Based on these conclusions, on June 13, the administration launched a preliminary administrative investigation against the official.¹⁵³⁸

1058. On May 30, the Uruguayan Press Association [*Asociación de la Prensa Uruguaya*] (APU) stated in a press release its annoyance with the Communications Services Regulatory Unit [*Unidad Reguladora de Servicios de Comunicaciones*] (Ursec) over what it said were “illegal and abusive practices” of broadcaster *CX44, 1410 AM Libre* that have not been addressed by the regulatory body. According to the group, an Argentine businessman took ownership of the broadcaster without Ursec’s authorization, violating

¹⁵³⁴ Centro de Archivos y Acceso a la Información Pública (Cainfo). September 23, 2016. [CAinfo presentó propuestas para mejorar proyecto de ley de Publicidad Oficial, que comenzaría a votarse en octubre.](#)

¹⁵³⁵ Telenoche online. March 28, 2016. [La opinión de Bardanca sobre la prohibición de Tenfield para Telenoche](#); Asociación de la Prensa Uruguaya (APU). March 29, 2016. [Comunicado sobre cobertura de la inauguración del estadio de Peñarol](#); El Observador. March 30, 2016. [Un “mute” discriminador.](#)

¹⁵³⁶ Montevideo COMM. April 1, 2016. [Decile a Mario que no venga](#); Caras y Caretas. April 2, 2016. [Comunicado de prensa de Tenfield por la polémica con Canal 4.](#)

¹⁵³⁷ El País. March 2, 2016. [Álvaro Méndez sancionado por inusual modo de protesta](#); El Observador. March 2, 2016. [Coordinador de Orquesta Filarmónica investigado por teñirse el pelo](#); Teledoce. March 3, 2016. [La polémica investigación a Álvaro Méndez por teñirse el pelo como forma de protesta](#); El Observador. December 11, 2015. [Coordinador de la Filarmónica se tiñó el pelo de celeste en protesta por más presupuesto.](#)

¹⁵³⁸ Intendencia de Montevideo. Resolución N° 616/16/5000. June 13, 2016. Available at: <http://www.montevideo.gub.uy/aplicacion/resoluciones>

a number of current legal provisions. It also alleged failure to comply with the workers' labor rights, such as for example delays in paying salaries.¹⁵³⁹

1059. On October 18, two police officers went to a Montevideo art gallery and asked to speak with the person responsible for a painting in which former president and current Senator José Mujica and his wife, Senator Lucía Topolansky, appear naked. In the painting, which belongs to artist Julio de Sosa, both politicians appear naked, with their genitals covered by large leaves, representing the biblical figures of Adam and Eve. At the request of the police, the owner of Galería La Marquería, Diana Saravia, put them in touch with the artist, who they interrogated. Minutes later, the police gave them a summons requiring them to appear the next day at the police station. They also asked Saravia to remove the painting for reasons of "taste." When Saravia and de Sosa appeared to testify, the chief of police told them that no one had filed a complaint. Rather, the order had come "from above," and that they had to prepare report for the ninth criminal circuit court [*Juzgado Penal de 9º Turno*].¹⁵⁴⁰

1060. On that day, the Security Minister told the media that the police had gone to the gallery after receiving "a number of calls" from neighbors complaining about the painting, and that no one had filed any official complaints. However, the next day, Senator Topolansky told the media that she and Mujica had filed a defamation complaint over the display of the painting, arguing that it involved "exhibitionism without permission" of her image. Mujica also issued statements on the issue, saying that the artist had the right to "make a few pesos," but that "there's a limit." Following Topolansky's statements, ministry spokespeople told the media that although the senators had considered filing the complaint, they later decided not to after the painting was voluntarily removed.¹⁵⁴¹

1061. Elsewhere, ninth circuit Judge [*jueza de 9º Turno*] Blanca Rieiro stated that the court learned of the incident from communication from the police that stated that a citizen had filed a complaint alleging that the painting was offensive. The judge stated that the senators were asked whether they filed a complaint over the incident, but they did not, meaning that in principle, the case would be closed. A judiciary spokesperson explained to the media that the police cannot order a painting removed and that this was the responsibility of the judiciary. However, he indicated that although there was no court order in the case, the owner of the gallery had voluntarily removed the painting and could put it back if she wish to.¹⁵⁴²

¹⁵³⁹ Asociación de la Prensa Uruguaya (APU). May 30, 2016. [Denuncia Ursec por irregularidades en radio 1410](#).

¹⁵⁴⁰ Diana Saravia/Facebook. October 19, 2016. [Panorama negro para un día negro](#); Búsqueda. October 27, 2016. [Esa molesta pintura naif](#); El País. October 20, 2016. [Ordenaron retirar cuadro con Mujica](#).

¹⁵⁴¹ La Diaria. October 20, 2016. [Mujica y Topolansky denunciaron obra de arte que los exhibía desnudos](#); El Observador. October 20, 2016. [Mujica y Topolansky censuran cuadro que los muestra desnudos](#); Montevideo Portal. October 20, 2016. [No pintó](#).

¹⁵⁴² Semanario Búsqueda. October 27, 2016. [Esa molesta pintura naif](#); La Diaria. October 20, 2016. [Galerista aclaró que nunca fue obligada a sacar el cuadro de Mujica y Topolansky de su galería](#).

31. VENEZUELA¹⁵⁴³

A. Progress

1062. On December 14, the Public Prosecutor announced guilty verdict against two officers of the Bolivarian National Guard (*Guardia Nacional Bolivariana*) (GNB) who were found guilty of the death of student Geraldine Moreno Orozco, which took place on February 19, 2014 during a demonstration in Carabobo State. According to the information that was disseminated, the prosecutors in charge of the case were able to show, before the First Trial Court of Carabobo, the responsibility of GNB sergeants Albin Bonilla Rojas and Francisco Caridad Barroso, who were sentenced to 30 and 16 and a half years of imprisonment, respectively.¹⁵⁴⁴

B. Killings

1063. On January 19, journalist and newscaster for *Venezolana de Televisión* (VTV), Ricardo Durán, was murdered. At the time of his death, he worked as the Press Officer for the Capital District Government [*Prensa del Gobierno del Distrito Capital*]. President Nicolas Maduro condemned the fact and urged the authorities to find those responsible.¹⁵⁴⁵ According to the available information, the authorities initially believed that attempted robbery was the motive of the crime and they announced the arrest of Darwin Antonio Barriento Díaz as the alleged perpetrator. However, on June 20 they announced the arrest of 14 police officers from the Chacao municipality [*Policía del Municipio de Chacao*], which is located in the Caracas metropolitan area, as those allegedly responsible for the death of the journalist. On August 8, a preliminary proceedings court [*Tribunal de Control*] allegedly ordered their release, as nothing was found linking them to Durán's murder. Attorneys for the officers reported that officers from the Bolivarian National Intelligence Service [*Servicio Bolivariano de Inteligencia Nacional*] (SEBIN) refused to carry out the order, which led the attorneys to file a complaint with the Office of the Attorney General [*Ministerio Público*] on August 11.¹⁵⁴⁶

1064. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression establishes that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

¹⁵⁴³ This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2016 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

¹⁵⁴⁴ Ministerio Público December 14, 2016. [Ministerio Público logró condena de 30 años para sargento de la GNB por muerte de Geraldine Moreno](#); El Diario Vasco. December 15, 2016. [Justicia venezolana condena a militar por la muerte de manifestante en 2014](#).

¹⁵⁴⁵ Telesur. January 20, 2016. [Maduro pide justicia por asesinato de periodista venezolano](#).

¹⁵⁴⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. January 25, 2016. [Press Release R 3/16 Office of the Special Rapporteur Condemns Killing of Journalist in Venezuela](#); Ministerio Público. January 20, 2016. [Ministerio Público comisionó a fiscal 55º del AMC para investigar la muerte del periodista Ricardo Durán](#); Inter American Press Association (IAPA). January 21, 2016. [Venezuela: Asesinan a periodista](#); El Universal. January 20, 2016. [Asesinado el periodista Ricardo Durán](#); Run Run. January 20, 2016. [Asesinaron al periodista Ricardo Durán](#); El País. January 20, 2016. [Asesinado en Caracas Ricardo Durán, un conocido periodista del chavismo](#); Periodistas en Español. January 23, 2016. [Periodistas asesinados: Ricardo Durán](#); Mundo24. January 20, 2016. [Ricardo Durán portaba su arma 9 mm en la cintura cuando fue atacado](#); Sumarium. March 17, 2016. [Detienen a presunto asesino del periodista Ricardo Durán](#); Noticias 24. March 17, 2016. [PNB detuvo a presunto asesino del periodista de VTV Ricardo Durán](#); RT. June 20, 2016. [Vinculan a policías de municipio opositor con asesinato de periodista en Venezuela](#); HispanTV. June 21, 2016. [Policías de municipio opositor, implicados en asesinato de periodista venezolano](#); Reporte1. June 24, 2016. [Presos en el SEBIN 14 Polichacao por asesinato de Ricardo Durán](#); País Zeta. August 4, 2016. [Denuncian violación de DDHH a funcionarios de PoliChacao en el SEBIN](#); Notitotal/Sumarium/Unión Radio. August 5, 2016. [Torturan a efectivos de Polichacao detenidos en el SEBIN](#); El Nacional/La Patilla. August 5, 2016. [La carta que publicaron los funcionarios de Polichacao detenidos en el SEBIN](#); Analítica. August 10, 2016. ["Oficiales de Polichacao pasaron de ser detenidos a estar secuestrados por el SEBIN"](#); El Pitazo. August 11, 2016. [Tribunal ordena liberar a los 14 polichacao del caso Ricardo Durán](#) (VIDEO); El Universal. August 11, 2016. [Denuncian al SEBIN por detención ilegal de 14 funcionarios de Polichacao](#); Entorno inteligente. November 25, 2016. [SEBIN ignora orden de tribunal dada en agosto que libera a Polichacaos](#).

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

1065. Throughout the year, the Office of the Special Rapporteur has received information about multiple events in which journalists were allegedly the object of physical assault and acts of intimidation, and also about various types of interference with their work. Various State security agencies, including the Bolivarian National Guard [*Guardia Nacional Bolivariana*] (GNB) and Bolivarian National Intelligence Service [*Servicio Bolivariano de Inteligencia Nacional*] (SEBIN), as well as police forces, are the alleged cause of the assault against the journalists, whether by action or omission. These incidents take place in a climate of extreme political polarization and social crisis due to the intensified confrontation between the government of President Nicolás Maduro and the opposition.

1066. During 2016, there were reports of assaults against journalists or interference in their work by State agents, either during the performance of their work or as a consequence thereof. The acts allegedly committed by police officers include beatings, threats, arrests, raids, the confiscation of work equipment and the destruction of journalistic evidence, among other incidents. According to the available information, the following cases may be included in this group. On January 15, reporter Fabiana Barboza and photographer Yorvis Weffer, from the *Diario La Costa* newspaper, from the city of Puerto Cabello, state of Carabobo, were allegedly assaulted by members of the Bolivarian National Guard [*Guardia Nacional Bolivariana*] (GNB) while covering a protest. The officers temporarily confiscated Weffer's camera and deleted photographs that were on the equipment.¹⁵⁴⁷ Subsequently the Commander of the Detachment 412 T/C [*Comandante del Destacamento 412 T/C*] expressed his excuses to the director of the media and the affected.¹⁵⁴⁸ On January 4, officers from the People's Guard [*Guardia del Pueblo*] (an operational unit of the GNB, according to the organizational chart of the institution, which is tasked with preventive duties¹⁵⁴⁹) arrested journalist Diana Moreno from the *El Impulso* newspaper for allegedly taking photographs in a shopping center located in the Las Trinitarias shopping center in Barquisimeto, in the state of Lara. A broadcaster and blogger by the name of Luis Guevara, who was making a video for a website, was allegedly detained with her. The journalist was held for several hours and then released.¹⁵⁵⁰ On March 23, journalist José Ángel Romero and graphic reporter Elías Miranda, from the *La Voz de Falcón* website, were allegedly assaulted by police officers from the state of Falcón while covering a protest over a lack of water.¹⁵⁵¹ On March 28, journalists Fabiana Delgado and Humberto Matheus from *La Versión*, José Antonio González and María Fuenmayor from *La Verdad*, and Ángel Romero and José López from *Noticia al Día* were allegedly detained, beaten, intimidated and threatened by officers of the police in Maracaibo, state of Zulia, and were also forced to delete the photography taken during the operative that was realized by anti-riot of the Bolivariana Police force [*Cuerpo de Policía Bolivariana*] of the State Zulia for the riot that had been provoked to the interior of *El Marite* pre-trial detention center.¹⁵⁵² On April 21, journalists covering a protest staged by National Assembly deputies at the headquarters of the National Electoral Council [*Consejo Nacional Electoral*] (CNE) in Caracas were allegedly violently forced to

¹⁵⁴⁷ Instituto Prensa y Sociedad Venezuela (IPYS). February 16, 2016. [Carabobo: Reporteros de Diario La Costa fueron agredidos por la Guardia Nacional](#); La Patilla. January 16, 2016. [GNB agrede a periodista y reportero gráfico de Diario La Costa](#); [Contrapunto.com/Diario La Costa](#). January 16, 2016. [GNB agrede a reporteros del diario regional La Costa](#); [Confirmado/ Colegio Nacional de Periodistas \(CNP\)](#). January 16, 2016. [Comunicado CNP seccional Carabobo](#).

¹⁵⁴⁸ La Patilla. January 16, 2016. [GNB agrede a periodista y reportero gráfico de Diario La Costa](#); [Contrapunto.com/Diario La Costa](#). January 16, 2016. [GNB agrede a reporteros del diario regional La Costa](#).

¹⁵⁴⁹ Guardia Nacional Bolivariana. [Organigrama institucional](#); Guardia Nacional Bolivariana. [Guardia del Pueblo](#).

¹⁵⁵⁰ NTN24. February 4, 2016. [Liberan a periodista detenida en Barquisimeto por tomar fotos en un supermercado](#); Periodista de El Impulso, Diana Moreno, se encuentra detenida presuntamente por tomar fotos dentro de un establecimiento comercial. Twitter account of El Impulso @elimpulsocom. [February 4, 2016](#); Instituto Prensa y Sociedad Venezuela (IPYS). February 5, 2016. [Periodista del Diario El Impulso fue retenida por la Guardia del Pueblo en un supermercado](#); Instituto Prensa y Sociedad Venezuela (IPYS). February 23, 2016. [Periodista introdujo demanda en Ministerio Público por detención arbitraria](#).

¹⁵⁵¹ Espacio Público. March 28, 2016. [Polifalcón agrede a reporteros de La Voz de Falcón](#).

¹⁵⁵² Efecto Cocuyo. March 28, 2016. [Tres policías heridos y seis periodistas retenidos durante motín en cárcel de Maracaibo](#); Espacio Público. March 29, 2016. [Policía a fotógrafo en El Marite: "o entregas la cámara o te voy a pegar dos tiros"](#); Tal Cual March 28, 2016. [Detuvieron y agredieron a periodistas en retén de El Marite](#); Instituto Prensa y Sociedad Venezuela (IPYS). March 29, 2016. [Policía regional agredió a periodistas en cobertura carcelaria](#).

leave the building by members of the GNB. They were then reportedly physically assaulted by a group of civilians, presumably sympathizers of the government, the vehicle in which they were moving was attacked with sticks and stones. Several of the journalists identified were Osmar Hernández and Jessica Flores, reporter and producer for *Cable News Networks en Español (CNN en Español)*; Oliver Fernández and Adriana Núñez Moros, from *NTN24*; Amanda Sánchez, from digital portal *Vivo Play*; Mildred Manrique and Wandor Dumont, from digital portal *800 Noticias*; Antonieta La Rocca, from *Telecaribe*; Alejandro Castillo, from digital portal *Su Noticiero*; Armando Altuve, from *El Pitazo TV*; Harley Monseguileman, from *Telegen*; Sonsiré Luna, from *Unión Radio*; and Alejandro Hernández, journalist and radio producer.¹⁵⁵³ On April 22, GNB officers allegedly took the camera of journalist Keren Torres Bravo, a correspondent for *El Pitazo* in Barquisimeto, in the state of Lara, while she was reporting on people standing in line to buy food. Her equipment was held for a few minutes and later returned.¹⁵⁵⁴ On April 26, a journalist from *Efecto Cocuyo*, Reynaldo Mozo, was detained while covering a protest over food shortages. Officers from the Vargas state Police took his cellular phone, handcuffed him and transported him to Macuto Command. He was held for an hour and then released.¹⁵⁵⁵ On August 18, journalist Julio Mendoza, a correspondent for *El Pitazo* in the state of Apure, was reportedly beaten and arrested by the Regional Police while covering a citizens' protest in the City of San Fernando. The journalist was allegedly detained along with 12 other citizens, who were released that night.¹⁵⁵⁶ On October 24, journalist Melissa Turibbi, a newscaster for the *Globovisión* television channel, reported that her home had been raided by SEBIN agents who, apparently without a judge's order, went to her home when only her son and his caretaker were there, causing damage in the building. According to the journalist, the officers were searching for her home computer. This was the second time the journalist was allegedly assaulted by State agents.¹⁵⁵⁷

1067. On March 9, on the Atena de Tumeremo property in the state of Bolívar, journalists were traveling to the El Miamo mine, where 28 miners disappeared and were allegedly massacred on March 4. The journalists were intercepted by officials from the Office of Scientific, Criminal and Forensic Investigations [*Cuerpo de Investigaciones Científicas Penales y Criminalísticas*] (CICPC), who did not allow them access to the scene until their work equipment and cellular telephones had been searched. The officers allegedly argued that they meant to prevent the reporting of information in real time from the area.¹⁵⁵⁸ Pedro Luis Montilla, a journalist for *Fe y Alegría*, was detained by officers of the SEBIN on March 18 in Barquisimeto, allegedly for publishing information about the case of the 28 miners who disappeared in Tumeremo on his personal blog. He was released hours later.¹⁵⁵⁹

¹⁵⁵³ NTN24. April 21, 2016. ["Todo ocurre con la mirada complaciente de las autoridades": periodista de NTN24 tras agresión de la GNB a la prensa en el CNE](#); La Patilla. April 21, 2016. [GNB y oficialistas agreden a periodistas en el CNE \(Video\)](#). "#EnVIVO Se reportan agresiones a periodistas en sede del CNE en Caracas. Los detalles en <http://goo.gl/ikCGkF>". Twitter account of VivoPlay @vivoplaynet. April 21, 2016; Contrapunto. April 21, 2016. [Grupos violentos agredieron a periodistas venezolanos que cubrían protesta en el CNE](#); CNN en Español. April 21, 2016. [Agreden a periodistas en sede del Consejo Nacional Electoral de Venezuela](#); Diario Contraste. April 21, 2016. [Diputados y periodistas fueron agredidos por la GNB para desalojar el CNE \(Fotos+Videos\)](#); Ipys Venezuela. April 25, 2016. [Atacaron a equipos reporteros durante cobertura en el CNE](#).

¹⁵⁵⁴ La Patilla. April 22, 2016. [VIDEO | Por grabar en una cola quitan cámara a periodista de El Pitazo](#); Espacio Público. April 23, 2016. [Comunidad defiende a periodistas de la GNB](#).

¹⁵⁵⁵ Efecto Cocuyo. April 26, 2016. [Detienen a periodista de Efecto Cocuyo mientras cubría protesta por comida en Vargas](#); El Estímulo. April 26, 2016. [Protesta por comida en Vargas provocó cierre de vías y detención de periodista](#); Tal Cual. April 26, 2016. [Detienen a periodista de Efecto Cocuyo por reportar protesta en Vargas](#).

¹⁵⁵⁶ Los reportes de Lichi. August 18, 2016. [Reportero de 'El Pitazo' Julio Mendoza fue detenido en Apure cuando cubría actividad de la MUD](#); El Pitazo. August 19, 2016. [Periodista Julio Mendoza: Fui detenido por grabar cómo dos funcionarios golpeaban a una menor de edad](#).

¹⁵⁵⁷ El Nacional. October 24, 2016. [Cinco funcionarios del SEBIN ingresaron a casa de periodista de Globovisión](#); Reporte Confidencial. October 24, 2016. [Periodista Melissa Turibbi denunció allanamiento a su casa por parte del SEBIN \(VIDEO\)](#); Espacio Público. October 24, 2016. [SEBIN allana la casa de una periodista en busca de su computadora personal](#).

¹⁵⁵⁸ Efecto Cocuyo. March 9, 2016. [Cuando estaban a punto de llegar a la mina en Tumeremo, el Cicpc devolvió a los periodistas](#); Espacio Público. March 10, 2016. [CICPC impide que reporteros "informen al momento" desde Tumeremo](#).

¹⁵⁵⁹ Espacio Público. March 18, 2016. [SEBIN detiene a periodista por informar sobre caso Tumeremo](#); Un Bombazo. March 19. [¡ESO SE LLAMA CENSURA! Detienen a periodista por publicar información sobre asesinatos de Tumeremo](#).

1068. The Office of the Special Rapporteur also documented cases of journalists who have allegedly been assaulted by civilians while conducting their professional activities and who have not received protection in order to continue doing so, even though there was a police presence in the area. This collection of incidents also includes the cases of journalists who have allegedly been assaulted and whose complaints have not been diligently investigated by the authorities. These acts against journalists include injuries, illegal arrest, beatings, threats, intimidation and stolen work equipment. According to known information, the following cases may be included in this category. On February 16, journalist Eleida Briceño, from the newspaper *El Tiempo* in the city of Puerto La Cruz, state of Anzoátegui, was shot in the leg while covering a confrontation between residents of the El Paraíso area and members of the Office of Scientific, Criminal and Forensic Investigations [*Cuerpo de Investigaciones Científicas Penales y Criminalísticas*] (Cicpc).¹⁵⁶⁰ On February 28, journalist José Rafael Ramírez, had his work gear, a laptop, and a cell phone stolen. The robbery was allegedly committed by unknown individuals who entered his apartment in the city of Maracay, in the state of Aragua, and took only the aforementioned items. Days earlier, the journalist had published information about the arrest of a commander after cocaine was supposedly found in his vehicle.¹⁵⁶¹ On March 9, journalists Rafael Urdaneta and Fabiola Niño, from *El Venezolano TV*, René Méndez from *NTN 24*, and Manuel Cardozo from the *Ecos del Torbes* channel were allegedly detained, threatened, intimidated and subject to an attempted robbery by a group of hooded individuals while covering a protest at the Industrial Technical School in the San Cristóbal municipality in the state of Táchira.¹⁵⁶² On February 29, while covering the chair of the National Assembly's Health Committee's visit to Maracaibo University Hospital, a group of approximately 20 journalists, including María Fernanda Muñoz, from *Primero Justicia*, Dorkys Tapia, from *Bien Dateao* and Aisley Moscote from *Versión Final*, had allegedly been assaulted by members of *Círculos Bolivarianos* ["Bolivarian Circles"] - grassroots organizations created by the PSUV in order to broadcast the ideas of the Bolivarian Revolution - who went to the hospital to prevent the representative's visit.¹⁵⁶³ On April 7, journalists Alejandro Hernández, from *Circuito Éxitos*, Antonieta La Rocca, from *Telecaribe*, Alejandro Molina, from *Notiminuto* and Luis Pérez Rojas, from *Caraota Digital*, had allegedly been assaulted while they covered the visit of Primero Justicia party leaders to the National Electoral Council [*Consejo Nacional Electoral*] (CNE) to request signature collection forms for the recall referendum of President Nicolás Maduro. The journalists were assaulted supposedly by a group of ruling party sympathizers who went to CNE headquarters.¹⁵⁶⁴ On April, freelance graphic reporter Miguel González was allegedly assaulted and robbed by ruling party sympathizers near the CNE while he covered the Democratic Unity Roundtable's [*Mesa de la Unidad Democrática*] (MUD) delivery of signatures to initiate the recall process.¹⁵⁶⁵ On October 23, at least half a dozen journalists were reportedly assaulted while covering a special session of the National Assembly when a group of civilians, presumably supporters of the government, burst into the Assembly building. Among those assaulted were reporter Gregory Jaimés and producer Yamel Rincón, from *Telecaribe*, who were threatened with a firearm so that part of their equipment could be taken.¹⁵⁶⁶

¹⁵⁶⁰ El Mercurio. February 16, 2015. [Periodista Eleida Briceño resultó herida durante cumplimiento de su labor](#); Sumarium. February 16, 2015. [Periodista de sucesos recibió un tiro en la pierna durante una pauta](#).

¹⁵⁶¹ El Pitazo. February 28, 2016. [Robaron equipos de trabajo a periodista en Maracay](#); Espacio Público. March 3, 2016. [Roban equipo de trabajo a periodista luego de publicar una información](#).

¹⁵⁶² El Pitazo. February 12, 2016. [Agredieron a periodista y reportero gráfico durante protestas en Táchira](#); Espacio Público. March 9, 2016. [Secuestran y amenazan de muerte a 4 periodistas en Táchira](#); La Nación Web. March 12, 2016. ["CNP Táchira rechaza las agresiones a periodistas y medios de comunicación"](#); Ecos del Torbes. March 10, 2016. [Identificados los sujetos que atacaron a periodistas Fabiola Niño y Manuel Cardozo en la ETI](#); Noticias 24. March 10, 2016. [Fueron identificados los sujetos que asaltaron a periodistas en la ETI](#).

¹⁵⁶³ Bien dateao.com. March 1, 2016. [María Fernanda Muñoz: Respeto](#); El Pitazo. February 29, 2016. [Círculos Bolivarianos impiden con violencia ingreso de diputados al Hospital Universitario de Maracaibo](#); El Correo del Orinoco. March 2, 2016. [Agresión a periodistas en el Hospital Universitario de Maracaibo es rechazada por el CNP](#); La Patilla. March 1, 2016. [CNP Zulia exige respeto a la labor periodística ante agresión en el HUM](#); [Niegan agresión a periodistas en el HUM](#); Círculos Bolivarianos. July 8, 2010. [Libro de los círculos bolivarianos](#).

¹⁵⁶⁴ Espacio Público. April 7, 2016. [Agreden y roban a seis periodistas en inmediaciones del CNE](#); Analítica. April 7, 2016. [Agreden y roban a periodistas en inmediaciones del CNE](#); Un Bombazo/El Coperante. April 7, 2016. [Periodistas pagan los platos rotos en ataque de chavistas a la MUD frente al CNE](#); El Tiempo. April 12, 2016. [Oposición entrega firmas en el CNE para iniciar trámite de revocatorio de Maduro](#).

¹⁵⁶⁵ Espacio Público. April 13, 2016. [PNB a reportero agredido y robado: "no podemos hacer nada, aquí no hay estado de derecho"](#); Inter American Press Association (IAPA). [72 IAPA General Assembly. Venezuela Report](#). October 12, 2016.

¹⁵⁶⁶ Knight Center for Journalism in the Americas. October 24, 2016. [Reporters assaulted, threatened and robbed after violent takeover of the Venezuelan National Assembly](#); Espacio Público. October 24, 2016. [Toma por asalto a la Asamblea Nacional deja 6](#)

1069. On August 4, the Office of the Special Rapporteur issued a joint statement with the United Nations Special Rapporteur for Freedom of Opinion and Expression, in which they expressed concern for the continuous deterioration of the freedom of the press in Venezuela, stating that this deterioration is reflected in events such as the attacks against journalists and independent media groups, escalating the pressure over the Venezuelan media, which is especially alarming given the country's food and medicines shortages, economic crisis and heightened social and political tensions. Reference is also made to the arrests for inquiry and retention of equipment that journalists and media workers have experienced, as well as the inexistence of adequate guarantees so that communicators may do their jobs, and there is emphasis on the fact that [t]he harassment of the media by law enforcement agents obviously hampers journalists' ability to carry their vital work and propagate a powerful chilling effect affecting the entire society.¹⁵⁶⁷

1070. Journalist Kalinina Ortega was reported missing by her brother, who informed the media that the 76-year-old communicator - who had reportedly retired from her work as a journalist and is currently a book editor - allegedly left her home on October 4, presumably to run errands at the bank and collect her pension. He lost touch/contact with her at that time. As of the closing date of this report, the former *El Nacional* newspaper journalist was still missing.¹⁵⁶⁸

1071. On December 2, in the framework of the 159th Period of Sessions of the IACHR, a hearing was held on the "Situation of the Right to Freedom of Expression and Information in Venezuela". The participating organizations affirmed that there is a "consensus on the part of international human rights protection bodies in relation to the situation of freedom of expression in Venezuela". That consensus can be seen, according to what was stated at the hearing, in the following events: i) the issuance by the Inter-American Court of Human Rights of four sentences against the Venezuelan State because of cases of restriction of the exercise of freedom of expression, effects on the personal integrity of journalists, criminalization of public declarations about the armed forces, threats, harassment and indirect restrictions on freedom of the press, events for which the Venezuelan State had been ordered to make reparations involving the removal of undue restrictions on the freedom to seek, receive and disseminate information; modification of the Organic Code of Military Justice to prevent civilians from being tried by military courts, and restitution of the RCTV television concession, among others; ii) the consistent inclusion of Venezuela, since 2002, in chapter IV of the annual reports of the IACHR, with 13 specific references to violations of the right to freedom of expression; iii) the issuance of 39 recommendations in the annual and country reports of the IACHR, as well as in those of the Office of the Special Rapporteur, urging the State to adopt measures to guarantee exercise of the right to freedom of expression; iv) repeated refusals by the State to respond to requests for a visit made by the United Nations Special Rapporteur for the Right to Freedom of Opinion and Expression in 2003 and 2009; v) the statement by the United Nations Human Rights Committee, in the framework of the periodic review of 2015, in terms of implementation and compliance with the International Covenant on Civil and Political Rights, regarding the existence of practices to restrict critical opinions, criminalize opinion, restrict access to information of public interest and; vi) the formulation of 41 recommendations in the framework of the Universal Periodic Review of 2011 and 2016, in which the Venezuelan State is urged, among other things, to align its regulatory framework on freedom of expression with its international obligations; guarantee free access to public information; ensure the cessation of threats and attacks against journalists and investigate and punish acts of harassment, threats and attacks against them and permit genuine expression of dissent.¹⁵⁶⁹

[violaciones a la libertad de expresión](#); Efecto Cocuyo. October 23, 2016. [Vea en fotos la irrupción de simpatizantes chavistas en la #SesiónAN](#).

¹⁵⁶⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2016. [Joint Press Release R110/16 Venezuela / Crisis: UN and Inter-American experts raise alarm at deterioration of media freedom](#).

¹⁵⁶⁸ El Nacional. October 15, 2016. [Desaparecida la periodista Kalinina Ortega desde principios de este mes](#); El Universal. October 15, 2016. [Desapareció periodista a principios de octubre](#); La Patilla. October 28, 2016. [¿Dónde está Kalinina?](#)

¹⁵⁶⁹ IACHR. 159 Period of Sessions. Hearing "Situación del derecho a la libertad de expresión e información en Venezuela". December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

1072. With respect to the violence against journalists and others because of their exercise of freedom of expression, the Office of the Special Rapporteur has underscored, based on the inter-American doctrine and case law, the importance of three positive obligations arising from the rights to life, humane treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to investigate, prosecute, and criminally punish the persons responsible for those crimes. As the Office of the Special Rapporteur has stated, these obligations are complemented reciprocally: in order for there to be free, robust, and unrestricted public debate, it is necessary to combat violence against journalists through a comprehensive policy of prevention, protection, and the pursuit of justice.¹⁵⁷⁰

1073. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

D. Social Protests

1074. In 2016, numerous protests, took place, and included the participation of members of different sectors of Venezuelan society. The protests were triggered by a common cause: food shortages, the poor quality or suspension of public services, the various demands of different trade groups, and the request for a recall referendum of President Nicolás Maduro that was put before the National Electoral Council [*Consejo Nacional Electoral*]. Violent events were recorded during a good number of these protests, and law enforcement reportedly reacted with excessive use of force.¹⁵⁷¹

1075. At least four people died during events linked to protests over food shortages and looting attempts that took place in different regions of the country.¹⁵⁷² On June 5, Jenny Ortiz was shot in the face with pellets, allegedly by a police officer who fired at close range while she tried to flee a looting attempt in the municipality of San Cristóbal.¹⁵⁷³ On June 9, José Antonio Tovar was shot several times, presumably by officers of the Bolivarian National Guard [*Guardia Nacional Bolivariana*](GNB) and the Bolivarian National Police [*Policía Nacional Bolivariana*](PNB), during an operation to subdue a looting attempt in the municipality of Sucre. Tovar was allegedly trapped in the uprising while opening a fast-food stand that he owned.¹⁵⁷⁴ Luis Josmer Fuentes Bermúdez was shot on June 10 during a confrontation with inhabitants of the Cerezaal community, in the municipality of Cariaco, and members of the GNB, during a protest over food shortages. Although he was taken to the hospital, he died the following day. According to the available information, a GNB sergeant had allegedly been detained as presumed responsible.¹⁵⁷⁵ Finally, on June 15,

¹⁵⁷⁰ 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. 31; See also: IACHR. [Annual Report 2010. 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. 541; IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹⁵⁷¹ IACHR. June 9, 2016. [Press Release 73/16. IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela](#); Manifestar.org. June 14, 2016. [A cinco meses de la Declaratoria de Estado de Emergencia y a un mes del Estado de Excepción: Balance de la situación del derecho a la protesta pacífica en Venezuela](#); La Gaceta. June 16, 2016. [Heridos y detenidos en saqueos en Venezuela](#); La Verdad. June 16, 2016. [Venezolanos sobreviven entre el hambre y la violencia](#).

¹⁵⁷² Runrunes. June 12, 2016. [La guerra del hambre: 3 muertos y 47 saqueos por comida en 10 días](#); EFE. June 15, 2016. [Las protestas en Venezuela ya dejan 4 muertos mientras el Gobierno intenta diálogo](#).

¹⁵⁷³ El Pitazo. June 6, 2016. ["A mi esposa le disparó a quemarropa un policía del grupo Rayo"](#); La Patilla. June 6, 2016. [Habla la hija de Jenny Ortiz, la mujer asesinada con perdigonazos en la cara: "Le desfiguraron el rostro" \(Video\)](#); La Opinión. June 6, 2016. [Protestas por alimentos en Táchira cobran primera víctima fatal](#).

¹⁵⁷⁴ El Tiempo. June 11, 2016. [Disturbios en Caracas dejaron un muerto y varios heridos en dos días](#); Venevisión. June 10, 2016. [Un joven fue asesinado durante los hechos violentos de este jueves en Petare](#); El Pitazo. June 10, 2016. [Fiscalía investigará muerte de joven en Petare tras situación irregular](#).

¹⁵⁷⁵ Control ciudadano. June 13, 2016. [Detienen a sargento de la GNB por muerte de joven durante protesta en Sucre](#); Noticias Venezuela. June 15, 2016. ["El Cumanazo" una nueva página en la historia de horror del Socialismo del XXI](#); El Universal. June 16, 2016.

during looting in the town of Lagunillas, a minor was allegedly hit by a bullet and pellets that were presumably shot by the police. He died as a result of his injuries.¹⁵⁷⁶

1076. On June 9, the Inter-American Commission and the Office of the Special Rapporteur issued a statement expressing concern over the violent events against protesters and journalists during the protests that occurred in Venezuela over the shortage of basic commodities, subsequently the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur of IACHR also expressed its concern over the attacks against journalists and media outlets that cover the effects of the economic crisis in Venezuela. In these statements, the Venezuelan State was urged to investigate the possible abusive use of force and, where applicable, to prosecute and punish those responsible. It was also called to guarantee and protect the physical integrity and security of demonstrators and journalists during public protests and to adopt all necessary measures to guarantee the rights to life, physical integrity, and security of everyone under its jurisdiction.¹⁵⁷⁷

1077. By way of an additional example, deputies and members of the opposition were assaulted during protests that were organized regarding the activation of the recall referendum mechanism. On June 9, a group of parliamentarians from the opposition, who were protesting outside the headquarters of the National Electoral Council [*Consejo Nacional Electoral*] (CNE) in Caracas, were assaulted by a group of alleged supporters of the ruling party. These assaults were reportedly committed in spite of the presence of the police and the National Guard [*Guardia Nacional*] on-site.¹⁵⁷⁸

1078. Among other actions aimed at discouraging protests, the National Government adopted several measures against opposition leaders, who were accused of participating, directly and indirectly, in the planning and/or implementation of destabilizing actions, or were charged with various types of crimes. These actions included: the imprisonment of Daniel Ceballos, former mayor of the municipality of San Cristóbal, on August 26; Ceballos was under house arrest and his imprisonment was justified on the basis of the existence of an alleged escape plan.¹⁵⁷⁹ The imprisonment of Yon Goicoechea, leader of the *Voluntad Popular* party, who was arrested on August 29; “detonating cords for explosive devices” were allegedly found in his possession.¹⁵⁸⁰ The arrest of Carlos Melo, leader of the Avanzada Progresista party, on August 30; he was also found to allegedly be in possession of explosive materials.¹⁵⁸¹ The arrest of Delson Guarate, mayor of the municipality of Mario Briceño Iragorry, on September 2; he was charged for the alleged crimes of violating

[Detienen preventivamente a GN sospechoso de asesinar a joven en Cariaco](#); Globovision. June 16, 2016. [Detienen a sargento involucrado en muerte de manifestante en Sucre](#).

¹⁵⁷⁶ La Voz. June 15, 2016. [Muere menor de edad herido en protestas en la población de Lagunillas](#); Infobae. June 16, 2016. [Hambre y muerte en Venezuela: un joven de 17 años fue baleado durante un saqueo](#); Maduradas. June 15, 2016. [¡Desastroso! Muere joven herido con perdigones en protesta por comida en Lagunillas](#).

¹⁵⁷⁷ IACHR. June 9, 2016. [Press Release 73/16. IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2016. [Joint Press Release R110/16 Venezuela / Crisis: UN and Inter-American experts raise alarm at deterioration of media freedom](#).

¹⁵⁷⁸ Infobae. June 9, 2016. [Venezuela: salvaje agresión de colectivos chavistas a 10 diputados opositores](#); EFE. June 9, 2016. [Golpean a diputados opositores durante protesta por el revocatorio en Venezuela](#); RPP. June 9, 2016. [Venezuela: Golpean a diputados opositores durante protesta por revocatorio](#); El Nuevo Herald/EFE. June 7, 2016. [Firmas para referéndum revocatorio, un nuevo motivo de protesta en Venezuela](#); Diario las Américas/EFE. June 15, 2016. [Diputado opositor Julio Borges denuncia a jefe militar venezolano por agresión](#); La Patilla. June 15, 2016. [Julio Borges formaliza denuncia contra general Zavarse por agresiones frente a CNE](#).

¹⁵⁷⁹ BBC. August 27, 2016. [Venezuela: envían a prisión al exalcalde opositor Daniel Ceballos](#); PanAm. August 27, 2016. [Venezuela: Trasladan a preso político Daniel Ceballos a la cárcel](#); El Mundo. August 27, 2016. [Encarcelado Daniel Ceballos a sólo cinco días de la 'toma de Caracas'](#); CNN en Español. August 27, 2016. [Venezuela: por un supuesto plan de fuga, trasladan a una cárcel al opositor Daniel Ceballos](#).

¹⁵⁸⁰ El Nacional. August 29, 2016. [Denuncian desaparición forzada de Yon Goicoechea](#); El Nuevo Herald. August 29, 2016. [Detienen a opositor Yon Goicoechea por "portar material para explosivos"](#); Telesur. August 29, 2016. [Detienen en Venezuela a opositor equipado con explosivos](#); El Universal. September 19, 2016. [Defensa de Goicoechea asegura que su detención viola Código Procesal Penal](#); País Zeta. September 22, 2016. [Esposa de Goicoechea denuncia pase de factura](#).

¹⁵⁸¹ Panorama. August 30, 2016. [Henri Falcón: Denunciamos la detención arbitraria del compañero Carlos Melo](#); El Nacional. August 30, 2016. [SEBIN detuvo a Carlos Melo en Centro Plaza](#); Sumarium. August 31, 2016. [Detienen a Carlos Melo por supuesta posesión de explosivo](#); El Venezolano News. August 31, 2016. [Por presunto explosivo fue detenido el dirigente opositor Carlos Melo](#).

land use plans and the improper disposal of waste and hazardous solid waste.¹⁵⁸² He was also charged for the September 5 revelation that he requested the support of the Colombian government for the arrest and extradition from that country of Lester Toledo, a leader of the Voluntad Popular party who was allegedly involved in plans to carry out a coup d'état,¹⁵⁸³ as well as that of Yorman Barillas, former president of the Federation of University Centers, who is charged with the death of a student in 2015.¹⁵⁸⁴

1079. A strategy to prevent citizens from participating freely in the signature collection process to activate the recall referendum mechanism was also reportedly implemented, and was specifically directed at civil servants who hold positions of trust as well as those who benefit from social programs, who were openly threatened with loss of employment or the benefits they received if they supported the request.¹⁵⁸⁵

1080. Organizations such as Human Rights Watch and Provea documented cases of dismissals of several public officers supporting the revocation of President Maduro. The organizations denounced that the papers via which workers were notified of their termination of employment are identical and do not specify the reasons behind the decision. The Confederation of Venezuelan Workers [*Confederación de Trabajadores de Venezuela*] (CTV), the National Workers' Union [*Unión Nacional de Trabajadores*] (UNT), the Autonomous Trade Union Confederation [*Confederación de Sindicatos Autónomos*] (CODESA) and the General Confederation of Labor [*Central General de Trabajadores*], trade unions grouped together in the Union of Trade Union Action (UASG) reportedly filed a complaint with the International Labor Organization against the government of Nicolás Maduro for workplace harassment and violation of Conventions 87, 98 and 111. The groups attached a report documenting hundreds of dismissal cases to the complaint.¹⁵⁸⁶

1081. On May 4, Diosdado Cabello, a legislator and the first deputy chair of the political party *Partido Socialista Unido* (PSUV), stated on his television show '*Con el Mazo Dando*' that the recall requests would be reviewed one by one, and that if the signatures of persons who held leadership positions in the public sector were found, they would have to leave [their positions] immediately. The legislator later repeated the warning several times and also called on citizens to report "weaklings," a term used generically in reference to the opposition, in order to conduct a national operation to identify them and remove them from the public sector.¹⁵⁸⁷ On the same day, the PSUV deputy in the National Assembly, Ricardo Molina, stated

¹⁵⁸² El Nacional. September 2, 2016. [Delson Guarate fue detenido por supuestos delitos ambientales](#); La Patilla. September 2, 2016. [SEBIN se lleva detenido al alcalde Delson Guarate](#); El Pitazo. September 13, 2016. [Delson Guarate es trasladado al Hospital Militar para ser examinado](#).

¹⁵⁸³ El Estímulo. September 5, 2016. [SEBIN pide a Colombia captura y extradición de más activistas opositores](#); RNV. No date. [Venezuela solicitará a Colombia extradición de opositores vinculados a actos terroristas](#).

¹⁵⁸⁴ El Mundo August 29, 2016. [El chavismo persigue a la oposición ante la 'toma de Caracas'](#); El Mundo. September 7, 2016. [La oposición venezolana mantiene el pulso en la calle](#); El Nuevo Herald. September 13, 2016. [Opositores denuncian represión antes de cumbre de los No Alineados](#); Runrunes. September 14, 2016. [Asociación de Alcaldes condenó persecución política por parte del gobierno](#); Civilis AC. No date. [124 ONG rechazan obstáculos y amenazas contra el derecho a la manifestación pacífica de la ciudadanía](#).

¹⁵⁸⁵ Runrunes. May 5, 2016. [Misión acoso o de cómo el Gobierno persigue a quienes apoyan el revocatorio contra Maduro](#); El Pitazo. May 14, 2016. [Funcionarios públicos que firmaron a favor del revocatorio tienen tres vías legales para defenderse](#); Siente América. June 20, 2016. [Acoso oficial: Obligan a funcionarios públicos a retirar sus firmas a favor del revocatorio](#); Reporte Confidencial. June 29, 2016. [Le quitan becas a estudiantes por firmar a favor del revocatorio](#); EP Mundo. July 4, 2016. [¿Represalias? Vea a cuántos policías despidieron por firmar para el RR](#); Correo del Caroní. July 5, 2016. [Más de 30 denuncias por represalias contra trabajadores en estatales por apoyar el revocatorio](#); El Pitazo. July 7, 2016. [AN aprobó acuerdo en rechazo a las agresiones sufridas por seminaristas en Mérida](#); El Pitazo. July 7, 2016. [Arias Cárdenas devuelve becas a estudiantes excluidos por firmar](#).

¹⁵⁸⁶ Human Rights Watch. June 22, 2016. [Venezuela: Recall Supporters Fired](#); Provea. August 4, 2016. [Presidenta de la Fundación El Niño Simón despidió a trabajadoras que solicitaron revocatorio presidencial](#); Provea/You Tube. August 26, 2016. [Trabajadores ferroviarios: "Nos están botando y lo seguirán haciendo"](#); Univisión Noticias/You Tube. August 23, 2016. [Nicolás Maduro pide el despido de los "traidores"](#); Observatorio Electoral Venezolano (OEV). August 27, 2016. [El OEV: Referendo, movilización y despidos](#); El Nacional. September 9, 2016. [Acusan a Maduro ante la OIT por hostigamiento a empleados públicos](#).

¹⁵⁸⁷ Noticias24/You Tube. May 4, 2016. [Con el Mazo Dando. 04 de mayo de 2016](#) [25:35]; Notimérica/Reuters. July 7, 2016. [Cientos de venezolanos denuncian despidos tras firmar el revocatorio contra Maduro](#); World News Mundo Noticias/You Tube. August 4, 2016. [Venezuela Diosdado Cabello no se puede hacer una revolución con escuálidos](#). [02:57]; Notitotal. August 5, 2016. [Cabello: Opositores no pueden dirigir las Instituciones del Estado](#); Entorno 58/You Tube. August 12, 2016. [Diosdado Cabello: Más de 4.000 funcionarios han firmado contra el compañero Maduro](#) [04:59]; Efecto Cocuyo. August 19, 2016. [Declaraciones de Cabello abren la puerta al apartheid político, advierten expertos](#); Reporte Confidencial. August 24, 2016. [Denuncian despidos en Sidor contra trabajadores que firmaron a favor del revocatorio](#).

in an interview that anyone who “does not support the revolutionary government and works in an institution of the revolutionary government is a disgrace.”¹⁵⁸⁸ On May 11, during a march for the governing party, he stated that “anyone who wishes to continue receiving support for any mission must close ranks and unite with President Maduro,” and required that civil servants who provided a signature in favor of the recall leave the government.¹⁵⁸⁹ On May 13, the governor of the state of Nueva Esparta, Carlos Mata Figueroa, warned those who support the referendum that once the lists containing the signatures were made public, they should accept the consequences.¹⁵⁹⁰ On August 22, the mayor of the Libertador Municipality in the Capital District, Jorge Rodríguez, acting as the spokesperson for the PSUV, reported that the list of public officials in positions of trust who had signed the recall referendum request had been given to the heads of five ministries of the Executive and that the officials had been given 48 hours to find “another place of employment,” because, he said, cannot be people with charges directors or of confidence “in ministries, public institutions, governorships and mayor’s offices, [there cannot be] people who are against the revolution.”¹⁵⁹¹

1082. On October 25, the IACHR and the Office of the Special Rapporteur issued a statement condemning the closing of forums for political participation in Venezuela, which is evidenced by, among other actions, the dismissal of and threats against public employees who speak out in favor of the recall initiative.¹⁵⁹²

1083. On September 19, in response to a letter of request of information sent to the State, reported that there are various constitutional and legal instruments that protect public employees from arbitrary termination. As for media reports on the alleged dismissal of employees of the National Customs and Tax Administration Service [*Servicio Nacional Integrado Aduanero y Tributario*] (Seniat), the Agency reported that there is a special institutional regulation governing labor relations that establishes a category of employees that may be freely appointed and removed, and it would therefore be necessary to “review the status and the complaint for each alleged victim, either via an administrative or a judicial process, to determine the categorization of the relationship between Seniat and the employee; therefore if persons are included in the category of employees that may be freely appointed and removed, supervisors would be acting in accordance with the Law governing the Institution.”¹⁵⁹³

1084. At least nine journalists who work for media outlets based in Qatar, Colombia, France and the United States were not allowed to enter Venezuela to cover the protest organized by the opposition on September 1. According to known information, a team from the Qatari television station *Al Jazeera*, made up of John Holman, Ricardo López, Teresa Bo, Mariano Rosendi and Lagmi Chávez, as well as César Moreno, who was sent from the Colombian media outlet *Caracol Radio*; a correspondent for French newspaper *Le Monde*, Marie Delcas, as well as reporters John Otis y Jim Wyss, who work for U.S. media outlets *National Public Radio*

¹⁵⁸⁸ Diario Panaroma/You Tube. May 4, 2016. [Ricardo Molina: Es indigno no apoyar al gobierno y trabajar en una institución gubernamental](#) [0:28-0:34].

¹⁵⁸⁹ El Venezolano News. May 4, 2016. [Ricardo Molina llamó “indignos” a trabajadores públicos que no son chavistas](#); Noticiero Digital. May 11, 2016. Ricardo Molina: [El que firme que asuma su responsabilidad porque no son calamos más escuchados en el gobierno](#); Reporte 1. May 11, 2016. [Ministro Quevedo: Hemos dado una respuesta heroica ante la “Ley Estafa”](#).

¹⁵⁹⁰ Sumarium. May 13, 2016. [El supuesto audio de Mata Figueroa amenazando a firmantes del revocatorio](#); Runrun/EFE. May 13, 2016. [Gobernador Mata Figueroa: El que firmó que se atenga a las consecuencias](#); El Universal. May 14, 2016. [Mata Figueroa dice que publicarán lista de quienes firmaron contra Maduro](#).

¹⁵⁹¹ Diario 2001/You Tube. August 22, 2016. [Jorge Rodríguez da 48 horas para renunciar a funcionarios con cargo 99 que apoyen a la MUD](#) [1:04-2:06]; Efecto Cocuyo. August 22, 2016. [Jorge Rodríguez: Opositores tienen 48 horas para renunciar a altos cargos públicos](#) [1; Noticiero Venevisión/You Tube. August 23, 2016. [PSUV da plazo de 48 horas para definir “destino laboral” de directivos firmantes contra Maduro](#); El País. August 24, 2016. [Maduro purga a altos cargos que avalan el referéndum revocatorio](#).

¹⁵⁹² IACHR. October 25, 2016. [Press Release 154/16. IACHR and Office of the Special Rapporteur for Freedom of Expression Condemn Measures to Shut Down Spaces for Political Participation in Venezuela and Raise Alarm at their Impact on Democracy](#); IACHR. [Report No. 75/15 Case 12.923 Report On Merits](#). OEA/Ser.L/V/II.156 Doc. 21. October 28, 2015.

¹⁵⁹³ República Bolivariana de Venezuela. State Agency for Human Rights of the Bolivarian Government of Venezuela before the Inter-American and International System. September 19, 2016. Response to Communication CIDH/RELE/Art.18/09-2016/32. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

and *El Nuevo Herald*, were detained by Venezuelan authorities upon their arrival at the Caracas international airport and were then informed that their visit would not be allowed as they did not meet entry requirements for the country, in accordance with the Immigration and Foreign Nationals Law. The journalists reportedly complained that meeting these requirements is based on rules that are difficult to understand and that prevent in the practice to obtain an entry visa.¹⁵⁹⁴

1085. On September 7, several members of the regional leadership of the *Primero Justicia* party were allegedly assaulted after a march held in Ciudad Trujillo as part of the actions organized by the Venezuelan opposition to demand a recall against President Nicolás Maduro. According to the available information, protesters were allegedly assaulted by supporters of the governing party, who intercepted them and beat them with bats and stones. At least four party leaders sustained injuries that required medical attention.¹⁵⁹⁵

1086. The authorities also placed several obstacles and/or restrictions on the right of assembly and the right to protest by issuing administrative rules or through the use of jurisdictional measures, which, when implemented, eventually make it impossible to hold a public demonstration. The administrative and jurisdictional measures implemented throughout the year included restricting access to specific urban areas, police operations that materially blocked demonstrations, or requiring previous authorization from the authorities to hold a civic event.¹⁵⁹⁶

1087. The organization Human Rights Watch reported that it documented the cases of 21 arrestees between May and June in the Caracas area and in the states of Bolívar, Cojedes and Zulia. According to the organization, most of the arrests occurred after the arrestees had been involved in protests and political activities.¹⁵⁹⁷

1088. These events occurred in the context of the declaration of a state of emergency and a state of economic emergency in Venezuela, over which the IACHR has expressed its concern. In that regard, all necessary measures should be taken to guarantee the right to life, physical integrity and security, and the right to assemble and the freedom of expression of everyone under its jurisdiction. This includes the obligation of the authorities, particularly those in charge of law and order and interior security, to take active measures to protect people whose lives and integrity may be at risk due to acts of violence at the hands of other individuals, and to prevent the recurrence of situations that may lead to acts of violence.¹⁵⁹⁸

¹⁵⁹⁴ Committee to Protect Journalists (CPJ). August 31, 2016. [International journalists denied entry to Venezuela before September 1 protest](#); El Pitazo. August 29, 2016. [Retienen en Maiquetía a periodistas de Al Jazeera que cubrirían "Toma de Caracas"](#); Archy World News. September 1, 2016. [Venezuela expels journalists, including the correspondent of "World"](#); El Nuevo Herald. August 31, 2016. [Corresponsal del Miami Herald detenido y expulsado de Venezuela](#); NPR. August 31, 2016. [Ahead Of Major Protest, Venezuela Kicked Me \(And Other Journalists\) Out](#); Caracol Radio. August 31, 2016. [Gobierno venezolano impide entrada de periodista de Caracol Radio](#); Espacio Público. August 31, 2016. [Gobierno está obligado a respetar trabajo de la prensa nacional e internacional](#); Grupo Fórmula/Notimex. September 2, 2016. [Francia condena negativa venezolana a ingreso de periodista](#).

¹⁵⁹⁵ La Patilla. September 7, 2016. [Agredidos varios dirigentes de PJ-Trujillo por colectivos armados](#); Diario Contraste. September 7, 2016. [Colectivos atacaron con un bate a coordinador de PJ en Trujillo](#); NTN24. September 7, 2016. [Al menos 3 heridos tras enfrentamientos en advacencias del Consejo Nacional Electoral en Trujillo](#).

¹⁵⁹⁶ Manifiestar.org. June 14, 2016. [A cinco meses de la Declaratoria de Estado de Emergencia y a un mes del Estado de Excepción: Balance de la situación del derecho a la protesta pacífica en Venezuela](#); Manifiestar.org. August 3, 2016. [Gobernación de Mérida prohíbe el derecho a la protesta por "razones de seguridad"](#); Partido Socialista Unido de Venezuela (PSUV). July 22, 2016. [Palacio de Gobierno de Mérida decretado zona de resguardo](#); EFE. May 23, 2016. [El Supremo venezolano prohíbe marchas "no autorizadas" a sedes del Poder Electoral](#); Panorama. May 23, 2016. [Esta es la sentencia del TSJ que prohíbe las manifestaciones frente a sedes del CNE](#); La Vanguardia/EFE. May 18, 2016. [Fuerzas de seguridad bloquean marchas opositoras por revocatorio en Venezuela](#); La Prensa. September 1, 2016. [Maduro blindo Caracas y ordena detener alcaldes](#); Tal Cual. August 26, 2016. [Aponete: Oposición no entrará al municipio Libertador el 1 de septiembre](#); ABC. September 1, 2016. [Las fuerzas de seguridad bloquean Caracas para impedir la marcha](#); El Correo del Orinoco, September 1, 2016. [GNB impide paso en marcha en Puerto Ordaz](#).

¹⁵⁹⁷ Human Rights Watch (HRW). July 27, 2016. [Venezuela: Dissidents Allege Torture, Coerced Confessions](#); Human Rights Watch (HRW). YouTube. July 27, 2016. [Dissidents Arrested, Tortured in Venezuela](#); Foro Penal. No date. [Reporte sobre la represión del Estado Venezolano enero 2014 – mayo 2016](#) p. 1; El Mundo. March 12, 2016. [Presas de Maduro](#); La Patilla. September 29, 2016. [SEBIN detuvo a tuitero por supuesto terrorismo](#).

¹⁵⁹⁸ IACHR. June 9, 2016. [Press Release 73/16. IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela](#).

1089. The Office of the Special Rapporteur calls to mind that the State has a duty to ensure that journalists and media workers who are covering the news during public demonstrations are not detained, threatened, attacked, or have their rights restricted in any way as a result of exercising their profession. Their materials and equipment must not be destroyed or confiscated by government authorities. The protection of freedom of expression requires authorities to ensure the necessary conditions for journalists to be able to cover noteworthy events of interest to the public, such as those involving public protests.¹⁵⁹⁹

E. Stigmatizing Statements

1090. Throughout the year, the Office of the Special Rapporteur learned of multiple episodes that evince the existence of State practice that stigmatizes the media and journalists with editorial lines that do not match with government interests. This policy is implemented mainly through systematic statements that suggest the alleged existence of an attempted coup d'état, of which some media outlets are allegedly a part. Such statements have been denounced by several civil organizations as well as national and international associations of journalists as a strategy to restrict the right of freedom of expression in the country.¹⁶⁰⁰

1091. According to known information, on January 6, during a national broadcast, President Nicolás Maduro accused the owners of media outlets *Televen* and *Globovisión* of once again acting as they had in 2002, in reference to the coup d'état that temporarily unseated Hugo Chávez. During a national broadcast on January 6, Maduro said, in reference to both networks: "...now they're out of control... You see what Televen is like, right? what Globovisión is like... You see Globovisión and Televen and it's April 9, 2002. To the owners of Globovisión and Televen, you will be mistaken and there will be no regretting it later"¹⁶⁰¹ On January 30, he stated that the "private media" wages "a war" against him, although he only mentioned the main television networks by name.¹⁶⁰² On April 11, the President again referred to Globovisión, calling them "those crooks."¹⁶⁰³ The President's statements were made after he reported the existence of an alleged plan to conduct a "military intervention" on May 17 and 28, which he alleged was being plotted in Madrid with the goal of overthrowing him.¹⁶⁰⁴ On October 8, during a national broadcast, Nicolás Maduro ordered that the Minister of Oil [*ministro de Petróleo*], Eulogio del Pino, file a complaint against a newspaper "being run in Miami" for allegedly publishing false information about the state-owned company *Petróleos de Venezuela S.A.* (PDVSA). Although President Maduro did not mention the newspaper by name, the editor of *El Nuevo País*, Rafael Poleo, posted on Twitter that the President's message was intended for his newspaper and that his reaction was caused by a story, produced by the *Bloomberg Corporation*, entitled "Venezuela Is Pawning Pieces of Citgo Brand to Survive." The article explained how Maduro's Government is using the U.S. subsidiary as "a lifeline" to avoid the default of outstanding payments against other foreign companies."¹⁶⁰⁵

¹⁵⁹⁹ IACHR. June 9, 2016. [Press Release 73/16. IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela.](#)

¹⁶⁰⁰ Tal cual. March 16, 2016. [Cabello: Televen, Globovisión, y Venevisión están metidos en el golpe de Estado](#); emol.com/EFE. March 17, 2016. [Gobierno venezolano asegura que medios propician golpe de estado con ayuda extranjera](#); Misión Verdad. May 18, 2016. [La violenta campaña de medios corporativos contra Venezuela](#); El Mundo. June 1, 2016. [Maduro anuncia que emprenderá acciones judiciales por la "guerra psicológica" de medios españoles](#); Noticias24/You Tube. May 4, 2016. [Con el Mazo Dando, 04 de mayo de 2016.](#)

¹⁶⁰¹ La Patilla/You Tube. June 6, 2016. [Maduro a medios: Se van a equivocar señores de Globovisión y Televen y no hay arrepentimiento](#) [0:04-0:27]; El Nacional. January 6, 2016. [Maduro a los medios de comunicación: "Después no vale arrepentimiento"](#); La Patilla. January 7, 2016. [Vladimir Villegas responde a las amenazas de Maduro contra Globovisión](#) [Video].

¹⁶⁰² Globovisión. January 30, 2016. [Maduro a Globovisión, Venevisión y Televen: Sigán la guerra contra mí pero vamos a producir](#) [Video].

¹⁶⁰³ Globovisión. February 11, 2016. [Maduro arremete contra Globovisión](#) [Video].

¹⁶⁰⁴ 20 minutos/AP. May 17, 2016. [Maduro denuncia campaña para justificar intervención militar](#); ABC/EFE. May 28, 2016. [Maduro insiste en que desde Madrid se hace campaña para invadir Venezuela.](#)

¹⁶⁰⁵ EFE. October 8, 2016. [Maduro ordena demandar a periódico por difundir información falsa de PDVSA](#); Analítica. October 9, 2016. [Maduro ordenó demandar medios de comunicación que difundían información falsa de PDVSA](#); NTN24. October 9, 2016. [Maduro ordena demandar a diario venezolano El Nuevo País, por redifundir trabajo sobre crítica situación de Pdvsá](#); Siente América. October 9, 2016. [Bloomberg: Venezuela pretende empeñar a la icónica marca americana Citgo para sobrevivir.](#)

1092. On March 16, during the broadcast of his television show '*Con el mazo dando*' [*'Hammering Away*'], PSUV legislator and first deputy chair Diosdado Cabello stated that "the owners of media outlets *Telegen, Globovisión, Venevisión*, are involved in a coup d'état again... I say this responsibly... in 2002, we defeated you; now, we shall defeat you again. The only difference will be the treatment you will get. That will be the only difference."¹⁶⁰⁶ According with the public information on August 30, during a public demonstration in Caracas, the parliamentarian repeated these sentiments, saying, "...I'm telling you, weaklings, and among those weaklings I include media owners, we are going to win... but do not even think you will be treated the way you were treated in 2002. Do not deign to think that. Anyone who is actively involved in the coup d'état, whatever your name may be; whether or not you have money; whether or not you are a man of the cloth, you will go to jail and pay for the crimes you are committing. The people are no fools. The government is no fool."¹⁶⁰⁷

1093. The public accusations regarding the alleged plan to execute a "*coup d'état*" in Venezuela have also been leveled against the opposition leaders who are spearheading a recall referendum. Before and after the protest on September 1, which the opposition called the "taking of Caracas," various public figures insisted that "the right" seek, with the support of foreign governments, to overthrow the Government.¹⁶⁰⁸ During an event in state of Monagas on August 18, President Nicolás Maduro said to the public: "Did you see what happened in Turkey? Erdogan (Tayyip Erdogan, president of Turkey) shall be but a babe in arms compared to what the Bolivarian Revolution shall do if the right crosses the line towards a coup d'état again. And I'm not just saying that, I'm prepared to do it! And I couldn't care less what the OAS says, or what American imperialism says... Do it if you dare! Do it if you dare, for the working class and a united people are here!"¹⁶⁰⁹

1094. On August 31, PSUV leader Freddy Bernal was interviewed on the '*Vladimir a la 1*' television show and said that he found similarities between the preparations for the "taking of Caracas" march and the events of April 11, 2002, when former president Hugo Chávez was temporarily unseated by a coup d'état. Bernal said that although he could not prove his statements in court, they had "intelligence information (regarding) individuals who went to Colombia from Panama and then crossed the border into Venezuela. Some of them posed as journalists from the New York Times or the BBC and had allegedly been in Venezuela for approximately two weeks... in order to execute what they call selective removals." He also stated that the opposition was allegedly combining three strategies with the goal of, on September 1, "even the murder of President Nicolás himself, like what happened with President Salvador Allende."¹⁶¹⁰

1095. On April 5, Vice Admiral Edglis Herrera Balza, commander of the Overall Defense Operational Area [*Zona Operativa de Defensa Integral*] (ZODI) in the state of Falcón, publicly singled out journalist Gerardo Morón during a press conference at the Punto Fijo Naval Base. He accused him of manipulating the numbers for homicides in the state of Falcón and stated that publishing these figures was done with the political intention of spreading anxiety and unease among the people of Falcón.¹⁶¹¹

¹⁶⁰⁶ Noticias24/You Tube. March 16, 2016. [Con el Mazo Dando, miércoles 16 de marzo de 2016](#) [1:02:31].

¹⁶⁰⁷ Notitotal. August 30, 2016. [Las amenazas de Cabello a la oposición venezolana de cara al 1-S \(Video\)](#); El Nacional. August 30, 2016. [Cabello: Preferimos un millón de veces meter presos a los terroristas antes de tener una gota de sangre](#); La Voz. August 31, 2016. [Diosdado Cabello: "Atrévase a entrar en Caracas"](#).

¹⁶⁰⁸ PanamPost. August 29, 2016. [Gobierno de Venezuela: EE.UU. prepara golpe de Estado para 1° de septiembre](#); Resumen Latinoamericano. August 29, 2016. [Venezuela acusa a EEUU de preparar un golpe de Estado para jueves](#); Telesur. September 2, 2016. [Gobierno venezolano revela pruebas del golpe de Estado frustrado contra presidente Maduro](#); Granma. September 2, 2016. [Gobierno desarticuló golpe de Estado planificado por la derecha](#); Primicias24.com/AVN. September 14, 2016. [Maduro: La derecha ha cometido fraudes para organizar un golpe de Estado](#); elabrelata.com. September 6, 2016. [Freddy Bernal: Planes de golpe de Estado en Venezuela siguen vigentes](#); HispanTV. September 5, 2016. [Inteligencia venezolana revela intento de golpe para el miércoles](#).

¹⁶⁰⁹ CNN en español. August 19, 2016. [Maduro: "Si la derecha pasa la frontera del golpismo, Erdogan se va a quedar como niño de pecho"](#); Excelsior/Reuters. August 19, 2016. ["Erdogan quedará como niño de pecho": Maduro sobre oposición](#); Pordavinci. August 19, 2016. [¿A qué se refirió Nicolás Maduro con "Erdogan se va a quedar como un niño de pecho"?](#).

¹⁶¹⁰ Globovisión. August 31, 2016. [Freddy Bernal revela presunto plan de golpe de Estado en Venezuela](#) [Video].

¹⁶¹¹ Notifalcon. April 6, 2016. [Periodistas salen en defensa de Gerardo Morón ante señalamientos de Herrera Balza](#); Instituto Prensa y Sociedad Venezuela (IPYS). April 12, 2016. [Comandante de la ZODI acusó a periodista de manipular estadísticas de homicidios](#).

1096. A context of marked confrontation in which journalists are constantly insulted and stigmatized creates a climate that prevents the reasonable and plural deliberation of public issues. Tension between the press and the government is a normal phenomenon that arises from the natural function of the press and occurs in many States. However, sharp polarization shuts down opportunities for calm debate and helps neither the authorities nor the press to better fulfill their respective roles in a vigorous, deliberate, and open democracy. In such cases, given its national and international responsibilities, it is the State's job to help create a climate of greater tolerance and respect for the ideas of others, including when those ideas are offensive or disturbing.¹⁶¹²

1097. The Office of the Special Rapporteur recalls that public servants have the duty to ensure that their statements do not infringe upon the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, media outlets, and human rights defense organizations. They must be mindful of the context in which they express themselves in order to ensure that their statements do not constitute, in the words of the Court, "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts."¹⁶¹³

1098. Public servants, like all people, are entitled to the right to freedom of expression in its many forms. Nevertheless, in their case, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized in the Inter-American case law, particularly with respect to: the special duties they acquire by virtue of their status as state officials; (b) the duty of confidentiality that may apply to certain types of information held by the State; (c) the right and duty of public officials to denounce human rights violations; and (d) the particular situation of members of the Armed Forces.¹⁶¹⁴

1099. With regard to the impact of the statements of public servants on the rights of others, the Inter-American Court has held that, under certain circumstances—even if the official speech does not expressly authorize, instigate, order, instruct, or promote acts of violence against specific citizens—its reiteration and content can increase the "relative vulnerability" of those groups and the risks they face.¹⁶¹⁵

F. Subsequent Responsibility

1100. On March 11, the Sixth Criminal Trial Court of the state of Bolívar [*Tribunal Penal Sexto de Juicio del estado Bolívar*] issued a guilty verdict against the director of *Correo del Caroní*, David Natera Febres by a complaint filed in 2013 by the offences of defamation and insult. The director was sentenced to four years in prison and a fine of 1,037 tax units (approximately US\$20 thousand) was imposed. The court also barred him from leaving the country and ordered him to appear in court every 30 days until the sentence is finalized and can be served. The judge also ordered that the transfer and encumbrance of the newspaper's rights would be prohibited, and barred *Correo del Caroní* from continuing to report information about the plaintiff's corruption case related with the complainant¹⁶¹⁶ businessman Yamal Mustafá.¹⁶¹⁷

¹⁶¹² IACHR. [Annual Report 2014. 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. 13. March 9, 2015. Para. 65.

¹⁶¹³ I/A Court H. R. *Case Ríos et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 139.

¹⁶¹⁴ 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.

¹⁶¹⁵ 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. Series C No. 195. Para. 157.

¹⁶¹⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 14, 2016. [Press Release R34/16 Office of the Special Rapporteur Expresses Concern over Defamation Conviction in Venezuela](#); *Correo del Caroní*. March 11, 2016. [Tribunal condena a Correo del Caroní por investigar y publicar notas sobre la corrupción en Ferrominera](#); Instituto Prensa y Sociedad Venezuela (IPYS). March 11, 2016. [La censura tiene un aval judicial en la sentencia contra el Correo del Caroní](#); Espacio Público. March 11, 2016. [Espacio Público rechaza sentencia contra el Correo del Caroní por informar sobre corrupción](#); El País. March 11, 2016. [Condenado a cuatro años el director de un diario en Venezuela](#).

1101. On March 14, the Office of the Special Rapporteur issued a statement expressing its concern over this decision and recalled that Inter-American case law has repeatedly recognized that freedom of expression grants—to both the directors of media outlets and the journalists that work for them—the right to investigate and disseminate information in the public interest. The statement highlighted that in a democratic society, the press has the right to report freely on the government’s activities and matters of public interest, and the public has the correlative right to be informed of such matters and that based on the American Convention on Human Rights, the IACHR established more than a decade ago that using criminal law to penalize expressions about matters of public interest and public servants is disproportionate in a democratic society and therefore violates the right to freedom of expression.¹⁶¹⁸

1102. On August 12, the Court of Appeals of the Venezuelan Supreme Court of justice [*Corte de Apelaciones del Tribunal Supremo de Justicia*] (TSJ) upheld the nearly 14-year prison sentence imposed on opposition leader Leopoldo López, who was charged with the crimes of public incitement, criminal association, property damage and arson, in connection with the incidents that occurred in Caracas on February 12, 2014, after an anti-government protest that left over 40 people dead. A court issued the sentence in September, 2015, and three young men were sentenced along with López. The sentences of two of them, Ángel González and Christian Holdack, were also upheld, while the sentence of the third, Demián Martín, was reduced by a year. The latter three are serving their imposed sentences on probation. Only Leopoldo López remains in prison.¹⁶¹⁹ On October 5, during the broadcast of his program ‘*Con el Mazo Dando*’ deputy Diosdado Cabello stated that “Leopoldo López must remain in prison. Now he must pay for the 43 dead,” as the prosecutor on the case reportedly decided against including homicide among the charges filed, but now “the victims’ families have filed, or are about to file, a complaint before the court so that murderer is charged with homicide for the 43 deaths he caused.”¹⁶²⁰

1103. On September 3, journalist and director of the digital outlet *Reporte Confidencial* Braulio Jatar was arrested and later charged with money laundering. Jatar was arrested the day after President Nicolás Maduro’s visit to the municipality of Villa Rosa, on Margarita Island, during which a protest (cacerolazo) that reportedly had the President directly confronting several of the protesters was held. According to known information, as a result of the protest, approximately 30 people were arrested and later released. Videos documenting the protest were posted on Jatar’s website, and according to his family and friends, this was the real reason legal proceedings were initiated against him. They also reported several procedural irregularities, such as his being held incommunicado and transferred from prison twice with no notice given to his family and attorneys. As of the writing of this report the journalist, who is also a Chilean national, was still under arrest.¹⁶²¹ On December 22 the IACHR granted precautionary measures for the journalist.¹⁶²²

¹⁶¹⁷ Correo del Caroní. July 15, 2013. [“El Tiburón” que extorsionaba en la ciudad del hierro](#); Correo del Caroní. July 16, 2013. [Pioneros de FMO repudian saqueo de su empresa por la corrupción](#); Correo del Caroní. September 6, 2013. [Fiscalía solicita enjuiciamiento de empresario por el caso FMO](#); Correo del Caroní. March 18, 2016. [La investigación periodística detrás de la sentencia contra Correo del Caroní. 18 marzo de 2016.](#)

¹⁶¹⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 14, 2016. [Press Release R34/16 Office of the Special Rapporteur Expresses Concern over Defamation Conviction in Venezuela.](#)

¹⁶¹⁹ El Universo/AFP. August 12, 2016. [Venezuela: Justicia confirma la condena de casi 14 años contra el opositor Leopoldo López](#); HRN. August 12, 2016. [Justicia venezolana confirma condena de opositor Leopoldo López](#); El País. August 14, 2016. [Felipe González: “La condena a Leopoldo López confirma el sometimiento de la justicia al poder de Maduro”](#); Soy Chile/DPA. August 12, 2016. [Opositor venezolano Leopoldo López seguirá preso tras confirmarse su sentencia.](#)

¹⁶²⁰ Noticias 24/You Tube. October 5, 2016. [Con el Mazo Dando 05/10/16.](#) [2:40:17- 2:41:02]; El nacional Nacional. October 6, 2016. [Diosdado Cabello: Víctimas solicitarán que Leopoldo López sea acusado de homicidio](#); El País/EFE. October 6, 2016. [Leopoldo López será acusado de homicidio por los incidentes de 2014.](#)

¹⁶²¹ PanAm. September 5, 2016. [Nuevo preso político en Venezuela: imputan a periodista que divulgó video de Maduro](#); Reporte Confidencial. September 5, 2016. [La policía política de Venezuela confirma la detención del director de un diario digital](#); El Nuevo Herald/EFE. September 5, 2016. [Oposición venezolana: detención del periodista es ‘otro crimen del régimen’](#); Notimérica.com/EP. September 6, 2016. [El director de ‘Reporte Confidencial’ imputado en Venezuela por blanqueo](#); Notitotal. September 12, 2016. [Chile “exige” a Venezuela que informe lugar de detención de Braulio Jatar](#); Te interesa/Europa Press. September 25, 2016. [El director de Reporte Confidencial es trasladado a una prisión en Sucre](#); Reporte Confidencial. September 25, 2016. [Defensor del Pueblo confirma que Braulio](#)

1104. On September 19, the Primero Justicia (Justice First) Party reported the arrests of Marco Trejo, César Cuellar and James Mathison, who were allegedly arrested for creating a promotional video in which the party called on law enforcement not to suppress the demonstrations being held to request the calling of a recall referendum. According to known information, the video was first broadcast on Thursday, September 15. A fourth person involved in the production, Andrés Eloy Moreno Febres-Cordero, was reportedly arrested on the 22nd, when he voluntarily appeared to testify after agents from the Bolivarian National Intelligence Service [*Servicio Bolivariano de Inteligencia*] (SEBIN) went to his home with an alleged arrest warrant. According to information provided by Febres-Cordero's family, the charges filed against the makers of the video are: offense against the National Armed Forces [*fuerza armada nacional*], against military duties and honor, impersonating a public officer, improper use of military medals, emblems and ranks, and offenses against military administration. Another story, broadcast by the *Control Ciudadano* civil association, states that the alleged crime charged is inciting a rebellion, for which the Office of the Prosecutor is demanding a 15-year prison sentence. The criminal case against the arrestees would reportedly be heard in a military court, which has been condemned by various organizations as a violation of the arrestees' rights and of the principles of procedural law.¹⁶²³

1105. The Office of the Special Rapporteur has highlighted, in recent years and in various ways, the systematic use of criminal law to punish, repress and hinder any expression that is critical of the actions of state authorities or regarding issues of public interest. The Office of the Special Rapporteur, expresses its serious concern because, as of the writing of this report, the editor-in-chief of *El Nacional*, Miguel Henrique Otero, as well as the Director of the *La Patilla* website, Alberto Federico Ravell, are out of the country due to the fact that they run the risk of being arrested and imprisoned should they come back to Venezuela, as there open judicial proceedings against them.¹⁶²⁴

1106. Principle 10 of the IACHR Declaration of Principles on Freedom of Expression establishes that "[t]he protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

G. Legal Reforms

1107. On September 29, the National Assembly sanctioned the partial reform of the Telecommunications Law, which was put forth the previous February by the Primero Justicia party caucus.

[Jatar fue trasladado al internado de Sucre](#); Cuatro Vientos. September 12, 2016. [Tensión entre Chile y Venezuela por la detención de un periodista](#); NTN24/AFP. September 21, 2016. [Familiares retoman contacto con el abogado Braulio Jatar detenido en Venezuela](#).

¹⁶²² IACHR. Resolución 67/2016. Medida cautelar No. 750-16. Asunto Braulio Jatar respecto de Venezuela. December 22, 2016.

¹⁶²³ Primero Justicia. September 19, 2016. [Pronunciamiento de Primero Justicia por la detención de tres profesionales de la comunicación](#); El Estímulo. September 19, 2016. [PJ denuncia detención de tres audiovisualistas por hacer videos para el partido](#); Periodistadigital.com. September 16, 2016. [El video que atraviesa como una bala el corazón de los duros militares chavistas](#); Control Ciudadano. September 20, 2016. [Detienen a productores de micro audiovisual dirigido a militares](#); Provea. September 21, 2016. [El gobierno insiste en persecución política y en justicia militar contra civiles detenidos](#); 800 noticias. September 24, 2016. [Denuncian la detención arbitraria de Andrés Moreno Febres-Cordero](#); FactorMM/El Nacional. September 27, 2016. [Andrés Moreno Febres-Cordero permanece aislado en el SEBIN](#); Global Voices. October 5, 2016. [Gobierno venezolano encarcela a productores de video por cargos de "incitación a la rebelión"](#).

¹⁶²⁴ Globovisión. June 14, 2016. [Miguel Henrique Otero: "Si regreso a Venezuela me encarcelan"](#); La Nación, April 28, 2016. [Miguel Henrique Otero: "Estamos en el momento previo a que las cosas estallen"](#); Noticias Barquisimeto. May 14, 2015. [Alberto Federico Ravell no confirmó si viene a Venezuela a enfrentar juicio por difamación](#); La Jornada May 15, 2015. [Directivos de medios volverán a Venezuela a enfrentar juicio](#); El Nuevo Herald. October 7, 2015. [Tribunal venezolano ordena buscar directivos de medios demandados por Cabello](#); La Patilla. October 8, 2015. [Comisión del Cicpc acudió a LaPatilla en busca de Alberto Federico Ravell](#).

The first draft of the bill was approved in April, and the second draft on September 20. The reform includes rules geared towards eliminating the uncertainty currently faced by numerous radio and television stations with expired concessions that, despite having taken the required actions, have not received a decision from the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel). The approved plan, by contrast, proposes a restructuring of the organization and the functioning of the Conatel, turning it into an organization operated by a governing body made up of five members, who would be appointed by the President but would require the confirmation of the National Assembly. The law also sets forth new rules for broadcasting speeches and official messages from the authorities and specifically bans the use of these forums “for the purposes of partisan politics, proselytizing and propaganda,” and exempts the government from free publicity.¹⁶²⁵

1108. In spite of the positive changes this reform brings to telecommunications laws, a source of concern for the Office of the Special Rapporteur is that in the area of concessions for operating community radio and television stations that provide a public service, no rules are included to guarantee communities the right to equal access to the radio spectrum. Furthermore, as regards power and geographic coverage, the reform appears to suggest that these types of concessions would have a limited range. If this were the case, it would violate the right of communities and towns to have media outlets that serve their specific interests effectively. Even when, according to available information, there is a large number of stations that operate irregularly, the formula set forth by the legislative reform to standardize the use of the radio spectrum would not seem to take into consideration the need for a transition period during which, in addition to identifying signals that operate irregularly, feasibility would be assessed regarding the standardization of signals that, based on current laws, play an important social role for communities. In this regard, the reform has been rejected by various social organizations and called “privatization.”¹⁶²⁶

1109. On November 4, the Constitutional Chamber of the Venezuelan Supreme Court of Justice [*Sala Constitucional del Tribunal Supremo de Justicia de Venezuela*] unofficially declared “null and void the legislative measure that sanctioned the Law of Partial Reform of the Telecommunications Law [*Ley de Reforma Parcial de la Ley de Telecomunicaciones*] and its contents, as it was issued in clear contempt of legal decisions issued by this, the Highest Court of the Republic [*Máximo Tribunal de la República*].”¹⁶²⁷ The decision of the Supreme Court of Justice is based, *inter alia*, on a decision issued by the Court on September 2, in which it declared that “all acts emanating from the National Assembly, including laws that are approved, are completely null and void of any validity and legal effect.” This decision, in turn, was issued on the basis that on December 30, 2015, the Electoral Court of the Supreme Court of Justice [*Sala Electoral del Tribunal Supremo de Justicia*] declared the suspension of office of three opposition legislators from the state of Amazonas, in spite of which the parliamentary majority decided to accept their oaths and allow them to take office.¹⁶²⁸

1110. On October 20, the National Assembly approved the first draft of the bill for Partial Reform of the Law on Social Responsibility in Radio, Television and Electronic Media [*Reforma Parcial de la Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos*] (known as the “Resorte Law”), put forward by the parties that make up the Democratic Unity Roundtable [*Mesa de la Unidad Democrática*] (MUD). The

¹⁶²⁵ Asamblea Nacional. No date. [Reforma Parcial de la Ley Orgánica de Telecomunicaciones](#); El Universal. February 24, 2016. [Presentan propuesta de reforma de la Ley de Telecomunicaciones a la AN](#); La Prensa. March 2, 2016. [Venezuela: Parlamento discute reforma a ley de medios del chavismo](#); Diario de Cuba/Agencias. September 21, 2016. [La Asamblea Nacional de Venezuela aprueba una ley de telecomunicaciones](#); Noticia al día. September 29, 2016. [Sanccionada Ley de Reforma Parcial de la Ley Orgánica de Telecomunicaciones](#).

¹⁶²⁶ Voz Proletaria. October 2016. [Reforma a la Ley de Telecomunicaciones es privatizadora](#); Correo del Orinoco. October 6, 2016. [Reforma a la Ley de Telecomunicaciones abre las puertas a la privatización del sector](#); Venezolana de Televisión (VTV). October 18, 2016. [Comunicadores populares rechazan reforma a Ley de Telecomunicaciones](#).

¹⁶²⁷ TSJ/Sala Constitucional. November 4, 2016. [Sentencia recaída al expediente N° 16-1027](#); NTN24. November 11, 2016. [En pleno diálogo el TSJ anula dos leyes a la Asamblea Nacional: Reforma a la Ley de Contraloría y a la Ley de Telecomunicaciones](#); Observacom. November 22, 2016. [Tribunal Supremo anuló reformas de la Ley de Telecomunicaciones](#).

¹⁶²⁸ RT.com. October 10, 2016. [Venezuela: "La reforma a la ley de telecomunicaciones carece de validez"](#); Noticias 24. October 4, 2016. [Estado mayor de Comunicación rechaza reforma a la Ley de Telecomunicaciones](#); El Tiempo/AP. September 5, 2016. [Tribunal Supremo de Justicia declara nulos actos de la AN](#).

bill, which involves broad reform, especially in the structure of the law, *provides* for, among other things, the creation of a single administrative regulatory authority for audiovisual services called the Superior Council for the Social Responsibility of Audiovisual Communications [*Consejo Superior de Responsabilidad Social de los Servicios de Comunicaciones Audiovisuales*], modifications to penalties and the procedures for imposing them while including constitutional rights, and also promotes the self-regulation of service providers through the creation of a user protection office [*Defensor del Usuario*].¹⁶²⁹

1111. Along with the important advances set forth in the proposal for legislative reform, the Office of the Special Rapporteur is concerned that in the case of public service community radio and television service providers, restrictive rules may be implemented, such as the requirement that 100 per cent of the advertisements broadcast by these providers be produced domestically, or prohibiting that advertisements from the original broadcast be used during a simultaneous rebroadcast. The express prohibition against broadcasting messages “meant to persuade users to become adherents or followers of... philosophical, moral, or social ideas” is also a reason for concern, as is prohibiting those who provide this service from performing co-productions for a single municipality, and that these exclusively refer to the “the broadcasting of sports or cultural events,” or that their objective is to create programs “for children, ethnic or disabled audiences.”¹⁶³⁰

H. Prior Censorship, Direct and Indirect Censorship

1112. During the parliamentary elections held on December 6, 2015, the Venezuelan government established special entry requirements for journalists from foreign media outlets. These requirements allegedly aimed to restrict election coverage, as reported by national and international civil organizations. The measures allegedly included the required signing of a “commitment letter” drafted by the ministry of the People’s Power for Communication and Information (MINCI). Upon signing, journalists committed to abide by current Venezuelan laws and “not to manipulate images, audio or text in order to change the meaning, source or ideas,” as well as to “broadcast accurate, timely information to users [...] and to always respect the democratic and peace process.”¹⁶³¹ Special requirements were reportedly also imposed on the equipment brought in by television media outlets. Television representatives were required to present a temporary declaration and an entry permit that those in charge of paperwork at Venezuelan diplomatic posts in their countries of origin were not made aware of before their trip.¹⁶³²

1113. On March 10, National Assembly deputy Winston Flores reported the alleged existence of an internal memo, issued by the Head of Production for the *Unión Radio* radio group. According to the memo, “as per instructions from the Office of the Vice President of the Republic, conducting and broadcasting interviews of family members of the miners who disappeared in the Tumeremo massacre in the state of Bolívar was prohibited “until further notice.”¹⁶³³

¹⁶²⁹ Asamblea Nacional. No date. [Ley de Reforma Parcial de la Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos](#); El Universal. October 20, 2016. [AN aprueba en primera discusión Ley de Reforma Parcial de la Ley Resorte](#); Panorama. October 10, 2016. [Aprobada en primera discusión Reforma Parcial de Ley de Responsabilidad Social en Radio y TV](#).

¹⁶³⁰ Asamblea Nacional. No date. [Ley de Reforma Parcial de la Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos](#) (arts. 38 - 39).

¹⁶³¹ Reporters Without Borders (RSF). December 4, 2015. [Foreign reporters forced to sign good conduct pledge before election](#); Sindicato Nacional de Trabajadores de la Prensa (SNTP)/Facebook. December 3, 2015. [SNTP denuncia censura en contra de la prensa internacional y pide mediación de la Unasur](#); Prnoticias. December 4, 2016. [Periodistas extranjeros que cubren elecciones en Venezuela obligados a firmar ‘carta de buena conducta’](#); El Pitazo. December 1, 2015. [Corresponsales extranjeros denuncian restricciones del Minci en la cobertura electoral](#).

¹⁶³² Efecto cocuyo. December 3, 2015. [SNTP denuncia acciones de censura en contra de medios internacionales](#); Knight Center for Journalism in the Americas. December 4, 2015. [Venezuelan Elections: journalists face challenges such as censorship and lack of access to information](#).

¹⁶³³ “Queda demostrado que este régimen le hace culto a la mentira y a toda costa evita la libertad de expresión GRAVE”. Twitter account of Winston Flores @wfloresVente. [March 10, 2016](#); Mundo24. March 11, 2016. [¿A qué le temen? Aristóbulo prohíbe entrevistar a familiares de las víctimas de Tumeremo](#).

1114. On April 12, the National Press Workers' Union reported the dismissal of journalist Ahiana Figueroa, who had worked for the *Grupo Últimas Noticias (GUN)* (Breaking News Group) for the previous six years. According to the memo released by the organization, her dismissal was a result of her participation in the investigation known as the "Panama Papers", a leak of more than 11.5 million internal documents from the Panamanian law firm Mossack Fonseca. More than 370 journalists from 76 different countries have worked on and supported the investigation,¹⁶³⁴ about which Figueroa published an article entitled "Gonzalo Tirado: a Plan to Hide the Money He Earned as a Banker," in which she sets forth in detail the former banker's alleged involvement in irregular financial activities.¹⁶³⁵

1115. On May 12, the Board of Directors of the International Broadcasting Association [*Consejo Directivo de la Asociación Internacional de Radiodifusión*] issued a resolution in which it expressed concern over the climate of "constant threats and verbal, physical and moral assault, and countless proceedings of all types (administrative, civil, criminal and judicial) against journalists, editors and media outlets" which, in its view, are evidence of a "systematic pattern of direct and indirect violations of freedom of expression." Specifically, it demanded that the Venezuelan government "stop the closing of independent media outlets," allow all print media to access newsprint, and abide by the ruling of Inter-American Court of Human Rights, dated June 22, in which the State was ordered to renew the concession for the radio spectrum used by *Radio Caracas Televisión*, as well as to pay compensation to the victims.¹⁶³⁶

1116. On June 8, the Constitutional Chamber of the Supreme Court of Justice [*Sala Constitucional del Tribunal Supremo de Justicia*] banned Venezuelan media outlets, specifically the websites *La Patilla* and *Caraota Digital*, [...] the broadcasting of videos that contained images of private individuals lynching alleged criminals, stating that "the repeated broadcast of lynching videos could aggrandize these events, which go against the very essence of social coexistence through State institutions, promoting anomie, a disregard for the law and human rights, as it conceives of citizens' taking justice into their own hands, with no regard for the victim's innocence or guilt or for the right to due process, life, and physical integrity, as lawful." This was the Court's justification for issuing a preventive measure with a view to promoting a democratic balance, peace, the pre-eminence of human rights and the rule of law.¹⁶³⁷ One of the videos that the Supreme Court ordered be removed from the websites contains images that show the lynching of an individual who was previously arrested by officers of the Bolivarian National Guard [*Guardia Nacional Bolivariana*], who tolerate the assault. This is the reason the video was published.¹⁶³⁸

1117. The United Nations Special Rapporteur on the right to freedom of opinion and expression, David Kaye, and the Office of the Special Rapporteur issued a joint press release on August 4, in which they expressed concern regarding court decisions that limit the ability of the media to work independently. They stated that the decision issued by the Venezuelan Supreme Court in this case "establishes a disproportional and unreasonable restriction, contradicting Inter-American and global standards for the right to freedom of expression," as "the exercise of the right to freedom of expression cannot be subject to prior censorship."¹⁶³⁹

¹⁶³⁴ El confidencial. April 4, 2016. [¿Qué son los 'Panama Papers'? ¿Qué es una sociedad 'offshore'? Todo lo que debes saber](#); CNN en Español. April 4, 2016. [Las 7 cosas que debes saber sobre Los papeles de Panamá](#).

¹⁶³⁵ Sindicato Nacional de Trabajadores de la Prensa (SNTP)/ Facebook. April 12, 2016. [Periodista venezolana es despedida de Últimas Noticias por participar en investigación de los Papeles de Panamá](#); Correo. April 13, 2016. [Panamá Papers: despiden a periodista ecuatoriana por participar en investigación](#); El Nacional. April 12, 2016. [Periodista del Panama Papers despedida de UN detalló las injusticias de una directiva "oficialista"](#); Univisión. April 13, 2016. [Diario venezolano despide a periodista que investigó los "Papeles de Panamá"](#); Panamapapersvenezuela.com. April 8, 2016. [Gonzalo Tirado: un plan para esconder el dinero que captó como banquero](#).

¹⁶³⁶ Asociación Internacional de Radiodifusión (AIR). May 12, 2016. [Resolución del Consejo Directivo de la Asociación Internacional de Radiodifusión/ Venezuela](#).

¹⁶³⁷ CNN. June 9, 2016. [TSJ condena linchamientos por contrariar la convivencia social, la condición humana y el Estado de Derecho](#); La Patilla. June 8, 2016. [TSJ prohíbe a LaPatilla, a Caraota Digital y a todos los medios de comunicación publicar videos de linchamientos](#).

¹⁶³⁸ La Patilla. June 8, 2016. [TSJ prohíbe a LaPatilla, a Caraota Digital y a todos los medios de comunicación publicar videos de linchamientos](#); Informe21. June 8, 2016. [TSJ prohíbe a medios de comunicación publicar videos de linchamientos](#); CNN en español. June 9, 2016. [Tribunal Supremo de Justicia de Venezuela prohíbe a medios publicar videos de linchamientos](#).

¹⁶³⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2016. [Joint Press Release R110/16 Venezuela / Crisis: UN and Inter-American experts raise alarm at deterioration of media freedom](#).

1118. On June 28, the Third Civil, Commercial, and Banking Court of First Instance [*Juzgado Tercero de Primera Instancia en lo Civil, Mercantil y Bancario*] in the jurisdiction of the state of Carabobo reportedly ordered preventive measures for the former Minister of Food, Major General of the Venezuelan Army Carlos Osorio Zambrano, which consisted of ordering that legislators Ismael García and Carlos Berrizbetia, as well as political leader Carlos Tablante, refrain from publishing, making statements or spread articles in the press that are defamatory or injuring specifically via the website *Cuentas Claras Digital*, a site that specializes in information on organized crime and is run by the latter individual charged by military command.¹⁶⁴⁰

1119. On August 23, the National Association of Journalists [*Colegio Nacional de Periodistas*] reported the decision of the Second Court of First Instance of the Civil, Commercial and Transit Circuit in the state of Barinas [*Tribunal Segundo de Primera Instancia del Circuito Judicial Civil, Mercantil y Tránsito del estado Barinas*] to prohibit newspapers *Diario de Los Llanos*, *La Prensa* and *La Noticia* from publishing “information about or statements from politicians, leaders, and ordinary citizens that claim that Governor (Adán) Chávez has committed offenses, if these have not been brought before a judicial entity.” According to known information, the judicial proceedings initiated against the state leader stemmed from articles published in these three media outlets, regarding an investigation initiated by the National Assembly Oversight Committee [*Comisión de Contraloría de la Asamblea Nacional*] for alleged irregularities in the execution of works in the area under his governance.¹⁶⁴¹

I. Newsprint Shortage

1120. Due to the existence of a State monopoly for the acquisition of currency and importing newsprint, represented by the Alfredo Maneiro Publishing Complex [*Complejo Editorial Alfredo Maneiro*], print media outlets, particularly those with an editorial line that is not aligned with the interests of the Government of the Republic, have experienced increasing difficulty in keeping up circulation, and several have been forced to suspend circulation completely. According to information received, even the National Assembly Standing Committee on the People’s Power and the Media [*Comisión Permanente del Poder Popular y Medios de Comunicación de la Asamblea Nacional*] has attempted to influence the reshaping of policies under which the Publishing Complex [*Complejo Editorial*] operates, but the General Director of the complex has refused to comply with the request issued by the Committee for his appearance.¹⁶⁴²

1121. On January 27, the 86 journalists that make up the Chamber of Regional Newspapers [*Cámara de Periódicos Regionales*] declared a state of emergency after the Alfredo Maneiro Corporation informed directors that there were no longer any printing plates or newsprint needed for printing. The president of the Chamber, Joselin Ramírez, reported that the state-owned agency’s inputs reduced the amount of newsprint allocated by 40 per cent, meaning that all daily newspapers had to make adjustments to format and pagination to guarantee circulation.¹⁶⁴³

¹⁶⁴⁰ Cuentas claras digital. No date. [Expediente No.23923: Nos prohíben hablar del General Carlos Osorio, ex ministro de alimentación](#); Notitotal. June 30, 2016. [TSJ prohíbe a medios y políticos hablar sobre Carlos Osorio](#); Tal Cual. June 30, 2016. [Tribunal prohíbe a diputados publicar información sobre Carlos Osorio](#); Primicias24.com. August 23, 2016. [Ismael García: Denuncia de Carlos Osorio es una patraña judicial](#); La Patilla. June 14, 2016. [Carlos Tablante: El cinismo del general Osorio](#).

¹⁶⁴¹ Colegio Nacional de Periodistas (CNP). August 23, 2016. [Periódicos de Barinas no podrán publicar notas contra Adán Chávez](#); El Universal. August 23, 2016. [Prohíben a periódicos barineses denunciar al gobernador Adán Chávez](#); Infobae. August 26, 2016. [Venezuela: prohibieron difundir denuncias de corrupción contra el hermano de Hugo Chávez](#).

¹⁶⁴² Asamblea Nacional. Standing Committee on the People’s Power and the Media. April 19, 2016. Communication on the situation of print media in Venezuela. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights; Inter American Press Association (IAPA). April 3, 2016. [Midyear Meeting. Venezuela Report](#).

¹⁶⁴³ 2001. January 28, 2016. [86 periódicos del país se declaran en emergencia](#); Globovisión/La Nación. January 28, 2016. [Se declaran en emergencia 86 periódicos del país](#); El informador. January 28, 2016. [En emergencia 86 periódicos venezolanos](#); Knight Center for Journalism in the Americas. January 31, 2016. [Venezuelan newspapers declared to be in emergency due to newsprint shortage](#).

1122. Early in the year, the newspaper *La Nación de San Cristóbal*, in the state of Táchira, reduced its circulation to a single edition due to the paper shortage media outlets have experienced since 2013. Initially, the newspaper had reduced publication from four editions to two, and after this directive it stated that it would apply this measure “as many times as necessary” to maintain circulation and keep its readers informed.¹⁶⁴⁴

1123. The *La Mañana* daily newspaper in the state of Falcón announced on February 29 that it would have to close temporarily due to a lack of paper.¹⁶⁴⁵

1124. On March 9, the newspaper *Panorama*, in the state of Zulia, stated that “due to the difficult current economic situation in the country, as of this date, the publishing company is forced to close its offices in Ciudad Ojeda and Cabimas, in Costa Oriental del Lago.” It said in a statement that “sharp inflation, a shortage of supplies and difficulty in accessing currency to guarantee a supply of newsprint, ink, replacement parts and other materials that are vital to media operations have forced this closing after more than five decades of uninterrupted activity.”¹⁶⁴⁶

1125. The Carabobeño newspaper ceased printed circulation on March 17, after a search for newsprint needed for circulation. 82 years after its founding, the newspaper bade its readers farewell on a completely black front page, condemning what it called a “huge blow to freedom.” The publisher stated that the newspaper “will no longer be found in households in printed form, unless there is a change in leadership in Venezuela.”¹⁶⁴⁷

1126. On March 31, *Expresión Libre*, the National Association of Journalists (CNP-DF), the National Press Workers’ Union [*Sindicato Nacional de Trabajadores de la Prensa*] (SNTP), civil society representatives from the state of Carabobo and *Espacio Público* filed a complaint before the Constitutional Chamber of the Supreme Court of Justice [*Sala Constitucional del Tribunal Supremo de Justicia*] against Hugo Cabezas, in his capacity as president of the Alfredo Maneiro Publishing Complex, for the discriminatory allocation of newsprint, which led *El Carabobeño* to shut down its printed edition.¹⁶⁴⁸

1127. On March 30 in Caracas, journalists, photographers, and camera operators, along with labor leaders from the National Association of Journalists (CNP-DF), the National Press Workers’ Union (SNTP), the Venezuelan Circle of Graphic Reporters of Venezuela [*Círculo de Reporteros Gráficos de Venezuela*] (CRGV), and the organizations *Expresión Libre* and *Espacio Público* protested “the critical situation the printed media in Venezuela face due to a lack of newsprint.”¹⁶⁴⁹

1128. On March 30, the president of the newspaper *El Impulso*, Carlos Carmona, stated that the newspaper had three weeks’ worth of newsprint left and that it was currently “in the midst of the uncertainty sustained thus far by the Maneiro Corporation regarding the supply of newsprint and raw materials for the

¹⁶⁴⁴ El Nacional. December 22, 2015. [Diario La Nación circulará a un solo cuerpo por falta de papel](#); La Opinión. December 22, 2015. [Diario La Nación reduce su edición impresa temporalmente](#).

¹⁶⁴⁵ Espacio Público. March 11, 2016. [Diario La Mañana de Coro cierra por falta de papel](#); El Pitazo. February 29, 2016. [Diario La Mañana se encuentra en peligro de cierre por falta de papel \(video\)](#); La Mañana. March 11, 2016. [Sin Papel No hay Periódico](#).

¹⁶⁴⁶ Panorama. March 3, 2016. [PANORAMA cierra sus agencias en Cabimas y Ciudad Ojeda](#); El Universal. March 9, 2016. [Diario Panorama cerró corresponsalías en la Costa Oriental del Lago](#).

¹⁶⁴⁷ Noticia al día. March 17, 2016. [Esta es la última portada del diario El Carabobeño](#); El Nacional. March 18, 2016. [Con esta portada se despidió El Carabobeño](#); Informe21.com. March 17, 2016. [“Zarpazo a la libertad”: La última edición impresa de El Carabobeño](#).

¹⁶⁴⁸ Espacio Público. March 31, 2016. [Sociedad civil demanda a Hugo Cabezas por caso El Carabobeño](#).

¹⁶⁴⁹ El Universal. March 30, 2016. [Periodistas manifestaron por un periodismo sin censura](#); El Nacional. March 30, 2016. [Comunicadores protestan por un “periodismo sin censura”](#).

printed media,” a situation that put the jobs of 270 newspaper workers at risk.¹⁶⁵⁰ On September 9, he confirmed that circulation would cease on the 12th due to a lack of newsprint.¹⁶⁵¹

1129. Article 13.3 of the American Convention on Human Rights establishes that “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

J. Access to Public Information

1130. On April 5, the National Assembly approved the first draft of the bill on Transparency, Disclosure and Access to Public Information [*Proyecto de Ley Orgánica de Transparencia, Divulgación y Acceso a la Información Pública*], which aims to guarantee the exercise of the right to access public information that is enshrined in the Constitution of the Bolivarian Republic of Venezuela [*Constitución de la República Bolivariana de Venezuela*]. The bill, introduced by the parties that make up the Democratic Unity Roundtable [*Mesa de la Unidad Democrática*] was drafted fundamentally in accordance with the State of Venezuela’s international obligations and Inter-American standards in that regard. It includes, among its guiding principles, the principle of maximum disclosure and establishes a limited number of exceptions to that right. It considers all public entities, political parties and state-owned enterprises to be bound by the law, provides for the creation of a Transparency Council [*Consejo de la Transparencia*] to guarantee this right, and suggests the repeal of current laws that contradict the State’s international obligations.¹⁶⁵² On June 20, the Office of the Special Rapporteur sent the National Assembly a technical note comprised of eight recommendations that, should they be included in the language, would improve its adherence to Inter-American standards on the subject.¹⁶⁵³

1131. The Political and Administrative Chamber [*Sala Político-Administrativa*] of the Supreme Court of Justice (TSJ) ruled that a complaint filed by the organization *Espacio Público* against the minister of the People’s Power for Penitentiary Services [*ministra del Poder Popular para los Servicios Penitenciarios*], Iris Varela, was inadmissible. With the complaint, the organization aimed to assert its right to access public information, a right that Varela was allegedly blocking by refusing to respond to a request sent to her office on January 26, 2015 and confirmed on March 25 of that year. In the request, *Espacio Público* required statistics on the number of deaths and the health of inmates in the correctional facilities managed by the Ministry. In a decision issued on February 10, the Court reaffirmed the approach taken by the Constitutional Chamber [*Sala Constitucional*] of the Venezuelan Supreme Court in June of 2010, according to which, “even when the language of the Constitution recognizes a citizen’s right to information, it places external limits on the exercise of that right, with the understanding that no rights are absolute.” In article 143, the Constitution itself establishes that the specific rules for the exercise of that right must be set forth in the law that regulates the subject. In the opinion of the Supreme Court, “in the absence of a specific law, and in order to safeguard the limits on the exercise of the fundamental right to information, the following is necessary: i) the person requesting information must specifically state the reasons or purposes for which the information is required;

¹⁶⁵⁰ El Impulso. March 30, 2016. [#ELIMPULSO podría dejar de circular en tres semanas](#); Diario La Voz. March 30, 2016. [Diario El Impulso podría dejar de circular por falta de papel](#).

¹⁶⁵¹ El Universal. September 9, 2016. [Diario El Impulso interrumpe desde el lunes su circulación](#); La Tribuna. September 11, 2016. [Diario más antiguo de Venezuela anuncia cierre](#); El Tiempo. September 11, 2016. [El diario más antiguo de Venezuela anuncia que saldrá de circulación](#).

¹⁶⁵² Asamblea Nacional. No date. [Proyecto de Ley Orgánica de Transparencia, Divulgación y Acceso a la Información Pública](#).

¹⁶⁵³ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 20, 2016. IACHR: Technical note from the Office of the Special Rapporteur for Freedom of Expression on the Transparency Bill. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

and ii) the magnitude of the information requested must be proportional to how the requested information will be used.”¹⁶⁵⁴

1132. By virtue of the precedent established in the preceding paragraph, the Political and Administrative Chamber found the complaint inadmissible, as in its opinion, although the requesting organization established that it was requesting the information for the purpose of “social oversight” and that the information would be used for the writing of reports “regarding the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,” the request did not comply with the latter requirement, that “the magnitude of the information requested must be proportional to how the requested information will be used.”¹⁶⁵⁵

1133. Principle 4 of the IACHR’s Declaration of Principles states that, “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

1134. The Model Inter-American Law on Access to Information, adopted by the OAS General Assembly, establishes that the right to access to information includes the right “to make an anonymous request for information” and to “make a request without providing justifications for why the information is requested.” the Law also establishes that everyone tasked with interpreting this Law, or any other legislation or regulatory instrument that may affect the right to information, must adopt any reasonable interpretation of the provision that best gives effect to the right to information.¹⁶⁵⁶

K. Internet and Freedom of Expression

1135. In May, the organization *Instituto Prensa y Sociedad* (IPYS Venezuela) reported the results of a study entitled, “Surfing Freely: an Outlook for the Internet in Venezuela.” According to this study, which was conducted between November 25, 2015 and February 14, 2016, 43 websites were found to be systematically blocked by one or more of the country’s main internet service providers. Nearly 19 per cent of the blocked websites were media sites, most notably the Colombia-based news site NTN24, which was reportedly blocked by all internet service providers. According to Ipys Venezuela’s analysis, “the criteria for blocking websites appear to match politics of a specific nature in Venezuela,” as in addition to the systematic blocking of websites that contain content that is prohibited by article 27 of the Law on Social Responsibility in Radio, Television and Electronic Media [*Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos*] (known as the Resorte Law [*Ley Resorte*]), such as websites that post information about the parallel dollar market, the next two largest categories blocked are media websites and blogs critical of *chavismo*. The study also found there was a decrease in bandwidth during times when opposition groups held public protests.¹⁶⁵⁷

1136. The State has informed that the number of Internet users in Venezuela has increased from 300 thousand in 1998 to 17 million users by 2016, covering 65 per cent of Venezuelans. A significant number of these people access through low cost or free-access landlines. It stated that Venezuela has created 5 thousand points of wireless (WIFI) free access internet and more than a thousand landline centers.¹⁶⁵⁸

¹⁶⁵⁴ Instituto Prensa y Sociedad (Ipys). August 18, 2015. [Espacio Público demandó a ministra Iris Varela por negar cifras de muertes en centros penitenciarios](#); Espacio Público. March 7, 2016. [TSJ declara inadmisibile demanda contra Iris Varela](#); República Bolivariana de Venezuela. Tribunal Supremo de Justicia. [Magistrada ponente: María Carolina Ameliach Villarroel. Exp. N° 2015-0877](#). February 10, 2016.

