

# Violence against journalists and media workers:

Inter-American standards and national  
practices on prevention, protection and  
prosecution of perpetrators

Office of the Special Rapporteur for Freedom of Expression  
Inter-American Commission on Human Rights



Organization of  
American States



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American States

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Commission on  
Human Rights

**IACHR**

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# **VIOLENCE AGAINST JOURNALISTS AND MEDIA WORKERS: INTER-AMERICAN STANDARDS AND NATIONAL PRACTICES ON PREVENTION, PROTECTION AND PROSECUTION OF PERPETRATORS**

Office of the Special Rapporteur for Freedom of Expression  
Inter-American Commission on Human Rights

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**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF  
EXPRESSION OF THE INTER-AMERICAN COMMISSION ON HUMAN  
RIGHTS**

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ACHPR: and Peoples' Rights	African Commission on Human
American Convention: Rights	American Convention on Human
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: Human Rights	Inter-American Commission on
ICCPR: and Political Rights	International Covenant on Civil
ILO:	International Labor Organization
Inter-American Court: Rights	Inter-American Court of Human
OAS:	Organization of American States
OSCE: Cooperation in Europe	Organization for Security and
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





## VIOLENCE AGAINST JOURNALISTS AND MEDIA WORKERS: INTER-AMERICAN STANDARDS AND NATIONAL PRACTICES ON PREVENTION, PROTECTION AND PROSECUTION OF PERPETRATORS

### I. Introduction

1. The murder of journalists and members of the media is the most extreme form of censorship<sup>1</sup>. As the Inter-American Court of Human Rights (“Inter-American Court” or “Court”) has observed, “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.”<sup>2</sup> Such actions infringe, in a particularly radical way, not only the affected person’s individual freedom of thought and expression, but also the collective dimension of this right. Acts of violence against journalists (term that should be understood broadly, from a functional perspective<sup>3</sup>) or media workers for reasons connected to their professional

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<sup>1</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Presentation; IACHR. Report No. 37/10. March 17, 2010. Case 12,308. Manoel Leal de Oliveira (Brazil). Para. 97; 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. 21. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>2</sup> 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.

<sup>3</sup> The term “journalists” in this report should 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” when they momentarily play this role. Such definition also includes 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. See, 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. 4. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United Nations. Human Rights Committee. [General Comment No. 34](#). CCPR/C/GC/34. September 12, 2011. Para. 44; 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. 26. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO).

activity<sup>4</sup> violate both the individual's right to express and impart ideas, opinions and information, as well as the rights of citizens and societies as a whole to seek and receive information and ideas of any nature.<sup>5</sup>

2. Regarding this, as the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stated, an attack on a journalist is "an attack against the principles of transparency and accountability, as well as the right to hold opinions and to participate in public debates, which are essential for democracy".<sup>6</sup> When these crimes are committed with impunity, it encourages the commission of similar violent acts and can result in communicators being silenced or self censoring.<sup>7</sup> As will be shown later on, 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. As the Inter-American Court has found on a number of occasions, freedom of expression is the cornerstone of the very existence of a democratic society; consequently, it can be said that a society that is not well informed is not a society that is truly free.<sup>8</sup>

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International Programme for the Development of Communication. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#). Point 1(5).

<sup>4</sup> The term "violence against journalists" in this report should be understood to refer to acts of violence related to, or at least possibly related to, the victim's exercise of their right to freedom of expression.

<sup>5</sup> 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. 142-149; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 67.

<sup>6</sup> 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. 54. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>7</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 129.

<sup>8</sup> I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 70.

3. Since its creation, the Office of the Special Rapporteur for Freedom of Expression (“Office of the Special Rapporteur”) of the Inter-American Commission on Human Rights (IACHR or “Commission”) has made violence against journalists a priority and paid special attention to the status of the investigation of these crimes.<sup>9</sup> In its Special Study on the Status of Investigations into the Murder of Journalists, published in 2008, the Office of the Special Rapporteur found that from 1995 to 2005, 157 journalists and media employees were murdered in 19 Member States of the Organization of American States (OAS) for reasons possibly related to their journalism work.<sup>10</sup> The Office of the Special Rapporteur verified that the majority of the investigations in those cases had never been completed, that only in a few cases were the perpetrators identified, and that in almost none of the cases had the masterminds been identified. A conviction of any kind was only handed down in 32 out of the 157 cases,<sup>11</sup> and only in four of those cases were the masterminds convicted.<sup>12</sup>

4. Although it is true that some States have improved legal guarantees for the exercise of journalism over the last few decades - including the incorporation of provisional measures and the creation of special protection programs; the strengthening of the independence and technical capacity of courts; and the creation of specialized investigative bodies and judges - such guarantees in other countries have been seriously compromised. Effectively, in many places of the region, murders and serious attacks on journalists continue to be particularly concerning, and sufficient and adequate measures do not seem to be in place for

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<sup>9</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 2; IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 43-52.

<sup>10</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 139.

<sup>11</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 96, 127 and 141.

<sup>12</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125 (footnote 160).

definitively addressing the debt of justice owed to victims. Likewise, phenomena such as the increase in highly violent organized criminal groups (which attack not only the population but also have the ability to terrorize and infiltrate the authorities themselves) has threatened the exercise of journalism in a way that has been extremely concerning.<sup>13</sup> In this sense, as the media has become a crucial element in the struggle against corruption and abuse of authority, violence against journalists has noticeably increased. Indeed, the information collected by the Office of the Special Rapporteur indicates that the situation of violence and impunity has worsened in recent years in some places of the region. According to reported data, from January 1, 2010, to November 1, 2013, at least 78 journalists and media workers were murdered throughout the region for motives that could be related to the exercise of their profession. Dozens more have been disappeared or displaced from their places of work, while hundreds of others received threats or were harassed or attacked in response to their professional activities.<sup>14</sup>

5. The purpose of this report is to document and raise the alarm regarding the worrying situation of violence against journalists that exists in the region, while at the same time contributing to the search for solutions by identifying inter-American standards and domestic practices on protection of journalists, prevention of crimes committed against them and prosecution of those responsible. The Office of the Special Rapporteur believes that this problem deserves special attention, specifically because acts of violence in response to the exercise of journalism have a profoundly negative effect on the collective aspect of freedom of expression. Violence against journalists and media workers that is committed as a result of the exercise of their professions not only affects the voices of these individuals - in particular by violating their right to freedom of expression - but also violates the right of societies generally to seek and receive all types of information and ideas, peacefully and freely.<sup>15</sup> In this regard, the Inter-American Court has found that "it is essential that

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<sup>13</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 46 and 51.

<sup>14</sup> In this sense, see: Committee to Protect Journalists (CPJ). [Journalists Killed Since 1992](#).

<sup>15</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 9.

journalists who work in the media should enjoy the necessary protection and independence to exercise their functions to the fullest, because it is they who keep society informed, an indispensable requirement to enable society to enjoy full freedom and for public discourse to become stronger.”<sup>16</sup> Similarly, as the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions stated recently:

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. [...] [A]n attack on a journalist represents an assault on the foundations of the human rights project and on informed society as a whole. Violence against a journalist is not only an attack on one particular victim, but on all members of the society.<sup>17</sup>

6. Based on this reasoning, over the last decade a variety of United Nations bodies and agencies have repeatedly condemned violence against journalists and urged States to prevent such crimes, protect journalists who are at risk, and investigate, try and punish those responsible.<sup>18</sup> In line with this, in its General Comment No. 34, the Human Rights Committee noted that:

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<sup>16</sup> 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. 150; 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. 119.

<sup>17</sup> 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>18</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. March 27, 2008. [Decision on the safety of journalists and the issue of impunity adopted by the IPDC Intergovernmental Council at its 26<sup>th</sup> session](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. March 24-26, 2010. [Decision on the safety of journalists and the issue of impunity adopted by the IPDC Intergovernmental Council at its 27<sup>th</sup> session](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. March 22-23, 2012. [Decision on the safety of journalists and the issue of impunity adopted by the IPDC Intergovernmental Council at its 28<sup>th</sup> Session](#); United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96); 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. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); United

States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. [...] Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.<sup>19</sup>

7. Likewise, considering the magnitude of violence committed against journalists and media workers in recent years, and recognizing the need for United Nations bodies to develop a coordinated strategic focus on the issue of the safety of journalists and impunity, the United Nations Educational, Scientific and Cultural Organization (UNESCO) elaborated the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, which was adopted in 2012.<sup>20</sup> Similarly, in July 2013, UNESCO produced security indicators, which could be used to evaluate the advances in connection with the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.<sup>21</sup> Also during 2013, the

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Nations. Human Rights Council. [Resolution 21/12 Safety of Journalists](#). A/HRC/21/L.6. September 21, 2012; United Nations. Human Rights Council. [Resolution 12/16 Freedom of Opinion and Expression](#). A/HRC/RES/12/16. October 12, 2009; United Nations Educational, Scientific and Cultural Organization (UNESCO). [Medellin Declaration. Securing the Safety of Journalists and Combating Impunity](#). 2007.

<sup>19</sup> United Nations. Human Rights Committee. [General Comment No. 34](#). CCPR/C/GC/34. September 12, 2011. Para. 23.

<sup>20</sup> 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](#).

<sup>21</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 25, 2013. [Journalists' Safety Indicators-International Level](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 25, 2013. [Journalists' Safety Indicators-National Level](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 25, 2013. [Journalists' Safety Indicators Guidebook](#).

United Nations Security Council held open debates with the participation of experts regarding the safety of journalists.<sup>22</sup> On November 26, 2013, the Third Committee of the United Nations General Assembly passed a resolution condemning the attacks and assaults perpetrated against journalists and media workers, and declared November 2 the “International Day to End Impunity for Crimes Against Journalists.”<sup>23</sup> Similarly, the Committee of Ministers of the Council of Europe is considering the adoption of a declaration on the “protection of journalism and the safety of journalists and other media actors.”<sup>24</sup>

8. This report focuses on addressing State obligations with regard to physical and psychological violence committed against journalists through attacks, assaults and threats. However, it should be noted that violence against communicators also includes violence of an institutional nature. This means that violence can also be committed against journalists through the use of criminal law - the State’s main coercive power - to punish, suppress and discourage expression that is critical of the actions of State authorities or on issues that are in the public interest. In particular, the threat or imposition of a prison sentence based on *desacato* or criminal defamation laws could have a chilling effect not only for communicators but for society as a whole.<sup>25</sup> Effectively, the development

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<sup>22</sup> United Nations. Security Council. July 17, 2013. 7003<sup>rd</sup> meeting. [Protection stressed as speakers in Security Council sound alarm over number of journalists targeted in conflict zones, impunity enjoyed by perpetrators](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 18, 2013. [UN Security Council debates journalists’ safety](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Irina Bokova advocates for freedom of expression and journalists’ safety at the UN Security Council](#); United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Informal Meeting of the Security Council on “Protecting Journalists”](#); United Nations. UN News Centre. December 13, 2013. [Security Council must pay more attention to attacks on journalists, UN expert warns](#).

<sup>23</sup> United Nations. November 26, 2013. Sixty-eighth General Assembly. Third Committee. 51st & 52nd meetings. [Third Committee approves text titles ‘Right to Privacy in the Digital Age’, as it takes action on 18 draft resolutions](#).

<sup>24</sup> Council of Europe. December 2, 2013. 5th meeting. December 3-6, 2013. CDMSI(2013)OJ3Rev. [Draft Annotated Agenda](#); Council of Europe. Committee of Ministers. [Draft Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors](#). CDMSI(2013)007rev2. September 22, 2013.

<sup>25</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 58; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Inter-American Legal Framework Regarding the Right to Freedom of Expression). OEA/Ser.L/V/II.Doc 51. December 30, 2009. Para. 110 and 111.



of a democratic and activist citizenry requires designing institutions that allow for - and do not inhibit or complicate - deliberation on all matters and phenomena that are relevant to the public. The use of the coercive power of the State to impose a single world view or discourage vigorous and open deliberation on matters that are relevant to the public is not compatible with the guiding principles of democratic systems of governance, specifically the right to freedom of expression. In consideration of this, the Office of the Special Rapporteur identified the need to eliminate laws that criminalize expression as one of the five central persistent challenges facing the region.<sup>26</sup>

9. Similarly, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression observed that the total number of journalists imprisoned throughout the world in 2011 was the highest in 15 years. At that time, the Rapporteur observed that the State's obligation to guarantee the ability of journalists to carry out their work "means not only preventing attacks against journalists and prosecuting those responsible, but also creating an environment where independent, free and pluralistic media can flourish and journalists are not placed at risk of imprisonment".<sup>27</sup> Hence, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity calls on member States to ensure that defamation become a civil and not a criminal violation.<sup>28</sup>

10. On this point, the Office of the Special Rapporteur recalls that Principle 10 of the IACHR's Declaration of Principles on Freedom of Expression establishes that "[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be

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<sup>26</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 55.

<sup>27</sup> 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. 78. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>28</sup> 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(9).

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.” Likewise, Principle 11 establishes that “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information”.

11. This report begins with an updated analysis on the scope of violence against journalists in the region and the factors that contribute to it. It then goes on to describe State obligations with regard to these facts. The report focuses on the positive obligations of States to prevent these crimes, protect journalists at risk, and criminally try those who use violence to silence journalists. With regard to each of these obligations, the report identifies the domestic practices developed by the countries in the hemisphere. Finally, the report presents a series of conclusions and recommendations.

## **II. Violence against journalists in the Americas: an increasingly urgent challenge**

12. As noted previously, in recent decades, some States in the region have made important legal progress to protect the exercise of journalism and the right to freedom of expression, including the creation of mechanisms for protecting journalists and adopting legal reforms in order to abolish criminal prosecution of crimes committed in response to the exercise of freedom of expression. However, while the press has become fundamental for fighting against corruption and abuse of authority, the evidence collected by the Office of the Special Rapporteur indicates that in recent years, the problem of violence against journalists in the Americas has become more serious, connected in many cases to a rise in organized crime, as will be seen.

13. The Office of the Special Rapporteur found in its Special Study on the Status of Investigations into the Murder of Journalists that from 1995 to 2005, 157 journalists and media employees were murdered in 19 Member States of the Organization of American States for reasons possibly related to their journalism work.<sup>29</sup> According to reported data,

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<sup>29</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 139.

between January 1, 2006, and November 1, 2013, at least 138 journalists, communicators and media workers were murdered in 17 countries for reasons that could be related to the exercise of their profession. Likewise, the Office of the Special Rapporteur has learned of a number of cases of murders of journalists and media employees that took place during that period of time in which there is no clear connection to their work. The Office of the Special Rapporteur exhorts States to diligently investigate these facts and urges authorities not to dismiss the hypothesis the victims could have been murdered in response to the exercise of their right to freedom of expression. States should exhaust all lines of investigation into this angle.<sup>30</sup>

14. Of the countries in the region, several that reported an increase in the number of murders of journalists related to the exercise of their profession deserve to be singled out. Over the last decade, the State of Mexico has reported worrying levels of violence against journalists.<sup>31</sup> From 2006 to 2013, 55 journalists were murdered in the country. Honduras has also suffered a drastic increase in the number of journalist deaths. Only 4 journalists were murdered in the country between 1995 and 2009, but from 2010 and 2013, the number rose to 15, a figure that is particularly alarming considering that Honduras is a small country with a sparse population compared to other countries. In the case of Brazil, the Office of the Special Rapporteur found that 26 journalists were murdered between 1995 and 2010. However, over the last three years, at least 15 journalists were murdered in the country. In Colombia, meanwhile, the journalist murder rate fallen considerably. From 1995 to 2005, 75 journalists were murdered in that country. From 2006 to 2013, 14 murders took place.<sup>32</sup>

15. These statistics tell only one part of the story, which is doubtlessly the most serious one. Although the murder of journalists constitutes the most extreme form of violence against and censorship of

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<sup>30</sup> In this sense, see: Committee to Protect Journalists (CPJ). [Journalists Killed Since 1992](#).

<sup>31</sup> 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. 536.

<sup>32</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. In this sense, see: Committee to Protect Journalists (CPJ). [Journalists Killed Since 1992](#).

the press, every year the Annual Report of the Office of the Special Rapporteur documents hundreds of other threats and attacks on journalists throughout the region. However, these reports cannot reflect the true seriousness of the situation, since it is often difficult to track the measures taken by journalists to self censor in order to avoid becoming a tragic statistic.<sup>33</sup> In these cases, those who attack journalists in order to silence them accomplish their future goals without need of violence, since the threat of violence is in itself so serious that journalists opt for silence. Regarding this, in the report *Impunity, Self-censorship and Armed Internal Conflict: An Analysis of the State of Freedom of Expression in Colombia* (2005), the Office of the Special Rapporteur expressed particular concern at the “climate of self-censorship that continues for journalists” and noted a correlation between self-censorship and a decrease in reported cases of murders and attacks.<sup>34</sup> The Office of the Special Rapporteur found that the fear resulting from threats and crimes against other journalists “engenders self-censorship by both journalists and the media for whom they work, and even the closure of media outlets and the abandonment of the profession.”<sup>35</sup>

16. As has been mentioned, in light of the magnitude of the violence committed against journalists and media workers in recent years, in 2012 the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity was adopted. The Plan was developed after an inter-institutional meeting of UN bodies and after meetings with other actors organized by UNESCO at the request of the International Programme for the Development of Communication (IPDC). The Plan of Action proposes a series of measures to be adopted by United Nations bodies before Member States and other organizations and institutions, as well as measures for raising awareness and encouraging safety initiatives, among other things. In this sense, the Plan’s objective is to work “toward the creation of a free and safe environment for journalists and media workers

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<sup>33</sup> 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. 699-705; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 88 to 102.

<sup>34</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 9 and 10.

<sup>35</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 99.

in both conflict and non-conflict situations, with a view to strengthening peace, democracy and development worldwide.”<sup>36</sup> For its part, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that “journalists are among the persons who receive the most death threats” noting that around 8% of communications sent between 2003 and 2011 in connection with its mandate were related with murders of journalists or death threats sent to journalists.<sup>37</sup>

17. In this context, a valid question is: why do the Americas have such high rates of violence against journalists? The 2008 Special Study on the Status of Investigations into the Murder of Journalists identified some of the factors leading to this violence. Regarding Colombia, for example, the report made special reference to the country's armed conflict, as well as to drug trafficking, corruption and the extra-legal conduct of the State security services.<sup>38</sup> In the case of Brazil, violence was associated with research into death squads and organized crime, human rights violations committed by State security forces, corruption, and the conduct of some local officials.<sup>39</sup> As far as Mexico, the report made reference to the strong presence of drug trafficking cartels and other forms of organized crime.<sup>40</sup> In Guatemala, meanwhile, there were a number of cases of violent deaths that may be linked to journalistic investigations into cases of corruption and the distribution of information on criminal gangs.<sup>41</sup>

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<sup>36</sup> 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 4(1).

<sup>37</sup> 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. 25. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>38</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 85 and 86.

<sup>39</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 85 and 86.

<sup>40</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 85 and 86.

<sup>41</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that](#)

18. More recent investigations by the Office of the Special Rapporteur have provided additional insight. In its 2010 Special Report on Freedom of Expression in Mexico, for example, the Office of the Special Rapporteur 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.”<sup>42</sup> At the same time, the report noted that in some regions of Mexico, violence and intimidation against journalists appears to be carried out by armed groups with presumed links to political factions.<sup>43</sup> In addition, the Office reported numerous allegations of harassment and acts of violence carried out by members of the police and armed forces against journalists who attempt to report on public security issues.<sup>44</sup>

19. Additionally, the recent increase in the number of homicides, threats and acts of harassment against journalists in Honduras was exacerbated starting in 2009.<sup>45</sup> As the IACHR indicated in its report Honduras Human Rights and the *Coup d'état*, the violations of the right to life and freedom of expression, among other abuses, that took place starting in 2009 were accompanied by an absence of institutions with the ability to process complaints, investigate incidents, punish those responsible and grant reparations to victims, all of which contributed to creating an environment that lent itself to the commission of acts of violence.<sup>46</sup> In this context, the Commission found “serious and multiple

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[may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 85 and 86.

<sup>42</sup> 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. 538.

<sup>43</sup> 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. 539.

<sup>44</sup> 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. 540.

<sup>45</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 298.

<sup>46</sup> IACHR. [Honduras: Human Rights and Coup d'Etat](#). OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Para. 558.

assaults on journalists for reasons associated with their news coverage,” along with a number of cases of detentions, destruction of reporter equipment, violent attacks against media outlets, and death threats against journalists.<sup>47</sup> Many of the journalists who suffered acts of violence in this context have expressed repudiation of the coup d'état.<sup>48</sup> Others have published news items on land conflicts or organized crime.<sup>49</sup> Regarding this, in its July 2011 report, the Commission on Truth and Reconciliation of Honduras found that during that period, journalists suffered “harassment, threats, intimidation, illegal detentions, mistreatment, torture, the closure of media outlets, attacks, and illegal confiscation of their property.”<sup>50</sup> Likewise, the Truth Commission indicated that “in the capital and other departments throughout the country, the repression was aimed only at those who were identified as members of the left, *'zelayistas,'* who called what happened on June 28, 2009 a *'coup d'état.'*”<sup>51</sup> In its conclusions, the Commission recommended that the State “conclude as soon as possible the investigations in progress into crimes that have been alleged against journalists, especially the violent deaths that have occurred (...), in order to prevent impunity.”<sup>52</sup> Similarly, a Truth Commission created by civil society organizations identified journalists as one of the groups of people particularly affected after the 2009 *coup d'état.*<sup>53</sup> The Commission concluded that this violence “makes the exercise

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<sup>47</sup> IACHR. [Honduras: Human Rights and Coup d'Etat](#). OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Para. 411, 447-459, 472 and 479.

<sup>48</sup> IACHR. [Honduras: Human Rights and Coup d'Etat](#). OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Para. 558.

<sup>49</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 303 and 305; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 320

<sup>50</sup> Estado de Honduras. Comisión de la Verdad y la Reconciliación. [Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación](#). July 2011. P. 346.

<sup>51</sup> Estado de Honduras. Comisión de la Verdad y la Reconciliación. [Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación](#). July 2011. P. 366.

<sup>52</sup> Estado de Honduras. Comisión de la Verdad y la Reconciliación. [Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación](#). July 2011. P. 420.

<sup>53</sup> Comisión de Verdad: Sin verdad no hay justicia. [Informe de la Comisión de Verdad: La voz más autorizada es la de las víctimas](#). October 2012. P. 280.

of the profession vulnerable and encourages self-censorship,”<sup>54</sup> noting that Honduras had become “one of the most dangerous countries in which to practice journalism.”<sup>55</sup>

20. In sum, violence against journalists in the region is the result of a complex series of causes. In general, in some cases this type of violence continues to be exercised by State actors, especially in the context of public safety operations and public demonstrations, or in cases involving allegations of corruption and illegality committed by local State officials. 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.

21. In a 2011 report, the UN Special Rapporteur on the Situation of Human Rights Defenders observed that journalists and media workers in the Americas are mainly targeted due to their work on environmental issues, human rights violations committed by the State, corruption, demonstrations, drug dealing and mafia groups, and denouncing impunity.<sup>56</sup> Of the communications sent to the UN rapporteur regarding violence against journalists, 30.5% of those from countries in the Americas alleged that the perpetrators were State actors.<sup>57</sup> Meanwhile, the Americas were the subject of the greatest number of communications

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<sup>54</sup> Comisión de Verdad: Sin verdad no hay justicia. [Informe de la Comisión de Verdad: La voz más autorizada es la de las víctimas](#). October 2012. P. 180.

<sup>55</sup> Comisión de Verdad: Sin verdad no hay justicia. [Informe de la Comisión de Verdad: La voz más autorizada es la de las víctimas](#). October 2012. P. 180.

<sup>56</sup> United Nations. General Assembly. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. A/HRC/19/55. December 21, 2011. Para. 56. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=70&m=166](http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166). See also, 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. 93. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>57</sup> United Nations. General Assembly. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. A/HRC/19/55. December 21, 2011. Para. 51. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=70&m=166](http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166)



by the UN special rapporteur regarding allegations of violence by non-State actors.<sup>58</sup>

22. 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.

23. In its Special Report on Freedom of Expression in Mexico (2010), the Office of the Special Rapporteur observed, on the influence of organized crime in self-censorship:

There are now areas of Mexico in which journalists are subject to serious intimidation originating principally from criminal groups who seek to suppress certain information in the media and promote the dissemination of that which furthers their criminal interests. In this high-risk situation, it is extremely difficult for journalists to carry out research and publish material on issues such as organized crime, corruption, public security and similar matters.<sup>59</sup>

24. A second challenge for protecting journalists from organized crime can be found in regions where local institutions themselves are infiltrated or captured by criminal structures. In that context, journalists are threatened both by organized crime and by co-opted institutional officials, which places them in a serious situation of vulnerability.<sup>60</sup>

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<sup>58</sup> United Nations. General Assembly. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. A/HRC/19/55. December 21, 2011. Para. 53. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=70&m=166](http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166)

<sup>59</sup> 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. 700.

<sup>60</sup> Thus for example, the Supreme Court of Justice of Colombia found that the former director of the now-dissolved intelligence agency of the Colombian State, the Departamento Administrativo de Seguridad (Administrative Security Department, DAS) abused his position and power to promote and facilitate the criminal activities of paramilitary groups. Estado de Colombia. Corte Suprema de Justicia. Sala de Casación Penal. [Única instancia 32000 P/Jorge Aurelio Noguera Cotes](#). Acta No. 331. September 14, 2011.

25. A third situation that presents an obstacle to protecting journalists from organized crime can be found when state officials fight organized crime through institutions that do not have adequate protocols or that act within a “war” mentality (friend or foe), in which critical media are identified as the enemy they are fighting. Thus, for example, as reported previously by the Office of the Special Rapporteur, from 2002 to 2008, some officials of the since-defunct Administrative Security Department [*Departamento Administrativo de Seguridad*] (DAS) implemented a systematic and sustained persecution policy in Colombia aimed at spying on, defaming and intimidating a number of public figures, including human rights defenders and journalists who were critical of the administration President Álvaro Uribe Vélez.<sup>61</sup> According to the information available, in 2009, the Office of the Attorney General of the Nation launched an investigation to determine the involvement of officials from the DAS and other areas of the administration in the wiretaps and surveillance of public figures, including the journalists.<sup>62</sup> The initial investigation has implicated 52 officials,<sup>63</sup> and at least 16 people have been criminally convicted, six of them for spying on and wiretapping journalists.<sup>64</sup> In their testimonies, some of those convicted argued that

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<sup>61</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 51, December 30, 2009. Para. 139 to 148; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc 5. March 7, 2011. Para. 140 to 162.

<sup>62</sup> Fundación para la Libertad de Prensa (FLIP). December 3, 2010. [Informe. Espionaje contra periodistas: la justicia tiene la palabra.](#)

<sup>63</sup> Fundación para la Libertad de Prensa (FLIP). December 3, 2010. [Informe. Espionaje contra periodistas: la justicia tiene la palabra.](#)

<sup>64</sup> According to the information received, the Office of the General Public Prosecutor of the Nation obtained the confessions of a number of individuals under investigation, and intervened to bring an early end to some court proceedings by negotiating plea bargains with the involved DAS officials who, in exchange, received prison sentences of between six and eight years. Accordingly, on March 7, 2011, the Bogotá Fourteenth Judicial Circuit Criminal Court [*Juzgado 14 Penal del Circuito de Conocimiento de Bogotá*] sentenced the former DAS Chief, Fernando Alonso Tabares Molina, to an 8-year and two months term of imprisonment, and Deputy Chief of Counterintelligence, Jorge Alberto Lagos León, to an 8-year term of imprisonment. Juzgado 14 Penal del Circuito de Conocimiento, Bogotá. Sentencia N.I. 131.374. March 7, 2011. Available for consultation at: <http://www.scribd.com/doc/50480547/Sentencia-Lagos-y-Tabares>. The Bogotá Fourteenth Judicial Circuit Criminal Court sentenced, former DAS Deputy Director of Analysis, Gustavo Sierra Prieto, to 8-year and four months term of imprisonment. El País. August 6, 2011. [Ex subdirector del DAS recibe 8 años de cárcel](#); La información. August 6, 2011. [Condenado a ocho años de cárcel un exsubdirector del espionaje colombiano por el caso de las 'chuzadas'](#); El Nuevo Día. August 5, 2011. [Condenado a ocho años por 'chuzadas' exsubdirector de análisis del DAS](#). The Sixth Bogotá Specialized Criminal Court sentenced to six-year and one

they were acting with the DAS “for the benefit of the country,” fighting against drug traffickers, guerrillas and the self-defense forces “constantly and committed, dedicated, responsible.”<sup>65</sup>

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month term of imprisonment to former DAS officials, Fabio Duarte Traslaviña and Germán Enrique Villalba Chávez. *El Espectador*. August 11, 2011. [Seis años de cárcel a ex funcionarios del DAS por 'chuzadas'](#); *El Tiempo*. August 10, 2011. [Cárcel para dos ex funcionarios del DAS por 'chuzadas'](#); WRadio. August 10, 2011. [Condenados dos exfuncionarios del DAS por "chuzadas"](#). The IACHR was also informed of the judgment issued on September 2011 by the Supreme Court of Justice that sentenced Jorge Noguera Cotes, former DAS Director, to 25 years of imprisonment as mastermind for the crimes of homicide and “destruction, suppression or hiding a public document,” and as the author of aggravated conspiracy and “disclosure of classified information.” These crimes are reportedly related to the surveillance of public figures. State of Colombia. Corte Suprema de Justicia. Sala de Casación Penal. [Única instancia 32000 P/Jorge Aurelio Noguera Cotes](#). Acta No. 331. September 14, 2011. The Commission also took note of the judgment handed down on June 8, 2012 by the Bogotá Fourteenth Judicial Circuit Criminal Court [*Juzgado 14 Penal del Circuito de Conocimiento de Bogotá*], sentencing former DAS Operations Director, Luz Marina Rodríguez, and the former DAS Anti-corruption Chief, Bernardo Murillo Cajamarca, for their roles in these crimes. The former DAS officials received a 6-year prison sentence for their roles in phone-tapping and surveillance activities on magistrates of the Supreme Court and senators of the Colombian Congress. *El Tiempo*. June 8, 2012. [Condenados dos funcionarios del DAS por seguimiento a magistrados](#); *Semana*. June 8, 2012. [Condenados dos ex funcionarios del DAS por chuzadas](#); *El País*. June 8, 2012. [Por chuzadas condenan a 6 años de cárcel a ex funcionarios del DAS](#). On November 30, 2012, the Third Bogotá Criminal Court of the Specialized Circuit in Clearing Backlogs [*Juzgado Tercero Penal del Circuito Especializado de Descongestión de Bogotá*] handed down 105-month prison sentences to former DAS intelligence director general, Enrique Alberto Ariza Rivas; former coordinator of the DAS technological development group, Jorge Armando Rubiano; former DAS deputy director of operations, Hugo Daney Ortiz; former DAS director general of operations, Jackeline Sandoval Salazar; and former DAS deputy director of analysis, Martha Inés Leal Llanos, for the crime of criminal conspiracy [*delito de concierto para delinquir*] and as co-perpetrators [*coautores impropios*] in the crimes of illegal interception of communications, illegal use of transmitting and receiving equipment, and arbitrary or unjust abuse of authority. The Court also convicted the former coordinator of the DAS “GRUVE” verifications group, José Alexander Velásquez Sánchez. The Court disqualified him from holding employment in the public service upon finding him guilty of multiple counts of arbitrary and unjust abuse of authority [*abuso de autoridad por acto arbitrario e injusto en concurso sucesivo y homogéneo*]. *Juzgado Tercero Penal de Circuito Especializado de Descongestión de Bogotá*. Radicación 2010-00020. Judgment of November 30, 2012. Available for consultation at: <http://www.derechos.org/nizkor/colombia/doc/das299.html>; Fundación para la Libertad de Prensa (FLIP). 2013. [De las balas a los expedientes. Informe sobre el estado de la libertad de prensa en Colombia, 2012](#). Pp. 62-63; *La Patria*. December 15, 2012. [Condenan a tres exfuncionarios del DAS por chuzadas](#).

<sup>65</sup> *Juzgado Tercero Penal de Circuito Especializado de Descongestión de Bogotá*. Radicación 2010-00020. Judgment of November 30, 2012. Available for consultation at: <http://www.derechos.org/nizkor/colombia/doc/das299.html>

26. On the other hand, the high (and rising) levels of violence against journalists in the region can be explained at least in part by the impunity that the perpetrators of such violence have often enjoyed.<sup>66</sup> Indeed, the Inter-American Court has repeatedly observed that impunity—the “total lack of investigation, prosecution, capture, trial and conviction”<sup>67</sup>—fosters the chronic repetition of human rights violations.<sup>68</sup> Such impunity has been the rule rather than the exception with regard to violence against journalists in the Americas; the region has an alarming, lingering history of impunity with regard to crimes committed against journalists.<sup>69</sup>

27. As mentioned previously, the study done by the Office of the Special Rapporteur on the 157 murders of journalists committed from 1995 to 2005 found that in only 32 of the 157 cases had any type of conviction been handed down, and in only four of those cases where the masterminds of the crime convicted.<sup>70</sup> As alarming as this statistic is, the report’s detailed conclusions paint an even more troubling and “deplorable” situation of impunity in the region.<sup>71</sup> The study found that the vast majority of investigations proceeded at an excessively slow pace, and showed substantial deficiencies in the adequate and timely gathering of relevant evidence, in the focus on logical lines of investigation, and in the investigation of possible patterns. Several of the investigations came up against obstacles and obstructions that adversely affected the diligence and effectiveness with which they were carried out. The vast majority of

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<sup>66</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 43. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>67</sup> 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.

<sup>68</sup> I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211.

<sup>69</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 42-51.

<sup>70</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 120 and 125 (footnote 160).

<sup>71</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 128.

investigations were not completed. In very few of them had the facts been clarified, at least fully, and as a result, in only a few of the cases had the circumstances of the murder been determined and the motive of the crime established. Similarly, in only a few of the cases had any of the perpetrators been identified, and only in very exceptional cases had the masterminds been determined. Very few of the investigations led to convictions, and in several of the cases in which some type of conviction had been achieved, the sentences had yet to take effect.<sup>72</sup>

28. With this brief overview of violence against journalists and impunity for such crimes as background, this report now turns to an analysis of the ways in which States can confront these challenges through effective policies of prevention, protection and prosecution of perpetrators.

### **III. Violence against journalists: international standards and national practices**

29. 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.<sup>73</sup> Likewise, the American Declaration of the Rights and Duties of

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<sup>72</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 127.

<sup>73</sup> 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.

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.<sup>74</sup> The effective exercise of these rights includes both positive and negative obligations. It can be said that those subjected to the jurisdiction of a State can have their fundamental rights affected due to the actions of State agents or as a result of conduct committed by third parties, which when not investigated, result in State responsibility due to a failure to comply with the obligation to guarantee judicial protection. In the case of people facing situations of particular vulnerability, States can also be held responsible when measures are not taken to prevent actions that affect the enjoyment of these rights.<sup>75</sup>

30. 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 authority.<sup>76</sup> OAS Member States are required to ensure that their agents do not interfere with the rights to life and personal integrity. That is to say, States have the obligation to refrain from carrying out actions that could violate these rights directly, such as acts of violence against their own citizens. Cases continue to arise 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. For this reason, it is important to place special emphasis on the

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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 [...].”

<sup>74</sup> 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.”

<sup>75</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57. December 31, 2009. Para. 38.

<sup>76</sup> 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.

forementioned negative obligations. Likewise, as has been noted, the allegations received demonstrate that, in general terms, many of the most serious acts of violence against journalists in the Americas - homicides, disappearances, kidnappings and armed attacks on media outlets, among others - are currently committed by non-state actors, especially powerful criminal groups. Because of this, it is crucial for States to also fulfill their *positive* obligations, as derived from the rights to life, personal integrity, and freedom of expression, among others. On this regard, the Inter-American Court has observed:

Said international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations embodied in Articles 1(1) and 2 of the Convention.<sup>77</sup>

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<sup>77</sup> I/A Court H.R. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Serie C No. 134. Para. 111 and 112; I/A Court H.R. *Case of Maiwana Community v. Surinam. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Serie C No. 124. Para. 211; I/A Court H.R. *Case of Brothers Gómez Paquiyauri v. Peru. Merits, Reparations and Costs*. Judgment of July 8, 2004. Serie C No. 110. Para. 91; I/A Court H.R. *Case of 19 Merchants v. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Serie C No. 109. Para. 183; I/A Court H.R. *Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs*. Judgment of November 27, 2003. Serie C No. 103. Para. 71; I/A Court H.R. *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Serie C No. 100. Para. 111. Also, in its Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants the Court established that "[...] the obligation to respect human rights between individuals should be taken into consideration. That is, the positive obligation of the State to ensure the effectiveness of the protected human rights gives rise to effects in relation to third parties (*erga omnes*). This obligation has been developed in legal writings, and particularly by the Drittwirkung theory, according to which fundamental rights must be respected by both the public authorities and by individuals with regard to other individuals". I/A Court H.R. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18. Para. 140. The Court took into account similar considerations when issuing provisional measures to protect groups and communities from acts of violence or threats by State agents and third parties.