¹⁶⁵⁵ República Bolivariana de Venezuela. Tribunal Supremo de Justicia. [Magistrada ponente: María Carolina Ameliach Villarroel. Exp. N° 2015-0877](#). February 10, 2016.

¹⁶⁵⁶ IACHR. [Ley Modelo Interamericana sobre el Derecho de Acceso a la Información Pública](#). OEA/Ser.G CP/CAJP-2840/10 Corr.1. April 29, 2010.

¹⁶⁵⁷ Instituto Prensa y Sociedad (Ipys). No date. *Navegar con Libertad. Perspectivas de la red en Venezuela*. Available at: <http://ipysvenezuela.org/navegarconlibertad/>

¹⁶⁵⁸ IACHR. 159 Period of Sessions. Hearing “Situación del derecho a la libertad de expresión e información en Venezuela”. December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>; República Bolivariana de Venezuela. Observations on the Draft Chapter IV B. Annual Report of the IACHR, Venezuela, received on January 30, 201. Para. 55.

Meanwhile, at the public hearing on freedom of expression in Venezuela held during the 159 Period of Sessions, civil society representatives acknowledged that Venezuela has a very high Internet penetration. However, they expressed concern about download speed (1,5 Megabytes per second), difficulty to access the service, increase in rates, as well as Conatel's [*Comisión Nacional de Telecomunicaciones*] constant announcements on Internet regulation.¹⁶⁵⁹

L. Diversity and Pluralism

1137. The National Communications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel) inspected the offices of the channel *Globovisión* on February 1. On his television show *Vladimir a la 1*, journalist Vladimir Villegas stated the following about the event: "We all know that Globovisión's concession expired in March of last year (...) what is the goal? To shut down the channel? To keep the channel mired in uncertainty? To hang the sword of Damocles over the channel? We know our concession has expired, and in spite of that, we have continued to do our jobs. It did not expire due to the channel's lack of responsibility, but rather because all necessary procedures were followed a year ago and we have not yet received a response."¹⁶⁶⁰

1138. Conatel responded to Villegas's statement that very day with a statement of its own in which it rejected "the opinions and judgments expressed by Vladimir Villegas on '*Vladimir a la 1*', in which he accuses the Venezuelan State of using a routine inspection as a form of intimidation against the channel and an attack on the freedom of expression, as these opinions are false and uninformed."¹⁶⁶¹

1139. On February 8, by virtue of article 18 of the Statute of the Inter-American Commission on Human Rights, the Office of the Special Rapporteur sent a letter to the State of Venezuela requesting information regarding actions of the Venezuelan Executive Branch, the goal or result of which was allegedly to unlawfully restrict or prevent the operations of television news channel *Globovisión*. According to available information, these actions were allegedly taken after the President of the Republic, Nicolás Maduro, spoke out publicly against the channel against a backdrop of extreme precariousness in the country as related to radio concessions.¹⁶⁶²

1140. On April 21, the National Association of Journalists, together with the National Press Workers' Union [*Sindicato Nacional de Trabajadores de la Prensa*], organizations *Espacio Público* and *Expresión Libre*, and groups of university students delivered a letter to Conatel in which they demanded that the agency streamline the procedures for the granting and renewal of radio and television concessions in the country. The signatories expressed concern over the fact that there is no plurality or diversity in the granting of radio concessions, as these procedures are not governed by clear criteria but rather political ones, and it remains the case that the concessions of nearly 200 media outlets have expired. Many of these outlets have provided the required documentation and are in a state of limbo nonetheless, which drives them to self-censorship to avoid the loss of their license."¹⁶⁶³

1141. The assignation of radio and television licenses must be guided by democratic criteria and procedures that are pre-established, public and transparent. The criteria and procedures must serve as a

¹⁶⁵⁹ IACHR. 159 Period of Sessions. Hearing "Situación del derecho a la libertad de expresión e información en Venezuela". December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

¹⁶⁶⁰ Globovisión. February 1, 2016. [Villegas: Mantener un canal sin concesión, es una manera de limitar la libertad de expresión](#); Su Noticiero Portal/You Tube. February 1, 2016. [Así reaccionó Vladimir Villegas a la inspección de Conatel a Globovisión](#).

¹⁶⁶¹ Comisión Nacional de Telecomunicaciones (Conatel). February 1, 2016. [Conatel sobre el caso de inspección a Globovisión](#).

¹⁶⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. February 8, 2016. Request for information pursuant to Article 18 of the Statute of the IACHR. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁶⁶³ Espacio Público. April 21, 2016. [Exigen a Conatel respuesta inmediata sobre concesiones de frecuencias radioeléctricas](#); Notiminuto. April 21, 2016. [CNP exige a Conatel rapidez en concesiones para radio y televisión](#); Colegio Nacional de Periodistas (CNP). April 21, 2016. [Exigen a Conatel respuesta inmediata sobre concesiones de frecuencias radioeléctricas](#).

check on possible State arbitrariness and guarantee equal opportunities for all individuals and sectors who wish to take part. In this regard, the Inter-American Commission's Declaration of Principles on Freedom of Expression emphasizes that, "The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

1142. To promote equal opportunity access to the media, affirmative measures should be provided for so that the three sectors of broadcasting can access licenses under equitable conditions; they must include democratic standards and transparent procedures for assigning licenses, and must establish conditions for use of the concessions that are reasonable and non-discriminatory.

M. Other Relevant Situations

1143. On December 8, 2015, during the broadcast of the '*Contacto con Maduro*' show, the former President of the National Assembly, Diosdado Cabello, announced that the radio and television concessions through which National Assembly information is broadcast, *AN Radio* and *AN Televisión* (ANTV), would be turned over to the workers of these outlets to avoid so as to prevent their dismissal, as opposition leaders had allegedly suggested after the elections held the previous 6th of December. On December 10, the proposal was reportedly approved by the National Assembly, which also authorized that the facilities and equipment of both outlets be turned over to their employees. According to the available information, the handover of the concessions had not been formalized, however, most workers were fired and the facilities were dismantled several hours before the opening ceremonies for the new composition of the Assembly, on January 5, 2016. Former ANTV employees have previously demanded on several occasions that their legal status be defined, while the current National Assembly Board has initiated legal action to recover the concession.¹⁶⁶⁴

¹⁶⁶⁴ Venezolana de Televisión (VTV)/You Tube. December 8, 2015. [ANTV y AN Radio pasarán a manos de sus trabajadores](#); Venezolana de Televisión (VTV)/You Tube. December 7, 2015. [Trabajadores de ANTV expresan rechazo a declaraciones de Henry Ramos Allup](#); El Nacional. December 8, 2015. [Anuncian entrega de medios ANTV y AN Radio a sus trabajadores](#); La Verdad/AVN. December 10, 2015. [Transfieren instalaciones y equipos de ANTV a trabajadores](#); El venezolano news. January 27, 2016. [Trabajadores de ANTV denuncian "falsedad" en entrega del canal](#); Sin Edición. May 4, 2016. [¡En la calle! Trabajadores de ANTV afirman ser víctimas de "la sed de venganza" de Cabello](#); La Patilla. December 11, 2015. [Trabajadores de ANTV no quieren la concesión del canal](#); Runrunes/NTN24. January 4, 2016. [Trabajadores de ANTV denuncian sustracción de equipos y despido masivo](#); El Pitazo. August 18, 2016. [Asamblea Nacional presiona a la Fiscalía por el caso de la televisora Antv](#); El Estímulo. July 12, 2016. [Más de seis meses sin cobrar llevan trabajadores de ANTV](#); KonZapata.com. June 9, 2016. [No termina el calvario de los trabajadores despedidos de ANTV](#).

32. SPECIAL REPORT ON THE RIGHT TO FREEDOM OF EXPRESSION IN CHILE 2016

I. INTRODUCTION

1138. The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) conducted an official visit to Chile to evaluate the situation of the right to freedom of expression in the country, from May 31 to June 4, 2016. The Special Rapporteur's visit took place just prior to the opening of the IACHR's 158 Extraordinary Session, held from June 7-9, 2016.

1139. During the visit, the Special Rapporteur visited the cities of Santiago and Temuco, where he met with senior officials of the executive, legislative, and judicial branches of government, as well as with the National Human Rights Institute [*Instituto Nacional de Derechos Humanos*], the Council for Transparency [*Consejo para la Transparencia*], and the National Television Council [*Consejo Nacional de Televisión*].

1140. The Special Rapporteur also held meetings with journalists, representatives of media outlets and civil society organizations, academics, students, and leaders of indigenous peoples. He met with the Regional Office for South America of the United Nations Office of the High Commissioner for Human Rights and the country office of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in Chile. In addition, during the IACHR's 158 Extraordinary Session, the Special Rapporteur participated with the IACHR delegation in meetings with senior government officials, including President Michelle Bachelet.

1141. Upon the conclusion of the official visit, the Office of the Special Rapporteur presented preliminary observations regarding the country's progress vis-à-vis its international obligations in the area of freedom of expression and the challenges the country faces in this regard.¹⁶⁶⁵ On October 17, 2016, upon the request of this office, the State submitted additional information regarding issues that were revealed during the visit and in the preliminary observations.

1142. The Office of the Special Rapporteur is grateful to the State for its invitation and the openness shown prior to and during the entirety of the visit. Thanks to the efforts of the Chilean State, the Office of the Special Rapporteur was able to receive valuable information from public servants at the highest level regarding the situation of the right to freedom of expression and the measures taken to respect and guarantee this right, as well as the existing problems and challenges faced in this area. These measures from the State demonstrate its commitment and willingness to cooperate with the Inter-American Human Rights System and with this Office of the Special Rapporteur to strengthen its actions in order to protect and guarantee the right to freedom of expression in the country.

1143. The Office of the Special Rapporteur is also grateful to the journalists, representatives of the media and civil society, academics, and Mapuche activists and leaders, who made extraordinary efforts and mobilized to share important information and testimony with this office. The Office of the Special Rapporteur appreciates the information provided by the civil society organizations that work on issues involving freedom of expression and access to information at the meetings that the IACHR held during its 158 Extraordinary Session. At those meetings, the Office of the Special Rapporteur was able to appreciate the active leadership role of Chilean civil society in the defense and promotion of the right to freedom of expression.

II. THE SITUATION OF THE RIGHT TO FREEDOM OF EXPRESSION IN CHILE

1144. The right to freedom of thought and expression, in accordance with the protection enshrined in article 13 of the American Convention on Human Rights ("American Convention"), includes the right of people to express their own thoughts, as well as the right to seek, receive, and impart information and ideas

¹⁶⁶⁵ Special Rapporteur for Freedom of Expression. July 18, 2016. [Preliminary Observations on the Situation of the Right to Freedom of Expression in Chile](#).

of all kinds. This right is of crucial importance for the personal autonomy of individuals, for the exercise of autonomy and other fundamental rights.¹⁶⁶⁶

1145. The right to freedom of expression is also a key component upon which the existence of democratic society is based, due to its indispensable structural link to democracy.¹⁶⁶⁷ The very purpose of article 13 of the American Convention is to strengthen the operation of deliberative and pluralistic democratic systems through the protection and promotion of the free circulation of information, ideas and expressions of all kinds.¹⁶⁶⁸ In this regard, the Inter-American Court of Human Rights (“Inter-American Court”) has affirmed that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.¹⁶⁶⁹

1146. Indeed, inter-American case law has been consistent in reaffirming that, as the cornerstone of a democratic society, freedom of expression is an essential condition for society to be sufficiently informed; that the greatest amount possible of information is required for the general welfare and that the full exercise of freedom of information is precisely what guarantees this maximum circulation; and that the free circulation of ideas and news is inconceivable without a plurality of sources of information and respect for the communications media.¹⁶⁷⁰

1147. Thirteen years after the first official visit of the Office of the Special Rapporteur to Chile, notable progress has been made in the area of guaranteeing the right to freedom of expression. Chile is a part of a group of countries in the region that pride themselves on having a robust, uninhibited public debate. After the restoration of democracy, the country has gradually adopted measures to build a legal framework and public institutions that are respectful of international principles and standards in the area of freedom of expression and access to public information.

1148. In the context of Inter-American Court of Human Rights judgments, Chile has adopted a series of legislative and constitutional reforms to provide greater guarantees for freedom of expression, including the repeal of cinematographic censorship in the Constitution and of most types of criminal insult [*desacato*] in the Criminal Code [*Código Penal*] and the Military Criminal Code [*Código Penal Militar*], in addition to passing and implementing the Access to Public Information Law [*Ley de Acceso a la Información Pública*].

1149. Nevertheless, it follows from the information received by the Office of the Special Rapporteur that Chile still has some laws and practices that continue to negatively affect the effective enjoyment of the right to freedom of expression and the right to access to information in the country. Many of

¹⁶⁶⁶ 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.

¹⁶⁶⁷ I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C No. 151. Para. 85; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107. Para. 116; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Para. 86; I/A Court H.R., *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 70.

¹⁶⁶⁸ 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. 8.

¹⁶⁶⁹ I/A Court H.R., *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 70.

¹⁶⁷⁰ 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. 178.

them can be understood as the legacy of past authoritarian doctrines and the transition process, which no longer hold meaning in the current environment of democratic development. Chile also faces new challenges in terms of the exercise of freedom of expression in the digital environment that must be addressed by the government, legislative and administrative bodies, and the court system in accordance with international human rights laws and best practices, to guarantee that the Internet and advances in communications technology continue to facilitate the exercise of fundamental rights in the country.

1150. The Office of the Special Rapporteur presents below its analysis of the current situation of the freedom of expression and information in Chile and offers recommendations with a view to helping the State strengthen its efforts to guarantee this right.

A. National Legal Framework

1151. The right to freedom of expression is recognized in the Political Constitution of Chile in the following terms:

Article 19.- The Constitution guarantees to all persons: [...] 12- Freedom to express opinions and to disseminate information without prior censorship in any form and by any means, without prejudice to assuming the responsibility for any crimes or abuses committed in the exercise of such freedoms, in conformity with the law which is to be passed by a qualified quorum. In no case may the law establish a state monopoly over the mass media. Any individual or body corporate offended or unjustly alluded to in a mass medium, has the right to have his declaration or rectification gratuitously disseminated, under the conditions determined by law, by the mass medium having issued such information. All individuals or bodies corporate shall have the right to establish, edit or maintain newspapers, magazines and periodicals, under the conditions prescribed for by law. The State, such universities and other persons or entities as prescribed by the law, may establish, operate and maintain television stations. There shall be a National Council for Radio and Television [*Consejo Nacional de Televisión*], having autonomy and legal status, which shall be in charge of supervising the proper functioning of these mass media. A law of qualified quorum shall determine the organization and other functions and authorities of said Council. The law will regulate a ratings system for the exhibition of cinema productions[.]¹⁶⁷¹

1152. The constitutional reform of August 26, 2005, added the principle of publicity and transparency of the acts and resolutions of the State:

Article 8.- [...] The acts and resolutions of organs of the State, as well as their foundations and procedures used, shall be public. However, only a law of qualified quorum can establish the confidentiality of the former or the secrecy of the latter, when publicity would affect the proper fulfillment of the functions of these organs, the rights of persons, the security of the Nation or the national interest.¹⁶⁷²

1153. The exercise of these rights is set forth in several legal provisions. For example, Law No. 19.733 on freedom of opinion and information and the practice of journalism (Press Law) regulates the practice of journalism, the functioning of social communication media and the mechanisms that promote pluralism in the national information system. The law also establishes the right to reply and correction and criminalizes defamation [*injurias* and *calumnias*] committed through social communication media.¹⁶⁷³

¹⁶⁷¹ Constitución Política de Chile. Texto refundido, coordinado y sistematizado. Latest modification on November 16, 2015. Available for consultation at: <http://www.bcn.cl/>

¹⁶⁷² Constitución Política de Chile. Texto refundido, coordinado y sistematizado. Latest modification on November 16, 2015. Available for consultation at: <http://www.bcn.cl/>

¹⁶⁷³ Ley No. 19.733 Ley sobre libertades de opinion e información y ejercicio del periodismo. May 18, 2001. Latest modification on December 23, 2013. Available for consultation at: <http://www.bcn.cl/>

1154. General Telecommunications [*General de Telecomunicaciones*] Law No. 18.168 regulates the process for granting, renewing or modifying broadcasting concessions.¹⁶⁷⁴ Law No. 18.838 creates the National Television Council [*Consejo Nacional de Televisión*] (CNTV) and regulates, in particular, concessions for television broadcasting services as well as the functioning of this sector.¹⁶⁷⁵ Law No. 20.750 allows for the introduction of digital terrestrial television.¹⁶⁷⁶ Law No. 20.433 creates free-to-air community radio broadcasting services, and regulates both equal access to radio spectrum frequencies for this sector as well as its operation.¹⁶⁷⁷

1155. Law 20.285 regarding Access to Public Information regulates the principle of transparency within public office, the right to access to state-held information, procedures for the exercise of that right, and exceptions to the publicity of information.¹⁶⁷⁸

1156. Law 20.453, which establishes the principle of net neutrality for Internet consumers and users, forbids blocking, interference, discrimination, disruption and restriction of the right of any user to “use, send, receive or offer any content, application or legal service via Internet, as well as any other type of activity performed on or any legal use of the network.”¹⁶⁷⁹

1157. Chile has been a State Party to the American Convention on Human Rights since August 21, 1990, as well as of the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights since February 10, 1972. In 2008, Chile ratified ILO Convention No. 169 on Indigenous and Tribal Peoples in independent countries. In article 5, the Political Constitution [*Constitución Política*] of Chile establishes that “[t]he exercise of sovereignty recognizes as a limitation the respect for the essential rights which emanate from human nature. It is the duty of the organs of the State to respect and promote those rights, which are guaranteed by this Constitution, as well as by the international treaties ratified by Chile which are in effect.”¹⁶⁸⁰

B. The Right to Freedom of Expression and the Practice of Free and Independent Journalism

1158. One of the main issues studied by the Office of the Special Rapporteur during its visit to Chile was the state of the right to freedom of the press and the practice of independent journalism.

1159. The Office of the Special Rapporteur has affirmed that “journalism, in the context of a democratic society, is one of the most important manifestations of freedom of expression and information. The work of journalists and the activities of the press are fundamental elements for the functioning of democracies, as journalists and the communications media keep society informed of events and their varied interpretations—a necessary condition for public debate to be robust, informed and vigorous. It is also clear that an independent and critical press is a fundamental element for the effectiveness of other freedoms in a democratic system.”¹⁶⁸¹

¹⁶⁷⁴ Ley No. 18.168 General de Telecomunicaciones. September 15, 1982. Latest modification on November 11, 2011. Available for consultation at: <http://www.bcn.cl/>

¹⁶⁷⁵ Ley No. 18.838 creating the Consejo Nacional de Televisión. September 29, 1989. Latest modification on January 21, 2016. Available for consultation at: <http://www.bcn.cl/>

¹⁶⁷⁶ Ley No. 20.750 que permite la introducción de la televisión digital terrestre. May 11, 2014. Available for consultation at: <http://www.bcn.cl/>

¹⁶⁷⁷ Ley No. 20.433 crea los servicios de radiodifusión comunitaria ciudadana. Available for consultation at: <http://www.bcn.cl/>

¹⁶⁷⁸ Ley 20.285 Sobre Acceso a la Información Pública. August 11, 2008. Available for consultation at: <http://www.bcn.cl/>

¹⁶⁷⁹ Ley No. 20.453 Consagra el Principio de Neutralidad en la Red para los Consumidores y Usuarios de Internet. August 18, 2010. Available for consultation at: <http://www.bcn.cl/>

¹⁶⁸⁰ Constitución Política de Chile. Texto refundido, coordinado y sistematizado. Latest modification on November 16, 2015. Available for consultation at: <http://www.bcn.cl/>

¹⁶⁸¹ IACHR. *Annual Report 2008. 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.134 Doc. 5 rev. 1. February 25, 2009. Para. 177.

1160. The IACHR spoke in this regard in its Declaration of Principles on Freedom of Expression, which establishes that “the means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”¹⁶⁸² In a Joint Declaration on the restrictions on journalists, and on investigating corruption (2003),¹⁶⁸³ the Special Rapporteurs of the UN, the OAS and the OSCE stated they were “aware of the important watchdog role of the media and of the importance to democracy and society as a whole of vibrant, active investigative journalism,” and thus affirmed that “media workers who investigate corruption or wrongdoing should not be targeted for legal or other harassment in retaliation for their work.”

1161. During the visit, the Office of the Special Rapporteur noted that Chile is having an extremely important debate about the influence of private interests in the political system, which has placed the right to freedom of expression and the crucial role investigative journalism plays in the social oversight of public power at the forefront of this discussion. Indeed, in 2015 and 2016, a series of investigative journalism pieces, many of which were based on leaked documents, revealed alleged incidents of corruption, embezzlement, bribery and illegal election campaign contributions implicating businesspersons, members of the military, and politicians.

1162. In this context, the Office of the Special Rapporteur is concerned that the Chilean legal framework still includes some laws that allow for the criminal prosecution and conviction of journalists for stories about public officials or issues of public interest, and that new measures are being pursued to criminalize the practice of journalism and the reporting of acts of corruption.

- ***Desacato crimes in the Criminal Code [Código Penal] and the Military Criminal Code [Código de Justicia Militar]***

1163. Chile was one of the first countries in the region to repeal *desacato* crimes, through an amendment of the Codes of Criminal and Military Justice [*Códigos de la Justicia Penal y Militar*] (Law No. 20.048) which was passed on August 31, 2005.¹⁶⁸⁴ Law No. 20.048 kept, however, the crime of “threats to authority” in article 264 of the Criminal Code.¹⁶⁸⁵ Although the reform replaced article 276 of the Code of Military Justice, which defined the crime of “unlawful sedition” in terms that were vague and incompatible with the principle of legality,¹⁶⁸⁶ it kept in effect article 284 of the Code of Military Justice, which also criminalizes *desacato*.¹⁶⁸⁷

¹⁶⁸² IACHR. 108th Regular period of sessions. October, 2000. [Background and Interpretation of the Declaration of Principles](#).

¹⁶⁸³ 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. December 18, 2003. [Joint Declaration on the Regulation of the Media, on the Restrictions on Journalists, and on Investigating Corruption](#).

¹⁶⁸⁴ Biblioteca del Congreso Nacional de Chile. Ley No. 20.048 modifica el Código penal y el Código de justicia militar en materia de desacato. Available at: <https://www.leychile.cl/Navegar?idNorma=241428>. This reform repealed article 263 that contemplated the crime of “injuria” (slander) against authorities; it eliminated article 265 which provided for the crime of “desacato” or serious slander against authority; it deleted from article 266 the words “desacato” and eliminated article 268 that typified the crime of riot or exaltation to disorder in an authority’s office.

¹⁶⁸⁵ Biblioteca del Congreso Nacional de Chile. Ley No. 20.048 modifica el Código penal y el Código de justicia militar en materia de desacato. Article 264. Available at: <https://www.leychile.cl/Navegar?idNorma=241428>. The law provides that: Any person who threatens during a meeting of the co-legislating bodies or hearings of the courts of justice any deputy or senator or a member of said tribunals, or a senator or deputy for the opinions expressed in Congress, or a member of a court of law for any decisions that he has made or the ministers of State or other authority in the practise of their positions, shall be punished with minor detention in any of its degrees. Anyone who seriously disrupts the order of meetings of co-legislating bodies or the hearings of the courts of law, or causes disorder or exalts to disorder in the office of a public authority or corporation to the extent of preventing their acts, shall be punished with the penalty of lesser imprisonment in its minimum degree and a fine of six to ten monthly tax units [unidades tributarias], or only the latter.

¹⁶⁸⁶ The new provision states: Article 276.- Any person who, with the exception of the case referred to in the preceding article, in any way induces or incites military personnel to disorder, indiscipline or breach of military duties, shall be punished with the penalty of major military detention in its minimum degree in the case of an Officer, with that of minor military detention in its maximum degree in

1164. In the judgment in the case of *Palamara Iribarne vs Chile* (2006), the Inter-American Court ordered that the State adopt all domestic measures to repeal and modify these provisions.¹⁶⁸⁸ In this regard, it stated:

The Court notes with concern that, despite the valuable contribution of the legislative reform, section 264 of the Criminal Code, as amended, still includes the offense of “threat” to the same authorities that constituted, before the amendment to said Code, the passive subject of the offense of contempt. This way, the Criminal Code includes an ambiguous description and does not clearly specify the scope of the criminal conduct, thus leaving room for broad interpretation and, as a result, the conduct previously regarded as contempt may be unduly punished through the use of the criminal offense of threats. Therefore, if the State decides to maintain said provision, it should specify the kind of threats concerned in order to prevent suppression of freedom of thought and expression of valid and legitimate opinions or whatever disagreement and protests against government bodies and their members.

In addition, the Court notes that the legislative reform implemented by means of Law No. 20,048 did not encompass all provisions dealing with contempt insofar as it is still an offense under the Code of Military Justice. Therefore, disproportionate sanctions are still being imposed for criticism leveled at government institutions and their members, and military institutions and their members are afforded greater protection than that afforded to civilian institutions in a democratic society, which is incompatible with article 13 of the American Convention.¹⁶⁸⁹

1165. During the stage of monitoring compliance with the judgment, Chile indicated that it has undertaken an effort to repeal the crime of *desacato* from the Code of Military Justice, as “this crime is not purely military in nature and severely restricts public discourse and the role that an informed public opinion plays in a democratic society.” Regarding the crime of threats, Chile emphasized that “it is a legal concept that has certain technical problems” and that “which legal interest is protected is not very clear,” although it is “practically never” enforced.¹⁶⁹⁰ However, in a resolution dated September, 2016, the Court stated:

It is serious that, more than ten years after the Judgment was issued, the crimes of threats and *desacato* are still in effect in domestic law. None of the legislative proposals suggested by Chile over these years have been approved. Nor has the State specified to what types of threats the crimes set forth in article 264 of the Criminal Code make reference, although it is encouraging that, at least, as indicated by the State, it is rarely enforced.¹⁶⁹¹

1166. In light of the foregoing, the Court urged the Chilean State to adopt the measures necessary to repeal or modify article 264 of the Criminal Code and article 284 of the Code of Military Justice, which classify the crimes of threats and *desacato*, as soon as possible as in the area of subsequent criminal liability that is incompatible with the right of freedom of expression, so that its domestic laws are aligned with

the case of a non-commissioned officer, and with that of minor military detention in any of its degrees in the case of a corporal, soldier or non-military individual.”

¹⁶⁸⁷ Art. 284. Any person who threatens in the terms of article 296 of the Criminal Code, offends or insults in word or in writing or by any other means the Armed Forces, its units, departments, weapons, classes or specific bodies, or one of its members in the knowledge of his membership in those institutions, shall be punished with the penalty of minor imprisonment in its minimum to medium degree. Biblioteca Nacional de Congreso. Código de Justicia Militar. Decreto No. 2226. Available at: <https://www.leychile.cl/Navegar?idNorma=18914>

¹⁶⁸⁸ I/A Court H.R.. Case of *Palamara Iribarne v. Chile*. Judgment of November 22, 2005. (Merits, Reparations and Costs). Series C No. 135. Punto resolutive 13.

¹⁶⁸⁹ I/A Court H.R. Case of *Palamara Iribarne v. Chile*. Judgment of November 22, 2005. (Merits, Reparations and Costs). Series C No. 135. Para. 93 and 94

¹⁶⁹⁰ I/A Court H.R. Case of *Palamara Iribarne v. Chile*. Resolution of September 1, 2016. Supervisión de Cumplimiento de Sentencia. Considerando 13.

¹⁶⁹¹ I/A Court H.R. Case of *Palamara Iribarne v. Chile*. Resolution of September 1, 2016. Supervisión de Cumplimiento de Sentencia. Considerando 14.

international freedom of expression standards. The Court requested that in its next report, the State "explain the steps taken to that end in a clear, detailed, and up-to-date fashion."¹⁶⁹²

1167. The Office of the Special Rapporteur has not received information on individuals or journalists who have been prosecuted for threats against authority and *desacato* since the Court's judgment in the Palamara Iribarne case. However, the Office of the Special Rapporteur highlights that these kinds of laws are *per se* incompatible with article 13 of the American Convention and openly conflict with the belief that freedom of expression and opinion is the "cornerstone of modern democracy" and "directly inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers."¹⁶⁹³

1168. In this regard, Principle 11 of the Declaration of Principles on Freedom of Expression, approved by the IACHR in the year 2000, establishes that "public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information."

1169. The Office of the Special Rapporteur emphasizes that article 264 of the Criminal Code and article 284 of the Code of Military Justice must be repealed in the terms ordered by the Inter-American Court in the *Palamara Iribarne* (2006) judgment, as these articles constitute an unlawful restriction on the right to freedom of expression.

- **Criminal Defamation**

1170. Chilean legislation continues to criminalize *calumnia*¹⁶⁹⁴ and *injuria*.¹⁶⁹⁵ According to information gathered by this Office, these criminal definitions are still used to prosecute journalists for statements that would affect the honor and reputation of public officials and elected officials, with the ensuing effect of inhibiting and restricting the investigation and dissemination of information that is of interest to the public.

1171. By way of example, the Office of the Special Rapporteur learned of the criminal conviction handed down on April 22, 2015 by the Third Criminal Investigations Supervisory Court of Santiago [*Tercer Juzgado de Garantía de Santiago*] against journalists and directors of the weekly newspaper *El Ciudadano*, Bruno Sommer Catalán and Sebastián Larraín Saa, for the offense of criminal defamation [*injuria grave*] against a member of Congress, following the publication of an interview in which the member was accused of committing unlawful acts during his parliamentary election campaign.¹⁶⁹⁶ The journalists were sentenced

¹⁶⁹² I/A Court H.R.. Case of *Palamara Iribarne v. Chile*. Resolution of September 1, 2016. Supervisión de Cumplimiento de Sentencia. Considerando 17.

¹⁶⁹³ IACHR. [Annual Report 1994](#). Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention On Human Rights. Title IV Point B). OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

¹⁶⁹⁴ Biblioteca del Congreso Nacional de Chile. Código Penal. Article 412 of the Criminal Code. Art. 412. It is slanderous to attribute a particular but false offense and that can currently be prosecuted ex officio. Art. 413. The slander propagated in writing and with publicity will be punished: 1. With the penalties of minor imprisonment in its medium degree and a fine of eleven to twenty monthly tax units [unidades tributarias], when a crime is attributed. 2. With those of minor incarceration in its minimum degree and a fine of six to ten monthly tax units, if a simple crime is attributed. Available at: <http://www.leychile.cl/Navegar?idNorma=1984>

¹⁶⁹⁵ Biblioteca del Congreso Nacional de Chile. Código Penal. Art. 416. *Injuria* is any expression uttered or action performed in dishonor, discredit or contempt of another person. Art. 417. Serious *injurias* are: 1. The attribution of a crime or simple offense of those that do not allow for an ex officio procedure; 2. Attribution of a crime or simple offense that is punishable or prescribed; 3. That of a vice or lack of morality whose consequences could considerably harm the fame, credit or interests of the individual aggrieved; 4. *Injurias* that by their nature, occasion or circumstances are held in the public concept as derogatory; 5. Those that rationally deserve the qualification of serious considering the status, dignity and circumstances of the offended and the offender. Art. 418. Serious *injurias* made in writing and with publicity, will be punished with penalties of minor imprisonment in their minimum to medium degrees and a fine of eleven to twenty monthly tax units [unidades tributarias]. Art. 419. Slight *injurias* shall be punished with penalties of minor imprisonment in their minimum degree and a fine of six to ten monthly tax units when they are made in writing and with publicity. If these circumstances do not take place they will be punished as misdemeanors. Available at: <http://www.leychile.cl/Navegar?idNorma=1984>

¹⁶⁹⁶ Tercer Juzgado de Garantía de Santiago. Causa RUC N° 1310027365-3. [Judgment of April 22, 2015](#).

to “(540) days of ordinary imprisonment of a minimum term, a fine of five monthly tax units, and the additional penalty of suspension of public duty or office during the time of the sentence,” for committing the crime of *injuria graves* against former *deputy* Miodrag Marinovic, in accordance with articles 416, 417 and 418 of the Criminal Code. Execution of the prison sentence was suspended and the journalists served the remainder of the sentence on probation.¹⁶⁹⁷

1172. During its finding of guilt, the Court stated that “the defendants did not provide specific, clear, concrete and verifiable information that would allow the Court to establish that they took appropriate care, as directors of a media outlet, to verify the truthfulness of the information they publish.”¹⁶⁹⁸ The judgment was upheld by the Supreme Court of Justice.¹⁶⁹⁹

1173. As another example of criminal proceedings initiated by public officials to sanction critical expression against them, on May 31, 2016, President Michelle Bachelet filed a complaint for the crime of *injurias graves*, set forth in articles 416 and 418 of the Criminal Code, against four journalists from the weekly magazine *Qué Pasa*, in which she reportedly asked for a three-year prison sentence for the defendants.¹⁷⁰⁰ According to available information, this would be the first complaint of this kind to be used by a Head of State since the process to restore democracy began in 1990.

1174. The magazine printed a wiretap, that was leaked to the press, of one of the individuals charged in the investigation of the Chilean Office of the Attorney General into the alleged illegal businesses of a company belonging to a relative of President Bachelet (the “Caval case”). The criminal investigation was opened following revelations published in the same magazine, *Qué Pasa*, in February 2015.¹⁷⁰¹ The published article included excerpts of telephone conversations, obtained by the authorities through wiretaps, in which one of the individuals charged in the case attributes financial profits to President Bachelet that came from the business run by her relatives.¹⁷⁰²

1175. President Bachelet denied the information published by the magazine and stated she filed the action “in her capacity as a citizen” and for the purpose of demanding “the ethics and responsibility that the media must demonstrate when providing information, by validating their sources.”

1176. *Qué Pasa* removed part of the article in question from the online version, published an explanatory note explaining the changes, and apologized to its readers and the persons alluded to in the article.¹⁷⁰³ However, it rejected the filing of the criminal action as an attempt to “restrict freedom of expression” and stated that “the fact that the complaint was filed by the President in her capacity as a citizen does not diminish this pressure, as both capacities are inseparable. Otherwise, it would not follow for the filing of the complaint to be announced by the Minister Secretary General of the Government.”¹⁷⁰⁴

¹⁶⁹⁷ Tercer Juzgado de Garantía de Santiago. Causa RUC N° 1310027365-3. [Judgment of April 22, 2015](#).

¹⁶⁹⁸ Tercer Juzgado de Garantía de Santiago. Causa RUC N° 1310027365-3. [Judgment of April 22, 2015](#).

¹⁶⁹⁹ Corte Suprema de Justicia. Segunda Sala. Causa RUC N° 1310027365-3. [Judgment of June 11, 2015](#).

¹⁷⁰⁰ Lawsuit for misdemeanor of private criminal action of serious *injurias* with publicity filed before 2º Juzgado de Garantías, by Juan Pablo Hermosilla, counsel for the president of Chile, Michelle Bachelet. May 31, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁷⁰¹ Lawsuit for misdemeanor of private criminal action of serious *injurias* with publicity filed before 2º Juzgado de Garantías, by Juan Pablo Hermosilla, counsel for the president of Chile, Michelle Bachelet. May 31, 2016. Available for consultation at Archive of the Office of the Special Rapporteur for Freedom of Expression. See also: *Qué Pasa*. May 31, 2016. [Presidenta Bachelet se querrela por injurias y calumnias contra revista Qué Pasa](#); Knight Center for Journalism in the Americas. June 1, 2016. [Chilean President Michelle Bachelet sues magazine Qué Pasa for defamation](#).

¹⁷⁰² *Qué Pasa*. June 3, 2016. [La querrela de la Presidenta contra Qué Pasa](#); Consejo de Ética de los Medios de Comunicación Social de Chile. [Resolución No. 204](#). September 14, 2016; Lawsuit for misdemeanor of private criminal action of serious *injurias* with publicity filed before 2º Juzgado de Garantías, by Juan Pablo Hermosilla, counsel for the president of Chile, Michelle Bachelet. May 31, 2016. Available for consultation at Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁷⁰³ *Qué Pasa*. June 3, 2016. [La querrela de la Presidenta contra Qué Pasa](#); *Elmostrador*. May 27, 2016. [Revista Qué Pasa baja nota con grabaciones alusivas a la Presidenta y Bachelet habla de “canallada”](#).

¹⁷⁰⁴ *Qué Pasa*. May 31, 2016. [Declaración de Revista Qué Pasa ante querrela de presidenta Bachelet](#).

1177. The President's legal action was called into question by the Chilean National Human Rights Institute [*Instituto Nacional de Derechos Humanos de Chile*] (INDH). The INDH director, Lorena Fries, recalled that "as for holding the media responsible for the violation of a human right such as honor, the standards that have been established are not criminal but rather civil proceedings." She emphasized that "public authorities are subjected to a higher level of exposure and scrutiny than anyone else, and in that regard, confront stronger criticism than anyone else."¹⁷⁰⁵ During his visit, the Special Rapporteur, Edison Lanza, expressed concern over the intimidating effect these actions have on the practice of journalism and noted that senior public officials have other mechanisms available to them to protect their right to reputation and privacy that are less damaging to the right to freedom of expression.

1178. On September 14, the Chilean Media Ethics Council of the country's Media Federation [*Consejo de Ética de los Medios de Comunicación Social de Chile de la Federación de Medios de Comunicación*]¹⁷⁰⁶ sanctioned *Qué Pasa* for "the lack of ethics" in the publication in question. In its ruling, the Council found that it was "the magazine's duty to evaluate statements obtained through the work of journalists, both from the perspective of the credibility of sources as well as by obtaining the necessary contrasting views and opinions from third parties."

1179. On September 30, President Bachelet announced her decision to withdraw the complaint against *Qué Pasa*, after learning of the decision of the Media Council, which she called "resounding."¹⁷⁰⁷ The President withdrew the complaint before the scheduled conciliation hearing was held before the Second Criminal Investigations Supervisory Court of Santiago and afterwards was reportedly ordered to pay court costs.¹⁷⁰⁸

1180. The Office of the Special Rapporteur reiterates that in a democratic, pluralistic society, the acts or omissions of the State and its public servants—or those who aspire to be public servants—are subject to a higher level of scrutiny by the press and the public. This means that the State must abstain more rigorously from limiting these types of expression and that public servants must have a higher threshold of tolerance for criticism.¹⁷⁰⁹ In the words of the Commission, "[t]he sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of and even offensive to those who hold public office or are intimately involved in the formation of public policy."¹⁷¹⁰

1181. The right to freedom of expression grants, both to the directors of media outlets and to the journalists who work for them, the right to investigate and disseminate matters of interest to the public. The threat of using criminal law—usually vague and ambiguous on the subject—against those who speak out against the government has a discouraging and chilling effect. Therefore, this office has recommended the use of mechanisms less harmful to the rights of individuals, such as the mechanisms of reply and correction and civil actions, which can provide effective protection to the right of public servants to honor and reputation.

¹⁷⁰⁵ La Tercera. June 2, 2016. [INDH rechaza querrela de Bachelet contra revista Qué Pasa: "Hay una colisión de derechos"; T13. June 2, 2016. INDH calificó como un "error" la querrela de Bachelet contra revista Qué Pasa.](#)

¹⁷⁰⁶ The Consejo de Ética de los Medios de Comunicación is defined as "a self-regulatory body in matters of information ethics" of the work carried out by those media belonging to one of the companies affiliated with the associations that make up the Federación de Medios de Comunicación Social de Chile. Available at: http://www.consejodeetica.cl/index.php?option=com_ce_consejo_etica&view=quienes

¹⁷⁰⁷ EMOL. September 30, 2016. [Bachelet retira querrela contra revista Qué Pasa tras sanción ética de Consejo de Medios](#); CNN Chile. September 30, 2016. [Presidenta Bachelet retira querrela contra revista Qué Pasa.](#)

¹⁷⁰⁸ *Qué Pasa*. November 3, 2016. [Bachelet deberá pagar costas del juicio a abogados de periodistas de Qué Pasa](#); Elmostrador. November 3, 2016. [Bachelet condenada por fallida querrela contra revista Qué Pasa](#); T13. November 3, 2016. [Bachelet tendrá que pagar \\$2 millones 400 mil en costas por querrela contra revista Qué Pasa.](#)

¹⁷⁰⁹ I/A Court H.R., *Case of Eduardo Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177. Para. 57 and 87.

¹⁷¹⁰ IACHR. *Annual Report 2002. Report of the Special Rapporteur for Freedom Of Expression*. Chapter V. ("Desacato" Laws and Criminal Defamation). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 18.

1182. Principle 10 of the IACHR Declaration of Principles on Freedom of Expression establishes that “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” Similarly, the Human Rights Committee states in General Comment No. 34 that “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”¹⁷¹¹

1183. The Office of the Special Rapporteur recommends that the State of Chile decriminalize *calumnia* and *injuria* and change them to civil actions, in accordance with international standards and best practices. This is especially significant for protecting expression that is critical of public officials, public figures or, in general, matters of public interest. The Office also recommends that the State strengthen legal safeguards so that journalists are not subjected to legal or other types of harassment in the judicial system in retaliation for their work, by establishing separate standards to evaluate subsequent civil liability, including the standard of actual malice and the strict proportionality and the reasonableness of subsequent penalties.

- **The Confidentiality of Sources of Information and the Dissemination of Confidential Information**

1184. During the visit, the Office of the Special Rapporteur received information about restrictions on the confidentiality of journalists’ sources and the free dissemination of information about matters of public interest.

1185. According to information received by this Office, in November of 2015, Patricio Fernández, Andrea Moletto and Mauricio Weibel, journalists for the Chilean weekly *The Clinic* and Pablo Dittborn, the owner of the publication, were summoned to give statements to the IV Office of the Military Prosecutor [*IV Fiscalía Militar*] in order to reveal the sources for a report known as “Milicogate.” The report unearthed a case of corruption and the misappropriation of funds in connection with the Restricted Law on Copper, which involved a number of Chilean Army officers.¹⁷¹² The IV Office of the Military Prosecutor had brought a case (file 1920-2015) to investigate the origin of the leaks to *The Clinic*, particularly the leaking of secret decrees for arms purchases in the country.¹⁷¹³ The IV Office of the Military Prosecutor also summoned a colonel, the former treasurer for the General Staff, who was questioned about his links to *The Clinic* weekly and to journalist Mauricio Weibel, who wrote the reports.¹⁷¹⁴

1186. In 2016, the National Congress [*Congreso Nacional*] debated legislative bills on the investigation of crimes that proposed establishing burdensome restrictions on the right of journalists and media outlets to investigate and disseminate information about matters of public interest. Thus, the proposed amendment to the bill that “facilitates the effective application of the penalties established for the offenses of robbery, theft, and receipt of stolen goods, and improves the criminal prosecution of such offenses” (Gazette No. 9.885-09) proposed amending article 182 of the Code of Criminal Procedure [*Código Procesal Penal*], which regulates confidentiality during an investigation, to make leaks of the Office of the Attorney General

¹⁷¹¹ United Nations. Human Rights Committee. [General Comment No. 34. Article 19: Freedoms of opinion and expression](#). CCPR/C/GC/34. September 12, 2011. Para. 47.

¹⁷¹² The Clinic. October 17, 2015. [La serie completa del Milicogate, el multimillonario robo del Fondo Reservado del Cobre](#).

¹⁷¹³ The Clinic. November 3, 2015. [Milicogate: Justicia Militar amplía inédita investigación para determinar las fuentes de información de The Clinic](#); The Clinic. October 29, 2015. [Se rompe el pacto de silencio en el Milicogate](#); Elmostrador. November 30, 2015. [Colegio de Periodistas rechaza solicitud a reportero que descubrió desfalco en el Ejército: "No tienen atribución para exigir que revele sus fuentes"](#).

¹⁷¹⁴ The Clinic. November 3, 2015. [Milicogate: Justicia Militar amplía inédita investigación para determinar las fuentes de información de The Clinic](#).

[Ministerio Público] investigations into such matters punishable by a term of imprisonment.¹⁷¹⁵ The bill that “strengthens the investigation of terrorist crimes and crimes affecting the security of the State” (Gazette No. 10460-25) proposed the assessment of monetary fines against any media outlet director who disseminates confidential information from a criminal investigation, in the following terms:

Article 3°.- Investigations shall be confidential and only those parties involved may have access to investigations once they are formalized, and the identities of the investigators shall be omitted. ***Violation of the confidentiality requirement in this or any provision of this law shall be punishable by a medium to maximum-grade term of imprisonment, depending on who provides the information. If the information is disseminated by a media outlet, a fine of ten to thirty monthly tax units shall also be assessed against its director.***¹⁷¹⁶ [Bold print ours]

1187. Although these provisions were eventually rejected by a joint Congressional committee and were removed from both proposals,¹⁷¹⁷ the Office of the Special Rapporteur notes that lawmakers announced the need for legislation regarding leaks and for “a law that makes the rules of the game clear for all” involved, including the media.¹⁷¹⁸

1188. The Office of the Special Rapporteur cautions that Law 19.733 (Press Law) expressly recognizes the right to confidentiality of sources. In article 7, the law states that “media directors and editors, to whom reference is made in articles 5 and 6, and foreign correspondents working in the country, shall have the right to keep their sources of information confidential, a right that shall extend to identifying information that may be in their possession and that they cannot be forced to reveal, even via legal proceedings.”¹⁷¹⁹

1189. However, articles 5 and 6 of this law restrict the exercise of this right and recognize as journalists “those who possess a corresponding university degree” and “students in schools of journalism.”¹⁷²⁰ The law also establishes, in vague and excessively broad terms, that “[h]e who exercises the right [to confidentiality of sources] shall be held professionally liable for crimes that may be committed because of the disseminated information.”

1190. States must guarantee that their legal frameworks and practices are compatible with the international obligations they have entered into in the area of the right to freedom of expression.

¹⁷¹⁵ According to Art. 182 of the current Criminal Procedure Code, “[T]he investigative actions carried out by the Public Prosecutor’s Office and by the police shall be secret for third parties not involved in the proceedings. [...] officials who participated in the investigation and other persons who, for any reason whatsoever, are aware of the proceedings of the investigation shall be bound to keep secrecy about them”. Biblioteca del Congreso Nacional. Criminal Procedure Code. Available for consultation: <http://www.leychile.cl/Navegar?idNorma=176595> The Senate had proposed adding the following sentence: “Any person who breaks the rules of secrecy established in this article shall be punished with a minor prison sentence in its minimum to medium degree”. Senado de la República de Chile. Boletín 9885/07. Bill “Facilita la aplicación efectiva de las penas establecidas para los delitos de robo, hurto y receptación y mejora la persecución penal en dichos delitos”. Indications presented as of January 28 2016/ Proposal by the Vicepresident of the Republic. Available for consultation: http://senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=9885-07

¹⁷¹⁶ Senado de la República de Chile. Bill “Fortalece la investigación de delitos terroristas y de aquellos que afecten la seguridad del Estado en casos de especial gravedad”, entered on December 17, 2015. Boletín N°10460-25. Available for consultation at: http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=10460-25

¹⁷¹⁷ CNN Chile. May 9, 2016. [Comisión mixta rechazó "Ley Mordaza"](#) (VIDEO); La Tercera. May 9, de 2016. [Comisión rechaza "ley mordaza" y propone no aplicar control de identidad a menores](#).

¹⁷¹⁸ CNN Chile (VIDEO). May 9, 2016. [Comisión mixta rechazó "Ley Mordaza"](#).

¹⁷¹⁹ Ley No. 19.733 Ley sobre libertades de opinión e información y ejercicio del periodismo. May 18, 2001. Last modification on December 23, 2013. Available for consultation at: <http://www.bcn.cl/>

¹⁷²⁰ Article 5 states that “journalists are those holding a respective university degree, validly recognized in Chile, and those whom the law recognizes as such”. Article 6 adds that “[t]he students of journalism schools, as long as they perform the professional practices demanded by said schools, and those graduating from them, until twenty-four months after the date of their graduation, shall have the rights and shall be bound to the responsibilities that this law provides for journalists.” Ley No. 19.733 Ley sobre libertades de opinión e información y ejercicio del periodismo. May 18, 2001. Last modification on December 23, 2013. Available for consultation at: <http://www.bcn.cl/>

1191. The IACHR has recognized that communicators have the right to confidentiality of sources, as established in the “Declaration of Principles on Freedom of Expression” adopted in October, 2000, which states that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”¹⁷²¹

1192. This Office has stated previously that the confidentiality of sources “is an essential element in the undertaking of journalistic work and in the role conferred upon journalism by society to report on matters of public interest.”¹⁷²² In this regard, David Kaye, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression, stated in a recent report that “[i]n the light of the importance attached to source confidentiality, any restrictions must be genuinely exceptional and subject to the highest standards, implemented by judicial authorities only. Such situations should be limited to investigations of the most serious crimes or the protection of the life of other individuals.”¹⁷²³

1193. The right to source confidentiality or any other protection linked to the work of journalists cannot be limited to those who have a university degree and must be based on the function of gathering and broadcasting [information]. In this regard, it is worth recalling that “[j]ournalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with international obligations regarding the subject.”¹⁷²⁴

1194. In Advisory Opinion OC5/85, the Inter-American Court recognized that the practice of journalism involves exercising the right to “seek, receive and import information orally, in writing or in print”¹⁷²⁵ and, in this regard, the Inter-American Commission has recognized that the term “journalists” must be understood “from a functional perspective: journalists are those individuals who observe and describe events, document and analyze events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering facts and analyses to inform sectors of society or society as a whole. Such a definition of journalists includes all media workers and support staff, as well as community media workers and so-called “citizen journalists” and other persons who might be using new communications media as a tool to reach the public, as well as opinion makers who are targeted for the exercise of their right to freedom of expression.”¹⁷²⁶

1195. The Office of the Special Rapporteur also expresses its concern over the passing of laws that establish the obligation to maintain absolute confidentiality of information that is classified as secret under penalty of criminal sanctions, with no exceptions made for the disclosure of matters of public interest, or guarantees for the role of journalism in this regard. Laws of this kind would allow for the argument that if a person had knowledge of human rights violations, acts of corruption or breaking the law, the person with the information would have to abstain from reporting it or make it public and be held criminally liable.

¹⁷²¹ IACHR. [Declaration of Principles on Freedom of Expression](#). Principle 8.

¹⁷²² IACHR. Office of the Special Rapporteur for Freedom of Expression. Annual Report 2003. OEA/Ser.L/V/II.118 Doc. 70 rev. 2. December 29, 2003. Para. 220. In a similar vein, the European Court of Human Rights has ruled in its *Goodwin v. the United Kingdom* decision that “[p]rotection of journalistic sources is one of the basic conditions for press freedom”. It added that “without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected.” European Court of Human Rights. *Case of Goodwin v. the United Kingdom*. Application No. 17488/90. Judgment March 27, 1996. Para. 39.

¹⁷²³ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#). A/70/361. September 8, 2015.

¹⁷²⁴ United Nations. Human Rights Committee. [General Comment No. 34. Article 19: Freedoms of opinion and expression](#). CCPR/C/GC/34. September 12, 2011. Para. 44.

¹⁷²⁵ I/A Court H.R.. *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 70.

¹⁷²⁶ IACHR. [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.12/13. December 31, 2013. Para. 1.

1196. In this regard, the Office of the Special Rapporteur recalls that “under no circumstances may journalists, members of the media, or members of civil society who have access to and distribute classified information on these types of surveillance program because they consider it to be in the public interest be subjected to subsequent punishment. Likewise, confidential sources and material related to the disclosure of classified information must be protected by law. Journalistic self-regulatory mechanisms have contributed significantly to developing best practices as far as how to address and communicate complex and sensitive subjects.”¹⁷²⁷

1197. This protection does not only cover journalists and the media. Freedom of expression includes the right of public officials to report human rights violations, acts of corruption or public mismanagement of which they become aware, which is also a part of their constitutional and legal duty. The exercise of this manifestation of freedom of expression, which is vital to the preservation of the rule of law in democracies on this continent, may not be obstructed by the authorities nor be the cause of later retaliatory actions against public officials who report these incidents. In this case, not only is it a violation of the individual right of a person to broadcast or disseminate information, it is a violation of the right of the entire community to receive information as well.¹⁷²⁸

1198. In this regard, Special Rapporteurs, of the UN, the OAS, the OSCE and the African Commission on Human and People’s Rights stated in their 2015 Joint Declaration that “individuals who expose wrongdoing, serious maladministration, a breach of human rights, humanitarian law violations or other threats to the overall public interest, for example in terms of safety or the environment, should be protected against legal, administrative or employment-related sanctions, even if they have otherwise acted in breach of a binding rule or contract, as long as at the time of the disclosure they had reasonable grounds to believe that the information disclosed was substantially true and exposed wrongdoing or the other threats noted above.”¹⁷²⁹

1199. The Office of the Special Rapporteur recommends that the Chilean State strengthen its legal framework in order to effectively guarantee the right of journalists (in the functional sense of the word) and the media to protect their sources and ensure that any restriction of this right meet the strictest standards, in accordance with international standards on the subject. Chile must also ensure that public officials (including from the Armed Forces [*Fuerzas Armadas*]) or individuals who expose wrongdoing, acts of corruption or human rights violations are not retaliated against for reporting these acts, and that they receive legal protection against legal, administrative or employment-related sanctions, in accordance with international standards and best practices.

C. Access to Public Information

1200. September 19, 2016 marked 10 years since the landmark judgment of the Inter-American Court of Human Rights in the case of *Claude Reyes et al. v. Chile*, which held that the Chilean State had violated the right to access to information “enshrined in article 13 of the American Convention,” and failed to comply with “the general obligation to adopt domestic legal provisions” on the subject.¹⁷³⁰ This was the first judgment handed down by an international high court that recognized the right to access to information as an

¹⁷²⁷ 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.

¹⁷²⁸ IACHR. Report No. 20/99. Case No. 11.317. *Rodolfo Robles Espinoza and Sons*. Peru. February 23, 1999. Para. 148.

¹⁷²⁹ 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. [Joint declaration on freedom of expression and responses to conflict situations](#). May 4, 2015.

¹⁷³⁰ I/A Court H.R.. *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Series C No. 151.

autonomous right that forms part of the right to seek, receive, and impart information established in article 13 of the American Convention.¹⁷³¹

1201. As part of the process of compliance with the judgment, Chile enacted Law No. 20.285 on Transparency in Government and Access to information in the Administration of the State [*Transparencia de la Función Pública y Acceso a la Información de la Administración del Estado*].¹⁷³²

1202. The civil society organizations, journalists, and academics, as well as the State authorities with whom the Office of the Special Rapporteur met during its visit acknowledged the importance that Law 20.285 has had in deepening democracy in Chile. In particular, they viewed positively the role of the Council for Transparency [*Consejo para la Transparencia*]¹⁷³³—the supervisory body of the transparency and access to information law—in the promotion and oversight of transparency in government and in resolving disputes between the government and private citizens regarding access to information, and the way in which State agencies and Ministries have progressively complied with the active transparency obligations established by law.

1203. The Office of the Special Rapporteur also noted the recent enactment of laws that aim to strengthen the transparency of the political system and government and that have raised standards in this regard. On March 8, 2014, Law No. 20.730 was published, “which governs lobbying and dealings that represent special interests before the authorities and public officials.” It establishes that the authorities and public officials must register and publish meetings and audiences requested by lobbyists and special interest groups that aim to influence public decisions, trips made in the course of their duties, and donations received as authorities or public officials, among other things.¹⁷³⁴ On April 11, 2016, Law 20.900, which regulates electoral campaign financing,¹⁷³⁴ was enacted for “the Strengthening and Transparency of Democracy” [*Fortalecimiento y Transparencia de la Democracia*], as was Law 20.915, with the goal of “strengthening the public and democratic nature of parties and facilitating the modernization thereof.” The latter law also includes the obligation of active transparency for political parties and establishes that the Council for Transparency shall oversee compliance with these obligations.¹⁷³⁵

¹⁷³¹ I/A Court H.R., *Case of Claude Reyes et al v. Chile*. Judgment of September 19, 2006. Series C No. 151. Para. 77.

¹⁷³² Ley 20.285 Sobre Acceso a la Información Pública. August 11, 2008. Available for consultation at: <http://www.bcn.cl/>

¹⁷³³ Ley Núm. 20.730 Regula el lobby y las gestiones que representen intereses particulares ante las autoridades y funcionarios. March 3, 2014. Available at: <http://www.leychile.cl/Navegar?idNorma=1060115&idParte=>

¹⁷³⁴ Ley Nº 20.900 para el fortalecimiento y transparencia de la democracia. Available for consultation at: <https://www.leychile.cl/Navegar?idNorma=1089342>

¹⁷³⁵ Ley Núm. 20.915. Fortalece el Carácter Público y Democrático de los Partidos Políticos y Facilita su Modernización. Available at: <https://www.leychile.cl/Navegar?idNorma=1089164>. Article 36 bis.- provides that political parties shall maintain permanently available for the public, through their electronic websites, up-to-date, complete, and in a way that enables easy identification and expedited access, the following updated background information, in a quarterly fashion, at least: a) Applicable regulatory framework, including the legal and regulatory rules that govern them, their declaration of principles, bylaws and internal regulations; b) Full name, acronym, symbol and motto of the political party; c) Electoral coalitions they are part of; d) Regions in which they are constituted; e) Domicile of party headquarters; f) Organic structure; g) Powers, functions and attributions of each of its internal units or bodies; h) Names and surnames of the members of the Executive Body and the Controlling Body; i) The declarations of interests and assets of the candidates of the political party for the elections referred to in Law No. 18.700, constitutional organic declarations of Popular Votes and Ballots, and of the members of the Executive Body, under the terms of law No. 20.880, on Probity in the Public Function and Prevention of Conflicts of Interest; (j) Agreements of the Regional Collegiate Intermediate Organs and the Intermediate Organ; k) Annual report approved by the Electoral Service; l) The total amount of the ordinary and extraordinary contributions of its affiliates, received during the respective calendar year; m) The total contributions, donations, bequests and, in general, all types of public or private transfers, which they receive from their registration, in accordance with legal provisions; n) The transfers of funds that they make, charged to the public funds they receive, including any economic contribution delivered to natural or legal persons, in accordance with legal provisions; o) All entities in which they have participation, representation and intervention, whatever their nature and the normative basis justifying it; p) Penalties applied to the political party; q) List of contracts above twenty monthly tax units, whatever their purpose, with indication of the contractors and identification of the partners and main shareholders of the providing companies, if any; r) Requirements and procedures for new affiliations and number of affiliates; s) Statistical information on political participation within the party, disaggregated by sex, indicating, at least, the number of activists, age distribution, the positions they hold within the party, elected offices, government authorities, among others; t) The registration of expenses incurred in the electoral campaigns referred to in article 33 (e) of Law No. 19.884, on Transparency, Limits and Control of Electoral Expenditure; u) The registration of contributions to electoral campaigns referred to in article 40 of Law No. 19.884, on Transparency, Limits and Control of Electoral Expenditure; v) A link to the Electoral Service's electronic website, which shows the electoral income and expenses accounts presented to the Electoral Service Director, in

1204. Notwithstanding the important progress that has been made, the Office of the Special Rapporteur received information at different meetings about the need to revise the legal and institutional framework of the right to access to information in order to bring it in line with the country's current needs and to continue to strengthen the effective guarantee of this right. It also received troubling information about the excessive use of national security arguments to restrict access to public information and disproportionate limitations to access to information about serious human rights violations.

- **Challenges for the Consolidation of an Effective Legal and Institutional Framework**

1205. The Office of the Special Rapporteur received information, both from public officials and civil society organizations, about a series of challenges faced by the legal and institutional framework that guarantees the right to access to public information in Chile, which must be examined and addressed in a comprehensive, holistic fashion in order to promote the improved and full exercise of this right.

1206. In the area of legislative gaps, the Office of the Special Rapporteur notes with concern that fundamental entities such as the Judiciary¹⁷³⁶ and the Legislature,¹⁷³⁷ state-owned businesses,¹⁷³⁸ public universities¹⁷³⁹ and political parties¹⁷⁴⁰ are not bound by the same obligations of transparency and access to information under Law No. 20.285 and that the regulation of these obligations is fragmented in different laws. According to the information available, these entities are only required to meet active transparency obligations and other special provisions, but they are not obligated to respond to requests for access to information under the Law (passive transparency).

1207. It must be noted that in this regard that in accordance with Inter-American case law and doctrine, the right to access to information creates obligations for all public authorities in all branches of government and in autonomous institutions, at all levels of government.¹⁷⁴¹ This right is also binding on those who work in government, provide public services or spend public resources on behalf of the State.¹⁷⁴² Each of

accordance with article 48 of Law No. 19.884, on Transparency, Limits and Control of Electoral Expenditure; w) Any other information that the Executive Body of each political party determines and whose publicity is not contrary to the Constitution and the laws.

Article 36 ter.- Any person may submit a complaint to the Transparency Council against a political party that does not comply with the provisions of the previous article, in accordance with the procedure set forth in articles 24 and following of the Public Service Transparency and Access to Information of the State Administration Act, contained in article one of Law No. 20.285".

¹⁷³⁶ Ley 20.285 Sobre Acceso a la Información Pública. August 11, 2008. Provisional article eight. Available for consultation at: <http://www.leychile.cl/Navegar?idNorma=276363>

¹⁷³⁷ Ley 20.285 Sobre Acceso a la Información Pública. August 11, 2008. Provisional article six. Available for consultation at: <http://www.leychile.cl/Navegar?idNorma=276363>

¹⁷³⁸ Ley 20.285 Sobre Acceso a la Información Pública. August 11, 2008. Provisional article ten. Available for consultation at: <http://www.leychile.cl/Navegar?idNorma=276363>

¹⁷³⁹ Consejo para la Transparencia de Chile. Pedro Antonio Vergara Montecinos with Universidad de Los Lagos. Rol C351-09. May 29, 2009. In this decision, the Council determined that "with regard to the state universities, knowing the complaint Rol C351-09 against Universidad de Los Lagos, the Council determined that the provisions contained in the Transparency Law, particularly the regulations contained in Articles 6 and 7 on active transparency, are applicable to the Universidad de Los Lagos as well as to the rest of the state universities because they are part of the State Administration". See: Recuento de jurisprudencia del CPLT 2012. Available for consultation at: <http://www.consejotransparencia.cl/recuento-de-jurisprudencia-del-cplt/consejo/2012-12-20/154745.html>

¹⁷⁴⁰ Ley Núm. 20.915. Fortalece el Carácter Público y Democrático de los Partidos Políticos y Facilita su Modernización. Available at: <https://www.leychile.cl/Navegar?idNorma=1089164>. Article 36 bis and ter.

¹⁷⁴¹ IACHR. *Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression*. Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 19 and 21.

¹⁷⁴² For example, the Model Inter-American Law provides that: "This Act applies to all public authorities belonging to all branches of Government (Executive, Legislative and Judicial Branches) and at all levels of the internal governmental structure (Central or federal, regional, provincial or municipal); it applies also to independent or autonomous organs, agencies or entities owned or controlled by the Government, or acting by powers granted by the Constitution or by other laws, and also applies to private organizations receiving substantial funds or public benefits (directly or indirectly) or performing public functions and services, but only with respect to the public funds or benefits received or the public functions and services performed. All these bodies must have their information available in accordance with the provisions of this law."

these institutions and entities must be subjected to public scrutiny and oversight, and the law must guarantee the effective exercise of this right to the broadest possible extent.

1208. As for institutional issues, the Office of the Special Rapporteur observes that the Council for Transparency [*Consejo para la Transparencia*] is in need of strengthening, both in the area of its composition as in its jurisdiction. The Chilean Council for Transparency is one of the most important institutions for the defense of the right to access to information, and it has notably promoted access to public information standards in the country and the region. However, according to current legislation, the four members of the Council board do not occupy these positions exclusively, and although the chairman of the board is paid a salary, the remaining members receive only “per diem for each session attended.” The Council for Transparency also does not have jurisdiction over all State institutions, and in some cases its supervisory role is limited to enforcing laws on transparency and the disclosure of information but does not extend to resolving disputes over requests for access. Experts agree that this “fragmented institutional government makes leadership in taking on a political role in public deliberations and deliberations on promotion difficult.”¹⁷⁴³ According to several experts who were consulted, this institutional weakness is linked to the need to introduce constitutional reforms to explicitly enshrine the right to access to information in the National Constitution and establish the institutional nature of the Council for Transparency to extend its jurisdiction to all branches and institutions of the State.

1209. Although the Office of the Special Rapporteur recognizes that there are different models for oversight and enforcement in the region, best practices indicate that in order to ensure the full and effective exercise of the right to access to information, there is a need for institutions that guarantee this right. These must have broad powers for oversight and dispute settlement as well as safeguards to guarantee the independence of the Council, a group made up of selected persons involved in government as well as civil society, who work full-time and are paid a salary that is in line with the important role they play.¹⁷⁴⁴ The Chilean Council for Transparency has also served as a regional model in this area, and reviewing these institutional shortcomings or weaknesses would not only benefit the country’s democracy and political system, it would also support the development of improved systems for access to information in the region.

1210. It was also observed that the impact of the law continues to be limited by the fact that the population lacks knowledge about the law and its mechanisms for facilitating access to information. According to data from the 2015 National Transparency Study, 74 per cent of those surveyed have not heard of Law No. 20.285, and only 26 per cent state that they have. Only 21 per cent of people surveyed state that they have heard of the government’s transparency portal, and only 7 per cent refer to the Council for Transparency as an organization where a complaint can be filed. Those who state they have heard of the Law and its mechanisms are mostly men of high economic status with advanced degrees.¹⁷⁴⁵

1211. Citizen engagement as an active subject of the right to access to public information is a key component of the effectiveness of the law as a whole. Therefore, it is necessary to promote this right by providing training about the law, its importance, and its mechanisms for the entire population, and especially for organized groups and social movements that represent the interests of the most excluded sectors or those discriminated against historically.

1212. Maintain the progress made in the area of access to information, strengthen current laws and the autonomy and institutional capacity of the appropriate institutions in regard to all public authorities.

¹⁷⁴³ Consejo para la Transparencia. [A 10 años del fallo Claude Reyes: Impacto y Desafíos](#). Juan Pablo Olmedo. *Nuevos Caminos de conquista social: El Derecho fundamental de acceso a la información pública*. September, 2016.

¹⁷⁴⁴ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 19 and 21 and OAS. [Guía de implementación y comentarios de la ley modelo interamericana sobre acceso a la información](#).

¹⁷⁴⁵ Consejo para la Transparencia de Chile. Estudio Nacional de Transparencia 2015- Available at: http://www.consejotransparencia.cl/consejo/site/artic/20121213/asocfile/20121213155411/estudio_nacional_de_transparencia_2015.pdf

The Office of the Special Rapporteur also urges the State to double its efforts to expand real access to the right of access to public information and society's knowledge of this information.

- **Limitations to Access to Information on Grounds of National Security**

1213. Another problem that was identified during the on-site visit is the excessive and illegitimate use of national security arguments to restrict access to public information.

1214. The Office of the Special Rapporteur observes with concern that in Chile, there is still a series of laws—whether or not they are in force—that establish the secrecy of various subjects and collections of documents for alleged reasons of national security, and that there is even a series of legal texts that remain under secrecy. According to information gathered by the Council for Transparency [*Consejo para la Transparencia*], there are some 203 legal texts in Chile that remain under secrecy for national security reasons, and are not accessible to the general public.¹⁷⁴⁶ Although most of these texts (which include laws, decrees having the force of law, and decree-laws) were enacted during the military dictatorship from 1973 to 1990 and are not in force, during the time of democracy, two secret laws and one decree having the force of law were allegedly enacted. It is reported that “there exist approximately 29 per cent of secret legal texts, regarding which there is no information that would allow for a preliminary determination about the subject matter contained therein.”¹⁷⁴⁷ 71 per cent of the remaining laws “are clearly related to National Defense, and, more specifically, to the Armed Forces and law enforcement and safety forces, their stations, financing, purchase of equipment and military supplies, as well as the transfer of resources.”¹⁷⁴⁸

1215. In this regard, the Office of the Special Rapporteur highlights the decision of the Council for Transparency [*Consejo para la Transparencia*] on March 29, 2016, in which it ordered the Office of the Under Secretary of the Armed Forces [*Subsecretaría de las Fuerzas Armadas*] to publish the Restricted Law on Copper [*Ley Reservada del Cobre*] (Law No. 13.196), concerning the financing of the Armed Forces. This law was passed in 1958 under restricted circulation and amended during the dictatorship, had never been published for public knowledge and was only circulated in confidential bulletins of the armed forces. In this notable decision, the Council expressed concern because there are still laws in the current legal system that are kept confidential on grounds of national security. This office hails the fact that, as follow-up to this decision, on November 23, 2016, the Chamber of Deputies approved the final legislative procedure of a bill that requires that the Restricted Law on Copper be published in the official newspaper.¹⁷⁴⁹ The law shall thus no longer be secret and its content may be known, in accordance with democratic principles.

1216. Access to information held by the State is one of the fundamental pillars of democracies that emanates from the acknowledgment that the individual is the owner of that information and has delegated the management of public affairs to his or her representatives; the individual also places checks on the government, such as public scrutiny of the people, to prevent or monitor the abuse of coercive power and to participate in the shaping of state policies.¹⁷⁵⁰ The existence of “secret laws” on grounds of national security directly inverts these fundamental principles and should be understood as the legacy of the authoritarian doctrines of the past, which has no justification in the current democratic system and is incompatible with the American Convention.

1217. It's worth recalling that “in a democratic society, the principle of legality is inseparably linked to that of legitimacy by virtue of the international system that is the basis of the Convention as it

¹⁷⁴⁶ Consejo para la Transparencia de Chile. [Minuta sobre Leyes Secretas](#). DJ/UNR/16/05/2016. 2016. Page 1.

¹⁷⁴⁷ Consejo para la Transparencia de Chile. [Minuta sobre Leyes Secretas](#). DJ/UNR/16/05/2016. 2016. Page 2.

¹⁷⁴⁸ Consejo para la Transparencia de Chile. [Minuta sobre Leyes Secretas](#). DJ/UNR/16/05/2016. 2016. Page 2.

¹⁷⁴⁹ Emol. November 23, 2016. [Cámara aprueba moción que permite que la Ley Reservada del Cobre sea publicada en el Diario Oficial](#); T13. November 23, 2016. [Congreso despacha proyecto que hace pública la Ley Reservada del Cobre](#).

¹⁷⁵⁰ IACHR. [Background and Interpretation of the Declaration of Principles](#). Principle 4. Para. 17 and 18.

relates to the "effective exercise of representative democracy," which results in the popular election of legally created organs, the respect of minority participation and the furtherance of the general welfare".¹⁷⁵¹ Secret laws do not satisfied these requirements.

1218. The Office of the Special Rapporteur also notes that on March 29, 2016, the Council for Transparency [*Consejo para la Transparencia*] ordered Chile's National Defense General Staff [*Estado Mayor Conjunto*] to release some of the minutes of National Security Council [*Consejo de Seguridad Nacional*] (Cosena), "upon receiving the request of a person who asked to see the minutes of all Council meetings held between 1989 and 2012, as well as documents containing the agreements or resolutions adopted at those meetings."¹⁷⁵² The General Staff denied access to the requested information, on the grounds that the information requested might affect national security. In its decision, the Council for Transparency found that disclosing the information would not affect national security and defense, and that its disclosure would instead be of interest to the public "as a way of preserving the historical memory of the events regarding serious human rights violations that occurred in Chile". According to information available, some of these minutes refer to a debate about the political and social consequences of the Rettig Report of the National Commission on Truth and Reconciliation [*Informe Rettig de la Comisión Nacional de Verdad y Reconciliación*] (1991), the constitutional accusation against Supreme Court Judges [*Ministros de la Corte Suprema*] (1992) and the perspectives of the members of Cosena on the unity and reconciliation of the country (2001).

1219. The Office of the Special Rapporteur recognizes that finding the appropriate balance between public interest in the disclosure of information and the protection of legitimate national security interests is not an easy task. One of the main challenges is the absence of a democratic definition of "national security" and its misuse for illegitimate purposes that may limit access to public information. In this regard, the Office of the Special Rapporteur has indicated that in order to invoke secrecy on grounds of national security, "laws that regulate secrecy must precisely define the concept of national security and clearly specify the criteria to be used to determine if certain information may be declared secret or not, in order to prevent overuse of the 'secret' classification to avoid the disclosure of information that is of public interest." In this regard, the Office of the Special Rapporteur emphasizes that restricting access to public information on grounds of national security must not be based on an idea of national security that is incompatible with a democratic society.¹⁷⁵³

1220. According to The Global Principles on National Security and the Right to Information (Tshwane Principles) "a national security interest is not legitimate if its real purpose or primary impact is to protect an interest unrelated to national security, such as protection of government or officials from embarrassment or exposure of wrongdoing; concealment of information about human rights violations, any other violation of law, or the functioning of public institutions; strengthening or perpetuating a particular political interest, party, or ideology; or suppression of lawful protests."¹⁷⁵⁴

1221. Restricting access to information on grounds of national security must also be established by law and be truly necessary in a democratic society. The mere assertion by the government of a national security risk is not enough. This risk must be proven. In the words of the Special Rapporteur for Freedom of Expression, an exception must pass a three-part test: a) it must be related to one of the legitimate objectives that justify it; b) it must be proven that disclosing the information actually threatens to substantially harm that legitimate objective; and c) it must be proven that the harm to the objective is greater than the public

¹⁷⁵¹ 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. 32.

¹⁷⁵² Consejo para la Transparencia. April 15, 2016. [CPLT ordena entregar actas del Cosena](http://www.consejotransparencia.cl/consejo/site/artic/20160415/asocfile/20160415110029/c2803_15_cosena_def_final.pdf); Consejo para la Transparencia. Decisión Amparo Rol C2803-15. March 29, 2016. Available for consultation at: http://www.consejotransparencia.cl/consejo/site/artic/20160415/asocfile/20160415110029/c2803_15_cosena_def_final.pdf

¹⁷⁵³ IACHR. *Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Access to information on human rights violations) OEA/Ser.L/V/II. Doc. 5. March 4, 2011.

¹⁷⁵⁴ Open Society Foundations. June 12, 2013. [The Global Principles on National Security and the Right to Information \(The Tshwane Principles\)](#).

interest in having the information. This is particularly important in the case of information about serious human rights violations or international humanitarian law.¹⁷⁵⁵

1222. In its report, *Access to Information on Human Rights Violations*, the Office of the Special Rapporteur affirmed that “it is surprising that the secrecy of serious human rights violations committed by agents of the State during the authoritarian regime from which the State is transitioning should be considered an indispensable condition for maintaining the “national security” of the new order based on the rule of law.”¹⁷⁵⁶ What damage to the national security of a democratic State can be done by the dissemination of information on crimes of a past authoritarian regime whose legacy a nation seeks to overcome? On the contrary, a society that is well-informed about the activities of the State and the events of the past is fundamental in dissolving authoritarian enclaves and fosters the legitimate interests of national security. For these reasons, in accordance with international human rights law and regional best practices, the Office of the Special Rapporteur has held that there are no democratic arguments that justify classifying or denying information regarding serious human rights violations on grounds of national security.

1223. In this context, enacting laws that complement the Law on Access to Public Information is essential to promote an opening in defense and national security institutions and to guarantee the effectiveness of a transparent regime that will protect human rights in that sector. Laws that protect whistleblowers encourage public officials in the Armed Forces and the Ministry of Defense and Security [*ministerio de Defensa y Seguridad*] to report wrongdoing, breaches of law and human rights violations committed by other officials and ensure that they may remain in their positions without facing retaliation.

1224. The Office of the Special Rapporteur is also concerned that in the case of the Cosena minutes, by filing an illegality appeal before the Santiago Court of Appeals, the Government has questioned the powers of the Council for Transparency [*Consejo para la Transparencia*] to resolve these kinds of disputes and oversee access to information that stem from this State security entity.¹⁷⁵⁷

1225. The Office of the Special Rapporteur reiterates that an assessment of the ability of the entity to guarantee access to information must take into account whether or not the entity has specific, unambiguous duties and clear jurisdiction when compared to the powers of other entities. In the case of agencies that guarantee access to information, a key attribute is the ability to resolve disputes about the disclosure of information through decisions that are binding and effective. In this regard, the Inter-American Court has highlighted that the State “should include a guarantee of the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for making a decision and providing information, and which is administered by duly trained officials.”¹⁷⁵⁸

1226. It is also a good practice for the legal system to establish that these decisions are final and unassailable for the parties involved, without prejudice to individuals, who must maintain the right to appeal adverse rulings or resolutions of guarantor entities before courts having jurisdiction, as part of the guarantee of the right of access to justice. Indeed, the Office of the Special Rapporteur believes that the ability of the parties involved to challenge the resolutions of the institutes that deal with access to information by means of

¹⁷⁵⁵ IACHR. *Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Access to information on human rights violations) OEA/Ser.L/V/II. Doc. 5. March 4, 2011; Open Society Foundations. June 12, 2013. [The Global Principles on National Security and the Right to Information \(The Tshwane Principles\)](#).

¹⁷⁵⁶ IACHR. *Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Access to information on human rights violations) OEA/Ser.L/V/II. Doc. 5. March 4, 2011.

¹⁷⁵⁷ Emol. December 19, 2016. [Gobierno evalúa apelar a dictamen que autorizó revelar actas del Consejo de Seguridad Nacional](#); Emol. April 23, 2016. [Estado Mayor Conjunto envía al CDE solicitud de hacer públicas actas del Cosena](#); Universidad de Chile. July 11, 2016. [Documentos secretos y Fuerzas Armadas: El derecho a la información en el centro del debate](#); *El mercurio*. April 22, 2016. Editorial. [Actas del Consejo de Seguridad Nacional](#); Diario Uchile. April 18, 2018. [Ministerio de Defensa y Estado Mayor bloquean entrega de actas del Cosena](#).

¹⁷⁵⁸ 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. 163.

ordinary appeals leads to a denial of the right to obtain the information requested by way of a simple, expeditious and specialized process.¹⁷⁵⁹

- **Historical Records and Memory**

1227. Finally, the Office of the Special Rapporteur notes with concern reports about the lack of proportionality and uniformity of restrictions on access to records, documents, testimony, and background information provided by victims to the National Commission on Political Imprisonment and Torture [*Comisión Nacional sobre Prisión Política y Tortura*] (Valech Commission I [*Comisión Valech I*]) and its impact on the right to memory, truth, and justice.

1228. The Valech Commission I [*Comisión Valech I*] was created in 2003 in order to determine who was imprisoned and tortured for political reasons during the military dictatorship. According to available information, the background information the victims provided to the Commission is classified as confidential by law for a term of 50 years,¹⁷⁶⁰ or until 2054. In accordance with Law No. 19.992, confidentiality binds every “person, group of persons, authority or magistrature,” which has been interpreted to include courts of justice. This differs from the background information of the Rettig Commission on Forced Disappearance and Political Execution [*Comisión Rettig sobre Desaparición Forzada y Ejecución Política*] (1990) which is under “absolute confidentiality,” but by law may be accessed by courts of justice in the cases before them.¹⁷⁶¹ The grounds for secrecy was the right to privacy of those who offered testimony.

1229. According to information gathered, former political prisoners and victims identified by the Valech Commission I have demanded access to this information through legal actions, with several positive results. On December 22, 2015, the Santiago Court of Appeals sustained a remedy for protection and required that the INDH, the custodian of records, turn over the information obtained in the Valech Commission I to one of the victims.¹⁷⁶² Later, on August 2, 2016, the Court of Appeals [*Corte de Apelaciones*] ordered the declassification of records concerning a group of 14 former political prisoners who supported *Movimiento de Izquierda Revolucionaria* (MIR).¹⁷⁶³ However, courts are still being denied access to these records for the purposes of investigating these crimes.

1230. During the visit, this Office was informed that Congress was considering a reform of the legal confidentiality of the Valech I Commission [*Comisión Valech I*] records in order to lift the 50-year-long secrecy and make public the records gathered by the Commission. The Office of the Special Rapporteur regrets that on August 31, 2016 the Chamber of Deputies [*Cámara de Diputados*] rejected the draft bill.¹⁷⁶⁴

1231. The IACHR has recognized that state efforts to guarantee access to information must include an opening of historical records so that the courts of justice that investigate serious human rights violations may perform their duties. The progress of a judicial process concerning serious human rights violations may never be obstructed by lack of access to state-held records and documents. In this regard, as the United

¹⁷⁵⁹ IACHR. [The Human Rights Situation in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15 December 31, 2015.

¹⁷⁶⁰ Decreto Supremo No. 1.040 of 2003. Art. 5 “All the actions carried out by the Commission, as well as all the background information it receives, will be classified in nature, for all legal effects”. Article 15 of Ley No. 19.992 provides that the access ban to documents extends to any “person, group of persons, authority or court”.

¹⁷⁶¹ Decreto No. 355 of 1990 and Ley 19.123 of 1992. Art. 2.3 final point.

¹⁷⁶² The Clinic. December 28, 2015. [Triunfo judicial de familiar de víctima de la dictadura quiebra con el secreto de la Comisión Valech](#); The Clinic. January 13, 2015. [La odisea de Fabiola: Cómo una víctima de la dictadura logró romper con el secreto de 50 años de la Comisión Valech](#); Proceso. December 28, 2015. [Chile: “el secreto de los 50 años” se resquebraja](#).

¹⁷⁶³ Diario Uchile. September 22, 2016. [Informe Valech: Desclasifican testimonios de ex presos políticos](#); la Jornada. September 22, 2016. [Desclasifican archivos sobre tortura en dictadura chilena](#).

¹⁷⁶⁴ La Tercera. No date. [Cámara rechaza proyecto que establecía el carácter público de los antecedentes de la Comisión Valech](#); Clarín. September 2, 2017. [Cámara rechazó proyecto para hacer públicos los antecedentes de la Comisión Valech sobre violadores de DD.HH.](#); Cooperativa.cl. August 31, 2016. [Por falta de quórum, Cámara rechazó levantar secreto de Comisión Valech](#).

Nations Committee Against Torture did in 2009,¹⁷⁶⁵ the Office of the Special Rapporteur urges the State to adopt the necessary measures to guarantee courts access to state-held information that is necessary to fulfill their obligations of justice and to reconsider repealing the article in Law 19.992 that provides for 50-year secrecy of the Valech Commission I records.

D. Pluralism, Diversity and Freedom of Expression

1232. The Office of the Special Rapporteur noted that, following the return to democracy, Chile has taken legislative and administrative measures to take gradual steps toward greater pluralism and diversity in public debate and to prevent the concentration of ownership and control of the media. However, these laws and the implementation thereof have not had the expected results, and Chile's media has one of the highest levels of concentration.

1233. It is worth noting that following the return to democracy, Chile passed laws and public policies geared towards developing independent public television, based on the principle that both the government and the opposition would be involved in the management of public signals. In the first decade, this ensured that the public media would not be coopted by the government in power. The Office of the Special Rapporteur has also taken note of the provisions enacted in recent years that provide State funding for regional media projects and require transparency in the ownership of private media outlets, the standards and policies that legally recognized community broadcasting, the legal provisions that allow persons with disabilities to access governmental and public interest information, and the reforms undertaken to provide more equal and nondiscriminatory access in the transition to digital television signals. Standards were also adopted to guarantee that government advertising reaches local and regional media.

1234. Without diminishing the progress made, and as described hereinafter, the Office of the Special Rapporteur notes that the promotion of a broad plurality of sources of information continues to be a challenge for Chilean democracy, and the reasons that prevent it from creating the structural conditions to promote a spectrum of media outlets that are diverse both in ownership and in their editorial lines should be studied in depth.

• The Regulation of the Media and Measures to Prevent Media Concentration

1235. The media play a key role in the very existence of a pluralist, deliberative and participatory democratic system. The Inter-American Court has stated that in a democratic society, the media play an essential role as vehicles and instruments for the exercise of freedom of expression and information, in its individual and collective dimensions.¹⁷⁶⁶ The Office of the Special Rapporteur has highlighted that “[t]he link between freedom of expression and democracy is so important that, according to the Inter-American Commission, the very purpose of article 13 of the American Convention is to strengthen the operation of deliberative and pluralistic democratic systems through the protection and promotion of the free circulation of information, ideas and expressions of all kinds.¹⁷⁶⁷

1236. In the words of the Inter-American Court, “[g]iven the importance of freedom of expression in a democratic society and the great responsibility it entails for professionals in the field of social communications, the State must not only minimize restrictions on the dissemination of information, but also extend equity rules, to the greatest possible extent, to the participation in the public debate of different types of information, fostering informative pluralism. Consequently, equity must regulate the flow of information.

¹⁷⁶⁵ UN Committee Against Torture. Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Concluding observations on Chile. CAT/C/CHL/CO/5. June 23, 2009. Para. 19. Available at: <http://www.refworld.org/docid/4a69b8542.html>.

¹⁷⁶⁶ I/A Court H.R.. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107. Para. 117.

¹⁷⁶⁷ IACHR. *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. 8.

In these terms is to be explained the protection of the human rights of those who face the power of the media and the attempt to ensure the structural conditions which allow the equitable expression of ideas.”¹⁷⁶⁸

1237. Respect for the principles of pluralism and diversity includes, on one hand, the obligation to establish structural conditions allowing for competition under equal conditions that involve a higher number of more diverse groups in the communicative process; and, on the other hand, ensuring the freedom to distribute information that could be “unpleasant for the State or a sector of the population,” in accordance with the “tolerance and spirit of openness” that are characteristic of pluralism.¹⁷⁶⁹ The freedom of individuals to debate openly and criticize policies and institutions, and diversity and pluralism in public debate not only advances civil and political liberties, it often contributes to economic, social, and cultural rights.¹⁷⁷⁰

1238. In that regard, in their 2007 Joint Declaration on Diversity in Broadcasting, the Rapporteurs for Freedom of Expression explained that, “in recognition of the particular importance of media diversity to democracy, special measures, including anti-monopoly rules, should be put in place to prevent undue concentration of media or cross-media ownership, both horizontal and vertical. Such measures should involve stringent requirements of transparency of media ownership at all levels. They should also involve active monitoring, taking concentration of ownership into account in the licensing process, prior reporting of major proposed combinations, where applicable, and powers to prevent such combinations from taking place.”

1239. During the visit, the Office of the Special Rapporteur heard complaints from civil society organizations about the excessive concentration of media ownership and control in the hands of a small number of economic groups, and the impact of this phenomenon on media pluralism. According to the reports received, concentration is particularly high in local and national radio and print media, and reportedly began during the military dictatorship with the shutdown of a dozen publications and the government takeover of 40 radio stations. Complaints were also received about a recent boom in cross-ownership and the influence of foreign capital in the radio sector. The acquisition by the Spanish group Prisa of the *Iberoamericana Radio Chile*, with more than half of the country’s radio stations, was cited as an example of this problem. The vertical integration (printing and distribution) of two groups that own national, regional, and local newspapers, in the opinion of many, has prevented new actors from entering the print media market. Another issue raised was that both groups espouse similar editorial ideas. There were also reports of an alleged lack of transparency with respect to media ownership and control in general. In this regard, representatives of the Chilean Media Federation [*Federación de Medios de Comunicación Social de Chile*] acknowledged the need to promote competition in the ownership and control of the media, although they expressed their concern that the potential enactment of legislative reforms seeking to promote public policies on the issue could disproportionately affect the right to freedom of expression, as has been the case in other countries in the region.

1240. The general legal framework on broadcasting is found in the Telecommunications Act [*Ley General de Telecomunicaciones*] (Law No. 18.168)¹⁷⁷¹ and Supreme Decree No. 127 (2006) of the ministry of Transportation and Telecommunications [*ministerio de Transportes y Telecomunicaciones*], which approved the General Plan for Radio Spectrum Use and its amendments [*Plan General de Uso del Espectro*

¹⁷⁶⁸ IACHR. [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. 198.

¹⁷⁶⁹ IACHR. [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.226; See also: 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.

¹⁷⁷⁰ 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. Doc. 1 rev. 1. March 7, 2003. Para. 37.

¹⁷⁷¹ Biblioteca del Congreso Nacional de Chile. Ley General de Telecomunicaciones No. 18.168. October 1982. Last version on August 20, 2016. Available for consultation at: <https://www.leychile.cl/Navegar?idNorma=29591>

Radioeléctrico].¹⁷⁷² The television sector is also regulated by Law No. 18.838, which creates the National Television Council [*Consejo Nacional de Televisión*],¹⁷⁷³ an autonomous entity whose mission is to ensure the proper functioning of all television services that operate in the country, and by its recent amendment via Law No. 20.750 on Digital Terrestrial Television.¹⁷⁷⁴ *Televisión Nacional de Chile*, a state-owned channel, is also regulated by Chilean National Television Law No. 19.132. Law No. 19.733, “On Freedom of Opinion and Information and the Practice of Journalism” (Press Law),¹⁷⁷⁵ applies to all media outlets.

1241. In terms of laws that ensure media diversity and prevent media concentration, the Office of the Special Rapporteur cautions that article 38 of the Press Law, via a 2009 amendment, stipulates that “any pertinent action or event concerning a change in ownership of a media outlet must be reported to the Office of the National Economic Prosecutor [*Fiscalía Nacional Económica*] within a thirty-day period. In the case of media outlets with concessions granted by the State, before the change takes place, the Office of the National Economic Prosecutor must issue a report on the effect of the change on competition within a thirty-day period after receiving background information on the case. If the report is unfavorable, the National Economic Prosecutor shall notify the Court in accordance with article 31 of Decree with Force of Law No. 1 (2005) of the ministry of Economy, Development and Reconstruction [*Economía, Fomento y Reconstrucción*]. If the report is not issued within the specified timeframe, it shall be understood that the Office of the Prosecutor has no objection.”¹⁷⁷⁶ The Office of the National Economic Prosecutor is governed by Decree-Law No. 211 on the Defense of Free Economic Competition and its amendments [*Decreto Ley No. 211 de Defensa de la Libre Competencia Económica y sus modificaciones*].¹⁷⁷⁷

1242. As for transparency in the ownership and control of the media, although media outlets are required to maintain current and freely accessible ownership records, there are no active transparency requirements for the entities that regulate radio frequencies. Article 9 of the Press Law [*Ley de Prensa*] requires that media outlets “provide accurate information regarding owners, direct or indirect controllers, lessees, bailees or concessionaires, as appropriate. In the case of one or more persons, this information shall allow for the individualization of natural and legal persons involved in ownership or use, regardless of the type. Furthermore, copies of documents of incorporation and the bylaws of legal persons, be they partners or shareholders, shall be kept, except in the case publicly traded corporations, as well as any changes made to these documents, if applicable. This information shall be freely accessible to the public and must be continuously updated and available at the offices of the media outlet and of the authorities who require it to carry out their responsibilities.”

1243. The Office of the Special Rapporteur highlights that article 13 of the Telecommunications [Ley General de Telecomunicaciones] Act sets limits on the accumulation of frequencies by a single company or economic group in the same location. This law establishes that “a single company and its subsidiaries, affiliate or related companies may not submit more than one application for the same location in the same bidding procedure. If it does so, no application will be considered during the procedure.”¹⁷⁷⁸ Article 15 of Law No. 18.838 of the National Television Council [*Consejo Nacional de Televisión*] also establishes that “new

¹⁷⁷² Biblioteca del Congreso Nacional de Chile. Decreto No. 127. Aprueba plan general de uso del espectro radioeléctrico. Available at: <http://www.leychile.cl/Navegar?idNorma=249068>

¹⁷⁷³ Biblioteca del Congreso Nacional de Chile. Ley No. 18.838 que crea el Consejo Nacional de Televisión. September 29, 1989. Last modification on January 21, 2016. Available for consultation at: <http://www.bcn.cl/>

¹⁷⁷⁴ Biblioteca del Congreso Nacional de Chile. Ley No. 20.750 que permite la introducción de la televisión digital terrestre. May 11, 2014. Available for consultation at: <http://www.bcn.cl/>

¹⁷⁷⁵ Biblioteca del Congreso Nacional de Chile. Ley No. 19.733 Ley sobre libertades de opinión e información y ejercicio del periodismo. May 18, 2001. Last modification on December 23, 2013. Available for consultation at: <http://www.bcn.cl/>

¹⁷⁷⁶ Biblioteca del Congreso Nacional de Chile. Ley No. 19.733 Ley sobre libertades de opinión e información y ejercicio del periodismo. May 18, 2001. Last modification on December 23, 2013. Available for consultation at: <http://www.bcn.cl/>

¹⁷⁷⁷ Ley de Defensa de la Libre Competencia. Texto refundido, coordinado y sistematizado del Decreto Ley N° 211, de 1973. Available for consultation at: <http://www.fne.gob.cl/marco-normativo/marco-normativo/>

¹⁷⁷⁸ Biblioteca del Congreso Nacional de Chile. Ley General de Telecomunicaciones No. 18.168. October 1982. Last version August 20, 2016. Article 13. Available for consultation at: <https://www.leychile.cl/Navegar?idNorma=29591>

concessions with internal funding may not be granted to legal persons that already hold a concession of the same type, or who control or manage other free-to-air television broadcasting service concessionaires, granted through a public bidding procedure, in the same service area [...]. The limits established in the preceding paragraphs also apply to the respective business group, in accordance with article 96 of Law No. 18.045.”¹⁷⁷⁹

1244. Although Law 18.838 was the first step in the sense that it limited frequency hoarding, the effect of the Law has been relative. First of all, it only applies to new bidding procedures in the future, and would therefore only apply to open digital television, a developing market that is seriously at risk due to the development of converging platforms.

1245. During the visit and in subsequent correspondence, the Office of the Special Rapporteur asked the State if reports were available or if research had been conducted on the subject of concentration, diversity or competition in the media. The State did not submit information on the subject, although article 4 of the Press Law [*Ley de Prensa*] provides for the funding of studies on pluralism in the media through the Pluralism Fund of the National Information System of the National Scientific and Technological Research Commission [*Fondo de Pluralismo en el Sistema Informativo Nacional de la Comisión Nacional de Investigación Científica y Tecnológica*] (Conicyt).¹⁷⁸⁰

1246. The Office of the Special Rapporteur received, however, a report drafted by the National Television Council Research Department [*Departamento de Estudios de la Comisión Nacional de Televisión*] on media concentration in the Chilean television industry (2016). According to the study, in Chile there are 7 national television channels (terrestrial and free-to-air), 18 regional channels, and 32 free-to-air local television channels. There are also 13 license holders for paid, cable or satellite television. According to the report, “there are currently 53 Digital TV projects at the national and regional level.”¹⁷⁸¹ On this basis, the study analyzed the “different degrees of media concentration, both in terms of audience and investment in advertising” in these markets. The report states that concentration ratio indicators do not point to the existence of a monopoly in television. However, the report affirms that this indicator appears to show domination of 91 per cent of the audience and 87 per cent of investment in advertising in the hands of four business groups. Other indicators appear to show concentration in free-to-air television, “though lower than in paid [television].” According to the study, “after analyzing the total number of signals at the regional and local levels, the Chilean State has the highest concentration of ownership (28 per cent).”

1247. Regarding this issue, the Inter-American Court of Human Rights has highlighted that media pluralism “is an effective guarantee of freedom of expression” and is “the duty of the State [...] to protect and guarantee [...] through minimizing restrictions to information and seeking balanced participation, by allowing the media to be open to all without discrimination, as the goal sought is ‘to preclude certain individuals [or] groups [...] from being excluded, a priori,’” pursuant to article 1.1 of the Convention, through minimizing restrictions to information and seeking balanced participation.¹⁷⁸²

1248. The Office of the Special Rapporteur recognizes that against this backdrop, the State has adopted important legislative measures. For example, the 2014 Digital Television Act [*Ley de Televisión Digital*] provides that once the necessary frequencies are assigned so that television channels can transition to digital broadcasting, 40 per cent of the total remaining licenses will be assigned to regional, local and local

¹⁷⁷⁹ Biblioteca del Congreso Nacional de Chile. Ley No. 18.838 que crea el Consejo Nacional de Televisión. September 29, 1989. Last modification on January 21, 2016. Available for consultation at: <http://www.bcn.cl/>

¹⁷⁸⁰ Biblioteca del Congreso Nacional de Chile. Ley No. 19.733 Ley sobre libertades de opinión e información y ejercicio del periodismo. May 18, 2001. Last modification on December 23, 2013. Available for consultation at: <http://www.bcn.cl/>

¹⁷⁸¹ Comisión Nacional de Televisión. Departamento de Estudios. 2016. Available for consultation at: <http://www.observacom.org/sitio/wp-content/uploads/2016/08/Informe-Concentracion-de-Medios-en-la-Industria-Televisiva-Chilena-CNTV-2015.pdf>

¹⁷⁸² I/A Court H.R.. *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*. Judgment of June 22, 2015. Series C No. 293. Para. 142.

community digital television broadcasting signals, or to cultural or educational signals. However, different sources expressed concern over the fact that the available space for commercial media outlets is being captured by actors who currently hold dominant positions in the television industry or in other broadcasting companies. They added that the State should strengthen promotional measures to ensure that new stakeholders have access to the spectrum, such as the production and broadcasting of content through competitive funding programs such as the National Television Council Fund [*Fondo Consejo Nacional de Televisión*]. The Office of the Special Rapporteur was also informed that the community sector was defined in the Digital Television Act [*Ley de Televisión Digital*] as “community site,” restricting its coverage to specific geographic areas.

1249. The Office of the Special Rapporteur has stated previously that the digital transition can have negative impacts if it is not guided by the requirements necessary to guarantee freedom of expression, potentially diminishing pluralism and creating new barriers to cultural and linguistic diversity and to the free circulation of information. Therefore, during the digital television implementation process, the States should evaluate the broadcasting opportunities provided by the spectrum savings gained from transitioning to digital broadcasting, and the use of the digital dividends that are freed up by this process. They should consider this technological change an opportunity to increase the diversity of voices and facilitate media access for new sectors of the population.

1250. Similarly, and taking into account the status quo, Chile should strengthen its policies to promote competition in all relevant communication markets and prevent existing groups from continuing to expand vertically and hoard media outlets. In this regard, laws and public policies (as long as they pass the test that every restriction on freedom of expression must pass) that set reasonable limits on frequency hoarding and cross-ownership in the same location, when this might mean that one or two groups might have all types of media outlets and rules to promote the transport of free-to-air, public, and community signals, are compatible with the protection of the right to freedom of expression.

1251. Along the same lines as promoting more diverse content and voices in Chilean television, the Office of the Special Rapporteur gathered relevant information about the introduction to Congress of a bill by President Michelle Bachelet’s administration to amend Chile’s National Television Law [*Ley sobre Televisión Nacional de Chile*] to strengthen public service television and its governance and funding. The bill also proposed the creation of a new signal with cultural content and strong support for national production. The Office of the Special Rapporteur commends these measures, and reiterates that during their implementation, the principles of independence, autonomy and the participation of civil society in public media must be respected, which will help enhance diversity and pluralism in the country’s media. The Office of the Special Rapporteur also highlights the need to offer significant opportunities for the representatives of different sectors of Chilean civil society to participate in legislative debate and to guarantee independence for the governance of the public service media outlet. Recently, the Office learned of a bill that was passed to amend the National Television Council Law 18.838 [*Ley 18.838 del Consejo Nacional de Televisión*] so that municipalities, corporations and municipal foundations may obtain licenses for television channels at the local level.¹⁷⁸³

1252. In this regard, in their 2007 Joint Declaration, the Special Rapporteurs on Freedom of Expression from the UN, the OAS, the OSCE and the African Commission stated that, “[s]pecial measures are needed to protect and preserve public service broadcasting in the new broadcasting environment. The mandate of public service broadcasters should be clearly set out in law and include, among other things, contributing to diversity, which should go beyond offering different types of programming and include giving voice to, and serving the information needs and interests of, all sectors of society. Innovative funding mechanisms for public service broadcasting should be explored which are sufficient to enable it to deliver its

¹⁷⁸³ Observacom. September 27, 2016. [Aprueban proyecto de ley que permitirá que municipios chilenos tengan canal de TV local.](#)

public service mandate, which are guaranteed in advance on a multi-year basis, and which are indexed against inflation.”

1253. As for reforms on government advertising, the Special Rapporteur notes with satisfaction that, in order to promote official information through local and regional media, the 2016 Law on Public Sector Budget [*Ley de Presupuesto del Sector Público*] established the obligation to assign 25 per cent of government advertising to media "with clear local identity" and "equitable territorial distribution," subject to accountability mechanisms. Upon becoming effective, this type of policy can contribute to promoting diversity and pluralism in the media in the country. This Office reiterates to the State that advertising resources should be allocated according to pre-established, clear, transparent and objective criteria. Government advertising should never be assigned by States as a reward or punishment for a media outlet's editorial and informational content.

1254. Regarding this issue, Office of the Special Rapporteur recommends that the Chilean State fully implement the laws that have been enacted on the transition to digital television, advertising on public media, recognizing community media and the allocation of government advertising, in accordance with international standards on freedom of expression and promoting greater diversity and pluralism in every public policy decision made in these areas.

1255. In terms of public service media, the Office of the Special Rapporteur recommends a law that provides them with the appropriate funding and a specific mandate on the broadcasting of content and information that is of public interest. In particular, these outlets should offer different types of programs, give a voice to and satisfy the needs of all sectors of society regarding information and interests. It should establish the participation of different stakeholders in civil society in the governance of public media and guarantee that these media are independent from the administration that is in office.

1256. In terms of concentration in different communication markets, the office recommends enforce the law that establishes the funding of studies on pluralism in the media system; provide training and promote policies at the level of the appropriate Office of the Prosecutor in the area of preventing oligopolistic practices in media markets and use criteria for the oversight of media acquisitions and mergers that not only include economic criteria but also promote diversity and pluralism in the media.

1257. Enact laws that complement those that aim to defend competition, in particular, those that establish clear and transparent procedures by law for the equitable assignment and renewal of frequencies for public, commercial and community media; set reasonable limits on the hoarding of audiovisual media that require a license or a spectrum assignment gradually adapt those that exceed the established limits; and establish transportation rules to ensure television broadcasting for subscribers of public, commercial and community media. The Chilean State must also guarantee that any restrictions placed on freedom of expression to manage frequencies and guarantee diversity and pluralism are enforced by an institution that is sufficiently independent and autonomous to shield it from both political and economic influence.

1258. In terms of the print media, foster an opening of the written and/or digital print media market through laws and public policies that also guarantee pluralism in print media outlets. These policies may include conducting studies and adopting measures on the mechanisms for access to newsprint, the distribution and sale of newspapers in the country, and doing away with possible barriers to access in this market.

- **The Situation of Community Broadcasting Media Outlets**

1259. On several occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media outlets play a crucial role in our region so that several sectors of society may exercise freedom of expression and of access to information. Specifically, community media outlets are essential in

guaranteeing indigenous people in our region effective respect for freedom of expression and access to information.¹⁷⁸⁴

1260. This Office has emphasized that a comprehensive policy in this area includes three types of measures: legal recognition, access to the spectrum and support for the development and sustainability of the media.¹⁷⁸⁵

1261. Community radio outlets were legally recognized as a separate sector of Chilean broadcasting upon the enactment of Law No. 20.433 on Chilean Community Broadcasting [*Ley No. 20.433 sobre Radiodifusión Comunitaria Ciudadana*] in 2010.¹⁷⁸⁶ However, during the visit, this Office heard criticism of the law's effectiveness in guaranteeing access to the spectrum and the sustainability of community media. Specifically highlighted were the effects of the limits this law imposes on radio outlets regarding power, funding, and the ability to air nationwide simultaneous broadcasts.

1262. Law No. 20.433 superseded Law 19.277 (1994) on "minimum coverage radio" [*radios de mínima cobertura*], which limited radiated power to 1 watt and from a 6-meter tall antenna, required frequency renewal every three years and prohibited any kind of commercial advertising.¹⁷⁸⁷ The new Law provides the following:

– Free-to-air community radio services "shall have a maximum service area of one municipality (*comuna*) or group of municipalities, in accordance with the concessionaire's scope of community action." (Art. 1)

– These services "shall be made up of one broadcasting station with a minimum radiated power of 1 watt and a maximum of 25 watts". "In exceptional cases, [...] and in the case of areas that are on the border or far removed, with a spread-out population or in extremely rural areas, radiated power may be up to 40 watts". "If the goal sought is to promote the cultural identities of indigenous peoples and languages, the maximum limit for radiated power shall be no greater than 30 watts". (Art. 4)

– "The concession period shall be ten years, and the concessionaire shall have the preferential right to renew it, providing it has fulfilled the community goals that led to the original concession." (Art. 11)

– "Service concession organizations may broadcast mentions of business or services located in their service area in order to finance their own broadcasting needs, and may also enter into agreements for cultural, community, sports or general public interest broadcasting. 'Commercial mentions' shall mean commending or thanking an entity, business, establishment or commercial venue, and only the name and address thereof may be indicated. In no case may electoral or political propaganda be broadcast." (Art. 13)

1263. The Office of the Special Rapporteur reiterates to the State that the legal recognition of community broadcasting is insufficient if laws establish discriminatory conditions for its development and sustainability. Discriminatory conditions include, for instance, limitations that may be provided for in legislation, or imposed in practice, that establish restrictions on content, geographical coverage, or access to sources of funding for certain types of media without a sufficient, objective and reasonable argument that they pursue a legitimate aim consistent with the American Convention.

¹⁷⁸⁴ 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. CIDH/RELE/INF. 3/09. December 30, 2009 Para. 96 and following.

¹⁷⁸⁵ IACHR. 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. CIDH/RELE/INF. 3/09. December 30, 2009 Para. 96 and following.

¹⁷⁸⁶ Biblioteca del Congreso Nacional de Chile. Ley núm. 20.433, Crea los servicios de radiodifusión comunitaria ciudadana. May 4, 2010. Available for consultation at: <http://www.leychile.cl/Navegar?idNorma=1013004>

¹⁷⁸⁷ Biblioteca del Congreso Nacional de Chile. Ley núm. 19.277, Introduce modificaciones que indica a la Ley n° 18.168, General de Telecomunicaciones. January 20, 1994. Available for consultation at: <http://www.leychile.cl/Navegar?idNorma=30644>

1264. There appears to be no reason to prevent a community radio station from having local or national coverage, depending on its social project. Community broadcasting is not necessarily limited to geographically defined service areas. With the exception of reasonable restrictions to avoid concentration of media ownership, the law should not preset arbitrary limits on coverage, power or the number of community stations in specific geographical areas.¹⁷⁸⁸ Pre-established limits on funds obtained through advertising are also arbitrary. Community radio stations should have access to resources to ensure their equal financial sustainability and with no more limitations than necessary to guarantee their social purpose and independence. Specifically, it must be ensured that State funding does not compromise the independence of community radio, as this would mean losing the genuine value of community in this area of broadcasting.¹⁷⁸⁹

1265. Other recurring themes during the visit were the slow implementation of the Law and the absence of public policies that effectively strengthen the sector. To many, implementation has shown that the law “has not fulfilled the expectations of having a more democratic media system.”

1266. The Office of the Special Rapporteur was informed that since the Law became effective, at least 226 radio stations reportedly had completed procedures to migrate from minimum-coverage radio to community radio, and 70 more were still completing the migration process required by law. One hundred and forty-eight public bidding procedures were completed in the sector. Most of these procedures were not granted, and only 47 new concessions were granted since the law became effective. Moreover, of the total number of concessions granted, 33.8 per cent are operated by religious organizations, and in more remote areas this percentage may be up to 50 per cent of radio stations.¹⁷⁹⁰ According to information received, political parties are also reportedly operating minimum-coverage concessions, at the expense of access to these frequencies in other social sectors.¹⁷⁹¹ Civil society organizations attribute the low number and lack of diversity in the new concessions granted to a lack of information and orientation on access to frequencies, the slow process (that can last from 1 to 2 years) and weaknesses in the legal system in terms of the development and sustainability of media outlets that represent a diversity of social actors, and specifically the indigenous peoples in the country.