31. With regard to violence against journalists and other persons based on the exercise of freedom of expression, the Office of the Special Rapporteur has highlighted, based on Inter-American scholarship and case law, the importance of three positive obligations that emanate from the rights to life, personal integrity, and freedom of expression. To wit: the obligation to prevent, the obligation to protect and the obligation to investigate, try and criminally punish those responsible for these crimes.<sup>78</sup> As the Office of the Special Rapporteur has indicated, these obligations are 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.<sup>79</sup>

32. The remainder of this chapter will analyze each of these positive obligations in turn, summarizing the relevant inter-American legal standards while identifying national practices adopted with the aim of furthering States' compliance with the aforementioned obligations.

#### **A. The obligation to prevent**

33. 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 immediate risk of such crimes being committed.<sup>80</sup> In the countries or regions in which journalists face a

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<sup>78</sup> 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](#).

<sup>79</sup> 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. 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.

<sup>80</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 194; 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)



situation of special vulnerability due to a context of violence directed at them, the State's responsibility to prevent and protect is reinforced. 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.<sup>81</sup> Regarding this, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity states 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 impunity."<sup>82</sup> Certain specific State obligations are particularly important, as will be shown hereinafter.

### **1. The obligation to maintain public discourse that contributes to preventing violence against journalists**

34. The Inter-American Court has held that the obligation of State Parties to guarantee the rights enshrined in the Convention implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of legally ensuring the free and full enjoyment of human rights.<sup>83</sup> The Court has emphasized that the duty to guarantee the rights to freedom of expression and humane treatment obligates public officials to refrain from making statements that place journalists and media workers at greater risk of violence.

35. In the case of *Perozo et al. v. Venezuela*, the Inter-American Court considered a series of violent actions by private individuals against the television station *Globovisión* and its workers, including physical attacks on reporters while they covered public events, damage to the station's equipment, and an attack on the station's premises with

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

<sup>81</sup> 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. 282.

<sup>82</sup> 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)

<sup>83</sup> I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. Para. 166; I/A Court H.R. *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2006. Series C No. 158. Para. 92.

fragmentation grenades.<sup>84</sup> The attacks took place in the context of declarations by high-ranking public officials referring to *Globovisión* and its owners and executives as “enemies of the revolution”, “enemies of the people of Venezuela”, “fascist”, and participants in the 2002 *coup d’état* against President Hugo Chávez.<sup>85</sup>

36. The Court, in finding the Venezuelan State responsible for violations of articles 5 (humane treatment) and 13 (freedom of thought and expression) of the American Convention, emphasized that the content of the statements made by high-ranking public officials placed *Globovisión’s* employees in a position of greater relative vulnerability *vis-à-vis* the State and certain sectors of society. The repetition of said statements contributed to aggravating an environment of hostility, intolerance or animosity toward the victims among certain sections of the population.<sup>86</sup> The Court stressed that public officials enjoy freedom of expression, but must exercise this freedom with particular discretion in contexts of social unrest, lest their statements place individuals at greater risk of violence. In the words of the Court:

in a democratic society it is not just legitimate but also, sometimes, a duty of the state authorities to make statements about issues of the public interest. Nevertheless, when doing so they have to verify reasonably, though not necessarily in an exhaustive manner, the truthfulness of the facts supporting their opinions, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy, the broad scope and possible effects their sayings may produce on certain sectors of the society and with a view to keeping citizens from receiving a distorted version of the facts. Furthermore, they should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights so that they must not amount to a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of its

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<sup>84</sup> 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. 141-142.

<sup>85</sup> 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. 139.

<sup>86</sup> 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. 360.

thought. This duty of special care is particularly emphasized in those situations of greater social conflict, disorderly conducts or social and political bias, precisely because of the risks entailed for certain people or groups at a given time.<sup>87</sup>

37. The Office of the Special Rapporteur has similarly emphasized the responsibility of government officials to maintain a public discourse that does not place journalists at increased risk of violence. The Office of the Special Rapporteur has recalled, among other things, that a simple but highly effective protective measure consists of the highest authorities of the State recognizing in a consistent, clear, public and firm manner the legitimacy and value of the journalistic profession, even when the information disseminated may prove critical of, inconvenient to or inopportune for the interests of the government. Similarly, it is essential that the authorities vigorously condemn attacks committed against media workers and encourage the competent authorities to act with due diligence and speed to investigate such events and punish those responsible.<sup>88</sup>

38. In 2009 the Office of the Special Rapporteur and its UN counterpart expressed their concern regarding statements made by then-Colombian President Álvaro Uribe regarding journalist Hollman Morris. The President had stated in a news conference that Morris had “shielded himself by his condition as a journalist to be a permissive accomplice to terrorism.” The journalist, a beneficiary of precautionary measures from the IACHR who had previously been forced to leave the country due to threats against his life, received threatening phone calls following the President’s remarks. In their statement, the rapporteurs “remind[ed] the Colombian State once more that high government officials must abstain from making public statements that stigmatize journalists who are critical of the government and generate an environment of intimidation that gravely affects freedom of expression in the country. This obligation is particularly important in a context of polarization and internal armed conflict, such as Colombia’s.”<sup>89</sup>

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<sup>87</sup> 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. *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. Serie C No.194. Para. 139.

<sup>88</sup> 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. 713.

<sup>89</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 9, 2009. [Press Release R05/09. The UN Rapporteur for Freedom of Opinion and Expression and](#)

39. Likewise, the Office of the Special Rapporteur has observed with concern the stigmatizing statements made against journalists, media outlets and human rights organizations by officials with the government of Ecuador since the year 2008. Regarding this, in its annual report, the Office of the special Rapporteur has reported on the statements made frequently by the President of the Republic of Ecuador against institutions and individuals critical of his administration. In particular, the Office of the Special Rapporteur noted that the president has repeatedly referred to journalists and the media with epithets such as: “ink hit men,” “corrupt press”, “mercantilist press,” “scoundrels,” “shameless,” “unethical,” “amoral,” and “worst press in the world,” among others. At these times, the Office of the Special Rapporteur has reiterated in its reports the importance of “creating a climate of respect and tolerance for all ideas and opinions” and has recalled that public officials have a duty to ensure that their statements are not damaging the rights of those who contribute to the public debate through the expression and circulation of their thoughts, such as journalists, media outlets, and human rights organizations, and must pay attention to the context in which they express themselves in order to ensure that their expressions do not constitute “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.”<sup>90</sup>

40. A similar opinion was expressed by the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to

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[\*the Special Rapporteur for Freedom of Expression of IAHR of the OAS, expressed their concern over statements made by high authority officials of the Colombian government against the journalist Hollman Morris.\*](#)

<sup>90</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 198-215. *See also*, IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Situation of freedom of expression in Member States). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 108; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 206-208; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 224-226; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 202-206.

Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe's (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 in their 2012 Joint Declaration, in which they ratified 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.<sup>91</sup>

41. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions recommended in his 2012 report to the Human Rights Council that a "clear public stand should be taken at the highest level of Government to condemn extrajudicial, summary or arbitrary executions of journalists and threats to their lives, and to reemphasize the important role of journalists in society."<sup>92</sup> The Commissioner for Human Rights for the Council of Europe has also stressed that public officials have a duty to prevent violence against journalists by both speaking out against such violence and responding in a "mature and non-violent" way to criticism from the media.<sup>93</sup>

42. At the domestic level of the countries of the region, it is worth mentioning two important judgments from the Constitutional Court of Colombia that are relevant to the issue at hand. In judgment T-1037/08, the Constitutional Court considered a *tutela* action by journalist Claudia Julieta Duque, whose State-assigned protection scheme had been withdrawn by the government in spite of repeated, credible threats to her

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<sup>91</sup> 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](#); 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>92</sup> 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>93</sup> European Council. Human Rights Commissioner. October 4, 2011. [Protection of Journalists from Violence](#).

personal safety. The Constitutional Court, citing the jurisprudence of the Inter-American Court, stressed that:

the exercise of freedom of expression by public servants can have a much greater impact on the collective imagination, on people's beliefs, and even on their conduct, given the enormous amount of faith people often have in the statements of those who occupy public office. For this reason, with the aim of protecting those who are in a weaker position to defend themselves against the statements of high-ranking public officials, and to safeguard the faith that the public has a right to have in the statements of such officials, constitutional, comparative and international law have established a clear obligation to abstain from making unfounded statements that can compromise the rights of individuals, such as the right to personal security, due process, honor, privacy and reputation.<sup>94</sup>

43. In reference to the fact that the government had denied the threats suffered by Duque as a result of her reporting on human rights violations and the armed conflict, the Constitutional Court observed that “[i]n a country as complex as Colombia, the public denial by the State, without sufficient proof, of a crime, a threat or persecution against a person or group who, as independent journalists or human rights defenders, investigate or question the State [...] can come to constitute a direct violation of the right to personal security and connected rights of such persons.”<sup>95</sup>

44. The Constitutional Court of Colombia reached similar conclusions in judgment, T-956/06, in which it analyzed a complaint, brought in response to an advertisement by the campaign of President Álvaro Uribe. As the Constitutional Court observed, the advertisement in question accused the members of the Unión Patriótica political movement of killing civilians, without providing proof of such accusations, a particularly dangerous allegation given the systematic violence to which members of this political movement had been subjected.<sup>96</sup> The Court

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<sup>94</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. P. 40.

<sup>95</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. P. 41.

<sup>96</sup> Corte Constitucional de Colombia. [Sentencia T-956/06](#). November 17, 2006. P. 24. See also, I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No.213. Para. 76-77 and 206-207.

stated that while differences should be expressed in clear and even radical terms in the context of a political campaign, “it is no less true that promoters and leaders have a minimum of responsibility for the content that they disseminate, which, as in the case under consideration, cannot constitute an unfounded imputation of criminal conduct against a generic group of persons, especially when in the context of the political violence present in the country the situation of such persons and those close to them is particularly sensitive.”<sup>97</sup> The Constitutional Court ordered President Uribe’s campaign manager to publicly retract the statements in question.<sup>98</sup>

45. Finally, it is worth noting that in analyzing the situation of human rights defenders, the IACHR has emphasized a similar State duty to publicly and unequivocally acknowledge that engaging in protection and promotion of human rights is a worthy mission.<sup>99</sup> In its Second Report on the Situation of Human Rights Defenders in the Americas, the Commission alluded to a number of measures taken in recent years by Bolivia, Chile, Colombia, El Salvador, Guatemala, Mexico and Peru in order to foster an appreciation of the work of human rights defenders. These measures included: informative brochures on human rights defenders, their work and their rights; presidential directives and public statements; workshops for police personnel and other public servants; radio programs and newsletters; and the granting of awards.<sup>100</sup>

46. The Office of the Special Rapporteur considers that, in addition to refraining from making statements that can aggravate situations of risk faced by journalists, affirmative actions such as those undertaken by a number of States with regard to human rights defenders can be an important component of a comprehensive policy to build public respect for the media and prevent violence against journalists.

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<sup>97</sup> Corte Constitucional de Colombia. [Sentencia T-956/06](#). November 17, 2006. P. 27.

<sup>98</sup> Corte Constitucional de Colombia. [Sentencia T-956/06](#). November 17, 2006. P. 30.

<sup>99</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 474.

<sup>100</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 476.

## 2. The obligation to instruct security forces on respect for the media

47. 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.<sup>101</sup> 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.<sup>102</sup> In its aforementioned special report on Mexico, the Office of the Special Rapporteur documented multiple instances of alleged harassment and violence against media workers attempting to report on the activities of police or military personnel,<sup>103</sup> and recommended to Mexico that it “provide training to members of the security forces on the subject of freedom of expression.”<sup>104</sup>

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<sup>101</sup> IACHR. [Annual Report 2012. Annual 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. Annual Report of the Office 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. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Capítulo VI (Conclusions and recommendations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 4; IACHR. [Annual Report 2011. Annual 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.

<sup>102</sup> The IACHR has repeatedly observed that the armed forces are not properly trained to deal with citizen security; hence the need for an efficient civilian police force, respectful of human rights and able to combat citizen insecurity, crime and violence on the domestic front. IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57, December 31, 2009. Para. 100.

<sup>103</sup> 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. 574-618.

<sup>104</sup> 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. 821.



48. Likewise, in *Vélez Restrepo and Family v. Colombia*, the Inter-American Court analyzed the case of a cameraman who was beaten by members of the National Army after filming soldiers attacking demonstrators. The Court recognized “the measures taken by Colombia [...] through directives that seek to raise awareness within the Armed Forces about the work of journalists and social communicators and the danger they face, especially during armed conflicts, and also about the necessary respect they must exercise so that the latter can exercise their profession without obstacles.”<sup>105</sup> Nevertheless, the Court ordered the Colombian State, as a guarantee of non-repetition, to “incorporate into its human rights education programs for the Armed Forces, a specific module on the protection of the right to freedom of thought and expression and on the work of journalists and social communicators.”<sup>106</sup>

49. The call to train security services on freedom of expression and the role played by journalists and media workers has been echoed by other international bodies. In their 2012 Joint Declaration on Crimes against Freedom of Expression, 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 stressed 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.”<sup>107</sup> Likewise, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that “[l]aw enforcement officials and the armed forces should receive training, as part of standard procedure, on the

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<sup>105</sup> 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. 277.

<sup>106</sup> 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. 277.

<sup>107</sup> 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](#).

legitimacy of the presence of journalists during non-armed and armed conflict and the legal protection for their safety.”<sup>108</sup>

50. As an example of such training, it is worth mentioning Directive No. 19/2010, issued by the Commander of the National Army of Colombia. The directive, regarding “Command Policies for the Strengthening of Respect for Journalists and Media Workers”, issues a series of orders within the Army with the objective of ensuring respect for the press. The directive includes a summary of the State’s obligations toward journalists under national, international human rights, and international humanitarian law, including the duty to “provide special protection to those who exercise the profession” in areas with greater presence of illegal armed groups, and the duty to treat media workers as “civilians” under international humanitarian law, even when the person “has favorable opinions toward some of the parties to the conflict.” The directive also issues specific orders to various units of the Army on implementing the policy expressed in the directive. The Chief of Education and Doctrine is ordered, for example, to “develop instructional programs and curricular training, at all levels of the command, on the issue of protection and respect for journalists and media workers.”<sup>109</sup>

51. Another example of good instructional practice is a memorandum issued by the New York City Police Department (NYPD) in the United States in November 2011. During the “Occupy Wall Street” protests that took place in that city beginning in September 2011, a number of journalists and media workers were arrested and some were the victims of violence at the hands of New York City police officers.<sup>110</sup> In this context, the NYPD issued a memorandum “to remind members of the

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<sup>108</sup> 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96). See also, United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [San José Declaration](#). May 2-4, 2013.

<sup>109</sup> Pamphlet “Respeto, atención, reconocimiento, protección, prevención, promoción, aplicación y difusión de los derechos humanos y DIH de los grupos especiales.” Directiva Permanente No. 19/2010 de la Jefatura de Derechos Humanos y DIH del Ejército Nacional. Ejército Nacional, Fuerzas Militares de Colombia. Document Attached to the answer to the application, annex 2, file on the merits, volume I, pages 455 a 463. 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. 276.

<sup>110</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 250-261.

service of their obligations to cooperate with media representatives acting in a news-gathering capacity at the scene of police incidents.” The memorandum recalled some of the most relevant components of the NYPD’s “Patrol Guide”, including “the commitment of the Department to upholding the principles of a free press and informed citizenry”, and the rules that “members of the service will not interfere with the videotaping or the photographing of incidents in public places”, “the media’s access to demonstrations on private property will not be impeded by the Department”, “the media will be given access as close to the activity as possible,” and “when incidents spill over or occur on private property, members of the media will not be arrested for criminal trespass, unless an owner or representative expressly indicates that the press is not to be permitted to enter or remain on the property.”<sup>111</sup>

### **3. The obligation to respect the right of journalists to keep their sources, notes, and personal and professional archives confidential**

52. The IACHR’s “Declaration of Principles on Freedom of Expression,” adopted in October 2000, establishes that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” The European Court of Human Rights (“European Court”) has similarly stated that “[p]rotection of journalistic sources is one of the basic conditions for press freedom.”<sup>112</sup> In the case of *Goodwin v. the United Kingdom*, the European Court further observed 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. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the

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<sup>111</sup> NYPD. [Memorandum](#). November 2011. See also, Knight Center for Journalism in the Americas. November 28, 2011. [New York police ordered not to interfere with journalists covering Occupy Wall Street protests](#).

<sup>112</sup> European Court of Human Rights. *Case of Goodwin v. Reino Unido*. Application No. 17488/90. Judgment March 27, 1996. Para. 39.

Convention unless it is justified by an overriding requirement in the public interest.<sup>113</sup>

53. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has indicated that the right of journalists to keep their sources confidential contributes to ensuring that attempts are not made on their lives for being potential witnesses<sup>114</sup>. In this regard, the International Criminal Tribunal for the former Yugoslavia found, on hearing a case in which a journalist was threatened by a Public Prosecutor and told to reveal his sources, that:

In order to do their jobs effectively, war correspondents must be perceived as independent observers rather than as potential witnesses for the Prosecution. Otherwise, they may face more frequent and grievous threats to their safety and to the safety of their sources. [...] What really matters is the perception that war correspondents can be forced to become witnesses against their interviewees. Indeed, the legal differences between confidential sources and other forms of evidence are likely to be lost on the average person in a war zone who must decide whether to trust a war correspondent with information. To publish the information obtained from an interviewee is one thing -- it is often the very purpose for which the interviewee gave the interview -- but to testify against the interviewed person on the basis of that interview is quite another. The consequences for the interviewed persons are much worse in the latter case, as they may be found guilty in a war crimes trial and deprived of their liberty. If war correspondents were to be perceived as potential witnesses for the Prosecution, two consequences may follow. First, they may have difficulties in gathering significant information because the interviewed persons, particularly those committing human rights violations, may talk less freely with them and may deny access to conflict zones. Second, war correspondents may shift from being

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<sup>113</sup> European Court of Human Rights. *Case of Goodwin v. Reino Unido*. Application No. 17488/90. Judgment March 27, 1996. Para. 39.

<sup>114</sup> 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. 59. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

observers of those committing human rights violations to being their targets, thereby putting their own lives at risk.”<sup>115</sup>

54. The Office of the Special Rapporteur observes that the conclusions of the International Criminal Court for the former Yugoslavia could apply not only to situations of armed conflict but also to situations of social unrest (*infra*) and to journalists covering sensitive topics, such as corruption and the activities of security forces and organized crime. In this regard, the Office of the Special Rapporteur indicates that the protection of confidential sources not only contributes to the press’s fundamental role as watchdog but also helps to prevent journalists from becoming victims of violence.

#### 4. The obligation to punish violence against journalists

55. 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.<sup>116</sup> 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.

56. In their Joint Declaration on Crimes against Freedom of Expression from 2012, 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 indicated that criminal law must establish a specific category for crimes against freedom of expression - to wit, attacks committed in retaliation for the exercise of freedom of expression - whether explicitly or

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<sup>115</sup> International Criminal Tribunal for the former Yugoslavia. [Prosecutor v. Radoslav Brdjanin Momir Talic](#). Decision on Interlocutory Appeal. Case No.: IT-99-36-AR73.9. December 11, 2002. Para. 42- 43.

<sup>116</sup> 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 stated by the Inter-American Commission, States have the primary obligation pursuant to international law to ensure the right to life, by the establishment of effective provisions in their 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 Kiliç v. Turkey*. Application no. 22492/93. Judgment 28 March 2000. Para. 63.

as an aggravating circumstance that would allow for the imposition of more severe punishments for those crimes because of their seriousness.<sup>117</sup> Following the same logic, Resolution No. 29 of the UNESCO General Conference calls on member States to guarantee by law the ability to try and punish those who instigate the murder of people because of their exercise of the right to freedom of expression.<sup>118</sup>

57. Some countries in the region have adopted provisions that move in this direction. Thus for example, the Criminal Code of Colombia establishes the murder of journalists as an aggravating circumstance, increasing the punishment for simple homicide from a sentence of 208 to 450 months in prison to a sentence of 400 to 600 months in prison.<sup>119</sup> Other crimes that are aggravated when committed against journalists in connection with their professional activities include kidnapping to extort,<sup>120</sup> extortion,<sup>121</sup> torture,<sup>122</sup> forced displacement,<sup>123</sup> and threats.<sup>124</sup> The Colombian Criminal Code also includes the crime of “homicide of a protected person,” which occurs when a person protected by international humanitarian law is murdered due to and as part of the armed conflict, including “journalists on assignment or accredited war correspondents.”<sup>125</sup>

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<sup>117</sup> 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](#).

<sup>118</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Resolution 29 "Condemnation of violence against journalists."](#) November, 1997.

<sup>119</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 104, subparagraph 10.

<sup>120</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 170, subparagraph 11.

<sup>121</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 245, subparagraph 7.

<sup>122</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 179, subparagraph 4.

<sup>123</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 181, subparagraph 3.

<sup>124</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 347.

<sup>125</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 135, subparagraph 5.

58. Similarly, a recent amendment to the Mexican Federal Criminal Code changed its general rules for the application of punishments of aggravated crimes committed against a “journalist, person or installation with the purpose of affecting, limiting or diminishing the right to information or the freedoms of expression or the press” to increase sentences by up to a third of the established sentence.<sup>126</sup> The Federal Criminal Code also establishes that in these cases, the sentence will increase by up to a half when the crime is committed “by a public servant in the exercise of their duties” or when “the victim is a woman and gender is part of the motive for the commission of the crime.”<sup>127</sup>

##### **5. The obligation to maintain accurate statistics on violence against journalists**

59. 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.<sup>128</sup> Currently, despite the increase in violence against journalists, the majority of States in the region do not produce this type of statistics. As a consequence, it is not easy to design an adequate policy for preventing violence of this kind.

60. In the context of violence against journalists, the Office of the Special Rapporteur has stressed the importance of compiling detailed, disaggregated statistics as an essential prerequisite for designing, implementing and evaluating effective public policies of prevention, protection and criminal prosecution of violence against members of the media. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur observed “with concern the absence of an institution charged with collecting and maintaining up-to-date

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<sup>126</sup> Estado Unidos de México. [Código Penal Federal](#). Article 51.

<sup>127</sup> Estado Unidos de México. [Código Penal Federal](#). Article 51.

<sup>128</sup> IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57. December 31, 2009. Para. 187.

documented records on violence against journalists in Mexico, and on the legal and administrative proceedings carried out in these cases.”<sup>129</sup> Among its recommendations to the State in the aforementioned report, the Office of the Special Rapporteur urged Mexico to “compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.”<sup>130</sup> At a minimum, these statistics should include: the type of crime committed (murder, assault, etc.), the name, employer and gender of the victim, the location and date of the attack, the suspected person and/or group responsible (if known), the investigating authority and relevant investigation reference number or code, and the current status of the investigation and/or prosecution.

61. The duty to maintain accurate statistics on violence against journalists was also stressed by 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 in their 2012 Joint Declaration, in which they observed that “States should maintain detailed and disaggregated statistics on crimes against freedom of expression and the prosecution of these crimes, among other things to facilitate better planning of prevention activities.”<sup>131</sup> Likewise, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has called on governments, intergovernmental organizations and NGOs to “gather further information and data on these killings and threats [against journalists] and to analyze the trends and developments, including in a gender-sensitive way.”<sup>132</sup>

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<sup>129</sup> 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. 537.

<sup>130</sup> 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. 821.

<sup>131</sup> 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](#).

<sup>132</sup> 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. 107. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)



## **B. The obligation to protect**

### **1. The obligation to protect at-risk journalists and media workers**

62. Pursuant to the inter-American system legal human rights framework, States have an obligation to protect those who face special risk to their fundamental rights. As will be developed in greater detail subsequently, 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.<sup>133</sup> In this regard, 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, as will be seen later on, when a particular country faces a systematic and serious 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 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.<sup>134</sup>

63. The scope of the State's positive obligation to protect individuals exposed to special risk was defined by the Inter-American Court

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<sup>133</sup> I/A Court H.R. *Case of the "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.

<sup>134</sup> 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](#).

in the case of the *Pueblo Bello Massacre v. Colombia*,<sup>135</sup> where it found that “[f]or a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate danger to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that danger.”<sup>136</sup>

64. The obligation to protect discussed by the Inter-American Court in the *Pueblo Bello* case was applied by the IACHR in the case of a journalist and his family who were forced to flee the country after failing to receive adequate protection from the State in light of threats provoked by his complaints of human rights abuses by the Colombian armed forces. In the case of *Luis Gonzalo “Richard” Vélez and Family*, the Commission found that camera operator Richard Vélez was beaten by soldiers after filming them abusing protesters. Vélez received increasingly serious threats following the dissemination of the images he had captured and his decision to press charges against the soldiers who beat him. The Commission found the State responsible for failing to protect him and his family against the urgent risk of harm posed by the threats which eventually forced him into exile. The IACHR cited the *Pueblo Bello* precedent as well as the jurisprudence of Colombia’s own Constitutional Court regarding the “right to personal security”<sup>137</sup> in finding that the State’s failure to “adopt in a diligent manner and in good time the necessary measures to protect Mr. Vélez and his family from the threats and attacks brought to the attention of the authorities” constituted a violation of article 5 of the Convention.<sup>138</sup> The IACHR concluded that, given the background and context of the threats in the particular case, a risk assessment should have been conducted and appropriate protective measures adopted at the moment Vélez first reported to State authorities

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<sup>135</sup> I/A Court H. R. *Case of the “Pueblo Bello Massacre” v. Colombia*. Judgment of January 31, 2006. Series C No. 140. Para. 119-141.

<sup>136</sup> I/A Court H. R. *Case of the “Pueblo Bello Massacre” v. Colombia*. Judgment of January 31, 2006. Series C No. 140. Para. 124, citing European Court of Human Rights. *Case of Kılıç v. Turkey*. Application no. 22492/93. Judgment 28 March 2000. Para. 63.

<sup>137</sup> IACHR. Report No. 136/10. Case 12,858. Merits. Luis Gonzalo “Richard” Vélez Restrepo and Family. Colombia. October 23, 2010. Para. 119.

<sup>138</sup> IACHR. Report No. 136/10. Case 12.658. Merits. Luis Gonzalo “Richard” Vélez Restrepo and Family. Colombia. October 23, 2010. Para. 119.

that unknown individuals had appeared at his residence inquiring about his whereabouts and movements.<sup>139</sup>

65. In its judgment, the Inter-American Court ratified the IACHR's conclusions. As mentioned, the Court stressed that "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."<sup>140</sup> As such, States "have the obligation to adopt special measures of prevention and protection for journalists subject to special risk."<sup>141</sup> For the Court, this special risk should be evaluated in light of the existing context in the country, and may result "from factors such as the type of issues covered by journalists, the public interest nature of the information they cover, or the areas they must enter in order to do their work, as well the dissemination of such information or the decision to denounce or seek investigations of violations they suffered directly or came across in the course of their work."<sup>142</sup> In the specific case of journalist Richard Vélez, the Court concluded that he "clearly faced real and immediate risk to his personal integrity"<sup>143</sup> and that the State, despite being aware of this situation, failed to act diligently to adopt the necessary protection measures for the journalist and his family in a timely manner.<sup>144</sup> The Court underscored that "it corresponds to the State authorities to get to know the situation of special risk in order to determine or assess whether the person who is the target of threats and harassment requires measures of protection or to refer the case to the competent authority to

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<sup>139</sup> IACHR. Report No. 136/10. Case 12.658. Merits. Luis Gonzalo "Richard" Vélez Restrepo and Family. Colombia. October 23, 2010. Para. 118.

<sup>140</sup> 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.

<sup>141</sup> I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 194.

<sup>142</sup> I/A Court H. R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 194.

<sup>143</sup> 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. 195.

<sup>144</sup> 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. 197 and 203.

do this, and also to offer the person at risk timely information on the measures available.”<sup>145</sup>

66. The European Court of Human Rights reached a similar conclusion on the case of *Dink v. Turkey*.<sup>146</sup> Dink was the publisher and editor-in-chief of a weekly Turkish-Armenian newspaper. In 2003 and 2004, he published a series of articles for the newspaper in which he expressed his opinion on the identity of Turkish citizens of Armenian origin. The articles provoked a number of protests and threats from nationalist extremist groups. On October 7, 2005, Dink was convicted and sentenced to six months in prison for the crime of “denigration of Turkish identity” [*dénigrement de la turcité*] because of the content of one of the articles. The ruling was upheld on May 1, 2006, by a cassation court. While he was waiting for the results of a remedy requested from a correctional court, on January 19, 2007, Dink was murdered. The European Court determined that the Turkish State had violated Dink’s right to life on not providing him with protection in response to a real and imminent threat of murder. According to the Court, it was reasonable to expect security forces to be aware of the intense hostility expressed toward the journalist by ultranationalist groups. Likewise, apparently two police delegations and a gendarmerie unit had been informed of the possibility that there would be a murder attempt, and they were even informed of the identity of the alleged instigators. Although the journalist had not requested extra security measures, the European Court found that he could not know that there was a plan to murder him and that therefore, it was up to the authorities to adopt the reasonable measures available in order to prevent real and immediate risk to the life of the journalist. Likewise, the European Court found that the conviction of the journalist for the crime of “denigration of Turkish identity” [*dénigrement de la turcité*] presented the journalist to public opinion - and especially to ultranationalist circles, from which the alleged murders of the journalist emerged - as someone committing offenses against all the Turkish people. The Court concluded that the conviction, added to the failure to adopt measures to protect Dink’s life from attacks by militant ultranationalists, represented a failure

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<sup>145</sup> 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. 201.

<sup>146</sup> European Court of Human Rights. *Affaire Dink c. Turquie*. Requêtes Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09. Arrêt 14 septembre 2010.

to comply with the State's positive obligations with regard to the guarantee of the journalist's right to freedom of expression.<sup>147</sup>

67. The European Court ruled similarly in other cases on the murder of journalists in Turkey who were working for the newspaper *Özgür Gündem*, a publication reflecting the opinions of persons of Kurdo-Turkish origin.<sup>148</sup> Toward the beginning of the 90s, the newspaper went through a number of court proceedings and was accused of promoting separatist propaganda. During that period, its journalists, delivery people, and even vendors were victims of numerous attacks, threats, incidents of harassment, and murders. In these cases, the State argued that the newspaper was functioning as a propaganda tool for extremist group *Partiya Karkerên Kurdistan* (PKK). Nevertheless, the European Court established that the State's obligation to effectively investigate those attacks and, where necessary, provide protection to people at risk existed regardless of the media outlet's editorial stance.<sup>149</sup> So for example, in the case of the murder of journalist Kemal Kılıç, a correspondent with the newspaper, the European Court found that the authorities were aware that the people involved in the publication and distribution of the newspaper *Özgür Gündem* feared becoming victims of a campaign tolerated or approved by public officials, and that therefore, Kılıç was at particular risk of falling victim to an illegal attack. During the two months prior to his death, the journalist published two press releases alerting the government to the attacks perpetrated against the newspaper's facilities and requesting protective measures. However, the State denied that the journalist was at risk and did not put in place any measure of protection for Kılıç or his colleagues. Based on this, the Court concluded that the State violated the journalist's rights to life on failing to take the available reasonable measures to prevent the real and immediate risk to his life.<sup>150</sup>

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<sup>147</sup> European Court of Human Rights. *Affaire Dink c. Turquie*. Requête Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09. Arrêt 14 septembre 2010. Para. 64-75, 106-108, 137-138.

<sup>148</sup> European Court of Human Rights. *Case of Özgür Gündem v. Turkey*. Application No. 23144/93. Judgment 16 March 2000; European Court of Human Rights. *Case of Kılıç v. Turkey*. Application No. 22492/93. Judgment 28 March 2000.

<sup>149</sup> European Court of Human Rights. *Case of Özgür Gündem v. Turkey*. Application No. 23144/93. Judgment 16 March 2000.

<sup>150</sup> European Court of Human Rights. *Case of Kılıç v. Turkey*. Application No. 22492/93. Judgment 28 March 2000. Para. 62-77.

68. Likewise, in the case of *Gongadze v. Ukraine*, the European Court found that the State failed to comply with its obligation to protect journalist Guéorgui Gongadze, who disappeared on September 16, 2000, and whose body was found on November 10, 2000. The journalist was the editor-in-chief of an online newspaper who often criticized persons in positions of power and exposed freedom of expression problems in the country. Two months before his murder, Gongadze wrote an open letter to the Attorney General alleging that he was being followed by unknown individuals and that police officers had interrogated persons who were close to him. The journalist asked the Office of the Public Prosecutor to take the necessary protective measures to prevent this harassment and punish those responsible. On September 1, 2000, two weeks prior to the journalist's disappearance, the Attorney General answered the open letter, stating that there was no basis on which to make a decision regarding the issue. Based on these facts, the European Court found that the Office of the Attorney General had acted negligently in its response to Gongadze's allegations of harassment, especially considering its obligation to supervise police actions. Likewise, the Court found that State authorities should have taken into account the context in which the allegations were made. The Court noted that 18 journalists had been murdered in Ukraine since 1991, and that Gongadze was in a position of vulnerability because he was reporting on politically sensitive issues involving powerful people. The Court also highlighted that the authorities had not acted diligently in their investigation of the facts despite indications that State agents had been the ones responsible for the journalist's disappearance and death. Thus, the European Court concluded that the State violated the journalist's right to life.<sup>151</sup>

69. Domestic courts in countries in the region have also ruled on the State's duty to protect at-risk journalists. Thus, as previously mentioned, the Constitutional Court of Colombia has defined in its settled case law the scope and content of the right to personal safety and the State's corresponding obligations to guarantee it. The Court has found that the right to personal safety "gives individuals the right to receive adequate protection from the authorities whenever they are exposed to exceptional risks that they do not have the legal duty to tolerate because they surpass the bearable levels that are part of life in society."<sup>152</sup> In order to better define the situations in which the State has the duty to take specific protective measures, the Court established a "risk scale," and identified,

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<sup>151</sup> European Court of Human Rights. *Case of Gongadze v. Ukraine*. Application No. 34056/02. Judgment 8 November 2005.

<sup>152</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.

based on the degree of intensity and level of legal risk tolerance, five risk levels in society: (i) minimum risk, where the individual is only threatened by individual and biological factors; (ii) ordinary risk, shared equally by those who live in a society; (iii) extraordinary risk, which people are not required to bear; (iv) extreme risk, which threatens life or personal integrity, and; (v) consummated risk, which is risk that has borne itself out.<sup>153</sup>

70. The Colombian Court defined ordinary risks as risks that “people must tolerate in order to belong to a particular society,” and that “can originate from [...] State action, living together with other people, natural disasters - or the persons themselves.”<sup>154</sup> In response to this type of risk, the State has the duty to take general measures to protect society as a whole, such as by providing effective policing services, essential public services, and building public infrastructure, among other actions. Extraordinary risk is defined as risk that “people are not legally required to bear, for which reason they have a right to receive special protection from authorities.” According to the Constitutional Court, in order for risk to be extraordinary, it must involve a specific situation with the following characteristics: (i) be concrete and identifiable; (ii) be specific; (iii) be present; (iv) be significant - that is, threaten damage to legal interests valuable to the person; (v) be serious and likely to materialize; (vi) be clear and discernible; (vii) be exceptional; (viii) be disproportionate in contrast to the benefits that the person in the situation giving rise to the risk receives. Thus, “the greater the number of confluent characteristics, the greater shall be the level of protection provided by the authorities.” Given these factors, the Court defined extreme risk as risk that includes not only some but all of the characteristics taken into account to determine the

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<sup>153</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003. In judgment T339-10, the Constitutional Court indicated that when the constitutional jurisprudence mentions the levels of exceptional and extreme risks “one refers more precisely to the concept of threat, since it is not enough that the contingency of a possible damage exists, but also that there must be a type of manifestation, some signal, to indicate that the integrity of the person is in danger.” The Court considered necessary to differentiate between risk and threat, in order to determine under which scope it is necessary for the State to activate special protective measures. In this regard, the court affirmed: “One must not speak only about a scale of risks, but instead about a scale of risks and threats, since the first levels of the scale refer to the concept of risk inasmuch as, in these levels, there is an abstract and random possibility that damage may take place. On their turn, in the two final levels of the scale, there is no longer merely a risk, but, instead, a threat, inasmuch as there are real facts that, due to their mere existence, imply in a change in the pacific use of the attacked right and make suppose that the integrity of an individual is in danger.” Corte Constitucional de Colombia. [Sentencia T-339-10](#). May 11, 2010.

<sup>154</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.

existence of extraordinary risk, with this risk also needing to be: (i) serious and imminent, and; (ii) directed against life and integrity of persons.<sup>155</sup>

71. In this sense, the Constitutional Court of Colombia identified the obligations of State authorities should they learn of persons potentially facing extraordinary risk. Among those obligations, the Court indicated the duty to identify the extraordinary risk and warn affected individuals of its existence; weigh, through examination of the specific case, the characteristics and origin of the risk; define and adopt in a timely fashion the measures that are specific, adequate and sufficient for preventing the risk from materializing; and periodically evaluate the development of the risk, effectively respond to signs that it may materialize, and act to mitigate its effects. Likewise, authorities have the negative obligation to abstain from taking decisions that could create an extraordinary risk. Additionally, the Court highlighted the need for affected persons to prove, summarily, “the facts that point to the existence of an extraordinary risk” and their characteristics, and “the situation of vulnerability or special exposure to the risk in which they find themselves in.” On this latter point, the Court identified journalists as one of the certain categories of persons that, because of the type of activities they do, “are exposed to risks of such an intensity that is highly possible that they meet all or the majority of the characteristics [of an extraordinary risk],” and that therefore they should be the subject of special attention from State authorities.<sup>156</sup>

72. As mentioned previously, States have an obligation not only to protect at-risk journalists, but also to guarantee that the protective measures adopted are effective and adequate. In this sense, when measures are adopted 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 beneficiary, the beneficiary’s gender, and other individual circumstances. In their 2012 Joint Declaration, the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe’s (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 stated

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<sup>155</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.