1267. Indeed, during the visit, the absence of a sustained public policy geared towards providing opportunities regarding the access and sustainable development of community radio for indigenous peoples was noted. In Temuco, the Office of the Special Rapporteur received worrisome complaints about the legal, technical, and economic limitations faced by indigenous peoples in implementing community broadcasting projects and the ineffectiveness of measures to promote and guarantee indigenous peoples’ access to the media. The Office of the Special Rapporteur has told the State that there is an urgent need to adopt positive measures to guarantee access for indigenous peoples to community media outlets, in the law and in practice, in accordance with ILO Convention 169, which imposes the requirement that States adopt special measures to safeguard the people, institutions, property and cultures of these peoples.

1268. In this regard, it is important to remember the UNESCO “Convention on the Protection and Promotion of the Diversity of Cultural Expressions” (2005), which promotes respect for cultural identities, linguistic diversity, religions and the customs and traditions of different sectors of society and minority groups in particular. In this regard, the Convention establishes that cultural diversity is expressed “also through...diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.” The preamble states that “cultural activities, goods and services have both

¹⁷⁸⁸ IACHR. 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. CIDH/RELE/INF. 3/09. December 30, 2009 Para. 96 and following. Also, see Principles for a democratic legislation on community broadcasting. Amarc-ALC 2008. Available for consultation: [http://www.globalmediapolicy.net/sites/default/files/Principles_Community_Broadcasting_Legislation\(1\).pdf](http://www.globalmediapolicy.net/sites/default/files/Principles_Community_Broadcasting_Legislation(1).pdf)

¹⁷⁸⁹ 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. 19 and 21.

¹⁷⁹⁰ According to Article 9 of Ley 20.433 “Likewise, churches and religious organizations ruled by law N° 19.638 may hold a concession.”

¹⁷⁹¹ This would be the case of *Radio Nuevo Mundo*, of the Communist Party of Chile (www.radionuevomundo.cl), present in Santiago on 930 AM and repeating signals on FM in 11 more cities.

an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value.” The goal of diversity in broadcasting must be established in legislation that ensures, among other things, enough space for the broadcasting of different communication platforms.¹⁷⁹²

1269. In this context, the Office of the Special Rapporteur is seriously concerned about complaints it received about incidents of intimidation against journalists who work at and operate indigenous community radio stations. The situation of radio *Kimche Mapu* and of journalist Mireya Manquepillan are examples of this situation. According to information received during the visit, Manquepillan has been the constant victim of pressure and acts of harassment committed by Chilean *Carabineros* as a consequence of her work as a journalist. The *Kimche Mapu* radio station has reported incidents of excessive use of force, raids and the arrest of members of the Lof Kulche Mapu community, who are claiming ancestral lands and denounce their occupation by forestry companies in the municipality of Lanco, Valdivia.

1270. As indicated by the Inter-American Court, “journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”¹⁷⁹³ Similarly, the IACHR has affirmed, in Principle 9 of the Declaration of Principles on Freedom of Expression, that violence against journalists “violate the fundamental rights of individuals and strongly restrict freedom of expression.” It is incumbent on States to investigate, identify, prosecute and penalize those who commit acts of violence against journalists.

1271. Providing appropriate instruction for State security forces on the role of the press in a democratic society is an important step in order to prevent violence against journalists and media workers. The Office of the Special Rapporteur has thus recommended that States adopt adequate prevention mechanisms in order to avert violence against media workers, including the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right to freedom of expression.¹⁷⁹⁴

1272. Lastly, the Office of the Special Rapporteur heard testimony on the use of criminal law and police force to punish the operation of unlicensed community radio stations pursuant to article 36 (B)(a) of the Telecommunications Act [*Ley General de Telecomunicaciones*] (Law No. 18.168), which stipulates that the operation or use of free-to-air telecommunications or broadcasting services or facilities without the authorization of the respective authority is punishable by a term of imprisonment.¹⁷⁹⁵ The World Association of Community Radio Broadcasters (AMARC) believes that between 2015-2016, six radio stations were reportedly raided, their equipment was seized and their communicators were arrested. Most of the criminal proceedings that are brought reportedly “end with the conditional suspension of the trial, with a commitment not to broadcast for a year, among other alternative measures, which has a silencing effect on further communication.”¹⁷⁹⁶

¹⁷⁹² United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005). Available for consultation at: <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>

¹⁷⁹³ 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.

¹⁷⁹⁴ IACHR. *Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 4. See also, IACHR. *Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression*. Chapter VII (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 4; IACHR. *Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression*. Chapter VI (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 4; IACHR. *Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 4.

¹⁷⁹⁵ Biblioteca del Congreso Nacional de Chile. Ley General de Telecomunicaciones No. 18.168. October 1982. Last version August 2,0 2016. Available for consultation at: <https://www.leychile.cl/Navegar?idNorma=29591>

¹⁷⁹⁶ World Association of Community Radio Broadcasters (AMARC) Chile. Informe radiodifusión comunitaria por visita oficial a Chile. June 6, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

1273. In this regard, the Office of the Special Rapporteur is still concerned about current Chilean laws that establish criminal penalties for the unauthorized use of frequencies. It is also worrisome that the debate in Congress on the legislative bill to amend the sanctions established in article 36 B(a) of the Telecommunications Act [*Ley General de Telecomunicaciones*] (Law No. 18.168) is not moving forward as urgently as it should. As stated on numerous previous occasions, the use of criminal law to penalize violations of the broadcasting system can be problematic in light of the American Convention on Human Rights. Establishing criminal penalties for commercial or community broadcasters who may find themselves in violation of the law due to the lack or misuse of a license is a disproportionate reaction to the interests sought to be protected.

1274. It is worth recalling that the Chilean State signed an agreement indicating it would comply with the recommendations issued by the IACHR in report No. 2/14 in case 12.799, Miguel Ángel Millar Silva *et al* (*Radio Estrella del Mar de Melinka*).¹⁷⁹⁷ In this agreement, approved by the IACHR, the State committed to, among other actions:

a. Establish a Program to promote citizen broadcasting in Regions X and XI (with emphasis on Chiloé and the Guaitecas) with the participation of the petitioners. The Program shall include positive action measures to guarantee the effective operation of radio stations promoted by civil society. The Program would be created jointly, and to this end, a specific working plan would be drafted beforehand.

b. Establish a working group to ensure that discriminatory practices are not followed in implementing the Law. Parties shall make an effort to ensure that the group includes the Ministry General Secretariat of Government, SUBTEL, the World Association of Community Radio Broadcasters (AMARC), the *Asociación Nacional de Radios Comunitarias y Ciudadanas de Chile* (Anarcich), Universities, the *Colegio de Periodistas de Chile* and *Instituto Nacional de Derechos Humanos*. In this regard, the working group shall conduct a study on the subject of amending article 36 B of the Telecommunications Act (Law No. 18.168)".

1275. Based on the preceding, the Office of the Special Rapporteur recommends that the Chilean State review Law No. 20.433 on Community Broadcasting [*Ley No. 20.433 sobre Radiodifusión Comunitaria Ciudadana*] and amend provisions that have discriminatory effects and impede the sustainable development of community radio. It also reiterates its call to amend article 36 B of the Telecommunications Act, which is not currently in compliance with international standards in this area. Finally, this Office urges the State to develop a comprehensive policy to promote this sector that specifically includes the indigenous peoples in the country.

E. Free and Open Internet

1276. The Office of the Special Rapporteur wishes to highlight that Chile has made a significant effort to guarantee that the social and economic benefits of communications technologies and the Internet reach the general population, through various legislative initiatives and public policies. To this end, for example, the Office of the Special Rapporteur was informed of the adoption of the 2020 Digital Agenda [*Agenda Digital*] in late 2015, which lays out “a roadmap for progressing towards the digital development of the country in an inclusive and sustainable manner.”¹⁷⁹⁸

1277. Progress made to date notwithstanding, the Office of the Special Rapporteur believes that the main challenge for Chile lies in including a true, human rights-based focus in the design, development and implementation of these policies, one that places human beings and their rights at the center. For the benefits of the Internet and communications technologies to be distributed among the population in an inclusive, sustainable manner, they must be grounded in respecting and guaranteeing human rights, especially the right

¹⁷⁹⁷ IACHR, Informe No. 48/16, Caso 12.799. Fondo (Publicación). Miguel Ángel Millar Silva et al. (*Radio Estrella del Mar de Melinka*) Chile. November 29, 2016.

¹⁷⁹⁸ Gobierno de Chile. Agenda digital 2020. Available for consultation at: <http://www.agendadigital.gob.cl/#/>

to freedom of expression, which enables and makes possible the exercise of other rights on the Internet.¹⁷⁹⁹ In the words of the United Nations General Assembly, “progress towards the vision of the World Summit on the Information Society should be considered not only as a function of economic development and the spreading of information and communications technologies but also as a function of progress with respect to the realization of human rights and fundamental freedoms.”¹⁸⁰⁰

1278. As explained hereunder, democratic states such as Chile have the obligation to develop Internet policies and practices that are necessary to guarantee the protection of human rights in this area and to review obsolete standards that may unduly interfere with the capability of the Internet as a medium for the realization of human rights.

- **Legal Framework**

1279. On several occasions, this Office has highlighted the important laws and policies adopted in Chile to protect freedom of expression on the Internet in recent years. These laws and policies explicitly included internationally recommended principles and positioned the country as a model to be followed in the region. The Office of the Special Rapporteur has underlined, for example, the Law on Intellectual Property [*Ley de Propiedad Intelectual*] that limits intermediary liability for the content produced by third parties, establishes a legal standard for eliminating content that violates the Law, and creates new exceptions to the need for obtaining the consent of rights holders.¹⁸⁰¹ It also held up as regional examples Law 20.453 and Supreme Decree [*Decreto Supremo*] 368 of 2010, which enshrine the principle of net neutrality for Internet consumers and users by prohibiting the blocking, interference, discrimination, hindrance, or restriction of the right of any user to “use, send, receive or offer any lawful content, application or service through the Internet, as well as any other type of lawful activity on or use of the web.”¹⁸⁰²

1280. In the 2020 Digital Agenda [*Agenda Digital 2020*] the State recognized, however, that “the development of the national digital legal framework has made uneven progress when compared to the development of new technologies, which has significantly impacted the fundamental rights of persons.”¹⁸⁰³ The government affirmed that “a new regulatory focus is needed so that regulations that have become obsolete due to advances in technology, or those that halt market innovation, entrepreneurship and growth, may be amended; this will create regulatory conditions that promote sustainable economic growth and full social inclusion in a knowledge-based society.”¹⁸⁰⁴

1281. The objectives of the new digital agenda include: 1) developing a digital framework, and 2) working towards the full respect of fundamental rights in digital development. The agenda “in some cases provides for working groups to create consensus on courses of action and to put forth draft bills that are considered key to ensuring digital development in Chile while fully respecting the human rights of persons.

¹⁷⁹⁹ IACHR. Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. (Standards for a free, open, and inclusive internet).

¹⁸⁰⁰ United Nations, General Assembly, Resolution 70/125. Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society. A/RES/70/125. February 1, 2016. Para. 9. Available for consultation at: http://unctad.org/en/PublicationsLibrary/ares70d125_en.pdf.

¹⁸⁰¹ Biblioteca del Congreso Nacional de Chile. Ley núm. 20.435. Modifica la Ley No 17.336 sobre Propiedad Intelectual de 28 de agosto de 1970. May 4, 2010. Art. 85L a 85U and 71A a 71S.

¹⁸⁰² Biblioteca del Congreso Nacional de Chile. Ley núm. 20.453. Consagra el principio de neutralidad en la red para los consumidores y usuarios de Internet. August 26, 2010. Art. 24 H a).

¹⁸⁰³ Gobierno de Chile. Agenda digital 2020. Chapter I. November 2015. Page 3. Available at: <http://www.agendadigital.gob.cl/files/Agenda%20Digital%20Gobierno%20de%20Chile%20-%20Capitulo%201%20-%20Noviembre%202015.pdf>

¹⁸⁰⁴ Gobierno de Chile. Agenda digital 2020. Chapter I. November 2015. Page 3. Available at: <http://www.agendadigital.gob.cl/files/Agenda%20Digital%20Gobierno%20de%20Chile%20-%20Capitulo%201%20-%20Noviembre%202015.pdf>

This is a multi-sectorial effort that involves coordinating, articulating and identifying regulatory gaps so that the necessary legal and/or regulatory amendments may be proposed.”¹⁸⁰⁵

1282. The Office of the Special Rapporteur celebrates that this initiative includes the respect and guarantee of online human rights as “a cross-cutting objective that will allow for the other objectives included [in the agenda] to be met.” However, it cautions that the proposal for regulatory review is limited to: “personal data protection regulations, electronic payment methods regulations, the promotion of electronic signatures, digital tax and tariff regulations, digital public purchase regulations, and mechanisms that facilitate the development of IT professionals.” It leaves significant gaps in areas that are considered essential for respecting rights on the Internet, such as net neutrality,¹⁸⁰⁶ the limits and checks on State and private surveillance on the Internet, and safeguards for the exercise of freedom of expression and privacy in cybersecurity policies.

1283. These gaps are troubling and highlight a substantial omission on the path to including a human rights focus in Internet policy. It is also troubling that at the same time as a regulatory review was announced in the framework of the 2020 Digital Agenda [*Agenda Digital 2020*], several legislative bills were promoted that propose imposing restrictions on the right to freedom of expression in vague, ambiguous terms and that could interfere arbitrarily in the exercise of this right on the Internet. This is the case in the proposal to amend Law No. 19.733 on Freedoms of Opinion and Information and the Practice of Journalism, on digital media [*Libertad de Opinión e Información y el Ejercicio del Periodismo, sobre medios digitales*],¹⁸⁰⁷ and the draft bill that seeks to amend article 13 of Law No. 19.628 on the Protection of Private Life [*Protección de la Vida Privada*], to establish the so-called “right to be forgotten” of personal information that is specifically stored on search engines and websites.¹⁸⁰⁸ The indiscriminate de-indexing of search engine links, as well as the suppression of information from its original source on the Internet may have disproportionate effects that are even similar to censorship.

1284. In order for the public policy outlined in the 2020 Digital Agenda [*Agenda Digital 2020*] to fulfill its objectives, these troubling legislative developments must be reviewed and brought in line with Chile’s commitments in the area of human rights, under which it has the obligation to respect and guarantee the rights that people have online and offline.¹⁸⁰⁹ Specifically, the Office of the Special Rapporteur has indicated that the right to freedom of expression is fully effective in communications, ideas and information that are disseminated and accessed via the Internet, and that States must respect and guarantee the exercise of this right in that area in accordance with article 13 of the American Convention.¹⁸¹⁰ In this regard, States must ensure that restrictions to freedom of expression on the Internet are only acceptable when they meet the international standards that stipulate, inter alia, that they must be provided for by law, pursue a legitimate aim recognized by international law, and be necessary to accomplish that aim (the “three-part” test). In evaluating a restriction to freedom of expression on the Internet, States must weigh the potential

¹⁸⁰⁵ Gobierno de Chile. *Agenda digital 2020*. Chapter I. November 2015. Page 3. Available at: <http://www.agendadigital.gob.cl/files/Agenda%20Digital%20Gobierno%20de%20Chile%20-%20Capitulo%201%20-%20Noviembre%202015.pdf>

¹⁸⁰⁶ During the visit, the Office of the Special Rapporteur welcomed information about Subtel’s actions, in accordance with the principles of net neutrality, to prevent Internet service providers from developing commercial offers with limited or discriminatory access to Internet content, applications or services and ensure a minimum access speed to the web, so as to uphold an open and non-discriminatory Internet. Gobierno de Chile. Subsecretaría de Telecomunicaciones. Circular No. 40/DAP 13221/F51. April 14, 2014. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁸⁰⁷ IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the state of freedom of expression in the hemisphere). OEA/Ser.L/V/II. Doc. 48/15 December 31, 2015.

¹⁸⁰⁸ Chamber of Deputies. April 2016. *Buscan garantizar el derecho al olvido*; Emol. October 26, 2016. *Diputados retoman discusión de proyecto que busca asegurar “derecho al olvido” en buscadores de Internet*.

¹⁸⁰⁹ United Nations, Human Rights Council, *Resolution on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, UN Doc. A/HRC/32/L.20 (June 19, 2016). Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/131/92/PDF/G1613192.pdf?OpenElement>

¹⁸¹⁰ 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.

impact of that restriction on the capacity of the Internet to guarantee and promote freedom of expression against the benefits that the restriction would yield for the protection of other interests.

1285. Another issue in urgent need of regulatory review is the surveillance of electronic communications by the police and investigation agencies, and the compatibility of these powers with the right to privacy and freedom of expression.

1286. In July of 2015, Wikileaks stated publicly that several countries in the region, including Chile, had acquired spy software called Remote Control System (RCS), created by the Italian company Hacking Team, which sells software for governments or government agencies, also known as DaVinci or Galileo. The spy software sold by the company is allegedly designed to evade encryption on computers and mobile phones, which would allow for the extraction of data, messages, calls and mail, VOIP (voice over IP) voice calls, and instant messages. The software could also be used to remotely activate cameras and microphones. According to the Hacking Team portal, “collecting evidence on monitored devices is silent and the transmission of data collected from the device to the RCS server is encrypted and untraceable.”¹⁸¹¹

1287. After these revelations, the Investigations Police of Chile [*Policía de Investigaciones de Chile*] (PDI) publicly acknowledged that “this tool was acquired within the framework of a project to modernize PDI technology, the goal being to build operational capacity for investigating organized crime, international terrorism and large-scale drug trafficking.”¹⁸¹² It also stated that the software “was acquired in compliance with public procurement regulations and is used with proper judicial authorization exclusively for the prosecution of crimes.”¹⁸¹³

1288. During its visit and in subsequent communications, the Office of the Special Rapporteur requested information from the State about the Chilean government’s purchase of spy and hacking software from the Hacking Team company and about the regulatory framework that covers these types of surveillance tools.¹⁸¹⁴ In its response, the State did not explicitly acknowledge purchasing this software and limited itself to affirming that “no public institution has the technological tools to violate the human rights of any inhabitant of the country.” It also stated that law enforcement and public safety forces conduct their investigative duties in strict adherence with the law and are subject to previous judicial control, in accordance with articles 23 and forward in Law No. 19.974, enacted in 2004, which establishes the State intelligence system [*Sistema de Inteligencia del Estado*] and creates the National Intelligence Agency [*Agencia nacional de inteligencia*].¹⁸¹⁵

1289. The manipulation of software, data, computer systems, networks or other electronic devices by State agencies without the permission of the responsible person or organization, or without the user’s knowledge (government hacking), is a highly intrusive practice that presents serious risks for the exercise of human rights online. If authorized by law, this practice should be limited to surveillance in the context of investigating serious crimes. Its use for any other purpose must be specifically prohibited.

1290. In the investigation of serious crimes, this kind of surveillance must be exceptional and selective, and its use must be surrounded by legal guarantees and judicial controls specifically designed to

¹⁸¹¹ 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.](#)

¹⁸¹² “[En relación a las informaciones acerca del software Phantom, la Policía de investigaciones de Chile informa: Comunicado de prensa \(...\)](#)” Official account of PDI Chile. July 6, 2015; CIPER. July 10, 2015. [Los correos que alertaron sobre la compra del poderoso programa espía de la PDI](#); Emol. July 6, 2015. [PDI confirma compra de software creado por empresa italiana que fue hackeada.](#)

¹⁸¹³ “[En relación a las informaciones acerca del software Phantom, la Policía de investigaciones de Chile informa: Comunicado de prensa \(...\)](#)” Official account of PDI Chile. July 6, 2015; CIPER. July 10, 2015. [Los correos que alertaron sobre la compra del poderoso programa espía de la PDI](#); Emol. 6 de julio de 2015. [PDI confirma compra de software creado por empresa italiana que fue hackeada.](#)

¹⁸¹⁴ Wikileaks. July 2015. Available for consultation at: <https://wikileaks.org/hackingteam/emails/emailid/1030224>

¹⁸¹⁵ Biblioteca Nacional de Chile. LEY NUM. 19.974 sobre el sistema de inteligencia del estado y crea la agencia nacional de inteligencia. October 2004. Available for consultation at: <https://www.leychile.cl/Navegar?idNorma=230999>

safeguard the rights involved. A law enacted by Congress in 2004 provides an outdated and inadequate legal framework to safeguard the rights affected by surveillance methods that are highly intrusive and highly technically complex. The existence of prior judicial controls without an adequate legal framework does not sufficiently guarantee [the] minimum mechanisms of transparency and specialized technical knowledge of the appropriate judges.

1291. In this regard, in the Joint Declaration on Surveillance Programs and Their Impact on Freedom of Expression this Office expressed its concern that “legislation on intelligence and security has remained inadequate as new technologies have been developed in the digital era.” It established that “it is especially concerning that indiscriminate access to information on communication between persons can have a chilling effect on the free expression of thought and the search for and distribution of information in the region.”¹⁸¹⁶

1292. Therefore, the Office of the Special Rapporteur has recommended that States guarantee that the interception, collection and use of personal information, including all limitations on the right of the affected person to access this information, be clearly authorized by law in order to protect them from arbitrary or abusive interference with their private interests. The law must establish limits with regard to the nature, scope and duration of these types of measures; the reasons for ordering them; the authorities with power to authorize, execute and monitor them; and the legal mechanisms by which they may be challenged.¹⁸¹⁷ Similarly, in its report on the Right to Privacy in the Digital Age, the Office of the United Nations High Commissioner for Human Rights stated that:

*The State must ensure that any interference with the right to privacy, family, home or correspondence is authorized by laws that (a) are publicly accessible; (b) contain provisions that ensure that collection of, access to and use of communications data are tailored to specific legitimate aims; (c) are sufficiently precise, specifying in detail the precise circumstances in which any such interference may be permitted, the procedures for authorizing, the categories of persons who may be placed under surveillance, the limits on the duration of surveillance, and procedures for the use and storage of the data collected; and (d) provide for effective safeguards against abuse.*¹⁸¹⁸

1293. This Office of the Special Rapporteur has also held that “the law must ensure that the public can access information on private communications surveillance programs, their scope and any regulation that may be in place to guarantee that they cannot be used arbitrarily. Thus, States must at least disseminate information about the regulatory framework for surveillance programs, the agencies tasked with the implementation and oversight of these programs, procedures for authorization, selecting objectives and data management, as well as information about the use of these techniques, including aggregate data about their scope. In any case, States must establish independent supervisory mechanisms that ensure the transparency and accountability of these programs.”¹⁸¹⁹ In this regard, in the Joint Declaration on Freedom of Expression and Responses to Conflict Situations, the Special Rapporteurs affirmed that “States should always be fully transparent regarding their systems of surveillance, including the legal and policy framework for this. There should be adequate independent oversight of systems of surveillance, including of the authorities tasked with actually conducting surveillance.”¹⁸²⁰

¹⁸¹⁶ 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.

¹⁸¹⁷ 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.

¹⁸¹⁸ United Nations. Human Rights Council. The Right to Privacy in the Digital Age. Report of the United Nations High Commissioner for Human Rights. A/HRC/27/37. June 30, 2014. Para. 28.

¹⁸¹⁹ 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.

¹⁸²⁰ 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

1294. In conclusion, this Office of the Special Rapporteur urges the Chilean State to review the current legal framework, practices and policies in order to ensure that they are in line with international human rights principles in the digital arena. The Office of the Special Rapporteur reminds the State of its technical assistance in this area.

- **Universal Internet Access**

1295. According to official data, 72 per cent of Chileans use the Internet.¹⁸²¹ This translates to 12.7 million people, which places Chile in first place when it comes to connectivity in Latin America. However, the State has acknowledged the “serious socioeconomic, geographical and age differences in Internet access,” the high cost of the service, and the need to “ensure the stability and speed of the service” given growing demand in the country. The State has identified a “second digital divide,” “not in regard to access, because extremely high penetration percentages have been reached, but rather between people whose Internet connections had a higher or lower capacity.”¹⁸²² The 2020 Digital Agenda [*Agenda Digital 2020*] reportedly plans to tackle these challenges and includes among its areas of action “expanding digital access for all” and “improving the conditions that enable higher-quality connectivity.”¹⁸²³

1296. During the visit, the Office of the Special Rapporteur learned of the government’s efforts to close the digital divide, which include installing public WiFi hotspots, broadening access to 700 MHz band spectrum, and launching fiberoptic connection programs in the southern part of the country between Puerto Montt and Punta Arenas. The Office of the Special Rapporteur also learned of a potential draft bill on minimum Internet connection speed.¹⁸²⁴

1297. This Office of the Special Rapporteur reminds the State that positive measures to enable quality universal Internet access must promote digital inclusion, be grounded in the respect for human rights, and must have a main emphasis on excluded communities and groups who are either excluded or discriminated against. The Office of the Special Rapporteur urges the State to make strides in that direction and guarantee the equal participation of all relevant stakeholders in Internet governance, while fostering greater cooperation between the authorities, academia, civil society, the technical community and the private sector. Specifically, it recommends that the 2020 Digital Agenda [*Agenda Digital 2020*] include standards for transparency, public reporting and monitoring systems that make it possible to assess whether the goals established to improve connectivity were achieved effectively, as well as indicators regarding the impact of these standards on human rights.

F. Freedom of Expression and Social Protest

1298. The exercise of social protest, as an essential aspect of the right to freedom of expression, was also the subject of observation during the official visit. The Office of the Special Rapporteur cautions that in the Chilean legal system, there are still laws that allow for restricting the right to assemble and to freedom of expression that are incompatible with the American Convention, and that in the management of protests,

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 freedom of expression and responses to conflict situations](#). May 4, 2015.

¹⁸²¹ Gobierno de Chile. Results of the VII National Survey of Internet Access and Uses. 2016. Available for consultation: http://www.subtel.gob.cl/wp-content/uploads/2015/04/Informe-VII-Encuesta-de-Acceso-Usos-y-Usuarios-de-Internet_VF.pdf

¹⁸²² Gobierno de Chile. Results of the VII National Survey of Internet Access and Uses. 2016. Available for consultation: http://www.subtel.gob.cl/wp-content/uploads/2015/04/Informe-VII-Encuesta-de-Acceso-Usos-y-Usuarios-de-Internet_VF.pdf

¹⁸²³ Gobierno de Chile. Agenda digital 2020. Chapter I. November 2015. Chapter II. Conectividad Digital. Available for consultation at: <http://www.agendadigital.gob.cl/files/Agenda%20Digital%20Gobierno%20de%20Chile%20-%20Capitulo%20%20-%20Noviembre%202015.pdf>

¹⁸²⁴ Senado de Chile. May 20, 2016. [Proyecto que busca garantiza una velocidad mínima de acceso a Internet quedó listo para ser votado por la Sala](#); BioBio. April 12, 2016. [Avanza en el Congreso proyecto de ley que garantiza velocidad mínima de acceso a Internet](#).

there is a persistence of excessive use of force and other practices that have particularly affected women and indigenous peoples in the country.

- **Legal Restrictions**

1299. The National Constitution [*Constitución Nacional*] of Chile recognizes that “all people [have] [...] the right to assemble peacefully without prior permission and without weapons.” It affirms, however, that “meetings in squares, streets and other public places shall be ruled by general police regulations.”¹⁸²⁵ Supreme Decree [*Decreto Supremo*] No. 1086, which was adopted during the military dictatorship in 1983, regulates the exercise of this right in streets and squares. The law requires that the organizers of any public meeting or demonstration “give prior notice of at least two business days to the corresponding regional or provincial Governor” and authorizes public safety forces to “prevent or dissolve any demonstration for which proper notice has not been given and that does not meet the requirements established by law.” The law also gives the regional or provincial Governor the authority “to deny permission for public meetings or demonstrations on heavily trafficked streets or on streets where public transportation may be disrupted, [and] for meetings held in squares and leisure roads during recreational and rest hours, as well as those held in parks, squares, gardens and green avenues.”¹⁸²⁶

1300. The IACHR and this Office of the Special Rapporteur have expressed concern over Supreme Decree [*Decreto Supremo*] No. 1086, which, in a manner that is incompatible Inter-American standards for the protection of human rights and best practices, appears to, in practice, confuse the prior notice requirement with a system of authorizations for public demonstrations in streets, squares, and main thoroughfares. Although the aim of the decree is to regulate the procedure for prior permission for marches and demonstrations in streets and squares, in practice, it allows the authorities to deny permission for legal public demonstrations and authorizes security forces to break up marches deemed “unauthorized.” In this regard, the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, stated in his report on his Mission to Chile that this legal framework is a “*de facto* authorization regime” and that “even when couched as notification, turns the exercise of the right to freedom of peaceful assembly into a privilege.”¹⁸²⁷

1301. This Office of the Special Rapporteur has affirmed that in a democracy, States must act based on the legality of the public protests or demonstrations and under the assumption that these are not a threat to public order. This means that the focus must be on promoting higher levels of citizen involvement, and that streets and squares must be privileged locations for public expression.¹⁸²⁸ To this end, it is important to keep in mind that those who participate in public demonstrations have as much a right to use these spaces during a

¹⁸²⁵ Constitución Política de Chile. Texto refundido, coordinado y sistematizado. Latest modification on November 16, 2015. Available for consultation at: <http://www.bcn.cl/>

¹⁸²⁶ Ministerio del Interior de Chile. Decreto No. 1068. Reuniones Públicas. September 15, 1983. Article 2. Available for consultation at: <http://www.leychile.cl/Navegar?idNorma=16783>

¹⁸²⁷ UN. Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Chile. Thirty-second session. A/HRC/32/36/Add.1. June 16, 2016. Para. 17. Available for consultation at: <http://freemassembly.net/reports/chile/>

¹⁸²⁸ In that sense, the UN Human Rights Council recognized that protests “can make a positive contribution to the development, strengthening and effectiveness of democratic systems, and to democratic processes.” Human Rights Council of the United Nations. Resolution A/HRC/25/L.2, March 2014. Preamble. Available for consultation at: http://www.un.org/ga/search/viewm_doc.asp?symbol=A/HRC/25/L.2 Also, the Special Rapporteurship for Freedom of Expression of the IACHR has emphasized that society’s participation through public demonstration is important for the consolidation of democratic life. 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. February 27, 2006. Para. 91.

reasonable time period as any other person.¹⁸²⁹ The use of public space for social protest must be considered as legitimate as its more habitual use for commercial activities or pedestrian and vehicular traffic.¹⁸³⁰

1302. The right to social protest, as an exercise of the freedom of peaceful assembly, of the right to freedom of expression, freedom of association and the right of participation and to petition, is not absolute.¹⁸³¹ However, as this is of crucial social interest, this leaves States with especially narrow margins to justify limiting this right.¹⁸³² Indeed, the freedom to participate in marches and demonstrations must be considered the rule, and limitations on this right must be the exception.¹⁸³³ The protection of the rights and freedoms of others must not be used as a simple excuse to restrict a protest.¹⁸³⁴ In this regard, the right of assembly and demonstration cannot be considered as synonymous with public disorder for the purpose of restricting it *per se*. Neither can the right to assembly be regulated with the goal of establishing grounds for prohibiting meetings or demonstrations.¹⁸³⁵

1303. In this regard, the Commission has reiterated that the exercise of the right to assembly through social protest should neither be subject to authorization by the authorities nor to excessive requirements that prevent it from taking place. Any legal requirements that create the basis for prohibiting or restricting a meeting or demonstration—for example, through the requirement of obtaining a permit first—are not compatible with this right. The IACHR has indicated that the requirement of prior notification must not be confused with the requirement of prior authorization granted in a discretionary manner.¹⁸³⁶

1304. So that the Chilean legal framework in this area may be compatible with the American Convention and Chile's other international obligations, the Office of the Special Rapporteur recommends that the State repeal Supreme Decree [Decreto Supremo] No.1086.

¹⁸²⁹ OSCE /ODIRH and Venice Commission. Guidelines on Freedom of Peaceful Assembly. Second edition (Warsaw/Strasbourg, 2010). Para. 19. Available for consultation at: <http://www.osce.org/odih/73405>; United Nations. General Assembly. Report of the Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai. A/HRC/20/27. May 21, 2012. Para. 41. Available for consultation at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

¹⁸³⁰ IACHR. *Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). Para. 70; OSCE /ODIRH and Venice Commission. Guidelines on Freedom of Peaceful Assembly. Second edition (Warsaw/Strasbourg, 2010). Para. 20. Available for consultation at: <http://www.osce.org/odih/73405>, taking up the case law of the European Court of Human Rights in the cases of Patyi and Others v. Hungary (2008). Para. 42-43; Balçık v. Turkey (2007). Para. 52, and Ashughyan v. Armenia (2008). Para. 90.

¹⁸³¹ IACHR. *Annual Report 2002. Report of the Special Rapporteur for Freedom Of Expression*. Chapter IV (Freedom of Expression and Poverty). Para. 31; 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. February 27, 2006. Para. 2; United Nations. General Assembly. Report of the Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai. A/HRC/20/27. May 21, 2012. Para. 15. Available for consultation at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>; UN. Human Rights Council. Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests - Report of the United Nations High Commissioner for Human Rights. A/HRC/22/28. January 21, 2013. Para. 5. Available for consultation at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session22/Pages/ListReports.aspx>

¹⁸³² 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. February 27, 2006. Para. 91; 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 7, 2011. Para. 785.

¹⁸³³United Nations. General Assembly. Report of the Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai. A/HRC/23/39. April 24, 2013. Para. 47. Available for consultation at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session23/Pages/ListReports.aspx>

¹⁸³⁴ UN. Human Rights Council. Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests - Report of the United Nations High Commissioner for Human Rights. A/HRC/22/28. January 21, 2013. Para. 12. Available for consultation at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session22/Pages/ListReports.aspx>

¹⁸³⁵IACHR. *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. February 27, 2006. Para. 91-92.

¹⁸³⁶ IACHR. *Annual Report 2015. Criminalization of the Work of Human Rights Defenders*. OEA/Ser.L/V/II. Doc. 49/15. December 31, 2015. Para. 129.

- **The Use of Force**

1305. General principles regarding the use of force, when applied to the context of protests and demonstrations, require that security operations be planned carefully and thoroughly by people with experience and training that is specific to this type of situation, and clear operating procedures must be followed.¹⁸³⁷ In the context of the positive obligation to guarantee this right and to protect those exercising the right as well as third parties, States must establish specific rules and standard operating procedures for security forces involved in social protests and public demonstrations. These directives must be such that police officers act “with the certainty that their obligation is to protect the participants in a public meeting or demonstration or mass gathering so long as they are exercising their right.”¹⁸³⁸

1306. The Office of the Special Rapporteur notes with satisfaction that in 2012, the General Management of the Chilean Police [*Carabineros de Chile*] ordered the review of Special Forces procedures for the management and control of demonstrations and protests. To this end, it brought together civil society organizations, human rights organizations, and the International Committee of the Red Cross (ICRC). Work concluded in 2013, with “the drafting of a series of protocols that defined a framework for the duties of the *Carabineros* in maintaining public order during public demonstrations. These include a defined sequence of steps expected in the planning and execution of police operations, a differentiated and proportionate use of force, as well as the principles of necessity, legality and proportionality.” In June, 2014, the Procedures for the Maintenance of Public Order [*Protocolos para el Mantenimiento del Orden Público*] were published.¹⁸³⁹

1307. However, the Office cautions that the Procedures for the Maintenance of Public Order draw a worrisome distinction when it comes to police intervention in demonstrations depending on the appearance of legitimacy, as follows: a) authorized peaceful protests; b) unauthorized peaceful protests; c) violent demonstrations; and d) aggressive demonstrations.¹⁸⁴⁰ “Violent demonstrations” are understood to be those that “violate the instructions of police authority” and in this case, procedures do not order that a process of dialogue be followed, but rather the clearing and dispersal of demonstrators and the arrest of lawbreakers.¹⁸⁴¹

1308. During its stay in Santiago de Chile, the Office of the Special Rapporteur team observed marches in which thousands of students protested to demand government reform in education. During some of these protests, violent acts were committed by specific, easily identifiable groups, acts that must be investigated by the State. However, it is unfortunate that these acts of violence are seized upon by different parties to discredit demonstrations in the streets.

1309. In this regard, it is worth reminding the State that a demonstration cannot be deemed illegal or considered non-peaceful due to the violent acts of a few people. If the actions of isolated persons or groups of persons, including agents provocateurs and counter-demonstrators, occur with the goal of disrupting or dispersing meetings, States have a positive obligation to actively protect these meetings. This responsibility must be explicitly stated in domestic legislation.¹⁸⁴² When a demonstration or a protest leads to situations of

¹⁸³⁷Amnesty International. [Use of force: Guidelines for implementation of the UN Basic Principles on the use of force and firearms by law enforcement officials](#). August 2015. Page 150.

¹⁸³⁸ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 193.

¹⁸³⁹ Chile's response to the questionnaire on the use of force sent by the IACHR. Page 25. See also: Carabineros de Chile, *Protocolos para el Mantenimiento del Orden Público*, 2014. Available for consultation: http://deptodhh.carabineros.cl/a1/Protocolos_mantenimiento_del_orden_publico.pdf

¹⁸⁴⁰ Carabineros de Chile. [Protocolos para el Mantenimiento del Orden Público](#). Intervención en manifestaciones violentas.

¹⁸⁴¹ Carabineros de Chile. [Protocolos para el Mantenimiento del Orden Público](#). Intervención en manifestaciones violentas. Protocolo 2.3.

¹⁸⁴² United Nations. General Assembly. Report of the Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai. A/HRC/20/27. May 21, 2012. Para. 33. Available for consultation at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

violence, it should be understood that the State was unable to guarantee the exercise of this right. Its obligation is to effectively manage the underlying demands and the social and political unrest in order to properly channel complaints and protect the participants and third parties from attacks by individuals.¹⁸⁴³

1310. After his visit to Chile in September, 2015, the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, stated that “the police have the duty to distinguish between peaceful demonstrators and agents provocateurs. The presence of a few people engaging in violence in and around a protest does not authorize police to brand the entire protest violent. It does not give the State *carte blanche* to use force against or arrest everyone indiscriminately. Rather, the violent elements should be extracted from the protest and dealt with in accordance with the rule of law.”¹⁸⁴⁴

1311. The Office of the Special Rapporteur warns that in the procedures of the *Carabineros*, the use of lethal force is governed by the principle of protection of life, in accordance with international standards in this area.¹⁸⁴⁵ As stated in the procedures, “[t]he use of firearms must be considered an extreme measure. They may be used only under exceptional circumstances in which there is imminent danger of death or serious bodily harm to the *Carabiniro* or any other person (legitimate defense). Once the dangerous situation has ended, firearms are not to be used.”¹⁸⁴⁶

1312. However, according to information received on July 24, 2015, Nelson Quichillao, a subcontractor for the “*El Salvador*” mine belonging to the National Copper Corporation [*Corporación Nacional del Cobre*] (Codelco), died from a gunshot discharged by the Special Forces of the *Carabineros* of Chile [*Fuerzas Especiales de Carabineros de Chile*] during a protest over the mine workers’ working and economic conditions.¹⁸⁴⁷ The Commission has made clear “that firearms should be excluded from the devices used to manage social protests.”¹⁸⁴⁸ Operations may provide for the presence of firearms and lead ammunition outside the radius of action of the protest for exceptional cases in which a situation of real, serious and imminent risk may arise, in which their use may be warranted.¹⁸⁴⁹ In such an extreme circumstance, there should be explicit rules concerning who has the power to authorize their use and the ways in which such authorization is to be duly documented.”¹⁸⁵⁰

¹⁸⁴³ IACHR. [Annual Report 2015. Chapter IV.A \(The Use of Force\)](http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf). 2015. Available for consultation at: <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf>.

¹⁸⁴⁴ 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](#).

¹⁸⁴⁵ United Nations. General Assembly. Report of the Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai. A/HRC/23/39. April 24, 2013. Para. 31. Available for consultation at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session23/Pages/ListReports.aspx>

¹⁸⁴⁶ Carabineros de Chile. [Protocolos para el Mantenimiento del Orden Público](#). Uso de Armas de Fuego. Protocolo 2.17.

¹⁸⁴⁷ El Mostrador. July 31, 2015. [Nelson Quichillao: el fatal destino de un eterno minero subcontratado](#); EMOL. July 24, 2015. [Contratista de Codelco muere baleado en protesta: trabajadores acusan a Carabineros](#); 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](#).

¹⁸⁴⁸ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/17/28. May 23, 2011. Para. 75. Available for consultation at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/134/47/PDF/G1113447.pdf?OpenElement>. See also: AI. [Use of force: Guidelines for implementation of the UN Basic Principles on the use of force and firearms by law enforcement officials](#). August 2015. Page 148 i).

¹⁸⁴⁹ The UN Human Rights Council has called “...upon States, as a matter of priority, to ensure that their domestic legislation and procedures are consistent with their international obligations and commitments in relation to the use of force and are effectively implemented by officials exercising law enforcement duties, in particular applicable principles of law enforcement, such as the principles of necessity and proportionality, bearing in mind that lethal force may only be used to protect against an imminent threat to life and that it may not be used merely to disperse a gathering”. Human Rights Council. Resolution A/HRC/25/L.20. March 24, 2014. Para. 10. Available for consultation at: http://www.un.org/ga/search/viewm_doc.asp?symbol=A/HRC/25/L.20

¹⁸⁵⁰ IACHR. [Annual Report 2015. Chapter IV.A \(The Use of Force\)](http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf). 2015. Available for consultation at: <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf>

1313. In the case of less-lethal weapons used in the context of social protests, the Office of the Special Rapporteur heard reports about their frequent indiscriminate use, even though the *Carabineros* procedures include the principles of necessity and proportionality and require training in the use of these kinds of weapons.¹⁸⁵¹ In May, 2015, Rodrigo Avilés, who was participating in a student protest in Valparaíso, was seriously wounded as a result of the improper use of a water-cannon vehicle.¹⁸⁵² Initially, the *Carabineros* stated that the injury occurred when the student accidentally slipped. Videos that were published later showed that the stream of the water cannon had been pointed directly at the young man's body. According to information available, *Carabineros de Chile* decided to dismiss the police officer who was responsible.¹⁸⁵³ In another incident, two teenage high-school students were reportedly wounded by rubber pellets shot by *Carabineros*.¹⁸⁵⁴

1314. The Office of the Special Rapporteur reminds the State that “almost all use of force against a person may, in some circumstances, lead to loss of life or serious injury.” This is the case of rubber pellets shot at close range towards the upper part of the body, tear gas shot at people, irritant gasses used against children or the elderly, or tasers used against people with heart conditions. Therefore, not only must the design and characteristics of the weapon be taken into account, other factors regarding its use and control must be as well, such as the context in which it is used and the specific conditions of the person against whom it is used.

1315. In Chile, some groups are at greater risk of suffering human rights violations during social protests and the use of force of the *Carabineros* affects them disproportionately.

1316. The Office of the Special Rapporteur was made aware of cases of gender-based violence against women in the context of protests. In one case, a pregnant woman was reported to have had a miscarriage as the result of a police beating¹⁸⁵⁵ and in another case, female students were transported to police stations where they were beaten and forced to undress.¹⁸⁵⁶ After a massive march on March 11, 2016, at least 9 women stated they were the victims of physical abuse, including sexual violence, and that they had been detained arbitrarily by *Carabineros*.¹⁸⁵⁷ It was reported that the victims filed complaints with the appropriate authorities, but the State did not inform this Office of the Special Rapporteur of the result of these complaints. The State only reported the opening of an administrative investigation into the alleged assault of a woman who subsequently suffered a miscarriage.¹⁸⁵⁸

1317. In addition, information was received from diverse sources alleging the disproportionate use of force by State agents against members of indigenous communities—especially the Mapuche people, and including children—during protests.¹⁸⁵⁹ According to the information received, in the last fifteen years the

¹⁸⁵¹ Carabineros de Chile. [Protocolos para el Mantenimiento del Orden Público](#). Empleo de Escopeta Antidisturbios. Protocolo 2.16.

¹⁸⁵² BioBio Chile. May 28, 2015. [Video confirma que chorro del carro lanzaaguas de Carabineros provocó caída de Rodrigo Avilés](#).

¹⁸⁵³ Boi BioBio Chile. May 28, 2015. [Video confirma que chorro del carro lanzaaguas de Carabineros provocó caída de Rodrigo Avilés](#).

¹⁸⁵⁴ Coperativa. June 3, 2016. [Dos secundarias fueron heridas con balines de goma durante marcha en Ñuñoa](#); Eldesconcierto. June 3, 2016. [FOTOS| Secundarias son heridas por balines de goma por parte de Fuerzas Especiales](#).

¹⁸⁵⁵ Elmostrador. May 27, 2016. [Mujer sufre un aborto luego de ser golpeada por Carabineros al defender estudiantes durante la marcha](#); La Tercera. May 28, 2016. [Indagan incidente entre carabinera y embarazada en marcha](#).

¹⁸⁵⁶ RadioUchile. June 4, 2016. [Estudiante de Liceo de Niñas de Concepción es torturada por Carabineros](#); El dinamo. June 7, 2016. [Duro testimonio de estudiantes que acusan torturas de Carabineros: “Nos trataron de putas y lesbianas”](#).

¹⁸⁵⁷ Sernam. March 11, 2016. [Declaración Pública Sernam por manifestaciones contra los femicidios frente a La Moneda](#); TheCLinic. March 11, 2016. [Manifestación contra la violencia de género frente a La Moneda termina con más de 10 detenidas](#); ElMostrador. March 11, 2016. [Carabineros detienen a mujeres que protestaban contra los femicidios frente a La Moneda](#); Fundación Heinrich Böll. March 11, 2016. [AlertadeGénero: Santiago de Chile, 11 de marzo 2016: Entre toques simbólicos y golpes reales](#).

¹⁸⁵⁸ State response to questionnaire sent after the on-site visit of the Office of the Special Rapporteur. October 17, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁸⁵⁹ IACHR. 156 Period of Sessions. Hearing [“Denuncias sobre violencia contra niños y niñas indígenas mapuche e impunidad en Chile”](#). October 22, 2015.

demands of the indigenous peoples to claim both lands of ancestral occupation and those of which they reportedly were dispossessed during the dictatorship have intensified, with actions of land occupation and burning of building and machinery on reclaimed land. The allegations received reveal that the state's reaction to the protest actions has been characterized by the violent eruption of security forces in the communities and the criminalization of their leaders. The Office of the Special Rapporteur listened with concern to reports of excessive use of force, raids, destruction of houses and cultural sites in the context of territorial conflicts and social protest.

1318. For example, according to information available, “from 17 August to 7 September 2015, a group of Mapuche, including several women and children, belonging to 11 communities from the Malleco region, peacefully occupied the premises of the National Corporation for Indigenous Peoples’ Development [*Corporación Nacional para el Desarrollo de los Pueblos Indígenas*] (CONADI) in Temuco. They demanded that their ancestral land be respected and that security forces present in the communities of Bajo Malleco be withdrawn. The police special forces eventually intervened to clear the occupation, in a reportedly excessive manner and in complete disregard of the fact that there were children in the premises. Several Mapuche were injured in the course of the operation. The police operation also breached a court order that required the presence of an INDH representative during any action to evacuate the premises.”¹⁸⁶⁰

1319. This Office reminds the State that the procedures for police intervention and the execution and oversight of operations must contain precautions and provide for special measures in order to avoid discrimination and unequal treatment of these groups.¹⁸⁶¹ These procedures must take into account the way patriarchal attitudes, stereotypes, assumptions and social constructs keep those groups at the margins of society and exclude them from public spaces.¹⁸⁶²

1320. In another incident, female staff members of the regional office of the INDH in Antofagasta were allegedly unlawfully arrested and assaulted while while they were exercising oversight—pursuant to their legal mandate—over police detention centers during protests. Information was also received about the assault and harassment of journalists by demonstrators¹⁸⁶³ and security forces¹⁸⁶⁴ while they covered protests.

1321. The IACHR has reiterated that “the national institutions to protect and defend human rights, which in many countries is the Office of the Ombudsperson or defenders of the people, play an important role in the observance and enforcement of human rights. The establishment of such institutions in member States represents a step forward in the consolidation of the institutions of democratic government.”¹⁸⁶⁵ The monitoring of protests and detention centers by national human rights institutions is an indispensable component of accountability under the rule of law and one of the most effective mechanisms for controlling the use of force.

¹⁸⁶⁰ UN. Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Chile. 32nd Session. A/HRC/32/36/Add.1. June 16, 2016. Para. 67. Available for consultation at: <http://freemission.net/reports/chile/>

¹⁸⁶¹ IACHR. [Annual Report 2015. Chapter IV.A \(The Use of Force\)](http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf). 2015. Available for consultation at: <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf>.

¹⁸⁶² United Nations. General Assembly. Report of the Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai. A/HRC/26/29. April 14, 2014. Para. 9. Available for consultation at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx>

¹⁸⁶³ 24 Horas.CL. September 11, 2016. [TVN repudia agresión a equipo de prensa](#); La Nación. September 12, 2016. [Intendencia metropolitana se querellará por ataque a equipo de prensa de TVN](#).

¹⁸⁶⁴ HispanTV. July 28, 2016. [Video: La policía chilena detiene al corresponsal de HispanTV y agrade a su camarógrafo](#); elDesconcierto.cl. July 29, 2016. [Leonel Retamal, periodista de Hispan TV detenido por 24 horas: “Aquí hay una afectación directa a la libertad de prensa”](#); República.com.uy. July 31, 2016. [Chile: detienen a periodista](#).

¹⁸⁶⁵ IACHR. [Annual Report 2015. Chapter IV.A \(The Use of Force\)](http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf). 2015. Available for consultation at: <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf>.

1322. In the Joint Statement on Violence Against Journalists and Media Workers in the Context of Protests, adopted in 2013, the UN and OAS Special Rapporteurs indicated that in the context of demonstrations and situations of social unrest, the work of journalists and media workers and the free flow of information “is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State [...] preventing the disproportionate use of force and the abuse of authority.”¹⁸⁶⁶ For this reason, the authorities must afford journalists the highest degree of protection in order for them to perform their duties. In this regard, they must ensure that journalists are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession in the context of a public protest.¹⁸⁶⁷

1323. In light of the preceding, the Office of the Special Rapporteur recommends that the Chilean State review the regulations and standard operating procedures of security forces in such a way that they better include human rights principles in procedures regarding the use of force, and that they adjust their practices based on these procedures. Specifically, it should ensure that these procedures contain provisions and special measures to avoid discrimination and the unequal treatment of groups that have historically been discriminated against and that recognize the important role human rights defenders and journalists play in promoting and protecting human rights in the context of social protests.

- **Identity Checks**

1324. During the visit, civil society organizations expressed concern over the potential effects on the right to participate in public marches and demonstrations of a legislative initiative approved as part of the “Short Anti-Crime Agenda” [*Agenda Corta Antidelincuencia*]. The initiative proposes changes to the identity control system currently in force in the country and would allow such checks to be conducted without any reasonable suspicion of the commission of a crime, granting the police broad and general powers to check identification and detain individuals.

1325. The legislative initiative was published on July 5, 2016. The authorities with whom the Special Rapporteur met reported that control and accountability mechanisms were incorporated into the draft bill during the debate in Congress, in particular to exclude minors and prevent the transfer of detainees to police stations. According to information provided by the State, preventive identity checks authorize police officers to “verify the identity of any person 18 years of age or older on the street, in other public places and in private places that are accessible to the public, via any means of identification [...] and the necessary powers for proper enforcement must be granted in all cases.” Among the controls established, the law provides that “if there is any question as to the person is older or younger than 18 years of age, the person shall always be assumed to be a minor.” It also establishes that the procedure “[...] shall in no case last over one hour” and that in cases in which identity cannot be determined on site, “the police officer must immediately halt the procedure.” The law also instructs the police “to develop a standard complaint procedure for those persons who believe that they have been subjected to an abusive or degrading exercise of this power” and to “update the ministry of the Interior and Public Security [*ministerio del Interior y Seguridad Pública*] regarding the use of this power on a quarterly basis.”

1326. The Office of the Special Rapporteur believes that the use of identity checks without any suspicion of the commission of a crime is a practice that presents serious human rights problems and may potentially have a greatly chilling effect on the exercise of the right to freedom of expression and the right to participate in public demonstrations. In this regard, the Office of the Special Rapporteur aligns itself with the analysis and the recommendations issued concerning this legal reform by Maina Kiai, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. In his report, the Special

¹⁸⁶⁶ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

¹⁸⁶⁷ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests.](#)

Rapporteur stated that even with these reforms “[h]e is [...] not convinced that the law will be effective in combatting crime. In fact, it may do the opposite: allowing police to randomly detain anyone they choose without any evidence or identifiable suspicion is a shortcut that fosters counterproductive policing. Effective police forces can do their jobs without interfering with fundamental rights.”¹⁸⁶⁸

- **The Administration of Justice and Military Jurisdiction**

1327. The Chilean State must properly investigate these events, prosecute those responsible and provide adequate reparations to the victims. It must also adopt measures to guarantee that these kinds of incidents are not repeated.

1328. The State informed the Office of the Special Rapporteur that when there are complaints about police violence, the appropriate institutions launch criminal or administrative investigations in order to establish the facts and determine what the appropriate measures may be, in accordance with national laws. However, the State did not provide information.

1329. However, this Office of the Special Rapporteur is concerned that the investigation and prosecution of the unlawful and excessive use of force by police against demonstrators remains under the jurisdiction of the military criminal justice system. According to the consistent doctrine and case law of the of the Inter-American Human Rights System, and because this forum presents serious challenges to the impartial and independent administration of justice, the military criminal justice system is not the proper forum to investigate and, if appropriate, prosecute and punish the alleged perpetrators of human rights violations. Indeed, the IACHR has stressed that military justice should be applied only in cases where military criminal legal interests are affected, and never to investigate human rights violations.

1330. The Chilean State should reform its laws in order to guarantee that human rights violations committed by law enforcement officers are investigated and prosecuted by courts and institutions with civil jurisdiction. Accordingly, the Office of the Special Rapporteur views positively the recent case law of the Constitutional Court [*Tribunal Constitucional*] finding that the military criminal justice system lacks jurisdiction to hear and decide criminal cases affecting civil legal interests, as well as the decision of the authorities of the ordinary justice system to pursue the investigation and prosecution of a former police sergeant [*ex sargento de carabineros*] for his alleged responsibility for the serious injuries sustained by the student Rodrigo Avilés during a march on May 21, 2015. The Office of the Special Rapporteur also welcomes the government’s announcement that it will be introducing a bill to Congress seeking to amend the Code of Military Justice [*Código de Justicia Militar*] to exclude cases of human rights violations from military jurisdiction.

III. RECOMMENDATIONS

1331. Based on information gathered during the on-site visit to Chile, and in view of the situation of freedom of expression in the country, which has been previously analyzed, the Office of the Special Rapporteur recommends that the Chilean State adopt a series of measures aimed at consolidating the legal and institutional framework in order to effectively guarantee full exercise of the right to freedom of expression in the country, and eradicating in law and practice the legacy of past authoritarian doctrines and the transition process, which no longer hold meaning in the current environment of democratic development.

1332. The Office of the Special Rapporteur has noted the significant progress Chile has made after its return to democracy in order to guarantee full exercise of the right to freedom of expression of people under its jurisdiction, and is convinced that the country can continue to serve as a model in the region in that regard. To this end, the Office makes itself available to the Chilean State and offers its assistance so that these recommendations may be addressed as soon as possible.

¹⁸⁶⁸ UN. Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Chile. 32nd session. A/HRC/32/36/Add.1. June 16, 2016. Para. 77. Available for consultation at: <http://freemission.net/reports/chile/>

1333. In view of the foregoing, the Office of the Special Rapporteur specifically recommends the following:

– ***Regarding the Practice of Free and Independent Journalism***

1334. Repeal article 264 of the Criminal Code [*Código Penal*] and article 284 of the Code of Military Justice [*Código de Justicia Militar*], in the terms ordered by the Inter-American Court in the *Palamara Iribarne* Decision (2006).

1335. Decriminalize defamation [*calumnia* and *injuria*] and make them civil actions, in accordance with international standards and best practices. This is especially important to protect critical expressions about public officials, public figures, or issues of public interest in general. The Office also recommends that the State strengthen legal safeguards so that journalists are not subjected to legal or other types of harassment in the judicial system in retaliation for their work, by establishing separate standards to evaluate subsequent civil liability, including the standard of actual malice and the strict proportionality and the reasonableness of subsequent penalties.

1336. Strengthen its legal framework in order to effectively safeguard the right of journalists (in the functional sense of the word) and the media to protect their sources and ensure that any restriction on this right meet the strictest standards, in accordance with international standards on the subject. Chile must also ensure that public officials (including those from the Armed Forces [*Fuerzas Armadas*]) or individuals who expose wrongdoing, acts of corruption or human rights violations are not retaliated against for reporting these acts, and that they receive legal protection from legal, administrative or employment-related sanctions, in accordance with international standards and best practices.

– ***Regarding the Right to Access to Public Information***

1337. Maintain the progress made in the area of access to information, strengthen current laws and the autonomy and institutional capacity of the appropriate institutions in regard to all public authorities. The Office also urges the State to double its efforts to expand real access to the right of access to public information and society's knowledge of this information.

1338. Prohibit declaring that laws are secret on grounds of national security and immediately make public the language of any law that is currently secret under these terms.

1339. Enact laws that protect whistleblowers, which encourages public officials in the Armed Forces and the ministry of Defense and Security [*ministerio de Defensa y Seguridad*] to report wrongdoing, breaches of law and human rights violations committed by other officials, and ensure that they may remain in their positions without facing retaliation.

1340. Adopt the necessary measures to guarantee courts access to state-held information that is necessary to fulfill their obligation to administer justice, specifically via the repeal of the article in Law 19.992 that provides for 50-year secrecy of the Valech Commission I [*Comisión Valech I*] records.

– ***Regarding Pluralism and Diversity in the Media***

1341. Fully implement the laws that have been enacted on the transition to digital television, advertising on public media, recognizing community media and the allocation of government advertising, in accordance with international standards on freedom of expression and promoting greater diversity and pluralism in every public policy decision made in these areas.

1342. Provide public service media with the appropriate funding and a specific mandate on the broadcasting of content and information that is of public interest. In particular, these outlets should offer different types of programs, give a voice to and satisfy the needs of all sectors of society regarding

information and interests. Establish the participation of different stakeholders in civil society in the governance of public media and guarantee that these media are independent from the administration that is in office.

1343. Improve enforcement of the law that establishes the funding of studies on pluralism in the media system. Provide training and promote policies at the level of the appropriate Office of the Prosecutor in order to prevent oligopolistic practices in media markets, and use criteria for the oversight of media acquisitions and mergers that not only include economic criteria, but also promote diversity and pluralism in the media.

1344. Enact laws that complement those that aim to defend competition, in order to guarantee pluralism in a democratic society. In particular, establish clear and transparent procedures by law for the equitable assignment and renewal of frequencies for public, commercial and community media; set reasonable limits on the hoarding of audiovisual media that require a license or a spectrum assignment and gradually adapt those that exceed the established limits; and establish transportation rules to ensure television broadcasting for subscribers of public, commercial and community media. The Chilean State must also guarantee that any restrictions placed on freedom of expression to manage frequencies and guarantee diversity and pluralism are enforced by an institution that is sufficiently independent and autonomous to shield it from both political and economic influence.

1345. Foster an opening of the written and/or digital print media market through laws and public policies that also guarantee pluralism in print media outlets. These policies may include conducting studies and adopting measures on the mechanisms for access to newsprint, the distribution and sale of newspapers in the country, and doing away with possible barriers to access in this market.

1346. Review Law No. 20.433 on Community Broadcasting [*Radiodifusión Comunitaria Ciudadana*] and amend provisions that have discriminatory effects and impede the sustainable development of community radio. It also reiterates its call to amend article 36 B of the Telecommunications Act [*Ley General de Telecomunicaciones*], which is not currently in compliance with international standards in this area. Finally, this Office urges the State to develop a comprehensive policy to promote this sector that specifically includes the indigenous peoples in the country.

– ***Regarding the Internet and Freedom of Expression***

1347. Review the current legal framework, practices and policies in order to ensure that they are in line with international human rights principles in the digital arena.

1348. Adopt positive measures that are grounded in the respect for human rights in order to facilitate universal, quality Internet access, with a greater emphasis on excluded communities and groups who are either excluded or discriminated against.

1349. Guarantee the equal participation of all relevant stakeholders in Internet governance, while fostering greater cooperation between the authorities, academia, civil society, the technical community and the private sector. Specifically, it recommends that the 2020 Digital Agenda [*Agenda Digital 2020*] include standards for transparency, public reporting and monitoring systems that make it possible to assess whether the goals established to improve connectivity were achieved effectively, as well as indicators regarding the impact of these standards on human rights.

– ***Regarding Social Protest***

1350. Repeal Supreme Decree [*Decreto Supremo*] No.1086 adopt new laws that are in line with international principles and standards on the subject.

1351. Review the regulations and standard operating procedures of security forces in such a way that they better include human rights principles in procedures regarding the use of force, and that they adjust

their practices based on these procedures. Specifically, the State should ensure that these procedures contain provisions and special measures to avoid discrimination and the unequal treatment of groups that have historically been discriminated against and that recognize the important role human rights defenders and journalists play in promoting and protecting human rights in the context of social protests.

1352. Establish regular, effective training programs for security forces regarding the management of demonstrations and protests and the appropriate use of force, in accordance with international human rights law. Also, continue to provide training for police officers on the rights and culture of the indigenous peoples of Chile in this regard.

1353. Reform laws as soon as possible in order to ensure that human rights violations committed by law enforcement officers are investigated and prosecuted by institutions and courts with civil jurisdiction.

CHAPTER III STANDARDS FOR A FREE, OPEN, AND INCLUSIVE INTERNET

A. INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has acknowledged that the Internet is a unique instrument with which to extend the enormous potential of human rights and, in particular, the right to freedom of expression, to broad sectors of the public.¹

2. The growing expansion of the web throughout the world, and especially in the Americas, makes it an indispensable instrument for the full exercise of human rights and contributes to the achievement of increasing levels of social benefits and inclusion.² In order for the benefits of the Internet and other communications technology to be distributed inclusively and sustainably among the population, the relevant policies and practices must be based on respecting and guaranteeing human rights—especially the right to freedom of expression, which facilitates and enables the exercise of other rights on the Internet. In the words of the United Nations General Assembly, “progress towards the vision of the World Summit on the Information Society should be considered not only as a function of economic development and the spreading of information and communications technologies but also as a function of progress with respect to the realization of human rights and fundamental freedoms.”³

3. In its report on *Freedom of Expression and the Internet (2013)*, the Office of the Special Rapporteur noted that the Internet’s unprecedented potential for the right to freedom of expression is mainly due to its “multidirectional and interactive nature, its speed, and its global scope at a relatively low cost, as well as its decentralized and open design.”⁴ The Office of the Special Rapporteur also affirmed that “the Internet also serves as a platform for fulfilling other human rights, such as the right to participate in cultural life and enjoy the benefits of scientific and technological progress (article 14 of the Protocol of San Salvador), the right to education (article 13 of the Protocol of San Salvador), the right to assembly and association (articles 15 and 16 of the American Convention), political rights (article 23 of the American Convention), and the right to health (article 10 of the Protocol of San Salvador), among other rights.”⁵

4. The Office of the Special Rapporteur has underscored that the right to freedom of expression, in particular, is fully applicable to communications, ideas, and information that is disseminated and accessed through the Internet.⁶ Along the same lines, the UN Human Rights Council reaffirmed that “the same rights that people have offline must also be protected online.”⁷

¹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013.

² United Nations. Human Rights Council. Resolution about the promotion, protection and enjoyment of human rights on the Internet. UN Doc. A/HRC/32/L.20. 1 July 2016. Available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/_layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A.HRC.32.2_AUV.doc&action=default&DefaultItemOpen=1; United Nations. General Assembly. Resolution 70/125. Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society. UN Doc. A/RES/70/125. 1 February 2016. Para. 9. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/125.

³ United Nations. General Assembly. Resolution 70/125. Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society. UN Doc. A/RES/70/125. 1 February 2016. Para. 9. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/125.

⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 36.

⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 36.

⁶ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 2.

⁷ United Nations. Human Rights Council. Resolution about the promotion, protection and enjoyment of human rights on the Internet. UN Doc. A/HRC/32/L.20. 1 July 2016. Available at:

5. This report draws from the standards developed on the 2013 *Report on Freedom of Expression and the Internet*, broadening its analysis to the new challenges faced in the exercise of human rights online, particularly freedom of expression. The document reviews current principles and summarizes the Inter-American case law and the advances made throughout the world, with the understanding that the right to freedom of expression is instrumental to the exercise of human rights on the Internet. Because of this, the standards on this subject shed light on the analysis of other, interrelated rights. The aim of this report is to assist the member States in their efforts to incorporate a human rights-based focus in the design, development, and implementation of policies affecting the Internet.

B. GUIDING PRINCIPLES

6. The relevance of the Internet as a platform for the enjoyment and exercise of human rights is directly tied to the architecture of the web and its governing principles, including the principles of openness, decentralization, and neutrality.⁸ On the thematic report on *Freedom of Expression and Internet*, the Office of the Special Rapporteur recognized that the original and special characteristics of the Internet should be taken into account before making any regulation that would affect its architecture or interaction with society. Accordingly, the Office of the Special Rapporteur emphasized that the digital environment should develop according to certain guiding principles that inform the State's work, the development of public policies, and the actions of private parties, which include equal conditions of access, pluralism, nondiscrimination and privacy.⁹ Net neutrality and multi-stakeholder governance were also recognized as transversal components of these guiding principles.

7. The principle of universal access "refers to the need to guarantee connectivity and access to the Internet infrastructure and other ICT services that is universal, ubiquitous, equitable, truly affordable, and of adequate quality, all throughout the State's territory".¹⁰ In other words, the Internet must maintain its intrinsically accessible character. This principle should be interpreted so as to derive the following consequences: steps should be taken to progressively promote universal access not only to infrastructure but also the technology necessary for its use and to the greatest possible amount of information available on the Internet; to eliminate arbitrary barriers to access to infrastructure, technology and information online, and to adopt measures of positive differentiation to allow for the effective enjoyment of this right for individuals or communities who face marginalization and discrimination.¹¹ Likewise, the Office of the Special Rapporteur has recognized that, according to this principle, closing the "digital divide" goes hand-in-hand with the need for States to ensure that private parties do not erect disproportionate or arbitrary barriers to Internet access or use of its principal services.¹²

8. Pluralism and diversity, as essential conditions for public debate and the exercise of freedom of expression, must be preserved in the digital era. The Office of the Special Rapporteur has emphasized that this means ensuring that changes are not made to the Internet that result in a reduction in the number of voices and amount of content available. Public policies on these subjects should protect the multidirectional

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/_layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A.HRC.32.2_AUV.doc&action=default&DefaultItemOpen=1

⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 11.

⁹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 14.

¹⁰ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 16.

¹¹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 16.

¹² IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 16.

nature of the Internet and promote platforms that allow for the search for and circulation of information and ideas of all kinds, without regard to borders, pursuant to the terms of article 13 of the American Convention.¹³

9. Likewise, the Office of the Special Rapporteur recognized that in the digital era, the principle of nondiscrimination requires States to guarantee that all persons – especially those belonging to vulnerable groups or who express criticism with regard to matters of public interest – are able to disseminate content and information under equal conditions.¹⁴

10. The Office of the Special Rapporteur stressed that privacy should also be a guiding principle in the digital era. The right to privacy, according to which “no one may be object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence”, is a condition for the exercise of freedom of expression on line that must be protected by law and rigorously promoted in public policy.¹⁵ This is closely linked to the State’s obligation to create a safe environment for the exercise of freedom of expression, as violation of communication privacy has a chilling effect and hampers the full exercise of the right to communication.¹⁶

11. In addition to the principles of universal access, pluralism, nondiscrimination and privacy, the principle of net neutrality was recognized by the Office of the Special Rapporteur as “a necessary condition for exercising freedom of expression on the Internet pursuant to the terms of article 13 of the American Convention”.¹⁷ The purpose of this principle is to ensure that free access and user choice to use, send, receive or offer any lawful content, application or service through the Internet is not subject to conditions, or directed or restricted, such as blocking, filtering or interference.

12. Internet’s multi-stakeholder governance was also recognized as an important principle. The Office of the Special Rapporteur considered the importance of the multi-stakeholder and democratic processes in Internet governance, in which the principle of strengthened cooperation ensures that all relevant points of view can be taken into account and no actor can assume its regulation exclusively.¹⁸

13. Similarly, the United Nations Organization for Education, Science and Culture (UNESCO) endorsed the concept of “Internet universality” as an integrative model for the development of the Internet in the service of the public interest and proposes four guiding principles for promoting the regulation and development of the Internet in order to continue building the knowledge society: (i) human rights-based (and therefore, free); (ii) openness; (iii) accessibility; and (iv) multi-stakeholder participatory. The four principles can be summarized by the mnemonic R – O – A – M (Rights-based, Open, Accessible, Multi-stakeholder driven).¹⁹

14. According to this characterization of the Internet, the first dimension of “Internet universality” is to respect international norms on the protection and promotion of human rights and guarantee the three-part test of legality, necessity, and proportionality in the implementation of permissible limitations on human

¹³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 18 and 19.

¹⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 20 and 21.

¹⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 130.

¹⁶ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 23.

¹⁷ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 25.

¹⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 177-180.

¹⁹ UNESCO. [Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda](#). 2 September 2013.

rights online. UNESCO emphasized that “an Internet that failed to uphold human rights would be far from being a case of ‘Internet Universality,’ and would also be incompatible with the Post-2015 Sustainable Development Agenda.”²⁰

15. The general principle of openness highlights the technical standards, such as inter-operability and open application interfaces, “and the absence of closure that might otherwise be imposed through exclusionary licensing regimes or protectionist limitation on the provision of services that artificially favor monopolies or archaic technological platforms.”²¹ Political and social support for open systems, not only in technical knowledge, are part of this principle—and it is through this principle that innovation is encouraged and decentralization is maintained online. UNESCO affirmed that “openness also points to the importance of open source software, open data, and open educational resources, as part of the positive make-up of the Internet.”²²

16. Accessibility means that Internet access is ubiquitous, attainable, nondiscriminatory, high-quality, and low-cost. UNESCO underscored the dual dimension of Internet users as recipients or beneficiaries of information and content but also as producers of content, services and applications. Emphasis is therefore placed not only on the available infrastructure but also on the promotion of capacity, multilingualism, and digital literacy. Finally, UNESCO recognized two other dimensions of access: one linked to the development of “sustainable and reliable business models are able to finance universal access and further ensure accessibility through the sustenance of a diverse range of content and services,” and the other linked to confidence in the Internet with respect to such issues as the security and authenticity of data.²³

17. UNESCO also recognized that the multi-stakeholder governance of the Internet ensures the active participation of the representatives of the different interests converging around the development and regulation of the Internet, including States, the private sector, the tech sector, civil society, and the academic sector, as well as—essentially—Internet users.²⁴ The multi-stakeholder driven aspect helps to build shared norms that ensure the global nature of the Internet and mitigate violations or abuses of this important resource.²⁵

18. There is an international consensus and a commitment to the need to promote universal access to the Internet as an essential means for the effective exercise of human rights online, particularly freedom of expression; and the multi-stakeholder governance of the Internet as a guarantee for the development of technologies respectful of human rights. The right to equality and nondiscrimination intersects with the abovementioned principles, as well as the analysis of all of the rights that are exercised on or through the Internet. The Office of the Special Rapporteur will develop some of the essential aspects of these guiding principles.

1. Free and Open Internet

²⁰ UNESCO. [Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda](#). 2 September 2013. Page 7.

²¹ UNESCO. [Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda](#). 2 September 2013. Page 7.

²² UNESCO. [Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda](#). 2 September 2013. Page 7.

²³ UNESCO. [Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda](#). 2 September 2013. Page 8.

²⁴ UNESCO. [Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda](#). 2 September 2013. Page 9.

²⁵ UNESCO. [Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda](#). 2 September 2013. Page 9. September 2013. Also see, [NETmundial’s Multistakeholder Statement](#). The Statement highlights the importance of a permissionless innovation environment for the future of the Internet. According to the text: “The ability to innovate and create has been at the heart of the remarkable growth of the Internet and it has brought great value to the global society. For the preservation of its dynamism, Internet governance must continue to allow permissionless innovation through an enabling Internet environment, consistent with other principles in this document.” April 24th, 2014.

19. The concept of openness and internet freedom is based on the development of technical standards such as inter-operability, open application interfaces, open documents, text and data, as well as on the absence of limitations or obstacles that artificially favor monopolies or archaic platforms.²⁶ One of the pillars that guarantees Internet freedom and openness is the principle of net neutrality.

20. The 2011 Joint Declaration on Freedom of Expression and the Internet holds that “There should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.”²⁷

21. The principle of neutrality is an Internet design principle, whereby the use of networks is maximized and all “data packets” are treated equally, without distinction of any kind. It follows that we can refer to a “dumb network” online that is specialized at both ends—the content or the application is created on one end, is transferred through the network in different packets, without discrimination, and the content or application is reassembled at the destination point.

22. As the Office of the Special Rapporteur for Freedom of Expression has maintained, net neutrality is a necessary condition for the exercise of freedom of expression, and intersects with the guiding principles.²⁸ 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.²⁹

23. The States must guarantee the operation of this principle through appropriate laws.³⁰ Several countries in the region have already enacted laws establishing the principle of net neutrality: Argentina³¹, Brazil³², Chile³³ and Mexico.³⁴ The Federal Communications Commission (FCC) of the United States also recently endorsed the principle of net neutrality,³⁵ and the National Telecommunications Commission of Paraguay has done the same.³⁶

²⁶ UNESCO. [Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda](#). 2 September 2013. Page 7.

²⁷ 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, [Joint Declaration on Freedom of Expression and the Internet](#). 1 June 2011.

²⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 25.

²⁹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 25.

³⁰ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 26.

³¹ República de Argentina. Ley 25.078 Argentina Digital. Boletín Oficial No. 33.034. December 19, 2014. Articles 1, 56 and 57. Available at: <https://www.enacom.gob.ar/ley-27-078-p2707>

³² República Federativa de Brasil. Ley No. 12.965. Marco Civil de Internet. April 23, 2014. Article 9. Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm

³³ República de Chile. Ley 20.453 que consagra el principio de neutralidad en la red para los consumidores y usuarios de internet. August 20, 2010. Articles 1 and 24H. Available at: <https://www.leychile.cl/Navegar?idNorma=1016570>

³⁴ Estados Unidos Mexicanos. Ley Federal de Telecomunicaciones y Radiodifusión. Diario Oficial de la federación. July 14, 2014. Article 145. Available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5352323&fecha=14/07/2014

³⁵ United States of America. Federal Communications Commission. Protecting and Promoting the Open Internet. 80 FR 19737. July 14, 2014. Article 145. Available at: <https://www.federalregister.gov/articles/2015/04/13/2015-07841/protecting-and-promoting-the-open-internet>

³⁶ República de Paraguay. Comisión Nacional de Telecomunicaciones. Resolución 190/2009. March 11, 2009. Article 26.

24. The FCC's policy on net neutrality bans three specific practices that "invariably harm the open internet." The order prevents internet service providers (ISPs) from blocking or restricting what people can do or see online; it prevents throttling, specifically prohibiting the degrading of traffic based on source, destination, or content; finally, it precludes paid prioritization.³⁷ The decision to protect net-neutrality, or the equal treatment of all internet traffic, also classifies broadband internet as a public utility. This allows the FCC to regulate broadband internet similarly to telephone services and other utilities and in turn, allows the FCC greater authority to enforce net neutrality. The United Nations Special Rapporteur on freedom of opinion and expression said that "this decision marks a real victory for freedom of expression and access to information in the United States".³⁸

25. The principle of net neutrality, however, may be subject to exceptions. The Office of the Special Rapporteur for Freedom of Expression maintained in 2013 that there should be no discrimination, restriction, blocking, or interference in the transmission of Internet traffic, "unless strictly necessary and proportional in order to preserve the integrity and security of the network; to prevent the transmission of online content at the express request - free and not incentivized - of the user; and to temporarily and exceptionally manage network congestion."³⁹ The European Commission's proposal for the regulation of the European single market for electronic communications recognizes that "Reasonable traffic management encompasses prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and distribution of child pornography."⁴⁰

26. The Committee of Ministers of the Council of Europe, for its part, has stated that the rules on neutrality "should apply irrespective of the infrastructure or the network used for Internet connectivity."⁴¹ The Charter of Human Rights and Principles for the Internet establishes that "Access includes freedom of choice of system, application and software use. To facilitate this and to maintain interconnectivity and innovation, communication infrastructures and protocols should be interoperable, and standards should be open."⁴² This gives all people the ability to innovate on the Internet, creating content, applications, and services in a decentralized manner, without the need for authorizations, bureaucracies, or permits.⁴³ It adds that, "Open standards and open formats must be made available. Free and Open Source Software (FOSS) must be used, promoted and implemented in public and educational institutions and services. When a free solution or open standards do not exist, the development of the needed software shall be promoted."⁴⁴

27. The Office of the Special Rapporteur has echoed the above, stating that "Users have the right to connect to or use the Internet, according to their choice, with any type of compatible device, as long as the devices do not adversely affect the network or the quality of service."⁴⁵

³⁷ United States of America. Federal Communications Commission. Protecting and Promoting the Open Internet. 80 FR 19737. April 13, 2015. Available at: <https://www.federalregister.gov/articles/2015/04/13/2015-07841/protecting-and-promoting-the-open-internet>

³⁸ United Nations Office of the High Commissioner for Human Rights. *"A real victory for freedom of expression" - UN rights expert hails US move to keep Internet open*. February 27, 2015.

³⁹ IACHR. Annual Report 2013. *Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013* Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 30.

⁴⁰ European Commission. *Regulation Framework of the electronic communications*. Regulation of the European Parliament and the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012. 11 September 2013. Page 27.

⁴¹ European Commission. *Committee of Ministers. Declaration of the Committee of Ministers on network neutrality*. 29 September 2010. Point 4.

⁴² Internet Rights and Principles Coalition. *The Charter of Human Rights and Principles for the Internet*. 2015. Point 1.b.

⁴³ Internet Rights and Principles Coalition. *The Charter of Human Rights and Principles for the Internet*. 2015. Point 1.b.

⁴⁴ Internet Rights and Principles Coalition. *The Charter of Human Rights and Principles for the Internet*. 2015. Point 11.f.

⁴⁵ IACHR. Annual Report 2013. *Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013* Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 29.

28. Transparency in the terms of network management is fundamental to ensuring the principle of net neutrality.⁴⁶ The 2011 Joint Declaration on Freedom of Expression and the Internet establishes that “Internet intermediaries should be required to be transparent about any traffic or information management practices they employ, and relevant information on such practices should be made available in a form that is accessible to all stakeholders.”⁴⁷

29. As part of the discussion on net neutrality, a new and controversial debate arose in 2015 regarding zero-rating plans. Zero-rating plans allow Internet service providers to provide access to specific applications without that access being charged as an expenditure in the end-user’s data plan. Zero-rating plans exist in different countries of the region, including Chile, Colombia, Brazil, Ecuador, Panama, and Paraguay.⁴⁸ Scholarly opinion is divided with respect to the impact of zero-rating plans on net neutrality. Without prejudice to the policy that each State adopts with regard to this issue, it bears noting that in no case will States be able to replace their policies of universal access to the Internet with zero-rating plans or policies.

30. The stated objective of some zero-rating plans is to bridge the digital divide and promote Internet access among persons not currently connected, temporarily providing them with restricted access to the Internet without any additional charges to their telephone service plan. Although zero-rating plans or policies may be considered acceptable in some States as part of a wider strategy to increase access, simply replacing access policies with zero-rating policies is incompatible with the development goals of the United Nations, and with the obligation of States to promote and protect individual human rights on the Internet.

31. In all cases, zero-rating policies must be evaluated in light of the legal regulations of each State, assessing the compatibility of those policies with the terms of the rules that govern and regulate net neutrality, and are incompatible in those jurisdictions where net neutrality establishes the express prohibition against discriminating among applications or content based on price. The compatibility of such measures or plans with human rights will have to be measured in light of the legality, necessity, and proportionality test. States that allow for zero-rating plans to be offered should monitor their functionality and periodically evaluate their compatibility with human rights. In addition, those States should pay special attention to the data and privacy protection systems of those plans, addressing the risks that those plans create as a result of the centralization of user data and information.

2. Access

32. Access to the Internet is a condition *sine qua non* for the effective exercise of human rights today, especially including the rights to freedom of expression and opinion, association and assembly, education, health, and culture discussed in this report.⁴⁹ Given its nature as a crucial means for the full exercise of specific rights, Internet access must be universally guaranteed by taking measures to bridge the digital divide, promoting infrastructure development policies, and protecting the quality and integrity of service at all times, establishing explicit prohibitions against arbitrary blocks (partial or total), and slow-downs.

⁴⁶ 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, [Joint Declaration on Freedom of Expression and the Internet](#). 1 June 2011.

⁴⁷ 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, [Joint Declaration on Freedom of Expression and the Internet](#). 1 June 2011.

⁴⁸ See, for example, Derechos Digitales, Coding Rights y APC. [Latin America in a Glimpse](#). 2015. Page 3.

⁴⁹ 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, [Joint Declaration on Freedom of Expression and the Internet](#). 1 June 2011. (The Declaration maintains that the States must promote Internet access as a means to guarantee rights, particularly freedom of expression).

33. Currently, and in spite of the commitment and efforts undertaken by the States of the region to bridge the digital divide,⁵⁰ one-third of the population of the Americas is still not connected to the Internet.⁵¹ The lack of Internet access increases vulnerability and exacerbates inequality, perpetuating exclusion, one danger is that States switch all of the broadcast services to digital without ensuring that all citizens have access to digital services. This is most likely to impact upon poor, isolated and remote communities who can therefore be doubly disadvantaged by losing access to all communication services, not just digital ones.

34. In the words of the United Nations Rapporteur on Freedom of Opinion and Expression, the digital divide “refers to the gap between people with effective access to digital and information technologies, in particular the Internet, and those with very limited or no access at all.”⁵²

35. The States should take actions to progressively promote universal access to the Internet – understood as access not only to the infrastructure but also to the technology needed for its use – and to the largest possible amount of information available on the web; eliminate arbitrary barriers to access to infrastructure, technology, and information online; and take positive differentiation measures to allow for the effective enjoyment of this right for individuals or communities who face marginalization and discrimination.⁵³ The Office of the Special Rapporteur for Freedom of Expression has stated that the States should guarantee connectivity and access to the Internet infrastructure and other ICT services that is universal, ubiquitous, equitable, truly affordable, and of adequate quality, all throughout the State’s territory.⁵⁴ The 2011 Joint Declaration on Freedom of Expression and the Internet stressed that the regulations to be adopted should seek to ensure that pricing structures are inclusive, so as not to hinder access; that connectivity be extended throughout the country to effectively promote access for rural users and excluded communities; that communities have access to community-based information technology centers and other publicly accessible options; and that training and education be reinforced, especially for the poor, rural populations, and the elderly.⁵⁵

36. The Tunis Declaration of Principles from the World Summit on the Information Society, developed within the framework of the United Nations in 2003 and subsequently reaffirmed in various international instruments,⁵⁶ concluded that it is desirable to have “a well-developed information and communication network infrastructure and applications, adapted to regional, national and local conditions, easily-accessible and affordable, and making greater use of broadband and other innovative technologies where possible.”⁵⁷

⁵⁰ OAS. General Assembly. Declaration of Santo Domingo. Governability and Development in the Knowledge Society . OEA Doc. AG/DEC. 46 (XXXVI-O/06). July 6, 2006. Para. 21. See also: United Nations. General Assembly. Resolution 70/125. Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society. UN Doc. A/RES/70/125. 1 February, 2016. Para. 9.

⁵¹ International Telecommunications Union. [ICT Facts and Figures 2016](#). June 2016.

⁵² 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. 16 May 2011. Para. 61.

⁵³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 15.

⁵⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 15.

⁵⁵ 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 Freedom of Expression and the Internet](#). 1 June 2011. See also: IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 11.

⁵⁶ See, for example: United Nations. General Assembly. Resolution 70/125. [Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society](#) UN Doc. A/RES/70/125. 1 February, 2016. Para. 9

⁵⁷ World Summit on the Information Society. [Declaration of Principles. Building the Information Society: a global challenge in the new Millennium](#). Geneva 2003- Tunis 2005. Doc. WSIS-03/GENEVA/4-E. 12 December 2003. Para. 22.

37. The Office of the Special Rapporteur for Freedom of Expression has underscored that States should devise long-term plans and policies to develop the necessary physical infrastructure to prevent the arbitrary exclusion of certain sectors and create broadband plans and measures that enable the development of mobile Internet.⁵⁸ This should include the development of more internet exchange points. These allow internet service providers and content delivery networks to exchange traffic locally rather than through upstream (and often remotely located points). This reduces costs, provides greater flexibility and quicker speeds (reducing latency considerably).

38. Finally, universal access to the Internet requires States to guarantee the quality and integrity of Internet service, protecting it in all cases from arbitrary blocking, interference, or slowdowns. Interrupting the Internet access of entire populations or segments of the population is never justified, even for national security reasons.⁵⁹ Temporary or partial blocks affect the exercise of human rights online, constituting restrictions to those rights. In examining each right included in this report, we discuss the effect of Internet blocks on the exercise of that right, and the permissible limitations thereto.

39. The application of penalties denying access to the Internet can only be justified when there are no less restrictive means, and provided that such penalties meet the requirements of legality, proportionality, and necessity in a democratic society, and have been ordered by a competent judicial authority.⁶⁰ Along the same lines, the State has the obligation to take measures to ensure that private companies and entities involved in the management and administration of the Internet do not erect disproportionate or arbitrary barriers to that access and that they are governed by transparent rules that allow for the exercise of citizen oversight over their access policies.⁶¹

40. Speed, stability, affordability, language, local content, and accessibility for persons with disabilities are core elements of access, recognized as such by the United Nations General Assembly in its resolution on the review of the implementation of the outcomes of the World Summit on the Information Society.⁶²

a. Digital Literacy

41. The benefits of technological media in the exercise of human rights may materialize to the extent that individuals have access to the Internet. And this Internet access is not satisfied by mere connection to the web; rather, people must have the quality, information, and knowledge needed to be able to make use of this tool and benefit from it.⁶³

42. “Digital literacy” is defined as the “the set of skills, knowledge, and attitudes required by an individual to functionally develop within the information society,”⁶⁴ and its objective is for people to acquire

⁵⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 45.

⁵⁹ 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 Freedom of Expression and the Internet](#). 1 June 2011.

⁶⁰ 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 Freedom of Expression and the Internet](#). 1 June 2011.

⁶¹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 17.

⁶² United Nations. General Assembly. [Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society](#). UN Doc. A/70/L.33. 13 December 2015. Para. 28.

⁶³ United Nations. General Assembly. Resolution 66/184. Information and communications technologies for development. UN Doc. A/RES/66/184. 6 February 2012. Available at: <http://www.un.org/en/ga/66/resolutions.shtml>

⁶⁴ Pan American Health Organization. eHealth Conversations. Information Management, Dialogue, and Knowledge towards Universal Access to Health. Washington DC, 2014. Pág. 255. Disponible para consulta en:

the knowledge and the skills “to use technology efficiently, developing new social and financial opportunities within their social framework.”⁶⁵

43. Differences in individuals’ capabilities to both use and create information and communications technologies represent a knowledge divide that perpetuates inequality.⁶⁶ Digital literacy is an essential process in the guarantee of human rights, and a particularly necessary measure to protect and guarantee the rights to equality and nondiscrimination.

44. The States should make “educational efforts to promote the ability of everyone to engage in autonomous, self-driven and responsible use of the Internet.”⁶⁷ Such measures have a direct impact on the ability of individuals to fully exercise specific rights and to critically evaluate information obtained online. A 2013 UNESCO report indicates that 63 per cent of the region’s countries state that they have public policies designed to offer training courses on computing and information technology.⁶⁸

45. The States must promote and ensure the participation of all sectors of society, including all of the subjects of such measures, in the design and implementation of specific and effective policies on the issue.⁶⁹ In addition, digital literacy must be aimed at all persons without discrimination. The States should take account of the particular characteristics of the persons at whom such policies are directed, adopting a dual focus: 1) it should respond to the characteristics and needs of those who seek and receive information, goods, and services—for instance, a student in a rural area who receives educational material electronically, or a patient who requests an appointment for a medical exam or is notified of the results of an exam by electronic means; 2) it should take account of who offers, produces, administers, or makes use of the information, goods, and/or services—i.e., the teachers, doctors, or laboratories that create new ways of interacting with their students, patients, or the general public through the Internet.⁷⁰ This dual focus on digital literacy encourages the circulation of content, openness, and the decentralization that characterize the Internet and are fundamental to the full exercise of human rights in this sphere.

b. Linguistic Plurality

46. Linguistic plurality is a condition *sine qua non* for the achievement of full access to the Internet under conditions of equality and nondiscrimination. Moreover, plurilingualism is intrinsically linked to the creation of the local content that is so necessary for Internet universality.

http://www.paho.org/ict4health/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=272&lang=en. See also, UNESCO. [Digital Literacy in Education](#). Policy Brief. May 2011.

⁶⁵ Pan American Health Organization. eHealth Conversations. Information Management, Dialogue, and Knowledge Exchange towards Universal Access to Health. Washington DC, 2014. Page. 255. Available at: http://www.paho.org/ict4health/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=272&lang=en. See also, UNESCO. [Digital Literacy in Education](#). Policy Brief. May 2011.

⁶⁶ United Nations. General Assembly. [Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society](#). UN Doc. A/70/L.33. 13 December 2015. Para. 23.

⁶⁷ 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 Freedom of Expression and the Internet](#). 1 June 2011.

⁶⁸ UNESCO. [ICT in Education in Latin America and the Caribbean. A regional analysis of ICT integration and e-readiness](#). 2013. Page. 9.

⁶⁹ 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. 16 May 2011. Para. 66; OAS. General Assembly. Declaración de Santo Domingo. Gobernabilidad y Desarrollo en la Sociedad del Conocimiento. OEA Doc. AG/DEC. 46 (XXXVI-O/06). June 6, 2006. Para. 21.

⁷⁰ See for example, Pan American Health Organization. eHealth Conversations. Information Management, Dialogue, and Knowledge Exchange to Approach Universal Access to Health. Washington DC, 2014. Pág. 255. Disponible para consulta en: http://www.paho.org/ict4health/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=272&lang=en. And, UNESCO. [Digital Literacy in Education](#). Policy Brief. May 2011.

47. On this point, the United Nations Special Rapporteur in the field of cultural rights has underscored that “the vastly unequal distribution of published literary works across languages poses a significant barrier to the right to take part in cultural life for linguistic communities not offering a major publishing market.”⁷¹ Although there are online translation services that have been improved in recent years,⁷² they do not provide effective solutions to the problem in question.

48. The Office of the Special Rapporteur for Freedom of Expression has emphasized that “In order for Internet access to constitute an authentic instrument to increase informational pluralism and cultural diversity, it is necessary to guarantee the participation of linguistic minorities, as well as the availability of local content on the Internet. As the Inter-American Court has indicated, the right to freedom of expression necessarily includes the right of individuals to use the language of their choosing to express themselves.”⁷³ States should take measures designed to reduce linguistic obstacles in order to make literacy viable and ensure access for all people under equal conditions.⁷⁴ They should also “promote original local and indigenous content on the Internet.”⁷⁵

49. In the development of the knowledge society, the creation, dissemination and preservation of content in diverse languages and formats must be accorded high priority, including all types of content—educational, scientific, cultural or recreational—and they should be accessible.⁷⁶ Accordingly, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has advocated for “the translation of websites into multiple languages, including languages spoken by minorities and indigenous peoples, and their accessibility to persons with disabilities. Allowing people speaking different languages or with disabilities to participate in the same communication platform facilitates a truly global society.”⁷⁷ This is the only way in which the States can ensure that information will be effectively accessible to all persons.

3. Multi-stakeholder Governance

50. The Internet has evolved into a global resource available to the public, and its management must respect that nature.⁷⁸ Indeed, the internet has been and is developed and operated by a series of private companies performing different functions. However its’ character as a communication medium is that of a public space and hence its governance should be guided according to the principles of a public resource rather than simply be a matter for private contracts.

⁷¹ United Nations. Human Rights Council. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. UN Doc. A/HRC/28/57. 24 December 2014. Para. 68.

⁷² 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. UN Doc. A/66/290. 10 August 2011. Para. 54.

⁷³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 44, citing, I/A Court H.R., Case of López-Álvarez s. Honduras. Judgment of February 1, 2006. Merits, Reparations and Costs. Series C No. 141. Para. 164.

⁷⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 44, citing, I/A Court H.R., Case of López-Álvarez s. Honduras. Judgment of February 1, 2006. Merits, Reparations and Costs. Series C No. 141. Para. 164.

⁷⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 44, citing, I/A Court H.R., Case of López-Álvarez s. Honduras. Judgment of February 1, 2006. Merits, Reparations and Costs. Series C No. 141. Para. 164.

⁷⁶ World Summit on the Information Society. [Declaration of Principles. Building the Information Society: a global challenge in the new Millennium](#). Geneva 2003- Tunis 2005. Doc. WSIS-03/GENEVA/4-E. 12 December 2003. Para. 53.

⁷⁷ 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. UN Doc. A/66/290. 10 August 2011. Para. 85.

⁷⁸ World Summit on the Information Society. [Declaration of Principles. Building the Information Society: a global challenge in the new Millennium](#). Geneva 2003- Tunis 2005. Doc. WSIS-03/GENEVA/4-E. 12 December 2003. Para. 48.

51. The Tunis Agenda defined Internet governance as “the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet,”⁷⁹ and affirmed that such governance should be multilateral, transparent and democratic.⁸⁰ The United Nations General Assembly has stressed the importance of multi-stakeholder governance at the international level, placing particular emphasis on the balanced participation of developing States and the cooperation of the multiple stakeholders—governments, civil society, international organizations, tech community, academic community—that have characterized the proceedings of the World Summit on the Information Society from its inception.⁸¹

52. The Office of the Special Rapporteur has stated that “in order to make sure that all relevant points of view can be properly considered, the States must ensure the equal participation of all actors relevant to the governance of the Internet, fostering strengthened cooperation among authorities, academia, civil society, the tech community, the private sector, and others, both nationally and internationally.”⁸²

53. The open debate and democratic participation that must characterize the enactment of laws in democratic States take on fundamental importance on the Internet where very diverse interests, opportunities, and capacities converge. Private actors and the tech community play a critical role as developers, administrators, and owners of the infrastructure, platforms, and applications through which people use and develop the Internet.⁸³

54. Technical bodies such as *Internet Corporation for Assigned Names and Numbers* – ICANN- or the *Internet Engineering Task Force* –IETF- have long practiced a multi-stakeholder form of governance with stakeholder groups able to develop policy and submit it to the wider community for agreement. These bodies are essentially concerned with technical problems where achieving rough consensus is possible as it involves identifying the best technical solution to the problem. Global policy issues, which require a balancing of competing interests are more difficult to achieve in a multi-stakeholder setting. Notwithstanding, the development of these public policies should be strengthened to enable the full and balanced participation of all stakeholders, and made by consensus, to the extent possible.

55. Also, the strengthening of local governance forums is essential to the promotion of a reliable and trustworthy Internet. It is particularly important for there to be rich, robust, and plural debates within States on the regulation of human rights, ensuring the participation of particularly affected or vulnerable sectors.

56. Finally, in order to measure the impact of the multi-stakeholder governance of the Internet, and to guarantee that its processes are being observed and its goals are being fulfilled, it is recommended to assess critical success factors such as inclusiveness, transparency, accountability, legitimacy and effectiveness.⁸⁴

4. Equality and Nondiscrimination

⁷⁹ World Summit on the Information Society. [Tunis Agenda for the Information Society](#). Doc. WSIS-05/TUNIS/DOC/6(Rev.1)-E. 18 November 2005. Para. 34.

⁸⁰ World Summit on the Information Society. [Tunis Agenda for the Information Society](#). Doc. WSIS-05/TUNIS/DOC/6(Rev.1)-E. 18 November 2005. Para. 29.

⁸¹ United Nations. General Assembly. Resolution 70/125. [Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society](#), UN Doc. A/RES/70/125. February 1, 2016. Para. 9.

⁸² IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 178.

⁸³ 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. 16 May 2011.

⁸⁴ For a development on those critical success factors, see Gasser, Urs and Budish, Ryan and West, Sarah Myers, Multistakeholder as Governance Groups: Observations from Case Studies (January 14, 2015). Berkman Center Research Publication No. 2015-1. Available at SSRN: <https://ssrn.com/abstract=2549270>.

57. Articles 1.1 and 24 of the American Convention establish the rights to equality and nondiscrimination. Article 1.1 of the Convention requires the States to respect and guarantee the free and full exercise of the human rights contained in the Convention “without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” Article 24 establishes that “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” Interpreting these provisions, the Inter-American Court has held that article 1.1 establishes the obligation of nondiscrimination with respect to the application and guarantee of the Convention rights and article 24 extends that guarantee of equality and nondiscrimination to the local laws that the States may enact.⁸⁵

58. In accordance with these rights, the States are required to abstain from discriminating in the exercise and guarantee of rights and to take positive measures that enable all persons under their jurisdiction to effectively enjoy and exercise their rights under equal conditions.⁸⁶ This entails the obligation to take administrative, legislative, or any other measures that may be necessary to reverse existing situations of discrimination that keep people from exercising their rights effectively.⁸⁷

59. Access to the Internet—both to the infrastructure and the content circulating on the web—is a key element in combating inequality and guaranteeing the full enjoyment and exercise of the rights to equality and nondiscrimination online.⁸⁸

60. The guarantee of nondiscrimination includes the State’s obligation to address the specific Internet access needs that some particularly vulnerable groups may have. The Office of the Special Rapporteur for Freedom of Expression has stated that “regulatory mechanisms need to be established - including pricing regimens, universal service requirements and licensing agreements - to foment broad access to the Internet, including for vulnerable sectors of society and the most isolated rural areas. For these purposes, all necessary efforts should be made to provide direct support to facilitate access, for example, as mentioned before, through programs to distribute affordable computers and the creation of community information technology centers and other points of public access.”⁸⁹

61. The States must promote and guarantee, for instance, the full participation of women in the knowledge society in order to be able to ensure integration and respect for human rights on the Internet. The States should ensure the participation of women in decision-making processes, and encourage their input in shaping all of the spheres of the information society at the international, regional, and local levels.⁹⁰ Statistics from Internet Governance Forum show that in 2015 only 38 per cent of the participants in the forum were women and in 2016 that percentage rose to 39.6 per cent.⁹¹ The States should take proactive measures to close the gender gap on the Internet and in all aspects of its governance.

⁸⁵ I/A Court. *Case Apitz Barbera et al (“Corte Primera de lo Contencioso Administrativo”) v. Venezuela*. Judgment of August 5, 2008. Preliminary Objections, Merits, Reparations and Costs. Serie C No. 182. Para. 209.

⁸⁶ I/A Court. *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Preliminary Objections, Merits, Reparations and Costs. Series C No. 127.

⁸⁷ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 230.

⁸⁸ United Nations. General Assembly. Resolution 70/125. [Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society](#), UN Doc. A/RES/70/125. February 1, 2016. Para. 9.

⁸⁹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 43.

⁹⁰ World Summit on the Information Society. [Tunis Agenda for the Information Society](#). Doc. WSIS-05/TUNIS/DOC/6(Rev.1)-E. 18 November 2005. Para. 23.

⁹¹ IGF 2015 Attendance Statistics, available at: <http://www.intgovforum.org/cms/igf-2015-attendance-statistics> and, IGF 2016 Attendance & Programme Statistics, available at: <https://www.intgovforum.org/multilingual/content/igf-2016-attendance-programme-statistics>

62. Similarly, and as established in the Convention on the Rights of Persons with Disabilities (CRPD)⁹² “States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems⁹³ [...]including through the Internet. [And] promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.”⁹⁴

63. The States therefore must consider the promotion of auxiliary technologies for persons with disabilities, with a view to ensuring a more uniform distribution of the benefits of ICT services, and to narrow the digital divide and provide digital opportunities for all.⁹⁵ They should also enact policies to encourage those who provide services on the Internet to adopt formats accessible to persons with disabilities.⁹⁶

64. Internet access is particularly important for persons in vulnerable situations, including the poorest sectors of the population. Without Internet access, persons living in extreme poverty run the risk of remaining excluded, thus perpetuating their marginalization and vulnerability.⁹⁷ The dissemination of information about the needs and issues of the poorest populations “improves understanding and actions aimed at addressing poverty, injustice and inequality and can inform and influence public agendas locally, nationally and internationally.”⁹⁸ Internet access is essential to guarantee the full exercise of these rights, and the States should adopt measures designed to guarantee that access under equal conditions. The Geneva Declaration states with regard to this point that “In disadvantaged areas, the establishment of ICT public access points in places such as post offices, schools, libraries and archives, can provide effective means for ensuring universal access to the infrastructure and services of the Information Society.”⁹⁹ The exercise of these persons’ rights has been facilitated with the emergence of the Internet as a means for disseminating their opinions and problems, thus preventing their exclusion from public debate and enabling them to fully enjoy their human rights.¹⁰⁰

65. The obligation of equality and nondiscrimination also entails the State’s obligation to guarantee the exercise of individual human rights on the Internet under equal conditions. articles 1.1 and 24 govern both “online” and “offline,” and individuals have the right to exercise their rights to assembly, association, freedom of expression, access to information, freedom of religion, and so on, without discrimination. The Internet is an essential tool for vulnerable communities and communities historically subjected to discrimination to obtain information, assert grievances, make their voices heard, participate actively in public debate, and help shape public policies designed to redress their situation.¹⁰¹

⁹² [United Nations Convention on the Rights of Persons with Disabilities](#). Article 21.

⁹³ [United Nations Convention on the Rights of Persons with Disabilities](#). Article 9.1.

⁹⁴ [United Nations Convention on the Rights of Persons with Disabilities](#). Article 9.

⁹⁵ World Summit on the Information Society. [Tunis Agenda for the Information Society](#). Doc. WSIS-05/TUNIS/DOC/6(Rev.1)-E. 18 November 2005. Para. 18.

⁹⁶ [United Nations Convention on the Rights of Persons with Disabilities](#). Article 21, subparagraphs c) and d).

⁹⁷ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/11/4. 30 April 2009. Para. 53.

⁹⁸ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/11/4. 30 April 2009. Para. 54.

⁹⁹ World Summit on the Information Society. [Declaration of Principles. Building the Information Society: a global challenge in the new Millennium](#). Geneva 2003- Tunis 2005. Doc. WSIS-03/GENEVA/4-E. 12 December 2003. Para. 23.

¹⁰⁰ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/11/4. 30 April 2009. Para. 55.

¹⁰¹ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/11/4. 30 April 2009. Para. 62.

66. Nevertheless, instances of online discrimination against particularly vulnerable groups, including women,¹⁰² children, the LGBTI community, migrants, disabled persons, and others have also been documented. The States must take measures to foster equality and nondiscrimination both “online” and “offline,” prohibiting hate speech that incites violence, documenting instances of discrimination, and promoting tolerance through social programs, training, and education.¹⁰³

67. The rights to equality and nondiscrimination inform the guiding principles that must shape public policy on matters concerning the Internet, as well as each one of the human rights discussed in this report. The obligation to guarantee those rights will require, where appropriate, the adoption of specific positive measures in light of the demands of each right.

C. THE RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION

1. The Right to Freedom of Thought and Expression in the Inter-American System

68. Article 13 of the American Convention on Human Rights¹⁰⁴ defines the right to freedom of thought and expression as the right to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. Clauses 2 to 5 of article 13 provide the applicable limitations and exceptions. Freedom of expression must not be subject to prior censorship or the subsequent imposition of liability.

69. The Inter-American System is the international system that gives the widest scope and breadth to freedom of thought and expression,¹⁰⁵ and is designed to lessen restrictions to the free circulation of information, opinions, and ideas, based on a broad concept of individual autonomy and dignity.¹⁰⁶ According

¹⁰² United Nations. General Assembly. Resolution 68/181. [Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders](http://www.un.org/es/ga/68/resolutions.shtml). UN Doc. A/RES/68/181. 30 January 2014, available at: <http://www.un.org/es/ga/68/resolutions.shtml>; IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2015](#). Chapter IV (Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas) OEA/Ser.L/V/II. Doc. 48/15. 31 December 2015.

¹⁰³ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2015](#). Chapter IV (Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas) OEA/Ser.L/V/II. Doc. 48/15. 31 December 2015.

¹⁰⁴ American Convention on Human Rights (Pact of San José). Article 13 provides that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

¹⁰⁵ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. February 25, 2009. Para. 223.

¹⁰⁶ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. February, 25 2009. Para. 224.

to the Inter-American case law this right is the “cornerstone” of a democratic society, a core element for advancing development goals,¹⁰⁷ and an indispensable tool for the exercise of other fundamental human rights.¹⁰⁸

70. The Inter-American Commission has underscored the triple function of the right to freedom of expression in a democratic system: a) as an individual right that reflects the human capacity to think about the world from our own perspective and communicate with one another; b) as a means of open and uninhibited deliberation about matters of public interest; c) as an essential instrument for the guarantee of other human rights, including political participation, religious freedom, education, culture, equality, and others.¹⁰⁹

71. The Inter-American Commission and the Court recognize two dimensions of freedom of opinion and expression—individual and societal—¹¹⁰ which are interrelated and must be fully and simultaneously guaranteed.¹¹¹ The States cannot rely on one aspect of the right in order to diminish the other; they must guarantee their exercise comprehensively. Prohibiting or hindering the dissemination of expression is a violation of the right to freedom of expression in both its individual and collective dimensions.¹¹²

72. Article 13 of the American Convention protects not only inoffensive or innocuous expressions but also those that “offend, shock or disturb the State or any other sector of the population,” in the understanding that they are necessary in a democratic, open, plural, and tolerant society.¹¹³ According to the inter-American legal framework, the right to freedom of expression also encompasses and protects erroneous, mistaken, and false speech, without prejudice to the subsequent liability that may arise as a result.¹¹⁴ The States have the primary obligation to remain neutral with respect to the content of speech, ensuring that there are no people, groups, ideas, or means of expression that are excluded *a priori* from public discourse.¹¹⁵

73. The Inter-American case law underscores three types of speech that are specially protected due to their importance in the exercise of all other human rights or for the consolidation, operation, and

¹⁰⁷ 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, [Joint Declaration on Freedom of Expression and the Internet](#), June 1, 2011.

¹⁰⁸ 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. 16 May 2011. Para. 22.

¹⁰⁹ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 224-226.

¹¹⁰ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue. UN Doc. A/HRC/14/23. 20 April 2010. Para. 29.

¹¹¹ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 228, and Inter-American Court of Human Rights. *Case of Palamara-Iribarne V. Chile*. Judgment of November 22, 2005. Series C No. 135.

¹¹² I/A Court. *Case of Palamara-Iribarne V. Chile*. Judgment of November 22, 2005. Series C No. 135. Para. 107.

¹¹³ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 232. See also, Inter-American Court of Human Rights, *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107. Para. 113; Inter-American Court of Human Rights. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73. Para. 69; Inter-American Court of Human Rights. *Case Rios et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. Para.105; Inter-American Court of Human Rights. *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. Chapter V (Report on the Compatibility of “Desacato” (Contempt) Laws with the American Convention on Human Rights) Title III, OEA/Ser. L/V/II.88. doc. 9 rev. 17 February 1995.

¹¹⁴ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 228.

¹¹⁵ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 231.

preservation of democracy: (a) political speech and speech involving matters of public interest; (b) speech regarding public officials in the performance of their duties and candidates for public office; and (c) speech that is an element of the identity or personal dignity of the person expressing him or herself.¹¹⁶

74. Article 13 of the American Convention provides the general framework of the permissible limitations on freedom of expression.¹¹⁷ Based on this provision, the case law of the Inter-American System has developed a “three-part test”¹¹⁸ which requires that the limitation must be: 1) clearly and precisely defined in a law, both substantively and procedurally, and must serve compelling objectives authorized by the Convention; 2) necessary and appropriate in a democratic society to accomplish the compelling objectives pursued; and 3) strictly proportionate to the objective pursued.¹¹⁹ In addition, the subsequent liability arising from the abuse of freedom of expression must always be ordered by an independent and impartial judge or court authority, respecting due process guarantees. These measures must in all cases be proportionate;¹²⁰ they must not be discriminatory or have discriminatory effects, and they cannot constitute censorship by indirect means, which is specifically prohibited by article 13.3 of the American Convention.¹²¹

75. The IACHR discourage the use of the criminal law to criminalize speech, and promotes the implementation of alternative measures such as the right of reply, and the imposition of subsequent liability in the form of proportionate civil penalties, especially cases involving public servants and specially protected speech. In those cases, “actual malice,” understood as the publication of erroneous or defamatory content with knowledge that it was false or inaccurate, must also be proven.¹²²

76. Principle 10 of the Declaration of Principles of Freedom of Expression, adopted by the Inter-American Commission on 2000, states that “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news”.

77. In all cases, the imposition of subsequent civil liability must be proportionate in order to prevent a chilling effect on freedom of expression, and must be designed to redress the harm actually caused, rather than as a punitive mechanism.¹²³ Disproportionate civil penalties have the potential to affect the speaker’s

¹¹⁶ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 232.

¹¹⁷ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 242.

¹¹⁸ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 244.

¹¹⁹ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 245.

¹²⁰ Inter-American Court of Human Rights. *Case Kimel V. Argentina*. Judgment of May 2, 2008. Series C No. 177; Inter-American Court of Human Rights. *Case Palamara-Iribarne V. Chile*. Judgment of November 22, 2005. Series C No. 135; and Inter-American Court of Human Rights, *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107.

¹²¹ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 251.

¹²² IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 261.

¹²³ 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. [Joint Declaration about Censorship by Killing and Defamation](#). 2000.

personal and family life as much as or even more than criminal penalties, creating an intimidating and chilling effect that has repercussions not only on the speaker but also on the entire community.¹²⁴

78. There are certain types of speech that are excluded from the scope of protection of the right to freedom of expression: 1) war propaganda and the advocacy of hatred that constitutes the incitement of violence; 2) the direct and public incitement of genocide; and 3) child pornography.¹²⁵

79. In its report on *Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, the Office of the Special Rapporteur underscored that article 13(5) requires the States to enact laws punishing the advocacy of hatred that constitutes the incitement of violence or any other similar action.¹²⁶ It clearly distinguishes this type of speech from other expressions that do not strictly amount to the “incitement of violence” and therefore would fall not within the scope of that clause but rather under 13(2), which protects the reputation and rights of others.¹²⁷ According to the consistent case law of the Inter-American Court and the Commission, the States may impose pecuniary and non-pecuniary reparations or other alternative measures in cases involving expressions that do not constitute the incitement of violence, but the criminalization of this type of speech is not considered advisable.¹²⁸

2. Internet and Freedom of Expression

80. Internet exponentially facilitates the exercise of freedom of expression in all of its dimensions, diversifying and multiplying the media and the audience (potentially global), decreasing costs and time,¹²⁹ and offering unparalleled conditions for the innovation and exercise of other fundamental rights.¹³⁰

81. The main impact of the internet on freedom of expression is the way in which it increases the ability to receive, seek and impart information. It enables the collaborative creation and sharing of content – it is world where anyone can be an author and anyone can publish and it helps them communicate, collaborate and exchange views and information. This represents, the ‘democratization’ of freedom of expression as public speech is no longer moderated by professional journalists or gatekeepers. In this way the internet has become a powerful democratizing force, transforming freedom of expression by creating: new capacities to create and edit content (across physical boundaries), often bypassing censorship controls, which creates new possibilities for realizing human potential; new abilities to organize and mobilize (strongly underpinning other rights such as the right to freedom of association); and new possibilities to innovate and generate economic development (underpinning social and economic rights).

¹²⁴ I/A Court. *Case Tristán Donoso v. Panamá*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193. Para. 129.

¹²⁵ IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. 25 February 2009. Para. 261.

¹²⁶ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2015](#). Chapter IV (Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas) OEA/Ser.L/V/II. Doc. 48/15. 31 December 2015. Para. 18.

¹²⁷ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2015](#). Chapter IV (Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas) OEA/Ser.L/V/II. Doc. 48/15. 31 December 2015. Para. 18.

¹²⁸ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2015](#). Chapter IV (Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas) OEA/Ser.L/V/II. Doc. 48/15. 31 December 2015. Para. 14 to 19.

¹²⁹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 36.

¹³⁰ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 2.

82. The Inter-American Commission has maintained for more than a decade that "the right to freedom of expression in the terms established by article 13 of the American Convention equally protects both traditional media and the widespread expression via Internet."¹³¹

83. The Joint Declaration on Freedom of Expression and the Internet contains the general principle that "Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognized under international law (the 'three-part' test)."¹³²

84. Given the particular characteristics of the Internet in terms of its multidirectional and interactive nature, its speed and global reach at a relatively low cost, and its decentralized and open design principles, Internet access has acquired an unprecedented potential for the effective realization of the right to seek, receive, and disseminate information.¹³³ In order to be able to ensure the effective and universal enjoyment of the right to freedom of expression, the States should take measures to progressively ensure that all persons have access to the Internet,¹³⁴ in addition to taking measures to prevent the total or partial blocking or limitation of Internet access.¹³⁵ The Internet has a significant impact on the social dimension of freedom of expression.

85. Any restrictions on the operation of websites, blogs, applications or any other Internet-based electronic or other such information dissemination system, including support systems, such as ISPs or search engines, are permissible only to the extent that they are compatible with the conditions provided for the curtailment of freedom of expression.¹³⁶

86. The Office of the Special Rapporteur has observed with concern how some countries in the region have been resorting to the blocking of specific websites or applications for different reasons – and even with a judicial order–, with little or no regard to the implications of such measures on the right to freedom of expression online.¹³⁷

87. The Joint Declaration on Freedom of Expression and the Internet, states that forcing the blocking or suspension of entire websites, platforms, channels, IP addresses, domain name extensions, ports, network protocols, or any other kind of application, as well as measures intended to eliminate links, information and websites from the servers on which they are stored, all constitute restrictions that are prohibited and

¹³¹ IACHR. [Complaint before the Inter-American Court of Human Rights against Costa Rica. Case No. 12.367, "la Nación" Mauricio Herrera Ulloa and Fernan Vargas Rohrmoser](#). 28 January 2002. Para. 97.

¹³² 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 Freedom of Expression and the Internet](#). 1 June 2011.

¹³³ 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 Freedom of Expression and the Internet](#). 1 June 2011.

¹³⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 37.

¹³⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 37.

¹³⁶ United Nations. Human Rights Committee. [General Comment No. 34 – Article 19: Freedom of opinion and expression](#). UN Doc. CCPR/C/GC/34. 12 September 2011. Para. 43.

¹³⁷ Brazilian courts, for example, have ordered the blocking of Whatsapp due to claims that the company has failed to comply with judicial orders requesting access to communication between users and user's data. See, IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2015](#). Chapter II (Evaluation of the Situation of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 48/15. 31 December 2015. Para. 264.

exceptionally admissible only strictly pursuant to the terms of article 13 of the American Convention.¹³⁸ The Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda indicates that these measures "can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, including in the sense of that it is proportionate, there are no less intrusive alternative measures which would protect the interest and it respects minimum due process guarantees."¹³⁹

88. The Office of the Special Rapporteur has indicated that "[i]n exceptional cases of clearly illegal content or speech that is not covered by the right to freedom of expression (such as war propaganda and hate speech inciting violence, direct and public incitement to genocide, and child pornography) the adoption of mandatory measures to block and filter specific content is admissible. In these cases, the measure must be subjected to a strict balance of proportionality and be carefully designed and clearly limited so as to not affect legitimate speech that deserves protection. In other words, filtration or blocking should be designed and applied so as to exclusively impact the illegal content without affecting other content. The measures must be authorized or put in place pursuant to the appropriate procedural guarantees, in the terms of articles 8 and 25 of the American Convention. In this regard, the measures should only be adopted after the illegal content to be blocked has been fully and clearly identified, and when necessary to achieve a pressing aim. In any case, these measures must not be applied to legal content."¹⁴⁰

89. Restrictive measures should at all times include safeguards to prevent abuse, such as transparency with regard to the content whose removal has been ordered, as well as detailed information regarding the measures' necessity and justification. At the same time, a measure of this kind should be adopted only when it is the only measure available for achieving an imperative end and is strictly tailored to achieve it.¹⁴¹

90. In the case of *Cengiz et al. v. Turkey*,¹⁴² the European Court of Human Rights held that the blocking of a You Tube page for a lengthy period of time was a violation of the rights of users, in this case university professors and academics, to receive and impart information and ideas. The Court took account of the violation of the social dimension of freedom of expression, highlighting that the blocked platform allowed for the transmission of information of specific interest, particularly on political and social issues. It further held that there was no law that would allow local Turkish courts to impose general blocks on access to the Internet (in this case, to You Tube).

¹³⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 84; 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 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](#). ^{Point 3 (a)}; 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. 149; IACHR. [Annual Report 2010](#). Volume I. Chapter IV (Human Rights Developments in the Region). OEA/Ser.L/V/II. Doc. 5, rev. 1. March 7, 2011. ^{Para. 822}.

¹³⁹ 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 Freedom of Expression and "Fake News", Disinformation and Propaganda](#). March 2017.

¹⁴⁰ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 85 and 86.

¹⁴¹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 87; IACHR. [Annual Report 2010](#). Volume I. Chapter IV (Human Rights Developments in the Region). OEA/Ser.L/V/II. Doc. 5, rev. 1. March 7, 2011. ^{Para. 822}; 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 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](#). ^{Point 1 (a) (b) and 3 (a)}; UN Special Rapporteur for Freedom of Opinion and Expression and IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [UN and IACHR Special Rapporteurs for Freedom of Expression Joint Declaration about Free Speech on the Internet](#).

¹⁴² European Court of Human Rights. [Case Cengiz et Autres v. Turquie](#). Petitions no. 48226/10 and 14027/11. 1 December, 2015.

91. The Office of the Special Rapporteur has emphasized that at no time can an *ex ante* measure be put in place to block the circulation of any content that can be assumed to be protected. Content filtering systems put in place by governments or commercial service providers that are not controlled by the end-user constitute a form of prior censorship and do not represent a justifiable restriction on freedom of expression.¹⁴³

92. Measures to block content cannot be used to control or limit the circulation of speech that is specially protected or is assumed to be protected when that assumption has not been contradicted by a competent authority that provides sufficient guarantees of independence, autonomy and impartiality, pursuant to the above-mentioned terms.¹⁴⁴ In this regard, it should be noted that systems for blocking and filtering Internet content frequently block legitimate websites and content. Some governments have used them to prevent their populations from accessing information that is fundamentally in the public's interest but that governments are interested in hiding.¹⁴⁵

93. With regard to subsequent liability for speech disseminated on the Internet, the Office of the Special Rapporteur for Freedom of Expression has maintained that the criminalization or aggravation of penalties merely because the speech in question was disseminated through the Internet would be unacceptable.¹⁴⁶ The Joint Declaration on Freedom of Expression and the Internet additionally states that, with respect to civil liability, "Standards of liability, including defenses in civil cases, should take into account the overall public interest in protecting both the expression and the forum in which it is made (i.e. the need to preserve the 'public square' aspect of the Internet)."¹⁴⁷ Following the decisions of the Inter-American System in these cases, the Office of the Special Rapporteur has stated that damages must not be proven rather than assumed, and that the States must not make presumptions that cannot be technically supported and that are based exclusively on the nature of the medium of dissemination or its comparison to others.¹⁴⁸

94. Now that the framework for the protection of the right to freedom of expression has been established, there are certain issues that represent important challenges and warrant particular attention: the

¹⁴³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 88; 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 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](#). Point 3 (b); UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression. December 21, 2005. [Joint Declaration on the Internet and on Anti-Terrorist Measures](#); UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression and Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression. December 21, 2010. [Joint Statement On Wikileaks](#). Point 5.

¹⁴⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 88; 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. 70. Available for consultation at: http://ap.ohchr.org/documents/dpage_e.aspx?m=85

¹⁴⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 89; United Nations. Human Rights Committee. [Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of the Human Rights Committee](#). CCPR/C/IRN/CO/3. November 29, 2011. Para. 27; 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. 32. Available for consultation at: http://ap.ohchr.org/documents/dpage_e.aspx?m=85.

¹⁴⁶ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 63.

¹⁴⁷ 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 Freedom of Expression and the Internet](#). 1 June 2011.

¹⁴⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 71.

role of the private sector, the liability of intermediaries, hate speech on the Internet, and the removal and de-indexing of content.

a. The Role of the Private Sector

95. The Internet depends in large measure on private entities that enable connection; design and maintain the hardware and operating systems that facilitate information processing; allocate web domains; host information; facilitate aggregating, sharing and searching for information; produce and regulate access to one's own content; connect users and communities; sell goods and services and facilitate transactions; and collect and sell data, among other things.¹⁴⁹ In view of their extremely broad spectrum of influence, private entities have come to play an unprecedented role as facilitators of the right to freedom of expression and access to information.¹⁵⁰ In effect, it is a public sphere that sits on a series of private platforms. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that "While States are the duty-bearers for human rights, private actors and business enterprises also have a responsibility to respect human rights."¹⁵¹

96. While States are the primary duty-bearers when it comes to respect for human rights, different international bodies have addressed the issue of the responsibility of corporations—particularly transnational corporations—to respect human rights.¹⁵² In 2011, the United Nations Human Rights Council adopted the *Guiding Principles on Business and Human Rights*, which establishes that business enterprises should abstain from violating the human rights of third parties and redress violations in which they have participated directly or indirectly.¹⁵³ In complying with these principles, corporations should seek to prevent violations linked directly or indirectly to their operations, products, or services and mitigate the impacts, even if they have not contributed to those impacts.¹⁵⁴

97. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlighted that the Guiding Principles are part of the international framework applicable to intermediaries and other necessary actors for the functioning of the Internet.¹⁵⁵ The Rapporteur noted, as a preliminary assumption, that corporations should undertake to respect and promote freedom of expression in their internal policies, product engineering, business development, staff training, and other relevant internal processes.¹⁵⁶ He further recommended that private actors develop and implement transparent human rights assessment procedures, taking account of the potential impact of their policies.¹⁵⁷

98. As highlighted in the Guiding Principles, private actors have a responsibility to respect human rights online, and this includes both a responsibility not to restrict rights and a positive responsibility to create an

¹⁴⁹ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/32/38. 11 May 2016. Para. 16 a 25.

¹⁵⁰ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/32/38. 11 May 2016. Para. 44.

¹⁵¹ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/32/38. 11 May 2016. Para. 45.

¹⁵² United Nations, Human Rights Office of the High Commissioner. [Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework](#). 2011. Principle No 11. Page. 13.

¹⁵³ United Nations, Human Rights Office of the High Commissioner. [Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework](#). 2011. Principle No 11. Page. 13.

¹⁵⁴ United Nations, Human Rights Office of the High Commissioner. [Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework](#). 2011. Principle No 13 b), Page. 14.

¹⁵⁵ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/32/38. 11 May 2016. Para. 87.

¹⁵⁶ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/32/38. 11 May 2016. Para. 90.

¹⁵⁷ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/32/38. 11 May 2016. Para. 88.

environment in which rights are respected. As part of the above, private actors should make a formal and high-level commitment to respect human rights, including freedom of expression and privacy, and back this commitment up with concrete internal measures and systems designed to prevent activities which lead to negative human rights impacts. In particular, they must seek to ensure that any restriction derived from the application of the terms of service does not unlawfully or disproportionately restrict the right to freedom of expression.¹⁵⁸ Intermediaries, in particular, should put in place effective systems of monitoring, impact assessments, and accessible, effective complaints systems in order to identify actual or potential human rights harms caused by their services or activities.

99. Where negative human rights impacts or potential impacts are identified, private actors should have in place effective systems for providing appropriate remedies for those affected; and adjust their activities and systems as necessary to prevent future abuse. In keeping with the Guiding Principles, private actors should adopt robust approaches towards transparency in relation to their terms of service, policies and any operating procedures or practices which directly affect the public.

100. On the other hand, the States are called upon to foster the development of the private sector and of technical measures, products, and services that protect freedom of expression, and to enact the respective laws.¹⁵⁹ The public policies and laws governing this matter should be enacted and implemented in a transparent manner, allowing for citizen oversight of both the government administration and private management of matters concerning the guarantee of human rights.¹⁶⁰

101. States bear a primary responsibility to protect and respect the right to exercise freedom of opinion and expression. This means that States must not require or otherwise pressure the private sector to violate human rights or unnecessarily or disproportionately interfere with the right to freedom of expression.¹⁶¹ Any requests that the States make of the private sector, to intercept, block, remove, or monitor content, must meet the requirements established in international human rights treaties, particularly on freedom of expression.¹⁶²

b. Intermediary Liability

102. The transmission of content on the Internet depends upon intermediaries.¹⁶³ Intermediaries are generally defined as “any entity that enables the communication of information from one party to another.”¹⁶⁴ However, the legal definition of “intermediary” may differ among jurisdictions or countries.¹⁶⁵ As the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has underscored, intermediaries range from Internet service providers (ISPs) to search

¹⁵⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 112.

¹⁵⁹ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/32/38. 11 May 2016. Para. 86.

¹⁶⁰ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/32/38. 11 May 2016. Para. 85.

¹⁶¹ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/32/38. 11 May 2016. Para. 85.

¹⁶² IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

¹⁶³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 92.

¹⁶⁴ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page. 19.

¹⁶⁵ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page 7.

engines, and from blogging services to online community platforms,¹⁶⁶ e-commerce platforms, web servers, social networks, and others.¹⁶⁷

103. There is a large number of intermediaries, and there are different ways to classify them.¹⁶⁸ As noted in the previous section, depending on what kind they are and what service they offer, intermediaries exercise control over how and with whom their users communicate. They have become key actors in the protection of the rights to freedom of expression and privacy.¹⁶⁹

104. One of the measures that most directly affects the actions of Internet intermediaries is the intermediary liability regime legally imposed upon them for third-party content.¹⁷⁰ The liability regime is fundamental for creating the appropriate incentives for the protection and guarantee of human rights.¹⁷¹ In all cases, the liability regime must follow the three-part test of legality, necessity, and proportionality.

105. The 2011 Joint Declaration on Freedom of Expression and the Internet establishes that “No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so (‘mere conduit principle’).”¹⁷² In the same regard, the Office of the Special Rapporteur for Freedom of Expression maintains that subsequent liability should be imposed upon the authors of the speech in question rather than on the intermediaries.¹⁷³

106. Different laws and initiatives at the regional level reflect the different frameworks regulating intermediary liability, including personal data and privacy protection laws, copyrights, and the right to reputation and one’s good name. In other cases there are general intermediary liability laws and specific regimes for particular instances such as copyright protection. Intermediaries may be exempt from liability for third-party content; subject to strict liability; subject to some conditional liability regime, or subject to the general regime of liability based on a breach of duty.

107. Strict liability, which holds the intermediary liable for any content on its platform that is considered unlawful,¹⁷⁴ is incompatible with the American Convention because it is disproportionate and unnecessary in

¹⁶⁶ 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. 16 May 2011. Para.38.

¹⁶⁷ A Global Society Initiative. [Manila Principles on Intermediary Liability](#). Version 1.0, March 24, 2015. Page 6.

¹⁶⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 91.

¹⁶⁹ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page. 23.

¹⁷⁰ A Global Society Initiative. [Manila Principles on Intermediary Liability](#). Version 1.0, March 24, 2015. Page 6.

¹⁷¹ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page. 3.

¹⁷² 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 Freedom of Expression and the Internet](#). 1 June 2011.

¹⁷³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 102. 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/17/27. 16 May 2011. Para. 43.

¹⁷⁴ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page. 40.

a democratic society.¹⁷⁵ These types of regimes encourage intermediaries to monitor and censor their own users.¹⁷⁶

108. In the context of conditional liability, the intermediary is offered “safe harbor” from any legal liability to the extent that it complies with certain specific duties.¹⁷⁷ These regimes include the “notice and takedown” procedure, whereby the intermediary must remove the content once notified of its existence; the system of “notice and notice,” where the intermediary must notify the author of any complaint received with respect to content; and the system of “notice and disconnection,” where the intermediary will disconnect the user when he or she fails to remove the offending content after having been notified.

109. This model of intermediary liability does not impose a duty to monitor or filter content proactively.¹⁷⁸ However, these systems do not always respect the right to due process and minimum guarantees, insofar as they shift the responsibility to examine and decide on the lawfulness or unlawfulness of the content subject to removal from the State to the intermediary.¹⁷⁹ The Joint Declaration on Freedom of Expression and the Internet establishes that “At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression (which is the case with many of the ‘notice and takedown’ rules currently being applied).”¹⁸⁰ Along these lines, the Office of the Special Rapporteur cautions that this model will be compatible with the American Convention “to the extent that they establish sufficient safeguards for the protection of the users’ freedom of expression and due process, and do not impose vague or disproportionate obligations on intermediaries.”¹⁸¹

110. Notice regimes must include a detailed notification procedure that states the location of the allegedly unlawful material, the legal basis for the unlawfulness, and an adequate option for counter-notice to the user who produced the content, with judicial oversight guarantees.¹⁸²

111. For example, Brazil’s Law no. 12.965/2014, (the so-called “Brazilian Internet Bill of Rights”) provides that Internet application providers should only be held liable if they fail to comply with a judicial order. Article 19 of said law provides that “[i]n order to ensure freedom of expression and to prevent censorship, internet application providers may only be held civilly liable for damage resulting from content generated by third parties if after specific judicial order the provider fails to take action to make the content identified as

¹⁷⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013.

¹⁷⁶ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 98. Also, see for example, the decision by the Argentinian Supreme Court in the María Belén Rodríguez v. Google Inc. case. In its decision the Court held that: “establishing a strict liability regime in this activity would ultimately discourage the existence of ‘search engines’, which fulfill an essential role in the right to seek, receive and impart information and opinions freely on the Internet”. Corte Suprema de Justicia de la Nación. [Rodríguez, María Belén c/ Google Inc. s/ daños y perjuicios](#). October 28, 2014.

¹⁷⁷ 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. 16 May 2011. Para. 41.

¹⁷⁸ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page 40.

¹⁷⁹ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page 30.

¹⁸⁰ 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, [Joint Declaration on Freedom of Expression and the Internet](#). 1 June 2011.

¹⁸¹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 106.

¹⁸² IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 109.

offensive unavailable on its service by the stipulated deadline, subject to the technical limitations of its service and any legal provisions to the contrary.”¹⁸³

112. Intermediaries are still private entities with financial, social, and individual interests that differ from those of the State. Requiring them to function as a court that balances the rights of its users goes beyond the scope of their competence and may lead to and provide incentives for abuses, to the detriment of freedom of expression and access to information.

113. The Manila Principles on Intermediary Liability, put forward by civil society organizations from around the world, propose a reference framework of baseline safeguards and best practices for States with regard to intermediary liability based on international human rights instruments.¹⁸⁴ The Principles recommend that the States limit the liability of intermediaries for third-party content (Principle 1), not require the restriction or removal of content without a court order issued in accordance with due process rights and guarantees (Principles 2 and 3), ensure that the laws meet the three-part test on freedom of expression and include the principles of transparency and accountability (Principles 5 and 6).¹⁸⁵

114. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recommended that intermediaries only implement restrictions to these rights after judicial intervention; be transparent to the user involved about measures taken, and where applicable to the wider public; provide, if possible, forewarning to users before the implementation of restrictive measures; and minimize the impact of restrictions strictly to the content involved.¹⁸⁶ He further recommended that there be effective remedies for affected users, including the possibility of appeal through the procedures provided by the intermediary and by a competent judicial authority.¹⁸⁷

115. The Office of the Special Rapporteur underscores that the States should encourage the adoption of systems that allow intermediaries to function as true promoters of freedom of expression and to operate with transparency toward their users.¹⁸⁸ Online content can be restricted both by the laws of a State and by the private policies of a company acting as an intermediary, and the liability regimes can have a significant impact on the latter, functioning as incentives for censorship or for the protection of human rights (for instance, providing incentives for intermediaries to remove lawful and legitimate content for fear of incurring liability for third-party content).¹⁸⁹

116. The Joint Declaration on Freedom of Expression and the Internet points to self-regulation as a potentially effective tool in redressing harmful speech.¹⁹⁰ “Self-regulation” refers to policies unilaterally set by

¹⁸³ Presidência da República. [Lei No. 12.965](#), April 23, 2014. Article 19 also establishes that “1- The judicial order mentioned in the heading must contain, under the penalty of nullification, clear and specific identification of the content claimed to be a violation, which allows for the unequivocal identification of the content. § 2- In cases where there is an infringement on copyright laws and other related rights, this Article shall be applicable when specific legal precaution has been utilized, with full respect for freedom of expression and other guarantees provided for in Art. 5 of the Federal Constitution.” Article 21 of the law also establishes that intermediaries have subsidiary responsibility when divulging content created by a third party; said content may be images, videos or other material containing nudity or sexual acts that are private in nature as long as, upon notification by the participant or legal representative, sponsorship diligently ceases; within the context and technical limitations of the service, the withdrawal of said content.

¹⁸⁴ A Global Society Initiative. [Manila Principles on Intermediary Liability](#). Version 1.0, March 24, 2015.

¹⁸⁵ A Global Society Initiative. [Manila Principles on Intermediary Liability](#). Version 1.0, March 24, 2015. Page

¹⁸⁶ Naciones Unidas. Asamblea General. Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Frank La Rue. A/HRC/17/27. 16 May 2011. Para. 47.

¹⁸⁷ Naciones Unidas. Asamblea General. Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Frank La Rue. A/HRC/17/27. 16 May 2011. Para. 47.

¹⁸⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 110.

¹⁸⁹ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Pages 54-55

¹⁹⁰ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on

intermediaries for the optimal functioning of their platforms or services. These policies range from measures taken by the company to block or remove spam and viruses, to the setting and enforcement of “terms of service” or “community rules”¹⁹¹ whereby companies limit the type of desirable and undesirable content according to criteria that are financial, social, cultural, and so on.¹⁹² Co-regulation is a regulatory regime involving private regulation that is actively encouraged or even supported by the state through legislation, funding, or other means of state support or institutional participation.¹⁹³ In order for self-regulation to function effectively, intermediaries must be committed to respecting and promoting freedom of expression and conducting with transparency.

117. Transparency in the intermediaries’ content removal policies is fundamentally important. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that “Lack of transparency in the intermediaries’ decision-making process also often obscures discriminatory practices or political pressure affecting the companies’ decisions.”¹⁹⁴

118. In this regard, the Office of the Special Rapporteur considers it is of utmost importance that intermediaries provide clear information about the type of content that might be removed from the platform on its terms of service or community guidelines, as well as how the removal could take place and if there is any form of appeal by the user who feel that his or her content have been incorrectly removed.

119. Bearing in mind that many States are currently promoting legislation on the liability of intermediaries, the global and transnational reach of the Internet means that States must aspire to consistency in the standards that govern such liability in order to maintain a free, open, and global Internet.¹⁹⁵ Jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection, normally because the author is established there, the content is uploaded there and/or the content is specifically directed at that State.¹⁹⁶ Judges are responsible for preventing what is known as “libel tourism” or “forum-shopping,” recusing themselves when no substantial harm can be demonstrated in their jurisdiction.¹⁹⁷

120. This issue has been consistently raised in judicial decisions regarding the so-called “right to be forgotten” (see below), in which a judge from one country might order the delisting of a specific search result not only from the platform that is linked to the competent jurisdiction, but also from other countries (or even globally). This could result in an extra-territorial application of a national court order and rises complex questions regarding the future of jurisdiction on the Internet and its interplay with national sovereignty.

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 Freedom of Expression and the Internet](#), 1 June 2011.

¹⁹¹ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page 55.

¹⁹² UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page 55.

¹⁹³ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page 56.

¹⁹⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 42.

¹⁹⁵ UNESCO. [Fostering Freedom Online: The role of Internet Intermediaries](#). Unesco Series on Internet Freedom. Internet Society (2014). Page 3.

¹⁹⁶ 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, [Joint Declaration on Freedom of Expression and the Internet](#), 1 June 2011. Para. 4.

¹⁹⁷ 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, [Joint Declaration on Freedom of Expression and the Internet](#), 1 June 2011. Para. 4.

c. Hate Speech on the Internet

121. The Office of the Special Rapporteur is of the opinion that only through a sustained and comprehensive policy that goes beyond legal measures and includes preventive and educational measures will it be possible to effectively combat hate speech and ensure the right of individuals to equality and nondiscrimination both on the Internet and offline.¹⁹⁸ Measures like these “strike at the cultural root of systematic discrimination. As such, they can be valuable instruments in identifying and refuting hate speech and encouraging the development of a society based on the principles of diversity, pluralism, and tolerance.”¹⁹⁹

122. The Office of the Special Rapporteur has underscored on numerous occasions that the States should not take measures that are especially restrictive of freedom of expression on the Internet. The 2001 Joint Declaration on Countering Terror, Broadcasting and The Internet had already asserted that freedom of expression governs the Internet just like any other communication medium, and that “States should not adopt separate rules limiting Internet content.”²⁰⁰ On the contrary, the UNESCO Report on hate speech, for instance, highlights digital literacy, universal access, and the promotion of techniques such as “counter-speech,” teaching people to detect hate speech and counteract it with tolerant and anti-discriminatory speech, as viable and sustainable mechanisms to combat hate speech.²⁰¹

123. The blocking or filtering of content to combat hate speech are measures of last resort, and should only be used when necessary and proportionate to the compelling aim they pursue.²⁰² The States that take such measures should also design them in such a way that they do not affect legitimate speech that warrants protection.²⁰³

124. The transparency of the measures adopted—with respect to both the content removed and the detailed information about the necessity and proportionality of the blocking, removal, or filtering of content—is essential in order to properly control the legality of these measures.²⁰⁴ In addition, and bearing in mind the issues examined in the section on intermediary liability, the States should not exert unlawful pressure on intermediaries to restrict the circulation of content through private blocking or filtering, or indirectly use the terms of service or community rules to expand the legally established grounds for restriction.²⁰⁵

¹⁹⁸ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2015](#). Chapter IV (Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas) OEA/Ser.L/V/II. Doc. 48/15. 31 December 2015. Para. 38; Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. [Conclusions and Recommendations](#). October 5, 2012. Para. 11; United Nations. General Assembly. Report of the United Nations Special Rapporteur for the promotion and protection of freedom of opinion and expression. UN Doc. A/67/357. September 7, 2012. Para. 33.

¹⁹⁹ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2015](#). Chapter IV (Hate Speech and Incitement to Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas) OEA/Ser.L/V/II. Doc. 48/15. 31 December 2015. Para. 36.

²⁰⁰ UN Special Rapporteur on Freedom of Opinion and Expression, Abid Hussain; OSCE Representative on Freedom of the Media, Freimut Duve and OAS Special Rapporteur on Freedom of Expression, Santiago Canton. [Joint Declaration on Freedom of Expression and New Century Challenges](#). 2001.

²⁰¹ UNESCO, *Combatiendo el Discurso de Odio en Línea (Countering Online Hate Speech)*, 2015, p. 48. Disponible únicamente en inglés.

²⁰² IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 85.

²⁰³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 85.

²⁰⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 85.

²⁰⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 111-113.

125. Combating hate speech requires empowering users to identify and condemn it in public discourse without blocking legitimate speech, thus creating more inclusive forums of expression.

d. De-indexation and the “Right to Be Forgotten”

126. Internet’s platforms, applications and search engines are central components of the one’s ability to seek, receive and impart information in the digital era, particularly to access information and opinions generated or disseminated by media outlets. The Office of the Special Rapporteur has highlighted the impact on the exercise of the right to freedom of expression in its dual dimension (individual and collective) of measures to remove and de-index Internet content adopted by the private companies that administer and manage specific web pages, platforms, or apps, as well as those requested by States.

127. As has been indicated in previous sections of this report, government limitations on internet content must be ordered by a competent, independent, and impartial judge or court with due process guarantees as established in Article 8 of the American Convention. It further emphasized the need to create appropriate incentives for companies to commit to freedom of expression, limiting their grounds, wherever possible, for the removal or de-indexing of content to those legally required.

128. In 2014, following the decision of the Court of Justice of the European Union (CJEU) in the case of “*Google Spain S.L., Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González*,” a new debate arose with regard to the legitimacy of different means of online content removal and deindexing and the appropriate weighing of the right to privacy against the right to freedom of expression and information on the Internet. The CJEU interpreted that the activity of search engines—intermediaries that index content hosted by other platforms (Google, Yahoo, Bing, etc.) should be classified as data controllers “processing personal data”. Under that classification and according to European Directive No. 95/46/CE, individuals may exercise the right to object to that data processing on compelling legitimate grounds relating to their particular situation.²⁰⁶ In its judgment, the CJEU interpreted that, under Directive No. 95/46/CE, individuals can request to have their personal data de-indexed from Internet browsers or search engines, based on the protection of personal data on the Internet.²⁰⁷

129. The decision, known for having established a so-called right to be forgotten, recognizes a de-indexing authority limited to information that has been indexed under an individual’s name, maintaining that said

²⁰⁶ CJUE. *Google Spain, S.L., Google Inc. / Agencia Española de Protección de Datos, Mario Costeja González*. Judgment of May 13, 2014. The Office of the Special Rapporteur for Freedom of Expression observes that on April 27, 2016 the European Parliament and the Council of the European Union issued new regulations on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealed Directive 95/46/EC. See, the European Parliament and the Council of the European Union Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)/ 27 April 2016. Paras 65 and 66. The regulation provides that: “A data subject should have the right to have personal data concerning him or her rectified and a ‘right to be forgotten’ where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject. In particular, a data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. That right is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims. To strengthen the right to be forgotten in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the controllers which are processing such personal data to erase any links to, or copies or replications of those personal data. In doing so, that controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, to inform the controllers which are processing the personal data of the data subject’s request”. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=ES>

²⁰⁷ CJUE. *Google Spain, S.L., Google Inc. / Agencia Española de Protección de Datos, Mario Costeja González*. Judgment of May 13, 2014.

indexing provides “a structured overview of the information relating to that individual that can be found on the internet — information which potentially concerns a vast number of aspects of his private life and which, without the search engine, could not have been interconnected or could have been only with great difficulty — and thereby to establish a more or less detailed profile of him.”²⁰⁸ According to this reasoning, the decision would not affect the deindexing of the same content under other search formats, such as thematic or contextual searches, or through other people’s names—for instance, the author of a news article or the name of a newspaper. The CJEU made clear that the data processing of a search engine is different from that done by the publishers of websites (such as newspapers), and recognizes that the content may be legally protected and therefore not subject to a removal order with respect to the site that hosts or created it.²⁰⁹ The CJEU held that de-indexing may only be authorized if the personal information included on the website in question is “inadequate, irrelevant or excessive,” and only if the information does not pertain to the public interest. However, the Court did not develop in detail these concepts, which are key for weighing the interests at issue, generating a series of vague and ambiguous interpretations of these concepts in different jurisdictions.²¹⁰ Also, the CJEU decision delegated to the private sector the duty of receiving, analyzing and deciding over de-indexation requests, which has generated other concerns regarding its implementation.

130. Based on the doctrine arising both from the *Costeja* case and the data protection laws in Latin America, search engine companies in the region began to receive content removal and de-listing requests. Also, requests have been filed using the concept of the “right to be forgotten” to demand that newspapers, blogs and newspapers to remove or delete content rather than deindexing it from web search results. Civil society organizations have also reported that public servants from different countries are using the right to be forgotten in order to delete information that is in the public interest, in many cases establishing the practice of filing challenges before the personal data protection authority rather than bringing criminal defamation lawsuits.²¹¹

131. Without a doubt, the advent of the Internet has brought new challenges to protecting the right to privacy, both for the State in its role of guarantor and for private parties in their roles as users. The Office of the Special Rapporteurship has recognized that the right to privacy on internet requires the protection of treatment of personal data online. States have an obligation to respect and protect the right to privacy in the digital era and adopt legislation and practices—or adapt existing ones—to do so, protecting everyone under their jurisdictions, including against arbitrary or abusive interference by private parties.

132. However, international human rights law does not protect or recognize the so-called “right to be forgotten” in the terms outlined by the CJEU in the *Costeja* case. On the contrary, the Office of the Special Rapporteur is of the opinion that the application to the Americas of a private system for the removal and de-indexing of online content with such vague and ambiguous limits is particularly problematic in light of the wide regulatory margin of the protection of freedom of expression provided by article 13 of the American Convention on Human Rights.

133. The removal of content from the Internet constitute a clear interference with the right to freedom of expression, in both its individual and social dimensions, as well as the right of access to information by the

²⁰⁸ CJUE. *Google Spain, S.L., Google Inc. / Agencia Española de Protección de Datos, Mario Costeja González*. Judgment of May 13, 2014. Para. 80.

²⁰⁹ CJUE. *Google Spain, S.L., Google Inc. / Agencia Española de Protección de Datos, Mario Costeja González*. Judgment of May 13, 2014. Para. 85.

²¹⁰ CJUE. *Google Spain, S.L., Google Inc. / Agencia Española de Protección de Datos, Mario Costeja González*. Judgment of May 13, 2014. Para. 85.

²¹¹ See, for example, Pérez de Acha, Gisela. ONG Derechos Digitales. Una panorámica sobre el derecho al olvido en la región. September, 2015. Available at: <https://r3d.mx/2016/07/12/el-erroneamente-llamado-derecho-al-olvido-no-es-un-derecho-es-una-forma-de-censura/>; Article 19. O Direito ao Esquecimento na América Latina. Libertad de expresión en el ámbito digital. January 2016. P. 60 and 61. Available at: <https://adcdigital.org.ar/wp-content/uploads/2016/04/LibEx-en-LatAm-AmbitoDigital.pdf>; Miguel Morachimo. Protección de datos personales: la nueva puerta falsa de la censura. Hiperderechos. July 21, 2016. Available at: <http://www.hiperderecho.org/2016/07/proteccion-datos-personales-la-nueva-puerta-falsa-la-censura/>.

people²¹². Information that has been removed does not circulate, which affects the right of individuals to express themselves and disseminate their opinions and ideas and the right of the community to receive information and ideas of all kinds. A similar effect—albeit not identical because of its dimension—is the de-indexing of content, insofar as it makes the information more difficult to find and renders it invisible.²¹³ Both have a limiting effect on the right to freedom of expression because they restrict the possibility to seek, receive and impart information and ideas regardless of national frontiers.

134. In the Americas, after many years of conflict and authoritarian regimes, individuals and human rights groups have maintained a legitimate claim to access to information regarding governmental and military activity of the past and gross human rights violations. People want to remember and not to forget. In this sense, it is important to recognize the particular context of the region and how a legal mechanism such as the so-called “right to be forgotten” and its incentive for de-indexation might impact the right to truth and memory.

135. According to the regional standards, prior censorship is prohibited except for the protection of minors at public events, and any restriction must be established by law, clearly and in detail. It must also be suitable, proportionate, and necessary for the accomplishment of a legitimate aim in a democratic society. It is not enough for the measure to be useful; it must be the least restrictive one. The protection of personal data is a legitimate aim for the establishment of restrictions to the right to freedom of expression. Nevertheless, any limitation on the right to freedom of expression—whether to protect privacy, as in the case of personal data, or honor and reputation—must respect the three-part test as developed by the inter-American case law and doctrine: it must be legally established in a law, both substantively and procedurally; it must be necessary and suitable, and it must be proportionate. Limitations on freedom of expression must also be ordered by a competent, independent, and impartial judge or court, with all due process guarantees.

136. Although the protection of personal data is a legitimate objective, at no time it may be invoked to limit or restrict the circulation of information about public persons, public servants or candidates to public office in the performance of their duties, information in the public interest, or information involving human rights violations.

137. If a State decides to adopt personal data protection systems that acknowledge the deindexing that is referred to as the “right to be forgotten” should do so on an absolutely exceptional basis. If enacted, laws on deindexing or the opposition of indexing should be designed in a clear, specific, and limited manner in order to protect privacy rights and the dignity of persons, respecting the rights to freedom of expression and access to information. They should distinguish between information and personal data, establishing those cases in which the action is inadmissible, particularly when it violates freedom of expression on matters of public interest, and protecting lawful and legitimate speech. The IACHR and the Inter-American Court has reiterated that public officials are subject to greater scrutiny by society, and for that reason, a strong presumption should be put in place against content removal and de-indexing requests lodged by a public official, public person or a candidate to public office.

138. This is particularly relevant in relation to the information produced and disseminated by media outlets that use the Internet as a platform. The protection of personal data to which the right to be forgotten refers cannot lead to the imposition of restrictions on information disseminated by media outlets that could affect the privacy rights or reputation of an individual. As a general rule and according to several laws regarding personal data protection adopted in the region, the content created by a media outlet is not subject

²¹² IACHR. [Complaint before the Inter-American Court of Human Rights against Costa Rica. Case No. 12.367, “la Nación” Mauricio Herrera Ulloa and Fernan Vargas Rohrmoser](#). 28 January 2002. Para. 97.

²¹³ Removal and de-indexation are neither synonymous nor should they be used interchangeably. The removal of content affects the platform or intermediary that hosts it - newspaper, blog, social network, etc. De-indexing affects search engines, intermediaries that index content hosted on other platforms - Google, Yahoo, Bing, etc. -.

to protections derived from the right of *habeas data*²¹⁴. Media digital platforms cannot be understood as personal data controllers. They are public sources of information and platforms for the dissemination of opinions and ideas on matters of public interest, and therefore cannot be subject to a de-indexing order nor to the suppression of online content regarding matters of public interest²¹⁵.

139. Furthermore, the Office of the Special Rapporteur considers that procedures for de-indexing or removing content cannot be used as a preventive mechanism to protect the right to honor or reputation. Individuals have other remedies available to them to seek redress for the harm caused in the case of alleged dissemination of false, offensive or inaccurate information by digital media, such as the right of correction and reply, and civil actions for damages. These remedies are less harmful to the right to freedom of expression and require the plaintiff to bear the burden of proving the falsity or inaccuracy of the information being disseminated.

140. De-indexing laws should be restricted to those cases in which the petitioner demonstrates a substantive harm to his or her privacy and dignity. The deindexing measures should always be enforced through a court order issued within the framework of a proceeding respectful of due process and where affected parties can be heard, including the speaker, the publisher or media outlet and the intermediaries²¹⁶. This prevents that intermediary companies from being the ones responsible for examining and determining the appropriateness of restricting access to online content in those scenarios.

141. In sum, it bears repeating that intermediaries do not cease to be private entities with financial, social, and individual interests different from those of the State. Requiring them to conduct a quasi-adjudicatory exercise that weighs the rights of their users exceeds the scope of their competence and could create and encourage abuses against freedom of expression and access to information. In this regard, the Joint Declaration on Freedom of Expression and the Internet establishes that, "At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression (which is the case with many of the 'notice and takedown' rules currently being applied)."²¹⁷

142. Transparency with respect to content de-indexing policies applied by private and public entities (including oversight bodies and the judicial branch) is fundamentally important. The law should subject intermediaries, government authorities, and courts to active transparency obligations, whereby information on the nature, volume, and outcomes of deindexing requests received is regularly published.²¹⁸

e. Internet, Intellectual Property and Access to Knowledge

²¹⁴ See, for example, Uruguay. Ley N° 18.331. [Protección de datos personales y acción de "habeas data"](#). Article 9; Colombia. Ley Estatutaria 1581 de 2012, [por la cual se dictan disposiciones generales para la protección de datos personales](#). Article 2 d), y Argentina. Ley 25.326. Protección de los datos personales. Article 1.

²¹⁵ For example, the IACHR has considered that the removal of content on the Internet may constitute prior censorship, explicitly prohibited in the American Convention. In its decision in the case of *newspaper La Nación (Mauricio Herrera Ulloa) vs. Costa Rica*, the IACHR determined that by ordering the removal of a series of critical articles regarding a public official from a newspaper's website, the State (through its judicial bodies) violated Article 13 of the American Convention. The IACHR understood that the decision of the Costa Rican court had "directly resulted in prior censorship, explicitly prohibited by the American Convention." The Commission argued that such measures are prohibited "even if it is supposed to prevent by that means a possible abuse of freedom of expression." In the case, the Commission considered that the judicial order constituted a violation of both the journalist's right to freedom of express as well as "the right of everyone to be well informed." IACHR. [Complaint before the Inter-American Court of Human Rights against Costa Rica. Case No. 12.367. "la Nación" Mauricio Herrera Ulloa and Fernan Vargas Rohrmoser](#). 28 January 2002. Para. 97.

²¹⁶ Article 19. [The "Right to be forgotten": remembering freedom of expression](#). Policy Brief. 2016; Access Now. [Position Paper: Understanding the "right to be forgotten" globally](#). September 2016.

²¹⁷ 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, [Joint Declaration on Freedom of Expression and the Internet](#), June 1, 2011. Point 2. b).

²¹⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 42.

143. Intellectual property, freedom of expression, and the right to culture are complementary rights, the purpose of intellectual property being “the promotion of literary, musical and artistic creativity, the enrichment of cultural heritage and the dissemination of knowledge and information goods to the general public.”²¹⁹ The UN Special Rapporteur on Cultural Rights has said that “Both intellectual property systems and the right to science and culture obligate governments ‘to recognize and reward human creativity and innovation and, at the same time, to ensure public access to the fruits of those endeavors. Striking the appropriate balance between these two goals is the central challenge that both regimes share.’”²²⁰

144. Copyright protection has a legitimate aim that could lead to imposing limits on the human rights to education, culture, and freedom of expression.²²¹ However, this protection cannot be implemented in a way that chills creativity or the free exchange of information and ideas on the Internet.²²² The advent of the Internet had a significant impact on the social dimension of freedom of expression by democratizing access to information, ideas, and opinions of all kinds and decentralizing the creative process. On the Internet, users not only receive content but also produce and distribute their own content, opening the closed circle that once included only record companies, businesses, and artist organizations, enabling the unauthorized use of copyright-protected material. It is important at this time to reconsider the role that the Internet plays in protecting copyright and the effectiveness of those regimes in achieving their legitimate objectives.

145. In this regard, the United Nations Special Rapporteur on Cultural Rights has held that “The right to protection of moral and material interests cannot be used to defend patent laws that inadequately respect the right to participate in cultural life, to enjoy the benefits of scientific progress and its applications, to scientific freedoms and the right to food and health and the rights of indigenous peoples and local communities.”²²³ Copyright must be understood as a measure to stimulate creation and invention by contributing to the expansion and preservation of cultural heritage and the development of the distinct cultural identities that converge and coexist on the Internet.²²⁴

146. In recent years, a number of measures have been promoted to strike the proper balance between protecting copyright and protecting the rights to education, culture, and freedom of expression. These include, for example, initiatives to promote open licensing and exceptions to existing copyright regimes. The United Nations Special Rapporteur on the Right to Culture recommended that exceptions and uncompensated uses of copyrighted material be adopted to promote a better balance between cultural rights and intellectual property rights. The uncompensated uses highlighted included the uncompensated use of copyrighted material in libraries, free school theater productions, noncommercial artistic activities, and initiatives to

²¹⁹ Article 19. The Right to Share: Principles on Freedom of Expression and Copyright in the Digital Age (2013). Page 11.

²²⁰ United Nations. Human Rights Council. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. UN Doc. A/HRC/28/57. December 24, 2014. Para. 4.

²²¹ UN Special Rapporteur for Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. [Joint Declaration about the Stop Online Piracy Act \(SOPA\) and the Protection of Intellectual Property Act \(PROTECT IP Act\)](#). January 20, 2012; HUDOC. *Case of Ashby Donald and Others v. France*. Petition no 36769/08. January 10, 2013. Para. 36.

²²² 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 Freedom of Expression and the Internet](#). June 1, 2011. Point 2. b); 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 the Internet and on Anti-Terrorism Measures](#). December 21, 2005.

²²³ United Nations. General Assembly. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. UN Doc. A/70/279. August 4, 2015.

²²⁴ United Nations Committee on Economic, Social and Cultural Rights. General Comment N° 17. The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant). UN Doc. E/C.12/GC/17. January 12, 2006. Para. 4.

make works accessible to people with limited financial resources.²²⁵ The exceptions highlighted included adoption of fair use doctrine, in place in countries such as the United States for example, where use for the purposes of education, criticism, parody, indexing, or personal use are theoretically exempt from penalty in the intellectual property regime.²²⁶

147. Particularly of note are international treaties that have in recent years included international obligations on intellectual property and regulations on Internet policy, which exert significant influence on the drafting of local regulations. States must take particular care to adjust the measures required under these treaties to fit local needs and to protect the rights of Internet users. It should also be noted that the special nature of these agreements and their negotiation process, which generally takes place in secret, in many cases lack the oversight, transparency, and social participation necessary to legitimately legislate exceptions to freedom of expression and the right to culture.²²⁷

i. Open Access Initiatives

148. Open access is a method of distributing knowledge with the goal of obtaining the maximum benefit for science and society. It entails publishing the full text of academic and scientific literature on the Internet publicly and free of charge, with no technical, economic, or legal barriers, where anyone can use it, copy it, and share it.²²⁸ Open access contributions include the results of original scientific research, raw data and metadata, materials, sources, digital reproductions of graphic and pictorial material, and scholarly multimedia material.²²⁹

149. The United Nations Rapporteur on Cultural Rights has highlighted the importance and potential of open licenses, especially for building and circulating scientific and academic knowledge. It has noted that “[s]cience is a process of discovery, collecting and synthesizing evidence and evolving models of the world” that requires access to as well as consultation, evaluation, and criticism of the raw evidence. These sources are often protected by copyright, and in order to get more subscribers, it is not unusual for specialized magazines to prohibit authors from disseminating their work on the Internet.²³⁰ It is important for States to circulate and promote training and use of open access licenses, particularly in academic and scientific communities, as well as for those who work for the State maintaining cultural heritage.²³¹

150. Existing open access initiatives include the Budapest Open Access Initiative, which since 2012 has recommended the use of creative commons licenses (or the equivalent) as the best way of licensing scientific and academic works for publication, distribution, use and reuse.²³² “Contracts replace an “all rights reserved” by a “some rights reserved” approach, employing standardized licenses where no compensation is sought by

²²⁵ United Nations. Human Rights Council. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. UN Doc. A/HRC/28/57. December 24, 2014. Para. 72.

²²⁶ United Nations. Human Rights Council. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. UN Doc. A/HRC/28/57. December 24, 2014. Para. 73.

²²⁷ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013.

²²⁸ Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, promoted by the Max Planck Society on October 22, 2003 and signed by around 400 academic and scientific institutions. Available at: https://openaccess.mpg.de/67605/berlin_declaration_engl.pdf

²²⁹ Budapest Open Access Initiative, Declaration on the Budapest Open Access Initiative. February 14, 2002. Available at: <http://www.budapestopenaccessinitiative.org/read>

²³⁰ United Nations. Human Rights Council. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. UN Doc. A/HRC/28/57. December 24, 2014. Para. 79.

²³¹ Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, promoted by the Max Planck Society on October 22, 2003 and signed by around 400 academic and scientific institutions.. Available at: https://openaccess.mpg.de/67605/berlin_declaration_engl.pdf

²³² Budapest Open Access Initiative. Ten years on from de Budapest Open Access Initiative: setting the default to open (2012). Available at: <http://www.budapestopenaccessinitiative.org/boai-10-recommendations>

the copyright owner. The result is an agile, low-overhead copyright-management regime, benefiting both copyright owners and licensees.”²³³

ii. Protecting the Public Domain

151. The public domain is “the net sum of all information and cultural goods not subject to copyright that can be used and exchanged by the public at large without restrictions. It is part of the cultural heritage of all humankind that must be preserved.”²³⁴

152. The Declaration of Principles of the World Summit on the Information Society states that a “rich” public domain is essential for the growth of the information society, as it both bolsters and promotes diversification of the educated public, thereby generating new jobs, innovation, business opportunities, and the advancement of science.²³⁵ The information in the public domain should be easily accessible and must be protected from misappropriation.²³⁶ States should strengthen, protect, and promote “Public institutions such as libraries and archives, museums, cultural collections and other community-based access points should be strengthened so as to promote the preservation of documentary records and free and equitable access to information.”²³⁷

153. Protection of the public domain is essential for protecting and promoting universal access to scientific knowledge and the creation and circulation of scientific and technical information with the same opportunities for all.²³⁸ Because the role played by existing materials is so important for developing new works, the term for protecting intellectual property rights should not be longer than the time necessary to achieve its goal without harming freedom of expression. In this regard it is noteworthy that, as mentioned in another section of this chapter, the right to receive and impart information and ideas also includes the right of individuals to enjoyment of cultural goods, which in itself implies that there is an individual right to read, listen to, look at, and explore cultural goods without being subject to the restrictions of intellectual property. This includes being able to perform these activities online. Access to information in the public domain is also essential for the Internet, for which reason the protection of intellectual property rights must be regulated in the same way in this space.²³⁹

154. Digital heritage is also part of cultural heritage and must be protected and preserved for future generations.²⁴⁰ In developing the right to culture, the 2003 UNESCO Charter on the Preservation of Digital Heritage establishes that digital heritage is at risk due to rapid technological progress, the result of which is that the programs and devices that create content become obsolete very quickly. States must develop mechanisms and policies for preserving that digital heritage and making it available to anyone in any region,

²³³ United Nations. Human Rights Council. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. UN Doc. A/HRC/28/57. December 24, 2014. Para. 77.

²³⁴ Article 19. The Right to Share: Principles on Freedom of Expression and Copyright in the Digital Age (2013). Para.13.

²³⁵ World Summit on the Information Society. [Declaration of Principles, Building the Information Society: a global challenge in the new Millennium](#). Geneva 2003- Tunis 2005. Doc. WSIS-03/GENEVA/4-E. December 12, 2003. Para. 26.

²³⁶ World Summit on the Information Society. [Declaration of Principles, Building the Information Society: a global challenge in the new Millennium](#). Geneva 2003- Tunis 2005. Doc. WSIS-03/GENEVA/4-E. December 12, 2003. Para. 8 and 9.

²³⁷ World Summit on the Information Society. [Declaration of Principles, Building the Information Society: a global challenge in the new Millennium](#). Geneva 2003- Tunis 2005. Doc. WSIS-03/GENEVA/4-E. December 12, 2003. Para. 8 and 9.

²³⁸ World Summit on the Information Society. [Declaration of Principles, Building the Information Society: a global challenge in the new Millennium](#). Geneva 2003- Tunis 2005. Doc. WSIS-03/GENEVA/4-E. December 12, 2003. Para. 28.

²³⁹ From 2007 to 2011, the European Commission funded a Thematic Network on the digital public domain called COMMUNIA. The network delivered a set of policy recommendations for the strengthening and enrichment of the public domain in the digital environment. Some of the recommendations deal with the enforcement of copyright’s limitations and exceptions, other with copyright’s term or the challenges posed by digitalization. The policy recommendations for the digital public domain can be found here: <http://www.communia-association.org/recommendations/>

²⁴⁰ UNESCO. *Charter on the Preservation of Digital Heritage*. October 15, 2003.

nation, and community in order to provide over time a representation of all peoples, nations, cultures, and languages.²⁴¹

iii. Restrictions and Limitations on the Rights to Freedom of Expression and Access to Knowledge to Protect Copyright

155. Restrictions on the rights to freedom of expression and access to knowledge on the Internet in connection to copyright protection must comply with the requirements established in the American Convention.²⁴² These limitations must pass the inter-American system's three-prong test: a) formal and material legality and legitimate objective; b) necessity in a democratic society and; c) proportionality. Moreover, there must be sufficient judicial control over the restriction in all cases with respect to due process guarantees, including user notifications.²⁴³

156. Punishing users for violating copyright by disconnecting them is a disproportionate and radical measure that is not compatible with international human rights law,²⁴⁴ even when a gradual mechanism is employed (three strikes, for example, in which the Internet is disconnected after three violations).²⁴⁵

157. A requirement to block whole sites is also a measure that is disproportionate and not compatible with the protection of human rights online. The 2011 Joint Declaration on Freedom of Expression and Internet held that "mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse."²⁴⁶

158. In addition to the proportionality tests and the impact such blockings might have on freedom of expression, it is important to stress the inefficacy of these measures. They can be easily circumvented by anyone with a basic knowledge about the Internet and using some widely available software.²⁴⁷ The 2011 Joint Declaration on Freedom of Expression and the Internet states that "Greater attention should be given to developing alternative, tailored approaches, which are adapted to the unique characteristics of the Internet, for responding to illegal content, while recognizing that no special content restrictions should be established for material disseminated over the Internet."²⁴⁸

²⁴¹ UNESCO. *Charter on the Preservation of Digital Heritage*. 15 October 2003.

²⁴² IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 76.

²⁴³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 55.

²⁴⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 81.

²⁴⁵ United Nations. Human Rights Council. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. UN Doc. A/HRC/28/57. December 24, 2014. Para. 51. See also, Article 19. The Right to Share: Principles on Freedom of Expression and Copyright in the Digital Age (2013). Page 17.

²⁴⁶ 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 Freedom of Expression and the Internet](#). (June 1, 2011). Point 3 a).

²⁴⁷ On the shortcomings of the blocking solution as adopted in Europe, Singapore and Australia, see Roy, Alpana and Marsoof, Althaf, "The Blocking Injunction: A Comparative and Critical Review of the EU, Singaporean and Australian Regimes" (June 29, 2016). (2016) 38(2) E.I.P.R. 9. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2802037

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, [Joint Declaration on Freedom of Expression and the Internet](#), (June 1, 2011), point 3 c), available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>.

159. Along the same lines, State or ISP content filtering that users do not control constitutes prior restraint.²⁴⁹ The 2011 Joint Declaration on Freedom of Expression and the Internet indicates that “The State must at all times require products intended to facilitate filtration by end users to be accompanied by clear information intended to inform those users on how the filters work and the possible disadvantages should filtering turn out to be excessive.”²⁵⁰

160. In addition, and with regard to subsequent liability, criminal liability for non-commercial violations of intellectual property law are a disproportional interference with freedom of expression. They have a chilling effect on the free circulation of information and ideas. Crimes perpetrated online should never involve punishments that are more severe than for those perpetrated in real life, as this would be a disproportionate restriction on Internet expression that could restrict and limit the internet as a space for the free exchange of ideas, information, and opinions.²⁵¹

161. At no time shall intermediaries be held criminally liable for omission or failure to comply with an order to restrict content. Measures should be limited to civil or administrative sanctions.²⁵² Similarly, intermediaries should never regulate the content produced by third parties. States must avoid adopting systems of objective or strict liability, as such systems foster private censorship of legitimate expressions,²⁵³ thereby illegitimately affecting the rights to freedom of expression, access to information, culture, and knowledge, among other human rights exercised and protected on the Internet.²⁵⁴ Although pursuing piracy is a legitimate public policy objective, doing so should take into account the nature of the Internet as a tool for expression and protect intermediaries, avoiding requiring them to conduct monitoring and oversight of the content created by users and third parties.²⁵⁵

162. Liability regimes requiring “notification and removal” procedures and that involve intermediaries removing content at the request of individuals transfer the jurisdictional authority of the State to the private sector and do not adequately guarantee due process.²⁵⁶

D. RIGHT TO ACCESS TO INFORMATION

1. International Standards on the Right to Access to Information

163. The right to access to information is a fundamental individual right protected by article 13 of the American Convention that enables the exercise of other rights and constitutes a means of controlling and reporting abuses perpetrated or tolerated by public authorities.²⁵⁷

²⁴⁹ 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 Freedom of Expression and the Internet](#), June 1, 2011. Point 3 b).

²⁵⁰ 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 Freedom of Expression and the Internet](#), June 1, 2011. Point 3 c).

²⁵¹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 74.

²⁵² Global Society Initiative. Manila Principles on Intermediary Liability. [Background](#), March 22, 2015. Page. 30.

²⁵³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 98.

²⁵⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 95.

²⁵⁵ UN Special Rapporteur for Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. [Joint Declaration about the Stop Online Piracy Act \(SOPA\) and the Protection of Intellectual Property Act \(PROTECT IP Act\)](#), January 20, 2012.

²⁵⁶ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Pages 79-81.

164. Like the right to freedom of expression, the right to access to information therefore has a dual nature, as it protects both those who actively exercise it and those who receive information through the media and/or official sources.²⁵⁸ It also entails a positive obligation for the State to provide its citizens with access to the information it has in its power, with the correlating right for people to access that information.²⁵⁹ At the regional level, there is broad consensus across the States Party to the Organization of American States as to the importance of access to public information and the need to protect it.²⁶⁰ Thus for example, the Model Inter-American Law on Access to Information establishes a series of principles and guidelines for designing and implementing access laws in the region.²⁶¹ First, it establishes a guarantee of the right to access to all information that is in the possession, custody or control, of any government authority, based on the principle of maximum disclosure. It then establishes that information from public institutions must be complete, timely and accessible, and subject to a clear and narrow regime of exceptions.²⁶²

165. People have a right to ask for documentation and information kept in public archives that was generated or processed by the State, both to exercise their political rights and to exercise oversight over the State and its administration, thereby promoting transparency and accountability.²⁶³ Only through access to information can citizens participate in governance without discrimination and on equal footing.²⁶⁴

166. Access to information is also a means by which other rights can be effectively exercised, including the economic, social, and cultural rights of vulnerable or historically excluded groups²⁶⁵ and civil and political rights.²⁶⁶ Lack of access to information can contribute to or even constitute a violation of other rights enshrined in the Convention. For example, when vulnerable groups lack access to information, it may affect their right to live a life free from violence and discrimination. In the case of women, for example, the Commission has held that the exercise of the right of access to information is closely linked to the prevention of discrimination and violence suffered by this group, as well as access to justice for victims.²⁶⁷

²⁵⁷ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013; Organization of American States. General Assembly. [Inter-American Democratic Charter](#). AG/RES. 1 (XXVIII-E/01). Resolution adopted in Lima, Peru, September 11, 2001. Articles 4 and 6.

²⁵⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Lima Principles](#). November 16, 2000. Principle N° 1, and IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas, Inter-American Standards and comparison of legal frameworks. OEA/Ser.L/V/II. Doc. 69. December 30, 2011.

²⁵⁹ IACHR. [Access to Information on Reproductive Health from a Human Rights Perspective](#). OEA/ Ser.L/V/II. Doc.61. November 22, 2011). Para. 15.

²⁶⁰ IACHR. [Access to Information on Reproductive Health from a Human Rights Perspective](#). OEA/ Ser.L/V/II. Doc.61. November 22, 2011). Para. 24.

²⁶¹ Organization of American States. Permanent Council of the Organization of American States. Committee on Juridical and Political Affairs. [Model Inter-American Law on Access to Information](#). OEA/Ser.G, CP/CAJP-2840/10 Corr.1. April 29, 2010.

²⁶² Organization of American States. Permanent Council of the Organization of American States. Committee on Juridical and Political Affairs. [Model Inter-American Law on Access to Information](#). OEA/Ser.G, CP/CAJP-2840/10 Corr.1. April 29, 2010.

²⁶³ IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information](#). Second Edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 5.

²⁶⁴ Inter- American Court. *Case Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. Merits, Reparations and Costs. Series C No. 151. Para. 86.

²⁶⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information](#). Second Edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 5.

²⁶⁶ Organization of American States. General Assembly. [Access to Public Information: Strengthening Democracy](#). Resolution AG/RES. 2121 (XXXV-O/05). June 7, 2005.

²⁶⁷ IACHR. [Annual Report 2015. Report of the Special Rapporteur for Freedom of Expression 2015](#). Chapter III (Access to Information, Violence Against Women, and the Administration of Justice in the Americas). OEA/Ser.L/V/II Doc. 48/15. December 31, 2015. Para. 38.

167. Based on its nature, in principle, State information is considered to be public, and government documentation, official.²⁶⁸As the legitimate owners of that information, citizens do not need to demonstrate that they have a direct interest or that they are personally affected by it,²⁶⁹ and may disclose it so that it circulates and all of society can access it and review it.²⁷⁰

168. States must respect the principles of maximum disclosure, making disclosure of information the default and classification of information the exception.²⁷¹The subjects compelled by the right to access to information must also act in good faith and “interpret the law in such a way that it meets the aims of the right of access and that they ensure the strict application of the right, provide the necessary measures of assistance to petitioners, promote a culture of transparency, contribute to making public administration more transparent, and act with due diligence, professionalism, and institutional loyalty.”²⁷²

169. States should put laws in place that permit effective access to information, with complementary regulations that ensure proper implementation pursuant to the international standards on the subject.²⁷³ In the event of a legal conflict, the law on access to information should take precedence over other legislation, as the right to access to information is recognized as an indispensable prerequisite for other human rights to function and for the functioning of democracy itself.²⁷⁴

170. The Inter-American Court has established that the State has an obligation to respond to all requests for access and to provide its reasoning in cases in where, for a reason permitted under the Convention, it limits access in a specific case.²⁷⁵ The Commission, meanwhile, has said that the right to access to information is not fully satisfied by a State response declaring that the information requested does not exist. When it comes to information that the State has an obligation to keep, it must describe the actions it took in attempting to recover or reconstruct information that may have been lost or illegally removed. Should it fail to justify the situation, the right to access to information is understood to have been violated.²⁷⁶

171. For its part, the Declaration of Principles establishes that States have an obligation to guarantee access to information and stipulates that in order to be legitimate, exceptions must be clearly established by law and have a legitimate objective—i.e., real and imminent danger affecting national security in democratic societies.²⁷⁷ Secrecy laws should define precisely the concept of national security, specify clearly the criteria to be used to declare certain information secret, detail which officials are entitled to classify documents as secret, and set overall limits on the length of time documents may remain secret.²⁷⁸ When information must

²⁶⁸ IACHR. [Terrorism and Human Rights](#). OEA/Ser. L/V/II.116. Doc. 5 rev. 1 corr. 22 October 2002. Para. 281.

²⁶⁹ IACHR. [Terrorism and Human Rights](#). OEA/Ser. L/V/II.116. Doc. 5 rev. 1 corr. 22 October 2002. Para. 282.

²⁷⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information](#). Second Edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 18.

²⁷¹ Inter-American Court. *Case Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. Merits, Reparations and Costs. Series C No. 151.

²⁷² IACHR. [Access to Information on Reproductive Health from a Human Rights Perspective](#). OEA/ Ser.L/V/II. Doc.61. November 22, 2011). Para. 16.

²⁷³ IACHR. [Annual Report 2015. Report of the Special Rapporteur for Freedom of Expression 2015](#). Chapter III (Access to Information, Violence Against Women, and the Administration of Justice in the Americas). OEA/Ser.L/V/II Doc. 48/15. December 31, 2015. Para. 22.

²⁷⁴ IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 72.

²⁷⁵ Inter- American Court. *Case Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. Merits, Reparations and Costs. Series C No. 151. Para. 77.

²⁷⁶ IACHR. [Annual Report 2015. Report of the Special Rapporteur for Freedom of Expression 2015](#). Chapter III (Access to Information, Violence Against Women, and the Administration of Justice in the Americas). OEA/Ser.L/V/II Doc. 48/15. December 31, 2015. Para. 110.

²⁷⁷ IACHR. [Declaration of Principles on Freedom of Expression](#). 2000. Principle 4.

²⁷⁸ UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. [Joint Declaration on Access to Information and on Secrecy Legislation](#). December 6, 2004.

remain secret pursuant to a legitimate objective under the Convention, public authorities and their staff bear sole responsibility for protecting the its confidentiality.

172. States thus have an obligation to a) respond promptly, fully, and accessibly to requests; b) provide a remedy that satisfies the right to access to information; c) provide a suitable and effective judicial remedy for reviewing refusals to turn over information; d) provide the most possible proactive transparency; e) produce or collect information; e) generate a culture of transparency; f) adequately implement regulations on access to public information; and g) adjust the legal system to the requirements of the right to access to information.²⁷⁹ The procedures for accessing public information should be simple, prompt and free or low-cost.²⁸⁰

173. The right to access to information also entails a duty of active transparency that falls to the State: the obligation to make information in the public interest available. The Inter-American Commission has held that “the obligation to provide information proactively lays the groundwork for the States’ obligation to provide public information that is essential for people to be able to exercise their fundamental rights or satisfy their basic needs in this area.”²⁸¹

174. States must proactively include government information that is in the public interest to the public domain in order to guarantee easy, prompt, effective, and practical access (for example, through freedom of information laws).²⁸²

2. The Internet and the Right to Access to Information

175. The Internet has become “one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies.”²⁸³ The formation of an inclusive information society requires universal ability to access and contribute information, ideas, and knowledge so citizens can participate in discussions on public affairs and be part of the decision-making process.²⁸⁴ The Internet offers a new opportunity for developing policies on proactive transparency and dissemination of information and ideas of all kinds. Its speed, decentralization, and low cost allow both the State and private parties to disseminate information without barriers of borders, opportunity, or bureaucracy that once hampered such circulation.²⁸⁵

176. Access to public information over the Internet empowers citizens to actively participate in democratic State’s decision-making processes.²⁸⁶ The nature of the Internet enables an increase in the amount of information that is publicly available, allowing it to be mass distributed at low-cost and published

²⁷⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information](#). Second Edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. 7 March 2011. Para. 23 to 45.

²⁸⁰ 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. [Joint Declaration on Access to Information and on Secrecy Legislation](#). December 6, 2004.

²⁸¹ IACHR. [Annual Report 2015. Report of the Special Rapporteur for Freedom of Expression 2015](#). Chapter III (Access to Information, Violence Against Women, and the Administration of Justice in the Americas). OEA/Ser.L/V/II Doc. 48/15. December 31, 2015. Para. 52; IACHR. [Access to Information on Reproductive Health from a Human Rights Perspective](#). OEA/ Ser.L/V/II. Doc.61. November 22, 2011). Para. 25.

²⁸² United Nations. Human Rights Committee. [General Comment N° 34 – Article 19: Freedom of opinion and expression](#). UN Doc. CCPR/C/GC/34. September 12, 2011. Para. 19.

²⁸³ 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. 2.

²⁸⁴ World Summit on the Information Society. [Declaration of Principles. Building the Information Society: a global challenge in the new Millennium](#). Geneva 2003- Tunis 2005. Doc. WSIS-03/GENEVA/4-E. December 12, 2003. Para. 24.

²⁸⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

²⁸⁶ 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. 23.

dynamically in such a way that it can be worked on and with.²⁸⁷ Governments should also examine the possibility of publishing data in a way that is machine-readable, and is made available under an open license such as *Creative Commons*. Machine-readable data is that which can be interpreted by computer code without the need for special equipment or operating systems. This allows the data to be accessed by the citizen to extract the information relevant to them, rather than use information that is constructed around the needs of a bureaucracy.

177. Access to information must also be guaranteed without discrimination. States must therefore ensure multilingualism and that the information is accessible over the Internet for persons with disabilities, as developed previously.

178. Principle 3 of the Declaration of Principles on Freedom of Expression states that, “Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.” This right is known as *habeas data* and is particularly relevant in the digital age, as many new actors now have the ability to collect, store, and process personal data, with the reasons for doing so having radically expanded.

179. *Habeas data* enables people to change, delete, or correct information considered sensitive, incorrect, biased, or discriminatory in order to preserve their rights to privacy, honor, personal identity, property, and accountability in the collection of information.²⁸⁸ Should an individual’s data be stored somewhere, that individual has the right to obtain intelligible information on what it includes and why it is being stored, as well as to rectify it or delete it should its collection or use be in violation of applicable legal provisions.²⁸⁹

180. The Office of the Special Rapporteur for Freedom of Expression has emphasized that *habeas data* “is the common heritage of inter-American constitutional law, insofar as most of the constitutions of the States in the region recognize it, whether in its substantive or its procedural form.”²⁹⁰ For cases in which there are no specific *habeas data* laws, people can use access laws to access their data and States would be required to turn it over, but only to its owners.²⁹¹

181. In the context of a *habeas data* remedy, entities are required to use the information for objectives that are specific and explicitly stipulated. They are also required to ensure data security from accidents, access, or unauthorized processing. Through a *habeas data* remedy, individuals can verify if personal information collected by State entities or the private sector has been obtained legally. If obtained illegally, the remedy enables determination as to whether the responsible parties should be punished.²⁹²

182. In order to effectively facilitate access to information, the mechanism for bringing a *habeas data* remedy must be simple and not involving excessively complex administrative procedures; easy to access; and low-cost.²⁹³ Likewise, the citizen should not be required to explain the reason for requesting the information,

²⁸⁷ 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. [Joint Declaration on Access to Information and on Secrecy Legislation](#). December 6, 2004. See also, World Summit on the Information Society. [Tunis Commitment](#). Doc. WSIS-05/TUNIS/DOC/7-E. November 18, 2005. Para. 11.

²⁸⁸ IACHR. [Terrorism and Human Rights](#). OEA/Ser. L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 289.

²⁸⁹ Office of the High Commissioner for Human Rights. *General Comment No. 16, Right to Privacy (Article 17)*. U.N. Doc. HRI/GEN/1/Rev.7 at 162. April 8, 1988. Para 10. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

²⁹⁰ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 140.

²⁹¹ IACHR. Office of the Special Rapporteur for Freedom Of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information](#). Second Edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 62.

²⁹² IACHR. [Terrorism and Human Rights](#). OEA/Ser. L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 292.

²⁹³ IACHR. [Terrorism and Human Rights](#). OEA/Ser. L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 293.

as the fact alone that personal data exists in public or private records is enough to exercise the right.²⁹⁴ In the event of a restriction that blocks the exercise of the right to *habeas data*, it must meet standards of necessity and proportionality.²⁹⁵

E. RIGHT TO PRIVACY AND PROTECTION OF PERSONAL DATA

183. Respect for online freedom of expression assumes that there is privacy for people's communications. Indeed, without a private sphere, free from the arbitrary interference of the State or private individuals, the right to freedom of thought and expression cannot be exercised fully. The regulatory framework of the right to privacy in the inter-American system is established in article 11 of the American Convention²⁹⁶ and articles V and X of the American Declaration.²⁹⁷

184. This right as it pertains to the field of human rights has been developed and interpreted in different ways in the regional and universal systems, but takes on new meaning with the advent of new technologies. The development of the Internet empowers and simplifies communications and the storage and standardization of information. But it also empowers States and private parties to more easily conduct monitoring, collection, and surveillance of data, representing a serious risk to privacy. Moreover, the Internet has also become a huge repository of information and personal data, including images. Their availability facilitates the exercise of other rights—such as family life, the right to health, freedom of expression and access to information—but it threatens the full exercise of the right to privacy online.²⁹⁸

185. The Office of the Special Rapporteur has stated that in view of this close relationship between freedom of expression and privacy, States should avoid the implementation of any measure that restricts, in an arbitrary or abusive manner, the privacy of individuals (article 11 of the American Convention). This privacy is understood in a broad sense as every personal and anonymous space that is free from intimidation or retaliation, and necessary for an individual to be able to freely form an opinion and express his or her ideas as well as to seek and receive information, without being forced to identify him or herself or reveal his or her beliefs and convictions or the sources he or she consults. Nevertheless, the defense of individual privacy must be based on reasonable and proportionate criteria that do not end up arbitrarily restricting the right to freedom of expression. It is thus important to recall, as stated in principle 10 of the Declaration of Principles, that privacy laws should not inhibit or restrict investigation and dissemination of information of public interest.

1. International Standards on Privacy and Data Protection

186. The legal protection spelled out in article 11 of the American Convention explicitly includes the protection of private life, the home,²⁹⁹ communications³⁰⁰ and family life.³⁰¹

²⁹⁴ IACHR. [Terrorism and Human Rights](#). OEA/Ser. L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 294.

²⁹⁵ IACHR. [Terrorism and Human Rights](#). OEA/Ser. L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 294.

²⁹⁶ [American Convention on Human Rights \(Pact of San José\)](#). Article 11 establishes that “1. [a]ll persons have the right to respect for their honor and recognition of their dignity. 2. No one must be the target of arbitrary or abusive interferences in their private life, that of their family, in their home or in their correspondence, nor of illegal attacks on their honor or reputation. 3. All persons have the right to the protection of the law against those interferences or those attacks.”

²⁹⁷ [American Declaration of the Rights and Duties of Man](#). Article V establishes that “[a]ll persons have the right to protection of the Law against abusive attacks on their honor, their reputation and their private and family life” and Article X establishes that “all persons have the right to the inviolability and circulation of their correspondence”.

²⁹⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 130 and following.

²⁹⁹ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Merits, Reparations and Costs. Series C No. 148; I/A Court H.R., *Case Escué-Zapata v. Colombia*. Judgment of July 4, 2007. Merits, Reparations and Costs. Series C No. 165; I/A Court H.R., *Case Fernández-Ortega et al. v. Mexico*. Judgment of August 30, 2010. Merits, Reparations and Costs. Series C No. 215.

³⁰⁰ I/A Court H.R. *Case Tristán Donoso v. Panamá*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193.

187. According to the standards developed within the inter-American system, privacy “is characterized by being exempt from and immune to abusive and arbitrary invasion or attack by third parties or the public authorities.”³⁰² In the case of *Artavia Murillo*, the Court found that private life includes aspects of an individual’s physical, emotional, and social identity, including personal autonomy and the right to establish and develop social relationships with other persons.³⁰³ The Court has held that privacy is strictly linked to the right to personal liberty enshrined in article 7 of the American Convention, adopting a broad concept of liberty as “the ability to do and not do all that is lawfully permitted.”³⁰⁴

188. As the Inter-American Court has concluded, the home is the proper or “natural” place for an individual’s personal or familial development.³⁰⁵ The space is characterized as one free of abusive or arbitrary invasions by the State or third parties.³⁰⁶ Effectively, the main factor for finding that the inviolability of the home has been transgressed is lack of consent or of a valid court order justifying the intrusion, not whether a particular domicile is personal or work-related.³⁰⁷

189. Correspondence is also specifically protected in article 11 and protection has been extended through case law to cover “communications,” including communications using telephones and new technologies like the Internet.³⁰⁸ In the cases of *Tristán Donoso v. Panama* and *Escher et al. v. Brazil*, the Inter-American Court found that although these forms of communication are not specifically indicated in article 11, they are still protected.³⁰⁹ The protection extends to all personal and professional communications with the understanding that the protection of privacy includes the development of relationships between people, and in particular, a person’s professional life is often where he or she has the most opportunity to interact with the world.³¹⁰ The protection of privacy as it relates to communication also extends to information about the communication, such as phone numbers called, the frequency of calls, their duration, etc.³¹¹ This information is an integral

³⁰¹ I/A Court H.R., *Case Escué-Zapata v. Colombia*. Judgment of July 4, 2007. Merits, Reparations and Costs. Series C No. 165.

³⁰² I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Merits, Reparations and Costs. Series C No. 148. Para. 192.

³⁰³ I/A Court H.R. *Case of Artavia-Murillo et al. (“In Vitro Fertilization”) v. Costa Rica*. Judgment of November 28, 2012. Merits, Reparations and Costs. Series C No. 257. Para. 143.

³⁰⁴ I/A Court H.R. *Case of Artavia-Murillo et al. (“In Vitro Fertilization”) v. Costa Rica*. Judgment of November 28, 2012. Merits, Reparations and Costs. Series C No. 257. Para. 143.

³⁰⁵ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Merits, Reparations and Costs. Series C No. 148; I/A Court H.R., *Case Escué-Zapata v. Colombia*. Judgment of 4 July, 2007. Merits, Reparations and Costs. Series C No. 165; I/A Court H.R., *Case Fernández-Ortega et al. v. Mexico*. Judgment of August 3, 2010. Merits, Reparations and Costs. Series C No. 215.

³⁰⁶ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Merits, Reparations and Costs. Series C No. 148. Para. 194.

³⁰⁷ I/A Court H.R., *Case Escué-Zapata v. Colombia*. Judgment of July 4, 2007. Merits, Reparations and Costs. Series C No. 165. Para. 94.

³⁰⁸ ECHR. *Case Klass and others v. Germany*. Judgment September 6, 1978. Para. 29; ECHR. *Case Halford v. United Kingdom*. Judgment of May 27, 1997. Para. 44; ECHR. *Case Amann v. Switzerland*. Judgment of February 16, 2000. Para. 44; and ECHR. *Case Copland v. United Kingdom*. Judgment of March 13, 2007. Para. 41.

³⁰⁹ ECHR. *Case Klass and others v. Germany*. Judgment September 6, 1978. Para. 29; ECHR. *Case Halford v. United Kingdom*. Judgment of May 27, 1997. Para. 44; ECHR. *Case Amann v. Switzerland*. Judgment of February 16, 2000. Para. 44; and ECHR. *Case Copland v. United Kingdom*. Judgment of March 13, 2007. Para. 41.

³¹⁰ I/A Court H.R. *Case of Escher v. Brazil*. Judgment of July 6, 2009. Merits, Reparations and Costs. Series C No. 200. Para. 114. See also, ECHR. *Case Niemietz v. Germany*. Judgment of December 16, 1992. Para. 28 and 29, and *Case Huvig v. France*. Judgment of April 24, 1990. Para. 8 and 25.

³¹¹ I/A Court H.R. *Case of Escher v. Brazil*. Judgment of July 6, 2009. Merits, Reparations and Costs. Series C No. 200. Para. 114. In its ruling, the Inter-American Human Rights Court established that “article 11 applies to telephone conversations regardless of their content and may even include technical operations aimed at recording that content, through recording and listening to it, along with any other element of the communications process itself, for example, the destination of the calls that go out or the origin of those that enter, the identity of the interlocutors, the frequency, time or duration of the calls, aspects which may be verified without the need to record the content of the call or record the conversations. Ultimately, the protection of private life takes concrete form in the right that subjects other than the interlocutors may not illegally gain knowledge of the content of telephone conversations or other aspects, such as those mentioned above, inherent to the communications process”.

part of communication, the same as its actual content, and storing it also constitutes an invasion of a person's privacy and communications.³¹² In defining the scope of this type of information, the European Court included information about internet communications, known as metadata. Metadata is information about Internet connections and the different activities conducted online: the location of the equipment where the connection is made, the time, the communication recipients, time spent on forums, pages opened, details on e-mails sent, frequency, etc. Like the information on telephone communications protected by the case law of the inter-American system, this information is separate from the content yet still highly revelatory of personal relationships, habits and customs, preferences, lifestyles, etc.³¹³

190. Finally, family life is also explicitly protected under article 11 of the Convention. The inter-American system developed it mainly in the case of *Atala Riffo and daughters v. Chile*³¹⁴ and then in the case of *Artavia Murillo (In Vitro Fertilization) v. Costa Rica*.³¹⁵ Both cases connect article 11(2) to article 17 of the American Convention, regarding protection of the family. Although it is addressing the issue of in vitro fertilization, the Court recognizes in *Artavia Murillo* that the right to privacy and family includes the right to form a family and connects it to the right to access to the benefits of science and technology in order to do so.³¹⁶

191. The Inter-American Commission has indicated that the right to privacy protects at least four legal rights: a) the right to have an individual sphere impervious to arbitrary interference from the State or third parties; b) the right to govern oneself by one's own rules defined autonomously according to one's individual life plan; c) the right to the confidentiality of all the data produced in that private space, with a corresponding prohibition on disclosure or circulation of information captured without the consent of its owner, in that space of private protection reserved for the individual; and d) the right to one's own image.³¹⁷

192. Respect for and guarantee of the full scope of the right to privacy as set forth in article 11 of the American Convention requires States to refrain from abusive or arbitrary meddling or interference. It also requires them to adopt specific measures for protecting people from abusive meddling at the hands of third parties. In the case of *Fontevecchia and D'Amico v. Argentina*, the Inter-American Court established clearly that "the State has an obligation to guarantee the right to privacy through positive actions, which may involve, in some cases, the adoption of measures to ensure that private life is protected against interference by public authorities as well as by individuals or private institutions, including the media."³¹⁸

³¹² ECHR. *Case Klass and others v. Germany*. Judgment September 6, 1978. Para. 29; ECHR. *Case Halford v. United Kingdom*. Judgment of May 27, 1997. Para. 44; ECHR. *Case Amann v. Switzerland*. Judgment of February 16, 2000. Para. 44; and ECHR. *Case Copland v. United Kingdom*. Judgment of March 13, 2007. Para. 44.

³¹³ ECHR. *Case Niemietz v. Germany*. Judgment of December 16, 1992. Para. 28 and 29.

³¹⁴ I/A Court H.R. *Case of Atala Riffo and daughters v. Chile*. Judgment February 24, 2012. Merits, Reparations and Costs. Series C No. 239.

³¹⁵ I/A Court H.R. *Case of Artavia-Murillo et al. ("In Vitro Fertilization) v. Costa Rica*. Judgment of November 28, 2012. Merits, Reparations and Costs. Series C No. 257.

³¹⁶ I/A Court H.R. *Case of Artavia-Murillo et al. ("In Vitro Fertilization) v. Costa Rica*. Judgment of November 28, 2012. Merits, Reparations and Costs. Series C No. 257. Para. 150. In its ruling, the Court established that "the right to private life and reproductive freedom correlates with the right of access to the necessary medical technology to exercise that right. The right to enjoy the benefits of scientific progress has been internationally recognized and, in the Inter-American sphere, is contemplated in article XIII of the American Declaration and in article 14.1 b) of the Protocol of San Salvador. It should be pointed out that the United Nations General Assembly, in its Declaration about that right, pointed to the relationship between this and satisfaction of the material and spiritual needs of all population sectors. Therefore, pursuant to article 29 b) of the American Convention, the scope of the rights to private life, reproductive autonomy and starting a family, derived from articles 11.2 and 17.2 of the American Convention, extends to the right of all persons to benefit from scientific progress and its applications. From the right of access to the highest and most effective scientific progress for the exercise of reproductive autonomy and the possibility of starting a family, the right of access to the best health services in reproductive assistance techniques derives, and, therefore, the prohibition against disproportionate and unnecessary de jure or de facto restrictions for exercising the reproductive decisions that correspond to each person".

³¹⁷ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 131 and following.

³¹⁸ I/A Court H.R. *Case of Fontevecchia and D'Amico v. Argentina*. Judgment November 29, 2011. Merits, Reparations and Costs. Series C No. 238. Para. 49.

193. All restrictions to the right to privacy, including the right to be free from arbitrary or abusive interference with communications, must pass the test of legality, proportionality, and necessity established in the Convention itself and reaffirmed by the Inter-American Court.³¹⁹

2. The Internet and Protection of Privacy

194. States have an obligation to respect and protect the right to privacy in the digital era and adopt legislation and practices—or adapt existing ones—to do so,³²⁰ protecting everyone under their jurisdictions—including, pursuant to international law, those in their custody—without discrimination based on national origin, nationality, sex, race, religion, or for any other grounds.³²¹

195. With the advent of the Internet, new challenges emerged to protecting the right to privacy, both for the State in its role of guarantor and for private parties in their roles as users.

196. By nature, the Internet is currently without a doubt a natural space for personal development. Although in certain cases it can be construed as a domicile-like space for a person—their personal, professional, banking, or commercial web page—or as a means of communication—e-mail, messaging services, etc.—it cannot necessarily or by force be limited to these two characterizations.

197. The Internet also provides new “public spaces” in which to interact, opine, associate, participate, educate or receive education, inform or be informed, etc. The distinction between the personal and public realms is not always as clear to third parties, and neither is it clear, often, to the actors themselves—individuals—who participate.

198. The Internet by necessity presupposes the existence of and coexistence with intermediaries—service providers, servers, platforms, etc.—meaning that use of the Internet and interaction with it will necessarily generate data and leave a “digital footprint,”³²² even in its most private areas. States must protect the right to privacy from potentially arbitrary or abusive meddling from third parties as well.³²³

199. Indeed, the impact of technology upon privacy became apparent with the introduction of mass circulation newspapers and photographs. People who saw their pictures in a newspaper were concerned that what they had assumed to be private was now public. With the internet, the technical capacity to gather, store and exchange personal information about people provided by digital technologies has led a new challenge in protecting privacy. Most social media companies have a business model that involves providing “free” services in exchange for ownership of the data generated by the user. This immensely complicates the right of people to determine when, how and to what extent information about them is communicated to others. The growing processing power of computers exacerbates the challenge as information can be harvested from multiple sources, processed and re-processed and then sold on. In fact the entire business model of the most successful companies directly impinges upon the right to privacy.

200. New technologies also create the possibility to locate and track personal data that was not possible before. Each computer, mobile phone or other device attached to the Internet has a unique Internet Protocol

³¹⁹ I/A Court H.R. *Case of Fontevecchia and D’Amico v. Argentina*. Judgment November 29, 2011. Merits, Reparations and Costs. Series C No. 238, and /A Court H.R. *Case of Escher v. Brazil*. Judgment of July 6, 2009. Merits, Reparations and Costs. Series C No. 200.

³²⁰ United Nations. General Assembly. *The right to privacy in the digital age*. UN Doc. A/RES/68/167. December 18, 2013. Para. 4. Available at: <http://www.un.org/en/ga/68/resolutions.shtml>

³²¹ International Covenant on Civil and Political Rights. *General Comment N° 31, The Nature of the General Obligation Imposed on States Parties to the Covenant*. UN Doc. CCPR/C/21/Rev.1/Add.13. March 29, 2004. Para. 10. Available at: http://www.un.org/ga/search/view_doc.asp?symbol=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Submit=Search&Lang=E

³²² IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 23.

³²³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 23.

(IP) address, which provides a specific identifier for the device and which means in turn that they can be traced. The advent of GPS systems has meant that devices with unique IP addresses can be physically located, enabling anyone with access to that information to track the movements of the person with the device.

201. The internet has seen a batch of new tools designed to extract personal information from the user. Of the many tools that have been created to track Internet users, two familiar examples are cookies and web bugs. Cookies are small pieces of text which web browsers store on a user's computer. The cookie 'registers' with the web browser each time the user accesses that browser and can be used for monitoring the user's session history, storing any preferences, etc. Web bugs (or web beacons as they are sometimes known) are usually invisible to the user (they are typically only 1x1 pixel in size) and are embedded in web pages and emails. When the page/email containing the web bug is viewed, it sends information back to the server (including the IP address of the user, the time and date that the page/email was viewed and the browser it was viewed on).

202. While not intended to be exhaustive, this report outlines five of the challenges that arise or are magnified by the phenomenon of the Internet: a) protection of personal data; b) surveillance, monitoring, and collection; c) encryption and anonymity; d) "big data"; and e) the Internet of Things.

a. Protection of Personal Data

203. In order to function, the Internet requires the creation, storage, and management of data: personal data as well as other kinds. This means that an enormous amount of information about people can be collected, stored, and analyzed by States and third parties.³²⁴

204. To protect privacy on the Internet, the confidentiality of personal online data must be guaranteed. Latin America has general defined personal data broadly to include any information on identified or identifiable physical or juridical persons.³²⁵ The Commission highlighted that it is crucial to develop rules for data protection that regulate the storage, processing, and use of personal data, as well as its transfer, whether among State entities or third parties.³²⁶ Due to the cross-border nature of the Internet, the need to regulate data handling is not limited to national frameworks: An international framework for data regulation must be developed as well.³²⁷

205. States must adopt policies to prohibit data processing—including storage, analysis, and disclosure of personal data—except when authorized or when the person affected has given informed consent.³²⁸ Positive measures should also be taken to educate people on their rights and the legal requirements for processing personal data and to inform them when their data has been collected, stored, processed, or disclosed. Use of personal data that violates human rights must be prohibited, and effective and independent monitoring mechanisms must be established.³²⁹

³²⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 137.

³²⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 138.

³²⁶ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 138.

³²⁷ Organization of American States. Inter-American Juridical Committee. [Privacy and Data Protection](#). OEA/Ser.Q CJI/doc. 474/15 rev.2. (86th Regular Session, Rio de Janeiro, Brazil). March 26, 2015. Principle 11.

³²⁸ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013. Para. 82.

³²⁹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31 2013. Para. 139.

206. An individual's consent authorizes States and private parties to process his or her personal data.³³⁰ However, in order for consent to be valid, it must be informed and freely given.³³¹ States must ensure the general conditions are in place to guarantee that consent can effectively be informed and freely given.³³² When the State is the one processing the data, it must establish the guidelines and controls necessary to verify 1) that the data is not used for purposes other than the ones declared, 2) that the data is maintained and stored pursuant to those purposes and only during the period of time reported and consented to; and 3) that the data is shared only under the conditions and for the purposes reported and consented to.³³³

207. The United Nations Office of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression warned that in many States, data protection laws are insufficient or inadequate and highlighted the need to adopt clear laws governing both the State and the private sector. The report highlights the urgency of the matter, particularly considering that Internet intermediaries collect and store a large volume of data, with some suits filed over the practice in some States of forcing intermediaries to collect and share such data.³³⁴

208. States must ensure a policy of transparency regarding legislation that applies to State and private data handling practices, data processing, procedures for challenging that processing, and the authority competent to resolve complaints.³³⁵ It is crucial for individuals to be able to access the information that is kept about them, update it, correct it, and where necessary, delete it.³³⁶

209. The right to access and the State's obligation to be transparent with the personal data it keeps also cover biometric data.³³⁷ Biometric data enable "systematic recognition of individuals based on biological and behavioral characteristics."³³⁸ The mechanism for using biometric data requires its collection in the form of fingerprints, iris scans, DNA, voice, etc., and the standardization of all that data into a single database that, combined with other sources of behavioral information, makes it possible to use statistical methods to

³³⁰ Organization of American States. Inter-American Juridical Committee. [Privacy and Data Protection](#). OEA/Ser.Q CJI/doc. 474/15 rev.2. (86° Regular Session, Rio de Janeiro, Brazil). March 26, 2015. Principle 2.

³³¹ Organization of American States. Inter-American Juridical Committee. [Privacy and Data Protection](#). OEA/Ser.Q CJI/doc. 474/15 rev.2. (86° Regular Session, Rio de Janeiro, Brazil). March 26, 2015. Principle 2.

³³² Organization of American States. Inter-American Juridical Committee. [Privacy and Data Protection](#). OEA/Ser.Q CJI/doc. 474/15 rev.2. (86° Regular Session, Rio de Janeiro, Brazil). March 26, 2015. Principle 2.

³³³ Office of the High Commissioner for Human Rights. *General Comment No. 16, Right to Privacy (Article 17)*. U.N. Doc. HRI/GEN/1/Rev.7 at 162. April 8, 1988. Para 10. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

³³⁴ 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. 56.

³³⁵ Office of the High Commissioner for Human Rights. *General Comment No. 16, Right to Privacy (Article 17)*. U.N. Doc. HRI/GEN/1/Rev.7 at 162. April 8, 1988. Para 10. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

³³⁶ Office of the High Commissioner for Human Rights. *General Comment No. 16, Right to Privacy (Article 17)*. U.N. Doc. HRI/GEN/1/Rev.7 at 162. April 8, 1988. Para 10. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

Office of the High Commissioner for Human Rights. *General Comment No. 16, Right to Privacy (Article 17)*. U.N. Doc. HRI/GEN/1/Rev.7 at 162. April 8, 1988. Para 10. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

³³⁷ In this respect, see Asociación por los Derechos Civiles (ADC). *Si nos conocemos más, nos cuidamos mejor: Informe sobre políticas de biometría en la Argentina*. May 2015. Available at: <https://adcdigital.org.ar/wp-content/uploads/2016/01/Si-nos-conocemos-mas.pdf>; Hernández, Valentina. *La acumulación compulsiva de datos personales en América Latina*. Derechos Digitales. October 1, 2015. Available at: https://www.derechosdigitales.org/9376/la-acumulacion-compulsiva-de-datos-personales-en-america-latina/?utm_content=buffer6ac89&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer; Rodríguez, Katitzta. *Biometría en Argentina: la vigilancia masiva como política de estado*. Publicado por Fundación Vía Libre. Available at: <http://www.vialibre.org.ar/2012/01/10/biometria-en-argentina-la-vigilancia-masiva-como-politica-de-estado/>

³³⁸ Asociación por los Derechos Civiles (ADC). *Si nos conocemos más, nos cuidamos mejor: Informe sobre políticas de biometría en la Argentina*. May 2015. Available at: <https://adcdigital.org.ar/wp-content/uploads/2016/01/Si-nos-conocemos-mas.pdf>

identify individuals. States must observe strict standards of necessity and proportionality when determining which data to collect and the methods to be used for collecting biological and behavioral data; establish collection protocols that respect human rights; and guarantee the right to access to information regarding the policies and practices in force, the type of information collected, and the uses made of that information, also indicating the authority competent to collect and process that data. This process must be subject to both administrative and judicial oversight, and the State must investigate any human rights violation brought to its attention that is perpetrated in the context of these practices.³³⁹

b. Surveillance, Monitoring, and Collection

210. Internet surveillance can come in different forms and nuances, including documentation, monitoring of activities and communications, or mass or targeted collection of online communications or activity.³⁴⁰ Targeted surveillance is generally protected in criminal proceedings or other kinds of investigations, and involves collecting and/or monitoring the communications of an identified or identifiable individual, and IP address, a specific device, a specific account, etc.³⁴¹ Mass data and communications surveillance involves tapping and monitoring entire cables, networks, or equipment, or buying server or intermediary data from a third party, then accessing all the data collected that has not been encrypted.³⁴²

211. Technologies developed in recent decades have dramatically reduced both the human and the financial costs of surveillance, thus the use of surveillance has increased radically as well.³⁴³ Considering these dangers and others involved in technological developments, the inter-American system has held that “the State must increase its commitment to adapt the traditional forms of protecting the right to privacy to current times.”³⁴⁴

212. Internet surveillance in any of its forms or nuances constitutes interference in the private lives of people and, when conducted illegally, can also affect the rights to due process and a fair trial, freedom of expression, and access to information.³⁴⁵ It is recognized both regionally and universally that illegal or arbitrary surveillance and interception and collection of personal data affect not only the right to privacy and freedom of expression but can also run contrary to the precepts of a democratic society.³⁴⁶ The United Nations Human Rights Committee has warned of the negative effects that surveillance, interception of communications and collection and analysis of personal data can have—particularly when performed indiscriminately—on the enjoyment and exercise of human rights.³⁴⁷

³³⁹ Organization of American States. Inter-American Juridical Committee. [Privacy and Data Protection](#). OEA/Ser.Q CJI/doc. 474/15 rev.2. (86^o Regular Session, Rio de Janeiro, Brazil). March 26, 2015. Principle 2.

³⁴⁰ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013.

³⁴¹ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013.

³⁴² United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013.

³⁴³ United Nations. General Assembly. *The right to privacy in the digital age*. UN Doc. A/RES/68/167. December 18, 2013. Para. 2.

³⁴⁴ I/A Court H.R. *Case of Escher v. Brazil*. Judgment of July 6, 2009. Merits, Reparations and Costs. Series C No. 200. Para. 115.

³⁴⁵ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

³⁴⁶ United Nations. General Assembly. *The right to privacy in the digital age*. UN Doc. A/RES/68/167. 18 December 2013. Para. 4. Available at: <http://www.un.org/en/ga/68/resolutions.shtml>, and IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

³⁴⁷ International Covenant on Civil and Political Rights. *General Comment N° 31, The Nature of the General Obligation Imposed on States Parties to the Covenant*. UN Doc. CCPR/C/21/Rev.1/Add.13. March 29, 2004. Para. 10. Available at: http://www.un.org/ga/search/view_doc.asp?symbol=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Submit=Search&Lang=E

213. According to the international principles developed to date, this surveillance includes interception of communications regardless of whether the resulting information is analyzed or systemized.³⁴⁸ It includes both cases in which the State itself collects the communications and cases where States outsource that work— for example, by requiring servers and service providers to collect data and then demanding access to it, regardless of where it is stored, as a condition for the servers or providers to operate, or when they reserve the right to access data flows for local purposes such as pursuing criminals, oversight, etc.³⁴⁹ The standards developed in both the Inter-American and the European system aim at protecting not only the content of communications but also the data about the communications, or the metadata in the case of the Internet, as established above.³⁵⁰ Surveillance in all its forms constitutes interference in private life.

214. In the same vein, the systematic collection of public data —voluntarily submitted by the owner of such data, including as blog posts, social network activity, or any other public domain content—also constitutes interference in the private lives of people.³⁵¹ The fact that a person leaves public traces of his or her activities—unavoidable on the Internet—does not authorize the State to collect it systematically except in specific circumstances where such interference would be justified.

215. All network surveillance constitutes interference with individuals' privacy. However, not all interference is *per se* illegitimate, and in exceptional cases, different degrees of interference are justifiable depending on the circumstances.³⁵² Terrorism and the fight against organized crime are examples of instances where the State has an obligation to prevent and protect that constitutes a legitimate objective that justifies the exceptional and supervised use of surveillance technologies and mechanisms.³⁵³ However, "it is crucial to understand that given the dynamic character of the Internet and of communications technology in general, this type of surveillance may constitute a particularly invasive act that seriously affects the right to privacy and freedom of thought and expression."³⁵⁴ The United Nations General Assembly has highlighted that although public safety can justify the collection and systemization of certain information, states must guarantee that these measures respect human rights.³⁵⁵

³⁴⁸ Office of the High Commissioner for Human Rights. *General Comment No. 16, Right to Privacy (Article 17)*. U.N. Doc. HRI/GEN/1/Rev.7 at 162. April 8, 1988. Para 8. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11.

³⁴⁹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 74 and 75.

³⁵⁰ Organization of American States. Inter-American Juridical Committee. [Privacy and Data Protection](#). OEA/Ser.Q CJI/doc. 474/15 rev.2. (86th Regular Session, Rio de Janeiro, Brazil). March 26, 2015.

³⁵¹ ECHR. *Case Segerstedt-Wiberg v. Switzerland*. Judgment of June 6, 2006. Para. 71 and 72, and ECHR. *Case Rotaru v. Romania*. Judgment of May 4, 2000. Para. 43 and 44.

³⁵² United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013.

³⁵³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. 31 December, 2013. See also, United Nations. Human Rights Council. Special Rapporteur of the United Nations (UN) on the Promotion and Protection of the Right to Freedom of Opinion and Expression and Special Rapporteurship for Freedom of Expression of the Inter-American Commission of Human Rights (OAS). [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#). June 21, 2013, and IACHR. [Terrorism and Human Rights](#). OEA/Ser. L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para 371.

³⁵⁴ Special Rapporteur of the United Nations (UN) on the Promotion and Protection of the Right to Freedom of Opinion and Expression and Special Rapporteurship for Freedom of Expression of the Inter-American Commission of Human Rights (OAS). [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#). June 21, 2013; 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 Freedom of Expression and the Internet](#). June 1, 2011. Point 1 (a) and (b). See also, United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013.

³⁵⁵ United Nations. General Assembly. *The right to privacy in the digital age*. UN Doc. A/RES/68/167. December 18, 2013. Para. 4. Available at: <http://www.un.org/en/ga/68/resolutions.shtml>

216. In line with the European and universal systems, the Inter-American system established a three-prong test to verify the legitimacy of State or non-State interference with privacy, including electronic surveillance. Pursuant to this test, surveillance must be legal—both formally and materially—necessary, and proportional.³⁵⁶

217. The permissible instances of and conditions for surveillance must be established beforehand in a law and established explicitly, strictly, precisely and clearly, both substantively and procedurally.³⁵⁷ In view of the inherent risk of abuse of any surveillance system, these measures should be based on legislation that is particularly precise, clear and detailed, and States have to ensure a plural, democratic, and open consultation prior to the adoption of the applicable regulations. The objectives for which surveillance or the interception of communications would be permissible must be explicitly established in the law, and in all cases the laws must establish the need for a prior court order.³⁵⁸ The nature of the measures, as well as their scope and duration, must be regulated, establishing the facts that could lead to them and the bodies responsible for authorizing, implementing and monitoring them.³⁵⁹

218. The laws and policies governing the nature, scope, and implementation of interception and surveillance mechanisms and when they are in force must be public, and the State is required to apply the principle of maximum disclosure developed in the framework of right to access information.³⁶⁰ The maximum disclosure requirement covers both policies and practices on electronic surveillance, including the acquisition, development, or updating of systems available for it; the protocols for its use; the conditions and guidelines for its authorization; and which authorities are in charge of its implementation, authorization, and supervision.³⁶¹ The Inter-American Commission notes with concern that some States in the region have acquired new surveillance technologies, yet the processes for its acquisition, use, availability, and monitoring lack sufficient regulation or dissemination.³⁶² In its Report on Terrorism and Human Rights, the Inter-American Commission highlighted that in complex contexts such as the fight against terrorism, the need for public information is even greater in order prevent abuses. It emphasized that States must demonstrate need for any measure that keeps certain information secret to protect national security and public order.³⁶³ Citing the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the Commission noted that measures to keep such information secret must be justified by a legitimate and

³⁵⁶ I/A Court H.R. *Case of Escher v. Brazil*. Judgment of July 6, 2009. Merits, Reparations and Costs. Series C No. 200.

³⁵⁷ I/A Court H.R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Merits, Reparations and Costs. Series C No. 177. Para. 63; I/A Court H.R. *Case of Usón-Ramírez v. Venezuela*. Judgment of November 20, 2009. Preliminary Objections, Merits, Reparations and Costs. Series C No. 207. Para. 55; Inter-American Court of Human Rights. *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. Serie A No. 5. Para. 39-40; I/A Court H.R. *Case of Palamara Iribarne v. Chile*. Judgment of 22 November, 2005. Merits, Reparations and Costs. Series C No. 135. Para. 79; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Preliminary Objections, Merits, Reparations and Costs. Series C No. 107. Para. 120; I/A Court H.R. *Case Tristán Donoso v. Panamá*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193. Para. 117; IACHR. *Annual Report 1994*. Chapter V (Report on the Compatibility of “Desacato” (Contempt) Laws with the American Convention on Human Rights). Title III. OEA/Ser. L/V/II.88 doc. 9 rev. February 17, 1995. Available at: <https://www.cidh.oas.org/annualrep/94eng/TOC.htm>

³⁵⁸ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013. Para. 81.

³⁵⁹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 74 and 75.

³⁶⁰ [The Global Principles on National Security and the Right to Information \(Tshwane Principles\)](#), published by Open Society Foundations. June 12, 2013.

³⁶¹ [The Global Principles on National Security and the Right to Information \(Tshwane Principles\)](#), published by Open Society Foundations. June 12, 2013.

³⁶² 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](#).