<sup>156</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.



that protective measures “should be tailored to the individual circumstances of the person at risk, including his or her gender, need or desire to continue to pursue the same professional activities, and social and economic circumstances.”<sup>157</sup>

73. In the same way, on ratifying the provisional measures ordered in response to acts of violence against employees of television channel *Globovisión*, in Venezuela, the Inter-American Court highlighted the importance of providing protection measures that facilitate, rather than obstruct, the professional activities of those who work in the media. The Court stated that “the State must continue to adopt the appropriate and necessary measures to safeguard and protect the life, personal integrity, and freedom of expression of the beneficiaries of these provisional measures, especially when they carry out journalistic activities outside the station’s offices [...] The means and coverage of this protection must respond to the requirements of the circumstances.”<sup>158</sup> Likewise, on ratifying the provisional measures ordered for the protection of the employees of *Radio Caracas Televisión* (RCTV) in Venezuela, the Inter-American Court ordered the State to allow the beneficiaries or their representatives to participate in the “planning and implementation of the protection measures.”<sup>159</sup> The IACHR has also ruled similarly with regard to protection measures intended to protect human rights defenders.<sup>160</sup>

74. Likewise, the Constitutional Court of Colombia recognized in the aforementioned judgment T-1037/08 that journalists have a right to participate in the design of a program for protection that would allow for the continuation of their professional activities. The ruling was handed down in a writ of protection filed by journalist Claudia Julieta Duque, who had her protective measures assigned by the State canceled - despite

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<sup>157</sup> 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](#).

<sup>158</sup> I/A Court H.R. *Provisional Measures, Matter of "Globovisión" Television Station regarding Venezuela*. Order of the Inter-American Court of Human Rights. November 21, 2007. Considering 11.

<sup>159</sup> I/A Court H.R. *Provisional Measures, Matter of Luisiana Ríos et al. regarding Venezuela*. Order of the Inter-American Court of Human Rights. September 12, 2005. Fifth operative paragraph.

<sup>160</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 522- 524.

having been subjected to repeated threats - after she used a State armored vehicle to continue with her journalism activities without an official driver. In its ruling, the Constitutional Court found that the State must guarantee not only the right to personal security for individuals being threatened, but also “the least collateral restrictions possible resulting from the protection measures adopted.”<sup>161</sup> Regarding this point, the Court reiterated that the protection of the person must be performed such that it guarantees the person’s other fundamental rights, such as the right to work and to privacy. Thus, the protected person, being fully aware of the risks, “has the right to submit specialized arrangements to the agencies with authority over the matter that would better allow the person to try to survive with dignity the threats and risks that they unfortunately face.”<sup>162</sup> Specifically with regard to journalism, the Court found that:

When what is at issue is a journalist who, despite threats, decides to continue their investigations, that person will likely require special provisions that take into account the totality of the rights involved. In particular, it is obvious that journalists may need a certain amount of privacy to be able to interview a confidential source or make certain inquiries. In these cases, it becomes necessary to make special arrangements designed to guarantee both the journalist’s safety and their work and the important rights associated with freedom of expression. Specifically, the Court cannot fail to note that in these cases, not only is the right of all persons to free personal development at issue, but also the rights to freedom of expression and to the confidentiality of sources.<sup>163</sup>

75. In the specific case in question, the Constitutional Court found that allowing the journalist herself to drive the vehicle, as long as she was aware of the circumstances and the risks involved in her case, cannot be rejected out of hand by state authorities as a potential measure. The Court concluded that the State agency in charge of providing protection to the journalist had the obligation, with the active participation of the beneficiary, to study the specific situation and adapt

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<sup>161</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

<sup>162</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

<sup>163</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

protective measures “in order to satisfy as well as possible the majority of the fundamental rights involved in this case.”<sup>164</sup>

76. Likewise, the protection measures for journalists and persons who work for the media must also consider 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. In its analysis of the situation of human rights defenders in Colombia, for example, the IACHR cited the recommendation of the United Nations High Commissioner of Human Rights, according to which Colombia should “strengthen programs for the protection of human rights advocates,” as well as its observation that “it is fundamental for [such] programs and mechanisms to respond adequately to the needs of organizations that defend the rights of women and the needs of their members, so they may continue working to promote and defend their rights.”<sup>165</sup> In this sense, as explained in a subsection of this report, when designing and implementing plans for protection, including components of prevention and access to justice, States must attend to the needs and risks that are gender specific.

77. Finally, States have the obligation to 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, 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 profession and their family lives.<sup>166</sup>

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<sup>164</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

<sup>165</sup> IACHR. [Violence and Discrimination Against Women in the Armed Conflict in Colombia](#). OEA/SER.L/V/II. Doc. 67. October 18, 2006. Para. 227.

<sup>166</sup> IACHR. [Annual Report 2012. Annual 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. Annual Report of the Office 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 e); IACHR. [Annual Report 2010. Annual 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. Annual 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.

78. The previous paragraphs have addressed the State's obligations to adopt special protective measures designed for individual journalists who face risk from doing their jobs. However, 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. Thus, for example, in its 2005 report *Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in Colombia*, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission recognized the efforts made by the Colombian State with the creation of the Program to Protect Journalists and Social Communicators, which "have allowed for the physical protection of an important number of Colombian journalists."<sup>167</sup> At the same time, in its report following the *in loco* visit to Honduras in 2010, the IACHR concluded that "[t]he State must (...) adopt permanent protective mechanisms to ensure the lives and personal integrity of the journalists and social communicators who are at risk."<sup>168</sup> Similarly, at the conclusion of an *in loco* visit to Mexico made in 2010, this Office and the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression indicated that since 2000, Mexico has become the most dangerous region in the Americas in which to practice journalism. They also highlighted the "urgent need" to create a program to protect journalists as soon as possible.<sup>169</sup> Later, in the 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur viewed positively the adoption of a Coordination Agreement for the Implementation of Preventative and Protective Actions for Journalists as a national mechanism for protecting journalists and communicators. It urged that the agreement be implemented.<sup>170</sup> Regarding this, the Office of the Special Rapporteur

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A/HRC/20/17. June 4, 2012. Para. 102. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>167</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 107.

<sup>168</sup> IACHR. [Preliminary Observations of the IACHR on its Visit to Honduras, May 15 to 18, 2010](#). OEA/SER.L/V/II. Doc. 68. June 3, 2010. Para. 26.

<sup>169</sup> OAS Office of the Special Rapporteur for Freedom of Expression and Special Rapporteur for Freedom of Opinion and Expression. August 24, 2010. [Joint Official Visit to Mexico - Preliminary Observations \(In Spanish\)](#). P. 6

<sup>170</sup> 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. 818 and 821.

congratulated the Mexican State for the 2012 passage of the “Law to Protect Human Rights Defenders and Journalists,”<sup>171</sup> which created a “mechanism to protect human rights defenders and journalists” and urged the authorities to implement it adequately and pursuant to the international standards that will be examined *infra*.

79. The Inter-American Court, for its part, has also addressed the importance of programs to provide special protection for journalists. In the *Case of Vélez Restrepo and Family v. Colombia*, the Court took note of the programs implemented and actions taken by the Colombian State to protect at-risk journalists, mainly the Protection Program of the Ministry of the Interior and Justice at the time (see *infra*).<sup>172</sup> The Court urged Colombia to “continue taking all necessary measures to adopt and strengthen the special programs designed to protect journalists at risk [...]”.<sup>173</sup>

80. Other international mechanisms have also highlighted the importance of specialized protection programs. The United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Organization for Security and Cooperation in Europe’s (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 expressed in their 2012 Joint Declaration that “[s]pecialized protection programmes, based on local needs and challenges, should be put in place where there is an ongoing and serious risk of crimes against freedom of expression.”<sup>174</sup> The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has also

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<sup>171</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012.

<sup>172</sup> 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. 289 and 290.

<sup>173</sup> 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. 290.

<sup>174</sup> 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](#).

stated that “[i]n countries where high incidences of attacks against journalists are reported, States should seriously consider establishing special protection programmes in consultation with civil society, journalists and other stakeholders.”<sup>175</sup> Similarly, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity highlights how important it is for States to “take an active role in the prevention of attacks against journalists, and take prompt action in response to attacks by establishing national emergency mechanisms, which different stakeholders can adopt.”<sup>176</sup>

81. When States decide to establish specialized protection programs, it is crucial that they be implemented adequately. In its analysis of programs to protect human rights defenders, the IACHR found that these programs “can enable a State to comply with its obligation of protection”, but that some of the existing programs in the region “tend to have efficacy and design problems.”<sup>177</sup> 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 implementation and operation of the mechanism; and 5) the benefits of seeking support from the international community for the mechanism’s operation.<sup>178</sup>

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<sup>175</sup> 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. 116. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>176</sup> 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(8).

<sup>177</sup> 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.

<sup>178</sup> 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.

82. Similarly, in its Second Report on the Situation of Human Rights Defenders in the Americas, the IACHR details a series of elements that are necessary for specialized protection programs. These elements are likewise applicable to protective mechanisms aimed at journalists and media workers. The first element is political commitment from the State, which must include an adequate legal framework, effective administration carried out by suitable personnel, sufficient resources and personnel, and coordination between the central government and regional or federal entities.<sup>179</sup> The second element is the adequate identification of the potential beneficiaries.<sup>180</sup> The third element is an adequate recognition of the grounds on which a potential beneficiary can seek protection; specifically, such protection should be available in response to threats or violence related to one's professional activity, and should not be confused with the criteria applicable to witness and victim protection programs.<sup>181</sup> The fourth element is a proper risk assessment procedure that enables the State to determine the best way to fulfill its obligation to protect, taking into account contextual and specific circumstances and providing for the active participation of the beneficiary.<sup>182</sup> The fifth element is the provision of suitable and effective protection measures that are tailored to both protect beneficiaries' life and integrity and allow them to continue their professional activities.<sup>183</sup> Finally, clear criteria and procedures should exist for monitoring the danger to a beneficiary and eventually lifting protection measures—which are fundamentally provisional and temporary in nature—once the risk to life and integrity ceases.<sup>184</sup>

83. In addition, 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 protection program is designed and implemented, especially when the programs benefit both groups.

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<sup>179</sup> 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 and 495.

<sup>180</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 496 and 497.

<sup>181</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 498-504.

<sup>182</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 505-520.

<sup>183</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 521-528.

<sup>184</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 529-531.

84. Finally, as previously mentioned, the Office of the Special Rapporteur notes that it is important for the protection programs to take into account the need to guarantee that media workers 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. Likewise, it is crucial for risk assessment 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 they belong is carrying out and those investigations' possible connection with the alleged situation of risk under examination.

## **2. Special protection mechanisms for journalists and media workers in place throughout the region**

85. Throughout the region, certain countries - like Colombia and Mexico - have established special programs for the protection of journalists. In the case of Colombia, the program for the protection of journalists, which has been in place since 2000, is the oldest and best established in the region. For its part, the Mexican protective program was legally established in 2012 and is in the early stages of operation and implementation. 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. For their part, countries like Guatemala and Honduras had expressed interest in establishing programs to protect journalists. This chapter will examine existing protective programs in the region and the recent measures taken to establish them where they do not yet exist. Additionally, best practices in the creation and implementation of existing programs will be highlighted, along with the main challenges currently facing those programs.

### **Colombia**

86. Of all the programs to protect at-risk journalists that currently exist in the region, the best established has been set up in Colombia. The passage of 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.<sup>185</sup> 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.<sup>186</sup> Decree 1592 also established the Committee for Regulation and the Evaluation of Risks [*Comité de Reglamentación y Evaluación de Riesgos*] (CRER), an inter-institutional 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.<sup>187</sup>

87. In 2011, with the passage of Decrees 4065 and 4912, structural changes were made throughout Colombia’s system for the protection of persons at risk, including journalists and social communicators. 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.”<sup>188</sup> 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,”<sup>189</sup> 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 protection due to risk included in the Program for Prevention and Protection are journalists and social communicators.<sup>190</sup>

88. The legal framework creates the National Protection Unit [*Unidad Nacional de Protección*] (UNP), a legal body with administrative and financial autonomy and its own budget, under the Ministry of the Interior, with the purpose of “articulating, coordinating and executing the

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<sup>185</sup> Congreso Nacional. [Ley No. 418 de 26 de diciembre de 1997](#). Article 81.

<sup>186</sup> Presidencia de la República. [Decreto No. 1592 de 24 de agosto de 2000](#). Article 1.

<sup>187</sup> Presidencia de la República. [Decreto No. 1592 de 24 de agosto de 2000](#). Article 2.

<sup>188</sup> Presidencia de la República. [Decreto No. 1225 de 11 de junio de 2012](#).

<sup>189</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 1.

<sup>190</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 6.

provision of protective services” to those persons facing situations of extraordinary or extreme risk in Colombia.<sup>191</sup> Among its principal duties, the UNP is responsible for dealing and processing requests for protection; carrying out risk assessments; 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.<sup>192</sup> The Program for Protection also has a Technical Body for the Collection and Analysis of Information [*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 and reporting new threats to the Protection Program<sup>193</sup>. For its part, the Preliminary Evaluation Group [*Grupo de Valoración Preliminar*] (GVP) is the body responsible for carrying out risk assessments 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.<sup>194</sup>

89. 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

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<sup>191</sup> Presidencia de la República. [Decreto No. 4065 de 31 de octubre de 2011](#). Articles 1 and 3.

<sup>192</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 28.

<sup>193</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 33

<sup>194</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Articles 34 and 35. The Preliminary Evaluation Group is coordinated by a delegate of the National Protection Unit and includes a delegate of the Ministry of National Defense, a delegate from the National Police, a delegate from the Presidential Program for the Protection and Vigilance of the Human Rights and of the International Humanitarian Law, and a delegate from the Special Administrative Unit of Assistance and Comprehensive Compensation to the Victims. The Preliminary Evaluation Group also counts with the participation, as permanent special guests, of a representative of the General Prosecutor’s Office of the Nation, a representative of the General Attorney of the Nation, a representative of the People’s Defender, and a delegate of the Technical Secretariat of the Intersectoral Commission of Early Warnings.

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. The CERREM is a permanent body comprising five senior public officials with voice and vote.<sup>195</sup> It is presided over by the Director of the Human Right Directorate of the Ministry of the 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. However, they do not have the right to vote.<sup>196</sup>

90. In order for at-risk journalists and social communicators to gain access to the protective measures granted by the program, Decree 4912 establishes an ordinary procedure, composed of the following steps: (i) receipt of the request for protection and initial processing of the applicant's claim by the UNP; (ii) analysis and verification that the applicant belongs to the population subject to the protection program and existence of the causal link between the risk and the activity being performed; (iii) transfer of the request to the Technical Information Collection and Analysis Group to collect and analyze the information *in situ*; (iv) presentation of the CTRAI fieldwork to the Preliminary Evaluation Group; (v) analysis of the case by the Preliminary Evaluation Group, which establishes the level of risk (ordinary, extraordinary or extreme) and makes recommendations; (vi) evaluation of the case and decision by the CERREM regarding the protective measures that should be implemented; (vii) adoption of the preventative and protective measures by the Director of the UNP through administrative decree; (viii) notification of the protected individual of the decision made; (ix) implementation of the protective measures, for which a document is drawn up indicating that the measures have been delivered to the individual protected; (x) monitoring of implementation; (xi) reevaluation.<sup>197</sup> In addition to this ordinary

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<sup>195</sup> They are: the Director of the Human Rights Program of the Presidency and IHL, the National Police Director of Protection and Special Services, the Director of the Special Administrative Unit of Integral Reparation and Attention to Victims, and the Coordinator of the Human Rights Office of the Police Inspector General. Presidencia de la República. [Decreto No. 4912](#). December 26, 2011. Article 36.

<sup>196</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Articles 36-37.

<sup>197</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 40; [Decreto No. 1225](#). June 11, 2012. Article 7.

proceeding, in cases of imminent and exceptional risk, the Director of the UNP may adopt provisional measures of protection without the need for risk assessment.<sup>198</sup>

91. The preventative and protective measures that can be assigned by the CERREM according to the situation of the potential beneficiary following the risk assessment analysis include 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.<sup>199</sup> Other measures of protection different from the ones set forth in the Decree may also be adopted, "taking into account a differential approach, the risk level, and location factors."<sup>200</sup> Protective 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 are concluded following the recommendation of this agency should any of these situations provided for in current law be found to be in effect. In this regard, Decree 4912 establishes that protective measures can be lifted when the risk assessment concludes that the measure is no longer necessary; at the request of the person being protected; or upon the expiration of the time period granted for the measure, among other reasons.<sup>201</sup> Current law also identifies the responsibilities of local and national governmental entities with regard to the implementation of protective measures.<sup>202</sup>

92. Since the creation of the Protection Program of the Ministry of the Interior in 1997, Colombia's Constitutional Court has ruled on a number of occasions regarding a variety of aspects of the law, ruling

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<sup>198</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 9.

<sup>199</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Artículo 11.

<sup>200</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 11, para. 2.

<sup>201</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Articles 44-46.

<sup>202</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Articles 25-32.

that the State must take a series of measures in order to guarantee effective protection of the beneficiaries. In this sense, as mentioned in other sections of this report, the Constitutional Court has developed the concept of the right to personal security and defined the different levels of risk under which a person may demand the adoption of specific protective measures by the State.<sup>203</sup> This understanding was later incorporated into Decree 4912, which divides the different types of risk into the categories of ordinary, extraordinary, and extreme. In this sense, pursuant to the case law of the Constitutional Court, ordinary risk is defined under current law as risk to which “all persons are subjected, under equal conditions” and that “does not bear an obligation to adopt measures of protection.”<sup>204</sup> Extraordinary risk is defined as risk that “on being a direct consequence of political, public, social or humanitarian activities or duties [...] people are not required to bear, and includes the right to receive special protection from the State through the Program.”<sup>205</sup> To define that risk, the Decree establishes that the risk must be specific and personalized, concrete, present, significant, serious, clear and discernible, exceptional, and disproportionate. Likewise, Decree 4912 establishes that when the extraordinary risk is serious and imminent, it represents an extreme risk.<sup>206</sup>

93. The Constitutional Court has also evaluated the Protection Program in a number of rulings on compliance with judgment T-025 of 2004, which established the State’s obligations with regard to the population of internally displaced people, including measures to guarantee their right to personal security.<sup>207</sup> Although this judgment makes reference specifically to the population of displaced persons, in its rulings on monitoring of compliance the Constitutional Court identified certain general weaknesses and challenges facing the Protection Program, such as the delay in carrying out risk studies, the centralization of the program in the country's capital, and the inadequacy of the measures implemented in response to risk.

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<sup>203</sup> Corte Constitucional de Colombia. [Sentencia T-719/03](#). August 20, 2003.

<sup>204</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 3, subparagraph 18.

<sup>205</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 3, subparagraph 16.

<sup>206</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 3, subparagraph 17.

<sup>207</sup> Corte Constitucional de Colombia. [Sentencia T-025/04](#). January 22, 2004

94. The Constitutional Court indicated that one of the challenges facing the protection program is the need to adopt “a differentiated focus that promotes the rights of those specially protected under the Constitution.” In that sense, the Court established that authorities have a duty to “pay special attention to cases in which those requesting protection are provided special protection under the Constitution, such as indigenous persons, Afro-Colombians, senior citizens, single mothers, minors, threatened teachers, persons with disabilities, persons of diverse sexual orientations, and human rights defenders, among others.”<sup>208</sup>

95. Along these lines, in Ruling 092 of 2008, the Constitutional Court ordered the adoption of special measures for the protection of the rights of displaced women on identifying a number of factors of vulnerability to which they are exposed in the context of the armed conflict. These factors have a disproportionate impact on displaced women, including the risk of sexual violence. The Court also found that the State has a constitutional and international obligation to adopt a strictly differentiated focus on the prevention of internal displacement and its disproportionate impact on women.<sup>209</sup> Likewise, in previous rulings the Court has developed the obligations of the State with regard to the need to adopt a differential approach in order to guarantee the rights of children and adolescents (Ruling 251 of 2008),<sup>210</sup> indigenous peoples and individuals (Ruling 044 of 2009),<sup>211</sup> the Afro-descendant population (Ruling 005 of 2009)<sup>212</sup> and people with disabilities (Ruling 006 of 2009)<sup>213</sup> who are part the population that has fallen victim to forced displacement.

96. As a result of these rulings, Decree 4912 establishes as part of the guiding principles for measures of prevention and protection the “differential approach,” not only for the population that has been forcibly displaced but also for all groups subject to programs of protection, journalists among them. As a consequence, “for the Risk Assessment and for the recommendation and adoption of measures of protection, specific characteristics and vulnerabilities of age, ethnicity, gender, disability,

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<sup>208</sup> Corte Constitucional de Colombia. [Auto No. 200/07](#). August 13, 2007

<sup>209</sup> Corte Constitucional de Colombia. [Auto No. 092/08](#). April 14, 2008.

<sup>210</sup> Corte Constitucional de Colombia. [Auto No. 251/08](#). October 6, 2008.

<sup>211</sup> Corte Constitucional de Colombia. [Auto No. 004/09](#). January 26, 2009.

<sup>212</sup> Corte Constitucional de Colombia. [Auto No. 005/09](#). January 26, 2009.

<sup>213</sup> Corte Constitucional de Colombia. [Auto No. 006/09](#). January 26, 2009.

sexual orientation, and the urban or rural origins of the individuals being protected must be taken into account.”<sup>214</sup> In addition, the Decree gives to the Ministry of the Interior authority for regulating its application through the adoption of protocols and specific rules “for each group subject to protection, taking into account a differential approach”.<sup>215</sup>

97. Thus, Resolution No. 0805 of May 14, 2012, sets forth the “Specific protocol focusing on gender and the rights of women,” adopting, among other things, principles of preferential and special attention for women and the participation of women's organizations in the program. The Protocol establishes the creation of a Risk Assessment and Measure Recommendation Committee (CERREM) for Women, which includes the participation of women's organizations, State agencies that work on issues of gender, the High Presidential Council on Women's Equality, and representatives of international organizations such as UN Women. The CERREM for Women meets specially and exclusively to examine cases in which women are requesting protection. According to the Protocol, the beneficiary can choose to have her case analyzed by the CERREM for Women or the CERREM created to examine situations of risk in the other segment of the population to which she belongs, such as for example journalists. Likewise, the Protocol establishes the adoption of supplementary measures with a differential approach when they are requested by the beneficiary or found necessary in the risk assessment. These include measures to ensure the health, social safety and well-being of women human rights defenders and their family members; measures aimed at providing support to the beneficiary and her family members for accessing the education system; and measures for aiding mothers who are nursing, pregnant, or have minors in their care. The Protocol also establishes the need for training and sensitizing the agencies and officials with the program on the issue of gender and women's rights.<sup>216</sup> According to available information as of the closing of this report, the State was designing additional protocols with a differential approach.<sup>217</sup>

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<sup>214</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 2, subparagraph 8.

<sup>215</sup> Presidencia de la República. [Decreto No. 4912 de 26 de diciembre de 2011](#). Article 50.

<sup>216</sup> Ministerio del Interior. Resolución 0805. [Protocolo específico con enfoque de género y de los derechos de las mujeres](#). May 2012.

<sup>217</sup> Corte Constitucional de Colombia. [Auto No. 098/13](#). May 21, 2013.

98. In an later monitoring order (Order 098 of 2013), the Constitutional Court identified an increase in the violation of the fundamental rights of women human rights defenders and established a presumption of extraordinary gender risk for this population, including an obligation for the State to guarantee that protective measures respond “adequately to the multidimensional ways gender can come into play - individual, familial, collective and community - and the type of risk.” Likewise, the Constitutional Court viewed positively the changes made to the Protection Program to incorporate a gender perspective, including the adoption of the differential approach Protocol on gender and the creation of the CERREM for Women.<sup>218</sup>

99. Finally, as mentioned previously, the Constitutional Court has also ruled (in judgment T-1037/08) on journalists’ right to participate in the design of measures granted by the Protection Program so as to allow for the continuation of their professional activities. In the ruling, the Constitutional Court found that “when what is at issue is a journalist who, despite threats, decides to continue their investigations, that person will likely require special provisions that take into account the totality of the rights involved. In particular, it is obvious that communicators may need a certain amount of privacy to be able to interview a confidential source or make certain inquiries.”<sup>219</sup> The Court concluded that “in these cases, it becomes necessary to make special allotments designed to guarantee both the journalist’s safety and their work and the important rights associated with freedom of expression.”<sup>220</sup> In light of this, the Office of the Special Rapporteur observes that in recent years, the protection program has also recognized the need to adopt protective measures that guarantee the conditions under which journalists who decide to continue their investigations may carry out their professional activities.

100. In a communication dated October 22, 2013, the State informed that in September 2013, the UNP has provided protection to 93 journalists in 20 departments. Among the beneficiaries, the implemented protective measures included 104 bodyguards; 28 motor vehicles; 19 armored vehicles; 2 motorcycles; 37 bullet-proof vests; 22 mobile communications devices; 14 Avantel communication devices; and approximately 30 million pesos per month in support of relocation and

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<sup>218</sup> Corte Constitucional de Colombia. [Auto No. 098/13](#). May 21, 2013.

<sup>219</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.

<sup>220</sup> Corte Constitucional de Colombia. [Sentencia T-1037/08](#). October 23, 2008. Considering 21.



transportation aid. Additionally, the National Protection Unit declared to have invested a total sum of 7,750 million Colombian pesos (some US\$ 4,100,000) in the protection of journalists and social communicators. Finally, the State informed that it “keeps direct contact with civil associations such as the [Fundación] para la Libertad de Prensa (FLIP), with a dialogue on threats under their attention, and that it is a task of the UNP to be in contact with the victims of such threats, and to provide them with a protective road map.”<sup>221</sup> Additionally, according to information provided by the Fundación para la Libertad de Prensa (FLIP) – a civil society organization that participates in the CERREM as a permanent guest – in 2012 the protection program “handled 100 requests from journalists. Of these, 50 had an extraordinary result, in other words, needed some measure of protection; 40 were ordinary and 10 were returned - that is to say, they were not accepted.”<sup>222</sup> The figures indicate an increase of 40% over the number of cases handled in 2011.<sup>223</sup>

101. The UN Special Rapporteur on the Promotion and Protection of the Right to Opinion and Expression recognized in a recent report the efforts made by Colombia to protect at-risk journalists. At the same time, he pointed to a number of obstacles the program faces, such as the delay in risk analysis and implementation of protective measures, the absence of a focus of the risk assessment that takes context into account, and the transfer of arrangements for protection to private companies.<sup>224</sup>

102. As mentioned previously, in its 2005 report *Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in Colombia*, the Inter-American Commission’s Office of the Special Rapporteur for Freedom of Expression recognized “the efforts of the Colombian State in creating a program aimed at guaranteeing the right to freedom of expression, which has allowed for the

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<sup>221</sup> Communication from the State of Colombia to the Inter-American Commission on Human Rights. MPC/OEA letter No. 1423/2013. October 23, 2013. Memorandum I-GAPDH-13-035732 of October 18, 2013, forwarding communication S-GAPDH-13-042535 to the Office of the Special Rapporteur for Freedom of Expression of October 18, 2013.

<sup>222</sup> Fundación para la Libertad de Prensa (FLIP). 2013. *De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012*. P. 55.

<sup>223</sup> Fundación para la Libertad de Prensa (FLIP). 2012. *De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012*. P. 55.

<sup>224</sup> 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. 69-171. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

protection of the physical integrity of an important number of Colombian journalists.”<sup>225</sup> The Office of the Special Rapporteur wishes also to recognize the political support that the program has received for more than a decade, as well as the significant financial resources that have been allocated, the clarity of the legal framework and administrative proceedings surrounding its implementation, and the variety of protective measures available to the CERREM.

103. The Office of the Special Rapporteur also takes note of the aforementioned challenges to the implementation of the protection program for journalists and social communicators that have been pointed out by domestic courts, international organizations and civil society organizations. In particular, the Office of the Special Rapporteur observes the importance of establishing effective communication between the State agencies in charge of protecting at-risk journalists and social communicators and the authorities responsible for investigating, trying and punishing those responsible for the alleged violations of their rights perpetrated based on their professional activities. In this sense, it is crucial to ensure 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. The Office of the Special Rapporteur also reiterates the importance of accelerating as much as technically possible the procedures for risk assessment and implementation of protective measures, especially in cases in which the need to adopt urgent measures is verified. In this regard, the Office of the Special Rapporteur believes it is important for the program to continue taking into account the specific needs of journalists and social communicators when deciding on the protective and preventive measures to be adopted.

104. Additionally, the Office of Special Rapporteur has previously expressed its concern with regard to the existence of serious irregularities that, from 2002 to 2008, increased rather than decreased the risks to which certain journalists were exposed. Specifically, the Office of the Special Rapporteur has reported that during that time, officials with a State intelligence agency, the now-defunct Administrative Security Department [*Departamento Administrativo de Seguridad*] (DAS), took part in illicit intelligence activities and acts of intimidation directed at

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<sup>225</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 107.

journalists and their families.<sup>226</sup> As the Office of the Special Rapporteur indicated in its 2010 Annual Report:

The investigations initiated by the National Procurator General and the National Attorney General's Office, as well as the important revelations of the media indicate a sustained and systematic policy of persecution on the part of the principal intelligence agency of the State of Colombia, directed at spying on, smearing and intimidating some of the journalists criticizing the Government of President Álvaro Uribe Vélez. In some cases, the unlawful spying by the DAS was undertaken by the same agents charged with protecting those journalists within the framework of the Interior and Justice Ministry's Human Rights Protection Program.<sup>227</sup>

105. The Office of the Special Rapporteur notes that in response to the illicit intelligence activities reported and acts of intimidation directed at journalists and their relatives perpetrated by the DAS between 2002 and 2008,<sup>228</sup> the current administration in Colombia decided to close the DAS and replace it with a new intelligence service. Likewise, the National Protection Unit was created partly to take over the responsibilities of the protection program that previously corresponded to the DAS, such as risk assessments and the implementation of protective measures.<sup>229</sup> The Inter-American Commission has considered that the State should “ensure that the personnel who participate in the security schemes inspire trust in the beneficiaries,” by guaranteeing that “the assignment of personnel for protection include[s] the participation of the beneficiaries.”<sup>230</sup>

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<sup>226</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 140-162.

<sup>227</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 141.

<sup>228</sup> IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 5. March 7, 2011. Para. 140-162.

<sup>229</sup> Presidencia de la República. [Decreto No. 4065](#). October 31, 2011. Considering 2.

<sup>230</sup> IACHR. [Annual Report 2011](#). Chapter IV (Human Rights Developments in the Region) OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 128; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 126-128.

106. The Office of the Special Rapporteur reiterates its satisfaction at the political and financial support that the Colombian State has provided to the program for the protection of journalists and social communicators since its creation in the year 2000. The Office of the Special Rapporteur recognizes the reduction seen since the establishment of the program in cases of journalists and social communicators murdered in Colombia for reasons related to their profession. Without a doubt, the program for the protection of journalists and social communicators in Colombia offers an important example for the countries in the region of a program that has protected the lives and integrity of dozens of journalists and communicators throughout the country.

### **Mexico**

107. 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. Subsequent to the on-site visit the Office of the Special Rapporteur learned that on November 3, 2010, a “Coordination Agreement for the Implementation of Preventive and Protective Actions for Journalists” was signed by the Ministry of the Interior, the Foreign Ministry, the Public Security Ministry, the Prosecutor General’s Office, and the National Human Rights Commission. On November 11, 2010, the Office of the Special Rapporteur received a communication from the Mexican State formally informing it that this Agreement had been signed, which, in the State’s view, represented “the first step towards establishing a mechanism for the protection of journalists and media workers.”<sup>231</sup> The aforementioned Coordination Agreement created a Consultative Committee in charge of receiving requests for protection, establishing and following up on measures of prevention and protection for journalists, and facilitating the federal and local implementation of those measures. Likewise, an Evaluation Subcommittee was created with the responsibility of analyzing the requests for preventive and protective measures and making the corresponding recommendations to the Consultative Committee. The

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<sup>231</sup> 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. 710.

Ministry of Interior [*Secretaría de Gobernación*] was charged with coordinating the mechanism for the protection of journalists.<sup>232</sup>

108. The Office of the Special Rapporteur subsequently received information on some progress in the implementation of the Agreement, including the incorporation of a civil society organization into the Consultative Committee and the adherence of a state government.<sup>233</sup> At the same time, the Office of the Special Rapporteur received comments from press and freedom of expression organizations on the mechanism's capacities and procedures and the lack of effective implementation of the protective measures contemplated in the agreement.<sup>234</sup> In its 2011 Annual Report, the Office of the Special Rapporteur expressed concern regarding the delay in publicly issuing the Operational and Working Guidelines of the Agreement, and reiterated the urgent need to put the protection mechanism into operation given the critical situation of violence against journalists and the media in Mexico.<sup>235</sup>

109. In this context, the Mexican Congress discussed and eventually approved a "Law for the Protection of Human Rights Defenders and Journalists."<sup>236</sup> The bill was signed into law by President Felipe Calderón and 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."<sup>237</sup> Its stated objective is to establish coordination between federal and state governments in the

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<sup>232</sup> 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. 711.

<sup>233</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 432.

<sup>234</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 433.

<sup>235</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 434.

<sup>236</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012.

<sup>237</sup> 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.

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.”<sup>238</sup> 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.

110. 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.<sup>239</sup> 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.<sup>240</sup> The petitioners whose case is under consideration will also be called to participate in the sessions.<sup>241</sup> 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.<sup>242</sup> In its decisions, the body should respect “the *pro persona*, gender perspective,

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<sup>238</sup> 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.

<sup>239</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Artículos 5 y 13.

<sup>240</sup> 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.

<sup>241</sup> 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.

<sup>242</sup> 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.

and best interest of the child principles, and other human rights standards.”<sup>243</sup>

111. 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. The first is the 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. The second is the 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. Finally, the third is 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.<sup>244</sup> The National Executive Coordinator is responsible for coordinating the work of 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.<sup>245</sup>

112. The final body that is part of the Mechanism for Protection is the Advisory Board, a consultation body of the Government Council

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<sup>243</sup> 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.

<sup>244</sup> 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.

<sup>245</sup> 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.

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 Assessment Studies requested by the Government Council to resolve disputes.<sup>246</sup>

113. 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 must always be taken into account.<sup>247</sup> To access the Mechanism, the potential beneficiary must be a human rights defender or a journalist,<sup>248</sup> or their relatives, that have suffered from attacks that have damaged their physical, psychological, moral or financial integrity. The program also covers the property of the beneficiary, group, organization or social movement.<sup>249</sup> 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.<sup>250</sup>

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<sup>246</sup> 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.

<sup>247</sup> 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.

<sup>248</sup> 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. According to Article 2 of the Act, journalists are “persons, as well as public, community, private, independent, university, experimental or any other kind of media outlet, whose work consists in collect, generate, process, edit, comment, opine, disseminate, publish or provide information, through any means dissemination and communications, which can be print, broadcasting, digital or images.”

<sup>249</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Article 24.

<sup>250</sup> 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.



114. The requests for protective or preventative measures are processed by the Unit for Case Reception and Fast Reaction, 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.<sup>251</sup> 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.<sup>252</sup> Urgent protective measures remain in force while the ordinary proceeding moves forward.<sup>253</sup>

115. 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.<sup>254</sup> 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.<sup>255</sup> According to the law, protective measures include instructions,

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<sup>251</sup> 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.

<sup>252</sup> 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.

<sup>253</sup> 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.

<sup>254</sup> 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.

<sup>255</sup> 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.

manuals, self-defense courses and the accompaniment of observers,<sup>256</sup> 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.<sup>257</sup> 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.<sup>258</sup>

116. The Law explicitly stipulates that in no case the provided measures may “restrict the activities of the beneficiaries, or imply in surveillance or undesired intrusions in their professional or personal lives”,<sup>259</sup> and that these measures must be agreed with the petitioners.<sup>260</sup> In this 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.<sup>261</sup> 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;

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<sup>256</sup> 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.

<sup>257</sup> 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.

<sup>258</sup> 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.

<sup>259</sup> 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.

<sup>260</sup> 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.

<sup>261</sup> Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). June 25, 2012. Articles 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.

against the deficient or unsatisfactory fulfillment of these measures; and against the rejection of the decisions of this Unit.<sup>262</sup>

117. 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.<sup>263</sup>

118. Finally, the 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.<sup>264</sup> Nevertheless, the law is not 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.<sup>265</sup> 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 new 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

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<sup>262</sup> 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 and 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 to 114.

<sup>263</sup> 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.

<sup>264</sup> 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.