³⁶³ IACHR. [Terrorism and Human Rights](#). OEA/Ser. L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 327.

demonstrable aim³⁶⁴ and the information should be public unless the damage to some legitimate interest is substantial.³⁶⁵

219. Similarly, States must promote and disseminate knowledge and awareness regarding the policies imposed on Internet service providers and other intermediaries, whether established by law or by administrative regulation.

220. Limitations on rights that are established by law must pursue a pressing need that is compatible with the American Convention.³⁶⁶ Like other international treaties, the American Convention provides for specific instances where rights may be limited, including for reasons of national security, public morals, and the rights of others. The UN Special Rapporteur for Freedom of Expression has argued that given the broadness and ambiguity of these terms, laws limiting human rights for reasons of national security, for example, should clearly and specifically describe the criteria to be applied for determining the cases in which such limitations are legitimate and be careful to accurately define the concept.³⁶⁷ The concept of national security cannot be interpreted in any way and must be defined from a democratic perspective.³⁶⁸

221. Measures to limit the right to privacy online, surveillance in particular, must be necessary in a democratic society in order to be legitimate.³⁶⁹ In this regard, the inter-American system has held that it is not sufficient for the measures to be useful, reasonable, or convenient. Rather, they must meet a clear and pressing need in order to achieve the legitimate objectives being pursued.³⁷⁰

222. Finally, the proportionality of the measure will depend on balancing the pressing and necessary aim being pursued against the impact of the proposed limitations to the individual right. For the Internet, this element takes on new dimensions. A proportionality analysis must take into account the characteristics of its architecture to assess the impact that a surveillance measure may have on the exercise of human rights on the web.³⁷¹ Mass surveillance of communications is under no circumstances proportional.

223. The Joint Declaration on freedom of expression and responses to conflict situations emphasizes that “conflict situations should not be used to justify an increase in surveillance by State actors given that surveillance represents an invasion of privacy and a restriction on freedom of expression. In accordance with the three-part test for restrictions on freedom of expression and, in particular, the necessity part of that test, surveillance should be conducted only on a limited and targeted basis and in a manner which represents an appropriate balance between law enforcement and security needs, on the one hand, and the rights to freedom of expression and privacy, on the other. Untargeted or “mass” surveillance is inherently disproportionate and

³⁶⁴ [The Johannesburg Principles on National Security, Freedom of Expression and Access to Information](#), published by Article 19. London, United Kingdom, 1996. Principles 1 and 2.

³⁶⁵ [The Johannesburg Principles on National Security, Freedom of Expression and Access to Information](#), published by Article 19. London, United Kingdom, 1996. Principle 4.

³⁶⁶ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 76 to 78.

³⁶⁷ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013.

³⁶⁸ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 76 and following.

³⁶⁹ Necessary and Proportionate Coalition. [Necessary & Proportionate, International Principles on the Application of Human Rights to Communications Surveillance](#). May, 2014.

³⁷⁰ Inter-American Court of Human Rights. *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. 46; IACHR. [Annual Report 2008. 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.134 Doc. 5 rev. 1. February 25, 2009. Para. 86.

³⁷¹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 160 and 161.

is a violation of the rights to privacy and freedom of expression.”³⁷² Similarly, “requirements to retain or practices of retaining personal data on an indiscriminate basis for law enforcement or security purposes are not legitimate. Instead, personal data should be retained for law enforcement or security purposes only on a limited and targeted basis and in a manner which represents an appropriate balance between law enforcement and security needs and the rights to freedom of expression and privacy.”³⁷³

224. Likewise, the surveillance measures must be ordered by a competent, independent, and impartial judge or court, and the order itself must be properly reasoned in order to be legitimate.³⁷⁴ The Inter-American Court has held that the procedures requiring decisions be made without a hearing that includes the participation of the affected party, the motivation and justification must reflect the weighing of all legal requirements justifying the intervention.³⁷⁵ The law must clearly establish which authority is empowered to demand, implement, and oversee strict compliance with the judicial order authorizing the interference.³⁷⁶

225. Transparency is also essential in a democratic society, and States must publish statistics on the number of requests made, the number approved, the number rejected, the type of investigations for which the requests are made, the duration of the measures, a breakdown of requests by provider, etc.³⁷⁷

226. Transparency of Internet intermediaries also plays a particularly important role. States often depend on the consent and/or cooperation of intermediaries, and there are numerous initiatives aimed at forcing intermediaries to perform a certain amount of record-keeping, control, or monitoring of activity and of their users as a condition to operate. The Joint Declaration on surveillance programs and their impact on freedom of expression holds that in order to monitor the legality of the various instances of surveillance, States should allow and even encourage intermediaries to disseminate information on the processes they implement, indicating at least in aggregate the number and scope of requests from State agencies received and granted.³⁷⁸

c. Encryption and Anonymity

227. Anonymity is a means of protecting privacy, and its connection to freedom of expression has been particularly noteworthy because it facilitates participation in the public discourse without the need to identify oneself, thereby preventing potential retaliation for an opinion.³⁷⁹ Based on this, the Office of the

³⁷² 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. [Joint Declaration on Freedom of Expression and Responses to Conflict Situations](#). May 4, 2015. Point 8 a).

³⁷³ 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. [Joint Declaration on Freedom of Expression and Responses to Conflict Situations](#). May 4, 2015. Point 8 b).

³⁷⁴ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 165.

³⁷⁵ I/A Court H.R. *Case of Escher v. Brazil*. Judgment of July 6, 2009. Merits, Reparations and Costs. Series C No. 200. Para. 131.

³⁷⁶ I/A Court H.R. *Case of Escher v. Brazil*. Judgment of July 6, 2009. Merits, Reparations and Costs. Series C No. 200. Para. 131.

³⁷⁷ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 81 and 82.

³⁷⁸ United Nations. Human Rights Council. Special Rapporteur of the United Nations (UN) on the Promotion and Protection of the Right to Freedom of Opinion and Expression and Special Rapporteurship for Freedom of Expression of the Inter-American Commission of Human Rights (OAS). [Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression](#). June 21, 2013. Para. 169.

³⁷⁹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 130 to 134.

Special Rapporteur has held that anonymous spaces that are free of observation and where identities and activities are not documented must be guaranteed.³⁸⁰

228. States have an obligation to respect anonymous discourse as an exercise of privacy and freedom of expression and may only exceptionally require authentication or proof of identity from the person expressing it, applying a standard of proportionality.³⁸¹ To commit to the protection of human rights online, the private sector should also protect anonymous speech by not adding requirements to their platforms that the law does not establish.

229. Without prejudice to this, States can take measures to fully identify a person during a judicial investigation, as long as doing so is within the framework of proportionality.³⁸² For example, anonymity can be lifted when the speech is not protected by the right to freedom of expression—such as propaganda calling for war, hate speech that incites violence, incitements to genocide, child pornography—³⁸³ or subject to subsequent liability in a way that is in keeping with the American Convention.

230. For its part, encryption is another remedy for protecting informational privacy in the digital age, as well as the inviolability of communications.³⁸⁴ Encryption is mathematical process of converting messages, information, or data into a form unreadable by anyone except the intended recipient³⁸⁵ with encryption of data in transit (i.e. - e-mails, text messages, etc.) being distinct from encryption of stored data (remote storage systems, the cloud, etc.).³⁸⁶

231. Measures to restrict encryption reduce people's ability to protect themselves from illegal invasions of their privacy.³⁸⁷ The measures include limitations or even legal bans on private encryption, automatic encryption provided by certain intermediaries, or "default" privacy, as well as the imposition of centralized key registries or the creation of back doors to enable collection of communication even from encrypted devices. These measures should only be adopted by States exceptionally and when legal, necessary, and proportional.

d. "Big Data"

232. Ease of collection and data availability on the Internet create development opportunities for both States and private parties. "Big data" is a term that refers to the immense quantity of data generated on the web that can be captured, stored, processed, analyzed, and systemized to find trends, profiles, etc.³⁸⁸ Big data presents both opportunities and challenges when it comes to protecting human rights. Analysis of the data

³⁸⁰ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 130 to 134.

³⁸¹ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 134.

³⁸² IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 135.

³⁸³ IACHR. Annual Report 2013. [Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013](#) Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 135.

³⁸⁴ United Nations. Human Rights Council. [Report of the Office of the United Nations High Commissioner for Human Rights: The right to privacy in the digital age](#). UN Doc. A/HRC/27/37. June 30, 2014.

³⁸⁵ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. UN Doc. A/HRC/29/32. May 22, 2015. Para. 6.

³⁸⁶ United Nations. Human Rights Council. [Report of the Office of the United Nations High Commissioner for Human Rights: The right to privacy in the digital age](#). UN Doc. A/HRC/27/37. June 30, 2014.

³⁸⁷ 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.

³⁸⁸ International Telecommunications Union. *Big Data – Cloud computing based requirements and capabilities*, ITU-T Series Y: Global information infrastructure, internet protocol aspects and next-generation networks. Recommendation ITU-T Y.3600. November, 2015. Page 1.

generated and currently available on the Internet could enable evaluation of social needs and trends that could potentially allow for the adoption of more and better public policies for guaranteeing the human rights of persons. For example, the United Nations has initiatives for researching and promoting the use of big data to produce and analyze social data.³⁸⁹ Likewise, large private companies are currently committed to developing technologies that will enable them to analyze the data made available by the existence of the Internet to evaluate market trends, preferences, profiles, etc. that may make it possible for them to provide society with more and better products and services.³⁹⁰

233. However, the general collection, analysis, and use of the information generated and made available by the Internet also presents important challenges for the protection of personal data. Currently there are regulatory issues surrounding ownership and transfer of data, but issues also exist when it comes to the technologies available for analysis.³⁹¹ Many of the technologies that are being used enable not only objective data and trend analysis but also inevitably enable identification of the users that make up the critical mass analyzed.³⁹² States must ensure that the technology for making use of big data that is employed by both the public and private spheres guarantees due protection of human rights on the Internet.

e. The Internet of Things

234. It is also important to mention the implications of the development of the so-called Internet of Things and the new threats to privacy that could pose. Currently services available on the Internet are characterized by human communication using the web as a platform. But as chips become embedded in all goods – even everyday items – and where each object has a unique individual identifier, we are reaching a point when, in the near future, objects will be able to communicate with each other, without human intervention. The Internet will then become a physical experience of objects - an Internet of Things (IoT). Humans will be surrounded by ubiquitous objects, gathering information and communicating with service providers and would be at the center of a continuous information network connecting the objects in their lives.³⁹³

235. The Office of the Special Rapporteur recognizes the fast moving technological changes that characterizes this era, in which the implications of a technology is rarely understood before it becomes widespread and adopted. It is the responsibility of states, on behalf of their citizens to understand the public policy implications of new technologies and ensure that they operate in the public interest with adequate consumer and privacy protections.

³⁸⁹ For example, the Global Task Force on Macrodata in Official Statistics, created by the Statistical Commission in its Forty-fifth session March 4-7, 2014. See also, United Nations. Report of the Secretary-General. [Big data and modernization of statistical systems](#). UN Doc. E/CN.3/2014/11. December 20, 2013.

³⁹⁰ International Telecommunications Union. *Big Data: Big today, normal tomorrow*. ITU-T Technology Watch Report. November, 2013. Available at : http://www.itu.int/dms_pub/itu-t/oth/23/01/T23010000220001PDFE.pdf

³⁹¹ United Nations. Report of the Secretary-General. [Big data and modernization of statistical systems](#). UN Doc. E/CN.3/2014/11. December 20, 2013. Para. 34 and 35.

³⁹² United Nations. General Assembly. *The right to privacy in the digital age*. UN Doc. A/RES/69/166. February 10, 2015. Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A%2FRES%2F69%2F166&Submit=Search&Lang=E.

³⁹³ The Internet Society. *The Internet of Things (IoT): An Overview Understanding the Issues and Challenges of a More Connected World*. October, 2015. Available at: <https://www.internetsociety.org/sites/default/files/ISOC-IoT-Overview-20151221-en.pdf>

CHAPTER IV
SILENCED ZONES:
Highly Dangerous Areas for the Exercise of Freedom of Expression

A. INTRODUCTION

1. The murder of journalists and media workers for reasons related to their work is the most serious violation of the right to freedom of expression. Acts of violence committed against journalists and media workers not only seriously violates their right to life but also aims to radically suppress their right to express themselves freely and create a self-censorship effect among other members of the media. Acts of violence committed because of the work that journalists do also seriously affects the social and collective dimension of the right to freedom of expression, given that they violate the right of societies and their citizens to seek and receive information and ideas of all kinds.¹

2. Although the murder of journalists constitutes the most extreme and condemnable form of censorship and violence against the press, every year the Annual Report of the Office of the Special Rapporteur documents hundreds episodes representing other forms of violence against journalists, such as disappearances, threats, and attacks on journalists and media outlets from different places in the region.

3. As the Inter-American Court of Human Rights (Court or Inter-American Court) has established, “journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment. Those acts constitute serious obstacles to the full exercise of freedom of expression.”²

4. Throughout its history, the Office of the Special Rapporteur has also paid special attention to the lack of timely and complete investigation in most of the cases involving different forms of violence against journalists, including murders. In the American hemisphere, this impunity has been the rule rather than the exception and the region has an alarming history of impunity with regard to crimes against journalists and Medias.³ Indeed, in the most recent reports on the situation of human rights in different countries of the region, the IACHR and the Office of the Special Rapporteur have documented rates of impunity for crimes against journalists near or over 90 per cent in countries like Mexico,⁴ Guatemala,⁵ and Honduras.⁶

5. When such crimes go unpunished, it encourages the repetition of similar violent acts and can result in the silencing and self-censorship of journalists.⁷ Impunity creates a strong chilling effect on the exercise of freedom of expression and the negative consequences on democracy are particularly serious, given that they affect the free, open, and dynamic exchange of ideas and information. Specifically, the Inter-American Court has reiterated that impunity, understood as the “total lack of investigation, prosecution, capture, trial and conviction,”⁸ favors the chronic repetition of human rights violations.⁹

¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists in the Region for Reasons that May Be Related to their Work in Journalism \(1995-2005 Period\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 1 and 9.

² 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. 209.

³ I/A Court H.R.. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211.

⁴ IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 411.

⁵ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 49.

⁶ IACHR. [Situation of Human Rights in Honduras](#). OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015. Para. 207.

⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists in the Region for Reasons that May Be Related to their Work in Journalism \(1995-2005 Period\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 129.

⁸ I/A Court H.R.. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37. Para. 173.

6. Pursuant to its mandate, the Office of the Special Rapporteur continually monitors that security situation of journalists. In that sense, this report takes up the standards established in the last report of this office on violence against journalists and media workers, adopted by the IACHR in 2013. Previously, in the year 2008 the office published the report study special about the murder of journalists¹⁰ in which already had registered a trend that has not changed since then: While journalism has become essential in the fight against corruption and abuse of authority, the evidence gathered indicates that the problem of violence against journalists in the Americas has intensified in recent years, in many cases in connection with the presence of organized crime in vast areas of the hemisphere and the cooptation or weakness of the State apparatus in those areas.¹¹

7. To this we can add the violence unleashed by some state actors in retaliation for the disclosure of information concerning government corruption. The information revealed by the press in the hemisphere in most cases is later backed up by judicial investigations, which seems to indicate that corruption and abuse of authority has increased in the region. Censorship has simultaneously increased through extreme violence aimed at journalists and harassment through civil or criminal litigation.

8. According to the figures reported by the Office of the Special Rapporteur, between January 1, 2010 and November 1, 2016, at least 162 journalists and media workers were murdered for reasons that may be related to the practice of their profession. In the past three years, the murder rate for journalists has remained high. In 2014 there were 25 reported murders allegedly linked to the exercise of freedom of expression; in 2015 there were 27, and in 2016 another 33 murders were documented. During that period dozens of journalists were reportedly displaced from their workplaces and hundreds received threats or were harassed or attacked for condemning corruption or reporting on criminal organizations, other powerful forces, and government corruption. Female journalists have reported being the victims of sexual violence, harassment, and intimidation in response to their professional activities.

9. The Office of the Special Rapporteur has also observed the concentration of violence against journalists in areas far from the capitals, particularly transit and/or border areas. In fact, during the past decade, most of the murders that have taken place in the region—as well as other types of attacks on journalists like disappearances, kidnappings, threats, intimidation—have occurred in places far away from the large urban centers. Between 2011 and 2015, the Office of the Special Rapporteur documented the murder of 131 journalists, 124 of which occurred in areas far from large urban centers, in countries like Colombia, Guatemala, Mexico, Honduras, Paraguay, and Brazil. It has also verified that those most affected were those journalists and media workers who covered local news about corruption, drug trafficking, organized crime, public safety, and related matters. In those regions where criminal organizations have a strong presence, journalists are caught in the crossfire and often—in order to safeguard their lives or physical safety, or even to keep working in their chosen profession—must align themselves with the interests of a given power, which means abstaining from reporting and remaining silent.¹²

10. The UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression stated that, “Local journalists continue to face daily challenges in situations that have not reached the threshold of an armed conflict, but may be characterized by violence, lawlessness and/or repression. These range from restrictions to movement, including deportations and denial of access into a country or a

⁹ I/A Court H.R.. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211.

¹⁰ 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.

¹¹ 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. 12

¹² IACHR. [Situation of Human Rights in Honduras](#). OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015. Para. 183; IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015.

particular area; arbitrary arrests and detention, particularly during public crises or demonstrations; torture and other cruel, inhuman or degrading treatment or punishment, including sexual violence against female journalists; confiscation of and damages to equipment, information theft, illegal surveillance and office break-ins; intimidation, including summons to police stations for questioning, harassment of family members, death threats, stigmatization and smear campaigns to discredit journalists; abductions or enforced disappearance to killings.”¹³

11. This scenario presents a number of challenges for the protection of journalists and media workers in the hemisphere, in particular worrisome scenario of violence against journalists and media workers laboring in areas or regions where there is significant organized crime, weak public institutions, collusion between criminals and local governments, and unstable employment conditions for journalists.

B. THE PHENOMENON OF SILENCED ZONES

12. In this report, the Office of the Special Rapporteur would like to call special attention to the phenomenon seen in different regions of the Americas where communities are being misinformed and silenced as a result of the violence unleashed by organized crime groups in furtherance of their unlawful aims, in some cases in complicity with local or regional authorities infiltrated by these groups. This type of violence particularly affects journalists and media workers, who in the past decade have been the direct victims of murder, kidnappings, and assaults in these complex scenarios of violence. The methods of the so-called “war on drug trafficking” and of armed conflicts—the latter of which are becoming less common in the region—are part of the main threats to the lives and safety of journalists.

13. In its Report on Violence against Journalists and Media Workers, the Office of the Special Rapporteur addressed the factors involved in violence against journalists and media workers and the State’s response, indicating that:

Violence against journalists in the region is the result of a complex series of causes. (...)Nevertheless, in recent years, the number and size of organized criminal groups has increased, including drug trafficking cartels and other organized criminal groups. These currently represent the main threat to the lives and personal integrity of journalists. This situation presents a series of challenges for the protection of journalists and media workers in the hemisphere. In some regions, State institutions are too weak to respond effectively to threats from organized crime. The weakness of State institutions leaves journalists without effective protection from attacks perpetrated by organized crime, resulting in self-censorship as an immediate consequence.¹⁴

14. The objective of those who attack the press is to prevent journalists or press workers from doing their work and keeping information contrary to their interests from reaching society. A recent report of Colombia’s National Center for Historical Memory, entitled “Words and Silence,” concluded that in the context of the Colombian armed conflict, murdering journalists was a clearly defined war strategy that involved the differentiated participation of multiple actors, and had objectives that affected the victims, their relatives, media outlets, and the community. The murders were meant to stifle, silence, intimidate, pressure, and teach a lesson to journalists—all in the name of securing a future in which society would be deprived of information contradictory to their war objectives.¹⁵

¹³ United Nations. General Assembly. Report of the United Nations 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. 48. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/137/85/PDF/G1213785.pdf?OpenElement>

¹⁴ 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. 20.

¹⁵ Centro Nacional de Memoria Histórica. La palabra y el silencio. La violencia contra periodistas en Colombia (1977 – 2015), Bogotá, CNMH, 2015. Page 26. Available at: <http://centrodememoriahistorica.gov.co/micrositios/periodistas/informe.html>

15. Journalism, in the context of a democratic society, is one of the most important manifestations of freedom of expression and information. Journalistic work and the activities of the press are essential to functioning democracies, because journalists and the media keep society informed about current events and their various interpretations, a necessary condition for the public discourse to be robust, informed, and vigorous.¹⁶ It is also clear that a free, independent, and critical press is a core element for the enjoyment of all the other freedoms that make up the democratic system.¹⁷

16. The inter-American case law has been consistent in reaffirming that, as a cornerstone of democratic society, freedom of expression is an essential condition for society to be sufficiently informed;¹⁸ that the maximum possible flow of information is a requirement of the common good, and that the full enjoyment of freedom of information is what guarantees that maximum flow;¹⁹ in addition, the free circulation of ideas and news is inconceivable without a plurality of sources of information and respect for the media.²⁰

17. Consequently, journalists and media workers can be vulnerable because of the role they play in society, as they are the ones who keep society informed about matters of public interest. “Obstacles created in order to hinder access to information of public interest may not only discourage journalists and other media actors from fulfilling their public watchdog role, but may also have negative effects on their safety and security. Attacks against journalists and other media actors constitute particularly serious violations of human rights because they target not only individuals, but deprive others of their right to receive information, thus restricting public debate, which is at the very heart of pluralist democracy,”²¹ underscored the Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted in 2014.

18. As mentioned in the introduction to this report, the Office of the Special Rapporteur continues to document high numbers of attacks on the press, year after year, in spite of the efforts made by many states in the hemisphere to curb the situation of violence affecting journalists and media workers. These attacks range from murders—the most brutal—to threats, assaults, accusations, and other forms of harassment. The Office of the Special Rapporteur has observed with concern the increase in localized violence in certain areas of the countries plagued by the presence and through traffic of criminal activities, often in rural or border areas. This violence has resulted in a heightened chilling effect on journalism, increased self-censorship, and the silencing of journalists.

19. This special report documents a number of representative cases that illustrate how organized crime, as well as state agents involved in corrupt acts, have developed strategies to silence the press in different regions of the hemisphere in order to impose information that is favorable to their interests and to silence information that reveals their methods of territorial and institutional control. This report also intends to deepen the dialogue with state institutions, civil society, and the media that face this situation through recommendations that enable the States to address this challenge through effective and focused policies of prevention, protection, and the criminal prosecution of perpetrators.

¹⁶ 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. 117 - 118.

¹⁷ IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda. México. April 13, 1999, Para. 42; IACHR. Report No. 130/99, Case 11.740. Víctor Manuel Oropeza. México. November 19, 1999. Para. 46.

¹⁸ 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. 68.

¹⁹ 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. 77.

²⁰ 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. 78.

²¹ Council of Europe. Committee of Ministers. Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted on 30 April 2014. Available at: <http://www.coe.int/en/web/media-freedom/committee-of-ministers>

20. Indeed, in areas subject to territorial dispute by unlawful armed groups, those groups see the press as an obstacle or as a tool for accomplishing their objectives.²² As the IACHR stated in its report on citizen security and human rights, “corruption and impunity have enabled criminal organizations to develop and establish parallel power structures.”²³

21. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur discussed in depth the factors that give rise to conditions conducive to violence against journalists, and concluded that, “the majority of murders, disappearances and kidnappings of journalists are concentrated in states that suffer from a strong presence of organized crime [...], in these regions organized crime represents the greatest threat to the life and physical integrity of journalists, especially those who report on local issues of corruption, drug trafficking, organized crime, public security and related matters.”²⁴ At the same time, the report noted that in some regions of Mexico the violence and intimidation against journalists is reportedly being perpetrated by armed groups that apparently maintain ties with political factions. The Office of the Special Rapporteur also reported on numerous complaints of persecution and acts of violence by police officers and members of the armed forces against journalists who try to cover issues related to public safety.²⁵

22. There are areas of Mexico where journalists are now subject to intense intimidation by criminal groups interested in suppressing certain information in the media and disseminating that which serves their criminal interests. In this particularly risky scenario, it is extremely difficult for journalists to investigate and publish articles on topics like organized crime, corruption, and public safety.²⁶ In the same regard, during the IACHR’s on-site visit to Mexico in September 2015, the Office of the Special Rapporteur was able to confirm that in those regions where organized crime has a strong presence, journalists are caught in the crossfire and often—in order to safeguard their interests—must align themselves with the interests of a given power, which means abstaining from reporting and remaining silent.

23. The report published by the National Center for Historical Memory of Colombia recognizes that the proximity of journalists to communities plagued with violence is a constant variable in crimes against freedom of expression. They are the ones who are close to the community’s problems, building a pertinent memory of what happens, and they shine a light on the problems that some would like to hide.²⁷ The same report notes how drug traffickers in Colombia treated the press brutally because of the threat it posed to their interests, as well as its potential for disseminating favorable information. The crime organizations behind the drug trafficking viewed the press as an enemy to be annihilated, but at the same time saw it as a powerful force able to publicize their criminal exploits.²⁸

24. In this same regard, the IACHR and its Office of the Special Rapporteur cautioned in the Report on the Situation of Human Rights in Guatemala that, “Given the difficulties surrounding their work, some journalists

²² IACHR. Office of the Special Rapporteur for 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. 90.

²³ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 33.

²⁴ IACHR. [Annual Report 2010. 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. 538.

²⁵ 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.18.

²⁶ 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. 23.

²⁷ Centro Nacional de Memoria Histórica. La palabra y el silencio. La violencia contra periodistas en Colombia(1977–2015). Bogotá, CNMH, 2015. Page30. Available at: <http://centrodememoriahistorica.gov.co/micrositios/periodistas/informe.html>

²⁸ Centro Nacional de Memoria Histórica. La palabra y el silencio. La violencia contra periodistas en Colombia(1977–2015). Bogotá, CNMH, 2015. Page5. Available at: <http://centrodememoriahistorica.gov.co/micrositios/periodistas/informe.html>

are said to have opted in the past year for self-censorship to protect themselves from attacks and threats.”²⁹ The Commission cited the collusion between government institutions and organized crime, especially in the country’s rural areas. In this scenario, the lack of an appropriate State response, the impunity, and the corruption have allowed the violence perpetrated by those groups to continue. The victims of human rights violations, as well as their relatives, human rights defenders, legal practitioners, and journalists are exposed to the violence that these criminal groups represent.³⁰ The IACHR also observed that, “Violence transects Guatemala, affecting the whole of society and all groups. Aside from the context of violence and insecurity, there is the situation of those whose role in society or particular vulnerability due to historic discrimination and exclusion leads them to be disproportionately affected. They particularly include individuals who defend human rights in Guatemala, among them, indigenous authorities and leaders, environmental activists, trade union leaders, [judges and lawyers], (...) and journalists (...)”³¹

25. In its report on the Situation of Human Rights in Honduras, the IACHR observed that, “Organized crime - with which public officials and agents of the State security forces have been found to be involved - is perceived as the greatest threat to the life and physical integrity of those journalists in Honduras covering local news about corruption, land claims, drug trafficking, organized crime and public safety. Similarly, the information gathered during the on-site visit helped to confirm that there is a high risk to life and integrity of journalists exercising critical journalism and who are critical of governments following the 2009 coup d’état. This violence particularly affects journalists working in departments within the country and in rural areas, including, among others, the departments of La Ceiba, Yoro and Olancho.”³²

26. Commissioner Iván Velázquez of the UN International Commission against Impunity in Guatemala (CICIG) described the impact of the criminal organizations that operate in different territories of the region’s countries and explained how in some cases they manage to co-opt state institutions. “In general (these criminal organizations that operate in the region), are very similar. In Colombia they probably reached a higher level of development—that is, they were able to co-opt the State more extensively, especially in many outlying areas. Criminal organizations involved in drug trafficking and paramilitary activities, or in other sectors with the guerrillas, gained a firm hold on local governments and, with the cooperation of those local governments, rose through the ranks of the State structure. In Guatemala, I think that (...) the co-optation of the State is underway. There are regions, particularly in the border departments of Guatemala, where municipal control is being exercised in this way by criminal organizations linked mainly to drug trafficking. With their economic influence and power of intimidation, they render any State authority ineffective, and they impose the law in those territories.”³³

27. The Office of the Special Rapporteur has observed that there are certain common characteristics or factors present in these so-called silenced areas that, in spite of the particularities of each situation, make them very similar when there is a context of attacks on journalists and media outlets. The Office of the Special Rapporteur has been able to identify the presence of the following factors: a) the existence of criminal organizations that operate outside the law and seek to control an entire region; b) the cooperation, collusion, or omission of broad sectors of government at different levels; c) the lack of an effective response from other state institutions (Executive, Judicial, and Prosecutors’ Offices) called upon to meet the primary obligations of preventing, protecting, investigating, and punishing threats to life and safety and to guarantee the exercise of freedom of expression; d) the lack of support and training for local journalists, which makes them more vulnerable to these types of attacks, whether because of the way in which they approach the news phenomenon or because they are involved with authorities or even with criminal organizations; e) this

²⁹ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 289.

³⁰ IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 41-46.

³¹ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 189.

³² IACHR. [Situation of Human Rights in Honduras](#). OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015. Para. 183.

³³ Prensa Libre. August 2, 2015. [“Es el miedo a la verdad lo que se opone a organizaciones como CICIG”](#).

complex set of factors inhibits journalists in the affected areas from conducting their work, limits freedom of expression, and produces a chilling effect on the free flow of information; it gives rise to self-censorship and reinforces the tendency to practice a type of journalism that avoids reporting on matters of security, corruption, or influence peddling, and to develop a kind of journalism that is aligned with power; f) the success obtained by the criminal organizations in silencing the media and opinion shapers over long periods of time, added to the impunity obtained by the masterminds and direct perpetrators of this type of violence, creates incentives to perpetuate violence against journalists.

28. In this report, the concept of “silenced zones” is used to describe the violence carried out against the physical or psychological integrity of journalists or media workers by criminal organizations, with or without the acquiescence of the state; however, we cannot ignore the fact that other means of institutional order meant to censor or hinder the work of the press persist in the region. In this regard, violence against journalists can occur through the use of the criminal law – the State’s main coercive power – to punish, repress, and inhibit speech critical of the actions of state authorities or about matters of public interest. In particular, the threat or imposition of a prison sentence based on criminal defamation [*desacato*] laws can have a chilling effect not only on journalists but on all of society. In fact, fostering a democratic and activist citizenry entails designing institutions that enable rather than hinder deliberation on all matters and phenomena of public relevance.³⁴

29. The Office of the Special Rapporteur has also observed through its monitoring activities that other problematic issues or indirect means contributing to self-censorship persist in many regions, such as the lack of objective criteria for the allocation of government advertising, the concentration of media ownership, the refusal of government authorities to disclose information in the public interest, among others. With respect to journalism that deals with local information, government advertising tends to heavily influence the sustainability of media outlets and independent journalists. The lack of effective access to public information also leaves journalists in a more vulnerable position, because they have to seek information from sources involved in violent activities, and the different versions of events that the press offers with regard to a single incident can trigger the retaliation of criminal groups in contexts of violence. In recent investigations, civil society organizations have exposed the way in which these other types of violence affect the information received in isolated communities.³⁵

30. In its report on Violence against Journalists and Media Workers, the Office of the Special Rapporteur indicated that a comprehensive State policy to address violence against journalists has three elements: prevention, protection, and the investigation, prosecution, and punishment of the perpetrators of crimes against the press. The prevention of this type of violence assumes the state’s positive obligation to promote an environment of free, independent, and diverse communications, which is a clear means of addressing the issue of misinformation.

31. With respect to the prosecution and punishment of crimes against journalists, the issue of impunity is a growing concern for the human rights protection bodies. Is crucial for the States to meet their obligation to investigate in order to identify the masterminds and direct perpetrators of those crimes, to serve justice in the specific case, prevent its repetition, and avoid the chilling effect that violence has on journalists. For its part, the IACHR has stated that,

[...] The [abdication] by a State of its duty to fully investigate the killing of a journalist is especially serious because of its impact on society. Likewise, this sort of crime has a chilling effect on other journalists, but also on every citizen, as it generates a fear of denouncing abuses, harassment and all kinds of illegal actions.³⁶

³⁴ 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. 8.

³⁵ E.g., Fundación para la Libertad de Expresión (FLIP). *Cartografías de la Información*. 2016. Available at: <http://flip.org.co/periodismo-colombia/>; IFEX-SPP Coalition (IFEXSPPC). Undated. [Report for Universal Periodic Review Paraguay 2016](#).

³⁶ IACHR. [Annual Report 1999](#). Report 130/99. Case 11.740. Víctor Manuel Oropeza, Mexico. November 19, 1999. OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000. Para. 58.

32. These positive obligations established for the states under international human rights law with respect to prevention, protection, and the attainment of justice as it pertains to the safety of journalists will be addressed in depth later in this report, in relation to the phenomenon of zones that have been silenced by organized criminal violence.

33. For purposes of illustrating how the aforementioned patterns are presented in each context, three representative cases that have taken place in different regions of the hemisphere are examined below: The case of Tamaulipas, Mexico, is one of the paradigmatic places with respect to the chilling effect and self-censorship resulting from attacks on the press by organized crime. The case of Mazatenango, a town in the Department of Suchitepéquez, Guatemala, is where two journalists were murdered in 2015 in a single act of violence, reportedly in relation to cases of municipal corruption. The case created a strong chilling effect on the profession of journalism. Finally, the chapter discusses the case of some cities in the borders of Paraguay—Brazil border that illustrates the vulnerability of journalists who investigate acts of corruption and drug trafficking in areas where the presence of criminal organizations is combined with the collusion of local authorities.

34. The Office of the Special Rapporteur has recognized that some states of the region have enhanced guarantees for the practice of journalism in recent decades, including the incorporation of legal measures, the decriminalization of certain types of speech in the public interest and the creation of specialized protection programs for journalists; the strengthening of the independence and technical capacity of the judiciary; and the creation of specialized investigative bodies and judges.

35. In this sense the Office of the Special Rapporteur is especially grateful for the information and responses offered by the States mentioned in this report to the different requests made by this Office. The information presented in this report is the result of the ongoing monitoring work that the Office of the Special Rapporteur conducts through different mechanisms established in the inter-American instruments, including its annual report on the Situation of Freedom of expression in the Hemisphere; requests for information sent to the states mentioned in this report pursuant to article 41 of the American Convention; thematic hearings announced by the IACHR on situations of violence against journalists in the countries where it is prevalent; and the reports published by the IACHR after its on-site visits to Mexico and Honduras, and the Report on the Situation of Human Rights in Guatemala. The Office of the Special Rapporteur is also grateful to the civil society organizations that specialize in the protection and safety of journalists in the hemisphere for the information they submit to this office on an ongoing basis, and for their extraordinary work to protect journalists at the local level.

1. Silenced Zones: Three Emblematic Cases

a. Tamaulipas, Mexico

36. Over the course of the past decade, the Office of the Special Rapporteur for Freedom of Expression has paid special attention to the violence carried out against journalists, media workers, and media outlets in Mexico. The situation of journalists amidst the violence that the country is experiencing was the subject of particular follow-up in the Special Report on Freedom of Expression in Mexico (2010) and in the Report of the Inter-American Commission on Human Rights on the Situation of Human Rights in Mexico (2015). The most alarming acts of violence against journalists and the media, as well as the replies of the State, are also included in the Annual Reports of the Office of the Special Rapporteur.³⁷

37. While Mexico is experiencing a severe crisis of violence and insecurity that affects different sectors of the population, the violence against journalists has reached alarming levels, intensifying in recent years. The Office of the Special Rapporteur recognizes the progress made at the federal level to implement a special

³⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. [2010 Special Report on Freedom of Expression in Mexico](#). OEA/Ser.L/V/II. Doc. 5. March 7, 2011; IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015.

mechanism for the protection of journalists and the role that the National Human Rights Commission (hereinafter the CNDH) plays in monitoring the violence against journalists, as well as the indispensable work of the civil society organizations that work on the safety of journalists and the fight against impunity for these crimes. Nevertheless, Mexico continues to be the most dangerous country in the region in which to practice journalism, and in various states journalists and media outlets face serious risks because of the work they do.³⁸

38. The CNDH reported 107 murders of journalists between 2000 and September 2015; for its part, the Office of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE) published figures on its website reporting that 103 journalists were killed between 2000 and August 31, 2015. The federal government's Mechanism for the Protection of Journalists and Human Rights Defenders has begun to develop a Monitoring and Analysis Unit that seeks to compile detailed and disaggregated statistics on attacks and crimes against freedom of expression in Mexico. The organizations specializing in the defense of freedom of expression report figures that are even higher.³⁹

39. In its two most recent on-site visits, the Office of the Special Rapporteur verified that threats and harassment are a mainstay of daily life for journalists in various Mexican states, principally for those who cover stories involving cases of corruption, organized crime, drug trafficking, and citizen security. The Office of the Special Rapporteur has stated since at least 2010 that the information it has received and verified indicates that Mexico is the most dangerous country in the Americas in which to practice journalism.⁴⁰ Indeed, in 2015, nearly one in five murders of journalists in Latin America (22 per cent) occurred in Mexico: six of the 27 cases documented in this year's annual report that were related to journalistic work.⁴¹

40. Every year the Office of the Special Rapporteur has been able to verify with concern that most of the murders, disappearances, and kidnappings of journalists are concentrated in outlying zones or regions; in the case of Mexico, the states plagued by the heaviest presence of organized crime include Veracruz, Guerrero, Chihuahua, Tamaulipas, and Oaxaca—all of which were visited by the IACHR and the Office of the Special Rapporteur during the past five years. According to the CNDH, if we disaggregate the statistics by state, it is possible to identify those that have the highest incidence of attacks on journalists. The CHDH maintains that Veracruz, Tamaulipas, Guerrero, Chihuahua, and Oaxaca have the highest number of murders. Indeed, between 2000 and January 31, 2016, nearly six out of every ten murders of journalists in Mexico have taken place in these five states.⁴²

41. During the IACHR's on-site visit in 2015, the Office of the Special Rapporteur went to Veracruz—the state that has had the highest number of journalists killed in recent years—and was able to verify the crisis of confidence in state institutions that journalists in that region are experiencing, and the constant risks to which they are exposed. According to figures maintained by the CNDH, there were 16 murders and 4 cases of disappeared journalists between 2010 and 2015 in that state. According to information provided by FEADLE, eight of the 40 cases in which it has exercised its authority to take over an investigation were from Veracruz.

³⁸ IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 374.

³⁹ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015.

⁴⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. [2010 Special Report on Freedom of Expression in Mexico](#). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 12; IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 385.

⁴¹ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015.

⁴² Comisión Nacional de Derechos Humanos (CNDH). [Recomendación General No. 24. Sobre el ejercicio de la libertad de expresión en México](#). February 8, 2016. Para. 22.

42. Veracruz shares the Gulf of Mexico with Tamaulipas, as well as the activity of organized crime groups.⁴³ In Veracruz, attacks on journalists have intensified in the past five years, with an extremely high number of murders, disappearances, and threats—in spite of which a small sector of the press held firm in its decision to report on these incidents. In Tamaulipas, in a similar context, many journalists have opted to remain silent, in good measure because they had previously endured threats, murder, and harassment. This has meant that in recent years, the spotlight has focused more on Veracruz with respect to the problem of violence in that sub-region, even though violence against journalists in Tamaulipas persists.

Tamaulipas: the origin of violence against journalists in Mexico

43. Although recently Veracruz has garnered national and international attention for the severity and magnitude of the violence perpetrated against journalists, it has not been the only region in which journalists have been affected by violence in Mexico. As the CNDH stated in its General Recommendation No. 24, the States of Oaxaca, Guerrero, Chihuahua, and Tamaulipas are also facing a critical situation with respect to the protection and safety of journalists.

44. The State of Tamaulipas, located on Mexico's northeastern border with the U.S., was one of the first states to be gripped by the violence of organized crime groups, even before the State decided to wage a "war on drug trafficking." From the early 2000s, the drug trafficking cartels began to use violence against media outlets and journalists in the state to silence the coverage of their criminal activities. As a result, Tamaulipas was cited in different civil society reports as "the root of fear" for the Mexican press.⁴⁴

45. Over the past 15 years, three administrations in the State of Tamaulipas have faced the problem of violence in the context of the so-called "war on drug trafficking" prosecuted by federal and state security forces, and during this entire time journalists and media outlets have remained in the crosshairs of the crime groups. According to the CNDH, "Three out of every ten kidnappings in Mexico are reported in Tamaulipas, making it the state with the greatest number of such crimes". During the period between January 1, 2014, and August 31, 2015, there were 779 cases of kidnapping,⁴⁵ and according to official reports, one of the highest rates of murders, kidnappings, and extortions.⁴⁶

46. This context is one of structural violence, impunity, and self-censorship in the state's press. According to the FEADLE of the Office of the Attorney General of the Republic (PGR), a total of 13 journalists were murdered in Tamaulipas between 2000 and 2015, which makes the state one of the most violent regions for the practice of journalism, after Chihuahua and Veracruz.⁴⁷ The CNDH agrees that Tamaulipas is one of the states with the highest number of slain journalists. It has noted that, despite this situation of structural violence, the state still "does not have specialized agencies dedicated to crimes against freedom of expression," and therefore recommended that such agencies be created.⁴⁸

⁴³ Drug Enforcement Administration (DEA). 2015. Mexico: Updated Assessment of the Major Drug Trafficking Organizations' Areas of Dominant Control. Available at: <https://www.dea.gov/docs/dir06415.pdf>

⁴⁴ Article 19. M.I.E.D.O.: informe 2015 sobre violencia contra la prensa. March 18, 2015. Available at: <http://articulo19.org/m-i-e-d-o-informe-2015-sobre-violencia-contra-la-prensa/>

⁴⁵ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación General No. 24. Sobre el ejercicio de la libertad de expresión en México](#). February 8, 2016. Para. 25.

⁴⁶ Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública. [Informe de víctimas de homicidio, secuestro y extorsión 2015](#). September 20, 2016.

⁴⁷ Fiscalía Especial para la Atención de Delitos Cometidos contra la Libertad de Expresión. [Informe Estadístico de la Fiscalía Especial para la Atención de Delitos Cometidos contra la Libertad de Expresión. Enero 2000-noviembre 2015](#). November 2015.

⁴⁸ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación General No. 24. Sobre el ejercicio de la libertad de expresión en México](#). February 8, 2016.

47. The civil society organization Article 19 recalled in a recent report that Tamaulipas “was where the first murders of journalists who reported on acts of violence in Mexico were documented.”⁴⁹ The origin of this violence can be traced back to 2000, with the murder of Pablo Pineda, a reporter from the daily newspaper *La Opinión* of the city of Matamoros. Although it is not clear where the crime was committed, Pineda’s body was found in the city of Harlingen, Texas, on the U.S. side of the border.⁵⁰ Pineda covered stories related to drug trafficking, and prior to his murder had been the victim of an attempt on his life. In situations where there is a strong presence of organized crime, the action of the State security forces when they are called to act in defense of national security cannot be ignored as a risk factor. In its Report on the Situation of Human Rights in Mexico, the Inter-American Commission stated that during the period examined here, the administration of former President Felipe Calderón initiated the so-called “war on drug trafficking,” and from that time forward, the struggle among drug trafficking cartels in Mexico—and between the cartels and the federal government—intensified. “As a response to the increased violence, the authorities have decided to increase the role of the armed forces in public safety tasks, including a policy of confrontation with organized crime and the execution of joint operations between the armed forces and state and municipal security institutions.”⁵¹

48. Luis Roberto Cruz, a reporter for the magazine *Multicosas* of the city of Reynosa, was also killed that same year. The investigation into both homicides failed to establish motives or identify the masterminds. In 2009, in its General Recommendation No. 17 “on assaults on journalists and the prevailing impunity,” the CNDH included both cases as the first murders of journalists that took place in Mexico during the first decade of the 2000s.⁵² In that document, the CNDH maintained that “The inattention to assaults on journalists has caused them to increase,” and condemned the murders of 52 journalists between 2000 and 2009, eight of which occurred in Tamaulipas.⁵³

Threats and attacks to control the message

49. According to information received by the Office of the Special Rapporteur, warnings issued by the criminal groups that started to operate in Tamaulipas more than a decade ago were a major source of intimidation meant to keep the media from reporting on violent acts related to drug trafficking and other activities of members or associates of the cartels. That practice was applied in the state to suppress information, as well as to disseminate information that would serve their criminal interests at various times.

50. The facts speak for themselves. In 2004, the annual report of the Office of the Special Rapporteur documented the murder of Roberto Mora, director of the newspaper *El Mañana* of the city of Nuevo Laredo, who was known for his investigations into drug trafficking. The logical theory would have been that this crime was related to his work as a journalist, but for months after the murder the authorities followed a line of investigation related to his personal life. The director of *El Mañana* and her colleagues repeatedly condemned the murder as the work of organized crime, given the fact that Mora’s investigations interfered with the interests of the cartels.⁵⁴ Media companies have also been exposed to different types of harassment on Mexico’s west coast. In February 2006, the facilities of the newspaper *El Mañana*, which belongs to the

⁴⁹ Article 19. M.I.E.D.O.: informe 2015 sobre violencia contra la prensa. March 18, 2015. Available at: <http://articulo19.org/m-i-e-d-o-informe-2015-sobre-violencia-contra-la-prensa/>

⁵⁰ Committee to Protect Journalists (CPJ). Journalists killed. [Pablo Pineda](#); IFEX/Reporters Without Borders (RSF). April 18, 2000. [RSF calls for full-scale investigation into journalist's assassination](#).

⁵¹ IACHR. [Situation of Human Rights in Mexico](#). December 31, 2015. Para. 2.

⁵² Comisión Nacional de los Derechos Humanos (CNDH). [Recomendación General No. 17. Sobre los casos de agresiones a periodistas y la impunidad prevaleciente](#). August 19, 2009.

⁵³ Comisión Nacional de los Derechos Humanos (CNDH). [Recomendación General No. 17. Sobre los casos de agresiones a periodistas y la impunidad prevaleciente](#). August 19, 2009.

⁵⁴ IACHR. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004](#). OEA/Ser.L/V/II.222. Doc. 5 rev. February 23, 2005. Chapter II. Para. 121; Univisión/You Tube. May 10, 2011. [Asesinato del Periodista Roberto Mora en México](#).

principal newspaper chain in Tamaulipas, was attacked with gunfire and explosives.⁵⁵ One of the paper's reporters was shot, seriously wounded, and left with permanent injuries.⁵⁶

51. This was the first attack using weapons and explosives against the facilities of a media outlet during the "war on drug trafficking,"⁵⁷ and it is viewed as one of the first intimidating messages sent to the press by the criminal groups that were establishing themselves in different parts of the country. Marking the presence of organized crime in a very symbolic way, the attack took place days after the newspaper had organized a seminar at its facilities about reporting on drug trafficking, sponsored by the Inter American Press Association (IAPA).⁵⁸ The newspaper's directors had been warning for months about the deteriorating conditions for the practice of journalism in Tamaulipas.⁵⁹

52. In the following years, the newspaper *El Mañana* continued to be the target of attacks. In 2010, three reporters from the newspaper, Pedro Argüello, Miguel Ángel Domínguez, and David Silva, were kidnapped. Only Silva was released, but he did not report it to the authorities. Argüello and Domínguez remain disappeared.⁶⁰

53. The building that houses *El Mañana* in Nuevo Laredo was once again attacked in May, 2012. This new attack led the newspaper's directors to make the extreme decision to stop reporting and publishing information about acts of violence associated with organized crime.⁶¹ In an editorial published on May 13, the newspaper announced, "We ask the public to understand that, for the length of time is necessary, we will abstain from publishing any information stemming from the violent conflict plaguing our city and other regions of the country." It stated that, "The Editorial Board of this company has arrived at this regrettable decision, obliged by circumstances of which we are all aware, and due to the absence of conditions for the free practice of journalism," while it also condemned all acts of unlawful violence.⁶²

54. Notwithstanding its decision to resort to forced self-censorship, two months after announcing that it was ceasing to report on organized crime, the newspaper sustained another attack. In July 11, 2012 unknown persons threw explosives at the newspaper's facilities. The same day, an office of the newspaper *El Norte* of the city of Monterrey was also attacked with explosives. In 2012, the area encompassing Tamaulipas and Nuevo León was part of a criminal dispute between drug trafficking cartels, and the attacks in Monterrey were seen as an extension of the conflict in the neighboring state.⁶³

55. *El Mañana* inadvertently became a symbol of the chilling effect of the violence on journalism and on the local society, but it has not been the only media outlet subject to harassment in the region. In March 2012,

⁵⁵ IACHR. [Annual Report 2006. Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Para. 145.

⁵⁶ El Universal. February 7, 2006. [Atacan a diario de Nuevo Laredo](#); Revista Proceso. February 7, 2006. [Ataque con granada al diario El Mañana: un reportero, herido](#).

⁵⁷ IACHR. [Annual Report 2006. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Situation of the Freedom of Expression in the Region). OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Para. 145.

⁵⁸ Inter American Press Association (IAPA). January 29, 2006. [Mexico: Nuevo Laredo Seminar Conclusions](#).

⁵⁹ IACHR. [Annual Report 2004. 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.222. Doc. 5 rev. February 23, 2005. Para. 121; La Jornada. February 7, 2006. ["Desde 2004 vimos que no había garantías para los periodistas", señala El Mañana](#).

⁶⁰ Committee to Protect Journalists (CPJ). [Silence or Death in Mexico's Press](#). September 8, 2010; 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. Marche 7, 2011. Para. 562.

⁶¹ Revista Proceso. May 12, 2012. [Comando ataca a balazos el periódico 'El Mañana de Nuevo Laredo'](#); Animal Político. May 15, 2012. [El Mañana de Nuevo Laredo decide ya no cubrir temas del narco](#); Knight Center for Journalism in the Americas. May 14, 2012. [Second Mexican newspaper reports shooting attack in one week](#).

⁶² El Mañana de Nuevo Laredo. May 13, 2012. *Opinión Editorial*. Available at: <https://es.scribd.com/doc/93489651/Opinion-editorial>

⁶³ Animal Político. July 11, 2012. [Atacan instalaciones de Grupo Reforma y El Mañana](#); Aristegui Noticias. July 11, 2012. ['El Mañana' es objeto de segundo ataque, 'El Norte' dice 'no a la intimidación'](#).

the facilities of the newspaper *Expreso* of Ciudad Victoria were also attacked, which seemed to indicate that organized crime violence against journalists was not limited just to the border region, but extended to other areas of the state and to the capital city.⁶⁴ The Office of the Special Rapporteur documented this case in its 2012 annual report and noted that the newspaper *Expreso* published an article about the attack on its website, but shortly thereafter had to take it down and disable its website for a day.⁶⁵

56. Barely a week after the attack on *Expreso*, the *Televisa* television station in Matamoros was also attacked.⁶⁶ According to the annual report of the Office of the Special Rapporteur of 2012, there was a string of attacks using explosive devices against the facilities of media outlets during that year. Given the number and intensity of the attacks, this onslaught of organized crime against the press managed to suppress the news coverage of criminal acts throughout the state.⁶⁷

57. Over the past decade, Tamaulipas has been defined as a “zone of silence” due to the self-censorship effect of these practices, as well as the cartels’ practice of imposing information. Indeed, the criminal bosses even managed to encroach on the editorial departments to impose their criteria that the media should follow when reporting on these issues. A report by Mike O’Connor, a correspondent in Mexico for the Committee to Protect Journalists (CPJ), had warned that in Tamaulipas “their objective is to keep the public ignorant of their actions.”⁶⁸ “In many parts of Mexico, organized crime and drug cartels have been able to terrorize journalists in local or regional news organizations into not running stories the criminals don’t want the public to know about. Reporters who try are threatened or murdered. In much of the country, newspapers, TV and radio stations have just stopped covering stories that even hint about how organized crime is taking over.”⁶⁹

58. According to information received by the Office of the Special Rapporteur, there are a number of matters of public interest whose coverage can lead to serious reprisals in Tamaulipas, including drug trafficking, human smuggling, prostitution, extortion, contraband, corruption in the customs service, and State contracts with companies associated with criminal groups. In these areas heavily influenced by groups engaged in unlawful activities, journalists are exposed to the risk of being contacted directly by the crime bosses of those organizations, who seek to impose information. Going against the interests of those groups can have very serious repercussions on the lives and safety of journalists.⁷⁰ The coverage of the border region in U.S. newspapers has been a crucial factor in disseminating information that cannot be published in places like Tamaulipas. The press in the State of Texas has reported on issues that are prohibited on the other side of the border, and have also covered the trials of crime bosses or businessmen and politicians involved in drug trafficking in the Texas courts. Due to the strong self-censorship, many episodes of extreme violence that occur in certain towns and cities have to be reported by the national and international press.

59. During 2010, the Office of the Special Rapporteur reported that foreign newspapers such as the *Dallas Morning News*, *The Angeles Times*, the *New York Times*, and the *Washington Post* reported on violent acts in the cities of Nuevo Laredo and Reynosa, both in the border State of Tamaulipas, which could not be

⁶⁴ MVS Noticias. March 20, 2012. [Explota coche bomba frente a diario en Ciudad Victoria](#); IFEX/Inter American Press Association (IAPA). March 22, 2012. [IAPA concerned over explosion outside "Expreso" newspaper in Tamaulipas](#).

⁶⁵ 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. 371.

⁶⁶ El Universal. March 26, 2012. [Estalla explosivo junto a Televisa Matamoros](#); Knight Center for Journalism in the Americas. March 27, 2012. [Grenade explodes in front of TV station in northern Mexico](#).

⁶⁷ 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.

⁶⁸ Public Radio International (PRI). November 5, 2010. [Analysis: A PR Department for Mexico's Narcos](#).

⁶⁹ Public Radio International (PRI). November 5, 2010. [Analysis: A PR Department for Mexico's Narcos](#).

⁷⁰ Freedom House. Comunicación enviada a la Relatoría Especial para la Libertad de Expresión. “Memorandum sobre la situación de periodistas en el estado de Tamaulipas. August 25, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

published there due to fear of organized crime.⁷¹ Alfredo Corchado, a longtime correspondent for the *Dallas Morning News*, explained that this is because the criminal groups do not want to provoke a reaction from the United States government. Nevertheless, there is an underlying fear: in 2007, Corchado had to leave the country when he received a death threat, supposedly from the criminal group Los Zetas; other newspapers, such as the *San Antonio Express-News*, took measures ordering their correspondent on the border to leave the city of Laredo, Texas and relocate in San Antonio as a precaution.⁷² In August 2014, Adrián Gaona, the host of *Multimedios* in Reynosa, was kidnapped and was missing for two weeks before his body was found.⁷³ The CNDH documented this incident and attributed the kidnapping and murder to organized crime groups,⁷⁴ according to a list of attacks on freedom of expression mentioned in its General Recommendation No. 24 on the exercise of freedom of expression in Mexico. The so-called Gulf Cartel denied responsibility for the murder by hanging a sign, known in Mexico as a “*narcomanta*” on a street in Reynosa, but the crime has not been solved to this day.⁷⁵

60. For more than a decade, the phenomenon of silencing has varied from city to city within the State of Tamaulipas. In Nuevo Laredo, for instance, the newspaper *El Mañana* has recently resumed coverage of violent incidents related to organized crime, while in cities like Tampico or Ciudad Victoria, such coverage has been suppressed. Beginning in May 2014, when the federal government announced a new security plan for the state, local media outlets local had more leeway to publish stories about violent acts. The “Tamaulipas Security Strategy” was launched in response to the wave of violence and consisted of reorganizing the coordination between federal security forces (Army, Navy, and Federal Police) and the State Police to dismantle criminal gangs and combat the trafficking of drugs, persons, weapons, and money.⁷⁶ In the early months of this security plan, the federal government reported the arrests of crime bosses and a decrease in crime,⁷⁷ and this offensive by the authorities against criminal groups was publicized in the regional media.⁷⁸

61. In states like Tamaulipas, the influence of organized crime is a key risk factor, but we must also note the concern over institutional violence against journalists, which has also been a risk factor. On July 28, 2014 a journalist was taking photographs of police vehicles that were leaving the headquarters of the State Secretariat of Public Safety in the city of Reynosa. Although he had identified himself at the request of two police officers, the reporter was assaulted by those officers, who destroyed his camera equipment and arrested him, keeping him in custody for several days. The CNDH demanded that the government of Tamaulipas redress the harm and punish the perpetrators, as well as provide training to police officers and judicial employees on the protection of journalists, freedom of expression, and human rights.⁷⁹

⁷¹ 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 7, 2011. Para. 701.

⁷² Alfredo Corchado. *Midnight in Mexico A Reporter’s Journey Through a Country’s Descent into Darkness*. The Penguin Press. New York. 2013.

⁷³ Revista Proceso. August 27, 2014. [Asesinan a locutor en Reynosa: Cártel del golfo se deslinda](#); Noticias de Tamaulipas. August 27, 2014. [Confirman asesinato de locutor de Multimedios Reynosa](#).

⁷⁴ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación General No. 24. Sobre el ejercicio de la libertad de expresión en México](#). February 8, 2016. Para. 86

⁷⁵ Animal Político. August 31, 2014. [CNDH investiga asesinato del periodista Adrián Gaona en Tamaulipas](#); Milenio Diario. August 31, 2014. [El periodismo necesita inversión. Comparte este artículo utilizando los íconos que aparecen en la página. La reproducción de este contenido sin autorización previa está prohibida](#).

⁷⁶ Secretaría de Gobernación. May 14, 2014. [Boletín informativo 245/15. Discurso del secretario Miguel Ángel Osorio Chong al anunciar la “Estrategia de Seguridad Tamaulipas” en Reynosa, Tamaulipas](#).

⁷⁷ Wilson Center. Christopher Wilson and Eugenio Weigend. [“Plan Tamaulipas. A New Security Strategy for a Troubled State”](#). October 2014.

⁷⁸ Milenio. November 17, 2014. [Informan resultados de estrategia de seguridad Tamaulipas](#); Ejecentral. November 17, 2014. [Grupo de Coordinación Tamaulipas informa resultados de la estrategia de seguridad](#).

⁷⁹ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación No. 019/2016. Sobre el caso de violación al derecho de acceso a la justicia en su modalidad de procuración de justicia, y a la libertad de expresión, en agravio de V. en el estado de Tamaulipas](#). May 2, 2016.

62. Although there have been changes in the context of violence, this succession of violent events has dragged on for over a decade against journalists and media outlets of various cities of Tamaulipas, and illustrates how organized crime has imposed silence on the press in Mexico. As the IACHR stated in its Report on the Situation of Human Rights in Mexico, “Violence and the high levels of impunity make self-censorship the alternative journalists take in order to safeguard their rights to humane treatment and to life.”⁸⁰

Violence and harassment against journalism online

63. The Internet allows everyone with access to the web to seek, receive, and disseminate information and ideas of all kinds. Its extraordinary decentralized design enhances the exercise of freedom of expression because it is a ubiquitous and low-cost medium. Indeed, all persons interested in issues pertinent to their communities have the effective ability to share information, opinions, and ideas through blogs, Internet platforms, and social networks. In Mexico and in Tamaulipas in particular, organized crime has also emphasized violence and intimidation against persons who take advantage of the Internet to produce and publish information about the situation of everyday insecurity and to demand justice. The violence and pressure on journalists described in this report has also extended to the citizen journalists who prepare and share opinions and information through the social networks, protected by anonymity. In Tamaulipas, in view of the silencing of the traditional media, the anonymous use of social networks became a form of communication that for many seemed to be free of threats; however, in due time and in brutal fashion, organized crime also turned the Internet into a forum for harassment.

64. Anonymity is a challenge for criminal groups, which started to attack these types of journalists in 2011. That year there were at least three murders of Twitter users who reported on events related to organized crime. In September 2011, a man and a woman identified as anonymous bloggers were murdered and their bodies were hung from a bridge in the city of Nuevo Laredo. Another woman who reported on criminal violence through her Twitter account, identified as María Elizabeth Macías, was murdered days later.⁸¹

65. In a press release following her murder, the Office of the Special Rapporteur stated that organized crime “has obligated people to use anonymity and social networks in order to be able to refer to controversial subjects such as violence associated with drug trafficking.”⁸² The Office of the Special Rapporteur also advised the State that there should be no distinction between citizen journalists and those who work for established media outlets: “The investigation of threats or crimes committed against people who use social networks as a means of mass communication of ideas, opinions and information, especially regarding matters of public interest, should be assumed with the same diligence and specialized attention as investigations regarding crimes committed against professional journalists.”⁸³

66. In 2014, the IACHR was informed of the murder of Twitter user @Miut3, allegedly by an organized crime group. The journalist disseminated information related to public safety issues in Reynosa, Tamaulipas, through her Twitter account, and contributed to the page *Valor por Tamaulipas*. According to the information documented by the Office of the Special Rapporteur, the photograph of a murdered women was published on her Twitter account on October 16, along with messages inviting her followers to close their accounts rather than risk their lives. The Twitter account was suspended. Those messages also reportedly stated that the alleged identity of the Twitter user was María del Rosario Fuentes Rubio. Fuentes Rubio, a doctor by profession, had been reported missing by a relative who said that on October 15 unidentified armed individuals had intercepted her outside a corporate office in the municipality of Reynosa.⁸⁴ The photos that

⁸⁰ IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 381.

⁸¹ IACHR. [Annual Report 2011. 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. 378.

⁸² IACHR. Office of the Special Rapporteur for Freedom of Expression. September 27, 2011. [Press Release R105/11 Office of the Special Rapporteur for Freedom of Expression Condemns Three Murders in Nuevo Laredo, Mexico](#).

⁸³ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 27, 2011. [Press Release R105/11 Office of the Special Rapporteur for Freedom of Expression Condemns Three Murders in Nuevo Laredo, Mexico](#).

⁸⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. November 3, 2014. [Press Release R 129/14 Office of the Special](#)

were published on the Twitter account (@Miut3) were accompanied by the following message: “All I can say is, don’t make the same mistake that I did. Nothing is gained. On the contrary, I now realize that I met my death in exchange for nothing (...) They are closer to us than you think.”⁸⁵ The State informed the Office of the Special Rapporteur that the case is being investigated by the State Anti-kidnapping Unit of the PGR of Tamaulipas, and the FEADLE initiated the fact-finding report, which is reportedly in process.⁸⁶

67. The criminals reportedly took notice of the surge in popularity of this account prior to committing this abominable crime, and in 2013 they tried to find out the identity of the person behind it. Pamphlets were distributed in various cities of the state offering up to MXN\$ 600 thousand (approximately US\$ 29 thousand) as a reward for information identifying the account’s authors.⁸⁷ The account was closed temporarily, but was later reactivated in order to keep reporting on issues of major public interest.⁸⁸

68. The chilling effect of this case is clear. Fuentes’s murder in Tamaulipas resulted in fewer citizens reporting security alerts on social networks, and those who continued to do so changed their profiles and connections among themselves.⁸⁹ Anonymous bloggers reportedly detected attempts to compile personal information from anonymous profiles by persons attempting to gain the trust of users who know other users on social networks. This type of electronic surveillance was reportedly how the criminals were able to identify murder victim.⁹⁰

A problem that remains urgent

69. The Office of the Special Rapporteur would also like this report to reflect the fact that, while the situation of freedom of expression in Tamaulipas may be subject to ups and downs, it continues to face serious obstacles, and acts of violence and intimidation against journalists in particular continue to occur.

70. The methods change but the chilling effect is the same. Kidnapping, followed by a short time in captivity, can also be used to send messages to specific targets, as in the case of the director of the newspaper *El Mañana* of Matamoros, Enrique Juárez. On February 4, 2015, a group of armed men broke into the offices of the newspaper and kidnapped him. For an hour, they drove him around the city in circles while beating him and warning him to stop publishing news related to violence in the region. Juárez was freed and had to leave the country for his safety, and dozens of employees resigned from the newspaper.⁹¹ The Office of the Special

[Rapporteur Condemns Murders of two Communicators in Mexico](#); Artículo 19. October 16, 2014. [Reportan en redes sociales asesinato de twittera de Tamaulipas](#); SinEmbargo. October 16, 2014. [Ciudadana que exhibía por redes al narco en Tamaulipas es secuestrada y asesinada](#); Reporters Without Borders (RSF). October 23, 2014. [A netizen is killed in Tamaulipas](#); Animal Político. October 17, 2014. [PGJ-Tamaulipas investiga desaparición y presunto asesinato de periodista ciudadana](#); La Jornada. October 17, 2014. [Secuestran y asesinan en Reynosa a tuitera que combatía a narcotraficantes](#); Procuraduría General de Justicia del Estado de Tamaulipas. October 18, 2014. [Comunicado de la Procuraduría General de Justicia del Estado a 18 de octubre de 2014](#)

⁸⁵ La Jornada. October 17, 2014. [Secuestran y asesinan en Reynosa a tuitera que combatía a narcotraficantes](#); Radio Fórmula. October 17, 2014. [Difunden imagen de activista asesinada en Reynosa. Con Ciro Gómez Leyva](#).

⁸⁶ 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. August 12, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁸⁷ 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. 648.

⁸⁸ Revista Proceso. April 30, 2013. [Gobierno y narco, unidos contra “Valor por Tamaulipas”](#); 24 Horas. April 2, 2013. [Por amenazas, cierran Valor por Tamaulipas](#).

⁸⁹ Freedom House. Comunicación enviada a la Relatoría Especial para la Libertad de Expresión. Memorándum sobre la situación de periodistas en el estado de Tamaulipas. August 25, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁹⁰ Freedom House. Comunicación enviada a la Relatoría Especial para la Libertad de Expresión. Memorándum sobre la situación de periodistas en el estado de Tamaulipas. August 25, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁹¹ El Mañana de Matamoros. February 5, 2015. [Atentado a El Mañana de Matamoros](#); Animal Político. February 5, 2015. [Secuestran al director de ‘El Mañana’ de Matamoros; lo liberan horas después bajo amenazas](#); Radio Fórmula. February 6, 2015. [Director de El Mañana de Matamoros ya está fuera del país](#).

Rapporteur learned that journalist Enrique Juárez was included in the Mechanism for the Protection of Journalists of the ministry of the Interior, which supported him by providing a panic button, security guards, and an emergency contact.

71. On February 6, unknown persons detonated an explosive device at the *Televisa* facilities in Matamoros.⁹² These types of incidents reinforce fear among journalists, provide an incentive for self-censorship, and are a clear sign of how organized crime uses violence to impose content in line with its interests.

72. The intimidation of the press to prevent coverage of security-related events also comes from the authorities, as was clear in the case of Jesús González de Leija, a reporter for the newspaper *La Tarde* of Reynosa. On July 28, 2014, González was outside the headquarters of the Secretariat of Public Safety of Reynosa when he noticed heavy activity by State Police vehicles, and decided to take photographs of the convoy. State Police officers confronted the journalist when they noticed him, even though he was on a public thoroughfare. González identified himself as a journalist, but was detained. According to his account, the officers handcuffed him, beat him, and took his camera. He was kept incommunicado for several hours and later informed that he was being accused of assault and crimes against public servants.⁹³ On July 31, 2014, González filed a complaint with the CNDH, which opened an investigation. It issued a recommendation to the government of Tamaulipas in May 2016, citing violations of the right to freedom of expression and access to justice.⁹⁴

73. González's case is not the only reported case of a journalist being assaulted by law enforcement officers while covering a story. On April 4, 2014 three journalists were threatened by members of the Mexican Army while covering a traffic accident involving a military vehicle.⁹⁵ Abisáí Rubio, director of the *Rubios News* Agency, and the agency's reporters Mario Mosqueda and Neftalí Antonio Gómez were covering the incident when, according to their complaint, they were confronted by soldiers who threatened to "disappear them," physically assaulted them, and damaged their equipment.⁹⁶ The journalists filed a complaint with the Office of the Attorney General of the Republic and provided statements on May 9, more than a month after the events,⁹⁷ but no progress on the investigation has been reported.

Arbitrary allocation of government advertising in contexts of violence

74. Another factor that strongly influences the silenced areas is the infringement of freedom of expression through the arbitrary and discriminatory allocation of government advertising. Journalists in the State of Tamaulipas cite the use of government advertising to pressure directors and editors not to publish articles about insecurity and violence.⁹⁸ As the Office of the Special Rapporteur has reiterated on numerous

⁹² El Norte. February 6, 2015. [Lanzan granada contra Televisa Matamoros](#); Milenio. February 7, 2015. [Lanzan granada contra Televisa Matamoros](#).

⁹³ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación No. 019/2016. Sobre el caso de violación al derecho de acceso a la justicia en su modalidad de procuración de justicia, y a la libertad de expresión, en agravio de V. en el estado de Tamaulipas](#). May 2, 2016.

⁹⁴ Comisión Nacional de Derechos Humanos (CNDH). [Recomendación No. 019/2016. Sobre el caso de violación al derecho de acceso a la justicia en su modalidad de procuración de justicia, y a la libertad de expresión, en agravio de V. en el estado de Tamaulipas](#). May 2, 2016; Periodistas en riesgo. July 28, 2014. [Golpean y detienen a periodista en Tamaulipas](#).

⁹⁵ La Jornada. April 5, 2014. [Atacan soldados a reporteros que cubrían un percance en Nuevo Laredo](#); HoyTamaulipas. April 4, 2014. [Periodistas son agredidos en Nuevo Laredo](#).

⁹⁶ IACHR. [Annual Report 2014. 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. 13. March 9, 2015. Para. 725.

⁹⁷ IFEX/ Article 19. May 22, 2014. [Fiscalía Especial debe investigar agresión de militares a periodistas en México](#).

⁹⁸ Freedom House. Comunicación enviada a la Relatoría Especial para la Libertad de Expresión. Memorandum sobre la situación de periodistas en el estado de Tamaulipas. August 25, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

occasions, these are indirect mechanisms that tend to suppress reporting on matters of public interest, communication, and the circulation of ideas and opinions.⁹⁹

75. In a study on the allocation of government advertising conducted by Fundar and Artículo19, several requests for information were sent to the government Tamaulipas, but went unanswered. When the 2014 Index to Access Spending on Government Advertising sought to determine spending on government advertising between 2011 and 2013, Tamaulipas was, along with Coahuila, Guerrero, and Puebla, one of the states that did not provide information for any of those three years.¹⁰⁰

b. Mazatenango, Guatemala

76. In its Report on the Situation of Human Rights in Guatemala, the IACHR observed that, “Since 1996, the ensuing administrations have faced significant challenges in the wake of the armed conflict, including dire socioeconomic conditions with high incidences of inequality and exclusion and widespread child undernourishment, all in the context of discrimination, corruption, increasing violence, the creation or continuation of de facto criminal powers, and the gradually increasing occupation of territory and power by drug trafficking organizations and gangs (*pandilleros*). Added to this, the institutional framework is weak, and with a system of justice with high levels of impunity. Compounding the above are ever-louder calls from civil society for justice and reparation for the gross human rights violations that were committed during the internal armed conflict and the rights ignored for decades as a result.”¹⁰¹

77. The severity of the security and human rights crisis in Guatemala spurred the 2006 creation of the International Commission against Impunity in Guatemala [*Comisión Internacional Contra la Impunidad en Guatemala*] (CICIG) by the United Nations with the consent of the Guatemalan State. Its mandate is to investigate, dismantle, and eradicate clandestine apparatuses and illegal security forces that “seriously violate” human rights.¹⁰²

78. In its report on the financing of politics in Guatemala, the CICIG indicated that, since 1984, the political system had taken on a number of characteristics that distinguished it from others in the region. These peculiarities include the fluidity of the party system; electoral volatility; the concentration of political options in the center and on the right of the political spectrum; the influence of the powers-that-be; and the continuity of the economic and social *status quo*. With regard to the political culture, it stated that Guatemalan society is deeply divided and splintered along multiple lines including ethnicity, rural-urban differences, and regional tensions between the metropolitan area and the rest of the country. It is also plagued by the persistent acts of racism and exclusion on the part of elites.

79. According to the CICIG, the ties between criminal drug trafficking organizations and politics arise from the criminal groups’ need for police protection, information, and the freedom to act in the areas where they operate. As such, from the beginning of the democratization process, these groups have financed election campaigns, contributing resources to the parties at various levels. Through political financing, criminal organizations seek to benefit from certain degrees of protection and information, as well as to occupy key positions in the State that allow them to diversify their businesses and exercise partial control or influence over security and justice institutions.¹⁰³

⁹⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Principles on the Regulation of Government Advertising and Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 6/12. March 7, 2011.

¹⁰⁰ Fundar and Article 19. Índice de acceso al gasto en publicidad oficial en las entidades federativas 2013. April 1, 2014. Available at: <http://fundar.org.mx/indice-de-acceso-al-gasto-en-publicidad-oficial-en-las-entidades-federativas-2013/>

¹⁰¹ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 49.

¹⁰² International Commission Against Impunity in Guatemala (CICIG). [Acuerdo entre la Organización de Naciones Unidas y el Gobierno de Guatemala relativo al establecimiento de una Comisión Internacional contra la Impunidad en Guatemala \(CICIG\)](#). December 12, 2006.

¹⁰³ International Commission Against Impunity in Guatemala (CICIG). El Financiamiento de la Política en Guatemala. July 2015. Page 93-94 and 101. Available at: <http://www.cicig.org/index.php?mact=News.cntnt01.detail,0&cntnt01articleid=616&cntnt01returnid=67>

Journalists as guardians of the public interest

80. The IACHR and its Office of the Special Rapporteur has continually received information indicating that the full enjoyment of the right to freedom of expression has been hindered by intimidating actions directed at media outlets and independent journalists. During the last years, the Commission has expressed its special concern over the attacks directed at social journalists who cover investigations into government administration, acts of corruption, and human rights violations.¹⁰⁴ In the Report on the Situation of Freedom of Expression in Guatemala, written following a 2003 on-site visit of the IACHR and the Office of the Special Rapporteur, they were already expressing concern over the spike in murders, threats, and intimidation of investigative journalists and human rights defenders who exercise their right to freedom of expression.¹⁰⁵

81. Between 2010 and 2015, the Office of the Special Rapporteur documented 10 murders of journalists in different regions of Guatemala, including three cases in Suchitepéquez. These 10 homicides reflect in just five years half of the 23 journalists who have lost their lives in Guatemala since 1994, according to a report by the Committee to Protect Journalists.¹⁰⁶

82. Through its annual reports, the Office of the Special Rapporteur has underscored its ongoing concern over the rise in assaults and acts of intimidation against journalists. In 2010, there were initial signs of the risks faced by journalists who cover information related to organized crime. On August 3, 2010, three reporters were assaulted by officers from the Counternarcotics Information and Analysis Division while the officers were conducting a search.¹⁰⁷ The 2011 report documented 15 assaults against journalists, compared to 10 cases in 2010.¹⁰⁸ That year the Office of the Special Rapporteur warned of threats against media outlets by alleged drug trafficking gangs. Notable among other reported assaults that year was the threat against three radio stations in Cobán by criminals identified as members of the group or cartel known as Los Zetas. The criminals forced them to convey a message to President Álvaro Colom, threatening to burn down the radio stations and kill the relatives of station employees if they did not comply. That year police detained individuals who were posting banners signed by drug trafficking groups in the city of Quetzaltenango, with threatening messages telling media outlets to stop reporting on crime-related events.¹⁰⁹ In 2012, during its Universal Periodic Review, the Guatemalan government announced to the United Nations Human Rights Council that it was taking actions to strengthen the units for the investigation of crimes against journalists, as well as making progress on the creation of a national mechanism for the protection of journalists with the support of UNESCO and the Office of the United Nations High Commissioner for Human Rights in Guatemala.¹¹⁰

83. Nevertheless, and despite all of the recommendations made by the universal system as well as the Interamerican human rights protection system, the situation of violence and the impunity of crimes against journalists did not substantially improve. In 2014, the Office of the United Nations High Commissioner for

¹⁰⁴ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 281.

¹⁰⁵ 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. 390.

¹⁰⁶ Committee to Protect Journalists (CPJ). No date. [6 Journalists Killed in Guatemala since 1992/Motive Confirmed](#).

¹⁰⁷ 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 7, 2011. Para. 277.

¹⁰⁸ IACHR. [Annual Report 2011. 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. 268 -278.

¹⁰⁹ IACHR. [Annual Report 2011. 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. 269.

¹¹⁰ United Nations. General Assembly. Human Rights Council. [Informe nacional presentado con arreglo al párrafo 5 del anexo de la resolución 16/21 del Consejo de Derechos Humanos, Guatemala](#). A/HRC/WG.6/14/GTM/1. August 7, 2012; 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. 268.

Human Rights (OHCHR), reported an increase in attacks on journalists in Guatemala. The report states that 71 attacks were recorded in November 2014, compared to 57 the previous year—despite the fact that there were four reported murders in 2013 and none in 2014.¹¹¹ Civil society has a similar assessment: the *Observatorio para los Periodistas del Centro de Reportes Informativos de Guatemala* (Cerigua) has warned that, “Censorship and self-censorship continue to be one of the principal problem issues for members of the press in Guatemala, (...) in view of the danger posed by the power of local politicians or organized crime structures.”¹¹²

84. At the October 28, 2014 hearing on the situation of human rights defenders in Guatemala, the Commission received information on the increase in alleged detentions and acts of violence against journalists and media workers in Guatemala, and the prevailing impunity with which those crimes were met. It also received information about alleged acts of surveillance and cyber-attacks on media outlets, as well as lawsuits brought in retaliation against critical journalists in the country. Problems were also alleged in the design and implementation of a mechanism for the protection of journalists and with respect to the activities of the Unit for the Prosecution of Crimes against Journalists. The organizations that took part in the hearing reported that, according to official figures, as of August 2014, the Prosecution Unit had reportedly opened 44 case files on assaults against 89 journalists, 19 of whom were women. Sixty of the assailants were reportedly public servants, while 37 were private citizens. At the same time, the State maintained that it was respectful of journalists and dismissed as false the alleged rise in violence aimed at human rights defenders. It additionally reported on the creation of mechanisms and institutions for the protection of human rights defenders and journalists, and said that it had provided protection to various at-risk persons.¹¹³

85. In a context like Guatemala’s, the full enjoyment of the right to freedom of expression is extremely important, as it is fundamental to the strengthening of “democracy, anti-corruption measures, good governance and in general the ability of society to take informed decisions.”¹¹⁴ In this regard, “Journalists deserve special concern not primarily because they perform heroic acts in the face of danger—although that is often the case—but because the social role they play is so important. (...) Violence against a journalist is not only an attack on one particular victim, but on all members of the society.”¹¹⁵

Mazatenango, an example of violence in the regions and its effects

86. The deterioration of the climate for a free press in Guatemala during the first years of the decade was also evident in towns far from the capital. An emblematic case is the 2015 double murder of two journalists on a public thoroughfare, in front of their colleagues, in the municipality of Mazatenango—a crime that summoned the attention of the international community associated with freedom of expression because of the use of extreme and brutal violence by different actors to silence local journalists, and as a way of sending a sinister message.

87. According to the annual reports of the Office of the Special Rapporteur, three reporters covering a police raid were assaulted in 2010 by the Counternarcotics Information and Analysis Division who were

¹¹¹ United Nations. Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala 2014. Para. 49. Available at: <http://www.ohchr.org.gt/informes.asp>

¹¹² Centro de Reportes Informativos de Guatemala (Cerigua). June 10, 2016. [Agresiones contra periodistas en Guatemala: urge programa de protección.](#)

¹¹³ IACHR. 153 Period of Sessions. Public hearing Situación de defensores de derechos humanos en Guatemala. October 28, 2014. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/153/default.asp>

¹¹⁴ 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. 23. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

¹¹⁵ 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. 24. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

carrying out the operation.¹¹⁶ One year later, in July 2011, correspondent Danilo López of *Prensa Libre* in Mazatenango complained of being verbally harassed by the mayor after having published evidence of local government corruption. Days later, López and Ángel Ruiz, a correspondent of the regional newspaper *Nuestro Diario*, reported that they had been intimidated by sympathizers of the mayor's and threatened by his bodyguards.¹¹⁷ López specifically reported having been the victim of threats several times over the following years. In 2013, Danilo López received a new threat. On June 8, 2011 he denounced the mayor of San Lorenzo, Suchitepéquez in a publication alleging irregularities in the management of public funds. Following an investigation, the Guatemalan government reported that a probable cause hearing was requested against the mayor, but that he enjoys immunity.¹¹⁸

88. In April 2012, journalistic organizations condemned the suspension of six local DX cable broadcast channels in Mazatenango and attributed the shutdown to pressures from the mayor's office. Although the company stated at the time that the reasons for the shutdown were administrative, the complaint indicated that one channel had been suspended since the beginning of 2012 and was reestablished on the condition that it not criticize the mayor's office.¹¹⁹

89. Four journalists were murdered in Guatemala in 2013, and one of those killings took place in the Department of Suchitepéquez. The body of Carlos Alberto Orellana Chávez, the former director of *Radio Victoria* and a news anchor on the *Óptimo 23* television station, was found on August 12. The Guatemalan government ruled out the possibility that the murder was linked to Orellana's work as a journalist, and although the Office of the Special Rapporteur acknowledged that "there is no clear connection" to his work, it did ask for in-depth investigations to be conducted "without ruling out the theory of a connection to (...) freedom of expression."¹²⁰ On his program, Orellana covered topics of public interest to the community, and denounced corruption.¹²¹ This murder coincided with an armed attack against photojournalist and radio reporter Fredy Rodas in Mazatenango. On the night of August 12, 2013, armed individuals fired at least three shots at Rodas, a correspondent for *Radio Sonora* and reporter for the newspaper *Al Día*. In December 2013, authorities informed the Office of the Special Rapporteur that there had been progress in the investigation and that two suspects had been arrested and accused of carrying out the attack.¹²²

90. In February 2014, the host of television news program 'Noticias y Más', Nery Morales, was the target of an armed attack from which she escaped unharmed. The night of February 12, she was on her way home in the municipality of Mazatenango, when two individuals on board a motorcycle shot at her and chased her until she found safety at a fire station.¹²³

91. On March 10, 2015, Danilo López, a correspondent for *Prensa Libre*—one of the country's main newspapers—Federico Salazar, a correspondent for *Radio Nuevo Mundo*, and local journalist Marvin Túnchez

¹¹⁶ IACHR. [Annual Report 2010. 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.

¹¹⁷ IACHR. [Annual Report 2011. 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.

¹¹⁸ IACHR. [Annual Report 2011. 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.

¹¹⁹ 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.

¹²⁰ 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. 451; Committee to Protect Journalists. August 20, 2013. [One journalist murdered, another attacked, in Guatemala](#).

¹²¹ Committee to Protect Journalists (CPJ). Journalist Killed. No date. [Carlos Alberto Orellana Chávez](#); *Prensa Libre*. August 22, 2013. [Dan último adiós a periodista Carlos Orellana Chávez](#).

¹²² 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. 467.

¹²³ IACHR. [Annual Report 2014. 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. 13. March 9, 2015. Para. 544.

were in the Central Park of the municipality of Mazatenango, a place where journalists regularly meet after preparing their articles. It was broad daylight, and they were some 20 meters from a police station, when two individuals on board a motorcycle drove up and shot them. López and Salazar died in the attack, and Túnchez was wounded.¹²⁴ The attack took place after López had reported being threatened at least twice by municipal authorities of Suchitepéquez, apparently as a consequence of articles denouncing misfeasance by government employees. There were no known threats against Federico Salazar, but both were members of the recently created Suchitepéquez Press Association, of which they were the Vice President and Secretary, respectively.

92. A year earlier, López had given an interview in which he described the poor conditions for the practice of journalism in Mazatenango. “Journalists here are very vulnerable, mainly to the daily crime that is visible in the department day in and day out. We have no security, just like the journalists who work in the city,” he said, describing the climate of violence in the region.¹²⁵

93. Three days after López and Salazar were killed, Giovanni Villatoro, a cameraman for the television channel *Servicable*, was murdered in the municipality of Chicacao, 25 kilometers from Mazatenango. The attack took place outside the television station’s offices.¹²⁶ The National Civil Police announced the arrest of three members of a criminal extortion gang for the murder.¹²⁷ The ministry of the Interior cited the extortion of employees of *Servicable* as a possible motive for the crime.¹²⁸

94. On March 17, 2015, one week after the attack, the Office of the Attorney General reported that the investigating prosecutors received threats warning them to stop their inquiries in the case.¹²⁹ The Suchitepéquez Press Association also reported threats against local journalists covering the investigation into the murder of their colleagues.¹³⁰

95. Authorities detained a suspect the same day López and Salazar were murdered. Information from his cell phone led to the arrest of three other individuals.¹³¹ In early July 2015, three men were prosecuted for the murders of López and Salazar, two of whom were police officers from the Protection Unit for Interior Ministry Officials. Two alleged suspects had been previously detained in the case and prosecuted for the offenses of

¹²⁴ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 657; Reporters Without Borders (RSF). March 11, 2015. [Two reporters gunned down in Mazatenango](#); Prensa Libre. March 11, 2015. [Corresponsal de Prensa Libre muere baleado en Mazatenango](#).

¹²⁵ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015.

¹²⁶ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015.

¹²⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 23, 2015. [Press Release R 35/15 The Office of the Special Rapporteur for Freedom of Expression Condemns Killing of Reporter in Guatemala](#).

¹²⁸ Centro de Reportes Informativos de Guatemala (Cerigua). March 28, 2015. [Capturan a presunto autor intelectual del asesinato de Guido Villatoro](#); Soy502. March 14, 2015. [Detienen a tres presuntos involucrados en la muerte de camarógrafo](#).

¹²⁹ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015; Prensa Libre. March 17, 2015. [Amenazan a fiscales que investigan crimen de periodistas](#); La Prensa Gráfica. March 18, 2015. [Amenazan a fiscales que indagan caso periodistas](#).

¹³⁰ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015; 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](#).

¹³¹ United Nations. International Commission Against Impunity in Guatemala (CICIG). [Informe de la Comisión Internacional contra la Impunidad en Guatemala con ocasión de su octavo año de labores](#). November 13, 2015.

conspiracy, murder, and attempted murder.¹³² Five people in total were prosecuted for the murders of López and Salazar.¹³³

96. Given the relevance of the case and the impact of the journalists' murder on the fight against corruption, the International Commission against Impunity in Guatemala (CICIG) began to monitor the investigation and later took it over when the evidence began to point toward the responsibility of local authorities.¹³⁴

97. Given the upheaval created by the case, various Guatemalan media outlets decided to conduct a joint investigation to keep these crimes from going unpunished. The digital media outlets *Nómada*, *Soy 502*, *Plaza Pública*, and *Contrapoder* carried out a joint investigation with the support of the organization Cerigua, with the objective of establishing the facts of the case, contributing evidence to the investigation, and verifying that the investigation was not diverted in order to have the crimes go unpunished. The publication of the joint investigation of these three national media outlets, under the name *#LaVerdadpuedemás*, enabled the case to gain national and international prominence. In an article published in July 2015—four months after the crime—the journalists described the possible involvement of local authorities and organized crime groups operating in the area where the murders took place, and their objective of silencing journalists who were reporting on corrupt acts that involved at least four area mayors.¹³⁵ It also mentioned the relationship between journalist López and one of the mayors in question; with whom would he had spoken hours before the crime.

98. The investigation additionally made another extremely serious institutional revelation—the gang of assassins who killed the journalists was controlled by members of the National Civil Police [*Policía Nacional Civil*] (PNC); however, they stated that the investigations had not determined the identity of the masterminds who had hired the killers.¹³⁶

99. A 2015 report of the International Commission against Impunity in Guatemala [*Comisión Internacional Contra la Impunidad en Guatemala*] (CICIG) included the case of slain journalists Danilo Flores and Federico Salazar as part of a pattern of “high-powered homicidal organizations.” The Commission indicated that this definition refers to “organizations that intimidate and provoke anxiety in broad segments of the population. The high degree of impunity with which they act allows them to attack anyone. These organizations are engaged in countless criminal activities and in some cases influence the local political power structure.”¹³⁷

¹³² Prensa Libre. July 1, 2015. [Ligan a proceso detenidos por muerte de periodistas](#); 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](#).

¹³³ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015.

¹³⁴ International Commission Against Impunity in Guatemala (CICIG). June 26, 2015. [Comunicado de prensa 031. Captura en casos de periodistas](#); Contrapoder. July 3, 2015. [Los alcaldes de Suchitepéquez y el crimen del periodista](#).

¹³⁵ Plaza Pública. July 3, 2015. [Los alcaldes de Suchitepéquez y el crimen del periodista](#); Nómada. July 2, 2015. [Los sospechosos de matar a periodistas de Suchi buscan su reelección con Líder-PP](#); Centro de Reportes Informativos de Guatemala (Cerigua). April 14, 2015. [Cuatro medios se unen en proyecto #LaVerdadPuedeMás](#).

¹³⁶ International Commission Against Impunity in Guatemala (CICIG). June 26, 2015. [Comunicado de prensa 031. Captura en casos de periodistas](#); 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](#).

¹³⁷ International Commission against Impunity in Guatemala (CICIG). [Informe de la Comisión Internacional contra la Impunidad en Guatemala con ocasión de su octavo año de labores](#). November 13, 2015.

100. On January 26, 2017, the Office of the Attorney General [*Ministerio Público*] (MP) and the CICIG announced their request for preliminary impeachment proceedings¹³⁸ against Representative Julio Juárez Ramírez on the grounds that he was the mastermind behind the murder of journalists Danilo López and Federico Salazar. At a press conference, the authorities set forth the possible motives for the journalists' murder and the connection to their professional activity. According to the authorities, the investigation was conducted in two phases. The first was conducted by the National Civil Police (PNC) and resulted in the identification of the direct perpetrators as well as the arrest and prosecution of four of them. The second phase of the investigation, carried out by the MP and the CICIG identified the potential motive for the murders as well as the persons responsible for contacting the assassins and ordering and paying for the journalists' murder. The MP and the CICIG determined that López's murder had been planned and ordered after he published an article in his digital media outlet *El Sur* about the existence of an investigation in the MP against Juárez Ramírez for tax evasion, since "the alleged mastermind, Juárez Ramírez, viewed [Danilo] López as a threat to the consolidation of his candidacy as district representative and as a challenge to his power in the area." They also stated that the death of journalist Federico López was collateral to the attack on López, and that the certainty of impunity led to the act being committed right in the town's central park.¹³⁹

101. The MP and the CICIG stated that the crime may have been motivated by differences that had arisen between Danilo López and then-congressional candidate of the Leader Party [*Partido Líder*], Julio Juárez Ramírez. According to the investigation, those differences stemmed from Juárez's refusal to support Erik Rolando López's candidacy for mayor of the municipality of Cuyotenango, Suchitepéquez, who was supported by the journalist López. The investigations indicate that, following Juárez's refusal, on March 4, 2015, journalist Danilo López contacted a prosecutor from the MP's Office of the Human Rights Prosecutor to request information about the existence of investigations against Juárez. On March 6, 2015, López published an article in his digital media outlet *El Sur* about the existence of an investigation in the MP against Juárez Ramírez for tax evasion.¹⁴⁰

102. The actions taken by the body in charge of the investigations, in this case the Office of the Attorney General, supported by the CICIG's action of taking on the investigation into the murder of the two journalists from Suchitepéquez in a timely and dedicated manner, demonstrates that the investigations conducted by a body that is protected from the influence of local interests and threats allows the State to provide an effective response in order to identify, capture, prosecute, and punish the perpetrators and prevent such crimes from going unpunished.

Job insecurity and lack of protection

103. The #*LaVerdadpuedemás* of *Nómada*, *Soy 502*, *Plaza Pública*, and *Contrapoder* initiative also highlighted the context of job insecurity for journalists in different regions of the country. In Mazatenango specifically, most journalists do not earn a fixed salary and their incomes are derived from the individual payments they receive for every article they publish.

104. The *Nómada* article stated that "Journalistic practices outside the capital have a variable that distinguishes them from reporters from larger media outlets from Guatemala City: correspondents get paid per article; they do not have a fixed salary. In order for their profession to be profitable, they sell their information to State entities and local media."¹⁴¹ For its part, *Plaza Pública* noted that, during his nine years as a correspondent for *Prensa Libre* in Mazatenango, Danilo López earned his living "from payments for

¹³⁸ Under Guatemalan law, the right to preliminary impeachment proceedings is the guarantee granted to public servants and dignitaries to not be detained or subjected to criminal proceedings before the respective judicial bodies unless there is a ruling from the competent authority. Congress of the Republic of Guatemala. Decree No. 85-2002.

¹³⁹ International Commission against Impunity in Guatemala (CICIG). January 26, 2017. [Comunicado de Prensa 008. Antejucio contra diputado y capturas en caso asesinato de periodistas](#); Office of the Attorney General of Guatemala (MP)/You Tube. January 26, 2017. [Caso Periodistas: MP y Cicig coordinan detención de dos hombres y piden antejucio contra diputado](#).

¹⁴⁰ International Commission against Impunity in Guatemala (CICIG). January 26, 2017. [Comunicado de Prensa 008. Antejucio contra diputado y capturas en caso asesinato de periodistas](#); Office of the Attorney General of Guatemala (MP)/You Tube. January 26, 2017. [Caso Periodistas: MP y Cicig coordinan detención de dos hombres y piden antejucio contra diputado](#).

¹⁴¹ *Nómada*. July 2, 2015. [Los sospechosos de matar a periodistas de Suchi buscan su reelección con Líder-PP](#).

articles published in the newspaper (as he did not have a fixed salary or benefits), and from those that he sold to other local media.”¹⁴²

105. The job insecurity of practicing journalism, plus the interest of different criminal actors in imposing or concealing information according to their interests, can also lead to bad practices on the part of journalists and media workers, which only increases their level of risk and vulnerability. Hence, one of the theories of Danilo López’s murder floated by the media was that he had published information calling into question the administration of one of the mayors suspected of the crime, following a disagreement stemming from the awarding of an infrastructure contract. Allegedly, the journalist was advocating for the contract to be awarded to a specific contractor, and in the end the mayor awarded it to someone else.¹⁴³

Political instability: scenario for intimidation

106. The political upheaval that Guatemala has undergone in recent years has been conducive to acts of governmental or judicial intimidation against journalists. An example of this is the case of Mayan journalist Francisca Gómez Grijalva, whose case was documented by the Office of the Special Rapporteur in its annual report. In May 2013, columnist Francisca Gómez Grijalva of the newspaper *Prensa Libre* was sued by the company Cementos Progreso over a column entitled “¿Agua o Cemento?” [“Water or Cement?”], which mentioned the needs and complaints asserted by the 12 communities of San Juan Sacatepéquez against the company. The company filed a complaint against the journalist and demanded that she be deposed with respect to the content of her column.¹⁴⁴

107. One of the journalists who has been subjected to the most harassment in Guatemala is José Rubén Zamora, director of the newspaper *elPeriódico*, as well as some of the paper’s editors. According to information received by the Office of the Special Rapporteur, Zamora faced lawsuits from the Guatemalan Social Security Institute alleging defamation and the incitement of violence, as well as from the Superintendency of Tax Administration, which notified *elPeriódico* that it was being audited to verify compliance with its tax obligations. Zamora called the act “tax persecution.” This occurred at the same time *elPeriódico* condemned the barring of one of its reporters from covering a meeting between President Pérez Molina and the president of El Salvador, as well as acts of espionage.¹⁴⁵

108. In November 2013, then-President Otto Pérez Molina filed a criminal complaint against *El Periódico*’s director, José Rubén Zamora, alleging coercion, extortion, blackmail, and violations of the Constitution, based on publications made by the newspaper. Zamora was ordered by the court not to leave the country, but in January 2014 the president withdrew his complaint. This journalist was also the subject of a criminal complaint brought by the Vice President of Guatemala, Roxana Baldetti Elías, who accused him of the offense of psychological violence against women because of publications made in *El Periódico* linking Baldetti to corrupt acts.¹⁴⁶

109. This case was relevant a year later, when Pérez Molina and Baldetti resigned based on the investigation of acts of corruption documented by the International Commission against Impunity in Guatemala.¹⁴⁷ The investigations and resignations led to mass protests, most of which were peaceful.

¹⁴² Plaza Pública. July 3, 2015. [Los alcaldes de Suchitepéquez y el crimen del periodista.](#)

¹⁴³ Soy502. July 3, 2015. [Los cuatro alcaldes ligados al asesinato de los periodistas de Suchi](#); Nómada. July 2, 2015. [Los sospechosos de matar a periodistas de Suchi buscan su reelección con Líder-PP.](#)

¹⁴⁴ IACHR. [Annual Report 2014. 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. 13. March 9, 2015.

¹⁴⁵ IACHR. [Annual Report 2014. 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. 13. March 9, 2015.

¹⁴⁶ IACHR. [Annual Report 2014. 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. 13. March 9, 2015.

¹⁴⁷ International Commission Against Impunity in Guatemala (CICIG). June 2, 2016. [Comunicado de prensa 047. Caso cooptación del Estado de Guatemala.](#)

Following these events, in its 2015 report, the Office of the Special Rapporteur underscored the “exercise of the right to freedom of expression [...] as a form of participation by societies in strengthening democracy.”¹⁴⁸

110. The press coverage of the episodes of political unrest in Guatemala during 2014 and 2015 following the proceedings against Pérez Molina and Baldetti, as well as the presidential elections, was not exempt from violence. The Office of the Special Rapporteur documented that “Numerous journalists and cameramen were attacked on various occasions when they covered news relating to the judicial proceedings faced by former Vice President Roxana Baldetti, when she entered jail, and during her hearing before the judge. Journalists complained that they were beaten on those occasions and that the PNC used pepper spray against them. Following those incidents, the Attorney General of Guatemala ordered an investigation *ex officio*.”¹⁴⁹ Various assaults were also documented during the 2014 electoral process. The Office of the Special Rapporteur noted that “The exercise of freedom of expression is especially important during political campaigns and elections. It is a fundamental element of the process because [...] it provides instruments for the analysis of each candidate’s platform, thus enabling a greater degree of transparency and oversight of future authorities.”¹⁵⁰

111. The harassment of the press was not only physical. There was also a clear deterioration of the environment for the exercise of freedom of expression. The Office of the Special Rapporteur stated that the signals of *CNN en Español*, *Guatavisión*, and *Canal Antigua* were interrupted by some cable television companies at different times, including during an interview with CICIG Commissioner Iván Velásquez in which he criticized the *Partido Líder* [the Leader Party]. Several members of that party are cable company owners. In addition, in Suchitepéquez, cable channels *Óptimo 23* and *ATV24* were reportedly taken off the air by the company *Servicable*, owned by Congressman Enrique Maldonado of the *Partido Patriota* [the Patriots Party].¹⁵¹

112. According to information presented by the Inter American Press Association (IAPA) at the hearing on “Diversity, Pluralism, and the Concentration of Media Ownership in the Americas,” held during the IACHR’s 154th Period of Sessions, the case of González “affects the quality and quantity of information received by Guatemalan citizens on matters of public interest.” In addition to the four open-signal television channels that it controls, *Albavisión* owns 66 of the 300 radio stations affiliated with the Guatemalan Broadcasting Chamber. Another 31 stations belong to the group *Emisoras Unidas*, 70 to *Radio Nuevo Mundo*, 20 to *Radio Corporación Nacional*, and 35 to *Radio Grupo Alius*. One of the stations belonging to González, *Radio Sonora*, is the country’s leading radio news broadcaster, and “is used constantly to send messages to the public that the government in power wants to make known.” “These messages include attacks on journalists, opposition politicians, academics, and people and institutions in general who oppose or express unfavorable opinions about the government in power,” said the IAPA. According to the IAPA, the station’s dominant position in the market gives it “virtually the power to elect presidents of the Republic and ensure that the public receives less critical information about the governments in power.” The IAPA additionally reported that *Albavisión* “blocks the creation of new cable channels, and seeks to strangle the existing ones with conditions and threats against important advertisers, so they cannot place advertising in other media against [González’s] shareholder interests.”¹⁵²

c. The Paraguayan Border

¹⁴⁸ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015.

¹⁴⁹ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015.

¹⁵⁰ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015.

¹⁵¹ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015.

¹⁵² IACHR. 154 Period of Sessions. Hearing Diversity, pluralism and media concentration in the Americas. March 16, 2015. Available at: <https://www.youtube.com/watch?v=sCdPshjnTpM&list=PL5QlapyOGhXtsTmVBlcpyZsJSY02mAAOm&index=18>; Inter American Press Association (IAPA). [Pluralismo y Concentración de Medios en las Américas](#). March 16, 2015.

113. This third emblematic case documents the practice of journalism in different areas of Paraguay's borders with Brazil or Argentina where criminal groups operate, especially during the past 10 years. Media workers in Paraguay also cite the persistence in these areas of a climate of violence that has gotten worse since the May 2014 murder of journalist Pablo Medina, a correspondent for the country's main newspaper (*ABC Color*).

114. The Departments of Ñeembucú and Misiones, bordering on Argentina in the south, and the Departments of Canindeyú, Concepción, and especially the department of Amambay, on the eastern border with Brazil, have become extremely dangerous for journalists working in those areas, where illegal business activities including drug, weapons, and fuel trafficking, among others, have been reported.

115. In recent years, Paraguay has witnessed the development of a phenomenon that the press and other actors, including State actors, call "narcopolitics." This phenomenon is characterized by drug traffickers supporting specific political figures in exchange for the favorable treatment of their interests, or drug traffickers that have become involved in political activity, even ascending to elected office.¹⁵³

116. With the advancement of so-called "narcopolitics," freedom of expression has been affected insofar as journalists face serious difficulties when they try to report on specific unlawful activities being conducted in their communities, and the institutions—according to the journalists themselves—do not function as they should to protect them. Organized crime has exerted pressure on the press with the objective of suppressing media coverage of their activities, even the most evident ones. Threats, harassment, and even the recent death of some journalists has left an indelible mark on media workers, despite which they have maintained their commitment to informing society of what goes on in the highest risk areas.

117. During the IACHR's 159th Session, a hearing was held on the "Situation of the Right to Freedom of Expression in Paraguay," with the participation of civil society organizations, representatives of journalists' professional associations, and the State of Paraguay. At the hearing, the organizations stated that 17 journalists have been murdered in Paraguay since 1991, nearly all "in border regions and areas where the influence of organizations engaged in unlawful activities in Paraguay has made inroads (...). In those areas, the politicians who hold elected office tend to be the owners of media outlets, and they use those outlets to attack their political adversaries. Those attacks result in attacks against the journalists who are caught in the middle of those political attacks (...)." The organizations additionally cited the existence of a widespread context of impunity for crimes against journalists, which has created an environment conducive to threats and assaults against journalists, especially those who report on drug trafficking and its ties to local politicians and police.¹⁵⁴

118. For its part, the State acknowledged that the border zones have seen an increase in the presence of transnational criminal organizations and unlawful activities related to drug trafficking. It underscored that borders in the Americas are areas that face challenges, and asserted that authorities should therefore take a special approach to the issues that arise in those areas. With respect to the impunity of crimes committed against journalists in border areas, the State noted that the fact that events occur on the border can make it difficult to investigate and establish the facts in criminal cases, and to criminally prosecute the perpetrators, who in some cases are nationals of the neighboring country.¹⁵⁵

Killings

¹⁵³ Última Hora. November 21, 2014. [Acceda al informe presentado sobre narcopolíticos](#); ABC Color. November 20, 2014. [Nombres de la narcopolítica](#); ABC Color. November 21, 2014. [Narcopolíticos: Senad maneja más nombres](#).

¹⁵⁴ IACHR. 159 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Paraguay. December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

¹⁵⁵ IACHR. 159 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Paraguay. December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

119. Murder is one of the most brutal forms of censorship that exists, not only because it silences the voice of the victim but also because of the chilling effect it has on the victim's peers. Pablo Medina was a correspondent for the newspaper *ABC Color* in the Department of Canindeyú, and was murdered on October 16, 2014. He had a police guard when he was murdered, but two months prior to his death this protection had been withdrawn by the ministry of the Interior. Changes in the government led to the elimination of private guards, although in Medina's case it was a special measure because of the threats he had received. Thirteen years earlier, on January 5, 2001, his brother and fellow journalist Salvador Medina had also been murdered in Capiibary, in the Department of San Pedro. Salvador Medina reported on acts of corruption and trafficking on the community radio station *Ñemity*. When he was killed, Pablo had spearheaded the investigation, which led to Pablo receiving death threats of his own.¹⁵⁶

120. According to the information received by the Office of the Special Rapporteur, two individuals ambushed him and riddled him with bullets in an area near the town of Villa Ygatimí as he was returning from covering a story in the Ko'ë Porã neighborhood. The journalist was with his assistant, Antonia Maribel Almada, who was wounded in the attack and died later at the hospital.¹⁵⁷ Medina had been working as a journalist from the town of Curuguaty and published information and news on drug trafficking and irregularities allegedly committed by local authorities.¹⁵⁸ According to Interior Minister Francisco de Vargas, the journalist was the victim of constant threats, because of which he had been receiving sporadic police protection for certain reporting assignments.¹⁵⁹

121. The case and its national and international impact gave rise to a rapid response from the State. Paraguayan President Horacio Cartes condemned the murder and declared that he would use "the full weight of the law and the lawful force of the State" to investigate and punish the perpetrators. The President also reiterated his appreciation for the work of journalists in Paraguay.¹⁶⁰ Foreign Minister Eladio Loizaga also expressed his "strongest" condemnation of the crime.¹⁶¹

122. Within a short period of time, authorities determined that the main suspected mastermind of the murder was the then-mayor of the city of Ypejhú, Vilmar Acosta, who fled to Brazil. The Court of Conduct of the ruling Colorado Party decided to expel him from the group on November 7, 2014, based on the accusations.¹⁶²

123. The support, however, was not unanimous. Shortly after the murder, Paraguayan Supreme Court Justice Víctor Núñez stated at a press conference that Medina "was writing about things he had no knowledge of" and "referred to case files he knew nothing about." Medina had accused Justice Núñez of interceding on

¹⁵⁶ Última Hora. April 16, 2015. [Padre del periodista Medina dice que también daría la vida para no callar](#); ABC Color. January 5, 2012. [A 11 años del asesinato de Salvador Medina](#); Inter American Press Association (IAPA). December 15, 2015. [Salvador Medina Velásquez](#); 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. Para. 186.

¹⁵⁷ Committee to Protect Journalists (CPJ). October 17, 2014. [Paraguayan journalist shot dead on way back from covering story](#); ABC Color. October 16, 2014. [Fallece segunda víctima de sicarios](#); Hoy. October 17, 2014. [Muerte de Medina, "grave ataque al periodismo"](#); Última Hora. October 24, 2014. [Jóvenes piden justicia para Antonia Almada](#).

¹⁵⁸ 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](#); El Comercio/Agencias. October 16, 2014. [Paraguay: Asesinan a periodista en zona dominada por narcos](#); Caracol Radio/EFE. October 16, 2014. [Asesinan a periodista en Paraguay, el tercero en lo que va de año](#).

¹⁵⁹ 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"](#).

¹⁶⁰ Presidencia de la República del Paraguay. October 16, 2014. [Mensaje del Presidente de la República](#); ABC Color. October 16, 2014. [Cartes: "Usaremos todo el peso de la ley"](#).

¹⁶¹ Ministerio de Relaciones Exteriores. October 17, 2014. [Loizaga reiteró condena por horrendo crimen que terminó con la vida del periodista de ABC](#); Última Hora. October 17, 2014. [Asesinato de periodista impacta al país, afirma canciller](#); ABC Color. October 17, 2014. [Muerte de periodista "daña imagen positiva del país"](#).