<sup>265</sup> 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.

of governance and guarantee a coherent response from the Mexican State.”<sup>266</sup>

119. On September 19, 2012, the Mexican government provided the Office of the Special Rapporteur detailed information on the status of the implementation of the protection law.<sup>267</sup> The information provided indicated that the Government Council held its first meeting on July 10, 2012, and subsequently publicly convened individuals and organizations involved in journalism or the defense of human rights or freedom of expression to form part of the Advisory Board.<sup>268</sup> According to available information, the Advisory Board was formed in October of 2012.<sup>269</sup>

120. On November 8, 2013, the State sent updated information on the national protection mechanism.<sup>270</sup> The State reported that 105 requests for protection had been received, 40 of which were requests from journalists. In 9 of the 105 cases, the determination was reportedly made not to include the petitioning individual in the mechanism. In addition, the State reported that the main protection measures that had been granted included ongoing bodyguard services or transportation security; security measures at residences; armored vehicles and the provision of gasoline; telecommunications equipment; panic buttons; surveillance by police patrols; a directory to be used in case of emergencies; self-defense manuals; and support in the filing of complaints. The State also reported that the Government Council had approved the Protocols on Preventive, Protective, and Urgent Measures for Risk Assessment and Protection.<sup>271</sup>

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<sup>266</sup> Office of the UN High Commissioner for Human Rights in Mexico (OHCHR). [Informe sobre la situación de las y los defensores de derechos humanos en México: actualización 2012 y balance 2013](#). Para. 73.

<sup>267</sup> Communication No. OEA02752 from the Mexico Permanent Mission before the OAS. September 19, 2012.

<sup>268</sup> Communication No. OEA02752 from the Mexico Permanent Mission before the OAS. September 19, 2012.

<sup>269</sup> Knight Center for Journalism in the Americas. October 24, 2012. [Council formed in Mexico to supervise new security mechanism for journalists](#); La Prensa. October 22, 2012. [Eligen a miembros del primer consejo consultivo para la protección de periodistas](#).

<sup>270</sup> Communication No. OEA-04472 from Mexico’s Permanent Mission to the OAS. November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

<sup>271</sup> Communication No. OEA-04472 from Mexico’s Permanent Mission to the OAS. November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

121. With respect to the Mechanism's operational personnel, the State reported that the National Executive Coordination and its three technical units is comprised by 20 individuals, and that "there are plans to increase the technical know-how of the individual members of the Government Council and the Advisory Board, as well as of the personnel that form part of the National Executive Coordination."<sup>272</sup> The State further reported that various measures would be put in place with the "aim of consolidating and strengthening the operation of the Mechanism," including the establishment of indicators for the evaluation of the mechanism, in cooperation with the Office of the United Nations High Commissioner for Human Rights in Mexico, and the signing of a memorandum of understanding with the organization Freedom House, which "has the purpose of strengthening the Mechanism technically."<sup>273</sup> The State also provided information on the establishment of the "Fund for the Protection of Human Rights Defenders and Journalists." According to the information received, the Rules of Operation of the Public Trust were approved on February 27, 2013, and published on November 5, 2013. On October 1, the funds authorized for the 2013 fiscal year were transferred to the Trust, a total of \$127,500,000.00 Mexican pesos (some US \$9,720,000). To date, the Trust has \$169,895,841.61 (some US \$12,952,145). Finally, the State reported that 25 Mexican states had signed Cooperation Agreements with the federal mechanism.<sup>274</sup>

122. The Office of the Special Rapporteur considers that the Law for the Protection of Human Rights Defenders and Journalists represents an important expression of the Mexican government's commitment to protecting at-risk journalists. The existence of a clear legal framework marks a significant improvement from the prior Coordination Agreement, and the law has a number of noteworthy characteristics, including the participation of representatives of the human rights and freedom of expression communities in the Government Council, the adoption of the principles of differentiated treatment and gender

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<sup>272</sup> Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS. November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

<sup>273</sup> Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS. November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

<sup>274</sup> The federal entities are: Aguascalientes, Campeche, Coahuila, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, Estado de México, Michoacán, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, San Luis Potosí, Sinaloa, Tabasco, Tamaulipas, Veracruz, Yucatán and Zacatecas. Communication No. OEA-04472 from Mexico's Permanent Mission to the OAS November 8, 2013, forwarding letter CEN/640/2013, of November 5, 2013.

perspective, the availability of a range of protection measures, the existence of an expedited procedure for protecting those facing imminent risk of grave harm, and the explicit goal of maximizing protection while not limiting the journalist's professional activities.

123. In an analysis of the mechanism dating from June of 2013, the Mexico Office of the United Nations High Commissioner for Human Rights (OHCHR) identified a number of challenges facing the protection program's implementation. Among them, the organization observed that:

As the Mechanism is an institution that is in the early stages of operations, it faces challenges that range from the administrative to the fundamental. Noteworthy in these initial months are the needs to overcome as soon as possible any obstacles to accessing financial resources, to having a proper internal structure, and to staffing that structure with qualified personnel. The preparation of risk reports following the guidelines of a methodology that has been agreed upon with civil society and has a broad focus requires stability for personnel in their positions and constant training, together with strong political backing that allows the Mechanism to move beyond traditional approaches to risk assessment. Adequate implementation of the agreed-upon protective measures, monitoring of them, and timely publicizing of the existence and functions of the Mechanism itself are challenges that must be addressed without delay.<sup>275</sup>

124. Similarly, on October 25, 2013, a "Draft Report of the Working Group on the Universal Periodic Review", was issued containing, among other items, preliminary recommendations by several member States to strengthen the federal protection mechanism. In this regard, it recommended: to provide the mechanism with the necessary political support to the fulfillment of its mandate; to secure the mechanism's ability to act preventively, considering the existing threats in relation to organized crime; to continue contributing to the mechanism with the necessary budget for its operations; to contact and provide training to the specialized staff, so as to secure the effective activities of the mechanism; to guarantee the cooperation of the states and municipalities in the implementation of the mechanism; to count with a clear division of jurisdictional responsibilities among the different levels of government;

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<sup>275</sup> Office of the UN High Commissioner for Human Rights in Mexico (OHCHR). [Informe sobre la situación de las y los defensores de derechos humanos en México: actualización 2012 y balance 2013](#). Para. 77 and 78.

and to integrate a gender perspective when treating the issue of journalists' safety in the country.<sup>276</sup>

125. The Office of the Special Rapporteur notes that the law was passed in June 2012, meaning that the mechanism is in its initial stage of implementation. That said, the resolution of certain pending questions is crucial for guaranteeing the law's effectiveness and adequate application. Among these challenges, the Office of the Special Rapporteur would particularly like to point to the importance of assigning and training of personnel necessary for the proper operation of the three auxiliary technical units; guaranteeing that risk assessment studies and implementation of urgent, preventative and protective measures are carried out in an adequate manner and with a differential approach regarding 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 disagreement; and taking the measures necessary to achieve an effective transition - with the entry into force of the federal protection mechanism - for the protection that certain individuals previously enjoyed under the "Coordination Agreement for the Implementation of Preventive and Protective Actions for Journalists."

126. Likewise, coordination of the different State federal agencies, as well as with the federal entities, is crucial for the mechanism to work adequately. It is especially important to ensure effective coordination and exchange of information between the agencies that administer the mechanism and the governmental entities that act to defend of the rights of journalists and that participate in the Government Council, such as the National Human Rights Commission [*Comisión Nacional de Derechos Humanos*] (CNDH) and the Office of the Special Public Prosecutor on Crimes against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos contra la Libertad de Expresión*] (FEADLE). Specifically, that coordination must take into account the CNDH and the FEADLE's authority to grant, *ex officio*, precautionary protective measures to at-risk journalists and the authority of both agencies to receive complaints and investigate attacks on journalists.<sup>277</sup>

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<sup>276</sup> United Nations. Human Rights Council. [Draft report of the Working Group on the Universal Periodic Review Mexico](#). A/HRC/WG.6/17/L.5. October 25, 2013.

<sup>277</sup> See, Estados Unidos Mexicanos. Diario Oficial de la Federación. [Ley de la Comisión Nacional de los Derechos Humanos](#). June 29, 2012. Article 40; Comisión Nacional de Derechos Humanos. August 15, 2013. [Recomendación General No. 20](#), Para. 140.

127. 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, in March 2012, the Federal District created the “Mechanism for Prevention and Protection of Journalists, Journalistic Contributors, and Human Rights Defenders Facing Risk because of their Professions.” The mechanism functions through an Institutional Collaboration Agreement signed by the Secretariat of Government, the Secretariat of Public Security, the Office of the Attorney General for Justice, and the Human Rights Commission. Although it was not enshrined by law, the mechanism included important principles and practices in its protocols, such as gender perspective, nondiscrimination, and the permanent participation of civil society.<sup>278</sup> Similarly, in September of 2012, the state of Morelos established a “Mechanism for the Protection of Journalists” following the adoption of an Inter-institutional Coordination Agreement for the Implementation of Preventative and Protective Actions, signed by the state’s Executive Branch, the Judicial Branch, the state Human Right Commission, the Morelos Institute for Public Information and Statistics, and the State Journalist Forum.<sup>279</sup> Also, in November of 2012, the state of Veracruz, facing a context of intense violence committed against journalists,<sup>280</sup> amended its Constitution to create a “State Commission for Attending to and Protecting Journalists.” The operation of the state mechanism was later outlined in the law passed in December 2012 and its corresponding regulations. Among other things, these norms establish the structure of the Commission and its administrative bodies,

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<sup>278</sup> Estados Unidos Mexicanos. Distrito Federal. May 29, 2012. Institutional Collaboration Agreement. Gobierno del Distrito Federal, el Tribunal Superior de Justicia, la Secretaría de Gobierno, la Comisión de Derechos Humanos, el Secretario de Seguridad Pública el Procurador General de Justicia. Cláusula tercera; Estados Unidos Mexicanos. Distrito Federal. Protocolo de Operación del Mecanismo de Prevención y Protección a Periodistas, Colaboradores Periodísticos, así como a Defensoras y Defensores de Derechos Humanos en Situación de Riesgo con Motivo del Ejercicio de sus Actividades. Capítulo II, b, k. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>279</sup> 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](#). June 6, 2012; El Sol de Cuernavaca. September 29, 2012. [Cuentan periodistas con métodos de protección](#); Instituto Morelense de Información Pública y Estadística. October 2, 2012. [Presentación del documento: “Mecanismos de protección para los periodistas del estado de Morelos”](#).

<sup>280</sup> See, IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 356-389.



and the procedure for accessing protective measures.<sup>281</sup> Finally, according to the information received, other states in the Federation, including Chihuahua,<sup>282</sup> San Luis Potosí<sup>283</sup> and Hidalgo,<sup>284</sup> also established mechanisms for protecting at-risk journalists.

128. The Office of the Special Rapporteur takes note of the initiative of members of the Mexican federation to establish mechanisms to protect at-risk journalists. Nevertheless, the Office of the Special Rapporteur observes that it is crucial to ensure the development of legal frameworks that allow for effective coordination with the federal protective mechanism and particularly take into account the cases in which petitioners access both mechanisms in order to request protection. In this regard, it is essential to guarantee that beneficiaries are not left unprotected or assigned protective measures by both mechanisms that are not compatible. In any case, both the state and the federal mechanisms must meet all the requirements set forth in international standards for their operation. Finally, the Office of the Special Rapporteur indicates that the evaluation of these state mechanisms will depend on their effectiveness in reducing the violence against journalists reported in their respective jurisdictions.

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<sup>281</sup> Estados Unidos Mexicanos. Estado de Veracruz. [Constitución Política del Estado de Veracruz de Ignacio de la Llave](#). 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.

<sup>282</sup> Estados Unidos Mexicanos. Estado de Chihuahua. [Acuerdo para la Implementación del Sistema Integral de Seguridad para Periodistas del Estado de Chihuahua](#). February 14, 2012; Comisión Estatal de Derechos Humanos de Chihuahua. [Sistema de Protección a Periodistas](#); Red de Periodistas de Juárez. April 30, 2012. [Conoce el protocolo de protección a periodistas que se pretende implementar en Chihuahua](#); La Jornada. September 6, 2010. [Formalizan en Chihuahua protección a los periodistas](#); El Buen Vecino. September 6, 2010. [Autorizan en Chihuahua el Sistema Integral de Protección a Periodistas](#).

<sup>283</sup> Estados Unidos Mexicanos. Estado de San Luis Potosí. [Ley de Protección al Ejercicio del Periodismo del Estado de San Luis Potosí](#). May 25, 2013; La Jornada San Luis. April 26, 2013. [Pasa incompleta la Ley de Protección al Ejercicio del Periodismo en SLP](#); El Heraldillo de San Luis Potosí. September 3, 2013. [Por unanimidad se aprobó Ley de Protección al Ejercicio del Periodismo en SLP](#).

<sup>284</sup> 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; Radio Trece. July 31, 2012. [Congreso de Hidalgo aprueba por unanimidad ley de protección a periodistas](#); Diario Vía Libre. August 27, 2012. [Comunicadores reconocen Ley de Protección a Periodistas en Hidalgo](#).

## Brazil

129. Brazil is the third country in the Americas that has 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.<sup>285</sup> Indeed, the Office of the Special Rapporteur has reported that the program was used in at least one case to provide protection to a threatened journalist. As noted in the Office of the Special Rapporteur’s 2011 Annual report, journalist Wilton Andrade dos Santos of broadcaster *Milenius FM* in the municipality of Itaporanga D’Ajuda was included in the Protection Program after being attacked on December 17, 2010 by two unidentified individuals who threw Molotov cocktails at his home and set his car on fire. Andrade dos Santos had reportedly alleged corruption in the municipal government and received death threats.<sup>286</sup>

130. The program for the protection of human rights defenders was established in 2004 by the federal Executive Branch, under the Human Right Secretariat<sup>287</sup> [*Secretaría de Derechos Humanos*] (SDH). The program’s current legal framework is based on Decree No. 6,044 of 2007,<sup>288</sup> which establishes the National Human Rights Defender Protection Policy in order to establish “principles and directives for the protection 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.”<sup>289</sup> In that regard, the Decree establishes general protection directives, such as coordination with civil society; the training of State agents that provide protection; protection of life, provision of social, medical, psychological

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<sup>285</sup> 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. Pp. 22 and 23; Committee to Protect Journalists (CPJ). December 18, 2012. [Assassinatos do Brasil refletem reportagens duras, falta de justiça](#).

<sup>286</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/SER.L/V/II. Doc. 69. December 30, 2011. Para. 51.

<sup>287</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>288</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007.

<sup>289</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Article 1.

and material aid, as well as re-location for at-risk or vulnerable human rights defenders; cooperation between public safety agencies and the judicial branch for the prosecution of those responsible, and the adoption of measures to address the underlying causes of the situation of risk or vulnerability.<sup>290</sup>

131. Likewise, Decree No. 6,044 provides the SDH 90 days to prepare a National Plan for the Protection of Human Rights Defenders.<sup>291</sup> 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.<sup>292</sup> 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.<sup>293</sup>

132. 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.<sup>294</sup> 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.<sup>295</sup> The National Committee is in charge of the requests for protection that come from those states that do not have their own coordination committees.<sup>296</sup> The federal program and

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<sup>290</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Annex. Política Nacional de Proteção aos Defensores dos Direitos Humanos. Articles 4-7.

<sup>291</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Article 2.

<sup>292</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Artículo 3.

<sup>293</sup> Estado de Brasil. [Decreto 6044](#). February 12, 2007. Article 3, sole paragraph.

<sup>294</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>295</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>296</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

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.<sup>297</sup>

133. 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. According to the SDH, the seriousness of the threat to the petitioner can be characterized by "any threatening conduct whose purpose is to prevent the continuation of the individual's activities for the promotion and defense of human rights." This conduct can be manifested through attacks on the individual's "physical, psychological, moral or financial integrity, or that are discriminatory in nature," as well as through such conduct directed at the applicant's family members or close associates. 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."<sup>298</sup>

134. 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.<sup>299</sup> 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.

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<sup>297</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>298</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

<sup>299</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#).

135. 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 state's Secretariat for Justice and Citizenry and nongovernmental organization Association of Relatives and Friends of Victims of Violence (APAVV).<sup>300</sup> Likewise, some participating states have passed laws formally adopting the program.<sup>301</sup> As of the closing of this report, seven States have signed agreements to implement the program in their jurisdictions.<sup>302</sup>

136. Since 2009, the National Congress has been analyzing a bill that would establish a formal legal basis for the Program for the Protection of Human Rights Defenders. As previously mentioned, the PPDDH currently operates under the auspices of a decree. Among other things, the bill would establish who can access the program; which bodies form part of it and their authority; and the measures of protection available. The draft bill defines human rights defenders as those individuals who "individually or as part of a group, organization or social movement act in the defense of human rights, including legal persons." The text of the bill does not explicitly include journalists or media outlets in that group. Nevertheless, the report from the executive branch presenting the bill to the National Congress mentions journalists among those who act for the defense and promotion of human rights. The bill has been ready for a vote in the Chamber of Deputies since it was approved in committee in October 2011.<sup>303</sup>

137. In a letter sent in December 2012 to the Human Rights Secretariat, the Committee of Human Rights Defenders of Brazil highlighted some progress in the PPDDH, including the government's efforts to include individuals from a variety of different at-risk groups under a broad definition of human rights defenders. At the same time, the Committee pointed to a series of challenges that persist, such as the need

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<sup>300</sup> Estado de Brasil. Estado de Ceará. August 1, 2012. [Equipe técnica do Programa de Proteção aos Defensores de Direitos Humanos recebe capacitação](#). See also: Estado de Rio de Grande do Sul. Edital. [Seleção Pública de Entidade Privada sem Fins Lucrativos com Objeto de Formalizar Parceria por Meio de Convênio para Gestão do Programa de Proteção aos Defensores de Direitos Humanos do Estado do Rio Grande do Sul. Rio Grande do Sul](#).

<sup>301</sup> Thus, for example, see: Estado de Brasil. Estado de Espírito Santo. [Ley No. 8,233](#). December 21, 2005.

<sup>302</sup> Secretaria de Direitos Humanos da Presidência da República. [Proteção dos Defensores de Direitos Humanos](#)

<sup>303</sup> State of Brazil. Câmara dos Deputados. [Projecto de Ley 4575 de 2009](#).

to move the legislative debate forward in Congress in order for the PPDDH to be formally established, the need to strengthen the budget and the program's structure as part of the Human Rights Secretariat, and the need to ensure coordination that is less bureaucratic and more effective between the federal and state programs.<sup>304</sup>

138. On October 29, 2013, the State of Brazil provided additional information on the National Program for the Protection of Human Rights Defenders at the hearing on the "Situation of Human Rights Defenders in Brazil," held during the IACHR's 149 Period of Sessions. The State reported that 404 individuals are currently included in the program. Among them, 218 people had their cases supervised by the federal technical team in 21 states, and 186 people had their cases supervised by the program's state teams in six states<sup>305</sup> that signed agreements to participate in the program. Additionally, the State reported that the state and federal teams were composed of a total of 60 individuals. According to reports, the protection program has a budget of 13 million *reais* (some US\$ 5,600,000), and additional funds and logistical support are provided by other federal government agencies to hire technical teams, take protection measures, and hold regular meetings, among other things. Finally, the State acknowledged some of the challenges to the implementation of the program, such as violence and threats to the beneficiaries, the task of investigating and holding responsible the perpetrators of these crimes, and the need for greater financial support so that the program will be able to provide special services to all of the states in the country. The State reported that 3 consultants had been hired to prepare a diagnostic report on the procedures, rules, and methodology of the program, including the action of the justice system and the structure of the offices of the secretaries of the federation's states that coordinate the program. According to the information received, civil society is also cooperating in the identification of measures to improve the program.<sup>306</sup>

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<sup>304</sup> Comitê Brasileiro de Defensoras/es de Direitos Humanos. November 19, 2010. [Carta do Comitê Brasileiro de Defensoras/ES de Direitos Humanos – 2010](#). See also, Amnesty International. 2012. [Transformando dor em esperança: defensoras e defensores dos direitos humanos nas Américas](#).

<sup>305</sup> Those states are Bahia, Minas Gerais, Espírito Santo, Pernambuco, Ceará and Rio Grande do Sul.

<sup>306</sup> IACHR. 149 Period of Sessions. Hearing on the Situation of Human Rights Defenders in Brazil. October 29, 2013. Available for consultation: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>

139. In a letter dated March 29, 2013, the Brazilian State reiterated that it “is willing to discuss and adopt broader measures to protect journalists [...] threatened for reasons associated with the free exercise of their activities.” In this sense, the State reported that on October 18, 2012, the Council for the Defense of the Rights of the Human Person (CDDPH) created the “Working Group on the Human Rights of Communication Professionals in Brazil.”<sup>307</sup> The group is composed of authorities from the federal government,<sup>308</sup> from the Office of the Attorney General of the Republic, and representatives of journalist associations and organizations. The Working Group can receive complaints of violence and threats against communication professionals for reasons related to the exercise of their work and refer these cases to the competent bodies for follow up. In addition, according to the State, the Working Group should propose the creation of a system for monitoring complaints; the fine tuning of public policy for carrying out this monitoring; and directives for the safety of communication professionals facing risk as a result of the exercise of their professions. Finally, the State reported that “the Working Group shall carry out its activities for 180 days, extendable for an equal period, and must submit partial reports and a final report to the Council for the Defense of the Rights of the Human Person.”<sup>309</sup> According to the received information, during 2013 the Working Group had many meetings and activities, including public hearings in the states of the federation to receive information on the situation of violence against journalists. Attendees to the meetings of the Working Group also included UNESCO authorities, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and experts who work with the issue of the protection of journalists in Mexico and Colombia.<sup>310</sup>

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<sup>307</sup> State of Brazil. Communication No. 129 to the Office of the Special Rapporteur for Freedom of Expression. May 28, 2013.

<sup>308</sup> According to the information received, the Working Group is composed by representatives of the Council for the Defense of the Rights of the Human Person, of the Human Rights Secretariat of the Presidency of the Republic, of the Social Communications Secretariat, and of the General Secretariat of the Presidency of the Republic.

<sup>309</sup> Estado de Brasil. Communication No. 129 to the Office of the Special Rapporteur for Freedom of Expression, dated May 28, 2013.

<sup>310</sup> Estado de Brasil. Communication No. 301 to the Inter-American Commission on Human Rights dated November 11, 2013, anexo XIV. Grupo de Trabalho “Direitos Humanos dos Profissionais de Comunicação no Brasil” criado pela Resolução No. 07/2012 – Relatório Parcial.

140. According to the information received, in December of 2012, the Minister of the Human Rights Secretariat stated that the Working Group would analyze the possibility of creating a new special program to protect journalists or broadening the existing program for the protection of human rights defenders to explicitly include journalists.<sup>311</sup> Later, on October 15, 2013, during the Global Investigative Journalism Conference, the Minister of the Human Rights Secretariat presented information on the Working Group's recent activities. At that time, the President of the Working Group indicated that the group's final report would be presented in February 2014, and that a preliminary report would be presented in December 2013. He observed that at least four guidelines are under consideration: the creation of a public observatory of investigations and judicial proceedings on crimes against journalists; the creation of manuals and guides on safety and risk for training communicators; the adaptation and implementation of UNESCO's national journalists' safety indicators;<sup>312</sup> and the development of a national strategy pursuant to the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity.<sup>313</sup>

141. The Office of the special Rapporteur receives with satisfaction the information provided by the Brazilian State with regard to the progress of the Program for the Protection of Human Right Defenders and on the creation of the Working Group on the Human Rights of Communication Professionals in Brazil. The Office of the Special Rapporteur believes it is crucial for the Brazilian State to continue adopting measures to strengthen the current mechanism for protecting human rights defenders, which, as mentioned previously, has also granted protection to journalists. In particular, the Office of the Special Rapporteur observes the need to clearly define the status, budget and legal framework of the protection program by passing a law that could contribute to improving the general effectiveness of the PPDDH program. Likewise, the Office of the Special Rapporteur observes with satisfaction the comments from state authorities on the possibility of explicitly including journalists in

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<sup>311</sup> O Globo. December 24, 2012. [Governo planeja proteção a jornalistas](#); G1. April 18, 2013. [Secretaria de Direitos Humanos avalia riscos para jornalistas de MG](#); BBC Brasil. December 20, 2012. [Governo estuda criar programa de proteção a jornalistas](#).

<sup>312</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). July 25, 2013. [Journalists' Safety Indicators-National Level](#).

<sup>313</sup> Secretaria de Direitos Humanos. October 16, 2013. [País precisa garantir atuação dos profissionais de comunicação, diz ministra](#); ONU BR. October 16, 2013. [Brasil mapeia violência contra jornalistas e deve adotar plano de proteção da ONU, afirma ministra](#).



the protection program or creating a protection program specifically for that group, which would need to be established in accordance with international standards on the subject. Finally, the Office of the Special Rapporteur observes that in order for the current protection program to respond to the needs of journalists as well as human rights defenders, it is crucial to, among other things, explicitly make the necessary adjustments to the protection of journalists and disseminate information on its existence to the country's media workers, who may not know they can request protection from the program.

### Guatemala

142. For its part, the State of Guatemala has expressed recently on a number of occasions its intention to adopt a specialized mechanism to protect at-risk journalists. In that regard, in the context of its participation in the Universal Periodic Review (UPR) before the UN Human Right Council in October 2012, the government of Guatemala announced that it was preparing a national plan for the protection of journalists from threats to their physical integrity.<sup>314</sup> Also, according to the information received, in May 2013, the president of Guatemala - Otto Pérez Molina - reiterated in the presence of UNESCO and the United Nations Office of the High Commissioner for Human Rights in Guatemala his commitment to local journalism associations and the Centro de Reportes Informativos sobre Guatemala (CERIGUA) "to draw up and implement as soon possible a program of a preventative nature for the protection of journalists."<sup>315</sup> In August 2013, the President of the Republic reiterated his commitment and said that the State was studying the creation of an office to protect the work and lives of journalists.<sup>316</sup>

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<sup>314</sup> United Nations. Office of the UN High Commissioner for Human Rights (OHCHR). [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21](#). August 7, 2012; Agencia Guatemalteca de Noticias (AGN). November, 30 2012. [Elaboran plan para protección de periodistas](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). October 29, 2012. [Llaman a la acción para proteger a los periodistas en Guatemala](#).

<sup>315</sup> IFEX/ Centro de Reportes Informativos sobre Guatemala (CERIGUA). May 7, 2013. [El futuro para un programa de protección a periodistas en Guatemala](#); Commitment adopted by the Guatemalan Government through the President of the Republic of Guatemala before the departmental journalism associations and the news agency Cerigua, Centro de Reportes Informativos sobre Guatemala. May 3, 2013. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>316</sup> Terra. August 22, 2013. [Guatemala suscribirá acuerdo de protección a periodistas de ONU](#); El Periódico. August 22, 2013. [Guatemala suscribirá acuerdo de protección a periodistas de ONU](#); El País. August 20, 2013. [Guatemala busca proteger a los](#)

143. Although it has no specialized mechanism to protect at-risk journalists, in communication dated March 4, 2013, the State of Guatemala informed the Office of the Special Rapporteur of the existence of other protective mechanisms in the country intended to protect victims, witnesses and justice department personnel and to which journalists have access.<sup>317</sup> The State indicated that 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.”<sup>318</sup> 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.<sup>319</sup> 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.<sup>320</sup>

144. As established in Decree 70-96, in order to access protection services, a request must be sent to a program official and

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[periodistas tras cuatro asesinatos](#); Yahoo!. August 21, 2013. [Firma Guatemala con aval de ONU acuerdo para proteger a periodistas](#).

<sup>317</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

<sup>318</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

<sup>319</sup> Estado de Guatemala. [Decreto número 70-96](#). August 27, 1996. Articles 1 and 2.

<sup>320</sup> Estado de Guatemala. [Decreto número 70-96](#). August 27, 1996. Artículos 3 to 7.

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, among other things: whether the risk to which the petitioner is exposed is reasonably certain; the seriousness of the punishable act and its “social transcendence;” the evidentiary value of the statement accusing the participants in the criminal act, both the direct perpetrators and the masterminds; the possibility of obtaining the offered information through other means; the options for granting the protection provided for by law; and the risks that said protection could present to the society or community in which the beneficiary resides. 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.<sup>321</sup>

145. 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.”<sup>322</sup>

146. In addition, the State indicated that the agency has been needed “for the protection of journalists in 48 cases.” Of these cases, 83% were in response to calls from the Rapporteurs of the United Nation system and 16% to precautionary or provisional measures granted by the

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<sup>321</sup> Estado de Guatemala. [Decreto número 70-96](#). August 27, 1996. Artículos 8 to 11.

<sup>322</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

Inter-American System. According to the State, only one of the cases had to do with a request under the national system for protection.<sup>323</sup> Indeed, the State reported that:

The experience of protecting journalists and social communicators, as well as the degree to which they have accepted the mechanisms, is reflected in the fact that in three cases, personal protection or bodyguard services have been adopted (6% of cases), while in nine cases, perimeter protection was accepted (representing 18%), and finally, in 37 cases (76%) journalists and social communicators did not feel any of the arrangements would be worthwhile.<sup>324</sup>

147. The State added that the high percentage of journalists who refuse any protection arrangements “continues to be a challenge for the State of Guatemala, and from there the need to create a protection program that allows for other security arrangements to be offered in accordance with and without limiting the activity or role petitioners play.”<sup>325</sup>

148. In a December 18, 2013 communication, the State provided updated information on the measures taken for the creation of a program for the protection of journalists. The State reported that President Otto Pérez Molina, together with Vice President Ingrid Baldetti Elias, presented the “Plan for the Protection of Journalists.” The State reported that the Plan has “a structure for coordination among the Ministry of Interior, the Office of the Press Secretary of the President (SCSPR), the Public Ministry (MP), the Presidential Human Rights Commission (COPREDEH), the Office of the Public Prosecutor for Human Rights (PDH), and organizations of journalists, which will be headed by the Office of the Press Secretary of the President of the Republic.” It further

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<sup>323</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

<sup>324</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

<sup>325</sup> Communication of the Permanent Mission of Guatemala to the OAS. M12-OEA-F.9.2.1 No. 463-2013. April 22, 2013, that submits a communication of the Presidential Commission of Human Rights [*Comisión Presidencial de Derechos Humanos (COPREDEH)*] Ref. P-150-2013/AFAF/MR/hm. March 4, 2013.

reported that the Plan would take account of “the recommendations of the United Nations Organization for Education, Science and Culture (UNESCO).”<sup>326</sup> In that communication, the State also provided a copy of the document entitled “Program Proposal for the Protection of Journalists” dated November 28, 2013, which proposes, among other things, general provisions on the organization of the program, the bodies it would include, the process for requesting protection, the protection measures that could be taken, and ways of funding the program.<sup>327</sup>

149. The Office of the Special Rapporteur takes note of the information provided by the State with regard to the existence of a Service to Protect People Involved in Legal Proceedings and Individuals Connected to the Administration of Criminal Justice and the existence of a Coordinating Unit for the Protection of Human Rights Defenders, Administrators and Operators of Justice, Journalists and Social Communicators. However, as was indicated by the State, 99% of requests for protection received have to do with international mechanisms, with only 1% brought under domestic protection programs. Likewise, the Office of the Special Rapporteur notes that the programs for the protection of witnesses and individuals connected with the administration of criminal justice are generally not adequate for guaranteeing effective protection to at-risk journalists due to their professional activities, especially with regard to their specific needs to continue exercising their professions. In this sense, the Office of the Special Rapporteur reiterates that the standards under which potential beneficiaries of specialized programs for the protection of journalists or human rights defenders may obtain protection - that is, in the event of threats or acts of violence connected to these individuals professional activities - should not be confused with the standards applied to programs for the protection of witnesses and victims.<sup>328</sup>

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<sup>326</sup> Communication of the State of Guatemala to the Inter-American Commission of Human Rights. Oficio M12-OEA-F.2.4.2.1 No. 1230-2013. December 24, 2013. “Informe del Estado de Guatemala a Relatora Especial sobre Libertad de Expresión de la Comisión Interamericana de Derechos Humanos, Organización de Estados Americanos.” Ref. P-100-2013/AFAP/hm. December 18, 2013.

<sup>327</sup> Communication of the State of Guatemala to the Inter-American Commission of Human Rights. Oficio M12-OEA-F.2.4.2.1 No. 1230-2013. December 24, 2013. “Informe del Estado de Guatemala a Relatora Especial sobre Libertad de Expresión de la Comisión Interamericana de Derechos Humanos, Organización de Estados Americanos.” Ref. P-100-2013/AFAP/hm. December 18, 2013. Secretaría de Comunicación Social de la Presidencia. November 28, 2013. *Propuesta de Programa de Protección al Periodista*.

<sup>328</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 498-504.

150. On the other hand, the Office of the Special Rapporteur notes with satisfaction the State's recognition of the need to adopt a specialized program for the protection of at-risk journalists and social communicators. The Office of the Special Rapporteur reiterates that it is important for the protection program to be set up pursuant to international parameters, like the ones mentioned in this report, and through consultation with civil society and journalist and media worker organizations, which must also be guaranteed participation in the implementation and operation of said 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 communicators 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.

### **Honduras**

151. The State of Honduras has expressed its intention to create a mechanism to protect at-risk journalists. Following its *in loco* visit in 2010, the IACHR concluded that "the State needs to adopt permanent mechanisms of protection in order to guarantee the life and integrity of at-risk communicators."<sup>329</sup> Regarding this, in communication dated February 22, 2013, the Honduran State reported that "the bill titled 'Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Operators' is being moved forward." The State reported that the bill was "a broad process of consultation and validation at the national level," and includes the participation of civil society organizations, bar associations, journalism associations, and State human rights organizations. Likewise, the State provided information on the passage of the National Plan for the Protection of human rights defenders, journalists, social communicators and justice operators. The Honduran State indicated that the plan "is undergoing the socialization process."<sup>330</sup>

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<sup>329</sup> IACHR. [Preliminary Observations of the IACHR on its Visit to Honduras, May 15 to 18, 2010](#). OEA/SER.L/V/II. Doc. 68. June 3, 2010. Para. 26.

<sup>330</sup> IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 299.

152. On July 11, 2013, the government of Honduras announced in a press release that the draft bill for the Law for Human Rights Defenders, Journalists, Social Communicators and Justice Operators was ready and in the process of looking for funds. For this, the Secretariat of Justice and Human Rights would be working with the Secretariat of the Treasury “to identify and assign the budget line item necessary for the Law to be passed by the National Congress of the Republic.”<sup>331</sup>

153. On October 28, 2013, at a hearing held during the IACHR’s 149 Period of Sessions, the State of Honduras provided as additional information the Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners.<sup>332</sup>

154. On that occasion, the State reported that the Draft Bill provides for the creation of a National Protection Council attached to the Office of the Secretary of State for Justice and Human Rights. According to the State, “[t]he Council is an executive, deliberative, and advisory body to guarantee and enforce the rights enshrined in the Protection Law [...] and to advise the Office of the President of the Republic on matters concerning the protection of the groups enumerated in the law,” which would include journalists.<sup>333</sup> The Draft Bill establishes that the Council will be comprised by representatives of State institutions and civil society organizations.<sup>334</sup> It

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<sup>331</sup> Estado de Honduras. Secretaría de Justicia y Derechos Humanos. July 11, 2013. [Mecanismo de Protección a Defensores de Derechos Humanos, Periodistas, Comunicadores y Operadores de Justicia permitirá dar seguimiento a denuncias de amenazas](#); Proceso Digital. July 11, 2013. [Decreto para protección de periodistas está listo, pero no hay fondos reitera Justicia y Derechos Humanos](#); La Tribuna. August 9, 2012. [Lobo anuncia medidas para proteger a periodistas hondureños](#); El Herald. July 10, 2013. [Buscan fondos para proteger periodistas](#).

<sup>332</sup> IACHR. 149<sup>th</sup> Period of Sessions. Hearing on the implementation of precautionary measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>

<sup>333</sup> Estado de Honduras. Report on progress regarding the implementation of the National Plan for the Protection of Human Rights Defenders, Journalists, Media Workers and Judicial Operators. October 23, 2013. P. 8. Information submitted by the State during the Hearing on the implementation of precautionary measures in Honduras, during the 149<sup>th</sup> Period of Sessions of IACHR.