¹⁶² Hoy. November 7, 2014. [Partido Colorado expulsa a "narcointendente" de Ypehú](#); ABC Color. November 7, 2014. [ANR expulsa a "Neneco" \(VIDEO\)](#); Última Hora. November 8, 2014. [Con un voto en disidencia, la ANR expulsó al prófugo Neneco Acosta](#).

Vilmar Acosta's behalf to get him released from jail in 2011, when he was in custody for his alleged involvement in a triple homicide after human hair and skeletal remains were found at his father's house.¹⁶³

124. Vilmar Acosta was finally arrested in March 2015, five months later, accused of being the mastermind behind the murder of journalists Pablo Medina and Antonia Almada. Acosta's brother Wilson and his nephew Flavio Acosta were also charged as direct perpetrators of the murder.¹⁶⁴ Flavio Acosta was detained in January 2016 in southern Brazil, where he remained in custody as of late September 2016 and was fighting extradition on the argument that he had Brazilian citizenship. Wilson Acosta reportedly remained a fugitive from justice.¹⁶⁵

125. In March 2016, Vilmar Acosta Marques's driver, Arnaldo Cabrera, was convicted in this case. Although he was not charged with murder, he was sentenced to five years in prison for the offense of "failure to report a crime."¹⁶⁶ "After working with Vilmar as his driver, I found out that he had a problem with a local journalist named Pablo Medina, who was harming him politically. I heard this at a family gathering that he held," said Cabrera to the Office of the Prosecutor, according to an article published in *ABC Color*. "On that occasion, I heard that Vilmar Acosta was going to bring his brother Wilson Acosta from Brazil so he could eliminate the people who were damaging his political career," stated Cabrera.¹⁶⁷

126. "Once I also heard him tell his sisters that he was going to have the journalist killed because he had caused him harm on several occasions. He said the journalist was putting too much pressure on him through his publications, especially since, because of those publications, Vilmar Acosta had been detained and sent to Coronel Oviedo Prison," stated his former driver to the Court, according to an *ABC Color* report that shed light on the murder and its connection to Medina's work as a journalist. "After he got out of prison, they met up with Wilson to see how they could kill the journalist, and that day, he arrived on the date on which Pablo Medina was murdered," he added.¹⁶⁸

127. According to the Office of the Attorney General of Paraguay, the Acosta Marques family controlled the trafficking of marijuana and other drugs in the Canindeyú area.¹⁶⁹ For this, they relied on the power they had in Ypehú, a city on the Brazilian border. The investigation, establishment of the facts, and timely punishment of the perpetrators, in addition to satisfying the demand for justice in this specific case, allows all of society to know about the impact of organized crime and its effects on democracy and freedom of expression in Paraguay.

128. This case drew the attention of Paraguayan institutions, and the National Congress spearheaded the investigation into the murder of journalist Pablo Medina, appointing a Bicameral Committee to investigate the crime and the infiltration of organized crime into State institutions.¹⁷⁰

¹⁶³ 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/You Tube. November 4, 2014. [Núñez cuestiona labor de Medina y se aferra al cargo](#).

¹⁶⁴ Paraguay.com. October 19, 2014. [Solicitan detención de Intendente de Ypehu](#); Hoy. October 18, 2014. [Asesinato a periodista: Ordenan detención de intendente](#).

¹⁶⁵ Knight Center for Journalism in the Americas. January 11, 2016. [Second suspect in murder of Paraguayan journalist Pablo Medina captured in Brazil](#); Crónica. January 10, 2016. [Cae presunto asesino del periodista Pablo Medina](#); ABC Color. January 9, 2016. [Cae asesino de Pablo Medina](#); ABC Color. June 16, 2016. [Fiscalía brasileña pide tiempo en caso Flavio](#).

¹⁶⁶ Knight Center for Journalism in the Americas. March 22, 2016. [First conviction handed down for 2014 murder of Paraguayan journalist Pablo Medina](#); Última Hora. March 21, 2016. [Condenan a 5 años de cárcel a ex chofer de Neneco](#).

¹⁶⁷ ABC Color. March 22, 2016. [Exchofer de Neneco es condenado a cinco años de cárcel por caso Pablo](#).

¹⁶⁸ ABC Color. March 22, 2016. [Exchofer de Neneco es condenado a cinco años de cárcel por caso Pablo](#).

¹⁶⁹ Ministerio Público. República del Paraguay. July 15, 2015. [Esta mañana detuvieron a cuñado de Vilmar Acosta Marques, procesado por tráfico de drogas](#).

¹⁷⁰ IACHR. 159 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Paraguay. December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

129. The department of San Pedro borders on the departments of Concepción and Amambay to the north, and is also a dangerous department in which to practice journalism. According to the information received by the Office of the Special Rapporteur, Medina had been threatened previously, after having reported the existence of a local mafia with alleged ties to the *Partido Colorado* [Colorado Party]. Nine months later, on October 16, the Court convicted Milciades Maylin as the direct perpetrator of the crime and sentenced him to 25 years in prison. The conviction was upheld and rendered final on March 27, 2002, by the VI Criminal Court of the Judicial District of Alto Paraná and Canindeyú.¹⁷¹

130. Some freedom of expression and human rights organizations pointed to Justo Franco, a Colorado Party leader allegedly involved in the trafficking of timber from the forest reserve of the Paraguayan ministry of Agriculture and Livestock in Capiibary, as the alleged mastermind of the crime.¹⁷²

131. The first murder of a journalist for work-related reasons that occurred on the border was that of journalist Santiago Leguizamón, a resident of Pedro Juan Caballero and correspondent for the Asunción-based newspaper *Noticias*. He was also the host of the afternoon radio program “*Puertas Abiertas*” on *Radio Mburucuyá*. Leguizamón was murdered in 1991. Prior to his death, the newspaper for which he worked published a series entitled “*El Hampa en Pedro Juan*” [“The Criminal Underworld in Pedro Juan”], which was an exposé on businesses tied to contraband smuggling, drug trafficking, and corruption. The IACHR declared the case of Santiago Leguizamón admissible in April 2016.¹⁷³

132. Over the past 15 years, another five journalists were murdered in Paraguay, in addition to two Paraguayan journalists who were murdered in Brazil very near the border. Samuel Román was slain in 2004. He was a journalist for the radio stations *Ñu Verá* and *Conquista FM* of Capitán Badó, a town on the Brazilian border. Three years later, a Brazil court sentenced the mastermind of the murder, Eurico Mariano, to 17 years and nine months in prison. Mariano had been the mayor of the city of Coronel Sapucaia, just across from Capitán Badó in the State of Mato Grosso do Sul.¹⁷⁴

133. Between 2007 and 2012, the Office of the Special Rapporteur documented the murder of 3 journalists for reasons connected to their profession in Paraguay. Although they did not all occur in the Department of Amambay, they highlight the difficult security situation faced by journalists in remote regions and border areas of Paraguay. Journalist Alberto Palma Godoy, a correspondent for the *FM Mayor Otaño* and *Chaco Boreal* radio stations, was murdered in 2007 after having received threats.¹⁷⁵ In 2009, Martín Ocampos Páez, the director of community radio station *Hugua Ñandú FM* in the Department of Concepción, was murdered in his house. The station had regularly denounced the existence of drug trafficking operations in the area, which reportedly led to death threats.¹⁷⁶ In 2012, journalist Paulo Roberto Cardoso Rodrigues was murdered in Ponta Porã, a city in the State of Mato Grosso do Sul that borders on Pedro Juan Caballero.

¹⁷¹ Proyecto Impunidad. Inter American Press Association (IAPA). June 6, 2006. [Veinticinco años de prisión y unos días de vacaciones](#); ABC Color. April 26, 2013. [La impunidad reina sobre la libertad de expresión](#).

¹⁷² Proyecto Impunidad. Inter American Press Association (IAPA). No date. [De cabos sueltos y civiles prófugos](#); Rebellion.org. February 4, 2001. [Circular del Sindicato de Periodistas del Paraguay \(SPP\) sobre el asesinato de Salvador Medina](#).

¹⁷³ IACHR. [Report No. 24/16 Petition 66-07 Report on Admissibility Santiago Leguizamón Zaván and Family Paraguay](#). April 15, 2016.

¹⁷⁴ ABC Color. April 27, 2004. [Crimen de Samuel Román es un mensaje de la mafia al periodismo](#); Inter American Press Association (IAPA). August 16, 2007. [IAPA hails conviction in Brazil in murder of Paraguayan newsman](#); Committee to Protect Journalists (CPJ). August 10, 2007. [Former mayor receives prison sentence for journalist's murder](#).

¹⁷⁵ Inter American Press Association (IAPA). August 24, 2007. [Condena la SIP asesinato de periodista en Paraguay](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. August 28, 2007. [Press Release 176/07 Office of the Special Rapporteur for Freedom of Expression Deplores Murder of Journalist in Paraguay and Demands an Investigation](#); IACHR. [Annual Report 2008. 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. Para. 207.

¹⁷⁶ Reporters Without Borders (RSF). February 17, 2009. [Asesinan al director de una radio comunitaria](#); Inter American Press Association (IAPA). Impunidad - Asesinatos. Midyear Meeting, March 13-16, 2009. Asunción, Paraguay. Available at: <http://www.sipiapa.org/notas/1129338-impunidad-asesinatos>; Radio Almenara. February 4, 2009. [Asesinado miembro de una radio Comunitaria en Paraguay](#); IFEX. February 16, 2009. [Community radio director Martín Ocampos Páez killed](#).

Rodrigues, known as Paulo Rocaro, was the editor-in-chief of *Jornal da Praça* and the founder of the news website *Mercosul News*. He was critical of the authorities in his work, and the preliminary police investigations reportedly determined that his death was likely connected to his practice of the profession.¹⁷⁷

134. In 2014, journalists Fausto Gabriel Alcaraz and Edgar Fernández were murdered in Paraguay. Alcaraz, of *Radio Amambay 570 AM* in Pedro Juan Caballero, was killed on May 16, 2014, after having denounced on air alleged drug trafficking crimes on the border.¹⁷⁸ The murder of Fernández, of *Radio Belén Comunicaciones* in the Department of Concepción, took place on June 19, 2014, in his own home. The journalist had been critical of judicial authorities in his area. An alleged mastermind behind this crime was promptly arrested.¹⁷⁹

135. In 2015, journalist Gerardo Servián was murdered in Ponta Porã, the small Brazilian town that shares a border with Pedro Juan Caballero. This was the third murder of a journalist in that area in three years. Servián worked for the community radio station *Ciudad Nueva FM* of Zanja Pytã.¹⁸⁰

136. In Concepción, former Colorado Party Congressman Magdaleno Silva was been linked to drug trafficking. Silva was murdered in 2015. In Amambay, brothers José Carlos and Robert Acevedo—of the Authentic Radical Liberal Party [*Partido Liberal Radical Auténtico*]¹⁸¹—and the governor, Pedro González, are alleged to have ties to organized crime.¹⁸¹

137. The threats to journalists in Paraguay's border region have not stopped. The Office of the Special Rapporteur therefore welcomes the State's announcement that it is committed to creating a comprehensive system for the protection of journalists in the country. Indeed, the new *ABC Color* correspondent in Canindeyú has received messages saying that, "You are going to be the next one if you continue to write like this." The newspaper decided to stop covering police operations that take place in that area at night.

Threats and attacks on media outlets

¹⁷⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. February 15, 2012. [Press Release R18/12 Office of the Special Rapporteur Condemns a New Murder of a Journalist in Brazil](#); Folha de São Paulo. February 16, 2012. [Polícia diz acreditar que jornalista de MS foi morto por vingança](#); Associação Nacional de Jornais (ANJ). February 14, 2012. [ANJ pede rápida apuração sobre assassinato de jornalista](#).

¹⁷⁸ 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](#); Última Hora. May 16, 2014. [Matan a periodista radial en Pedro Juan Caballero](#); ABC Color. May 16, 2014. [Periodista asesinado a tiros en Pedro Juan](#); Hoy. May 16, 2014. [Sicarios acribillan a periodista en Pedro Juan](#); El Tiempo/EFE. May 16, 2014. [El periodista paraguayo Fausto Gabriel Alcaraz, conocido por sus denuncias contra el narcotráfico, murió hoy a consecuencia de los disparos efectuados por dos desconocidos](#); ABC Color. May 17, 2013. [Matan a tiros a periodista de Radio Amambay y acusan al narcotráfico](#).

¹⁷⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. June 24, 2014. [Press Release R 70/14 Office of the Special Rapporteur Condemns Murder of Journalist in Paraguay](#); ABC Color. June 20, 2014. [Sicarios acribillan a radialista tras irrumpir en su casa en Concepción](#); La Vanguardia/EFE. June 20, 2014. [Asesinan a segundo periodista en Paraguay en poco más de un mes](#); Página 12. No date. [Van dos periodistas muertos en Paraguay](#); Paraguay.com. June 20, 2014. [Locutor asesinado criticaba a todos](#); Radio Amambay 570 AM. June 20, 2014. [SPP condena crimen de periodista concepcionero](#); ABC Color. June 21, 2014. [Detienen a supuesto homicida en Concepción](#); Paraguay.com. June 22, 2014. [Detienen a supuesto asesino de locutor](#); Radio Amambay 570 AM. June 22, 2014. [Detienen a supuesto homicida de periodista en Concepción](#).

¹⁸⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 23, 2015. [Comunicado de Prensa R 34/15. Relatoría Especial condena asesinato de periodista paraguayo en Brasil](#); 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](#).

¹⁸¹ ABC Color. May 8, 2015. [¿Quién era Magdaleno Silva?](#); Última Hora. May 6, 2015. [Senad admite que Magdaleno tenía vínculos con narcos](#); Agencia Informativa Paraguaya. May 6, 2015. [Senador Giuzzio confirma que Silva fue investigado por vínculos con el narcotráfico](#); ABC Color. August 10, 2008. [Documentos confirman vínculo de los hermanos Acevedo con el clan Yamil](#); ABC Color. May 31, 2014. [Región dominada por delincuentes](#); CPJ. April 27, 2015. [Informar con guardaespaldas en la frontera paraguaya](#); E'a. June 2, 2014. [Fiscal acusa a policías por escaso avance de la investigación de asesinato de periodistas](#); Radio Imperio. May 31, 2014. [Evitar que Amambay se convierta en "tierra de nadie"](#).

138. According to the Paraguayan State, 14 journalists currently have special protection measures in place due to the risks they face and the threats they have reported.¹⁸² One of them is Cándido Figueredo, a correspondent for the newspaper *ABC* in the city of Pedro Juan Caballero.

139. Cándido Figueredo a correspondent for the newspaper *ABC* in the border region, and has had a security detail provided for by the State for nearly 20 years. Figueredo is nationally and internationally known for his reports denouncing drug trafficking and the ties between drug traffickers and local politicians. In 2015 he received the International Press Freedom Award from the Committee to Protect Journalists (CPJ) in acknowledgement of his work reporting on the problems on the border between Paraguay and Brazil. Figueredo has received threats on several occasions, and his house has twice been the target of armed attacks.¹⁸³

140. In its 2012 Annual Report, the Office of the Special Rapporteur indicated that Brazilian police alerted Cándido Figueredo to a plan to assassinate him that had been hatched by alleged drug traffickers. According to reports, Intelligence Service agents of the Brazilian Civil Police met with Figueredo and allowed him to listen to the recording of an intercepted phone call in which an alleged drug trafficker told an inmate in a Brazilian jail that he intended to murder Figueredo. The plan to kill the journalists reportedly stemmed from several articles published in *ABC Color*, in September 2011, reporting the existence of several clandestine landing strips used for drug trafficking, which were later located and destroyed by authorities.¹⁸⁴

141. According to the information provided by the State to this Office of the Special Rapporteur, Figueredo has personal security 24 hours a day, and there have also been random police patrols. The threats against him are reportedly being investigated by the Crime Unit of Pedro Juan Caballero.¹⁸⁵ The security detail assigned to the journalist means that he is under 24-hour guard by armed men, and works without leaving his house in order to avoid security incidents. He has stated that reporting from the border has meant having to live locked up inside his house in order to be safe.¹⁸⁶ The journalist maintained in an interview that, in Pedro Juan Caballero, “you have to take care, you have to know to look and listen, you have to know how to speak and how to move.”¹⁸⁷

142. During 2016, the Office of the Special Rapporteur also documented an attack on the newspaper *La Jornada*, which is published in Ciudad del Este. Unknown persons opened fire on the newspaper’s facilities on September 8. Its director, José Espínola, attributed the incident to the recent publication of journalistic reports in which three police officers were linked to the kidnapping and robbery of two employees of a private company. The following day, a National Police officer was detained as a suspect in the incident.¹⁸⁸ The

¹⁸² IACHR. 159 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Paraguay. December 22, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

¹⁸³ Committee to Protect Journalists (CPJ). No date. [International Press Freedom Awards. Cándido Figueredo Ruíz, Paraguay](#); *ABC Color*. September 19, 2015. [Cadena internacional destaca a periodista de ABC](#); Committee to Protect Journalists (CPJ). April 27, 2015. [Reporting with bodyguards on the Paraguayan border](#).

¹⁸⁴ 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. 406. .

¹⁸⁵ Misión Permanente del Paraguay ante la Organización de los Estados Americanos. Informe del Estado Paraguayo Relatoría especial para la libertad de Expresión. Nota No. 1283/16/MPP/OEA. November 28, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

¹⁸⁶ Committee to Protect Journalists (CPJ). April 27, 2015. [Reporting with bodyguards on the Paraguayan border](#); *ABC Cardinal*. September 1, 2016. [“Hay políticos que darían todo porque yo cierre mis ojos y nunca más los abra”](#); Knight Center for Journalism in the Americas. October 5, 2016. [“My guards are almost family”: threatened journalist who has been living under 24-hour protection for 20 years](#).

¹⁸⁷ *ABC Cardinal*. September 1, 2016. [“Hay políticos que darían todo porque yo cierre mis ojos y nunca más los abra”](#).

¹⁸⁸ *ABC Color*. September 9, 2016. [Balearon diario La Jornada de CDE](#); Última Hora. September 9, 2016. [Detienen a sospechoso de atentar contra el diario La Jornada](#); Hoy. September 9, 2016. [Atentaron a balazos contra diario de Ciudad del Este](#); *ABC Color*. September 9, 2016. [Videos de los atentados a diario de Ciudad del Este](#); Vanguardia. September 10, 2016. [Acribillan con 15 balazos local del diario regional La Jornada](#); La Nación. September 10, 2016. [Policías habrían atentado contra el diario La Jornada](#); Paraguay.Com. September 11, 2016. [Sindicato de Periodistas condena ataques contra sede de dos medios](#).

day after that, explosives were thrown at the facilities of the *Radio Amambay* radio station. Two people who were inside the property, located in the town of Pedro Juan Caballero, were injured. These events reportedly occurred around 9:00 p.m., during the broadcast of a program hosted by journalist Patricia Ayala.¹⁸⁹ The radio station is owned by Senator Robert Acevedo, President of the Paraguayan Congress, who reportedly stated that the incident was a warning to his family because of the “fight against drug trafficking” that he spearheaded, and that this was the third occasion on which the station owned by his family was attacked.¹⁹⁰

143. The attack on *Radio Amambay* reflects one of the difficulties faced by journalists in the Paraguay—Brazil border area. The scant employment opportunities force local journalists to work as freelancers. In addition, as the organizations stated before the IACHR and to the United Nations for the Universal Periodic Review, one of the situations that creates a major risk for journalists is that many of the media outlets on the border are owned by politicians who use them as a forum for attacking their opponents, putting journalists in the middle of that confrontation. Added to this, the fact that journalists are in remote areas and working for small media outlets means that many times the violence committed against them does not attract national attention, which then becomes a factor that contributes to impunity.¹⁹¹

144. Despite being exposed to considerable levels of risk, journalists in the region may be resistant to accepting State protection. According to civil society organizations, a report prepared by a bicameral committee of the Paraguayan legislature concluded that 70 per cent of the National Police is reportedly infiltrated by organized crime and that the criminal networks financed by drug trafficking have permeated Paraguayan government.¹⁹² This explains the high level of mistrust that journalists have toward the National Police and judicial authorities.

C. STATE OBLIGATIONS REGARDING VIOLENCE AGAINST JOURNALISTS

145. The media and investigative journalism have become fundamental in the struggle against corruption, abuse of authority, grave human rights violations, and inefficiency in the performance of the Government. In the Americas, journalism plays a fundamental role in ensuring transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press.¹⁹³

146. In its report “Violence against journalists and media workers,” the Office of the Special Rapporteur rigorously and at length described States’ obligations in response to violence against journalists based on the Inter-American legal framework and on other international human rights law instruments. For the purposes of this report, the Office of the Special Rapporteur considers it essential to reiterate these obligations, as ensuring compliance with them is tantamount to combating the violence against the press and its chilling effect and the resulting damage to democratic societies. This report focuses on the obligations that are

¹⁸⁹ ABC Color. September 9, 2016. [Lanzan una bomba contra Radio Amambay](#); Víctor Benitez/You Tube. September 9, 2016. [Atentado contra Radio Amambay](#); Paraguay.com. September 11, 2016. [Sindicato de Periodistas condena ataques contra sede de dos medios](#); Hoy. September 9, 2016. [Así atentaron contra Radio Amambay](#); TN23/You Tube. September 13, 2016. [Asociación Internacional de Radiodifusión repudia ataque contra Radio paraguaya](#); TelefuturoInfo/You Tube. September 10, 2016. [Hallan dos granadas en el techo de radio tras atentado](#).

¹⁹⁰ ABC Color. September 12, 2016. [Hermética reunión con presidente del Congreso](#); ABC Color. September 13, 2016. [Para Acevedo, atentado contra la radio de su familia sería una “distracción”](#).

¹⁹¹ Coalición IFEX-SPP (CIFEXSPP). No date. [Report for Universal Periodic Review Paraguay 2016](#); IACHR. 159 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Paraguay. December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

¹⁹² IACHR. 159 Period of Sessions. Hearing Situation of the Right to Freedom of Expression in Paraguay. December 2, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

¹⁹³ Inter-American Democratic Charter: “Article 4. Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy”.

particularly relevant to preventing violence toward and protecting communicators who work in so-called “silenced zones,” or areas where reporting is difficult due to the presence of organized crime. In this section, the Office of the Special Rapporteur will also look at instruments of international law developed recently by international bodies to raise awareness on the need to combat violence against journalists and impunity for these crimes, as well as a series of good practices that some States in the region have been applying in this regard.

147. Violence against journalists compromises the rights to personal integrity, life, and freedom of thought and expression. Likewise, the lack of due diligence in the investigation, pursuit and punishment of all those responsible can result in an additional violation to the rights to access to justice and judicial guarantees of those affected and their family members. The American Convention on Human Rights (“American Convention” or “Convention”) guarantees these rights in articles 4, 5, 13, 8 and 25.¹⁹⁴ Likewise, the American Declaration of the Rights and Duties of Man, on its turn, states that “[e]very human being has the right to life, liberty and the security of his person” and that “[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.” Similarly, the American Declaration guarantees the rights to petition and to justice.¹⁹⁵ The effective exercise of these rights includes both positive and negative obligations.

148. With regard to negative obligations, pursuant to the principles of international law, the State is responsible for all the acts and omissions in which its agents take part in the exercise of their duties, including when they surpass the limits of their area of competence.¹⁹⁶ OAS Member States are required to ensure that their agents do not interfere with the rights to life and personal integrity and to refrain from carrying out actions that could violate these rights directly, such as acts of violence against their own citizens. Cases are continually reported in the region of State agents committing acts of violence against journalists, especially in the context of police or military action intended to combat crime or control demonstrations, as well as in cases of allegations of corruption or illegalities committed by local authorities.

149. As regards positive obligations, many of the most serious acts of violence against journalists in the Americas—homicides, disappearances, kidnappings and armed attacks on media outlets, among other acts— are committed by non-State actors, especially powerful criminal groups.

150. Based on Inter-American scholarship and case law, the State has three positive obligations that emanate from the rights to life, personal integrity, and freedom of expression. They are: the obligation to prevent, the obligation to protect and the obligation to investigate, try and criminally punish those responsible for these crimes.¹⁹⁷ As the Office of the Special Rapporteur has indicated, these obligations are

¹⁹⁴ American Convention on Human Rights: “Article 4. Right to Life 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. [...] Article 5. Right to Humane Treatment 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners. [...] Article 13. Freedom of Thought and Expression 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. [...]”

¹⁹⁵ American Declaration of the Rights and Duties of Man: “Article XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights. (...) Article XXIV. Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon”.

¹⁹⁶ I/A Court H.R. Case of the “Mapiripán Massacre” v. Colombia. Judgment of September 15, 2005. Series C No. 134. Para. 108; I/A Court H.R. Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006. Series C No. 140. Para. 111.

¹⁹⁷ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on

complementary to each other: in order for free, robust, and unrestricted democratic debate to exist, violence against journalists must be combated through a comprehensive policy of prevention, protection, and procurement of justice.¹⁹⁸

151. Regarding this, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity establishes that:

Promoting the safety of journalists and fighting impunity must not be constrained to after-the-fact action. Instead, it requires prevention mechanisms and actions to address some of the root causes of violence against journalists and of impunity. This implies the need to deal with issues such as corruption, organized crime and an effective framework for the rule of law in order to respond to negative elements (...).¹⁹⁹

152. To comply with these obligations, States must guarantee that journalism in particular and the right to freedom of expression generally can be exercised freely, thereby enabling the existence of informed societies. In particular, allowing an entire region to be silenced without adopting measures to stop threats against those exercising freedom of expression opens the door to other human rights violations and damages democracy. In order to prevent the creation of silenced zones and deal with those that already exist, States must commit to fostering an environment that is favorable to the exercise of freedom of expression, which can only be accomplished with a comprehensive policy that includes protection, prevention, and administration of justice.

153. In this regard, it is important to highlight that these obligations must be complied with not only with regard to journalists who work regularly in the traditional media but also with regard to journalists or citizens who create content and/or disseminate information in the public interest on the Internet. This is in line with the definition of the United Nations Human Rights Committee, which in 2011 defined journalists as “a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.”²⁰⁰

154. It should also be noted that all actions taken by states to comply with their obligations to prevent, protect, and investigate, try, and criminally punish those responsible for crimes against journalists must take into account the differentiating effect of crimes against journalists who are women.

1. The Obligation to Prevent

155. States have an obligation to adopt measures to prevent violence against journalists and media workers. This obligation is particularly important in countries in which there is a risk of these incidents taking place and in specific situations in which authorities know or should know that there is a real and

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](#).

¹⁹⁸ IACHR. [Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression](#). Chapter II (Special Report on Freedom of Expression in Mexico 2010). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 541; IACHR [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 472.

¹⁹⁹ United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity. Point 1.6. Available at: <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/>.

²⁰⁰ United Nations. Human Rights Committee. [General comment No. 34 Article 19: Freedoms of opinion and expression](#). CCPR/C/GC/34. September 12, 2011. Para. 44.

immediate risk of such crimes being committed.²⁰¹ In these situations, the absence of a general public policy of prevention can mean the State has failed to comply with its duty to prevent.²⁰²

156. The Office of the Special Rapporteur has indicated that the obligation to prevent includes a series of specific obligations: the obligation to ensure its public statements contribute to preventing violence against journalists; the obligation to instruct its security forces to respect the media; the obligation to respect the right of journalists to the confidentiality of their sources, notes and personal and professional files; the obligation to punish violence against journalists; and the obligation to maintain precise statistics on violence against journalists.²⁰³

157. Compliance with this obligation is of vital importance in countries with areas in which journalists have turned to self-censorship in order to prevent this from being replicated in other places in the country where similar violence is taking place.

a. The Obligation to Ensure Public Statements Contribute to Preventing Violence Against Journalists

158. The Inter-American Court has found that the obligation to guarantee the rights of freedom of expression and personal integrity requires public officials to refrain from making statements that expose journalists and media workers to a great risk of acts of violence.²⁰⁴ The Office of the Special Rapporteur has similarly indicated that government officials are responsible for ensuring their public speech does not expose journalists to greater risk of violence. In this regard, the Office of the Special Rapporteur has recalled, among other things, that a simple but very effective measure of protection is for the most senior State officials to consistently, clearly, publicly, and firmly recognize the legitimacy and value of the work that journalists do, even when the information they disseminate is critical of the government or inconvenient to its interests. It is likewise crucial for authorities to energetically condemn attacks on journalists and push the competent authorities to act with due diligence and swiftness in clearing up the facts and punishing those responsible.²⁰⁵

159. In States with a federal structure or in States where government authority is decentralized into a number of different levels, the speech of federal or national authorities might promote the legitimacy of journalism activities while locally, government statements remain hostile toward the media, exposing local communicators to a higher risk of violence. The Special Rapporteur recalls that a State answers as a whole to international law, the obligations of which extend to all its powers and levels of governance.

²⁰¹ 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](#).

²⁰² I/A Court H.R. Case of *González et al ("Cotton Field") v. Mexico*. Preliminary Exception, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205. Para. 282.

²⁰³ 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. 2.

²⁰⁴ I/A Court H.R. Case of *Perozo et al v. Venezuela*. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195.

²⁰⁵ 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 7, 2011. Para. 713. In that regard, 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](#); United Nations. General Assembly. Report of the United Nations 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. 103. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?m=85; 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. 110. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

b. The Obligation to Train Security Forces on Respect for the Media

160. Appropriate instruction of State security forces on the role of the press in a democratic society constitutes an important step in preventing violence against journalists and media workers. For this reason, the Office of the Special Rapporteur has recommended that States adopt adequate preventive mechanisms in order to avert violence against media workers, including the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines regarding respect for the right of freedom of expression.²⁰⁶ This is particularly important in relation to forces that carry out public security tasks which regularly bring them into direct contact with the members of the press who cover their activities, especially if the force in question was not originally trained for such public security tasks.²⁰⁷

161. The Office of the Special Rapporteur views this obligation as extremely important, considering that in many countries in the region, the struggle against organized crime and drug trafficking is conducted by a variety of different bodies of the armed forces and the police. Likewise, in many cases in which journalists are murdered or threatened in “silenced zones,” they were on the police beat, meaning that for their work, they are in contact with members of the armed forces, either because they are used by the journalists as sources of information or because they are the subject of the journalists’ reporting.

162. The call to provide training to security forces on freedom of expression and the role of journalists and media workers has been echoed by a number of international organizations. In their 2012 Joint Declaration on Crimes against Freedom of Expression, the special rapporteurs on freedom of opinion and expression highlighted that “appropriate training on crimes against freedom of expression, including gender specific crimes, should be provided to relevant law enforcement officials, including the police and prosecutors, as well, where necessary, to military personnel.”²⁰⁸ Along the same lines, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that “Law enforcement officials and the armed forces should receive training, as part of standard procedure, on the legitimacy of the presence of journalists during nonarmed and armed conflict and the legal protection for their safety.”²⁰⁹

c. The Obligation to Respect the Right of Journalists to Keep Their Sources, Notes, and Personal and Professional Archives Confidential

163. The right of journalists to keep their sources’ identities confidential helps ensure sources’ lives are not threatened for being potential witnesses. Protection of confidential sources not only contributes to the fundamental role of the media as watchdogs but also helps prevent journalists from becoming victims of acts

²⁰⁶ 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. 4. See also, IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](#). Chapter VII (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 4; IACHR. [Annual Report 2010. 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. 4; IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 4.

²⁰⁷ The Committee has repeatedly pointed out that, since the armed forces lack the appropriate training to control citizen security, it is up to a civilian police force, efficient and respectful of human rights, to combat insecurity, crime and violence in the domestic field. IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 100.

²⁰⁸ 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](#).

²⁰⁹ 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. 118. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx> See also, United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [San José Declaration](#). May 2-4, 2013.

of violence due to a source's fear of being identified. For this reason, it should be ensured that, for example, no public official violates this confidentiality.²¹⁰

164. In areas or regions with high rates of violence against the media, this obligation is especially important considering that revelation of journalists' sources could put them at greater risk of retaliation by both the sources and the sources' "enemies."

d. The Obligation to Punish Violence Against Journalists

165. In order to prevent violence against journalists and media workers, it is indispensable for legal systems to punish this conduct in a manner that is proportional to the damage committed.²¹¹ In a more general sense, article 2 of the American Convention requires States to adopt legislative or whatever other measures that may be necessary to make the rights and freedoms recognized in the treaty effective.²¹²

166. In cases of violence against journalists in areas with high rates of violence, such as the ones described in this report, journalists who suffer violence have often been previously attacked or threatened or seen their colleagues murdered, with neither the law nor the agencies in charge of administering justice being adequate for rigorously investigating and punishing these crimes. In general, the fact that these types of crimes remain in almost absolute impunity in some parts of the region has encouraged their repetition.

e. Obligation to Keep Accurate Statistics on Violence Against Journalists

167. Understanding the magnitude and shape of violence against journalists and media workers is fundamental to implement effective policies of prevention, such as, for example, the design of trustworthy risk maps. In general, the IACHR has emphasized that State authorities must produce high-quality data that can be used to adequately plan the different operations of the police forces, so as to favor preventative actions as opposed to repressive ones. The design and up-to-date maintenance of trustworthy statistics and indicators on the different factors that contribute to violent or criminal acts constitute an irreplaceable tool for the implementation of an adequate process of strategic planning, which is a key piece of any public policy.²¹³

168. In the 2016 reports on the situation of human rights in Honduras and Mexico, as well as in the 2013 report on truth, justice, and reparation in Colombia, the IACHR recommended that these three States produce detailed and disaggregated crime statistics on violence against journalists and the criminal prosecution thereof. The Office of the Special Rapporteur has recommended that the statistics include the type of crime committed (homicide, kidnapping, etc.); the victim's name, gender, and employer; the location and date of the attack, the person and/or group allegedly responsible (when known); the authority in charge of the investigation; and the case file number of the investigation, along with the current status of the investigation and/or legal process.

169. The Office of the Special Rapporteur thus appreciates the creation of the Prevention Unit [Unidad de Prevención] of the Federal Protection Mechanism [*Mecanismo Federal de Protección de México*] of Mexico (the creation and operating of which will be described in more detail in this chapter), whose work includes

²¹⁰ 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.

²¹¹ I/A Court H.R. Case of the *Rochela Massacre v. Colombia. Merits, Reparations, and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 193. As the Commission has pointed out, under international law, States have a fundamental obligation to ensure the right to life by establishing effective provisions in their domestic criminal law and by creating the necessary enforcement mechanisms. IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 44. *See also*, European Court of Human Rights. *Case of Kılıç v. Turkey*. Application no. 22492/93. Judgment of March 28, 2000. Para. 63.

²¹² 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.

²¹³ IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 187.

collecting statistics and creating a database that is constantly updated in order to perform risk mapping and identify the patterns to the attacks in different areas in Mexico. Initiatives like this are very important for identifying patterns to the attacks by region and preventing the formation of new areas where the media may be silenced, as they make it possible for the State to take proactive measures to protect the media.

2. Obligation to Protect

a. The Obligation to Protect At-risk Journalists and Media Workers

170. Pursuant to the human rights laws of the inter-American system, States have a special obligation to protect those who face special risk to their fundamental rights. The obligation to adopt specific measures of protection is dependent on the knowledge that there is a situation of real or imminent risk to a particular individual or group of individuals and a reasonable possibility of preventing or avoiding harm.²¹⁴

171. The obligation to protect an at-risk journalist can be satisfied through the individual application of the measures necessary to ensure, among other things, the beneficiaries' right to life, to personal integrity, and to freedom of expression. When a particular country faces a systematic and grave structural situation of violence against journalists and media workers, States must establish special protection programs in order to serve these groups. At all times, the measures adopted must be adapted to the individual circumstances of the person at risk, including the person's gender, the need or desire to continue carrying out the same professional activities, and the person's social and economic circumstances.²¹⁵

172. When measures are taken to protect journalists from the credible threat of damage to their physical integrity, the measures must take into account the needs specific to the profession of the beneficiaries, their genders, and other individual circumstances. In their 2012 Joint Declaration, the Special Rapporteurs stated that the measures of protection "must be adequate to the individual circumstances of the person at risk, including the person's gender, the need or desire to continue carrying out the same professional activities, and the person's social and economic circumstances."²¹⁶

173. Likewise, the measures of protection for journalists and media workers must include a gender perspective that takes into account both the specific forms of violence suffered by women and the specific ways in which the protective measures are implemented that may be necessary or adequate for women journalists.

174. Finally, States also have a duty to adopt the measures necessary to ensure that those working in the media who have had to flee or exile themselves in response to a risk are able to return home safely. When it is not possible for these people to return, States must adopt measures enabling them to live in the place they chose in dignified conditions and with the necessary security measures and financial support to continue their work and family lives.²¹⁷

²¹⁴ I/A Court H.R.. *Case of Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006, Series C No. 140. Para. 123; I/A Court H.R.. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations, and Costs*. Judgment of March 29, 2006. Series C No. 146. Para. 155; I/A Court H.R.. *Case of Valle Jaramillo et al v. Colombia. Merits, Reparations, and Costs*. Judgment of November 27, 2008. Series C No. 192. Para. 78; I/A Court H.R.. *Case of González et al ("Cotton Field") v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 280. See also, IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009. Para. 42.

²¹⁵ 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](#).

²¹⁶ 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](#).

²¹⁷ IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 4 e). See also, IACHR. [Annual Report 2009. Report of the Special](#)

b. Programs for Protecting Journalists and Media Workers

175. In situations in which violence against journalists and media workers is particularly widespread, States' obligation to protect them could require the creation of permanent and specialized protection programs.

176. Over the last decade, a number of countries in the region have followed the recommendations of international bodies like the IACHR and its Office of the Special Rapporteur by establishing special programs to protect journalists. The Office of the Special Rapporteur supports and highlights the efforts made by a number of States—including, Brazil, Mexico, and Honduras—to establish this type of program and progressively provide it with the resources to fulfill its objectives, notwithstanding the deficiencies and implementation problems that this office has noted in its monitoring and ongoing dialogue with States on the situation of violence against journalists. Also, Argentina recently established a limited protocol to protect journalists, while Guatemala is looking at setting up a special program to protect journalists and human rights defenders, and Paraguay informed the IACHR of passage of a law to establish such a program in response to violence against journalists in a number of areas in the country.

177. In the case of Colombia, the program for the protection of journalists has been operating since 2000, making it the oldest and best established in the region. For its part, the protection program in Mexico was legally established in 2012. In the case of Honduras, the mechanism was established through a law passed in 2015. Although it has not begun to operate, the State has announced regulations for it to make it fully operational. Likewise, other countries have taken measures to include journalists and media workers as beneficiaries of pre-existing programs for protection. Such was the case in Brazil. On September 27, 2016, through Resolution 479-E/2016, Argentina's ministry of Security [*ministerio de Seguridad de Argentina*] approved a General Conduct Protocol for Protection of Journalism Activities. Both Paraguay and Guatemala are moving forward with processes to approve mechanisms to protect journalists. In the case of Paraguay, the State informed the Office of the Special Rapporteur that "a bill is before the National Congress on the protection of journalists and human rights defenders. The bill was submitted on November 17, 2016, as the Freedom of Expression and Protection of Journalists, Media Workers, and Human Rights Defenders Act" [*Proyecto de Ley "De libertad de expresión protección a periodistas, trabajadores de prensa y defensores de derechos humanos"*].²¹⁸

178. This section provides a detailed examination of existing protection programs in the region, describing the best practices identified for their creation and implementation, as well as the main challenges they currently face. When States decide to establish specialized protection programs, it is crucial that they be implemented adequately and in good faith.

179. Indeed, the IACHR has found in a number of reports that these programs "can enable a State to comply with its obligation of protection." However, some of the programs in the region "tend to have efficacy and design problems."²¹⁹ The IACHR and its Office of the Special Rapporteur have defined some of the requirements that States must follow for protective mechanisms to be effective. For example, the Office of the

[Rapporteur for Freedom of Expression](#). Chapter VII (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 4 e); IACHR. [Annual Report 2010. Report Of The Office Of The Special Rapporteur For Freedom Of Expression](#). Chapter VI (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 4 e); IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (Conclusions and Recommendations). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 4 e); United Nations. General Assembly. Report of the United Nations 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. 102. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?m=85

²¹⁸ Misión Permanente del Paraguay Ante la Organización de los Estados Americanos. Nota 1283/16/MPP/OEA. Ref: Informe del Estado Paraguayo. Washington DC. November 28, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

²¹⁹ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 484-486.

Special Rapporteur has recommended placing emphasis on: 1) the importance of guaranteeing the necessary personnel and financial resources for the adequate implementation of the mechanism; 2) the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and procurement of justice; 3) the need to adequately define protective measures called for in the mechanism and the procedure for their adoption; 4) the need to guarantee the full participation of journalists, civil society, and beneficiaries in the implementation and operation of the mechanism; and 5) the benefits of seeking support from the international community for the mechanism's operation.²²⁰

180. In addition, the IACHR has indicated that States must take into account that journalists and human rights defenders form two populations with certain distinct characteristics whose particular needs for protection must be taken into account when the protective program is designed and implemented, especially when the programs benefit both groups. The Office of the Special Rapporteur notes that it is important for the protection programs to guarantee that communicators are able to continue to perform their journalistic activities, as well as the specific needs of the profession (such as the privacy necessary to meet with sources) when designing the protective measures available, taking into consideration the circumstances of each specific case and in consultation with the potential beneficiary.

181. It is crucial for risk assessments and decisions on the adoption of protective measures to take into account the content of the journalistic work and the investigations that the potential beneficiary or the media outlet to which he or she belongs is carrying out and those investigations' possible connection with the alleged situation of risk under examination.

- **Colombia**

182. Law 418 in 1997 created a protection program under the ministry of the Interior aimed at people facing situations of risk "due to causes having to do with political or ideological violence, or with the armed internal conflict" and belonging to particular groups, such as leaders or activists with political groups, social organizations and human rights organizations.²²¹ In 2000, through Decree 1592, journalists and social communicators were for the first time recognized as a special at-risk population with the creation of the "Program for the Protection of Journalists and Social Communicators," run by the General Directorate of Human Rights of the ministry of the Interior.²²² Decree 1592 also established the Committee for Regulation and the Evaluation of Risks [*Comité de Reglamentación y Evaluación de Riesgos*] (CRER), an interinstitutional body made up of representatives of the State and civil society whose purpose was to evaluate specific cases and recommend the adoption of protective measures.²²³

183. Likewise, in June of 2012, Decree 1225 was issued to "restructure and define some of the concepts and procedures described in Decree 4912 of 2011."²²⁴ Under this new legal framework, the "program for the prevention and protection of the rights to life, liberty, integrity and safety of persons, groups and communities" for "persons, groups and communities facing situations of extraordinary or extreme risk as a direct result of the exercise of their political, public, social or humanitarian activities or functions, or as a result of the exercise of their duties."²²⁵ Was created, unifying all the existing specific programs for the protection of individuals in situations of extraordinary or extreme risk. Among the 16 groups subject to

²²⁰ 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; IACHR. [Annual Report 2010. 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. 712.

²²¹ Congreso Nacional. [Ley No. 418. December 26, 1997](#). Article 81.

²²² Presidencia de la República. [Decreto No. 1592. August 24, 2000](#). Article 1.

²²³ Presidencia de la República. [Decreto No. 1592. August 24, 2000](#). Article 2.

²²⁴ Presidencia de la República. [Decreto No. 1225 June 11, 2012](#).

²²⁵ Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Article 6.

protection due to risk included in the Program for Prevention and Protection are journalists and social communicators.²²⁶

184. Under this new structure, Colombia created the National Protection Unit [*Unidad Nacional de Protección*](UNP), a legal body with administrative and financial autonomy and its own budget, adscrito under the ministry of the Interior, with the purpose of "articulating, coordinating and executing the provision of protective services" to those persons facing situations of extraordinary or extreme risk in Colombia.²²⁷ The UNP is responsible for receiving and processing requests for protection; carrying out risk evaluations; implementing approved measures of protection; following up on the measures of protection granted; and communicating reported threats to the Office of the Attorney General of the Nation [*Fiscalía General de la Nación*].²²⁸ The Program for Protection also has a Technical Body for the Collection and Analysis of Information [*Programa de Protección cuenta también con un Cuerpo Técnico de Recopilación y Análisis de Información*](CTRAI), an inter-institutional body made up of UNP and National Police officials. Among other things, it is responsible for collecting and analyzing *in situ* information following a request for protection. It is also required to report new threats to the Protection Program.²²⁹ For its part, the Preliminary Evaluation Group [*Grupo de Valoración Preliminar*](GVP) is the body responsible for carrying out risk evaluations based on the information provided by the CTRAI and indicating the protective measures that would be suitable in a specific case within a period of 30 days upon receiving consent from the applicant.²³⁰

185. The most senior deliberative body of the Colombian Protection Program is the Risk Assessment and Measure Recommendation Committee [*Comité de Evaluación de Riesgo y Recomendación de Medidas*](CERREM), which replaces the defunct CRER in the analysis of requests and ordering of protective measures that should be granted in each case, as well as their duration. In its analysis, the CERREM must take into account the recommendations of the Preliminary Evaluation Group and the information provided by the entities participating in the Committee in order to validate the risk level determination made by the GVP. Additionally, the CERREM has the authority to recommend the adjustment, suspension or cancellation of preventative and protective measures based on the results of risk re-assessments.

186. The CERREM is a permanent body comprising five senior public officials with voice and vote.²³¹ It is presided over by the Director of the Human Right Directorate of the ministry of the Interior [*Director de la Dirección de Derechos Humanos del ministerio del Interior*]. Four delegates of each of the populations subjected to the program (including journalists) also participate in the CERREM meetings as permanent guests, among other persons. The delegates participate exclusively in the analysis of the cases of the groups they represent and can provide any information they may have on the requests under consideration as material for the adoption of protective measures.²³²

²²⁶ Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Article 1.

²²⁷ Presidencia de la República. [Decreto No. 4065 October 31, 2011](#). Articles 1 and 3.

²²⁸ Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Article 28.

²²⁹ Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Article 33.

²³⁰ Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Articles 34 and 35. According to the decree the *Grupo de Valoración Preliminar* (GVP) is coordinated by a delegate of the *Unidad Nacional de Protección* (UNP), and formed with a delegate of the Ministry of National Defense, a delegate of the National Police, a delegate of the *Programa Presidencial para la protección y vigilancia de los Derechos Humanos y el Derecho Internacional Humanitario*, and a delegate from the *Unidad Administrativa Especial de Atención y Reparación Integral a las Víctimas*. Also, the GVP has as its permanent special guests a representative of the *Fiscalía General de la Nación*, a representative of the *Procurador General de la Nación*, a representative of the *Defensor del Pueblo*, and the delegate of the *Secretaría Técnica de la Comisión Intersectorial de Alertas Tempranas*.

²³¹ They are: the Director of the *Programa Presidencial de Derechos Humanos y DIH*, the Director of *Protección y Servicios Especiales* of the National Police, the Director of the *Unidad Administrativa Especial de Atención y Reparación Integral a las Víctimas*, and the Coordinator of the *Oficina de Derechos Humanos de la Inspección General de la Policía*. Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Article 36.

²³² Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Articles 36-37.

187. The protective measures that the Colombian protection program provides are determined using two types of processes: an ordinary one and an urgent one that grants the director of the National Protection Unit the authority to put interim measures in place.

188. Depending on the risk situation of the potential beneficiary, the CERREM can take the following measures: planes de contingencia; Contingency plan; self-defense courses; police patrols and monitoring; arrangements for individual protection (including armored vehicles, driver and bodyguard); journeys via land, river, ocean or air to another place; temporary relocation, including economic assistance and the transportation of personal items; communication devices that allow for rapid contact with State agencies; and fortification and installation of security systems in the beneficiary's workplace and/or residence.²³³ The law also allows for adopting other measures of protection different from the ones it sets forth, "taking into account a differential approach, the risk level, and factors of place."²³⁴ Protection measures can be suspended should they be used improperly or at the request of the protected individual following consultation with and authorization by the CERREM. The measures can be ended on the recommendation of this agency when the risk evaluation concludes that they are no longer necessary; on request of the beneficiaries; or upon expiration of the measure's term.²³⁵ Current law also identifies the responsibilities of local and National Governmental entities with regard to the implementation of protective measures.²³⁶

189. According to the information provided by the Colombian State to the IACHR in 2015, provided to follow up on the recommendations made in the country report, 137 journalists enjoy some type of protective arrangement.²³⁷ According to the information available, the budget approved for the agency for 2016 was COP\$ 477 million 189 thousand (about US\$161 million).²³⁸ According to information from the *Fundación para la Libertad de Prensa* (FLIP), a civil society organization that participates in the CERREM as a permanent observer, "in 2015, the National Protection Unit had a budget of COP\$ 449 million 664 thousand (approximately US\$152 million) and held nine committees to assess risk and recommend measures (CERREM). During these meetings, more than 150 requests for protection submitted by journalists were discussed, and protective measures were granted to approximately 70 per cent of applicants."²³⁹

190. The Office of the Special Rapporteur has recognized the efforts made by the State of Colombia to protect journalists whose lives are at risk through the protection mechanism.²⁴⁰ Evidence of these efforts includes the political support the program has received for more than a decade, as well as the significant financial resources that have been allocated for its operation, the clarity of the legal framework and administrative proceedings surrounding its implementation, and the variety of protective measures available to the CERREM.

191. Despite this progress, in their report *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, the Office of the Special Rapporteur and the IACHR also noted persistent challenges in the implementation of the program for the protection of journalists and media workers. The Office of the Special Rapporteur observes the importance of establishing effective communication between the State agencies in charge of protecting the at-risk journalists and social communicators and the authorities

²³³ Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Article 11.

²³⁴ Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Article 11, Para. 2.

²³⁵ Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Articles 44-46.

²³⁶ Presidencia de la República. [Decreto No. 4912 December 26, 2011](#). Articles 25-32.

²³⁷ República de Colombia, *Avances en materia de promoción, garantía y defensa de los derechos humanos en Colombia. Primer Semestre de 2015*. Nota S-GAIID-15-088842. September 14, 2015. Page 49.

²³⁸ República de Colombia. Unidad Nacional de Protección. Resolución 0001 de 2016. [Por el cual se desagrega el detalle del anexo del Decreto de Liquidación correspondiente a las cuentas de Gasto de Personal, Gastos Generales y de Transferencia, de Funcionamiento y los gastos de inversión del Presupuesto de la Unidad Nacional de Protección-UNP para la vigencia fiscal 2016](#). January 4, 2016.

²³⁹ Fundación para la Libertad de Prensa (FLIP). [Paz en los titulares, miedo en la redacción](#). 2015. Page 55.

²⁴⁰ IACHR. Office of the Special Rapporteur for 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. 107.

responsible for investigating, trying and punishing those responsible for the alleged violations of their rights—including threats, attacks, harassment, and murders—perpetrated based on their professional activities. In this sense, the Commission notes the importance of the effective participation of the Office of the Attorney General of Nation in the different CERREM divisions in its capacity as a special guest such that it is able to provide and receive key information on situations under analysis and the alleged human rights violations suffered by journalists and social communicators.²⁴¹ The IACHR has reiterated to the Colombian State "the urgent need that the State establishes, as State policy in the short-, mid- and long-term, investigation as a measure of prevention. The IACHR recalls that the lack of investigation of the facts that motivate the risk situation could generate a cumulative effect with regard to the constant increase of beneficiaries in the protection program and the powers of revision of the decisions adopted on protection."²⁴²

- **Mexico**

192. In 2012, Mexico became the second country in the region to adopt a specialized mechanism for the protection of at-risk journalists. As mentioned previously, the creation of such a program was one of the main recommendations of the IACHR and UN special rapporteurs following their August 2010 on-site visit to the country. The Mexican Congress discussed and eventually approved a "Law for the Protection of Human Rights Defenders and Journalists." The law entered into force on June, 2012. The law creates the "Mechanism for the Protection of Human Rights Defenders and Journalists" in order to attend the State's "fundamental responsibility to protect, promote and guarantee human rights."²⁴³ Its stated objective is to establish coordination between federal and state governments in the implementation of preventive and protective measures to guarantee the "life, integrity, liberty and security of persons who are in a situation of risk as a consequence of the defense or promotion of human rights or the exercise of freedom of expression and journalism."²⁴⁴ The mechanism is made up of a Government Council [*Junta de Gobierno*], an Advisory Board [*Consejo Consultivo*], and a National Executive Coordinator [*Coordinación Ejecutiva Nacional*], and it is run by the ministry of Interior.

193. The law for the protection of human rights defenders and journalists represents an important step taken by the Mexican government toward complying with the obligation to protect at risk journalists, notwithstanding the implementation problems that have been noted throughout its existence.

194. Under Mexican law, the Government Council is the most senior level of the Mechanism and the main body for taking decisions on the granting of preventative and protective measures. The Government Council is made up of four representatives of the executive branch (ministry of Interior, Office of the Attorney General of the Republic, Secretariat of Public Security, and Secretariat for Foreign Relations), a representative of the National Human Rights Commission, and four representatives of the Advisory Board, two of them independent experts on the defense of human rights and two of them experts on the exercise of freedom of expression and journalism.²⁴⁵ Representatives from Congress, the judicial branch, the states, and the Mexico Office of the United Nations High Commissioner for Human Rights may participate in the Government Council sessions with speaking rights, but not voting rights.²⁴⁶ The petitioners whose case is under consideration will

²⁴¹ IACHR. [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013. Para. 966.

²⁴² IACHR. [Annual Report 2015. Chapter V. Follow-Up of Recommendations Issued by the IACHR in its Country or Thematic Reports. Follow Up on the Recommendations Made by the IACHR In The Report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015.

²⁴³ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 1.

²⁴⁴ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 1.

²⁴⁵ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 5 and 13.

²⁴⁶ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 6.

also be called to participate in the sessions.²⁴⁷ The main role of the Government Council is to evaluate, deliberate and rule on the granting and suspension of preventative and protective measures based on the information provided by the auxiliary units of the National Executive Coordinator.²⁴⁸ In its decisions, the body should respect “the *pro persona*, gender perspective, and best interest of the child principles, and other human rights standards.”²⁴⁹

195. The National Executive Coordinator is the body responsible for coordinating the operations of the Mechanism with federal entities, the sub-offices of the federal government, and autonomous agencies, and must be headed up by an official of the ministry of Interior ranking just below under-secretary or equivalent. The body is also made up of three auxiliary technical coordination units: i) Case Receipt and Rapid Reaction Unit, which is responsible for receiving requests to be included in the Mechanism, analyzing and defining which cases will be addressed through an extraordinary proceeding, and implementing urgent protective measures; ii) Risk Assessment Unit, which is responsible for drawing up the risk assessment studies, recommending the preventative or protective measures to be adopted in each case, periodically following up on the implementation of the measures, and making recommendations with regard to their continuation, adequateness or conclusion. Under the law, both units must be made up of at least five risk assessment and protection experts, one of them an expert in the defense of human rights and another in journalism and the exercise of freedom of expression: iii) the Prevention, Follow-up and Analysis Unit, which is responsible for proposing preventative measures, monitoring attacks nationwide in order to collect the raw information and place it in a database; identifying patterns of attacks and preparing risk maps; and evaluating the effectiveness of the preventative, protective and urgent measures implemented.²⁵⁰

196. Under the law, both the Case Receipt Unit and the Risk Evaluation Unit must be made up of at least five risk evaluation and protection experts, one of them an expert in the defense of human rights and another in journalism and the exercise of freedom of expression. The National Executive Coordinator is responsible for coordinating the different units, managing communications between them and the Government Council, and communicating the Council’s decisions to the agencies in charge of implementing them.²⁵¹

197. The mechanism also includes an Advisory Board, a consultation body of the Government Council made up of members of civil society. The Board is composed of nine advisors, including experts in the defense of human rights and the exercise of freedom of expression and journalism, four of whom are elected to participate in the Government Council. The Advisory Board is responsible for addressing consultations and formulating opinions requested by the Government Council on the programs and activities carried out by the National Executive Coordinator; submitting complaints before the Government Council that have been brought by petitioners or beneficiaries with regard to the implementation of the measures; and commissioning the independent Risk Evaluation Studies requested by the Government Council to resolve disputes.²⁵²

198. The law allows for both “ordinary” and “extraordinary” procedures for assigning the measures of protection requested. During the process and in the implementation of the measures, gender perspective

²⁴⁷ Estados Unidos Mexicanos. Presidente de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 9.

²⁴⁸ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 8.

²⁴⁹ Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 22.

²⁵⁰ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 17-23.

²⁵¹ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 18.

²⁵² Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 9-16.

must always be taken into account.²⁵³ The beneficiary must not be under the protection of an arrangement or program set up by another State mechanism, except should they agree with the transfer of the protection responsibilities to the federal mechanism.²⁵⁴

199. The requests for protective or preventative measures are processed by the Case Receipt and Rapid Response Unit, which verifies that the request meets the requirements established by law and determines the type of proceeding to be adopted. In cases in which the petitioner declares that their life or physical integrity is in imminent danger, an extraordinary proceeding will be launched through which urgent protective measures are provided within no more than three hours of receipt of the request. They must be implemented over the following nine hours.²⁵⁵ Simultaneously, the Receipt Unit must carry out an Immediate Action Evaluation Study and submit the case to the Risk Assessment Unit to begin the ordinary proceeding. Urgent measures can include evacuation, temporary relocation, specialized bodyguards, and the protection of the property where the beneficiary is located.²⁵⁶ Urgent protective measures remain in force while the ordinary proceeding moves forward.²⁵⁷

200. In cases in which there is no imminent risk of physical danger or death, an ordinary proceeding is launched under which the Risk Assessment Unit must do a risk analysis, determine the level of risk and the beneficiaries of the measures, and define the protective measures within 10 days of the submission of the request.²⁵⁸ The evaluation is brought for the analysis of the Government Council, which decrees the applicable preventative and protective measures that must be implemented by the National Executive Coordinator within a time period of no more than 30 days.²⁵⁹ According to the law, protective measures include instructions, manuals, self-defense courses and the accompaniment of observers,²⁶⁰ while the protective measures include the provision of communications devices, security cameras, locks, etc. in the home or workplace of the individual, bulletproof vests, metal detectors and armored cars.²⁶¹ The Risk Assessment Unit is responsible for the periodic evaluation of the measures adopted, which can be increased or decreased by the Government Council based on these reviews.²⁶²

201. An important element for any system to protect journalists is that its measures not be intrusive or impede the journalist's work. Mexico's law explicitly establishes that at no time shall the measures granted "restrict the activities of the beneficiaries, or imply in surveillance or undesired intrusions in their professional or personal lives"²⁶³, and that these measures must be agreed with the petitioners.²⁶⁴ In this

²⁵³ Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 2.

²⁵⁴ Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 53, IV.

²⁵⁵ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 26.

²⁵⁶ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 32.

²⁵⁷ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 26.

²⁵⁸ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 27.

²⁵⁹ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 29.

²⁶⁰ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 34.

²⁶¹ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 33.

²⁶² Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 21, III and 8

²⁶³ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 30.

sense, they can present a note of dissatisfaction to the Executive Secretariat of the Government Board against the resolutions of the Government Board and of the National Executive Coordination regarding the imposition or denial of measures; the insufficient or unsatisfactory fulfillment of measures; or the rejection of the Government Board's decisions by the authorities in charge of implementing the measures.²⁶⁵ In the case of an extraordinary procedure, the beneficiaries may present notes of dissatisfaction to the National Executive Coordination against the resolutions of the Unit for Case Reception and Fast Reaction, on the access to the extraordinary procedure or the adoption of urgent measures; against the deficient or unsatisfactory fulfillment of these measures; and against the rejection of the decisions of this Unit.²⁶⁶

202. In order to obtain financial resources additional to those provided in the federal budget for the mechanism, the law establishes the creation of the "Fund for the Protection of Human Rights Defenders and Journalists," whose resources shall be dedicated exclusively to the implementation and operation of preventative, protective and urgent measures, as well as any other measures established in the law for the implementation of the mechanism. The fund shall be operated through a public trust. Its resources will be made up of, among other sources, contributions from the federal government, funds from the annual federal budget, and donations from individuals and corporations. Likewise, the fund must have a Technical Committee chaired by the ministry of Interior, along with its own oversight body.²⁶⁷

203. Another extremely important design element is making the resolutions issued by the protection program authorities binding for other State bodies. In this case, the Mexican law establishes that the resolutions of the Government Council are binding for the federal authorities whose actions are necessary for compliance with the measures adopted.²⁶⁸ Nevertheless, the law is not similarly binding for the authorities of the individual states or the Federal District. For this, the law establishes the possibility of agreements signed by the federative entities and the federal government for implementing measures.²⁶⁹ Regarding this, the Mexico Office of the United Nations High Commissioner of Human Rights (UNHCR) found that "coordination between federal and state authorities is one of the great challenges for the nascent protection mechanism given the federal structure of the Mexican State. (...) [T]he agreements that have been signed are a vehicle for promoting adequate coordination between the different levels of governance and guarantee a coherent response from the Mexican State."²⁷⁰

204. In its report following the IACHR's *in loco* visit to Mexico in 2015, the Commission received information that the non-governmental agency Freedom House in Mexico accompanied the National Executive Coordination Group [Coordinación Ejecutiva Nacional] (CEN) of the protective mechanism during 2014. A work plan was generated on the basis of this cooperation, which included, among other things, technical strengthening in three areas where methodologies needed to be adjusted: risk evaluation, processes and procedures of the National Executive Coordination

²⁶⁴ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 31.

²⁶⁵ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 55 and 56; Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 108.

²⁶⁶ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 59 - 60; Estados Unidos Mexicanos. Presidencia de la República. Diario Oficial de la Federación. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Articles 110 - 114.

²⁶⁷ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 48-54.

²⁶⁸ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 4.

²⁶⁹ Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 46 and 47.

²⁷⁰ 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. 73.

Group, and lastly measures related to the Risk Evaluation and Risk Level Assessment Protocol.²⁷¹ In its observations to the draft of this report, the State specified that the strengthening process carried out with Freedom House has taken place in three phases. The first was dedicated to improve the methodology and internal procedure of the mechanism, which was able to overcome the backlog in the analysis of cases and took place through 2014; the second phase had as its objective of make protection measures more effective and include a gender perspective in their adoption, as well as training the mechanism's personnel throughout 2015; and, the third phase, , tends to establish a program for the prevention of violence against journalists and media workers.

205. In this regard, the Office of the Special Rapporteur recognizes and appreciates the efforts of the Mexican State to address the difficulties that arose when the protection mechanism was first implemented and encourage expansion of the work to legitimize and strengthen the system with the goal of providing better protection to beneficiaries.

206. The Office of the Special Rapporteur also highlights the importance of the development of a policy for preventing violence against journalists as a part of the work performed by the protection mechanism and recognizes this as a good practice. As mentioned previously, a Unit for Prevention, Follow-up, and Analysis was established within the structure of the mechanism. That Unit became operational in 2016, and according to information received by the Office of the Special Rapporteur in September 2016,²⁷² it has up-to-date statistics available to it covering requests for protection from the mechanism, beneficiary individuals or groups, types of attacks, precautionary measures, protective measures, legal actions, closed case files, sessions of the Government Council, and requests for public information.

207. According to the information provided by the mechanism, the Unit has a database to which trained officials add each attack reported by journalists, their professional organizations, or the media. The mechanism also includes in this database the repercussions of these attacks and the results made public of investigations of them.

208. The information contained in the database is collected through an alert system built by the unit itself that collects information by monitoring 300 local sources. This information is arranged into a dynamic, geo-referenced map that identifies areas of risk and prevalence. Information is entered into the database under different categories, including facts, rights affected, types of violence, risk factors, sources covering victim journalists, State response, and location in which the incidents take place. The Office of the Special Rapporteur sees this initiative as a useful tool to help State authorities design an effective response to the issue of violence against journalists concentrated in certain parts of the country and adopt measures of prevention, protection, and investigation to stop self-censorship and silence from taking over in these areas.

The early warning systems of the protection mechanism

209. One of the measures of prevention established in the Federal Law to Protect Human Rights Defenders and Journalists is the design of early warning systems and contingency plans "to prevent potential attacks on human rights defenders and journalists." As far as measures taken to comply with this mandate, the Office of the Special Rapporteur highlights the adoption of an early alert system for Veracruz and Chihuahua, two states with high rates of violence against the media. The alerts were established after an assessment of the risks faced by both human rights defenders and journalists in those states. They entail a series of actions that state and federal authorities must take in coordination with the Federal Protection Mechanism and that include actions for prevention, protection, and administration of justice.

210. One of the cases mentioned in this report is that of the State of Veracruz, Mexico, which in recent years has been the state with the highest number of journalists murdered in Mexico. In a recent visit to

²⁷¹ Estados Unidos Mexicanos. Misión Permanente de México ante la OEA. Nota No. OEA-02252 a la Secretaría Ejecutiva de la IACHR. May 28, 2014.

²⁷² Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas. [Informe Estadístico-Agosto 2016](#). August 2016.

Veracruz during the IACHR's *in loco* visit to Mexico (2015), the Office of the Special Rapporteur found that the journalists in the region are facing a crisis of confidence in state institutions due to the constant risks that they face. According to the information provided by the CNDH, from 2010 to 2015, 16 journalists were murdered in Veracruz and four were disappeared. In 2015, the Office of the Special Rapporteur documented the murder of six journalists in that state. Some of these terrible events have caught the attention of Mexican society and the international community because of the cruelty used to murder reporters covering news in Mexico that was significantly in the public interest.²⁷³

211. In that context, on November 3, 2015, the Department of Governance (SEGOB) established an Early Warning and Contingency Plan System to protect Veracruz journalists. The objective of this public policy program is to prevent possible attacks on journalists. It was adopted at the request of a group of journalists and of the Federal Journalist Protection Mechanism. In establishing this mechanism, in line with the assessment of a number of civil society organizations, the Office of the Special Rapporteur, the UN High Commissioner for Human Rights, and others, the State recognized that Veracruz and Chihuahua are the Mexican states with the greatest number of journalists murdered and have the second highest number of people protected under the federal protection mechanism.

212. The special program entails 13 actions to be executed within 12 months, each with outcome indicators. The measures are categorized as follows: i) respect for the right to freedom of expression; ii) development of risk maps; iii) journalist safety; iv) strengthening and following up on investigations conducted by the ministry; v) training of public servants; vi) self-defense training for journalists; vii) improvement of working conditions for journalists; viii) quick response measures; and ix) program evaluation. According to the information provided by the State, the agreement has made it possible to provide human rights and freedom of expression training to public officials and established regular cooperation between the federal mechanism and Veracruz state authorities. Also, statistics have been collected and maps have been made to help identify at risk areas and populations. Likewise, investigations opened into attacks on journalists are being monitored.²⁷⁴

213. The Office of the Special Rapporteur also notes that the Government Council of the Federal Protection Mechanism took an important step by deciding to issue an early warning on August 11, 2016, aimed at preventing attacks against human rights defenders and journalists in the state of Chihuahua. According to a number of organizations, the decision "represents a significant step forward because it explicitly recognizes the grave risk faced by people who work in journalism or defense of human rights in that state, which is one of the federal entities with the highest number of attacks on human rights defenders and the greatest number of journalists murdered."²⁷⁵ The decision was made in response to a request filed by a group of 25 human rights defender organizations in Chihuahua.

214. The Protection Mechanism performed an analysis of the situation of human rights defenders and journalists in Chihuahua and published it in July 2016. The analysis identifies situations that put the fundamental rights of human rights defenders and journalists at risk using an interpretive risk model with four elements: (i) territorial dynamics; (ii) violence; (iii) the conditions of at-risk social sectors, human rights defenders, and journalists; and (iv) the operation of the guarantees system. To collect the information needed for the interpretive risk model through the Prevention, Monitoring, and Analysis Unit, three methodologies were used: a timeline on violence was prepared; a risk map was drawn up to identify, locate, and analyze risk

²⁷³ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 876 - 888.

²⁷⁴ 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 12 de agosto de 2016. México, Distrito Federal, September 9, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

²⁷⁵ Federación Internacional de Derechos Humanos (FIDH), Observatorio (OMCT-FIDH) and Centro de Derechos Humanos de las Mujeres (CEDEHM). September 15, 2016. [México: Por primera vez se emite una alerta temprana para prevenir agresiones a defensores/as de derechos humanos y periodistas](#).

variables; and relevant institutional and social actors and relations were mapped out. The combination of these three methodologies enables projection of future risk scenarios.²⁷⁶

215. The analysis concludes that given "the territorial characteristics, the violence dynamics described in this document, and the weaknesses of the system of guarantees, it is likely that the attacks on human rights defenders and journalists will continue, as will violations of their human rights."²⁷⁷ It indicates that "the federation and federal entities must work together efficiently and strategically to enable developments of preventative initiatives that are structural and have a broad scope and that include the involvement of the affected populations in an exercise of democratic coresponsibility."²⁷⁸

216. By adopting this special measure, the Mechanism committed to implementing the recommendations that the CNDH and the State Human Rights Commission of Chihuahua issued to the various governmental authorities involved in prevention of and protection from attacks on the populations in question.²⁷⁹ The Commission hopes that all the government authorities involved—both federal and state—fulfill their commitments. It also hopes that journalists, human rights defenders, and civil society are able to participate effectively, actively, and with full guarantees in the development and monitoring of the early warning system.

217. The Office of the Special Rapporteur sees the use of early warnings as important as a way to facilitate interinstitutional coordination between the authorities in charge of prevention, protection, and administration of justice for crimes against journalists. At the same time, is important for institutions to recognize the difficult security situation facing journalists and human rights defenders in particular areas and the risks they face due to the work they do reporting on or revealing human rights violations committed by criminal groups. These mechanisms can be very useful in certain silenced zones to prevent increases in violence. But they can also be useful in places showing patterns of violence for State authorities to take early action with the participation of civil society to protect vulnerable populations and prevent violence and lack of visibility thereof from taking over.

Special State-level Mechanisms

218. In recent years, certain states in the Federation have also established autonomous state mechanisms for prevention and the protection of at-risk journalists. For example, the Federal District, the state of Morelos,²⁸⁰ the state of Veracruz, in November of 2012, facing a context of intense violence committed against journalists,²⁸¹ amended its Constitution to create a "State Commission for Attending to and Protecting

²⁷⁶ Estados Unidos Mexicanos. Secretaría de Gobernación. Subsecretaría de Derechos Humanos. Mecanismo para la protección de personas Defensoras de Derechos Humanos y Periodistas. Diagnóstico sobre la situación de las personas defensoras de derechos humanos y periodistas en el Estado de Chihuahua. Alerta Temprana. 2016. Available at: <http://www.gob.mx/segob/documentos/conoce-mas-sobre-el-mecanismo-de-proteccion-de-personas-defensoras-de-derechos-humanos-y-periodistas?idiom=es>

²⁷⁷ Estados Unidos Mexicanos. Secretaría de Gobernación. Subsecretaría de Derechos Humanos. Mecanismo para la protección de personas Defensoras de Derechos Humanos y Periodistas. Diagnóstico sobre la situación de las personas defensoras de derechos humanos y periodistas en el Estado de Chihuahua. Alerta Temprana. 2016. Available at: <http://www.gob.mx/segob/documentos/conoce-mas-sobre-el-mecanismo-de-proteccion-de-personas-defensoras-de-derechos-humanos-y-periodistas?idiom=es>

²⁷⁸ Estados Unidos Mexicanos. Secretaría de Gobernación. Subsecretaría de Derechos Humanos. Mecanismo para la protección de personas Defensoras de Derechos Humanos y Periodistas. Diagnóstico sobre la situación de las personas defensoras de derechos humanos y periodistas en el Estado de Chihuahua. Alerta Temprana. 2016. Available at: <http://www.gob.mx/segob/documentos/conoce-mas-sobre-el-mecanismo-de-proteccion-de-personas-defensoras-de-derechos-humanos-y-periodistas?idiom=es>

²⁷⁹ Estados Unidos Mexicanos. Secretaría de Gobernación. Subsecretaría de Derechos Humanos Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas. [Diagnóstico sobre la situación de las personas defensoras de derechos humanos y periodistas en el estado de Chihuahua](#). July 2016.

²⁸⁰ Estados Unidos Mexicanos. Estado de Morelos. [Convenio de Colaboración Interinstitucional para la implementación de acciones de prevención y protección para periodistas en el Estado de Morelos](#).

²⁸¹ In that regard, see: 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. 356-389.

Journalists.” The operation of the state mechanism was later outlined in the law passed in December 2012 and its corresponding regulations. Among other things, these norms establish the structure of the Commission and its administrative bodies, and the procedure for accessing protective measures.²⁸² Finally, according to the information received, other states in the Federation, including Chihuahua²⁸³, San Luis Potosí²⁸⁴ e Hidalgo²⁸⁵ also established mechanisms for protecting at-risk journalists.

219. Despite the progress made through both the Federal Protection Mechanism and the protection arrangements made by Mexico's States, the Office of the Special Rapporteur notes that these entities still face the challenge of gaining credibility and trust in the eyes of beneficiaries and proposed beneficiaries. As the mechanism gains the trust of journalists and civil society organizations, more at-risk journalists will approach it to seek protection which, as demonstrated in the case of Colombia and already in some areas of Mexico, helps prevent crimes against journalists.

- **Honduras**

220. Both the IACHR and its Office of the Special Rapporteur have paid special attention to the violence perpetrated against journalists and media workers in Honduras and its effect on the respect for and guarantee of the right to freedom of expression. While acknowledging that the problem of violence and the high murder rate affect all sectors of Honduran society, the IACHR found during its 2014 *in loco* visit that journalists and communicators faced a grave situation of insecurity when exercising their freedom of expression that makes them a particularly vulnerable group. Given the seriousness of the situation facing people who do journalism in the country, the final report for the 2010 *in loco* visit by the IACHR indicates a need to establish a permanent protection mechanism to protect the lives and safety of journalists and communicators. For its part, in a report on the 2012 visit to Honduras, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlighted the government's initiative to submit the draft bill on the protection mechanism. In that same report, the Rapporteur recommended that the mechanism have a committee made up of senior government representatives and its own budget, and that the protection measures must be compatible with the work that journalists do. The Office of the Special Rapporteur recognizes the commitment of the Honduran State to guaranteeing protection for human rights defenders and journalists in that it is taking up the recommendations of the inter-American system and the universal system for the protection of human rights.²⁸⁶

221. The Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials of Honduras was passed on April 15, 2015, by unanimous vote of the National Congress in the third and final round of approval.²⁸⁷

222. The law²⁸⁸ recognizes the importance of the work that human rights defenders, journalists, communicators, and justice officials do. Consequently, its objective is the protection and promotion of the

²⁸² Estados Unidos Mexicanos. Estado de Veracruz. [Constitución Política del Estado de Veracruz de Ignacio de la Llave](#). March 21, 2007. Article 67, V; Estado de Veracruz. Gaceta Oficial. [Ley Número 586 de la Comisión Estatal para la Atención y Protección de los Periodistas](#). December 3, 2012; Estado de Veracruz. Gaceta Oficial. [Reglamento Interior de la Comisión Estatal para la Atención y Protección de los Periodistas](#). February 14, 2013.

²⁸³ Estados Unidos Mexicanos. Estado de Chihuahua. [Acuerdo para la Implementación del Sistema Integral de Seguridad para Periodistas del Estado de Chihuahua](#). February 14, 2012.

²⁸⁴ Estados Unidos Mexicanos. Estado de San Luis Potosí. [Ley de Protección El Ejercicio del Periodismo del Estado de San Luis Potosí](#). May 25, 2013.

²⁸⁵ Estados Unidos Mexicanos. Estado de Hidalgo. [Ley de Protección a Personas Defensoras de Derechos Humanos y de Salvaguarda de los Derechos para el Ejercicio del Periodismo](#). August 27, 2012.

²⁸⁶IACHR. [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. 159.

²⁸⁷ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#).

²⁸⁸ Congreso Nacional de Honduras, [Congreso Nacional aprueba en segundo debate Ley de Protección a Periodistas y Ley Anti](#)

constitutionally recognized rights and guarantees of natural and legal persons dedicated to defending human rights and freedom of expression and performing legal work that puts them at risk.²⁸⁹ The principles established in this law include coordination between the State agencies in charge of protecting and promoting the rights of the target populations, from decree to implementation and execution of protection measures.²⁹⁰ The law's principles also include a gender and differential focus for implementing protection measures that are tailored to each beneficiary.²⁹¹

223. The law's general provisions broadly define those it considers as journalists, social communicators, photographers, camera operators, and photojournalists in the media as "natural people who perform the work of collecting, creating, processing, editing, commenting on, opining on, disseminating, publishing, or providing information through any media, whether print, broadcast, digital, graphic, or any other."²⁹²

224. Five types of measures were established for preventing and deterring risk to the rights of the target population: (i) preventative measures to reduce risk factors; (ii) reactive measures, including security and measures to address risk and protect the life and safety of the beneficiary; (iii) urgent measures of protection to immediately protect the life, integrity, and freedom of the affected individual; (iv) psychosocial measures focused on addressing psychological and social damage caused by violence; and (v) measures to deal with impunity, aimed at guaranteeing that those responsible for the attacks on beneficiaries are investigated, tried, and punished.²⁹³ As far as tools of prevention, the law would strengthen accountability mechanisms, ratify international human rights instruments, and encourage a culture of respect for human rights.²⁹⁴ It further establishes that the State must put mechanisms in place to facilitate results monitoring and the struggle against impunity that would allow it to determine areas of risk and whether there has effectively been a reduction in human rights violations.²⁹⁵

225. The text approved would create a "National Council for the Protection of Human Rights Defenders,"²⁹⁶ a consultative, deliberative, and advisory body of the National System for the Protection of Human Rights Defenders. This council would be made up²⁹⁷ of representatives from each of the following agencies: the Human Rights, Justice, Governance, and Decentralization Office of the Department of State; the Foreign Affairs and International Cooperation Office of the Department of State; the Office of the Public Prosecutor; the Judicial Branch; the Office of the Attorney General of the Republic; the Security Office of the Department of State; the Office on Defense of the Department of State; the Bar Association of Honduras; the Journalism Association of Honduras; the Press Association of Honduras; the Association of Judges and Magistrates; the Prosecutors Association; and two civil society representatives recognized by the National

[Bullying](#), August 6, 2014; Teleprensa. August 7, 2014. [CN aprueba en segundo debate Ley de Protección a Periodistas y Ley Anti Bullying](#).

²⁸⁹ 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](#). Consideraciones and Article 2.

²⁹⁰ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 3.

²⁹¹ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 3.

²⁹² Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 5.

²⁹³ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 5 numeral 15.

²⁹⁴ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 12.

²⁹⁵ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 16.

²⁹⁶ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 20.

²⁹⁷ 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](#). Articles 20 - 27.

Human Rights Commissioner. In addition to the ones already described, the Council's functions include "promoting or directing the design and implementation of manuals, public policies, and programs to guarantee and make effective the rights enshrined in the (...) law,"²⁹⁸ as well as present annual reports on the status of the target populations and make recommendations to the relevant authorities.²⁹⁹

226. The law also establishes that the General Directorate of the Protection System, the system's executive body, will form part of the structure of the Department of State in its human rights, justice, governance, and decentralization offices.³⁰⁰ Its authorities include receiving all requests for protection and processing them; drafting operational protocols necessary for effective application of the law; and *ex officio* application of security measures when an individual under protection faces a risk requiring urgent measures. It also must request and constantly monitor provisional measures of the Inter-American Court of Human Rights, precautionary measures from the Inter-American Commission on Human Rights, and the corresponding security measures ordered by the State's judiciary bodies. The General Directorate will be the Executive Secretariat of the National Protection Council.

227. The law orders the creation of a Technical Committee for the Protection Mechanism that will be in charge of drafting the opinions resulting from risk analysis, deliberation, and decisions on requests for protection filed with the General Directorate.³⁰¹ The Technical Committee will be comprised of the General Director of the Protection System and a representative of the Office of the Attorney General of the Republic, the Office of the Human Right Prosecutor, and the human rights department of the Department of State in the Security Office.

228. Pursuant to best practices and to the recommendations made by the IACHR and its Office of the Special Rapporteur, the measures issued must at no time restrict the work of the target population. The law establishes that the measures must be implemented within 48 hours of receipt of the order granting them.³⁰² It should also be noted that the decisions of the Technical Committee must follow the protocols established by the Directorate of the National Protection System. These protocols must take into consideration the differences between target populations as far as gender, ethnic origin, gender identity, sexual orientation, or any other condition requiring differentiated treatment.³⁰³

229. The mechanism gives authority to establish cooperation agreements with domestic and international bodies thereby enabling access to other sources of financing. All the information on the protection law and protection mechanisms will be subject to the rules established in the Transparency and Access to Public Information Act.

230. In its report on human rights and Honduras, the IACHR expressed appreciation at the adoption of the protection mechanism, but at the same time expressed a number of concerns received at various times from civil society organizations regarding the following requirements that are not provided for in the law's final provisions: (i) the National System of Protection of Human Rights Defenders would not have the necessary characteristics of functional autonomy; (ii) the incorporation of the Secretariat of Defense in the National Council for the Protection of Human Rights Defenders would not be appropriate for securing the safety of

²⁹⁸ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 24 numeral 4.

²⁹⁹ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 24 numeral 6.

³⁰⁰ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 28.

³⁰¹ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 31.

³⁰² Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 48.

³⁰³ Congreso Nacional de Honduras. Decreto No. 34-2015. [Ley de protección para las y los defensores de derechos humanos, periodistas, comunicadores sociales y operadores de justicia](#). Article 38.

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.³⁰⁴

231. The IACHR has noted that properly equipping these mechanisms would help the State meet its obligation to protect by bringing it into closer contact with human rights defenders and informing it specifically on particular situations they face, consequently enabling it to intervene quickly, in a specialized way, and proportional to the risk that they may be facing.³⁰⁵

232. In the framework of the follow-up to the compliance of the recommendations made by the IACHR in its report on the situation of human rights in Honduras,³⁰⁶ the State reported that during the short amount of time that the mechanism was in place, it handled 38 requests for protection, eight of them submitted by journalists. Further, according to the information received, during the process to draft its regulations, the recommendations made by international bodies—including the IACHR—were taken into account. The process also includes the participation of members of civil society.³⁰⁷ With regard to the mechanism's budget, the National Congress budgeted "10 million lempiras to ensure the sustainability of the implementation of the law" and authorized "10 million lempiras (approximately US\$426,092.20) for the Special Protection Fund, which will enable it to make the protective measures effective."³⁰⁸

233. During the 159th Period of Sessions of the IACHR, a public hearing was called on the progress of the protection mechanism in Honduras in which both members of civil society and State representatives participated. At the hearing, civil society reported a number of challenges to the IACHR that have arisen in implementing the mechanism. They included minimal participation of civil society in the mechanism's various levels, as the protection mechanism's technical committee, which is in charge of conducting risk analysis and deciding what protection measures to adopt, is comprised only of State institutions. They also complained that the law establishes that the decisions of the technical committee can be challenged through a remedy that is ruled on by the General Directorate, which is part of the technical committee, meaning that the administrative appeal provides no guarantee of independence. While the regulations establish that a bill to amend the law will be submitted to correct the situation, civil society noted that so far, none has been submitted to the National Congress. On measures of protection, the civil society representative stated that in the best cases, they have been limited to protecting the lives of people. However they have not taken into consideration that the measures must not block those they protect from working. They lamented that so far, no system had been put in place for handling information on the situation of prevention and protection for human rights defenders. Finally, they expressed concern at the mechanism's lack of transparency and reticence at disclosing the information requested by civil society.³⁰⁹

234. The Office of the Special Rapporteur recalls that for a protection program to be effective, it must be supported by a strong political commitment from the State and have sufficient and well-trained human resources for receiving the requests for protection, assessing the risk, and adopting and executing the protection measures, as well as monitoring the measures in place.³¹⁰ The State represented by the

³⁰⁴ IACHR. [Situation of Human Rights in Honduras](#). OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015. Para. 381.

³⁰⁵ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc 66. December 31, 2011. Para. 484.

³⁰⁶ Gobierno de la República de Honduras. Secretaría de Derechos Humanos, Justicia, Gobernación y Descentralización. Informe sobre el estado de cumplimiento de las recomendaciones contenidas en el Informe sobre la Situación de Derechos Humanos en Honduras de la IACHR. August 17, 2016.

³⁰⁷ IACHR. Annual Report 2016. Chapter V. Follow-Up of recommendations made by the IAHCN in the country report Honduras.

³⁰⁸ IACHR. Annual Report 2016. Chapter V. Follow-Up of recommendations made by the IAHCN in the country report Honduras.

³⁰⁹ IACHR. 159 Regular Period of Sessions. Hearing Follow-Up on Protection Mechanism for Human Rights Defenders in Honduras. December 1, 2016. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/159/default.asp>

³¹⁰ IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II. Doc 66, December 31, 2011. Para. 487.

institutions that form the National Protection System must ensure that the law is followed, with special focus on the issues that have raised concerns, such as the participation of the Department of Defense and the implementation of transparent measures to guarantee civil society participation, such that sectors that are part of the target population but not part of professional organizations are represented in the National Protection Council. The State likewise must comply with the provisions of the law intended to guarantee the mechanism's financial sustainability.

235. Finally, evaluation of these State mechanisms must examine their effectiveness at reducing violence against human rights defenders, journalists, and justice officials in the country. Although the law provides for the creation of mechanisms to measure this, it is not clear who will be in charge of this important work.

236. The Office of the Special Rapporteur notes that the law was passed in April 2015, meaning that the mechanism is in the early stages of implementation. Resolution of a number of pending issues is therefore fundamental for ensuring its effectiveness and proper application. Among these challenges, the Office of the Special Rapporteur would particularly like to point to the importance of taking all measures necessary to assign and train the staff necessary for the three technical aid units to operate effectively; guaranteeing that studies and implementation of urgent, preventative and protective measures are conducted in line with professional technical standards and with a differential approach according to the conditions of each beneficiary, following proper guidelines and meeting the deadlines set by law; and that the urgent measures and protective measures granted are not replaced or withdrawn prior to the resolution of potential disputes. The Office of the Special Rapporteur also observes that the mechanism faces a lack of trust on the part of beneficiaries and proposed beneficiaries. It is thus essential for the mechanism to adopt procedures to enable it to evaluate the effectiveness of the measures granted and implement processes that facilitate transparency.

- **Guatemala**

237. The State of Guatemala has expressed its intention to implement a protection mechanism since 2012, when, in the context of its participation in the Universal Periodic Review (UPR) before the UN Human Rights Council in October of 2012, the government of Guatemala announced that it was preparing a national plan for the protection of journalists from threats to their physical integrity.³¹¹

238. The IACHR, its office of the special Rapporteur, UNESCO, and the UN High Commissioner for Human Rights have repeatedly recommended that the State of Guatemala move forward in creating a program for protecting journalists and media workers. However, the implementation of such a protection system is still only the subject of talks. In 2014, a high-level roundtable and a technical roundtable were established—including the participation of the Presidential Committee for Coordinating Executive Policy on Human Rights (Copredeh), the Governance Ministry, the Public Prosecutor, and the Department of Social Communication of the Presidency of the Republic (SCSPR)—to design and implement a program to protect journalists.³¹²

239. In 2015, the government took positive steps toward designing a mechanism, with consultations with civil society and human rights organizations. The high-level roundtable and the technical roundtable worked to design and implement the mechanism for protecting journalists. The work continued with support from Unesco and the Office of the UN High Commissioner for Human Rights (UNHCR). The process to build a mechanism resulted in a document entitled “Preliminary Proposal for a Program to Protect Journalists.” The document identifies the institutions that would form the program, their protective functions, and how coordination would operate. The document was discussed by journalists and defenders of the right to freedom of expression. Based on their comments, recommendations, and observations, the technical roundtable presented the conceptual design of the System for the Protection of Journalism Activities

³¹¹ United Nations. General Assembly. Human Rights Council. Report of the Working Group on the Universal Periodic Review Guatemala. A/HRC/22/8. December 31, 2012. Available at: <http://www.ohchr.org/SP/HRBodies/UPR/Pages/GTSession14.aspx>; La hora/Agencia CERIGUA. July 25, 2012. [Elabora plan para periodistas](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). October 29, 2012. [Llaman a la acción para proteger a los periodistas en Guatemala](#).

³¹² IACHR. [Annual Report 2014. 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. 13. March 9, 2015. Para. 557-560.

(SPEP).³¹³ However, a number of journalism associations said they had had little or no involvement in drafting the proposal. In 2016, following the inauguration of a new government, the administration of President Jimmy Morales moved to suspend the process and begin a new process for setting up the mechanism.

240. On July 19, representatives of the alliance of media organizations met with the president of Guatemala, Jimmy Morales, and presented him with the content of the proposal for creating a program or mechanism for protecting journalists. The president pledged to support the proposal and assured them they would have the “full support” of the presidency for “making the project a reality.”³¹⁴

241. According to information published by civil society organization Cerigua, the organizations’ proposal includes the creation of a surveillance and coordination unit made up of a highly qualified technical team, as well as a training unit with experts on freedom of expression and freedom of the press to work in coordination with the structure of the State. The fundamentals highlighted by the proposal include the following: the program must be apolitical; it must have space for agreement on and coordination of the defense of journalists; the State must commit to its responsibility on the issue, and journalists and communicators, professional associations, the media, and specialized institutions must all cooperate; and finally, the minimal necessary structure for supporting the mechanism adopted and designation of the necessary human and material resources for effectively implementing the program must be provided. Also, having up-to-date, trustworthy, and accurate information on the situation of journalists, along with an instrument with data specific to the program, were seen as indispensable for building the safety and protection mechanism. The proposal recommends that preventative actions, training for police, prosecutors and judges on the issue, and providing the public prosecutor’s crimes against journalists unit with the necessary resources be seen as priorities.³¹⁵

242. The Office of the Special Rapporteur believes the Guatemalan State should make it a priority to comply with the recommendations of the international organizations and move forward in the process to create a mechanism to protect journalists and implement it as soon as possible. In particular, it is essential that the mechanism be implemented through a high-level official and inter-institutional committee; be led by a State authority with the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of civil society, journalists, and media workers, whose participation must also be guaranteed in the implementation and operation of that program. The Office of the Special Rapporteur reiterates that it is important for the programs for the protection of journalists to take into account the need to guarantee that journalists are able to continue to perform their professional activities and to guarantee their right to freedom of expression when designing the measures of protection available, taking into account the circumstances in each specific case and in consultation with the potential beneficiaries.

243. Despite the lack of a specialized mechanism, the country has other mechanisms in place for protecting victims, witnesses, and justice officials, to which journalists have access. The Service to Protect People Involved in Legal Proceedings and Individuals Connected to the Administration of Criminal Justice, which operates under Decree 70-96 of the Congress of the Republic, provides coverage to, among other people, “journalists who need it because they are at risk as a result of performing their duties to inform.”³¹⁶

³¹³ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 683-694.

³¹⁴ República de Guatemala. Primer Informe del Estado de Guatemala a la Ilustre Comisión Interamericana de Derechos Humanos sobre el cumplimiento de las recomendaciones contenidas en el “informe de la situación de Derechos Humanos en Guatemala: Diversidad, Desigualdad y Exclusión” 2015. October 10, 2016; Gobierno de la República de Guatemala. Secretaría de Comunicación. July 19, 2016. [Presidente de Guatemala expresa compromiso con protección a periodistas](#); IFEX/Cerigua. July 20, 2016. [Presidente de Guatemala recibe propuesta de Programa de Protección a Periodistas y asume compromiso](#); Prensa Libre. July 23, 2016. [Total apoyo del presidente](#).

³¹⁵ IFEX/Cerigua. July 20, 2016. [Presidente de Guatemala recibe propuesta de Programa de Protección a Periodistas y asume compromiso](#); Prensa Libre. July 23, 2016. [Total apoyo del presidente](#).

³¹⁶ Comunicación de la Misión Permanente de Guatemala ante la OEA. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, que transmite la comunicación de la Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-150-2013/AFAF/MR/hm, March 4, 2013.

The Protection Service is set up within the organizational structure of the Office of the Public Prosecutor and its main role is to provide protection to individuals exposed to risks as a result of their participation in criminal proceedings.³¹⁷ The protection system is composed of a Board of Directors comprised of the Attorney General of the Republic, a representative of the ministry of Interior and the director of the Office of Protection. Its responsibilities include designing general protection policies; approving programs and plans presented by the director of the Office of Protection; issuing general instructions for protection; and approving the necessary expenditures for the protection plans. The protection service has an Office for Protection that acts as the executor of the policies of the Board of Directors and decisions of the director. The Office of Protection is also responsible for examining requests for protection.³¹⁸

244. As established in Decree 70-96, in order to access protection services, a request must be sent to a program official and information provided on the case. The information is analyzed through a review carried out by the Office of Protection that must take into account in its analysis whether the risk to which the petitioner is exposed is "reasonably certain" and the gravity of the punishable act and its "social transcendence." The measures granted by the protection service include the protection of beneficiaries using security personnel; change of residence that could include housing, transportation and living expenses; protection of security personnel at the place of residence and/or the workplace of the beneficiaries; change of identity; and other benefits. The measures can be lifted at the conclusion of the term granted if the circumstances of risk on which the protection was based have disappeared, or should the beneficiary fail to comply with the conditions or obligations established in the agreement signed with the director of the Board of Directors.³¹⁹

245. Likewise, the Guatemalan State reported on the existence of the Coordinating Unit for the Protection of Human Rights Defenders, Administrators and Operators of Justice, Journalists and Social Communicators. The unit was created in 2004, became a Department in 2008, and currently has the status of Directorate. The agency is responsible for "coordinating the executive branch institutions in charge of granting and implementing protective measures for individuals who request precautionary, provisional and security measures before the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Rapporteurs of the Universal System [...], or national mechanisms. Its purpose is to guarantee effective compliance."³²⁰

- **Brazil**

246. Brazil has also taken steps to include journalists under a protective mechanism for at-risk individuals. Although the mechanism in question is a "Program for the Protection of Human Rights Defenders" (PPDDH), the Brazilian State has indicated that the program may provide protection to journalists under a broad definition of human rights defenders.³²¹

247. The program for the protection of human rights defenders was established in 2004 by the federal Executive Branch, under the Human Right Secretariat³²²[*Secretaría de Derechos Humanos*] (SDH). The program's current legal framework is based on Decree No. 6,044 of 2007³²³, which establishes the National Human Rights Defender Protection Policy in order to establish "principles and directives for the protection

³¹⁷ Congreso del Estado de Guatemala. [Decreto número 70-96](#). August 27, 1996. Articles 1 - 2.

³¹⁸ Congreso del Estado de Guatemala. [Decreto número 70-96](#). August 27, 1996. Articles 3 - 7.

³¹⁹ Congreso del Estado de Guatemala. [Decreto número 70-96](#). August 27, 1996. Articles 8 - 11.

³²⁰ Comunicación de la Misión Permanente de Guatemala ante la OEA. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, que transmite la comunicación de la Comisión Presidencial de Derechos Humanos (COPREDEH) Ref. P-150-2013/AFAF/MR/hm March 4, 2013.

³²¹ United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [The Safety of Journalists and the Danger of Impunity. Report by the Director-General](#). CI-12/CONF.202/4 REV. March 27, 2012. Pages 22 - 23; Committee to Protect Journalists (CPJ). December 18, 2012. [Brazil murders reflect tough reporting, lack of justice](#).

³²² Secretaria Especial de Direitos Humanos do Ministério da Justiça e da Cidadania. [Proteção dos Defensores de Direitos Humanos](#).

³²³ Estado de Brasil. [Decreto 6044](#). February 12, 2007.

and aid of physical or legal persons, groups, institutions, organizations, or social movements that promote, protect, or defend Human Rights and as a result of their actions or activities face a situation of risk or vulnerability.”³²⁴

248. Likewise, Decree No. 6,044 provides the SDH 90 days to prepare a National Plan for the Protection of Human Rights Defenders. However, as of the publication date of this report, the Plan has not been adopted. Given the absence of a National Plan, the Decree grants the federal government and the states the option of adopting urgent protective measures - *ex officio* or upon request - that are “immediate, provisional, precautionary and investigative,” in order to guarantee the “physical, psychological and financial integrity” of the at-risk or vulnerable human rights defender. Likewise, the Decree authorizes the federal government’s human rights and public safety bodies to sign agreements with the states and the Federal District for the implementation of the protective measures.³²⁵

249. On the federal level, the PPDDH is in the hands of a General Coordination Committee, associated with the Human Rights Secretariat and composed of members of civil society and representatives of the executive, legislative and federal judicial branches. Likewise, states that have signed agreements to participate in the program have State Coordination Committees.³²⁶ The national coordination committee and the state committees are deliberative bodies and have the authority to respond to requests for protection and determine which measures should be adopted and implemented.³²⁷ The National Committee is in charge of the requests for protection that come from those states that do not have their own coordination committees. The federal program and participating states can also have a Federal Technical Team and state technical teams for evaluating requests for protection and the level of risk faced by applicants and their families, as well as periodically monitoring the cases.³²⁸

250. In order to access the program, at-risk human rights defenders or any other agency that is aware of the situation of risk must send the request for protection to the State Coordinator or the General Coordinator (when the state in question is not part of the program). The request is evaluated by the corresponding state or federal protective program. The request for protection must demonstrate the willingness of the potential beneficiary to access the program, the individual’s actions for the defense of human rights, and the causal nexus between the risk and the person’s activity as a human rights defender. Following the risk assessment carried out by the technical teams, the state or general deliberative coordination bodies determine which measures must be adopted in a specific case, with the general objective of “guaranteeing protection in order that [human rights defenders] may continue working where they are located.”³²⁹

251. The protective measures provided for under the program include periodic visits to the beneficiaries’ workplaces, temporary relocation, and police protection. The program takes a holistic focus that seeks to deactivate the underlying causes of the insecurity and places emphasis on the coordination of protective actions with the measures that must be adopted in other areas of the State, such as the criminal justice system and land registry authorities.³³⁰ The measures are periodically evaluated by the technical teams and can be lifted should the beneficiaries fail to comply with the program’s rules, at the request of the beneficiaries, or upon the elimination of the threat or risk.

252. In general, the program has been implemented in states through agreements with civil society organizations. For example, in the state of Ceará, the PPDDH operates through an agreement between that

³²⁴ Estado de Brasil. [Decreto 6044](#). February 12, 2007. Article 1.

³²⁵ Estado de Brasil. [Decreto 6044](#). February 12, 2007. Article 3. Single paragraph.

³²⁶ Secretaria Especial de Direitos Humanos do Ministério da Justiça e da Cidadania. [Proteção dos Defensores de Direitos Humanos](#).

³²⁷ Secretaria Especial de Direitos Humanos do Ministério da Justiça e da Cidadania. [Proteção dos Defensores de Direitos Humanos](#).

³²⁸ Secretaria Especial de Direitos Humanos do Ministério da Justiça e da Cidadania. [Proteção dos Defensores de Direitos Humanos](#).

³²⁹ Secretaria Especial de Direitos Humanos do Ministério da Justiça e da Cidadania. [Proteção dos Defensores de Direitos Humanos](#).

³³⁰ Secretaria Especial de Direitos Humanos do Ministério da Justiça e da Cidadania. [Proteção dos Defensores de Direitos Humanos](#).

state's Secretariat for Justice and Citizenry and nongovernmental organization Center for the Defense and Promotion of Human Rights of the Archdiocese of Fortaleza (CDPDH).³³¹ As of the publication of this report, six states have formally established the program, although it is being implemented in a total of nine Brazilian states.³³² The Office of the Special Rapporteur has received information on the difficulties the mechanism has faced adjusting to the needs of journalists and the lack of awareness among the media workers about it, both of which have detracted from its effectiveness at providing guarantees to those who are threatened due to their journalism activity.³³³

Observatory on Violence against Communicators

253. Brazil is the largest country in South America, and violence against journalists there has a distinct local context. While it cannot be said that journalists face a general situation of violence, in recent years, they have been threatened, harassed, and even murdered in certain areas of the country, such as for example the Northeast, Southeast, and Central East. For this reason, the Office of the Special Rapporteur highlighted the recommendation made in March 2014 by the Working Group on the Human Rights of Communication Professionals in Brazil in its final report.³³⁴

254. This document, which has been approved by the Council for the defense of the rights of the human person, recommended that the three branches of government—executive, legislative, and judicial—and its various agencies undertake a series of actions.³³⁵ Its first recommendation was the creation of an “Observatory on Violence against Communicators.” Under the proposal, the Observatory should be structured with the following elements: 1) a unit for receiving and monitoring reports of violations; 2) a system of indicators; and 3) a mechanism for protecting communication professionals based on the experiences of the Special Human Rights Secretariat of the ministry of Justice and Citizenry. In addition, the Special Secretariat of Human Rights recommended expanding the “national protection system to cover communicators facing threats, taking into account the specificities of the activities of these professionals, and, beyond the measures of protection provided to communicators, establishing measures to protect them in their workplaces,” including “civil society organizations that work on issues related to the exercise of freedom of expression and communicators in the National Office of the Protection Program to meet the particular needs of communicators,” and conduct “a campaign to inform journalists of the protection program.”

255. Decree No. 8.724 of April 27, 2016³³⁶ created the Program for the Protection of Human Rights Defenders “for purposes of coordinating measures for the protection of persons who are threatened because of their human rights defense work,”³³⁷ and established its Deliberative Council, composed of two representatives of the Special Human Rights Secretariat of the ministry of Women, Racial Equality, Youth, and Human Rights³³⁸, one of whom serves as the coordinator and the other as the representative of the

³³¹ Estado de Brasil. Estado de Ceará. August 1, 2012. [Equipe técnica do Programa de Proteção aos Defensores de Direitos Humanos recebe capacitação](#). See also, Centro de Defesa e Promoção dos Direitos Humanos da Arquidiocese de Fortaleza (CDPDH). March 24, 2015. [PEPDDH: Programa Estadual de Proteção aos Defensores de Direitos Humanos](#).

³³² Sur Revista Internacional de Derechos Humanos. July 2016. [An analysis of the Latin American context: Brazil, Colombia and Mexico](#). Page 177; Justiça Global. Guia de Proteção para Defensoras e Defensores de Direitos Humanos. 2016. Page 38. Available at: <http://www.global.org.br/wp-content/uploads/2016/08/Guia-Defensores-de-Direitos-Humanos.pdf>.

³³³ Reporters Without Borders (RSF). April 20, 2016. [Brasil retrocede 5 lugares en la Clasificación Mundial de la Libertad de Prensa \(104º\)](#).

³³⁴ Secretaria Especial de Direitos Humanos do Ministério da Justiça e da Cidadania. March 11, 2014. [GT Comunicadores apresenta relatório final e propõe a criação de observatório](#).

³³⁵ Secretaria Especial de Direitos Humanos do Ministério da Justiça e da Cidadania. March 11, 2014. [GT Comunicadores apresenta relatório final e propõe a criação de observatório](#).

³³⁶ Secretaria Especial de Direitos Humanos do Ministério da Justiça e Cidadania. April 2016. [Decreto reestrutura ações de proteção aos defensores dos direitos humanos](#).

³³⁷ Estado de Brasil. [Decreto Nº 8.724. April 27, 2016](#). April 27, 2016. Article 1.

³³⁸ The Ministry of Women, Racial Equality, Youth, and Human Rights was eliminated on May 12, 2016, through Provisionary Measure [Medida Provisória] No. 726.

National Public Security Secretariat of the ministry of Justice. The decree similarly provides that one member of the Office of the General Attorney [*Ministerio Público Federal*] and one representative of the Judiciary [*Poder Judiciário*] may be invited to join the Council.³³⁹ According to the decree, both are within the purview of the Special Human Rights Secretariat of the ministry of Women, Racial Equality, Youth, and Human Rights.³⁴⁰ Civil society considers some aspects of that decree problematic—for example, it does not provide for the participation of public agencies or civil society in the program’s coordination or deliberative council, nor does it cover institutions or groups that defend human rights, as it only provides protection to individuals. Also, the decree is limited to covering “threatened persons,” not people “facing risk or vulnerability.”³⁴¹

256. More recently, according to information received by the Office of the Special Rapporteur, the country’s alleged political and financial crisis have affected the execution of the Protection Program³⁴² with measures such as *Portaria 161*, published on June 13, 2016, that would suspend a number of activities conducted by the Justice and Citizenry Ministry, thereby impacting a number of human rights policies and programs.³⁴³ On September 5, this *Portaria* was extended to December 31, 2016.

257. The criticisms of the Program to Protect Human Rights Defenders in Brazil focus particularly on the lack of the legal framework in the country despite the fact that since 2009, a bill has been before the National Congress; the lack of clarity on the methodology used by the PPDDH to assess risk; the alleged lack of protection strategies aimed at minority groups; and the difficulties that states have had communicating with human rights defenders and understanding their specific needs for protection.³⁴⁴

3. Obligation to Criminally Investigate, Try, and Criminally Punish

258. As mentioned previously in this report, impunity encourages the repetition of acts of violence against journalists. When crimes committed against journalists or media workers remain in impunity, it not only fosters an environment that is hostile toward the media but also has serious implications for democracy because it breaks the trust of victims and their relatives in State institutions and encourages journalists to self censor. Impunity has a strong chilling effect on the exercise of freedom of expression, and its consequences for democracy—which depends on the free, open and dynamic exchange of ideas and information—are particularly serious.³⁴⁵

³³⁹ Estado de Brasil. [Decreto Nº 8.724. April 27, 2016](#). April 27, 2016.

³⁴⁰ Estado de Brasil. [Decreto Nº 8.724. April 27, 2016](#). April 27, 2016.

³⁴¹ Sur Revista Internacional de Derechos Humanos. July 2016. [An analysis of the Latin American context: Brazil, Colombia and Mexico](#). Pag 177.

³⁴² Amnesty International. September 23, 2016. [Suspensão de convênios paralisa programa brasileiro de proteção aos defensores de direitos humanos](#); Rede Brasil Atual. July 29, 2016. [Corta de verba afeta em cheio programas de proteção de testemunhas e segurança alimentar](#); Ponte. June 17, 2016. [Ministro da Justiça da gestão Temer paralisa tudo o que é relacionado a Direitos Humanos no Brasil](#); Conselho Nacional dos Direitos Humanos. [Nota Pública do Conselho Nacional dos Direitos Humanos pela revogação da Portaria n. 794/2016/MJC](#). 16 de septiembre de 2016; Huffington Post Brasil. June 23, 2016. [Portaria do ministro da Justiça limita ações de direitos humanos e prejudica missão em Belo Monte](#); Brasil 247. June 20, 2016. [MP questiona Moraes sobre paralisação nos direitos humanos](#); Sur Revista Internacional de Derechos Humanos. July 2016. [An analysis of the Latin American context: Brazil, Colombia and Mexico](#).

³⁴³ Ministério da Justiça e Cidadania. Portaria No. 611. June 10, 2016. Available at: http://www.lex.com.br/legis/27154900/PORTARIA_N_611_DE_10_DE_JUNHO_DE_2016.aspx

³⁴⁴ Sur Revista Internacional de Derechos Humanos. July 2016. [An analysis of the Latin American context: Brazil, Colombia and Mexico](#), pages 179-180; Justiça Global. Guia de Proteção para Defensoras e Defensores de Direitos Humanos. 2016. Pages 40-41. Available at: <http://www.global.org.br/wp-content/uploads/2016/08/Guia-Defensores-de-Direitos-Humanos.pdf>

³⁴⁵ 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; 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. 2.