<sup>334</sup> According to Article 17 of the Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, the National Protection Council will be composed of representatives from: the Office of the Secretary of State for Justice and Human Rights; the Office of the Secretary of State for Security; the Office of the Secretary of State for Foreign Affairs; the Office of the National Human Rights Commissioner; the Public Ministry; the Office of the Attorney General of the Republic; the Judiciary; the Honduran Bar Association; the Honduran Association of Journalists; and by five representatives of civil society organizations. Draft Bill for the Protection of Human

also stipulates that trade associations representing individual beneficiaries will be able to request to participate as observers to the National Council.<sup>335</sup> According to the information received, the National Council's powers will include: handling risk reports filed before the Office of the Secretary of State for Security or the Office of the Secretary of State for Justice and Human Rights; promoting or directing the design and implementation of instructions, public policies, and programs to guarantee and enforce the rights enshrined in the law; examining and debating the national context of the human rights situation in the country and making recommendations; and proposing new prevention, protection, and urgent protection measures that guarantee the life, integrity, freedom, and safety of persons at risk, among other things, for exercising their right to freedom of expression.<sup>336</sup>

155. According to the information received, the Draft Bill also stipulates that the Office of Protection Mechanisms for Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners, which is within the organizational structure of the Office of the Secretary of State for Justice and Human Rights, will be the body responsible for "handling complaints of risk to the beneficiaries of this law, and the instructions and policies issued by the National Protection Council."<sup>337</sup> Accordingly, the Draft Bill provides that the Office of Protection Mechanisms will have three auxiliary units. The first one will be the Case Intake, Risk Assessment, and Immediate Response Unit. This unit will be in charge of receiving complaints involving situations of risk, examining and assessing the reported risk, recommending the adoption of protection measures, and identifying the urgent cases that will be dealt with through the

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Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 17. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>335</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 18. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>336</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 21. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>337</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 25. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.



extraordinary procedure.<sup>338</sup> The second unit will be the Prevention, Monitoring, and Analysis Unit, which will be responsible for ordering measures for the prevention of risks to individual beneficiaries, monitoring the protection measures implemented, and ordering any necessary corrective measures.<sup>339</sup> The last unit will be the Unit for the Protection of At-Risk Individuals, which will be attached to the Office of the Secretary of State for Security, and will operate as a specialized technical body to implement preventive, protective, and urgent protection measures. Therefore, the Draft Bill provides that this unit will have its own security personnel in charge of implementing the measures.<sup>340</sup>

156. According to the information received, the Draft Bill contains various preventive and protective measures that will be implemented according to the risk faced by the beneficiary. In this regard, in situations of “moderate risk,” the available measures will include: special instructions with personal security measures adapted to the situation at hand; self-defense courses; a telephone hotline; the appointment of a liaison in the security corps assigned to provide protection to the individual beneficiaries; and regular monitoring by the General Office of Protection Mechanisms.<sup>341</sup> In cases of “serious risk,” the measures will include: the assignment of cellular, radio, or satellite telephone equipment; the installation of cameras, locks, lights, and other devices at residences; the assignment of bulletproof vests; the installation of metal detectors; ongoing monitoring of the situation of risk and the measures taken, in coordination with the Office of the Secretary of State for Security; the assignment of personal police protection; and, the

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<sup>338</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 31. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>339</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 34. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>340</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Articles 36 and 37. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>341</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 45. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

assignment of police protection at specific properties.<sup>342</sup> Finally, in cases of “serious risk,” the available measures will include: immediate evacuation; temporary or permanent relocation in-country or abroad; the assignment of armored vehicles for ongoing or temporary travel; the assignment of bodyguards from specialized corps; the assignment of bodyguards for personal protection; and the assignment of police protection at specific properties, in qualified cases. The Draft Bill also provides that, “to the extent possible, the protection measures shall not restrict the normal activities of the beneficiaries or involve unwanted monitoring or intrusions in their personal or professional lives.”<sup>343</sup>

157. Finally, with respect to the budget, the Draft Bill instructs the Office of the Secretary of State for Finance to “progressively, according to budgetary availability, allocate the necessary funds from the General Budget of the Republic for the Office of the Secretary of State for Security and for the Office the Secretary of State for Justice and Human Rights, each one within its respective mandate, to timely implement this law.”<sup>344</sup> It further provides that the Office of the Secretary of State for Justice and Human Rights and the Office of the Secretary of State for Security may have additional funds, for example, through contributions made by institution, donations, and national and international cooperation agencies.<sup>345</sup>

158. The State reported that the Draft Bill was introduced to the Congress of the Republic on August 28, 2013 for debate and

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<sup>342</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 46. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>343</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 47. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>344</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 67. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

<sup>345</sup> Draft Bill for the Protection of Human Rights Defenders, Journalists, Media Workers, and Judicial Operators. Article 68. Information provided by the State at the Hearing on the Implementation of precautionary measures in Honduras, during the 149 Period of Sessions of the IACHR.

approval.<sup>346</sup> As of the closing of this report, the Draft Bill was at the initial processing stage. Different organizations of civil society made important observations to the draft bill at the hearing entitled “Implementation of precautionary measures in Honduras,” held during the 149 Period of Sessions of the IACHR, especially with regard to its reference to the participation of social organizations in the protection mechanism, its institutional design, and the indiscriminate treatment in the Draft Bill of the people subject to protection.<sup>347</sup>

159. In its reports, the IACHR has urged the Honduran State to establish protective mechanisms aimed at guaranteeing the safety of individuals who are threatened due to their activity as journalists. In that sense, the Office of the Special Rapporteur notes with satisfaction the progress made with the creation of this mechanism and reiterates to the State that it is important for the protection program to be established as quickly as possible. Likewise, in order for the protection program be properly implemented, it must have the funding and personnel necessary to operate. The Office of the Special Rapporteur also reiterates that it is important for the programs for the protection of journalists to take into account the need to guarantee that communicators are able to continue to perform their professional activities and to guarantee their right to freedom of expression when designing the protection measures available, taking into account the circumstances in each specific case and in consultation with the potential beneficiaries.

### **C. The obligation to criminally investigate, prosecute and punish**

160. The third and final component of a comprehensive State policy to address violence against journalists is the investigation, prosecution and punishment of those who perpetrate such violence. The Office of the Special Rapporteur has repeatedly called on States to “[c]arry out serious, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media

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<sup>346</sup> State of Honduras. Report on progress regarding the implementation of the National Plan for the Protection of Human Rights Defenders, Journalists, Media Workers and Judicial Operators. October 23, 2013. P. 10. Information submitted by the State during the Hearing on the implementation of precautionary measures in Honduras, during the 149 Period of Sessions of IACHR.

<sup>347</sup> IACHR. 149 Period of Sessions. Hearing on the implementation of precautionary measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>

workers.”<sup>348</sup> The Inter-American Court has observed that impunity<sup>349</sup>—the total lack of investigation, prosecution, arrest, trial and conviction of those responsible—fosters the chronic repetition of human rights violations and the total defenselessness of victims and their relatives, and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that impunity is “widely recognized as one of the main causes of the continued killing of journalists.”<sup>350</sup> In the same way, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has found that impunity constitutes a fundamental obstacle to the protection of the lives and personal integrity of journalists, “as it emboldens perpetrators as well as would-be perpetrators to attack journalists with no legal consequences”.<sup>351</sup>

161. Both the Commission and the Court have referred to the chilling effect of crimes against journalists on the willingness of other media professionals as well as ordinary citizens to expose abuses of power and illicit acts of all kinds.<sup>352</sup> Such a chilling effect can only be avoided, the

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<sup>348</sup> IACHR. [Annual Report 2012. Annual 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, letter c). *See also*, IACHR. [Annual Report 2009. Annual Report of the Office 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, letter a); IACHR. [Annual Report 2010. Annual 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, letter a); IACHR. [Annual Report 2011. Annual 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, letter c).

<sup>349</sup> I/A Court H.R. *Case of Ivcher-Bronstein v. Perú. Merits, Reparations, and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 186; I/A Court H.R. *Case of Constitutional Court v. Peru. Merits, Reparations, and Costs* Judgment of January 31, 2001. Series C No. 71. Para. 123; I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211.

<sup>350</sup> I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70. Para. 211; United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10, 2012. Para. 43. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>351</sup> 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. 54. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>352</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 148. IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez

Commission has observed, “by swift action on the part of the State to punish all perpetrators, as is its duty under international and domestic law.”<sup>353</sup>

162. This section lays out international standards and best practices with regard to the investigation, prosecution and punishment of perpetrators of acts of violence against journalists and media workers.

163. The obligation of States to investigate cases of human rights violations arises from this general obligation to guarantee the rights established in Article 1.1, 8 and 25 of the American Convention and Article XVIII and XXVI of the American Declaration, together with the substantive right that must be protected or ensured. In light of this duty, authorities must investigate conduct affecting the enjoyment of the rights protected under inter-American human rights law. This investigation must be carried out, without delay, by all available legal means with the aim of determining the truth and ensuring the identification, prosecution and punishment of the perpetrators. During the investigation procedure and the judicial proceedings, the victims of the human rights violations, or their next-of-kin, should have extensive opportunities to participate and be heard, both in the clarification of the facts and the punishment of those responsible, as well as in seeking fair compensation. However, the investigation should be carried out by the State as an inherent juridical obligation and not merely as a reaction to private interests.<sup>354</sup>

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Restrepo and Family. (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999, para.58. *See Also*, IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716.

<sup>353</sup> IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family. (Colombia). October 23, 2010. Para. 136; IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (Mexico). November 19, 1999. Para. 58. *See also*, IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 716. *See also*, I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 212.

<sup>354</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 33-34; IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II Doc. 57. December 31, 2009. Para. 45; I/A Court H.R. *Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005,

164. The duty of States to investigate conduct affecting the enjoyment of human rights exists irrespective of the agent to which the violation may eventually be attributed. In those cases where conduct is attributed to private individuals (non-state actors), the lack of a serious investigation with the characteristics described can compromise the international responsibility of the State.<sup>355</sup> This is particularly relevant with regard to acts of violence against journalists, considering that nowadays some of the most serious crimes are committed by non-state actors. Such crimes are often carried out by sophisticated and powerful criminal networks in which the direct perpetrator of a crime acts in conjunction with others and at the behest of the organization's leaders.

165. That said, when the crime has been committed by State actors or with the acquiescence or complicity of the State, the State is directly responsible for the violence.

166. States have the obligation to investigate, identify, prosecute and punish all perpetrators of such crimes, including those who carry out the crime, the masterminds, accomplices, collaborators, and those who cover up the human rights violations committed. They must also investigate the structures involved in the execution of the crimes or the criminal structures to which the perpetrators belong.<sup>356</sup>

167. To the Inter-American Court the failure to comply with the obligation to investigate acts of violence against a journalist violates the duty to respect and ensure the right to freedom of thought and expression.<sup>357</sup>

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Series C No. 134. Para. 219; I/A Court H.R. *Case of the Moiwana Community v. Surinam. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124. Para. 147; I/A Court H.R. *Hermanas Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005, Series C No. 120. Para. 63.

<sup>355</sup> I/A Court H.R. *Case of González et al. ("Cotton Field") v. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205. Para. 291; *Case of the Pueblo Bello Masacre v. Colombia*. Judgment of January 31, 2006, Series C No. 140. Para. 145; *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196. Para. 78.

<sup>356</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 40.

<sup>357</sup> See also, I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 215.

168. Unfortunately, it is unusual in the Americas for the whole range of individuals involved in the murder of a journalist to be brought to trial.<sup>358</sup> As mentioned previously, in its Special Study on the Status of Investigations into the Murder of Journalists, the Office of the Special Rapporteur found that from 1995 to 2005, 157 journalists and media workers were murdered for reasons possibly related to their work in journalism.<sup>359</sup> In the vast majority of these cases, investigations have not been completed and in the majority of the cases, the masterminds were not identified.<sup>360</sup> A conviction of any kind was handed down in only 32 out of the 157 cases and only in four cases were the masterminds convicted.<sup>361</sup> In other cases of attacks that are not as serious as murders or disappearances, the probability of a trial and conviction of those responsible is much lower.

169. 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.<sup>362</sup> The majority of the countries in the region have not put special protocols in place requiring authorities to exhaust the line of investigation regarding the exercise of the profession in cases of crimes committed against journalists. This presents an obstacle to the criminal

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<sup>358</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125-126.

<sup>359</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 139.

<sup>360</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 96 and 127.

<sup>361</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 120 and 125 (footnote 160).

<sup>362</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 49.

prosecution of these crimes and is a special factor in the impunity of masterminds.<sup>363</sup> 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 considerably contribute to impunity in particular cases.<sup>364</sup> 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 local state authorities are suspected to have participated in the crimes committed.

170. 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 expose corruption among state authorities.<sup>365</sup> Particularly, impunity in the context of crimes committed against journalists critical of local governments can be aggravated through pressure applied by authorities to the justice system, as well as through the corruption of that system. Thus, a lack of cooperation and coordination between local and national agencies that pursue criminal prosecutions can present an additional obstacle to obtaining justice in these cases.<sup>366</sup>

171. 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

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<sup>363</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. 109-113.

<sup>364</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Paras 98-108 and 115.

<sup>365</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 49.

<sup>366</sup> 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. 73. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)



capacity to defend, guarantee and promote human rights.<sup>367</sup> No doubt, in areas with a strong organized crime presence, another important factor is the wrongful 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.<sup>368</sup> 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.<sup>369</sup> Given this situation, many journalists choose not to file complaints over the threats and attacks against them, perpetuating the cycle of impunity.<sup>370</sup>

172. Nevertheless, there are examples of successful trials from which it is possible to draw some important lessons. One of those is the legal proceeding carried out following the murder of Brazilian journalist Tim Lopes in June of 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*.<sup>371</sup> 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

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<sup>367</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 49.

<sup>368</sup> 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. 73. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>369</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 117 and 118.

<sup>370</sup> 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. 66. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>371</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression.. June 6, 2002. [Press Release 58/02. Rapporteur for Freedom of Expression Gravely Concerned regarding Disappearance of Journalist in Brazil](#); Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#); Committee to Protect Journalists (CPJ). [Tim Lopes](#).

perpetrators and as the crime's mastermind.<sup>372</sup> 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.<sup>373</sup> These actions combined to assert strong and sustained pressure on the authorities to bring Lopes' killers to justice.

173. Days after Lopes' murder, the police arrested Angelo Ferreira da Silva in connection with the crime. He admitted to helping transport Lopes from the place where he was seized to the location of Elias Pereira da Silva, and he began helping the authorities identify the remaining participants in the murder. Three months later, Pereira da Silva was captured. In all, seven suspects were eventually detained, tried and convicted of sentences ranging from 23 years (in the case of the five direct perpetrators) to 28 years in prison (in the case of the mastermind, Elias Pereira da Silva), while Ferreira da Silva, the last suspect to be tried, received a much reduced sentence of nine years in prison in return for his cooperation.<sup>374</sup> Two of those convicted later escaped after being released on parole, eliciting criticism from press freedom groups, but they were both later recaptured.<sup>375</sup> On the tenth anniversary of Tim Lopes' death,

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<sup>372</sup> Reporters Without Borders. October 24, 2005. [Last suspect in Tim Lopes Murder gets nine-year prison sentence](#); Abraji. June 15, 2005. [Homem que torturou Tim Lopes é condenado a 23 anos de prisão](#).

<sup>373</sup> Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#).

<sup>374</sup> Reporters Without Borders. October 24, 2005. [Last suspect in Tim Lopes Murder gets nine-year prison sentence](#); Committee to Protect Journalists (CPJ). [Tim Lopes](#); G1. May 31, 2012. [Morte de Tim Lopes faz 10 anos com todos os sete acusados presos](#).

<sup>375</sup> Knight Center for Journalism in the Americas. November 29, 2010. [Brazilian police arrest drug trafficker convicted of killing journalist Tim Lopes in 2002](#); Knight Center for Journalism in the Americas. May 25, 2010. [Another convicted killer of Brazilian journalist flees prison through the front gate](#).

*Globo* published an article headlined “Death of Tim Lopes marks 10 years with all seven accused in jail.”<sup>376</sup>

174. The Tim Lopes case demonstrates that journalists’ murders can be solved, even when they are committed by powerful actors of organized crime. A series of factors - including constant attention from the press, energetic action on the part of civil society, the assigning of the case to independent judges and prosecutors with the right technical training, and the intelligent use of incentives on the part of authorities - ensured that in this case, the murderers were brought to justice. The remainder of this section will examine a variety of State actions that are crucial for effectively investigating, trying and punishing those who commit acts of violence against journalists.

**1. The obligation to adopt an adequate institutional framework for the effective investigation, prosecution and punishment of violence against journalists**

175. The existence of an adequate institutional framework with sufficient resources is crucial to a State’s ability to investigate, prosecute and punish crimes against journalists. States have the obligation to guarantee that institutional frameworks are not designed so as to lead to or even promote impunity when these crimes take place.<sup>377</sup> Likewise, states must ensure that the agencies responsible for investigating, trying and punishing those responsible for these crimes work under the conditions necessary to do their jobs.

176. The first determining factor for complying with this obligation is assigning the responsibility to investigate and try these crimes to those authorities that will best be able to resolve them and are autonomous and independent to act. 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.<sup>378</sup> The State must ensure that the judges and prosecutors with

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<sup>376</sup> G1. May 31, 2012. [Morte de Tim Lopes faz 10 anos com todos os sete acusados presos.](#)

<sup>377</sup> 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. 57. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>378</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that](#)

authority to act in cases of violence against journalists can operate without being subjected to influence by the public official or criminal organization allegedly involved in the crime, given the existence of indications that said persons participated in the act of violence. Should the investigation and criminal prosecution agencies be acting within such a sphere of influence, the State has the duty to provide them with sufficient capacity to resist it.

177. Along these lines, the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe's (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 determined that the investigation of a crime committed against freedom of expression should "be carried out by a body that is independent from those implicated in the events. This implies both formal hierarchical and institutional independence, and practical arrangements to secure independence. When there are credible allegations of involvement of State agents, the investigation should be carried out by an authority outside of the jurisdiction or sphere of influence of those authorities, and the investigators should be able to explore all allegations fully."<sup>379</sup> For its part, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated that "[w]here there is a possibility of undue influence by

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[may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58, citing I/A Court H. R. *Case of Baldeón-García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147. Para. 95; 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](#); European Court of Human Rights. *Case of Adali v. Turkey*. Application no. 38187/97. Judgment of March 31, 2005. Para. 222. "This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Ergi v. Turkey*, judgment of July 28, 1998, Reports 1998-IV, §§ 83-84, where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident.)"

<sup>379</sup> 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](#).

local authorities or other government bodies, such an investigation should be moved to a different authority outside of their jurisdiction or sphere of influence (for example, in appropriate cases, to the federal as opposed to the state level).<sup>380</sup>

178. In particular, the bodies of the inter-American system have indicated that when State security services have allegedly 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.<sup>381</sup> In that regard, in the aforementioned case of *Vélez Restrepo and Family*, the Inter-American Court found the State responsible for having conducted the preliminary investigation into an attack on a journalist committed by members of the national army through the criminal military jurisdiction. At that time, the Inter-American Court reiterated that the military justice system “is not the competent system of justice to investigate and, as appropriate, prosecute and punish the authors of human rights violations,” and added that “only soldiers on active duty who have committed crimes or misdemeanors that, owing to their nature, harm juridical rights of a military nature, can be tried by the military justice system.” Finally, the Court clarified that “that the criteria to investigate and prosecute human rights violations before the ordinary jurisdiction reside not on the gravity of the violations, but rather on their very nature and on that of the protected juridical right.”<sup>382</sup>

179. For its part, in the case of *Najafli v. Azerbaijan*, the European Court found a violation of the obligation to guarantee the

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<sup>380</sup> 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. 113. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>381</sup> 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. 241-245; I/A Court H.R. *Case of Radilla Pacheco v Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209. Para. 273-275; IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo and Family (Colombia). October 23, 2010. Para. 156. 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. 736-742; United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Resolution 29 "Condemnation of violence against journalists"](#). November, 1997.

<sup>382</sup> 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. 239-245.

independence of the investigators in the case of a journalist who had been beaten by individuals presumed to be members of the local police force while covering a demonstration. The Court found that although the authority to investigate lay with a police department other than the local one, the department was under the same public authority as the agents who had participated in the attacks and was therefore not independent. The Court found that the State failed to comply with its obligation to effectively investigate the violations committed.<sup>383</sup> Likewise, in the case of *Kılıç v. Turkey*, the European Court ruled that state agents in charge of investigating crimes committed by security officials at the time of the murder of journalist Kılıç did not have independence safeguards, which “undermined the effectiveness of the protection afforded [to the journalist] by the criminal law” According to the Court, the lack of independence of the investigative bodies enabled the impunity of the members of state security forces, something that is not compatible with a democratic society<sup>384</sup>.

180. In its Special Report on Freedom of Expression in Mexico 2010, the Office of the Special Rapporteur specifically recommended that the State “adopt the necessary reforms to facilitate the exercise of federal jurisdiction over crimes against freedom of expression and ensure that all possible violations of the right to freedom of expression are investigated by the civilian authorities.”<sup>385</sup> This option is particularly important in the

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<sup>383</sup> In the case *Najafli v. Azerbaijan*, the European Court convicted the State for violating the right not to receive an unhuman or degrading treatment, and the right to freedom of expression, of a journalist who was severely beaten by agents of the security forces while covering an unauthorized demonstration by the opposition. The journalist was not wearing the special blue vest that identified him as a press member, but he was in possession of his press credentials and did identify himself as a journalist to the police agents as he was beaten. The Court remarked that the activity of reporting on meetings and demonstrations of the opposition is “essential for a democratic society” and concluded that the use of force by the police was abusive and characterized a degrading treatment committed with the aim of casting obstacles to the journalistic activity of the victim. Further on, the Court indicated that independently of the State’s intention to interfere in the exercise of the journalist’s profession, the victim was submitted to a degrading treatment in spite of having made “clear efforts to identify himself as a journalist who was simply doing his work and observing the event.” In this sense, the Court concluded that the State violated the journalist’s right to freedom of expression, given that the restriction to this right took place in an illegal way, without aiming at a legitimate purpose, and without being necessary in a democratic society. European Court of Human Rights. *Case of Najafli v. Azerbaijan*. Application no. 2594/07. Judgment. October 2, 2012.

<sup>384</sup> European Court of Human Rights. *Case of Kılıç v. Turkey*. Application No. 22492/93. Judgment. 28 March 2000.

<sup>385</sup> IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico.

event that local authorities have a limited investigative capacity and/or are more exposed to pressure from the criminal organizations that attack journalists. In June 2012, Mexico adopted this precise measure and amended Article 73 of its Constitution so as to allow federal authorities to take over investigations into crimes committed against journalists.<sup>386</sup> As will be seen hereinafter, the authority to take over investigations was later established through reforms of a number of federal laws passed by the National Congress in April 2013.

181. For its part, the National Congress of Brazil is currently considering passage of Bill 1078/11, which, without prejudice to the responsibilities of state civilian and military police forces, grants the Federal Police authority to investigate crimes committed “against journalistic activity.”<sup>387</sup> The bill has been before the Chamber of Deputies since 2011 and is currently awaiting the approval of the Commission on Public Safety and Combating Organized Crime.<sup>388</sup> On April 1, 2012, the National Congress’ Social Communication Council passed a motion to approve the bill.<sup>389</sup> According to the Senate’s website, the motion of support requested that the law explicitly cover crimes against all individuals performing journalism activities, including radio journalists. Likewise, the Council’s motion requested the bill be moved forward quickly and given priority.<sup>390</sup> In 2004, the the Brazilian State amended its constitution so that the Attorney General of the Republic could, in serious cases of human rights violations and “in order to ensure compliance with the obligations derived from international human rights treaties,” require

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OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 821; 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. 75. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>386</sup> Estados Unidos Mexicanos. Senado de la República. June 6, 2012. *Boletín 1111. Valida la permanente reforma constitucional a favor de periodistas.*

<sup>387</sup> Estado de Brasil. Câmara dos Deputados. Bill 1078/11. April 13, 2011. Available for consultation at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=498538>

<sup>388</sup> Estado de Brasil. Câmara dos Deputados. Bill 1078/11. April 13, 2011. Available for consultation at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=498538>

<sup>389</sup> Estadão. April 2, 2013. *Conselho de Comunicação Social pede federalização de crime contra jornalista*; Associação Brasileira de Emissoras de Rádio e Televisão (Abert). April 1, 2013. *Conselho de Comunicação pede que radialistas sejam contemplados em PL que federaliza crimes contra jornalistas.*

<sup>390</sup> Estado de Brasil. Senado Federal. April 1, 2013. *Conselho de Comunicação formaliza apoio à federalização dos crimes contra jornalistas.*

the country's Supreme Tribunal of Justice [*Superior Tribunal de Justiça*] to move the case to federal jurisdiction for investigation, prosecution and trial.<sup>391</sup>

182. Likewise, in States with centralized governments, corresponding norms should allow for the assignation of jurisdiction 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. Thus, for example, the Colombian Criminal Procedural Code allows for the exceptional possibility of changing the location of a criminal trial when the location where it is currently being pursued presents “circumstances that could affect the public order, the impartiality or independence of the administration of justice, procedural guarantees, the public nature of the trial, or the safety or personal integrity of participants, particularly of victims or public servants.”<sup>392</sup>

183. The second element of the State obligation to adopt an adequate institutional framework for the investigation, trial and criminal sanction of crimes against journalists 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 located in a different jurisdiction than the one in which the crime was committed taking over an investigation. The absence of clear rules regarding jurisdiction and change of venue can lead to procedural errors and nullities that can affect the entire proceeding and any investigations carried out, thus contributing to generating impunity.

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<sup>391</sup> Estado de Brasil. [Emenda Constitucional No. 45](#). December 30, 2004. Article 109. Para. 5.

<sup>392</sup> Estado de Colombia. Rama Legislativa - Poder Público. [Ley 906 de 2004](#). Código de Procedimiento Penal. Diario Oficial No. 45.657. August 31, 2004. Article 46 to 49. Also, according to the Brazilian Criminal Procedure Code, in cases of intentional crimes against life under State jurisdiction, in which “there is doubt on the impartiality of the jury or on the safety of the defendant” it is possible to change the jurisdiction to a court in a different locality. However, it is not possible for the case to be tried by a federal court. This rule has been applied in some cases to provide better independence and impartiality safeguards in the judgment of crimes committed by powerful actors in the region. Estado de Brasil. Presidência da República. [Decreto-Lei Nº 3.689](#). Código de Processo Penal. October 3, 1941. Article. 427. *See also*, Estado de Brasil. Presidência da República. [Constituição da República Federativa do Brasil de 1988](#). Article. 5. Section XXXVIII. subparagraph d).



184. Thus, for example, in its Special Report on Freedom of Expression in Mexico 2010, the Office of the Special Rapporteur made special note of the deficient and ambiguous definition of the jurisdiction of the Office of the Special Prosecutor in charge of investigating crimes against journalists. The report observed that this could prevent such crimes from being investigated by federal authorities when it fell to them to investigate the facts and recommended that Mexico make the necessary reforms “to permit the exercise of federal jurisdiction over crimes against freedom of expression.”<sup>393</sup> As mentioned earlier, in May 2013 the National Congress passed a legal reform that made changes to a number of federal laws in order to codify the Office of the Federal Public Prosecutor’s authority to assert jurisdiction and the authority of federal courts to process and try crimes committed against journalists, individuals or facilities that “affect, limit or threaten the right to information or the freedoms of expression or the press.”<sup>394</sup>

185. Among its provisions, the reform establishes that the federal authority to assert jurisdiction may be exercised in cases in which intent of the perpetrator is assumed and at least one of the following circumstances is also present: (i) when there are indications that a state or municipal public servant participated in the crime; (ii) when the victim has accused a state or municipal public servant in the criminal complaint; (ii) when the crimes at issue qualify as serious ones under the law; (iv) when the life or physical integrity of the victim or offended party are at real risk; (v) when the authority of the federal entity with jurisdiction requests it; (vi) when the facts constituting the crime overwhelmingly impact the exercise of the right to freedom of expression; (vii) when objective and generalized circumstances of risk to the exercise of freedom of expression exist in the federal entity where the crime took place or where its effects are seen; (viii) when the act constituting the crime crosses beyond the sphere of one or more federal entities; or (ix) when a body provided for in any international treaty to which the State of Mexico is party determines through a judgment or resolution that the Mexican State is internationally

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<sup>393</sup> 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. 724-725.

<sup>394</sup> 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.

responsible due to defects or omissions in the investigation, prosecution or trial regarding the crimes.<sup>395</sup>

186. Third, necessary steps should be taken to protect judges, witnesses and other persons that intervene in criminal investigations from external pressures, including threats, attacks, and other forms of intimidation.<sup>396</sup> In its 2008 Special Study on the Status of Investigations in the Murder of Journalists, the Office of the Special Rapporteur identified several cases of murdered journalists in Brazil, Colombia and Mexico in which witnesses or individuals linked to the investigations or suspected perpetrators of the crimes were killed, as well as cases in which witnesses were afraid to testify.<sup>397</sup> In this regard, the Office of the Special Rapporteur recalled that States must ensure the security of investigating authorities and adopt any measures or mechanisms that are necessary to prevent the obstruction of investigations, as well as any necessary measures to guarantee the security of witnesses, victims, their family members, and other judicial representatives against threats, intimidations or attacks aggression that seek to impede the proceedings.<sup>398</sup> Similarly, the Inter-American Court has stated that “in order to comply with the obligation to investigate within the framework of the guarantees of due process, the State must take all necessary measures to protect judicial officers, investigators, witnesses and the victims’ next-of-kin from harassment and threats” which are designed to obstruct the proceedings, impede the clarification of the facts of the case, and prevent the identification of those responsible.<sup>399</sup>

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<sup>395</sup> 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.

<sup>396</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 383 and 385.

<sup>397</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 117.

<sup>398</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58.

<sup>399</sup> I/A Court H.R. *Case of the Rochela Massacre v. Colombia Case. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163. Para. 171.

187. 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.<sup>400</sup> Along these lines, in their 2012 Joint Declaration on Crimes against Freedom of Expression, the United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe's (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 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"<sup>401</sup>. An initiative of this nature was developed by the organization Article 19 in Mexico in November 2012 when it organized a workshop on "investigative techniques and attacks against the right to information or freedom of expression or the press." The training was aimed at the personnel of the Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE) and its purpose was to provide theoretical and practical elements for investigating these crimes from a pro-victim and pro-human rights perspective.<sup>402</sup>

188. 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

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<sup>400</sup> 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](#).

<sup>401</sup> 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](#).

<sup>402</sup> Campaña Permanente de Protección a Periodistas en México. November 13, 2012. [Taller de capacitación al personal de la FEADLE](#).

evaluate evidence and carry out other tasks necessary for determining liability.<sup>403</sup>

189. Finally, in contexts of ongoing violence against journalists and impunity for such crimes, States should set up dedicated investigative units. In their 2012 Joint Declaration, 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, stated that "in cases of frequent and recurrent crimes against freedom of expression, consideration should be given to establishing specialized and dedicated investigative units – with sufficient resources and appropriate training to operate efficiently and effectively – to investigate crimes against freedom of expression".<sup>404</sup> The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has likewise recommended the creation of such units in countries where high incidences of attacks against journalists are reported.<sup>405</sup>

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<sup>403</sup> 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. 733 and 821; 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85); IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58; citing I/A Court H.R., *Carpio Nicolle et al. v. Guatemala Case*. Merits, Reparations and Costs. Judgment of November 22, 2004. Series C No. 117. Para. 135; United Nations. Human Rights Council. [Resolution 21/12 Safety of Journalists](#). A/HRC/21/L.6. September 21, 2012. Para. 8.

<sup>404</sup> 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](#).

<sup>405</sup> 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. 113. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

190. At the conclusion of its 2010 on site visit to Honduras, the IACHR observed that “[i]t is imperative that the Honduran State take urgent action to move forward with investigations conducted by independent, specialized bodies, with a view to ascertaining the facts surrounding these deaths, which includes determining whether in fact the crimes were related to the practice of the profession, so that the persons responsible for the crimes can be tried and convicted.”<sup>406</sup> The Commission noted the need for specialized investigation units given that Honduras’ own Office of the Special Prosecutor for Human Rights had attributed the failings of investigations into journalists’ murders to the “limited investigative skills of the police.”<sup>407</sup>

191. In the region today, the clearest example of a specialized investigative and prosecutorial unit focused on violence against journalists is Mexico’s Office of the Special Prosecutor on Crimes against Freedom of Expression (FEADLE). In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur commended the Mexican State for its decision to respond to the situation of widespread impunity that exists with regard to crimes against journalists in Mexico by creating the Office of the Special Prosecutor within the structure of the Office of the Prosecutor General of the Republic (PGR). As detailed in the report, 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.<sup>408</sup> 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

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<sup>406</sup> IACHR. [Preliminary observations of the Inter-American Commission on Human Rights on its visit to Honduras](#). May 15-18, 2010. OEA/SER.L/V/II. Doc. 68, June 3, 2010. Para. 26.

<sup>407</sup> IACHR. [Preliminary observations of the Inter-American Commission on Human Rights on its visit to Honduras](#). May 15-18, 2010. OEA/SER.L/V/II. Doc. 68, June 3, 2010. Para. 25.

<sup>408</sup> Document provided to the Inter-American Commission on Human Rights by the Special Prosecutor’s Office for Crimes Against Journalists in March 2010. 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. 719.

guarantee the physical and moral integrity of those engaging in journalistic or informative activities in Mexico.”<sup>409</sup>

192. In the aforementioned report, while recognizing that Mexico had taken a critical step in creating the FEADLE, the Office of the Special Rapporteur also observed that this alone was insufficient to make “any impact on reducing the generalized impunity that holds sway in cases of violence against journalists.”<sup>410</sup> The Office of the Special Rapporteur pointed to shortcomings such as a lack of initiative in assuming responsibility for investigations, a lack of autonomy and resources, and the aforementioned ambiguity regarding the FEADLE’s jurisdiction,<sup>411</sup> and called on the Mexican State to strengthen the FEADLE, endow it with greater autonomy and resources, and clearly define its jurisdiction over crimes against freedom of expression.<sup>412</sup> The challenges facing FEADLE were also recently recognized by the National Human Rights Commission [*Comisión Nacional de los Derechos Humanos*] (CNDH) in Mexico in its General Recommendation No. 20, which noted a lack of efficiency in the actions of the Office of the Public Prosecutor given the results seen since its creation in 2010. The CNDH found that out of the 378 preliminary investigations launched by the FEADLE between July 5, 2010, and July 5, 2013, 210 were transferred to other authorities due to lack of jurisdiction. Meanwhile, of the 168 cases handled by the FEADLE, criminal action was taken in 28%, 55% of the investigations remained unsolved, and in only one case was a judgment handed down. The CNDH also found that the FEADLE had granted precautionary protective measures to victims and their families in 75 of the preliminary investigations and exercised its authority to assert jurisdiction in nine cases.<sup>413</sup> Recently, on October 25, 2013, the “Draft Report of the Working Group on the Universal Periodic

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<sup>409</sup> 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. 719-722.

<sup>410</sup> 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. 723.

<sup>411</sup> 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. 724.

<sup>412</sup> 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. 821.

<sup>413</sup> Comisión Nacional de los Derechos Humanos México. [Recomendación General No. 20](#). On Agressions to Journalists in Mexico and the Prevailing Impunity. August 15, 2013. Para. 140.

Review” was distributed. In its text, the states recommend that the Mexican State strengthen the FEADLE and combat impunity in the crimes committed against journalists.<sup>414</sup>

193. On June 6, 2012, the Permanent Commission of the Congress of the Union approved the reform of article 73 of the Constitution, so as to allow federal authorities to assert jurisdiction and investigate crimes of local jurisdiction “when they are connected to crimes committed against journalists, individuals or facilities that affect, limit or threaten the right to information or the freedoms of expression or the press.”<sup>415</sup> In May, 2013 a legal reform was passed that defined the cases in which the Office of the Public Prosecutor could exercise its authority to assert jurisdiction in these crimes. The law establishes that the unit of the Office of the Public Prosecutor that deals with the crimes will have “full access to the information, records and actions taken in the investigation of crimes related to its area of jurisdiction that are being addressed by any other administrative unit of the Office of the Prosecutor General of the Republic.”<sup>416</sup> In that legal reform, the National Congress did not include the proposed changes to the bill that would include the FEADLE in the Organic Law of the Office of the Prosecutor General of the Republic<sup>417</sup> which would have provided the Office of the Special Prosecutor with greater autonomy and legal certainty. However, the legislation that was passed establishes a deadline of 180 days in its transitional provisions for the Federal Executive Branch to make the necessary changes to the Rules of the Organic Law of the Office of the Prosecutor General of the Republic

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<sup>414</sup> Naciones Unidas. Human Rights Council. Working Group of the Universal Periodic Review. [Draft report of the Working Group on the Universal Periodic Review Mexico](#). A/HRC/WG.6/17/L.5. October 25, 2013. Para. 148.127 and 148.129.

<sup>415</sup> Estados Unidos Mexicanos. Senado de la República. June 6, 2012. [Boletín 1111. Valida la permanente reforma constitucional a favor de periodistas.](#)

<sup>416</sup> 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.

<sup>417</sup> Estados Unidos Mexicanos. Senado de la República. LXII Legislatura. Comisiones Unidas de Justicia, Derechos Humanos y de Estudios Legislativos, con Opinión de la Comisión de Gobernación. Anteproyecto de Dictamen de las Comisiones Unidas de Justicia, Derechos Humanos y de Estudios Legislativos, con Opinión de la Comisión de Gobernación, sobre la iniciativa con Proyecto de Decreto por el que se reforman, derogan y adicionan diversas disposiciones del Código Federal de Procedimientos Penales; de la Ley Orgánica del Poder Judicial de la Federación y de la Ley Orgánica de la Procuraduría General de la República y del Código Penal Federal. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

in order to establish an administrative unit of the Office of the Public Prosecutor “that deals with the federal crimes committed against any journalist, individual or facility that threaten the right to information or the freedoms of expression or press, as well as for asserting jurisdiction over local jurisdiction crimes.” Until the changes are made, FEADLE will be the agency responsible for exercising authority to assert jurisdiction.<sup>418</sup> As of the closing of this report, the Regulations have not been approved.

194. According to the information received, since the passage of the legal reform in 2013, the FEADLE has exercised its authority to assert jurisdiction in at least one case of the murder of a journalist. According to reports, in August of 2013, the Office of the Public Prosecutor asserted jurisdiction in the case of Armando Rodríguez Carreón (“*El Choco*”), journalist with *El Diario* in Ciudad Juárez, murdered on November 13, 2008.<sup>419</sup> The journalist had spent more than 10 years covering security issues for the newspaper and was the author of a number of analyses and statistics illustrating the increase in violence in Ciudad Juárez. Two weeks prior to his death, he had published an article linking the relatives of a senior official with the state Attorney General's office to drug trafficking.<sup>420</sup> The case was being investigated by the Office of the Attorney General of Justice of the State of Chihuahua, and as of the moment the FEADLE asserted jurisdiction in the case, nobody had been brought to trial or convicted for the murder.<sup>421</sup>

195. The Office of the Special Rapporteur expresses its satisfaction at the passage of the legal reform in Mexico codifying the authority of the Office of the Federal Public Prosecutor and the FEADLE to assert jurisdiction in crimes committed against journalists and other individuals in response to the exercise of their right to freedom of expression. In addition, the Office of the Special Rapporteur reiterates the

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<sup>418</sup> 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.

<sup>419</sup> El Diario. August 13, 2013. [Atrae PGR caso de homicidio contra El Choco](#); Artículo 19. August 14, 2013. [México: FEADLE debe atraer los expedientes de periodistas asesinados y desaparecidos](#); Zócalo Saltillo. August 14, 2013. [Atrae PGR caso de periodista asesinado](#).

<sup>420</sup> 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. 653.

<sup>421</sup> El Diario. August 13, 2013. [Atrae PGR caso de homicidio contra El Choco](#); Zócalo Saltillo. August 14, 2013. [Atrae PGR caso de periodista asesinado](#).



importance of strengthening the FEADLE and providing it with greater autonomy and resources.<sup>422</sup> The Office of the Special Rapporteur urges the Mexican State to approve the necessary changes to the Regulations of the Organic Law of the Office of the Attorney General of the Republic for this to happen as soon as possible.

196. Though not focused specifically on crimes against journalists, the International Commission against Impunity in Guatemala [*Comisión Internacional Contra la Impunidad en Guatemala*] (CICIG)<sup>423</sup> has also attracted attention as an innovative investigative body that employs international specialists to support domestic prosecutions of complex crimes.<sup>424</sup> 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.<sup>425</sup> 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.”<sup>426</sup> 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

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<sup>422</sup> 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. 821.

<sup>423</sup> Comisión Internacional contra la Impunidad en Guatemala (CICIG). [Acuerdo de creación de la CICIG](#).

<sup>424</sup> 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>425</sup> Comisión Internacional contra la Impunidad en Guatemala (CICIG). [Acuerdo de creación de la CICIG](#).

<sup>426</sup> 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

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.

197. In a communication received on December 24, 2013, the State of Guatemala provided information on the "Prosecution Unit for Crimes against Journalists" of the Human Rights Prosecution Section of the Office of the Public Prosecutor. According to reports, the Unit was created in 2001, and "it became the specialized Prosecution Unit with national jurisdiction in 2011."<sup>427</sup> 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. The State further reported that the Unit has protocols of action, which include monitoring the media to keep abreast of attacks against journalists; conducting evidence-gathering procedures, especially those that are time-sensitive; and making recommendations to journalists with respect to filing complaints of attacks and participating in the criminal proceedings. Finally, the State reported that during 2013 the Prosecution Unit has documented 63 complaints of assaults on journalists, of which "approximately 50% involve threats or coercion." The State indicated that the Prosecution Unit "has had successful cases," such as the sentencing of a security forces officer to 3 years and 8 months in prison for the offenses of discrimination and threats against a journalist; the imposition of a two-year prison sentence (subject to commutation) against two individuals for having assaulted five journalists who were covering a demonstration; and the criminal prosecution of a former Minister of Culture and Sports for threatening a journalist.<sup>428</sup>

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<sup>427</sup> Communication of the State of Guatemala to the Inter-American Commission of Human Rights. Oficio M12-OEA-F.2.4.2.1 No. 1230-2013. December 24, 2013. "Informe del Estado de Guatemala a Relatora Especial sobre Libertad de Expresión de la Comisión Interamericana de Derechos Humanos, Organización de Estados Americanos." Ref. P-100-2013/AFAP/hm. December 18, 2013. Annex 1.

<sup>428</sup> Communication of the State of Guatemala to the Inter-American Commission of Human Rights. Oficio M12-OEA-F.2.4.2.1 No. 1230-2013. December 24, 2013. "Informe del Estado de Guatemala a Relatora Especial sobre Libertad de Expresión de la Comisión

198. Turning to Colombia, in 1999 a Subunit for the Investigation of the Murder of Journalists was established under the Human Rights Unit of the Office of the Attorney General of the Nation.<sup>429</sup> The Office of the Special Rapporteur recognized the efforts of the Colombian authorities in the creation of the subunit as a specific mechanism to provide effectiveness to the investigations.<sup>430</sup> Later, in its 2005 report *Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in Colombia*, the Office of the Special Rapporteur observed that the subunit lacked prosecutors specifically assigned to the issue of freedom of expression and expressed its concern at the high number of cases of murders and attacks against journalists still pending. However, the Office of the Special Rapporteur reiterated the “importance of the existence of an office of this nature with personnel specifically assigned to this issue” and urged the State “to provide the Office of the Attorney General of the Nation with the budgetary resources necessary to specifically investigate these crimes.”<sup>431</sup>

199. More recently, in communication received on October 23, 2013, the Colombian State reported that it had implemented strategies for the investigation of cases of threats against journalists (among other vulnerable groups) “as a legal methodology aimed at guaranteeing the efficiency, effectiveness and optimization of resources and intended to obtain results in criminal investigations.” The State reported that as of May 2013, the Human Rights Unit of the Office of the Attorney General of the Nation had followed up on 51 cases of crimes committed against journalists, 37 of which were open. Of these, 19 cases were in their preliminary phase, 15 cases in pretrial examination, and three at trial. The

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Interamericana de Derechos Humanos, Organización de Estados Americanos.” Ref. P-100-2013/AFAP/hm. December 18, 2013.

<sup>429</sup> Fundación para la Libertad de Prensa (FLIP). [Informe sobre la Libertad de Prensa en Colombia en 1999. La Guerra Impactó como Nunca al Periodismo. Ataques contra el periodista y su oficio](#); Observatório da Imprensa. 2002. [Repórteres Sem Fronteiras. Impunidade em 21 países do mundo](#).

<sup>430</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 13, 2001. [Press Release No. 49/01. Concern on the Part of the IACHR Rapporteur for Freedom of Expression over the Assassinations of Journalists in Colombia](#); IACHR. [Annual Report 2000. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser./L/V/II.111. Doc. 20 rev. April 16, 2001. Para. 19 and 20.

<sup>431</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 67.

State also reported that 30 convictions had been handed down. Finally, the State indicated that the Analysis and Context Unit of the Office of the Attorney General of the Nation had marked investigations into crimes committed against journalists as a priority.<sup>432</sup>

200. On October 28, 2013, at a hearing held during the 149 Period of Sessions of the IACHR, the State of Honduras provided information on the creation of a “High Impact Deaths Unit” assigned to the Office of the Special Prosecutor for Crimes against Life. According to the information received, the unit was established to identify the murders of persons belonging to groups particularly affected by violence, such as journalists, legal practitioners, and human rights defenders. According to the information received, the unit was involved in 26 investigations into the murder of journalists during the period from 2009 to 2013, of which 10 have reportedly gone to trial.<sup>433</sup>

201. In addition to the aforementioned examples of specialized investigatory and prosecution units, it is worth mentioning that Peru has created specialized tribunals with jurisdiction to try, *inter alia*, serious crimes committed against journalists in the exercise of their profession. Peru’s Criminal Procedural Code envisions the creation of a specific criminal justice system to try crimes that are particularly serious and particularly complex or massive, as long as they have national repercussion and have effects that extend beyond one judicial district or are committed by criminal organizations.<sup>434</sup> Under this system, initially developed to try cases of terrorism, crimes against humanity, and human rights violations,<sup>435</sup> a National Criminal Court [*Sala Penal Nacional*] was granted nationwide jurisdiction over certain crimes. In 2010, the jurisdiction of the National Criminal Court was expanded to include cases of homicide, murder, grave injury, kidnapping and extortion committed against

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<sup>432</sup> Communication from the State of Colombia to the Inter-American Commission on Human Rights. MPC/OEA letter No. 1423/2013. October 23, 2013. Memorandum I-GAPDH-13-035732 of October 18, 2013, forwarding communication S-GAPDH-13-042535 to the Office of the Special Rapporteur for Freedom of Expression of October 18, 2013.

<sup>433</sup> IACHR. 149<sup>th</sup> Period of Sessions. Hearing on the implementation of precautionary measures in Honduras. October 28, 2013. Available for consultation at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>

<sup>434</sup> Estado de Perú. [Código de Procedimientos Penales](#). Article 16. Article modified by Article 1 of the Legislative Decree No. 983. July 22, 2007.

<sup>435</sup> Justicia Viva. [Sala Penal Nacional: el trabajo en los casos de terrorismo](#). March 2005. Pp. 12-14.

journalists in the exercise of their profession.<sup>436</sup> In 2012 the National Criminal Court’s jurisdiction was reviewed and redefined, given the need to “prioritize its intervention in those cases which, given their characteristics, imply great transcendence, reach or repercussion at the national level,” and thus require “specialized judges equipped with the best infrastructure possible, technological means, and human resources in order to resolve the cases with efficiency, celerity, security and independence.” The Court’s jurisdiction continued to include the aforementioned crimes committed against journalists.<sup>437</sup>

## **2. The obligation to exercise due diligence and exhaust lines of inquiry related to the victim’s practice of journalism**

202. The Inter-American Court has emphasized that the obligation of due diligence requires that criminal investigations exhaust logical lines of inquiry. In particular, “due diligence” requires that investigations carried out by the State take into account “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.”<sup>438</sup> This is critical if States are to comply with their aforementioned duty to investigate, prosecute and punish all direct perpetrators and masterminds.<sup>439</sup>

203. The obligation to exercise due diligence and exhaust logical lines of inquiry is particularly important in cases of violence against journalists, where an investigation that fails to take into account contextual factors such as a journalist’s professional activities will be both less likely to succeed and prone to questions about the authorities’ political will to solve the crime in question. In its 2008 Special Study on the Status of Investigations in the Murder of Journalists, the Office of the

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<sup>436</sup> Estado de Perú. Consejo Ejecutivo del Poder Judicial. Resolución Administrativa No. 187-2010-CE-PJ. May 26, 2010. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>437</sup> Estado de Perú. Consejo Ejecutivo del Poder Judicial. [Resolución Administrativa No. 136-2012-CE-PJ](#). July 9, 2012.

<sup>438</sup> /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.

<sup>439</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 40.

Special Rapporteur examined 157 cases of murdered journalists and media workers and found that in the majority of cases studied, avenues of investigation had not been pursued that would help identify the actual perpetrators or masterminds of the crime.<sup>440</sup> The report noted that the motive of the murder—in particular, whether it was related to the journalist’s professional activities—had been established in only a limited number of cases.<sup>441</sup> Furthermore, negative repercussions were observed at the indictment or trial stage due to the omission of logical avenues of investigation or a lack of diligence in the gathering evidence.<sup>442</sup> The failure to fully exhaust logical lines of inquiry has led, in particular, to a generalized failure to identify the masterminds.<sup>443</sup>

204. In examining individual cases of violence against journalists, the IACHR has called attention to the failure to pursue logical lines of inquiry in the investigation of such crimes. In the case of Héctor Félix Miranda, a journalist with the weekly *Zeta* in Tijuana, Mexico murdered in 1988, the IACHR found that while the direct perpetrators had been punished, the “central violation” was the Mexican State’s failure to “definitively and conclusively determine who were the intellectual authors of the crime.”<sup>444</sup> The Commission took note of the evidence that the investigation did not adequately pursue the “numerous items which point to the existence of an intellectual author”, including a US\$ 10,000 payment made to the murderers one day after the murder by a business owned by

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<sup>440</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 110.

<sup>441</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 111.

<sup>442</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 116.

<sup>443</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 125-126; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 65-66.

<sup>444</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 2 and 51.

an individual who Felix Miranda had criticized repeatedly in his columns during the months prior to his death.<sup>445</sup> The IACHR concluded that the “failure to investigate and punish the mastermind behind the murder of Héctor Félix Miranda [...] goes hand-in-hand with a violation of the right to inform and to express one's views freely and publicly.”<sup>446</sup>

205. The Inter-American Court also highlighted the failure to pursue logical lines of inquiry that pointed to one or more masterminds in the 1994 murder of Manuel Cepeda Vargas, a Colombian journalist and politician. Two Colombian Army sergeants were convicted of being the direct perpetrators of Cepeda's murder, and strong evidence pointed to an Army coronel and a paramilitary group leader as the masterminds of the crime. Nonetheless, the Court found that these hypotheses were not diligently investigated by the domestic authorities, in violation of the State's international obligation to investigate and punish all those who participated in the crime.<sup>447</sup>

206. Likewise, in the case of Colombian cameraman Richard Vélez, the Court underscored the importance of exhausting logical lines of inquiry related to the professional activities of journalists victims of violence.<sup>448</sup> In said case, the Court concluded that the harassment, threats, and attempted deprivation of liberty against Vélez in 1996 and 1997 were linked to the attack he suffered as a result of his reporting, as well as his subsequent attempts to ensure the investigation and punishment of the soldiers responsible for the attack.<sup>449</sup> The Court found that this connection was not sufficiently incorporated into the authorities' investigative strategy, observing that “[t]he State should have undertaken the compliance with its obligations of investigation and protection taking into account the reasonable connection between the attack motivated by the

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<sup>445</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 20, 29, 65.

<sup>446</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico). April 13, 1999. Para. 56.

<sup>447</sup> I/A Court H.R. *Case of Manuel Cepeda-Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213. Para. 106-110 and 167.

<sup>448</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 211.

<sup>449</sup> 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. 174.

exercise of freedom of expression and the subsequent threats and harassment that escalated into an attempted deprivation of liberty.”<sup>450</sup>

207. The European Court ruled similarly in the case of the murder of journalist Kutlu Adali, known for writing articles critical of the policies and practices of the Turkish government. After repeatedly receiving death threats, Adali was murdered on July 6, 1996, in Turkey. In the case, the Court found that State authorities erred in failing to inquire sufficiently into the motives behind the murder of the journalist. The Court observed that “it was not established that any adequate steps were taken to investigate the possibility that the murder was politically motivated or had any link with his work as a journalist.” The Court indicated that on the contrary, investigators dismissed that possibility in the initial stage of the investigation without sufficient basis for doing so. The Court added that the victim’s documents and other belongings were not searched for evidence that could indicate the crime’s motive.<sup>451</sup> Likewise, in the case of *Kılıç v. Turkey*, the European Court found that the State had failed to comply with its duty to adequately investigate the murder of journalist Kemal Kılıç because, among other things, the investigation that was carried out did not include inquiries into a possible connection between the attack and the victim’s work as a journalist.<sup>452</sup>

208. Recent experiences suggest that a tendency to dismiss logical lines of inquiry persists in certain contexts. Following its 2010 on-site visit to Honduras, for example, the IACHR questioned some government authorities’ conclusion that murders of journalists were unrelated to their profession, and stressed the State’s obligation to determine “the facts surrounding these deaths, which includes determining [...] whether in fact the crimes were related to the practice of the profession, so that the persons responsible for the crimes can be tried and convicted.”<sup>453</sup> Likewise, in its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur cited the

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<sup>450</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 211.

<sup>451</sup> European Court of Human Rights. *Case of Adali v. Turkey*. Application no. 38187/97. Judgment. 31 March 2005. Para. 231.

<sup>452</sup> European Court of Human Rights. *Case of Kılıç v. Turkey*. Application no. 22492/93. Judgment. 28 March 2000. Para. 82.

<sup>453</sup> IACHR. [Preliminary observations of the Inter-American Commission on Human Rights on its visit to Honduras](#). May 15-18, 2010. OEA/SER.L/V/II. Doc. 68, June 3, 2010. Para. 26.



National Human Rights Commission's conclusion that impunity for crimes against journalists was due in part to a failure to exhaust relevant lines of inquiry, including the possibility that the attack was motivated by the victim's exercise of freedom of expression.<sup>454</sup> The report recognized that the Office of the Attorney General of Justice of the Federal District of Mexico has adopted a protocol with guidelines for the investigation of crimes against journalists that includes the adoption of protective measures for victims and witnesses.<sup>455</sup> The report indicated that in a number of meetings held during the on-site visit of the Office of the Special Rapporteur, especially with state authorities, a propensity was observed to "dismiss out of hand that attacks on communicators were motivated by their journalism work."<sup>456</sup> The Office of the Special Rapporteur recommended that the State "adopt special protocols of investigation for crimes committed against journalists, requiring the full consideration of the possibility that the crime was committed because of the victim's professional activity."<sup>457</sup> Regarding this, the Office of the Special Rapporteur notes with satisfaction that the recent legal reform regarding crimes committed against freedom of expression in Mexico requires the Office of the Federal Public Prosecutor to exhaust investigative inquiries into the violation, limitation or threatening of the right to freedom of expression in cases in which the authority to assert jurisdiction in these crimes is exercised.<sup>458</sup>

209. In their 2012 Joint Declaration, 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

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<sup>454</sup> 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. 718.

<sup>455</sup> 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. 735.

<sup>456</sup> 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. 718.

<sup>457</sup> 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. 821.

<sup>458</sup> 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.

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 similarly noted the importance of exhausting lines of inquiry related to a journalist's professional activities, observing that "[w]here there is some evidence that a crime which has been committed may be a crime against freedom of expression, the investigation should be conducted with the presumption that it is such a crime until proven otherwise, and relevant lines of inquiry related to the victim's expressive activities have been exhausted." Investigations should, in turn, "lead to the identification and prosecution of all those responsible for crimes against freedom of expression, including direct perpetrators and instigators, as well as those who conspire to commit, aid and abet, or cover up such crimes."<sup>459</sup>

### **3. The obligation to conduct investigations in a reasonable time**

210. The Inter-American Court has held that in certain cases an excessive delay in investigating acts of violence can, in and of itself, constitute a violation of the right to fair trial.<sup>460</sup> 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.<sup>461</sup> In this regard, the IACHR has indicated that "as a general rule, a criminal investigation must be carried out promptly to protect the interest of the victims, preserve evidence and even to safeguard the rights of any person that is considered a suspect in the investigation."<sup>462</sup> In reference

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<sup>459</sup> 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](#).

<sup>460</sup> I/A Court H. R. *Case of Gómez Palomino v. Peru. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136. Para. 85; I/A Court H. R. *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment 15, 2005. Series C No. 124. Para. 160.

<sup>461</sup> I/A Court H. R. *Case of Gómez Palomino v. Peru Case. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136. Para. 85.

<sup>462</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 60.

specifically to violence against journalists, 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 have stated that "authorities should make all reasonable efforts to expedite investigations, including by acting as soon as an official complaint or reliable evidence of an attack against freedom of expression becomes available."<sup>463</sup>

211. In its Special Study on the Status of Investigations in the Murder of Journalists, the Office of the Special Rapporteur found that in many of the 157 cases studied, ten years or more had passed "without the investigations shedding any light on the perpetrators or the motives for the crime."<sup>464</sup> The IACHR has also encountered significant delays in criminal investigations when analyzing individual cases of violence against journalists. In the aforementioned case of Mexican journalist Héctor Felix Miranda, the IACHR's merits report concluded that Mexico violated its obligation to carry out an effective investigation in a reasonable time, given that more than a decade had passed without the mastermind of the crime being identified and prosecuted. The Commission recalled the Court's observation that the reasonable time period established in Article 8.1 of the American Convention "is not a concept of simple definition," but one that must be interpreted in light of the complexity of the case, the procedural activity of the interested party, and the conduct of the judicial authorities.<sup>465</sup> In the Commission's view, however, the murder of Héctor Felix Miranda was "not an extremely complex case", given that the direct

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<sup>463</sup> 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](#).

<sup>464</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 98.

<sup>465</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (México). April 13, 1999. Para. 52; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (México). November 19, 1999. Para. 30.

perpetrators were quickly tried and convicted, and that there was clear evidence linking them to a potential mastermind.<sup>466</sup>

212. Similarly, in its merits report in the case of *Luis Gonzalo “Richard” Vélez Restrepo and Family*, the Commission found a “reasonable time” violation given that 13 years had passed without the Colombian State identifying, trying or punishing any of those responsible for a series of threats and acts of harassment against journalist Richard Velez and members of his family, actions which eventually forced them to flee the country.<sup>467</sup> Richard Vélez had been violently beaten by security forces agents after he filmed them attacking unarmed protesters, and he subsequently pursued criminal charges against the soldiers. This led Colombia’s own Procurator General’s Office [*Procuraduría General de la Nación*] to observe that those most likely to be threatening Vélez were his attackers.<sup>468</sup> Nonetheless, the evidence presented to the IACHR indicated that the investigation of these threats had not advanced beyond the preliminary stage, and the Commission found that the delay violated Colombia’s obligations under Article 8.1 of the American Convention.<sup>469</sup> For its part, in the previously cited case *Najafli v. Azerbaijan*, the European Court found that a period of three months between the incidents of violation that took place and the launch of the initial relevant procedural measures (like the victim’s statement and the request for an examination of the *corpus delicti*) constitute a violation of the obligation to carry out an effective investigation in the case.<sup>470</sup>

#### **4. The obligation to remove legal obstacles to the investigation and effective and proportional punishment of the most serious crimes against journalists**

213. The Commission has repeatedly held that general amnesties in cases of serious human rights violations contravene Article

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<sup>466</sup> IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda (México). April 13, 1999. Para. 31; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza (México). November 19, 1999. Para. 31.

<sup>467</sup> IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo y Familia (Colombia). October 23, 2010. Para. 158.

<sup>468</sup> IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo y Familia (Colombia). October 23, 2010. Para. 90.

<sup>469</sup> IACHR. Report No. 136/10. Case 12.658. Luis Gonzalo “Richard” Vélez Restrepo y Familia (Colombia). October 23, 2010. Para. 159.

<sup>470</sup> European Court of Human Rights. *Case of Najafli v. Azerbaijan*. Application No. 2594/07. Judgment. October 2, 2013.

XVIII (Right to justice) of the American Declaration and Articles 8 and 25 of the American Convention on Human Rights.<sup>471</sup> The IACHR has especially called attention to the use of general amnesty laws to block the investigation of serious human rights violations committed against journalists. For example, the Commission expressed its “deep concern” over the amnesty legislation passed by the Parliament of Suriname on April 5, 2012, which “seeks to consolidate immunity for human rights violations committed during the military era (1982-1992).”<sup>472</sup> Regarding this, the IACHR specifically mentioned the murder of 15 prominent citizens, among them five journalists, which took place on December 8, 1982, in the Fort Zeelandia military barracks.<sup>473</sup>

214. International bodies have also expressed concern regarding the effect of provisions of prescription, also known as statutes of limitation, on the investigation and punishment of crimes against journalists because of their work. UNESCO’s General Conference, for example, has called upon governments to “adopt the principle that there should be no statute of limitations for crimes against persons when these are perpetrated to prevent the exercise of freedom of information and expression or when their purpose is the obstruction of justice”,<sup>474</sup> something that was reiterated by the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity.<sup>475</sup> Likewise, the United

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<sup>471</sup> IACHR. Report No. 28/92. Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 *Argentina*, October 2, 1992; IACHR. Report No. 29/92. Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375. *Uruguay*. October 2, 1992; [Report on the Situation of Human Rights in El Salvador](#). Chapter II (El Salvador and Its International Commitments in the Area of Human Rights: the American Convention. Individual Cases). Point 4 (Enactment of the Amnesty Law and El Salvador's international commitments). OEA/Ser.L/II.85 Doc. 28 rev., February 11, 1994.

<sup>472</sup> IACHR. April 13, 2012. [Press release 38/12. IACHR Expresses Concern about Amnesty Legislation in Suriname](#).

<sup>473</sup> IACHR. April 13, 2012. [Press release 38/12. IACHR Expresses Concern about Amnesty Legislation in Suriname](#); 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. 404.

<sup>474</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Resolution 29 "Condemnation of violence against journalists."](#) November, 1997.

<sup>475</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). International Programme for the Development of Communication. 2012. [United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity](#); United Nations Educational, Scientific and Cultural Organization (UNESCO). [San José Declaration](#). May 2-4, 2013.

Nations Special Rapporteur on Extrajudicial, Summary of Arbitrary Executions recommended that “[s]tatutes of limitation should not allow prosecutions to be blocked.”<sup>476</sup> 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 have stated that “crimes against freedom of expression, and the crime of obstructing justice in relation to those crimes, should be subject to either unlimited or extended statutes limitations (i.e. the time beyond which prosecutions are barred).”<sup>477</sup> In these cases, extending statute of limitations deadlines is especially justifiable due to the systemic impact of crimes committed against journalists and media workers for the exercise of their professions.

215. For its part, the Inter-American Court has established that generally speaking, human rights violations are not exempt from statutes of limitations, with the exception of conducts so serious that they must be punished in order to prevent them from being repeated, such as the forced disappearance of persons, extrajudicial execution and torture.<sup>478</sup> Nevertheless, statute of limitations deadlines cannot present an obstacle to justice in cases of violence committed against journalists and media workers over the exercise of their right to freedom of expression. In the *Case of Vélez Restrepo and Family v. Colombia*, the Inter-American Court found it necessary in the context of the overwhelming impunity in the case to order the State to report to the Court on the possibility of taking “other measures or actions that allow for the determination of responsibility for

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<sup>476</sup> 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. 111. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>477</sup> 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](#).

<sup>478</sup> 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. 282 and 283.

the aforementioned acts in this case, and should it be possible, to take such measures or actions.”<sup>479</sup>

216. For its part, the Office of the Special Rapporteur has called attention to compliance with statute of limitations deadlines in a number of cases. In Colombia for example, just from January 1, 2011 to November 1, 2013 this happened in thirteen cases of murdered journalists.<sup>480</sup> In this context, the Office of the Special Rapporteur has viewed favorably the Colombian Congress’ approval of Law No. 1426, signed by President Juan Manuel Santos on December 29, 2010, which increases from 20 years to 30 years the statute of limitations on the murder of journalists, human rights defenders, and union members.<sup>481</sup> The Office of the Public Prosecutor of the Colombian State has also qualified some cases involving

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<sup>479</sup> 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. 284.

<sup>480</sup> The cases would be: Arsenio Hoyos, murdered on September 13, 1991, in Granada, Meta; Carlos Julio Rodríguez and José Libardo Méndez, murdered on May 20, 1991, in Florencia, Caquetá; Julio Daniel Chaparro and Jorge Enrique Torres, murdered on April 24, 1991, in Segovia, Antioquia; Rafael Solano Rochero, who died on October 30, 1991, in Fundación, Magdalena; Néstor Henry Rojas Monje, who died on December 28, 1991, in Arauca; John Félix Tirado Castañeda, murdered in the city of Cartago, department del Valle del Cauca on August 5, 1992; José Domingo Cortés Soto, murdered in the city of Valencia on Noviembre 15, 1992; Gerardo Didier Gómez, murdered in the proximities of the city of Cali on February 11, 1993; Carlos Lajud Catalán, murdered in the city of Barranquilla on March 19, 1993; Nelson de la Rosa Toscazo, murdered on August 3, 1993 in Cartagena; and Manuel José Martínez Espinosa, murdered on September 28, 1993 in Popayán. IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 101. *See also*, Fundación para la Libertad de Prensa (FLIP). 2013. [De las balas a los expedientes: Informe sobre el estado de la libertad de prensa en Colombia, 2012](#); Fundación para la Libertad de Prensa (FLIP). April 19, 2013. [Asamblea de la FLIP exige respuesta de la Fiscalía frente a la prescripción de casos de asesinatos a periodistas](#); Fundación para la Libertad de Prensa (FLIP). March 19, 2013. [19 de marzo, día doloroso para el periodismo: Prescribe asesinato de Carlos Lajud Catalán y se cumplen tres años de impunidad por el crimen de Clodomiro Castilla](#); Reporters Without Borders. July 25, 2013. [“Statutes of Limitations Are a Tragic Guarantee of Eternal Impunity”](#); Fundación para la Libertad de Prensa (FLIP). September 28, 2013. [Prescribe el asesinato del periodista Manuel José Martínez Espinosa](#); Fundación para la Libertad de Prensa (FLIP). August 3, 2013. [Sin reportes del proceso, prescribe el asesinato del periodista Nelson de la Rosa Toscazo](#).

<sup>481</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 101; Congreso de la República de Colombia. [Ley No. 1426 de 2010](#). December 29, 2010. The reform does not have retroactive effect, and applies only to crimes committed subsequent to its entry into force.

murders of and attacks on journalists as crimes against humanity on observing that, among other considerations, the crimes were part of a systematic and generalized attack on civilians by armed groups (in the context of the internal armed conflict) or drug trafficking groups. This would be the case in the murders of journalists Guillermo Cano<sup>482</sup> and Eustorgio Colmenares<sup>483</sup> and the kidnapping and rape of journalist Jineth Bedoya.<sup>484</sup> Therefore, the statute of limitations cannot be applied in these cases.

217. 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 are 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.<sup>485</sup> On that occasion, the Court highlighted the need for the State's response to the illegal conduct of the perpetrator of a crime to be proportional to the legal right affected and the guilt of the perpetrator, according to the nature and seriousness of the facts. Likewise, the Court found that when the sanctions imposed are set forth, the judicial authority should determine "the reasons for the punishment." With regard to the principle of the favorability of a prior law, the Court found that it "should be harmonized with the principle of

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<sup>482</sup> Fundación para la Libertad de Prensa (FLIP). [El Olvido de la justicia: Informe sobre el Estado de la Libertad de Prensa en Colombia](#). P. 15; Semana. July 6, 2010. [El crimen de Guillermo Cano es de lesa humanidad](#); Knight Center for Journalism in the Americas. July 7, 2010. [Colombia declara asesinato del periodista Guillermo Cano como crimen lesa humanidad](#); Fiscalía General de la Nación. July 6, 2010. [Crimen de quillermo Cano Isaza es de lesa humanidad](#).

<sup>483</sup> El Tiempo. March 11, 2013. [Crimen de periodista Eustorgio Colmenares, delito de lesa humanidad](#); Knight Center for Journalism in the Americas. March 12, 2013. [Fiscalía de Colombia declara asesinato de periodista como delito de lesa humanidad](#); Terra/ Agencia EFE. March 11, 2013. [Fiscalía colombiana dice asesinato periodista es crimen de lesa humanidad](#).

<sup>484</sup> Fiscalía General de la Nación. October 11, 2012. [Declaración del Fiscal General de la Nación, Eduardo Montealegre Lynett, sobre el caso de la periodista Jineth Bedoya Lima. Neiva \(Huila\), 20 de septiembre de 2012](#); IFEX/ Fundación para la Libertad de Prensa (FLIP). September 13, 2012. [Caso de periodista colombiana secuestrada declarado crimen de lesa humanidad](#); El Espectador. September 13, 2012. [Justicia en caso Jineth Bedoya](#).

<sup>485</sup> /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.



proportionality of punishment, such that criminal justice does not become illusory". The Court concluded that "every element which determines the severity of the punishment should correspond to a clearly identifiable objective and be compatible with the Convention."<sup>486</sup>

218. 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. For example, Article III of the Inter-American Convention on Forced Disappearance of Persons allows States to establish mitigating circumstances for individuals who have participated in acts of forced disappearance when they "help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person." Nevertheless, the application of extenuating circumstances and grounds for lessening the punishment cannot have the effect of making the criminal proceeding ineffective and illusory, nor can it result in the imposition of a disproportionate punishment and subsequent partial impunity of the crime committed.

219. In this sense, it is possible to identify cases in which perpetrators are granted criminal law benefits amounting to a significant decrease in the sentence to be served without said perpetrators having collaborated in establishing the facts of the case or the identification of the masterminds. In some cases, the prisoners who benefited even worked to block efforts to identify the masterminds.

220. For example, in the case of the murder of journalist José Orlando Sierra Hernández, who died on February 1, 2002, after he was attacked on January 30, 2002, the Office of the Special Rapporteur found in its Special Study on the Status of Investigations into the Murder of Journalists that although three people had been convicted as the perpetrators of the crime,<sup>487</sup> at the time of the report's publication the masterminds had not been punished. The Office of the Special Rapporteur

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<sup>486</sup> /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. 193.196.

<sup>487</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 100.

indicated that in 2006, four years after the crime was committed, only one of the alleged masterminds had been called to give a statement.<sup>488</sup>

221. A later study of the murder of Orlando Sierra, performed by Rodrigo Uprimy and Guillermo Puyana,<sup>489</sup> analyzed the criminal process brought against Luis Fernando Zoto Zapata, one of the perpetrators of the journalist's murder. The report confirmed that although Zoto Zapata was convicted of aggravated homicide, a crime punished in Colombia with 25 to 40 years in prison, the perpetrator spent little more than five years and eight months in prison following the application of a series of leniency measures. The research indicated that Zoto Zapata received these benefits after accepting the charges against him, but that in order to receive them he did not have to cooperate in any way in solving the journalist's murder. On the contrary, although Zoto Zapata accepted his responsibility in the aggravated homicide for the murder of a journalist over the exercise of his profession, the report finds that the perpetrator stated during the trial that he had killed Orlando Sierra by "mistake," after he confused him with another person, thus making the investigation into the masterminds behind the crime more difficult. The report concluded that in the case, the charge the Office of the Public Prosecutor brought against Zoto Zapata - and to which he pled guilty - was not intended to identify the motive behind the crime and the connection to the journalist's profession. It likewise indicated that in cases in which the evidence demonstrates that the perpetrators may be connected to organized crime, "the Office of the Public Prosecutor shall predicate a plea bargain or other leniency [...] on a more comprehensive investigation aimed at identifying all those responsible for the crime." Finally, regarding the general need to guarantee the principle of sentence proportionality, the report recommended the adoption of "minimum sentences that must be served" for certain especially grave crimes, and that the granting of leniency in a specific case is not automatic, but rather a way of guaranteeing that

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<sup>488</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 100.

<sup>489</sup> UPRIMY, R. and PUYANA, G. [Injusticia Premiada: Un análisis de la impunidad de los crímenes contra periodistas en Colombia vinculada a la justicia premial, a partir del estudio del proceso contra el autor material del homicidio de Orlando Sierra](#). Realizado para El Proyecto Contra la Impunidad – Sociedad Interamericana de Prensa y para la Asociación Colombiana de Editores de Diarios y Medios Informativos (ANDIARIOS). Bogotá, August 2008.

prosecutors and judges are able to “apply leniency according to the degree of effective cooperation with the justice system.”<sup>490</sup>

222. Similarly, the Office of the Special Rapporteur reported in its 2008 and 2009 annual reports on the granting of parole to the perpetrators of the murder of journalist José Luis Cabezas, a photographer with the magazine *Noticias*. The journalist’s charred body was found in Pinamar, Buenos Aires province, on January 25, 1997, handcuffed and with two bullets in his head. In February of 2000, Gregorio Ríos, former head of security for businessman Alfredo Enrique Nallib Yabrán, was one of the individuals convicted for the murder. He was sentenced to life in prison as instigator of the crime. On October 28, 2008, while under house arrest, Gregorio Ríos was released granted parole by the Dolores Criminal Chamber. In the case, the Chamber granted a prisoner leniency as established under a law that was in force at the time of the crime but had since been struck down. The law established that after two years of preventative detention, “each day of preventative detention [would count as] two of prison or one of confinement.”<sup>491</sup> In that case, the Office of the Special Rapporteur highlighted that “the delays in the administration of justice and the granting of criminal benefits cannot lead to the employment of measures of relative impunity that run contrary to the international obligations of the State.”<sup>492</sup> Also, the Office of the Special

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<sup>490</sup> UPRIMY, R. and PUYANA, G. [Injusticia Premiada: Un análisis de la impunidad de los crímenes contra periodistas en Colombia vinculada a la justicia premial, a partir del estudio del proceso contra el autor material del homicidio de Orlando Sierra](#). Realizado para El Proyecto Contra la Impunidad – Sociedad Interamericana de Prensa y para la Asociación Colombiana de Editores de Diarios y Medios Informativos (ANDIARIOS). Bogotá, August 2008.

<sup>491</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 11; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26; Información Legislativa. Estado de Argentina. [Ley 24.390](#). November 2, 1994. Article 7; Información Legislativa. Estado de Argentina. [Ley 25430](#). May 9, 2001. Article 5; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. P. 67; Clarín. October 28, 2008. [Justicia argentina otorgó libertad condicional a instigador de asesinato de Cabezas](#). La Nación. October 28, 2008. [Bronca de la viuda de Cabezas al conocer que otorgaron la libertad condicional de Gregorio Ríos](#). Committee to Protect Journalists (CPJ). October 28, 2008. [In Argentina, CPJ shocked by release](#).

<sup>492</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of

Rapporteur underscored that the Inter-American Court has indicated that States have “a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”<sup>493</sup>

223. Finally, in the Special Study on the Status of Investigations into the Murder of Journalists, the Office of the Special Rapporteur also found that in at least six of the cases in which someone had been convicted of the murder of a journalist between 1995 and 2005, the sentence was not carried out, whether because the judgment was pending further rulings on remedies sought or because the individuals convicted had not been captured.<sup>494</sup>

## 5. The obligation to facilitate victim participation

224. Under inter-American human rights law, States have an obligation to guarantee that victims of human rights violations or their family members have complete access and the capacity to be active in all stages and at all levels of the investigation and corresponding judicial process, in accordance with domestic law and with the standards of the American Convention.<sup>495</sup> This must include ample opportunity to

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Expression in the Hemisphere). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 11; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26.