259. Along these lines, the United Nations special Rapporteur for freedom of expression and opinion has stated that "impunity for those who attack and/or kill journalists is a central obstacle to guaranteeing the protection of journalists and press freedom, as it emboldens perpetrators as well as would-be perpetrators to attack journalists with no legal consequences. Indeed, impunity is one, if not the main cause of the unacceptably high number of journalists who are attacked or killed every year. States must recognize that in cases of violence against journalists, impunity generates more violence in a vicious cycle."³⁴⁶

260. The Office of the Special Rapporteur has been able to document that in areas where journalists have chosen to self-censor, one of the problems they face is impunity for the attacks. While the perpetrators are identified in some cases, seldom are the masterminds identified or the criminal organization behind the crime dismantled.

261. The Office of the Special Rapporteur recalls that when it comes to violence against journalists and media workers, both the court and the Inter-American Commission have found that a lack of compliance with the obligation to investigate incidents of violence against journalists may also represents a failure to fulfill the obligations to respect and guarantee the right to freedom of thought and expression.³⁴⁷

262. Explanations for the generalized impunity seen in cases of violence against journalists vary. In some cases, it is possible to point to deficiencies in the law, such as amnesty laws or the disproportionate granting of leniency. There may also be institutional failings, such as a lack of technical capacity, adequate resources and specialized personnel in investigative bodies. The majority of the countries in the region have not put special protocols in place requiring authorities to exhaust the line of investigation into the exercise of the profession as a factor in cases of crimes committed against journalists. This presents an obstacle to the criminal prosecution of these crimes and is a special factor in the impunity of masterminds. Delays, omissions and failures in the timely and adequate carrying out of evidence procedures, especially with regard to initial investigative steps - such as crime scene analysis, the examination of the corpus delicti and the collection of statements from witnesses - are elements that can contribute considerably to impunity in individual cases.

263. Likewise, another fundamental factor in many cases is the lack of independence and impartiality of the authorities responsible for pursuing the investigations and corresponding legal proceedings. This phenomenon is especially concerning in cases in which the security forces or State authorities are suspected to have participated in the crimes committed.

264. However, the complexity of this phenomenon suggests that other factors may also come into play, including a lack of political will to launch effective investigations or even the existence of a culture of intolerance toward criticism, or the tacit acceptance of the crimes committed, especially in cases in which the violence is committed against journalists who allege corruption among state authorities.

265. Finally, there are other considerably relevant social factors that cannot be ignored and that have to do with the existence of powerful criminal groups that, in some places, may seriously weaken the State's capacity to defend, guarantee and promote human rights. No doubt, in areas with a strong organized crime presence, another important factor is the improper influence exercised over the judicial system through intimidation, and in some cases the complicity of police officers, prosecutors and judges, as well as witnesses and civilian parties. In that sense, the lack of protective measures and adequate investigation into attacks on or even murders of witnesses, individuals linked to the investigation or the alleged perpetrators presents a significant obstacle to establishing the facts and the possibility of criminally prosecuting those responsible.

a. Obligation to Adopt an Adequate Institutional Framework that Allows for the Effective Investigation, Trial, and Punishment of Violence Against Journalists.

³⁴⁶ United Nations. General Assembly. Report of the United Nations 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 at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/137/85/PDF/G1213785.pdf?OpenElement>

³⁴⁷ 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. 215.

266. The existence of an adequate institutional framework is crucial for States to be able to investigate, try and criminally punish crimes against journalists. In this sense, States have the obligation to guarantee that institutional frameworks are not designed so as to lead to or even encourage impunity when these crimes take place.

267. The first determining factor for complying with this obligation is assigning the responsibility to investigate and try these crimes to the authorities that will best be able to resolve them and that are autonomous and independent. States must ensure not only the hierarchical and institutional independence of the authorities responsible for moving the investigations and judicial proceedings forward, but also that their independence can be verified in practice in the case in question. In particular, the bodies of the inter-American system have repeatedly indicated that when State security services are alleged to have committed human rights violations, including acts of violence against journalists, under no circumstance can these cases be investigated and brought to trial under the military justice system. When local authorities have a limited investigative capacity and/or are more exposed to pressure from the criminal organizations that attack journalists, the potential for exercising federal jurisdiction is especially important. In States with centralized governments, pertinent law must allow the assignation of competency to investigate and punish these cases to authorities outside the sphere of influence of the officials being accused or the reach of the criminal organization concerned.

268. The second element of that obligation is the duty to clearly define the formal jurisdiction of the authorities in charge of investigating and processing these crimes. This obligation is especially fundamental for defining the authority to assert jurisdiction for those cases in which the domestic legal context allows for the possibility of federal authorities or authorities from a different jurisdiction taking over an investigation.

269. There are currently a number of examples in the region of public prosecutor offices or units dedicated exclusively to investigating crimes against journalists. In its report following its *in loco* visit to Mexico in 2010, the Office of the Special Rapporteur hailed the establishment of the Office of the Special Prosecutor on Crimes against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión*] (FEADLE), and it has highlighted the importance of keeping it within the structure of the Office of the Attorney General of the Republic (PGR). The Mexican government, through an agreement with the Prosecutor General of the Republic, dated February 15, 2006, created the Special Prosecutor's Office for Crimes against Journalists (FEADP), as an administrative body of Office of the Prosecutor General of the Republic's specialized in dealing with matters relating to criminal acts committed against journalists. The FEADP was subsequently modified in a new agreement of July 5, 2010, becoming the Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE), with the objective of responding "to the persistent and deeply-felt demand on the part of society as a whole with regard to the improvement and reinforcement of government actions which guarantee the physical and moral integrity of those engaging in journalistic or informative activities in Mexico."³⁴⁸

270. In 2010 the rapporteurs for freedom of expression for the OAS and the UN recognized the importance of the creation of the Office of the Special Prosecutor for Crimes against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión*] (FEADLE) in the PGR, however they noted the need for political will in order to strengthen it and give more autonomy to the local PGRs, as well as strengthening the capability of action public agencies for human rights have. Due to the ambiguous and deficient jurisdiction of FEADLE, recommendations were also made to make the necessary reforms in order to "allow the exercise of federal jurisdiction on crimes against freedom of expression."³⁴⁹

³⁴⁸ IACHR. [Annual Report 2010. 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. 719-722.

³⁴⁹ IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 416.

271. Complying with said recommendations, in May of 2013 the National Congress passed legal reform wherein it changed several federal laws to regulate Federal Public Prosecutor jurisdiction³⁵⁰ and that of the federal justice system to prosecute and adjudicate crimes against journalists, persons or facilities that: “affect, limit or undermine the right to information or freedom of expression or of the press.”³⁵¹ Said reform had as its objective to overcome the legal barrier that FEADLE had to assume jurisdiction and be more effective in solving cases that may be related to the exercise of journalism.³⁵²

272. Following the IACHR's *in loco* visit to Mexico in 2015, it expressed concern regarding the obstacles that FEADLE continues to face in practice to taking over investigations in cases of violence against journalists. The IACHR thus recommended “Remove all obstacles so that, in practice, the Specialized Prosecutor’s Office for Attention to Crimes against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión*] (FEADLE) may absorb investigation of crimes against journalists and against freedom of expression. This way, make more effective the exercise of federal jurisdiction over crimes within its competence and guarantee that the most serious violations of freedom of expression are always investigated by that Office.”³⁵³

273. In the case of Guatemala, in 2001 it created the “Prosecution Unit for Crimes against Journalists” of the Human Rights Prosecution Section of the Office of the Public Prosecutor and “it became the specialized Prosecution Unit with national jurisdiction in 2011.” The purpose of the Prosecution Unit is to “give special treatment to crimes committed against journalists and to draw national attention to the existence of the Prosecution Unit for crimes against journalists, for purposes of implementing a direct procedure for the filing of complaints.” The Unit reportedly has jurisdiction to handle all crimes committed against journalists “in the practice of their journalistic work” anywhere in the country. It is comprised by a Prosecutor, Assistant Prosecutors, and a Prosecution Officer.³⁵⁴ In its report on the human rights situation of Guatemala, the IACHR observed “that the Unit for Crimes against Journalists in the Public Prosecution Service has been a welcome improved in terms of investigation and the arrest of aggressors, only has five attorneys to investigate, crimes, attacks, and threats against media personnel, with more than 100 cases still awaiting clarification.”³⁵⁵

274. In November 2016, Attorney General Thelma Aldana announced the restructuring of the Crimes against Journalists Unit with the goal of strengthening it and improving the quality of its investigations.³⁵⁶

³⁵⁰ Estados Unidos Mexicanos. [Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal](#). May 3, 2013.

³⁵¹ Estados Unidos Mexicanos. Decreto por el que se reforman y adicionan diversas disposiciones del Código Federal de Procedimientos Penales, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal. May 3, 2013. In that regard, the reform provides, among other provisions, that the federal authorities may exercise their authority to assert jurisdiction in cases where the author's willful intent is presumed and at least one of the following circumstances occur: (i) when there are indications of the participation of a state or municipal public official in the offense; (ii) when the victim has indicated in his complaint that a public state or municipal official is responsible; (iii) in the case of serious crimes so qualified by law; (iv) when the life or physical integrity of the victim or offended person is at real risk; (v) when it is requested by the competent authority of the federative entity; (vi) when the facts constituting a crime have a significant impact on the exercise of the right to freedom of expression; (vii) when there are objective and generalized circumstances of risk for the exercise of the right to freedom of expression in the federal entity where the crime was committed or its results were manifested; (viii) when the act constituting an offense transcends the domain of one or more federal entities; or (ix) when, by judgment or resolution of a body provided for in any international treaty of which the Mexican State is a party, the international responsibility of the Mexican State has been determined by default or omission in the investigation, prosecution or prosecution of these offenses.

³⁵² IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 416.

³⁵³ IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15 December 31, 2015. Para. 63

³⁵⁴ 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). Guatemala. OEA Ser.L/V/II.149 Doc. 50. December 31, 2013. Para. 473.

³⁵⁵ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 295.

³⁵⁶ Centro de Reportes Informativos de Guatemala (Cerigua). November 7, 2016. [Fiscal General anuncia fortalecimiento de la Unidad Fiscal de delitos contra Periodistas](#).

275. Though not focused specifically on crimes against journalists, the International Commission against Impunity in Guatemala [*Comisión Internacional Contra la Impunidad en Guatemala*] (CICIG)³⁵⁷ has also attracted attention as an innovative investigative body that employs international specialists to support domestic prosecutions of complex crimes.³⁵⁸ The result of an agreement between the United Nations and the Government of Guatemala, CICIG was established in 2007 as an independent, international body designed to support the Office of the Public Prosecutor, the National Civil Police and other State institutions in the investigation of crimes committed by members of illegal security forces and clandestine security structures and, in a more general sense, help to disband such groups. To do so, CICIG assists with investigations and criminal prosecutions in select complex cases, as well as implementing steps—in accordance with its mandate—aimed at strengthening the institutions of the justice system so that they can continue to tackle these illegal groups in the future.³⁵⁹ The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has observed that while “CICIG is not specifically directed towards journalists, it draws attention to issues at the heart of the problem of impunity.”³⁶⁰ In this way, it has the potential to address structural factors, including the role of organized crime and the weakness of the justice system, that contribute to violence and impunity in the case of journalists. More generally, CICIG’s approach to strengthening domestic investigative capacity by employing international experts to work side-by-side with national prosecutors may serve as a model for countries that have the political will to tackle violence against journalists but lack the technical expertise and resources to do so effectively.

276. In the case of the homicide of journalists Danilo López and Federico Salazar, which took place in Mazatenango and was covered in this report (Chapter II), the Office of the Public Prosecutor has worked together with the ICIG. In July 2015, the Freedom of the Press Committee of the Association of Guatemala and Journalists lauded “the efforts of the Crimes against Journalists Unit” to investigate the murders of journalists and praised “the intent and willingness” of the ICIG commissioner, Iván Velásquez, to “assist in the investigations.”³⁶¹

277. The Office of the Special Rapporteur also took note that the Office of the Attorney General of the Nation in Colombia created a series of special criminal investigation taskforces to look into threats against union members, human rights defenders, journalists, and justice officials issued due to their positions using technically advanced means. The group is made up of three prosecutors, two assistant prosecutors, a secretary, three computer crimes investigators, two forensic investigators, and five investigators from the National Office of the Technical Investigations Group, which is under the Cyber Police Center.³⁶² Although as of the publication of this report, no cases have been solved by this task force, its creation is a recognition of the challenge of investigating crimes such as threats against journalists and recognizes the challenges presented by a digital environment to preventing crimes against journalists and protecting them.

³⁵⁷ International Commission Against Impunity in Guatemala (CICIG). No date. [Agreement to establish CICIG](#).

³⁵⁸ United Nations. General Assembly. Report of the United Nations 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. 68. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?m=85

³⁵⁹ International Commission Against Impunity in Guatemala (CICIG). No date. [Agreement to establish CICIG](#).

³⁶⁰ United Nations. General Assembly. Report of the United Nations 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. 68. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?m=85

³⁶¹ Asociación de Periodistas de Guatemala. July 31, 2015. [Comunicado de la Comisión de Libertad de Prensa de la APG](#).

³⁶² Fiscalía General de la Nación. Resolución 249. February 19, 2015. “Por medio de la cual se conforma un grupo de tareas especiales para la investigación de conductas punibles sobre Amenazas a través de medios tecnológicos en contra de miembro de organización sindical, defensor de derechos humanos, periodista o servidor público perteneciente a la Rama Judicial o al Ministerio Público o sus familiares, en razón o con ocasión al cargo o función que desempeñe”. Available at: http://legal.legis.com.co/document?obra=legcol&document=legcol_1227387edad01cce0530a01015101cc; Fiscalía General de la Nación. March 4, 2015. [Fiscal General conforma grupo de tareas especiales para investigar exclusivamente amenazas por medios tecnológicos contra sectores especiales](#).

278. Third, necessary measures must be adopted to protect judges, prosecutors, witnesses, and other individuals who take part in criminal investigations in order to protect them from external pressures, including threats, attacks, and other forms of intimidation.

279. On this point, in the merits report in the case of *Nelson Carvajal v. Colombia*, the IACHR stated that "in cases involving a violent death in which State agents and/or powerful criminal groups are under investigation for their participation, States must ensure that the responsibility to investigate and prosecute human rights violations is assigned to the authorities that are in the best position to adjudicate them effectively, autonomously, and independently. In this respect, States must establish safeguards so that the competent authorities can operate without being subject to the influence of the government official or criminal organization allegedly involved in the crime. At the same time, they must guarantee that the witnesses and relatives of the victim are able to participate in the proceedings without fear of retaliation. These safeguards may entail, for example, removing the investigation from the jurisdiction of the local authorities, or changing the venues of criminal proceedings."³⁶³

280. This measure is particularly important in the areas labeled by this report as "silenced zones" because the violence exercised against the media has not only a chilling effect that impacts other journalists but also can impact society, resulting in people refusing to make complaints or in victims, their relatives, or their colleagues declining to participate actively in investigations or the eventual criminal trials of those responsible due to fear of retaliation.

281. In its Third Report on the Human Rights situation in Colombia following its *in loco* visit in December 1997, the Commission stated that "The legitimate fear of public authorities involved in the administration of justice, as well as witnesses, also contributes to the ineffectiveness of criminal proceedings in human rights cases processed in the civilian justice system. Those responsible for human rights abuses sometimes ensure their impunity by threatening or attacking those who might contribute to a sanction against them." Effectively, it reiterated that the issue of fear of becoming the victim of retaliation had affected judges, attorneys, judicial police, and "witnesses who are key in determining the authorship of the facts under investigation and whose testimony can shed light on the facts and convict the guilty parties."³⁶⁴

282. Fourth, opportunities must be provided for sufficient training of investigative police officers, prosecutors and judges to ensure that investigations into crimes against freedom of expression are exhaustive, rigorous and effective, and that all aspects of these crimes are minutely examined.

283. Likewise, for the success of investigations into crimes against freedom of expression, investigators should receive sufficient human, financial, logistical and scientific resources to collect, secure and evaluate evidence and carry out other tasks necessary for determining responsibility.

284. Finally, in contexts in which there is a continual risk of acts of violence against journalists and impunity prevails, States should create specialized investigative units in charge of investigating crimes against freedom of expression.

b. Obligation to Act With Due Diligence and Exhaust Lines of Investigation Connected to The Victim's Exercise of Journalism

285. The Inter-American Court has highlighted that the obligation of due diligence means that criminal investigations must exhaust all logical lines of investigation. In particular, "due diligence" requires that investigations pursued by the State take into account the complexity of the facts, the context in which they took place, and the patterns that explain them, ensuring that nothing was left out as the evidence was

³⁶³ IACHR. Report No. 21/15. Case 12.462. Report on merits. *Nelson Carvajal Carvajal and Family. Colombia*. OEA/Ser.L/V/II.154. Doc. 15. March 26, 2015. Para. 156. Available at: <http://www.oas.org/es/cidh/decisiones/demandas.asp>

³⁶⁴ IACHR. [Third Report on the Human Rights Situation in Colombia](#). Chapter V (Administration of Justice and Rule of Law). OEA/Ser.L/V/II.102. Doc. 9 rev. 1. February 26, 1999.

collected and logical lines of investigation are followed. This aspect is crucial for States to fulfill their duty, indicated previously, to investigate, criminally prosecute, and punish the perpetrators and masterminds.

286. The obligation to investigate with due diligence and exhaust all logical lines of inquiry is especially relevant in cases of violence against journalists, given that an investigation that does not look into issues related to context - such as the professional activity of the journalist - is less likely to get results and will probably raise questions as to the authorities' willingness to solve the crime.

287. In the 2015 report on the human rights situation in Mexico, both the Commission and its Special Rapporteur expressed concern after observing "the practice to not exhaust the investigation line related to the profession, as this sends a message of justice by proxy. This omission creates a barrier to reaching the masterminds, only accomplishing perpetrator convictions, allowing for a reduction in impunity statistics and sending a mixed message to society since there is no explanation to what actually took place."³⁶⁵

288. For its part, the IACHR also indicated in the section on impunity for crimes against journalists of its report on the human rights situation in Honduras that "it is essential for all institutions to have special protocols in place that require the authorities to exhaust all lines of inquiry related to the practice of journalism in cases involving crimes against journalists. The institutions must also have adequate resources and personnel specialized in investigating such matters."³⁶⁶

289. As the IACHR stated in its report on the merits in the case of Nelson Carvajal v. Colombia, the "State is also required to investigate, and if appropriate, punish all perpetrators of crimes, including direct perpetrators, masterminds, accomplices, collaborators, and accessories to human rights violations. Moreover, it must investigate the structures through which the crimes are committed and the criminal organizations to which the perpetrators belong. As previously explained, 'due diligence' demands that the investigations conducted by the State take account of 'the complexity of the facts, the context in which they occurred, and the systematic patterns that explain why the events occurred,' ensuring that there are no 'omissions in gathering evidence or in the development of logical lines of investigation.'³⁶⁷ This obligation is especially relevant in cases of violence against journalists, which oftentimes are committed by criminal networks that act with the tolerance or acquiescence of State agents, and in which the direct perpetrator of the crime is merely carrying out orders."³⁶⁸

290. In this regard, the Office of the Special Rapporteur appreciates the creation of the Analysis and Context Unit (UNAC) of the Office of the Attorney General of the Nation of Colombia. While this unit is not focused exclusively on investigating crimes committed against journalists, the concept under which it was created can help solve certain cases of violence against journalists, especially because it enables understanding of patterns of violence committed by organized crime. The unit was created in 2012 "as a crime policy tool focused mainly on addressing organized crime by using forensic and context analysis tools to draw connections between the individual pieces of information currently held by the various offices of the public prosecutor. Likewise, it will take over the processes involved in the situations and cases classified as priority by the Situations and Cases Prioritization Committee of the Office of the Attorney General of the Nation."³⁶⁹ Among its considerations, the Resolution creating that unit states that "the current judicial management system requiring all crimes be investigated at the same time, in the same way, and as isolated

³⁶⁵ IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 425.

³⁶⁶ IACHR. [Situation of Human Rights in Honduras](#). OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015. Para. 213.

³⁶⁷ I/A Court H.R.. Case of the *Rochela Massacre v. Colombia. Merits, Reparations, and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 158; I/A Court H.R.. Case of *Manuel Cepeda Vargas v. Colombia. Preliminary Exceptions, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213. Para. 106-110 and 167.

³⁶⁸ IACHR. Report No. 21/15. Case 12.462. Report on merits. Nelson Carvajal Carvajal and Family. Colombia. OEA/Ser.L/V/II.154. Doc. 15. March 26, 2015. Para. 156. Available at: <http://www.oas.org/es/cidh/decisiones/demandas.asp>

³⁶⁹ República de Colombia. Fiscalía General de la Nación. Resolución No. 01810. Por medio de la cual se crea la Unidad Nacional de Análisis y Contextos. October 4, 2012. Available at: <http://www.fiscalia.gov.co/colombia/priorizacion/unidad-nacional-de-analisis-y-contextos/>

incidents impedes the creation of real crime policy through designing and implementing strategies to effectively combat the various criminal phenomena attributable to organized crime.” It also states that investigation of the cases as isolated incidents has led to high rates of impunity.

291. The unit is made up of a lead prosecutor and two offices: (i) forensic analysis, made up of a interdisciplinary team of specialists in politics, defense and security, drug trafficking, finance, social issues, economics, etc.; and (ii) coordination of priority situations and cases, made up of delegated prosecutors, an administrative secretary, and a judicial police unit.³⁷⁰ The Office of the Special Rapporteur has learned that the case of journalist Claudia Julieta Duque, who was subjected to psychological torture, is assigned to this unit. The Office of the Special Rapporteur thus notes that although the inexhaustible struggle of the journalist for justice in her case should be recognized, it is also noteworthy that since her case was taken over by the Analysis and Context Unit, some noteworthy progress has been achieved, including linking the crimes to their masterminds.

c. Obligation to Investigate Within a Reasonable Period of Time

292. In a number of its rulings, the Inter-American Court has established that excessive delay in the investigation of acts of violence can constitute a *per se* violation of judicial guarantees. The authorities responsible for the investigation must act quickly, avoiding unjustified delays that would lead to impunity and violate due judicial protection of the right.

d. Obligation to Remove Legal Obstacles to the Investigation and Effective and Proportional Punishment of the Most Serious Crimes Against Journalists

293. The IACHR has called special attention to the use of general amnesty laws to block the investigation of grave human rights violations committed against journalists. Likewise, a number of international organizations have also expressed concern at the effect that prescription provisions have had on the criminal investigation and punishment of the most serious crimes committed against journalists for exercising their profession. States also have a duty to guarantee that punishments applied to individuals convicted of acts of violence committed against journalists and media workers over the exercise of their profession be proportionate and effective. In this sense, the Inter-American Court has determined that in order for the State to satisfy its obligation to investigate, try and, where applicable, punish and provide redress for grave human rights violations committed under its jurisdiction, it must observe the principle, (among others) of the proportionality of the punishment and serving of the sentence. Although the existence of leniency for sentences is legitimate in a democratic society, its application in this case, especially to serious acts of violence such as murder, torture and forced disappearance, must take place pursuant to the parameters established by international human rights law.

e. Obligation to Facilitate Victim Participation

294. Inter-American human rights law requires States to ensure that victims of human rights violations or their relatives have full access and agency at all stages and levels of the investigation and in the corresponding trial, pursuant to domestic law and the provisions of the American Convention. This must include ample opportunity to participate and be heard, both in the clearing up of the facts and the punishment of those responsible, as well as in the search for just compensation.

D. VIOLENCE AGAINST WOMEN JOURNALISTS

295. It is important for all actions taken by States to comply with their obligations to prevent, protect, and investigate, try, and criminally punish those responsible for crimes against journalists to address specific gender-based needs and risks. Along these lines, the General Assembly of the United Nations—in a resolution

³⁷⁰ República de Colombia. Fiscalía General de la Nación. Resolución No. 01810. Por medio de la cual se crea la Unidad Nacional de Análisis y Contextos. October 4, 2012. Article 4. Conformación. Available at: <http://www.fiscalia.gov.co/colombia/priorizacion/unidad-nacional-de-analisis-y-contextos/>

on the safety of journalists and the issue of impunity³⁷¹—and the Security Council of the United Nation—in Resolution 2222 on protecting journalists and armed conflicts³⁷²—have pointed out that security measures for journalists must take into account the risks faced specifically by journalists as they do their work. Frank La Rue, the former UN Special Rapporteur on freedom of expression and opinion, indicated in his report to the General Assembly of the United Nation's that women journalists face additional risks, such as sexual assaults that can take place while they cover the news when they become victims of deprivation of liberty. In many cases, such incidents are not reported for fear that due to cultural beliefs or professional reasons, blame could fall on them.³⁷³ UN Special Rapporteur on freedom of expression and opinion David Kaye stated in his most recent report on restrictions on freedom of expression that women are exposed to certain limitations to their right to freedom of expression due to their gender. He thus expressed concern at the acts of violence and systematic threats of sexual and physical assault that have been reported against women exercising their right to freedom of expression.³⁷⁴

296. In its annual reports, the Office of the Special Rapporteur has recorded the different forms that violence and harassment against women journalists takes in the region. According to these reports, the situation faced by women has not improved despite the recommendations made by this office to the States to specifically prevent this harassment. In its report on Violence against journalists and media workers, it indicated that, “the information compiled by the Office of the Special Rapporteur, violence committed against female journalists as a result of their work has particular characteristics stemming from the social constructs of gender and discrimination to which women have traditionally been subjected. This violence is manifested in different ways, from murder and sexual violence—including sexual harassment—to intimidation, abuse of power, and threats based on gender. According to the information available, violence against women is perpetrated by different actors, including State agents, sources of information, and colleagues, and it takes place in diverse contexts and settings, including the street, the workplace, and State offices or institutions.”³⁷⁵

297. States have an obligation to prevent and protect and to investigate, try and punish those responsible for these crimes. According to inter-American case law, in cases of violence against women, in addition to the general obligations above indicated, States also have a particularly strong obligation to act with due diligence pursuant to existing provisions on the subject of the rights of women, such as the Convention of Belem do Para. Likewise, States have an obligation to adopt protective measures in specific cases in which individual journalists are at special risk of becoming victims of violence. In this task, States must take into consideration the specific risk of violations to their human rights that different groups of women face as a result of the intersection of other different reasons for discrimination, including race, ethnicity, age, sexual orientation, and others.³⁷⁶

298. As far as the obligation to investigate, it is relevant to highlight that it has additional scope in cases of crimes committed against women journalists. In all cases, it is crucial for the authorities in charge to be duly trained on issues of gender. Regarding this, the United Nations Plan of Action on the Safety of Journalists and

³⁷¹ United Nations. General Assembly. The safety of journalists and the issue of impunity. A/RES/69/185. February 11, 2015. Available at: <http://www.un.org/es/ga/69/resolutions.shtml>

³⁷² United Nations. Security Council. Protection of civilians in armed conflict. S/RES/222(2015). May 27, 2015. Available at: <http://www.un.org/es/sc/documents/resolutions/2015.shtml>

³⁷³ United Nations. General Assembly. Report of the United Nations 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. 52. Available at: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>

³⁷⁴ United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. David Kaye. A/71/373. September 6, 2016. Para. 48. Available at: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>

³⁷⁵ 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. 251.

³⁷⁶ 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. 259 - 262.

the Issue of Impunity states, “Female journalists also face increasing dangers, highlighting the need for a gender-sensitive approach. In carrying out their professional duties, they often risk sexual assault, whether in the form of a targeted sexual violation, often in reprisal for their work; mob-related sexual violence aimed against journalists covering public events; or the sexual abuse of journalists in detention or captivity. Furthermore, many of these crimes are not reported as a result of powerful cultural and professional stigmas.”³⁷⁷

299. One of the challenges involved in the attacks women journalists suffer is the failure to report these incidents. As a result, the statistics that may be available on the issue do not necessarily reflect reality. Regarding this, the Office of the Special Rapporteur highlights work done by organizations throughout the region to document the existence of this issue. For example, Mexican organization Cimac has been a pioneer in conducting surveys of women journalists and standardizing statistics on the attacks of which they are victims. Recently, with the support of UNESCO in Guatemala, the organization Civitas conducted a study on violence against women journalists that warned of the “normalization” of sexual harassment of women reporters and journalists in that country. In its report, the organization highlights that women journalists may be victimized not only by those actors who traditionally commit acts of violence against the media but also by their sources, colleagues, and others.³⁷⁸ The nature of the phenomenon is such that complaints are few, and therefore the problem remains unseen.

300. Based on its 2015 *in loco* visit to Mexico, the IACHR and its Office of the Special Rapporteur received information indicating that in recent years, while violence against journalists has increased, “violence against women journalists has increased by percentage at a higher rate than the violence against male journalists [... and] in many cases the violence was psychological in nature.”³⁷⁹ According to the information received, women journalists who have been the victims of some type of attack tended to cover issues related to politics, citizen security, organized crime, and the police beat. The Office of the Special Rapporteur calls on States to conduct surveys on the risks specifically facing women journalists with the understanding that women journalists, who are generally younger, are taking a leading role in the coverage of violence and corruption, either because they receive lower salaries or because coverage of these issues has been abandoned by journalists with more experience due to the violence.

301. In recent statements adopted on the safety of journalists, both the United Nations General Assembly and the Security Council have alluded to the differentiated fact that violence has on women journalists due to “the specific risks faced by women journalists in the exercise of their work, and underlining, in this context, the importance of taking a gender-sensitive approach when considering measures to address the safety of journalists.”³⁸⁰ Along these lines, the Office of the Special Rapporteur has welcomed the fact that laws establishing mechanisms of protection—such as in Mexico and Honduras—have enshrined the gender perspective as one of the elements to take into account when assessing risk and implementing measures. In addition, the Office of the Special Rapporteur stressed the importance of the decisions of the Constitutional Court of Colombia ordering that the protection mechanism adjust its protection measures to the specific needs of women beneficiaries.³⁸¹

³⁷⁷ United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity. Point 1.17. Available at: <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/>.

³⁷⁸ Civitas. Informe de grupos focales sobre acoso sexual a mujeres periodistas en Guatemala. 2015.

³⁷⁹ IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015. Para. 428.

³⁸⁰ United Nations. General Assembly. The safety of journalists and the issue of impunity. A/RES/69/185. February 11, 2015. In that regard: United Nations. General Assembly. Human Rights Council. The protection of journalists. A/HRC/33/L.6. September 26, 2016; United Nations. Security Council. Protection of civilians in armed conflict. S/RES/2222 (2015). May 27, 2015.

³⁸¹ 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.

302. The special risks to which women journalists are exposed must be taken into account in order to prevent the intimidation or fear that may arise from an attack or the risk of one from leading to women journalists self-censoring. The Office of the Special Rapporteur reminds States of the need to improve mechanisms of prevention, protection and judicial response in order to fully comply with the obligations described in this report and guarantee women the full exercise of their freedom of expression.

E. PROTECTION OF JOURNALISTS ONLINE

303. The obligations to prevent, protect, and investigate violence against journalists must be met not only regarding journalists who work for traditional media outlets but also for journalists who work for online media or on the various platforms that the Internet provides. The implementation strategy for the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity states that “[...] the safety of journalists, and the combating of impunity for crimes against their use of freedom of expression, can only be effectively addressed through a holistic approach. This is because the Plan perceives safety as a broad category that extends from preventive, protective and pre-emptive measures, through to combating impunity and promoting a social culture which cherishes freedom of expression and press freedom. Notably, the Plan also acknowledges that safety spans both online and offline worlds and those solutions require informed action at global, regional, national and local levels whilst at the same time responding to contextual specificities in each case.”³⁸²

304. The dawn of the Internet marked the beginning of a series of profound changes in human communication. While it has had a democratizing impact on the exercise of freedom of expression and the collection and dissemination of information and news, at the same time, significant challenges have arisen to the safety of communicators as a result of the greater opportunities that the new technologies offer as far as surveillance, intimidation, and State censorship, as well as private control of communication.

305. The Internet enables people in general to seek, receive, and impart information and ideas of all kinds. Its unique design enhances the exercise of freedom of expression, extending it beyond the use journalists make of it. Indeed, anyone interested in issues related to their community are able to share information, opinions, and ideas over the Internet and social networking platforms. In this regard, the Special Rapporteur for the promotion and protection of the right to opinion and expression stated in his 2012 report that most media outlets have developed web versions of their publications, making the Internet essential for disseminating news to a more global audience. Newspaper journalists have thus been published online along with “citizen journalists,” the latter of which play a very important role in documenting and disseminating on-the-ground news, thus “increasing access to sources of information, stimulating informed analysis and promoting the expression of diverse opinions, particularly in moments of crises.”³⁸³

306. The Office of the Special Rapporteur has observed in recent years that journalists are increasingly migrating from traditional media outlets to online media, publishing their work on web portals, blogs, and social networks. This trend has been joined by citizen journalists who, through a number of different technologies, share information on issues that are in the public interest for the communities in which they live. In areas with a generalized context of violence against traditional media, the Internet is a safer alternative from which to continue informing society, as by using it anonymously and through social networks, people can address controversial issues such as the violence associated with drug trafficking.³⁸⁴

³⁸² United Nations Educational, Scientific and Cultural Organization (Unesco). [Implementation Strategy 2013-2014 UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#).

³⁸³ United Nations. General Assembly. Report of the United Nations 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. 61. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?m=85

³⁸⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. September 27, 2011. [Press Release R105/11 Office of the Special Rapporteur for Freedom of Expression Condemns Three Murders in Nuevo Laredo, Mexico.](#)

However, in order for this to be possible, the digital environment must also provide safe conditions for people who wish to take part.³⁸⁵

307. Unfortunately, the Office of the Special Rapporteur observes that people who use the Internet to inform are exposed to risks that threaten the free exercise of their right to freedom of expression. On one hand, they are exposed to the kind of cyberattacks that come with the digital environment, while on the other, they are exposed to violence and become victims of threats, harassment, and stigmatization, and are even killed.

308. A report from the United Nations Special Rapporteur on extrajudicial executions on attacks on journalists online points out that one of “[o]ne of the main changes in the way in which the news is disseminated around the world in recent years has been the emergence of online journalists, both professionals as well as people who are untrained, who use social media. With the spread and increased availability of technology, the pool of who we now consider journalists has expanded rapidly, and so has the number of people who are potential targets of those who want to control the flow of information. In parts of Mexico, for example, the conventional media have for all practical purposes been replaced by new media—and assassins have likewise moved their sights.”³⁸⁶

309. In this section, the Office of the Special Rapporteur seeks to highlight need for States to prevent, protect, and investigate attacks committed against people who report over the Internet. By doing so, the Office of the Special Rapporteur joins the efforts of the Special Rapporteur for freedom of opinion and expression of the UN and international organizations such as UNESCO and civil society organizations in describing the phenomenon and proposing possible solutions.³⁸⁷

310. In his 2015 annual report, UN Special Rapporteur on the right to freedom of opinion and expression David Kaye stated that “Internet has profound value for freedom of opinion and expression, as it magnifies the voice and multiplies the information within reach of everyone who has access to it. Within a brief period, it has become the central global public forum. As such, an open and secure Internet should be counted among the leading prerequisites for the enjoyment of the freedom of expression today. But it is constantly under threat, a space — not unlike the physical world — in which criminal enterprise, targeted repression and mass data collection also exists. It is thus critical that individuals find ways to secure themselves online, that Governments provide such safety in law and policy and that corporate actors design, develop and market secure-by-default products and services.”³⁸⁸

311. The Office of the Special Rapporteur has recognized on various occasions that the right to freedom of expression is favored when States protect the privacy of digital communications, as well as the confidentiality, integrity, and availability of data and computer systems.³⁸⁹ Its report on freedom of expression and the Internet addressed the concept of cybersecurity as an element linked to “the protection of

³⁸⁵ United Nations. General Assembly. The safety of journalists and the issue of impunity. A/RES/69/185. February 11, 2015. Available at: <http://www.un.org/es/ga/69/resolutions.shtml>; United Nations. General Assembly. Report of the United Nations 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. 61. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?m=85

³⁸⁶ United Nations. General Assembly. 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. 36. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

³⁸⁷ Committee to Protect Journalists (CPJ). [Journalist Security Guide. Chapter 3 \(Technology Security\)](#); Freedom House and International Center for Journalists. [Manual de Seguridad Digital y Móvil para Periodistas y Blogueros](#); Fundación para la Libertad de Prensa (FLIP). [Manual Antiespías: Herramientas para la protección digital a periodistas](#).

³⁸⁸ Office of the United Nations High Commissioner for Human Rights. Special Rapporteur for Freedom of Expression. Report on the promotion and protection of the right to freedom of opinion and expression. May 1, 2016. Available at: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>

³⁸⁹ 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](#).

a set of legally protected interests, such as infrastructure and information that is stored or in any way administered through the Internet, but not of the technological medium used to commit any kind of crime". As consequence "by virtue of the open and decentralized configuration of the Internet, governments should seek a security model in which there are shared responsibilities among the different actors as well as a diversity of media, from the training of users and the implementation of technical security devices to the sanctioning of acts that in fact threaten or attack the legal interests protected by "cybersecurity.""³⁹⁰

312. The 2012 joint declaration of the rapporteurs on freedom of expression of the UN and the IACHR established that "all restrictions on freedom of expression, including those that affect speech on the Internet, should be clearly and precisely established by law, proportionate to the legitimate aims pursued, and based on a judicial determination in adversarial proceedings. In this regard, legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect legitimate websites and services."³⁹¹

313. As this Office has reiterated on a number of occasions, the exercise freedom of expression requires a private space free from threats. In view of this close relationship between freedom of expression and privacy, States should avoid the implementation of any measure that restricts, in an arbitrary or abusive manner, the privacy of individuals. This privacy is understood in a broad sense as every personal and anonymous space that is free from intimidation or retaliation, and necessary for an individual to be able to freely form an opinion and express his or her ideas as well as to seek and receive information, without being forced to identify him or herself or reveal his or her beliefs and convictions or the sources he or she consults.³⁹² The 2013 joint declaration of the rapporteurs on freedom of expression of the UN and the IACHR stated that "Any surveillance of communications and interference with privacy that exceeds what is stipulated by law, has ends that differ from those which the law permits, or is carried out clandestinely must be harshly punished. Such illegitimate interference includes actions taken for political reasons against journalists and independent media."³⁹³

314. In this regard, it is important to highlight the protection of sources that must be in place not only for journalists who work in traditional media but also for those who receive and disseminate information in the public interest over the Internet. UN special Rapporteur on the promotion and protection of the right to freedom of expression David Kaye said in his report on protecting sources of information and whistleblowers that "Protection must also counter a variety of contemporary threats. A leading one is surveillance. The ubiquitous use of digital electronics, alongside government capacity to access the data and footprints that all such devices leave behind, has presented serious challenges to confidentiality and anonymity of sources and whistle-blowers." Along those same lines, the Rapporteur recommended to States that "National legal frameworks must protect the confidentiality of sources of journalists and of others who may engage in the dissemination of information of public interest. Laws guaranteeing confidentiality must reach beyond professional journalists, including those who may be performing a vital role in providing wide access to information of public interest such as bloggers, "citizen journalists."³⁹⁴

³⁹⁰ 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. 120.

³⁹¹ UN Special Rapporteur for Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur on Freedom of Expression. January 20, 2012. [Joint Declaration on Freedom of Speech on the Internet](#).

³⁹² 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. 132.

³⁹³ 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](#).

³⁹⁴ United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. A/70/361. September 8, 2015. Available at: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>

315. The Office of the Special Rapporteur has observed that decisions to conduct surveillance that invades individual privacy must be authorized by independent judicial authorities, who must state why the measure is suitable to accomplish the aims pursued in the specific case; whether it is sufficiently restricted so as not to infringe upon the right in question more than necessary; and whether it is proportionate in relation to the interests pursued. Investigative proceedings involving an invasion of privacy authorized by law and by a competent judge must also respect other due process safeguards. States must ensure that the judicial authority is specialized and competent to make decisions on the legality of the communications surveillance, the technologies used, and its impact on the sphere of rights that could be involved, and that they have sufficient guarantees to carry out their duties in an adequate manner. Finally, the Office of the Special Rapporteur observes that, at the very least, the decision-making criteria adopted by the courts should be public.³⁹⁵

316. Today, there are a growing number of tools that contribute to fostering freedom of expression. With a cellular telephone, we can upload content directly to the web or exchange information from a single server using Bluetooth technology; encryption software, such as Tor, ensures high levels of privacy for telecommunications; and digital media enables us to collect evidence in cases of mistreatment or abuse.³⁹⁶ UNESCO's most recent report on this issue, entitled "Building Digital Safety for Journalism," explains that a number of applications developed recently enable people whose access to offline communications is blocked to exchange information safely and using encryption.³⁹⁷ The same report notes that when evaluating the different ways of protecting freedom of expression on the Internet, the safeguards must protect not only the content but also the means used to transmit it. In fact, they must protect the whole communication environment: from the applications used to find the information to the codes and protocols connecting devices to the digital world, to the hardware itself, cables, and wireless towers that transmit the data.³⁹⁸

317. The Office of the Special Rapporteur also considers civil society initiatives to train journalists to use the tools necessary to protect themselves digitally to be very important, along with development of applications to make this easier.

F. THE ROLE OF OTHER ACTORS: MEDIA OUTLETS AND CIVIL SOCIETY

318. Although the obligations to prevent, protect, and investigate are the international responsibility of States, there is no doubt that other actors are key for the protection of at-risk journalists, especially in areas in which the risk is higher due to the characteristics of the context, such as in the case of silenced zones.

319. Based on this, the media play a decisive role in guaranteeing the protection of journalists and other workers, both those with which it has a labor relationship and freelance journalists. Thus, the Special Rapporteurs stated in their 2012 joint statement that "[m]edia organizations should be encouraged to provide adequate safety, risk awareness and self-protection training and guidance to both permanent and freelance employees, along with security equipment where necessary."³⁹⁹ The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has similarly stated that "While recognizing the often

³⁹⁵ IACHR. [Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 111.

³⁹⁶ United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. A/HRC/29/32. May 22, 2015. Available at: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>

³⁹⁷ United Nations Educational, Scientific and Cultural Organization (UNESCO). [Building Digital Safety for Journalism. A survey of selected issues](#). 2016. Page 22.

³⁹⁸ United Nations Educational, Scientific and Cultural Organization (UNESCO). [Building Digital Safety for Journalism. A survey of selected issues](#). 2016. Page 22.

³⁹⁹ 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](#).

competitive nature of the relationships among media workers worldwide, it is important to set competition aside where issues of safety are involved."⁴⁰⁰

320. As this report has explained, one of the factors that increase the vulnerability of journalists and media workers in areas with significant organized crime and corruption is labor instability. In this regard, it is important for the media to adopt protocols for protecting journalists and providing them with opportunities to receive training on tools for protecting themselves, both physically and online.

321. As noted by the Special Rapporteur on the right to freedom of expression and opinion of the UN "journalists and media organizations also have a responsibility to take precautionary safety measures to ensure their own protection. Additionally, by voluntarily adhering to global standards of professionalism, journalists can also enhance their credibility in the eyes of society and their legitimate protection concerns. Such standards of journalistic professionalism include those that have been developed and adopted by journalists and media workers themselves."⁴⁰¹ Along the same lines, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that "Media agencies should provide appropriate basic and advanced security training for journalists and media personnel. [...] They should also provide safety and self-protection guidance for their employees, giving them security equipment as necessary and offering training to both their permanent and freelance employees."⁴⁰² Also, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity warns that it is important to urge "all stakeholders, and in particular the media industry and its professional associations, to establish general safety provisions for journalists, including but not limited to safety training courses, health care and life insurance, access to social protection and adequate remuneration for free-lance and full-time employees."⁴⁰³ In its report entitled "Violence against journalists and media workers," the Office of the Special Rapporteur gave examples of good practices as far as measures taken by the media and civil society organizations that focus on providing advisory services and training on issues like self-defense, drafting protocols, and digital security.⁴⁰⁴

322. Solidarity between domestic and international media is a key element for ending the silence that organized crime and corruption wish to impose in different areas in the hemisphere. The Office of the Special Rapporteur has highlighted that in addition to the security measures taken by media organizations, experience in the region demonstrates that solidarity and cooperation among media outlets can make a notable contribution to the safety of journalists. One example of this from the cases described in this report, which demonstrates how collaboration with media from other regions makes it possible to report what happens in the so-called silenced zones and reduces the risk to local journalists, is the case of Tamaulipas, Mexico. Because this state shares a border with the United States, media outlets in US border cities have been able to cover the incidents of violence that take place there. As a result, the reporting can continue without the people doing it facing such a high risk. Another recent example of agreements between media outlets to provide coverage and visibility to local issues is the one struck between *El Faro* in El Salvador and the *New York Times*, in the United States. These two papers jointly conducted an investigation into the *maras* (gangs) operating in El Salvador that are blamed for the majority of the acts of violence that take place in that country.

⁴⁰⁰ United Nations. General Assembly. 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. 144. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

⁴⁰¹ 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. 60. Available at: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>

⁴⁰² United Nations. Asamblea 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. 145. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

⁴⁰³ United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity. Point 5.22. Available at: <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/>.

⁴⁰⁴ 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.

The agreement made it possible to conduct the investigation over the course of one year. It was published in both El Salvador and the United States.

323. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that “Local journalists and foreign correspondents play complementary roles. While journalists based in their home countries have local legitimacy and offer an insider’s view, foreign correspondents are often well placed to attract international attention. Whereas local journalists are often more vulnerable, foreign correspondents may prove to be more difficult to silence, and can in some cases continue to spread the message.”⁴⁰⁵

324. It is also important to highlight the importance of cooperation between media outlets to follow up on investigations of cases of violence against journalists. One good example is the #LaVerdadPuedeMás initiative of four Guatemalan media outlets—*Revista ContraPoder*, *Nómada*, *Plaza Pública*, and *Soy502*—that covered the murder of journalists Danilo López and Federico Salazar in the Mazatenango department of Suchitepéquez. The coverage ensured the case not only domestic but international attention. The articles published by these four publications described how local corruption and local power operates and how it affects the exercise of journalism. The publications also reported on the initial progress in the case that led to the arrest of the perpetrators, which included local police officers.

325. In Colombia, the organizations *Andiarios*, *Colprensa*, and the *Fundación para la Libertad de Prensa* led the *¡Pitalito sin Censura!* initiative in response to the murder of journalist Flor Alba Núñez, which took place in the Pitalito department of Huila in 2015. A number of domestic and regional media outlets published articles written by eight journalists from different media outlets who were in charge of looking into the journalism work Flor Alba was doing to determine who might be behind her murder. This was an extension of Proyecto Manizales, carried out by a number of print media outlets following the murder of journalist Orlando Sierra in 2002. That project was able to draw the authorities’ attention to the case, and thanks to the research done by journalists, progress was made in the police investigation.⁴⁰⁶

326. One example of a media outlet that has taken important steps in this regard is Brazil’s *TV Globo*. Following the murder of investigative reporter Tim Lopes in June, 2002. Lopes, an investigative reporter with *TV Globo* in Rio de Janeiro, was seized, tortured and killed when he was discovered using a hidden camera to document the sexual exploitation of minors by drug trafficking organizations who organized “funk” dance parties in the community of Vila Cruzeiro, in Rio’s *Complexo do Alemão*. Over the following three years, a total of seven people were captured, convicted and sentenced for Lopes’ murder, including all those accused as the direct perpetrators and as the crime’s mastermind. The success of the prosecution effort in this case can be attributed to various factors, among them, the role of the media itself. Though Lopes tended to operate behind the camera and was therefore little known by the public prior to his death, the *Globo* network used its television, radio and newspaper outlets throughout the country to launch an “Enemies of Rio” campaign drawing attention to the murder and calling for justice. The media publicized the government’s anonymous tip hotline and the reward offered for information on the whereabouts of the presumed mastermind, drug lord Elias Pereira da Silva. The Journalists’ Union of Rio de Janeiro and the Associação Brasileira de Imprensa organized public events to press the authorities to resolve the crime, while Lopes’ colleagues at *TV Globo* closed an edition of the network’s leading news program, ‘Jornal Nacional’, dressed in black and applauding in recognition of Lopes. These actions combined to assert strong and sustained pressure on the authorities to bring Lopes’ killers to justice.⁴⁰⁷

⁴⁰⁵ 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. 102. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

⁴⁰⁶ Knight Center for Journalism in the Americas. November 10, 2015. [Colombian journalists launch investigation to fight for justice for murdered colleague](#); El Tiempo. November 10, 2015. [Los medios se unen para la campaña 'Pitalito sin Censura'](#); Semana. November 9, 2015. [Pitalito sin censura](#); El Pílon. November 10, 2015. [Pitalito sin censura](#).

⁴⁰⁷ 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. 172.

327. Civil society organizations also play a valuable role in the prevention of attacks, the protection of journalists, and the struggle against impunity. The Office of the Special Rapporteur highlights the extraordinary role played by civil society organizations and media and journalist associations in preventing, providing protection from, and reporting on violence against journalists. Their activity is crucial for the continent and has often raised the alarm on these issues, which affect freedom of expression.

328. As concerns the so-called silenced zones, in the view of the Office of the Special Rapporteur, the visits that regional organizations make to these areas to raise awareness internationally on the issues facing journalists and media workers are important. Examples of this include the visits some made by IFEX ALC to Paraguay to assist local organizations⁴⁰⁸; the visits to monitor cases, such as those regularly made by the Committee to Protect Journalists (CPJ); and the mission led by a number of regional organizations, one of them being the Inter-American Press Association (IAPA), and local organizations to follow up on the murder of journalist Gregorio Jiménez de la Cruz in Veracruz, Mexico. As a result of that mission, a report was published containing a series of recommendations for the Mexican State.⁴⁰⁹ Meanwhile, the IAPA has also historically made country visits to evaluate the freedom of expression situation or specific cases of murdered journalists.

329. Generally speaking, local and international organizations play a fundamental role by monitoring the measures taken by States with regard to their duties to prevent crimes against journalists, protect journalists, investigate crimes, and punish those responsible for them. Some of these organizations also dedicate themselves to monitoring attacks against women journalists, analyzing their situation from a gender perspective. In many countries, the monitoring work of these organizations constitutes the only source of statistics on violence against journalists. Likewise, civil society organizations can play an important role by counseling journalists and media outlets so that they are able to access their States' preventative and protective mechanisms and the precautionary measures handed down by international bodies. In that sense, it is crucial for expert organizations to play a role in government initiatives to establish protective mechanisms and in the operation of those mechanisms. Legal counsel provided by civil society organizations during the criminal prosecution of attacks against journalists is also crucial, especially in legal systems that allow the victim to act as a civil or auxiliary party in criminal proceedings.⁴¹⁰ A variety of organizations have also developed guides and security standards for communicators, both analog and digital.

G. CONCLUSIONS AND RECOMMENDATIONS

330. Violence against journalists in general and the murder of journalists over their work specifically is the most serious violation of freedom of expression, not only because it endangers the lives and safety of victims but because these crimes are multifaceted offenses. That is, they affect a series of legally protected rights, including: i) the right of victims to express themselves and express their ideas; ii) the chilling effect on journalists working in the same area, region, or country; and iii) effects on the right of freedom of expression in its collective dimension by depriving society as a whole of its right to be informed. Consequently, democratic debate is also affected, as the kind of free and open debate necessary for a healthy and robust democracy is restricted or suppressed.

331. On the American continent, the situation of violence against the media and media workers is part of a generalized situation of impunity for crimes affecting freedom of expression, leading to an environment that is hostile to the media and facilitates repetition of these acts. Although the Office of the Special Rapporteur has recognized the efforts made by States in the region on the administration of justice to solve these crimes,

⁴⁰⁸ Coalition IFEX- Sindicato de Periodistas de Paraguay (SPP) (CIFEXSPP). [Informe para el Examen Periódico Universal Paraguay 2016](#). No date.

⁴⁰⁹ Committee to Protect Journalists (CPJ), Reporters Without Borders (RSF), Periodistas de a Pie, Casa de los Derechos de Periodistas and Inter American Press Association (IAPA) took part in that observer mission. Committee to Protect Journalists (CPJ). April 2, 2014. [Unprecedented response to Mexican journalist's murder](#).

⁴¹⁰ 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. 284 and 285.

it should be noted that the vast majority of criminal convictions and punishments are for the material perpetrators, not, generally speaking, the masterminds or all those suspected in carrying out the attacks.

332. With regard to the phenomenon of silenced zones, the Office of the Special Rapporteur is particularly concerned that in recent years, violence against media workers and journalists and the majority of murders of them over the last five years have taken place in particular areas and regions of different countries, even while declining in the capitals or urban centers throughout the region. In many of these places, organized crime has a strong presence, while in others, organized crime goes hand-in-hand with high rates of corruption, which has enabled these organizations to co-opt government authority. The situation has left journalists in an even greater situation of risk and vulnerability. Because of this, journalists covering local news on government corruption, drug trafficking, organized crime, public safety, and other issues are frequently targets of attacks and greatest risk of being victims of violence.

333. As a result of the violence, impunity, and lack of effective response from State authorities, many journalists have opted for self-censorship in order to protect themselves. The Office of the Special Rapporteur notes with concern that an increasing number of journalists are forced to stop investigating and disseminating information significantly in the public interest to their local communities in order to avoid retaliation against their lives or physical safety or that of their relatives. Over the last decade, a number of areas and communities throughout the Americas have been silenced completely due to the chilling effects of this climate of violence and impunity. In these places, journalists and many media outlets have decided to stop covering a variety of topics and adjust their coverage to cover issues that do not cross the *de facto* local powers, forming zones of silence. This creates a situation in which information is restricted, meaning that society in these locations is not sufficiently informed. Consequently, and as the IACHR and the Inter-American Court have indicated repeatedly, it can be said that a society that is not well informed is not a society that is truly free.

334. It is precisely the role that journalists play in these zones, as the ones who keep it informed on matters of public interest and their closeness to the communities they cover that places them at greater risk. The objective of violence against journalists is to silence the media. However, it also inhibits democratic debate on matters of public interest.

335. These regions have their own characteristics, although there are some similarities such as: the presence of organized crime; high rates of government corruption that makes it easier to co-opt state institutions; the absence of an effective response by the authorities in charge of prevention, protection, and administration of justice; and a lack of support or assistance for journalists that exposes them to greater risk. All these factors inhibit journalists in the affected areas from doing their work, limits freedom of expression, and has a chilling effect on the free flow of information, leading to self-censorship and strengthening the trend toward journalism that avoids reporting on issues of security, corruption, or influence trafficking, opting instead for journalism that is aligned with power.

336. The situation of violence against the media of that many countries on our continent are facing requires a decisive response from States. They must have policies tailored to the factors leading to this violence according to each individual social context and its consequences for the lives of those affected. These policies must address the obligations to prevent violence against journalists, protect at-risk journalists, and administer justice when journalists' rights have been violated. Without a comprehensive public policy guaranteeing the right to seek, receive, and disseminate information through any means, societies will never be able to make the free and informed decisions necessary to combat criminality and corruption, and citizens will never be able to exercise active and informed oversight of State actions to address organized crime and corruption and protect the community.

337. In consequence, it is crucial for States to take concrete measures to comply with their obligation to protect the lives, physical integrity and freedom of expression of journalists. This means at least three kinds of obligations as explained in this report. In effect, States have the duty to prevent violence, protect at-risk journalists, and seriously investigate the crimes committed. These obligations must be met not only with

regard to those who exercise journalism but for anyone who shares information that is in the public interest, either online or off-line.

338. States must recognize the differentiated effect that violence has on women journalists and, as a result, use this perspective in adopting measures to protect women journalists and investigate attacks on them. States must provide incentives for these types of crimes to be reported.

339. Given the growing number of journalists working online, public policies are needed for preventing violence and protecting journalists that take into account the specific characteristics of the digital environment and provide the necessary guarantees for journalists to do their work safely and without fear of becoming victims of cyber attacks or surveillance of their communications. Protection of sources in the digital realm is essential for the exercise of journalism. Any restriction on source confidentiality must be exceptional and authorized by a judge who weighs the measure's legality, suitability, and proportionality.

340. Likewise, other actors can play a crucial role in the protection of journalists who have received threats. These actors include the media companies and civil society organizations. Positive experiences such as the ones described in this report are fundamental for fighting impunity for crimes against freedom of expression. These include journalistic investigations that show the trauma underlying the violence against journalists in particular areas and picking up the lines of investigation that were being followed by threatened or murdered journalists. Also, organizations that conduct visits to these silenced zones or issue regular reports on these situations and made a permanent monitoring of the situation of violence in the referred zones play an extraordinary role.

341. Some States in the region have taken important steps toward meeting their obligations. As shown by the experiences detailed in this report, some States have created specialized protection programs for journalists, and established dedicated prosecutorial units and tribunals to investigate and try the perpetrators of violence against journalists. These initiatives represent important expressions of political will and in some cases have achieved significant results. The region's accumulated experience for us states interested in taking decisive steps toward meeting their international obligations in this area. Nonetheless, it is much more that can and must be done to ensure that journalists in the region can freely and securely carry out their work, and to guarantee the free flow of information so essential for healthy democratic societies

Recommendations

1. States must adopt a comprehensive public policy of prevention, protection, and administration of justice for cases of violence against journalists. These policies must take into account the specific needs of each country and the needs of each region, especially for zones where journalists are faced with greater risk and where self-censorship is high.

2. Attacks against journalists must be rejected and condemned at the highest levels of State power while at the same time recognizing the importance of the role the journalists play in democratic societies. In this regard, States must adopt a legal framework that guarantees the free and full exercise of the right to freedom of expression.

3. It is vitally important for States to assume the commitment of maintaining updated and disaggregated statistics on violence against journalists. There can be no effective public policy without clearly identifying the characteristics of the phenomenon, the most vulnerable journalists, the sources of risk, the assailants, and the zones in which this violence is prevalent, among other indicators. This information will be a substantive element in the comprehensive policy for addressing this phenomenon. Keeping detailed, up-to-date statistics may make it possible to take early action to prevent risks from materializing.

4. From the statistics, protection mechanisms that States can rely on tools like geo-referencing of the threats and violence against journalists to warn the media and prevent the risks they face in a particular region, as well as take coordinated actions with the various governments involved to prevent harm to the rights of communicators and ensure that local communities receive relevant information.

5. The members of the armed forces and the military must receive training on freedom of expression, the importance of journalists in democratic societies, and the need to protect them. This is particularly relevant in contexts in which there is a significant military presence, such as the fight against drug trafficking, armed conflict, during protests, etc. This training should be provided at all levels of the military hierarchy and in administrative headquarters as well as in States' remote and border regions.

6. In countries in which a specialized protection program has been established for protecting journalists, it is crucial that it work to win the trust of current and future beneficiaries. Trust is created insofar as the program produces concrete results, by preventing beneficiaries from becoming the victims of attacks. However, protection programs must also act with transparency and allow both the beneficiaries and other journalists and civil society to monitor what happens inside that program.

7. The measures adopted under the protection program must also be the result of a process to come to an agreement with the beneficiary so that the protection measures adopted are effective for the context in which the beneficiary works and do not inhibit the beneficiary from doing journalism. These measures must take a gender perspective and a differentiated focus into account for women journalists.

8. The authorities responsible for providing protection must coordinate with the authorities in charge of investigating acts of violence against journalists and media workers. The most effective way to provide protection is by ending impunity in crimes committed against journalists.

9. States must make a clear commitment to the struggle against impunity and crimes against journalists and understand the chilling and silencing effect that the violence and impunity have on the existence of a free media and a democratic society.

10. Investigations into crimes committed against journalists must take into account the possibility of a connection to their work, and should the investigation conclude that the crime was not related to journalism activity, the authorities have a duty to demonstrate why that is. In this regard, it is important for States to adopt protocols to facilitate and support the investigation by making it a requirement to exhaust the possibility that the journalist's work was the motive. This measure would make it possible to find both the perpetrators and the masterminds who commit violence against the media in a particular area. The protocols must also take into account the particular characteristics and complexities of each type of violence, for example in the case of threats.

11. States must also investigate the structures through which the crimes are committed and the criminal organizations to which the perpetrators belong. The investigations conducted by the State must take account of the complexity of the facts, the context in which they occurred, and the systematic patterns that explain why the events occurred.

12. The investigations must be carried out by specialized prosecutor units. Not only must these units exist structurally but they also must have sufficient political support to do their work without obstacles such as lack of budget or staff, or a legal framework that in practice limits the unit from acting effectively.

13. Prosecutors should receive frequent training on freedom of expression. For this, the Office of the Special Rapporteur sees it as important to create academic spaces that include the participation of both prosecutors and journalists to foster dialogue and exchange to encourage mutual understanding.

14. The authorities must ensure the protection of everyone who takes part in criminal proceedings to solve crimes against journalists. This means that they must provide any guarantees that may be necessary for witnesses and relatives as well as the victims themselves to participate and move the process forward without fear of retaliation against their lives or integrity.

15. States must adopt adequate, specific, and effective measures for preventing all forms of violence against women journalists and must try those responsible for such attacks. It also must encourage reporting

of such attacks by victims. Is important for the State to train its agents on the risks to which women journalists are exposed.

16. Investigations into acts of violence committed against citizen journalists or journalists who use social networks as a way to mass communicate their ideas, opinions, and information, especially on matters of public interest, must be conducted with the same diligence and focus as investigations into crimes committed against professional journalists.

17. States should guarantee the safety of the digital environment, as well as network privacy and anonymity. States must also protect the confidentiality of the sources of journalists or people disseminating information in the public interest over the Internet.

18. Media outlets must commit to adopting protection protocols for journalists who freelance for them. Along the same lines, they must help train their staff on both physical and digital security and provide them with the necessary tools.

CHAPTER V NATIONAL CASE LAW ON FREEDOM OF EXPRESSION

A. INTRODUCTION

1. Pursuant to its mandate, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) monitors and documents in its annual reports the intervention of the region's justice system in matters of freedom of expression. In this report, the Office of the Special Rapporteur presents a compilation of different judgments handed down over the past four years by national high courts that represent progress at the domestic level or enrich the regional doctrine and jurisprudence, while incorporating the inter-American standards in support of their decisions.

2. As in other annual reports, this type of analysis aims to contribute to a positive dialogue between the bodies of the system and the national courts, with the conviction that sharing different experiences leads to a virtuous circle of mutual learning.

3. Indeed, the Inter-American Court and the Commission have repeatedly acknowledged that all of the national courts—regardless of their ranks and hierarchies—play an important role in the development and implementation of regional human rights standards. According to the Court's interpretation, the local justice systems not only operate as a guarantee of the rights of individuals in particular cases; through their decisions, they can also broaden and strengthen the content of the constitutional norms and national laws connected to these rights, and therefore broaden and strengthen the content of the international instruments themselves, such as the American Convention. The bodies of the system have similarly emphasized that national judges have a significant role in the process of implementing international human rights law in the domestic legal system.¹

4. This compilation was put together starting with the cases that have been highlighted and documented by the Office of the Special Rapporteur in its annual reports for the 2013 – 2016 period. The criterion used for the selection of the judicial decisions summarized in this chapter was that they represent progress at the domestic level, either because they ensure the protection of the freedom of expression of the persons directly involved in the specific case, and/or because they set forth legal guidelines that incorporate and develop the inter-American standards in the national sphere.

5. The report includes case law from ten countries (Argentina, Brazil, Canada, Colombia, Costa Rica, United States, Mexico, Panama, Dominican Republic, and Uruguay). Of particular note is the work of the high courts of Argentina, Colombia, Mexico, and Uruguay, which are prolific in the incorporation and development of the inter-American doctrine and case law, and the work of different Brazilian courts, which have played a very important role during this period to promote the right to freedom of expression and exercise “conventionality control.”

6. The group of decisions examined reflects a solid body of case law from the region's national high courts that—consistent with the Inter-American Court and Commission—underscores the importance of freedom of expression as a “cornerstone of the very existence of a democratic society,” reaffirms the individual and collective dimension of this right and the prohibition of prior censorship, and applies the *three-part test* in analyzing the admissibility of limitations to freedom of expression under the American Convention.

7. With respect to the catalog of issues that have traditionally been addressed by the courts of the region, this compilation identifies advances in the judicial protection of specially protected speech, particularly political speech about public servants. With regard to the themes that have emerged in the

¹IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Domestic Case Law on Freedom of Expression). OEA/Ser.L/V/II.147.Doc.1. March 5, 2013. Para. 3.

hemisphere in recent years in relation to freedom of expression, the chapter discusses the growing litigation of matters involving freedom of expression on the Internet, privacy, and surveillance, on which the case law is still nascent.

8. Summarized below is a selection of notable court decisions. They have been systematized in accordance with 24 items that reflect different standards and rules of the inter-American legal framework, and grouped according to 13 analytical aspects. The decisions are preceded by a synthesis of the inter-American standard that was used as a reference in each category.

9. Finally, as in other annual reports, this Office recognizes that an exhaustive study of the national court decisions handed down in relation to this right is beyond the scope of this report. Accordingly, the Office of the Special Rapporteur will refer only to those notable court decisions about which it has received information.

B. CASE LAW ON THE IMPORTANCE, FUNCTION, AND SCOPE OF FREEDOM OF EXPRESSION IN DEMOCRATIC SYSTEMS

10. The Inter-American legal framework grants a robust and broad scope to the right to freedom of expression. The doctrine and jurisprudence established by the Inter-American Commission and the Inter-American Court of Human Rights based on the American Convention, the American Declaration, and the Inter-American Democratic Charter, have helped to spur significant regulatory progress in the region in recent decades. They have also strengthened the intervention of the hemisphere's justice systems when it comes time to act in favor of protecting this right.

11. The fundamental role of freedom of expression that the bodies of the Inter-American Human Rights System have recognized has been addressed extensively by the high courts of the region which, in turn, have enriched and developed the emerging judicial discourse on the inter-American standards.

12. For instance, on June 20, 2013, in admitting unconstitutionality action 29/2011 filed by National Human Rights Commission [*Comisión Nacional de Derechos Humanos*] (CNDH) to challenge an article of the Criminal Code of Veracruz, the Supreme Court of Mexico held that freedom of expression and the right to information are “central to the constitutional and democratic rule of law” and are “fundamental pillars.”² The high court underscored the dual dimension of these rights, and held that “they enjoy a public, collective, or institutional aspect that makes them basic components in the proper workings of a representative democracy.” It emphasized that “freedom of expression is a preferential right, as it serves to guarantee the realization of other rights and freedoms.” The Court also referred to the interrelationship and interdependence of freedom of expression and other human rights. It held that “having full freedom to express, gather, disseminate, and publish information and ideas is indispensable, not only as an essential means of self-expression and self-creation but also as a premise for the ability to fully exercise other human rights—the right of association and peaceful assembly with any lawful aim, the right of petition, and the right to vote and be voted for—and as a functional element that determines a country's democratic quality of life.”

13. In 2014, these conclusions were reaffirmed by the First Chamber of the Supreme Court of the Nation of [*Primera Sala de la Suprema Corte de Justicia de la Nación*] Mexico in the judgment handed down on February 7 of that year, in which it ruled direct *amparo* [petition for a constitutional remedy] 3123/2013 groundless. That petition sought to protect the honor and reputation of a public servant in view of the mass

² Suprema Corte de Justicia de la Nación de México (SCJN). June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774); Suprema Corte de Justicia de la Nación de México (SCJN). Acción de Inconstitucionalidad 29/2011. Judgment of June 20, 2013. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774>; See also, Suprema Corte de Justicia de la Nación de México (SCJN). [Contenido de la versión taquigráfica de la sesión pública ordinaria del pleno de la Suprema Corte de Justicia de la Nación](http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774). June 20, 2013.

email distribution of criticism of his performance as the academic coordinator of a state university.³ On May 20, 2015, the Supreme Court again ruled similarly by declaring the unconstitutionality of an article of the Criminal Code of Chiapas that established the so-called offense known as *halconeo*, or acting as a “lookout,” and made it punishable by prison to obtain and disclose confidential or reserved information from the public security forces or armed forces for a number of purposes.⁴ The Court held that “the rights to freedom of expression and access to information not only protect freedoms necessary for the personal autonomy of individuals but also are meant to protect and guarantee a public forum for political deliberation.”

14. The Chamber of Criminal Cassation of the Supreme Court of Colombia [*Sala de Casación Penal de la Corte Suprema de Justicia de Colombia*] expressed similar considerations in its July 10, 2013 decision to acquit journalist Luis Agustín González, the director of the newspaper *Cundinamarca Democrática*, of the crime of defamation [*injuria*].⁵ In this case, upon considering the extraordinary petition for cassation filed by the journalist’s defense attorney, the Court exhaustively examined the function of freedom of expression in its political dimension. Citing the case law of the country’s Constitutional Court,⁶ the judgment underscored the importance of freedom of expression as a pre-condition for effective social participation, the improvement of public policies, and the guarantee of robust discussion on matters of general interest. It held that freedom of expression “promotes socio-political stability, by providing a safety valve for social dissent [...] protects the political minorities that are active at a given time, preventing them from being silenced by prevailing or majority forces [...] helps shape public opinion on political matters and the consolidation of a properly informed electorate.” The Chamber of Criminal Cassation of the Supreme Court of Colombia thus concluded that the “profound” constitutional and international protection of freedom of expression “is justified precisely because of those lofty goals of solidifying participatory democracy.”

15. Along the same line of reasoning, in judgment T-904/13 of December 3, 2013, the First Chamber of the Constitutional Court of Colombia, citing the July 2, 2004 judgment of the Inter-American Court in the case of *Herrera Ulloa v. Costa Rica*, held that “Without effective freedom of expression, materialized in all of its terms, democracy vanishes, pluralism and tolerance start to break down, the mechanisms of citizen oversight and complaint start to become inoperable, and, in short, fertile ground is created for authoritarian systems to take root in society.”⁷ The Court so ruled in overturning an order of the lower courts which, invoking the need to protect the right to image and privacy of a minor child—the son of a high-ranking public servant—had ordered measures to de-link videos connected to the news story and delete a sentence from an opinion column.

16. On September 19, 2013, the Fourth Civil Chamber of Private Law of the Court of Justice of the state of São Paulo [*4ª Câmara de Direito Privado do Tribunal de Justiça do Estado de São Paulo*] in Brazil, dismissed an appeal filed by an association of religious entities seeking to have a video removed from the Internet, finding that freedom of expression “entails respect for political and ideological pluralism, elements that are inseparable from democracy.”⁸ In this case, the Court held that the freedom to express thought “is, without doubt, the greatest achievement of contemporary history.” Brazil’s highest Court, the Federal Supreme Court (STF), underscored in different decisions handed down during the period covered by this report the importance of freedom of expression as a condition of every democratic system and reaffirmed the standards

³ Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo Directo en Revisión 3123/2013. Judgment of February 7, 2014. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=156633&SinBotonRegresar=1>

⁴ Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo en revisión 492/2014. Judgment of May 20, 2015. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=167949>

⁵ *Corte Suprema de Justicia de Colombia. Sala de Casación Penal. Casación sistema acusatorio N° 38.909. Judgment of July 10, 2013. Available at: <http://flip.org.co/resources/documents/c4ab6f8aa7b923cc81bf7d99e4da4e93.pdf>*

⁶ The judgment quoted sentence T-391 of 2007 of the Corte Constitucional.

⁷ Sala Primera de la Corte Constitucional de Colombia. [Judgment T-904/13](#) of December 3, 2013.

⁸ Tribunal de Justiça do Estado de São Paulo. 4ª Câmara de Direito Privado. Processo N° 0192984-85.2012.8.26.0100. Judgment of September 19, 2013. Available at: <https://esaj.tjsp.jus.br/cposg/open.do>

set forth in its landmark decision of 2009, which held that the Press Law of 1967 was incompatible with the Federal Constitution. It did so, for instance, in its judgment of September 17, 2014, by setting aside an injunction issued *inaudita altera pars* by a court in the District of Fortaleza, State of Ceará, which barred the publication of an edition of the magazine *IstoÉ*.⁹ In this case, the Federal Supreme Court was of the opinion that the measure amounted to an act of prior censorship that was inadmissible under the constitutional standards. The Federal Supreme Court held that the freedoms of expression, information, and the press are “the underpinnings for the functioning of democratic regimes,” and therefore “there is a public interest” in guaranteeing their exercise. It also held that “For this reason, they are treated as preferential freedoms [*liberdades preferenciais*] in different parts of the world [...]”

17. The Argentinean Supreme Court’s October 28, 2014 judgment in the case of *Rodríguez María Belén v. Google Inc. re: Damages*, reaffirmed its prior position that among “[t]he freedoms enshrined in the Constitution, freedom of the press is one of the most important, to the point that without it being properly safeguarded democracy would be eroded or purely nominal.”¹⁰ In this case, the high court ruled that an Internet intermediary that had been sued for damages was not liable. Citing the Inter-American Court, the Supreme Court held that “Freedom of expression is a cornerstone of the very existence of a democratic society.” It ruled identically in its October 29, 2013 judgment in the case of *Grupo Clarín SA et al. v. National Executive Branch, et al./ action for a declaratory judgment*, in which it adjudicated an action alleging the unconstitutionality of the Audiovisual Communication Services Law.¹¹ In this decision—as discussed later in this chapter—in addition to asserting the importance of freedom of expression for the construction of democratic societies, the Supreme Court conducted an exhaustive study on the media concentration and its impact on media quality.

18. Similarly, on March 21, 2014, the Constitutional Chamber of the Supreme Court of Costa Rica upheld the right of journalists to maintain the confidentiality of their sources, noting “the very close relationship between democratic pluralism and freedom of information. To curtail the latter is, essentially, a weakening of the democratic system.”¹² In support of her vote in this case, Judge Hernández López stated that “freedom of the press is special and preferential in nature, because it is a crucial right for the operation of democracy and the full exercise of freedom of expression.”

19. On April 11, 2014, the Supreme Court of Panama, sitting *en banc*, upheld the constitutionality of a law barring high-ranking public servants from filing criminal complaints for crimes against honor. It underscored the importance of freedom of expression for democracy, and reaffirmed that public servants are subject to a higher degree of scrutiny, which is fundamental for “the operation of democratic society.”¹³ The Court referred to the legal nature of the right to freedom of expression as a human right, and stressed that this right “is one of the primary achievements of the liberal constitutionalism enshrined in international treatie[s].”

20. Another aspect developed extensively by the high courts of the region concerns the scope of the right to freedom of expression.

⁹ Supremo Tribunal Federal do Brasil (STF). [Reclamação 18.638](#). Judgment of September 17, 2014.

¹⁰ Corte Suprema de Justicia de la Nación Argentina. [Rodríguez María Belén c/google Inc. s/ Daños y Perjuicios](#). Judgment of October 28, 2014.

¹¹ Corte Suprema de Justicia de la Nación Argentina. [Grupo Clarín AS y otros c/Poder Ejecutivo Nacional y otros/ acción meramente declarativa](#). Judgment of October 29, 2013.

¹² Sala Constitucional de la Corte Suprema de Justicia de Costa Rica. Fallos Relevantes Año 2014. Expediente No. 14-000848-0007-CO. Judgment 2014-004035 of March 21, 2014. Available at: <http://sitios.poder-judicial.go.cr/salaconstitucional/Centro%20de%20Jurisprudencia/Sentencias%20relevantes/Sentencias%20Relevantes.htm>; See also: Sala Constitucional Corte Suprema de Justicia de Costa Rica. [Expediente No. 13-007483-0007-CO](#). Recurso de Amparo. Judgment 00531 of January 17, 2014.

¹³ Órgano Judicial de la República de Panamá. Registro Judicial. Advertencia de Inconstitucionalidad. Expediente No. 478-08. Judgment of April 11, 2014. Pages 749-766. Available at: <http://www.organojudicial.gob.pa/wp-content/uploads/2014/05/rj2014-04.pdf>

21. Citing the inter-American doctrine and jurisprudence, the Supreme Court of Mexico held in the previously cited judgment of June 20, 2013 that, “As the Inter-American Court has had the opportunity to underscore on repeated occasions,¹⁴ it is not only a matter of the freedom to express one’s own thoughts but also of the right to seek, receive, and disseminate” ideas and information of all kinds.¹⁵ The Court reaffirmed the inter-American standards and maintained that both dimensions “must be guaranteed simultaneously in order to ensure the proper effectiveness of the right to freedom of thought and expression.” It added that, “The expression and dissemination of thought and information are indivisible, such that a restriction on opportunities for dissemination directly represents a limit on the right to express oneself freely. This has repercussions of various kinds, on many levels, but especially within the sphere of what we call the media.”

22. On April 5, 2016, the Supreme Court of Uruguay adjudicated the first of a set of actions challenging the constitutionality of the Audiovisual Communication Services Law, ruling in accordance with the case law of the Inter-American Court that article 13 of the Convention must be interpreted under a two-part standard: the democratic aspect and the dual dimension.¹⁶ Accordingly, it held that “Through the ‘democratic standard,’ the Inter-American Court proposes that freedom of expression is a value that, if lost, jeopardizes the operation of the essential principles for the existence of a democratic society. The protection of the right to express one’s ideas freely thus becomes fundamental for the full enjoyment of all other human rights. In fact, without freedom of expression full democracy does not exist, and without democracy, the sad history of the hemisphere has demonstrated that everything from the right to life to the right to private property is seriously endangered.”

C. CASE LAW ON ENTITLEMENT TO FREEDOM OF EXPRESSION AND ITS DUAL DIMENSION

23. The inter-American doctrine and jurisprudence emphasizes universal entitlement to freedom of expression and its interrelationship with and interdependence on other human rights. Under article 13 of the American Convention, freedom of expression is a right to which *everyone* is entitled, under conditions of equality and without discrimination of any kind.¹⁷

24. The Inter-American Court has underscored that entitlement to the right to freedom of expression cannot be restricted to a certain profession or group of people, nor to the sphere of freedom of the press. In this regard, for instance, in its judgment in the case of *Tristán Donoso v. Panama*, the Court stated that “the American Convention guarantees this right to every individual, irrespective of any other consideration; so, such guarantee should not be limited to a given profession or group of individuals. Freedom of expression is an essential element of the freedom of the press, although they are not synonymous and exercise of the first does not condition exercise of the second.”¹⁸

25. Similarly, on December 3, 2013, in its previously cited Judgment T-904/13, the First Review Chamber of the Constitutional Court of Colombia [*Sala Primera de Revisión de la Corte Constitucional de Colombia*] held that “What we call freedom of expression is a general category that consists of bundle of different rights and freedoms, most notably including (...) freedom of opinion (also called “freedom of expression in the strict sense”), which includes the freedom to express and disseminate one’s own thought, opinions, and ideas,

¹⁴ The judgment cited Advisory Opinion OC-5/85 of November 13, 1985 and the case of *Olmedo Bustos et al. v. Chile* (“The Last Temptation of Christ”) settled in judgment of February 5, 2001.

¹⁵ Suprema Corte de Justicia de la Nación de México (SCJN). June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774); Suprema Corte de Justicia de la Nación de México (SCJN). Acción de Inconstitucionalidad 29/2011. Judgment of June 20, 2013. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774>

¹⁶ Suprema Corte de Justicia de Uruguay. IUE 1-18/2015. [Directv de Uruguay Limitada c/ Poder Legislativo](http://www.corteconstitucional.gub.uy/decisiones/18-2015-001). Acción de inconstitucionalidad. Judgment No. 79 of April 5, 2016.

¹⁷ IACHR. [Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression](http://www.oas.org/doc/l/v/ii/doc51.htm). Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 11.

¹⁸ 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. 114.

without being limited by borders and by any means of expression; and freedom of information, which protects the freedom to seek, transmit, and receive accurate and impartial information about events, ideas, and opinions of all kinds.”¹⁹ The Court explained that, “Both freedom of opinion and freedom of information can be exercised by any person by any means of expression, but when they are exercised through the mass media, the content of freedom of the press is incorporated. This includes, in addition to the freedom to disseminate information and opinions through the media, the right to establish and operate such media.”

26. Another characteristic of freedom of expression that the Court and the Inter-American Commission have emphasized is their dual dimension. On numerous occasions, the inter-American case law has stated that freedom of expression has an individual dimension, consisting of the right of each person to express his or her own thoughts, ideas, and information; and a collective or social dimension, consisting of society’s right to seek and receive any information, to learn about the thoughts, ideas, and information held by others, and to be well-informed.²⁰ The doctrine and jurisprudence of the system has indicated that both dimensions are interdependent and equally important, and therefore one cannot be diminished by invoking the preservation of the other.

27. Consistent with the above, when the Supreme Court of Argentina handed down the aforementioned October 23, 2013 judgment in the case of *Grupo Clarín SA et al. v. National Executive Branch, et al./ action for a declaratory judgment*, it held that, in its individual aspect “understood in this way—as a faculty of self-determination, self-realization—the exercise of freedom of expression allows for almost minimal state regulatory activity, which would only be justified in those cases in which that freedom adversely affects the rights of third parties (article 19 of the National Constitution).”²¹ Therefore, “in its collective dimension—an aspect that is especially promoted by the challenged law—freedom of expression is a necessary instrument to guarantee freedom of information and the formation of public opinion.” As such, “from this point of view, freedom of expression is a cornerstone of the very existence of a democratic society.” The Supreme Court of Uruguay ruled similarly on April 5, 2016, in adjudicating the previously cited unconstitutionality action.²²

D. CASE LAW ON THE ADMISSIBILITY OF LIMITATIONS TO FREEDOM OF EXPRESSION: GENERAL FRAMEWORK

28. According to the standards developed by the inter-American doctrine and jurisprudence,²³ this Office of the Special Rapporteur has stressed that freedom of expression is not an absolute right. Article 13 of the

¹⁹ Sala Primera de la Corte Constitucional de Colombia. [Judgment T-904/13](#) of December 3, 2013.

²⁰ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008 Series C No. 177. Para. 53; 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. 75; 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. 163; IACHR. Arguments before the Inter-American Court in the case of *Herrera Ulloa v. Costa Rica*. Transcribed in: 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. 101.1 a); 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. 108; I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations, and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 146; 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. 77; 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. 64; I/A Court H.R. *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 30; IACHR. [Annual Report 1994](#). Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention On Human Rights. Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. Available at: <https://www.cidh.oas.org/annualrep/94eng/chap.5.htm>; IACHR. Report No. 130/99. Case of No. 11.740. *Víctor Manuel Oropeza*. Mexico. November 19, 1999. Para. 51; IACHR. Report No. 11/96, Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 53.

²¹ Corte Suprema de Justicia de la Nación Argentina. [Grupo Clarín AS y otros c/ Poder Ejecutivo Nacional y otros/ acción meramente declarativa](#). Judgment of October 29, 2013.

²² Suprema Corte de Justicia de Uruguay. IUE 1-18/2015. [Directv de Uruguay Limitada c/ Poder Legislativo](#). Acción de inconstitucionalidad. Judgment No. 79 of April 5, 2016.

²³ I/A Court H.R. *Case of Eduardo Kimel VS. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 54; I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No.135. Para. 79; I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of

American Convention provides expressly—in clauses 2, 4, and 5—that freedom of expression can be subject to certain limitations, and establishes the general framework of the conditions that such limitations must meet in order to be legitimate. Accordingly, it has stated that the general rule was established in clause 2, according to which “The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.”²⁴

29. Article 13(4) of the American Convention provides that public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence, without prejudice to the provisions of clause 2. Finally clause 5 establishes that any propaganda for war and any advocacy of national, racial, or religious hatred that constitute 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.

30. The Office of the Special Rapporteur has explained that the rules pertaining to the admissibility of restrictions apply to all of the elements of freedom of expression and in their diverse manifestations.

31. In applying “conventionality control,” different courts of the region have developed standards of constitutional scrutiny in their case law that apply when imposing limitations to freedom of expression.

32. For instance, in the aforementioned *González v. Serrano* judgment of July 10, 2013, the Chamber of Criminal Cassation of the Supreme Court of Colombia [*Sala de Casación Penal de la Corte Suprema de Justicia de Colombia*] developed a detailed analysis of the conditions under which the right to freedom of expression may be limited under the standards of the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the Constitution of Colombia.²⁵ Based on the case law of the Constitutional Court, the Chamber held that limitations to the right to freedom of expression may be constitutionally admissible, in the following terms: “(1) they are provided by law, specifically and exhaustively, (2) they pursue certain compelling aims, (3) they are necessary for the accomplishment of such aims, (4) they are subsequent and not prior to the expression, (5) they do not constitute censorship in any of its forms, which includes the requirement to maintain neutrality with respect to the content of the expression that is limited, and (6) they do not interfere excessively with the exercise of this fundamental right; that is, they are proportionate.” The Colombian Constitutional Court [*Corte Constitucional*] issued a similar ruling on December 3, 2013, in the previously cited Judgment T-904/13. It held that “The constitutional case law has held that any limitation on freedom of expression, especially when it pertains to specially protected speech, is presumed to be suspect, and therefore must be subject to a strict constitutional analysis.”²⁶

33. Similarly, the Supreme Court of Mexico [*Suprema Corte de Justicia de la Nación de México*] addressed the issue in a June 20, 2013 judgment upholding a constitutional challenge to article 373 of the Criminal Code

July 2, 2004. Series C No. 107. Para. 120; 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. 110; I/A Court H.R. Case of *Ríos et al. v. Venezuela. Preliminary Exceptions, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 106; 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. 117; IACHR. [Annual Report 1994](#). Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention On Human Rights Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995, among others.

²⁴ 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. 61.

²⁵ [Corte Suprema de Justicia de Colombia. Sala de Casación Penal. Casación sistema acusatorio N° 38.909. Judgment of July 10, 2013. Available at: <http://flip.org.co/resources/documents/c4ab6f8aa7b923cc81bf7d99e4da4e93.pdf>](#). The judgment cites sentence T-391/2007 of Corte Constitucional de Colombia.

²⁶ Sala Primera de la Corte Constitucional de Colombia. [Judgment T-904/13](#) of December 3, 2013.

of Veracruz.²⁷ The challenged criminal provision established penalties ranging from one to four years in prison and a fine equivalent to five hundred to one thousand days' wages for any person who "falsely claims the existence of explosive devices or others; attacks with firearms; or chemical, biological, or toxic substances that can harm human health, thus disturbing public orde[r]." In its decision, the Court cited Advisory Opinion 5/85 of the Inter-American Court,²⁸ stating that, "according to the Inter-American Court of Human Rights, in order for subsequent liability to be established as a limit to freedom of expression, it must meet several requirements: a) it must correspond to previously established grounds of liability; b) there must be an express and exhaustive definition of those grounds in the law; c) the aims pursued when imposing it must be legitimate, and d) those grounds of liability must be necessary in a democratic society to ensure the aforementioned aims. Any interference that fails to meet any of these requirements constitutes a violation of freedom of expression."

34. In examining the scope of article 13.2 of the American Convention, the Argentine Supreme Court [*Corte Suprema de Justicia de la Nación*] held that "any restriction, penalty, or limitation to freedom of expression must be interpreted restrictivel[y]."²⁹ Along these lines, it further held that "[a]ny prior censorship exercised over freedom of expression is subject to a strong presumption of unconstitutionality," the imposition of subsequent liability being the principle eventually applicable in the event of the abuse of its exercise. "This is because (...) the case law of the Court has been consistent with the governing principle whereby press law occupies a privileged position in our legal system. And this could not be otherwise, given that contemporary society breathes through informatio[n]," it stated. The Court ruled similarly in its October 28, 2014 decision in the case of *Rodríguez v. Google Inc. & Yahoo Argentina*, in which it found that the Internet companies were not liable for damages.

35. On December 17, 2014, the Federal Supreme Court of Brazil [*Supremo Tribunal Federal*] (STF), in suspending a measure that had ordered *Rede União de Rádio e Televisão LTDA* to pay compensation for non-pecuniary damages, upheld the prohibition against prior censorship and held that, in order to be admissible, limitations to freedom of expression must be properly provided for in valid laws; must pursue constitutionally legitimate aims, and must be "necessary to the preservation of a democratic and plural society."³⁰

36. In its April 5, 2016 decision adjudicating an unconstitutionality action challenging various articles of the Audiovisual Communication Services Law, the Uruguayan Supreme Court [*Suprema Corte de Justicia*] maintained the importance of adopting "the democratic standard" and the "dual dimension" of the right to freedom of expression, in assessing the constitutionality of the challenged provisions, which the petitioners alleged would inadmissibly restrict the right to freedom of expression.³¹ The Court rejected including issues related to "the convenience, justice, or timeliness of the provision" as a criterion of analysis. In explaining the reasoning behind its position on the standard of scrutiny that should be adopted, Judge Jorge Chediack stated that, "Although some rights can be limited by the legislature, the Court must examine in each case whether the provision effectively protects the general interest," a determination that requires the application of "the rules of reasonableness." He specified that, "In case of doubt, and if it is not clear what the protected general interest is, the situation must be resolved in favor of freedom of expression." For his part, Judge Ricardo C.

²⁷ Suprema Corte de Justicia de la Nación de México (SCJN). June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](#); Suprema Corte de Justicia de la Nación de México (SCNJ). Acción de Inconstitucionalidad 29/2011. Judgment of June 20, 2013. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774>

²⁸ The judgment cited paragraphs 37 and 39 of Advisory Opinion OC-5/85 of the I/A Court H.R., *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism*, of November 13, 1985.

²⁹ Corte Suprema de Justicia de la Nación Argentina. [Rodríguez María Belén c/google Inc. s/ Daños y Perjuicios](#). Judgment of October 28, 2014.

³⁰Supremo Tribunal Federal do Brasil (STF). [Reclamação 16.329 MC/CE](#). Judgment of December 17, 2014, published on February 2, 2015.

³¹Suprema Corte de Justicia de Uruguay. IUE 1-18/2015. [Directv de Uruguay Limitada c/ Poder Legislativo](#). Acción de inconstitucionalidad. Judgment No. 79 of April 5, 2016.

Pérez Manrique, citing the position taken by the Inter-American Court in the case of *Granier et al. (Radio Caracas Televisión) v. Venezuela*, noted that, “Freedom of expression can also be affected without the direct intervention of State action,” for instance, through the existence of monopolies and oligopolies in media ownership.

37. Another relevant decision was issued by the Constitutional Court of the Dominican Republic [*Tribunal Constitucional de República Dominicana*] on April 4, 2016. The Court, partially upholding a direct action of unconstitutionality that challenged a number of articles of the Law on the Expression and Dissemination of Thought and of the Criminal Code, held that limitations on freedom of expression must: a) be provided for by law, b) pursue a legitimate aim, and c) be suitable, necessary, and proportionate.³²

E. CASE LAW ON PROHIBITION OF PRIOR CENSORSHIP

38. The Inter-American Commission and this Office of the Special Rapporteur have underscored that, under article 13 of the American Convention, the limitations imposed on freedom of expression cannot amount to censorship and must be established through subsequent liability for the exercise of the right in question. These restrictions cannot be discriminatory or produce discriminatory effects, nor can they be established by indirect means.³³ Below are some examples of the way in which different courts in the region have incorporated these principles to protect freedom of expression.

39. In the previously cited judgment of June 20, 2013, the Supreme Court of Mexico [*Suprema Corte de Justicia de la Nación de México*] reaffirmed “the prohibition against prior censorship set forth in article 7 of the Constitution of the United Mexican States, article 13 of the American Convention on Human Rights, and article 19 of the International Covenant on Civil and Political Rights.”³⁴ The Court held that this prohibition “is consistent” with the “preferential position” of freedom of expression and the right to information, and has “as a principal consequence the general presumption that all expressive or informative speech is covered by the constitution, and is justified by the primary obligation of the State to remain neutral toward the content of the opinion and information disseminated, as well as by the need to guarantee that, in principle, no persons, groups, ideas, or means of expression are excluded *a priori* from public discourse.” The judgment held that “The Pact of San José is one of the clearest instruments on this issue, because it expressly opposes the mechanism of prior censorship with the rule that the exercise of free speech and freedom of the press can only be subject to subsequent liability.”

40. The issue was also addressed by the Federal Supreme Court [*Supremo Tribunal Federal*] (STF) in Brazil in a judgment handed down on September 17, 2014. In that decision, the Court set aside an injunction issued by the District Court of Fortaleza, in the State of Ceará, ordering the magazine *IstoÉ* to cease distributing, marketing, and publishing—in print and electronic formats—any news related to the Governor of Ceará and related to an investigation of cases of money laundering and tax evasion.³⁵ The injunction had also assessed a daily fine in the event of noncompliance. In its decision, the Federal Supreme Court reaffirmed “the full freedom of the press as a legal category prohibiting any type of prior censorship.” In this regard, it held that the lower court’s order imposed prior censorship on a journalistic publication under circumstances in which such measures were inadmissible. The Court stated that, “On the contrary, all of the standards [...] indicate that the appropriate solution is to allow for the disclosure of the news, after which the interested party may avail itself of subsequent redress mechanisms.” The Federal Supreme Court added that, in this

³²Tribunal Constitucional de República Dominicana. [Acción directa de inconstitucionalidad](#). Judgment TC/0075/16 of April 4, 2016.

³³IACHR. [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. 90.

³⁴Suprema Corte de Justicia de la Nación de México (SCJN). June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](#); Suprema Corte de Justicia de la Nación de México (SCJN). [Acción de Inconstitucionalidad 29/2011](#). Judgment of June 20, 2013. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774>

³⁵Supremo Tribunal Federal do Brasil (STF). [Reclamação 18.638](#). Judgment of September 17, 2014.

specific case, the censored news was of “clear public interest,” given that it referred to the investigation into alleged criminal acts related to the diversion of public funds.

41. This reasoning was reiterated by the Federal Supreme Court (STF) on October 3 of the same year, in its ruling on claim [*Reclamação*] 18.746.³⁶ In this case, the Court set aside an injunction issued by the 12th civil court of the District of João Pessoa [*Juízo da 12ª Vara Cível da Comarca de João Pessoa*], state of Paraíba, barring *Rede Globo* from publishing reports on alleged irregularities committed by a judge in the State of Paraíba in adoption proceedings, which were the subject of parliamentary investigations.

F. CASE LAW ON THE CONDITIONS THAT LIMITATIONS ON FREEDOM OF EXPRESSION MUST MEET IN ORDER TO BE ADMISSIBLE (*THREE-PART TEST STANDARD*)

42. In interpreting article 13.2 of the American Convention, the inter-American case law has developed a *three-part test* to control the legitimacy of restrictions to freedom of expression. According to that test, in order for a limitation on the right to freedom of expression to be admissible, it must: be clearly and precisely provided for in advance by law, both substantively and procedurally; be designed to achieve one of the compelling objectives recognized in the American Convention; and be necessary in a democratic society to accomplish the compelling aims, strictly proportionate to the aim pursued, and suitable for accomplishing the compelling aim pursued.

43. The Inter-American Commission has specified that these conditions are included in the general rule that the limitations must be compatible with the democratic principle, which entails—at least—the following requirements: “restrictions on freedom of expression must incorporate the just demands of a democratic society;” that “the rules under which these restrictions are interpreted must be compatible with the preservation and development of democratic societies in keeping with articles 29 and 32 of the [American] Convention;” and that “the interpretation of restrictions on freedom of expression (article 13(2)) must ‘be judged making reference to the legitimate needs of societies and democratic institutions,’ given that freedom of expression is essential for every form of democratic government.”³⁷

44. The reasoning and legal grounds expressed by different courts of the region upon specifically considering the different elements of the *three-part test* is systematically organized below.

- **The Requirement that Limitations Must Be Established by Law, in a Clear and Precise Manner**

45. In its 2013 decision on unconstitutionality action 29/2011,³⁸ the Supreme Court of Mexico [*Suprema Corte de Justicia de la Nación de México*] held that article 373 of the Criminal Code of Veracruz³⁹ amounted to an inadmissible restriction to freedom of expression, in that—among other elements—its ambiguity violated the principle that the law must be exhaustive. The article allowed for the criminal prosecution of anyone who, “(a) *by any means, falsely claims the existence of explosive devices or others [...]*” (emphasis in the original). Referring to Advisory Opinion 5/85 of the Inter-American Court, the decision held that “In matters concerning limitations to freedom of expression imposed by criminal provisions, the Inter-American Court

³⁶ Supremo Tribunal Federal do Brasil (STF). [Reclamação 18.746](#). Judgment of October 3, 2014.

³⁷ 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. 67.

³⁸ Suprema Corte de Justicia de la Nación de México (SCJN). June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](#); Suprema Corte de Justicia de la Nación de México (SCN). Acción de Inconstitucionalidad 29/2011. Judgment of June 20, 2013. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774>

³⁹ “Article 373. Whoever, by any means, falsely claims the existence of explosive or other devices; of firearm assaults; or of chemical, biological or toxic substances that may cause health damage; causing disturbance of the public order, shall be imprisoned from one to four years and fined from five hundred to one thousand days of their salary, considering the alarm or disturbance of the order actually produced.”

has held that the requirements of the principle of strict legality must additionally be met. The purpose of this requirement has a dual function: first, it reduces the jurisdiction of the State with regard to the way in which it can restrict freedom of expression; in addition, it tells the citizen exactly what is prohibited.” This principle “amounts to an authentic constitutional duty of the legislature, whereby it is obligated to formulate the factual assumptions of the criminal provisions in precise terms,” emphasized the Court. In this specific case, it established that the governing language describing the challenged concept “is ‘falsely claim,’ and therefore the conduct that constitutes the crime is the expression, whether verbal, written, or symbolic.” It then determined that:

the expression included in the challenged provision, related to the governing language of the statutory description of the offense, and which is imprecise, is ‘or others.’ The challenged provision contains this phrase as a disjunctive with respect to the false claim of the existence of explosives: “*anyone who, by any means, falsely claims the existence of explosive devices or others [...].*” This issue allows for at least two possible interpretations: 1) that the phrase “or other” refers to another type of device analogous to explosives; or 2) that it refers to a different type of devices, that is, not explosives. This dual possibility is another example of potential vagueness, since it is not clear to which of the two aspects the legislature is referring, which could be interpreted in either of the aforementioned ways. The issue is relevant because it concerns the statutory definition of a criminal offense that in no way allows for or makes possible the imposition of penalties based on analogy or compelling logic (article 14 of the Constitution). This problem can lead to cases of over-inclusion.

46. Accordingly, the Mexican Supreme Court concluded that the “arguments expressed by the Chairman of the National Human Rights Commission are especially well-founded with regard to their two concepts of invalidity,” in which he had indicated, respectively, “that the challenged provision violates the human rights of freedom of expression and the right to information, and fails to comply with the guarantees of legality, legal certainty and precise application of the criminal law.” The Court also adopted other important conclusions by applying the three-part test, as mentioned in the sections below.

- **Requirement that Limitations Must Be Designed to Achieve the Legitimate Aims Recognized in the American Convention**

47. As stated earlier, the limitations imposed must pursue one of the compelling aims set forth exhaustively in the American Convention, to wit: the protection of the rights of others, the protection of national security, public order, or public health and morals. This Office of the Special Rapporteur and the bodies of the Inter-American System have emphasized that “these are the only objectives authorized by the American Convention.”⁴⁰

48. In relation to this point, the June 20, 2013 judgment of the Supreme Court of Mexico cited in the previous section is of particular interest.⁴¹ In this judgment, which cites the inter-American doctrine and jurisprudence multiple times, the high court held that “the protection of public order is an objective authorized” by the “legal system to limit the freedom of expression of citizens. Nevertheless, citing OC – 5/85 of the Inter-American Court, it held that, in general terms, “‘public order’ may under no circumstances be invoked as a means of denying a right guaranteed by the Convention or to impair or deprive it of its true content.” Citing the Office of the Special Rapporteur, the Court stated that, “any limitation on freedom of expression in the name of one of the aims provided for must be based on real and objectively verifiable causes that present the certain and credible threat of a potentially serious disturbance of the basic conditions for the functioning of democratic institutions.”

⁴⁰ 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. 74.

⁴¹ Suprema Corte de Justicia de la Nación de México (SCJN). June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](#); Suprema Corte de Justicia de la Nación de México (SCJN). Acción de Inconstitucionalidad 29/2011. Judgment of June 20, 2013. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774>

- **Requirement that the Limitation be Necessary in a Democratic Society, Suitable for Accomplishing the Compelling Aim Pursued, and Strictly Proportionate to that aim**

49. The inter-American case law has noted that the States that impose limitations on freedom of expression are required to demonstrate that those limitations are necessary in a democratic society for the accomplishment of the compelling objectives they pursue.⁴² The link between the necessity of the limitations and democracy is derived, in the opinion of the Inter-American Court, from a harmonic and comprehensive interpretation of the American Convention.⁴³

50. The Supreme Court of Mexico [*Suprema Corte de Justicia de la Nación de México*] further developed these concepts in the previously cited judgment of June 20, 2013.⁴⁴ It held that, “It is not enough for the legislature to demonstrate that the aim pursued is legitimate; rather, it must ensure that the measure employed is carefully designed to accomplish that compelling aim.” Along these lines, the Court specified that “necessary” is not the same as “useful” or “opportune.” Accordingly, “In order for the restriction to be legitimate, the certain and compelling need to impose the limitation must be clearly established. In other words, it must be demonstrated that the objective in question cannot reasonably be accomplished by another measure less restrictive of freedom of expression. This means that it must not be limited beyond what is strictly necessary in order to guarantee the full exercise and scope of this human right,” held the Court. In its decision, the Supreme Court found that “A restriction to freedom of expression must be proportionate to the legitimate aim that justifies it, and strictly tailored to the accomplishment of that objective without interfering in the legitimate exercise of said freedom.”

51. In applying these standards to this specific case, the Court concluded that “the omission from the challenged provision of malice as an integral part of the statutorily defined conduct creates a very relevant **chilling effect**, whereby well-intentioned individuals may feel inhibited or frightened to express necessary alerts with respect to the ‘real’ existence of those elements (emphasis in the original).” “In this regard, article 373 caused greater harm than the harm it intended to prevent,” the Court summarized. Therefore, the Court, sitting *en banc*, found that the article was not “carefully designed to interfere as little as possible with freedom of expression and the right to information,” and did not “adequately meet the requirement of necessity demanded for all subsequent liability for the illegitimate exercise of speech.” It concluded that “The fear of serious harm does not by itself justify the chilling effect created by the threat of criminal prosecution or the seriousness of the penalty. The silence imposed by the State ends up blocking the flow of information more than necessary in a democratic society, and therefore violates articles 6 and 7 of the Federal Constitution.”

52. The First Division of the Supreme Court of Mexico [*Primera Sala de la Suprema Corte de Justicia de la Nación de México*], ruled similarly in its May 20, 2015 judgment on the unconstitutionality of article 398 Bis⁴⁵

⁴² 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. 120-123; H.R. I/A Court H.R. *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 46.

⁴³ 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. 84.

⁴⁴ Suprema Corte de Justicia de la Nación de México (SCJN). June 20, 2013. [Invalida SCJN Artículo 373 del Código Penal del Estado de Veracruz](#); Suprema Corte de Justicia de la Nación de México (SCNJ). *Acción de Inconstitucionalidad 29/2011*. Judgment of June 20, 2013. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=132774>. The sentence cites the following: 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. Parr. 120-233; *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 44.

⁴⁵Article 398 Bis of the Criminal Code of Chiapas: “Any person who obtains and provides confidential or classified information from the public security or armed forces for the purpose of preventing the individual or individuals active of the crime from being detained or for the purpose of enabling them to engage in criminal activity to the detriment of a third party, shall be penalized with two to fifteen years of imprisonment and a fine of two hundred to four hundred days of minimum wage.

When the behavior is carried out using persons who are minors or persons without the capacity to understand the unlawful nature of the act, the penalty shall be increased by one-half of that indicated in the first paragraph.

of the Criminal Code of Chiapas that prohibited “*halconeo*” [acting as a lookout].⁴⁶ The provision imposed a term of imprisonment between two and fifteen years for persons “who obtain and disclose confidential or reserved information from the public security or armed forces for purposes of preventing the perpetrator or perpetrators of the crime from being arrested or for them to be able to conduct criminal activity against a third party.” In this case, the Court ruled on an *amparo* petition filed by the non-governmental organization *Artículo 19*, which called into question the vagueness of the terms of the provision, on the assertion that practically any search for information on matters of public safety was thus absolutely restricted. In its rationale for finding the provision unconstitutional, the First Division [*Primera Sala*] de la Suprema Corte de Justicia de la Nación de México held that although the provision pursued a legitimate aim—protecting public safety—“the restriction was not oriented toward satisfying the public interests meant to be protected (necessity) and the restriction imposed is not the one that restricts the right of access to information to the least extent possible (suitableness). All of which, in turn (...) is related, in the instant case, to the violation of the principle that criminal provisions must be exhaustive in nature.”

53. The judgment of the First Division, delivered by Judge Alfredo Gutiérrez Ortiz Mena, held that “the challenged provision restricts the enjoyment of the essential core of the right of access to information (...) by criminalizing the public discussion of a part of the government’s activity that ideally should be front and center for society to evaluate—that is, public safety (core speech), and is not limited to restricting incidental or peripheral aspects of that speech.” The judgment contained important references to the doctrine and jurisprudence of the Inter-American Commission and the Inter-American Court of Human Rights with respect to the right to information. Among other things, it mentioned the standards on the right to information set forth in the *Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil* and the *Case of Claude Reyes et al. v. Chile*.

54. In Colombia, the Constitutional Court [*Corte Constitucional*] applied the *three-part test* to determine which constitutional remedy would be least restrictive of freedom of expression, for purposes of adopting measures designed to protect the rights to honor and reputation of a citizen who sought the removal of content from the Internet concerning alleged criminal acts of which she was never found guilty. She sought to have measures ordered to prevent search engines from providing links to the news story published by *El Tiempo* in its web version. In Judgment T-277 of May 12, 2015, the Court upheld the lower court’s decision regarding the need to grant the protection requested by the citizen, but ordered measures it considered less restrictive in application of the three-part test.⁴⁷ In its examination of the lower court’s decision, the Court held that “This decision ordered the *El Tiempo* Publishing House to delete from the web page all of the negative information about Mrs. Gloria’s arrest and the criminal investigation against her for the offense of human trafficking. Although it is a measure that seeks to protect the rights of the petitioner, we should not lose sight of the fact that it also imposes a restriction on the media outlet’s right to freedom of expression, as it suppresses the published information.” Therefore, “this being a matter that has the potential to jeopardize the freedom of expression of a media outlet, the Court finds that three-part test developed in the case law of the Inter-American Court of Human Rights should be used in the examination of this case, to the extent that it is designed specifically to assess whether a limitation on the restriction of the right to freedom of expression is in turn an unlawful violation of that right.” Weighing the “need” of the measure adopted by the lower court

Likewise, the sentence will be increased up to one half when the behavior is carried out by civil servants who belong or have belonged to a public security institution, the armed forces or who are persons having belonged or belonging to legal entities that provide private security services.

When the behavior is carried out using official equipment or vehicles, or vehicles of a public or commercial transport service, or that by their characteristics are similar to those in appearance, the penalty will be increased up to one half of the one indicated in the first paragraph.

Likewise, confidential or classified information is understood as that which is related to the activities coming from operations, investigations, prosecution of crimes or their perpetrators, the same information that, in terms of the Political Constitution of the United Mexican States and the Law that Guarantees the Transparency and the Right to Public Information for the State of Chiapas, has such a nature.”

⁴⁶ Primera Sala de la Suprema Corte de Justicia de la Nación (SCJN). Amparo en revisión 492/2014. Judgment of May 20, 2015. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=167949>

⁴⁷ Corte Constitucional de Colombia. Sala Primera de Revisión. [Judgment T-277/15](#) of May 12, 2015.

judge, the Constitutional Court found that it was necessary “to verify whether there are other constitutionally admissible means that are equally suitable for the proposed objective and less harmful to the right to freedom of expression of the *El Tiempo* Publishing House.”