<sup>493</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 11; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26; I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4. Para. 174.

<sup>494</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 122-125.

<sup>495</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 41.

participate and be heard, both in the clarification of the facts and the punishment of those responsible, as well as in seeking reparations.<sup>496</sup>

225. In their 2012 Joint Declaration, 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 stated that when crimes against freedom of expression occur, the victims or their next-of-kin should be afforded effective access to the procedure.<sup>497</sup> They also recognized the important role that non-governmental human rights organizations have often played in representing victims and their families in such proceedings, particularly where public prosecutor's offices lack independence or technical capacity. According to the Rapporteurs, "[c]ivil society organizations should be able to lodge complaints about crimes against freedom of expression—of particular importance in cases involving killings, abductions or disappearances where the next-of-kin are unwilling or unable to do so—and intervene [...] in criminal proceedings."<sup>498</sup>

226. As mentioned previously, facilitating victim participation in criminal proceedings also requires providing adequate protection from threats and attacks aimed at preventing such participation.<sup>499</sup> In the

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<sup>496</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 41.

<sup>497</sup> 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](#).

<sup>498</sup> 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](#).

<sup>499</sup> /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. 171; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations](#)

forementioned case of *Vélez Restrepo and Family*, the victim and his family were threatened and harassed repeatedly as a consequence of his reporting and, in particular, his decision to pursue criminal and disciplinary sanctions against the soldiers who attacked him for documenting their abuse of unarmed protesters. In its judgment in the case, the Court found the State liable for failing to protect Mr. Vélez and his family, a failure that eventually forced Vélez and his family to flee the country.<sup>500</sup> The Inter-American Court reached a similar conclusion in the case of *Manuel Cepeda Vargas v. Colombia*, in which it found that the next-of-kin of the victim, a Colombian journalist and politician who was murdered by members of the armed forces, were threatened with the objective of preventing their search for justice and forced into exile.<sup>501</sup> As a result, the Court found the State responsible for violations of the rights to personal integrity and freedom of movement and residence.<sup>502</sup>

#### **D. State obligations with regard to journalists in situations of social unrest**

227. The Inter-American Commission has paid special attention to the situation of journalists reporting on situations of social unrest given the particular degree of risk they face.<sup>503</sup> The Office of the Special Rapporteur has found that in places of exacerbated social tension, groups of civilians of all political persuasions have attacked communicators

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[into the Murder of Journalists during for Reasons that may be Related to their Work in Journalism \(1995-2005\)](#). OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 58.

<sup>500</sup> 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. 203-204.

<sup>501</sup> I/A Court H.R. *Case of Manuel Cepeda-Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213. Para. 194-195.

<sup>502</sup> I/A Court H.R. *Case of Manuel Cepeda-Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213. Para. 202 and 210

<sup>503</sup> 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](#); IACHR. June 20, 2013. [Press Release 44/13. IACHR Expresses Concern Over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. November 17, 2011. [Press Release R120/11. Office of the Special Rapporteur Expresses Concern over Arrests and Assaults on Journalists Covering Protests in the United States](#).

affiliated with media outlets that do not share their point of view.<sup>504</sup> At the same time, the Office of the Special Rapporteur has found that the majority of States do not have special protocols for protecting the press in circumstances of social unrest and has found that a significant number of attacks on communicators during protests and public demonstrations have taken place.<sup>505</sup>

228. Regarding this, the United Nations (UN) special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the OAS observed in their Joint Declaration on Violence against Journalists and Media workers in the Context of Protests that “in the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, 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 and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority.”<sup>506</sup> Likewise, the European Court has found that journalist reports on demonstrations are “essential for the development of any democratic society. Were it otherwise, the press would be unable to play its vital role of “public watchdog.”<sup>507</sup>

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<sup>504</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 45.

<sup>505</sup> For example, see: 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](#); IACHR. June 20, 2013. [Press Release 44/13. IACHR Expresses Concern Over Arrests and Attacks on Demonstrators and Journalists During Protests in Brazil](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. November 17, 2011. [Press Release R120/11. Office of the Special Rapporteur Expresses Concern over Arrests and Assaults on Journalists Covering Protests in the United States](#).

<sup>506</sup> 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](#).

<sup>507</sup> European Court of Human Rights. *Case of Najafli v. Azerbaijan*. Application No. 2594/07. Judgment. October 2, 2013. Para. 66.

229. It has also recognized that attacks on journalists covering situations of significant social unrest violate both the individual aspect of freedom of expression - as they prevent journalists from exercising the right to seek, cover and disseminate information and have a chilling and intimidating effect on other journalists that will affect the information they transmit - and in its collective aspect - as it deprives society of the right to learn of the information that journalists have collected.<sup>508</sup> Effectively, the Inter-American Court has found that attacks perpetrated by members of the police force against a journalist covering a demonstration not only block the journalist from working and transmitting the information to society, but also have “a negative impact on other journalists who must cover incidents of this nature and who may fear suffering similar acts of violence.”<sup>509</sup>

230. Consequently, States have a duty to guarantee that journalists and communicators working during public demonstrations and situations of significant social unrest are not detained, threatened, attacked, or limited in any way with regard to their rights as a result of exercising their professions. In this sense, the Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests indicates that:

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 the social protests mentioned. The disproportionate restrictions on access to the scene of the events, the arrests, and the criminal charges resulting from the performance of professional duties by reporters violate the right to freedom of expression. It is incumbent upon the authorities to reestablish the affected guarantees and ensure full respect for the right to freedom of expression.<sup>510</sup>

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<sup>508</sup> 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.](#)

<sup>509</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 3, 2012. Series C No. 248. Para. 148.

<sup>510</sup> 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.



231. The declaration states that the material and equipment of journalists shall neither be destroyed nor confiscated by government authorities. Likewise, the State “must not prohibit or criminalize live broadcasts of events, and must abstain from imposing measures that regulate or limit the free circulation of information via the Internet, and other communications platforms.”<sup>511</sup>

232. Similarly, on adopting the “Basic principles concerning the protection of journalists in situations of conflict and tension”, the Committee of Ministers of the Council of Europe recommended that member States “shall not restrict the use by journalists of means of communication for the international or national transmission of news, opinions, ideas and comments” nor “delay or otherwise interfere with such transmissions”.<sup>512</sup> Likewise, the principles established that the States must avoid taking “any restrictive measures against journalists such as withdrawal of accreditation or expulsion”<sup>513</sup> in response to their exercise of journalism activities. In this sense, the principles also determine that the accreditation of journalists can only take place when it is “necessary in particular situations,” and it shall not be used to restrict journalists’ freedom of movement or access to information. In any case, the exercise of journalism shall not depend on accreditation, which must operate to “facilitate the exercise of journalism in situations of conflict and tension.”<sup>514</sup>

233. As has been mentioned, in the case of *Vélez Restrepo and Family*, the Inter-American Court found the State responsible for attacks

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[Joint Declaration on Violence against Journalists and Media Workers in the Context of Protests.](#)

<sup>511</sup> 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.](#)

<sup>512</sup> Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension.](#) May 3, 1996. Principle 6.

<sup>513</sup> Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension.](#) May 3, 1996. Principle 7.

<sup>514</sup> Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension.](#) May 3, 1996. Principle 11.

on a journalist while he was covering a demonstration. The attacks were perpetrated by members of security forces. At the time, the State had alleged that the assault was not a deliberate attack, “but the result of a chaotic situation that led to acts of violence involving the marchers that caused the State’s security forces to react, where one of the consequences was the injury to Mr. Velez.”<sup>515</sup> In the judgment, the Inter-American Court observed that the attack on the journalist had taken place in a context in which police officers “were trying to control a protest demonstration with thousands of people, where confrontations arose with some of the protestors.”<sup>516</sup> However, the Court rejected the State’s arguments and concluded that the journalist was attacked while defenseless, without having acted in a way that would justify the attack and while identifiable as a member of the press by the video camera he was carrying. Furthermore, the Court found that “the attack was directed against him with the specific purpose of preventing him from continuing to record what was taking place and to prevent the dissemination of the recording.” In that sense, the Court concluded that it was not acceptable to argue that the attack on a journalist under those conditions “was not a deliberate attack” and a “consequence” of the operations being carried out by the police.<sup>517</sup>

234. Similarly, in the case of *Najafli v. Arzerbaijan*, the European Court found the State responsible for the attacks on a journalist covering a demonstration in the city of Baku perpetrated by members of the police force. According to the Court, the journalist did not threaten the police or act in a violent manner. The Court did not find other reasons that could justify the use of force against the journalist under those circumstances. The Court concluded that the use of force was “unnecessary, excessive and unacceptable.”<sup>518</sup> The State argued that the police had no intention of interfering with the journalist’s activities, but that the communicator was not using the blue vest that would have identified him as a member of the press, and that because of this, the

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<sup>515</sup> 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. 143.

<sup>516</sup> 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. 144.

<sup>517</sup> 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. 143.

<sup>518</sup> European Court of Human Rights. *Case of Najafli v. Azerbaijan*. Application no. 2594/07. Judgment. October 2, 2012. Para. 39.

police could not distinguish him from the other demonstrators. However, the European Court found that the journalist was at the demonstration to report on the event, and that although he was not using the blue vest, he had a badge identifying him as a member of the media and had identified himself as a journalist to the police who were attacking him. The Court also found that regardless of whether the State intentionally interfered with journalism activity, the relevant part of the case was that the journalist had been subjected to the excessive use of force by police “despite having made clear efforts to identify himself as a journalist who was simply doing his work and observing the event.” The Court concluded that the State violated the journalist’s right to freedom of expression as a result of the attacks he suffered.<sup>519</sup>

235. The Inter-American Court has stated that in situations of serious social tension or disruption of public order, it is not enough for authorities to order the adoption of protective measures, as this “does not prove the State has effectively protected the beneficiaries of the order in relation to the facts analyzed.” Its adequate, coherent and consistent implementation is needed in all cases. The Inter-American Court has also found that State claims that journalists “had acted beyond what state authorities could reasonably prevent and do” or disobeyed instructions must be proven by the State itself.<sup>520</sup>

236. As observed in this report, in situations of social unrest, the State’s obligation to respect the right of journalists to the confidentiality of their sources, notes and personal and professional files is especially important. As has been noted, in order to do their work effectively, journalists must be perceived as independent observers and not potential witnesses for the justice system. Otherwise, they may suffer threats to their safety and the safety of their sources. In these contexts, the perception that they can be forced to testify not only limits journalists’ ability to access sources of information, but also increases their risk of becoming a target for violent groups. In this sense, authorities shall not require journalists to demonstrate that the comments of witnesses given

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<sup>519</sup> European Court of Human Rights. *Case of Najafli v. Azerbaijan*. Application no. 2594/07. Judgment. October 2, 2012. Para. 68.

<sup>520</sup> 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. 154; 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. 167.

regarding the facts are accurate or to prove before a judge the veracity of the allegations reported.<sup>521</sup>

237. Likewise, as has been mentioned in this report, the authorities must take into account that public officials are guarantors of the fundamental rights of persons, and therefore, their statements cannot be construed as direct or indirect interference with the rights of those seeking to contribute to the public debate through the expression and dissemination of information. This duty is particularly accentuated in situations of greater social unrest, disruption of public order, or social and political polarization, precisely due to the combination of risks involved for certain persons. In this sense, it is crucial for authorities to energetically condemn attacks on journalists and communicators under these circumstances and act with due diligence and swiftness in clearing up the facts and punishing those responsible.<sup>522</sup>

238. Finally, the obligation to instruct the armed forces or police forces regarding the role of the media in a democratic society is also particularly important in situations of social unrest in order to prevent violence against journalists and media workers, especially considering that many of the attacks suffered by communicators in these contexts originate with said actors. In this sense, as has been mentioned in this report, an example of best training practices is a memorandum issued by the New York Police Department in the United States during the protests organized in that city in September of 2011 during the “Occupy Wall Street” movement, when a number of journalists and media workers were arrested and some faced violence at the hands of the New York City police.<sup>523</sup> The memorandum reiterated the “commitment of the Department to upholding the principles of a free press and informed

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<sup>521</sup> 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](#); Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension](#). May 3, 1996. Principle 5.

<sup>522</sup> 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 151; 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. 139.

<sup>523</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 250-261.

citizenry” and the rules establishing that “[m]embers of the service will not interfere with the videotaping or the photographing of incidents in public places” that “the media’s access to demonstrations on private property will not be impeded by the Department,” that “the media will be given access as close to the activity as possible” and that “ [w]hen incidents spill over or occur on private property, members of the media will not be arrested for criminal trespass, unless an owner or representative expressly indicates that the press is not to be permitted to enter or remain on the property.”<sup>524</sup>

239. Likewise, countries like Argentina and Brazil have adopted resolutions seeking to protect journalists covering demonstrations and situations of significant social unrest. Resolutions 210/2011, from the Security Ministry of Argentina, created a working group with the purpose of developing protocols to guide the actions of police and security forces during public demonstrations. Under the minimum standards for the development of those guidelines, the resolution explicitly establishes that:

Security officials must respect, protect and guarantee journalism activity. Journalists, invoking their status as such - including but not limited to photographers and camera operators – cannot be harassed, arrested, detained, moved, or suffer any other restriction to their rights for the simple fact of exercising their professions during public demonstrations. Likewise, police and security officials must refrain from taking actions that could block the recording of images or the collection of statements under these circumstances.<sup>525</sup>

240. Similarly, Resolution No. 6 of 2013 of the Human Rights Secretariat of the federal government of Brazil, regarding the guarantee of human rights in the context of demonstrations, public events, execution of court orders, and actions to recover land or property that has been occupied, establishes that “the activities exercised by reporters, photographers and other communication professionals are essential for effective respect of the human right of freedom of expression” in these contexts, and mandates that these individuals “must enjoy special

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<sup>524</sup> NYPD. [Memorandum](#). November 2011. See also, Knight Center for Journalism in the Americas. November 28, 2011. [New York police ordered not to interfere with journalists covering Occupy Wall Street protests](#).

<sup>525</sup> Estado de Argentina. Ministerio de Seguridad. [Resolución 210/ 2011](#). May 4, 2011. Para. 21.

protection in the exercise of their profession, with any obstacle to their actions through the use of force being prohibited.”<sup>526</sup>

241. As mentioned in this report, the Office of the Special Rapporteur observes that media outlets, society organizations and other actors can play a fundamental role in the prevention of violence against journalists and in their protection in these contexts through actions including training and self protection courses for situations involving demonstrations and social unrest. Civil society organizations have developed self-protection manuals specifically for journalists covering these situations.<sup>527</sup>

#### **E. State obligations regarding journalists in situations of armed conflict**

242. Armed conflict is an especially serious form of social unrest. The Office of the Special Rapporteur has stated that “where there are still internal armed conflicts, the aggressiveness and intolerance characteristic of the armed subjects continue to pose a grave threat to the lives and safety of journalists, critics and dissidents.”<sup>528</sup> Likewise, the IACHR has recognized that visiting communities affected by armed conflict, documenting living conditions, and collecting statements and allegations of human rights violations by authorities is a part of the range of journalism activities covered by the right to freedom of expression; any attack or retaliation by the authorities as a result of the exercise of these activities is a violation of the right to freedom of thought and expression.<sup>529</sup> Attacks on journalists in these contexts constitute a violation

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<sup>526</sup> Estado de Brasil. Secretaria de Direitos Humanos da Presidência. [Resolución No.6](#). June 18, 2013. Article 5.

<sup>527</sup> Committee to Protect Journalists (CPJ). [Journalist Security Guide. Chapter 4: Armed Conflict](#). 2012; Article 19. [Guía Protección del Derecho de la Libertad de expresión durante Marchas, Protestas y Disturbios Sociales](#); Artigo 19. [Proteção do Direito de Liberdade de Expressão durante Manifestações e Protestos](#); Reporters Without Borders. [Handbook for Journalists](#). February 17, 2006; Reporters Without Borders. May 30, 2002. [Charter for the Safety of Journalists Working in War Zones or Dangerous Areas](#).

<sup>528</sup> IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (A Hemispheric Agenda for the Defense of Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 45.

<sup>529</sup> IACHR. Report No. 29/96. Case 11.303. *Carlos Ranferí Gómez López*. Guatemala. October 16, 1996. Para. 92.

of both the individual and the collective dimensions of the right to freedom of expression.<sup>530</sup>

243. Following this line of reasoning, the IACHR has recognized that given the importance of the work that journalists do to inform a society by covering situations of armed conflict, the media outlets operating under these circumstances should be provided by the State with special protection. For example, in the case of the murder of journalist Hugo Bustíos Saavedra, perpetrated in 1988 by a Peruvian military patrol while he was investigating two murders committed during the internal armed conflict that at the time was affecting the country, the IACHR found that the State was responsible for, among other things, the violation of Article 13 of the American Convention, given that although it knew that journalists were in the conflict zone, the State failed to grant them the necessary protection. The IACHR found that the acts of violence that took place prevented the free exercise of the right to freedom of expression of the murdered journalist and another communicator who was wounded by the same patrol. It also violated the right to freedom of expression of the community of media outlets and journalists who felt threatened by these types of incidents of violence, as well as the right of society in general, which was deprived of the knowledge of matters of utmost importance to the public with regard to the armed conflict. According to the IACHR, journalists serve a fundamental role in situations of armed conflict, as “it is journalists who are risking their lives to bring the public an independent and professional view of what is really happening in areas of conflict.”<sup>531</sup> Consequently, it indicated that the State must provide them with the greatest protection possible in order for them to be able to exercise their right to freedom of expression in a way that satisfies society’s right to be adequately informed.<sup>532</sup>

244. On this same issue, the IACHR has specified that journalists covering situations of armed conflict do not, despite being exposed to the risks resulting from the conflict, lose their status as civilians. They are therefore still protected by the applicable guarantees of international

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<sup>530</sup> IACHR. Report No. 38/97. Case 10.548. *Hugo Bustíos Saavedra*. Perú. October 16, 1997. Para. 76 and 77; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 53.

<sup>531</sup> IACHR. Report No. 38/97. Case 10.548. *Hugo Bustíos Saavedra*. Perú. October 16, 1997. Para. 73.

<sup>532</sup> IACHR. Report No. 38/97. Case 10.548. *Hugo Bustíos Saavedra*. Perú. October 16, 1997. Para. 75.

humanitarian law and international human rights law - particularly the guarantees derived from the principle of distinction.<sup>533</sup> In this line of thinking, Additional Protocol I to the Geneva Conventions, regarding the protection of the victims of international armed conflicts (1977), explicitly states in Article 79 that “[j]ournalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians” and they will consequently be protected as such pursuant to international humanitarian law “provided that they take no action adversely affecting their status as civilians” and without prejudice to the right of war correspondents accredited by the armed forces to enjoy the status of prisoners of war.<sup>534</sup> In this line of thinking, the United Nations Security Council has condemned attacks on journalists perpetrated during situations of armed conflict and urged States and all other parties involved in the conflicts to take all possible measures to prevent international humanitarian law violations from being committed against journalists, media professionals, and their associated personnel; to fulfill their duties by prosecuting and convicting those responsible; and to respect the professional independence and rights of that group of individuals.<sup>535</sup> For its part, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions recommended that non-State actors participating in armed conflicts “respect the obligations they incur in terms of international humanitarian law during armed conflict, also towards journalists”.<sup>536</sup> In this sense, the United Nations Plan of Action on the Safety of Journalists and Issue of Impunity establishes that “provisions for

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<sup>533</sup> Article 48 of the Protocol I Additional to the Geneva Conventions provides that “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Inter-American Legal Framework Regarding the Right to Freedom of Expression). OEA/Ser.L/V/II.Doc 51. December 30, 2009. Para. 195.

<sup>534</sup> See also, Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension](#). May 3, 1996. Principle 8.

<sup>535</sup> United Nations. Security Council. [Resolution 1738 \(2006\)](#). S/RES/1738 (2006). December 23, 2006.

<sup>536</sup> 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. 136. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)



the safety of journalists in conflict zones, for example by encouraging the creation of so-called ‘media corridors’” should be strengthened.<sup>537</sup>

245. Likewise, the United Nation's Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution indicated that “the spreading of propaganda for the enemy in itself does not make a journalist a legitimate target”, but observed that “incitement to commit grave breaches of international humanitarian law, acts of genocide or violence is prohibited.”<sup>538</sup> In this sense, the Belgrade Declaration provides that “authorities should not mix up independent news with propaganda that incites violence”.<sup>539</sup>

246. Also of special importance in situations of armed conflict are States’ obligations to respect the right of journalists to the confidentiality of their sources, adopt public discourse that contributes to preventing violence against journalists, and instruct the armed forces and security forces on the role of the media in a democratic society.<sup>540</sup>

247. With regard to this latter obligation, Directive No. 19/2010, issued by the Commandant of the National Army of Colombia, constitutes a best practice. It includes an overview of State obligations with regard to journalists pursuant to national and international human rights law and international humanitarian law, including the obligations to “provide special protection to those who exercise their profession” in

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<sup>537</sup> 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 (24).

<sup>538</sup> 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. 67. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>539</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [Belgrade Declaration. Support to Media in Violent Conflict and in Countries in Transition](#). May 3, 2004. Para. 7.

<sup>540</sup> International Criminal Tribunal for the former Yugoslavia. [Prosecutor v. Radoslav Brdjanin Momir Talick](#). Decision on interlocutory appeal Case No. IT-99-36-AR73.9. December 11, 2002. Para. 42 - 43; Council of Europe. Committee of Ministers. [Recommendation No. R \(96\) 4 of the Committee of Minister to Member States on the Protection of Journalists in Situations of Conflict and Tension](#). May 3, 1996. Principle 5; 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](#).

areas with a significant concentration of illegal armed groups, and the obligation to treat communicators as “civilians” pursuant to international humanitarian law, including when the individual in question “has a favorable opinion toward any of the parties to the conflict.”<sup>541</sup> In this sense, in the *Case of Vélez Restrepo and Family*, the Inter-American Court “appreciate[d] the measures taken by Colombia in this area, through directives that seek to raise awareness within the Armed Forces about the work of journalists and social communicators and the danger they face, especially during armed conflicts, and also about the necessary respect they must exercise so that the latter can exercise their profession without obstacles.”<sup>542</sup> Nevertheless, the Court established as a guarantee of non-repetition that the State must “incorporate into its human rights education programs for the Armed Forces, a specific module on the protection of the right to freedom of thought and expression and on the work of journalists and social communicators.”<sup>543</sup> Similarly, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions recommended that States train the members of their security and armed forces “on the legitimacy of the presence of journalists during non-armed and armed conflict and the legal protection for their safety.”<sup>544</sup>

248. Examples can be found in the region of measures taken to provide special protection to journalists in armed conflict situations. For example, the State of Colombia has recognized journalists on a number of occasions as a population that is particularly affected during armed conflict. In its 2005 report entitled *Impunity, Self-censorship and Armed Internal Conflict: an Analysis of the State of Freedom of Expression in*

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<sup>541</sup> Pamphelt “Respeto, atención, reconocimiento, protección, prevención, promoción, aplicación y difusión de los derechos humanos y DIH de los grupos especiales.” Directiva Permanente No. 19/2010 de la Jefatura de Derechos Humanos y DIH del Ejército Nacional. Ejército Nacional, Fuerzas Militares de Colombia. Document Attached to the answer to the application, annex 2, file on the merits, volume I, pages 455 to 463. 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. 276.

<sup>542</sup> 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. 277.

<sup>543</sup> 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. 277.

<sup>544</sup> 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

Colombia, the Office of the Special Rapporteur found that “[t]he exercise of freedom of expression in Colombia has been gravely affected in recent decades by the internal armed conflict.”<sup>545</sup> As this report has found, since the year 2000, journalists and social communicators have had special protection program available to them, set up by the Colombian Government.<sup>546</sup> Currently, 16 populations that face social risk are included in the recently established Prevention and Protection Program of the Ministry of the Interior and the National Protection Unit.<sup>547</sup> Likewise, journalists and social communicators have been recognized by the Unit for Full Care and Reparation of Victims as a beneficiary population of collective reparations in the framework of the Law on Victims and Land Restoration.<sup>548</sup> On the issues of the struggle against impunity and access to justice, as has been mentioned, the Colombian Penal Code includes the crime of “homicide of a protected person,” which occurs when a person protected by international humanitarian law is murdered due to and as part of the armed conflict, including “journalists on assignment or accredited war correspondents.”<sup>549</sup> Finally, the Office of the Public Prosecutor of the Colombian State has also qualified some cases involving murders of and assaults on journalists as crimes against humanity on observing that among other considerations, the crimes formed part of a systematic and general attack on civilians by armed groups in the context of the internal armed conflict.<sup>550</sup>

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<sup>545</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Impunity, Self-Censorship and Armed Conflict: An Analysis of the State of the Freedom of Expression in Colombia](#). OEA/Ser.L/V/II Doc.51. August 31, 2005. Para. 5.

<sup>546</sup> Presidencia de la República de Colombia. [Decreto No. 1592 de 2000](#). August 24, 2000.

<sup>547</sup> Presidencia de la República de Colombia. [Decreto No. 4912 de 2011](#). December 26, 2011. Article 6.

<sup>548</sup> Unidad para la Atención y Reparación Integral a las Víctimas. September 20, 2012. [Gobierno consulta a periodistas Víctimas del conflicto sobre proceso de Reparación Colectiva](#); El Mundo. October 9, 2012. [Reparación para periodistas víctimas](#); Knight Center for Journalism in the Americas. September 25, 2012. [Colombian government consults journalists targeted by violence in reparation process](#).

<sup>549</sup> Estado de Colombia. [Código Penal. Ley 599 de 2000](#). Article 135. Para. 5.

<sup>550</sup> El Tiempo. March 11, 2013. [Crimen de periodista Eustorgio Colmenares, delito de lesa humanidad](#); Knight Center for Journalism in the Americas. March 12, 2013. [Fiscalía de Colombia declara asesinato de periodista como delito de lesa humanidad](#); Terra/Agencia EFE. March 11, 2013. [Fiscalía colombiana dice asesinato periodista es crimen de lesa humanidad](#); Fiscalía General de la Nación. October 11, 2012; [Declaración del Fiscal General de la Nación, Eduardo Montealegre Lynett, sobre el caso de la periodista Jineth Bedoya Lima. Neiva \(Huila\), 20 de septiembre de 2012](#); IFEX/ Fundación para la Libertad de Prensa (FLIP). September 13, 2012. [Caso de periodista colombiana secuestrada declarado crimen de lesa humanidad](#); El Espectador. September 13, 2012. [Justicia en caso Jineth Bedoya](#).

249. Finally, civil society organizations and other actors have also played a fundamental role in the prevention of violence against journalists and their protection during armed conflict. For example, the International Committee of the Red Cross (ICRC) organizes first aid training and courses for journalists who cover armed conflict and international humanitarian law.<sup>551</sup> The ICRC also has a direct line of communication with journalists, their relatives and media outlets that need assistance with regard to arrests, disappearances and injuries suffered by journalists during armed conflicts. It acts to locate disappeared journalists and evacuate those who are injured.<sup>552</sup> Likewise, civil society organizations have developed self protection manuals specifically for journalists covering armed conflicts.<sup>553</sup>

## F. Violence against women journalists

250. The Inter-American standards and domestic practices on the prevention, protection and prosecution of violence against journalists set forth so far highlight the need for State policies specifically designed to address the roots of this violence according to social context and its consequences for the lives of those affected. One relevant aspect of this endeavor involves examining the situation of women who practice journalism in our region and the multiple and specific risks they face as a result of the exercise of their right to freedom of expression. This means understanding how gender inequality and sexist practices manifest themselves in the phenomenon of violence against journalists, and with it, foster the adoption of adequate measures of prevention, protection and justice.

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<sup>551</sup> 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. 84, 87 and 90. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96); International Committee of the Red Cross (ICRC). [Informe 2010 Colombia](#) (In Spanish). March 2011. P. 77; TV San Jorge. June 14, 2013. [Culminó capacitación para periodistas regionales ofrecida por el CICR](#) (VIDEO).

<sup>552</sup> International Committee of the Red Cross (ICRC). September 9, 2011. [HOTLINE: assistance for journalists on dangerous assignments](#).

<sup>553</sup> Committee to Protect Journalists (CPJ). [Journalist Security Guide. Chapter 4: Armed Conflict](#). 2012; Article 19. [Guía Protección del Derecho de la Libertad de expresión durante Marchas, Protestas y Disturbios Sociales](#); Artigo 19. [Proteção do Direito de Liberdade de Expressão durante Manifestações e Protestos](#); Reporters Without Borders. [Handbook for journalists](#). February 17, 2006; Reporters Without Borders. May 30, 2002. [Charter for the Safety of Journalists Working in War Zones or Dangerous Areas](#).

251. As explained below, according to 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.<sup>554</sup>

252. To this point, United Nations Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, Frank La Rue, stated in his report on the protection of journalists and media freedom, that “[f]emale journalists also face additional risks, such as sexual assault, mob-related sexual violence aimed against journalists covering public events, or sexual abuse in detention or captivity. Many of these attacks are not reported as a result of powerful cultural and professional stigmas. A gender-sensitive approach is therefore needed when considering measures to address the issue of violence against journalists.”<sup>555</sup>

253. The importance of taking account of gender in the study of violence against journalists and the identification of strategies to eradicate it is reinforced by the obligation of the States to combat discrimination and violence against women with due diligence.<sup>556</sup> As has been recognized by

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<sup>554</sup> CIMAC. Informe diagnóstico. [Violencia contra mujeres periodistas. México 2010-2011](#). Septiembre 7, 2012. P. 11; Committee to Protect Journalists (CPJ). June 7, 2011. [Special Report: The silencing crime: Sexual violence and journalists](#).

<sup>555</sup> 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>556</sup> IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. July 21, 2011. Para. 110-111; IACHR. Report No. 28/07. Cases 12.496-12.498. Claudia Ivette González et al. Mexico. March 9, 2007. *See also*, IACHR. Report No. 54/01. Case 12.051. Maria Da Penha Maia Fernandes. Brazil. April 16, 2001. IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007; 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; I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215; I/A Court

the Inter-American Commission “gender-based violence is one of the most extreme and common forms of discrimination”<sup>557</sup>, as it severely impedes and annuls women’s exercise of their rights, including the rights to life and personal integrity. Effectively, the Inter-American system has highlighted the strong connection between the issues of discrimination and violence against women.<sup>558</sup> An example of this can be found in the provisions of the “Convention of Belém do Pará,” which establishes that all women have the right to a life free from violence,<sup>559</sup> to be free of all forms of discrimination, to be valued and educated free from stereotypical patterns,<sup>560</sup> to equal protection before the law and of the law, and to have a simple and quick remedy available through the competent courts when their rights are violated.<sup>561</sup>

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H.R., *Case Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216.

<sup>557</sup> IACHR. Report No. 80/11. Case 12.626. Merits. *Jessica Lenahan (Gonzales) et al.* United States. July 21, 2011. Para. 110. *See also*, United Nations. General Assembly. [Declaración sobre la eliminación de la violencia contra la mujer](#). Resolution 48/104. September 20, 1993. A/RES/48/104; United Nations. General Assembly. [Beijing Declaration and Platform for Action](#). The Fourth World Conference on Women. A/CONF.177/20/Rev.1. September 15, 1995; United Nations. CEDAW. [General Recommendation 19: Violence against Women](#). ONU Doc.A/47/38.1. 11<sup>o</sup> Period of Sessions 1992.

<sup>558</sup> IACHR. Report No. 80/11. Case 12.626. Merits. *Jessica Lenahan (Gonzales) et al.* United States. July 21, 2011. Para. 110; IACHR. Report No. 28/07. Cases 12.496-12.498. *Claudia Ivette González et al. Mexico*. March 9, 2007. *See also*, IACHR. Report No. 54/01. Case 12.051. *Maria Da Penha Maia Fernandes. Brazil*. April 16, 2001. IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007; 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; I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215; I/A Court H.R., *Case Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216.

<sup>559</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem do Pará”. Article 3. It should be noted that “[f]or the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”

<sup>560</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem do Pará”. Article 6.

<sup>561</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem do Pará”. Article 4.

254. Similarly, the Commission has noted “the close relationship between discrimination, violence and due diligence”<sup>562</sup> and emphasized that this duty includes “the obligation to organize the structure of the State –including the laws, public policy, organs charged with enforcing the law, like the police, and the judicial system- so that it is capable of adequately and effectively preventing and responding to these problems.”<sup>563</sup> Likewise, it has observed that State inaction in the area of violence against women constitutes not only a form of discrimination but also a violation of the rights to life and personal integrity”.<sup>564</sup> This is particularly relevant due to the fact that the practice of journalism remains a male-dominated activity in which stereotypes and traditional gender roles are reproduced. Although the participation of women has admittedly increased significantly over the years, studies show that the assignment of women to the highest levels of decision-making or to issues that warrant the most important media coverage remains low.<sup>565</sup>

255. There is little documentation on the situation of women journalists and the violence that they face as a result of the exercise of their profession in the Americas. No exhaustive regional or local studies have been done, and it is assumed that the information that is available does not reflect the depth of the problem.<sup>566</sup> This is no surprise. In general,

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<sup>562</sup> IACHR. Report No. 80/11. Case 12.626. Merits. *Jessica Lenahan (Gonzales) et al.* United States. July 21, 2011. Para. 111; IACHR. Report Nº 28/07. Cases 12.496-12.498. *Claudia Ivette González et al.* Mexico. March 9, 2007; 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.

<sup>563</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II. Doc. 63. December 9, 2011. Para. 41.

<sup>564</sup> IACHR. Report No. 80/11. Case 12.626. Merits. *Jessica Lenahan (Gonzales) et al.* United States. July 21, 2011. Para. 111. *See also*, 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; European Court of Human Rights. *Case of Opuz c. Turquía*. Application No. 33401/02. Judgment. June 9, 2009; European Court of Human Rights. *Kontrová c. Slovakia*. Application No. 7510/04. September 24, 2007; United Nations. CEDAW. Comments on the Communication No. 5/2005, *Sahide Goekce c. Austria*. C/39/D/5/2005. August 6, 2007.

<sup>565</sup> International Women Media Foundation. *Global Report on the Status of Women in the News Media*. 2011. Available for consultation at: <http://www.iwmf.org/global-report/>. *See also*, United Nations. General Assembly. [Beijing Declaration and Platform for Action](#). The Fourth World Conference on Women. A/CONF.177/20/Rev.1. September 15, 1995. Strategic Objective J. Women and Media. Para. 235.

<sup>566</sup> Committee to Protect Journalists (CPJ). June 7, 2011. [Special Report: The silencing crime: Sexual violence and journalists](#); CIMAC. [Informe diagnóstico. Violencia contra mujeres periodistas. México 2010-2011](#). September 7, 2012. P. 11.

instability and lack of coordination between information systems to collect statistics on incidents in cases of violence against women has been identified by the IACHR as a relevant obstacle to examining the causes of this phenomenon and relevant trends.<sup>567</sup> In its thematic reports on violence against women, the Commission has identified among some of the most important challenges obstructing effective access to justice: (i) the lack of studies or statistics on the prevalence of violence against women, and the little information there is on its magnitude and (ii) the severe problem of under-reporting and failure to file complaints of incidents, because victims fear stigmatization by their communities and reprisals on the part of the assailant.<sup>568</sup>

256. The preliminary results of the first global survey on the issue launched in 2013 by civil society organizations in collaboration with UNESCO show that women journalists are victims of intimidation and threats, sexual violence and harassment, cyber-bullying, among other attacks. According to the data published, only a minority of cases are reported and investigated.<sup>569</sup>

257. For a number of years, nongovernmental organizations in Mexico have made a significant effort to document the situation of women journalists there.<sup>570</sup> Their diagnosis is that the increase in violence in general has also exacerbated gender violence. According to available information, in this context, the number of cases of women journalists who are victims of femicide and sexual violence - from harassment to rape - has increased. However, the reports released highlight that due to the nature of the phenomenon and distrust of the legal remedies available, these incidents are not reported by Mexican women journalists. This type of violence remains invisible and in silence for many, and when it is reported, they receive negligent treatment that is inconsistent and

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<sup>567</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007.

<sup>568</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II, Doc. 63. December 9, 2011. Para. 5.

<sup>569</sup> International Women Media Foundation. [Global research project investigates violence against women journalists](#) December 2, 2013. *See also*, UNESCO/International Women Media Foundation. August 26, 2013. [Global survey on violence against female journalists launched](#).

<sup>570</sup> CIMAC. [Informe diagnóstico. Violencia contra mujeres periodistas. México 2010-2011](#). September 7, 2012; CENCOS. [¿Porque tanto silencio?. Daño reiterado a la libertad de expresión en México 2012](#). May 2013. P. 121- 129; CENCOS/Article 19. [Violencia en México y el derecho a la Información. Análisis de las cifras](#). April 2011.



inequitable for the women involved. The women are subjected to stereotypical treatment and their private (sexual) lives are questioned. The experience thus brings with it a significant professional cost.<sup>571</sup> In its final observations for Mexico, the Committee on the Elimination of Discrimination against Women expressed deep concern at the risks faced by women journalists exercising their profession in that country. The Committee observed that it had received information indicating that women journalists in that country are “subjected to a variety of manifestations of violence, including threats and defamatory campaigns, sexual abuse, harassment and femicide.” Other causes for concern indicated by the Committee include the delays by competent authorities in adopting measures to guarantee the human rights of journalists; the fact that the majority of cases of violence against journalists have been perpetrated by State agents; and the lack of measures to prevent, investigate, charge and try the guilty parties.<sup>572</sup>

258. The Office of the Special Rapporteur has received information suggesting that this problem is also affecting other countries in the region that have high levels of violence against journalists.<sup>573</sup> States

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<sup>571</sup> CIMAC. [Informe diagnóstico. Violencia contra mujeres periodistas. México 2010-2011](#). September 7, 2012; CENCOS. [¿Porque tanto silencio?. Daño reiterado a la libertad de expresión en México 2012](#). May 2013. P. 121- 129; CENCOS/Article 19. [Violencia en México y el derecho a la Información. Análisis de las cifras](#). April 2011.

<sup>572</sup> United Nations. CEDAW. [Concluding Observation of the Committee on the Elimination of Discrimination Against Women Mexico](#). CEDAW/C/MEX/CO/7-8. August 7, 2012. Para. 24.

<sup>573</sup> United Nations. CEDAW. [Concluding Observation of the Committee on the Elimination of Discrimination Against Women Mexico](#). CEDAW/C/MEX/CO/7-8. August 7, 2012.

<sup>573</sup> For example, on June 2, 2000 the IACHR granted precautionary measures and requested that the Colombian State take steps to protect the life and physical integrity of Jineth Bedoya Lima, a journalist for *El Espectador*. According to the IACHR “[t]he available information indicates that on May 24, 2000, Jineth Bedoya received a call from an individual nicknamed “the baker” (“*el Panadero*”), who expressed interest in having a journalistic piece done on the paramilitary’s version of the outbreak of violence on April 27, 2000 in the National Model Prison of Bogotá. The journalist was approached at the door of the facilities, surrounded, sedated, and driven to a nearby house where several individuals gagged and beat her and subjected her to degrading treatment. She was then left in an unpopulated sector”. IACHR. [Annual Report 2000](#). Chapter III (The petitions system and individual cases). OEA/Ser.L/V/II.111 Doc. 20 re. Para. 20. Likewise, on 2010 the Office of the Special Rapporteur received information that indicated that Claudia Julieta Duque, an independent correspondent in Colombia with the Internet human rights broadcaster *Radio Nizkor*, received threats. IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 149-152.

therefore need to adopt specific, adequate, full and effective measures toward making the attacks and other forms of abuse perpetrated against women journalists visible, preventing those attacks, and investigating them.

259. Effectively, as indicated throughout this report, States have an obligation to prevent, protect and investigate, and try and punish those responsible for these crimes. According to the inter-American case law, in cases of violence against women the States have—in addition to the abovementioned general obligations—a reinforced obligation to act with due diligence based on the existing provisions on the rights of women, such as the Convention of Belém do Pará.<sup>574</sup>

260. With regard to the obligation to prevent, the Inter-American Court has recognized that States “should have an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the respective complaints.” As has been indicated, 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. In this regard, an amendment to the Federal Mexican Penal Code stands out according to which the punishment of crimes against journalists is increased by up to half when “the victim is a woman and gender forms part of the motive for the commission of the crime.”<sup>575</sup>

261. That said, establishing a legal framework is not by itself enough; the prevention strategy must be complete - that is, it should “prevent the risk factors and, at the same time, strengthen the institutions that can provide an effective response in cases of violence against

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<sup>574</sup> IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. July 21, 2011. Para. 110-111; IACHR. Report No. 28/07. Cases 12.496-12.498. Claudia Ivette González et al. Mexico. March 9, 2007. See also, IACHR. Report No. 54/01. Case 12.051. Maria Da Penha Maia Fernandes. Brazil. April 16, 2001. IACHR. [Access to Justice for Women Victims of Violence in the Americas](#). OEA/Ser.L/V/II. Doc. 68. January 20, 2007; 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; I/A Court H.R. *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215; I/A Court H.R. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216.

<sup>575</sup> Estados Unidos Mexicanos. [Código Penal Federal](#). November 30, 2012. Article 51.

women”.<sup>576</sup> The Inter-American Commission has stated that this obligation necessarily means executing initiatives to collect information, including statistics, research and studies on the various manifestations of violence against women journalists.<sup>577</sup> In this respect, recognizing the need to consider the intersection of different forms of discrimination that women may experience for other related reasons, such as race, national origin, sexual orientation, and others, the IACHR has recommended that States include data in the pertinent studies broken down by sex, race, and other variables that expose women to violence.<sup>578</sup> Similarly, the IACHR has found that given the relevance to the public interest of statistical information related with the problem of violence against women, States “must have appropriate legal and administrative mechanisms to ensure ample access to that information, establish vehicles for circulating it, and encourage public debate and scrutiny of the policies being implemented in that realm”.<sup>579</sup>

262. Likewise, based on Inter-American case law and doctrine, the bodies of the Inter-American system have indicated that 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 regard, the UN Human Rights Council acknowledged “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.<sup>580</sup> Also, on analyzing the situation of human rights defenders, the IACHR found that during the risk assessment, a gender perspective must be taken into account with regard to applicants for protection and urged States to evaluate the specific context in which applicants perform their duties and

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<sup>576</sup> 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. 258.

<sup>577</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas.](#) OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 42-43; *See also*, United Nations. CEDAW. [General Comment No. 19: Violence against Women.](#) Doc.A/47/38.1. 1992; CEPAL. [Cuaderno 99. Si no se cuenta, no cuenta: Información sobre la violencia contra las mujeres.](#) April 2012.

<sup>578</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica.](#) OEA/Ser.L/V/II, Doc. 63. December 9, 2011. Para. 20.

<sup>579</sup> IACHR. [Access to Justice for Women Victims of Violence in the Americas.](#) OEA/Ser.L/V/II. Doc. 68. January 20, 2007. Para. 43.

<sup>580</sup> United Nations. Human Rights Council. [Resolution 23/2. The role of freedom of opinion and expression in women’s empowerment.](#) A/HRC/RES/23/2. June 24, 2013.

whether it could have a differential impact on the level of risk based on that category.<sup>581</sup> In so doing, the States must also take account of the particular risk of human rights violations faced by different sectors of women because of the intersection of different forms of discrimination for other related reasons, including their race, ethnicity, age, sexual orientation, among others.

263. In these circumstances, according to the Commission, the risk measured by the assessment must be qualified as higher.<sup>582</sup> This is particularly important in the case of women journalists, as they are exposed to a two-fold risk for exercising journalism in situations of significant conflict or violence and in contexts that reinforce gender subordination.

264. As has been highlighted, special protection programs for journalists in Colombia and Mexico have protocols and directives that require the mechanism to be applied from a gender perspective and with emphasis on the human rights of women. Thus, in a follow-up of Resolution No. 0805 of May 14, 2012 adopted by the Ministry of Interior of Colombia, the government issued a “specific protocol focusing on gender and the rights of women,” adopting, among other things, principles of preferential and special attention for women and the participation of women's organizations in the program. The Protocol establishes the creation of a Risk Assessment and Measure Recommendation Committee (CERREM) for Women, which includes the participation of women's organizations, State agencies that work on issues of gender, the High Presidential Council on Women's Equality, and representatives of international organizations such as UN Women. The CERREM for Women meets specially and exclusively to examine cases of in which women are requesting protection. According to the Protocol, the beneficiary can choose to have her case analyzed by the CERREM for Women or the CERREM created to examine situations of risk in the other segment of the population to which she belongs, such as for example journalists. Likewise, the Protocol establishes the adoption of complementary measures with a differential approach when they are requested by the beneficiary or found necessary in the risk assessment. These include measures to ensure the health, social safety and well-being of women human rights defenders and their family members; measures aimed at providing support to the

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<sup>581</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 512.

<sup>582</sup> IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#). OEA/Ser.L/V/II Doc. 66. December 31, 2011. Para. 512.

beneficiary and her family members for accessing the education system; and measures for aiding mothers who are nursing, pregnant, or have minors in their care. The Protocol also establishes the need for training and sensitizing the agencies and officials with the program on the issue of gender and women's rights.<sup>583</sup>

265. In the case of Mexico, the rules of procedure of the Government Council of the Mechanism for the Protection of Human Rights Defenders and Journalists establish that its resolutions must hew to “*pro persona* principles, a gender perspective, the higher interest of the child and other human rights criteria.”<sup>584</sup> Likewise, the Mechanism for the Prevention and Protection of Journalists of the Federal District included a gender focus in its protocols and respect for the principle of nondiscrimination.

266. As far as the obligation to investigate, it is relevant to highlight that it has additional meaning in cases of women journalists and of violence that seeks to restrict the exercise of freedom of expression. In this sense, the Inter-American Court has expressed that “when an act of violence against a woman occurs, it is particularly important that the authorities in charge of the investigation carry it out [...] in a determined and effective manner, taking into account society’s obligation to reject violence against women and the State’s obligation to eliminate it and to ensure that victims trust the State institutions there for their protection.”<sup>585</sup>

267. The Court has in its recent case law specified the content of this obligation. In the specific case of the duty to investigate complaints of sexual violence, the Court has found it necessary that in “the course of a criminal investigation for rape: i) the victim’s statement should be taken in a safe and comfortable environment, providing privacy and trust; ii) the victim’s statement should be recorded so as to avoid or limit the need for repetition; iii) the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under a protocol for such attention aimed at reducing the consequences of the rape; iv) a complete and detailed medical and

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<sup>583</sup> Estado de Colombia. Ministerio del Interior. [Resolución 0805. Protocolo específico con enfoque de género y de los derechos de las mujeres](#). May 14, 2012.

<sup>584</sup> Estados Unidos Mexicanos. [Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#). November 30, 2012. Article 22.

<sup>585</sup> I/A Court H.R. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216. Para. 177.

psychological examination should be made immediately by appropriately trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can be accompanied by a person of confidence if she so wishes; v) the investigative measures should be coordinated and documented and the evidence handled with care, including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, and obtaining other evidence such as the victim's clothes, immediate examination of the scene of the incident, and guaranteeing the proper chain of custody of the evidence, and vi) access to free legal assistance at all stages of the proceedings should be provided to the victim."<sup>586</sup>

268. In order for this to be possible, it is crucial for the authorities in charge to be duly trained on issues of gender. As has been broadly recognized, when those investigations are not carried out by trained authorities, they are marred by indifference and deficiencies, which negatively affect a case's procedural future. Specifically, the lack of training is frequently demonstrated by the fact that these types of investigations turn to discriminatory gender stereotypes to question the credibility of the complaint that has been filed.<sup>587</sup> In this regard, the IACHR has pointed out that "when victims turn to the state institutions with which complaints are to be filed –mainly the police or prosecutors- they generally encounter an atmosphere of gender-based discrimination. Because of the stereotypes and biases that members of law enforcement and officers of the court harbor, they give little credence to the victim's version of what happened, put the blame on her, justify what happened by pointing to the victim's attitude or behavior or her previous relationships, question the woman's honor, or use a sexist vocabulary. The discrimination is often a function of the victim's sexual [orientation], the color of her skin, her ethnic origins, her low level of education, her nationality, and other factors."<sup>588</sup>

269. In sum, the Office of the Special Rapporteur expresses its concern with regard to the situation of women journalists and the differential risks that they face over their exercise of the profession in the

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<sup>586</sup> I/A Court H.R. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216. Para. 178.

<sup>587</sup> 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. 401.

<sup>588</sup> IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II. Doc. 63. December 9, 2011. Para. 181.

Americas. Especially concerning is the lack of attention that has thus far been paid to the phenomenon and the obstacles to denouncing and understanding it. For this reason, States are reminded of the need to improve mechanisms of prevention, protection and judicial responses in order to fully comply with the obligations described in this report and guarantee women the full exercise of their freedom of expression.

#### **G. The role of other actors: third-party States, media outlets and NGOs**

270. International obligations to prevent attacks against journalists, put in place measures of protection, and punish crimes against journalists are, pursuant to regional human rights law, dependent on the States in their corresponding territories. Nevertheless, the Office of the Special Rapporteur believes it pertinent to mention the significant role that other actors can play in the work of preventing and punishing violence against journalists.

271. The international community is a crucial actor in the protection of journalists, particularly those third-party States where an at-risk journalist has fled or seeks to be received in order to escape an imminent threat to their life or safety. Regarding the extreme situation of violence affecting journalists on some States, the Office of the Special Rapporteur has observed that bilateral and multilateral cooperation should focus a significant portion of its efforts on the defense of journalists and human rights defenders, including financial resources to guarantee their protection, technical assistance to aid with ongoing investigations, and international solidarity in the sheltering of journalists or activists who have been displaced individually or with their families as a result of their opinions, allegations or investigations.<sup>589</sup> Regarding the latter group, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has praised the Swedish government's decision to create a refuge<sup>590</sup> for journalists facing serious and urgent threats in the context of that government's Special Initiative for Democratisation and Freedom of Expression.<sup>591</sup>

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<sup>589</sup> IACHR Office of the Special Rapporteur for Freedom of Expression. [Press Release R28/10. Office of the Special Rapporteur strongly condemns murder and kidnapping of journalists in Mexico](#). March 15, 2010.

<sup>590</sup> Fojo Safe House. [Safe House Guidelines](#).

<sup>591</sup> 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. 88. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

272. A second actor that undoubtedly plays a critical role in the safety of journalists is the media itself. In its 2010 Special Report on Freedom of Expression in Mexico, the Office of the Special Rapporteur called on media company owners to “provide appropriate support to journalists, including security protocols and the training required to minimize the risks” to their safety.<sup>592</sup> 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 made a similar point in their 2012 Joint Declaration on Crimes against Freedom of Expression, stressing 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.”<sup>593</sup> The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has similarly stated that “[m]edia 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.”<sup>594</sup> Similarly, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity points to the importance of urging “the media industry and its professional associations, to establish general safety provisions for journalists, including but not limited to safety training

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<sup>592</sup> 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. 833.

<sup>593</sup> 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](#).

<sup>594</sup> 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)



courses, health care and life insurance, access to social protection and adequate remuneration for free-lance and full-time employees.”<sup>595</sup>

273. 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 2002, *TV Globo* created an internal commission to reevaluate its coverage of violence in Rio de Janeiro and reinforce its existing security measures.<sup>596</sup> For more than a decade, the company has invested in safety training for its entire crew.<sup>597</sup> It has also provided security measures such as temporary relocation and personal bodyguards to employees who are under threat.<sup>598</sup> In addition, *TV Globo* is a member of the International News Safety Institute (INSI), a coalition of news organizations, journalist support groups and individuals exclusively dedicated to the safety of news media staff working in dangerous environments. INSI’s purpose is to create a global safety network of advice and assistance to journalists and other news gatherers who may face danger covering the news on international assignment or in their own countries.<sup>599</sup> In this regard, organizations like Article 19 have developed security courses aimed at journalists located dangerous areas that include basic security measures, first aid, risk identification and the preparation of safety and self-defense protocols, and information technology security.<sup>600</sup>

274. In addition to safety measures adopted within media organizations, experience in the region shows that solidarity and cooperation among media outlets can contribute significantly to journalist safety. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary

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<sup>595</sup> 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.

<sup>596</sup> Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#).

<sup>597</sup> Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#).

<sup>598</sup> Proyecto Impunidad. June 2, 2002. [Muerte de Tim Lopes denuncia el poder de los traficantes](#).

<sup>599</sup> International News Safety Institute. Available for consultation at: <http://www.newssafety.org/>

<sup>600</sup> Article 19. 5 de noviembre de 2012. [Curso de Seguridad para Periodistas en línea](#); Article 19. 25 de junio de 2013. [Invitación: Curso de Seguridad para periodistas en zonas de riesgo](#); Article 19. [Asesoría para la Elaboración de Protocolos de Seguridad](#); Article 19. [Capacitación para periodistas sobre cobertura de alto riesgo](#).

Executions also highlighted the importance of this type of cooperation between media outlets, noting that, “while recognizing the often competitive nature of the relationships among media workers worldwide, it is important to set competition aside where issues of safety are involved.”<sup>601</sup> For example, in Colombia, competing media outlets have at various times collaborated to report and publish stories that could be dangerous in order to reduce the exposure of any one reporter or media outlet while sending a defiant message to those who would seek to silence the press through violence.<sup>602</sup> Following the 1986 murder of *El Espectador* newspaper director Guillermo Cano by the drug cartel headed by Pablo Escobar, for example, the entire Colombian press corps instituted a 24 hour blackout in protest.<sup>603</sup> In the following months, *El Espectador*, its main competitor *El Tiempo*, and other media outlets worked together to investigate and publish stories about drug trafficking.<sup>604</sup>

275. In 2004, a similar strategy was employed whereby 19 Colombian magazines and newspapers investigated and simultaneously published dangerous investigative stories on issues such as paramilitary infiltration in gambling.<sup>605</sup> On this note, the “Proyecto Manizales”, was designed to report the very stories that had been thwarted when the initial reporters were threatened, murdered or forced into exile.<sup>606</sup> This project

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<sup>601</sup> 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 for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>602</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico’s Press: How Colombian Media Met Dangerous Times](#).

<sup>603</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico’s Press: How Colombian Media Met Dangerous Times](#).

<sup>604</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico’s Press: How Colombian Media Met Dangerous Times](#).

<sup>605</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico’s Press: How Colombian Media Met Dangerous Times](#).

<sup>606</sup> Center for International Media Assistance. [Dangerous Work: Violence Against Mexico’s Journalists and Lessons from Colombia](#). April 11, 2012. Pp. 23-25; Committee to

was initially created by seven leading Colombian newspapers and magazines (*La Patria*, *El Colombiano*, *El Tiempo*, *El Espectador*, *Cambio* and *Semana*, among others) in response to the 2002 murder of journalist Orlando Sierra.<sup>607</sup> The media outlets collaborated on an investigation into Sierra's murder and simultaneously published their findings, helping to establish the political motives of the crime.<sup>608</sup> The Proyecto Manizales was reactivated on subsequent occasions in order to carry out the work being done by journalists who suffered acts of violence. This was done, for example, in order to conclude the investigations being carried out by journalist Guillermo Bravo at the time he was killed in 2003,<sup>609</sup> as well as the investigations that led to death threats against the investigative editor of *El Diario* of Huila, Germán Hernández, in 2007.<sup>610</sup>

276. In 2012, a similar initiative was carried out by online media from different countries throughout the region. Twice they simultaneously published investigative journalism reports on organized crime's involvement in displacement and human trafficking. The initiative included the cooperation of online media sources *El Faro* (from El Salvador), *Plaza Pública* (from Guatemala), *Verdad Abierta* (from Colombia) and *Animal Político* (from Mexico), in coordination with the organizations Internews and InSight Crime, and sought, among other objectives, to decrease the level of risk faced by each one of the media outlets involved in publishing the reports. To do this, prior to the beginning of the investigations, the media outlets reached an agreement on strategies to keep their sources safe, which security protocols to use in hostile environments, and the purchase of life insurance for the journalists participating in the project. A subsequent analysis of the initiative published by PBS concluded that despite the security procedures, the lack of mechanisms for digital security put the media outlets at risk when they were exchanging information. They recommended that future initiatives involving this type of

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Protect Journalists (CPJ). September 8, 2010. [Silence or Death in Mexico's Press: How Colombian Media Met Dangerous Times.](#)

<sup>607</sup> Semana. May 3, 2007. [En el Día de la Libertad de Expresión denuncian "impunidad total" contra los casos de periodistas muertos o amenazados;](#) Semana. March 29, 2011. [Profieren medida de aseguramiento a Ferney y Dixon Tapasco por el asesinato de Orlando Sierra.](#)

<sup>608</sup> Hechos de Callejón. [Un periodismo que denuncie y dé garantías;](#) El Colombiano. [Cadena criminal en el caso de Orlando Sierra.](#)

<sup>609</sup> Semana. May 1, 2005. [La última cuartilla de un periodista asesinado;](#) Hechos de Callejón. [Un periodismo que denuncie y dé garantías.](#)

<sup>610</sup> Semana. April 14, 2007. [¿Qué esconden en Huila?;](#) Hechos de Callejón. [Un periodismo que denuncie y dé garantías.](#)

collaboration conduct an exhaustive prior analysis of both physical and digital security and develop a security protocol for the parties involved.<sup>611</sup>

277. The Office of the Special Rapporteur also observes that more than 50 Mexican media outlets signed an agreement on March 24, 2011, on coverage of the violence in order to protect journalists and avoid being used as instruments of propaganda by organized crime. The document establishes objectives, guiding principles, and common editorial standards and, among other provisions, proposes guaranteeing the safety of the reporters covering issues related with violence and insecurity through joint coverage, not to conduct live reporting from the most violent areas, and not placing bylines on news items on subjects related to organized crime. Among other points, it also calls for encouraging citizen participation and complaints in the fight against crime, noninterference in combating crime, protecting victims and minors, and the creation of a citizen body for monitoring the media to prepare regular reports on the degree to which the media have followed the terms of the agreement.<sup>612</sup>

278. The media also have a fundamental role to play in responding to an attack against a journalist. As demonstrated in the aforementioned case of the murder of journalist Tim Lopes, the condemnation of the attacks by the media, their reports on the facts, and their monitoring of the measures taken by the State to protect journalists and investigate attacks are fundamental for guaranteeing that the State complies with its obligations to prevent violence against communicators, put in place measures of protection, and combat impunity in the crimes committed.<sup>613</sup>

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<sup>611</sup> PBS. January 10, 2013. [Lessons Learned From A Collaboration Without Borders in Latin America](#); InterNews. October 29, 2012. [Collaborative Reporting Project Examines Organized Crime and Human Rights Issues in Latin America](#); InSight Crime. September 30, 2012. [The Displaced of Sinaloa](#); InSight Crime. September 30, 2012. [The Legion of the Displaced](#); InSight Crime. September 30, 2012. [Running from Your Own Shadow](#); InSight Crime. [La Sombra del Crimen en las Américas](#); Animal Político. [Esclavos del Narco](#); InSight Crime. October 29, 2012. [Esclavos del Crimen en América Latina](#); El Faro. October 1, 2012. [La legión de los desplazados](#).

<sup>612</sup> Mexicodeacuerdo.org. March 24, 2011. [Acuerdo para la Cobertura Informativa de la Violencia](#). Available for consultation at: [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/media\\_standards/Art%2019%20memorandum%20on%20the%20mexican%20draft%20federal%20act%20Acuerdo\\_Medios\\_23\\_marzo\\_2011.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/media_standards/Art%2019%20memorandum%20on%20the%20mexican%20draft%20federal%20act%20Acuerdo_Medios_23_marzo_2011.pdf); WRadio. March 23, 2011. [Firman acuerdo editorial directivos de medios de comunicación](#); El Economista. March 24, 2011. [Unifican criterios ante la violencia](#).

<sup>613</sup> United Nations. United Nations Educational, Scientific and Cultural Organization (UNESCO). [San José Declaration](#). May 2-4, 2013.

279. Likewise, in media systems that allow it, media and journalist organizations can play an important role as civil or intervenor parties.<sup>614</sup> An example of this practice is the case of the April 28, 2012, murder of journalist Regina Martínez, with the magazine *Proceso*. The crime was strongly repudiated by journalists, organizations and the media. They demanded the resolution of the case and justice in the murder of Regina Martínez and other journalists in the region. Following the murder, members of the press and civil society organizations held demonstrations and marches and wrote open letters to state authorities, which were published by a number of media outlets.<sup>615</sup> Also, journalist Jorge Carrasco, also with *Proceso*, became part of a Special Investigative Commission created by the government of the state of Veracruz to investigate the crime.<sup>616</sup>

280. In particular, *Proceso* rejected the hypothesis of the Office of the State's Attorney of Veracruz that the murder had been the result of a burglary at Regina Martínez' home and that there was no connection to her work. Based on that approach to the investigation, the State's Attorney's Office brought a man to trial for perpetrating the alleged robbery and murder. He was convicted and sentenced to 38 years and two months in prison in April 2013 by a trial court. *Proceso* questioned the capture of the accused and his confession to the crime. It alleged inconsistencies in the investigation of the homicide, for example the fact that the fingerprints found at the scene of the crime did not match those

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<sup>614</sup> UPRIMY, R. and PUYANA, G. [\*Injusticia Premiada: Un análisis de la impunidad de los crímenes contra periodistas en Colombia vinculada a la justicia premial, a partir del estudio del proceso contra el autor material del homicidio de Orlando Sierra\*](#). Realizado para El Proyecto Contra la Impunidad – Sociedad Interamericana de Prensa y para la Asociación Colombiana de Editores de Diarios y Medios Informativos (ANDIARIOS). Bogotá, August 2008. P. 73.

<sup>615</sup> La Política. May 2, 2012. [\*Homenaje a Regina en España\*](#); Astillero TV. April 29, 2012. [\*Comunicado de periodistas veracruzanos sobre crímenes impunes\*](#); Animal Político. April 30, 2012. [\*Anuncian creación de comisión especial para investigar muerte de Regina Martínez\*](#); CNN México. April 29, 2012. [\*Gobierno de Veracruz crea comisión especial por asesinato de periodista\*](#); El Sur de Campeche. May 4, 2012. [\*Periodistas Campechanos Protestan en Contra del Asesinato de Regina Martínez\*](#); Diario de Yucatán. May 1, 2012. [\*Protestan en desfile por asesinato de Regina Martínez en Veracruz\*](#); La Política. May 1, 2012. [\*Crece repudio por asesinato de Regina Martínez\*](#); CNN México. April 28, 2013. [\*Ciudadanos marchan para exigir justicia por la muerte de Regina Martínez\*](#).

<sup>616</sup> Animal Político. April 30, 2012. [\*Anuncian creación de comisión especial para investigar muerte de Regina Martínez\*](#); El Universal. April 29, 2012. [\*Integran comisión especial por crimen de periodista\*](#); CNN México. April 29, 2012. [\*Gobierno de Veracruz crea comisión especial por asesinato de periodista\*](#).

of the accused. The magazine also reported that the individual allegedly responsible had accused the Mexican authorities of torturing him to make him to confess to the crime.<sup>617</sup>

281. Faced with that situation, the magazine named an attorney in the trial to participate as intervenor and requested a series of measures, such as the broadening and correction of testimony. The media outlet also submitted the reporter's articles as evidence to be incorporated into the case file. According to the information received, the governor of the state of Veracruz committed to facilitating the magazine's participation in the investigations. Nevertheless, *Proceso* identified a number of challenges it faced in its role as intervenor in the proceeding, such as difficulty accessing the case file and obtaining copies.<sup>618</sup> According to the information received, on August 8, 2013, the Seventh Criminal Chamber of the Superior Tribunal of Justice of the State of Veracruz annulled the judgment and the sentence of 38 years in prison of the man who had initially been convicted for the supposed robbery and murder of Regina Martínez. The Tribunal's decision was based, among other things, on the fact that due process guarantees had been violated and that the conviction of the defendant was based only on his confession, which had been

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<sup>617</sup> *Proceso*. November 3, 2012. [Caso Regina Martínez: solución inverosímil](#); *Proceso*. April 28, 2012. [Asesinan a la corresponsal de Proceso en Veracruz, Regina Martínez](#); *Proceso*. April 17, 2013. ["Infundada" la versión de Proceso: Procurador de Veracruz](#); *Proceso*. August 8, 2013. [La de "El Silva", una sentencia encubridora](#); *Proceso*. March 14, 2013. [Caso Regina: Sin avances, sin explicaciones, sin credibilidad...](#); *Proceso*. May 28, 2012. [Caso Regina, un mes y nada](#); *Proceso*. May 1, 2012. [Proceso se suma a investigaciones de la PGR sobre caso Regina](#); *Proceso*. July 3, 2012. [Mentiras, filtraciones e incompetencia en el caso Regina](#); *Proceso*. November 12, 2012. [Insiste gobierno de Veracruz en robo como único móvil en caso Regina](#); *Proceso*. April 9, 2013. [Proceso y el caso Regina: "No les creímos y no les creemos"](#); *Proceso*. August 28, 2012. [Caso Regina: cuatro meses de impunidad y desinterés](#).

<sup>618</sup> *Proceso*. November 3, 2012. [Caso Regina Martínez: solución inverosímil](#); *Proceso*. April 28, 2012. [Asesinan a la corresponsal de Proceso en Veracruz, Regina Martínez](#); *Proceso*. April 17, 2013. ["Infundada" la versión de Proceso: Procurador de Veracruz](#); *Proceso*. August 8, 2013. [La de "El Silva", una sentencia encubridora](#); *Proceso*. March 14, 2013. [Caso Regina: Sin avances, sin explicaciones, sin credibilidad...](#); *Proceso*. May 28, 2012. [Caso Regina, un mes y nada](#); *Proceso*. May 1, 2012. [Proceso se suma a investigaciones de la PGR sobre caso Regina](#); *Proceso*. July 3, 2012. [Mentiras, filtraciones e incompetencia en el caso Regina](#); *Proceso*. November 12, 2012. [Insiste gobierno de Veracruz en robo como único móvil en caso Regina](#); *Proceso*. April 9, 2013. [Proceso y el caso Regina: "No les creímos y no les creemos"](#); *Proceso*. August 28, 2012. [Caso Regina: cuatro meses de impunidad y desinterés](#).

obtained under torture. As of the closing of this report, the journalist's murder has still not been solved.<sup>619</sup>

282. Finally, with regard to voluntary adherence to rules and ethical codes and its role in the safety of journalists, the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression indicated that, "by voluntarily adhering to global standards of professionalism, journalists can also enhance their credibility in the eyes of society and their legitimate protection concerns."<sup>620</sup> Also, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions noted that "the fairness, objectivity and professionalism of the reporting done by journalists in exercising their role of informing the world remains the bedrock of the profession. Various media initiatives to maintain this credibility are welcomed."<sup>621</sup> The Office of the Special Rapporteur observes that by voluntarily following rules and codes of ethics, journalist and media outlets have a generally positive impact on their safety and diminishing violence against them. Principle 6 of the Declaration of Principles on Freedom of Expression, establishes, *inter alia*, that "journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State."

283. The third actor who plays a valuable role in the prevention of attacks, the protection of journalists, and the struggle against impunity in crimes against journalists is civil society and its various organizations. Indeed, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has highlighted the importance of keeping the question of violence against journalists on the agenda of NGOs, especially in cases of murders.<sup>622</sup> For its part, the Special Rapporteur on the

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<sup>619</sup> Proceso. August 8, 2013. [Revocan la condena a "El Silva", sentenciado por el crimen de Regina Martínez](#); Knight Center for Journalism in the Americas. August 12, 2013. [Court revokes sentence of man accused of killing Mexican journalist after torture claims, lack of evidence.](#)

<sup>620</sup> 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. 60. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>621</sup> 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. 148. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>622</sup> United Nations. General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. A/HRC/20/22. April 10,

Promotion and Protection of the Right to Freedom of Opinion and Expression has recommended that civil society organizations “work to raise awareness of the risks faced by journalists, the international standards which exist to protect them, and how these might be implemented through campaigns and training initiatives.”<sup>623</sup>

284. The actions of NGOs in the matter at hand can vary according to their nature. 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 these crimes, and punish those responsible. In this sense, important NGOs and journalists’ organizations do the crucial work of monitoring violence committed against the press in countries throughout the region, intervening in specific cases, and denouncing any shortcomings in the actions of States to guarantee the rights to life, personal integrity, access to justice, judicial guarantees and freedom of expression. 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.

285. 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.<sup>624</sup> Legal counsel provided by civil society organizations during the criminal prosecution of attacks against journalists is also crucial,

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2012. Para. 64. Available for consultation at:  
[http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>623</sup> 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. 111. Available for consultation at:  
[http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)

<sup>624</sup> 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. 112. Available for consultation at:  
[http://ap.ohchr.org/documents/dpage\\_e.aspx?m=85](http://ap.ohchr.org/documents/dpage_e.aspx?m=85)



especially in legal systems that allow the victim to act as a civil or auxiliary party in criminal proceedings.<sup>625</sup>

286. The work of NGOs and expert institutions in journalist security and self-defense should also be mentioned. A variety of organizations have developed guides and security codes for communicators.<sup>626</sup>

#### IV. Conclusions and recommendations

287. Acts of violence against journalists have a threefold effect: They violate the right of victims to express and disseminate their ideas, opinions and information; they have a chilling and silencing effect on their peers; and they violate the right of persons and society in general to seek and receive information and ideas of any kind. Its consequences for democracy - which depends on the free, open and dynamic exchange of ideas and information - are particularly serious.

288. Throughout the region, this type of violence takes place with alarming frequency. Between the years of 2010 and 2013 at least 78 journalists were murdered in the region, according to reported data. Many more journalists suffer threats or assaults, while others are forced to self censor as the only way to protect themselves.

289. In this context, 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, States have the duty to prevent violence, protect at-risk journalists, and seriously investigate the crimes committed.

290. The obligation to prevent requires States to adopt a public discourse that contributes to avoid violence against journalists; instruct its security forces to respect the oversight role that the media performs;

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<sup>625</sup> 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. 138. Available for consultation at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)

<sup>626</sup> Reporters Without Borders. February 17, 2006. [Handbook for Journalists](#); International News Safety Institute. [The INSI Safety Code](#); Committee to Protect Journalists (CPJ). [Journalist Security Guide](#); Article 19. [Guía de Seguridad para Periodistas Audiovisuales](#); Fundación para la Libertad de Prensa (FLIP). [Manual de Autoprotección para Periodistas](#).

respect the right of journalists to the confidentiality of their sources, notes and personal and professional files; and collect and maintain precise statistics regarding violence against journalists, among other things.

291. The obligation to protect requires States to take concrete measures when journalists are facing real and imminent danger due to the exercise of their profession. In particular, the measures adopted 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.

292. In situations in which violence against journalists is particularly common, the State may need to establish specialized protection programs that take into account local needs and obstacles and that are adequately implemented pursuant to the principles mentioned in this report. In order for these programs to be effective, special emphasis must be put on the importance of guaranteeing the financial resources and personnel required for the mechanism's adequate implementation; the need to ensure effective coordination among the entities responsible for the implementation of measures of prevention, protection and justice; the demand to define adequately the measures of protection included in the mechanism and the procedure for adopting them; the need to guarantee the effective participation of journalists, civil society and beneficiaries in the implementation and operation of the mechanism; and the benefits of seeking support from the international community for its operation. Other indispensable elements for the adequate implementation of specialized protection programs include a political commitment from States; an adequate definition of potential beneficiaries; a clear recognition of the grounds on which the potential beneficiary may seek protection; an adequate risk analysis that allows the State to determine the most effective way to comply with its obligation to protect, taking into account the circumstances specific to the particular context and allowing for the active participation of the beneficiary; the provision of appropriate and effective measures of protection that are specifically designed to protect both the life and the safety of the beneficiaries and allow them to continue with their professional activities; and the adoption of clear criteria and procedures for monitoring the danger facing the beneficiary.

293. The obligation to investigate, try and criminally punish requires States to investigate violence against journalists without delay and using all legal measures available in order to establish the truth and ensure that attackers are identified, tried and punished. States therefore

must adopt an adequate institutional framework that provides their agencies with sufficient independence and capacity to investigate, try and punish violence against journalists, including, where necessary, specialized investigative units or specialized courts. State authorities must act with due diligence during the investigations, exhaust all possible lines of investigation connected with the victim's journalism work, and carry out investigations within a reasonable period of time. States must also refrain from creating legal obstacles, such as prescription periods, that affect the investigation of the most serious crimes against journalists and the possibility of justice being done. States must also guarantee that the punishments effectively applied are proportional to the seriousness of the crimes. Finally, journalists who are victims of violence and/or their close relatives must be allowed to participate as broadly as possible in the investigation and in any pertinent legal proceedings initiated, and all barriers must be eliminated that block women journalists from exercising their right to justice.

294. Likewise, other actors can play a crucial role in the protection of journalists who have received threats. These actors include the media companies that employ journalists, civil society organizations, and third-party States to which journalists exposed to grave danger temporarily or permanently relocate.

295. In situations of armed conflict or of social unrest, States have a special duty to protect journalists covering these events, because of the special risk they face in these contexts. States must guarantee that journalists and media workers who are reporting these facts are not detained, threatened, attacked or have their rights limited in any way for the exercise of their profession. Furthermore, during armed conflict, journalists do not lose their status as civilians, regardless of the risks to which they are exposed as a result of the conflict. As such, they continue to be protected by the applicable guarantees of international human rights law and international humanitarian law, particularly by the guarantees derived from the principle of distinction. Also, in situations of armed conflict or social unrest, it is specially important, among others, that States respect journalists' rights to keep their sources, notes, and personal and professional archives confidential, and ensure that authorities do not make declarations that could constitute forms of direct or indirect interference with the rights of those that seek to contribute to public deliberation through expression and dissemination of information.

296. Some States in the Americas have taken important steps to meet these obligations. As has been mentioned, some States have

trained their security services on respect for the media and freedom of expression, 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. They also provide important lessons for States that wish to take decisive steps to meet 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.

297. Taking into account the content of this report and the recommendations made to the Member States of the OAS on recent Annual Reports, the Office of the Special Rapporteur closes this 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 improvement of the circumstances for exercising the right of freedom of expression throughout the region:

- 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 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.
- g. 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.