55. The three-part test was also applied by the Supreme Court of Argentina in 2013⁴⁸ and the Supreme Court of Uruguay in 2016, in examining the legitimacy of measures designed to guarantee the diversity and plurality of the media and combat monopolies and oligopolies. In those cases, which are examined at greater length below, the courts found that the regulation provided by the audiovisual communication services laws of both countries pursued a legitimate aim consistent with the democratic standard.

56. The Supreme Court [*Suprema Corte de Justicia*] of Uruguay found that, by restricting the enjoyment of fundamental rights, the legislature is limited by “the precaution that the restrictive law (...) is enacted for ‘reasons of general interest’ and by the principle of proportionality that “appears as a logical consequence.”⁴⁹ Along these lines, it held that “proportionality in the strict sense leads to an examination of the reasonableness of the legally provided measure considered in its totality, by weighing the limitation or restriction of the right, on one hand, and the aim it seeks to accomplish, on the other. If the curtailment of the potential enjoyment or exercise of the right is excessive in relation to the proposed objective, the measure is disproportionate and therefore unlawful. It follows that the assessment of proportionality in the strict sense focuses on the means/ends relationship, which must be balanced or proportionate (Cf. Casal Hernández [...]).” The Court noted that, additionally, and according to the parameters established by the Inter-American Court of Human Rights in Advisory Opinion 5/85, it is appropriate to examine in each case whether a restriction on freedom of expression is necessary to secure one of the objectives mentioned in article 13.2 of the American Convention, reaffirming that such objectives “must be tied to the legitimate needs of societies and democratic institutions.”

G. CASE LAW ON THE PRESUMPTION OF *AB INITIO* COVERAGE FOR ALL KINDS OF EXPRESSION, INCLUDING OFFENSIVE, SHOCKING OR DISTURBING SPEECH

57. The Inter-American Commission and the Court have emphasized that freedom of expression must be guaranteed not only in terms of the dissemination of ideas and information received favorably or considered inoffensive or indifferent but also with regard to those that offend, shock, upset, are disagreeable, or disturb the State or any sector of the population.⁵⁰ The bodies of the Inter-American System have underscored the importance of this rule to ensure the pluralism, tolerance, and spirit of openness that are indispensable in a democratic society. This Office of the Special Rapporteur has emphasized that this general assumption that all expression is covered is explained by the primary obligation of the State to remain neutral toward the content of the opinion and information disseminated, as well as by the need to guarantee that, in principle, no persons, groups, ideas, or means of expression are excluded *a priori* from public discourse.⁵¹

⁴⁸ Corte Suprema de Justicia de la Nación Argentina. [Grupo Clarín AS y otros c/ Poder Ejecutivo Nacional y otros/ acción meramente declarativa](#). Judgment of October 29, 2013.

⁴⁹Suprema Corte de Justicia de Uruguay. IUE 1-18/2015. [Directv de Uruguay Limitada c/ Poder Legislativo](#). Acción de inconstitucionalidad. Judgment No. 79 of April 5, 2016.

⁵⁰ 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](#). Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

⁵¹ 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. 30.

58. The application of this standard by courts in the region has contributed to the judicial protection of the right to freedom of expression in cases where there have been attempts to restrict the right because of the content of the speech.

59. For instance, in Brazil, on September 19, 2013, the Fourth Civil Chamber of Private Law of the Court of Justice of the state of São Paulo [*Tribunal de Justiça do Estado de São Paulo. 4ª Câmara de Direito Privado*], in its decision in the *União Nacional de Entidades Islâmicas do Brasil v. Google Brasil Internet Ltda.* case, held that the content of a video critical on the religion of Islam was protected [*encontra-se socorrido*] by the right to the free expression of artistic thought and the free circulation of ideas.⁵² The judgment held that religious criticism is an expression of thought, as citizens are entitled to set forth, debate, and practice their beliefs. In making these arguments, the Chamber upheld the judgment of the trial court and dismissed the claim for damages and the removal from You Tube of all of the videos from the film entitled “The innocence of muslims” [*Inocência dos Muçulmanos*].

60. In consonance with the previously explained, the issue was also taken up by the First Division of the Mexican Supreme Court [*Primera Sala de la Suprema Corte de Justicia de la Nación de México*] in a judgment handed down on February 7, 2014.⁵³ The decision rejected an *amparo* review petition in which a public servant sought civil damages for harm to his honor based on the dissemination of opinions critical of his work as the academic coordinator of a State university. The First Division held that “The main consequence of the preferential position of freedom of expression and the right to information is the general **presumption that all expressive or informative speech is covered by the constitution**” (highlighted in the original). Citing the Office of the Special Rapporteur, the Court held that that presumption “is justified by the primary obligation of State neutrality toward the content of the opinions and information disseminated, as well as by the need to ensure that, in principle, no persons, groups, ideas, or means of expression are excluded *a priori* from public discourse.” The judgment underscored that “protected speech includes not only ideas that are received favorably or viewed as inoffensive or indifferent but also speech that may offend, shock, disturb, bother, upset, or disgust, as that is precisely where freedom of expression is most valuable. These are the demands of a plural, tolerant, and open society, without which a true democracy does not exist.”

H. CASE LAW ON SPECIALLY PROTECTED SPEECH

61. Albeit all forms of expression are, in principle, protected by the freedom enshrined in article 13 of the American Convention, there are certain types of speech that receive special protection, given its importance to the exercise of all other human rights or to the consolidation, operation, and preservation of democracy. This Office of the Special Rapporteur has determined from the inter-American case law that such specially protected modes of speech are: (a) political speech and speech about matters of public interest; b) speech about public servants and candidates for public office; and (c) speech that comprises an element of the personal identity or dignity of the speaker.

62. This issue was addressed by the Constitutional Court of the Dominican Republic [*Tribunal Constitucional de República Dominicana*] in its April 4, 2016 judgment finding seven articles of the Law on the Expression and Dissemination of Thought unconstitutional.⁵⁴ The Court was called upon to adjudicate a direct unconstitutionality action challenging eleven provisions of the law, and five articles of the Criminal Code. The plaintiffs, the directors of three newspapers—Rafael Molina Morillo, the director of *El Día*, Miguel Antonio Franjul, the director of *Listín Diario*, and Osvaldo Santana, the director of *El Caribe*—and the *Fundación Prensa*

⁵²Tribunal de Justiça do Estado de São Paulo. 4ª Câmara de Direito Privado. Processo Nº 0192984-85.2012.8.26.0100. Judgment of September 19, 2013. Available at: <https://esaj.tjsp.jus.br/cposg/open.do>

⁵³ Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo Directo en Revisión 3123/2013. Judgment of February 7, 2014. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=156633&SinBotonRegresar=1>

⁵⁴ Tribunal Constitucional de República Dominicana. Expediente No. TC-01-2013-0009. Acción directa de inconstitucionalidad. Judgment TC/0075/16 of April 4, 2016.

y *Derecho* [Press and Law Foundation], alleged that the challenged articles made “speech crimes” and “liability for the acts of another” criminal offenses punishable by imprisonment, which was inadmissible under the inter-American standards and the constitutional protection of the right to freedom of expression in the country. The decision, found that the criminalization of speech about public servants in the performance of their duties or persons holding government positions, is inadmissible and “affects the essential core of freedom of expression and opinion.” The Court ruled as follows:

In view of the legal precedent, the Court concludes that the provisions of articles 30, 31, 34, and 37 of Law No. 6132,⁵⁵ by establishing criminal penalties for any defamatory act against any public servant in the performance of his or her duties or persons holding government positions, constitute a legal limitation that affects the essential core of freedom of expression and opinion through the press when it concerns public servants subject by their nature to citizen oversight through public opinion, and therefore are unconstitutional.⁵⁶

63. Similarly, on April 21, 2014 the Constitutional Court [*Corte Constitucional*] of Panama handed down a decision upholding the constitutionality of article 196 (previously 192)⁵⁷ of the Criminal Code [*Código Penal*]. This provision partially decriminalized crimes against honor in those cases where the alleged victims are high-ranking public servants, elected officials, or governors.⁵⁸ The Court recalled its doctrine and ruled that public servants are subject to a higher degree of scrutiny, which is fundamental for “the operation of democratic society”. In setting forth the reasoning for the decision adopted by the majority of the Court, the Judge who delivered the opinion, José Eduardo Ayu Prado Canals, stated that although the national constitution and the international instruments protect all people’s right to their honor,

⁵⁵ Article 30.- Article 30.- Defamation committed by one of the means set forth in articles 23 and 29 to the detriment of the Courts and Tribunals, the Armed Forces, the National Police, Legislative Chambers, Town Halls and other State institutions, will be punished with a one month to one year prison sentence and with a fine of RD \$ 50.00 to RD \$ 500.00, or with only one of these two penalties. Article 31.- The same punishment established in article 30 applies to defamation committed by the means announced in articles 23 and 29 to the detriment of: a) One or more members of the Cabinet; b) One or more members of the Legislative Chambers; c) One or more public officials; d) One or more depositaries or agents of public authority; e) One or more citizens in charge of any service or official, temporary or permanent mandate; f) A witness because of his deposition. This article only applies to defamation committed by reason of the office or quality of the persons who are considered aggrieved. Article 34.- Defamation (Injuria) committed by the same means to the detriment of the bodies or persons designated by articles 30 and 31 of this law shall be punished with a six days to three months prison penalty and a fine of RD\$ 6.00 to RD\$ 60.00 or with just one of these two penalties. Article 37.- The truth of the defamatory act, but only when it relates to the functions performed by the allegedly aggrieved body or person, may be established by all means of evidence in the case of accusations against the constituted Powers, Armed Forces, National Police, public institutions and against the persons listed in article 31. The truth of defamatory and libelous accusations may also be established against the directors or administrators of any industrial, commercial or financial enterprise that publicly applies for savings or credits. Likewise, the truth of allegedly defamatory acts can always be proved except: a) When the accusation concerns the private life of one or more persons; b) When the accusation refers to an event that constitutes an amnestied or prescribed violation, or that has resulted in a sentence erased by rehabilitation or review, provided that the person to whom the accusation is made is not charged or convicted with new crimes or offenses. In the cases provided for in the preceding section, the evidence to the contrary is reserved. If the defamatory event is proven, the complaint against the defendant will be rejected. In any other circumstance and in which it concerns any other person not qualified by this law, when the event of which the person is accused is being object of judicial proceedings initiated at the request of the public prosecutor or was subject of a complaint by the defendant himself, it shall be discontinued during the investigation and hearing of the case, prosecution and ruling of the crime of defamation. (Consejo del Estado de República Dominicana. Ley No. 6132 de Expresión y difusión del Pensamiento. December 19, 1962. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83343/91947/F1965099340/DOM83343.pdf>)

⁵⁶ Tribunal Constitucional de República Dominicana. Expediente No. TC-01-2013-0009. Acción directa de inconstitucionalidad. Judgment TC/0075/16 of April 4, 2016.

⁵⁷Subsequently it was registered in the new Criminal Code with article 196. The article that originated the challenge stated: “In crimes against honor, public retraction consented by the offended excludes criminal responsibility. When in the behaviors described in the preceding article, those allegedly ofended are one of the public servants dealt with in Article 304 of the Political Constitution, elected officials or governors, the criminal sanction will not be imposed, which does not exclude civil responsibility from the event”. The plaintiff argued that the normative reference “the criminal sanction will not be imposed” violated articles 17, 19, 20 and 163 number 1 of the National Constitution. (Asamblea Nacional de la República de Panamá. April 26, 2010. Article 196. Available at: <http://www.asamblea.gob.pa/legispan-2/>).

⁵⁸Órgano Judicial de la República de Panamá. Registro Judicial. Advertencia de Inconstitucionalidad. Expediente No. 478-08. Judgment of April 11, 2014. Pages 749-766. Available at: <http://www.organojudicial.gob.pa/wp-content/uploads/2014/05/rj2014-04.pdf>

from the perspective of the supranational laws on human rights, when an individual assumes a public position, he or she becomes a person of public relevance; therefore, he or she inevitably and deliberately is exposed to the watchful oversight of his or her acts and gestures, both by journalists and by the multitude of citizens. As such, he or she must exhibit greater tolerance,” he affirmed. “In other words, when a public servant becomes a person of public relevance, he or she must withstand the fact that his or her honor will be affected or influenced to a greater degree. This is necessary for political pluralism and the establishment of a critical, open, and tolerant spirit, without which democratic society and the oversight and control of the authorities who act on behalf of the people would be rendered devoid of content.

64. In Colombia, the Chamber of Criminal Cassation of the Supreme Court addressed the special protection of speech about public servants and the public interest.⁵⁹ In its judgment of July 10, 2013, acquitting a journalist of the defamation charge filed against him after a lengthy court case brought by a high-ranking public servant, the Court referred to the “principle of public relevance” as the applicable standard. Citing the precedent established by the Constitutional Court in Judgment SU- 1723 of 2000, it held that this principle “justifies the preferential position *prima facie* of freedom of expression vis-à-vis other fundamental rights whose purpose is to safeguard the private sphere of the individual. It refers to the need for information to be developed within the framework of the general interest in the matter at hand, in which regard two essential aspects come into play: (i) the status of the person; and (ii) the content of the information.”

65. On February 7, 2014, the First Division of the Supreme Court of Mexico⁶⁰ dismissed as groundless a direct *amparo* petition seeking the protection of the honor and reputation of a public servant following the mass email distribution of information and opinions critical of his performance as the academic coordinator of a State university.⁶¹ In rendering its decision,⁶² the Court analyzed what standard it should use to assess the lawfulness of the speech in question, based on the status of the subjects involved in the specific case and the public relevance of the information disseminated. In this analysis, the Court expressly incorporated the inter-American doctrine and jurisprudence as summarized below.

66. The First Division of the Court maintained that there was a “dual system of protection” in which “the limits of criticism are broader if it concerns individuals who, because they are involved in public activities or because of the role they play in a democratic society, are exposed to a more rigorous oversight of their activities and statements than those private citizens who have no public influence.” Commenting on the position of the Inter-American Court in the *Case of Herrera Ulloa*, the Court held that “the emphasis of this different threshold of protection does not lie in the status of the individual, but rather in the public interest nature of his or her activities or actions.” Accordingly, the Court’s unanimous decision noted that, “in order for the requirement of subsequent liability for speech that infringes upon the honor of public servants or other individuals involved in the performance of public duties to constitute a necessary, suitable, and proportionate legal response, stricter conditions must be met than those that apply in the case of infringements upon a private citizens’ right to honor.” Finally, the high court summarized its position in the following terms:

⁵⁹ [Corte Suprema de Justicia de Colombia. Sala de Casación Penal. Casación sistema acusatorio N° 38.909. Judgment of July 10, 2013. Available at: http://flip.org.co/resources/documents/c4ab6f8aa7b923cc81bf7d99e4da4e93.pdf](http://flip.org.co/resources/documents/c4ab6f8aa7b923cc81bf7d99e4da4e93.pdf)

⁶⁰Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo Directo en Revisión 3123/2013. Judgment of February 7, 2014. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=156633&SinBotonRegresar=1>

⁶¹ The case went to court based on the lawsuit initiated by the public official demanding payment of compensation for moral damages derived from the distribution of various communications through the Internet, which she stated, contained expressions that undermined her reputation and institutional prestige in her workplace. After the rejection of her claim in previous judicial instances, the official appealed before the Supreme Court of Justice. The appellant relied on the following arguments: (a) the information disclosed has no public relevance nor encourages national debate; b) the co-defendants are not journalists nor communication professionals, so that the standard of effective malice [estándar de malicia efectiva] is not applicable; and c) assuming that her academic duties were of public relevance, her nature as a public official does not automatically require her to tolerate the dissemination of false events or insults. Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo Directo en Revisión 3123/2013. Judgment of February 7, 2014. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=156633&SinBotonRegresar=1>

this First Division finds that, in a democratic society, there is a slim margin to any restriction of political speech or speech concerning matters of public interest, such as speech calling into question the entities and public servants that make up the State. This does not mean that public servants cannot avail themselves of the judicial protection of their honor when it is subject to unjustified attacks, but it must be done in a manner consistent with the principles of democratic pluralism and through mechanisms that do not have the potential to create inhibition or self-censorship.

67. On September 17, 2014, the Federal Supreme Court of Brazil [*Supremo Tribunal Federal*] (STF) ruled in claim [*Reclamação*] 18.638 that “Persons who hold positions in government enjoy a less intense level of protection of their right to privacy. The oversight of government power and the prevention of censorship broadens the lawful degree of interference in the personal sphere of conduct of State agents.”⁶³ The Court ruled similarly in the previously cited case involving the appeal filed by the magazine *IstoÉ* to suspend an injunction that imposed prior censorship.

I. CASE LAW ON THE INCOMPATIBILITY OF *DESACATO* (DEFAMATION OF PUBLIC OFFICIALS) LAWS AND THE AMERICAN CONVENTION

68. Principle 11 of the Declaration of Principles on Freedom of Expression establishes that “Public officials are subject to greater scrutiny by society,” and therefore, “Laws that penalize offensive expressions directed at public officials, generally known as ‘*desacato* laws,’ restrict freedom of expression and the right to information.” In other words, do not constitute a legitimate restriction on freedom of expression under article 13 of the American Convention.

69. The Inter-American Commission on Human Rights has posited that the “*desacato* laws” are an illegitimate restriction on freedom of expression, because they do not pursue a legitimate aim under the American Convention and are not necessary in a democratic society. According to the IACHR, “the use of ‘*desacato* laws’ to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the public’s right to criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office.”⁶⁴

70. As this Office of the Special Rapporteur has explained, in the opinion of the IACHR, “the enforcement of criminal *desacato* laws against those who criticize public officials is *per se* contrary to the Convention, given that it is an imposition of subsequent liability for the exercise of freedom of expression that is unnecessary in a democratic society, and is disproportionate because of its serious effects on the person expressing the opinion and on the free flow of information in society. *Desacato* laws are a means of silencing unpopular ideas and opinions, and discourage criticism by generating fear of legal action, criminal punishment and monetary sanctions. *Desacato* laws are disproportionate in terms of the penalties they establish for criticizing State institutions and their members; they suppress the debate that is essential to the functioning of a democratic system, and unnecessarily restrict freedom of expression.”⁶⁵

⁶³ Supremo Tribunal Federal do Brasil (STF). [Reclamação 18.638](#). Judgment of September 17, 2014.

⁶⁴IACHR. [Annual Report 1994](#). Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention On Human Rights. Title IV Section B). OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. Available at: <http://cidh.oas.org/annualrep/94span/cap.V.htm>

⁶⁵ 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. 141.

71. Below are examples in which the inter-American standards have been decisive in protecting the right to freedom of expression in Brazil, even within the framework of legal systems that still have so-called crimes of *desacato* against public servants on the books.

72. In a decision of December 15, 2016, the Judges of the Fifth Chamber of the Superior Court of Justice of Brazil [*Quinta Turma do Supremo Tribunal de Justiça do Brasil* (STJ)], unanimously, followed the vote of Judge Rapporteur Ribeiro Dantas, in an appeal filed by the Public Defender's Office of São Paulo before the STJ, against a decision of the Court of Justice [*Tribunal de Justiça*] of São Paulo that sentenced a man to five years and five months of imprisonment for stealing a bottle of drink valued at BRL\$ 9 (approximately US\$ 3), for the crime of *desacato* to the detriment of the military police who would have detained him, and for resisting detention.⁶⁶ The Judges annulled the sentence, stating that the criminal provision of *desacato* was not compatible with article 13 of the American Convention on Human Rights. In this important decision, the TSJ exercised control of the conventionality of the criminal provision, taking into account the decisions and reports adopted by the IACHR in this matter. In this regard, the Court held that the adherence to the Pact of San José implies the obligation to incorporate in the national legislation the criteria of interpretation of the international organizations and their methods of interpretation, including the *pro person* standard. In this regard, it noted that the IACHR "has already expressed that *desacato* laws lend themselves to abuse as a means to silence ideas and opinions considered uncomfortable by the establishment and therefore provide a greater level of protection for State agents than particulars, in contravention of democratic and egalitarian principles". The Court concluded that "the criminalization of contempt is opposed to universal humanist values because it reveals the preponderance of the state - personified in its agents - over the individual. The existence of these norms in the [Brazilian] legal system is anachronistic and represents unequal treatment of employees and individuals unacceptable in the rule of law."⁶⁷

73. On July 4, 2016, the Special Criminal Court of the Second Criminal Division of the District of Belford Roxo in Brazil, [*Juizado Especial Criminal Adjunto a Segunda Vara Criminal da Comarca de Belford Roxo*], applied the inter-American standards and, following a strict exercise in "conventionality control," ruled inadmissible a *desacato* complaint filed by the Office of the Attorney General.⁶⁸ The Judge Alfredo José Marinho Neto was of the opinion that the complaint should be dismissed based on the protection of the right to freedom of expression that emerges from articles: 1, II, III, V and its sole paragraph ; 5, IV,V, and IX; and article 220, all of the Federal Constitution; article 13 of the American Convention; article 27th of the Vienna Convention on the Law of Treaties; article 395.III of the Code of Criminal Procedure of Brazil [*Código de Procedimento Penal*] (CPP), and Principles 1 and 11 of the Declaration of Principles on Freedom of Expression adopted by the IACHR. The judgment held that the complaint should be shelved immediately, "due to the unconstitutionality and non-conventionality of the criminal offense of *desacato* contained in article 331 of the Criminal Code [*Código Penal*]."⁶⁹ It further underscored that, "Citizens have the right to criticize and examine the actions and attitudes of public servants in the performance of their duties," this being a core element of democracy. The judge noted that, insofar as Brazil acceded to the American Convention "it is subject to the action" of the IACHR and to the jurisdiction of the Inter-American Court of Human Rights. It further held that, according to article 27^t of the Vienna Convention —of which Brazil is also a signatory—a State party cannot invoke the provisions of its domestic law to justify the breach of a treaty. It held that, in short, the country would have to "formally expunge" article 331 of the Criminal Code from its legal system; otherwise, it would incur international responsibility.

⁶⁶ Superior Tribunal de Justiça do Brasil (STJ). [Recurso Especial No. 1.640.084 - SP \(2016/0032106-0\)](#). Judgment of December 15, 2016.

⁶⁷ Superior Tribunal de Justiça do Brasil (STJ). [Recurso Especial No. 1.640.084 - SP \(2016/0032106-0\)](#). Judgment of December 15, 2016.

⁶⁸ Tribunal de Justiça do Estado do Rio de Janeiro Comarca de Belford Roxo. Juizado Especial Criminal Adjunto a 2da Vara Criminal da Comarca de Belford Roxo. Processo No. 0013156 -07.2015.8.19.0008. Judgment of July 4, 2016. Available at: <http://emporiadodireito.com.br/juiz-do-tjrj-faz-controle-de-convencionalidade-do-crime-de-desacato/>

⁶⁹ Art. 331 - Desacatar funcionário público no exercício da função ou em razão dela: Pena - detenção, de seis meses a dois anos, ou multa (Presidência da República de Brasil. [Código Penal](#). December 7, 1940. Article 331).

74. The judgment incorporated the doctrine of the IACHR that *desacato* laws are incompatible with the American Convention and observed that maintaining this offense in the Brazilian legal system “inhibits individuals from expressing their opinions and thoughts to government authorities,” having a chilling effect on freedom of expression, because of the self-censorship in which citizens are liable to engage. The court maintained that “the interpretation and enforcement of the law” by the State judge should entail not only an analysis of its constitutionality but also a “conventionality control” analysis, as it was “imperative” in the Court’s view, “to acknowledge the non-conventionality and unconstitutionality of the criminal type in question, “to do otherwise violates the fundamental and inalienable right of persons to freedom of expression, which constitutes the axiological and ontological foundation of democracy itself.”

75. Similar reasoning was expressed on March 17, 2015 by Judge Alexandre Morais da Rosa, of the Fourth Criminal Division of the District of the Capital of Santa Catarina [4^a Vara Criminal da Comarca da Capital de Santa Catarina], in ruling inadmissible a complaint filed by the Office of the Attorney General against a citizen for the offense of criminal defamation [*desacato*] for statements allegedly made to police officials during an operation.⁷⁰ In this case,⁷¹ the court also performed a “conventionality control.” The court held that the conviction of an individual under Brazilian law for the offense of *desacato* violates article 13 of the American Convention on Human Rights, as interpreted by the Inter-American Commission on Human Rights. The judgment cited the decisions of the Inter-American Commission on Human Rights on the incompatibility of the *desacato* laws with the Convention, whereby it has determined that these types of provisions do not pass the *three-part test*, given that they fail to meet the criterion of necessity and do not pursue a legitimate objective in a democratic society.

J. CASE LAW ON THE SPECIAL PROTECTION OF OPINIONS AND THE NONEXISTENCE OF CRIMES OF OPINION

76. The right to disseminate ideas and opinions by any means and in the terms provided in article 13 of the American Convention is protected under the robust protection of the right to free expression in the Inter-American System. Principle 2 of the Declaration of Principles on Freedom of Expression emphasizes this protection. Reaffirming the inter-American doctrine and jurisprudence, the Office of the Special Rapporteur for Freedom of Expression has underscored that only facts, and not opinions, are subject to determinations of accuracy or falsity; therefore, no one can be convicted for an opinion about a person when it does not entail the false attribution of verifiable facts.⁷²

77. Consistent with this reasoning, the Court of Appeals of Washington, Division 1, held in the 2013 case of U.S. Mission Corp. v. Kiro TV, Inc. that a statement of opinion is not actionable as defamatory.⁷³ The court issued this ruling after examining one of the allegedly false statements included in a news report that made reference to the United States Mission Corporation, submitted as evidence in a suit for defamation against the *Kiro TV* television station. On this point, the Court found that it was a statement of opinion, and held that a statement of opinion cannot be defamatory. The judgment upheld the lower court’s dismissal of the defamation suit filed by the Seattle transitional housing service against the local television station.

⁷⁰ Poder Judiciário de Santa Catarina. 4^a Vara Criminal da Comarca da Capital de Santa Catarina. [Processo No. 0067370-64.2012.8.24.0023](#). Judgment of March 17, 2015.

⁷¹ In this case, according to the account of the facts contained in the sentence, the citizen was denounced for “*desacato*”, after allegedly saying to police agents who intervened in a street brawl in which he had reportedly taken part: “I do not like the Police and they are all a bunch of animals, arrogant and good for nothing”, refusing to contribute any clarification about the brawl “much less” to a female police agent.

⁷² 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. 109; I/A Court H.R. Case of *Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 93; 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.124

⁷³ Court of Appeals of the State of Washington, Division 1. *United States Mission Corporation v. Kiro TV, Inc.* No. 66868-4-I. Judgment of January 14, 2013. Available at: <http://www.leagle.com/decision/In%20WACO%2020130114B77>

78. On August 29, 2016, the Sixth Specialized Criminal Division of the Superior Court of Lima for Cases with Defendants Not in Custody [*Sexta Sala Especializada en lo Penal para Procesos con Reos Libres, de la Corte Superior de Justicia de Lima*], overturned the conviction of journalist Rafael Enrique León Rodríguez, a columnist for the magazine *Caretas*, who was found guilty of the offense of aggravated defamation against a fellow journalist.⁷⁴ The Court held that there was no “criminal content” in the journalist’s conduct because the publication that gave rise to the complaint was an opinion column that concerned matters of public interest. The Court based its reasoning on Peruvian case law and on the judgments of the Inter-American Court of Human Rights.⁷⁵

79. The Chamber of Criminal Cassation of the Supreme Court [*Corte Suprema de Justicia*] of Colombia examined the special protection of political opinion. In its previously cited judgment of July 10, 2013, acquitting journalist Luis Agustín González of the defamation [*injuria*] charge brought against him as the result of a lawsuit filed by former Governor Leonor Serrano,⁷⁶ the Court held that: although “disrespectful,” the “statements concerning the character of the former governor—who was referred to as despotic, arrogant, haughty, demeaning, erratic, flamboyant, and mentally unstable—do not contain objective elements to support the assertion that her honor was undermined or her image tarnished in front of other people. Rather, they pertain to the columnist’s perception of her.” The decision indicated that although the terms used by the journalist could “cause discomfort or humiliation to the complainant because of their highly disrespectful content,” criminal law cannot be “the appropriate forum for resolving these differences or for the aggrieved party to see her legitimate claims of redress satisfied” according to the “principle of strict legality and condition of *ultima ratio* established for criminal law.”

80. On December 17, 2014, the Federal Supreme Court [*Supremo Tribunal Federal*] of Brazil (STF) affirmed that freedom of expression includes the right to criticize and opine.⁷⁷ In its decision, the Court held that, “The essential and irreducible core of the fundamental right to freedom of expression encompasses the right to inform, to be informed, to have and share opinions, and to criticize.” It thus underscored the importance of critical speech in the strengthening of democracy, and affirmed that “reducing the social role of the press to sanitized informative one that is supposedly neutral and impartial” does nothing to contribute to the dynamic of a democratic society. It held that the imposition of objectivity and the prohibition of pejorative opinions and unfavorable criticism “annihilate” the protection of freedom of the press, reducing it to the freedom to inform, which—in spite of being one of its dimensions—is by no means the only one. Freedom of the press and the imposition of objectivity “are mutually exclusive concepts,” emphasized the Court. It further stressed that the threshold for the protection of freedom of expression is even higher in cases of public interest.

K. CASE LAW ON THE APPLICATION OF THE PRINCIPLE OF FAIR (OR NEUTRAL) REPORTING

81. The decision of the Inter-American Court in the case of *Herrera Ulloa v. Costa Rica* introduced into the Inter-American System the principle of “neutral reporting” or “fair reporting.” According to this principle,

⁷⁴ Corte Superior de Justicia de Lima. Expediente N° 14156-2014. Judgment of August 29, 2016. Available at: <http://legis.pe/wp-content/uploads/2016/09/Lee-aqu%C3%AD-la-sentencia-de-segunda-instancia-que-absuelve-a-Rafo-Le%C3%B3n-Legis.pe.pdf>

⁷⁵ Corte Superior de Justicia de Lima. Expediente N° 14156-2014. Judgment of August 29, 2016. Available at: <http://legis.pe/wp-content/uploads/2016/09/Lee-aqu%C3%AD-la-sentencia-de-segunda-instancia-que-absuelve-a-Rafo-Le%C3%B3n-Legis.pe.pdf>

⁷⁶ *Corte Suprema de Justicia de Colombia. Sala de Casación Penal. Casación sistema acusatorio N° 38.909. Judgment of July 10, 2013. Available at: <http://flip.org.co/resources/documents/c4ab6f8aa7b923cc81bf7d99e4da4e93.pdf>. The Corte Constitucional de Colombia, with a judgment on April 30, 2014 of the Sala Tercera de Revisión, denied an action for protection brought by the former governor against the decision of the Sala de Casación Penal of the Supreme Court of Justice which is being commented. (Corte Constitucional de Colombia. [Judgment T-265/14](#) of April 30, 2014).*

⁷⁷ Supremo Tribunal Federal do Brasil (STF). [Reclamação 16.329 MC/CE](#). Judgment of December 17, 2014, published on February 2, 2015.

persons who disseminate a news item that is limited to copying statements or information from third parties, will not be subjected to tests of veracity, as long as the source is cited.⁷⁸

82. Consistent with this standard, in a judgment delivered by its Chief Judge, the Supreme Court of the Dominican Republic held that “[w]hen a person, in his public or private life, offers a statement, and another person merely publishes it, making use of the right of access to information and its dissemination, that person is not the author of the information; only the person who made the statement is its author. Therefore, in the event that such information attacks the honor or reputation of a third party, the person who has limited him or herself to disseminating the information by the means set forth in Law No. 6132 is not personally liable for the harm that may be caused to the third party.”⁷⁹ The Judge subsequently declared the unconstitutionality of article 46⁸⁰ of that law (Law on the Expression and Dissemination of Thought), which established so-called vicarious liability of the media directors or editors.

L. CASE LAW ON THE APPLICATION OF STANDARDS OF ACTUAL MALICE AND PROPORTIONALITY WHEN ESTABLISHING SUBSEQUENT CIVIL LIABILITY

83. According to the Joint Declaration of 2000 issued by the Special Rapporteurs on Freedom of Expression of the UN, the OAS and the OSCE, civil penalties potentially assessed for the abuse of freedom of expression “should not be so large as to exert a chilling effect on freedom of expression and should be designed to restore the reputation harmed, not to compensate the plaintiff or to punish the defendant; in particular, pecuniary awards should be strictly proportionate to the actual harm caused and the law should prioritize the use of a range of non-pecuniary remedies.”⁸¹ Along these lines, in the case of *Tristán Donoso v. Panama*, the Inter-American Court found that, because of the significant amount requested by the Office of the Attorney General as reparation for the acts it considered to be defamatory, the civil penalty assessed against Tristán Donoso was just as intimidating and inhibiting of the exercise of freedom of expression as a criminal sentence.⁸²

84. The point was addressed by the First Chamber of the Constitutional Court [*Sala Primera de la Corte Constitucional*] of Colombia in the previously cited Judgment T-904/133 of December 2013.⁸³ In reaffirming the existence of specially protected speech, the First Chamber stated that, “the special importance of and

⁷⁸ IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Domestic Case Law on Freedom of Expression). OEA/Ser.L/V/II.147 Doc.1. March 5, 2013. Para. 113.

⁷⁹ Suprema Corte de Justicia de República Dominicana. Judgment on Excepciones e Incidentes No 18-2013 of April 17, 2013. Available at: <http://www.yumpu.com/es/document/view/12872337/datos-adjuntos-sentencia-2010-3051>

⁸⁰ Article 46: “The persons in the order indicated below shall be liable, as the principal perpetrators of the penalties constituting the repression of crimes and offenses committed by means of the press:

1.- The directors of publications or publishers, whatever their professions or denominations, and in the cases provided for in the second paragraph of article 4, the substitutes of the directors.

2.- In the absence of directors, substitutes or publishers, the authors; 3.- In the absence of authors, the printers;

4.- In the absence of printers, the vendors, distributors, film exhibitors, announcers, posters setters.

In the cases provided for in the second paragraph of Article 4, subsidiary liability shall fall on persons referred to in paragraphs 2, 3 and 4 of this article as if there were no director of the publication.

When the violation of this law is made through a paid advertisement, notice or publication, appearing in a publication or transmitted by radio or television, the autor shall be considered the individual or authorized representatives of the entity or corporation that orders it, who will incur in the liability set forth in section 2 of this article.

Any advertisement that is not strictly commercial must be published or disseminated under the responsibility of a particular person”. (Consejo del Estado de República Dominicana. Ley No. 6132 de Expresión y difusión del Pensamiento. December 19, 1962. Article 46. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83343/91947/F1965099340/DOM83343.pdf>).

⁸¹ Joint declaration by the 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. 2010. Available at: <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=142&IID=2>

⁸² 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.

⁸³ Sala Primera de la Corte Constitucional de Colombia. [Judgment T-904/13](#) of December 3, 2013.

potential threat to speech that aims to criticize public servants has led to the consideration that, in principle, any attempt—prior or subsequent—to restrict these types of speech constitutes censorship; and the enactment and enforcement of laws that penalize the criticism of public servants—known as ‘*desacato* laws’—as well as the assessment of substantial civil damages for the exercise of these types of speech, violate of freedom of expression.”

85. The judgment referred to the Report on the Compatibility of *Desacato* Laws with the American Convention on Human Rights.⁸⁴ It also cited the November 29, 2011 judgment of the Inter-American Court in the case of *Fonteviechia y D’Amico v. Argentina*. Echoing the position of the Inter-American Court, the Colombian Constitutional Court recalled that, “the fear of a disproportionate civil penalty clearly may be as or more intimidating and inhibiting of freedom of expression than a criminal penalty, in that it has the potential to affect the personal and family life of the person who reports—or in this case publishes—information about a public servant, with the clear and damaging result of self-censorship, both for the person affected and other potential critics of the actions of a public servant.”

86. Also, the Mexican Supreme Court established, in a decision issued on February 7, 2014, that the applicable standard to adjudicate the case was “actual malice,” derived from the appellant’s status/activity as a public servant. It held that “the imposition of civil penalties derived from the expression of opinions, ideas, or assessments about a public servant is appropriate only in those cases in which there is false information and the intent to harm, regardless of the status of the person responsible for that expression—that is, regardless of whether that person is a journalist or media professional. This is because the point of distinction is the public activity of the recipient of the expression, who is subject to greater public scrutiny.” The Court held that the information disclosed, which gave rise to the claim for damages from the public servant, was a matter of public interest. It stated that, “The fact that the speech is designed to call into question the performance of the government in itself entails a public interest.”⁸⁵

M. CASE LAW ON THE RIGHT TO PROTECT THE CONFIDENTIALITY OF SOURCES

87. The inter-American standards have acknowledged that journalists and media workers are entitled to the right to keep their sources confidential. Principle 8 of the Declaration of Principles on Freedom of Expression establishes that “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” The Office of the Special Rapporteur for Freedom of expression has interpreted that this principle “provides for the right of every social communicator to refuse to disclose sources of information and research findings to private entities, third parties, or government or legal authorities.”⁸⁶ This prerogative rests on the premise of ensuring, through the work of journalists and media workers, that society as a whole is able to learn of information that it would not otherwise have any way of knowing. Thus, the Office of the Special Rapporteur has maintained that, “confidentiality is an essential element of the work of the journalist and of the role society has conferred upon journalists to report on matters of public interest.”⁸⁷

88. The importance of this prerogative to guarantee the most extensive flow of information has also been expressed by different courts in the region.

⁸⁴ IACHR. [Annual Report 1994](#). Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention On Human Rights. Title IV Section B). OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

⁸⁵ Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo Directo en Revisión 3123/2013. Judgment of February 7, 2014. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=156633&SinBotonRegresar=1>

⁸⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Background and Interpretation of the Declaration of Principles](#). 2002. Para. 36.

⁸⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Background and Interpretation of the Declaration of Principles](#). 2002. Para. 37.

89. Thus, for instance, in Judgment 2014-004035 of March 21, 2014, the Constitutional Chamber of the Supreme Court [Sala Constitucional de la Corte Suprema de Justicia] of Costa Rica upheld the right of journalists to maintain the confidentiality of their sources.⁸⁸ The case came before Court as an *amparo* petition filed by journalists from the newspaper *Diario Extra* after one of the paper's journalists, Manuel Rodríguez Estrada, was subjected to telephone surveillance. The surveillance order was given by the Office of the Assistant Attorney General on Organized Crime [*Fiscalía Adjunta contra Crimen Organizado*], and was executed and requested by the Judicial Investigations Agency [*Organismo de Investigación Judicial*], a body within the Judiciary, as part of an investigation to determine the responsibility of a public servant for leaking confidential information related to two kidnappings for ransom. The telephone surveillance reportedly sought to determine who had provided the journalist with information about those events.⁸⁹

90. The Court concluded that, in this specific case, the journalist's right to privacy had been violated, and it sought to determine whether that circumstance had additionally entailed a violation of his right to freedom of expression and the right to keep sources confidential. Citing article 13.1 of the American Convention, article 19.2 of the International Covenant on Civil and Political Rights, and Principle 8 of the Declaration of Principles on Freedom of Expression, the Constitutional Court held that, "the confidentiality of sources of information" is "a fundamental right of journalists," and is "instrumental" to the "full enjoyment of the right to disseminate and receive information." In those terms, the high court reaffirmed and cited judgment 2008-007548 of April 30, 2008:

The confidentiality of sources is, then, an indispensable or essential condition for the exercise of the right to information. This confidentiality is also an institutional guarantee, in that it guarantees the right to information, which, in turn, has the objective of creating free public opinion and fostering democratic pluralism. The entitlement of journalists—that is, those who habitually or regularly engage in reporting—to this fundamental right is not an unjustified privilege; rather, as stated earlier, it is a condition *sine qua non* to guarantee freedom of information, and therefore, the development of free public opinion and democratic pluralism.

91. Referring to the scope of this right, the Constitutional Court held that "its protection and effectiveness apply *erga omnes*," including to the company that employs the journalists and to the authorities. It added that, "The reporter's privilege (...) allows him or her to refuse to reveal his or her sources of information, maintaining their confidentiality." Finally, the Court held that the confidentiality of sources cannot be equated to traditional professional privilege and affirmed that "the confidentiality of sources of information does not protect the journalist or the informant but rather the social conglomerate that is entitled to the right to receive information, such that it serves to guarantee a free, responsible, and independent press," reasserted the Court.

92. Particularly relevant is the separate opinion of Judge Jinesta Lobo, in which he stated that the telephone surveillance of journalists or persons who habitually and regularly inform the public or public opinion, "is totally, absolutely, and radically unconstitutional, as they reveal sources of information (...). It cannot even be ordered by a judge." He further found the telephone surveillance "of individuals who serve as sources of information for journalists or persons who habitually or regularly inform the public" to be inadmissible "under any circumstance." He stated that journalists' fundamental right not to disclose their sources "cannot yield, even to a court. It is a right that constitutes a secondary pillar of freedom of information, of the press, of the expression of thought and, consequently, of a robust and healthy democratic

⁸⁸ Sala Constitucional de la Corte Suprema de Justicia de Costa Rica. Fallos Relevantes Año 2014. Expediente No. 14-000848-0007-CO. Judgment 2014-004035 of March 21, 2014. Available at: <http://sitios.poder-judicial.go.cr/salaconstitucional/Centro%20de%20Jurisprudencia/Sentencias%20relevantes/Sentencias%20Relevantes.htm>; See also, Sala Constitucional Corte Suprema de Justicia de Costa Rica. Expediente No. 13-007483-0007-CO. Recurso de Amparo. Judgment 00531 of January 17, 2014.

⁸⁹ The ruling ordered that all telephone tracking linked to the journalist be annulled and reportedly warned the Prosecutor's Office and the Judicial Investigation Agency of refraining from engaging in such conduct again. Although the appeal was filed because of alleged telephone tracking of several journalists in the newspaper, the Court only ruled on journalist Rodríguez Estrada, whose tracking was proven.

system that seeks transparency.” Otherwise, “the right in question is deprived of its essential content,” he concluded.

93. On February 19, 2013, a judge from the United States District Court Southern District of New York quashed a subpoena seeking access to material filmed for the documentary *The Central Park Five*, including footage that had not been included in the final version of the movie.⁹⁰ The request for the subpoena was filed in a civil case brought against the city of New York, its police department, the Office of the District Attorney of New York, and employees of those offices, by five individuals who had been wrongly accused of attacking and raping a woman in Central Park in 1989.

94. The Court determined that the producer, *Florentine Films*, had demonstrated its independence in making the documentary and could claim the reporter's privilege recognized in the common law.⁹¹ It further concluded that the attorneys for the city of New York had failed to demonstrate the relevance and significance of the material requested at trial, and that the information was not reasonably obtainable from other sources. The Court held that the policy on the reporter's privilege reflects an essential public interest in maintaining a vigorous and independent press capable of participating in robust debate and without restrictions on controversial matters, “an interest which has always been a principal concern of the First Amendment.” It asserted that this privilege exists in order to guarantee the vital public function of the press to seek and disclose accurate information, and to protect the newsgathering process, as had been established in the case of *Chevron Corp. v. Berlinger* 629 F. 3d 297, 308 (2d Cir. 2011).

95. Also in the United States, a few months later, on December 10, 2013, the New York State Court of Appeals reversed an order of the Appellate Division of the New York Supreme Court and rejected the notion that a journalist from the FoxNews.com network should be required to testify and reveal her confidential sources in a trial held in Colorado against a defendant accused of a movie theater shooting in that state.⁹² The case began when the journalist published an article in July 2012 indicating that the suspect in that case had detailed to his psychiatrist how he would commit the attack. The journalist had cited two law enforcement officers as anonymous sources.

96. The New York State Court of Appeals held that protection of the anonymity of confidential sources is a core—if not *the* central—concern underlying the privilege granted to reporters under the New York Shield Law. The Court noted that the reporter's privilege seeks to prevent news sources from remaining silent for fear of reprisals, thus inhibiting the future investigative efforts of reporters. The majority⁹³ of the Court concluded that—although the New York court had found that the order from Colorado did not specify that the purpose of the subpoena was to compel the journalist to reveal her sources—the only purpose of requiring her to appear in Colorado would be to force her to reveal the identities of the individuals who provided her with the information she reported in the news story, which was obtained in exchange for a promise of confidentiality. The Court of Appeals explained that this would almost certainly allow the District Court to identify the officers who revealed the information, and that they could potentially be sanctioned for violation of a nondisclosure order and perhaps even prosecuted for perjury. Nevertheless, the Court found that although this could be a valid objective, this predictable chain of events is precisely the harm sought to be avoided under the Shield Law, to the extent that it could have a chilling effect in the future. The defense

⁹⁰ United States District Court. Southern District of New York. In Re McCray, Richardson, Santana, Wise, and Salaam Litigation. Opinion and Order. 03 Civ. 9685 (DAB) (RLE). February 19, 2013. Available at: <http://www.nyli.com/nylawyer/adgifs/decisions/022013jogger.pdf>

⁹¹ The motion to quash a subpoena invoked the New York Shield Law, § 79-h (c) of the New York Civil Rights Law, and the decision by the Second Circuit Court of Appeals in the case of *Gonzales v. National Broadcasting Company Inc*, 194 F. 3d 29 (2d Cir.1999).

⁹²New York Official Reports. Court of Appeals. [Matter of Holmes v Winter. 2013 NY Slip Op 08194 \[22 NY3d 300\]](#). December 10, 2013.

⁹³ Judge Robert Smith expressed his dissent. He agreed with the other members of the Court of Appeals that New York's Shield Law establishes the robust protection of the right of reporters to protect sources. However, he held that it was not applicable to the case, since the communications that the journalist claimed to be privileged took place wholly in Colorado and not in New York.

appealed the Court's decision to the United States Supreme Court, attempting a final review. On May 27, 2014, the U.S. Supreme Court upheld the decision.⁹⁴

97. Similarly, on January 8, 2015, Chief Judge Ricardo Lewandowski of the Federal Supreme Court [*Supremo Tribunal Federal*] of Brazil (STF), issued a ruling to suspend a judgment of the Fourth Federal Court of São José de Rio Preto [*4ª Vara Federal de São José do Rio Preto*], in the state of São Paulo, which had authorized lifting the confidentiality of the telephone communications of journalist Allan de Abreu Aio and his employer, the *Diário da Região* newspaper.⁹⁵ The journalist and the newspaper were accused by the Office of the Attorney General of disclosing confidential information about a Federal Police operation called "Tamburutaca." As part of the investigations, the Office of the Attorney General requested that their communications be turned over.

98. In stating the reasons for its adoption of the provisional measure, the Court specified that "one of the most important constitutional guarantees, freedom of the press and, consequently, democracy itself" was at stake. The Court held that for this reason, and to ensure the usefulness of a judicial decision to address the urgency of the case, it was necessary to suspend the challenged decision until the merits of the case could be reexamined.

N. THE PROHIBITION AGAINST PRIOR AND INDIRECT CENSORSHIP ESTABLISHING LIMITATIONS ON FREEDOM OF EXPRESSION BY INDIRECT MEANS, INCLUDING THE DISCRIMINATORY PLACEMENT OF GOVERNMENT ADVERTISING

99. Article 13.3 of the American Convention provides, without limitation, that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

100. The IACHR has explained that a single State act can simultaneously constitute a limitation of freedom of expression contrary to the requirements of article 13.2 of the American Convention, and an indirect or subtle restriction on freedom of expression. For instance, the imposition of criminal penalties for specific speech contrary to the interests of the government, which is a direct limitation on this freedom, violates article 13 by virtue of being unnecessary and disproportionate; it also constitutes an indirect limitation of this right because of its chilling effect on future speech, which curtails the circulation of information—that is, it has the same result as direct censorship.⁹⁶

101. In a decision handed down on June 30, 2016 in claim (*Reclamação*) 23.899, the Brazilian Federal Supreme Court [*Supremo Tribunal Federal*] (STF) suspended the effects of a judgment in the plaintiff's favor and the processing of another set of class action lawsuits filed throughout the State of Paraná by judges seeking damages from the newspaper *Gazeta do Povo* following the publication of a report, an opinion column about the remuneration of judges and members of the Office of the Attorney General in Paraná.⁹⁷ *Gazeta do Povo* maintained that the class action lawsuit against the newspaper amounted to an abuse of the right of action and sought to prevent the publication of new journalistic material that cast the judges in an unfavorable light.

⁹⁴ Supreme Court of the United States. Orders of the Court. CERTIORARI DENIED. 13-1096 HOLMES, JAMES V. WINTER, JANA. May 27, 2014. Available at: https://www.supremecourt.gov/orders/courtorders/052714zor_5fci.pdf; See also, Supreme Court of the United States. Orders of the Court. CERTIORARI DENIED. 13-1096 HOLMES, JAMES V. WINTER, JANA. May 27, 2014. Available at: <https://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/13-1096.htm>

⁹⁵ Supremo Tribunal Federal do Brasil (STF). [Reclamação 19.464 MC/SP](#). Judgment of January 8, 2015, published on February 4, 2015.

⁹⁶ 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. 157.

⁹⁷ Supremo Tribunal Federal do Brasil (STF). Agravo Regimental. [Reclamação \(RCL\) 23899](#). Judgment of June 30, 2016.

102. In this decision, STF's Judge Rosa Weber found that the Curitiba court's issuance of an order for the payment of non-pecuniary damages based on the journalistic publication provided "legal plausibility for the theory put forward" by the newspaper, "at least" insofar as the precedent of the Federal Supreme Court (ADPF 130) — in which the STF found that an entire set of mechanisms provided for in the Press Law was unconstitutional—was being ignored. In addition, the Judge took account of the fact that, as of the date of the decision, some 40 actions had been filed throughout the state of Paraná. Third, she considered the evidence submitted by the claimants before the Court to demonstrate the existence of a coordinated operation for the filing of class action lawsuits throughout the state, and to caution of the risk that this could entail for the claimants' exercise of their right to a defense if they were compelled to travel around the state to appear at hearings.

103. Based on the analysis of a prior case that dealt with a claim for alleged non-pecuniary damages stemming from a news publication, the Judge underscored that the "essential and irreducible core" of the fundamental right to freedom of thought encompasses the right to inform, to be informed, to have and share opinions, and to criticize. Citing prior case law, the Judge held that the imposition of restrictions to freedom of the press that, in addition to being excessive, are shown to be substantively incompatible with the democratic rule of law, defies the authority of the decision-making parameter issued by the Supreme Court.

104. Along these same lines, the First Division of the Supreme Court [*Primera Sala de la Suprema Corte de Justicia*] of Mexico found article 398 *Bis* of the Criminal Code [*Código Penal*] of Chiapas unconstitutional in the previously cited judgment of May 20, 2015. In so doing, it accepted the appellant's argument that the legal provision in question had a chilling effect, and therefore was contrary to the conventional and constitutional protection of freedom of expression and information.⁹⁸ The decision, adopted by a three-judge majority, stated that: "[t]he existence of a provision that penalizes *ab initio* the search for information that, in addition, is considered *prima facie*, without having been declared classified or reserved in advance, and without passing a 'harm test,' can have a chilling effect on that journalist, given that, aside from the fact that his or her liability is unproven, the simple fact of being exposed to criminal prosecution could clearly discourage the journalist from conducting his or her professional work, in view of the very real threat of being subjected to one or more court cases. Accordingly, this First Division finds that harm can arise from the simple fact of subjecting a journalist to a criminal case as a consequence of the legitimate exercise of that right, and that furthermore it can constitute a disproportionate use of the criminal law [...]."

105. On the occasion of the decision of February 7, 2014, the First Division of the Supreme Court of Mexico indicated that "[i]n interpreting and applying the relevant constitutional and legal provisions, we must not forget that the full guarantee of the freedoms enshrined in articles 6 and 7 of the Constitution requires preventing not only unjustified direct restrictions but also indirect ones. The proscription of indirect restrictions has many possible derivations, but they undoubtedly include the obligation to pay special attention to the rules for assigning liability among the many subjects involved in the chain of dissemination of news and opinion. In other words, it is a matter of taking care not to create dynamics for the assignment of liability among citizens, journalists, publishers, and owners of media outlets that lead some to find interest in the silencing or restriction of the speech of the others."⁹⁹

106. According to Principle 13 of the Declaration of Principles on Freedom of Expression, "the exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten

⁹⁸ Primera Sala de la Suprema Corte de Justicia de la Nación de México (SCJN). Amparo en revisión 492/2014. Judgment of May 20, 2015. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=167949>

⁹⁹ Primera Sala de la Suprema Corte de Justicia de la Nación (SCJN) México. Amparo Directo en Revisión 3123/2013. Judgment of February 7, 2014. Available at: <http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=156633&SinBotonRegresar=1>

freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.” The Office of the Special Rapporteur has indicated that, “In the case of the allocation of government advertising, a case of indirect censorship occurs when such allocation is done with discriminatory aims according to the editorial position of the media outlet included in or excluded from such allocation, and with the purpose of imposing conditions on its editorial position or line of reporting.”¹⁰⁰

107. Following the important 2007 judgment in the *Editorial Río Negro*¹⁰¹ case, and in keeping with the inter-American standards, on February 11, 2014 the Supreme Court of Argentina [*Corte Suprema de Justicia de la Nación de Argentina*] held that in allocating government advertising, the State must meet two constitutional criteria: “1) it cannot manipulate advertising, placing it and withdrawing it from certain media outlets based on discriminatory criteria; 2) it cannot use advertising as an indirect means of affecting freedom of expression.”¹⁰² In considering the case of *Arte Radiotelevisivo (ARTEAR SA) v. Estado Nacional*, the Argentine Supreme Court ruled admissible an extraordinary appeal filed by the respondent and affirmed the judgment of the IV Division of the Federal Court for the Judicial Review of Administrative Action [*Sala IV de la Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal*]. The Court had overturned the trial court’s judgment and admitted the *amparo* action filed by the media outlet.¹⁰³ In its decision, the appeals court had ordered the State to prepare and present to the court within 30 days “a plan for the allocation of government advertising” that “includes analog stations like the plaintiff” and “faithfully adheres to the guidelines of proportionality and fairness established in the precedent.”

108. The Supreme Court underscored its status as the “supreme interpreter of the National Constitution and the laws enacted thereunder” and called into question the State’s failure to respect “the doctrine” of the precedent judgments such as *Editorial Río Negro* versus the government of that province and *Editorial Perfil S.A.* against the National State. It noted that, “The State conduct aimed at not applying these criteria is a clear violation of constitutional principles,” and that failure to comply with a court judgment constitutes disregard for the separation of powers, which is unacceptable under the rule of law.” The Supreme Court held that “Consequently, all conduct that deviates from these essential values of the democratic system, whether in the process of applying the law or enforcing judgments, violates the State’s function as guarantor of freedom of expression.”

O. CASE LAW ON THE STATE’S OBLIGATION TO GUARANTEE PLURALISM AND DIVERSITY

109. The Office of the Special Rapporteur has stated that “The State’s authority to regulate broadcasting is based on, inter alia, the ‘duty to guarantee, protect, and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and the right of society to access all types of information and ideas.’ In this way, the broadcasting regulation that the State can and should create would form a framework under which the broadest, freest, and most independent exercise of freedom of expression for the widest variety of groups and individuals is possible. The framework should function in such a way that

¹⁰⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Principles on the Regulation of Government Advertising and Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 6/12. March 7, 2011. Para. 11.

¹⁰¹ Corte Suprema de Justicia de la Nación Argentina. [Caso Editora Río Negro S.A. c/ Neuquén, Provincia del y otro](#). Judgment of September 5, 2007.

¹⁰² Corte Suprema de Justicia de la Nación Argentina. [Caso Arte Radiotelevisivo Argentino S.A. c/ Estado Nacional](#). Recurso Extraordinario. Judgment of February 11, 2014.

¹⁰³ The case started with an *amparo* action promoted by Arte Radiotelevisivo Argentino S.A. (Artear - Canal 13), against the National State (in particular against the Chief of Cabinet, then led by Minister Juan Manuel Abal Medina and the Secretary of Public Communication, Alfredo Scoccimarro) in order to “cease the arbitrary and discriminatory allocation of official advertising regarding” that company. The *amparo* action was reportedly dismissed in the first instance. In June, the *Sala IV* of the *Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal* revoked the first decision. The State then filed an extraordinary appeal before the Supreme Court, which gave merit to the ruling mentioned here. The Supreme Court’s decision was dissented by two Judges (Enrique Santiago Petracchi and Carmen M. Argibay) who upheld the inadmissibility of the extraordinary appeal.

it guarantees diversity and plurality while simultaneously ensuring that the State's authority will not be used for censorship."¹⁰⁴ In this regard, emphasis has been placed on affirming that the regulation of broadcast media should take account of the international obligations assumed by the State under article 13 of the Convention and, in particular, the prohibition established in article 13.3 against the restriction of the right to freedom of expression by indirect means, such as the abuse of the power to regulate and administer radio frequencies.

110. This issue was taken up by the Supreme Court of Argentina [*Corte Suprema de Justicia de la Nación Argentina*] in its October 29, 2013 judgment on the constitutionality of a number of articles of the Audiovisual Communication Services Law (Law 26.522).¹⁰⁵ The Court ruled on the unconstitutionality action filed by *Grupo Clarín*, underscoring the importance of freedom of expression as the "cornerstone for the very existence of a democratic society" and held "that, unlike what occurs with freedom of expression in its individual dimension where—as stated earlier—the regulatory activity of the State is minimal, the collective aspect demands active protection on the part of the State, which is why its intervention here is intensified."¹⁰⁶

111. In its decision, the Court held that "In order to meet this objective it is necessary to guarantee equal access to the mass media for all groups and persons," so that "no individuals or groups are excluded *a priori* from access to those media." According to the Court, this requires "certain conditions with respect to the media so that, in practice, they are true instruments of that freedom rather than vehicles for its restriction. The media allow for the exercise of freedom of expression to materialize, so the conditions for their operation should be brought into line with the requirement of that freedom," it affirmed, citing the position established by the Inter-American Court in OC 5/85.

112. Examining the possible ways in which the State can ensure free and robust speech, the Court asserted that, "one way (...) would be to leave the operation of the media up to the market, and step in through the laws that defend competition"; whereas "another way (...) is by enacting rules that *a priori* equitably organize and allocate citizens' access to the mass media." The Supreme Court emphasized that this second method is in line with the standards promoted by the Inter-American System. It established that the regulatory policy "can rely on licenses of any type, whether or not they use the radio spectrum. This is because the basis for the regulation lies not in the limited nature of the spectrum as a public good, but rather, fundamentally, in guaranteeing the plurality and diversity of voices that the democratic system demands [...]."

113. As *orbite dictum* the Court established: a) that the purpose of the law to guarantee diversity and pluralism in the mass media "would lose all meaning without the existence of transparent public policies on government advertising"; b) the same would occur, "if the public media, instead of giving voice to and satisfying the information needs of all sectors of society, were to become forums at the service of government interests"; c) that the accomplishment of the law's objectives is tied to the existence of an independent enforcement body that adheres to the standards established in the Constitution and the international treaties incorporated therein, in order for it to be "protected against undue interference from both the government and other pressure groups."

¹⁰⁴ IACHR. [Annual Report 2014. Office of the Special Rapporteur for 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.

¹⁰⁵ Argentina. Ley de Servicios de Comunicación Audiovisual. Ley No. 26.522. October 10, 2009. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/155000-159999/158649/norma.htm>

¹⁰⁶ Corte Suprema de Justicia de la Nación Argentina. [Grupo Clarín AS y otros c/ Poder Ejecutivo Nacional y otros/ acción meramente declarativa](#). Judgment of October 29, 2013. The decision was adopted by a majority. The voting scheme can be consulted in the following systematization carried out by the Centro de Información Judicial of the court: <http://www.cij.gov.ar/nota-12394-La-Corte-Suprema-declarar-la-constitucionalidad-de-la-Ley-de-Medios.html>

114. For its part, in an unconstitutionality action challenging several articles of the Audiovisual Communication Services Law (LSCA), Law 19.307,¹⁰⁷ the Supreme Court [*Suprema Corte de Justicia*] of Uruguay, upheld the lawfulness of the regulatory policies designed to guarantee media pluralism and diversity. In its initial decision of April 5, 2016, ruling on a group of actions filed by different media companies, the Court agreed with its Argentine counterpart—which it cited—insofar as the collective dimension of freedom of expression requires “the active protection of the State.”¹⁰⁸ It held that “That protection is, undoubtedly, what Law 19.307 seeks, as is evident from its articles and from the reliable history of its enactment.”¹⁰⁹ It held that the provision in question “is a legislative tool whereby the legislature, in the exercise of its lawmaking authority, has sought to promote freedom of expression and communication in its collective dimension.”

115. The Court established that, “essentially,” the case presented a “conflict between the right to freedom of expression in its collective dimension and other fundamental rights: the right to freedom of expression in its individual dimension, the right to freedom of enterprise, and the right to property.” It held that the “basic source of regulation” of freedom of expression in Uruguay is article 29 of the Constitution and article 13 of the American Convention. It stated that, “Freedom of expression, in its diverse manifestations and in the terms regulated by article 13 of the Convention (...), is a fundamental human right, incorporated” into the national legal system through article 72 of the Constitution.

116. The Supreme Court established the parameters of scrutiny accordingly. Citing Advisory Opinion [*Opinión Consultiva*] 5/85 of the Inter-American Court, it stated that, “The interpretation of article 13 of the Convention must rest on two basic pillars: the first, called the “democratic standard”; and the second, called the “dual dimension standard.” It held that both pillars should have a bearing on the resolution of this specific case, and ruled out the notion that the constitutionality action should be at issue in the consideration of the merits, appropriateness, justice, or timeliness of the challenged articles.

117. The judgment found that the State’s establishment of limits on media concentration is a legitimate aim. Referring to article 51 on monopolies and oligopolies,¹¹⁰ the Court held that this provision “seeks to respect the general interest of every society in ensuring the true right of individuals to information, which necessarily involves plurality and diversity in the ownership and control of audiovisual communication services.”¹¹¹

¹⁰⁷ Uruguay. Ley de Servicios de Comunicación Audiovisual. Ley No. 19307. December 29, 2014. Available at: <http://www.impo.com.uy/bases/leyes/19307-2014>

¹⁰⁸Suprema Corte de Justicia de Uruguay. IUE 1-18/2015. [Directv de Uruguay Limitada c/ Poder Legislativo](#). Acción de inconstitucionalidad. Judgment No. 79 of April 5, 2016.

¹⁰⁹ In this ruling, the Court ruled on the unconstitutionality action brought by Directv Uruguay. This is the first decision in a set of 28 lawsuits that were filed before the highest judicial body seeking the Court's ruling on the constitutionality of several articles. The suit of unconstitutionality in this case challenged Articles 32, 33, 39 inc. 3, 40, 55, 56, 60, 66, 68, 97, 98, 115 a 117, 139, 142 and 176-186 of law N° 19.307. The ruling declared unconstitutional and inapplicable to the plaintiff articles 39 Para. 3, 55, 60 letter C Para. 1, 2 and 3, and 98 Para. 2 of law 19.307.

By October 2016, the Court had ruled in 10 of the 28 lawsuits filed. Based on these pronouncements, the president of the Supreme Court of Justice said that the structure of the law “in terms of user rights, the structure in terms of creating an independent body with multisectoral integration... has passed the test of constitutionality, as well as the vast majority of the law”. (Cfr: Comunicación Democrática. October 17, 2016. [Presidente de Suprema Corte de Uruguay afirma que sentencias sobre Ley de Medios sientan jurisprudencia: “una buena ley que supera el test de constitucionalidad”](#)).

¹¹⁰ Article 51 (Monopolies and oligopolies).- Monopolies or oligopolies in the ownership and control of audiovisual media services conspire against democracy by restricting the pluralism and diversity that ensures the full exercise of the right to information of people. It is the State’s duty to implement adequate measures to prevent or limit the existence and formation of monopolies and oligopolies in audiovisual communication services, as well as to establish mechanisms for their control. (Uruguay. Ley de Servicios de Comunicación Audiovisual. Ley No. 19.307. December 29, 2014. Article 51. Available at: Uruguay. Ley de Servicios de Comunicación Audiovisual. Ley No. 19307. December 29, 2014. Available at: <http://www.impo.com.uy/bases/leyes/19307-2014>)

¹¹¹ However, the Court declared by majority the unconstitutionality of one of the anti-concentration rules provided for in the law. The regulation considered unconstitutional is Article 55, on limitations on the number of subscribers of television services for subscribers, based on the following reasons: a) because “regardless of pursuing the important purpose of avoiding monopolistic or oligopolistic behavior, it ends up violating the right of ownership of the plaintiff” (position held by judges Jorge Larrieux and Jorge Chediak); (b) because it “harms legal security, affecting the acquired rights of the company” (judge Elena Martínez’s argument, shared also by the other

118. The Supreme Court determined that the imposition of minimum percentages of national production for the audiovisual media is constitutional, given that these types of provisions “do not impose content, such as the expression or dissemination of specific material; rather, they establish rules on the origin of the production that, given their vagueness, in principle, would have no effect on freedom of expression.” Nevertheless, the majority of the Court was of the opinion that “the obligation to put out certain types of content”—citing some of the law’s provisions on programming—such as the obligation to show “new releases of fictional television” or “new film releases” are unconstitutional, because “they do not adhere to the content of the right of freedom of expression (which includes freedom of communication).” On this point, a majority of the Court opined that the provision “entails a measure that indirectly violates freedom of expression.”¹¹²

119. The uruguayan Court upheld the constitutionality of a number of provisions of article 32 of the law which establish a programming schedule designed to protect the rights of children and adolescents, and a number of guidelines regarding the programming to be aired during those hours. The judgment held that that regulation was compatible with article 29 of the Constitution and article 13 of the American Convention, to the extent that it “pays special attention to the moral protection of children” and therefore, the challenged provision “finds its support in a reason of general interest.”

P. CASE LAW ON FREEDOM OF EXPRESSION AND THE INTERNET

• The Need to Adopt a Systemic Perspective on the Digital Environment for Determining the Limits to Freedom of Expression on the Internet and Applying the Proportionality Test

120. Based on the Inter-American doctrine on freedom of expression, the Office of the Special Rapporteur has underscored that, although freedom of expression enjoys the same protection whether it is exercised on the Internet or through other media, the conditions for the lawfulness of limitations on the right to freedom of expression on the Internet require addressing the special characteristics inherent to the web. For instance, when establishing the potential proportionality of a particular restriction, it is essential to assess the impact (or cost) of that restriction, not only from the point of view of the private citizens directly affected by the measure but also from the perspective of its impact on the operation of the Internet. A particular restrictive measure may seem mild if it is studied solely from the perspective of the person affected. However, the same measure can have a truly devastating impact on the overall operation of the Internet and, consequently, on the right to freedom of expression of all of its users as a whole. In this regard, the Office of the Special Rapporteur has stressed that it is crucial to evaluate each measure in a specialized fashion, from what could be called a systemic digital perspective.¹¹³

121. Some courts in the region have referred expressly to the need to adopt this criterion when resolving judicial claims related to freedom of expression on the Internet. In other cases, although the standard has not been cited expressly, it is understood that it has been incorporated into the reasoning of the courts when they evaluate the application of measures to harmonize the right to freedom of expression on the Internet with other rights, as discussed further below.

122. An illustrative example of this is in the opinion (*voto- vista*) delivered by Judge Nancy Andrichi of the Superior Court of Justice [*Superior Tribunal de Justiça*] (STJ) of Brazil, in the decision published on June 4, 2014.¹¹⁴ In that decision, the majority of the Second Section of the high court ruled to set aside a coercive

two judges mentioned, with whom the majority was formed); c) Because it “distorts the free play of the market”. In this judgment, the Court ruled on the constitutionality of Article 56 inasmuch as it provides for the prohibition of cross-ownership between television and telecommunications services. The first paragraph of the regulation states: “Natural or legal persons who provide audiovisual communication services regulated by this law may not, in turn, provide telephony or data transmission telecommunications services.” However, months later, with the same integration, the Court held in another ruling that such a provision is unconstitutional”.

¹¹² The sentence referred in this point to the second paragraph of letter C of Art. 60 of the law 19.307.

¹¹³ 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. 53.

¹¹⁴ Superior Tribunal de Justiça do Brasil (STJ). [Reclamação 5.072](#). Judgment of December 11, 2013, published on June 4, 2014.

measure ordered against an Internet search provider. The Judge maintained that guardianship of the virtual environment demands “increased care.” Consequently, “any type of restriction must be carefully considered” so that it does not affect “the perfect functioning” of the Web. She added that “in the case of Internet search service providers, the imposition of implicit or subjective obligations would entail, potentially, the restriction of the search results, which would be to the detriment of all user[s]”. The judge highlighted the importance of search services in a world in which the daily lives of millions of people depend on information that is on the Internet and would be difficult to find without the search tools offered by search sites.

- **Application of the Principle of Universal Access and Emerging Obligations of the States**

123. The Declaration of Principles on Freedom of Expression states that, “All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.” This principle applied to freedom of expression on the Internet—this Office of the Special Rapporteur has stated—must be interpreted to have the following consequences: steps should be taken to progressively promote universal access not only to infrastructure but also to the technology needed for its use and to the greatest amount possible of information available on the Internet; to eliminate arbitrary barriers to access to infrastructure, technology, and information online; and to take positive differentiation measures to allow for the effective enjoyment of this right for individuals or communities who face exclusion or discrimination.¹¹⁵

124. A similar perspective is reflected in Judgment 531 of January 17, 2014, handed down by the Constitutional Chamber of the Supreme Court [*Sala Constitucional de la Corte Suprema*] of Costa Rica, in which the Court admitted an *amparo* petition filed by a resident of the town of Santa Ana de Nicoya who complained that she lacked access to cellular telephone and Internet service.¹¹⁶ In this case, the Constitutional Court ordered the State to take a number of measures designed to guarantee the principle of universal access according to the provisions of the Telecommunications Act.¹¹⁷ Stating the reasons for the decision, Judge Rapporteur Fernando Castillo Víquez, who delivered the opinion, invoked the principle in the following terms:

First, it should be noted that the Superintendence of Telecommunications, through the National Telecommunications Fund—and not this Court—is responsible for promoting access to high-quality telecommunications services in a timely, efficient, affordable, and competitive manner to residents in the areas of the country where the cost of investing in the installation and maintenance of the infrastructure makes it so that the provision of these services is not financially profitable, ensuring the application of the principles of universality and solidarity in telecommunications services”.

125. The Constitutional Chamber of the Supreme Court of Costa Rica thus reaffirmed its jurisprudential position recognizing the right of access to the Internet as a fundamental right, and held that “the omission”¹¹⁸

¹¹⁵IACHR. [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. 15.

¹¹⁶ Sala Constitucional Corte Suprema de Justicia de Costa Rica. [Expediente No. 13-007483-0007-CO](#). Recurso de Amparo. Judgment 00531 of January 17, 2014.

¹¹⁷ The ruling ordered *Instituto Costarricense de Electricidad* to “carry out actions that are within the scope of its powers, so that within a period of six months from the notification of the judgment, it shall submit a project” under the *Fondo Nacional de Telecomunicaciones* (Fonatel), in order to assess the possibility of installing the necessary infrastructure to provide Internet and cellular services in the community of Santa Ana de Nicoya. Likewise, it ordered “the *Consejo de la Superintendencia de Telecomunicaciones* (SUTEL), to carry out the actions that are within the scope of its competencies so that these applications are valued, so that if deemed feasible, they are included within the projects financed by FONATEL”.

¹¹⁸ At this point in line with the support of the *Sala Constitucional* of the Supreme Court of Justice in judgment No. 2011017704 of December 23, 2011, the agency in charge of telecommunications should have sought to guarantee access to the Internet through the funds available by the legal framework to that effect.

of the State to take measures tending to guarantee Internet access in the area, regardless of financial feasibility or profitability, “violates the affected parties’ constitutional right to telecommunications.”

• **Content Blocking and Filtering: Its Restrictive Nature with Regard to Freedom of Expression and Exceptional Admissibility Under Strict Conditions in Relation to Unprotected Speech or Specific Content that is Openly Illegal**

126. According to the aforementioned Joint Declaration on Freedom of Expression and the Internet and the Inter-American legal framework, the Office of the Special Rapporteur has noted that “forcing the blocking or suspension of entire websites, platforms, channels, IP addresses, domain name extensions, ports, network protocols, or any other kind of application, as well as measures intended to eliminate links, information and websites from the servers on which they are stored, all constitute restrictions that are prohibited and exceptionally admissible only strictly pursuant to the terms of article 13 of the American Convention.”¹¹⁹

127. This issue was addressed by the Supreme Court Argentina [*Corte Suprema de Justicia de la Nación Argentina*] in the adjudication of the extraordinary appeals filed by the plaintiff and the respondent in the previously cited case of *Rodríguez v. Google, Inc.*¹²⁰ The judgment of October 28, 2014 introduced the analysis in relation to the admissibility of content blocking and filtering and its compatibility with the standards on freedom of expression in its consideration of one of the plaintiff’s allegations of lower court error, which challenged the decision of the court of appeals to set aside the Trial Court’s judgment. The Trial Court had ordered the permanent deletion of the links between the plaintiff’s name, image, and photographs and sites containing sexual, erotic, and/or pornographic content on Google.

128. In its conclusions of law, the judgment stated that, “This is a matter of determining whether, in cases in which freedom of expression is at stake, preventive protection is warranted for purposes of preventing the repeated dissemination of information harmful to an individual’s personal rights.” Invoking the pertinent application of article 13. 2 of the American Convention to decide this point, the high court reaffirmed that the exercise of the right to freedom of expression cannot be subject to prior censorship, but rather only to subsequent liability. Accordingly, the Supreme Court ruled that it was not possible to force the search engines to establish filters or blocks on links in advance, as that would be tantamount to a form of prior censorship that is unconstitutional and proscribed by article 13 of the American Convention on Human Rights, a principle that can yield only to “absolutely exceptional circumstances.” Accordingly, the plaintiff’s allegation of lower court error was dismissed on that point, as “he had not even argued that the case justified deviating from the principles that arise from the case law” of the Supreme Court on the issue.¹²¹

129. In Brazil, in an August 5, 2014 judgment delivered by Judge Ricardo Villas Bôas Cueva regarding claim [*Reclamação*]18.685,¹²² the Second Section [*Segunda Seção*] of the Superior Court of Justice [*Superior Tribunal de Justiça*] (STJ) held that Internet search service providers cannot be forced to delete specific results from their systems with respect to a specific word, image, or text, even when it shows the exact address of the page sought to be deleted. It also found that search services, “by their nature,” do not include the prior screening of content. The case came before the STJ on a request for the protection of constitutional rights [*Reclamação com pedido de liminar*] filed by Google Brazil, against the decision of the Fourth Rotation

¹¹⁹ 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. 84.

¹²⁰ Corte Suprema de Justicia de la Nación Argentina. [Rodríguez María Belén c/ google Inc. s/ Daños y Perjuicios](#). Judgment of October 28, 2014.

¹²¹ The President of the Supreme Court, Ricardo Luis Lorenzetti and Judge Juan Carlos Maqueda, expressed their partial dissent on this point. In support of their position, the magistrates stated that what was intended was the judicial protection of a very personal right that is compatible with freedom of expression. They contended that the claim is admissible “provided that, for an adequate balance of interests at stake, the links associated with its person and the damage that the linkage causes are precisely identified. Thus delimited, protection constitutes a type of further reparation and avoids any generalization that may affect the free circulation of ideas, messages or images and with it, the constitutional guarantee of freedom of expression.”

¹²² Superior Tribunal de Justiça do Brasil (STJ). [Reclamação No. 18.685](#). Judgment of August 5, 2014.

of the Court of Appeals of the Special Courts for the State of Espírito Santo [*Quarta Turma do Colégio Recursal dos Juizados Especiais do Estado do Espírito Santo*]. Google had been ordered to block the URL address—which linked the plaintiff’s name to a news article—from search results when the plaintiff’s name was used as a search criterion. The measure was requested by a judge, who, after having been acquitted in an administrative disciplinary case, filed the action seeking to have the news article associated with his name excluded from search results. The STJ held that the judgment against Google was “inconsistent” with its established case law.

- **The Responsibility of Internet Intermediaries**

130. Intermediaries have been defined as those actors—generally from the private sector—that “give access to, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties.”¹²³ This Office of the Special Rapporteur has noted that the circulation of information and ideas on the Internet would not be possible without these entities, which play an essential role in the exercise of the right to search for and receive information online, fostering the social dimension of freedom of expression in the terms of the Inter-American Court.¹²⁴ It is precisely this important role of intermediaries in the architecture of the Internet that explains the attention that the Inter-American and universal doctrine, as well as different Courts of the region, have paid to defining the scope of their responsibility in relation to alleged tensions or conflicts among rights arising from online activities.

131. The national chapters of the most recent annual reports prepared by this Office of the Special Rapporteur discuss the incremental presence of this issue on the freedom of expression agenda, which is constantly subject to new challenges arising from the impact of the Internet.

132. The Superior Court of Justice of Brazil [*Superior Tribunal de Justiça*] (STJ) handed down a decision on June 4, 2014,¹²⁵ in which the majority granted a motion filed by Google to set aside the imposition of a fine (*astreintes*) against the company. It had been assessed to compel compliance with an injunction ordering Google to exclude from Google Search results the hyperlink for a page of an online magazine that linked a judge—the claimant who requested the measure—to investigations into alleged acts of pedophilia, as well as to suspend in its search results the association between the judge’s name and reports of his alleged involvement in criminal acts. The STJ found that the injunction was impossible to enforce due to technical infeasibility, and it ruled to set aside the imposition of the fine.

133. The majority opinion analyzed the scope of responsibility of the Internet search providers, holding that they: “(i) are not responsible for the content of the results of searches performed by their users; (ii) cannot be required to exercise prior control over the content of the results of searches performed by each user; (iii) cannot be required to eliminate from their systems the results obtained from the search for a specific term or phrase, or of the results that point to [*apontem para*] a specific photo or text whether or not they specify the hyperlink of the page that contains it”.

134. The Court’s legal reasoning stated that search services cannot be held liable for the content of search results, even when those results may be illegal. In those cases, explained Judge Nancy Andighi, it is incumbent upon the victim to take measures to suppress them, “with which they will be automatically excluded from the search results on the search sites.” the high court thus held that “It is not possible, under the pretext of hindering the propagation of unlawful or offensive content on the Web, to repress the collective right to information.”

¹²³ Definition given by the Organization for Economic Cooperation and Development (OECD). Organization for Economic Cooperation and Development (OECD). April 2010. [The Economic and Social Role of Internet Intermediaries](#). Page 9, cited in: 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. Quote 129.

¹²⁴ 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. 92.

¹²⁵ Superior Tribunal de Justiça do Brasil (STJ). [Reclamação 5.072](#). Judgment of December 11, 2013, published on June 4, 2014.

135. For its part, the Supreme Court of Argentina [*Corte Suprema de Justicia de la Nación de Argentina*], in the previously cited case of *Rodríguez v. Google, Inc.*, concluded that “It is not appropriate to judge the potential responsibility of ‘search engines’ according to the rules of strict liability;” rather, they must be judged “in the light of subjective liability.”¹²⁶ The judgment stated that according to comparative law search engines “do not have a general obligation to ‘monitor’ (supervise, surveil) the content that is uploaded to the Internet and provided by those responsible for each web page.” Thus, the Court explained, “in principle, they are not responsible for content they have not created. If an unlawful activity—that, hypothetically, should be condemned—is conducted at the edge of a path, it is not reason to punish the party responsible for the route that allows access to the place, on the argument that the path made it easier to get there”.

136. Nevertheless, the high court specified that there are situations in which the search engine “can become responsible for the content of another.” This can occur “when it has *effectively become aware* of the unlawfulness” of content, “if that knowledge is not followed by diligent action.” In cases in which harmful content requires a “clarification that must be debated or addressed in a court or administrative forum for its effective decision, it should be understood that the ‘search engine’ cannot be required to take the place of the competent authority, much less of the judges. Therefore, in those cases, it is appropriate to require that notice be given to the competent judicial or administrative authority. The simple communication of the private party that considers itself harmed, let alone that of any interested party, is insufficient,” held the high court. The Court was of the opinion that the same reasoning applied to search engines should be taken into account with respect to thumbnails, given that their function is merely to provide a link to the original image uploaded to an Internet page. The Court explained that “the original image and the original text—uploaded to the web page—are the exclusive responsibility of their owner, the sole creator of the content.” As such, the judgment concluded that it is not appropriate to apply different rules to the image search engine and the text search engine.

137. The Constitutional Court of Colombia also ruled against the possibility of holding intermediaries liable for the content they make available. In Judgment T-277 of May 12, 2015, the First Review Chamber [*Sala Primera de Revisión*] held that “Assessing liability against Internet intermediaries for the content transmitted would significantly limit the dissemination of ideas through this medium, as it would give it the power to regulate the flow of information online. As for those who create the information, the Office of the Special Rapporteur for Freedom of Expression has indicated that subsequent liability may only be imposed against the authors of internet content—that is, those directly responsible for the offensive expression.”¹²⁷

- **Online Privacy, Surveillance, and Freedom of Expression**

138. The Office of the Special Rapporteur for Freedom of expression has maintained that respect for freedom of expression online assumes the privacy of communications. It has also stated that the protection of the right to privacy involves at least two specific policies linked to the exercise of the right to freedom of expression: the protection of anonymous speech and the protection of personal data.¹²⁸

¹²⁶ Corte Suprema de Justicia de la Nación Argentina. [Rodríguez María Belén c/google Inc. s/ Daños y Perjuicios](#). Judgment of October 28, 2014. This case had its origin in the lawsuit for damages brought by María Belén Rodríguez against Google Inc. and Yahoo of Argentina SRL, in which the commercial and unauthorized use of the plaintiff’s image was claimed. She argued that very personal rights had been violated by having linked her to certain erotic and / or pornographic websites. In the first instance, the defendants were convicted. Instead, *Sala A* of the *Cámara Nacional de Apelaciones en lo Civil* partially overturned the ruling: it rejected the lawsuit against Yahoo and admitted it against Google, but it reduced the compensation to one half and annulled the first ruling since it decided for “the definitive elimination of the links of the name, image and photographs of the plaintiff with sites and activities of sexual, erotic and / or pornographic content.”

¹²⁷ Corte Constitucional de Colombia. Sala Primera de Revisión. [Judgment T-277/15](#) of May 12, 2015.

¹²⁸ 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. 130 and 133.

139. On June 13, 2014, the Supreme Court of Canada handed down a judgment in the case of *R. v. Spencer*,¹²⁹ holding that law enforcement agencies must have a warrant to request information from Internet service providers about their subscribers, given that they have the ability to reveal online activity.

140. The Court emphasized that “Particularly important in the context of Internet usage is the understanding of privacy as anonymity.” It further stated that, “The identity of a person linked to their use of the Internet must be recognized as giving rise to a privacy interest beyond that inherent in the person’s name, address and telephone number.” This is because subscriber information, by tending to link particular kinds of information to identifiable individuals, may implicate privacy interests relating to an individual’s identity “as the source, possessor or user of that information.” In this same regard, it noted that the IP address, once identified with a particular individual, is capable of revealing the individual’s online activity.

¹²⁹ Supreme Court of Canada. *R. v. Spencer*. June 13, 2014. Available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14233/index.do>

CHAPTER VI CONCLUSIONS AND RECOMMENDATIONS

1. As on previous occasions, the Office of the Special Rapporteur closes its annual report with a chapter of conclusions and recommendations. The objective of this practice is to begin a fluid dialogue with Member States that will enable the Americas to emerge as an example in the area of respect, protection, and promotion of the right to freedom of expression.

A. Violence Against Journalists and Media Outlets

2. According to the information received by the Office of the Special Rapporteur, 33 journalists or media workers were killed during 2016 in the region, while several others disappeared or were dislocated from the areas in which they worked, for reasons that could have been related with their exercise of freedom of expression. In addition to these tragic events, there were dozens of complaints of violence, attacks, threats, and intimidation against communicators and media outlets, presumably in connection with their exercise of freedom of expression.

3. The Office of the Special Rapporteur observes with concern the manner in which journalists must increasingly stop investigating and disseminating information of great public interest for their local communities in order to avoid reprisals against their lives or physical integrity or that of their families. Over the last decade, diverse zones and communities in the hemisphere have become totally silenced due to the paralyzing effect generated by the climate of violence and impunity. In these places, journalists and many media outlets choose to abandon coverage of diverse topics or adapt their information lines to subjects that do not come into conflict with de facto local powers, which creates zones of silence. This situation gives rise to restrictions on information, with the end result that the societies in those localities are not sufficiently informed.

4. It is important to highlight that during 2016 there was also important progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. This shows that it is possible to investigate as a priority the line linked to the professional work of these victims and punish those responsible. However, despite these efforts, the majority of these crimes remain in a troubling state of impunity.

5. On this point, the Office of the Special Rapporteur recommends that member States:

a. Adopt adequate preventive mechanisms in order to avert violence against media workers, including the public condemnation of all acts of aggression, omitting any statement that may increase the risk for journalists; the respect for journalists' right to keep their sources of information; the training of public officials, particularly police and security forces, and, if necessary, the adoption of operation manuals or guidelines on the respect for the right of freedom of expression, determining appropriate sanctions proportionate to the damage done; as well as the development of accurate statistics on violence against journalists.

b. Adopt the measures necessary to guarantee the security of those who are at special risk by virtue of exercising their right to freedom of expression, whether the threats come from state agents or private individuals. Measures or protection programs must be suitable and sufficient for its purpose, in accordance with the views expressed in this report.

c. Carry out serious, impartial, and effective investigations into the murders, attacks, threats, and acts of intimidation committed against journalists and media workers, in accordance with this report. This entails the creation of specialized units and special investigative protocols, as well as the identification and exhaustion of all possible case theories related to the professional work of the victim.

d. Bring to trial, before impartial and independent tribunals, all those responsible for the murders, attacks, threats, and acts of intimidation based on the exercise of freedom of expression, remove legal

obstacles to the investigation and punishment of these crimes, and provide the victims and their family members ample participation during the investigation and prosecution, as well as adequate compensation, and eliminate gender barriers that obstruct access to justice.

e. Adopt the necessary measures so that media workers in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the States must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

f. Adopt specific, adequate and effective measures to prevent attacks and other forms of violence perpetrated against women journalists, and prosecute and punish those responsible. States must adopt effective measures to encourage reporting of cases of violence against women journalists and combat the impunity that characterizes those crimes.

B. Social Protests

6. The Office of the Special Rapporteur also views with concern the manner in which certain state authorities reacted to social protests in the Americas in 2016. In particular, information was received about dozens of detentions, threats and aggressions committed against journalists, communicators, protesters and users of social networks who reported on demonstrations.

7. In a similar vein, the Office of the Special Rapporteur notes that it is necessary for States to design regulatory frameworks to protect and facilitate the exercise of social protest. States must not fail to take into account that, when faced with institutional frameworks that do not favor participation, or with serious barriers to the access of more traditional mass communication forms, public protest may become the only medium that actually allows disgruntled sectors of the population - but not aligned with political parties - and groups discriminated against or marginalized from public debate to voice their views and influence public debate.

8. On this point, the Office of the Special Rapporteur recommends that member States:

a. Guarantee the legitimate exercise of social protest and prevent the application of disproportionate restrictions that can be used to inhibit or suppress critical or dissident expressions. In order to be consistent with international obligations on human rights, any national regulation affecting the right to social protest must meet requirements of legality, necessity and proportionality.

b. Initiate the necessary legislative reforms to eliminate from the legal system requirements for the previous authorization or permission to carry out demonstrations and protests in public spaces, and expressly establish the general presumption in favor of the exercise of this right.

c. Ensure protection of individuals and refrain from stigmatizing or stereotyping protesters and their demands, avoiding generalizations based on the behavior of particular groups or isolated events. If security forces must act in a demonstration, they shall use the safest and least harmful measures to individual rights. The response of security forces should aim to protect and facilitate rights, not to repress them. The general principles on the use of force, applied to the context of protests and demonstrations, require that security operations be carefully and thoroughly planned by persons with specific experience and training for this type of situation.

d. In the context of positive obligations to guarantee the right and protect the person exercising it as well as third parties, States should establish specific rules and action protocols for security forces acting in situations of social protest and public demonstrations. These guidelines should aim for police agents to act in the knowledge that their obligation is to protect the participants in a public meeting, demonstration or concentration, to the extent that it is the exercise of a human right.

e. Guarantee that firearms are excluded from the devices used to control social protests. The ban on carrying firearms and lead ammunition by officials who may come into contact with protesters has

been proven as the best measure of preventing lethal violence and deaths occurring in a context of social protests. Operations may provide for the availability of firearms and lead ammunition somewhere outside the range of the demonstration for those exceptional cases in which a violent situation warranting such use occurs. In this extreme scenario, there shall be explicit rules regarding who has the power to authorize their use and the ways in which this authorization is to be properly documented.

f. Adopt special measures to protect journalists who are reporting on situations of armed conflict and social unrest, and guarantee that they are not detained, threatened, attacked or have their rights limited in any way for the exercise of their profession; that their work materials and tools are not destroyed nor confiscated by the authorities, according to what was laid out in this report; and create special protocols to protect the press in circumstances of social unrest.

C. Criminalization of Expression and Proportionality of Subsequent Liability

9. Some Member States witnessed criminal complaints filed by State officials in response to the publication of opinions or information related to matters in the public interest. It is true that in some of the cases studied, the criminal proceedings were dismissed. In others, however, judges issued criminal convictions against the journalists. The Office of the Special Rapporteur verifies that there are still criminal codes that have yet to be adjusted to inter-American standards on the subject of freedom of expression because they criminalize speech related to public officials and public interest matters, and other criminal provisions that allow for the imposition of disproportionate measures that can have the kind of chilling effect that is incompatible with a democratic society. Similarly, the Office of the Special Rapporteur received information on the need to adjust civil laws to prevent the disproportionate use of pecuniary sanctions.

10. In regard to statutes that criminally or civilly sanction expression, the Office of the Special Rapporteur recommends that Member States:

a. Promote the repeal of contempt (*desacato*) laws, whatever their form, given that these norms are contrary to the American Convention and restrict public debate, an essential element of the practice of democracy.

b. Promote the modification of laws on criminal defamation with the objective of eliminating the use of criminal proceedings to protect honor and reputation when information is disseminated about issues of public interest, about public officials, or about candidates for public office. Protecting the privacy or the honor and reputation of public officials or persons who have voluntarily become involved in issues of public interest, should be guaranteed only through civil law.

c. Promote the inclusion of inter-American standards in civil legislation so that civil proceedings against individuals who have made statements about public officials or about matters of public interest apply the standard of actual malice, in accordance with principle 10 of the Declaration of Principles, and are proportionate and reasonable.

d. Promote the modification of ambiguous or imprecise criminal laws that 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

11. In 2016, the Office of the Special Rapporteur continued to receive information on statements made by high-ranking State officials discrediting and stigmatized the journalistic work of some communicators, media outlets and non-governmental organizations. It is particularly concerning that in some of these cases, the statements were followed by violence or the opening of disciplinary procedures that threatened the permanent withdrawal of operating concessions, permits, or licenses of critical media outlets. The Office of the Special Rapporteur exhorts State authorities to contribute decisively to building an environment of

tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for them.

12. Regarding statements of high-level State officials, the Office of the Special Rapporteur recommends that member States:

a. Encourage democratic debate through public declarations, practices, and policies that promote tolerance and respect of all individuals, under equal conditions, whatever their thoughts or ideas.

b. Exhort the authorities to refrain from making public statements or using state media outlets to carry out public campaigns that can encourage violence against individuals because of their opinions. In particular, avoid statements that could stigmatize journalists, media outlets, and human rights defenders.

E. Prior Censorship

13. The Office of the Special Rapporteur received information about judicial decisions and government measures that prohibited the exercise of journalism, the operation of media outlets or the circulation of information of public interest this year. Member States must take into account that article 13.2 of the American Convention explicitly establishes that the exercise of the right to freedom of expression shall not be subject to prior censorship.

14. On this point, the Office of the Special Rapporteur recommends that member States:

a. Eliminate any norm that enables prior censorship by any state organ, and also any prior condition that may imply censorship of freedom of expression, such as prior requirements of truthfulness, timeliness, or impartiality of information.

F. Indirect Censorship

15. The Office of the Special Rapporteur received complaints pertaining to distribution of government advertising that was intended to punish or reward media outlets according to their editorial positions. It is necessary for member States to have statutory frameworks that establish clear, transparent, objective, and non-discriminatory criteria for determining the distribution of official advertising. The Office of the Special Rapporteur received complaints about the use of other mechanisms of state power, such as tax and administrative control, in order to pressure and punish or reward and provide privileges to journalists and media outlets depending on their editorial position.

16. On this point, the Office of the Special Rapporteur recommends that member States:

a. Abstain from using public power to punish or reward media and journalists in relation to their editorial stance or coverage of certain information, whether through the discriminatory and arbitrary assignment of government advertising or other indirect means aimed at impeding communication and the circulation of ideas and opinions.

b. Regulate these matters in accordance with the current inter-American standards on freedom of expression.

c. Adopt legislation to regulate the State's authority to control and supervise the allocation of public goods or resources related directly or indirectly with the exercise of freedom of expression. On this point, the task is to adjust institutional frameworks with two central objectives: first, to eliminate the possibility that State authority is used to reward or punish media outlets according to their editorial positions, and second, to foster pluralism and diversity in the public debate.

G. Internet

17. The Office of the Special Rapporteur observes that various States in the region have promoted attempts to regulate some aspect of Internet use and access or have adopted decisions in this regard, in response to the need to prevent crime and protect the fundamental rights of third parties. It must be pointed out that many of these initiatives fail to take into account the special characteristics of this technology and, as a result, unduly restrict freedom of expression. In evaluating the proportionality of a restriction on freedom of expression on the Internet, the impact that said restriction could have on the capacity of the Internet to guarantee and promote freedom of expression must be weighed against the benefits that the restriction would provide for the protection of other interests.

18. Furthermore, the Office of the Special Rapporteur highlights the promotion of regulation in certain countries of the hemisphere to ensure there is no discrimination, restriction, interference or blocking in the transmission of Internet traffic, in accordance with the principle of net neutrality.

19. In this sense, the Office of the Special Rapporteur recommends that the Member States:

a. Abstain from applying regulatory approaches to the Internet that have been developed for other communications media – such as telephony or radio and television – and design an alternative regulatory framework specifically for this medium, addressing its particularities, pursuant to currently-in-effect international standards in the field of freedom of expression.

b. Encourage self-regulation as an effective tool to deal with defamatory expressions that could be disseminated on the Internet.

c. Protect the actors who participate as Internet intermediaries and provide technical services from any responsibility for contents generated by third parties and which are disseminated through these services, pursuant to international standards on the matter.

d. Promote universal Internet access to guarantee universal and effective enjoyment of the right to freedom of expression through this medium.

e. Ensure that the processing of data and Internet traffic is not subject to any discrimination based on factors such as devices, content, author, source and / or destination of the material, service or application, in accordance with the principle of net neutrality.

H. Surveillance Programs and Confidential Sources

20. The Office of the Special Rapporteur has expressed concern over the existence of security programs and practices that can generate serious damage to the universal rights to privacy and freedom of thought and expression. As a result, the Office of the Special Rapporteur has urged the corresponding authorities to review relevant legislation and modify their practices, with the aim of ensuring their adjustment to international principles in the field of human rights.

21. In the terms of the Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression, the Office of the Special Rapporteur recommends that the Member States:

a. Review their legislation to establish limits on the power to oversee private communications, their necessity and proportionality, pursuant to the public's universal rights and the principles of international law that have been taken up in this report.

b. Ensure that the public can have access to information on programs for surveillance of private communications, their scope and the existing controls to guarantee that they cannot be used arbitrarily. In any case, States must establish independent control mechanisms to ensure the transparency and accountability of these programs.

c. Abstain from punishing journalists, members of the media or members of civil society who have access to and disseminate reserved information about this type of surveillance programs, considering it to be of public interest. Confidential sources and materials associated with dissemination of reserved information must be protected by law.

d. Establish regulations to guarantee that individuals who expose wrongdoing, serious maladministration, a breach of human rights, humanitarian law violations or other threats to the overall public interest, for example in terms of safety or the environment, should be protected against legal, administrative or employment related sanction, even if they have otherwise acted in breach of a binding rule or contract, as long as at the time of the disclosure they had reasonable grounds to believe that the information disclosed was substantially true and exposed wrongdoing or the other threats noted above.

I. Access to Public Information

22. During this period, the Office of the Special Rapporteur once more noted the incorporation of the inter-American system's standards on access to information into the domestic legal regimes of several States, either through the approval of special access to information laws or through decisions by their domestic courts. With the approval of the Law on Access to Public Information in Argentina, 23 countries in the hemisphere have adopted legal norms to guarantee and enforce the exercise of this right. However, it was noted that in several Member States there continue to be difficulties in regulating the exceptions to the exercise of this right and in the implementation of some laws.

23. With regard to access to information, the Office of the Special Rapporteur recommends that Member States:

a. Continue promulgating laws that permit effective access to information and complementary norms that guarantee its adequate implementation, in conformity with the international standards in this area.

b. Guarantee effectively, both *de jure* and *de facto*, the right of *habeas data* of all persons, this being an essential element of freedom of expression and the democratic system.

c. Encourage the effective and efficient implementation of norms on access to information, adequately training public employees and informing the citizenry in order to eradicate the culture of secrecy and provide citizens the tools to effectively monitor state activities, public administration and the prevention of corruption, all essential to the democratic process.

d. Strengthen the institutional structure for supervision of the implementation of laws regarding access to public information, pursuant to the highest standards in this field, such as those adopted by the General Assembly of the OAS, in its Resolution AG/RES. 2607 (XL-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 the civil society organizations in the use of the mechanisms available to make requests of information to the state.

J. Diversity and Pluralism in the Allocation of Radio Frequencies

24. The Special Rapporteur received complaints about the lack of recognition of the community and indigenous broadcasting sector in some countries in the region. It also received information about the absence of regulatory mechanisms to ensure access to frequencies to this type of media as well as the existence of obstacles to their proper functioning. The Office of the Special Rapporteur also noted that concentration of public and private media is still a problem in some countries in the region.

25. During this period, the Office of the Special Rapporteur continued to emphasize the need for Member States to have a competent authority in charge of radio broadcasting that is technical, independent of the government, autonomous in the face of political pressure, and subject to due process guarantees and strict judicial review.

26. In this regard, this year the Office of the Special Rapporteur noted with satisfaction the adoption of broadcasting regulatory frameworks which represented progress in some countries in the region in relation to the pre-existing situation, but also identified provisions that could be incompatible with the exercise the right to freedom of expression. In this regard, this 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. Ensure the existence of transparent, public, and equitable criteria for the allocation of radio frequencies and the new digital dividend. These criteria must take into account the concentration of ownership or control of communications media, and assign the administration of the radio electric spectrum to an organ independent from political and economic interests, subject to due process and judicial oversight.

b. Promote effective policies and practices that permit access to information and the equal participation of all sectors of society so that their needs, opinions, and interests will be contemplated in the design and adoption of public policy decisions. Additionally, adopt legislative and other measures that are necessary to guarantee pluralism, including laws that prevent the existence of public or private monopolies.

c. Legislate in the area of community radio broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The allocation of these frequencies must take into account democratic criteria that guarantee equal opportunities to all individuals in the access and operation of these media in conditions of equality, without disproportionate or unreasonable restrictions, and in conformity with Principle 12 of the Declaration of Principles and the “Joint Declaration on Diversity in Broadcasting.”

d. Ensure that respect for freedom of expression, including media diversity according to editorial position or type of property, is ensured in the digital terrestrial transition process. To that aim, States should ensure that decision-making processes relating to the digital terrestrial transition take place in a transparent and fully consultative manner, allowing for all stakeholders and interests to be heard.

APPENDIX
Joint Declaration on Freedom of Expression and Countering Violent Extremism

May 4, 2016

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 and the Centre for Law and Democracy (CLD);

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, 6 May 2014 and 4 May 2015;

Taking note of the global attention paid to programmes and initiatives under the umbrella of "countering and preventing violent extremism" (CVE/PVE), including by the United Nations and National Governments;

Acknowledging the importance of frameworks for countering violence and incitement to violence and encouraging participation in political life based on respect for principles of human rights, purposes shared by many CVE/PVE programmes;

Highlighting that CVE/PVE programmes and initiatives that restrict freedom of expression must be based on evidence of their effectiveness and a legal framework to support their necessity and proportionality to achieve legitimate objectives;

Deploring the violence and terrorism that CVE/PVE initiatives aim to address and the impact of such acts on the enjoyment of human rights, including the rights to life and freedom of expression, highlighted dramatically by recent attacks on journalists, bloggers and media outlets;

Reaffirming the critical role that freedom of expression can play in promoting equality and in combating intolerance, and the essential role that the media and the Internet and other digital technologies play in keeping society informed, and stressing that limiting the space for freedom of expression and restricting civic space advances the goals of those promoting, threatening and using terrorism and violence;

Stressing in particular the need to promote media diversity and to ensure that members of all groups in society have access to a range of means of communication so as to be able to express themselves and engage in public debate;

Expressing concerns that some CVE/PVE initiatives negatively impact human rights and specifically the right to freedom of expression, even if inadvertently, including by "balancing" freedom of expression and the prevention of violence rather than assessing restrictions on expression based on legality, necessity and legitimacy of objective, and that in some cases CVE/PVE programmes and initiatives have not been adopted in a transparent manner and with the effective participation of impacted communities;

Mindful that in some cases CVE/PVE initiatives which aim to target incitement to violence or 'hate speech' online risk undermining the potential of digital technologies to foster freedom of expression and access to information and to provide avenues for counter-speech;

Noting that CVE/PVE programmes and initiatives generally offer insufficiently clear definitions of "extremism" or "radicalisation" and that some governments target journalists, bloggers, political dissidents, activists and/or human rights defenders as "extremists" or "terrorists";

Alarmed at the proliferation in national legal systems of broad and unclear offences that criminalise expression by reference to CVE/PVE, including offences "against social cohesion", "justification of extremism", "agitation of social enmity", "propaganda of religious superiority", "accusations of extremism against public officials", "provision of information services to extremists", "hooliganism", "material support for terrorism", "glorification of terrorism" and "apology for terrorism";

Highlighting that CVE/PVE initiatives are used increasingly to justify profiling, surveillance and other activities that treat certain communities as de facto suspects, promoting a climate of intolerance and alienating members of these communities by scapegoating, thereby deterring robust debate and information-sharing;

Emphasising that CVE/PVE initiatives have in some cases impacted negatively on academic freedom and open debate in schools and universities, undermining the freedom of expression rights of children and young people;

Concerned about pressure on private companies, and especially social media networks, to "cooperate" in reporting on those whom they suspect of radicalization and the fact that CVE/PVE is increasingly being used by companies to justify measures restricting content, sometimes without being transparent or consistent about the rules and the kinds of expression that are being limited;

Aware that in some cases politicians and other leadership figures in society have, under the umbrella of CVE/PVE, made statements which can have the effect of encouraging or promoting discrimination against minorities;

Recalling statements in our previous Joint Declarations which have addressed some of the issues raised here;

Adopt, in Helsinki, on 4 May 2016, the following Joint Declaration on Freedom of Expression and Countering Violent Extremism:

1. General Principles:

- a. Everyone has the right to seek, receive and impart information and ideas of all kinds, especially on matters of public concern, including issues relating to violence and terrorism, as well as to comment on and criticise the manner in which States and politicians respond to these phenomena.
- b. States have an obligation to ensure that the media are able to keep society informed, particularly in times of heightened social or political tensions, including by creating an environment in which a free, independent and diverse media can flourish.
- c. Any restrictions on freedom of expression should comply with the standards for such restrictions recognised under international human rights law. In compliance with those standards, States must set out clearly in validly enacted law any restrictions on expression and demonstrate that such restrictions are necessary and proportionate to protect a legitimate interest.
- d. Restrictions on freedom of expression must also respect the prohibition of discrimination, both on their face and in their application.
- e. Restrictions on freedom of expression must be subject to independent judicial oversight.
- f. A key part of any strategy to combat terrorism and violence should be to support independent media and communications diversity.

2. Specific Recommendations:

- a. Public authorities should respect robust standards of transparency and engagement with all interested stakeholders, in particular affected communities, if they are proposing to adopt CVE/PVE initiatives.
- b. All CVE/PVE programmes and initiatives should respect human rights and the rule of law, and contain specific safeguards against abuse in this regard. They should be independently reviewed on a regular basis to determine their impact on human rights, including the right to freedom of expression, and these reviews should be made public.
- c. The concepts of "violent extremism" and "extremism" should not be used as the basis for restricting freedom of expression unless they are defined clearly and appropriately narrowly. Any restrictions drawing upon a CVE/PVE framework should be demonstrably necessary and proportionate to protect, in particular, the rights of others, national security or public order. The same applies whenever the concept is invoked to limit the activities of civil society, including in relation to their establishment or funding, or to impose restrictions on fundamental rights, including the right to protest.
- d. States should not restrict reporting on acts, threats or promotion of terrorism and other violent activities unless the reporting itself is intended to incite imminent violence, it is likely to incite such violence and there is a direct and immediate connection between the reporting and the likelihood or occurrence of such violence. States should also, in this context, respect the right of journalists not to reveal the identity of their confidential sources of information and to operate as independent observers rather than witnesses. Criticism of political, ideological or religious associations, or of ethnic or religious traditions and practices, should not be restricted unless it involves advocacy of hatred that constitutes incitement to hostility, violence and/or discrimination. States should review their laws and policies to ensure that any restrictions on freedom of expression which are claimed to be justified by reference to CVE/PVE robustly meet these standards.
- e. States should not subject Internet intermediaries to mandatory orders to remove or otherwise restrict content except where the content is lawfully restricted in accordance with the standards outlined above. States should refrain from pressuring, punishing or rewarding intermediaries with the aim of restricting lawful content.
- f. States and public officials should encourage open debate and access to information about all topics, including where they touch upon issues such as ethnicity, religion, nationality or migration, in schools and universities, and in academic, scholarly or historical texts. Academic institutions should respect pluralism, promote intercultural understanding, and support the ability of members of all communities, and particularly marginalised groups, to voice their perspectives and concerns.
- g. States should never base surveillance on ethnic or religious profiling or target whole communities, as opposed to specific individuals, and they should put in place appropriate legal, procedural and oversight systems to prevent abuse of surveillance powers.
- h. Politicians and other leadership figures in society should refrain from making statements which encourage or promote racism or intolerance against individuals on the basis of protected characteristics, including race, nationality or ethnicity.
- i. Private enterprise initiatives, including those online, that limit expression in support of CVE/PVE goals should be robustly transparent so that individuals can reasonably foresee whether content they generate or transmit is likely to be edited, removed or otherwise affected, or user data is likely to be collected, retained or passed to law enforcement authorities.
- j. States should not adopt, or should revise, laws and policies which involve the following:

i. Blanket prohibitions on encryption and anonymity, which are inherently unnecessary and disproportionate, and hence not legitimate as restrictions on freedom of expression, including as part of States' responses to terrorism and other forms of violence.

ii. Measures that weaken available digital security tools, such as backdoors and key escrows, since these disproportionately restrict freedom of expression and privacy and render communications networks more vulnerable to attack.